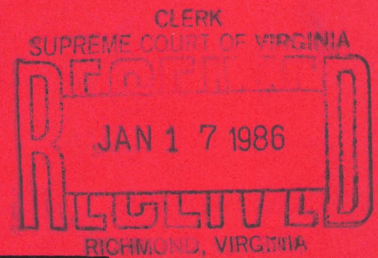


235 VA-295



IN THE
Supreme Court of Virginia
AT RICHMOND

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NOV 30 1988

E. L. DOMINICK, JR.

Appellant,

v.

MARION M. VASSAR,

Appellee.

JOINT APPENDIX

Paul M. Lipkin
GOLDBLATT, LIPKIN, COHEN,
ANDERSON, JENKINS & LEGUM, P.C.
415 Saint Paul's Boulevard
Suite 609
Post Office Box 3505
Norfolk, Virginia 23514-3505

Counsel for Appellant

Grover C. Wright, Jr.
Attorney At Law
3330 Pacific Avenue
Beach Tower Building
Suite 303
Post Office Box 51
Virginia Beach, Virginia 23458

Counsel for Appellee

TABLE OF CONTENTS

	Page
Answer to the Defendant, filed 3/5/84 -----	1
Bill of Complaint filed 3/7/84 -----	5
Opinion letter from H. Clavin Spain, Judge on 12/18/84 -----	9
Final Decree filed 1/11/85 -----	11
Notice of Appeal filed 1/30/85 -----	12
Excerpts from the trial transcript heard before the Honorable Clavin Spain, Judge on 1/6/84 -----	13
Testimony of Jack D. Maness -----	16
Testimony of E. L. Dominick, Jr. -----	41
Testimony of Marion Vassar -----	66
Argument by Mr. Lipkin -----	87
Argument by Mr. Wright -----	97
Rebuttal by Mr. Lipkin -----	102
<u>Plaintiff's Exhibits</u>	
1 - Agreement dated September 6, 1966 -----	107
2 - Stock Ledger Book -----	109
3 - Minutes of Meeting on September 2, 1966 -----	149
4 - Last Will and Testament of John L. Vassar -----	151
5 - Letter from E. L. Dominick, Jr. to Marion M. Vassar dated November 21, 1983 -----	158
6 - Letter from Grover C. Wright, Jr. to E. L. Dominick dated December 1, 1983 -----	159

7 - Letter from Paul M. Lipkin to Grover C. Wright, Jr. dated February 14, 1984 -----	161
8 - Letter from Grover C. Wright, Jr. to Paul M. Lipkin dated February 21, 1984 -----	163
9 - Balance Sheet of Tidewater Auto Parts, Inc. -----	164

Defendant's Exhibits

1 - Waiver of Notice -----	169
2 - By Laws of Tidewater Auto Parts, Inc. -----	174
3 - Waiver of Notice -----	191
4 - Stock Certificate -----	192
5 - Waiver of Notice -----	194
6 - Appraisal of Tidewater Auto Parts, Inc. -----	195

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

E. L. DOMINICK, JR.

Plaintiff,

v.

IN CHANCERY

NO. CH-_____

MARION M. VASSAR, INDIVIDUALLY
AND AS EXECUTRIX OF THE ESTATE
OF JOHN A. VASSAR, DECEASED,

Defendant.

ANSWER OF THE DEFENDANT

1. The allegations of fact set forth in paragraph 1 of the Bill of Complaint are admitted.

2. The allegations of fact set forth in paragraph 2 of the Bill of Complaint are admitted, except that the defendant says that the plaintiff and her deceased husband abandoned that agreement long before the death of her husband.

3. Paragraph 3 of the Bill of Complaint requires no answer.

4. The allegations of paragraph 4 are admitted.

5. The allegations of paragraph 5 are admitted.

6. The allegations of paragraph 6 are admitted.

7. The allegations of paragraph 7 are denied.

8. The allegations of paragraph 8 are admitted.

9. The allegations of paragraph 9 are denied.

10. The allegations of paragraph 10 are denied.

11. The defendant alleges that the plaintiff is

GROVER C. WRIGHT, JR. ^{estopped} to bring this suit as the plaintiff consented to

ATTORNEY AND COUNSELLOR AT LAW, P.C.
SUITE 303 BEACH TOWER BUILDING
1800 PACIFIC AVENUE
VIRGINIA BEACH, VIRGINIA 23458

the cancellation of the defendant's deceased husband's stock and the issuance of new stock to her.

12. To enforce the alleged agreement would be unconscionable.

WHEREFORE, the defendant prays that the Court will dismiss the Bill of Complaint.

MARION M. VASSAR,
INDIVIDUALLY AND AS EXECUTRIX
OF THE ESTATE OF JOHN A.
VASSAR, DECEASED

By Counsel

I hereby certify that a copy of the foregoing pleading was mailed to Paul M. Lipkin, p.q., P.O. Box 3505, Norfolk, VA 23514-3505, this 2 day of March, 1984.


Grover C. Wright, Jr., p.d.

THIS AGREEMENT, Made this 5th day of September, 1966
by and between JOHN A. VASSAR, party of the first part and E.
L. DOMINICK, JR., party of the second part.

WHEREAS, the parties hereto are the sole stockholders of
Tidewater Auto Parts, Inc., each owning 112 shares of common
stock; and

WHEREAS, it is the desire of both parties that in the
event of death of either party, that the corporation continue
to function without a change in stockholders.

NOW THEREFORE in consideration of their mutual promises
and covenants, the parties hereto agree as follows:

1. In the event of death of either party hereto, the
surviving party shall have an exclusive and binding option to
purchase from the heirs, devisees, assigns, or estate of said
deceased party all the shares of stock which said deceased
party owned in Tidewater Auto Parts, Inc., within ninety (90)
days following the date of death of such deceased stockholder.

2. The purchase price of the stock shall be the book
value as reflected by the books of the corporation as of the
date the option is exercised.

3. Notice of the exercise of the option shall be given
in writing addressed to the estate of the deceased stockholder
at the residence address of said deceased stockholder as shown
by the books of the corporation.

4. Within ninety (90) days after notice of the exercise
of said option, the surviving stockholder shall complete the
purchase of the stock by tendering the purchase price in cash
or by certified check.

5. The option hereby granted shall expire ninety (90) days following the date of death of the deceased stockholder.

WITNESS the following signatures and seals:

John A. Vassar (SEAL)
John A. Vassar

E. L. Dominick, Jr. (SEAL)
E. L. Dominick, Jr.

STATE OF VIRGINIA

CITY OF NORFOLK, to-wit:

I, *Jack D. Maness*, a Notary Public in

and for the City aforesaid, in the State of Virginia, do hereby

certify that John A. Vassar and E. L. Dominick, Jr., whose

names are signed to the foregoing agreement, bearing date on

the 5th day of September, 1966, have acknowledged the same

before me in my City and State aforesaid.

GIVEN Under my hand this 5th day of September, 1966.

My Commission Expires:

March 9, 1970

Jack D. Maness
Notary Public

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
E. L. DOMINICK, JR.

Plaintiff

vs.

CH-
IN CHANCERY NO. 5536

MARION M. VASSAR, INDIVIDUALLY
AND AS EXECUTRIX OF THE ESTATE
OF JOHN A. VASSAR, DECEASED
3977 Ocean Hills Court
Virginia Beach, Virginia

Defendant

BILL OF COMPLAINT

TO THE HONORABLE JUDGES OF SAID COURT:

Your plaintiff respectfully represents as follows:

1. That until the death of John A. Vassar as hereinafter described, plaintiff and John A. Vassar were the sole shareholders of Tidewater Auto Parts, Inc., a Virginia corporation, each owning 112 shares of its common stock.

2. That by writing dated September 5, 1966, plaintiff and John A. Vassar agreed that upon the death of either, the surviving shareholder would have the option to purchase from the heirs, devisees, assigns, or estate of the deceased shareholder, all of the deceased shareholder's stock at a price to be determined in accordance with said agreement.

3. That a copy of said written agreement is attached hereto and prayed to be read as a part of this Bill of Complaint.

4. That John A. Vassar died testate September 15, 1983.

5. That defendant, Marion M. Vassar, has duly qualified before the Clerk of this Court as Executrix of the Estate of John A. Vassar.

6. That in addition thereto, Marion M. Vassar is the sole devisee of the Estate of John A. Vassar.

7. That in full compliance with the terms and conditions of the agreement attached as Exhibit A, plaintiff has timely tendered to Marion M. Vassar the purchase price for the stock decedent owned at his death in Tidewater Auto Parts, Inc. by tender to Marion M. Vassar of the sum of \$144,029.50.

8. That defendant has refused the tender, returning plaintiff's certified check, and rejecting his demand to transfer the stock to him.

9. That defendant has refused to comply with the agreement of her decedent, which is binding upon her.

10. That the plaintiff is and always has been ready to pay the purchase price required by the contract and to fully perform his part of the agreement whenever defendant delivers to him the shares of stock Tidewater Auto Parts, Inc. held by her.

WHEREFORE, plaintiff prays that defendant be ordered specifically to perform the agreement entered into between plaintiff and defendant's decedent, John A. Vassar, and to

Commonwealth of Virginia



PHILIP L. RUSSO
AUSTIN E. OWEN
HENRY L. LAM
KENNETH N. WHITEHURST, JR.
BERNARD G. BARROW
H. CALVIN SPAIN
RESIDENT JUDGES
CIRCUIT COURT
CITY OF VIRGINIA BEACH
PRINCESS ANNE
VIRGINIA BEACH, VIRGINIA 23456-9002

SECOND JUDICIAL CIRCUIT

N. WESCOTT JACOB
RESIDENT JUDGE
CIRCUIT COURTS
ACCOMACK COUNTY
NORTHAMPTON COUNTY
ONANCOCK, VIRGINIA 23417

December 28, 1984

Paul M. Lipkin, Esquire
Post Office Box 609
Norfolk, VA 23514

Grover C. Wright, Jr., Esquire
Suite 303 Beach Tower Building
Virginia Beach, VA 23458

Re: E. L. Dominick, Jr.
v. (CH-5536)
Marion M. Vassar, etc.

Gentlemen:

The above-captioned matter was tried by this Court on December 6, 1984. At the conclusion of the Defendant's evidence, the Court granted Plaintiff's counsel an opportunity to provide a memorandum of law in that the Defendant had filed a trial memorandum with the Court on the date of trial.

The Court has reviewed carefully the evidence presented at trial and the arguments as well as discussion of authorities with respect to each memorandum.

The matter at hand, of course, is a chancery matter. The only relevant issues are whether waiver and estoppel are applicable and would negate the effect of an otherwise binding contract.

The facts have been amply stated in the memoranda filed herein. On September 15, 1983, John A. Vassar died. On October 10 and 11, 1983, special meetings of the stockholders and board of directors elected Marion M. Vassar as a Director and President of Tidewater Auto Parts, Inc. On October 10, 1983, Mrs. Vassar, in her capacity as Executrix of the Estate of John A. Vassar, surrendered a stock certificate in Tidewater Auto Parts, Inc., which amounted to some 112 shares in the name of John A. Vassar, and requested that a new certificate be issued in her name, individually, by virtue of being the beneficiary of the Last Will and Testament of John A. Vassar. Subsequently, a stock certificate was

Paul M. Lipkin, Esquire
Grover C. Wright, Jr., Esquire
December 28, 1984
Page Two

issued to Marion M. Vassar (Marion Morrel Vassar) dated October 10, 1983 and executed by E. L. Dominick, Jr., Treasurer, and Marion Morrel Vassar as President.

On September 5, 1966, E. L. Dominick, Jr. and John A. Vassar entered into a Stock Option Purchase Agreement (hereinafter called the "Agreement"), with respect to their respective 112 shares of stock in Tidewater Auto Parts, Inc. The Agreement granted, in essence, a 90 day first option for the surviving individual to purchase the stock of the deceased individual, after giving certain notices. Prior to the transfer of the stock to Marion M. Vassar, no notice had been given by E. L. Dominick, Jr. Notice was subsequently given within the 90 day period in the manner required by the agreement.

None of the stock certificates contained any restrictions on the face thereof with respect to the right of transfer. No mention was made of any restriction at the time of the transfer to Marion M. Vassar, individually. There has been no evidence introduced that either party lacked knowledge of the existence of the September 5, 1966 Agreement at the time of the reissuance of the stock to Marion M. Vassar on October 10, 1983.

The Agreement was binding upon the heirs, devisees, etc. of the Estate of John M. Vassar. It is argued that the 90 day option to purchase by Mr. Dominick extended to Mrs. Vassar by virtue of the Agreement. It is further arguable that she took the stock as a constructive trustee subject to the rights of Mr. Dominick pursuant to the Agreement.

Waiver is generally held to be a legal concept applicable in matters at law. Further, it seems to require consideration.

Estoppel is in the form of common law estoppel and/or equitable estoppel. It is applicable upon certain facts in chancery matters.

The Court finds from all of the evidence that has been introduced in this matter, and the memoranda and authorities cited therein, that the Plaintiff, E. L. Dominick, Jr., is barred by estoppel from asserting his right of option to purchase pursuant to the Agreement of September 6, 1966 against Marion M. Vassar. The act transferring stock on the corporate books in which the Plaintiff, himself, participated, is inconsistent with respect to the rights held by the Plaintiff under the aforementioned Agree-

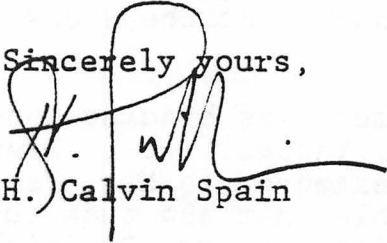
Paul M. Lipkin, Esquire
Grover C. Wright, Jr., Esquire
December 28, 1984
Page Three

ment. The Plaintiff had full knowledge of his rights at the time of his participation in the transfer of the stock, and did not see fit to put any restriction upon the face of said stock certificate, making the same readily marketable to any third party who might have been interested in purchasing said stock. Consistent with the actions of the Plaintiff, the Plaintiff and the Defendant in this matter did engage in mutual efforts to obtain a purchaser for the business of Tidewater Auto Parts, Inc. while preserving for their mutual benefit as rental property that real property owned by the corporation. It was only at the 11th hour and 59th minute, after the actual value of the corporate assets became known, that the Plaintiff saw fit to give notice of the exercise of his rights under the Agreement. His actions were entirely inconsistent with one who intended to give purpose and meaning to the original Stock Option Purchase Agreement.

For all of the foregoing reasons, the Court has decided that judgment should be entered in favor of the Defendant.

Mr. Wright is requested to prepare an appropriate order incorporating the findings of this opinion.

Sincerely yours,


H. Calvin Spain

HCS/ed

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

E. L. DOMINICK, JR.,

Plaintiff,

v.

IN CHANCERY
NO. CH-5536

MARION M. VASSAR,

Defendant.

FINAL DECREE

THIS CAUSE, which has been regularly matured, docketed and set for hearing, came on again this day to be heard upon the papers formerly read, the Court having taken the matter under advisement following an ore tenus hearing before the Court on December 6, 1984, and the Court having considered the papers formerly read, the testimonial and documentary evidence presented at the hearing, the oral and written argument of counsel, it is, for the reasons set forth by the Court in a written letter opinion to counsel dated and filed herein on December 28, 1984, ADJUDGED, ORDERED and DECREED that judgment be, and the same is hereby, awarded the defendant, that the defendant's plea of estoppel be, and the same is hereby, sustained and that the plaintiff's bill of complaint be, and the same is hereby, dismissed, *to which action of the Court the Plaintiff did object and except.*

Enter: 1/11/85


H. Calvin Spain, Judge

Seen: 

Grover C. Wright, Jr., p.d.

GROVER C. WRIGHT, JR.

~~Seen and objected to:~~

ATTORNEY AND COUNSELLOR AT LAW, P.C.
SUITE 303 BEACH TOWER BUILDING
3330 PACIFIC AVENUE
VIRGINIA BEACH, VIRGINIA 23458

Justice given to:

Paul M. Lipkin, p.q.

*Object added per
t/c from Lipkin to Wright.*



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
E. L. DOMINICK, JR.

Plaintiff

vs.

IN CHANCERY NO. CH-5536

MARION M. VASSAR

Defendant

NOTICE OF APPEAL

NOW COMES the plaintiff, E. L. Dominick, Jr., by counsel, pursuant to Rule 5:6(a) of the Rules of Court and files his Notice of Appeal to the entry of the Final Decree by the Circuit Court of the City of Virginia Beach on January 11, 1985, wherein his Bill of Complaint was dismissed and judgment was entered in favor of the defendant. A transcript of facts, testimony or other incidents of the case is to be hereafter filed.

E. L. DOMINICK, JR.

By: *Paul M. Lipkin*

Of Counsel

PAUL M. LIPKIN
GOLDBLATT, LIPKIN, COHEN,
ANDERSON, JENKINS & LEGUM, P.C.
415 St. Paul's Boulevard-Suite 609
P. O. Box 3505
Norfolk, Virginia 23514-3505
627-6225

FILED

JAN 30 1985

J. Curtis Pruitt, Clerk

Certificate of Service

I certify that a copy of the foregoing Notice of Appeal was mailed this 29th day of January, 1985 to Grover C. Wright, Jr., counsel for the defendant, Suite 303 Beach Tower Building, 3330 Pacific Avenue, Virginia Beach, Virginia 23458.

Paul M. Lipkin

1 V I R G I N I A:
2 IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

3 -----
4 E. L. DOMINICK, JR.,

5 Plaintiff,

6 v.

IN CHANCERY
NO. CH-5536

7 MARION M. VASSAR, etc.,

8 Defendant.
9 -----

10 TRANSCRIPT OF HEARING

11
12 DATE: December 6, 1984

13 BEFORE: The Honorable H. Calvin Spain

14
15 APPEARANCES: GOLDBLATT, LIPKIN, COHEN, ANDERSON,
JENKINS & LEGUM, P.C.
16 Attorneys for the Plaintiff
415 St. Paul's Blvd., Suite 609
17 Norfolk, Virginia
BY: PAUL M. LIPKIN, ESQ.
18 of Counsel.

19 GROVER C. WRIGHT, JR., ESQ.
Attorney for the Defendant
20 303 Beach Tower Building
3330 Pacific Avenue
21 Virginia Beach, Virginia
22
23
24
25

I N D E X

WITNESSES:

PAGE:

JACK D. MANESS

Direct Examination by Mr. Lipkin	7
Cross-Examination by Mr. Wright	13
Redirect Examination by Mr. Lipkin	23
Recross-Examination by Mr. Wright	28

E. L. DOMINICK, JR.

Direct Examination by Mr. Lipkin	32
Cross-Examination by Mr. Wright	39

MARION VASSAR

Direct Examination by Mr. Wright	57
Cross-Examination by Mr. Lipkin	66
Redirect Examination by Mr. Wright	73
Recross-Examination by Mr. Lipkin	75

EXHIBITS:

PAGE:

Plaintiff's Exhibit No. 1 (Buy/Sell Agreement)	10
Plaintiff's Exhibit No. 2 (Stock Ledger Book)	27
Plaintiff's Exhibit No. 3 (Minutes)	27
Plaintiff's Exhibit No. 4 (Last Will and Testament)	31
Plaintiff's Exhibit No. 5 (Letter)	34
Plaintiff's Exhibit No. 6 (Letter)	35
Plaintiff's Exhibit No. 7 (Letter)	37
Plaintiff's Exhibit No. 8 (Letter)	37
Plaintiff's Exhibit No. 9 (Balance Sheet)	38

<u>EXHIBITS:</u>	<u>PAGE:</u>
Defendant's Exhibit No. 1 (Document)	17
Defendant's Exhibit No. 2 (By-laws)	23
Defendant's Exhibit No. 3 (Document)	45
Defendant's Exhibit No. 4 (Certificate)	47
Defendant's Exhibit No. 5 (Minutes)	48
Defendant's Exhibit No. 6 (Fair Market Value)	56
Defendant's Exhibit No. 7 (Letter)	62
Defendant's Exhibit No. 8 (CPA Book Value)	66
Defendant's Exhibit No. 9 (W-2)	74

1 MR. LIPKIN: Mr. Maness.

2
3 JACK D. MANESS,

4 a Witness, having been first
5 duly sworn, was examined and
6 testified as follows:

7
8 DIRECT EXAMINATION

9
10 BY MR. LIPKIN:

11 Q. Would you state your name and address.

12 A. Jack D. Maness, and my address is 39
13 Westover Road, Newport News, Virginia.

14 Q. What is your occupation, Mr. Maness?

15 A. I'm an attorney at law.

16 Q. Where do you practice law?

17 A. In the City of Norfolk.

18 Q. What's your business address?

19 A. 702 Plaza One Building, Norfolk,
20 Virginia.

21 Q. How long have you been engaged in the
22 practice of law?

23 A. Since 1957.

24 Q. And all of that time, have you
25 practiced in the Tidewater area?

1 A. In the City of Norfolk and the
2 Tidewater area.

3 Q. Do you know E. L. Dominick, Jr.?

4 A. I do.

5 Q. Did you know prior to his death John
6 A. Vassar?

7 A. I did.

8 Q. Are you familiar with the corporation
9 Tidewater Auto Parts, Incorporated?

10 A. Yes, sir.

11 Q. How are you familiar with it?

12 A. I was engaged by first of all
13 Mr. Vassar shortly after the Articles of
14 Incorporation were filed with the State Corporation
15 Commission.

16 Q. You did not prepare the articles?

17 A. No, sir, I did not.

18 Q. Do you know when you were first
19 engaged?

20 A. It was in early 1966.

21 Q. Okay. And you said Mr. Vassar is the
22 man who engaged you?

23 A. Yes, sir. My notes reflect my first
24 contact with this corporation was February 6th, 1966.

25 Q. Were you then -- did you then become

1 the attorney for the corporation?

2 A. At that time, the corporation had
3 been partially organized between Mr. Vassar and
4 another gentleman. I think his name was Todd,
5 Mr. Todd. And they were having some problems about
6 the finances between these two individuals, and
7 Mr. Vassar contacted me, and I attended a meeting of
8 these two potential stockholders of the corporation.

9 Q. Mr. Dominick was not a part of the
10 corporation?

11 A. Not at that time, no, sir.

12 Q. Do you know when he became a part of
13 the corporation?

14 A. Sometime prior to September 1966. My
15 notes reflect, as I said, that I attended a meeting
16 between the Todds and the Vassars, and there was a
17 problem with Mr. Todd putting his money into the
18 corporation.

19 Q. Did Mr. Todd ever become a
20 shareholder of the corporation?

21 A. No, sir.

22 Q. Who were the big shareholders of the
23 corporation?

24 A. The two shareholders were John Vassar
25 and E. L. Dominick, Jr.

1 Q. Did you prepare a buy/sell agreement
2 between them?

3 A. I did.

4 Q. Is this the signed copy of that
5 buy/sell agreement?

6 A. This is a signed copy of the
7 agreement, yes, sir.

8 MR. LIPKIN: Your Honor, I'd offer
9 that exhibit.

10 THE COURT: Any objections?

11 MR. WRIGHT: No, sir.

12 THE COURT: Marked.

13
14 (Whereupon, the above-mentioned

15 document was marked as Plaintiff's Exhibit No. 1.)

16

17 BY MR. LIPKIN:

18 Q. Did you finally witness the
19 signatures of both parties to that?

20 A. I witnessed and notarized the
21 signatures.

22 Q. You were at that time a notary public?

23 A. Yes, sir.

24 Q. And so you have acknowledged -- they
25 acknowledged the signing of that agreement?

1 A. That's correct.

2 Q. Okay. Mr. Maness, how long did you
3 serve as attorney for the Tidewater Auto Parts,
4 Incorporated, the corporation?

5 A. From the time the stock was issued,
6 and I don't know if I'm an attorney for it at the
7 present time, but at least until Mr. Vassar's death,
8 and I think since then that I've prepared the annual
9 modification and the annual report.

10 Q. Are you the registered agent?

11 A. Yes, I am.

12 Q. Now, over the course of the years
13 from 1966, are you aware as corporate counsel of any
14 modification or abridgement or annulment of the
15 agreement?

16 A. No, sir.

17 Q. Are you aware of any obligation of
18 the agreement between the parties?

19 A. No, sir.

20 Q. Did you -- in acting for the
21 corporation, did you have contact at all with
22 Mr. Vassar?

23 A. At least once a year in the
24 preparation of minutes and annual reports and on
25 other occasions when they would have litigation

1 problems he would contact me. So usually two or
2 three times a year I would have conversations with
3 him.

4 Q. And you also had contact with
5 Mr. Dominick, I believe?

6 A. Yes, sir.

7 Q. Did Mr. Vassar ever indicate to you
8 that this agreement --

9 MR. WRIGHT: Object to the leading.

10 THE COURT: Sustained.

11

12 BY MR. LIPKIN:

13 Q. Did Mr. Vassar ever make any
14 statement to you concerning this agreement after the
15 execution of it to your knowledge?

16 A. Not after the execution, no, sir.

17 Q. Were you ever instructed --

18 MR. WRIGHT: Object to the leading.

19

20 BY MR. LIPKIN:

21 Q. Were you ever instructed to prepare
22 any minutes regarding this agreement subsequent to
23 its execution?

24 A. No, sir.

25 Q. Did you keep the minutes' book of the

1 corporation?

2 A. Yes, I did.

3 Q. Up until when?

4 A. Up until Mr. Vassar's death, and I
5 think Mrs. Vassar requested that she wanted to see
6 it, and I turned it over to her. I believe -- I
7 stand corrected. I think that initially I did keep
8 the minute book, but eventually I turned it over to
9 Mr. Vassar who was the operator or manager of the
10 the business.

11 Q. During his lifetime, of course?

12 A. Yes, sir.

13 MR. LIPKIN: Okay. Would you answer
14 Mr. Wright.

15
16 CROSS-EXAMINATION

17
18 BY MR. WRIGHT:

19 Q. The contract that's been introduced
20 into evidence dated September 5th, 1966 recites that
21 on that date, September 5th, 1966, that Dominick and
22 the decedent were each the owners of 112 shares of
23 stock. Is that correct?

24 A. Yes, sir.

25 Q. The fact is that on that date,

1 September 5th, 1966, neither one of them owned any
2 stock, did they?

3 A. Mr. Wright, I don't know. I'd have
4 to see the stock certificates to tell you.

5 Q. See if you recognize that as being
6 the stock book of the corporation.

7 A. This appears to be the stock book of
8 the corporation, yes, sir.

9 Q. So the fact is that even though your
10 contract of September 5, '66 says that they each own
11 112 shares, there was no stock issued until the 14th
12 of September, 1966; is that correct, according to
13 the records?

14 A. According to the stock certificate
15 book, that's correct. I will correct that. It
16 shows that on February 5, '66 there were --

17 Q. I'm not talking about what was issued
18 to Mr. Todd when you say no stock had been issued to
19 the Todds. I'm talking about whether or not
20 Dominick was a stockholder on September 5th.

21 A. Let me find it. According to the
22 records, it was not on September 5th.

23 Q. When was the stock issued to
24 Mr. Dominick?

25 A. According to these records, it's got

1 a date of September 14, 1966.

2 Q. When was the certificate for 112
3 shares issued to Mr. Vassar?

4 A. If these dates are correct, it was
5 September 14, 1966.

6 Q. Then your prior testimony that no
7 stock had been issued to Todd is incorrect, isn't it?

8 A. That's correct.

9 Q. So on September 5th, Todd was the
10 shockholder, wasn't he?

11 A. I don't know when his shares were
12 transferred, Mr. Wright.

13 Q. Now, did you prepare the by-laws of
14 the corporation?

15 A. Mr. Wright, I don't know. If I could
16 see the minute book, I might be able to determine my
17 writing. I did not prepare the Articles of
18 Incorporation but by-laws, I don't know.

19 Q. All right. Let me show you the
20 minutes of the original meeting and ask you if you
21 recognize them as being the true minutes reflected
22 by the books of this corporation?

23 A. Mr. Wright, I assume they are. It
24 states on the face that they are, but I have no
25 independent knowledge.

1 Q. Did you prepare them?

2 A. No, sir.

3 Q. But they do appear to be the --

4 A. I would assume that they are, yes,
5 sir.

6 Q. And in those minutes, there is an
7 agreement that binds stockholders, is there not?

8 A. I don't know.

9 Q. Well, read the last paragraph of the
10 page that I've opened to you there.

11 A. It's got a resolution that states
12 that if any stockholder desires to sell his stock,
13 he must give the other shareholders at least
14 thirty-days' notice.

15 Q. Thirty-days' notice?

16 A. Yes, sir, and apparently a first
17 right of refusal.

18 Q. It's not an option to purchase, it
19 doesn't have a purchase price, it's a right of first
20 refusal. If you want to sell and you got an offer
21 that's acceptable to you, you give the other
22 shareholder the right to buy on the similar terms?

23 A. Yes, sir.

24 Q. Are you aware that the stockholders
25 or directors ever abrogated that?

1 A. I'm not aware of any change that was
2 made in the corporate minutes.

3 MR. WRIGHT: I'll offer this as
4 Defendant's Number 1, Your Honor.

5 THE COURT: Any objection?

6 MR. LIPKIN: No, Your Honor.

7 THE COURT: Be so marked.

8
9 (Whereupon, the above-mentioned
10 document was marked as Defendant's Exhibit No. 1.)

11
12 BY MR. WRIGHT:

13 Q. Now, let me show you some more
14 minutes -- more by-laws, rather, and ask you if you
15 drew these. I show you these by-laws. Did you draw
16 those?

17 A. Mr. Wright, these are apparently
18 pre-printed, but they have blanks filled in, and it
19 appears to be my handwriting for these blanks that
20 are filled in.

21 Q. Okay. Do you know when -- do you
22 know if these by-laws were ever adopted?

23 A. Not unless I see the corporate minute
24 book and see if there was a formal adoption. I
25 don't have any independent recollection.

1 Q. And these by-laws contain another
2 agreement with regard to the sale of stock, don't
3 they?

4 A. I have no idea.

5 Q. Well, look at Article 10, page 16.

6 A. It appears to contain the similar
7 agreement as the other by-laws, yes, sir. That's
8 for the --

9 Q. Having to do with the right of first
10 refusal?

11 A. Yes, sir. And the book value.

12 Q. It only talks about a lifetime
13 transfer or does it talk about any kind -- you say
14 those are your forms?

15 A. No, I don't say they're my forms. It
16 appears that it's my handwriting that filled in the
17 blanks, yes, sir.

18 Q. And do you know whether or not that
19 was adopted?

20 A. I have no independent recollection.
21 The minutes may reflect whether or not they were
22 adopted. I don't know.

23 Q. At any rate, that would make a total
24 of three different arrangements that were among the
25 official records of the corporation?

1 A. Well, it would appear that in the
2 minutes and by-laws, there are two provisions having
3 to do with one stockholder selling his shares to
4 anybody else that requires that he give the other
5 stockholders first right of refusal. The other
6 agreement which I prepared is a little bit more
7 detailed.

8 Q. It's a lot shorter?

9 A. It's a lot shorter?

10 Q. Yes. One lasts two pages long.

11 A. This one looks like it's about a page
12 and-a-half.

13 Q. And not consistent though, are they?

14 A. Not consistent and nor are they
15 inconsistent.

16 Q. They're not?

17 A. Not in my opinion, no, sir.

18 Q. That's your opinion?

19 A. Yes, sir.

20 Q. Which one do we go by, Mr. Maness?

21 A. For what purpose?

22 Q. If a stockholder wants to dispose of
23 his stock.

24 A. Well, according to these by-laws, if
25 a stockholder wishes to sell his shares to some

1 third party, then he must give the other stockholders
2 or any stockholder the first right of refusal. The
3 agreement that I prepared didn't have anything to do
4 with that.

5 Q. Let me stop you for a minute. Is it
6 your opinion then that under the by-laws that if a
7 stockholder died, his executor would not be bound by
8 the agreement made by the decedent and that the
9 executor could sell the stock to anybody he wanted
10 without going by the agreement in the by-laws?

11 A. I don't think the bylaws cover such a
12 situation.

13 Q. The by-laws bind the stockholders,
14 don't they? It's a contract between --

15 MR. LIPKIN: Let him answer.
16 Your Honor, I object to it.

17 THE COURT: Sustained. Let him
18 answer.

19
20 BY MR. WRIGHT:

21 Q. All right. Mr. Maness, the by-laws
22 bind the stockholders, don't they?

23 A. To a certain extent, yes, sir.

24 Q. You consider that they are a contract
25 between the people and the corporation?

1 A. The by-laws, no, sir, I don't
2 consider it a contract.

3 Q. Are you saying that the resolution
4 about the stock is meaningless?

5 A. No, sir.

6 Q. All right. If it's binding on the
7 stockholders, are you telling me that if a stockholder
8 dies that his executor can sell his stock to anybody
9 he wants without honoring that restriction?

10 A. This does not, from my reading of it,
11 say anything about a decedent.

12 Q. I understand that, but that isn't
13 what I asked you. You're telling me that a contract
14 that's binding on a party is not binding on his
15 executor, and the executor can turn around and sell
16 the stock to an outsider?

17 A. First of all, in my opinion, this is
18 not a contract. This is a resolution that was
19 adopted apparently by the corporation.
20 It's not a contract between the stockholders.

21 Q. Is it meaningless?

22 A. I'd say it's meaningful.

23 Q. Would it bind the two stockholders?

24 A. The two living stockholders, I think
25 if they wanted to sell their stock to a third person,

1 then they would be required to honor this first
2 right of refusal.

3 Q. Okay. But if a guy died, his
4 executor could sell it to anybody he wanted?

5 A. You're asking me for a legal opinion.

6 Q. You're a lawyer, aren't you?

7 MR. LIPKIN: Your Honor, I object.
8 Of course, he's a lawyer.

9
10 BY MR. WRIGHT:

11 Q. I'm asking you for a legal opinion.

12 A. Am I going to get paid?

13 THE COURT: Strike that from the
14 record. Continue.

15 MR. LIPKIN: Your Honor, I object to
16 his legal opinion, too. I don't think that's what
17 we're dealing with. Your Honor has got to
18 determine -- interpret these contracts.

19 MR. WRIGHT: I'll withdraw the
20 question. I'll take the Judge's interpretation.

21 I'll offer this as Defendant's 2.

22 THE COURT: Any objection to the
23 by-laws?

24 MR. LIPKIN: No, sir.

25 THE COURT: Defendant's 2.

1 (Whereupon, the above-mentioned
2 document was marked as Defendant's Exhibit No. 2.)
3

4 MR. WRIGHT: No further questions of
5 this witness.
6

7 REDIRECT EXAMINATION
8

9 BY MR. LIPKIN:

10 Q. Mr. Maness, if you would, looking in
11 the stock ledger book, the stubs of the stocks that
12 were issued are here and some of the canceled shares
13 are here; is that correct?

14 A. Yes, sir.

15 Q. Would you recite, if you would, the
16 stocks that were issued as reflected by the book
17 showing the number, the certificate number, the
18 amount of shares, and to whom issued, and what the
19 records show happened to them?

20 A. All right. According to certificate
21 book number one, 72 shares was issued to John L.
22 Vassar on February 8, 1966.

23 Q. 72?

24 A. Yes, sir.

25 Q. February 8, '66, 72?

1 A. Yes, sir.

2 Q. Okay.

3 A. Now, certificate number two indicates
4 that 54 shares were issued to Mary G. Todd on
5 February 8, 1966, and this stock certificate is in
6 the minute book. It's stapled. And on the back
7 side of the stock certificate it shows that this
8 certificate was transferred to John Leroy Vassar on
9 March 27, 1966.

10 Q. It's in the minute book?

11 A. Yes, sir

12 THE COURT: March what?

13 THE WITNESS: 27th. Next,
14 certificate number three for 40 shares of stock was
15 issued to John A. Vassar on September 14, 1966.

16

17 BY MR. LIPKIN:

18 Q. Okay. Now --

19 A. Do you want the other one?

20 Certificate number four, 112 shares was issued
21 to E. L. Dominick, Jr. on September 14, 1966.

22 Q. Okay.

23 A. Certificate number five was
24 transferring -- replacing certificate number two and
25 three, 112 shares was issued to Marion Vassar on

1 October 10, 1983.

2 Q. October 10, '83?

3 A. Yes, sir.

4 Q. Okay. Now, let me show you some
5 minutes -- a waiver of notice and some minutes of
6 the corporation that were purportedly held on
7 September 2, 1966 and ask you did you prepare those
8 minutes?

9 A. I believe that I did, sir.

10 Q. The minutes -- who were the parties
11 at the meeting?

12 A. The parties at the meeting were John
13 A. Vassar, Marion M. Vassar, E. L. Dominick, Jr.,
14 Elizabeth S. Dominick.

15 Q. Elizabeth S. is Mr. Dominick's wife?

16 A. That's correct.

17 Q. And, of course, Mr. and Mrs. Vassar
18 are husband and wife?

19 A. Correct.

20 Q. Two husband and wife teams?

21 A. That's correct.

22 Q. What does it say about the issuance
23 of stock in these minutes?

24 A. It resolved that the corporation
25 issue 40 shares of common stock to John A. Vassar

1 for two thousand dollars. It also resolved that the
2 corporation issue 112 shares of common stock to
3 E. L. Dominick, Jr. for five thousand dollars.

4 Q. This was on September 2nd?

5 A. September 2, 1966, correct.

6 Q. Okay. Now, Mr. Dominick --
7 Mr. Vassar already had 72 shares, correct?

8 MR. WRIGHT: Object to the leading.

9 THE COURT: Sustained.

10 MR. WRIGHT: He's testifying.

11 THE WITNESS: When all those --

12 THE COURT: Rephrase the question.

13
14 BY MR. LIPKIN:

15 Q. All right. The issuance on those 40
16 shares according to the records would have placed
17 how many shares in Mr. Vassar's name?

18 A. 112 shares.

19 Q. And how many in Mr. Dominick's?

20 A. 112 shares.

21 Q. Any other shares outstanding?

22 A. Those were the only outstanding
23 shares.

24 MR. LIPKIN: Your Honor, I'd offer
25 the stock ledger book.

1 THE COURT: Any objections?

2 MR. WRIGHT: No, sir.

3 THE COURT: All right. Plaintiff's
4 Number 2.

5
6 (Whereupon, the above-mentioned
7 document was marked as Plaintiff's Exhibit No. 2.)

8
9 MR. LIPKIN: Yes, sir. And I would
10 offer, sir, the minutes and the waiver as one
11 exhibit as the September 2nd, 1966 minutes.

12 THE COURT: Any objections?

13 MR. WRIGHT: No, sir.

14
15 (Whereupon, the above-mentioned
16 document was marked as Plaintiff's Exhibit No. 3.)

17
18 BY MR. LIPKIN:

19 Q. Mr. Maness, looking at Defendant's
20 Exhibit 1, the Article 11 that Mr. Wright asked you
21 to observe about first right of refusal, does that
22 recite any condition in the event of a death of a
23 shareholder?

24 MR. WRIGHT: It speaks for itself.

25 THE COURT: I think it speaks for

1 itself.

2 MR. LIPKIN: Okay.

3 THE WITNESS: Do you want me to
4 answer?

5 THE COURT: No, sir.

6 MR. LIPKIN: Okay. I have no other
7 questions then.

8 THE COURT: Any recross?

9 MR. WRIGHT: Just one question.

10

11

RECROSS-EXAMINATION

12

13 BY MR. WRIGHT:

14

15 Q. You recited that certificate one for
16 72 shares was issued to Vassar in February of '66
17 and number two for 54 shares was issued to Todd in
18 February of '66. Then you indicated that that 54
19 shares of Todds was transferred to Vassar in March
 of '66. Is that what you said?

20

21

 A. I think that's what the certificates
 show.

22

23

24

 Q. When it was transferred to Vassar on
 March 27th, 1966, what happened to the 54 shares
 that Vassar got from Todd?

25

 A. I have no idea, Mr. Wright.

1 Q. No idea?

2 A. No, sir. The only thing that I know
3 is that Vassar and Dominick wound up with 112 shares.

4 Q. Well, according to the records as of
5 March 27th, '66, Vassar would have had 126 shares.

6 MR. LIPKIN: Objection, Your Honor.
7 The records speak for themselves.

8 THE COURT: Perhaps the gentleman
9 would like to look at the records.

10 MR. WRIGHT: I thought you'd have him
11 testify rather than just look at the record. Did
12 you just introduce the record?

13 MR. LIPKIN: Didn't you just indicate
14 that the record speaks for itself?

15 MR. WRIGHT: I was talking about the
16 by-laws.

17 MR. LIPKIN: I think all of them
18 speak for themselves.

19 MR. WRIGHT: I'm simply going over
20 his own testimony.

21 THE COURT: You can ask him the
22 question, but the records clearly speak for
23 themselves.

1 BY MR. WRIGHT:

2 Q. You testified that 40 more shares
3 were issued to Vassar on September 14th of '66.
4 That would make 166 shares as of that point,
5 wouldn't it?

6 A. Well, Mr. Wright, I'm not looking at
7 the books, but I do know that in September 1966,
8 Mr. Vassar and Mr. Dominick each owned 112 shares of
9 stock.

10 Q. Is that what the stock records show?

11 A. I think so. That's what the
12 agreement says, everything.

13 Q. I understand what the agreement says.
14 The agreement says they had stock as of that date.
15 You admitted that Dominick didn't get any stock
16 until the 14th.

17 A. Yes, sir, according to the records.

18 Q. And your recitation of the stock
19 records don't reflect what your agreement reflects,
20 does it?

21 A. Probably not. The resolution had
22 been adopted to issue the shares.

23 MR. WRIGHT: No further questions.

24 MR. LIPKIN: No further questions.

25 THE COURT: May he be excused?

1 MR. LIPKIN: Yes, sir.

2 THE COURT: You may leave.

3 Next witness.

4 MR. LIPKIN: Your Honor, by agreement,
5 I would offer the last will and testament of John
6 Vassar that has been probated in the clerk's office
7 in this court and recorded in Book 67, page 70, the
8 clerk's order probating the will and qualifying
9 Mrs. Vassar as executrix followed by a list of heirs
10 sworn to by Mrs. Vassar and offer that as an exhibit.

11 THE COURT: Number 4, I believe.

12 MR. LIPKIN: Yes, sir.

13 THE COURT: By agreement?

14 MR. LIPKIN: Yes, sir. Those papers
15 indicate that Mr. Vassar died September 15th, 1983.

16 THE COURT: Plaintiff Number 4.

17
18 (Whereupon, the above-mentioned
19 document was marked as Plaintiff's Exhibit No. 4.)
20

21 MR. LIPKIN: I call E. L. Dominick,
22 Jr.
23
24
25

1 E. L. DOMINICK, JR.,
2 the Plaintiff, having been first
3 duly sworn, was examined and
4 testified as follows:

5
6 DIRECT EXAMINATION

7
8 BY MR. LIPKIN:

9 Q. Would you be good enough to state
10 your name and address.

11 A. E. L. Dominick, Jr., 4014 Tanglewood
12 Trail, Chesapeake, Virginia.

13 Q. You are the Dominick who owns 112
14 shares of stock of Tidewater Auto Parts,
15 Incorporated?

16 A. I am.

17 Q. When did you purchase those shares?

18 A. Some time in '66.

19 Q. And who was the other shareholder?

20 A. John L. Vassar.

21 Q. Did you and Mr. Vassar enter into
22 this paper agreement of September '66 marked
23 Plaintiff's Exhibit 1?

24 A. Yes, sir.

25 Q. Okay. Did you ever cancel that

1 agreement with Mr. Vassar?

2 A. No, sir.

3 MR. WRIGHT: Your Honor, I think that
4 calls for his conclusion, and I would like it to be
5 stricken. He can tell what happened or what didn't
6 happen, but that's his conclusion or opinion as to
7 whether or not the agreement was canceled.

8 MR. LIPKIN: I said did he ever
9 cancel it, not whether it was canceled. He can
10 testify what he did or didn't do.

11 THE COURT: I think he can testify to
12 what he did.

13 MR. LIPKIN: Okay.

14
15 BY MR. LIPKIN:

16 Q. Did you and Mr. Vassar ever discuss
17 putting the agreement away or aside or abrogating it?

18 A. No, sir, we did not.

19 Q. Do you recall when Mr. Vassar died?

20 A. Yes, sir.

21 Q. When was that?

22 A. September '66 -- I mean, sorry,
23 '84 -- '83.

24 Q. Did you give any written notice to
25 Mrs. Vassar that you wished to buy Mr. Vassar's

1 stock?

2 A. I did.

3 Q. I show you, Mr. Dominick, your letter
4 of November 21, 1983 and ask is that a letter that
5 you wrote?

6 A. Yes, sir.

7 Q. And you sent that to Mrs. Vassar,
8 executrix of the estate?

9 A. Yes, sir. She didn't pick it up, and
10 I hand-delivered it.

11 MR. LIPKIN: I offer that as
12 Plaintiff's Exhibit 5.

13 THE COURT: No objection to these
14 correspondence, right, Mr. Wright?

15 MR. WRIGHT: No, sir.

16 THE COURT: Plaintiff Number 5.

17
18 (Whereupon, the above-mentioned
19 document was marked as Plaintiff's Exhibit No. 5.)
20

21 BY MR. LIPKIN:

22 Q. In that letter you stated that you
23 wished to exercise the option?

24 A. Yes, sir.

25 Q. Did you then receive a response from

1 Mr. Grover Wright, attorney on the behalf of
2 Mrs. Dominick?

3 A. I did. Mrs. Vassar.

4 Q. Mrs. Vassar. I did it again.

5 A. This is a letter I received.

6 MR. LIPKIN: Your Honor, I offer that.

7 THE COURT: All right. Plaintiff's
8 Number 6.

9
10 (Whereupon, the above-mentioned
11 document was marked as Plaintiff's Exhibit No. 6.)

12
13 BY MR. LIPKIN:

14 Q. In effect, Mr. Wright was telling you
15 on behalf of Mrs. Vassar that she declined to accept
16 your offer?

17 A. Yeah.

18 Q. Thereafter, you engaged my services,
19 I believe?

20 A. I think that's right. Right after
21 that.

22 Q. And did you get in touch with the
23 corporate accountants?

24 A. I did.

25 Q. And who was that?

1 A. L. George Hoover.

2 Q. What did you -- did you engage him to
3 do a specific task and, if so, what?

4 A. Take the inventory and give us a
5 balance sheet at the end of the required time to
6 meet the agreement.

7 Q. Okay. And did you help prepare that,
8 the inventory?

9 A. The inventory, yes. I was doing the
10 supervising.

11 MR. WRIGHT: To save time, we don't
12 have any quarrel with the fact that it was done,
13 that the accountant made the determination, and that
14 the determination is accurate.

15 THE COURT: Stipulated.

16 MR. LIPKIN: Thank you.

17 THE COURT: As to the book value?

18 MR. WRIGHT: Yes, sir.

19

20 BY MR. LIPKIN:

21 Q. Did you then tender through me to
22 Mr. Wright one half of the book value for the stock?

23 A. I did in a certified check.

24 Q. And I show you my letter of February
25 14th and ask if you can identify that.

1 MR. WRIGHT: We stipulate that that
2 was sent and received.

3 THE COURT: All right.

4 MR. LIPKIN: I'd offer the letter and
5 stapled to it a copy of the certified check that he
6 was kind enough to return as an exhibit.

7 THE COURT: Mark that one as Exhibit
8 Number 7.

9
10 (Whereupon, the above-mentioned
11 document was marked as Plaintiff's Exhibit No. 7.)

12
13 BY MR. LIPKIN:

14 Q. And the other one that I will
15 introduce through you is Mr. Wright's letter
16 returning it to me of February 21.

17 A. Yes, sir. We did get it back.

18 MR. LIPKIN: Your Honor --

19 THE COURT: Number 8.

20
21 (Whereupon, the above-mentioned
22 document was marked as Plaintiff's Exhibit No. 8.)

23
24 BY MR. LIPKIN:

25 Q. That figure of a hundred and

1 forty-two thousand plus that certified check, was
2 that based upon Mr. Hoover's balance sheet report?

3 A. Yes, sir.

4 Q. And is this his report reflecting --

5 A. This is the cover, and it appears to
6 be the same report.

7 MR. LIPKIN: I'd offer the balance
8 sheet.

9 THE COURT: Any objection?

10 MR. WRIGHT: Yeah. I think it's a
11 hundred and forty-four, not a hundred and forty-two.

12 MR. LIPKIN: Thank you very much.

13 THE COURT: \$144,029.50?

14 MR. LIPKIN: Yeah. Thank you.

15 MR. WRIGHT: Okay.

16 THE COURT: Mark this as Exhibit
17 Number 9.

18
19 (Whereupon, the above-mentioned
20 document was marked as Plaintiff's Exhibit No. 9.)

21
22 BY MR. LIPKIN:

23 Q. Mr. Dominick, are you still ready,
24 willing, and able to pay \$144,029.50?

25 A. I am.

1 Q. Are you asking that the stock be
2 transferred to you in payment for that amount of
3 money?

4 A. That's right, sir.

5 MR. LIPKIN: I have no other
6 questions.

7 THE COURT: Cross-examination.

8
9 CROSS-EXAMINATION

10
11 BY MR. WRIGHT:

12 Q. Mr. Dominick, you didn't start this
13 business; is that correct?

14 A. No, sir, I did not.

15 Q. Okay. Mr. Vassar did?

16 A. Mr. Vassar and someone by the name of
17 Todd, which I never met.

18 Q. Vassar and Todd started it --

19 A. That's right.

20 Q. -- in '65. You came in it and got a
21 stock certificate in September of '66?

22 A. That's right, sir.

23 Q. Have you ever actively worked at the
24 business, down at the business?

25 A. I put in quite a bit of time there

1 when it was first opened, and from time to time, I
2 check to the present date.

3 Q. Well --

4 A. May I add something?

5 Q. If it's responsive to my question you
6 may.

7 A. Well, actually I think it would be.
8 My background in automotive and guidance to Johnny
9 Vassar had a lot to do with that automotive business.

10 Q. What I'm asking is, when is the last
11 time you put in a day's work at this business?

12 A. You mean full day?

13 Q. Uh-huh.

14 A. Taking inventory, sir.

15 Q. Taking inventory. That was for your
16 own benefit. Other than that?

17 A. Well --

18 Q. When was the last time you put in a
19 day's work?

20 A. I can't rightfully answer that.

21 Q. It's fair to say that you were an
22 investor, isn't it?

23 A. I invested and worked, too. I did a
24 lot of the leg work and the financing of it.

25 Q. All right. Back in September of '66,

1 the corporation didn't have -- let's say that you
2 signed that agreement the time you came in. The
3 corporation didn't have anything but a few accounts
4 receivable and some inventory and that's about it;
5 isn't that true?

6 A. Debts.

7 Q. And some debts?

8 A. Yeah.

9 Q. It basically had no net worth at that
10 time, did it?

11 A. I would say, no.

12 Q. You don't know about the real estate?

13 A. No, sir.

14 Q. So in '66, the book value was a
15 pretty good representation of the worth of the
16 business, wasn't it?

17 A. I'd say it was.

18 Q. Now, in about -- what was it, '71
19 maybe, that the corporation bought the land?

20 A. Yes, sir. I bought it.

21 Q. You bought it?

22 A. I bought it.

23 Q. The corporation bought it, didn't it?

24 A. That was put in the corporation name,
25 yes, sir.

1 Q. Then indulge me by saying the
2 corporation bought the land.

3 A. All right.

4 Q. And a building was put on the
5 property?

6 A. There was a building already on the
7 property. We added to the building.

8 Q. Now, today the land and building
9 alone are worth close to three hundred thousand
10 dollars, aren't they?

11 A. I don't know that.

12 Q. The book value, however, as shown on
13 the sheet you had the accountants prepare and on
14 which your offer was made shows the book value of
15 the property at 76 thousand and some dollars?

16 A. That's probably right.

17 Q. And certainly you would agree that
18 the real estate is probably worth four times that
19 today?

20 A. Real estate is like a horse, whatever
21 it's worth to someone.

22 Q. But this horse hasn't got any glass
23 eye, has it?

24 A. I don't know about that.

25 Q. When Mr. Vassar died in September of

1 '83 --

2 A. What about it.

3 Q. -- you knew he died?

4 A. Oh, yes, sir.

5 Q. Death is notorious.

6 A. Uh-huh.

7 Q. You gave no notice to the executrix
8 that you wanted Mr. Vassar's stock transferred to
9 you and that you were buying his stock certificate,
10 did you?

11 A. I had ninety days to make up my mind
12 which way to go.

13 Q. Answer my question. You didn't do
14 that, did you?

15 A. No. Because I had an agreement that
16 said ninety days.

17 Q. Were you aware at the time of
18 Mr. Vassar's death that you had any agreement or did
19 you find it later?

20 A. I certainly must have. I had it on
21 hand on file.

22 Q. I'm asking you --

23 A. Yes.

24 Q. When he died, did you know that there
25 was any agreement?

1 A. Yes. Not that I knew about it. That
2 day I had looked in my file.

3 Q. How did you find it?

4 A. In my file under Tidewater Auto Parts.

5 Q. You mean at home?

6 A. No. My office where I keep most of
7 my stuff.

8 Q. When was it you found it?

9 A. I just finished telling you. I found
10 it in my office.

11 Q. I said when.

12 A. A few days before that. I mean after
13 his death.

14 Q. A few days after his death. Okay.
15 So if he died on the 15th of September, you knew by
16 the 18th that you had what you thought was an
17 agreement?

18 A. 18th through 20th, somewhere in
19 between there.

20 Q. Now -- and you knew that when he died
21 he had a stock certificate in his name?

22 A. Yes, sir.

23 Q. Okay. Now, you had a meeting of
24 stockholders on the 10th of October, nearly a month
25 after his death and nearly a month after you say you

1 located your agreement, didn't you?

2 A. I'd have to say somewhere in the
3 neighborhood.

4 Q. And minutes were prepared of that
5 stockholders' meeting which you signed. And the
6 stockholders were decided to be you and the
7 executrix of the estate of John Vassar; is that
8 correct?

9 A. That's right, sir.

10 Q. So at that point, you and the
11 executrix in her capacity as executrix were acting
12 as the sole stockholders; correct?

13 A. That's right, sir.

14 Q. And you all met and you elected
15 Mrs. Vassar as a director; is that correct, and
16 yourself and a Mr. Gregory?

17 A. Uh-huh.

18 MR. WRIGHT: Okay. I offer this as
19 Defendant's 3, I believe, Your Honor.

20 THE COURT: Any objection?

21 MR. LIPKIN: No objection, Your Honor.

22 THE COURT: Defendant's 3.

23
24 (Whereupon, the above-mentioned
25 document was marked as Defendant's Exhibit No. 3.)

1 BY MR. WRIGHT:

2 Q. Now, following that meeting, the
3 decedent's stock was turned into the corporation and
4 it was canceled, wasn't it?

5 A. That's right, sir. Miss Vassar
6 wanted to see that Mr. Maness took care of it.

7 Q. It was canceled so that the decedent
8 no longer owned the stock and you, yourself, and
9 Mrs. Vassar had a new certificate issued making
10 Mrs. Vassar, herself, individually a stockholder of
11 the corporation for the first time?

12 A. She was executor of the estate.

13 Q. She was that.

14 A. And that was the reason for that.

15 Q. I didn't ask you that. I don't want
16 you to make a speech. You tell me if you and
17 Mrs. Vassar caused her to be a stockholder of the
18 corporation for the first time. Did you sign that
19 certificate?

20 A. Yes, sir, I did.

21 Q. Okay. It's dated October 10th, 1983?

22 A. Right.

23 Q. Is that issued to her as executrix of
24 Mr. Vassar's estate?

25 A. No, it's not. It's to her.

1 Q. It makes her a stockholder, doesn't
2 it?

3 A. That's right.

4 MR. WRIGHT: Okay. I offer that.

5 THE COURT: Substituted copy. It
6 will be Number 4.

7
8 (Whereupon, the above-mentioned
9 document was marked as Defendant's Exhibit No. 4.)

10
11 MR. WRIGHT: Just for the record,
12 here's the back of it, but it shows nothing.

13 THE COURT: I'll go ahead and add it
14 onto it.

15
16 BY MR. WRIGHT:

17 Q. The following day, the newly elected
18 directors had a directors' meeting and you elected
19 Mrs. Vassar for the first time president of the
20 corporation?

21 A. That's right, sir.

22 Q. Are these minutes -- you signed them?

23 A. Yes, uh-huh.

24 MR. WRIGHT: Judge, 4.

25 THE COURT: That's 5.

1 MR. WRIGHT: 5.

2
3 (Whereupon, the above-mentioned
4 document was marked as Defendant's Exhibit No. 5.)
5

6 BY MR. WRIGHT:

7 Q. Now, did you and Mrs. Vassar -- after
8 she became a stockholder on October 10th of 1983,
9 did you and she enter into any stockholders'
10 agreement?

11 A. No, sir, not as I know of.

12 Q. I believe you'd know if you did. You
13 didn't, did you?

14 A. No.

15 Q. Was there ever at any time a
16 restriction placed on the front or back of any stock
17 certificate saying that the transfer of the stock
18 was reflected in any way by any agreement or by-law?

19 A. Not that I recollect.

20 Q. Okay. Now, after Mrs. Vassar was
21 made a stockholder and the president of the
22 corporation, did she work in the business more or
23 less full time?

24 A. I can't say full time, but she worked
25 in the business.

1 Q. You're saying she didn't work full
2 time?

3 A. No. I said she worked in the
4 business.

5 Q. Did she work full time?

6 A. That, I couldn't tell you.

7 Q. You mean you weren't around?

8 A. I was there -- the time I went down
9 there -- she wasn't there at the time I went down
10 there; she wasn't there.

11 Q. Is she paid a salary?

12 A. Yes, sir.

13 Q. Okay. Now, you waited until -- was
14 it the 30th of November to send a letter?

15 A. I don't remember the exact date, sir.

16 MR. WRIGHT: What was the date?

17 MR. LIPKIN: November 21.

18
19 BY MR. WRIGHT:.

20 Q. November 21st to send a letter. You
21 didn't send the letter to Mrs. Vassar as a
22 stockholder, did you? You addressed the letter to
23 the Estate of John Vassar?

24 A. Yes, sir.

25 Q. Why didn't you write a letter to the

1 executrix or to the estate before the stock was
2 issued to Mrs. Vassar and made her a stockholder?

3 A. I still had ninety days to make up my
4 mind as to what I wanted to do.

5 Q. So you didn't address this to her,
6 you addressed it to the estate of the decedent even
7 though the stock had already been canceled, but the
8 decedent owned it, and Mrs. Vassar was not the new
9 stockholder.

10 Let me ask you a question. Did it
11 ever occur to you that after October 10th when you
12 issued a stock certificate to Mrs. Vassar that she
13 could have sold that stock certificate to somebody?

14 A. As executrix of the estate?

15 Q. No. In your capacity as a stockholder,
16 you made her a stockholder on October 10th. After
17 that, did it ever occur to you that she could have
18 sold that certificate to somebody else?

19 A. No.

20 Q. There was no restriction on the face
21 of the certificate, was there?

22 A. No, sir. We depended on our attorney
23 to take care of it.

24 Q. Depended on your attorney?

25 A. Well, the corporate attorney.

1 Mrs. Vassar went down to talk to him about
2 transferring the stock.

3 Q. Did you sign the certificate?

4 A. I did sign it.

5 Q. And it made her a stockholder?

6 A. That's right, sir.

7 Q. What would you have done if she had
8 sold that certificate to somebody else?

9 MR. LIPKIN: Your Honor, I object. I
10 think that's speculation. We're not dealing with
11 that situation. It's totally irrelevant.

12 THE COURT: It's irrelevant,
13 Mr. Wright.

14 MR. WRIGHT: I withdraw the question.

15
16 BY MR. WRIGHT:

17 Q. Now, after she became a stockholder,
18 you and she discussed and negotiated selling the
19 business, didn't you?

20 A. We did.

21 Q. You did. And you were discussing and
22 negotiating selling the goodwill and the inventory
23 and the trade name, but that you were going to keep
24 the real estate; isn't that so?

25 A. She wanted to.

1 Q. She wanted to. You're saying you
2 didn't?

3 A. I didn't answer. I don't think
4 either way.

5 Q. You stayed mute?

6 A. I don't think I answered. I'll put
7 it this way, I would.

8 Q. You would what?

9 A. Would sell it.

10 Q. Okay. But keep the real estate?

11 A. No. I didn't say on the real estate.

12 Q. Yeah.

13 A. I said it would be a good idea to
14 keep it if we did.

15 Q. So you could rent the real estate to
16 whoever bought the other assets of the business,
17 meaning the trade name and goodwill, the inventory,
18 that sort of thing?

19 A. Not necessarily to them. It could be
20 rented to someone else.

21 Q. And then you received an offer,
22 didn't you, at least one?

23 A. Yes, sir.

24 Q. How many did you receive?

25 A. I really don't remember now.

1 Q. More than one, wasn't it?

2 A. We had several orals, nothing on
3 paper.

4 Q. You're saying you never saw a written
5 offer?

6 A. I said one. That's what I saw.

7 Q. You saw a written offer?

8 A. Well, it was through a real estate
9 agent.

10 Q. Okay. And this whole time you were
11 negotiating, talking to her about selling the
12 business, keeping the real estate or renting it, you
13 never once indicated to her, If we do this, I get it
14 all at book value, and that's all you get for your
15 interest, did you, and I get all the rest of it?
16 You never made any such indication to her, did you?

17 A. I didn't make any indication to her.

18 Q. You led her to believe that she was
19 going to share the same as you did?

20 A. I never led anyone to anything. Now,
21 some people could accept that the way they wanted to.
22 I haven't led anyone.

23 Q. I see. You just let them think what
24 you want?

25 A. That's right. Don't you?

1 Q. No, sir. You treated her as an equal
2 stockholder and negotiated as if she was an equal
3 stockholder, and you never led her to believe that
4 you had any agreement in your pocket that you were
5 going to try to enforce, did you?

6 A. Mr. Wright, Miss Vassar came to me
7 and told me that she thought I had forgotten all
8 about that agreement and didn't think anything about
9 it at the time. In the conversation, I still didn't
10 say anything about the agreement.

11 Q. You're talking about after you
12 exercised your so called option?

13 A. Yes. After she found out, that's
14 right.

15 Q. I'm talking about before you did it
16 in writing in such a business-like fashion?

17 A. That depends --

18 Q. You face-to-face led her to believe
19 that you were treating her as an equal stockholder,
20 and you-all were going to share and share alike?

21 A. We sent to her the agreement the
22 first time, sir. She told me she didn't pick it up
23 because she was afraid that was it on top of that.
24 I hand-delivered it to her at the office.

25 Q. You -- we'll get her version of that.

1 You let her work down there full time, elected her
2 president and director, made her a stockholder and
3 negotiated with her and never mentioned one time
4 that you were going to try to enforce some agreement?

5 A. I didn't have to do that.

6 Q. Didn't have to?

7 A. No.

8 MR. WRIGHT: That's all I have.

9 THE COURT: Redirect?

10 MR. LIPKIN: No redirect.

11 THE COURT: You may step down.

12 We'll take a couple minutes' break.

13
14 (Whereupon, a recess was held.)

15
16 THE COURT: Call your next witness.

17 MR. LIPKIN: Your Honor, plaintiff
18 rests.

19 THE COURT: All right.

20 MR. WRIGHT: I call Miss Vassar to
21 the stand, Your Honor.

22 Before she testifies, Your Honor, I
23 have two exhibits that have been agreed to that can
24 go in. This is the balance sheet prepared by the
25 accountant as of the date of option to exercise.

1 THE COURT: Don't I have it already?

2 MR. WRIGHT: You already put it in?

3 MR. LIPKIN: You already put that in.

4 MR. WRIGHT: Never mind then. Then
5 this is an appraisal of the value -- the fair market
6 value of the real property as of the same date of
7 the balance sheet.

8 THE COURT: All right. That's by
9 agreement.

10 MR. LIPKIN: Is that Defendant 6?

11 THE COURT: Defendant 6.

12 MR. WRIGHT: The fair market value is
13 \$273,200, the book value of the real estate is
14 \$78,800, the difference being \$194,400.

15
16 (Whereupon, the above-mentioned
17 document was marked as Defendant's Exhibit No. 6.)

18
19 MARION VASSAR,
20 the Defendant, having been first
21 duly sworn, was examined and
22 testified as follows:

23
24
25

1 DIRECT EXAMINATION

2
3 BY MR. WRIGHT:4 Q. Now, will you identify yourself for
5 the record.6 A. I'm Marion Vassar. I live at 3977
7 Ocean Hills Court, Virginia Beach.8 Q. Now, following the death of your
9 husband, did you attend the stockholders' meeting
10 that Mr. Dominick testified to as shown by the
11 minutes?

12 A. I did.

13 Q. The stockholders' meeting of October
14 10, 1983 in your capacity as executrix?

15 A. Yes, I did.

16 Q. You were then elected a director; is
17 that correct?

18 A. Yes.

19 Q. Now, did you attend the director's
20 meeting the next day at which time you were elected
21 the president of the corporation?

22 A. I did.

23 Q. Now, did you receive the original of
24 the stock certificate issued October 10, 1983 signed
25 by Mr. Dominick and yourself? Did you receive the

1 original of that?

2 A. Yes.

3 Q. And you are now the owner of this
4 stock certificate?

5 A. I am.

6 Q. Now, after becoming a stockholder and
7 being elected president and director, have you
8 worked full time in the business since then?

9 A. Yes, I have.

10 Q. At any time before you became a
11 stockholder -- that is, between your husband's death
12 and the time you became a stockholder, did
13 Mr. Dominick do anything to indicate to you that he
14 intended to attempt to acquire your husband's stock?

15 A. No.

16 Q. Following the time you became a
17 stockholder on October 10th, 1983, did you and
18 Mr. Dominick discuss the sale of the business?

19 A. Yes, we did. Several times.

20 Q. And in those discussions, did he ever
21 indicate to you that he felt that he had any right
22 to acquire your stock?

23 A. No.

24 Q. What was the general nature of the
25 way you and he were -- from his conversation with

1 you, were you going to -- what did he tell you about
2 selling the business? How was it going to be done?

3 A. We were going to share in the sale of
4 the business and turn the property over to us, and
5 we would receive rent from the property.

6 Q. Okay. Did he ever indicate to you
7 that your share was to be anything but equal with
8 his?

9 A. No.

10 Q. Did you contact a broker or agent
11 pursuant to those conversations?

12 A. I've had several people contact me
13 about the sale of the property, and we did get a
14 contract.

15 Q. Okay. How many different offers did
16 you and Mr. Dominick consider from other parties?

17 A. Mr. Dominick brought a couple of
18 people up there. Also, Mr. Miller came up there,
19 and Mr. Dominick and I talked to him.

20 Q. Mr. Dominick, himself, brought people
21 to talk to you about selling the business?

22 A. Yes.

23 Q. And a Mr. Miller brought people --

24 A. He brought -- Mr. Miller came up
25 there. We had an appointment with Mr. Miller. He's

1 in the auto parts business, and he was interested in
2 it, in buying. That was before we got the contract
3 with the Mr. Murphy.

4 Q. And Mr. Murphy, in fact, made you-all
5 a written offer?

6 A. Yes, he did. Mr. Smith was handling
7 the negotiations.

8 Q. And what, if anything, was
9 Mr. Dominick's objection to the offer from Murphy?

10 A. Well, he kept saying that he didn't
11 know whether his financial advisor would permit him
12 to sell for that year, and then he was saying --
13 well, he sent for Mr. Murphy's financial statement,
14 a financial statement of him, and he said he thought
15 it was kind of shaky, and he would offer several
16 excuses as to the reason he wouldn't give me a
17 direct answer.

18 Q. Now, the offer from Murphy was for
19 the stock and the trade name and that sort of thing?

20 A. Yes.

21 Q. But not the real estate?

22 A. Not the real estate. We met
23 Mr. Dominick's offers, his own offers.

24 Q. Do you recall what you-all were
25 offered by Mr. Murphy?

1 A. Somewhere around between two fifty.

2 MR. LIPKIN: Your Honor, I think that
3 what is offered should not be in a vague term, if
4 there was an offer. If so, the offer ought to be
5 introduced.

6 THE COURT: Do you have the offer
7 anywhere?

8 MR. WRIGHT: Yes, sir.

9 THE COURT: Why don't you introduce
10 it?

11 MR. WRIGHT: Okay.

12
13 BY MR. WRIGHT:

14 Q. I'm going to show you a letter dated
15 November 3rd, 1983 from Mr. Murphy to you and
16 Mr. Dominick together with a financial statement
17 attached.

18 Did you and Mr. Dominick receive that?

19 A. Yes, we did.

20 Q. Okay.

21 MR. LIPKIN: Your Honor, I object to
22 offering it into evidence. It's immaterial,
23 irrelevant.

24 THE COURT: I thought you said why
25 not put it in?

1 MR. LIPKIN: That's not their offer.

2 MR. WRIGHT: I'll get to the offer.

3 I asked him if she received it. He said yes. It
4 corroborates the testimony about the negotiations
5 for the sale of it.

6 THE COURT: That's the letter of the
7 financial statement?

8 MR. WRIGHT: Yes. She testified that
9 Mr. Dominick was asking for financial information
10 from the buyer. And I asked her if she received it.
11 She said yes. I agree it's corroborative.

12 THE COURT: I'll let it in.

13 MR. LIPKIN: Note my exception.

14 THE COURT: Noted. Number 7.

15
16 (Whereupon, the above-mentioned
17 document was marked as Defendant's Exhibit No. 7.)

18
19 MR. LIPKIN: Your Honor, I have a
20 paper that Mr. Wright has handed me. I assume he's
21 going to try to identify and offer it into evidence.
22 It's an unsigned document. I assume that's the
23 offer. I would object to it first on the grounds of
24 relevancy of the offer. I think that we contend
25 that our --

1 MR. WRIGHT: I haven't even had it
2 identified yet. It's not unsigned by the buyer.
3 It's an offer.

4 MR. LIPKIN: Signed by the buyer.

5 MR. WRIGHT: By what?

6 MR. LIPKIN: Unsigned by the buyer.

7 MR. WRIGHT: There it is right there
8 signed by their agent.

9 MR. LIPKIN: Clell Smith is not their
10 agent. Clell Smith is with National Business
11 Brokers.

12 MR. WRIGHT: All I'm going to ask her
13 is if this offer was tendered to them.

14 MR. LIPKIN: Go ahead.

15 MR. WRIGHT: If you want to bring
16 some evidence --

17 THE COURT: Go on.

18
19 BY MR. WRIGHT:

20 Q. I'm going to show you a written offer
21 dated November 25th, 1983 signed at the bottom on
22 the 29th.

23 Did you receive this offer?

24 A. Yes, I did.

25 Q. All right. Did you and Mr. Dominick

1 ever accept it?

2 A. I accepted, Mr. Dominick did not.

3 Q. Now, the letter that Mr. Dominick
4 sent to you purportedly -- sent to the estate
5 purportedly exercising the option, what was the date
6 you received that offer?

7 A. On the 29th.

8 Q. 29th of November. Okay. Was that
9 substantially the same time that you-all received
10 this offer?

11 MR. LIPKIN: Your Honor, I object to
12 counsel leading.

13 THE COURT: Sustained.

14 MR. WRIGHT: Never mind. It will
15 speak for itself.

16 MR. LIPKIN: It speaks for itself.

17 THE WITNESS: I think that was on one
18 of the contracts that I kept, but I think Mr. Smith
19 has prepared other contracts.

20

21 BY MR. WRIGHT:

22 Q. What I'm asking is did you-all
23 receive this around the same time that he wrote you
24 that letter?

25 MR. LIPKIN: Objection, Your Honor.

1 THE COURT: Mr. Wright, again it's
2 the same leading question I sustained a moment ago.

3 MR. WRIGHT: What answer does it
4 suggest?

5 MR. LIPKIN: Was it around the time.
6 I object, Your Honor.

7 THE COURT: Overruled.

8 MR. WRIGHT: We'll offer this as the
9 next defendant's exhibit, and I would point out that
10 it says that it's got to be accepted by November 28th
11 right on the face of it.

12 MR. LIPKIN: I object, Your Honor.
13 That document is not signed by anyone other than the
14 agent for National Business Brokers who is going to
15 seek a fee from the seller, and it specifically
16 calls for it, and he doesn't indicate he was the
17 agent for the buyer and if he was, he couldn't be
18 both.

19 THE COURT: Well, it says here that
20 he signed for the purchases.

21 MR. LIPKIN: He was working for
22 National Business Brokers, Your Honor.

23 THE COURT: I don't know who he was
24 working for. It says on here Ronald E. and Jan
25 Murphy. It shows under that by signing off as agent,

1 Mr. Smith. He had the authority to do it. I don't
2 know, I'll admit it.

3 MR. LIPKIN: I also object to it as
4 immaterial, that the question is whether there is a
5 valid contract in 1966 to purchase at the book value.

6 MR. WRIGHT: The issue is whether
7 there was or whether it was waived.

8 THE COURT: It may be corroborative
9 as to the stipulated CPA book value of business at
10 least to that extent.

11 MR. WRIGHT: We offer -- submit it
12 and the issue of waiver and estoppel.

13 THE COURT: That will be plaintiff's
14 exception to that Defendant's Exhibit Number 8.

15
16 (Whereupon, the above-mentioned
17 document was marked as Defendant's Exhibit No. 8.)

18
19 CROSS-EXAMINATION

20
21 BY MR. LIPKIN:

22 Q. Mrs. Vassar, did Mr. Clell Smith
23 bring you this contract?

24 A. Yes, he did.

25 Q. He was the representative, vice

1 president of National Business Brokers, the
2 brokering agency; is that correct?

3 A. Sir, I don't know what he is other
4 than his card he gave me.

5 Q. The card said he was vice president.
6 Here's a card on the exhibit your counsel showed you.
7 It says vice president, doesn't it?

8 A. Yes, sir. But he also --

9 Q. Now look, Miss Vassar --

10 THE COURT: Just answer counsel's
11 question.

12
13 BY MR. LIPKIN:

14 Q. He was vice president of National
15 Business Brokers?

16 A. Yes.

17 Q. And how did he come to you in
18 reference to your business?

19 A. He said that he had heard that the
20 business was for sale and was I interested in
21 selling.

22 Q. And you answered in the affirmative,
23 I take it?

24 A. Yes, sir. I was.

25 Q. Now, you indicated that if he sold it

1 for you, you'd pay him a commission; is that correct?

2 A. Agents get a commission.

3 Q. No. That's not my question. My
4 question was, did he indicate to you that if he sold
5 it for you, he could get a commission from you; is
6 that correct?

7 A. I don't remember talking to
8 Mr. Smith about a commission.

9 Q. You mean you hired him without
10 knowing how much you were going to pay him?

11 A. I didn't hire him. He brought a
12 contract to me.

13 Q. You said it was acceptable to you.

14 A. It was after he brought it to me.

15 Q. It says Miller agrees to pay broker
16 ten percent commission upon closing.

17 A. If it says that, I agreed to pay it.

18 Q. Then your answer is you did agree to
19 pay it; is that correct?

20 A. That's correct then.

21 Q. Now, you said you accepted this
22 contract.

23 A. I said I accepted it. Mr. Dominick
24 did not want to accept it.

25 Q. Show me on this paper anywhere that

1 you signed accepting that contract.

2 MR. WRIGHT: She didn't say she
3 signed it.

4 THE WITNESS: I didn't say I signed
5 it.

6 MR. LIPKIN: Counsel may wish to
7 testify afterwards.

8 THE COURT: Let's follow the rules of
9 evidence. Answer the question.

10 THE WITNESS: I did not sign it.
11 Mr. Dominick had told me not to put my name on
12 anything.

13
14 BY MR. LIPKIN:

15 Q. You said you accepted it, but you
16 didn't accept it by writing; is that correct?

17 A. That's right. I told Mr. Smith that
18 I would accept it.

19 Q. And did he ask you to sign it?

20 A. No.

21 Q. He has an "X" by your name for you to
22 sign it.

23 A. That might be true.

24 Q. Now, can you on any of these pages
25 show where Mr. Murphy has signed this agreement?

1 A. Mr. Murphy was not in the area at the
2 time.

3 Q. So what you're saying is nowhere on
4 these papers does it show that Mr. Murphy signed it?

5 A. No. He did not sign it, but he
6 signed his financial statement.

7 Q. A rather weak financial statements
8 or big for a couple of hundred thousand dollars, was
9 it not?

10 A. I'm not an expert, sir.

11 Q. You introduced a statement that
12 showed he had a net worth of a hundred thousand
13 dollars or so. He was going to pay you, you said,
14 \$230,000 on the contract; is that correct?

15 A. That's correct but not all in one
16 lump sum, sir.

17 Q. It says a hundred thousand dollars or
18 total down payment \$120,000; is that correct?

19 A. Yes, sir.

20 Q. And his net worth shows a total net
21 worth of \$134,000, does it not?

22 A. He brought a Mr. Cook with him, a
23 Wayne Cook.

24 Q. Answer my question. It shows a total
25 net worth of \$134,800; is that correct?

1 A. Yes, sir. I can't see it. I'm
2 taking your word for it.

3 Q. I'd like for you to see it.

4 MR. WRIGHT: What is the point, may I
5 ask? We're not claiming that a binding contract was
6 entered into.

7 MR. LIPKIN: Well, the statement was
8 made, if Your Honor please, that Mr. Dominick turned
9 her down because he had other aspirations, and the
10 fact of the matter is that he might have turned it
11 down because there was no pretext. This man didn't
12 have any financial wherewithal.

13 THE COURT: All right.

14 MR. WRIGHT: All you're doing is
15 arguing the case now.

16 THE COURT: Explanation, I believe.
17 Go ahead.

18
19 BY MR. LIPKIN:

20 Q. Mrs. Vassar, prior to your husband's
21 death, what was your occupation?

22 A. I was retired at the time my husband
23 died.

24 Q. And did you do any work at the
25 business?

1 A. Yes, I did. I worked there the whole
2 many years as we've been in business. And the last
3 few years, I haven't worked as much. I wasn't there
4 constantly.

5 Q. So you didn't give up any job or
6 anything to go to work at the business?

7 A. No. I had worked at Vepco for 34
8 years and all the years that I worked there, I came
9 from Vepco to the business.

10 Q. That's not my question. I didn't
11 mean to mislead you.

12 At the time your husband died, you
13 were not at Vepco; you were retired?

14 A. No. I had been retired.

15 Q. And you were not at that time working
16 other than helping your husband at the business?

17 A. I signed checks and wrote checks.

18 Q. You assisted?

19 A. Yes.

20 Q. Probably daily or pretty much
21 constantly?

22 A. Yes, sir.

23 Q. And after your husband passed away
24 and you became the president, you received a salary,
25 I believe?

1 A. Yes, sir. I've been working full
2 time.

3 Q. Commensurate with what your husband
4 has received?

5 A. No, sir.

6 Q. No?

7 A. No, sir. Mr. Dominick suggested that
8 I wasn't worth more than four hundred dollars a
9 month.

10 Q. You were an equal shareholder at the
11 time, weren't you?

12 A. Yes, sir.

13 Q. And you were the president of the
14 corporation, were you not?

15 A. Yes, sir.

16 MR. LIPKIN: I have no other
17 questions.

18 THE COURT: Redirect?

19

20 REDIRECT EXAMINATION

21

22 BY MR. WRIGHT:

23 Q. Mrs. Vassar, I notice that the cash
24 amount offer at closing by Mr. Murphy was equal to
25 the total value of the assets as shown on the

1 balance sheet. It wasn't a bad offer, was it?

2 MR. LIPKIN: Your Honor, I don't know
3 if that's a statement of counsel or a question. It
4 sounds more like a declaration.

5 THE COURT: I think the record speaks
6 for itself.

7 MR. WRIGHT: Okay.

8
9 BY MR. WRIGHT:

10 Q. Is this Mr. Dominick's W-2 for '83
11 from this corporation?

12 A. Yes, it is.

13 Q. And it shows that he was paid \$4,800
14 for that year?

15 A. Yes.

16 MR. WRIGHT: Offer that, Your Honor.

17 THE COURT: Any objections?

18 MR. LIPKIN: Immaterial. That's the
19 only objection.

20 THE COURT: I'll overrule it and note
21 your exception.

22
23 (Whereupon, the above-mentioned
24 document was marked as Defendant's Exhibit No. 9.)
25

1 MR. WRIGHT: That's all I have.

2 THE COURT: Any further?

3
4 RECROSS-EXAMINATION

5
6 BY MR. LIPKIN:

7 Q. Mr. Dominick wasn't paid \$4,800, was
8 he?

9 A. Yes, sir.

10 Q. Isn't that -- what does it say on
11 there? Doesn't it say that that's what's charged to
12 him because of the insurance that the corporation
13 was carrying on his life for the excess of \$50,000?

14 A. He gets \$400 a month.

15 Q. Doesn't that say here \$196, cost of
16 group life insurance of \$50,000?

17 MR. WRIGHT: That's in block 6, Paul.

18 MR. LIPKIN: He gets \$400 a month
19 plus insurance.

20
21 BY MR. LIPKIN:

22 Q. Now, speaking of the insurance,
23 didn't the corporation carry some insurance on your
24 husband's life?

25 A. Yes, sir. They both had a policy.

1 Q. \$50,000?

2 A. No, sir. \$44,000.

3 Q. Huh?

4 A. \$44,000 a piece, not \$50,000. He's
5 on the retirement plan, too.

6 Q. Pardon?

7 A. You said anything else. I said he's
8 also on our retirement plan with the company.

9 Q. Wasn't your husband?

10 A. My husband worked there.

11 Q. Wasn't your husband?

12 A. Yes.

13 Q. Okay. Both of them received benefits
14 from owning their 50 percent interest, didn't they?

15 MR. WRIGHT: Is this cross-examination
16 now something that came in on mine?

17 MR. LIPKIN: Something she said.

18

19 BY MR. LIPKIN:

20 Q. Didn't both your husband and
21 Mr. Dominick receive something from the retirement
22 plan?

23 THE COURT: She said yes.

24 THE WITNESS: I said they both were
25 on the retirement plan. Both had the insurance but

1 my husband worked.

2
3 BY MR. LIPKIN:

4 Q. And Mr. Dominick didn't work at all?

5 A. Not there.

6 Q. He didn't assist?

7 A. Mr. Dominick has a business of his
8 own to run.

9 Q. Did he assist?

10 A. I don't know how much he assisted.

11 Q. Then you don't know whether he did
12 that or not?

13 A. I never saw him there.

14 Q. If you don't know, you don't know; is
15 that correct?

16 A. I wouldn't say that.

17 Q. Then if you don't know, you do know?

18 A. What is your point, sir?

19 Q. Ma'am, just answer my questions
20 unless there's an objection.

21 THE COURT: Rephrase your question.
22 Please try to answer his question.

23 MR. LIPKIN: You can come on down.

24 THE COURT: Any further questions?

25 MR. LIPKIN: No, sir.

1 MR. WRIGHT: No, sir.

2 THE COURT: Call your next witness.

3 MR. WRIGHT: We rest, Your Honor.

4 MR. LIPKIN: We have no rebuttal,
5 Your Honor.

6 MR. WRIGHT: Before you rule, Your
7 Honor, I would like for you to look at a trial
8 memorandum I prepared for you to consider.
9 I hope it will be of assistance.

10 THE COURT: I want to go through
11 these exhibits carefully. I don't think it's
12 beneficial that I shoot from the hip to be truthful
13 with you.

14 Argument?

15 MR. LIPKIN: If Your Honor please,
16 there has been introduced into evidence a contract
17 entered into between the sole shareholders in
18 September of 1966. The defendant has sought to
19 introduce or to cloud the issue of how much stock
20 was owned by the parties. Mr. Vassar and
21 Mr. Dominick by going back to the records in early
22 1966 and showing one of the certificates having been
23 turned in by a man named Todd, I believe, for 54
24 shares, but the only certificates issued and
25 outstanding that we know of during the times

1 pertinent were the 72 shares issued to Mr. Vassar in
2 February of '66 plus the 40 shares issued to him
3 before the date of September 14, 1966 which total
4 112 shares that are mentioned in the agreement, and
5 Mr. Dominick's shares issued on the same date as the
6 second certificate to Mr. Vassar of 112 shares on
7 September 14.

8 Now, the date of the issuance on
9 those certificates I don't believe is significant
10 and should play a part in whatever ruling Your Honor
11 comes up with because the minutes on September the
12 2nd indicated that that's the way the shares were to
13 be issued. And it was recognized by the two
14 shareholders that they could be issued so that each
15 of them owned 112 shares.

16 Mr. Wright had made a great to-do
17 over the by-laws of the corporation be they the
18 first by-laws in February of '66 or the set by-laws
19 in the later part of '66, I don't know when, but
20 both of them reflected and referred to the desire of
21 a shareholder to sell, and the shareholder in order
22 to sell according to the by-laws had to offer the
23 other shareholder his stock at the price for which
24 he could sell it to an outsider. And that was the
25 sale of a living shareholder.

1 Now, the agreement drawn by
2 Mr. Maness, the September 14, '66 agreement, talked
3 about what would happen in the event of the death of
4 a shareholder and talked about the opportunity of
5 the surviving shareholder to acquire the deceased's
6 shares. It doesn't talk just in terms of the
7 shareholder. It refers to the shareholder. It
8 refers to his executor. It refers to his heirs --
9 it doesn't refer to his executor. It refers to his
10 estate, to him, to his heirs, devisees or assigns.
11 And in several of these capacities, Mrs. Vassar fits.
12 She's the devisee, she's the heir, and she was the
13 executor. So it was the intention of her husband to
14 bind her in any of these capacities.

15 Now, Mr. Wright in interrogating
16 Mr. Maness said -- well, he tried to confuse or
17 bring out what he considered an inconsistency
18 between the by-laws, restrictions and the written
19 restrictions of September the 16th. But it is clear --
20 and I'll repeat it and I'll get off of it -- that it,
21 the by-laws, only referred to the living shareholder
22 and a restriction upon that living shareholder.

23 Now, if Mr. Dominick hadn't exercised
24 his option within the ninety-day period, then
25 Mrs. Vassar would have taken the place and become a

1 shareholder bound by the by-laws. And had she
2 decided to sell at a later date, she had to give him
3 first refusal. And if Mr. Dominick decided to sell
4 at a later date, he'd have to give Mrs. Vassar a
5 first refusal.

6 But we are strictly speaking of the
7 agreement of September the 14th, and there's no
8 inconsistency. There's no ambiguity, and there's no
9 abrogation of that agreement shown by anything in
10 writing.

11 Now, we come then over the period of
12 years from '66 to '83, and I suggest to Your Honor
13 there has been nothing shown to this Court that
14 would indicate to this Court that that agreement has
15 been thrown away or was no longer valid. It
16 couldn't have come up in the sense that it was in
17 issue because neither of the shareholders had died
18 up until '83. So there's been nothing shown here,
19 there's been no testimony that the parties have
20 talked about it during those years to say let's put
21 it away, let's abolish it, let's abrogate it, let's
22 do a new agreement, let's forget about the old
23 agreement. Nothing has been shown here. And the
24 fact of years passing is totally immaterial because
25 the triggering of that agreement had never taken

1 place. So years didn't put the agreement aside.

2 I would suggest to the Court that
3 years of ignoring the agreement or not following an
4 agreement or days of not following an agreement,
5 months or weeks, will be evidence that the agreement
6 wasn't being considered, but there has been no point
7 in time between September of '66 and September of '83
8 to have for the parties to have said we have an
9 agreement, let's put it aside; to have done the act
10 which would have abrogated the agreement. So time
11 had nothing to do with it at all. The agreement
12 remains exclusive and binding up until the time of
13 John Vassar's death. And I don't believe that
14 Mr. Wright is saying that up until the time of
15 Mr. Vassar's death that there had been an abrogation
16 of this agreement. If he does, he hadn't produced
17 one scintilla of evidence of that. What Mr. Wright
18 is saying is that after Vassar's death, then the
19 parties put the agreement aside. That is the
20 estoppel. That is the estoppel principle that he is
21 relying on.

22 But let's look at the facts.

23 Mr. Vassar died September 15th. Several weeks later
24 on October the 4th, Mrs. Vassar qualified in the
25 clerk's office here, probated the will and became

1 the executrix. Then there was a meeting on
2 September the 10th. Now, mind you, if Your Honor
3 please, that Mr. Dominick had ninety days to make up
4 his mind. There was nothing in the agreement to
5 advance those days. He had a contact up until that
6 time, it hadn't been abrogated, that allowed him
7 ninety days to decide if he was going to buy the
8 stock. Mrs. Vassar comes to him and says, I am the
9 executor and I am the sole devisee, recognize me.
10 Here's my husband's two stock certificates totaling
11 112 shares. I want to be a director. Mr. Dominick,
12 faced with that situation, did what his counsel
13 advised him -- or what the corporation counsel
14 advised him and made Mrs. Vassar a director and the
15 next day an officer. But she had the right to be.
16 She had the right to participate in the corporation.
17 But Mr. Dominick also had his right.

18 Now, I don't believe there's anything
19 wrong with a person who has a financial interest
20 determining if he should exercise an option before
21 testing a market. I wouldn't think that there is
22 anything wrong with it. I wouldn't think that
23 finding out the value of an option is insidious. I
24 wouldn't think that it is in nonrecognition of an
25 obligation or a right. I would think that a person

1 who has his own financial interest at heart and in
2 mind would want to know what he should do with an
3 option. I think that that is the nature of all
4 options. An option is the opportunity of saying yes
5 or no, and a person who has the right to do that
6 should do it knowingly and should find out to his
7 financial advantage and by exercising what is to his
8 financial advantage, he is not leading a person on.
9 He is not exercising duplicity. He is not
10 exercising fraud on a person.

11 Now, it is conceded, if Your Honor
12 please, that within the ninety-day period,
13 Mr. Dominick gave the necessary notice. Within the
14 period of the contract he ascertained the book value
15 of the stock. That's within the period of the
16 contract. He tendered what the contract called for.
17 The book value of the stock would be one half of the
18 book value because each one of them owned 50 percent,
19 totaling \$144,000.

20 Now, there's talk that this is
21 unconscionable. Your Honor, it wasn't
22 unconscionable when the contract was made. That is
23 the question of when a contract is unconscionable or
24 not. At any given time, Mr. Dominick could have
25 died first. We're talking about unconscionable, and

1 from their own testimony on cross-examination by
2 Mr. Wright, it was a fair contract when it was
3 entered into.

4 Now, the parties during the course of
5 their lives, the deceased Mr. Vassar and
6 Mr. Dominick, could have changed that contract
7 because it was going to be just as tough if the
8 assets had appropriated on Mr. Dominick and his
9 estate as it was on Mr. Vassar and his estate. But
10 they didn't. They didn't abrogate the contract, and
11 it is fair in all respects.

12 Well, in regard to an estoppel, I
13 haven't had the opportunity to see Mr. Wright's
14 trial brief up until this moment, but I see he cited
15 T... versus T... and Lataif versus Commercial
16 Industrial Construction, both of which are probably
17 the latest cases on equitable estoppel there, and
18 it's been decided by our Supreme Court -- Lataif
19 versus Commercial Industrial is 223 Virginia 59,
20 cited 1982, and T... versus T... is 216 Virginia 867,
21 cited in 1976.

22 All those cases do is set out the
23 elements necessary to establish equitable estoppel,
24 and they are a representation, reliance, a change of
25 position, and detriment. Michie's Jurisprudence for

1 once is fairly accurate, and in there section on
2 estoppel, Volume 7, section 16, in order to
3 constitute an estoppel, there must have been a
4 representation or concealment of material facts.
5 That's the first one. That's numbered as elements.
6 It must have been a representation or concealment of
7 material facts. I don't believe that this has been
8 established in this case. There's been no
9 representation by Mr. Dominick to Mrs. Vassar or
10 concealment of material facts.

11 The representation or concealment
12 must have been with knowledge of the true state of
13 facts unless the party making it was bound to know
14 the facts or is ignorant due to gross negligence. I
15 think that's neutral.

16 The party to whom it was made must
17 have been ignorant of the truth of the matter as to
18 which representation was made. The uncontradicted
19 testimony of Mr. Dominick was that Mrs. Vassar said
20 to him, I thought you had forgotten about the
21 contract. So as the record stands, she knew of it.
22 So it's not -- she wasn't ignorant of the contract.
23 It means the representation must have been made with
24 the intention that the other party should act upon
25 it. There's been no representation made by

1 Mr. Dominick.

2 The representation -- five, the
3 representation or concealment must be proved to have
4 been the inducements to the action of the other party.
5 There's been no action by Mrs. Vassar. She's taken
6 no steps. There's been nothing done that has
7 damaged Mrs. Vassar. She acquired the stock and she
8 began receiving a salary for acting as president,
9 but there's been no damage to her.

10 And then finally is the party
11 claiming the estoppel must have been mislead to her
12 injury. There has been no injury to Mrs. Vassar by
13 anything that happened here. Mrs. Vassar's position
14 hasn't changed. If Your Honor please, there's been
15 no misrepresentation, there's been no concealment,
16 and there's been no change of position for
17 Mrs. Vassar to which she can claim an estoppel.

18 Next, the burden of proof rests upon
19 the party relying upon an estoppel, and it must be
20 made by clear, precise, and unequivocal evidence.
21 And I'm citing section 39 of Michie's Jurisprudence
22 which cites a whole slew of Virginia cases for that
23 point. And it says the facts upon which an estoppel
24 is based must be clearly proven.

25 If Your Honor please, there's been

1 nothing here shown other than that Mr. Dominick had
2 a contract that was in existence upon the death of
3 Mr. Vassar that he exercised to the letter, and we
4 can ask the Court to enforce it.

5 THE COURT: Mr. Wright.

6 MR. WRIGHT: Your Honor, I will be
7 brief in my oral argument because my memorandum, I
8 think, focuses on the issues, and I think you will
9 find the statement of facts in my memorandum review
10 the facts that have been proven today. I do want to
11 put this case in context though.

12 We've got a case in which
13 Mr. Dominick is the plaintiff. He's brought the
14 suit. It's a chancery suit. He bears the burden of
15 proof in this case. It's his burden, not the
16 defendant's burden. What he's asking is that Your
17 Honor as a chancellor specifically enforce against
18 Mrs. Vassar in his individual capacity. It's very
19 clear from the evidence that she owns no stock in
20 her capacity as executrix. He is asking that this
21 Court under Mrs. Vassar to convey her stock that she
22 owns in her name to Mr. Dominick, to specifically
23 enforce an alleged agreement not between
24 Mr. Dominick and Mrs. Vassar but between
25 Mrs. Dominick -- between Mr. Dominick and another

1 stockholder.

2 The fact that Mr. Vassar was her
3 husband is immaterial for the purpose of these
4 proceedings. This suit is brought by one
5 stockholder against another to enforce specifically
6 an alleged agreement between the plaintiff
7 stockholder and a different stockholder. He has the
8 burden of proof. So you judge the weight of the
9 evidence, you determine the credibility of the
10 witnesses.

11 Now, also consider this is not a suit
12 between two separate vendors on the streets in New
13 Delhi. This is a suit between two stockholders of a
14 closely-held corporation. I suggest to you that
15 they owe each other some duty of fair dealing full
16 disclosure, and a fiduciary duty toward each other.
17 I suggest to you that Mr. Dominick's attitude as the
18 plaintiff is what led her to think what she wants.
19 I owe no duty to her. What difference does it make
20 if I mislead her and lull her down a path. In
21 effect, what difference does it make if I sell a
22 horse with a glass eye if I can get away with it. I
23 suggest to you that that's not the context in which
24 this case comes before the bar of this court. And
25 also that specific performance is not a matter of

1 right. It's within the sound discretion of the
2 Court within the Court's conscience as it were in
3 the law. The burden is on the plaintiff to prove a
4 clear difference in the unambiguous contract that
5 binds this stockholder, Mrs. Vassar.

6 Mr. Lipkin is wrong when he says
7 Mrs. Vassar as executrix and he confuses these
8 capacities. He says she was entitled to recognition.
9 Well, she got recognition because the stockholders'
10 meeting that was held which had as its stockholders
11 Mr. Dominick and Mrs. Vassar as executrix. Her
12 stockholder status as executrix was recognized by
13 Mr. Dominick. He need not have gone any further
14 than that. He allowed her to attend as executrix
15 because under the law, the stock passed to her as
16 executrix, she became the owner of the stock as
17 executrix. She had the power to dispose of it, to
18 sell it, or distribute it.

19 Now, she was the legal title holder
20 by operation of law. He recognized her, let her
21 participate as a stockholder, but he went beyond
22 that. She was elected a director. But she and the
23 two other directors having the majority vote elected
24 her president. They didn't have to do that. He
25 went beyond her stockholder status as executrix. He

1 embraced her as a new stockholder of the corporation.
2 The certificate that she had in her capacity as
3 executrix was canceled, rendered annulity. A new
4 certificate was issued to her individually. She
5 became a stockholder. There were no restrictions
6 placed on that stock certificate prohibiting its
7 transfer.

8 I suggest to Your Honor that she
9 could have on October the 10th sold that stock
10 certificate to me, to anyone else, and I suggest to
11 you that a person would have been happy to have paid
12 book value for that stock certificate just to get at
13 that real estate, just to cause a dissolution of
14 that corporation and sell that real estate. That
15 isn't what happened. He says no change of position.
16 She comes out of retirement, goes to work full time
17 for this corporation. What else did she do or not
18 do in reliance on his conduct. She refrained from
19 disposing of her own stock certificate. She could
20 have sold that certificate, but he led her to
21 believe that they were equal stockholders. They
22 discussed and negotiated the sale of the business,
23 not the real estate. They were going to keep that
24 equally she says, and he didn't refute that. He did
25 not deny that they were going to keep it equally and

1 rent it. They were going to sell the trade name,
2 the goodwill, the parts.

3 Then, while they were negotiating --
4 and she says that Mr. Dominick brought people
5 himself to talk to them about the sale. He didn't
6 deny that. They get an offer and guess what, a man
7 is going to pay \$230,000 for the inventory, the
8 goodwill, and the parts, which valued on the balance
9 sheet of November 30th at only a hundred thousand
10 dollars.

11 Now, he decides why treat her equally.
12 I think I'll see if I can get her stock from her at
13 book value. If the parts and the goodwill alone and
14 the trade name are worth the hundred and thirty and
15 we now know that the land and building is worth
16 \$273,000. That's not bad. I suggest to you that
17 makes it very clear that he is estopped and by his
18 conduct, he has waived any right he had.

19 Furthermore, I do not believe that he
20 has shown the burden of showing from the evidence
21 that there was a clear, unambiguous, definite
22 contract that he is enforcing. It's been shown by
23 the evidence that there were at least three
24 different versions. Counsel has attempted to
25 distinguish them, but I don't think he has. I do

1 not think that the corporate attorney did a very
2 good job of that either.

3 We ask that after you consider the
4 evidence and the argument of counsel and consider my
5 memorandum, that you deny the relief sought by the
6 plaintiff and dismiss his bill of complaint with
7 specific performance.

8 THE COURT: Sir?

9 MR. LIPKIN: Yes, sir. Just briefly
10 to dispel some of the misstatements of Mr. Wright.
11 I'm certain that he put that argument about
12 vagueness of the contract at the end because that's
13 where it really belongs. It is certainly not a
14 point that I believe the Court would have much
15 trouble with as saying that there were three
16 contracts when only one contract refers to what
17 happens upon the death of a shareholder. And that's
18 the contract we're suing on. I believe that that is
19 an attempt to -- and not a good one -- to bring an --
20 to make an issue where none is.

21 The second thing that I believe the
22 Court -- even though I say it's immaterial what the
23 value of the stock was, or what the value of the
24 land was and what a bargain it is for Mr. Dominick,
25 it's absolutely not a fact that a hundred thousand

1 dollars, the figure he mentioned, is that which
2 would have benefited Mr. Dominick because what
3 happens under that \$220,000 so called contract
4 that's not signed by anybody to buy or anybody to
5 sell the corporation would keep its own cash and its
6 own accounts receivable and would pay its own
7 liability so the purchase price is certainly -- or
8 that which we have tendered is certainly within the
9 range of what is fair for this property, for the
10 business.

11 Mr. Wright has stated to Your Honor
12 that the burden of proof is upon the plaintiff.
13 Well, of course, it's upon the plaintiff. It's upon
14 the plaintiff to prove what we have alleged in the
15 bill of complaint. And if it wasn't sufficient
16 proof or sufficient allegations, certainly
17 Mr. Wright, astute as he is, would have demurred to
18 the bill of complaint.

19 But the question is have we proved
20 what we have alleged. One, that there was an
21 agreement. Two, that within upon the death of Mr.
22 Vassar we exercised the option and so forth in the
23 agreement. And did we do it properly and did we
24 properly tender. That is the burden upon the
25 plaintiff in this case. That's all the burden is in

1 this case upon the plaintiff to prove the contract
2 and ask for its enforcement.

3 Another burden is to establish
4 affirmative defenses upon the defendant. And that's
5 what he has here. He's come barred with a so called
6 estoppel. And I've recited to Your Honor and quoted
7 what the law is, clear and concise evidence has to
8 be introduced by the defendant to establish the
9 estoppel.

10 And has there been a detriment? Has
11 she worked for the corporation and received wages?
12 That's a quid pro quo. That's not a detriment,
13 that's not a change of position. However, failure
14 to sell the shares -- there's no indication that
15 there was a sale of these shares or that she could
16 have sold the shares, and there's no indication that
17 she had the right to sell. As a matter of fact, the
18 evidence adduced by the defendant shows he has no
19 right to sell. She had a right to make that as a
20 shareholder and had not Mr. Vassar exercised the
21 option, she would have had a right to give him a
22 first refusal if she had a buyer. There's been no
23 change of position. There's been no fraudulent
24 inducement. There's been no inducement whatsoever.
25 We've proved the contract.

1 Now, Mr. Wright has also said to you,
2 Your Honor, that this Court doesn't have to grant
3 specific performance as a chancellor. It's a matter
4 of discretion. It's discretion within sound legal
5 principles. And there are other remedies available
6 for Mr. Vassar -- Mr. Dominick, excuse me. There is
7 no other remedy available to him. I know in
8 specific performance of real estate contracts if you
9 can't buy this, buy this next one and damages might
10 be in order. But there is no other remedy available
11 to Mr. Dominick other than to come before this Court
12 and ask for specific performance.

13 THE COURT: Do you want to read this?

14 MR. LIPKIN: I think I probably
15 should, if Your Honor please. I only had a chance
16 to read it while Mr. Wright was talking, and I did
17 read some of them.

18 THE COURT: I don't think it's going
19 to take the Court very long to reach a decision.

20 In fairness, do you want to respond?

21 MR. LIPKIN: Yes, sir. I would say
22 two weeks. I could have it in ten days. Do you
23 want me to respond in writing? Is that what you're
24 saying?

25 THE COURT: That's what I figured

1 you'd do.

2 MR. LIPKIN: I think I have to.

3 THE COURT: How about next Friday?

4 MR. LIPKIN: Have it here next Friday,
5 I will.

6 THE COURT: December 14th.

7 All right. I'll try to get this out
8 very quickly.

9
10 (Whereupon, the hearing was
11 concluded.)

THIS AGREEMENT, Made this 5th day of September, 1966
by and between JOHN A. VASSAR, party of the first part and E.
L. DOMINICK, JR., party of the second part.

WHEREAS, the parties hereto are the sole stockholders of
Tidewater Auto Parts, Inc., each owning 112 shares of common
stock; and

WHEREAS, it is the desire of both parties that in the
event of death of either party, that the corporation continue
to function without a change in stockholders.

NOW THEREFORE in consideration of their mutual promises
and covenants, the parties hereto agree as follows:

1. In the event of death of either party hereto, the
surviving party shall have an exclusive and binding option to
purchase from the heirs, devisees, assigns, or estate of said
deceased party all the shares of stock which said deceased
party owned in Tidewater Auto Parts, Inc., within ninety (90)
days following the date of death of such deceased stockholder.

2. The purchase price of the stock shall be the book
value as reflected by the books of the corporation as of the
date the option is exercised.

3. Notice of the exercise of the option shall be given
in writing addressed to the estate of the deceased stockholder
at the residence address of said deceased stockholder as shown
by the books of the corporation.




4. Within ninety (90) days after notice of the exercise of said option, the surviving stockholder shall complete the purchase of the stock by tendering the purchase price in cash or by certified check.

5. The option hereby granted shall expire ninety (90) days following the date of death of the deceased stockholder.

WITNESS the following signatures and seals:

 (SEAL)
John A. Vassar

 (SEAL)
E. L. Dominick, Jr.

STATE OF VIRGINIA

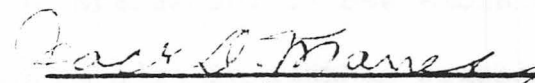
CITY OF NORFOLK, to-wit:

I, Jack D. Maness, a Notary Public in and for the City aforesaid, in the State of Virginia, do hereby certify that John A. Vassar and E. L. Dominick, Jr., whose names are signed to the foregoing agreement, bearing date on the 5th day of September, 1966, have acknowledged the same before me in my City and State aforesaid.

GIVEN Under my hand this 5th day of September, 1966.

My Commission Expires:

March 7, 1970


Notary Public

NUMBER

1

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

*Transferred Stock
to certificate # 5*

SHARES

—72—

Marion M. Vassar 10/10/83

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

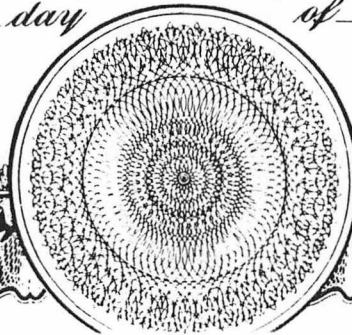
NO PAR VALUE

This Certifies that JOHN L. VASSAR *is the*
registered holder of SEVENTY - TWO *Shares*

of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
*transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.*

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va. *this* EIGHTH *day* of FEBRUARY A.D. 1966

Marion M Vassar
Treasurer



John L. Vassar
President

PLAINTIFF'S
EXHIBIT

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE. IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

For Value Received, _____ hereby sell, assign and transfer unto:

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

Shares _____
represented by the within Certificate, and do hereby
irrevocably constitute and affirm

Attorney _____
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises;
Dated _____ 19____
In presence of _____

PASTE CANCELLED CERTIFICATE IN THIS SPACE

See certificate #4

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. 1

FOR SEVENTY TWO SHARES

ISSUED TO

JOHN L. VASSAR

1401 EWELL ROAD

VA. BEACH

DATED 2/8/66 19

RECEIVED CERTIFICATE No. 1

FOR SEVENTY TWO SHARES

THIS EIGHTH DAY OF FEBRUARY 1966

John L. Vassar

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NEW CERTIFICATES ISSUED TO:	NO. OF SHARES TRANSFERRED	NO. OF NEW CERTIFICATES

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

see certificate #4

CERTIFICATE No. 2

RECEIVED CERTIFICATE No. 2

FOR FIFTY - FOUR SHARES

FOR FIFTY FOUR SHARES

ISSUED TO

MARY G.
~~JOSEPH P.~~ TODD

THIS EIGHTH DAY OF FEB. 1966

243 TOY AVE

Mary G. Todd

VA. BEACH

DATED 2/8/66 19

TRANSFER FROM ORIGINAL ISSUE BELOW

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

FROM WHOM TRANSFERRED:

Mary G. Todd - to Ribchester Auto parts, etc.

DATED 3-27-66 19

NEW CERTIFICATES ISSUED TO:

NO. OF SHARES TRANSFERRED	NO. OF NEW CERTIFICATES

NO. ORIGINAL CERTIFICATE

NO. ORIGINAL SHARES

NO. OF SHARES
TRANSFERRED

2

54

54

NUMBER

2

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

SHARES

54

Tidewater Auto Parts Inc.
AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

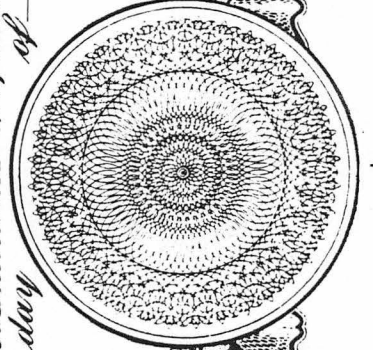
This certifies that MARY G. TODD is the
registered holder of FIFTY - FOUR Shares

of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., this EIGHT day of FEBRUARY A.D. 1966

Marion M. Cassler
Treasurer

John L. Fennell
President



For Value Received, I, hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

Indecate Auto Bart

Sec. Fifteen Shares
represented by the within Certificate, and do hereby
irrevocably constitute and appoint

John Leroy Warner Attorney
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises.

Dated March 27 1966

In presence of

Joseph J. [Signature] Mary J. Todd

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

PASTE CANCELLED CERTIFICATE IN THIS SPACE

See Certificate #4

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. 3

FOR 40 SHARES

ISSUED TO

John Q. Vassar

DATED September 14 19 66

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19 _____

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19 _____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NEW CERTIFICATES ISSUED TO:	NO. OF SHARES TRANSFERRED	NO. OF NEW CERTIFICATES

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

NUMBER

3

*Transferred stock
to certificate # 5*

SHARES

40

Maxon M. Vassar 10/10/83

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

This Certifies that

JOHN A. VASSAR

registered holder of

FORTY

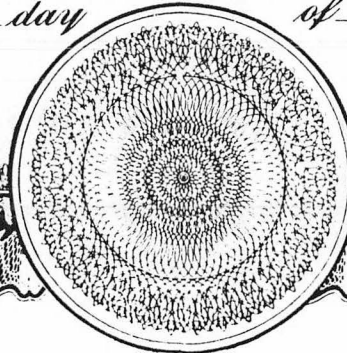
*is the
Shares*

of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
*transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.*

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., *this* 14th day of September A.D. 1966

Maxon M. Vassar
Treasurer

John A. Vassar
President



NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE, WHATEVER.

I hereby sell, assign and transfer unto:

For Value Received,

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

Shares

represented by the within Certificate, and do hereby

irrevocably concede and affirm

Attorney

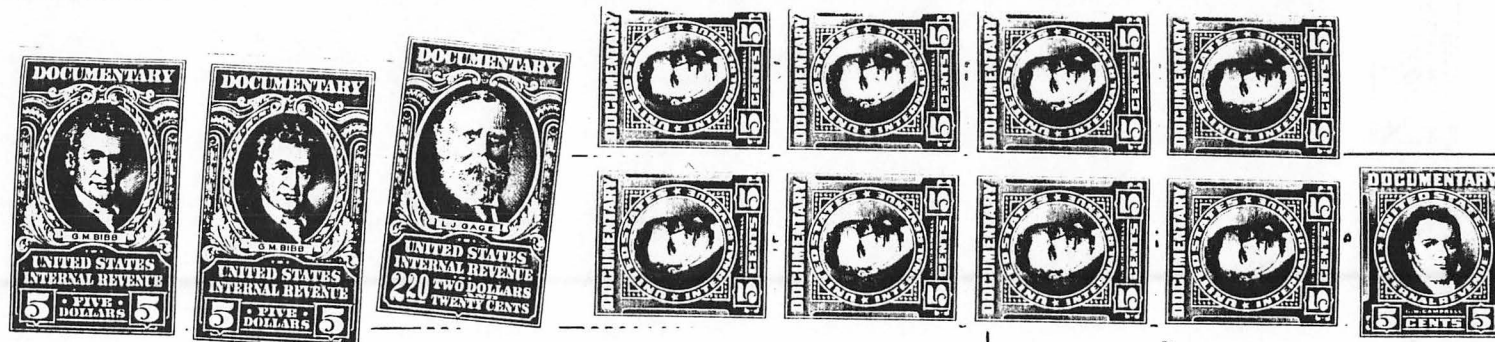
to transfer the said Shares on the books of the within named

corporation with full power of substitution in the premises:

19

Dated

In presence of



Per stamps for
224 Monies -
evening
certificates #1, 2, 3, 4

CERTIFICATE No. 4

FOR 112 SHARES

ISSUED TO

E. L. Dominick, Jr.

{ 54 shares Treasury stock (see Statement for certificate #2)
{ 58 " new issue

DATED September 14 19 66

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19 _____

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19 _____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NEW CERTIFICATES ISSUED TO:	NO. OF SHARES TRANSFERRED	NO. OF NEW CERTIFICATES

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. 5

FOR 112 SHARES

ISSUED TO

Marion Morell Vassar

Replacing certificate #1 + #3

DATED October 10 1983

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19____

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NEW CERTIFICATES ISSUED TO:	NO. OF SHARES TRANSFERRED	NO. OF NEW CERTIFICATES

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

NUMBER

6

SHARES

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

This Certifies that
registered holder of

is the
Shares

*of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.*

*In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., this _____ day of _____ A. D. 19____*

Treasurer

President

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE. IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

For Value Received, _____ hereby sell, assign and transfer unto:

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

*Shares _____
represented by the within Certificate, and do hereby
irrevocably constitute and appoint*

*Attorney _____
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises:*

*Dated _____ 19____
In presence of _____*

THIS
 PLEASE INSERT
 IDENTIFY
represents
irrevocable
to State
Corporation
Del.

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

122

CERTIFICATE No. _____

FOR _____ SHARES

ISSUED TO

DATED _____ 19__

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19__

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

 DATED _____ 19__

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NEW CERTIFICATES ISSUED TO:	NO. OF SHARES TRANSFERRED	NO. OF NEW CERTIFICATES

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

NUMBER

7

SHARES

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

This Certifies that

registered holder of

is the

Shares

of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
*transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.*

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., this _____ day of _____ A.D. 19____

Treasurer

President

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

For Value Received, _____ hereby sell, assign and transfer unto:

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

*Shares _____
represented by the within Certificate, and do hereby
irrevocably constitute and appoint*

*Attorney _____
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises:*

*Dated _____ 19____
In presence of _____*

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. _____

FOR _____ SHARES

ISSUED TO

DATED _____ 19 _____

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19 _____

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19 _____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NEW CERTIFICATES ISSUED TO:	NO. OF SHARES TRANSFERRED	NO. OF NEW CERTIFICATES

126

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

NUMBER

8

SHARES

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

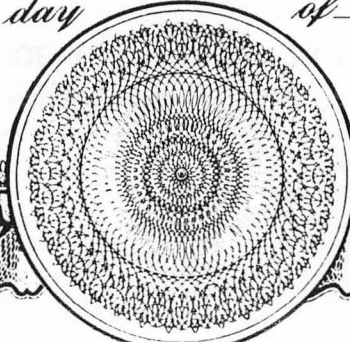
*This Certifies that _____ is the
registered holder of _____ Shares*

*of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.*

*In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va. this _____ day of _____ A.D. 19____*

Treasurer

President



For Value Received, _____ hereby sell, assign, and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

*_____ Shares
represented by the within Certificate, and do hereby
irrevocably constitute and appoint*

*_____ Attorney
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises.*

Dated _____ 19____

In presence of

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

PLEASE IDENTIFY
 RETURN TO
 THE
 COMPANY

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. _____

FOR _____ SHARES

ISSUED TO

DATED _____ 19____

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19____

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NEW CERTIFICATES ISSUED TO:	NO. OF SHARES TRANSFERRED	NO. OF NEW CERTIFICATES

129

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

NUMBER

9

SHARES

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

This Certifies that _____ *is the*
registered holder of _____ *Shares*

of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., *this* _____ day of _____ A. D. 19____

Treasurer

President

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE. IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

Heidy self, assign and transfer unto:

For Value Received,

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

Shares _____
represented by the within Certificate, and do hereby
irrevocably constitute and appoint

Attorney _____
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises.

19__

In presence of

Dated

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. _____

FOR _____ SHARES

ISSUED TO

DATED _____ 19 _____

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19 _____

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19 _____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NEW CERTIFICATES ISSUED TO:	NO. OF SHARES TRANSFERRED	NO. OF NEW CERTIFICATES

132

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

NUMBER
10

SHARES

Tidewater Auto Parts Inc.
AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

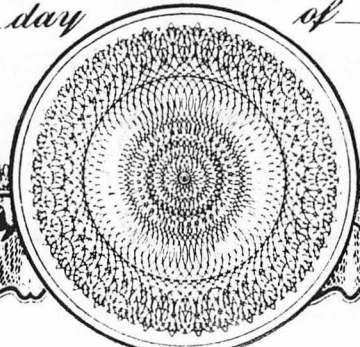
This Certifies that _____ *is the*
registered holder of _____ *Shares*

of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., *this* _____ *day* of _____ *A. D. 19* _____

Treasurer

President



NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE. IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

For Value Received. _____ hereby sell, assign and transfer unto:

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

Shares _____
represented by the within Certificate, and do hereby
irrevocably constitute and appoint

Attorney _____
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises.

Dated _____ 19____
In presence of _____

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. _____

FOR _____ SHARES

ISSUED TO

DATED _____ 19 _____

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19 _____

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19 _____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

	NO. OF SHARES TRANSFERRED	NO. OF NEW CERTIFICATES

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

NUMBER
11

SHARES

Tidewater Auto Parts Inc.
AUTHORIZED CAPITAL STOCK 500 SHARES

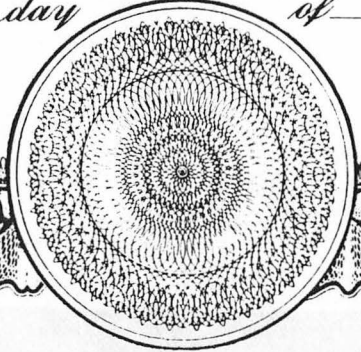
NO PAR VALUE

This Certifies that _____ *is the*
registered holder of _____ *Shares*
of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., *this* _____ day of _____ A. D. 19 _____

Treasurer

President



NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE. IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE, WHATEVER.

For Value Received, hereby sell, assign and transfer unto:

For Value Received,

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

Shares _____
represented by the within Certificate, and do hereby
irrevocably constitute and appoint

Attorney _____
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises:

19 _____

In witness of

Dated

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. _____

FOR _____ SHARES

ISSUED TO

DATED _____ 19 _____

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19 _____

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19 _____

NO. ORIGINAL CERTIFICATE

NO. ORIGINAL SHARES

NO. OF SHARES
TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NO. OF SHARES
TRANSFERRED

NO. OF NEW
CERTIFICATES

NUMBER

12

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

SHARES

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

This Certifies that
registered holder of

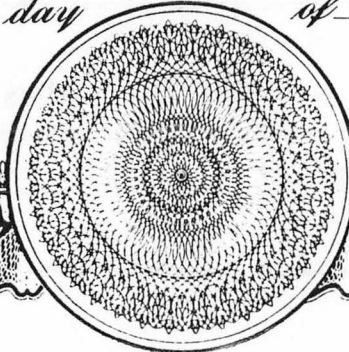
is the
Shares

of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., *this* day of *A. D. 19*

Treasurer

President



NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

For Value Received, I hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

Shares
represented by the within Certificate, and do hereby
irrevocably constitute and appoint

Attorney
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises.

Dated _____
In presence of _____
19__

140

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. _____

FOR _____ SHARES

ISSUED TO

DATED _____ 19____

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19____

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19____

NO. ORIGINAL CERTIFICATE

NO. ORIGINAL SHARES

NO. OF SHARES
TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NO. OF SHARES
TRANSFERRED

NO. OF NEW
CERTIFICATES

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

NUMBER

13

SHARES

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

This Certifies that _____ *is the*
registered holder of _____ *Shares*

of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., *this* _____ *day* of _____ A. D. 19 _____

Treasurer_____
President

For Value Received, _____ hereby sell, assign and transfer unto:

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

_____ *Shares*
represented by the within Certificate, and do hereby
irrevocably constitute and appoint

_____ *Attorney*
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises.

Dated _____ *19* _____

In presence of

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. _____

FOR _____ SHARES

ISSUED TO

DATED _____ 19__

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19__

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19__

NO. ORIGINAL CERTIFICATE

NO. ORIGINAL SHARES

NO. OF SHARES
TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NO. OF SHARES
TRANSFERRED

NO. OF NEW
CERTIFICATES

144

NUMBER

14

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

SHARES

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

This Certifies that
registered holder of

is the
Shares

*of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.*

*In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., this _____ day of _____ A. D. 19____*

Treasurer

President

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE. IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

For Value Received, I hereby sell, assign and transfer unto:

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

Shares _____
represented by the within Certificate, and do hereby
irrevocably constitute and appoint

Attorney _____
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises:

Dated _____
In presence of _____
19 _____

146

NUMBER

15

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

SHARES

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

This Certifies that _____ *is the*
registered holder of _____ *Shares*

of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, *the said Corporation has caused this Certificate to be signed*
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., *this* _____ *day* of _____ *A. D. 19* _____

Treasurer

President

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

For Value Received, _____ hereby sell, assign and transfer unto:

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

Shares _____
represented by the within Certificate, and do hereby
irrevocably constitute and appoint

Attorney _____
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises:

Dated _____ 19____

In presence of _____

PASTE CANCELLED CERTIFICATE IN THIS SPACE

PASTE REVENUE STAMPS FOR ORIGINAL ISSUE IN THIS SPACE

CERTIFICATE No. _____

FOR _____ SHARES

ISSUED TO

DATED _____ 19____

RECEIVED CERTIFICATE No. _____

FOR _____ SHARES

THIS _____ DAY OF _____ 19____

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____ 19____

NO. ORIGINAL CERTIFICATE

NO. ORIGINAL SHARES

NO. OF SHARES
TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

NO. OF SHARES
TRANSFERRED

NO. OF NEW
CERTIFICATES

MINUTES OF SPECIAL JOINT MEETING
OF STOCKHOLDERS AND DIRECTORS



^A
~~The~~ special joint meeting of stockholders and directors of Tidewater Auto Parts, Inc. was held at the principal offices of the corporation on the 2nd day of September, 1966 at 10:00 o'clock a.m.

Present were:

John A. Vassar
Marion M. Vassar
E. L. Dominick, Jr.
Elizabeth S. Dominick,

being all the stockholders and directors.

On motion made, seconded and unanimously adopted, the following were elected as Directors of the corporation:

John A. Vassar 1401 Ewell Road, Virginia Beach, Virginia
Marion M. Vassar 1401 Ewell Road, Virginia Beach, Virginia
E. L. Dominick, Jr. 4014 Tanglewood Trail, Chesapeake, Virginia
Elizabeth S. Dominick, 4014 Tanglewood Trail, Chesapeake,
 Virginia

On motion made, seconded and unanimously adopted the following were elected as Officers of the corporation:

John A. Vassar, President
E. L. Dominick, Jr., Vice-President
Marion M. Vassar, Secretary-Treasurer

On motion made, seconded and unanimously adopted, it was

RESOLVED that the registered agent of the corporation be changed to Jack D. Maness with the registered office to be 604 Plaza One Building, Norfolk, Virginia.

On motion made, seconded and unanimously adopted, it was

RESOLVED that the corporation assume the present loan of John A. Vassar and Marion M. Vassar with Virginia National Bank

in the present amount of \$5,929.33.

On motion made, seconded and unanimously adopted, it was
RESOLVED that the corporation issue 40 shares of common
stock to John A. Vassar for the sum of \$2,000.00.

On motion made, seconded and unanimously adopted, it was
RESOLVED that the corporation issue 112 shares of common
stock to E. L. Dominick, Jr. for the sum of \$5,600.00.

There being no further business to come before the meeting,
it was adjourned.

Marion M. Vassar
Secretary

Elizabeth F. Dominick

Marion M. Vassar

E. L. Dominick Jr.

John A. Vassar



LAST WILL AND TESTAMENT

OF

JOHN LEROY VASSAR
.....

I, JOHN LEROY VASSAR, of Virginia Beach, Virginia, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all former Wills and Codicils heretofore made by me.

ARTICLE I.

I direct my Executor, hereinafter named, to pay as a cost of the administration of my estate all my just debts, expenses of last illness and funeral expenses.

ARTICLE II.

I give, devise and bequeath all of my property, real, personal, tangible and intangible, wheresoever situate and howsoever held, hereinafter referred to as my Estate, to my wife, MARION MORRELL VASSAR.

ARTICLE III.

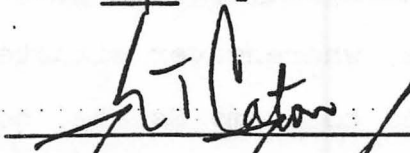
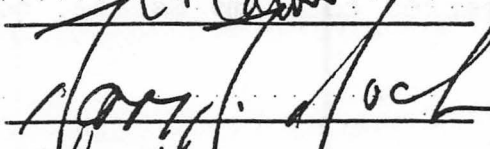
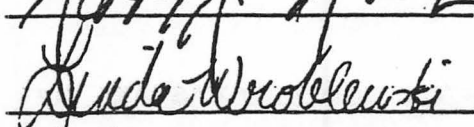
I nominate and appoint MARION MORRELL VASSAR, my wife, as Executrix of this my Last Will and Testament and I request that no security be required on the bond of my Executrix.

In administering my Estate, my Executrix is authorized and empowered to exercise any and all the powers set forth at the date of execution of this Will as set forth in §64.1-57, Code of Virginia (1980 Rep. Vol.), which provisions are hereby incorporated in this Will by reference.

IN WITNESS WHEREOF, I hereunto set my hand and seal
to this Will, consisting of one (1) typewritten page, this
17 day of November, 1982.

 (SEAL)
JOHN LEROY VASSAR

We, the undersigned, do hereby certify that JOHN
LEROY VASSAR has signed, sealed, published, acknowledged and
declared the foregoing paper as and for his Last Will and
Testament in the presence of us, three competent witnesses,
who, in his presence, at his request, and in the presence of
each other, all present together at the same time, have here-
unto subscribed our names as attesting witnesses thereto,
this 17 day of November, 1982.


 residing at Va Beach
 residing at " "
 residing at " "


AFFIDAVIT FOR SELF-PROVING WILL

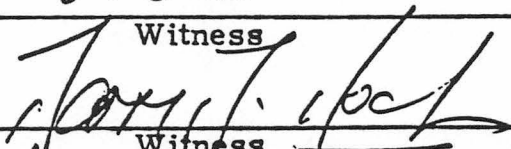
STATE OF VIRGINIA

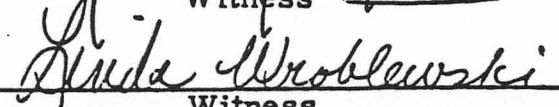
CITY OF VIRGINIA BEACH, to-wit:

Before me, the undersigned Notary Public, on this day personally appeared John Leroy Vassar, E. T. Caton, Barry R. Koch, and Linda Wroblewski, known to me to be the testator and the witnesses, respectively, whose names are signed to the foregoing instrument and, all of these persons being by me first duly sworn, John Leroy Vassar, the testator, declared to me and to the witnesses in my presence that said instrument is his last will and testament and he had willingly signed and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will and testament in the presence of said witnesses who, in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.



Testator


Witness


Witness


Witness

LAW OFFICES

CATON & KOCH, P.C.

P. O. BOX 42

VIRGINIA BEACH, VIRGINIA 23458

2508 PACIFIC AVENUE

AREA CODE 804

428-4661

Subscribed, sworn and acknowledged before me by John Leroy Vassar,
the testator, subscribed and sworn before me by E. T. Caton, Barry
R. Koch, and Linda Wroblewski, witnesses, this
17th day of November, 1982.


Notary Public

My commission expires: October 31, 1983

VIRGINIA:

In the Clerk's Office of the Circuit Court of the City of Virginia Beach on the 4th day of October, 1983.

A paper writing purporting to be the last will and testament of John Leroy Vassar, deceased, late of the City of Virginia Beach, who departed this life on the 15th day of September, 1983, was this day produced in office and offered for probate, in accordance with Section 64.1-87.1 of the Code of Virginia, 1950, as amended. Whereupon it is considered that the said paper writing has been self-proved by the affidavits attached to the said will and the same is ordered to be admitted to record as the true last will and testament of John L. Vassar, deceased.

And thereupon on motion of Marion M. Vassar, the Executrix, therein named, who took the oath prescribed by law, ~~and together with~~

entered into and acknowledged a bond in the penalty of ----one hundred thousand---- (\$100,000.00) Dollars, conditioned according to law, a certificate is granted the said Marion M. Vassar, Executrix for obtaining letters of probate and administrative on the estate of John L. Vassar, deceased, in due form.

And it is ordered that said bond be recorded.

TESTE: J. CURTIS FRUIT, CLERK

BY: *Lori A. Malbon* D.C.

VIRGINIA:

In the Clerk's Office of the Circuit Court of Virginia Beach, Va.

I, Marion M Vassar, Executrix of the estate
of John L. Vassar, who died _____ testate on
the 15th day of September 19 83, do hereby
make oath that I have made diligent inquiry as to the names, ages and addresses of the heirs of the said _____
testate, and to the best of my belief the following list is true and correct.

NAME	KINSHIP	AGE	RESIDENCE
Marion M. Vassar	wife	+21	Virginia Beach, VA
John L. Vassar, Jr.	son	37	Savannah, GA

Marion Morrell Vassar

Executrix of the estate of John L. Vassar deceased.

Subscribed and sworn to before me this the 4th day of October 19 83

Leri A. Malbon
Deputy Clerk

VIRGINIA:

In the Clerk's Office of the Circuit Court of Virginia Beach, Va., on the 4th day
of Ocotber 1983

The foregoing list of heirs was presented in office and admitted to record.

Teste: J. Curtis Fruit Clerk

By Lori A. Malber D. C.

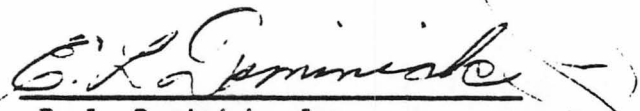


November 21, 1983

Estate of John A. Vassar, deceased
c/o Marion M. Vassar
3977 Ocean Hill Court
Virginia Beach, VA 23451

Re: Tidewater Auto Parts, Inc.

NOTICE is hereby given that E. L. Dominick, Jr. does hereby exercise the option to purchase all the shares of stock in Tidewater Auto Parts, Inc. owned by John A. Vassar on the date of his death in accordance with the agreement between John A. Vassar and E. L. Dominick, Jr. dated September 5, 1966.


E. L. Dominick, Jr.

E. L. Dominick, Jr.
c/o Central Wholesale Supply Corp.
P. O. Box 7206
Norfolk, VA 23509

Estate of John A. Vassar
c/o Marion M. Vassar
3977 Ocean Hill Court
Virginia Beach, VA 23451

GROVER C. WRIGHT, JR.
ATTORNEY AND COUNSELLOR AT LAW, P.C.
SUITE 100 BEACH TOWER BUILDING
11110 PACIFIC AVENUE
VIRGINIA BEACH, VIRGINIA 23451



December 1, 1983

Mr. E. L. Dominick
4014 Tanglewood Trail
Chesapeake, VA 23325

Re: Tidewater Auto Parts, Inc.

Dear Mr. Dominick:

I represent Marion M. Vassar who is a 50% stockholder in the corporation.

Mrs. Vassar and I are shocked to receive your letter of November 21, 1983, which was delivered on November 29, 1983, in which you now attempt to exercise an option to purchase the shares of Mrs. Vassar's deceased husband, John A. Vassar.

As you well know, you had a stockholders' and directors' meeting of the corporation on the 10th and 11th of October, 1983, respectively, as reflected by the minutes, and you consented to the issuance of a new stock certificate to Mrs. Vassar as the sole heir of the late Mr. Vassar under his will, she having qualified as his executrix. After that stock certificate was issued and signed by you, her stockholder status was recognized by virtue of the meeting of the stockholders held on October 10, 1983, the minutes of which have been signed by yourself as well as Mrs. Vassar. At that meeting you elected directors with her voting as a stockholder. As a matter of fact, she was also elected as a director and as president.

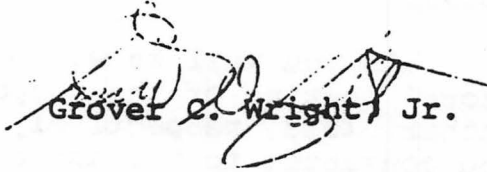
First of all, we are confident that you and Mr. Vassar long ago abandoned the agreement of September 5, 1966, into which you now attempt to breathe life, because at the time that agreement was signed there were no appreciating assets of the corporation, the corporation not having purchased the real estate and building and improved the building until many years thereafter. While apparently both of you recognize during Mr. Vassar's lifetime and you for a while recognized after his death that the agreement had outlived its usefulness and it would be inequitable to impose the conditions on a survivor when the assets are now worth probably two or three times the book value.

Apparently, for some reason best known to you, following the stockholders' and directors' meetings and the issuance of the stock to Mrs. Vassar, you are now attempting to revive something that everyone treated as not being in existence.

Accordingly, your demand to purchase the stock owned by John Vassar is rejected as John Vassar owns no stock nor does his estate, new stock having been issued to a new stockholder with your full knowledge and consent and further on the ground that the old agreement is not enforceable for among other reasons, the reasons indicated above.

I suggest that if you, in good faith, want to deal with Mrs. Vassar as a 50% stockholder in the future that you do so in good faith because each of you owes that duty to the other and to the corporation. If you want to have the assets appraised by a competent appraiser, such as Alex Grice or Joe Nolte or some other M.A.I. appraiser, and negotiate on the basis of a fair price, we will be happy to do so.

Yours truly,


Grover C. Wright, Jr.

GCWjr:bgd

cc: Mrs. Marion M. Vassar
3977 Ocean Hills Court
Virginia Beach, VA 23451

GOLDBLATT, LIPKIN, COHEN, ANDERSON,
JENKINS & LEGUM, P. C.
ATTORNEYS AND COUNSELORS AT LAW
415 ST. PAUL'S BLVD, SUITE 609
POST OFFICE BOX 3505
NORFOLK, VIRGINIA 23514-3505



TELEPHONE 627-6225
AREA CODE 804

SAMUEL GOLDBLATT, OF COUNSEL

PAUL M. LIPKIN
ROBERT S. COHEN
ROBERT H. ANDERSON, JR.
CHARLES E. JENKINS, II
STEVEN M. LEGUM

February 14, 1984

Grover C. Wright, Jr., Esquire
Suite 303 Beach Tower Building
3330 Pacific Avenue
Virginia Beach, Virginia 23451

Re: Your client: Marion M. Vassar
My client: E. L. Dominick

Dear Grover:

The firm accountants for Tidewater Auto Parts, Inc. has completed the balance sheet as of November 30, 1983. A copy of this accounting is enclosed.

In accordance with the contract of September 5, 1966 between John A. Vassar and E. L. Dominick, Jr., I enclose herewith Mr. Dominick's certified check for \$144,029.50 payable to Marion M. Vassar, the widow and sole heir at law of John A. Vassar.

I believe Mrs. Vassar has a certificate for 112 shares of common stock of the corporation. The tender of the certified check is in full payment for those shares and I would thank you to have them returned to me endorsed on the back to Mr. Dominick.

We consider this tender to be in accordance with the contract between the original shareholders as described above.

Very truly yours,

PAUL M. LIPKIN

PML/sc

cc: Mr. E. L. Dominick

ESMOND L. DOMINICK, JR.

4014 TANGLEWOOD TRAIL
CHESAPEAKE, VA 23325

2399

February 13, 19 86
514

PAY TO THE
ORDER OF

Marion M. Vassar

\$ 144,029.50*

One Hundred Fourty Four Thousand Two Hundred Nine and 50/100 - - - - - DOLLARS



VIRGINIA NATIONAL BANK
Norfolk, Virginia

FOR One Half Book Value of Tidewater Auto Parss, Inc.

Esmond L. Dominick
AUTHORIZED SIGNATURE
DO NOT DESTROY

Esmond L. Dominick

GROVER C. WRIGHT, JR.
ATTORNEY AND COUNSELLOR AT LAW, P.C.
SUITE 303 BEACH TOWER BUILDING
3330 PACIFIC AVENUE
VIRGINIA BEACH, VIRGINIA 23458



POST OFFICE BOX 51
AREA CODE 804 428-2741

February 21, 1984

Mr. Paul M. Lipkin
Attorney at Law
Post Office Box 3505
Norfolk, VA 23514-3505

Re: Marion M. Vassar
and E. L. Dominick

Dear Paul:

In response to your letter of February 14, 1984, I am returning herewith the check written by your client, Mr. Esmond L. Dominick, Jr., dated February 13, 1984, for \$144,029.50.

The reasons for this rejection have been set forth in the prior letter which I wrote to Mr. Dominick.

As you know, Mr. Dominick has no right to purchase Mrs. Vassar's stock and, as you know, she is the stockholder.

As you further know, the price is unconscionably low and also the original agreement which existed, not with Mrs. Vassar but with her deceased husband and Mr. Dominick, was long ago abandoned by the original parties to it because of changes in circumstances.

Yours truly,

Grover C. Wright, Jr.

GCWjr:bgd

Enclosure

cc: Mrs. Marion M. Vassar



BALANCE SHEET
TIDEWATER AUTO PARTS, INC.
November 30, 1983

HOOVER & MULKEY
CERTIFIED PUBLIC ACCOUNTANTS

HOOVER & MULKEY

CERTIFIED PUBLIC ACCOUNTANTS

154 NEWTOWN ROAD • VIRGINIA BEACH, VIRGINIA 23462 • 804-490-2424

Board of Directors and Stockholders
Tidewater Auto Parts, Inc.
Virginia Beach, Virginia

We have compiled the accompanying balance sheet of Tidewater Auto Parts, Inc. as of November 30, 1983 in accordance with standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or any other form of assurance on it.

Hoover & Mulkey

Virginia Beach, Virginia
February 3, 1984

Tidewater Auto Parts, Inc.

BALANCE SHEET

November 30, 1983

ASSETS

CURRENT ASSETS

Cash	\$ 72,355	
Accounts receivable		
Trade	29,225	
Employees	1,348	
Inventories (Note 1)	135,144	
Prepaid expenses	14,541	
Refundable income taxes (Note 3)	<u>2,483</u>	
Total current assets		\$255,096

PROPERTY AND EQUIPMENT (Notes 1 and 2)	180,206	
Less accumulated depreciation	<u>101,368</u>	<u>78,838</u>
		<u>\$333,934</u>

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES

Accounts payable		
Trade	\$ 37,055	
Employees' taxes withheld	472	
Sales taxes	837	
Income taxes (Note 3)	922	
Accrued expenses	<u>4,494</u>	
Total Current Liabilities		43,780

DEFERRED INCOME TAXES (Note 3)		2,095
--------------------------------	--	-------

STOCKHOLDERS' EQUITY

Common stock - authorized 500 shares of no par value; issued 224 shares at stated value of \$50 per share	11,200	
Retained earnings	<u>276,859</u>	<u>288,059</u>
		<u>\$333,934</u>

See notes to the balance sheet and accountants' compilation report.

NOTES TO THE BALANCE SHEET

November 30, 1983

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Inventories - Inventories are valued at the lower of cost or market. Cost is determined generally on a first-in, first-out basis.

Property and Equipment - Property and equipment are valued at cost. Depreciation is provided over the estimated useful lives of the assets, computed principally by using the declining-balance method, until January 1, 1981 after which the ACRS method is employed. A summary of rates used for the various classes of assets is shown in Note 2 to the balance sheet.

Income and Expense Recognition - The Corporation uses the accrual basis of accounting for revenue and expense. Bad debts are written off by using the direct charge-off method.

NOTE 2 - PROPERTY AND EQUIPMENT

The following schedule shows the cost, rates used in computing depreciation expense, and the accumulated balances for the different classes of assets.

Classification	Rates	Amount
Cost		
Land		\$ 45,227
Buildings and improvements		81,995
Autos and trucks		23,145
Shop and store equipment		18,528
Sign		1,017
Furniture and fixtures		10,294
		<u>180,206</u>
Accumulated Depreciation and Amortization		
Buildings and improvements	5% - 10%	50,683
Autos and trucks	33 1/3%	23,145
Shop and store equipment	10% - 20%	17,490
Sign	33 1/3%	1,017
Furniture and fixtures	10% - 20%	9,033
		<u>101,368</u>
Net Amount		<u>\$ 78,738</u>

NOTE 3 - INCOME TAXES

The Corporation uses the flow-through method for tax credits.

Income tax returns of the Corporation have not been examined by Federal or State tax authorities for any of the years open under the statutes.

For the year ended May 31, 1982, the Corporation was granted permission by the Internal Revenue Service to change the method of valuation of its inventories to conform to the prescribed methods allowed under the Internal Revenue Code and regulations. The change involved discontinuing the use of percentage valuation allowances for obsolescence and damage in certain product lines. This method had been used for

Tidewater Auto Parts, Inc
NOTES TO THE BALANCE SHEET (CONTINUED)

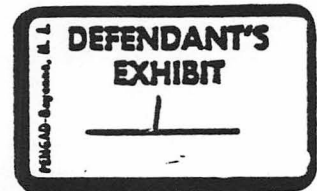
November 30, 1983

NOTE 3 - INCOME TAXES (CONTINUED)

financial and tax reporting valuation of inventories since inception of the Corporation. The elimination of these allowances has increased the beginning inventory for tax reporting purposes by \$14,907 for the year ended May 31, 1982. The income tax liability resulting from the change is \$3,026 (\$2,132 Federal tax and \$894 Virginia tax), payable over a ten year period, beginning in the fiscal year ended May 31, 1982.

NOTE 4 - PROFIT-SHARING PLAN

During the fiscal year ended May 31, 1980, the Corporation adopted a profit-sharing plan which is qualified under Section 401 of the Internal Revenue Code of 1954, as amended. All full time employees, age 24 1/2 and older, in service with the Corporation on May 31, with a minimum of one-half year of service, are eligible for participation in the plan. The Corporation's annual contribution to the plan is determined by the trustees and is not to exceed 15% of eligible employee's compensation.



WAIVER OF NOTICE OF
ORGANIZATIONAL MEETING OF SUBSCRIBERS,
DIRECTORS AND INCORPORATORS OF
TIDEWATER AUTO PARTS, INC.

We, the undersigned, subscribers, directors and Incorporators of
TIDEWATER AUTO PARTS, INC. , hereby waive notice of the initial
or organizational meeting of said subscribers, directors and incorporators
to be held at the offices of Owen and Guy, Attorneys, ⁴⁵⁶⁵~~9200~~ Virginia Beach
Boulevard, Virginia Beach, Virginia, on the 7th day of January , 1966,
at 4:30 P.M., and publication thereof, and do hereby consent to the
transaction of such business as may come before said meeting, or any ad-
journment thereof; and do hereby constitute and appoint John Vassor
our lawful attorney to represent us, or such of us as are not present in
person at such meeting, and for us and in our name and stead to vote at
said meeting or any adjournment thereof, and we do hereby grant our said
attorney all the power that we should possess if personally present at such
meeting.

GIVEN under our hands this the 7th day of January , 1966.

CH-5536

PLTF DEFD EXHIBIT #1
Nominees Vassor
DATE 12/6/84

John L. Vassor
JOHN VASSOR
Marion M. Vassor
MARY O. TODD
MARION M. VASSOR
ALBERT E. GUY
Evelyn Owens
EVELYN OWENS
Richard D. Guy
RICHARD D. GUY
Austin E. Owen
AUSTIN E. OWEN

MINUTES OF ORGANIZATIONAL MEETING
OF
TIDEWATER AUTO PARTS, INC.

(1) The initial or organizational meeting of the incorporators, subscribers to the capital stock and directors of TIDEWATER AUTO PARTS, INC. was held at the offices of Owen and Guy, Attorneys, ⁴⁵⁶⁵~~XXXX~~ Virginia Beach Boulevard, Virginia Beach, Virginia, on the 7th day of January, 1966, at 4:30 P. M., pursuant to written waiver of notice hereto attached.

(2) Present in person or by proxy were John Vassor, Mary G. Todd, and Albert E. Guy, constituting all of the directors of the corporation and Richard D. Guy, Austin E. Owen

(3) Mr. Vassor presided and *Mary G. Todd*
~~Mary G. Todd~~ served as Secretary of the meeting.

(4) The chairman reported that the charter of the corporation had been issued by the State Corporation Commission under date of _____, and the provisions thereof were read in their entirety, after which, upon motion duly made and seconded and by unanimous vote the said Charter was accepted, and copy thereof ordered attached to these minutes as Exhibit "A".

(5) The chairman reported that Counsel for the Corporation had been requested to prepare by-laws to be considered at this meeting for adoption, whereupon, Mr. Guy read the proposed by-laws, section by section, and upon conclusion of such consideration, upon motion duly made and seconded and by unanimous vote, the by-laws attached hereto as Exhibit "B" were adopted.

(6) The chairman suggested that it was now in order to accept nominations for directors to serve the corporation, and upon motion duly made and seconded, and by unanimous vote, the following slate was unanimously elected to serve until the date of the next annual meeting of the stockholders, or until their successors be duly elected and qualified:

John Vassor

~~Mary G. Todd~~ *Mary G. Todd*

Albert E. Guy

(7) The chairman announced that nominations were now in order for officers to carry on the affairs of the corporation, and upon motion duly made and seconded, and by unanimous vote, the following slate was elected to serve until the next annual meeting of the Board of Directors, or until their successors be duly elected and qualified:

John Vassor - President, ~~Treasurer~~

Mary G. Todd - V. President, ~~Secretary~~

MARY G. TODD *JOHN VASSOR* *Sec. Guy*

(8) The chairman advised the stock subscriptions had been received for a total of 200 shares of the capital stock of the corporation, and upon motion duly made and seconded all such subscriptions were accepted, and the officers directed to file the appropriate notice with the State Corporation Commission and thereafter, upon acknowledgment of receipt of such notice, to issue appropriate certificates to the subscribers upon payment by such subscribers of the sum of \$50.00 per share.

(9) The Chairman advised that in the course of the operation of the corporate business, the obtaining of loans secured by corporate realty and/or other assets, and/or unsecured would undoubtedly become necessary from time to time, and upon motion duly made and seconded and by the affirmative vote of all present the following resolution was adopted:

Resolved: That the President or any one of the Vice-presidents and the Secretary or any one of the assistant secretaries be, and each is hereby, authorized to sign and execute and attest in the name of and on behalf of the corporation, all documents in connection with the sale, purchase, or mortgage (including all forms of security instruments) or lease by the corporation of real estate and personalty, and to endorse negotiable instruments of the corporation to any lender, bank or to any other person, firm or corporation.

(10) Upon motion duly made and seconded and by unanimous vote, the resolution hereto attached as Exhibit "C", opening a bank account in the name of the corporation and fixing those persons who should execute the checks, notes and other obligations in the name of the corporation was approved and confirmed, and by this reference is incorporated into the minutes as fully and completely as if copied herein.

(11) The chairman suggested that it would be desirable that the ownership of the corporation remain, insofar as possible, in the hands of the original investors. Whereupon, on motion duly made and seconded, it was:

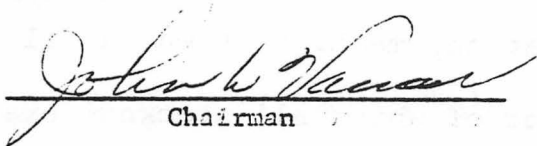
Resolved: That each purchaser of stock in the corporation, shall, and does by virtue of the purchase thereof, enter into a binding agreement granting to the other shareholders, a first purchase option, whereby should any stockholder desire to sell his or her stock in the corporation he must first give to the other shareholders not less than 30 days notice of the terms and conditions upon which he is willing to sell to any other party, and such other stockholders shall have the right, on a pro-rata basis, of first refusal of any such offer received by the stockholder desiring or willing to sell. Should any shareholder not de-

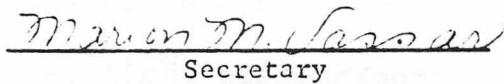
sire to exercise his right of first refusal, his right shall vest pro-rata in the remaining shareholders and so on until no shareholder is desirous of exercising such right.

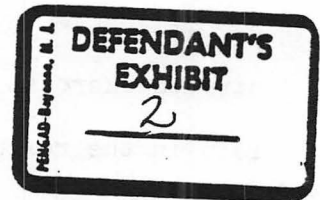
(12)

No further business being presented the meeting was adjourned.

APPROVED


Chairman


Secretary



BY-LAWS

of

TIDEWATER AUTO PARTS, INC.

Article 1.

MEETING OF STOCKHOLDERS

Sec. 1. ANNUAL MEETING. The annual meeting of Stockholders shall be held at the principal office of the Corporation, in the City of Virginia Beach, Virginia or at such other places as the Board of Directors may from time to time determine, on the 15th day of JANUARY of each year, at 10:00 o'clock in the fore noon of that day. If the day so designated falls upon a Sunday or a legal holiday, then the meeting shall be held upon the first business day thereafter. The Secretary shall serve personally, or by mail a written notice thereof, not less than ten nor more than forty days previous to such meeting addressed to each stockholder at his address as it appears on the stock book; but at any meeting at which all stockholders shall be present, or of which all stockholders not present have waived notice in writing, the giving of notice as above required may be dispensed with.

CH-5536

PLTF (DFFD) EXHIBIT #2
Domick vs. [unclear]
DATE 12/6/84
(H4)

Sec. 2. SPECIAL MEETINGS. Special Meetings of Stockholders other than those regulated by statute, may be called at any time by a majority of the Directors. Notice of such meeting stating the purpose for which it is called shall be served personally or by mail, not less than ten days before the date set for such meeting. If mailed, it shall be directed to a stockholder at his address as it appears on the stock book; but at any meeting at which all stockholders shall be present, or of which stockholders not present have waived notice in writing, the giving of notice as above described may be dispensed with. The Board of Directors shall also, in like manner, call a special meeting of stockholders whenever so requested in writing by stockholders represented not less than one-half of the capital stock of the company. The President may in his discretion call a special meeting of stockholders upon ten days notice. No business other than that specified in the call for the meeting, shall be transacted at any meeting of the Stockholders, except upon the unanimous consent of all the stockholders entitled to notice thereof.

Sec. 3. VOTING. At all meetings of the Stockholders of record having the right to vote, each stockholder of the Corporation is entitled to one vote for each share of stock having voting power standing in the name of such stockholder on the books of the company. Votes may be cast in person or by written authorized proxy.

Sec. 4. QUORUM.

The number of shares of any class having voting power, the holders of which shall be present in person or represented by proxy at any meeting of the stockholders in order to constitute a quorum for the transaction of any business or any specified item of business shall be two-thirds of the shares issued and outstanding.

If a quorum shall not be present or represented, the stockholders entitled to a vote thereat, present in person or represented by proxy, shall have power to adjourn from time to time the meeting until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business or any specified item of business may be transacted which might have been transacted at the meeting as originally notified.

The number of votes or consents of the holders of any class of stock having voting power which shall be necessary for the transaction of any business or any specified item of business at any meeting of stockholders, including amendments to the certificate of incorporation, or the given of any consent, shall be a majority of the shares issued and outstanding.

Article II.

DIRECTORS

Sec. 1. NUMBER. The affairs and business of this Corporation shall be managed by a Board of Directors composed of not less than three nor more than ten whom may be stockholders of record, and at least one of such Directors shall be a resident of the State of Virginia and a citizen of the United States.

Sec. 2. HOW ELECTED. At the annual meeting of Stockholders, the number of persons receiving a majority of the votes cast shall be directors and shall constitute the Board of Directors for the ensuing year.

Sec. 3. TERM OF OFFICE. The term of office of each of the Directors shall be one year, and thereafter until his successor has been elected and accepted office.

Sec. 4. DUTIES. The Board of Directors shall have the control and general management of the affairs and business of the corporation. Such Directors shall in all cases act as a Board, regularly convened, by a majority, and they may adopt such rules and regulations for the conduct of their meetings and the management of the Company, as they may deem proper, not inconsistent with these By-Laws and the Laws of the State of Virginia.

Sec. 5. DIRECTORS' MEETINGS. Regular meetings of the Board of Directors shall be held immediately following

the annual meeting of the Stockholders, and at such other times as the Board of Directors may determine. Special meetings of the Board of Directors may be called by the President at any time, and shall be called by the President or the Secretary upon the written request of one director.

Sec. 6. NOTICE OF MEETINGS. Notice of meetings, other than the regular annual meeting shall be given by service upon each Director in person, or by mailing to him at his last known post-office address, at least ten days before the date therein designated for such meeting, including the day of mailing, of a written or printed notice thereof specifying the time and place of such meeting, and the business to be brought before the meeting and no business other than that specified in such notice shall be transacted at any special meeting. At any meeting at which every member of the Board of Directors shall be present, although held without notice, any business may be transacted which might have been transacted if the meeting had been duly called.

Sec. 7. VOTING. At all meetings of the Board of Directors, each Director is to have one vote, irrespective of the number of shares of stock that he may hold. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Sec. 8. VACANCIES. Vacancies in the Board occurring between annual meetings shall be filled for the unexpired portion of the term by a majority of the remaining Directors.

Sec. 9. REMOVAL OF DIRECTORS. Any one or more of the Directors may be removed either with or without cause, at any time by a vote of the stockholders holding a majority of the stock, at any special meeting called for the purpose.

Sec. 10. WAIVER OF NOTICE. Whenever by statute, the provisions of the certificate of incorporation or these by-laws the stockholders or the Board of Directors are authorized to take any action after notice, such notice may be waived, in writing, before or after the holding of the meeting, by the person or persons entitled to such notice, or, in the case of a stockholder, by his attorney thereunto authorized.

Sec. 11. QUORUM. At any meeting of the Board of Directors, a majority of the Board shall constitute a quorum for the transaction of business; but in the event of a quorum not being present, a less number may adjourn the meeting to some future time, not more than ten days later.

Article III.

OFFICERS.

Sec. 1. NUMBER. The Officers of this Corporation shall be:--

President.

Vice-President.

Secretary.

Treasurer.

Any officer may hold more than one office except that of President and Secretary.

Sec. 2. ELECTION. All officers of the Corporation shall be elected annually by the Board of Directors at its meeting held immediately after the meeting of stockholders, and shall hold office for the term of one year or until their successors are duly elected. Officers need not be members of the board.

The board may appoint such other officers, agents and employees as it shall deem necessary who shall have such authority and shall perform such duties as from time to time shall be prescribed by the board.

Sec. 3. DUTIES OF OFFICERS. The duties and powers of the officers of the Company shall be as follows:

PRESIDENT

The President shall preside at all meetings of the Board of Directors and Stockholders.

He shall present at each annual meeting of the Stockholders and Directors a report of the condition of the business of the Company.

He shall cause to be called regular and special meetings of the Stockholders and Directors in accordance with these By-Laws.

He shall appoint and remove, employ and discharge, and fix the compensation of all servants, agents, employees, clerks of the Corporation other than the duly appointed officers, subject to the approval of the Board of Directors.

He shall sign and make all contracts and agreements in the name of the corporation.

He shall see that the books, reports, statements and certificates required by the statutes are properly kept, made and filed according to law.

He shall sign all certificates of stock, notes, drafts or bills of exchange, warrants or other orders for the payment of money duly drawn by the Treasurer.

He shall enforce these By-Laws and perform all the duties incident to the position and office, and which are required by Law.

VICE-PRESIDENT.

During the absence or inability of the President to render and perform his duties or exercise his powers, as set forth in these By-Laws or in the acts under which this Corporation is organized, the same shall be performed and exercised by the Vice-President; and when so acting, he shall have all the powers and be subject to all the responsibilities hereby given to or imposed upon such President.

SECRETARY

The Secretary shall keep the minutes of the meetings of the Board of Directors and of the Stockholders in appropriate books.

He shall give and serve all notices of the Corporation.

He shall be custodian of the records and of the seal, and affix the latter when required.

He shall keep the stock and transfer books in the manner prescribed by law, so as to show at all times the amount of capital stock, the manner and the time the same was paid in, the names of the owners thereof, alphabetically arranged, their respective places of residence, their post-office addresses, the number of shares owned by each, the time at which each person became such owner, and the amount paid thereon; and keep such stock and transfer books open daily during business hours at the office of the Corporation, subject to the inspection of any Stockholder of the Corporation, and permit such Stockholder to make extracts from said books to the extent and as prescribed by law.

He shall sign all certificates of stock.

He shall present to the Board of Directors at their stated meetings all communications addressed to him officially by the President or any officer or shareholder of the Corporation.

He shall attend to all correspondence and perform all the duties incident to the office of Secretary.

TREASURER.

The Treasurer shall have the care and custody of and be responsible for all the funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such bank or banks, trust company or trust companies or safe deposit vaults as the Board of Directors may designate.

He shall sign, make, and endorse in the name of the Corporation, all checks, drafts, warrants and orders for the payment of money, and pay out and dispose of same and receipt therefor, under the direction of the President or the Board of Directors.

He shall exhibit at all reasonable times his books and accounts to any director or stockholder of the Company upon application at the office of the Corporation during business hours.

He shall render a statement of the conditions of the finances of the Corporation at each regular meeting of the Board of Directors, and at such other times as shall be required of him, and a full financial report at the annual meeting of the stockholders.

He shall keep at the office of the Corporation, correct books of account of all its business and transactions and

such other books of account as the Board of Directors may require.

He shall do and perform all duties appertaining to the office of Treasurer.

Sec. 4. BOND. The Treasurer shall, if required by the Board of Directors, give to the Corporation such security for the faithful discharge of his duties as the Board may direct.

Sec. 5. VACANCIES, HOW FILLED. All vacancies in any office, shall be filled by the Board of Directors without undue delay, at its regular meeting or at a meeting specially called for that purpose. In the case of the absence of any officer of the Corporation or for any reason that the Board of Directors may deem sufficient, the Board may, except as specifically otherwise provided in these By-Laws, delegate the powers or duties of such officers to any other officer or director for the time being, provided a majority of the entire Board concur therein.

Sec. 6. COMPENSATION OF OFFICERS. The officers shall receive such salary or compensation as may be determined by the Board of Directors.

Sec. 7. REMOVAL OF OFFICERS. The Board of Directors may remove any officer, by a majority vote, at any time with or without cause.

Article IV.

CERTIFICATES OF STOCK

Sec. 1. DESCRIPTION OF STOCK CERTIFICATES. The certificates of stock shall be numbered and registered in the order in which they are issued. They shall be bound in a book and shall be issued in consecutive order therefrom, and in the margin thereof shall be entered the name of the person owning the shares therein represented, with the number of shares and the date thereof. Such certificates shall exhibit the holder's name and the number of shares. They shall be signed by the President or Vice-President, and countersigned by the Secretary or Treasurer and sealed with the seal of the Corporation.

Sec. 2. TRANSFER OF STOCK. The stock of the Corporation shall be assignable and transferable on the books of the Corporation only by the person in whose name it appears on said books, his legal representatives or by his duly authorized agent. In case of transfer by attorney, the power of attorney,

duly executed and acknowledged, shall be deposited with the Secretary. In all cases of transfer, the former certificate must be surrendered up and cancelled before a new certificate be issued. No transfer shall be made upon the books of the Corporation within ten days next preceding the annual meeting of the shareholders.

Sec. 3. LOST CERTIFICATES. If a stockholder shall claim to have lost or destroyed a certificate or certificates of stock issued by the Corporation, the Board of Directors may direct at its discretion, a new certificate or certificates issued, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed, and upon the deposit of a bond or other indemnity in such form and with such sureties if any as the Board may require.

Article V.

Sec. 1. Seal. The seal of the corporation shall be as follows:--

Article VI.

D I V I D E N D S

Sec. 1. WHEN DECLARED. The Board of Directors shall by vote declare dividends from the surplus profits of the Corporation whenever, in their opinion, the condition of the Corporation's affairs will render it expedient for such dividends to declared.

Article VII.

BILLS, NOTES, ETC.

Sec. 1. HOW MADE. All bills payable, notes, checks, drafts, warrants, or other negotiable instruments of the Corporation shall be made in the name of the Corporation, and shall be signed by the *PRESIDENT AND TREASURER FOR ANY AMOUNTS IN EXCESS OF \$300.00. ANY OFFICER MAY SIGN A CHECK FOR LESS THAN \$300.00*

Article VIII.

AMENDMENTS.

Sec. 1. HOW AMENDED. These By-Laws may be altered, amended, repealed or added to by the vote of the Board of Directors of this corporation at any regular meeting of said Board, or at a special meeting of Directors called for that purpose provided a quorum of the Directors as provided by law and by the Certificate of Incorporation, are present at such regular or special meeting. These By-Laws, and any amendments thereto and new By-laws added by the Directors may be amended, altered or replaced by the stockholders at any annual or special meeting of the stockholders.

Article IX.

FISCAL YEAR

Sec. 1 The Fiscal Year shall begin the 1st
day of MAY OF EACH YEAR.

Article X.

STOCK AND STOCKHOLDERS

Sec. 1. No stock of the corporation ~~can~~^{MAY} be issued without one hundred (100%) per cent approval of the Directors and Stockholders.

Sec. 2. If any stockholder desires to sell any stock which he owns in the corporation, he must first give an option to the remaining stockholder or stockholders to purchase said stock at the price as determined by the book value of said stock. Notice of such intention to sell must be in writing and mailed by certified mail to each remaining stockholder or stockholders, addressed to him or them at the address as listed in the books of the corporation.

Such remaining stockholder or stockholders shall have thirty (30) days from date said notice was mailed in which to exercise the option hereby granted by paying an amount as determined by the then book value of the corporation in cash or by certified check.

Sec. 3. In the event a stockholder desires to sell his stock and, in the event the remaining stockholder or stockholders do not desire to purchase said stock, the stockholder desiring to sell shall, thirty (30) days after giving notice of his intention to sell to each remaining stockholder, give notice to the corporation of his intention and desire to sell said stock in writing and mailed by certified mail to the registered office of the corporation; the corporation shall have an option to purchase said stock by paying the amount as determined by the then book value within thirty (30) days after such notice was given.

WAIVER OF NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

OF

TIDEWATER AUTO PARTS, INC.

We, the undersigned, being all the stockholders of Tidewater Auto Parts, Inc., do hereby waive notice of a special meeting to be held on the 10th day of October, 1983, to consider any business that may come before the meeting.

Marion Morrell Vassar
Marion Morrell Vassar, Executrix of
the Estate of John Leroy Vassar

E. L. Dominick, Jr.
E. L. Dominick, Jr.

MINUTES OF SPECIAL MEETING OF STOCKHOLDERS

A special meeting of the stockholders of Tidewater Auto Parts, Inc. was held on the 10th day of October, 1983, following the death of John Leroy Vassar.

Present were E. L. Dominick, Jr. and Marion Morrell Vassar, Executrix of the Estate of John Leroy Vassar, being all the stockholders.

On motion made, seconded and unanimously adopted, the following persons were elected as directors of the corporation, who immediately took office:

Marion Morrell Vassar
E. L. Dominick, Jr.
Willard I. Gregory

There being no further business to come before the meeting, it was adjourned.

MARION MORRELL VASSAR

E. L. DOMINICK, JR.

WILLARD I. GREGORY

CH-5536

PLTF DFFD EXHIBIT #3
Dominick, Vassar
DATE 12/6/84

HE

C. H. 5536

Dominick Vassar #4
12/6/84

H4

INCORPORATED UNDER THE LAWS OF THE STATE OF VIRGINIA

NUMBER

5

SHARES

112

Tidewater Auto Parts Inc.

AUTHORIZED CAPITAL STOCK 500 SHARES

NO PAR VALUE

This Certifies that

Marion Morrell Vassar

is the

registered holder of

One Hundred Twelve (112)

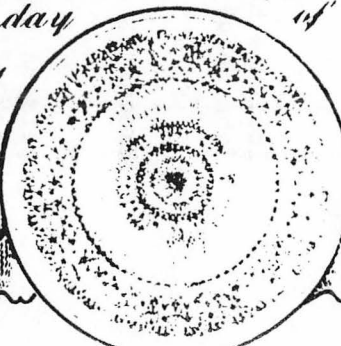
Shares

of the Capital Stock of Tidewater Auto Parts Inc., fully paid and non-assessable
transferable only on the books of the Corporation by the holder hereof in
person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
at Virginia Beach, Va., this 10th day of October A.D. 1983

E. L. Dominick
Treasurer

Marion Morrell Vassar
President



For Value Received. _____ hereby sell, assign and transfer unto
PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

_____ Shares
represented by the within Certificate, and do hereby
irrevocably constitute and appoint

_____ Attorney
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of _____

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER

WAIVER OF NOTICE OF SPECIAL MEETING OF DIRECTORS

OF

TIDEWATER AUTO PARTS, INC.

We, the undersigned, being all the directors of Tidewater Auto Parts, Inc., do hereby waive notice of a special meeting to be held on the 11th day of October, 1983, to consider any business that may come before the meeting.

Marion Morrell Vassar
Marion Morrell Vassar

E. L. Dominick, Jr.
E. L. DOMINICK, JR.

Willard I. Gregory
Willard I. Gregory

MINUTES OF SPECIAL MEETING OF DIRECTORS

A special meeting of the directors of Tidewater Auto Parts, Inc. was held on the 11th day of October, 1983. Present were Marion Morrell Vassar, E. L. Dominick, Jr. and Willard I. Gregory.

On motion made, seconded and unanimously adopted, the following persons were elected officers of the corporation, who immediately took office.

Marion Morrell Vassar, President

E. L. Dominick, Jr., Secretary-Treasurer

There being no further business to come before the meeting, it was adjourned.

Marion Morrell Vassar

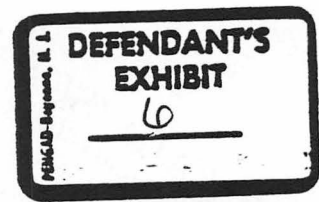
E. L. Dominick, Jr.

Willard I. Gregory

CH-5536

#5

12/6/84



Appraisal
of
Tidewater Auto Parts, Inc.
5192 Virginia Beach Boulevard
Virginia Beach, Virginia

D. L. McKnight, MAI
W. E. Ward, Jr.
Harold C. Spicher
David E. Richards
Lawrence H. MacIver
Elizabeth C. Holmes
Robert G. McCory

December 5, 1984

Mrs. John Vassar
5192 Virginia Beach Boulevard
Virginia Beach, Virginia 23462

Re: Appraisal of
Tidewater Auto Parts, Inc.
5192 Virginia Beach Boulevard
Virginia Beach, Virginia

Our File #84-863

Dear Mrs. Vassar:

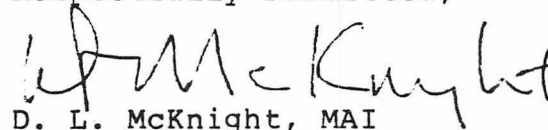
Consistent with your request for the purpose of estimating the Market Value of the above referenced property, I have inspected said property and have analyzed all data pertinent to the establishment of its value.

The accompanying sheets fully describe the property and show my approach to value.

Based on this research and analysis, and upon my experience as a real estate appraiser, I have estimated the Market Value of the subject property as of November 21, 1983, to be:

**TWO HUNDRED SEVENTY THREE THOUSAND TWO HUNDRED DOLLARS
(\$273,200)**

Respectfully Submitted,


D. L. McKnight, MAI

DLM:ks

ASSUMPTIONS AND LIMITING CONDITIONS

I have assumed no responsibility for matters legal in character and existing liens and encumbrances, if any, have been disregarded. The property is appraised as though free and clear.

Sketches in this report have been included to assist the reader in visualizing the property. I have had no survey made of the property and assume no responsibility in connection with such matters.

I believe to be reliable the information which was furnished me by others, but assume no responsibility for its accuracy.

Disclosure of the contents of this appraisal report is governed by the By-Laws and Regulations of the American Institute of Real Estate Appraisers of the National Association of Realtors.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which he is connected, or any reference to the American Institute of Real Estate Appraisers or the MAI designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without the prior written consent and approval of the appraiser.

The fee for this appraisal does not provide compensation for conference or testimony, or attendance in court, with reference to the property in question.

No tests have been made to determine load bearing qualities,

percolation, subsoil conditions, or drainage conditions of the site, and no consideration has been given to the requirements regarding flood insurance for loan purposes. It must be further understood that no consideration has been given to any possible effects on value that may be caused by environmental restrictions placed on this property by federal, state, city or county governments or any of their agencies in regard to pollutants or annoyances of any kind. No responsibility has been assumed for any of these matters.

It has been assumed that all equipment related to this building operation is in satisfactory working condition. No professional engineering services were employed to verify this assumption.

PURPOSE OF APPRAISAL

The purpose of this appraisal is to estimate the Market Value in fee simple of the subject property as of November 21, 1984.

Market Value may be defined as the most probable price in terms of money which a property should bring in competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated.

2. both parties are well informed or well advised, and each acting in what they consider their own best interest.
3. a reasonable time is allowed for exposure in the open market.
4. payment is made in cash or its equivalent.
5. financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale.
6. the price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs, or credits incurred in the transaction.

NEIGHBORHOOD DATA

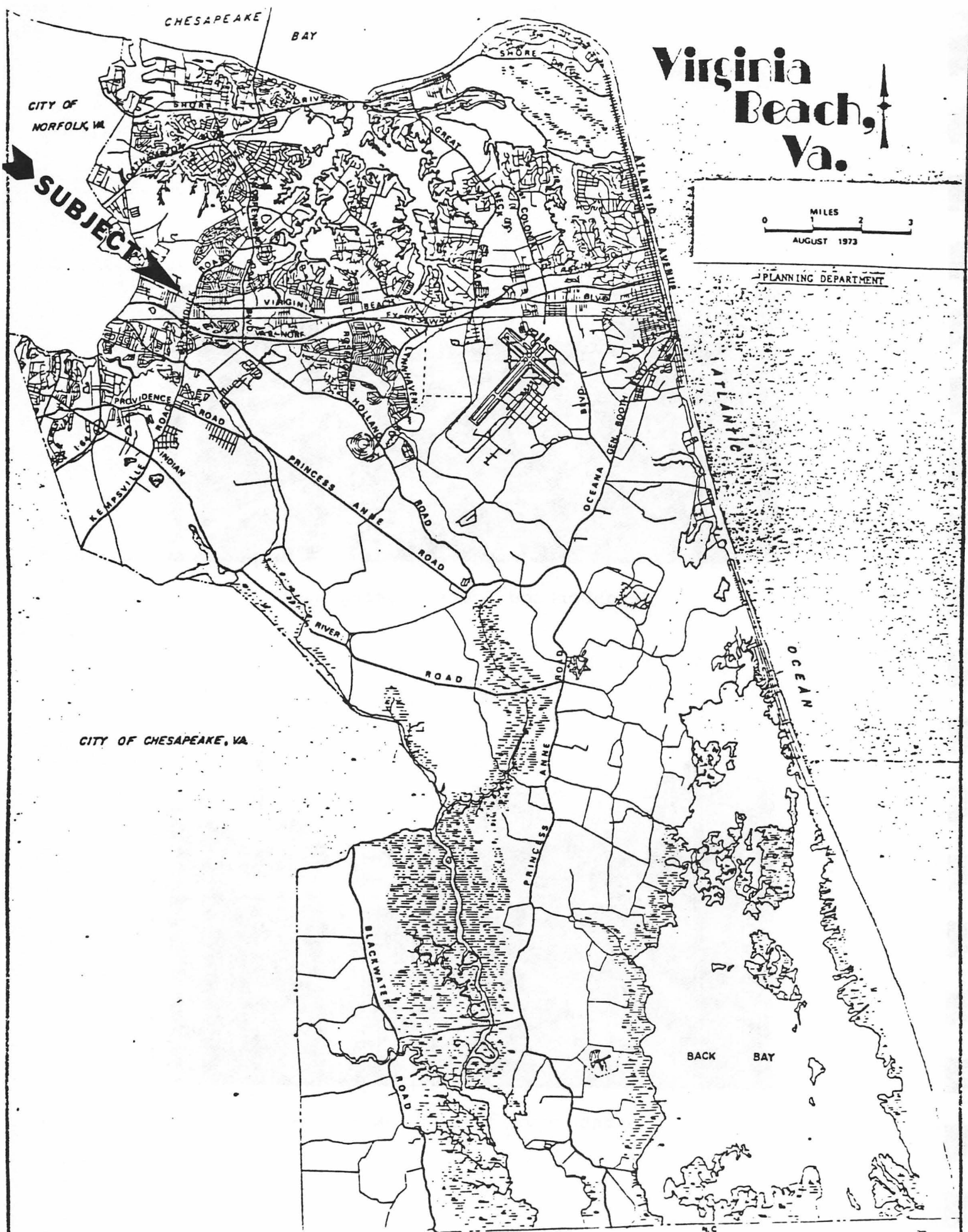
The subject property is located on a commercially developed thoroughfare known as Virginia Beach Boulevard which runs east/west from the Atlantic Ocean to downtown Norfolk. The subject area is located in the northwest portion of Virginia Beach between Witchduck and Newtown Roads. A full interchange at Route 44 and Witchduck Road is less than one mile to the southeast and a full interchange at Route 44, Interstate highways 64 and 264, and Newtown Road is 2 miles to the southwest. The interstate system, expressway, and local thoroughfares allow easy access and travel in all directions to and from subject property.

Virginia Beach Boulevard is a very heavily traveled thoroughfare and commercial development is diverse and includes offices, discount stores, strip centers, shopping malls, restaurants, fast foods, auto sales both new and used, furniture stores and service stations just to mention a few.

Residential development in the area includes single family,

multi-family, and townhouses. Improvements range in age from new to 50 years and values range from \$35,000 to \$150,000. Adjacent to the subject is the new Northridge Townhouse development with 390 units proposed and a price range of \$39,000 to \$57,850, depending on model and financing. Approximately 170 of the units have been sold.

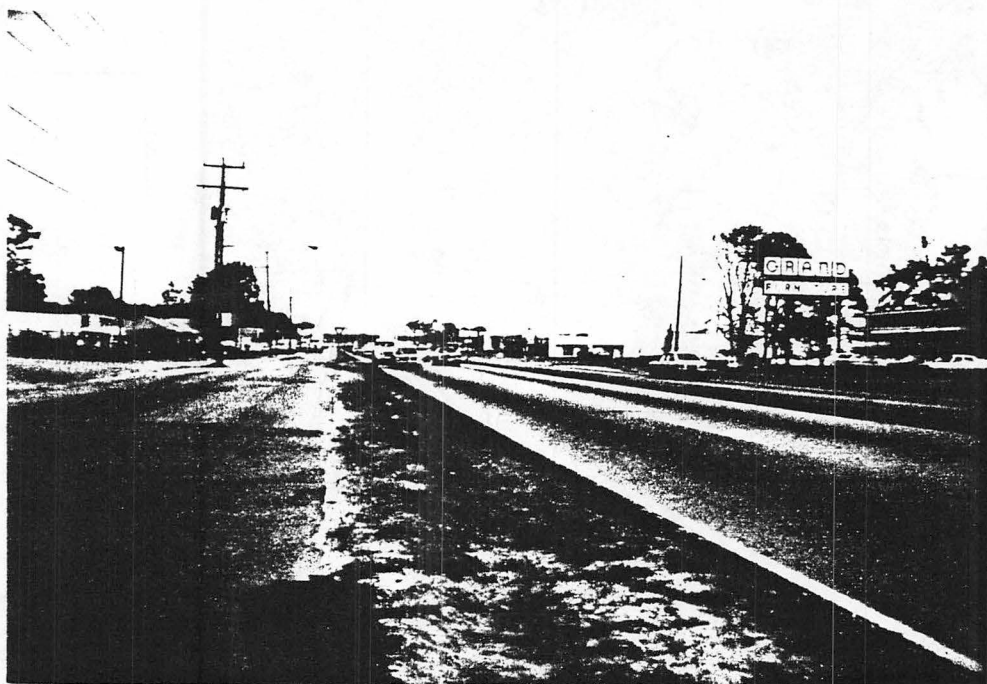
The immediate neighborhood has exhibited a healthy and moderate growth rate in the past and there is sufficient land available for future growth.



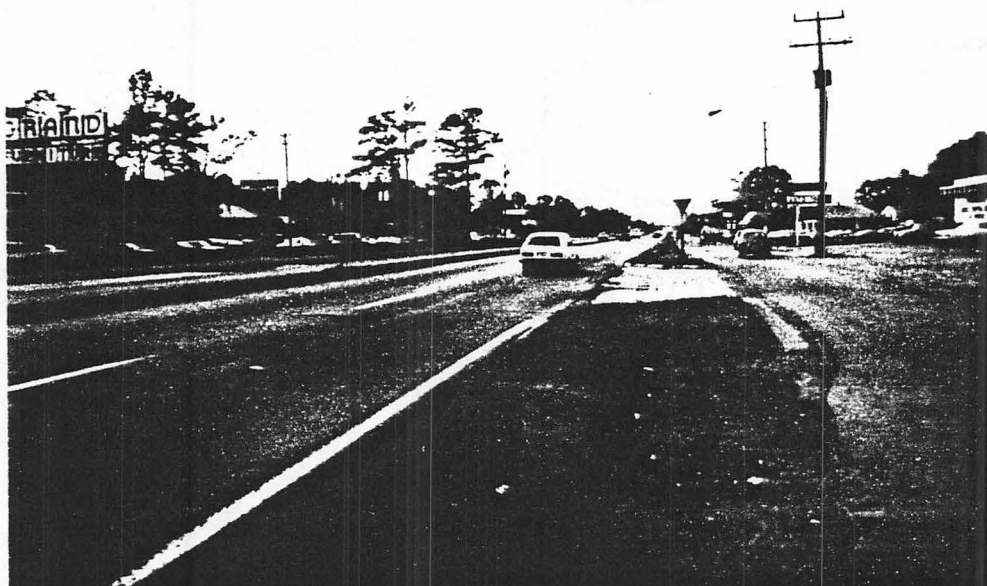
Virginia Beach, Va.

0 1 2 3
MILES
AUGUST 1973

PLANNING DEPARTMENT



Neighborhood Scene Looking East



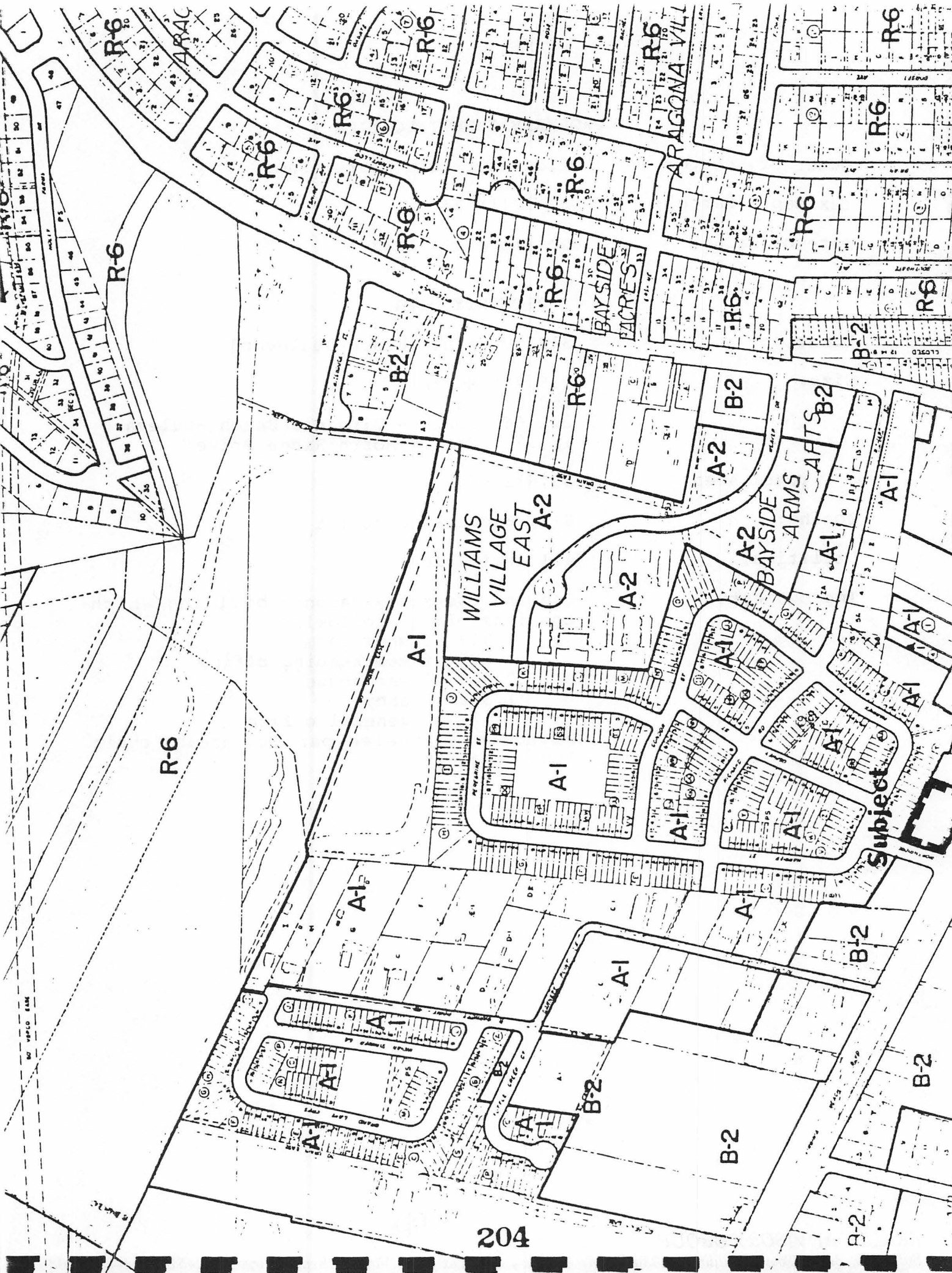
Neighborhood Scene Looking West

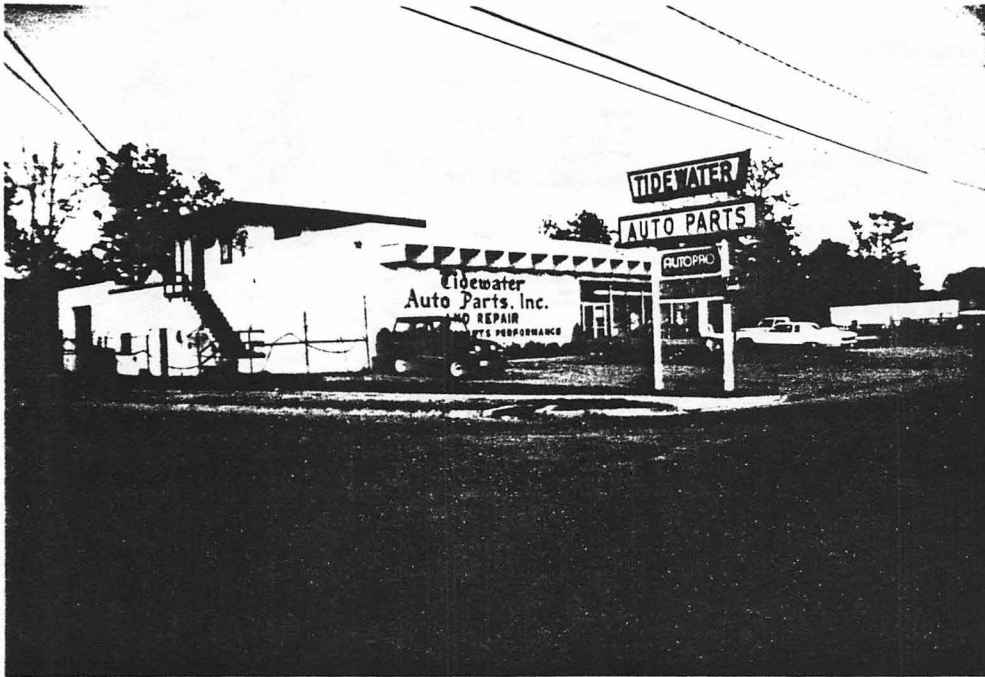
PROPERTY IDENTIFICATION

Owner of Record: Tidewater Auto Parts, Inc.
Tax Map & Parcel: D7-3 (1) 24
Date of Value: November 21, 1983

PROPERTY DATA

Location: 5192 Virginia Beach Boulevard
Size: 235.76' North
150.00' East
212.66' South - Virginia Beach Boulevard
151.71' West - North Ridge Drive
Total Area 33,632 sf
Zoning: B-2, Business District
Utilities: All available
Improvements: One and two-story masonry building which consists of the following:
1,817 sf show room
525 sf bookkeeping office
2,830 sf warehouse
1,850 sf shop
525 sf general office
Paved and graveled parking areas, chain link fencing





Front View Of Subject



East View Of Subject



West View Of Subject

REAL ESTATE ASSESSMENT AND TAXES

Land	\$169,600.00
Improvements	<u>82,708.00</u>
Total	\$252,308.00
Annual Taxes	\$ 2,018.46

HIGHEST AND BEST USE ANALYSIS

The principle of highest and best use is fundamental to the concept of value. It can be defined as that reasonable and probable use which at the time of appraisal is most likely to produce the highest present value.

In estimating highest and best use, I have given consideration to the following items:

Possible Uses - The subject site which contains 33,632 sf has good frontage and is a corner site could physically accommodate any number of commercial uses; thus, the physical aspects of the subject site do not impose any unusual development constraints.

Permissible Uses - The subject's use may be restricted by private deed restrictions and by zoning. There are no known private enforceable restrictions affecting title.

The parcel is zoned B-2, Community Business. B-2 zoning allows a range of commercial uses from offices, restaurants and retail stores to service oriented facilities and mini-warehouse properties.

Feasible Uses - Recent development trends along and abutting Virginia Beach Boulevard include infill residential development such as North Ridge and Amhurst as well as residential dwellings

being converted to commercial usage; thus, the land use pattern is becoming more intense and properties such as the subject are being converted in a similar manner.

Highest and Best Use - Consistent with the above comments and analysis and also, consistent with the neighborhood trends, I have concluded that the existing use is an interim use which will be converted into a more intense retail use as demand will dictate.

APPROACH TO VALUE

Consistent with the conclusions reached in the Highest and Best Use section of the report and consistent with proper appraisal technique given the appraisal problem herein, the value of the subject's land will be estimated by the Sales Comparison Approach and the contributing value of the interim use improvements will be estimated by costs.

Land Value By Comparison

Sale	Location	Date	SF	FF	Price PSF	Price PFF
1	5501	01-79	41,800	100	\$2.37	\$ 990
2	5162	01-79	22,050	45	2.72	1,333
3	5081-83	06-79	18,850	90	3.40	711
4	5331	12-79	16,500	77	3.03	667
5	5456	01-81	40,000	100	2.13	850
6	4981	07-81	55,125	175	3.81	1,200
7	5513	09-81	67,500	160	2.44	1,031
8	5226	01-84	19,297	72	5.44	1,458
9	3234	04-84	62,334	240	4.95	1,286
10	5196	08-84	43,560	136	3.10	993
Subject	5192	11-83	33,632	213		

The above sales have been compared to the subject on a per square foot and a per front foot basis with the final analysis

being based upon a per front foot basis because of the consistency reflected in the market data.

Furthermore, having carefully analyzed Sale 6 which was purchased vacant and utilized as a car wash; Sale 7 which was purchased vacant and utilized as retail space; Sale 8 which is improved with an old dwelling; however, this property is located in the immediate vicinity; Sale 9 which was purchased vacant and is being utilized as retail space; Sale 10 which is vacant and is located on the opposite corner, is being utilized as a used car lot.

Sales Summary

Sale	Date	Front Footage	Price PFF
6	07-81	175	\$1,200
7	09-81	160	1,031
8	01-84	72	1,458
9	04-84	240	1,286
10	08-84	136	993
Subject	11-83	213	

Thus, having given primary consideration to the above Sales, I have concluded that the value of the subject's land is well supported at \$1,000 per front foot:

$$213 \text{ FF @ } \$1,000 = \$213,000$$

Contributing Value of Improvements

7,547 sf building @ \$28.00	=	\$211,316
Less Depreciation 30/40	=	158,487
Value of buildings		<u>\$ 52,829</u>
Plus fencing 612 LF @ \$5.00	=	3,060
Plus paving 8,540 sf @ \$.50	=	<u>4,270</u>
Indicated Value		\$ 60,159

Valuation Summary

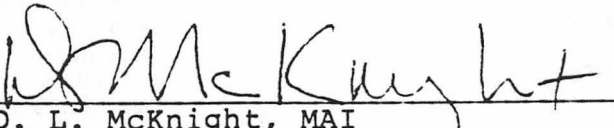
Estimated Land Value	\$213,000
Contributing Value of Improvements	<u>60,159</u>
Total	\$273,159
Rounded	\$273,200

CERTIFICATION

I, D. L. McKnight, do hereby certify that:

1. I have no present or contemplated future interest in the property appraised and that I have no personal interest or bias with respect to the subject matter or the parties involved in the appraisal.
2. D. L. McKnight and other staff members prepared the analyses, conclusions and opinions concerning real estate which are included in this report.
3. I have inspected the subject property.
4. To the best of my knowledge and belief, the statements of fact contained in this report, upon which the analyses, opinions and conclusions expressed herein are based, are true and correct.
5. This report sets forth all of the limiting conditions (imposed by the terms of my assignment or by the undersigned) affecting the analyses, opinions and conclusions contained in this report.
6. This report has been made in conformity with and is subject to the requirements of the Code of Professional Ethics and Standards of Professional Conduct of the American Institute of Real Estate Appraisers of the National Association of Realtors.
7. The American Institute of Real Estate Appraisers conducts a voluntary program of continuing education for its designated members. MAIs and RMs who meet the minimum standards of this program are awarded periodic educational certification. D. L. McKnight is currently certified under this program.
8. The market value of the herein described property as of November 21, 1984, is estimated to be:

TWO HUNDRED SEVENTY THREE THOUSAND TWO HUNDRED DOLLARS
(\$273,200)


D. L. McKnight, MAI

**QUALIFICATIONS
OF
D. L. McKnight, MAI**

EDUCATION AND EXAMINATIONS:

MBA Candidate, Old Dominion University's Graduate School of Business Administration (completed 21 semester hours).

West Virginia University, graduated December 1970, BSBA - Finance Major.

American Institute of Real Estate Appraisers: Capitalization Seminar, February 1978; Comprehensive Examination, August 1977; Course VI, Investment Analysis, 1976; Course II, Urban Properties, August 1974; Course I-B, Capitalization Theory and Techniques, April 1974; Course VIII, Single Family Residential Appraisal, October 1973; Course I-A, Basic Principles, Methods and Techniques, March 1973.

Society of Real Estate Appraisers: Seminar on Tax Considerations in Real Estate Transactions, March 1979; Seminar on Basic Money Market & Economic Analysis, October 1978 and April 1980; Young Advisory Council Member 1978; Seminar on Investment Feasibility Analysis, September 1977; Seminar on Condominium Appraisal, April 1976.

Seminars: Real Estate Market Feasibility Analysis by Realty Seminars, Inc., April 1980; Real Estate & Money Market by James E. Gibbons, May 1980; University of Virginia, Division of Continuing Education, Real Estate Income Taxation, May-June 1981; College of William & Mary, Special Programs Office, Real Estate Syndication & Securities, January 1982; Cash Equivalency Seminar, May 1982; Market Analysis, August 1983; Hotel-Motel Valuations & Market Studies, October 1983.

PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS:

Member - Appraisal Institute (MAI), American Institute of Real Estate Appraisers; President Tidewater Chapter 1982 & 1983; further, the Institute conducts a voluntary program of continuing education for its members. Members who meet the minimum standards of this program are awarded periodic education certification. I am currently certified under this program through December 31, 1986.

Realtor - Tidewater Board of Realtors, Inc., Virginia Association of Realtors, and National Association of Realtors.

Regular Member - Real Estate Securities & Syndication Institute of the National Association of Realtors, Urban Land Institute.

Associate Member - Tidewater Builders Association, and the Apartment Council.

EXPERIENCE:

Entered real estate appraisal field in September 1972 and since entering the field, the scope of my experience has included making appraisals to determine: Market Value, Insurable Value, Investment Feasibility Analysis, Just Compensation in Condemnation Proceedings, Depreciation & Amortization Analysis. These appraisals and analyses have been prepared involving real property in a variety of categories and they have been made as a governmental, institutional and fee appraiser; furthermore, since July 1975, my specialization has been the appraisal and analysis of income producing properties. Presently, providing real estate appraisals and counseling on a fee basis.

Qualified as an expert witness on Real Property Value in the following:

Circuit Court of Accomack County, Virginia
Circuit Court of Greenbrier County, West Virginia
Circuit Court of Newport News, Virginia

Circuit Court of Portsmouth, Virginia
Circuit Court of Virginia Beach, Virginia

Licensed as Real Estate Broker in Virginia, West Virginia and North Carolina.

Instructor of Real Estate Appraisal, Property Management and Land Planning & Use at Tidewater Community College.

PARTIAL LISTING OF CLIENTS:

American Fletcher Mortgage Company
Atlantic Permanent Savings & Loan Association
Bank of Virginia
Bank of Virginia Beach
Bankers Trust Company, New York
Central National Bank
Chemical Bank
Chesapeake Bank and Trust
City of Virginia Beach
Dominion National Bank
General Electric Company
General Services Administration
Hermitage Savings & Loan Association, Richmond, VA
IBM Corporation
Investors Mortgage Insurance Company
Life Federal Savings & Loan
Lone Star Industries
Mortgage Guaranty Insurance Corporation

Newport News Savings & Loan
New York Life Insurance Company
Owens Corning Fiberglass Corporation
Peninsula Airport Commission
Portsmouth Redevelopment & Housing Authority
Sambo's Inc.
Seaboard Savings & Loan
Sovran Bank
Transamerica Relocation Service, Inc.
United Virginia Bank
U. S. Army Corps of Engineers
U. S. Navy
Virginia Beach Bank of Commerce
Virginia Beach Federal Savings & Loan
Virginia Department of Highways
VNB Mortgage Corporation
Westinghouse Electric Corporation