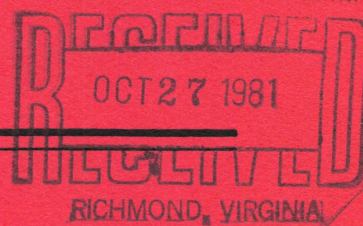


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CLERK  
SUPREME COURT OF VIRGINIA



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IN THE

# Supreme Court of Virginia

AT RICHMOND

RECORD NO. 801946

THE PEBBLE BUILDING COMPANY,  
and  
COMMERCIAL UNION INSURANCE COMPANY,  
Appellants,  
v.  
G. J. HOPKINS, INCORPORATED,  
Appellee.

JOINT APPENDIX

S. D. Roberts Moore, Esquire  
Eugene E. Derryberry, Esquire  
GENTRY, LOCKE, RAKES &  
MOORE  
800 Colonial Plaza  
Post Office Box 1018  
Roanoke, Virginia 24005

Counsel for Appellants

Charles H. Osterhoudt, Esq.  
Osterhoudt, Ferguson, Natt  
& Aheron  
P. O. Box 7332  
Roanoke, Virginia 24019

Counsel for Appellee



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G. J. HOPKINS, INCORPORATED,  
a Virginia corporation,

Plaintiff,

v.

THE PEBBLE BUILDING COMPANY,  
a Virginia corporation,  
c/o William B. Poff,  
Registered Agent  
105 Franklin Road, S. W.  
Roanoke, Virginia 24004

Defendant,

and

COMMERCIAL UNION INSURANCE  
COMPANY, a Massachusetts  
corporation,  
c/o G. Kenneth Miller  
Registered Agent  
700 E. Main Street  
Richmond, Virginia 23219

Defendant.

MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

COMES now the Plaintiff, G. J. Hopkins, Incorporated,  
a Virginia corporation, and respectfully moves the Court for  
judgment against the Defendants and each of them in the amount  
and upon the grounds as hereinafter set forth:

1. In May of 1975, the City of Roanoke, Virginia, a  
Municipal corporation chartered under the laws of the Commonwealth  
of Virginia, through its agents, Randolph Frantz and John  
Chappelear, architects, published certain construction documents  
for the construction of a Municipal Parking Garage within the  
limits of the City of Roanoke, Virginia. The construction  
documents included inter alia, plans, specifications, bidding  
requirements, contract forms and contract conditions. Some of

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COMMERCIAL UNION

APR 23 1979

said documents were from time to time thereafter amended.

2. The Pebble Building Company, a Virginia corporation, general contractor, Lynchburg, Virginia, was the successful bidder for the construction of the Municipal Parking Garage for the City of Roanoke and entered into a contract with the City of Roanoke for the construction of said parking garage in accordance with the contract documents referred to above.

3. Thereafter, The Pebble Building Company entered into a written contract with G. J. Hopkins, Incorporated, dated August 28, 1975. This contract called for G. J. Hopkins, Incorporated, a licensed electrical contractor, to perform all electrical work in the construction of the said Municipal Parking Garage in accordance with the applicable contract documents. A copy of the agreement between The Pebble Building Company and G. J. Hopkins, Incorporated, is attached hereto as Exhibit A. Said contract was subsequently amended in part by certain change orders.

4. Commercial Union Insurance Company is the surety for The Pebble Building Company upon the Performance Bond and Labor and Material Payment Bond required by and under the construction documents referred to above.

5. Article 8 of the Supplementary General Conditions of the Contract for Construction provides for completion of the Municipal Parking Garage within 450 consecutive calendar days. The time for completion was extended to 540 consecutive calendar days by Addendum No. 1 dated June 26, 1975, which was issued prior to the bidding date. G. J. Hopkins, Incorporated, relied upon the contract conditions that construction would be completed within 540 days and, in the event the time for completion was delayed or extended, for reasons beyond the control of G. J. Hopkins, Incorporated, then G. J. Hopkins, Incorporated, would

damages resulting from such delays.

3

6. Construction on the Municipal Parking Garage was begun on or about September 1, 1975, the first monthly progress meeting being held on September 25, 1975. G. J. Hopkins, Incorporated, expended its first material costs on the construction job during the week ending September 26, 1975, and its first labor costs during the week ending November 7, 1975.

7. By agreement dated June 17, 1977, Commercial Union Insurance Company, as surety, became directly responsible to G. J. Hopkins, Incorporated, for all debts and obligations of The Pebble Building Company to G. J. Hopkins, Incorporated, under the contract documents. A copy of this agreement is attached as Exhibit B.

8. G. J. Hopkins, Incorporated, was at all times ready, willing and able to perform under its contract with The Pebble Building Company in accordance with the terms of the contract. Specifically, G. J. Hopkins, Incorporated, was at all times ready, willing and able to complete its work within the time of completion called for in the contract documents.

9. The Pebble Building Company has breached its contracts with the City of Roanoke and G. J. Hopkins, Incorporated, in that it:

A. Delayed completion of the project and prevented its completion within the time specified.

B. Delayed and prevented G. J. Hopkins, Incorporated, from completing its portion of the contract work within the time specified.

C. Failed and refused to process requests of G. J. Hopkins, Incorporated, for an increase in the contract sum due by the City of Roanoke for increased costs and damages caused by delays.

with an adequate work force.

E. Failed to establish and enforce progress schedules in a timely and expeditious manner and failed to properly coordinate the work of other subcontractors.

F. Delayed issuance of the certificate of substantial completion, final completion and final inspection.

G. Has in other ways breached its contract with G. J. Hopkins, Incorporated.

10. By reason of the agreement dated June 17, 1977, (Exhibit B), Commercial Union Insurance Company is, together with The Pebble Building Company, liable to G. J. Hopkins, Incorporated, for damages due for breach of contract to the same extent as The Pebble Building Company.

11. Because of the delays and breaches of contract on the part of The Pebble Building Company, substantial completion of construction was delayed until on or about March 31, 1978, and final completion was delayed until the late fall of 1978, well beyond the date for final completion specified in the contract documents.

12. As a direct result of the delays and breaches of contract on the part of The Pebble Building Company, G. J. Hopkins, Incorporated, suffered increased labor costs of \$37,970.63 in the completion which costs are claimed as recoverable as damages for delay and breach of contract.

13. G. J. Hopkins, Incorporated, has done all things necessary to assert and preserve its claim for such damages, but has been denied payment for same.

14. In addition to the amount due for damages, G. J.

in the amount of \$23,648.70, which sum is being wrongfully withheld by The Pebble Building Company.

WHEREFORE, G. J. Hopkins, Incorporated, does respectfully move the Court for judgment against The Pebble Building Company and Commercial Union Insurance Company, its surety, jointly and severally, for the sum of thirty-seven thousand nine hundred seventy and 63/100 dollars (\$37,970.63) in damages and twenty-three thousand six hundred forty-eight and 70/100 dollars (\$23,648.70), retainage, together with attorney's fees, interest and Court costs.

Respectfully,

G. J. HOPKINS, INCORPORATED

By 

Of Counsel

Charles H. Osterhoudt, Esquire  
OSTERHOUDT, FERGUSON & NATT  
P. O. Box 7332  
Roanoke, Virginia 24019

EXHIBIT A  
SUBCONTRACT AGREEMENT

area code 804/845-8081

6

Project No. 1003  
Code No. 1699  
Municipal Parking Garage  
Church Ave., S.W. &  
First St., S.W.  
Roanoke, Virginia

THE PEBBLE BUILDING COMPANY  
P. O. Box 2528  
Lynchburg, Va. 24501  
JOB MAILING ADDRESS:  
P. O. Box 12985  
Roanoke, Va. 24030  
JOB TELEPHONE NO.  
703/982-2641

ORDER NO. 1053 C

Date August 28, 1975

G. J. HOPKINS, INC.  
P. O. Box 1176  
Roanoke, Virginia 24006  
703/362-1863

Please Have An Official Of Your Company Sign The Acceptance Copy Of This Contract Agreement And Return It To Us Promptly. This Order Is Not Valid Until Signed Copy Is Returned To Us.

E: Contract Agreement No. Must Appear On All Correspondence, Invoices, Shipping Papers & Packages Invoice in Triplicate.

Furnish all labor, materials, equipment, hoisting, scaffolding, supervision, etc. to furnish and install all ELECTRICAL work in accordance with the Specifications, Instructions To Bidders, General Conditions, Supplementary General Conditions, Special Conditions, Architectural Drawings A-1 thru A-24, Structural Drawings S-1 thru S-17, Mechanical-Electrical Drawings M-1, E-1 and ME-1 thru ME-5, all dated May 5, 1975, and Addendum No. 1, all as prepared by Randolph Frantz & John Chappellear, Architects, under Commission No. 7360.

The work shall include but not be limited to all related items called for in Sections ME and E of the Specifications unless specifically excluded herein.

Note that in accordance with Para. 1A.09 of the Special Conditions, the Subcontractor shall not place orders for materials or equipment or proceed with any work in the rental areas until he receives written instructions.

Furnish a payment bond in the amount of fifty percent (50%) of the Subcontract amount.

It is agreed that the Subcontractor will promptly clean up and remove from the site all trash and debris generated by his work.

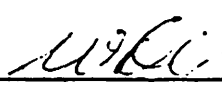
All work on this subcontract shall be performed for the firm lump sum amount of TWO HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED FIFTY AND NO/100 DOLLARS-----(\$216,850.00).

CONDITIONS OF SUBCONTRACT

The subcontractor hereby agrees that he will indemnify and hold harmless The Pebble Building Company for and against any and all claims, loss to persons or property, to which The Pebble Building may be put or subjected by reason of any act, actions, neglect, omission or default on the part of the subcontractor, its officers, agents, servants or any of his subcontractor's officers, agents, servants or employees.

All subcontractors are bound to The Pebble Building Company by the same terms as The Pebble Building Company is bound to the owner under any provisions of the Contract Documents.

BY   
John R. Kranz, Jr., President

ACCEPTED BY: 

TITLE: 

NOTE: Please Sign And Return Acceptance Copy To Us For Our File.

RECEIVED  
COMMERCIAL UNION

APR 23 1979

LYNCHBURG, VIRGINIA



June 17, 1977

G. J. Hopkins, Inc  
P.O. Box 12467  
Roanoke, VA. 24025

APR 18 1979

CLAIMS  
RICHMOND

Re: The Pebble Building Company - Contract  
with City of Roanoke, Roanoke, Virginia  
for construction of Municipal Parking  
Garage

Gentlemen:

Commercial Union Insurance Company is surety for Pebble Building Co.  
in connection with the captioned contract.

We understand that Pebble entered into a subcontract on or about  
with you for

28 August 75

Electrical Work

and that as of 31 May 77 the status of your subcontract  
was as follows:

Original Contract Amount..... 216,850<sup>00</sup> (1)

Fully Executed Change Orders: \*

Additions..... 19,637<sup>00</sup>

Deductions.....

Net..... 19,637<sup>00</sup>

19,637<sup>00</sup> (2)

Current agreed to Total Contract Amount..... 236,487<sup>00</sup> (3)

Total Earned As of 31 May 77  
Including Retainage..... 192,270<sup>68</sup> (4)

Retainage Included in  
(4) above..... 19,227<sup>05</sup> (5)

Total Earned Less Retainage (4-5) 173,043<sup>63</sup> (6)

Actual Amounts Previously Paid... 161,449<sup>44</sup> (7)

Net Amount Currently Due (6-7)..... 11,544<sup>19</sup> (8)

Balance to be Earned or Invoiced (3-4)..... 44,216<sup>32</sup>

\* If there are contested additions or deductions, check ( ) he  
and list below your signature on Page 2, description and  
amount in dispute

We agree to make payment to you of the amounts currently due as  
indicated above and to guarantee payment by Pebble of such further  
amounts as may be due to you from Pebble from time to time under the



**Commercial Union Assurance Companies**  
EXECUTIVE OFFICES: ONE BEACON STREET, BOSTON, MASSACHUSETTS 02108

8

terms of your subcontract.

In consideration of the agreements set forth herein, you acknowledge that the foregoing figures are correct and you agree to complete your subcontract with Pebble Building Company pursuant and subject to all of its terms and conditions, for Pebble Bldg Co. , or at our direction as surety for Pebble Bldg. Co. , to complete for us or such party as we may designate. It is understood that in the event Commercial Union requires performance for itself or its designee Commercial Union will be responsible for such further amounts as may become due under the subcontract. Further, you represent to us that all persons who have furnished labor and material to you in connection with said subcontract have been fully paid all amounts currently due them except the amounts due or to become due as listed on separate schedule attached. If No exceptions check (X) here.

You further agree to transfer and assign to this company, to the extent of any payment made by it to you, your claims against Pebble Bldg. . in connection with the captioned project and all of your right, title and interest in any security interest which you now have or may acquire in connection with such payment and to execute such further documents as may be required to perfect our rights with respect to such claims.

If the foregoing is acceptable to you, please acknowledge your agreement and acceptance by signing in the space provided below and returning one copy to us.

Very truly yours,

COMMERCIAL UNION INSURANCE COMPANY

By: 

AGREED AND ACCEPTED:

G. J. Hopkins Inc

21 J. Hopkins Inc

DATE:

4-17-77

**RECEIVED**

APR 18 1979

**CLAIMS  
RICHMOND**

TWENTY-THIRD JUDICIAL CIRCUIT OF VIRGI

ERNEST W. BALLOU, JUDGE  
P. O. BOX 211  
ROANOKE, VIRGINIA 24002

CIR  
CI  
C

August 5, 1980

Charles H. Osterhoudt, Esquire  
Osterhoudt, Ferguson & Natt  
Attorneys at Law  
Post Office Box 7332  
Roanoke, Virginia 24019

S. D. Roberts Moore, Esquire  
Gentry, Locke, Rakes & Moore  
Attorneys at Law  
Post Office Box 1018  
Roanoke, Virginia 24005

Re: G. J. Hopkins, Incorporated  
v. The Pebble Building Company and Commercial Union  
Insurance Company - At Law No. 5163  
In the Circuit Court of the City of Roanoke

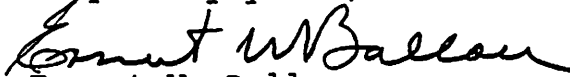
Gentlemen:

Upon consideration of the pleadings, evidence, and memoranda of counsel, the Court is of opinion that G. J. Hopkins, Incorporated, electrical subcontractor, is entitled to recover delay damages in the amount of \$37,970.63 from The Pebble Building Company, Inc. and its bonding company, Commercial Union Insurance Company,, because of unexcused delay of about 14 months of the general contractor in constructing the municipal parking garage for the City of Roanoke. The measure of damages is the uncontradicted excess labor costs over the original labor estimates of plaintiff. Interest at 8% per annum will be allowed from August 25, 1978, the date of completion.

The Court further finds that plaintiff is not estopped from asserting its claim because of its agreement of June 17, 1977, with Commercial Union. That agreement deals exclusively with contract price, change orders, retainage, amounts previously paid, etc., and does not in any wise address itself to delay damages.

Counsel for plaintiff may present an appropriate order.

Very truly yours,

  
Ernest W. Ballou

EWB:hg

G. J. HOPKINS, INCORPORATED,  
a Virginia Corporation,

10

Plaintiff,

v.

FINAL JUDGMENT ORDER

THE PEBBLE BUILDING COMPANY,  
a Virginia Corporation,

and

COMMERCIAL UNION INSURANCE  
COMPANY, a Massachusetts  
Corporation,

Defendants.

This case came on again to be heard upon Motion for Judgment filed herein, the Responsive Pleadings thereto, the Interrogatories propounded by the parties and the answers thereto, the Depositions filed herein, all other pleadings filed herein, evidence taken ore tenus before the Court on the 19th day of March, 1980, together with all exhibits offered or filed, the Memorandum of counsel, the Memorandum Opinion of the Court dated August 5, 1980, and was argued by counsel.

It appearing to the Court on the representations and agreement of counsel that the sum sued for as retainage in the amount of \$23,648.70, was paid by the defendants to the plaintiff prior to trial, the Court doth find that the amount in controversy in this case is \$37,970.63, together with interest and costs.

The Court doth further find that the plaintiff has borne the burden of proof to establish its claim for delay damages and the amount and extent thereof. The Court doth further find that the plaintiff is not estopped from asserting its claim because of an agreement between the plaintiff and the defendant, Commercial Union Insurance Company, dated June 17, 1977. Accordingly, the Court doth find the plaintiff



is entitled to judgment against the defendants, The Pebble Building Company and Commercial Union Insurance Company in the amount of \$37,970.63 and interest on each sum at the rate of 8% per annum from and after August 25, 1978, the date of final completion of the contract in question, and the plaintiffs' taxable costs expended in this proceeding. 11

It is accordingly ADJUDGED, ORDERED and DECREED that judgment be entered herein in favor of the plaintiff, G. J. Hopkins, Incorporated, against the defendants, The Pebble Building Company and Commercial Union Insurance Company, jointly and severally in the amount of \$37,970.63 together with interest thereon from and after August 25, 1978, at the rate of 8% per annum until paid and the plaintiffs' taxable costs in this proceeding expended. The defendants have expressed their intention to appeal to the Virginia Supreme Court and have moved the Court to suspend the execution of the judgment herein entered pending the prosecution of the appeal which the defendants intend to take. Accordingly, it is ORDERED that execution on the judgment herein entered shall be suspended for so long as the defendants timely prosecute the appeal and thereafter for so long as the matter is under consideration by the Supreme Court, provided that the defendants or someone for them shall file a supercedas bond in the Clerk's Office within 30 days in the penal sum of \$50,000.00, with corporate surety to be approved by the Clerk, which bond shall be conditioned as required by §8.01-676 A of the Code of Virginia.

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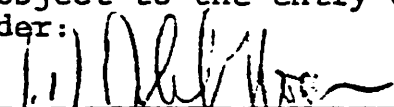
Ernest W. Ballou, JUDGE

I ask for this:

Charles H. Osterhoudt

Charles H. Osterhoudt, Esq.,  
OSTERHOUDT, FERGUSON,  
NATT & AHERON  
P. O. Box 7332  
Roanoke VA 24019

I object to the entry of this order:

  
S. D. Roberts Moore  
GENTRY, LOCKE, RAKES & MOORE  
800 Colonial Plaza  
P. O. Box 1018

1  
2 company and the plaintiff admitted in evidence and so marked  
3 for identification as "Exhibit 3.")

4 MR. OSTERHOUDT:

5 Then we have gotten various responses to the  
6 Interrogatories which are over there.

7 THE COURT:

8 EXHIBITS TO DEFENDANTS' RESPONSE TO PLAINTIFF'S  
9 INTERROGATORIES WILL BE EXHIBIT 4.

10 (Exhibits to Defendants' Response to Plaintiff's  
11 Interrogatories admitted in evidence and marked for identifi-  
12 cation as "Exhibit 4.")

13 (Set of progress schedules admitted in evidence  
14 and so marked for identification as "Exhibit 5.")

15 MR. OSTERHOUDT:

16 Our first witness will be Mr. Larry Starkey.

17 XXX

18 Larry Starkey, having first been duly sworn  
19 upon his oath, testified as follows:

20 DIRECT EXAMINATION BY MR. OSTERHOUDT:

21 Q. Would you state your name, please?

22 A. Larry Starkey.

23 Q. Mr. Starkey, where do you work?

24 A. G. J. Hopkins.

25 Q. How long have you worked for G. J. Hopkins?

Mr. Starkey

Direct

6.

A. Approximately six (6) years.

Q. And what do you do for G. J. Hopkins? What is your job description?

A. Primarily electrical estimating, purchasing for the Electrical Department of G. J. Hopkins.

Q. Do you have any professional education in the electrical field?

A. No.

Q. Are you a graduate engineer, for example?

A. No.

Q. How long have you been working for the G. J. Hopkins Company?

A. Approximately six (6) years.

Q. Were you working for the G. J. Hopkins Company at the time that they undertook to do some work on the Roanoke City Parking Garage?

A. Yes.

Q. All right, when you are considering a job, what do you do, do you prepare a bid, is that what you do?

A. Yes.

Q. Did you participate in that?

A. Yes, I did.

Q. Tell the Court what your participation was in preparation of this bid?

Mr. Starkey

Direct

1  
2 A. I took the plans and specifications and did a  
3 material takeoff for the job.

4 Q. You did a material takeoff?

5 A. Yes, from the plans.

6 Q. And how do you do that?

7 A. Well, you review the plans, identify the mater-  
8 ial that's on the plans, make a list of it, secure prices on  
9 it and put labor units on it.

10 Q. Now, you say you review the plans? You do this  
11 from an electrical standpoint, is that correct?

12 A. That's right.

13 Q. And you do something called a "takeoff?"

14 A. Yes.

15 Q. Now, tell me what a "takeoff" is?

16 A. I look at the plans, each piece of equipment on  
17 there, each item, I physically look at it, count the items and  
18 identify each item, count them, to come up with a material  
19 list for the job.

20 Q. You mean you count -- I don't know how wire  
21 comes, in different sizes, I suppose?

22 A. Right.

23 Q. And you count the---

24 A. ---number of feet.

25 Q. Number of feet?



Mr. Starkey

Direct

3.

A. Yes.

Q. And you do this for what you think are the electrical parts, is that right?

A. Yes.

Q. Then I believe you said you obtain pricing? How do you obtain pricing?

A. We get prices, current prices, from local distributors on items of equipment in the job.

Q. Do you, in any way, advise them as to when you want it delivered to---

A. ---yes.

Q. Is the price, in any way, based on that?

A. Yes.

Q. All right; and you said something about assigning time elements to it, is that correct?

A. For the material that we figure for the job, we have manuals with labor units in it that tells us how long -- how many man-hours it will take to install a certain piece of equipment or a certain item.

Q. You say you have manuals?

A. Yes.

Q. What kind of manuals are these?

A. Well, we have three (3) that we use here. One (1) is a NECA Manual.

1

Mr. Starkey

Direct

2.

2

Q. What is "NECA?"

3

A. It's National Electrical Contractors Association;

4

it's a manual they have put out with labor units for electrical material.

5

6

Q. Okay, so, for example, if you've got one

7

hundred (100) feet of a certain kind of electrical conduit to lay, you look in the book and it gives you some kind of a figure?

9

10

A. Right; it tells you how many man-hours it will

11

take to install that one hundred (100) feet of conduit.

12

Q. I see. And you say you use this NECA, this

13

National Electrical Contractors and is there anything else that you use?

14

15

A. That's one (1) that we use. We have another

16

one here and it's called a "Master Manual," and it's put out by Management Services of Dallas, Texas which is, basically, the same thing. Then we have a third one which is put out by MEANS.

19

20

Q. "Means?"

21

A. That's just a brand name.

22

Q. Another service?

23

A. Another service.

24

Q. Are you the only people that use these, as far

25

as you know?

Mr. Starkey

Direct

10.

A. No, they are used throughout the industry.

Q. Okay, and you look at those and they can tell you how many man-hours, is that right?

A. Right.

Q. Okay, then what do you do?

A. Well, after we get a total of man-hours on the job, a complete list of materials with prices on it, we figure what our labor per hour will be and multiply that by the total man-hours and come up with the base cost of the labor and materials and then we put our profit, overhead and taxes on it and our final line is the dollar amount for the job.

Q. Now, do you, yourself, actually come up with what the labor costs is or what the overhead and profit figure is to be used and what the taxes and insurance will be for the job?

A. No, that's usually myself and Stan Reas or Wes or whoever will sit down and decides the job and figure out---

Q. ---but you don't have the authority to do that on your own?

A. No.

Q. What you did on your own here then was to see what materials were involved---

A. ---essentially what I done was to come up with a base cost of material and labor.

Mr. Starkey

Direct

Q. I see. Okay, do you remember how many man-hours you figured on this job?

A. Seven thousand eighty (7,080) man-hours was the base bid.

Q. Okay, did you also come up with material cost?

A. Yes, the base material cost, again, for base bid only was One Hundred Forty-Eight Thousand Five Hundred Forty-Nine Dollars (\$148,549.00).

Q. Okay; now, I don't know whether you did this or not, Mr. Starkey, but let's just see. Did you do the final compilations, plugging in these other factors, the estimated labor cost and markup and all, did you actually do the calculations or did somebody else do those?

A. I did the calculations for the man-hours or labor units, man-hours, if you will, yes.

Q. Did you do the calculations to come up with the final anticipated labor cost using the man-hours?

A. You mean did I come up with the bottom line?

Q. Yes.

A. No.

Q. Okay, someone else did that, I take it?

A. Yes.

Q. But you came up with Seven thousand and eighty (7,080) hours?



Mr. Starkey

Direct

A. Base bid.

Q. Now, what does that mean to me as a layman, the Seven thousand eighty (7,080) hours?

A. That does not take into consideration any changes, additions or deletions to the job. This was base bid per plans and specifications.

Q. Does that mean that it was your estimate that it would take Seven thousand eighty (7,080) man-hours to do the work on this job?

A. Yes.

Q. Okay, were there any subsequent change orders in the work that required you to submit additional figures?

A. Yes.

Q. What was that related to?

A. It was related to the First National Exchange Bank which went in the ground floor.

Q. Okay, did you again do what I believe you called the "takeoff?"

A. Yes.

Q. Did you again prepare the material cost, find out the additional material cost?

A. Yes.

Q. All right, and did you calculate the number of man-hours again?

Mr. Starkey

Direct

13.

1  
2 A. Yes.

3 Q. Okay, let's talk first about what you came up  
4 with as a change or addition to the material cost?

5 A. Okay, the way this one was worked, originally,  
6 they had, more or less, a shell there with a few lights in it  
7 and we were to deduct that amount from the job, if you will.

8 Q. So you took out what you didn't have to do?

9 A. That's right.

10 Q. Okay.

11 A. Then we added back in the new portion of it.

12 Q. What did you come up with?

13 A. The total man-hours was Seven thousand six  
14 hundred and ninety-nine (7,699) after that change.

15 Q. And that means you took some off of the Seven  
16 thousand Eighty (7,080)?

17 A. And added some back in.

18 Q. And then added some back in?

19 A. Yes.

20 Q. Do you remember how much you took off and  
21 added back?

22 A. I took out three hundred seventy-four (374)  
23 hours and added back nine hundred ninety-three (993).

24 Q. Now, again, that means that because you didn't  
25 have to do the original work in that space, you could take the

Mr. Starkey

Direct

14.

three hundred and some hours off?

A. That's right.

Q. But because you had to do the new work, you had to add the other hours back on?

A. Right.

Q. All right; now, you say you came up with Seven thousand six hundred ninety-nine (7,699) as a total with that change?

A. Right.

Q. What about the material cost?

A. We deducted approximately Fifty-Four Hundred Dollars (\$5400.00) material cost and we added back in Sixteen Thousand Four Hundred Twenty-Nine Dollars (\$16,429.00) material cost.

Q. Okay, so what did you come up with then as a total material cost with respect to the job as changed by the bank?

A. Do you want the material cost after the change?

Q. Yes, sir.

A. The latest one I have in here was One Hundred Fifty-Five Thousand Seven Hundred Fifty Dollars (\$155,750.00) as of November 29, 1976.

Q. Now, I'm not talking about the actual material cost, I'm talking about the estimated material cost?

Mr. Starkey

Direct - Cross

A. That was estimated.

Q. And what did you give me?

A. One Hundred Fifty-Five Thousand Seven Hundred Fifty Dollars (\$155,750.00).

Q. All right, Mr. Starkey, were you charged with direct on-the-site, on-the-job responsibility in this case?

A. No, not direct, no.

Q. Then you did not follow then, if you will, on a continued basis the course of construction?

A. No.

Q. And you did not prepare the final bid that went in, you just did the background work?

A. Right.

Q. And came up with the hours?

A. Yes.

Q. Do you use those manuals all the time as references?

A. Yes.

Q. I don't have any other questions of this witness.

CROSS EXAMINATION BY MR. MOORE:

Q. Mr. Starkey, how old are you?

A. Thirty-five (35).

Q. Where did you work before you went to work for G. J. Hopkins?



Mr. Starkey

Cross

A. Western Electric.

Q. What did you do for them?

A. Installed central office telephone equipment.

Q. You were a telephone maintenance repairman and installation man?

A. No, we installed the central office equipment.

Q. You didn't do estimating or contracting kind of work?

A. No.

Q. You went to work for G. J. Hopkins when, in 1974?

A. I believe that's right.

Q. Do you recall when in 1974?

A. I believe it was February.

Q. Do you recall when you did the work with relationship to this bid?

A. This job was bidden July 2nd, 1975, so the work I done on preparing this bid would have been done approximately two (2) weeks prior to that date.

Q. You had been working for G. J. Hopkins for a little more than a year when you did the work for the preparation of this bid?

A. That's right.

Q. Well, who taught you how to prepare bids?

Mr. Starkey

Cross

1  
2 A. Stan Reas, basically.

3 Q. Who taught you how to estimate the number of  
4 man-hours would be required to do the electrical work on a  
5 fairly complex job?

6 A. Well, you take your material and you get your  
7 man-hours from a manual.

8 Q. You don't have any experience to go by? That's  
9 just like a Ford dealer may say it cost -- it will take two  
10 (2) hours to fix a carburetor from some manual?

11 A. Well, over a period of years, I think the  
12 company has found out that these manuals are pretty accurate.

13 Q. All right, sir, but you have no independent  
14 experience to base any of those figures on?

15 A. Just what we have seen our people do in the  
16 field.

17 Q. Well, when you say "we," do you include your-  
18 self?

19 A. Yes.

20 Q. In 1975?

21 A. Yes, I think that after a year, I had some idea  
22 of how long it took to do some things.

23 Q. Have you ever had any on-the-job experience?

24 A. As what?

25 Q. In the preparation of bids for electrical

Mr. Starkey

Cross

subcontractors and actually seeing the job performed?

A. (No response)

Q. What I'm asking you, Mr. Starkey, is have you ever prepared a bid and then as of July, 1975, seen the work completed?

A. Not completely completed as of that date.

Q. Who else with G. W. Hopkins assisted you in the preparation of the bid?

A. Stan Reas.

Q. Did anyone else?

A. Not in the electrical bid, not that I know of.

Q. Did the labor figures that you testified to, were they the actual figures used in the preparation of the bid?

A. Yes.

Q. And they were extracted from these manuals that you have testified about?

A. Yes.

Q. What percentage of profit does G. J. Hopkins generally try to tie into a bid?

MR. OSTERHOUDT: (Interrupting)

Your Honor, I believe he has testified that he didn't have anything to do with adding on profit and other figures.

1 Mr. Starkey

Cross

19.

2 THE COURT:

3 WELL, IF HE KNOWS?

4 THE WITNESS:

5 What percentage do we normally use?

6 MR. MOORE:

7 Yes, sir.

8 THE WITNESS:

9 Whatever the market will allow; it varies.  
10 Sometimes maybe five percent (5%) and sometimes maybe ten  
11 percent (10%).

12 MR. MOORE: (Continuing)

13 Q. Depending on the quality of competition and  
14 amount of competition and that sort of thing?

15 A. Depending on that and how busy everybody is at  
16 the time.

17 Q. How busy was your company in July, 1975?

18 A. I don't remember.

19 Q. Do you know what profit margin was put into this  
20 job?

21 A. Ten percent (10%).

22 Q. And that's ten percent (10%) of the total  
23 contract?

24 A. That's ten percent (10%) of the base material  
25 and labor cost.

Mr. Starkey

Cross

Q. So that would be ten percent (10%) over what figure when you originally bid the contract?

A. Okay, we came up with the figure for base material and labor and added to that ten percent (10%) overhead and added to that ten percent (10%) profit and added to that---

Q. ---that's what I'm asking you, what figure did you add ten percent (10%) profit to?

A. One Hundred Ninety-One Thousand Eighty-Nine Dollars (\$191,089.00).

Q. All right, so then from your testimony, it's your recollection that G. J. Hopkins added a profit margin of Nineteen Thousand One Hundred Eight Dollars and Ninety Cents (\$19,108.90), to be precise?

A. That's right.

Q. All right, sir, and how much did you allow for overhead, ten percent (10%)?

A. Ten percent (10%).

Q. Of which figure?

A. Ten percent (10%) of One Hundred Seventy-Three Thousand Seven Hundred Seventeen Dollars (\$173,717.00).

Q. And One Seventy-Three Seven Seventeen is the base cost of labor and materials?

A. That's right.

Mr. Starkey

Cross - Redirect

21.

Q. Do you include insurance and things of that sort in your overhead or is that an additional---

A. ---are you talking about labor insurance?

Q. I'm talking about Workmen's Compensation, liability and all the insurances that you carry?

A. That's included in our base labor rate.

Q. Now, isn't it true that labor expense is generally or is many times considered to be a percentage of material expense?

A. No.

Q. You never estimate jobs on that basis?

A. No.

Q. I have no other questions.

REDIRECT EXAMINATION BY MR. OSTERHOUDT:

Q. Mr. Starkey, what you were testifying to a moment ago to Mr. Moore about overhead and profit, you were using the base contract figures, not the figures as amended by the bank building?

A. That's right.

Q. That's all.

RECROSS EXAMINATION BY MR. MOORE:

Q. Mr. Starkey, do you know anything about the job after your company began to do the work?

A. Yeah.

1

Mr. Starkey

Recross

2

Q. Were there cost overruns on the job?

3

A. Not from material standpoint.

4

Q. Were there cost overruns from a labor standpoint?

5

A. Yes.

6

Q. Did anybody call that to your attention or did

7

you call it to anyone's attention?

8

A. Well, I think everyone knew it.

9

Q. Well, who is "everyone?"

10

A. (No response)

11

Q. Everyone with G. J. Hopkins?

12

A. Without going back through our files, do you

13

mean did we write a letter to tell them this?

14

Q. Did you notify -- if you don't know, just say

15

you don't know?

16

A. I don't know.

17

Q. But you, personally, never contacted either

18

Pebble or Commercial Union to advise that there was any cost

19

overrun, did you?

20

A. Not personally, no.

21

Q. And do you know whether or not anyone with

22

your company did?

23

A. No, I don't know.

24

Q. I have no further questions.

25

(Witness aside)

1  
2 Stanley Reas, having first been duly sworn upon  
3 his oath, testified as follows:

4 DIRECT EXAMINATION BY MR. OSTERHOUDT:

5 Q. State your name, sir.

6 A. Stan Reas.

7 Q. Where do you live, Mr. Reas?

8 A. Roanoke; Salem address.

9 Q. Mr. Reas, where are you employed, sir?

10 A. G. J. Hopkins, Incorporated.

11 Q. And what is your position with the company?

12 A. I'm titled as Manager of the Electrical Division.

13 Q. How long have you been employed with G. J.

14 Hopkins, Incorporated?

15 A. Since '67.

16 Q. All right, have you always been Manager of the  
17 Electrical Division?

18 A. No, I think the first year or two, basically,  
19 I was in the mechanical end of the business.

20 Q. Do you have any professional background or  
21 training?

22 A. I'm a professional engineer and a graduate  
23 electrical engineer.

24 Q. When you say "graduate electrical engineer,"  
25 what is that?



Mr. Reas

Direct

A. B.S.E.

Q. Bachelors Degree in Electrical Engineering?

A. Yes.

Q. Are you State Certified as an Engineer, sir?

A. Yes.

Q. In Virginia and other states?

A. Just Virginia.

Q. Just Virginia? How long have you been a  
Certified Professional Engineer?

A. Charlie, I think it's '61.

Q. So, obviously, you worked somewhere else before  
you went to work for G. J. Hopkins, Incorporated?

A. Yes.

Q. Where else have you been employed, sir?

A. General Electric Company.

Q. What did you do for General Electric?

A. I was in sales, product planning and engineering;  
five (5) years in sales and product planning and one (1) in  
engineering.

Q. All right, sir, and you have been with the  
Hopkins Company since '67?

A. Correct.

Q. And after the first couple of years, you've been  
with them, I gather, as Manager of the Electrical Division?

1

Mr. Reas

Direct

25.

2

A. Yes.

3

Q. What does Manager of the Electrical Division

4

do?

5

A. I guess the easiest way to explain it is in the contracting business, you oversee the electrical installations and basically run the electrical end of the business.

8

Q. In the summer of 1975, did you participate in any way with the company's preparation for bid for the Roanoke City Parking Garage?

11

A. Yes.

12

Q. You did? Can you tell us who else, in your company, participated in preparation of the bid?

14

A. Okay, Mr. Starkey and at the final analysis of the price to be established, it would have been Mr. Hopkins and Mr. Gillock.

17

Q. All right, sir, what particularly did you do with respect to the preparation of the bid?

19

A. Basically to review the estimate which Larry Starkey had made to determine that it was correct, that it reflected what I felt was on the plans and then to review the rates we would charge for the labor associated with it to establish the numbers that he had for the component pieces were proper. In all probability, I also took prices from some of the suppliers which were bid at the time, prior to our

25

Mr. Reas

Direct

1 making the bid and then we reviewed the total markup we thought  
2 we could put on this particular job prior to bid.

3 Q. All right; now, when you reviewed the plans,  
4 did you go back and look at the plans?

5 A. Oh, yes.

6 Q. I'm not able to read blueprints, but how do you  
7 know how much electrical cable you are going to put into a  
8 job and how many switch boxes and that kind of thing?

9 A. Well, Larry, the estimator, will do an actual  
10 running feet takeoff, to the best of his ability, to determine  
11 the amount of conduit we will have to buy and the wire we will  
12 have to buy and that's based on the information that is  
13 documented on those plans and it's our best estimate of what  
14 the men in the field will actually end up putting in.

15 Q. You review that, yourself, as well?

16 A. In a general nature, yeah; I didn't go back and  
17 check every one of his takeoffs, no.

18 Q. Then do you -- how do you determine the number  
19 of hours that all this work is going to take?

20 A. Well, basically, hours are determined by the  
21 amount of material and the labor unit assigned to that mater-  
22 ial.

23 Q. How do you know what labor units to assign?

24 A. Use either NECA---  
25

Mr. Reas

Direct

Q. ---that has previously been testified to as National Electrical Contractors Association?

A. Right.

Q. Is it a manual that tells you---

A. ---manuals that are put out. It seems like there are a group of manuals and a group of figures which are available throughout as to labor hours which can be applied. We use some of the NECA; we use of a Master System and we use some of information we have from past history of our own people.

Q. You do draw on your own experience?

A. Oh, yeah.

Q. What has been your own experience, the company's experience with respect to the accuracy to the labor unit assignments done by these manuals?

A. They are relatively accurate from the standpoint of any job which would be properly manned and properly pursued. Now, all of the manuals and all of the information we ever use it must be taken into account as to what can occur on a given job but they are numbers that I think are realistic and they are pretty much -- we've been able to go back and find that our numbers of actual hours used on a given job that proceeds properly is realistic and the numbers end up being the same.

Q. The numbers end up being the same as the manual

Mr. Reas

Direct

1  
2 says?

3 A. Yes. Say we forgot -- we stumbled around and  
4 forgot ten thousand (10,000) feet of conduit on a given job  
5 and we end up installing that conduit, we may have put in an  
6 estimate of three and a half (3 1/2) hours per hundred, we will  
7 go back and look and, yeah, we will be pretty close to that  
8 total number at the end of a job, so that, sure, it's not going  
9 to be exactly because estimating is not an exact science from  
10 that standpoint.

11 Q. Estimating is not an exact science?

12 A. It is not an exact science, no.

13 Q. Do you know the number of man-hours that was  
14 come up with originally on this job?

15 A. The specific number, no; I think it was seventy-  
16 five hundred (7500) or something around there.

17 Q. Does that include the FNEB?

18 A. Charlie, I don't know; I would have to check.

19 Q. Well, can you do that?

20 A. Yes.

21 Q. I take it these are the records that the  
22 Electrical Department keeps?

23 A. Yeah. Well, this happens to be the estimate.  
24 All right, we've got Seven thousand eighty (7,080) and Nine  
25 hundred ninety-three (993) and that would be Seventy-nine

Mr. Reas

Direct

hundred (7900) and we've got to deduct---

Q. ---what was the base bid?

A. Around seventy-five hundred (7500).

Q. What was the base bid, Seven thousand eighty (7,080)?

A. Yeah, around Seven thousand eighty (7,080).

Q. Mr. Starkey has already given testimony that would indicate that the amended bid for the bank job was Seven thousand six hundred ninety-nine (7,699) hours, would that be approximately correct?

A. Probably would be correct.

Q. Now, when you take these hours and the material cost, can you tell us what the base material cost and the material cost of the bank would be?

A. The base bid material cost?

Q. Yes.

A. The base bid material cost is One Hundred Forty-Three Thousand Eight Hundred Forty-Eight Dollars and Forty-Five Cents (\$143,848.45).

Q. What is the bid then on the bank, the material cost on the bank?

A. Sixteen Thousand Four Hundred Twenty-Nine Dollars Thirty Cents (\$16,429.30).

Q. What I want to come up with is, if you know and

Mr. Reas

Direct

1 if you can tell me what the total material cost would have  
2 been, the base material cost including the change order in-  
3 volving First National Exchange Bank?  
4

5 A. Well, let's see if I can find it. Here we go,  
6 it's One Hundred Fifty-Five Thousand Seven Hundred Fifty  
7 Dollars Eighty-Five Cents (\$155,750.85) per the job cost  
8 analysis which would be revised 11/29/76, which would include  
9 the change.

10 Q. All right, so including the change for the bank  
11 it would be One Hundred Fifty-Five Seven Fifty Eighty-Five  
12 base material cost?

13 A. Right.

14 Q. Do you participate in the preparation of the  
15 final bid?

16 A. Yes.

17 Q. All right; now, with respect to the anticipated  
18 man-hours and let's try to treat this as a lump and I realize  
19 that it was a base bid for man-hours and there were some  
20 additional man-hours added on, how do you come up with an  
21 estimated labor cost figure?

22 A. We take into account the present cost of a crew  
23 of electricians and build into that factor, that number, a  
24 factor based on the length this job may run and that's generally  
25 based upon either information input from general contractors

Mr. Reas

Direct

31.

as to how long they anticipate the job to run or, in many instances, build into the contract, itself, the contract documents, we state that the job is to be completed by a given period of time so that, in this instance, as I recall, in this instance, there was a five hundred forty (540) day period established as being the amount of time that the job would be anticipated to take.

Q. All right, and during that five hundred forty (540) day period, you anticipated putting in Seven Thousand Six Hundred Ninety-Nine (7,699) man-hours?

A. Correct.

Q. Does the length of time and the amount of time, the amount of hours you had to put in represent any particular problem in this job? Did it indicate any special manning requirements to crews, overtime and that sort of thing?

A. No, I don't think we figured that the job would be any -- that given five hundred forty (540) days that the Seventy-Seven Hundred hours or whatever would be realistic for the amount of time. No, we wouldn't do any special manning, no.

Q. Did you apply an hourly labor cost figure to the man-hours in this job?

A. True.

Q. What was that figure?



Mr. Reas

Direct

1  
2 A. The labor rate established was Five Dollars  
3 (\$5.00).

4 Q. Was that labor rate also used in preparing the  
5 change order for the bank?

6 A. No, Five Dollars Twenty-Five Cents (\$5.25).

7 Q. Five and a quarter?

8 A. Yes.

9 Q. What is included in that wage rate? How do you  
10 determine that?

11 A. Well, the wage rate is total labor costs; it's  
12 not simply a cost that we pay individuals, it's a cost of in-  
13 surance and taxes over and above. Backing up, you are looking  
14 at a number here beginning, perhaps, at Four Dollars (\$4.00),  
15 an actual paid hour at that time.

16 Q. All right, do you take into account the  
17 composition of a crew?

18 A. Yeah.

19 Q. So the Five Dollar (\$5.00) an hour figure is not  
20 based on an individual, per se?

21 A. Correct.

22 Q. But on the average cost of the crew, is that  
23 correct?

24 A. Correct; yeah.

25 Q. Can you tell us, with respect both to the base

Mr. Reas

Direct

33.

bid and to the change order, what your estimated labor cost was?

A. Total dollar?

Q. Yes, without any provision for overhead and profit?

A. Well, the base bid was Thirty-Five Thousand Four Hundred One Dollars Fifty Cents (\$35,401.50). The only way, really, to make any sense out of trying to give you a number which is then the net amount for the change order would be to take the difference between that and that original bid, so the difference. You can take the Thirty-Eight Thousand Seven Hundred Seventy-Three Dollars Sixty-Five Cents (\$38,773.65), so that the difference between that and the Thirty-Five Four Hundred One Fifty is the net difference of the change, which, I think, is the only way you can make it realistic.

Q. Is it correct to say then that the estimated labor cost, including the change order for the First National Exchange Bank was Thirty-Eight Thousand Seven Seventy-Three Sixty-Five?

A. Yeah, Thirty-Eight Thousand Seven Seventy-Three Sixty-Five, right.

Q. And the estimated labor cost on the base bid was Thirty-Five Thousand Four Hundred One Dollars (\$35,401.00)?

1

Mr. Reas

Direct

2

A. Right.

3

Q. Okay. Now, after you have put these figures

4

together, did you participate any further in the preparation  
of the bid?

5

6

A. As far as determining the markup we would apply?

7

Q. Yes, sir.

8

A. Yeah.

9

Q. What percentage of markup for various items did

10

you utilize?

11

A. Well, in the base bid it was ten percent (10%)

12

for overhead, ten percent (10%) for profit.

13

Q. And what about the change order?

14

A. Same, ten percent (10%).

15

Q. Same?

16

A. Yeah, ten percent (10%).

17

Q. Well, when you say "ten percent (10%) for over-

18

head and ten percent (10%) for profit," what do you calculate  
that ten percent (10%) on?

19

20

A. Total base material and labor costs.

21

Q. So in the case of the base bid, you were using

22

the One Hundred Forty-some Thousand Dollar figure plus the  
Thirty-Five Thousand Dollar figure?

23

24

A. Correct.

25

Q. Which came to a total of One Hundred Seventy-some?

Mr. Reas

Direct

1

2

A. Correct.

3

Q. All right, and take ten percent (10%) of that?

4

A. Right.

5

Q. And that's for overhead?

6

A. Right.

7

Q. What does overhead cover? Does it cover your

8

salary?

9

A. Yeah, a little bit of my salary.

10

Q. Covers the operation of the office?

11

A. Right, and trucks.

12

Q. Okay, and then you added on, I believe you said,

13

a figure of ten percent (10%) for profit?

14

A. Correct.

15

Q. How do you calculate that? What figure do you

16

use?

17

A. Add ten percent (10%).

18

Q. Ten percent (10%) to which figure?

19

A. To the amount which included the overhead.

20

Q. To the amount which included the overhead?

21

A. Correct.

22

Q. All right, can you tell us what the ultimate

23

bid was for the electrical work, basic electrical work, that

24

was submitted?

25

A. Two Hundred Sixteen Thousand Eight Hundred Fifty

1

Mr. Reas

Direct

2

Dollars (\$216,850.00).

3

4

Q. All right, can you tell us what the price became with the change order for the First National Exchange Bank?

5

6

7

8

9

10

11

12

A. Yeah, I'd have to say -- I'm not positive that I can without doing some further putting together numbers, but I can go back and tell you that the quote was Twenty-Six Thousand Nine Hundred but the specifics of whether or not that was the additional quote, I would assume that it is, but this is an FNEB add to the original bid, but whether that's the exact number, I don't know.

13

14

Q. I see. You can't testify as to what the ultimate final contract price was then?

15

16

17

18

19

20

21

22

23

24

25

A. As changed for -- no, I cannot.

Q. Was your company awarded the contract?

A. Yes.

Q. And proceeded with construction?

A. Correct.

Q. Did you have any direct personal supervision of this job?

A. Yes.

Q. Did you go on the job?

A. Yes.

Q. On a regular basis?

Mr. Reas

Direct - Cross

A. Yes, not weekly but---

Q. ---were there periodic meetings you had to attend?

A. I did not attend the meetings, no.

Q. Answer any questions Mr. Moore and the Court may ask.

CROSS EXAMINATION BY MR. MOORE:

Q. Mr. Reas, has your company, as far as you know, ever done the electrical work on a parking garage similar to this?

A. Yes.

Q. Where was that?

A. Roanoke Memorial Hospital.

Q. Was that done about the same time?

A. Correct.

Q. Did you have anything to do with the execution of the contract between your firm and Pebble?

A. No.

Q. You weren't aware of any of the negotiations that went on that culminated in the execution of that contract?

A. Other than the number and the original price, no.

Q. All right, sir, and I believe you stated that estimating is not an exact science, meaning that if any two (2)

Mr. Reas

Cross

people estimated the work to be done on one (1) job, it is likely their figures would be different?

A. Correct.

Q. I think you stated that the hours that are assigned are estimates of the hours that it will take and that is in relationship to the amount of equipment and materials used on the job?

A. The hours that are assigned are based on the quantity of materials taken off, correct, in all probability.

Q. Quantity of materials taken off the plans and specifications submitted to you by the architect?

A. Correct; that we do the take-off on, right.

Q. Do you recall what the economic climate was like at the time this bid was submitted?

A. Not particularly. I don't know what you mean by "economic climate."

Q. Well, that is one of the considerations, I guess, that you use in determining your percentage of profit, isn't it?

A. To a certain extent, yeah.

Q. Well, what I'm really asking you is how did you arrive at ten percent (10%)?

A. As a markup for overhead or a markup for profit?

Q. Markup for profit?

Mr. Reas

Direct

39.

A. Markup for profit? Basically, we felt, at that time, that's what the market would allow us to get.

Q. How did you decide on ten percent (10%) overhead?

A. That's generally -- well, basically, ten percent (10%) overhead is determined by the cost of the operation relative to the sales of the operation at a given period of time.

Q. You don't always use a ten percent (10%) overhead figure?

A. Basically, yes, over the period of time I've been associated with the company, we generally will use a ten percent (10%) overhead figure.

Q. And the percentage of profit on any given bid will vary?

A. Will vary, right.

Q. Consistent with your getting the work and making a reasonable profit for the work that you do?

A. Correct.

MR. MOORE:

Mr. Osterhoudt, we would like, not now, but at some stage of the proceedings, to examine the bid documents.

MR. OSTERHOUDT:

Go right ahead.



1

Mr. Reas

2

MR. MOORE:

3

I have no other questions, Your Honor.

4

(Witness aside)

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1  
2 Wesley D. Gillock, having first been duly sworn  
3 upon his oath, testified as follows:

4 DIRECT EXAMINATION BY MR. OSTERHOUDT:

5 Q. State your name, sir.

6 A. Wesley D. Gillock.

7 Q. Mr. Gillock, where do you live?

8 A. I live in the City of Roanoke.

9 Q. And where are you employed, sir?

10 A. With the firm of G. J. Hopkins, Incorporated.

11 Q. What is your position in that company?

12 A. Well, I'm Vice President and Corporate Secretary  
13 of G. J. Hopkins, Incorporated; I am also a stockholder and  
14 member of the Board of Directors.

15 Q. How long have you been with G. J. Hopkins?

16 A. Basically, since its inception, twenty-one (21)  
17 years.

18 Q. All right, sir, prior to that, where were you  
19 employed?

20 A. I was with a local consulting engineering firm  
21 for approximately three (3) years.

22 Q. What was that?

23 A. The firm name?

24 Q. Yes, sir.

25 A. At that time, it was Sowers, Knowles and Rhodes,

1

Mr. Gillock

Direct

42.

2

Consulting Engineers.

3

Q. All right, sir, and do you have any educational background, professional background in the engineering field?

4

5

A. My degree is -- I have a BS in physics and mathematics. I have worked in the construction industry since I was sixteen (16) years old in various forms during the summers and so forth.

6

7

8

9

Q. All right, have you ever been involved in bidding and estimating job costs?

10

11

A. Yes.

12

Q. How long have you been involved in that?

13

A. Twenty-one (21) years.

14

Q. Since you went with G. J. Hopkins Company?

15

A. Right.

16

Q. What did you do for Sowers, Knowles and Rhodes?

17

A. I was a design engineer, designed heating and ventilating and air conditioning systems, plumbing systems for all types of commercial and industrial structures.

18

19

20

Q. All right, were you involved in the preparation and submission of a bid for the construction of electrical work on the Roanoke City Parking Garage?

21

22

23

A. Only from a supervisory standpoint.

24

Q. All right, did you prepare or approve the final bid?

25

Mr. Gillock

Direct

43.

1  
2 A. Yes, I did.

3 Q. All right; now, you have been in the Court Room  
4 and have heard the testimony of Mr. Reas and Mr. Starkey. Was  
5 their testimony correct that the initial base bid was -- that  
6 the initial base bid for the construction was Two Hundred  
7 Sixteen Thousand Eight Fifty?

8 A. Yes.

9 Q. All right, and the bid for the job, as changed  
10 by the bank, was Two Hundred Thirty-Six Thousand and some odd  
11 dollars?

12 A. And some odd dollars, correct.

13 Q. Mr. Reas testified with respect to the overhead  
14 and profit which were applied to this job. Did you participate  
15 in that decision?

16 A. Yes, I did.

17 Q. What was the percentage of overhead and percent-  
18 age of profit applied here?

19 A. On that particular job, the overhead percentage  
20 was ten percent (10%) and the profit percentage was ten percent  
21 (10%) also.

22 Q. Is the ten percent (10%) overhead figure unusual  
23 or customary?

24 A. At that particular time, that was the figure we  
25 were using. That is a compilation of costs that we monitor

Mr. Gillock

Direct

44.

1 constantly to see what the figure should be. That's the cost  
2 of administration in the company based on a certain volume of  
3 business.  
4

5 Q. Okay. Now, the percentage of profit that was  
6 applied was ten percent (10%)?

7 A. Yes.

8 Q. And is that any kind of a usual or unusual  
9 figure?

10 A. At that particular time, that was probably the  
11 average. It must have been proper because we were low bidder  
12 on the job.

13 Q. Well, with respect to that, what do you do with  
14 a bid when you submit it? What do you physically do with it?  
15 Do you take it over to Pebble Building Company and hand it to  
16 them or just what do you do with it?

17 A. We normally, on the bid day, because of the  
18 complexity and last minute pricing done by most suppliers, we  
19 are -- our bids are telephoned to the general contractor and  
20 then followed up with a written confirmation of that bid.

21 Q. Do you know what the general contractor does  
22 with the bid, do you have any knowledge of that?

23 A. Oh, yes, he incorporates that into his overall  
24 project cost and then, in turn, he puts a percentage for over-  
25 head and profit on the job and, basically, the same procedure

Mr. Gillock

Direct

45.

that we use.

Q. Mr. Gillock, I am making reference here and showing you a portion of "Exhibit 4" filed in this case and which is composed of Exhibits filed with the defendant's Answers to Interrogatories and in connection with the Answers to the Interrogatories it's marked as "Exhibit 5," and I wonder if you can identify for the purpose of the record what that purports to be?

A. This is evidently a tabulation of the bids that Pebble Building Company received for the electrical work on the Roanoke Parking Garage.

Q. Is there a tabulation of a bid supposedly submitted by G. J. Hopkins?

A. Yes, it is.

Q. What does that show it to be?

A. It shows the base bid was Two Hundred Sixteen Thousand Eight Hundred Fifty Dollars (\$216,850.00).

Q. Was that the bid that was ultimately accepted as the job that you were to do?

A. Yes, it was.

Q. What are the other bids?

A. The next low bid was submitted by Newcomb Electrical Company of Two Hundred Nineteen Thousand Three Hundred Fifty-Two Dollars (\$219,352.00). The third next high

Mr. Gillock

Direct

bidder was Watson Electrical Company, who is out of North Carolina, of Two Hundred Nineteen Thousand Four Hundred Ninety-Eight Dollars (\$219,498.00).

Q. And then there are other bids which run higher than that, I take it?

A. Yes, then there are four (4) other bids, the highest being Fishback and Moore of Two Hundred Eighty-Six Thousand Dollars (\$286,000.00).

Q. Mr. Gillock, do you know how much time it was supposed to take to complete this job when it was bid?

A. The specifications, as amended, just prior to bid time, I think, the total time to complete the project was Five Hundred Forty (540) days, calendar days.

Q. All right; now, was there some additional time allowed when the bank was added to the job?

A. Yes, there was an additional seventy (70) day allowance to complete the bank portion of the project.

Q. All right, and your company did that additional work?

A. Yes.

Q. All right, and that additional work, the total job bid cost up to Two Hundred Thirty Six Thousand and some dollars?

A. Two Thirty-Six or Two Thirty-Seven; I've

1

Mr. Gillock

Direct

2

forgotten the exact figure.

3

Q. All right, can you refer to some of your records and tell us?

5

A. Yes, the total bid price, as amended, was Two Hundred Thirty-Six Thousand Four Hundred Eighty-Seven Dollars (\$236,487.00).

8

Q. Before we go any further, Mr. Gillock, let me ask you a little bit about your company. Apparently, this company, the G. J. Hopkins Company, was organized, you said, twenty-one (21) years ago, is that correct?

9

10

11

12

A. That's correct.

13

Q. What kind of work does the Hopkins Company do?

14

A. We do all types of heating, ventilating, air conditioning, plumbing, electrical work, utility work for commercial and industrial and institutional structures.

15

16

17

Q. And this has been since the company was organized?

18

19

A. Yes.

20

Q. All right, what are some of the local projects you've been involved in?

21

22

A. Local projects, Tanglewood Shopping Mall, Ingersoll Rand, Industrial Plant, Mohawk Rubber Company and schools, we've done dozens of schools in the area and other shopping centers, Crossroads Shopping Mall. Out of the area,

23

24

25



Mr. Gillock

Direct

43.

White Motor Truck Division plant. In the middle east, we just completed a fourteen (14) story deluxe hotel for Ramada Inns.

Q. Sir, have you ever built another parking garage?

A. One (1) other parking garage.

Q. Where was that?

A. That was local, the Roanoke Memorial Parking Garage.

Q. Was that a similar type construction?

A. It was a steel frame building with concrete over the steel frame, a little different from this structure but still a parking garage.

Q. Did you participate in the preparation of estimate for that job?

A. Yes, I did.

Q. Did you calculate the man-hours?

A. Yes.

Q. How close did you come?

A. Very close; a profitable job, almost exactly what we had computed the profit to be.

Q. How much total business have you done in the last twenty-one (21) years with the company?

A. It's approaching or it may exceed One Hundred Million Dollars (\$100,000,000.00) but it's in that area.

Q. Have you ever lost money on a job?

Mr. Gillock

Direct

1  
2 A. Projects in excess of Ten or Fifteen Thousand  
3 Dollars (\$10,000.00 - \$15,000.00), no, with the exception---

4 Q. ---what you're saying is if you lost money, it  
5 was on little jobs?

6 A. Yes, we've had twenty-one (21) consecutive  
7 profitable years.

8 Q. Now, Mr. Gillock, let's turn to this job.  
9 You have testified that you are Vice President and Secretary  
10 of the Hopkins Company, and you have participated in the  
11 preparation of this bid and can you tell us more about what  
12 your responsibilities are with the company?

13 A. Well, I administer most of the financial functions  
14 of the company or practically all of them. I also supervise  
15 our estimators; I also -- in the office, we divide up the  
16 projects and I will have total supervision over a certain  
17 number of projects that I can fit into my schedule, actual  
18 on-site supervision.

19 Q. Did you have supervision over this project?

20 A. No, I did not.

21 Q. Who did?

22 A. Stan Reas did.

23 Q. Stan Reas did? All right, and do you prepare  
24 or supervise the preparation of time records for this company?

25 A. General supervision, yes.

Mr. Gillock

Direct

50.

Q. All right, and do you review them?

A. Yes.

Q. How are they done? Can you describe the process you go through?

A. Yes, we issue to the job superintendent or the job foreman a series of time cards and the time cards are broken down to basic labor categories that we want the superintendent to fill out in accordance with the progress on the job or the number of people on the job. For a particular week, he will assign to the basic labor categories the time of each man that he has working under him on the project. Those are, in turn, turned in weekly to the office.

Q. If a man works on more than one (1) project, does the other superintendent---

A. ---he will have a time card for each project, yes.

Q. Okay, go ahead.

A. These time cards are turned in weekly to the office and they are reviewed by, in some cases, the person who has overall responsibility on the job. Sometimes, I will review them. Then we have a payroll clerk and supervisor who -- we also have an IBM data processing system which we use for producing our job cost records and our payroll records and all of our financial data. This data is then keyed in from the

Mr. Gillock

Direct

51.

time card. The computer goes through a series of checks to make sure that the time cards balance with the total number of hours turned in and then the computer will produce the payroll checks; it will make distribution through a series of programs, the cost to each individual job that every individual in the company worked on for that particular week and the results are these types of tabulated forms that are contained in this "Exhibit 2," right here.

Q. Wait just a minute. Can you tell us the total number of man-hours that was actually expended by your company in the course of this job?

A. Yes, the total was Fourteen Thousand Thirty-Nine, point Two (14,039.2)

Q. Did this come off of those computers you talked about?

A. Yes, this came off -- actually came from the timesheets, assorted and produced or tabulated by the computer and this is the net result or the total result.

Q. The total was Fourteen Thousand Thirty-Nine and Two-Tenths hours (14,039.2), is that correct?

A. Right.

Q. All right, you are testifying from something that is in a folder there. Can you tell us what that is?

A. This is a summary prepared by some of our

Mr. Gillock

Direct

people in our office of the number of hours worked by every individual who worked on this particular project by week and then tabulated individually by total and then summarized on this front sheet.

Q. Was that done under your supervision and direction?

A. Yes, it was.

Q. And it shows the number of hours that each individual in your company worked on that job, work for each individual week during the course of the job?

A. Right.

Q. And the front thing is the Summary Sheet?

A. Correct.

Q. Did that information come off of your computer program?

A. Yes.

MR. OSTERHOUDT:

Judge, I would like to have that marked as an Exhibit.

THE COURT:

ANY OBJECTION?

MR. MOORE:

I have no objection, Your Honor.

THE COURT:

Mr. Gillock

Direct

ALL RIGHT, IT WILL BE "EXHIBIT 6."

(Summary admitted in evidence and so marked for identification as "Exhibit 6.")

MR. OSTERHOUDT: (Continuing)

Q. Mr. Gillock, do you know when the company entered into this contract with Pebble Building Company to do the electrical work on this project?

A. It was in August of 1975.

Q. All right, and there is an Exhibit, "Exhibit 2," dated the 28th of August, 1975.

A. That's correct.

Q. Is that the contract between the Hopkins Company and Pebble Building Company for the electrical work on this project?

A. Yes, it is.

Q. Can you tell us when your people first went on the job?

A. Yes, our first time sheet or job cost report indicates that the first hour was spent on the job on the week of November 7th, 1975.

Q. That's the first time you had people on the job?

A. Right.

Q. All right, do you know -- do you, of your own knowledge, know when the work on the job actually started with

Mr. Gillock

Direct

1 the general contractor?

2 A. No, I don't know the exact date.

3 Q. All right, sir, but your people were first on  
4 the job in November of 1975?

5 A. That's correct.

6 Q. What is that folder you've got in your lap? What  
7 does that contain, sir?

8 A. These are computer printouts which are entitled,  
9 "Weekly Job Status Reports" pertaining, in particular, to the  
10 Municipal Parking Garage which are a compilation of our origi-  
11 nal estimated cost and man-hours to do this particular project  
12 and then as we are invoiced or as we expend the monies on the  
13 project, we post, in effect, through our DP System, the costs  
14 that are related to this particular project and then we print  
15 out this form weekly to monitor the progress of the job.

16 Q. So that tells you how much money you have spent  
17 for material and how much money you have spent for labor?

18 A. Correct.

19 Q. Does what shows up on there as a labor cost  
20 include the provision for insurance and taxes or does it  
21 exclude it?

22 A. It includes it.

23 Q. It includes it?

24 A. Yes.

Mr. Gillock

Direct

Q. So that, that is what would be described as a total labor cost then?

A. That's correct.

Q. Are the weekly figures then for both materials and labor, total costs, as they relate to that week, is that correct?

A. That's correct.

Q. Does it also give you a running total?

A. Yes, it does.

Q. All right, see if you can tell us where you stood perhaps at certain times on this job, if you can? Can you refer to those computer printouts and let's refer to the one closest to the 31st of January of 1977?

A. 31st of January, that would be the 2nd of February, 1977.

Q. What does it show as an expended material cost on the job at that time?

A. The total material cost on the project, at that time, was Seventy-Nine Thousand Dollars (\$79,000.00), approximately.

Q. And that's against an estimated figure of how much?

A. One Hundred Forty-Six at that point.

Q. Was that before the FNEB Building was added?



Mr. Gillock

Direct

1  
2 A. No, I believe that must have been after the  
3 FNEB Building was added.

4 Q. This is January 31st of '77?

5 A. Yes.

6 Q. Okay, and what is your labor cost?

7 A. The labor cost, at that point, was Twenty-Four  
8 Thousand Six Hundred Thirteen Dollars (\$24,613.00).

9 Q. As against an estimated figure of what?

10 A. Thirty-Eight Thousand Seven Hundred Seventy-Three  
11 Dollars (\$38,773.00).

12 Q. All right, sir, can you tell me how many man-hours  
13 you had expended by that time?

14 A. We had expended Forty-Eight Hundred Fifteen  
15 (4815) man-hours.

16 Q. All right, and that was on January 31st of '77?

17 A. Right.

18 Q. All right, let's look at August 5th of 1977.

19 A. That would be August 10th of 1977.

20 Q. All right, sir, what does that show, again, as  
21 estimated material cost and total material cost?

22 A. The total material cost, at that point, was  
23 approximately One Hundred Thirty-Six Thousand Dollars  
24 (\$136,000.00).

25 Q. As against an estimated cost of what?

Mr. Gillock

Direct

1  
2 A. One Hundred Forty-Six Thousand and some odd  
3 dollars.

4 Q. All right, and what about the labor?

5 A. The labor cost, at that particular time, was  
6 Thirty-Six Thousand Five Hundred Thirteen Dollars (\$36,513.00),  
7 against an estimated cost of Thirty-Eight Thousand Seven  
8 Hundred Seventy-Three Dollars (\$38,773.00).

9 Q. And how many man-hours had you expended by that  
10 time?

11 A. At that point, we had expended Seven Thousand  
12 Ninety (7,090) hours.

13 Q. I see. All right, sir, suppose we look at May  
14 31st of 1978. Okay, what was your material cost at that time?

15 A. The material cost, at that point, was One Hundred  
16 Fifty-Five Thousand Dollars (\$155,000.00), roughly, against  
17 an estimated cost of One Hundred Fifty-Six Thousand Dollars  
18 (\$156,000.00).

19 Q. Okay, and what about your labor at this point?

20 A. The labor, at this point, was Sixty-Six  
21 Thousand Five Hundred Forty-Two Dollars (\$66,542.00) actual  
22 cost versus an estimated cost of Thirty-Eight Thousand Seven  
23 Hundred Seventy-Three Dollars (\$38,773.00).

24 Q. Okay, you have now spent a lot more than Seven  
25 Thousand Six Hundred Ninety-Nine (7,699) man-hours?

Mr. Gillock

Direct

A. We've spent Twelve Thousand Eight Hundred Eighty-Eight (12,888) man-hours.

Q. Okay, let's look at the final invoice, Mr. Gillock, the last one.

A. Okay, the date is 1/29/79.

Q. What does it show as a material cost?

A. The material cost, at that point, was One Hundred Fifty-Seven Thousand Dollars (\$157,000.00) in round figures against an estimated cost of just under One Hundred Fifty-Seven Thousand Dollars (\$157,000.00).

Q. All right, and what is your labor?

A. The labor, at that point, was Seventy-Two Thousand Five Hundred Seventy Dollars (\$72,570.00).

Q. As opposed to what?

A. An estimated cost of Thirty-Eight Thousand Seven Hundred Seventy-Three Dollars (\$38,773.00). The total man-hours expended was Fourteen Thousand Thirty-Eight (14,038).

Q. Fourteen Thousand Thirty-Eight (14,038)?

A. Correct.

Q. Now, Mr. Gillock, I take it the computer programming is done under your supervision?

A. It is, yes.

Q. And the punching is done under your supervision?

Mr. Gillock

Direct

A. That is correct.

Q. And the program was installed under your supervision?

A. That is correct.

Q. Can you tell us, also, from those things, who worked each week and how much they worked?

A. We also have stapled to the back of each of these job status reports, we have our certified payroll report which gives the name of each individual who worked on the project, the number of hours that they worked for each individual day and, of course, their gross earnings for each individual period.

Q. Can you tell me, Mr. Gillock, from referring to those records, when your company first spent more than Seven Thousand Six Hundred Ninety-Nine (7,699) man-hours on this job?

A. Yes, I can. Well, on the 29th day of September, 1977, the total number of man-hours was Eight Thousand Twelve (8,012), so, at that point, that week, we had exceeded the number of estimated man-hours. Well, wait a minute, you said Seventy-Six, didn't you?

Q. Yes, sir, Seven Thousand Six Ninety-Nine (7,699)?

A. Okay, wait a minute; I was looking at the wrong figure here. Well, it was actually two (2) weeks prior to that on 9/19/77 and the total number of man-hours was Seventy-Six

Mr. Gillock

Direct

60.

Fifty-Five (7655), so during that week, we went over.

Q. You went over during that week?

A. Yes.

MR. OSTERHOUDT:

Judge, I would like to ask that those be admitted as an Exhibit.

MR. MOORE:

I have no objection, Your Honor.

THE COURT:

ALL RIGHT, THAT WILL BE "EXHIBIT 7."

(Job Cost Summary admitted in evidence and so marked for identification as "Exhibit 7.")

MR. OSTERHOUDT: (Continuing)

Q. When you get those Job Cost Summaries, do you use them in any way to prepare a periodic billing that you might submit?

A. Yes.

Q. How do you do that? Well, let me ask you first, did you bill on this job once a month, once every three (3) months?

A. The job was billed monthly.

Q. Billed monthly?

A. That's correct.

Q. Okay, so once a month you would sit down and you

Mr. Gillock

Direct

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2

would send Pebble Building Company a bill?

3

A. Correct.

4

Q. How do you do that?

5

A. We take the last job cost report, job cost

6

status report, for the period and we add to it the estimated

7

percentage of overhead and profit that we put on the job and

8

we send the general contractor a bill for that amount.

9

Q. So you take the total expended, the total

10

material cost and the total labor cost to that date?

11

A. Right.

12

Q. And you add ten percent (10%) to that for over-

13

head?

14

A. Right.

15

Q. And ten percent (10%) for profit?

16

A. Right.

17

Q. And that's the bill that you send in?

18

A. Right.

19

Q. Okay, and then does it go through a series of

20

approvals by anybody or does Pebble just send your money back

21

or do you know?

22

A. No, it has to be approved by the -- first,

23

Pebble will look at the billing and then it's forwarded to the

24

architect and ultimately to the owner for his payment and the

25

payment would be received by the general contractor and then

*Eula W. Bott*

COURT REPORTER

Mr. Gillock

Direct

we, in turn, would be paid within a specified period of time, approximately thirty (30) days after submission of the bill.

Q. By Pebble?

A. By Pebble, right.

Q. But you submit your bill to Pebble?

A. That's right.

Q. And Pebble is the one who pays you?

A. Right.

Q. Are you the one who submits the bills? Are you in charge of sending them out?

A. Well, these bills are prepared on computer, on a computer---

Q. ---yes, I understand---

A. ---but I do examine them before they go out, yes.

Q. So you reviewed these billings before they went out?

A. Yes.

Q. Were any of the billings that you ever submitted on this job ever questioned by Pebble Building Company?

A. Not to my knowledge.

Q. All right, sir. You have filed a claim on your Motion for Judgment for labor cost overrun in the amount of Thirty-Seven Thousand Nine Hundred Seventy Dollars and Sixty-

1

Mr. Gillock

Direct

2

Three Cents (\$37,970.63). Have you presented any claim in this case for any material cost overrun?

3

4

A. No, that is labor cost overrun.

5

6

Q. All right; now, does that Thirty-Seven Thousand Dollars (\$37,000.00) include any percentage for overhead?

7

A. No.

8

Q. Any percentage for profit?

9

A. No.

10

11

Q. Does it then include just your out-of-pocket labor cost?

12

13

A. Out-of-pocket direct labor cost plus the insurance and taxes on that amount of money.

14

Q. And how do you arrive at that direct labor cost?

15

16

A. From the job cost status reports by subtracting the estimated labor cost from the actual labor cost on the project.

17

18

Q. That goes back to the man-hours?

19

A. Yes.

20

21

Q. Now, Mr. Reas has testified that when you bid the original job you used Five Dollars (\$5.00) an hour for your job cost?

22

23

A. Right.

24

25

Q. And when you bid the bank, you used Five Twenty-Five?



Mr. Gillock

Direct

1  
2 A. Right.

3 Q. All right, have you done any calculations to  
4 determine what the overall man-hour job cost was per hour on  
5 this job?

6 A. Yes, I have; it's Five Dollars and Seventeen  
7 Cents (\$5.17) per hour.

8 Q. All right. Mr. Gillock, did you ever notify  
9 Pebble Building Company or Commercial Union Insurance Company  
10 that your labor costs were exceeding the contract price in any  
11 way?

12 A. Yes, I did.

13 Q. When did you do that?

14 A. Let's see, I believe my first letter was in  
15 October of 1977. Yes, in my letter dated October 26th, 1977,  
16 which was addressed to the Commercial Union Insurance Company  
17 in New Haven, Connecticut -- shall I read the letter?

18 Q. Yes, sir.

19 A. "We are electrical subcontractors on the  
20 referenced project for Pebble Building Company for whom Commer-  
21 cial Union has assumed contractual responsibility. We originally  
22 contracted this project on four hundred fifty (450) calendar  
23 day completion from the date of contract which meant that the  
24 project should have been completed on or about October 31st,  
25 1976. You are aware, of course, that we are approximately one

Mr. Gillock

Direct

MR. OSTERHOUDT:

I would like to have that admitted, Judge.

THE COURT:

WHAT IS IT?

MR. OSTERHOUDT:

It's just the billings they sent to Pebble plus the correspondence.

THE COURT:

ANY OBJECTION?

MR. MOORE:

Well, let me see it.

MR. OSTERHOUDT:

Sure; naturally.

MR. MOORE:

We have no objection, Your Honor, to the whole file.

THE COURT:

ALL RIGHT, IT WILL BE "EXHIBIT 8."

(File admitted in evidence and so marked for identification as "Exhibit 8.")

MR. OSTERHOUDT: (Continuing)

Q. Mr. Gillock, do you have any idea how many contracts your company has fulfilled in the years you've been with them?

Mr. Gillock

Direct

1  
2 A. I don't know but it's in the hundreds; it's in  
3 the hundreds.

4 Q. All right; now, you put your people on the job  
5 in the fall of 1975, is that correct?

6 A. That's correct.

7 Q. Did you keep people on the job continuously  
8 thereafter until the completion of the job?

9 A. When I examined the job cost records, I noted  
10 that there were several places in there where there were gaps,  
11 a week or maybe two (2) weeks where there were -- where there  
12 was very little, if any, labor expended on the project.

13 Q. Is that normal?

14 A. No, not for this type of project, it shouldn't  
15 be normal.

16 Q. You mean you keep people on the job?

17 A. Yes.

18 Q. Why wouldn't you?

19 A. Well, the job progress was such that we simply  
20 had to pull the men off of the job because they didn't have  
21 anything to do.

22 Q. Now, what do you base that on?

23 A. Reports that came back from the project.

24 Q. They were not able to apply their trade?

25 A. Right; they were basically nonproductive, so

Mr. Gillock

Direct

70.

they -- that's reflected in the fact that there are over three hundred (300) man-days of partial working days for men on this project during the course of the job.

Q. Can you explain that to me a little bit?

A. Well, yes, on occasion, one (1) or two (2) men may be on the project for four (4) hours one (1) day and eight (8) hours the next day and three (3) hours the next day and two (2) hours the next day and no hours the next day and this is reflected in the -- on the time sheets.

Q. In other words, they go to the job and then they go somewhere else?

A. Right.

Q. Who directs them to do that and why?

A. Well, the job superintendent has basic control over that. We also control it from the office to an extent. If he reports back that he's got three (3) men and he has little of nothing for them to do, then we will ask him to send the men to another job site.

Q. Well, can you take your men off the job and leave them off the job?

A. Not for any substantial length of time because especially in a structure of this nature because it is a concrete building and any progress at all could leave us with materials left out of the concrete forms that could be

1

Mr. Gillock

Direct

2

disastrous to try to get in at a later date and it means you have to go back and cut the concrete out.

3

4

Q. So you have to stay with the job?

5

A. Pretty much.

6

Q. Why did the labor run so much?

7

A. For those basic reasons, keeping men on the job who were nonproductive for a great portion of the time.

8

9

Q. Well, what did the delay in completion have to do with it?

10

11

A. Well, you have to look at the estimated time that it should have taken to do the project and compare that with the number of hours that it actually took. The estimated time is based on basically productive hours and when you introduce almost on a two (2) for one (1) basis nonproduction during the course of the job plus whatever the total number of days the cost ran over -- I mean the project ran over, then that is the net result; it takes not quite twice as long to do the project man-hourwise.

12

13

14

15

16

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19

20

Q. So what you are saying is that it is nonproductive hours spent on the job---

21

22

A. ---and also the nonproduction time in pulling the men off the job. If a man goes to the job and has little or nothing to do, then he proceeds to another project, you have, in effect, lost a couple of hours for each man for each day,

23

24

25

Mr. Gillock

Direct

72.

possibly even three (3) hours, depending on where he is going and what he is going to do.

Q. But they bill it somewhere, don't they?

A. Sure.

Q. Would they bill it to this job?

A. Some would be billed to this job.

Q. That's nonproductive time and time delay?

A. That's right, they go hand in hand.

Q. Okay. Now, when you originally wrote to the company, to Commercial Union Insurance Company, I believe you made some reference to four hundred fifty (450) days but there has been testimony that the actual base contract time was five hundred forty (540) days?

A. Yes, when I wrote the letter, I opened the specifications to get the proper number of days and I looked at what was in the basic proposal and I failed to look at the addendum which actually had the number of days -- the days had been changed prior to bid time from four fifty (450) to five forty (540).

Q. All right, you got a letter from Mr. Wells. Now, did you ever have any further contact with Mr. Wells, Troward Wells?

A. Yes, I don't recall the exact date but it was a few days prior to the time that, that assignment of the

Mr. Gillock

Direct

contract was made to the Commercial Union Insurance Company.

Q. So you had previous contact with them?

A. Yes. Mr. Wells or someone saying that it was Mr. Wells, called me on the telephone and said that the parent company of the Pebble Building Company had made application to them for some refinancing, was the way that he expressed it, and that it was going to involve the Pebble Building Company and would we be amenable to assigning our contract to -- our present contract with the Pebble Building Company to Commercial Union. I said it would depend on the terms of this assignment and that we would have to discuss it---

MR. MOORE: (Interrupting)

---Your Honor, for the record, I would like to voice an objection to any parole evidence coming in that seeks to alter or vary the terms of the agreement that was entered into on June 17, 1977.

THE COURT:

ALL RIGHT, LET HIM GO AHEAD.

THE WITNESS: (Continuing)

A. Anyway, he said he would be at the job site on such and such a date, which, I think, ultimately was June 17th and would I meet him at the job site and discuss it. I told him that I was -- I think I told him that I was going to be out of town because I was leaving the next day but that I would

Mr. Gillock

Direct - Cross

1  
2 have someone there and, ultimately, Garland Hopkins, from our  
3 firm, went to the job site and met with Mr. Wells but there  
4 was no indication, on his part, that Pebble Building Company  
5 was, in fact, going into bankruptcy or anything.

6 Q. In fact, did that happen?

7 A. I don't know.

8 Q. So you don't know?

9 A. Right.

10 Q. All right, no other questions.

11 CROSS EXAMINATION BY MR. MOORE:

12 Q. Mr. Gillock, what is the position of Garland  
13 Hopkins with G. J. Hopkins, Incorporated?

14 A. He is the president.

15 Q. He is the founder of the company?

16 A. In essence, yeah.

17 Q. Was he the president in 1977?

18 A. Yes.

19 Q. Is he the president today?

20 A. Yes.

21 Q. I presume that in fulfilling those requirements,  
22 he is familiar with the operations of the company?

23 A. Yes.

24 Q. I understood, from the two (2) previous gentle-  
25 men who testified, and you were here, that you used a Five



Mr. Gillock

Cross

1 Dollar (\$5.00) per hour labor rate, correct?

2 A. That is correct.

3 Q. In preparing the bid?

4 A. Yes.

5 Q. And I understood from those witnesses, specifically  
6 from the first gentleman who testified, Mr. Starkey, that  
7 the insurance and workmen's compensation and liability and all  
8 of those things were built into the wage rate?

9 A. That's correct.

10 Q. You determined a Five Dollar (\$5.00) rate and  
11 you included all those things in it?

12 A. Right.

13 Q. Well, then I'm confused when you testified that  
14 your first labor on the job was sometime during the week end-  
15 ing November 7, 1975 and you had a man on the job for one (1)  
16 hour that day or during that week and you have identified the  
17 job cost as Five Dollars and Ninety-Six Cents (\$5.96).

18 A. Okay.

19 Q. Now, how do you identify the job cost at Five  
20 Dollars and Ninety-Six Cents (\$5.96)?

21 A. That particular individual who was on the job  
22 whose name is on the---

23 Q. ---whose name is "Wells?"

24 A. Wells, he is a project supervisor and went to  
25

Mr. Gillock

Cross

76.

the job site for some reason to check to see whether or not we were ready to do anything on the job and his particular labor rate happens to be whatever it says there.

Q. So as far as he was concerned, you had underestimated by Ninety-Six Cents (\$.96)?

A. No, no, no, no; flip back over to the other sheet and look at his labor rate. What is his labor rate or let me read it?

Q. I can't testify, Mr. Gillock.

A. The certified payroll report for this particular project dated 11/5/75 indicates that Mr. Wells makes -- his actual pay rate is Five Dollars and Five Cents (\$5.05) an hour.

Q. Yes, sir.

A. The computer will then add the insurance and taxes to his labor rate to come up with the Five Dollars and Ninety-Six Cents (\$5.96) an hour.

Q. So as far as that one (1) hour is concerned, your firm underestimated by Ninety-Six Cents (\$.96) an hour?

A. Not at all. The Five Dollars (\$5.00) an hour is a composite rate of all the individuals who are going to work on the project.

Q. I see, but for this one (1) hour, the -- you actually spent a Dollar more or Ninety-Six Cents (\$.96) more

Mr. Gillock

Cross

77.

1  
2 than you had estimated. Now, you hoped to make that up be-  
3 cause you are going to have some guy making Four Dollars and  
4 Four Cents (\$4.04) an hour working the next day?

5 A. Right.

6 Q. But for this one (1) hour, you -- it comes out  
7 to Five Dollars and Ninety-Six Cents (\$5.96)?

8 A. Sure; that's what I said.

9 Q. And you had bid that hour, on a composite rate,  
10 at Five Dollars (\$5.00)?

11 A. On the composite rate, right.

12 Q. All right, sir. And you have a figure on the  
13 second sheet of Seven Dollars and Fifty-Eight Cents (\$7.58).  
14 What is that figure?

15 A. That would be his overtime rate which is one  
16 and a half (1 1/2) times his basic rate.

17 Q. Is there any reason why that was shown there?  
18 Did he work overtime on that day?

19 A. No, the computer just automatically does it.

20 Q. Just automatically shows it?

21 A. Right.

22 Q. All right, sir. And then on, and I'm just  
23 taking the various computer printout sheets that Mr. Osterhoudt  
24 specifically asked you to refer to. On August 10, 1977, you  
25 had an employee named "Rogers" work eight (8) hours and his

Mr. Gillock

Cross

78.

1 pay rate was Six Dollars and Sixty Cents (\$6.60)?

2 A. Right.

3 Q. And then you add the insurance and all that into  
4 it, how much is Rogers' pay rate an hour?

5 A. Well, it's Six Sixty times---

6 Q. ---what is the factor?

7 A. At that particular time, it was either eighteen  
8 percent (18%) or twenty-one percent (21%). There was a change  
9 in the middle of the project.

10 Q. Approximately twenty percent (20%)?

11 A. Right.

12 Q. Which would add another Dollar and Twenty-Five  
13 Cents (\$1.25) or so?

14 A. Yeah.

15 Q. So for this employee, you are actually paying  
16 Seven Dollars and Eighty-Five Cents (\$7.85) an hour?

17 A. Yes.

18 Q. Yet you had only bid that at Five Dollars (\$5.00)  
19 an hour?

20 A. Yeah.

21 Q. All right, sir. Now, you weren't paying any  
22 employee less than Four Dollars (\$4.00) an hour, were you?

23 A. On that particular week, that is correct. No,  
24 that isn't correct. There is one that was making Three Forty;  
25

Mr. Gillock

Cross

one making Three-Forty-Five; one making Three-Forty; one making Four Twenty and one making Four Dollars (\$4.00).

Q. And when you add the insurance and all those features to the ones making Four Dollars (\$4.00), you almost get up to Five Dollars (\$5.00) an hour because you have added Eighty Cents (\$.80) for insurance and all of those things?

A. Well, you can factor it backwards and find out what the exact figure is.

MR. OSTERHOUDT: (Interrupting)

Mr. Moore, what were you referring to there, which week?

MR. MOORE:

I'm referring to the computer printout sheet for the week ending -- when it's 8/10/77, it's the week ending 8/10/77?

THE WITNESS:

Right.

MR. MOORE: (Continuing)

Q. And for the week ending February 2, 1977, you have the same sort of a situation, don't you? Mr. Simmons' pay rate is Four Dollars and Ninety Cents (\$4.90) an hour; Mr. Thompson, Three Dollars and Eighty Cents (\$3.80) an hour and the average of those two would be, for those pay periods, over Five Dollars (\$5.00) an hour?

Mr. Gillock

Cross

80.

1  
2 A. No.

3 Q. Including insurance---

4 A. ---no.

5 Q. It wouldn't?

6 A. I don't think so; it depends on the number of --  
7 well, that particular case, they both worked the same number  
8 of hours. Do you want me to figure it out, Four Ninety and  
9 Three Eighty?

10 Q. Yes.

11 A. Five Dollars and Thirteen Cents (\$5.13).

12 Q. Five Dollars and Thirteen Cents (\$5.13)?

13 A. Yes..

14 Q. And then it would depend on the skills of the  
15 employee that you sent to the job as to what his hourly rate  
16 would be?

17 A. Yes.

18 Q. If you pay a man Six Dollars and Eighty Cents  
19 (\$6.80) an hour, he's a pretty highly skilled individual; if  
20 you pay a fellow Three Dollars and Forty Cents (\$3.40) an hour,  
21 then he is just an unskilled laborer, I take it?

22 A. No, he is what we classify as a helper or an  
23 apprentice. We haven't had a laborer working for us in many years.

24 Q. Is that the lowest rate that you had, Three  
25 Dollars Forty Cents (\$3.40)?

Mr. Gillock

Cross

A. I don't know; I would have to go through the time sheets to answer that question.

Q. The scope of your company's work under the contract with Pebble was to do what?

A. To do the electrical work; those things associated with the electrical system in the building.

Q. As taken from the plans and specifications?

A. Correct.

Q. And then sometime after you were awarded the subcontract for the electrical work, you were advised that the First National Exchange Bank branch building would be in that structure?

A. That's correct, yes.

Q. And a change order was issued and you were given a change order which increased the scope of your company's work, is that correct?

A. Right.

Q. And increased the contract price?

A. Yes.

Q. And when your company finished doing its work over the period of time that it actually took to do it, did your company do any work or was the scope of your company's work any different than what you had actually bid on?

A. To the extent that the bank was included, yes.

Mr. Gillock

Cross

82.

Q. Well, the bank was the subject of a change order?

A. Right.

Q. And that was included in the scope of your work?

A. Right.

Q. When you got to the end, you did the work that you anticipated would be done?

A. Correct.

Q. And no other work was required of you?

A. Not outside of what you said, that's right.

Q. You weren't required to do anything by the architect or by the owner that was not included in the plans and specifications?

A. No.

Q. I believe that you previously testified that your company's profit on this job was Six Thousand Two Hundred Dollars (\$6,200.00)?

A. I think that's approximately what it was, yes.

Q. Now, who determines the number of workers from G. J. Hopkins, Incorporated that will be assigned to work on this job?

A. It's the job foreman's responsibility to see that he has the proper manpower to do the job and then the office will support him by making whatever manpower movements



Mr. Gillock

Cross

83.

1 we have to do to supply his needs.

2 Q. Does he determine that on a weekly basis or a  
3 monthly basis or an hourly basis or how is that determined?

4 A. It's done on a daily basis on some projects and  
5 on other projects, it's -- it would not require the number of  
6 changes that other projects might require.

7 Q. Did you have a job foreman that was assigned  
8 to this job?

9 A. Yeah.

10 Q. Did the same man occupy that status throughout?

11 A. No.

12 Q. Well, for example, why doesn't G. J. Hopkins or  
13 why didn't G. J. Hopkins, Incorporated know what would be re-  
14 quired of it say on September 10th, 1977, the day before and  
15 then put the number of men on the job that they needed to have  
16 do it?

17 A. I think you would have to be present on the job  
18 on that date that you mentioned to know why.

19 Q. Well, after all of the concrete was poured, the  
20 building was available for you to complete your subcontract  
21 without interference from anyone else, wasn't it?

22 A. There are other finishers in the building.

23 Q. Other subcontractors?

24 A. Sure.  
25

Mr. Gillock

Cross

Q. And, what, your progress depends on their progress?

A. Sure.

Q. Well, give the Court an example?

A. The ceiling in the bank, the light fixtures are attached to the ceiling and if the ceiling isn't up, you can't install the light fixtures.

Q. Well, was the bank work completed within the seventy (70) days that represented the time of the change order -- that represented the time for the completion of the change order?

A. What seventy (70) day period are you speaking of?

Q. I don't know.

A. Well, I don't either.

Q. Well, the change order was issued extending the contract seventy (70) days because the bank work was included?

A. Right.

Q. Now, my question to you is, was your firm able to do the electrical work within that seventy (70) day period?

A. I don't know but I would say, offhand, no.

Q. Well, why not?

A. Well, because the bank wasn't completed in seventy (70) days nor was it intended to be completed in

Mr. Gillock

Cross

85.

seventy (70) days; that was an extension to the total contract not specifically for the bank work itself.

Q. Well, Mr. Gillock, your company was asked to do additional work because of the bank. Now, how much time did you estimate it was going to take your company to do that work?

A. That's been previously testified to as Nine Hundred Ninety-three (993) man-hours less Three Hundred Seventy-Four (374) man-hours which is what, Six Hundred Nineteen (619).

Q. All right, sir. Well, how many working days is that? Do you consider that you are going to have one (1) man working eight (8) hours a day or are you going to have six (6) men working eight (8) hours a day? How many working days is that?

A. Well, we'll take the Six Hundred Nineteen (619) hours and we will divide it by eight (8) hours and that's what, Seventy-Six (76) working days?

Q. All right, for one (1) man?

A. For one (1) man, yes.

Q. Is that what you estimated you were going to have, one (1) man on that job for Seventy-Six (76) working days?

A. You have to be more familiar with the installation process to understand that, that is a composite, again, the total number of man-days to complete the project is Seventy-Six

Mr. Gillock

Cross

(76) and whether I put Seventy-Six (76) men on there for one (1) day which is impossible or I put two (2) men on there for Thirty-five (35) days, you are doing the same job.

Q. So really the total time of the contract is absolutely irrelevant in determining the time it takes you to do your subcontract?

A. Absolutely not.

Q. Well, I thought you just said you take the number of hours that you have geared in and that you can accomplish it by putting three (3) men on or six (6) men on---

A. ---you took what I said out of context. I said that it would be impossible to put Seventy-six (76) men on the job for one (1) day but on an average basis, you could say you are going to put two (2) men on the job for Thirty-five (35) days or whatever or Thirty-seven (37) days. That does not mean that the work would be ready to be accomplished during that Thirty-five (35) days or Seventy (70) days or One hundred (100) days or whatever.

Q. But what I just said though is true, isn't it? If the fact that the architect allowed seventy (70) days for that bank work to be done has no relationship to the period of time it would take your firm to do that work because your time is estimated at doing a particular job within a particular number of hours and those hours may be accomplished within a Twenty

Mr. Gillock

Cross

1  
2 (20) day period or it may be One Hundred Twenty (120) day  
3 period, isn't that correct?

4 A. Yes, that's correct.

5 Q. And that's true about the entire contract?

6 A. No, it isn't.

7 Q. And why isn't it?

8 A. Well, because of the intermittent period through  
9 which we have to install our work; you are totally geared to  
10 what the general contractor does.

11 Q. You mean what the other subcontractors do?

12 A. And the other subcontractors. The general  
13 contractor has total control of the project and it is his  
14 responsibility.

15 Q. The owner has total control?

16 A. Well, whatever---

17 Q. ---doesn't the owner have total control?

18 A. No, the general contractor has job progress  
19 control.

20 Q. All right, sir.

21 A. Of course, the owner has total control because  
22 he owns the building, whatever that means.

23 Q. All right, sir. And the number of hours, the  
24 approximately Seven Hundred (700) hours that your firm  
25 originally estimated it would take to complete this work, those

Mr. Gillock

Cross

number of hours could be accomplished over a two (2) year period or a three (3) year period or a four (4) year period, isn't that correct?

A. Mr. Moore, I'll go back to my deposition and---

Q. ---no, just answer my question.

A. Well, I'm going to answer the question in the same manner in which I answered it in the deposition.

Q. All right, sir.

A. From your assumption, it could take two thousand (2,000) years to build the project and you know that's not going to happen. We have to be on the project when a certain portion of our work has to be done so that we don't get behind and leave something out of the building that's going in when the concrete is being poured and when the steel is being installed. This was a total concrete building and it requires, if the forming work takes two (2) weeks, we, basically, have to be there during the whole forming process. If it takes the guy six (6) months, we've still got to be there through most of the process.

Q. Why?

A. Well, let's suppose that the guy wraps the reinforcing steel up so we can't get the conduit through the steel. He may not put in but two (2) pieces of steel in a week. All he has to do is just to block our progress at one

Mr. Gillock

Cross

39.

(1) point and we are in trouble.

Q. All right, sir, but you know that, that is a problem anytime you deal with reinforcing steel, don't you?

A. Sure.

Q. Did you take that into consideration in preparation of your estimate?

A. Yes, on the basis of five hundred forty (540) day completion date.

Q. What does that have -- that's not in amends in any of those estimating manuals as to the completion date in the general contract, is it?

A. Why certainly it is.

Q. It is?

A. It's built into the man-hour factor, certainly.

Q. What is built into the man-hour factor, Mr. Gillock?

A. The total time that it's going to take for the men to do the job; the inefficiency is a judgment thing.

Q. Yes, sir.

A. Okay.

Q. And the time that it's going to take for concrete to set up and for you to be ready to put in whatever has to be put in is a judgment call, also?

A. Right.

Mr. Gillock

Cross

90.

Q. Depending on the abilities and capacities of the concrete contractor?

A. Right.

Q. And all sorts of things?

A. Right.

Q. Depending on the weather and all of those things?

A. Absolutely.

Q. And you can have a crew of men sitting on the job for a week doing nothing because the concrete isn't setting up properly, is that right?

A. Well, I wouldn't say for concrete not setting up properly but for installation work in the concrete, yes.

Q. All right, sir, and I believe you testified that your bid was predicated upon the assumption that your men were going to be able to work fulltime every day and there would be no slack or lag time on the job, didn't you?

A. Basically, yeah.

Q. So in this circumstance, that simply wouldn't be true, you wouldn't be able to accomplish the desired result because you know that there could be times when your men are going to sit around unproductive, as you have said?

A. (No response)

Q. You don't like that to happen but it sometimes happens in the construction industry, isn't that correct?



Mr. Gillock

Cross

A. It sure does.

Q. Now, you say that when the agreement was executed on June 17, 1977 by Mr. Garland Hopkins on behalf of your company you weren't present?

A. That's correct.

Q. Now, that agreement, in effect, sets forth the status of the project as of that date between Commercial Union Insurance Company as a successor to Pebble---

MR. OSTERHOUDT: (Interrupting)

---Your Honor, just a moment. I believe -- I hate to interrupt the question but I believe that's not an accurate statement of what the contract shows. It was the 31st of May, I believe.

THE COURT:

31ST OF MAY, I THINK.

MR. MOORE:

31st of May; all right, sir.

MR. MOORE: (Continuing)

Q. But Mr. Garland Hopkins certainly had authority to speak for your company at that time, didn't he, speak for his company at that time?

A. Yes.

Q. Did you have anything to do with the preparation of the subcontract agreement between Pebble and Hopkins?

Mr. Gillock

Cross

92.

1  
2 A. Yes, I executed the contract on behalf of the  
3 company.

4 Q. Now, actually, your company refused to sign the  
5 normal of the -- or the usual form of the subcontract that was  
6 sent to you by Pebble for execution?

7 A. I refused to sign the form of the contract that  
8 Pebble Building Company sent to me, yes.

9 Q. Yes, sir, that was my question and you consulted  
10 with counsel and the form which was actually executed was the  
11 form you agreed to?

12 A. That's correct.

13 Q. And was a result of negotiations between the  
14 parties?

15 A. Yes.

16 Q. The only point of that is that your company is  
17 not in the habit of signing documents or entering into agree-  
18 ments without careful scrutiny of them?

19 A. That's correct.

20 Q. Now, you testified that you had gone over this  
21 agreement -- I mean, you had gone over these records and you  
22 came to a figure of Five Dollars and Seventeen Cents (\$5.17) per  
23 hour?

24 A. That's right.

25 Q. I'm not sure how you arrived at that. I don't

Mr. Gillock

Cross

1 want to know all the details, just tell me what it represents?

2 A. Well, it simply represents the total labor cost  
3 divided by the total number of man-hours spent on the job.

4 Q. Without regard to insurance---

5 A. ---yes, including insurance and taxes.

6 Q. All right. And you actually wrote two (2)  
7 letters saying that the time for performance of the prime  
8 contract was four hundred fifty (450) calendar days, didn't  
9 you?  
10

11 A. Yes.

12 Q. And you just said that was an error on your part?

13 A. Right.

14 Q. All right, sir, I have nothing else.

15 MR. OSTERHOUDT:

16 I have no other questions.

17 (Witness aside)  
18  
19  
20  
21  
22  
23  
24  
25

1  
2 John Chappelear, Jr., having first been duly  
3 sworn upon his oath, testified as follows:

4 DIRECT EXAMINATION BY MR. OSTERHOUDT:

5 Q. You are John Chappelear, sir?

6 A. Yes, sir.

7 MR. MOORE: (Interrupting)

8 Your Honor, Mr. Chappelear's qualifications are  
9 admitted and it is stipulated that he was the architect on  
10 this job.

11 MR. OSTERHOUDT: (Continuing)

12 Q. Mr. Chappelear, as the architect on the Roanoke  
13 City Parking Garage which was recently constructed in the City  
14 of Roanoke, what general type of construction is that building  
15 from an architectural standpoint of construction?

16 A. It's post-tension cast and placed concrete.

17 Q. All right, sir.

18 THE COURT:

19 WHAT IS "POST-TENSION?"

20 THE WITNESS:

21 The beams, before they are poured, have tendons  
22 that are laid in with reinforcing rods in the tendons. The  
23 beam is poured; after a certain number of days the reinforcing  
24 rods are stressed and that's why they call it "post-tension."

25 MR. OSTERHOUDT: (Continuing)

Mr. Chappelear

Direct

Q. Sir, have you been involved in the construction of other parking garages?

A. No, this was the first one for our office.

Q. For your office?

A. Yes.

Q. Was there any other architectural consulting firm involved in it?

A. There were parking consultants that the City employed from Detroit.

Q. But did your office have, in fact, actual supervision of the job and architectural control over the job?

A. We prepared the drawings and the specifications and inspected construction.

Q. You inspected the course of construction? You were on the site and made or caused to be made whatever tests were made and that kind of thing?

A. Well, our firm was on the site.

Q. Okay, sir; I'm sorry, I didn't mean to indicate that you were always there. Can you tell me when the job was started?

MR. MOORE: (Interrupting)

What are you referring to, Mr. Chappelear?

THE WITNESS:

Some letters and correspondence and summary of

Mr. Chappellear

Direct

various things from the City.

The work was started on August 11th, '75 and the contract date was July 29th, 1975.

MR. OSTERHOUDT: (Continuing)

Q. In the specifications and addition to the contract, do you know what the time for completion of the contract initially let was?

A. Five hundred forty (540) days.

Q. All right, and when the contract documents were originally drawn, was there a statement that the time of completion would be four hundred fifty (450) days?

A. (No response)

Q. Maybe you would like to look at the documents.

A. I would have to; I don't have a copy of them.

Q. Well, if that is, in fact, the case---

THE COURT: (Interrupting)

---THERE'S NO CONTEST ON THAT.

MR. MOORE:

That is not contested.

MR. OSTERHOUDT: (Continuing)

Q. Why would that have been changed from four fifty (450) to five forty (540), do you have any idea?

A. Oh, a couple of contractors called about it and felt that maybe a little additional time might be better. We

Mr. Chappelear

Direct

discussed it and the five hundred forty (540) days, that was the final decision.

Q. Do you know whether or not Pebble Building Company was one of those contractors that called you?

A. I have no recollection. In fact, I might not have even taken the call; it could have been someone else in the office.

Q. But Pebble Building Company was ultimately the general contractor on the job?

A. Yes.

Q. All right, Mr. Chappelear, do you know what the original project completion date was, five hundred forty (540) days?

A. January 31st, 1977.

Q. Were there any change orders issued during the course of construction that extended or shortened the time for contract completion?

A. There were two (2) that extended the completion date.

Q. Can you give me the numbers of those change orders and what they were for?

A. Change Order No. 2 extending the date by seventy (70) days, that was for work in the First National Exchange Bank rental area, and the revised completion date, as a result

Mr. Chappelear

Direct

of that, was April 11th, 1977.

Q. All right, sir, was there a subsequent change order which extended it?

A. Change Order No. 4 for twenty-eight (28) days and that was for some problems in connection with installing the sheeting work and that revised completion date was May 9th, 1977.

Q. All right, Mr. Chappelear, is there a date in the construction industry that might be called a "substantial completion date?"

A. Yes, that's part of the contract documents.

Q. All right, what happens at that time?

A. Well, the definition in the documents is that it is the point at which the owner -- that the project is sufficiently complete so that the owner can use it for the purpose intended.

Q. When did the City of Roanoke occupy this building?

A. The certificate of substantial completion set the date as June 1st, 1978.

Q. All right. Now, was there ever a final inspection conducted on the job?

A. We conducted an inspection on August 25th, 1978.

Q. Now, what happens, if anything, if you know,



Mr. Chappellear

Direct

22.

between the substantial completion date when the City takes over and final occupancy, generally, what's going on during that period of time?

A. They are continuing to work and complete the job.

Q. Complete the job and make corrections and that sort of thing?

A. To some extent but, actually, the major -- the final inspection sets forth a list of deficiencies.

Q. All right, so the final inspection and, in this case, on the 25th of August, and after that they go back and make corrections, is that right?

A. Right.

Q. So does that indicate -- final inspection, does that indicate final completion or we are talking about a final completion date, what triggers that---

A. ---final completion is pretty hard to define. There are call-backs and there are problems that have to be resolved, this hardware doesn't work, that doesn't work but these are routine.

Q. In fact, I think, in this case, that maybe the wrong color fluorescent light bulbs were installed, weren't they, and they had to go back and---

A. ---that was one of the points raised, yes.

Mr. Chappelear

Direct

Q. So it's hard to precisely pinpoint a date of final completion, is that right?

A. It would be very difficult to say, at any point, that everything is completed.

Q. Would that ever occur prior to final inspection, that you would have final completion of---

A. ---no; no.

Q. So is it fair to say, in this case, that final completion did not occur before August 25th, 1978, which was the date of the final inspection?

A. Ask that question, again.

Q. Is it fair to say, in this case, that the final completion did not occur before August 25th, 1978?

A. Not according to the terms of the contract documents, no.

Q. All right. Mr. Chappelear, was there a provision in the contract between the City of Roanoke and the general contractor with respect to liquidated payments in the event of late completion?

MR. MOORE: (Interrupting)

Excuse me. Your Honor, isn't that -- that contract is a matter of record and Mr. Chappelear doesn't need to testify about the provisions of the contract.

THE COURT:

Mr. Chappellear

Direct

101.

IT'S IN THE RECORD, I GUESS; THE CONTRACT IS IN  
THE RECORD.

MR. MOORE:

I mean, I'm just trying to shorten this. The  
contract speaks for itself.

MR. OSTERHOUDT:

Okay, but let me ask him this question then.

MR. OSTERHOUDT: (Continuing)

Q. Did you, during the course of administering  
this contract, become involved in any discussions or negoti-  
ations between the City of Roanoke and the general contractor  
with respect to delay damages?

MR. MOORE: (Interrupting)

Now, I object. That has no relevancy whatsoever  
with these issues.

THE COURT:

I AGREE; I SUSTAIN THE OBJECTION.

MR. OSTERHOUDT: (Continuing)

Q. Did you, during the course of administering  
this contract, ever make any recommendations with respect to  
the allowance of additional time for completion of the contract?

A. The matter was discussed. Of course, the  
contractor had sent a number of requests for extensions, that  
is, beyond the two (2) change orders that we recommended.

Mr. Chappelear

Direct

102.

1

2

Q. All right.

3

A. No additional change order for additional time extension was written.

5

Q. No additional change order for additional time extension was ever written?

7

A. No.

8

Q. Were you, personally, on this job from time to time, Mr. Chappelear?

10

A. Occasionally, yes.

11

Q. Do you believe that the five hundred forty (540) days plus the allowed change orders of ninety-eight (98) days was sufficient time within which to complete the work?

14

A. I think it could have been done within that time.

15

Q. The fact is that it was not done within that time, though?

17

A. Not according to the requirements of the contract documents, no.

19

Q. Have you any professional opinion as to why it took longer to complete than the contract documents called for?

21

A. I think one of their problems was the turnover they had in superintendents.

23

Q. Who had?

24

A. The general contractor and that's my own personal opinion.

25

1

Mr. Chappellear

Direct

2

Q. How did that affect the job?

3

A. Well, if you have a guy on the job for six (6)

4

months or a year and he leaves and you bring in somebody and

5

he's there for three (3) or four (4) months and he leaves, it

6

has got to hurt the job.

7

Q. Was the progress slow on this job?

8

A. There were times when it appeared to be slow

9

and this was discussed at each monthly progress meeting that

10

we attended with representatives of the general contractor and

11

the City.

12

Q. Did the general contractor prepare and submit

13

to you progress schedules as to the progress to be made on the

14

job?

15

A. We received, I believe, three (3) progress

16

charts.

17

Q. You received one (1) shortly after the job

18

started?

19

A. Some few months after the job started, yes.

20

Q. And two (2) others?

21

A. I believe there were two (2) others.

22

Q. And were these prepared by the general contract-

23

or?

24

A. Yes.

25

Q. Did the general contractor ever keep up with

Mr. Chappellear

Direct - Cross

104.

the progress schedules?

A. On some occasions; on others, no.

MR. OSTERHOUDT:

Again, Your Honor, the progress schedules are in evidence and I think they speak for themselves and I won't go any further than that.

There are no other questions.

CROSS EXAMINATION BY MR. MOORE:

Q. Mr. Chappellear, what was the date of change order number 2?

A. (No response)

Q. That's the one that involved the FNEB Building?

A. The date of the change order, I do not have.

Q. All right, sir, do you have the date of change order number 4?

A. No. They are in our records but I don't have them.

Q. Are you familiar with the Roanoke Memorial Hospital Parking Garage?

A. Only in passing by.

Q. The type of construction involved there is substantially different from the type of construction involved in the garage we are discussing, isn't it?

A. It's a steel structure as opposed to concrete.

Mr. Chappelear

Direct

Q. All right, Mr. Chappelear, you did recommend to the City an additional eighty-three (83) days of allowable time, did you not?

A. Yes, that was in the letter; yes.

Q. All right, sir, that's all.

(Witness aside)

(Lunch recess from 12:45 P.M. to 2:00 P.M.)

1  
2 Dewey Anderson, having first been duly sworn  
3 upon his oath, testified as follows:

4 DIRECT EXAMINATION BY MR. OSTERHOUDT:

5 Q. What is your name, sir?

6 A. Dewey Anderson.

7 Q. Mr. Anderson, where are you presently employed?

8 A. S. Lewis Lionberger Company.

9 Q. What do you do there?

10 A. Project manager and estimator.

11 Q. Okay, were you ever employed by a company called  
12 Pebble Building Company?

13 A. Yes, sir.

14 Q. Were you employed by them in connection with  
15 the construction of the Roanoke City Parking Garage?

16 A. Yes, sir.

17 Q. In what capacity did you serve Pebble Building  
18 Company in the construction of the Roanoke City Parking Garage?

19 A. Project manager.

20 Q. What does a project manager do, Mr. Anderson?

21 A. Well, primarily, my duties with Pebble and with  
22 Lionberger are about the same, dealing with subcontractors,  
23 purchasing materials and things of that nature.

24 Q. Do you actually, physically, boss the Pebble  
25 Building Company employees?



Mr. Anderson

Direct

1

2

A. No, sir.

3

Q. Do you have somebody else that does that?

4

A. That's usually the job superintendent.

5

Q. The job superintendent?

6

A. Yes, sir.

7

Q. Is there a chain of command that includes both  
you and the job superintendent?

9

A. No, sir, not in the case of either company  
other than---

10

11

Q. ---are you his boss, for example?

12

A. No, sir.

13

Q. Okay. You have somewhat different responsibilities,  
is that correct?

14

15

A. Yes, sir.

16

Q. Were you physically on the job?

17

A. Yes, sir, for approximately a year.

18

Q. Approximately a year? When was that, sir?

19

A. Well, I came on the job when it was started in  
August of '75 and I was there regularly until about the end of  
August of '76.

21

22

Q. All right, did you have any continuing contact  
with the job after that?

23

24

A. I had about two (2) days a week for six (6)  
months or so and then roughly, say, a day a week up until, I

25

Mr. Anderson

Direct

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guess, it would be -- gosh, let's see, what year? It would be along in the fall of '77.

Q. Did you stay with the project until it was finally completed?

A. No, sir.

Q. Did you leave Pebble Building Company?

A. Yes, sir.

Q. Was that why you left the job?

A. No, sir, I had very little to do with that job after I went to White Motor Company in the summer of '77.

Q. Okay, so you went up to White Motor Company in the summer of '77?

A. Yes, sir.

Q. So you were then on the job, either permanently or on a regular basis, for about two (2) years?

A. Yes, sir, approximately that.

Q. Where else have you worked in the construction industry, Mr. Anderson?

A. Quite a number of places, actually. I worked for architectural firms locally and I worked for an architectural engineering firm in St. Louis and was in construction with my father for a number of years and I worked for architectural firms, as I said, here in town.

Q. Do you have any professional training and

Mr. Anderson

Direct

background?

A. Yes, sir, I've studied architecture.

Q. Are you a graduate architect?

A. Equivalent through correspondence school, yes, sir.

Q. I see, but you are not---

A. ---I'm not a registered architect, no, sir.

Q. You are not a registered architect? Okay, and how long have you been working in and around the construction industry then?

A. Over thirty (30) years.

Q. All right, have you ever been involved with the type of construction before that was involved in the Roanoke City Parking Garage?

A. Not exactly, but to a certain extent. I was on a couple of parking garage projects as architect and specification writer in St. Louis but actually, physically, being on the jobs, no.

Q. Okay, did you participate on this job in the preparation of any of the so-called progress schedules?

A. Yes, sir.

Q. What is a progress schedule, Mr. Anderson?

A. Well, actually, it is a schedule that is made, most generally, at the beginning of the job, showing the

Mr. Anderson

Direct

110.

starting the time, the different phases of the work, when you anticipate doing those particular phases of work and carrying it through to the completion of the job.

Q. So you helped prepare the initial progress schedule?

A. Yes, sir.

Q. When the job was first started?

A. Yes, sir.

Q. Did you subsequently prepare any other progress schedules?

A. Several of them, yes, sir.

Q. Why did you prepare these subsequent progress schedules?

A. Well, as I remember, the first one after the initial progress schedule was submitted, the first one was at the request of the owner which was the City.

Q. What was that in connection with, do you remember?

A. An update because apparently the job was off schedule.

Q. Off schedule?

A. Yes, sir.

Q. Ahead or behind?

A. Behind.

Q. Do you have any recollection of how far behind?

Mr. Anderson

Direct

111.

1  
2 A. At that particular time, we were probably forty-  
3 five (45) days.

4 Q. We have the progress schedules here, Mr.  
5 Anderson.

6 A. Okay.

7 Q. Would you look through here and see if these  
8 are the progress schedules on the job?

9 A. Yes, sir. I don't see the original -- yes, here  
10 is the original.

11 Q. And what completion date does it call for?

12 A. February 1st, 1977.

13 Q. All right, sir, there was a first one prepared  
14 after that at the request of the owner because the job was  
15 behind?

16 A. Yes, sir.

17 Q. What date is that and what does it show as the  
18 projected completion date?

19 A. This one has a revised date of March 12th,  
20 1976, and -- it has March 12th, 1976 and is revised and shows  
21 April 8th, 1977.

22 Q. All right, sir, were there subsequent to that,  
23 additional progress schedules prepared?

24 A. Yes, sir, there's one here of the same schedule  
25 revised again on July 2nd, 1976.

Mr. Anderson

Direct

112

Q. Okay, what does it show?

A. June 17th, 1977.

Q. All right, are there any others?

A. The first three (3) were in CPM, Critical Path Method and this one (1) draft one dated 9/17/75, I think, was, more or less, a duplicate but just in a different form of the Critical Path Method.

Q. Did you find any others?

A. Of actual progress schedules, that seems to be it.

Q. Are there any other documents that indicate the projected or predicted progress of the job made by the general contractor?

A. Manpower comparison charts.

Q. What do they do?

A. Well, actually, this was made to indicate the manpower on the job and the projected manpower that we would need, that is, that the general contractor would need.

Q. Okay, and was this made before or after the fact?

A. We have one made on -- or dated, at least, on August 5th, 1976. As a matter of fact, both of these are dated the same; these are duplicates.

Q. Do they show what actually happened or what was

Mr. Anderson

Direct

1  
2 projected to happen?

3 A. Well, actually, the first item shown on here  
4 states "projected manpower based on the original progress  
5 schedule dated 9/17/65." The second item is "projected man-  
6 power based on estimated billing schedule dated November 26,  
7 1975," and the third is "actual manpower on the job from  
8 project log," which includes all personnel.

9 Q. Did this cover the full period of the contract?

10 A. From August, 1975 to July, 1976.

11 Q. All right, sir. Now, you testified that there  
12 were several progress schedules made and these forecast the  
13 progress of construction. Were these progress schedules kept?

14 A. No, sir.

15 Q. They were not?

16 A. No, sir.

17 Q. Did you get ahead of them or fall behind them?

18 A. Well, we were continually behind, apparently.

19 Q. Okay, you say you were continually behind?

20 A. Yes, sir.

21 Q. Do you mean from the very start of the job?

22 A. No, the job actually did not begin to fall be-  
23 hind, that I could see any indication of until over probably  
24 the first part of the winter of '75-'76 winter.

25 Q. How could you tell then that the job was falling

Mr. Anderson

Direct

114.

1 behind?

2 A. Well, we had some problems with the sheeting  
3 on the job, which was placed to retain the earth or at least  
4 the earth and banks. When the excavation was made, we had  
5 several cave-ins of that and then during the winter of '76,  
6 we were at the point of placing compacted backfill; the City  
7 had a consultant on the job, Snobble Engineering Company, who  
8 was in charge of placing this backfill and there would be  
9 times, for instance, when we would have a rain over a weekend  
10 followed by cold weather, the ground would freeze the upper  
11 surface, perhaps a half (1/2) inch or one (1) inch deep would  
12 be frozen and we weren't allowed to do any backfilling until  
13 this had thawed out and dried out. As an example, we might  
14 sit a week and not do anything.

15 Q. Now, you did subsequently get, however, a change  
16 order for that, didn't you, an extension of time for the  
17 sheeting and foundation problem?

18 A. I actually do not know what extensions of time  
19 were finally granted. I applied for several but -- and I'm  
20 sure the Lynchburg office also applied for some but I'm not  
21 sure what were actually ever accepted on that.

22 Q. But you made application for extension for  
23 those incidents?

24 A. Yes.



Mr. Anderson

Direct

Q. Did the job continue to fall behind after that?

A. Yes, sir.

Q. How many superintendents did you have on the job?

A. Three (3), to my knowledge.

Q. Three (3), to your knowledge, during the time you were there?

A. Yes, sir.

Q. What about the first superintendent, what was his name.

A. Ranco Zic; Z-I-C.

Q. And how long was he superintendent?

A. Let's see, Ranco came on the job in September of '75 and I think it was during the month of August of '76, that he left the job.

Q. That he left the job?

A. Yes, sir.

Q. Do you have any idea how far the job was behind schedule when he left?

A. Not really; I could make a guess at it but it would be nothing but a guess.

Q. Well, you were there and you were looking at the progress schedule?

A. Yes, sir, and I'm looking at one right now.

Mr. Anderson

Direct

116.

Q. Based on that, how far behind was the status of the job?

MR. MOORE: (Interrupting)

Your Honor, he said he would have to guess to give an estimate of it.

THE COURT:

WELL, HE CAN GIVE AN ESTIMATE, HE WAS ON THE JOB BUT IF IT IS JUST A WILD GUESS, THEN DON'T GIVE IT.

THE WITNESS:

Oh, at that time, we had received an extension of time for the First National Exchange Bank branch which was in the building and I don't recall that extension of time period but I would feel fairly certain we were three (3) to four (4) months behind even with that.

MR. OSTERHOUDT: (Continuing)

Q. Even with the extension?

A. Yes, sir.

Q. What caused you to get so far behind?

A. Well, of course, we had an accident with the crane; it was broken down for a time and we had, of course, some delay due to the bank and we were granted an extension of time which should have taken that in and I would -- and this is an opinion and my own opinion, the superintendent was not really capable of doing that job.

Mr. Anderson

Direct

117.

Q. Mr. Zic was not qualified for the job?

A. That's my own opinion.

Q. What do you base that on, Mr. Anderson?

A. The fact that it just didn't get done.

Q. Well, were there any objective incidents that you can call to mind?

A. Well, there was form work that was built and built wrong and taken down and rebuilt. There was just a lot of general delays. I do not have any records of -- there were records made. In other words, the job, I feel, was fully documented. We had daily log reports; we had taped reports which were made at the end of every day. I can recall, I can't cite specific dates but I can recall many instances at the end of the week where on the tape that I would make the comment that the job was continually falling further and further behind. I did not place any blame on anyone but I hoped that someone in the Lynchburg office would question why it was falling further and further behind.

Q. Is it your opinion then that---

MR. MOORE: (Interrupting)

---Your Honor, I object to his opinions.

THE COURT:

HE HAS SAID IT WAS FALLING BEHIND.

MR. OSTERHOUDT: (Continuing)

Mr. Anderson

Direct

Q. And the superintendent gave evidence to you that he didn't know what -- that he didn't---

THE COURT: (Interrupting)

---YOU'VE ALREADY ASKED HIM THAT.

MR. OSTERHOUDT:

Okay. Fine, Your Honor, that's right.

MR. OSTERHOUDT: (Continuing)

Q. All right, did the job continue to fall further behind after Mr. Zic left?

A. No, sir. In my opinion, the job began to turn around after Mr. Zic left.

Q. Now, the job was supposed to have been completed when, Mr. Anderson, by the most updated progress schedule that you have?

A. Well, apparently, this schedule of March 12th of '76 is the most -- is the latest.

Q. And when does it say the job was supposed to be finished?

A. June 17th, 1977.

Q. All right. Now, you were still around in June of '77?

A. Yes, sir.

Q. And the job wasn't finished?

A. This progress schedule was a lie when it was

Mr. Anderson

Direct

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submitted to the City.

Q. The progress schedule was what, a lie?

A. It was incorrect.

Q. Why?

A. Because the project schedule that Mr. Zic and I made called for a completion date of September of '77 and we were told to set the date back to -- to bring the completion of the job within the allocated time plus time extensions.

Q. So you just arbitrarily did that?

A. It took about two (2) weeks to go back and cram it in, yes, sir, but it was done.

Q. All right. Well, was the job finished in September of '77?

A. No, sir.

MR. MOORE: (Interrupting)

Your Honor, we know when the job was finished and Mr. Chappellear has testified to all those facts and they are not in dispute.

THE COURT:

LET'S MOVE ALONG, MR. OSTERHOUDT.

MR. OSTERHOUDT: (Continuing)

Q. Was there ever a time that you can recall when the Hopkins Company pulled their people off this job?

A. One (1) time.

Mr. Anderson

Direct

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Q. Did you have any contact with the Hopkins Company as a result of that?

A. I either called them or wrote a letter.

Q. What did you tell them?

A. I told them that according to our superintendent, their people were needed on the job or they would cause a delay in progress.

Q. Did they put their people back on the job?

A. Two (2) days afterward, yes, sir. I think roughly two (2) days. I know I received a call from Stan Reas and he said he felt that we were erroneous in saying that it would cause any delay to the job but he put the men back on the job.

Q. So why would the electrical contractor have to keep his men on the job?

A. Well, most generally, you have underground conduit and wiring and work like that, that has to be installed as you go along and depending upon the work at the time, you almost have to have someone on there.

Q. They just have to stay on the job continually?

A. It's general practice, yes, especially where you are covering up the electrical work with concrete or something like that.

Q. Okay, that's all.

CROSS EXAMINATION BY MR. MOORE:

Q. Mr. Anderson, as I understand your testimony, when Mr. Zic left the job in August of 1976, the job was, according to your recollection, three (3) or four (4) months behind?

A. It was behind, yes, sir.

Q. About three (3) or four (4) months is what you thought it would be?

A. Yes, sir.

Q. And then after he left, from your observations, things began to turn around?

A. I would say so, yes, sir.

Q. Would you say that from your observations, from that time until you last had any connection with the job, it moved forward with progress toward completion in a way that would be expected and anticipated?

A. With the exception of accidents, weather and things of that nature.

Q. Things that you had no real control over?

A. Yes, sir.

Q. Your answer is that from August, 1976 on, the job did move forward as you would expect and anticipate it to do?

A. Well, not being on it all the time, you know,

Mr. Anderson

Cross

122.

you don't get the same perspective that you do if you are there every day but the job was apparently moving along. As I say, we had other problems that did delay the job.

Q. Well, you were there once or twice a week from September of '76 until sometime in the fall of '77?

A. Let's see, I went to Lynchburg in August of '76 and I worked there three (3) days a week and I came back to the Roanoke job two (2) days a week and, as I recall, that continued until somewhere in the winter and then I was working in Lynchburg four (4) days a week and back on the Roanoke job one (1) day. I don't say that, that didn't vary maybe some somewhere along the line but that was, more or less, the established schedule and then we got the work at White Motor Company which started in July of '77 and I went to White Motor Company and I wasn't really regular on that job anytime and most of the time that I would be there would be maybe a Friday morning or something like that to pick up the payroll and take it to Dublin.

Q. I see. And you had the responsibility of sort of coordinating the work of the various subcontractors on the job?

A. I would say up until the time that I went to work at White, yes, sir.

Q. And that would be in '77 or something?



Mr. Anderson

Cross - Redirect

123.

A. Yes, sir.

Q. Summer or fall?

A. Actually, that work started up there in July.

Q. All right, thank you very much, sir.

REDIRECT EXAMINATION BY MR. OSTERHOUDT:

Q. Mr. Anderson, what percentage of the job was completed in August of '76?

A. August of '76?

Q. That's right, when Mr. Zic left?

A. We were on the first parking level.

Q. First parking level?

A. Yes, sir.

Q. That can translate into a percentage of completion, can't it?

A. Twenty (20) to twenty-five percent (25%).

Q. When you left the job a year later in the summer of '77, what percentage of the job was completed then?

A. Eighty (80) to eighty-five percent (85%).

Q. All right, that's all the questions I have.

(Witness aside)

1  
2 Jack Simmons, having first been duly sworn  
3 upon his oath, testified as follows:

4 DIRECT EXAMINATION BY MR. OSTERHOUDT:

5 Q. Your name is Jack Simmons?

6 A. Yes, sir.

7 Q. Mr. Simmons, what is your occupation?

8 A. Electrician.

9 Q. Where do you work now, sir?

10 A. I work for J. M. Blair.

11 Q. Are they electrical contractors?

12 A. Yes, sir.

13 Q. And what do you do there?

14 A. Job superintendent.

15 Q. All right, did you ever work for the G. J.  
16 Hopkins Company?

17 A. Yes, sir.

18 Q. While you were working for them, did you ever  
19 work on the Roanoke City Parking Garage?

20 A. Yes, I did.

21 Q. All right, did you work on the job as both an  
22 electrician and a superintendent?

23 A. Yes, I did.

24 Q. All right, do you recall when you first went on  
25 the job, Mr. Simmons?

Mr. Simmons

Direct

125.

2 A. I think it was sometime in May or April; April  
3 or May.

4 Q. Of what year, sir?

5 A. '76, I believe it was but I'm not sure.

6 Q. Were you already the superintendent when you  
7 went on the job?

8 A. No, I wasn't.

9 Q. Did you become the superintendent?

10 A. Yes, I did.

11 Q. When would that have been, sir?

12 A. It was sometime in June.

13 Q. Of '76?

14 A. Yes.

15 Q. Did you stay with the job until it was finished?

16 A. Yes, I did. I stayed with it up until March and  
17 I went overseas but the job was near completion when I left  
18 except for a few final items.

19 Q. Mr. Simmons, how many men did you have on that  
20 job from time to time?

21 A. On the average, it would be between four (4) and  
22 six (6) men, normally, and sometimes we would have more and  
23 sometimes we would have less.

24 Q. What did you do on the job physically? What  
25 were some of the things you did?

Mr. Simmons

Direct

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1  
2 A. Well, most of the time when they would get the  
3 forms ready when I first started on the job and we would  
4 rough everything in and ninety percent (90%) of the time, it  
5 was either wrong or someone hadn't figured right and all the  
6 forms would have to come back down and we would end up tearing  
7 the work out and the rest of the time, we would stand around  
8 waiting for it to go back in.

9 Q. Now, when you say "wrong," do you mean it was  
10 wired wrong or something else was---

11 A. ---no, when they would put the forms in, they  
12 would have the elevations wrong or they would leave out key-ways  
13 or something had to be inside the form in order to -- and in  
14 order to do it right, they would have to tear the forms back  
15 down.

16 Q. Who was doing this work, the Pebble superin-  
17 tendent?

18 A. Yes, Ranco.

19 Q. Do you know his last name?

20 A. I really don't.

21 Q. You just know "Ranco?"

22 A. "Ranco," is all I knew him by.

23 Q. He was in charge, the foreman?

24 A. Yes.

25 Q. Okay, and so would you have to take your work

1  
2 down and redo it?

3           A.    We would have to take it down and -- because  
4 where we had drilled the forms and everything, we would have to  
5 they would drop one side and we would have to take and untie it  
6 and take the conduit down and recut it and everything and put  
7 it back in according to what the new elevation would be, you  
8 know. When they get the elevations off, once they were off,  
9 the only way they could correct and get the key-way in and  
10 catch the next pour would be to strip the forms all the way  
11 down and start all over again.

12           Q.    Did you encounter any other difficulties there  
13 with your work?

14           A.    Well, when I first went to work on the job --  
15 well, when I first went on the job, even before I took the job  
16 over, Ranco always wanted at least four (4) men on the job and  
17 we would have four (4) men on the job and it wouldn't be any-  
18 thing really to do to keep everybody busy. I would give the  
19 guy something to do and all they could do would be to go up on  
20 the deck where the work was to be done and stand around and  
21 wait because the work wasn't ready for them.

22           Q.    But Ranco insisted that they be there?

23           A.    Yes, he did.

24           Q.    Did you have any other difficulties with the  
25 concrete pour besides the forms?

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Mr. Simmons

Direct

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A. Well, really, the only trouble -- the trouble we did have was once the pour was made and the way they were jumping back and forth, they would make a pour and then by the time they would strip and reform the pour again, it was lost time because once we -- we had a whole lot of loose ends that we couldn't even work on and the one portion of the garage that tied back into the west tower where we had all the panels and where everything had to go, this was actually the last part of the building to be constructed, this little transient and the tower, itself, so that left all my major homeruns and everything just loose until all of this was finished.

Q. When you say "homeruns," what are you referring to?

A. Well, my conduit going back to the panel, you know, to tie everything together to where we could pull the wire towards completion of the job electrically. Of course, when they were pouring, a lot of the days when they were pouring concrete, it was other areas of the job we could have been working but, you know, it wasn't ready and the forms weren't ready or, you know, in other words, a lot of times they would concentrate on getting one thing ready to pour and yet not having the foresight to look ahead to have something for the contractors to be working on while they were pouring concrete and they would just have to stand around, you know.

Mr. Simmons

Direct

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Q. Did your men ever work any part days there on the job and then go other places?

A. Sometimes, you know, if we had a job going somewhere else and we knew that, you know, there was no way that they were going to be ready for us, even though they thought they might be, you know, we would pull the guys off and send them somewhere so they would be, you know, working instead of just standing around.

Q. Was this standing around business and the problem with the foreman business, was this something that you just encountered at one particular period during the construction or did it go on during the whole course of it while you were there?

A. I would say it really went on up until maybe the last two (2) levels and it seemed like after it got up to maybe the seventh level of the parking garage, everything -- you know, somebody had gotten everything together and everything went in a pattern but from there on up, everything was just, you know, a big hassle. They would get the steel in and work overtime, you know, and get all that in and then our work, we would really have to get up there and get it done and, you know, we should have had more time to do it and the rest of the time, it was just waiting on them to get something ready for you to do again.

Mr. Simmons

Direct

Q. Do you recall when they might have gotten up to the seventh level? If you do, say so, and if you don't---

A. ---I don't really -- I know that right at the end when they were making the last pours, they had set a schedule up and right at the end, you know, except for what accidents and everyone on strike and all, that interfered and, more or less, just slowed the job down that much more but right at the end, it did pretty well stay on schedule as far as if they said they were going to pour concrete, you know, three (3) days ahead, they would let you know, you know, that they were going to pour it and before that, you didn't know.

Q. You didn't know when they were going to do what, is that right?

A. No, you didn't. A lot of times, we would have work, you know, to be done and they were going to like say, well, from Ranco all the way up to Frank, this other superintendent, they would say well, we are going to pour Wednesday and if they heard the weather was going to be bad Wednesday, you know, Tuesday morning, they would have the trucks there and still have the guys tying the steel down and us trying to rough it in. We worked plenty of times with the concrete, actually pouring concrete and we was trying to rough the deck in at the same time and, you know, once they got this done, then they had nothing else for you to do, no other parts of the



Mr. Simmons

Direct

131.

job where we could be working.

Q. Is this type of coordination typical of the jobs you have worked on?

A. Well, to be honest, I've never, you know, worked on where it's totally that much concrete, just a total job like that but other jobs where, you know, we always worked, you know, concrete slabs and everything and we've never had this problem before. You know, the only thing, if you were pushed, we would always manage to get the man to do it but this thing here was a matter of just pushing and then, all of a sudden, you know, nothing to do whatsoever. If you pulled the man off and sent him somewhere, you know, by that time, you would be needing them back, so it was a matter of just, you know, a couple hours every day was just killed, actually, just standing around waiting.

Q. So it was just a lack of coordination?

A. Yes. Well, a lot of times, we would have conduit ready and they would be wanting us to rough something in and we always kept the crane in operation for minor things, you know, electrically, to keep them going and then a lot of times when the steel came in, they would be wanting us to rough something in and, yet, they wouldn't even make a lift with the crane, you know, to get the conduit up to the location where we were working and that was, more or less, the agreement

Mr. Simmons

Direct - Cross

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that we had that, you know, as long as we did things like that for them that they would make lifts for us but a lot of times, we would be ready to do something and they would be working on something else and they wouldn't even lift the conduit for us or the material. It seemed like just everything, you know, no one planned ahead or something, I don't know.

Q. That's all the questions I have.

CROSS EXAMINATION BY MR. MOORE:

Q. Mr. Simmons, you came on that job for the first time during the last week of April, 1976, didn't you?

A. Yes, if you say so. I know it was somewhere in that time, yes.

Q. Some papers have been introduced into evidence which indicate that you came -- that you worked four (4) hours on this job for the week ending April 28th, 1976, and that, that's the first time you worked on the job.

A. I guess so, yes.

Q. Does that refresh your memory, your recollection?

A. It's been a long time.

Q. Well, who was the foreman when you went on the job?

A. Deacon Jones.

Q. Is he still working for Hopkins?

Mr. Simmons

Cross

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1  
2 A. No, he is not.

3 Q. What is he doing, now?

4 A. Honestly, I couldn't tell you.

5 Q. What kind of work were you doing when you first  
6 went on the job?

7 A. (No response)

8 Q. The first week you were there, what did you do?

9 A. The first week we were there, we just, more or  
10 less, stood around.

11 Q. Doing what?

12 A. Well, at the time, they were getting the first  
13 floor slab which is now the bank section, shooting elevations  
14 on it.

15 Q. Who was shooting elevations on it?

16 A. Ranco, and he shot them and they put some floor  
17 boxes down and we had to take them back up because the elevation  
18 was wrong, the slab was too high and we had to take it back  
19 out, plus, at that time, I was just helping out down there  
20 some and I had another job of my own going.

21 Q. You mean a job you were foreman on?

22 A. Right.

23 Q. You only worked four (4) hours that week ending  
24 April 28th?

25 A. I guess.

Mr. Simmons

Cross

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Q. You mean they sent you down there for four (4) hours and you just stood around for four (4) hours?

A. Well, just more or less. The guy that was running the job at the time, Deacon Jones, was planning on quitting and -- because there was hard feelings with Ranco because Ranco---

Q. ---well, were you down there trying to learn the job, is that the reason you went down there?

A. Well, I was finishing up a job and I knew that I would be going on this job once mine was finished.

Q. So you were going down there every chance you got?

A. Right.

Q. Just to learn something about the layout?

A. Right.

Q. Now, Ranco or whatever his name is, left that job in August, 1976, do you remember that?

A. The exact date, I don't.

Q. Well, there has been testimony that he left in August of 1976. Does that ring a bell with you or does that refresh your memory?

A. Well, I knew he left, you know.

Q. All right, sir, from the time that you first went on the job to the time that Ranco Zic left, what work did

1  
2 G. J. Hopkins accomplish?

3 A. Well, we accomplished what -- I mean what walls  
4 or what structures they had gotten up that we had conduit in  
5 and could work on.

6 Q. What structures they had gotten up, you had put  
7 the conduit in---

8 A. ---when Ranco left, I think they had gotten up  
9 to the intermediate level which is actually the beginning of  
10 actually the structure of the parking garage, itself.

11 Q. And after he left, did the job move along?

12 A. It moved along a whole lot better. The other  
13 superintendent they had, he was the type that he tried to get  
14 along with you and work things out where Ranco was just the  
15 type of guy that you did it his way and, personally, I don't  
16 think he knew what he was doing.

17 Q. Well, when the new superintendent came on, did  
18 you work with him and Dewey Anderson in trying to schedule the  
19 work that your company had to do?

20 A. I think Chuck Gregory, I believe, was his name  
21 and yes, we tried to work with him but he wasn't there that  
22 long but, you know, what time he was there.

23 Q. Well, who did you try to coordinate with, Dewey  
24 Anderson or the project superintendent?

25 A. The project superintendent, that's who we were

Mr. Simmons

Cross

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1 told to work with. Of course, Dewey helped us out a lot, too.  
2 Like I say, these guys were---

3 Q. ---well, from August of 1976 until you left  
4 that job, was the work coordinated and were you moving forward  
5 to completing it, the part that Hopkins had to do?  
6

7 A. Well, it was like this, that once Gregory got  
8 on the job and once he got squared away on what was going on  
9 and what had to be changed and straightened out what was done,  
10 then the next thing you knew, he was gone and then we had  
11 another superintendent.

12 Q. All right, when did he come?

13 A. I couldn't tell you. Mr. Collins took over for  
14 awhile and then Dewey Anderson took over for awhile, watching  
15 over the job and then Frank, the other superintendent, took  
16 over.

17 Q. Well, did you coordinate your work with those  
18 people?

19 A. I coordinated with him until he left.

20 Q. You left in March of which year?

21 A. It was '78, I believe.

22 Q. You were the foreman of that job from June,  
23 is that when you became the foreman?

24 A. Yes.

25 Q. From June of '76 until March of '78, is that

1  
2 your testimony?

3 A. '77 or '78, I don't know. I know I left in  
4 March to go overseas; I'm not very good on dates.

5 Q. All right, sir, you talked about setting up  
6 the forms. The forming work was being done by Seiko, wasn't  
7 it?

8 A. No, Seiko had formed the decks and Pebble  
9 Construction formed all the tower walls.

10 Q. Well, when were all the tower walls up?

11 A. The tower walls went up -- one side of the tower  
12 wall went up as each level of the parking garage went up. The  
13 exterior walls were put up later.

14 Q. Well, did you have any trouble with Seiko form-  
15 ing the decks?

16 A. I didn't have any trouble with Seiko forming  
17 the decks because the only thing I could do was wait until the  
18 deck was formed and the steel, the amount of steel was in.  
19 Now, Seiko and Pebble had problems and---

20 Q. ---and that is because Seiko formed the decks  
21 and the architect refused to approve the method or the way they  
22 were built?

23 MR. OSTERHOUDT: (Interrupting)

24 I don't think he's qualified to answer that.

25 MR. MOORE:

Mr. Simmons

Cross

Well, if he knows?

THE COURT:

IF HE KNOWS; HE MAY NOT KNOW.

THE WITNESS:

To be honest with you, I don't know.

MR. MOORE: (Continuing)

Q. Well, you know they had a lot -- Seiko had a lot of trouble in forming those decks?

A. I do know there was some problem with elevations and I do know they weren't coming out right, you know, that they either had to be lowered or raised in order to make the decks---

Q. ---and Seiko was having those problems---

A. ---right up to the end where, like I say, it seemed like everybody got everything together and they knew what was going on and after that, there was no problem but that was near the end of the job.

Q. You say these men were standing around with nothing to do? Did anybody complain to Pebble or to the owner?

A. Well, about all you could do would be like from Ranco on up, Ranco, first of all, was the one that insisted that we have the men there and---

Q. ---well, I understand that.

A. Okay, and then on up to the other superintendents,



Mr. Simmons

Cross

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when you would go down there, they would say we are getting something ready for you.

Q. Did you ever tell anybody connected with Pebble Building Company or Commercial Union Insurance Company that there was a cost overrun on that job for labor?

A. I mean, I just do the work for the other man; I'm not---

Q. ---well, your response is you did not?

A. No, because I don't even know what the contract price or what. The only thing I know is that I was sent down there to do it.

Q. No one from G. W. Hopkins told you to give that message, did they?

A. When I first taken the job over, I knew just what men were already on the job and who was there and I mean, you know, as far as money or what they had figured or what labor they had figured, I didn't know, no, I didn't.

Q. All right, and what is the reason that you were unable to-- or is there any reason that you were unable to complete the work within the time you thought it was going to be completed?

A. Just like I said, when they formed up and poured the concrete and from the time they would pour it until the time they would strip it and just jumping from one end of the

Mr. Simmons

Cross

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building to the other, it just left loose ends and, plus a lot of running from one end of the building to the other just to put something in.

Q. All right, from the time who would pour it until the time who would strip it?

A. From the time Pebble would pour it until the time Pebble would strip it.

Q. Now, how about Seiko pouring and stripping?

A. Well, I mean, they formed the decks and like I said, like I told you, they had problems with the elevations.

Q. All right, sir, I don't have any other questions.

MR. OSTERHOUDT:

No further questions.

(Witness aside)

MR. OSTERHOUDT:

That's our evidence, Your Honor.

THE COURT:

DO YOU HAVE ANY EVIDENCE, MR. MOORE?

MR. MOORE:

Yes, Your Honor.

1  
2 Milton J. Collins, having first been duly sworn  
3 upon his oath, testified as follows:

4 DIRECT EXAMINATION BY MR. MOORE:

5 Q. What is your name?

6 A. Milton J. Collins.

7 Q. What is your address, Mr. Collins?

8 A. Lynchburg, Virginia.

9 Q. What is your business?

10 A. I'm President of Cooperative Construction  
11 Company.

12 Q. In 1975, what was your business, Mr. Collins?

13 A. I was Vice-President of Pebble Building Company.  
14 Well, actually, in 1975, I was Secretary of Pebble Building  
15 Company and was later made Vice-President.

16 Q. Is Pebble Building Company an ongoing company  
17 today?

18 A. No.

19 Q. In 1975, what was the business of Pebble  
20 Building Company?

21 A. We were general contractors, a wholly owned  
22 subsidiary of W. J. Megin of Naugatuck, Connecticut.

23 Q. Were you, Pebble Building Company, the general  
24 contractor for the parking garage in the City of Roanoke?

25 A. Yes, we were.

Mr. Collins

Direct

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Q. Mr. Collins, what connection did you have with the contract?

A. Well, at the time it was estimated, I was, generally, in charge of all the estimating and from the time that it was started, I had only sort of a peripheral contact with it up until about the middle of 1976. I was involved in estimating other jobs that the company was bidding and we had other people that were in charge of the direct field supervision.

Q. All right, sir, in 1976, did you become more involved?

A. Yes.

Q. Did you continue to be involved until the job was completed?

A. In differing capacities, yeah, and in differing amounts, yeah.

Q. Who was the spokesman for Pebble Building Company after say July of 1976 with respect to this job?

A. By "spokesman," do you---

Q. ---who was the man that took care of any problems when they came up on the job from an executive standpoint?

A. Well, John Krantz was the ultimate authority and he kept a pretty close personal interest in it. I got a

Mr. Collins

Direct - Cross

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little more involved in it, in the day-to-day things when Ranco left around the end of August of '76.

Q. All right, sir. Now, Mr. Collins, can you tell me whether or not prior to October, 1977, G. J. Hopkins, Incorporated ever notified your company or Commercial Union that it was having any cost overrun with respect to any phase of its subcontract for construction of the Roanoke Parking Garage?

A. Not to my knowledge.

Q. Well, if they had made any such statement, would you know about it, to your company?

A. All I can say that is in all likelihood, I would because I was, you know, pretty much involved in the day-to-day thing like the correspondence that came in to the company.

MR. MOORE:

All right, you may cross-examine.

CROSS EXAMINATION BY MR. OSTERHOUDT:

Q. Mr. Collins, you did the estimate for Pebble Building Company on the general construction of this job, did you not?

A. No, I was generally in charge of all the estimating. Dewey Anderson did the actual estimating in about the same manner that Larry Starkey did---

Mr. Collins

Cross

Q. ---in about the same manner that Larry Starkey did?

A. Yes, actually the same type of thing that---

Q. ---did you review it?

A. Yeah.

Q. Did Pebble Building Company raise any question about the length of time that was given in the contract to complete the job?

A. I just don't actually remember, I really don't. I remember we did discuss it in the office at the time but whether or not we actually discussed it with the architect, I know we had severe concerns about it when we first saw the four hundred fifty (450) days and we were still somewhat concerned with the five hundred forty (540) days but we tried to figure out how we could do it within that time.

Q. Did you increase your bid any because of the fact that it was going to five hundred forty (540) days instead of a longer period of time?

A. I just don't remember; I rather doubt it.

Q. You don't know whether you decreased it any, either, do you?

A. I know we didn't decrease it and I can say that for a fact but I really don't remember and I would have to look back at the bid form and see what we put on it.

Mr. Collins

Cross

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Q. Okay. Now, I believe Cooperative actually sort of took over the job before Commercial Union, did they not, after June of '77?

A. Well, the actual sequence of events was that in October of 1977, Commercial Union contracted directly with Pebble to finish the job, I believe, and we were assigned the contract from Pebble is how it actually worked.

Q. When you did the estimate, how many man-hours did Pebble Building Company come up with?

A. We normally don't work on a man-hour type of thing like an electrical contractor; we do it mainly based on unit prices based on historical evidence. We use some of the same types of things that they do but most of it is based on experience and the type of job it is.

Q. Well, when you say "unit," you calculate it on the basis of how it is going to take you to do a particular job such as if it is going to take you one (1) minute to carry one (1) bucket of water and if you've got one thousand (1,000) to carry it's going to take you one thousand (1,000) minutes. Don't you do that?

A. Well, not really because when it comes in a general contractor's sense you might figure out some of the units but, basically, if you are talking a yard of concrete, you know that it's taking -- that it has cost you X amount of

Mr. Collins

Cross

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1  
2 dollars to pour concrete in the past so you figure out how  
3 many yards of concrete there are and you put so many dollars  
4 down per yard of concrete. We have not done very much esti-  
5 mating using man-hours. Most of our man-hour estimating has  
6 to do with incidental things and what we call "general  
7 conditions" having to do with things like job cleanup and  
8 things that are not part of the actual physical construction  
9 of the building.

10 Q. Did your bid include the labor cost?

11 A. Yeah, it included labor cost.

12 Q. Do you remember what that was?

13 A. I really wouldn't have the slightest idea now.

14 Q. Do you remember whether or not you came within  
15 that figure?

16 A. Well, I really don't think there is any way  
17 right now to tell because at the time that Commercial Union  
18 took it over, the labor records were changed so that the actual  
19 job costs weren't kept in the same way anymore so I don't be-  
20 lieve that there exists an exact total record of the total  
21 number of labor hours.

22 Q. So nobody from Pebble Building Company or  
23 Cooperative Construction, as far as you know, Commercial Union,  
24 can tell me what it cost them to finish the job or anything  
25 else?



Mr. Collins

Cross

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A. I don't know if Commercial Union knows but I don't.

Q. Now, let me see if I can get this straight. When the job started, Mr. Zic was the superintendent?

A. Right.

Q. And he left and then you worked on the job for awhile?

A. Approximately a month.

Q. All right, and then Mr. Anderson did?

A. No, I went directly to Charles Gregory. Charles Gregory came on the job and we were both on the job for approximately a week while Charlie got acclimated to it.

Q. And he was there for how long?

A. He was there for about some three (3) or four (4) months and---

Q. ---he left---

A. ---he left and went to Saudi Arabia.

Q. All right, and then who was in charge of the job after that?

A. Then we brought up our superintendent from Chapel Hill, Frank Wasbes.

Q. All right, and did he finish the job out?

A. No, he wasn't there to the bitter end. He worked there, to the best of my recollection, until about

Mr. Collins

Cross

December of '77, right around the middle of the winter.

Q. And who finished the job out?

A. Bill Stinson, who had been basically assistant superintendent for all the time that Frank Wasbes was there. He had worked on Chapel Hill with Frank Wasbes and both of them came down from Connecticut and had been with Megin for many, many years.

Q. Okay, and you say the "bitter end." When was the "bitter end?"

A. Well, referring back to Mr. Chappalear, it's a very difficult thing to say exactly when the end comes. The last piece of correspondence, the last bit of work that I recall was a punch list item that Hopkins fulfilled in October of 1978, which was the delivery of some light bulbs, I believe, some spare light bulbs that were required but, basically, it was, I believe, during August of 1978, that you could say that virtually everybody was gone and everything was done. There might have been, you know, a couple of hours here and there for somebody after that but, to my knowledge, nobody spent any time at all on the job after October, 1978.

Q. All right, no further questions.

MR. MOORE:

That's all, Mr. Collins.

(Witness aside)

ASSIGNMENTS OF ERROR

The lower court was in error:

1. In finding that the evidence of damages presented by Appellee was sufficient to support judgment in its favor;  
and