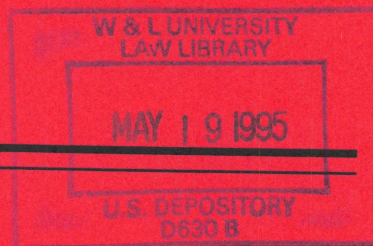
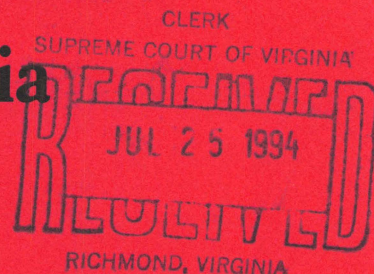


249 Va 244



IN THE
Supreme Court of Virginia
AT RICHMOND



RECORD NOS. 940447 & 940453

GERHARD R. GRESSMAN, et al.,

Appellants,

v.

LOUIS G. THIBAUT, SR., et al.,

Appellees.

JOINT APPENDIX

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DEAL, WELLS &
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VIRGINIA:

IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

GERHARD R. GRESSMAN,

and

GLORIA M. GRESSMAN,

Plaintiffs,

v.

CASE NO. _____

LOUIS G. THIBAUT, SR.
5920 Beville Drive
Southerland, Virginia 23885
(Dinwiddie County)

LOUIS G. THIBAUT, JR.
Route 4, P.O. Box 330
Georgetown, Delaware 19947
Serve: Secretary of Commonwealth

WILLIAM K. THIBAUT
206 Battery Place
Colonial Heights, Virginia 23834
(City of Colonial Heights)

ROSEALMA T. BURTON
16104 Gary Avenue
Chester, Virginia 23831
(Chesterfield County)

CAROL A. THIBAUT
18601 Branders Bridge Road
Colonial Heights, Virginia 23823
(Chesterfield County)

Defendants.

BILL OF COMPLAINT

The plaintiffs, by counsel, state as follows for their bill of complaint:

1. Plaintiffs are the owners of all the issued and outstanding shares of Petersburg-Dinwiddie Aviation, Inc. (PDA), a Virginia Corporation, pursuant to a Stock Purchase Agreement dated

December 5, 1991 between plaintiffs and defendants (Stock Purchase Agreement). Copy is attached as Exhibit 1.

2. PDA is in the business of operating an aircraft school, sales, service, paint and strip, and repair facility at the Petersburg-Dinwiddie Airport located in Dinwiddie County, Virginia (since 1980). This type of business is commonly referred to as a fixed based operation.

3. Defendants are the former owners of the stock of PDA. They sold the stock to plaintiffs pursuant to the Stock Purchase Agreement. Louis G. Thibault, Sr. (Mr. Thibault) owned 46,531 shares or 57 percent of PDA.

4. Mr. Thibault as controlling shareholder and President of PDA, negotiated with plaintiffs on behalf of all the shareholders in bargaining with plaintiffs.

COUNT 1

Intentional Fraudulent Misrepresentations and Concealment

With Respect to Environmental Violations

5. Plaintiffs adopt paragraphs 1 through 4 above as a portion of Count 1.

6. During negotiations between plaintiffs and defendants, and in response to direct inquiry by the plaintiffs, Mr. Thibault verbally represented to plaintiffs that there were no environmental problems associated with the operations of PDA and intentionally diverted plaintiffs from further inquiry.

7. Upon information and belief, defendants operated PDA in violation of several state and federal environmental regulations

with respect to generating and disposing of wastes, including hazardous wastes. In part, PDA, as operated by the defendants, disposed of the hazardous wastes generated by the paint and strip shops through the on-site septic system for approximately several years.

PDA is now in the process of attempting to comply with state and federal statutes. The environmental liability arising out of the defendants' operation of PDA without the proper permits may be enormous.

8. Upon information and belief, prior to negotiations with plaintiffs Mr. Thibault had been given a copy of an environmental report prepared by Environmental Service and Technology Corporation dated January 9, 1991 concerning PDA operations. (Copy attached as Exhibit 2) In part, this report raises grave environmental concerns associated with defendants' disposal of hazardous wastes generated by the paint and strip shops. Mr. Thibault intentionally concealed this report from plaintiffs.

9. Paragraph 4.2 of the Stock Purchase Agreement merely addresses two environmental concerns; however, it fails to mention certain other environmental problems associated with defendants' operation of PDA, such as those associated with the paint and strip shops. (See page 7 of Stock Purchase Agreement.)

10. Mr. Thibault knew about the environmental problems.

11. Mr. Thibault intentionally and fraudulently misled plaintiffs with respect to environmental problems associated with defendants' operation of PDA.

12. Plaintiffs believed and relied upon Mr. Thibault's misrepresentations with respect to whether or not there were any environmental problems.

13. The defendants' assurances that there were no environmental problems (other than the two listed in the agreement) were material to plaintiffs' purchase of PDA stock. State and federal statutes hold PDA financially responsible for the cleanup. It is believed that the cost to clean up the contaminated area could run into the hundreds of thousands of dollars. This will be financially devastating to PDA.

WHEREFORE, plaintiffs pray that the Stock Purchase Agreement, along with all accompanying documentation including the \$400,000 promissory note and collateral, be rescinded and declared void ab initio; that the \$275,000 down payment to defendants be returned to plaintiffs; that plaintiffs receive full indemnification from defendants, jointly and severally, with respect to costs associated with environmental cleanup if plaintiffs are held personally liable; and that plaintiffs be awarded such other and further relief as the court deems proper.

COUNT II

Intentional Fraudulent Misrepresentations and Concealment

With Respect PDA Financial Condition

14. Plaintiffs adopt paragraphs 1 through 13 above as a portion of Count II.

15. Incorporated as a part of the Stock Purchase Agreement is a Closing Financial Statement dated November 30, 1991 (November 1991 Financial Statement) in addition to several other financial statements. A copy is attached as Exhibit 3.

16. According to the November 1991 Financial Statement, the value of inventory parts was \$124,332.80. Upon information and belief, this total was overstated by \$64,000.

17. According to the November 1991 Financial Statement, accounts payable totalled \$121,429.27. This amount was understated by \$16,000 (to date).

18. In addition, liabilities did not include a dollar amount associated with the environmental liability already discussed. It is believed that the cost to clean up the environmental problems could run into the hundreds of thousands of dollars. This was a material concealment of a significant liability.

19. Upon information and belief, PDA (as operated by the defendants and certain officers, shareholders and their families) willfully and intentionally engaged in the practice of concealing income and benefits subject to taxation under the Internal Revenue Code. Defendants caused PDA to file inaccurate tax reports and returns with respect to those payments and benefits which could subject it to liability to the Internal Revenue Service. This was material concealment of a potential liability.

20. The complaints received by plaintiffs from current and former customers indicate that PDA was operated by the defendants with a complete disregard for the safety of aircraft owners and passengers. By way of evidence, an Astec N100VT crash landed in Colorado on or about May 15, 1991. The aircraft's logbook indicates that an annual inspection was performed on May 1, 1990 by Mr. Thibault; however, the work order indicates that the aircraft was merely washed. It is believed that the cause for the crash would have been detected if an inspection had been performed.

21. Upon information and belief, PDA faces potential exposure for the mishap mentioned in paragraph 18 as well as other potential tort and contract claims that may exist due to the defendants' conscious disregard for the safety of others as evidenced by other occurrences.

22. In order to maintain good business relations, as well as out of a concern for the safety of aircraft owners and passengers, PDA has been making customers whole and correcting inferior work performed by previous owners of PDA. This mode of operation will cause considerable liability to PDA and was concealed from plaintiffs.

23. Defendants fraudulently and intentionally mislead plaintiffs with respect to PDA's financial condition.

24. Plaintiffs believed and relied upon defendants' fraudulent and material misrepresentations with respect to PDA's financial condition.

WHEREFORE, plaintiffs pray that the Stock Purchase Agreement, along with all accompanying documentation including the \$400,000 promissory note and collateral, be rescinded and declared void ab initio; that the \$275,000 down payment to defendants be returned to plaintiffs; that plaintiffs receive full indemnification from defendants, jointly and severally, with respect to costs associated with environmental clean-up if plaintiffs are held personally liable; and that plaintiffs be awarded such other and further relief as the court deems proper.

COUNT III

Intentional Torts

25. Plaintiffs adopt paragraphs 1 through 24 above as a portion of Count III.

26. The defendants' tortious conduct with respect to the intentional fraud as set forth in Counts 1 and II entitles plaintiffs to compensatory damages. To date, plaintiffs have paid \$285,572.06 to defendants (includes \$275,000 down payment), injected another \$50,000 (to date) into PDA to keep it operating, and accumulated thousands of dollars in attorney's fees. In addition, PDA will be forced to take steps to comply with state and federal environmental statutes.

27. Plaintiffs are entitled to lost profits on the \$285,572.06 paid to defendants and \$50,000 injected into PDA to keep it operating, as well as additional sums plaintiffs might be forced to expend to keep PDA going. At a minimum, plaintiffs could

have invested this money in an interest-bearing savings account and realized a return.

As a part of the Stock Purchase Agreement, plaintiffs executed a \$400,000 promissory note in favor of defendants. The note was secured, in part, by an account at Shearson Lehman Brothers, which was liquidated and a check in the amount of \$221,679.03 was issued made payable to plaintiffs and Mr. Thibault. Plaintiffs are entitled to lost profits for the period that these funds were unavailable for earnings, in the amounts it was earning prior to liquidation.

28. Subsequent to execution of the Stock Purchase Agreement, Mr. Thibault fraudulently and intentionally misrepresented that a check in the amount of \$22,500 belonged to him personally. It is believed that the check was an asset of PDA and was tortiously converted.

29. The conduct of defendants as set forth in Counts I and II, as well as paragraph 28 above, was so willful, wanton, and reckless that it evinces a malicious disregard for the rights of plaintiffs and; therefore, plaintiffs are entitled to punitive damages.

30. Plaintiffs reserve the right to amend this bill of complaint including, but not limited to, adding third party defendants as additional evidence of fraud and misconduct is discovered.

WHEREFORE, plaintiffs request that the court award compensatory damages in the amount of \$335,572.06 plus attorney's

fees and all costs associated with bringing this action, plus all other amounts injected into PDA by plaintiffs until this matter is resolved, plus lost profits; and that plaintiffs be awarded punitive damages against the defendants, jointly and severally, in the amount of \$700,000.

GERHARD R. GRESSMAN
GLORIA M. GRESSMAN

By: Ronda Wells
Of Counsel

John F. Deal, Esquire
Ronda J. Cobler Wells, Esquire
John F. Deal & Associates
4510 South Laburnum Avenue
Richmond, Virginia 23231-2422
(804) 222-1250

Filed in the Clerk's Office the 14 day of May, 1992
Writ Tax \$ 5.00 Tester: Clare L. [Signature]
64 3.50 [Signature], Clerk
Deposit 42.10
Total Paid 49.60 B. B.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF DINWIDDIE

GERHARD R. GRESSMAN,
GLORIA M. GRESSMAN,

Plaintiffs,

v.

CASE # 92-49

LOUIS G. THIBAUT, SR., et al

Defendants.

MOTION FOR LEAVE TO FILE AN AMENDED BILL OF COMPLAINT

Plaintiffs by counsel, state as follows for their motion for leave to amend their bill of complaint:

1. On May 11, 1992 plaintiffs filed a bill of complaint against the defendants alleging fraud against the defendants with respect to the sale of stock to the plaintiffs.

2. Plaintiffs have requested rescision of the Stock Purchase Agreement executed by the plaintiffs and defendants on December 5, 1991 due to the fraudulent concealments and misrepresentations made by the defendants.

3. Defendants have informed plaintiffs that they intend to file a contract action against plaintiffs in the event that plaintiffs do not receive complete rescision of the Stock Purchase Agreement at February 1993 trial.

4. As well, plaintiffs will have a breach of contract action against the defendants.

5. Both contract actions would involve the same operative facts, witnesses, and preparatory work as the existing fraud action.

10

FILED

Date: 1-13-93

Am. L. W. ...
Clerk

6. In the interests of judicial economy and reducing litigation costs to the plaintiffs and defendants, all of these matters should therefore be brought before this court during the trial that is scheduled for February 10, 1993.

WHEREFORE, plaintiffs request leave to amend their original bill of complaint by adding an action for breach of contract against the defendants.

Gerhard R. Gressman
Gloria M. Gressman

By: Ronda J. Cobler Wells
Of Counsel

John F. Deal, Esquire
Ronda J. Cobler Wells, Esquire
John F. Deal and Associates
4510 South Laburnum Ave.
Richmond, Va. 23231
(804) 222-1250

CERTIFICATE

This is to certify that the original of the foregoing Motion for Leave to File an Amended Bill of Complaint and a true and exact copy was likewise mailed to Robert B. Hill, Esquire, Hill & Rainey, Suite 517, Virginia First Building, Petersburg, Virginia 23803 this 11th day of January, 1993.

Ronda J. Cobler Wells
Ronda J. Cobler Wells

VIRGINIA:

IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

GERHARD R. GRESSMAN
GLORIA M. GRESSMAN,

Plaintiffs,

v.

CASE NO. 92-49

LOUIS G. THIBAUT, SR., et al

Defendants.

AMENDED BILL OF COMPLAINT

Plaintiffs, by counsel, state as follows for their amended bill of complaint:

1. Plaintiffs adopt their entire original bill of complaint filed on May 11, 1992, as a part of this amended bill of complaint. Plaintiffs' original bill of complaint is attached as exhibit 1.

COUNT IV

BREACH OF CONTRACT

2. Section 2.4 of the Stock Purchase Agreement (Agreement) states that certain financial statements provided before and at closing would be accurate and that they fairly represented the condition of the company--Petersburg-Dinwiddie Aviation, Inc. (PDA). A November 30, 1991 financial statement was submitted to plaintiffs at closing. (Stock Purchase Agreement dated December 5, 1991 is exhibit 1 to the original bill of complaint, and November 30, 1991 Financial Statement is exhibit 3 to the complaint.)

3. The November 1991 Statement was not accurate and did not fairly represent the financial condition of PDA. Assets were

overstated and liabilities were understated and substantial liabilities undisclosed.

4. Section 2.4 (ii) of the Agreement states that the dollar figure for fuel inventory plus accounts receivable (army) would either be equal to or exceed the balance owed to Eastern Aviation. Fuel inventory plus accounts receivable did not equal or exceed the payable to Eastern Aviation.

5. Section 2.5 of the Agreement states that there were no undisclosed liabilities except for those disclosed in the Agreement.

6. There were undisclosed liabilities which were not set forth in the Agreement, such as the liability to cleanup the environment due to hazardous wastes that PDA had dumped for many years, in addition to others.

7. Section 2.6 of the Agreement states that PDA had filed all tax forms and paid all taxes. At that time, PDA had not paid all taxes due.

8. Section 2.11 of the Agreement states that there are no actual, pending or threatened lawsuits against PDA. Upon information there were actual, pending, and/or threatened suits against PDA.

9. Section 2.13 states that there were no misrepresentations of material facts nor were there any omissions concerning material facts and that all material facts necessary to provide plaintiffs with accurate information concerning PDA had been disclosed.

10. Defendants failed to disclose the environmental liability incurred as a result of defendants' operation of PDA which is believed to be in the hundreds of thousands of dollars. This was certainly a material fact that should have been disclosed.

11. Section 5.1 Buyer's Conditions of Closing states that plaintiffs' (purchasers) obligation to purchase PDA was subject to warranties and representations being true and correct as of the closing date.

12. Certain representations made by the defendants in Agreement were not true and correct; therefore, plaintiffs are not required to purchase PDA.

13. Additionally, as a result of the breaches of contract, plaintiffs have been damaged in an amount which is believed will exceed \$600,000 including attorney's fees and costs. Additional costs are expected due to the seriousness of the environmental problems caused by the defendants.

WHEREFORE, Petitioners request that plaintiffs be awarded judgment against defendants, jointly and severally, in an amount currently undetermined, but is believed will be in excess of \$600,000 and full indemnification for environmental liability incurred during defendants' ownership of PDA; and that as a result of the gross breaches of contract that the Stock Purchase Agreement be rescinded and declared void ab initio in addition to all other

closing documents; and such other relief as this court shall deem to be fair and equitable.

GERHARD R. GRESSMAN
GLORIA M. GRESSMAN

By: Ronda Wells
Of Counsel

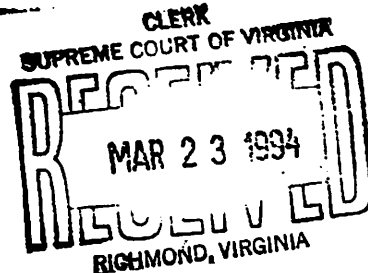
John F. Deal, Esquire
Ronda J. Cobler Wells, Esquire
John F. Deal & Associates
4510 South Laburnum Avenue
Richmond, Virginia 23231-2422
(804) 222-1250

CERTIFICATE

I certify that a copy of this document was hand-delivered to Robert Hill, Esquire, Hill & Rainey, Suite 517, Virginia First Building, Petersburg, Virginia 23803, this 11th day of January, 1993.

Ronda Wells
Ronda J. Cobler Wells

940447



568

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE COUNTY OF DINWIDDIE

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9 GERHARD R. GRESSMAN
10 GLORIA M. GRESSMAN

11 vs.

12 LOUIS G. THIBAUT, SR.,
13 LOUIS G. THIBAUT, JR.,
14 WILLIAM K. THIBAUT,
ROSEALMA T. BURTON,
CAROL A. THIBAUT

CASE NO.
92-49

15 DAY III

16
17 Complete transcript of testimony and other
18 incidents in the above, when heard on February 10, 1993,
19 before the Honorable Thomas V. Warren, Judge.

20
21
22
23 CRANE-SNEAD & ASSOCIATES, INC.
24 4914 Fitzhugh Avenue
Richmond, Virginia 23230
25 Tel. No. (804) 355-4335

FILED

Date: 4-22-93
Annie L. Williams
Clerk

ORIGINAL

12

1 your objection until after he has testified.

2 MR. HILL: Yes, Your Honor.

3 THE COURT: And the testimony is in.

4 Go ahead, Mrs. Wells. I simply don't
5 have enough information to rule on your
6 objection at this point. Go ahead, Mrs. Wells.

7

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13 WILLIAM R. DACEY, JR., a witness called by the
14 plaintiffs, first being duly sworn, testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MS. WELLS:

18 Q Would you state your name for the
19 record and tell us where you live?

20 A I'm William R. Dacey, Jr. I live in
21 Richmond, Virginia.

22 Q Could you tell us where you're
23 employed?

24 A I'm a special agent accountant for
25 the Virginia State Police, Bureau of Criminal

1 Investigations. I own a professional corporation
2 through which I provide consulting services, forensic
3 accounting, and expert witnesses in the services to
4 attorneys.

5 Q Have you ever testified as an expert
6 witness before?

7 A Yes, I have.

8 Q Generally, tell us--

9 A In Virginia, Circuit Courts and in
10 the Federal District Courts.

11 Q Okay. Could you tell us about your
12 professional experience as a CPA?

13 A I spent four years as an FBI agent
14 accountant, special agent accountant with the FBI, and
15 as a relief supervisor. There, I supervised the agents
16 in all criminal areas that the FBI enforces. I worked
17 primarily in white collar crime investigations with the
18 FBI. I have practiced as a CPA with Coopers & Lybrand,
19 in Richmond, Virginia. There, I was senior staff
20 accountant, and I planned, conducted and supervised
21 audits.

22 Q Could you tell us a little bit about
23 your education?

24 A I have a bachelor of arts from
25 Hampden-Sydney College; I have a Masters in public

1 administration of finance from Virginia Commonwealth
2 University. And I've attended numerous schools
3 conducted by the FBI, IRS and DEA in white collar crime
4 and drug transactions, et cetera.

5 Q Do you have any professional
6 associations?

7 A I'm a certified fraud examiner and
8 licensed certified public accountant in the State of
9 Virginia.

10 Q Any professional association
11 memberships?

12 A I'm a member of the American
13 Institute of Certified Public Accountants, the Virginia
14 Society of CPA's, the National Association of Certified
15 Fraud Examiners, and the Society of Former Agents of the
16 FBI.

17 MS. WELLS: I would ask that the
18 Court recognize this witness as an expert
19 witness.

20 MR. HILL: No objection.

21 THE COURT: Expert in the field of
22 accounting. Go ahead.

23 Q Mr. Dacey, did you have the
24 opportunity to review any financial statements for PDA?

25 A Yes, I did. I reviewed an unaudited

1 balance sheet for PDA, certain accounts, not the entire
2 balance sheet, but certain accounts of an unaudited
3 balance sheet for PDA dated November 30, 1991.

4 Q What did you do-- What did you do
5 with respect to your review of that financial statement?

6 A I conducted testing that I thought
7 necessary to assure myself of the values of specific
8 accounts of November 30, 1991.

9 Q I'd like to show you a document dated
10 February 9, 1993 to Ronda Wells from William Dacey. I'd
11 like to show you this.

12 Do you recognize that document? Is
13 that the report that you prepared?

14 A Yes. That's my report, and it's
15 complete.

16 MS. WELLS: May I approach the Bench,
17 Your Honor?

18 THE COURT: Yes, ma'am.

19 MS. WELLS: You don't have a copy of
20 this.

21 MR. HILL: No objection, Your Honor,
22 other than my previous objection.

23 MS. WELLS: Will you have this marked
24 as Plaintiff's Exhibit No. 44.

25 THE COURT: I understand.

1
2 NOTE: The above-referred-to report
3 dated February 9, 1993 was marked and filed as
4 Plaintiff's Exhibit No. 44.
5

6 Q In preparing your work, did you find
7 any incongruities in what you were doing? And if you
8 did, how did you resolve those discrepancies?

9 A I found several incongruities,
10 problems. Most appropriately in the pricing of the
11 inventory. In every case where there was a question, I
12 resolved it in the most conservative manner, in favor of
13 the defendant.

14 For example, if there were a higher
15 price and a lower price, and I didn't know exactly which
16 one to apply to the inventory in question, I applied the
17 higher price, which increased the value of the
18 inventory.

19 If there were questions of liability,
20 I applied decrease in value to the liability.

21 THE COURT: Mr. Dacey, just in a nut
22 shell, what were you called upon to do?

23 THE WITNESS: I was called upon to
24 review certain accounts. There were questions
25 that were raised by Mr. Gressman regarding

1 certain accounts of the balance sheet. I
2 reconstructed those accounts to the November
3 30th value.

4 THE COURT: So everything that you
5 were doing is as of November 30, 1991?

6 THE WITNESS: Yes, sir. I did the
7 work in '92 and the beginning of '93 and then
8 rolled it back to 1991, November 30th.

9 THE COURT: The effective date that
10 you're looking for in everything is as of
11 November, '91.

12 THE WITNESS: November 30, '91, yes,
13 sir.

14 THE COURT: Okay.

15 MS. WELLS: Your Honor, if you will,
16 there's a copy of the November 30, 1991 balance
17 sheet attached to the report that you received.
18 And there's also an unaudited balance sheet
19 that Mr. Dacey prepared in conjunction with his
20 report.

21 THE COURT: All right.

22

23

24

25

1 BY MS. WELLS: (Continuing)

2 Q If you could briefly go through each
3 section or each balance that you reviewed and tell us
4 what your findings are. Would you do that, please?

5 A Yes. The first, Your Honor, if you
6 will refer to the very last page of the copy of my
7 report, you'll see a balance sheet that I restated and a
8 column marked Changes. Those are the, those are the
9 accounts that I'll address this afternoon.

10 The first account was Accounts
11 Receivable Charge Cards. Do you see that, sir? The
12 Change column?

13 THE COURT: I see the Change column.

14 THE WITNESS: Those are the accounts
15 that I will testify. The first one was
16 Accounts Receivable Charge Cards.

17 A I spoke with Gary Thompson. And he
18 provided me his work papers that he used to adjust the
19 November 30, 1991 balance sheet. This work paper that
20 he showed me--

21 Q I'm sorry, Bill.

22 THE COURT: Who talked to you?

23 THE WITNESS: Gary Thompson, the
24 attorney for PDA.

25 Q Who is Gary Thompson?

1 A I'm sorry. Gary Thompson was the CPA
2 for PDA in November. He had done their accounting work.
3 He provided me with his work papers for the November
4 30th period in 1991.

5 On one of the work papers regarding
6 Accounts Receivable Charge Cards was the notation,
7 quote,

8 Balance should be \$3,179.56 per Mrs.
9 T.

10 I reduced that account balance to
11 \$3,179.56, the number that appears on the restated
12 balance sheet.

13 Q Do you want to go to Accounts
14 Receivable?

15 A Accounts Receivable, I analyzed the
16 PDA Customer Summary from their computer at 11-30-91.
17 And I compared the summary to the House and Flight
18 Account, subsidiary ledger cards.

19 This review of cards revealed that
20 the computer accounting records had not been updated
21 since approximately the 13th of November, 1991.

22 Under the Customer Summary showed
23 receivable from the Airport Authority for 12,700-- I'm
24 sorry. \$12,576.35. This receivable was also included
25 in the Accounts Receivable Airport Authority.

1 Mr. Thompson, again, the accountant
2 for PDA, advised that prior to November 30, '91, he was
3 made aware of this double-booked asset by an employee of
4 PDA. Therefore, I adjusted the balance of Accounts
5 Receivable by \$15,322.91, which includes the \$12,000.00
6 from, due from the Airport Authority and other accounts
7 that should have been updated between November 13th,
8 approximately, and November 30th.

9 Q Would you move to Accounts Receivable
10 Army?

11 A Yes. Accounts Receivable Army is a
12 receivable for fuel sold to the military on a military
13 contract. The records of this account were kept in a
14 quote, blue notebook. That blue notebook had all of the
15 transactions regarding the Army fuel contract listed.

16 A review of that notebook showed that
17 throughout the history of PDA's contract fuel
18 transactions, numerous mathematical errors had occurred.
19 I found that there were only three outstanding invoices
20 unpaid at November 30, 1991. These invoices total
21 \$31,046.20.

22 There was also evidence that prior to
23 November 30, '91, PDA had been advised by the Defense
24 Logistics Agency that they had been, they had
25 overcharged the Government on several other contracts,

1 undercharged on a few, the net of that was a reduction
2 of the Accounts Receivable by another \$2,450.29. And
3 that, and those overcharges and undercharges occurred
4 between October, '88 and September of '90.

5 I reduced the total value of that
6 account by \$8,297.91.

7 Q Would you go to Unbilled Work In
8 Progress?

9 A Unbilled Work In Progress is work on
10 aircraft that has not yet been billed. So it's billed,
11 so it's an asset that has not been mailed, the work is
12 not completed, it hadn't been mailed out to the people
13 who, who are going to pay the bills.

14 In this account, I noted that there
15 was warranty work for an aircraft belonging to Rob
16 Elliott. Warranty work is not an unbilled receivable.
17 It is an expense and should be, be placed on the income
18 statement.

19 Further, I noted that there was
20 billings, including work orders included in the Unbilled
21 Work In Progress for PDA owned aircraft. Maintenance on
22 PDA aircraft should be either expensed or capitalized
23 into the value of the aircraft, but it should not be
24 included as an asset to the corporation, Unbilled Work
25 In Process. And because of those two items, I reduced

1 the value of that account by \$2,673.00.

2 Q Would you move to Inventory Parts?

3 A The physical inventory of the
4 aircraft parts was apparently conducted sometime around
5 January, 1990 when the parts inventory system was placed
6 into the computer.

7 I reviewed a printout of that 1990
8 computer work--I believe it was 1990. And the parts
9 were included in the inventory, but there was no price
10 associated with the individual parts. The sole control
11 that I could find for the valuation of the inventory was
12 a monthly PDA work orders report. And at the bottom of
13 that report, it showed the prior months ending
14 inventory, followed by the addition of parts purchased
15 during that month and subtracted out parts sold during
16 that month and gave you an ending inventory value.

17 I could find no evidence of the
18 inventory ever having the value adjusted to the lower of
19 cost of market or justification of the pricing inventory
20 in that work order report.

21 Mr. Gressman began a physical
22 inventory at the end of March, 1992. He priced the
23 inventory at cost where cost could be determined by
24 looking it up in a variety of different catalogs,
25 microfiche, where he would normally order the parts.

1 I applied appropriate tests to this
2 accounting and pricing, and I believe that the inventory
3 is very conservatively priced.

4 MR. HILL: Judge, I would object. He
5 has no expertise in valuing inventory of
6 aircraft parts.

7 Q Mr. Dacey, do you have any experience
8 in the aircraft industry at all?

9 A I--

10 THE COURT: I think he has expertise
11 to do what he's doing, Mr. Hill. I would
12 overrule your objection.

13 A Do you want me to answer that
14 question?

15 MS. WELLS: Do you want him to answer
16 the question whether or not he has expertise in
17 the aircraft industry?

18 THE COURT: If you want to ask him
19 that.

20 A I've been a military officer and
21 pilot for over 20 years. One of my duties in the Marine
22 Corps was as Helicopter Pilot, I was maintenance
23 officer. I was an aviation safety officer. I have
24 knowledge of-- I have an aircraft part suitability
25 documentation. I'm a commercial FAA pilot, rated for

1 single and multi-engine airplanes, helicopters;
2 instruments and both. And I have a 65 1/2,
3 approximately 22 flight hours. I'm somewhat familiar
4 with aircraft parts inventory and maintenance
5 procedures.

6 Q Mr. Dacey, did you have anything else
7 to tell us with respect to what you found out about
8 inventory parts?

9 A I accept the value that I came up
10 with, including the work of Mr. Gressman and employees
11 there who did the actual pricing. I did the testing of
12 their inventory pricing. I accept the value of
13 \$104,980.18. However, I believe the true value, if this
14 were a going concern, and audits were being conducted,
15 in accordance with generally accepted auditing standards
16 would be significantly less than \$104,980.18. Because
17 when I inspected the inventory, I saw numerous obsolete,
18 untagged parts, parts that have virtually no value.

19 In January, 1993, a representative of
20 Atlanta Air Salvage, Incorporated, offered Mr. Gressman
21 \$26,000.00 for the parts inventory. Obviously, this
22 inventory price is the lowest for liquidation value, not
23 the value of a going concern entity.

24 I believe what the true accounting
25 value, if this were an ongoing corporation, at November

1 30, 1991, would have been somewhere between 26,000 and
2 104,980. It's hard to estimate that, but I accept the
3 highest value that we came up with of \$104,000.00. So I
4 reduced the inventory by \$19,352.62.

5 Q Could you move on to Property and
6 Equipment?

7 A The Property and Equipment
8 inventories presented to Mr. Gressman at closing
9 included two paint mixing machines, a fuel anti-icing
10 additive mixing device, a refrigerator and Grey Robin
11 furniture that, according to Mr. Gressman, did not
12 belong to PDA. Therefore, I researched the value of the
13 inventory accounting of the PDA and reduced that account
14 value to \$68,635.67.

15 Q And Accounts Payable?

16 A I reviewed the PDA account vendor,
17 vendor summary at 11-30-91 and compared this, again, to
18 the Flight and House Accounts Subsidiary ledger card. I
19 identified all ledger cards with credit balances. I
20 found that there was no provision for the liability of
21 unpaid flight time.

22 PDA would sell flight time in advance
23 to student pilots, individuals who are interested in
24 flying will apparently get a lower rate if they bought a
25 block of flight time. PDA counted that sale of flight

1 time as income, when it should have been counted as
2 income in the period which the flight time was flown.
3 So it was actually a liability. All of that outstanding
4 of November 30th should have been included in the
5 liability.

6 Further, we viewed checks and
7 invoices paid in December, '91, and January, 1992. And
8 determined that, like Accounts Receivable, the Accounts
9 Payable had not been brought up to date in the computer
10 system.

11 During my review of invoices, one
12 invoice came to my attention that was fairly
13 significant, a bill from Williams, Mullen, Christian &
14 Dobbins for work performed in January and April of 1991.
15 And this bill was for \$10,875.12. That bill, including,
16 plus the flight time and unrecorded payables increased
17 the value, increased the liability to \$43,343.96.

18 Q Sales Tax Payable.

19 A PDA failed to properly accrue sales
20 and use taxes on the non-military sale of jet aviation
21 fuel and on PDA owned and operated aircraft. This, I
22 increased this liability to \$1,983.37.

23 Q Local taxes.

24 A In January, 1992, PDA Check No. 6190,
25 dated 1-28-91, payable to William E. Jones, Treasurer

1 for \$811.91, cleared the account of PDA. This check was
2 for Dinwiddie County business taxes for the year 1991.
3 Research showed that this check appeared on the, as a
4 reconciled item on the February bank reconciliation.
5 After February, the check disappeared in one of the many
6 adjustments to the cash balance, was added back in.
7 Therefore, the check didn't clear. It was written in
8 January, '91, didn't clear until January, '92. The
9 company still had \$811.91 outstanding balance owed to
10 Dinwiddie County. So it's appropriately a liability,
11 still.

12 Q Mr. Dacey, what was the total effect
13 of these changes on the equity in the company as of
14 November 30, 1991?

15 A If you look at the bottom of the
16 financial statements, it says, Total Equity. The effect
17 of these reduced equity by \$76,569.00 to \$71,631.26.
18 And depending on the value of the inventory, the equity
19 could have been less. We discussed the inventory of
20 this problem.

21 Q Mr. Dacey, do you know what a
22 contingent liability is?

23 A Yes.

24 Q Could you tell us what that is?

25 A A contingent liability is either the

1 degradation of the value of an asset, or the occurrence
2 of a liability at some future date, depending on certain
3 circumstances, such as if you have a pending lawsuit.
4 At a future date, that may become an amount that you
5 have to pay.

6 Q Are warranties on airplanes for
7 airplane work, would that be considered a contingent
8 liability?

9 A A warranty is a liability when it's
10 made as to amount of all warranties are going to be
11 brought back. And you're going to be required to expend
12 money to pay for it. But it depends on the nature of
13 the warranty.

14 Q What about just a customer complaint?
15 Would that be a contingent liability?

16 A Depending on what they're complaining
17 about.

18 Q Should contingent liabilities be
19 included on a balance sheet?

20 MR. HILL: Judge, I would ask for
21 more information. There's all kinds of balance
22 sheets. There's audited, there's non-audited
23 according to general accounting principles.

24 THE COURT: I feel like this witness
25 can answer. If the question is off the wall or

1 doesn't make accounting sense, he won't be able
2 to answer it.

3 A If there are--

4 THE COURT: Can you answer the
5 question?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay.

8 A If they're audited financial
9 statements, and the contingent liability rises to the
10 level that it will probably occur, and it is reasonably
11 able to be estimated, it should be included and accrued
12 on the books and the balance sheet. If it doesn't rise
13 to those two levels, but is reasonably possible, it
14 should be disclosed in the footnotes of an audited
15 balance sheet, audited set of financial statements.

16 Q Would warranties be included on
17 balance sheets, or should they?

18 A Again, on an audited balance sheet,
19 if they're able to be estimated, and there is reasonable
20 probability that they will occur, if, at the time of the
21 balance sheet date, there should be accrued, have the
22 same test as a contingent liability in an audited
23 balance sheet, financial sales.

24 Q Did you have the opportunity to
25 review any of the tax returns or the financial

1 statements for PDA prior to November 30, 1991?,

2 A I reviewed some of the computer
3 generated-income statements and balance sheets. I did
4 not look at the tax returns.

5 Q Didn't look at the tax returns. Do
6 you remember whether or not the Company was showing a
7 loss at any of those times?

8 A They were showing a loss at, from
9 June of 1990 through July 1st of '91. They showed a
10 loss. I have that if you want it.

11 Q Would you give us that amount,
12 please?

13 A From July 1st 1990 through June 30,
14 1991, PDA's computer-generated income statement shows a
15 \$51,731.44 loss. From--

16 THE COURT: What were those dates
17 again, Mr. Dacey?

18 THE WITNESS: From July 1, 1990
19 through June 30, 1991. That's their fiscal
20 year.

21 THE COURT: Okay.

22 THE WITNESS: Is that enough? Would
23 you like to have the amount?

24 THE COURT: No. That's good. Thank
25 you?

1 A From July 1, 1991 through November
2 30, 1991, their computer-generated income statement
3 shows a 7,000-- I'm sorry. \$4,795.10 loss. However,
4 that one double accounting of the \$12,000.00 due from
5 the Airport Authority went straight into income. So
6 this number, this loss of 4,000 should be increased,
7 increased by that 12,500 amount. So this loss, just
8 with that one adjustment alone, the loss would have been
9 over \$17,000.00.

10 Q Have you had the opportunity to, to,
11 to calculate your total, what the total loss should have
12 been?

13 A Well, the way a balance sheet works,
14 the total loss is the adjustment to earnings. At the
15 bottom of my restated balance sheet, the total loss,
16 which includes things that occurred prior to July 1,
17 1991, includes things all the way back into January.
18 But the total loss would have been \$76,569.00 would have
19 been that change in the earnings section down at the
20 lower right-hand corner, which is the accumulated effect
21 of all the adjustments.

22 Q Mr. Dacey, I'd like to give you a
23 hypothetical. Would you participate in a transaction at
24 all, as a CPA or just as a bookkeeper, if you knew that
25 sellers were not disclosing all the liabilities,

1 contingent or otherwise to the buyers?

2 MR. HILL: Objection, Your Honor.

3 How is it relevant what he would do?

4 THE COURT: Are you talking about--

5 What are you getting at?

6 MS. WELLS: I was just stating a

7 hypothetical. I'll withdraw it.

8 THE COURT: All right.

9 MS. WELLS: That's all I have.

10 THE COURT: Cross-examine, Mr. Hill.

11 MR. HILL: Yes, Your Honor.

12

13

14

15 CROSS-EXAMINATION

16 BY MR. HILL:

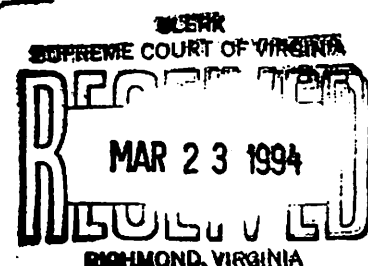
17 Q Mr. Dacey, how are you? I haven't
18 had a chance to meet you.

19 You had indicated that the cover
20 letters that's been introduced with the exhibit
21 indicated that you started to work with Mr. Gressman on
22 or about April 28th, and you submitted your report just
23 a couple days ago.

24 A (Nodding head indicating yes.)

25 Q And your letter also makes it clear,

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF DINWIDDIE

GERHARD R. GRESSMAN
GLORIA M. GRESSMAN

vs.

LOUIS G. THIBAUT, SR.,
LOUIS G. THIBAUT, JR.,
WILLIAM K. THIBAUT,
ROSEALMA T. BURTON,
CAROL A. THIBAUT

CASE NO.
92-49

DAY IV

Complete transcript of testimony and other
incidents in the above, when heard on February 15, 1993,
before the Honorable Thomas V. Warren, Judge.

CRANE-SNEAD & ASSOCIATES, INC.
4914 Fitzhugh Avenue
Richmond, Virginia 23230
Tel. No. (804) 355-4335

FILED

Date: 4-22-93
Anne L. Williams
Clerk

ORIGINAL

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ROBERT LESLIE FREED, a witness called by the
defendants, first being duly sworn, testified as
follows:

DIRECT EXAMINATION

BY MR. HILL:

Q Good afternoon Mr. Freed. Please
state your full name.

A Robert Leslie Freed.

Q And what do you do for a living, Mr.
Freed?

A I'm an attorney at law.

Q In that capacity, did you come to
know the parties, Mr. Gressman and Mr. Lou Thibault?

A Yes.

Q Can you describe for the Court, very
briefly, when you met them, who you met, et cetera?

A Yeah. I, on November 14, 1991, I got
a call from a Rob Elliott, who is an attorney in
Petersburg. He asked me to become involved in a sale of
a business for a Mr. Thibault and his family.

Q Did you subsequently receive a phone
call from Mr. Thibault?

A Yes, I did.

Q Did you have a telephone conference

1 with him and members of his family?

2 A I know that Mr. Thibault was on the
3 line. I don't know who else was present, but Mr.
4 Thibault was definitely the person I talked to.

5 Q Based on that oral telephone
6 conversation, were preliminary documents drafted?

7 A Yes. On-- As a result of that
8 telephone conference, and other information that Mr.
9 Elliott sent me the next day, I drafted the initial set
10 of documents, sent those out to Mr. Thibault by Federal
11 Express on November 18th.

12 Q Did you subsequently have a meeting
13 and meet Mr. Thibault in person?

14 A Yes, I did.

15 Q What was the approximate date of that
16 meeting?

17 A November 21st, I think.

18 Q Who was present at that meeting, to
19 the best of your recollection?

20 A We met first in Mr. Elliott's office.
21 Mr. Thibault was there, Lou Thibault, his son, Kirk was
22 there, and his daughter, Carol, who I think subsequently
23 married, her name was Carol Thibault then.

24 MR. HILL: Your Honor, may I approach
25 the witness?

1 THE COURT: Yes.

2 Q This has already been introduced into
3 evidence. Is this the Stock Purchase Agreement in its
4 final form, to the best of your knowledge and belief?

5 A It appears to be.

6 Q I'd like to direct your attention to
7 Paragraph 2.13. I'd like to give His Honor time to get
8 that in front of him.

9 A This is the final draft.

10 MR. DEAL: Again, Your Honor--

11 Q Briefly, it's not very long. Could
12 you read that for the record?

13 THE COURT: Wait just a minute. I
14 see 2.1, then it goes to 2.2.

15 What page is it on?

16 MR. DEAL: Page 6, Your Honor.

17 MR. HILL: What is the title of that,
18 Mr. Freed, so the Judge can find that? What's
19 the title of 2.13 in that draft?

20 THE WITNESS: No Representation or
21 Omission.

22 THE COURT: Okay. All right. I'm
23 with you. Go ahead.

24

25

1 BY MR. HILL: (Continuing)

2 Q Could you just very briefly read that
3 into the record?

4 A The title is 2.13, No Representation
5 Or Omission.

6 No representation or warranty by
7 sellers in this Article 2 or in any other
8 article or section of this agreement, or in any
9 certificate or other documents furnished or to
10 be furnished by sellers pursuant hereto
11 contains or will contain any unreleased
12 statement of any material facts, or omit or
13 will omit to stated material facts necessary to
14 make the statements contained therein not
15 misleading or will omit the stated material
16 facts necessary in order to provide buyer with
17 accurate information as to the Company.

18 Q Who did you represent in this
19 transaction?

20 A I represented the Thibaults.

21 Q Did you have discussions with the
22 Thibaults at that November 21st meeting concerning and
23 specifically related to the inclusion or non-inclusion
24 of that clause in the contract?

25 A I did.

1 MR. DEAL: Your Honor, I object to
2 that. It's inadmissible. The contract speaks
3 for itself.

4 THE COURT: He asked him about
5 conversations.

6 MR. HILL: Correct. We're going to
7 fraud, Your Honor.

8 THE COURT: Okay.

9 MR. DEAL: I just--

10 THE COURT: Of course, the contract
11 does speak for itself.

12 MR. DEAL: Yes, sir.

13 THE COURT: But I think statements of
14 the parties are relevant in a fraud claim. So
15 go ahead, Mr. Hill.

16

17 BY MR. HILL: (Continuing)

18 Q Did you explain the meaning of that
19 clause to them? I don't want you to explain it today.
20 That's for the Court to do.

21 A I did.

22 Q Did you advise them whether or not
23 they had to include that provision in the contract?

24 A I advised them with respect to this
25 provision. I didn't tell them to include it or not to

1 include it. But we had a lengthy discussion about
2 whether or not to put it in the contract.

3 Q Did you have some concerns as a
4 lawyer representing the Thibaults when the buyer was
5 unrepresented by counsel?

6 A Yes, I did.

7 Q Did they relate to the inclusion or
8 non-inclusion of this provision?

9 A They most certainly did.

10 Q Can you inform the Court what those
11 concerns were?

12 A I was concerned that Mr. Gressman was
13 not represented. And during this meeting, we spent a
14 great deal of time talking about that fact.

15 And what I had advised the Thibaults
16 was that if Mr. Gressman ever missed a payment and we
17 were put in a position of having to sue him under the
18 note, that what we were going to hear were all sorts of
19 fraud claims, and that there had been lots of
20 misrepresentations. And to try and short cut that, I
21 told them and I had included this in the original draft
22 that I sent them on the 18th. I told them that this was
23 something that would be normal in a contract where the
24 buyer was represented by an attorney.

25 In order to appear to be as fair as I

1 could to Mr. Gressman, I advised them to certainly
2 consider putting this in the contract. I also explained
3 the import and the consequences to them and told them
4 that if we did put it in, then they had to be reasonably
5 correct in disclosing all of the material facts
6 regarding the sale. And that they had a business
7 decision to make whether or not to include this in which
8 case they had a high burden of what to disclose or not
9 to disclose.

10 And after I would suspect somewhere
11 between an hour-and-a-half or an hour discussion, the
12 Thibaults that were there decided to include this
13 provision, because they felt that they had made full
14 disclosure of what was necessary for Mr. Gressman.

15 Q Did there come a time where you met
16 Mr. Gressman for the first time?

17 A Yes. He came to my office on
18 December 2nd.

19 Q Now, did you know about Olsen?

20 A Yes.

21 Q What did you know about Olsen?

22 A Well, in the first conversation, I
23 really didn't know too much. They had told me that
24 there had been a prior buyer. They told me, I think
25 that there had been some EPA problems and that he had

1 gone to the Airport. And the Airport had given him a
2 letter that Mr. Thibault told me was a letter of
3 indemnification.

4 Q Did you tell Mr. Gressman that a
5 prior prospective purchaser had raised EPA problems?

6 A Yes, I did.

7 Q What was his reaction?

8 A Well, I'm not sure there was any
9 reaction one way or another. I don't remember Mr.
10 Gressman really reacting to anything. But he seemed to
11 understand what I was talking about. He certainly knew
12 that it was incumbent upon him to go to the Airport
13 Authority and to get that letter of indemnification. He
14 was supposed to go and work out the deal with the
15 Airport.

16 Q Before we move on to that letter, did
17 Mr. Gressman ever negotiate or request any specific
18 warranties concerning any environmental problems?

19 A Not that I can remember.

20 Q Did you review this contract with him
21 on December 2nd?

22 A Yes, I did.

23 Q How thoroughly?

24 A Pretty thoroughly.

25 Q Now, if I could have you turn to the

1 environmental section of that contract. I believe it's
2 4.2, at least in your copy. I don't know which copy,
3 which paragraph it would be numbered in the draft that
4 His Honor has. It's already been read a couple times.
5 I would just like to ask you-- You're familiar with
6 this paragraph?

7 A I am.

8 Q What was the reason that you included
9 a reference to going to the Airport Authority in that
10 contract?

11 MR. DEAL: Your Honor, I object to
12 that again. The contract speaks for itself.

13 THE COURT: Objection overruled.

14 A If you will repeat your question.

15 Q What was the reason that you included
16 that provision? Why is that provision dealing with
17 going to the, shall look to the Airport Authority for
18 comfort and indemnification? Why is that in this
19 contract?

20 A This is drafted, and the language
21 stays pretty much the same other than filling in some
22 blanks throughout the three drafts of the agreement.
23 This was based on my conversation with Mr. Thibault on
24 the 18th. And I understood the buyer had gotten a
25 letter of indemnification. As far as I was concerned,

1 what I was doing was shifting the burden to the buyer to
2 go to the Airport and cut his deal with the Airport and
3 to indemnify. It's an all inclusive statement. He was
4 going to indemnify and hold us harmless from anything
5 and everything.

6 Q Did you explain this to Mr. Gressman?

7 A On the 2nd, yes.

8 MR. HILL: If I could approach the
9 witness, Your Honor?

10 THE COURT: Yes, sir.

11 MR. DEAL: Your Honor, this is a
12 little bit unusual, but I did not hear Mr.
13 Hill's last question. Could I have the court
14 reporter--

15 THE COURT: Did he explain this to
16 the purchaser I think was the last question.

17 MR. DEAL: Your Honor, I'm sorry, I
18 would need the one before that.

19
20 NOTE: At this time, the previous two
21 questions and answers were read by the court
22 reporter.

23

24

25

1 BY MR. HILL: (Continuing)

2 Q If I could take you back, I almost
3 missed something, Mr. Freed. Can you identify this
4 document?

5 A This is a letter that I sent on
6 November 25th to Mr. Thibault. This would have
7 contained the second draft that I would have prepared as
8 a result of the November 21st meeting.

9 Q What was included with that letter?
10 What did you send down to him via that letter?

11 A Your Honor, I sent the Stock Purchase
12 Agreement, and I sent a note agreement, Deed of Trust.

13 Q How many copies?

14 A Three copies. The employment
15 agreement that was supposed to have been entered into
16 but wasn't. A couple of UCC-1's to be filed with the
17 various courts, State Corporation Commission,
18 amortization schedule for a \$400,000.00 note, a proposed
19 letter of resignation.

20 Q Can you please read--

21 A Mandate closing.

22 Q This last paragraph that starts--

23 A After Mr. Gressman has had a chance
24 to review them, please call me to determine
25 whether or not we may proceed with closing or

1 whether or not his attorney has any further
2 questions or comments.

3 Q Now, if you will also turn back on
4 Page 2. Can you read this last paragraph?

5 A I am enclosing a Closing-To-Do List.
6 Please review all of these items after you have
7 had a chance to review the closing items.
8 Please call me so we may discuss each of these
9 items at the time of closing.

10 Q Now, what is the document directly
11 behind that letter of attachments that I have given you?

12 A That is a Closing-To-Do List.

13 Q Is that the Closing-To-Do List that
14 you sent down with that letter?

15 A Yes, it is.

16 Q Can you read the Court, read for the
17 benefit of the Court No. 17 of the Things-To-Do List?
18 I hope I got my number right.

19 A 17 says:
20 Buyer to get letter from Airport
21 Authority concerning EPA problems. See No. 25.

22 Q How many--

23 MR. HILL: Judge, we would move to
24 introduce this as one exhibit. I believe it is
25 Exhibit 13 at this time. As Defendant's

1 Exhibit 13.

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NOTE: The above-referred-to
Things-To-Do List was marked and filed as
Defendant's Exhibit No. 13.

Q Did you do any other Things-To-Do
Lists?

A I'm sorry. Can you repeat the
question?

Q Did you--

THE COURT: It was for them to do, is
that correct?

THE WITNESS: For the Thibaults to
do. Well, may I see that again?

I think there's probably a little bit
for everybody to do on our side.

THE COURT: Things for you to do or
for them to do?

THE WITNESS: It's a combination,
Your Honor. And most of the items are for the
Thibaults to do some of the drafting. And
filings are for me to do, some of the things
for Mr. Gressman to do.

1 BY MR. HILL: (Continuing)

2 Q Did you do subsequent Things-To-Do
3 Lists, or check lists?

4 A I think there were two more after
5 this one.

6 MR. HILL: If I could approach the
7 witness, Your Honor.

8 Q Can you identify this document?

9 A This would have been a to-do list
10 that we prepared in our office sometime around December
11 19th, which would have been about two weeks after
12 closing.

13 Q Did that-- Look at the very bottom
14 there with respect to the notation you made. And what's
15 the number of it?

16 A No. 18.

17 Q Yes. What does that reflect?

18 A GRG got letter, Airport letter, EPA
19 letter confirm.

20 MR. HILL: Judge, we would move to
21 introduce this as Defendant's Exhibit 14.

22

23

24

25

1 NOTE: The above-referred-to
2 Things-To-Do list was marked and filed as
3 Defendant's Exhibit No. 14.

4
5 Q Did you have a hard time during the
6 closing, either closing or let's say in the pre-closing
7 trying to figure out exactly how to figure out the
8 purchase price?

9 A We spent a lot of time in our meeting
10 on November 21st and we also spent a lot of time at the
11 very beginning of the closing on December 5th trying to
12 figure out the purchase price and the downpayment that
13 was required.

14 Q Would you identify your notes from
15 the pre-closing?

16 A That's definitely my handwriting.

17 Q Do those notes reflect a \$3,500.00
18 credit for Eastern Aviation, or Eastern Fuels against
19 the fuel bill to be paid?

20 A Yes.

21 Q Do you personally recall the reason
22 for that credit?

23 A All I know is that Mr. Thibault told
24 me that he was entitled to a credit. And Mr. Gressman
25 and Mrs. Gressman were in the room at the time. And I

1 got a, kind of looked at him, and he indicated his
2 consent, so I just put it down. Didn't make any
3 difference to me what it was for.

4 MR. HILL: Your Honor, we would move
5 to introduce this as Defendant's Exhibit No.
6 15.

7
8 NOTE: The above-referred-to notes
9 were marked and filed as Defendant's Exhibit
10 No. 15.

11
12 Q Now, I'd like to take you to the
13 actual closing on December 5th. On December 2nd, did
14 you tell Mr. Gressman to get a lawyer?

15 A Yes, I did.

16 Q Did he show up on December 5th with
17 or without a lawyer?

18 A Without a lawyer.

19 Q Did you review the contract once
20 again on December 5th?

21 A Yeah. But not as thoroughly as we
22 had on the 2nd. And I pretty much-- His wife was
23 there, and was there for the first time. And I briefly
24 explained what each of the documents were that they were
25 signing.

1 Q Did you-- Were you still concerned
2 about the fact that he was unrepresented?

3 A That had been the central theme of my
4 representation of the Thibaults. I told them from the
5 beginning that I was very concerned that Mr. Gressman
6 wasn't represented in a transaction that was as
7 complicated as this.

8 Q Did you do something without Lou
9 Thibault's consent because of those concerns on December
10 5th?

11 A Towards the end of the closing,
12 which, if I remember correctly, lasted for two to three
13 hours late in the afternoon, I looked at Mr. Gressman
14 and said, Mr. Gressman, I'm going to give you 48 hours
15 to rescind this contract and to get these documents
16 reviewed by an attorney. And then I kind of sheepishly
17 looked at Lou and realized that I didn't have any
18 authority to do that. And I said to Lou Thibault, is
19 that okay with you? And he said, yes. So we gave Mr.
20 Gressman, and I think that's in one of the notes, the
21 handwritten closing statement that Mr. Gressman signed.

22 Q Now, I would ask you to refer to
23 Paragraph 5.1, Conditions of Sale in that contract.

24 A All right.

25 Q Do you see in that contract any

1 condition of sale that Mr. Gressman gets that letter of
2 indemnification from the Airport?

3 A No.

4 MR. HILL: Please answer any
5 questions opposing counsel may have.

6 THE COURT: What is the last
7 paragraph you cited?

8 MR. HILL: 5.1 in this draft, Judge.
9 I'm beginning to think that you might have a
10 slightly varied draft of that. It's titled--
11 What is it titled?

12 THE WITNESS: Stock Purchase
13 Agreement.

14 THE COURT: Of the paragraph, 5.1.
15 How is it titled in your draft?

16 THE WITNESS: Very bottom of Page 7.

17 THE COURT: All right.

18

19 BY MR. HILL: (Continuing)

20 Q Was it a condition of closing that he
21 get approval from the Airport Authority as far as him
22 operating the FBO?

23 A No. I'm sorry. I was-- Repeat the
24 question again.

25 Q Was it a condition of closing that he

1 be approved by the Airport Authority to operate under
2 the management agreement?

3 A That-- The answer to that is, yes.
4 He had to have the approval and consent. Because Mr.
5 Thibault couldn't sign those contracts, if I remember,
6 correctly without the Airport Authority.

7 MR. HILL: Please answer any
8 questions opposing counsel or the Court may
9 have.

10

11

12

13 CROSS-EXAMINATION

14 BY MR. DEAL:

15 Q Mr. Freed, you never saw this
16 purported letter of indemnification from Mr. Olsen, did
17 you?

18 A Not before closing, Mr. Deal. I saw
19 it later in April or May of '92.

20 Q You had just taken Mr.-- I withdraw
21 that.

22 Now, you drew--

23 THE COURT: Wait a minute. Your last
24 question letter of indemnification--

25 MR. DEAL: Yes, sir.

VIRGINIA: IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

GERHARD R. GRESSMAN,
GLORIA M. GRESSMAN,

Plaintiffs,

v.

CASE NO. 92-49

LOUIS G. THIBAUT, SR., ET AL.

Defendants.

PLAINTIFFS' TRIAL BRIEF

FACTS

Mr. Gressman asked Mr. Thibault if he had any environmental problems and Mr. Thibault told him "no." Mr. Gressman asked Mr. Thibault about disposal of waste generated by the strip shop, and Mr. Thibault showed him a system that would have been adequate if it had been properly used, permitted, and had no hole in the sump. Mr. Thibault had a hole put in the sump. Mr. Thibault claimed that he contracted with Safety-Kleen to haul of strip shop waste. Mr. Gressman had experience in coordinating transportation of hazardous wastes and had worked with Safety-Kleen. Jack Fair testified that the system was adequate assuming that Mr. Thibault was using it properly and disposing of his waste in accordance with the law.

Mr. Thibault gave Mr. Gressman inaccurate financial information. Mr. Gressman's accountant raised concerns about negative cash flow, but Mr. Thibault told Gressman that PDA had just paid off some large bills and that was the reason for the negative cash flow. Mr. Thibault had agreed to sell a debt-free company, so the explanation seemed reasonable. Mr. Thibault lead Mr. Gressman to believe they had developed a close friendship just as he lead Rob Elliott to trust him.

Mr. Thibault ^{& Mr. G?} hated lawyers and convinced the Gressmans to refrain from hiring an

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DATE 2-23-93

James F. Williams
Cuba

attorney. Mr. Gressman relied on Mr. Freed to draw the documentation, and Mr. Freed provided Mr. Gressman with instructions and "things to do" list. Unfortunately, the Thibaults had purposely changed attorneys and Freed was not made aware of the contamination and could not disclose it. Mr. Freed gave Mr. Gressman a 48-hour rescission period, but the contract adequately reflected the deal.

Mr. Thibault told Freed that the Dinwiddie Airport and Industrial Authority would give Mr. Gressman environmental indemnification. The Authority told Mr. Gressman that the only problems were the transformers and fuel farm and that those problems were being addressed.

The evidence overwhelmingly showed that the defendants were aware of the ENSAT report and its contents. The defendants knew that Olsen changed his deal from stock to assets to avoid environmental liability. Olsen excluded the paint and strip shops from his proposed lease with the Authority. Mr. Thibault requested approximately \$15,000 from the Authority to do soil sampling. Mr. Ball explained personal liability with respect to environmental problems to the defendants. After learning of ENSAT, Mr. Thibault paid Safety-Kleen to analyze a sample from the sump. Mr. Thibault was told that the waste contained methylene chloride and phenol, both listed hazardous substances, and that the waste had to be lawfully disposed. William Thibault took a sample from the tank and the test results were basically the same.

In June 1992, Mr. Gressman engaged Resource International, Inc. to perform a phase 2 investigation concerning suspected releases of paint stripping wastes mentioned by ENSAT. Resource concluded that paint stripping wastes had been released in certain areas. Resource concluded that it would take \$140,270 to characterize the site.

Mr. Thibault continuously disposed of the strip shop wastes at the airport from 1980 until he sold the business to the Gressmans. Even after the tank was installed in March 1990, Thibault disposed of the contents of the tank via a hose out the front of the strip shop door. Keith Mottas saw this, and Mr. Thibault told him that the contents were being treated and were clean enough to drink. The evidence is overwhelming that Mr. Thibault knew that PDA had environmental problems.

Defendants submitted financial information to the plaintiffs for the purpose of inducing them to purchase PDA. Unfortunately, after Mr. Gressman purchased the business, he had to pay bills incurred prior to his purchase. Mr. Gressman loaned PDA \$50,000 to keep it operating. According to William Dacey, the November 1991 balance sheet is incorrect with respect to certain accounts. Total equity in the company was no more than \$71,631.26 as opposed to the \$147,474 that it was supposed to have.

LEGAL ARGUMENTS

A. FRAUD

Fraud is a tort and is either actual or constructive, the former requiring intent. The elements of actual fraud are a false representation of a material fact made intentionally and knowingly with intent to mislead, reliance by the party mislead, and damages. Spence v. Griffin, 236 Va. 21 (1988). Additionally, it is undisputed that Mr. Thibault was agent for the other defendants and that they are all liable for his fraud. Dudley v. Estate Life Insurance Co., 220 Va. 343 (1979)(quoting Restatement (Second) of Agency §261).

False representations include concealments or non-disclosures. Williston on Contracts, §1487. See also Spence. The Restatement 2nd of Torts, §551 creates an affirmative duty on the seller in a business transaction to disclose "facts basic to the

transaction."

Mr. Thibault's behavior satisfied this element of fraud. He made misrepresentations as follows: (1) no environmental problems (2) strip shop waste disposal was being disposed by Safety-Kleen (3) strip shop had a closed-loop system (4) inventory was computerized and accurate (although never adjusted for lower of fair market value or cost) and (5) financial statements were accurate. Mr. Thibault concealed the following: (1) PDA had disposed of hazardous wastes on site for years (2) ENSAT report (3) further testing needed to be done to determine contamination which would cost approximately \$15,000.

The second element of fraud is materiality. Common sense and the evidence show that if the misrepresentations had not been made, the plaintiffs would not have purchased PDA. PDA was worthless.

The third essential element is reliance and it must be reasonable; however, the burden of proof is on the defendant to prove that there was no reliance. See Linhart v. Foreman, 77 Va. 540 (1883). It is no defense for Mr. Thibault to say, "It is true that I, by fraud and deceit, induced you to enter into a contract, but you were negligent in not finding out that I was deceiving you, and, therefore, guilty of negligence in believing me." Cerriglio v. Pettit, 113 Va. 533 (1912), See also Nationwide Ins. Co. v. Patterson, 229 Va. 627 (1985).

In McDaniel v. Hodges, 176 Va. 519 (1940), a buyer was looking at a house when he dropped a rock into the well and didn't hear a splash. The seller assured the buyer that the well had water in it. The court found for the buyers based on the simple verbal assurance that there was water in the well even though the buyer had not heard a splash. In Horner v. Ahern, 207 Va. 860 (1967), the sellers discovered termite damage. The sellers then found a termite inspector who certified that "the property contained an infestation of termites," but

that there was no "destroying infestation damage." The buyer received this and asked the seller whether this meant that there was no damage and the seller said yes. Massive damage was discovered by the buyer. The court found for the buyers because although they had notice of termites, they had no notice of termite damage and furthermore, only an expert could have reasonably been expected to discover this sort of termite damage. The court found no need for the buyers to engage the expert. The court pointed out the rule that "there is a very important exception to the rule that a purchaser is bound to discover the true condition for himself if he has information which would excite the suspicions of a reasonably prudent man. The exception is that a vendor must not say or do anything to throw the purchaser off his guard or divert him from making inquiries and examination which a prudent man ought to make." Ibid. Virginia cases make it clear that diversion can be minuscule. In Ware v. Scott, 220 Va. 317 (1979), the purchaser asked if the house had water problems and was told by the sellers that it did not. In Armentrout v. French, 220 Va. 458 (1979), the purchaser inquired about the condition of the septic system and was told that it "checked fine." In both cases, the courts held for the purchasers in that the simple statements made by the sellers were adequate diversions to support the fraud actions. See also Kuczmanski v. Gill, 225 Va. 367 (1983).

Mr. Thibault engaged in substantial diversion. He showed Mr. Gressman a system which would have been adequate if properly used. He diverted Mr. Gressman away from contacting Fred Olsen by telling Mr. Gressman what a untrustworthy individual Olsen was. Mr. Thibault concealed that he had disposed of wastes on site for years and that he knew it would cost \$15,000 to do the next phase of testing. Mr. Thibault diverted Mr. Gressman from inquiry on the financial statements by assuring him of their accuracy in the contract.

Mr. Thibault intentionally developed a close friendship with Mr. Gressman. Mr. Thibault convinced Mr. Gressman that he didn't need a lawyer, and Mr. Gressman not being a sophisticated businessman believed that he could trust Mr. Thibault. Dr. Leonard Vance, defendants' own expert, testified that he relied on the honesty of the sellers when purchasing a medical waste testing facility. Former prospective purchaser, Keith Mottas testified that he would not have thought to have ordered an environmental audit if his investors had not required it.

The final element is damages. Rescission being the appropriate remedy, damages at a minimum are what the Gressmans paid for PDA to date which was \$285,572.06, plus the amount PDA owes Gressmans which is approximately \$35,000, and attorney's fees which exceed \$200,000. PDA was worthless when the Gressmans purchased it. Plaintiffs have more than demonstrated the wilful, wanton, and reckless behavior of Mr. Thibault and are entitled to punitive damages in the total amount \$700,000.

A fraud action for an improperly induced contract will allow a rescission of the contract. Williston on Contracts §1487, See Horner v. Ahern, 207 Va. 860 (1967). A rescission puts the parties in the same position they were in prior to the contract. The money invested by Mr. Gressman into the business should be recovered as part of a rescission. Environmental indemnification would be a natural part of rescission and would make the Gressmans whole.

The inability of plaintiffs to return the consideration is directly due to the defendants' wrongful conduct. The defendants cannot complain. Williston on Contracts, §1530. See Millbro Lumber Co. v. Augusta Wood Products, 125 S.E. 306 (1924).

Environmental Liability

Disposal of hazardous wastes are strictly regulated under the Virginia Waste Management Act, Virginia Code §10.1-1400, et. seq., and the Hazardous Waste Management Regulations (Regulations). The Waste Management Act generally defines hazardous waste as one which may cause or contribute to increase in mortality or incapacitating illness or pose threat to human health or environment when improperly disposed. Virginia Code §10.1-1400.

Defendants used AK-2 chemical stripper which contains methylene chloride and phenol, both listed hazardous substances. (Regulations, Table 3.1-4) Once AK-2 stripper is used it becomes a hazardous waste assigned EPA hazardous waste code F006. (Regulations, §3.10(E) and Table 3.1-1) It is irrefutable that PDA was a hazardous waste generator.

Virginia Code §10.1-1426(B) required PDA to report to the Virginia Department of Waste Management information concerning its hazardous waste. Stringent record keeping and annual reporting requirements apply to hazardous waste generators. (Regulations, §6.5) PDA was not a small quantity generator exempt from permit and record keeping requirements. Under Virginia Code §10.1-1426(A) no individual can dispose of hazardous wastes without a permit, yet PDA disposed of hazardous wastes on site for years without a permit. Under Virginia Code §10.1-1455(a), PDA could be liable for \$50,000 for violations of each §1426(A) and §1426(B) with respect to permitting.

Owners and operators (PDA) of a facility are liable for costs of remedial action incurred by the federal or state government. CERCLA §101(20)(A)(ii), 42 U.S.C.A. §9601(20)(A)(ii). Although the defendants' unlawful disposal of PDA hazardous waste has not yet resulted in a cleanup, PDA is liable for the cleanup. This liability includes costs to

monitor, assess, and evaluate the release of hazardous substances and for actions "necessary to prevent, minimize, or mitigate damage to public health or welfare or environment which may otherwise result from a release" of hazardous substances. 42 U.S.C.A. §9601(23)

B. Breach of Contract (Stock Purchase Agreement)

what ambiguous?

Mr. Freed drafted the contract and any ambiguities should be construed against defendants. See American Realty Trust v. Chase Manhattan Bank, 222 Va. 392, 403 (1981); Russel Company v. Carroll, 194 Va. 699, 701 (1953).

Section 2.4 declares that the financial statements "fairly present the financial condition of the company." William Dacey testified that the equity was overstated by \$76,569 and that PDA potentially insolvent. The defendants presented no evidence to dispute Mr. Dacey's findings.

Section 2.13 warrants that there have been no misrepresentations or omissions of a "material fact necessary in order to provide Buyer with accurate information as to the Company." As shown at trial, the defendants breached this warranty with respect to the environmental and financial condition of PDA.

With respect to environmental problems, Section 4.2 declares that the airport was a military base, contained fuel farm (which had been tested for contamination), and transformers; and that Gressmans should look to the Authority for indemnification concerning PDA's operations. The only logical conclusion from reading this entire clause is that the environmental concerns involved the Authority.

With respect to remedy for a breach, Section 5.1 states that the Gressmans have no duty to purchase PDA if all representations and warranties are not correct. The defendants violated a multitude of warranties and contract provisions; therefore, the Gressmans have

a contractual right to rescind the contract and receive a return of the money paid.

The Gressmans are entitled to damages that "fairly, reasonably, and naturally arise in the course of things from such breach." Krikorian v. Dailey, 171 Va. 16 (1938). Any ^{None yet /} environmental liability incurred and any money spent by the Gressmans because of the misrepresented financial condition would be naturally arising damages. Even though some of the environmental costs have not yet been accumulated with a certainty, "one guilty of a breach of contract cannot be allowed to escape liability merely because of the uncertainty of damages, where the damages are substantial and the only uncertainty is as to their true amount." Wyckoff Pipe & Cressoting Co. Inc. v. Saunders, 175 Va. 512 (1940).

There is no severability clause which means that the clauses are interdependent. The defendants have violated most of the material terms of the contract, and it must fail. The Gressmans have no duty to pay for PDA, but are entitled to restitution for the amount already paid. The Virginia Supreme Court has also stated that a breach of contract can be of such a substantial character so as to defeat the very object of the contract rescission is an available remedy to the plaintiff. See Sternheimer v. Sternheimer, 208 Va. 89, 97 (1967); Bolling v. King Coal Theaters, 185 Va. 991, 996 (1947). The undisclosed contingent liabilities will probably run well in excess of the purchase price of the business.

C. MRS. MARGOT E. THIBAUT

Mrs. Thibault transferred her stock to her husband after Mr. Thibault decided to sell the business to avoid personal liability for the environmental problems that she and her husband ~~knew existed~~. It is clear that Mrs. Thibault received her share of the proceeds from the Gressmans' purchase and that the transfer wasn't recorded in the PDA minute book until three days before the sale to the Gressmans.

D. DEFENSES

The defendants did not present defenses to plaintiffs' action other than to deny that they knew that there were any environmental problems at the time that they sold to Gressmans. Defendants intimated that Mr. Gressman had caused the company to lose money, but this was explained by Gary Thomson, William Dacey, and Mr. Gressman to be a result of the transaction, the false financial statement, the cost of warranty work, and the cost to have the hazardous wastes properly disposed. It is totally illogical to conclude that Mr. Gressman reported dumping to the Virginia Department of Waste Management, the National Response Center, and the Virginia State Water Control Board and continued to do so himself.

Respectfully Submitted,
GERHARD and GLORIA GRESSMAN

By: Ronda Wells
Of Counsel

John F. Deal, Esquire
Ronda J. Cobler Wells, Esquire
John Deal and Associates
4510 South Laburnum Avenue
Richmond, Virginia 23231-2422

Certificate

I certify that a copy was sent to Robert Hill, Esquire at Hill & Rainey, Virginia First Building, Petersburg, Virginia 23803 on February 23, 1992, first-class mail.

Ronda Wells
Ronda J. Cobler Wells

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CLERK'S OFFICE
Circuit Court of Potomac County

P. O. Box 37
Potomac, Virginia 23139

(804) 598-5660
February 25, 1993

WILLIAM E. MAXEY, JR.
CLERK

ELEVENTH JUDICIAL CIRCUIT
THOMAS V. WARREN
OLIVER A. POLLARD, JR.
JUDGES

John F. Deal, Esq.
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4510 S. Laburnum Avenue
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Robert B. Hill, Esq.
Hill and Rainey
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Suite 517
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Petersburg, Virginia 23803

Re: Gressman, et ux.
vs.
Thibault, et al.

Lady and Gentlemen:

Thank you for timely filing your memorandums as directed. It was a pleasure being with you and your associates during the trial.

I will address the fraud allegation first. Much of the testimony is in dispute and the court is in the familiar posture of resolving conflicts in the testimony and deciding on the credibility of witnesses and the weight of the evidence. I will not attempt to quote verbatim since a transcript is not available, nor do I think it necessary. Some of the following statements are derived directly from trial testimony or exhibits and some are derived from natural and logical inferences from trial exhibits and testimony considered worthy of belief.

Gerhard Gressman and Lou Thibault reached and signed an agreement because both were anxious to carry through with a transaction they deemed beneficial to themselves.

The parties had become friends and trusted each other. In fact, Thibault even agreed to work for Gressman after closing the deal. It is apparent that Gressman was extremely eager to purchase PDA. Despite the fact that he was conversant with and had formal training in contracts, waste management and waste disposal, he made no attempt to negotiate the purchase price. He was in fact desirous of paying the full asking price and closing as soon as possible. It was clear that money was not going to be a stumbling block since he was as he stated, buying the company not for what it was worth, but for what it was potentially worth.

Prior to closing Gressman sought the advice of his accountant who alerted him to potential and possible financial problems and even asked Gressman to get further information. Gressman ignored that request because he said he accepted the explanation given him by Lou Thibault as to questions raised by the accountant. Prior to closing, everything at PDA was open to Gressman for his inspection. He was frequently on the premises, asked questions, received information from the staff, and was denied access to nothing. Gressman in fact even went to the Airport Authority and made inquiry about PDA and inquired of potential pollution problems.

Gressman was not particularly concerned about the net equity, the inventory, the receivables, etc., because as he testified, he was not buying the business for its value, but for its potential. He wanted PDA and was willing to pay the asking price which he deemed reasonable.

Gressman and Thibault shared a mutual dislike for lawyers at the business level. Robert Freed was, however, retained by Thibault to prepare the contract of sale. Despite the urgings of Mr. Freed, Gressman declined to retain an attorney, repeating again that he trusted Thibault. Freed prepared a detailed though clear and unambiguous contract in preparation for closing. At the scheduled closing Mr. Freed was so uncomfortable with Gressman not being represented by counsel that he insisted on a forty-eight hour delay in closing to give Gressman yet another opportunity to retain counsel. Before the delayed closing occurred, Gressman was at the office of PDA to give the down payment to Thibault saying in effect, "Everything is a go, we're going to close regardless of what the lawyer thinks". Prior to closing it occurred to Gressman to call a lawyer who had earlier represented him on an unrelated matter. That lawyer apparently suggested caution and asked that Gressman come in for a consultation which he declined.

All of the foregoing is I believe important because it helps to resolve the endless conflicts in the evidence regarding who did and said what as it related to the allegations of fraud. Certainly Thibault wanted to sell PDA and wanted to sell it for as much as he could get. In my opinion he did know of potential concerns raised about chemical pollution. It is also clear, however, that he did not agree with some of the concerns raised by others and felt that they were the result of trouble maker purchasers who just wanted to knock down the purchase price. I do not doubt that Thibault did not relate everything that everybody had said regarding toxic waste but he did nothing to divert or mislead that would constitute fraud. It is unclear to me whether Thibault knew at any point that he was polluting or violating the letter of the law. If I learned anything at the trial, it is that this is a very technical field with great involvement by numerous and over-lapping authorities at the local, state and federal level. The advice to any prospective purchaser of a commercial property with toxic chemicals on site should be "Caution, proceeds at your own risk. The waters are uncharted, fraught with unseen dangers, and you proceed at your own risk."

The evidence is insufficient to prove by clear and convincing evidence that Thibault knowingly made a false representation of a material fact with the intent to mislead. The Court finds for the defendants on the fraud charge.

As to the breach of contract allegation, I find no evidence of breach save the undervaluation of the equity. The testimony of Mr. Dacy is persuasive on that point and pursuant to Paragraph 2.4 (i) of the contract, the equity is overstated by \$76,569. The purchase price is therefore reduced accordingly.

On the counterclaim, the court grants judgment in the amount of \$25,601.08 on the stockholders' loan. Further judgment in the amount of \$603,903.40 is granted on the \$400,000.00 promissory note, that amount including the unpaid balance, attorneys' fee, and accrued interest, all pursuant to the terms of the note. The total judgment in favor of the defendants of \$629,504.48 is offset by the overstated equity of \$76,569 leaving a net judgment in favor of the defendants in the amount of \$552,935.48. The appeal bond is set at \$600,000.00, cash or corporate surety approved by the Clerk.

Very truly yours,

Thomas V. Warren
Judge

TVW/kcp

VIRGINIA: IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

GERHARD R. GRESSMAN AND
GLORIA M. GRESSMAN

VS.

CHANCERY, 92-49

LOUIS G. THIBAUT, SR., ET AL.

O R D E R

Pursuant to letter opinion of even date filed herewith, the court finds for the defendants on all allegations of fraud.

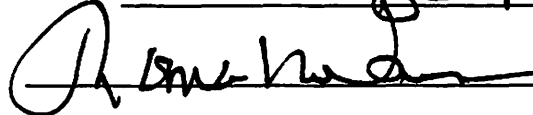
The court finds for the plaintiffs on the breach of contract allegation in the amount of \$76,569.

The court finds for the defendants on the counter-claim against the plaintiffs in the amount of \$629,504.48, offset by the judgment of \$76,569 against the defendants, leaving a net judgment in favor of the defendants against the plaintiffs in the amount of \$552,935.48.

The appeal bond is set at \$600,000.00 cash or corporate surety approved by the clerk.

ENTER

February 25, 1993

 JUDGE

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF DINWIDDIE

GERHARD R. GRESSMAN,
GLORIA M. GRESSMAN,

Plaintiffs,

v.

CASE # 92-49

LOUIS G. THIBAUT, SR., et al

Defendants.

OBJECTIONS TO ORDER

1. On February 25, 1993, the Court entered an order on behalf of the defendants in the amount of \$552,935.48. The order was based on an opinion letter of the same date.

2. Plaintiff's hereby object to the order on the following grounds:

FRAUD

3. The finding that Mr. Thibault did not defraud plaintiffs was against the clear and overwhelming weight of the evidence.

4. The finding that Mr. Thibault "did know of potential concerns raised about chemical pollution" and that he "did not relate everything that everybody had said regarding toxic waste..." required a finding of fraudulent concealment and whether Mr. Thibault diverted the Plaintiffs is not relevant to the issue fraudulent concealment.

5. The decision is based almost exclusively on the testimony of Mr. Thibault and virtually ignores the dozens of other witnesses present at trial.

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FILED

Date: 3-9-93

Case & Thomas
Call

6. There was no evidence to support the conclusion that "money was not going to be a stumbling block" to Mr. Gressman. The evidence at trial clearly established that Gressman agreed to purchase a company with no undisclosed environmental problems and equity of at least \$148,000 for what it was worth. Any more expansive interpretation of Mr. Gressman's testimony is unreasonable.

7. It is against the overwhelming weight of the evidence to presume that plaintiffs would have paid \$675,000 for a company that may be insolvent (per Mr. Dacey) and that faced significant environmental cleanup costs.

8. The court's finding that Gressman ignored the advice of his accountant is clearly contrary to the evidence as Gressman followed up his accountant's concerns.

9. The fact that PDA was open to Gressman was wholly irrelevant to the issue at trial since the ENSAT report nor any of the environmental information possessed by Mr. Thibault could have been discovered by simply touring the facility.

10. The conclusion that plaintiffs did not care about the equity, inventory, receivables, etc. was made against the overwhelming weight of the evidence, especially in light of the fact that Gressman made certain those matters had been properly addressed in the contract.

11. There was absolutely no evidence that Gressman's former attorney advised caution in consummating the deal.

12. The apparent legal conclusion that the doctrine of Caveat Emptor is absolute where environmental issues are concerned is

contrary to the clearly established rules of fraud laid down by the Supreme Court of Virginia.

CONTRACT

13. The finding that there had been an acceleration of the note was outside the scope of the Defendant's pleading as no acceleration was pled, nor was an acceleration adequately proved and therefore a judgement for the accelerated amounts was improper.

14. The contract itself in Section 5.1 clearly, unambiguously, and irrefutably states that if any of the warranties, representations or schedules contained in the agreement are not true and correct, the buyer has no obligation to purchase or pay for the shares.

15. Mr. Dacey clearly established (as the court points out) that the equity of PDA was overstated by at least 50 percent. By not granting rescission, the decision of the court ignores the clear language of the agreement.

16. An equity overstatement of 50 percent is clearly a substantial and material variance from the terms of the agreement and the plaintiffs were entitled to common law rescission.

17. The damage amount awarded clearly exceeded the scope of the defendant's pleadings as well as the clear language of the note.

18. The \$76,569 offset was erroneously applied after computing interest and attorney's fees on the balance awarded to the defendants.

19. Defendants clearly failed to prove the claimed \$25,601.08 stockholder's loan and the order improperly awarded defendants this

amount.

20. The defendants did not prove the claimed costs of \$22,205.00 and were not entitled to such a figure without evidence.

21. The decision totally ignored that section 2.13 of the agreement had been violated and a finding that there was "no evidence of breach save the undervaluation of the equity" was against the overwhelming weight of the evidence.

22. The decision was against the overwhelming weight of the evidence that section 2.5 of the agreement had been breached.

23. The decision clearly ignored the fact that the contract contained no severability clause and could only be logically viewed as an entire contract and therefore the breach with respect to the equity caused the entire contract to fail.

Respectfully Submitted

Gerhard R. Gressman
Gloria M. Gressman

By: Ronda Wells
Of Counsel

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(804) 222-1250

CERTIFICATE

This is to certify that a true and correct copy of the foregoing Objection was mailed, postage pre-paid to Robert B. Hill, Esquire, Hill & Rainey, Suite 517, Virginia First Building, Petersburg, Virginia 23803 this 8th day of March, 1993.

Ronda Wells
Ronda J. Cobler Wells

752

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF DINWIDDIE

GERHARD R. GRESSMAN,
GLORIA M. GRESSMAN,

Plaintiffs,

v.

CASE # 92-49

LOUIS G. THIBAUT, SR., et al

Defendants.

MOTION FOR A REHEARING

1. On February 25, 1993, the Court entered an Order on behalf of the defendants in the amount of \$552,935.48. The Order was based on an opinion letter of the same date.

2. Defendants did not plead an acceleration of the loan and as such are not entitled to accelerated amounts.

3. The contract itself in section 5.1 contains a remedy in cases where any representations, schedules or warranties were incorrect.

4. The damage calculation exceeds the damage amount plead by the defendants in that the pleading alleges interest and late charges of \$808.53 through May 31, 1992 and defendants were awarded \$18,425.50.

5. Defendants failed to prove the \$22,205 in costs awarded.

6. The \$76,569 offset for equity was applied after calculating attorney's fees and interest on the entire balance.

7. Defendants failed to prove the \$25,601.08 stockholder loan.

8. No allowance was made for the \$140,000 PDA cost to

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Date: 3-9-93
Am. & Thomas
Clerk

Resource International Inc. to characterize the site. The amount has not yet been expended but is a necessary and certain amount.

WHEREFORE, plaintiffs request that the Order dated February 25, 1993 be set aside, and that they be awarded rescission of the contract. In the alternative, plaintiff's request that the judgment be modified to reflect the above mentioned matters.

Respectfully Submitted

Gerhard R. Gressman
Gloria M. Gressman

By: Ronda Wells
Of Counsel

John F. Deal, Esquire
Ronda J. Cobler Wells, Esquire
John F. Deal and Associates
4510 South Laburnum Ave.
Richmond, Va. 23231
(804) 222-1250

CERTIFICATE

This is to certify that a true and correct copy of the foregoing Motion was mailed, postage pre-paid to Robert B. Hill, Esquire, Hill & Rainey, Suite 517, Virginia First Building, Petersburg, Virginia 23803 this 8th day of March, 1993.

Ronda Wells
Ronda J. Cobler Wells

VIRGINIA: IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

GERHARD R. GRESSMAN AND
GLORIA M. GRESSMAN

VS.

CHANCERY 92-49

LOUIS G. THIBAUT, SR., ET AL.

AMENDED ORDER

Pursuant to letter opinion of even date filed herewith, the court finds for the defendants on all allegations of fraud.

The court finds for the plaintiffs on the breach of contract allegation in the amount of \$76,569.

The court finds for the defendants on the counter-claim against the plaintiffs in the amount of \$607,497.55, offset by the judgment of \$76,569 against the defendants, leaving a net judgment in favor of the defendants against the plaintiffs in the amount of \$530,928.55.

The appeal bond is set at \$600,000.00 cash or corporate surety approved by the Clerk.

ENTER

Mark Feb 25, 1993
Chas. W. [Signature] JUDGE
None the Time. 3-17-93

VIRGINIA:

IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

GERHARD R. GRESSMAN,

and

GLORIA M. GRESSMAN,

Petitioners,

v.

CHANCERY NO. _____

LOUIS G. THIBAUT, SR. ✓
5920 Beville Drive
Southerland, Virginia 23885
(Dinwiddie County)

LOUIS G. THIBAUT, JR.
Route 4, P.O. Box 330
Georgetown, Delaware 19947
Serve: Secretary of Commonwealth

WILLIAM K. THIBAUT
206 Battery Place
Colonial Heights, Virginia 23834
(City of Colonial Heights)

ROSEALMA T. BURTON
16104 Gary Avenue
Chester, Virginia 23831
(Chesterfield County)

CAROL A. THIBAUT
18601 Branders Bridge Road
Colonial Heights, Virginia 23823
(Chesterfield County)

Defendants.

BILL OF REVIEW

The petitioners, by counsel, state as follows for their bill of review:

1. In December of 1991, petitioners purchased all of the stock of the corporation Petersburg-Dinwiddie Aviation Inc. from defendants.

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[Signature]
Clerk

2. The stock was purchased pursuant to a stock purchase agreement (the agreement) executed between the parties.

3. In May of 1992, the petitioners filed a bill of complaint against defendants seeking rescision of the agreement on the grounds of fraud and breach of contract on the part of the defendants. Defendants filed a cross-bill against the petitioners seeking the full amount due under the agreement.

4. In February of 1993, a trial *Ore Tenus* was held before the Honorable Judge Thomas V. Warren of this Court on the issues presented (chancery number 92-49).

5. On February 25, 1993, the Court found for the defendants in their cross-bill against the petitioners in the amount of \$629,504.48 (Copy attached as Exhibit #1).

6. The same day, the Court also found for petitioners in the amount of \$76,569.00 on their claim against the above listed defendants based on an overstatement by defendants of the equity of the corporation at the time of sale. The overstatement was made in a November 30, 1991 financial statement referenced and incorporated into the stock purchase agreement as an attached schedule.

7. Therefore, on February 25, 1993 this Court granted a net judgment in favor of the above listed defendants in the amount of \$552,935.48 on their cross-bill.

8. This judgment was comprised of:

- a) Principal owed - \$396,206.42
to defendants

b) Interest	- \$ 6,295.88
c) Late handling	- \$ 211.44
d) Interest	- \$ 62,716.98
e) Attorney's Fees-	\$116,357.68
f) Costs	- \$ 22,205.00
g) Stock loan	- \$ 25,601.08
SUBTOTAL	\$629,504.48
Less Equity	- (76,569.00)
Adjustment	
NET JUDGMENT	- \$552,935.48

(A copy of the breakdown is attached as Exhibit #2. This breakdown was admitted into evidence at the trial).

9. On March 17, 1993 this Court modified the judgment for the defendants to \$530,928.55 to reflect the actual demand in defendants' cross-bill (copy attached as exhibit #3).

10. The new judgment was comprised of:

a) Principal owed	- \$396,206.42
to Defendants	
b) Interest	- \$ 808.53
c) Late handling	- \$ 211.44
d) Interest	- \$ 50,528.78
e) Attorney's Fees-	\$111,936.30
f) Costs	- \$ 22,205.00
g) Stock loan	- \$ 25,601.08
SUBTOTAL	\$607,497.55
Less Equity	- (76,569.00)

Adjustment

NET JUDGMENT - \$530,928.55

11. Based on the judgment, defendants attached all of petitioners assets and petitioners were unable to even purchase groceries because of no funds. Defendants, however, had been unsuccessful in actually taking possession of petitioners assets. Therefore, on April 29, 1993 petitioners and defendants entered into an agreement to effectuate an orderly payment of the Court's judgment in exchange for defendants releasing some of petitioners' assets (attached as Exhibit #7).

12. The payment agreement specifically states that no release of liability was made by the parties and that the judgment remained in full force and effect. An April 28, 1993 letter from Robert Hill, Esquire, attorney for defendants, specifically reiterates that no party waives any claims to affirmative defenses and that no party releases anyone (i.e. all parties continue to have any remedies available other than those specifically waived in the payment agreement).

13. This bill of review is properly and timely filed within the six month statutory requirement.

14. No leave of court to file this bill of review is required because the errors complained of are errors of law apparent on the face of the record.

ERRORS OF LAW

I.

15. This Court, in the opinion letter sent with the order of February 25, declared that the \$76,569.00 was to reduce the original purchase price of the stock (See next to last paragraph of Court's opinion. A copy is attached as exhibit #4.)

16. As stated, the Court awarded defendants attorney's fees in the amount of \$111,936.30 which represented 25% of the amount owing by petitioners to defendants on the stock. The Court also awarded interest on this amount.

17. As a matter of law, and as indicated in the Courts opinion letter, the attorneys fees (and interest) should have been calculated AFTER deducting the purchase price adjustment of \$76,569.00. This error of law is apparent from the face of the record.

18. The judgment for the defendants should therefore have been \$499,857.38 rather than \$530,928.55 (see Exhibit #5 for the corrected calculation).

19. Petitioners have paid defendants \$521,550.74 toward this judgment amount which represents an overpayment of \$8,562.08. Petitioners are entitled to return of this overpayment (see Exhibit #6).

* 20. Petitioners timely and properly noted their objections to this matter at the time the order was entered.

WHEREFORE, petitioners request that the Court enter an order declaring that the entire judgment in favor of the defendants

against the petitioners is satisfied. Further, petitioners request that the Court enter an order requiring defendants to repay petitioners the \$8,562.08 in overpayment on the judgment.

II.

21. The stock purchase agreement clearly and unambiguously states in paragraph 5.1 that petitioners had no obligation to pay defendants for the shares of stock if any schedules attached to the agreement were incorrect. (See Exhibit # 8).

22. Furthermore, defendants expressly warranted the accuracy of the financial statements in paragraph 2.13 of the stock purchase agreement.

23. This court found that the November 1991 financial statement was overstated by the \$76,569.00.

24. As a matter of law, apparent from the face of the record, petitioners were therefore entitled to a rescission of the agreement.

25. This court also found that defendants "did know of concerns raised about chemical pollution" and that "Thibault did not relate everything that everybody had said regarding toxic waste."

26. The stock purchase agreement specifically contained an express warranty that defendants had been provided all material information necessary to provide defendants with accurate information as to the company (see paragraph 2.13).

27. By failing to disclose pollution concerns, defendants, as a matter of law, breached this contractual warranty.

28. Petitioners timely and properly noted their objections to this matter at the time the order was entered.

WHEREFORE, petitioners request that this Court enter an order declaring the original stock purchase agreement between the parties rescinded and ordering the defendants to return the \$521,550.74 paid by the petitioners to the defendants on the judgment as well as the \$275,000.00 originally paid by the petitioners as down payment on the stock purchase agreement.

GERHARD R. GRESSMAN
GLORIA M. GRESSMAN

By: _____
Of Counsel

John F. Deal, Esquire
Ronda J. Cobler Wells, Esquire
John F. Deal & Associates
4510 South Laburnum Avenue
Richmond, Virginia 23231-2422
(804) 222-1250

CERTIFICATE

I certify that a true and correct copy of this Bill of Review was mailed, postage pre-paid to Robert Hill, Esquire, attorney for defendants, at suite 517, Virginia First Building, Petersburg, Virginia 23803 this 16th day of August, 1993.

28. Petitioners timely and properly noted their objections to this matter at the time the order was entered.

WHEREFORE, petitioners request that this Court enter an order declaring the original stock purchase agreement between the parties rescinded and ordering the defendants to return the \$521,550.74 paid by the petitioners to the defendants on the judgment as well as the \$275,000.00 originally paid by the petitioners as down payment on the stock purchase agreement.

GERHARD R. GRESSMAN
GLORIA M. GRESSMAN

By: RWells
Of Counsel

John F. Deal, Esquire
Ronda J. Cobler Wells, Esquire
John F. Deal & Associates
4510 South Laburnum Avenue
Richmond, Virginia 23231-2422
(804) 222-1250

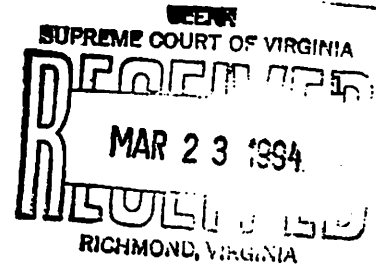
CERTIFICATE

I certify that a true and correct copy of this Bill of Review was mailed, postage pre-paid to Robert Hill, Esquire, attorney for defendants, at suite 517, Virginia First Building, Petersburg, Virginia 23803 this 16th day of August, 1993.

RWells

Filed in the Clerk's Office the 19th day of August, 1993
Writ Tax \$ 5.00
For 40.00
Fees 2.00
Total 2.00
229 2.00
51.00
Test: John F. Deal
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940447



VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF DINWIDDIE

PETERSBURG-DINWIDDIE AVIATION, INC. :

-VS-

LOUIS G. THIBAUT, SR., et al

Law No.
93-1118

Complete transcript of the hearing in the
above, when heard on November 24, 1993, before the
Honorable Thomas V. Warren, Judge.

FILED

Date

1-25-1994

Thomas V. Warren
Clerk

CRANE-SNEAD & ASSOCIATES, INC.
4914 Fitzhugh Avenue
Richmond, Virginia 23230
Tel. No. (804) 355-4335

83

ORIGINAL

1 APPEARANCES

2 JOHN F. DEAL & ASSOCIATES
3 4510 S. Laburnum Avenue
4 Richmond, Virginia
5 By: Mr. Thomas Lacheney
6 Counsel for the plaintiff

7 HILL & RAINEY
8 Virginia First Bank Building
9 Petersburg, Virginia
10 By: Mr. Robert B. Hill
11 Counsel for the defendants

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THE COURT: Mr. Hill, Mr.

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Lacheney, good morning.

5

MR. HILL: Good morning, Your

6

Honor.

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THE COURT: We're here this

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morning on a Bill of Review filed by the

9

plaintiffs in the case of Gressman versus

10

Thibault. And it's Gerhard Gressman and

11

Gloria Gressman versus Louis Thibault and

12

others. This is case 93-127.

13

Mr. Lacheney, are you ready on

14

behalf of the plaintiffs?

15

MR. LACHENEY: Yes, sir.

16

THE COURT: Mr. Hill, are you

17

ready on behalf of the defendants?

18

MR. HILL: Yes, Your Honor. With

19

all-- Judge, also, we have pending before

20

the Court a motion for sanctions filed by

21

the defendants.

22

THE COURT: Everything that is

23

filed in the file is before the Court, I

24

think.

25

All right, Mr. Lacheney.

1 MR. LACHENEY: Your Honor, good
2 morning. We're really before you on two
3 very simple issues. .

4 The first issue being that the
5 defendants in the previous action were
6 awarded attorney's fees on money that this
7 Court concluded they were not owed.

8 The second issue is that there's
9 language--

10 THE COURT: There is \$76,000.00.

11 MR. LACHENEY: Yes, sir.

12 THE COURT: Okay.

13 MR. LACHENEY: The second issue
14 deals with what we believe is a contractual
15 right of rescission expressly on the face of
16 the contract.

17 Now, what I'd like to suggest, if
18 Mr. Hill is agreeable, they're totally
19 independent issues. And to keep the two
20 from becoming confused, since we have
21 plenty of time allotted, perhaps we could
22 deal with one issue completely and then the
23 other completely, just so we don't muddy
24 the two issues.

25 THE COURT: Does that suit you or

1 not, Mr. Hill?

2 MR. HILL: Judge, I may put my
3 argument together, but he may proceed,
4 whichever. That's fine.

5 THE COURT: All right.

6 MR. LACHENEY: Also, I'd like to
7 reserve some time for rebuttal, because I'm
8 not exactly sure what Mr. Hill's response
9 is going to be for the, especially the
10 attorney's fees issue.

11 The fact of the matters is, Your
12 Honor, one of the things I feel like we
13 need to get out of the way first, Mr. Hill,
14 in his answer to the Bill of Review, denied
15 that a timely and proper objection was
16 made.

17 Your Honor, I have here copies.
18 Now, this would be in the file to the
19 original case, but I don't know if that's
20 handy. I have here a copy of an objection
21 that was, in fact, filed with this Court
22 almost immediately after the order was
23 entered.

24 THE COURT: All right. Hand me
25 that. I would--

1 MR. LACHENEY: Attached to the
2 front is our motion for a rehearing that
3 was filed in the third page back of the
4 objections. And I would draw your
5 attention to Paragraph 14, which addresses
6 the contractual right of recision, and
7 Paragraph 18, which addresses the
8 attorney's fees on the \$76,000.00. And
9 this objection was filed on the 8th of
10 March, which was just a little over a week
11 after the award was entered.

12 Now, the first issue of the
13 attorney's fees is very straight forward.
14 What happened is there was a contract
15 action by, originally filed by the
16 Thibaults against the Gressmans for a note
17 owing on the contract of purchase, the
18 Stock Purchase Agreement that they had
19 signed.

20 In January, just before the trial,
21 we were given leave to amend, and we filed
22 a counter action to the contract action,
23 claiming there were material breaches of
24 the contract, material breaches of certain
25 representations, misrepresentations were

1 made, certain misrepresentations as to the
2 financial statements, and prayed for
3 rescission of the contract, saying we do not
4 owe them.

5 As Your Honor remembers, Mr. Dacey
6 testified, and this Court concluded that
7 the equity of the corporation was, in fact,
8 overstated by approximately \$76,000.00,
9 76,569. And, Your Honor, in his letter
10 opinion--and I'm sure you have one, but I
11 have a copy here.

12 THE COURT: Yes, I have it, and I
13 remember it.

14 MR. LACHENEY: Okay. On the very
15 last page, it says:

16 The equity is overstated by
17 76,569. The purchase price is, therefore,
18 reduced accordingly.

19 Well, if there's a reduction in
20 the purchase price, there's a reduction in
21 the note, corresponding, and that's a
22 natural outcome. If you reduce the
23 purchase price, then there's a natural
24 reduction in the note of that \$76,000.00.

25 The note called for attorney's

1 fees, and we don't dispute that. We don't
2 dispute that the note, itself, called for a
3 25 percent attorney's fee. What we do
4 dispute is that a party can collect
5 attorney's fees on money that the Court has
6 concluded was not owed. And the Court,
7 Your Honor, said that 76,000 of those
8 dollars, \$76,000.00 of the purchase price
9 was no longer owed.

10 THE COURT: Mr. Lacheney, you can
11 cut through most of your argument on this,
12 because I understand your argument. It's
13 clear, and it's straight forward on the
14 attorney's fees. I do understand it. If
15 something really comes up that muddies it,
16 you will have rebuttal on that issue.

17 MR. LACHNEY: Okay. Well, in that
18 case, I'm fine, then. And we'll just let
19 Mr. Hill address it.

20 THE COURT: Mr. Hill.

21 MR. HILL: I guess I will handle
22 one issue at a time.

23 Judge, on the attorney's fee
24 issues, I will not deal with the sanctions,
25 I'll deal with that later.

1 It ignores, first of all, on the
2 objection basis, if the Court remembers,
3 there was no objection at trial to the
4 testimony as to the amount of attorney's
5 fees. The amount of attorney's fees is a
6 factual issue.

7 Also, the only evidence, and the
8 Court has to make its rulings based upon
9 the evidence, was that we get 25 percent
10 attorney's fees of the balance due on the
11 note. So there was no objection. There
12 was no argument in closing argument by
13 counsel. They cannot make it a good and
14 timely objection by filing their objection
15 after trial.

16 But aside from that, on the
17 substantive issue of attorney's fees, it
18 completely ignores the element of law that
19 Your Honor followed.

20 Now, what they're asking for in
21 attorney's fees, Judge, first of all, we
22 know we sued, the Thibaults sued on a
23 contract that contractually provided for
24 attorney's fees. Under Virginia law,
25 undisputed, that constitutes, therefore,

1 attorney's fees constitutes part of our
2 damage claim.

3 What they are asking this Court to
4 do, and what they're really saying is,
5 quote, it clear on the face of the record,
6 is to suspend part of our damage claim, the
7 attorney's fees, kind of hold it some
8 place, set off the amounts due that Your
9 Honor has found the amounts due, then bring
10 that attorney's fee issue down and
11 determine what's left, and we're going to
12 give you 25 percent of what's left.

13 Well I'd like to read, Your Honor,
14 from Michie's Jurisprudence on that issue.
15 And Judge, it's Volume 16, Section 41 of
16 set-off. It's at Page 559.

17 While judgment may be set off
18 against a judgment, a demand not reduced to
19 judgment cannot be set off against a
20 judgment.

21 Your Honor followed proper legal
22 procedure. You took our claim, reduced it
23 to judgment, gave us all the damages that
24 were contractually provided for. You took
25 their claim based upon the buy/sell

1 contract which did not have a contractual
2 attorney's fee provision in it. You
3 reduced that to judgment, and you set them
4 off.

5 Their position is not only not
6 clear on the face of the record, it's
7 clearly wrong and completely ignores
8 Virginia law concerning that. There was
9 absolutely nothing wrong with the way that
10 was handled.

11 He is taking a phrase found in
12 your letter opinion, which I believe when
13 you read the whole letter opinion, it makes
14 it clear what you're doing, and takes it
15 out of context. So we disagree with their
16 position on the attorney's fees.

17 THE COURT: Mr. Lacheney.

18 MR. LACHENEY: Your Honor, a
19 couple of points. The first point is,
20 seriously, we didn't make an objection at
21 trial. As I said just a moment ago, we
22 don't dispute that the note called for 25
23 percent attorney's fee. I don't know if
24 Mr. Hill was expecting us to anticipate the
25 ruling and object in advance or what.

1 Because we didn't ever dispute that the
2 note called for a 25 percent attorney's
3 fee. All we're disputing is the
4 application of it, which is an issue of
5 law, not an issue of fact. Determination
6 of the calculation.

7 The second issue, Mr. Hill quotes
8 from Michie's on set-off. Unfortunately,
9 he spent a little more time maybe on doing
10 the sanctions motion than doing his
11 research, because this is not even,
12 anything in the nature of a set-off.

13 Your Honor, what this is, is a
14 recoupment. There is a big difference. I
15 have brought a copy of Black's Law
16 dictionary, as well as a Virginia case on
17 set-off and recoupment.

18 Your Honor, I have here the
19 Virginia case, Supreme Court case of
20 National Bank and Trust Company versus
21 Castle, a copy for Mr. Hill, a copy for
22 you.

23 On the 5th page here, Page 695 at
24 the top, at Paragraph 2, the Supreme Court
25 discussing the difference between a set-off

1 and a recoupment. We're dealing here with
2 the right of recoupment; this is not a
3 set-off. Set-off, Your Honor, is two
4 independent claims, one extrinsic to the
5 other. Two independent claims. Those are,
6 in fact, reduced to judgment.

7 That's not what we have here.
8 What we have here is the last full
9 paragraph:

10 Recoupment, therefore, is the
11 right of the defendant to cut down or
12 diminish the claim of the plaintiff in
13 consequence of his failure to comply where
14 some provision of the contracts are to be
15 enforced.

16 Recoupment is a reduction. It is
17 a defense against a part of the claim. It
18 is not at the judgment level. It attacks
19 the claim, itself.

20 Less there be any doubt, I also
21 have here, Your Honor, a copy of Black's
22 Law dictionary. Mr. Hill a copy, and a
23 copy for Your Honor.

24 The definition for recoupment,
25 which is on the last page is, if you will

1 look at the first paragraph at the top of
2 the second column:

3 The recoupment is a right of
4 defendant to have a reduction from the
5 amount of the plaintiff's damages.

6 It is not at the judgment level;
7 it is a set-off. And it has to do with the
8 same contract. Set-off is distinguished,
9 if Your Honor will look there at the
10 bottom.

11 Set-off is a demand which the
12 defendant has against the plaintiff arising
13 out of a transaction extrinsic to the
14 plaintiff's cause of action.

15 Those, naturally, would have to go
16 to judgment, because they're not even
17 related transactions.

18 Recoupment is a reduction or
19 rebate by the defendant of part of the
20 plaintiff's claim.

21 So the first problem with Mr.
22 Hill's argument is, it's not a set-off;
23 it's a recoupment in nature. The nature of
24 what was done here was in the nature of
25 recoupment and not a set-off.

1 Second, even if it had been a
2 set-off, it wouldn't change our argument
3 one bit. Because let's say this had been a
4 set-off. And let's say there had been
5 damages being calculated. Then I would
6 submit to Your Honor that the damage
7 calculation that Mr. Hill provided, and the
8 damages as calculated were incorrect.
9 Because then what would Mr. Gressman's
10 damages have been? His damages would have
11 been the 76,000, the 25 percent attorney's
12 fee he had to pay on that 76,000, the
13 interest he had to pay on the 76,000. The
14 bottom line result--

15 THE COURT: Save your argument,
16 Mr. Lacheney. Because I agree with you. I
17 agree with your position. \$76,000.00
18 should have come off of the amount due and
19 owing on the note. And the 25 percent is
20 figured on the balance after the deduction
21 of the \$76,000.00. I agree with you on
22 that point.

23 MR. LACHENEY: I have done here
24 some computations. And since--

25 THE COURT: Well, let's get to

1 that later. I agree with you. There
2 should be a reduction. I don't know the
3 exact figures, but I think you all can work
4 with the figures. I have no problem with
5 that.

6 MR. LACHENEY: I don't think those
7 will be disputed.

8 MR. HILL: Judge, I just note, for
9 the record, my exception to the Court's
10 ruling.

11 THE COURT: Let's go on to the
12 next two matters that you have.

13 MR. LACHENEY: The next matter,
14 the last matter, which is, which actually
15 this first matter becomes meaningless if
16 Your Honor finds for us on the second
17 matter, is we feel that there was in the
18 contract a clear and expressed right of
19 recision for Mr. Gressman.

20 And what apparently happened here,
21 Your Honor, there were a lot of issues at
22 this trial, there were a lot of things
23 decided. Apparently, this issue just fell
24 through the cracks. But I have here, Your
25 Honor--

1 THE COURT: I don't know that
2 anything fell through the cracks, Mr.
3 Lacheney.

4 MR. LACHENEY: Well, maybe it was
5 just an oversight, I don't know. What I've
6 done, Your Honor, and the paragraph I'm
7 referring to is Paragraph 5.1 of the Stock
8 Purchase Agreement. Do you have a copy of
9 the Stock Purchase Agreement, Your Honor?

10 THE COURT: I've got a copy of
11 everything somewhere.

12 MR. LACHENEY: I have one handy,
13 if that would be helpful.

14 THE COURT: What's in the Stock
15 Purchase Agreement is certainly not
16 disputed and cannot be disputed. It's
17 there. You go ahead and make your
18 argument. I don't want to pull out every
19 piece of paper we had at trial in your
20 argument. So you go ahead with your
21 argument, if you would.

22 MR. LACHENEY: Okay. Paragraph
23 5.1 of the Stock Purchase Agreement says,
24 and I quote:

25 The obligation of buyer to

1 purchase--and here are very significant
2 words--and pay for the company shares shall
3 be subject to and conditioned upon the
4 satisfaction of closing.

5 And one of those conditions is
6 that those financial statements be
7 accurate. Now, Your Honor has already
8 found that the financial statements were
9 not accurate. So this clause has been
10 breached.

11 Now, it says:

12 The obligation of buyer to
13 purchase and pay.

14 If Your Honor will take a look at
15 Paragraph, I think it is 1-3, yes, 1-3 of
16 the Stock Purchase Agreement. The Stock
17 Purchase Agreement expressly and
18 exclusively anticipated payment in the
19 future.

20 Paragraph 1-3 says:

21 The purchase price shall be
22 payable on the closing date as follows:
23 One, a down payment of \$275,000.00 and
24 delivery of a negotiable promissory note
25 for the balance.

1 So the contract expressly provided
2 for payment in the future. It was
3 anticipated. Part of the express, on the
4 face agreement. There will be a down
5 payment, payment in the future.

6 Paragraph 5-1 says:

7 Obligation of buyer to purchase
8 and to pay. Now, if that, if those words
9 simply mean, as I think Mr. Hill is going
10 to present, that that was a right not to
11 close on the deal, then those words, and
12 pay, become redundant. If you don't have
13 to buy, why add the words and pay? The
14 reason the words, and pay, are there is
15 because it was anticipated that payments
16 would be made into the future. There was a
17 future obligation associated with this
18 contract. And this clause was a continuing
19 duty or continuing right of Mr. Gressman
20 not to pay.

21 And I would point out, Your Honor,
22 that the stock certificates were, in fact,
23 held in escrow. This deal was not going to
24 be completed until all the payments were
25 made, the stock certificates were, in fact,

1 tendered to Mr. Gressman.

2 Now, one of the things that I
3 think clearly bears out that this
4 interpretation is accurate is, because I
5 think it's the only logical
6 interpretation. Mr. Hill, I believe, is
7 going to argue that, well, this was a right
8 of Mr. Gressman not to enter into the
9 contract. But, Your Honor, I would submit,
10 until Mr. Gressman signed this contract, he
11 had no duty to enter into this contract.

12 Prior to Mr. Gressman signing this
13 contract, all this was, was a bunch of
14 words on a piece of paper. It was not an
15 agreement. None of the paragraphs were
16 operative; none of the paragraphs meant
17 anything until the parties put their
18 signatures to it, made the contract. So
19 this clause was not operative until it was
20 signed.

21 Now, if the clause is not
22 operative until it's signed, it cannot be a
23 right that is only effective prior to the
24 signing of the contract. If this is just
25 the right for Mr. Gressman not to enter

1 into the deal, it's a meaningless right.
2 Because the right not to enter into the
3 deal is there before he enters into the
4 deal. The minute he signs it, he's
5 entered, he's in the deal.

6 So this clause is not operative.
7 It's not effective. It doesn't mean
8 anything until Mr. Gressman signs it. If
9 Mr. Gressman signing it waives it, then
10 it's a clause with absolutely no meaning,
11 whatsoever.

12 And as Your Honor is aware, one of
13 the first and cardinal rules of contract
14 interpretation is everything means
15 something. I can't believe that the
16 parties put one of the longest paragraphs
17 in the agreement, and it doesn't mean
18 anything. The fact is, and again, a simple
19 rule of contract interpretation is, the
20 words mean what they say. The plain
21 meaning, rule.

22 The words here say:

23 Obligation of buyer to purchase
24 and pay is contingent upon those financial
25 statements being accurate.

1 When those financial statements
2 were not accurate, it vested Mr. Gressman
3 the right to a rescission of the contract.
4 Any other interpretation of this clause
5 defeats the very existence of the clause.
6 Because any other interpretation would, in
7 fact, make the clause meaningless.

8 Ironically, Mr. Hill is out for
9 sanctions motions saying that this, no way
10 can this legally or factually be argued.

11 Your Honor, I draw your attention
12 to the next clause, which is 5-2, and I've
13 blown that one up, also, so we can compare
14 the two. But Your Honor will notice in
15 Paragraph 5-2 is the exact same words.
16 Exact same words. Paragraph 5-1 says:

17 The obligation of buyer to
18 purchase and pay is subject to these
19 conditions.

20 Paragraph 5-2 says:

21 The obligation of seller to sell
22 shall be subject to certain conditions.

23 Exact same words, exact same
24 language. There is absolutely no
25 difference in these two clauses other than

1 the fact that one is the seller's
2 obligations and one is the buyer's
3 obligations. Other than that, the words
4 are identical.

5 Mr. Hill has, in fact, in this
6 Court--and I attached a copy of the
7 pleading to my response to the sanctions
8 motion--filed an action claiming that this
9 seller's clause is a continuing obligation
10 of indemnity. A continuing obligation on
11 the part of Mr. Gressman to comply with the
12 condition in this section. I don't see how
13 they can argue that the exact same words in
14 the paragraph dealing with seller's duties
15 is a continuing right and obligation;
16 whereas the rights and duties on the
17 buyer's portion are somehow ineffective
18 after the contract is closed. That's
19 nonsensical; it makes no sense. They,
20 themselves have filed an action saying,
21 this is a continuing obligation.

22 We agree with that. In fact, our
23 answer is on file, we agree. It's a
24 continuing obligation. But as the seller's
25 obligation is a continuing obligation, so

1 is the buyer's obligation.

2 These clauses survived closing as
3 they, themselves, have evidenced for filing
4 suit on the identical clause following.

5 And so for all of those reasons,
6 Your Honor, we feel like there's a
7 contractual right of recision here. That
8 the words mean what they say. Mr. Gressman
9 did not have an obligation to pay. It's a
10 purchase and pay. He had no obligation
11 once this Court determined that the
12 financial statements were, in fact,
13 overstated by 50 percent.

14 THE COURT: All right. Is that it
15 for the rest of your argument now?

16 MR. LACHENEY: That is it, other
17 than if the sanctions motion is addressed.

18 THE COURT: Okay.

19 MR. HILL: First of all, Your
20 Honor, they didn't plead a contractual
21 right of recision in their Motion for
22 Judgment, either in their amended Bill of
23 Complaint or in their original Bill of
24 Complaint. All we have here is another
25 theory of recovery, taking the facts as

1 interpreted by them and saying, well, maybe
2 we can do it this way. It wasn't pleaded:

3 Secondly, that paragraph, you
4 know, is once again purposefully taken out
5 of context. Right above this language on
6 Paragraph 5.1 says:

7 Conditions of closing.

8 And it says and uses the word, and
9 pay. Well, how does the contract provide
10 for the shares to be paid for? That's
11 dealt with on Page 2. In fact, it was read
12 to you by opposing counsel. Page 2 says:

13 The purchase price shall be paid
14 as follows. And it says: It shall be paid
15 at closing.

16 You do two things to pay for these
17 shares at closing. No. 1, you have a down
18 payment and a cash amount. No. 2, you
19 execute a promissory note. You have bought
20 the shares. You have closed the
21 transaction. This is nothing more than a
22 condition precedent. A very simple concept
23 under Virginia law.

24 If he had investigated prior to
25 closing on the deal and determined that

1 there were some warranties out there, then
2 he didn't have any obligation to go through
3 and close on the deal. He had a breach of
4 contract action dealing with the other
5 warranties.

6 Very briefly, I'd like to deal
7 with his interpretation of the second
8 phrase and then use, as our pleadings,
9 Judge, that's a case where, after he
10 purchased the shares of stock, and went in
11 and operated PDA, he was dealing with
12 Eastern Fuels. That, Eastern Fuels has now
13 sued the Thibaults on an invoice that
14 pre-dates the closing transaction.

15 And yet, page, paragraph, and as
16 our pleading, which is attached to their
17 response to our sanctions motion, makes it
18 clear, we're also looking at another
19 paragraph on, I believe it's on Page 2.

20 We don't rely just on that,
21 Judge. We're pointing to 5:2 and saying,
22 look. We were supposed to receive a
23 release from Eastern, and we, in fact,
24 did. We received a release from them from
25 their guarantee of PDA's fuel expenses for

1 all invoices subsequent to the closing
2 date. We are now pursuing on an invoice
3 that pre-dated. But his obligation to pay
4 us back originates in a completely
5 different provision, which is alluded to
6 right in that same pleading, Judge. And
7 that is Page 3 of the Stock Purchase
8 Agreement, 2:4, paragraph 6. Where it
9 says:

10 Buyer shall pay all liabilities of
11 the company at or shortly after closing.

12 In other words, all these
13 liabilities were looked at. The assets
14 were looked at. Okay. We're going to pay
15 these things, we're going to give you an
16 off-set for this; that's how it was done.
17 All the liabilities were counted as part of
18 the purchase price. And he was supposed to
19 pay those liabilities out of the down
20 payment at or shortly after closing. But
21 as far as the, the trying to take a small
22 contractual provision and give meaning to
23 two words, and pay, when the contract
24 clearly defines he shall pay for the shares
25 at closing on Page 2 of the contract is

1 just contrary to the, and certainly doesn't
2 even begin to touch the burden that he has
3 here today, which is that it's clear on the
4 face of the record.

5 THE COURT: Rebuttal?

6 MR. LACHENEY: Your Honor, one
7 thing I did observe is that Mr. Hill didn't
8 tell us what that clause does mean if it
9 doesn't mean what I say it means. If it
10 means, and he alluded to it, but he didn't
11 come out and say it, because it doesn't
12 make sense that it wasn't right for Mr.
13 Gressman to close on the deal, then this
14 clause is meaningless. Because the clause
15 didn't become effective until the paragraph
16 was signed. What he would then be arguing
17 is that it was waived, too, at the instant
18 of signing.

19 How can a clause become operative
20 and become waived at the same moment? It
21 makes no sense. It's nonsensical. If Mr.
22 Hill has not given you a definition of what
23 that clause does mean--

24 And as to the heading which Mr.
25 Hill seems to put a lot of weight on, I

1 would draw your attention to Paragraph 6.7
2 of the contract. Headings in this
3 agreement are for convenience only and
4 shall be given no substantive or
5 interpretive effect, whatsoever.

6 The heading is meaningless. What
7 the operative words are the words that I
8 blew up. And they say the obligation of
9 the buyer is to purchase and pay is
10 contingent upon those financial statements
11 being accurate. It had to mean something.
12 And the only logical explanation for what
13 it means is a contractual right of
14 rescission. Because if it meant he didn't
15 have to close the deal, he didn't have to
16 close the deal, anyway.

17 If Mr. Gressman had discovered
18 that the financial statements were off 50
19 percent, and he didn't want to sign that
20 contract, they had no action against him.
21 He didn't have a contractual right not to
22 enter into a contract. That's silly to say
23 that it was a contractual right not to
24 enter into the contract.

25 The right not to enter into a

1 contract existed. The contract itself,
2 that clause became operative when the
3 contract was signed.

4 Now, he also backed off with what
5 they filed. What they filed, they quoted
6 5.2.3. And they said it manifests a clear
7 intent that the third party defendants,
8 Gerhard and Gloria Gressman, were assuming
9 the liabilities of the corporation. And
10 then they quote Paragraph 5.2.3. That is
11 the basis of, the primary basis of their
12 argument. They quoted. It's the exact
13 same language.

14 They're saying-- And Mr. Hill
15 makes the observation, well, but that was
16 the duty that arose. That was an Eastern
17 obligation. That was there at the time of
18 the signing of the contract. Bingo. The
19 financials, Mr. Dacey testified and Your
20 Honor found, were inaccurate at the time of
21 the signing of the contract.

22 Exact same situation. Exact same
23 language. And the results should be the
24 same. It is a continuing obligation. And
25 otherwise, this clause has no meaning.

1 With that, Your Honor, I rest.

2 THE COURT: Well, I recall this
3 action as basically a fraud action. It was
4 well plead; it was well litigated; well
5 argued. We took a lot of time with it.
6 And that's not to say that just because we
7 took five days with it that every possible
8 thing was revealed and every possible thing
9 was litigated.

10 But I would say this. That every
11 possible thing either was litigated or
12 could have been litigated at the time this
13 case was tried. And what this does as a
14 Bill of Review, this part of it, it seems
15 to me, is an attempt to relitigate the
16 case. And certainly is an attempt to do
17 something that I don't favor. That is
18 after the case is all over, go back and try
19 to find other areas or other theories of
20 recovery after the case has all been tried
21 in a trial court.

22 I would say this. That I do not
23 find any clear errors as a matter of law on
24 the record as to anything that was done.
25 And the Court affirms the earlier ruling.

1 I do deny the motion for
2 sanctions. There is a fine line between
3 what I would consider aggressive pre-dated
4 lawyering, which I believe is what took
5 place in this case as to the motions
6 regarding the Bill of Review, as to the
7 Bill of Review. And I don't think it went
8 any further than that. I don't think it
9 went to the point that I would find that
10 there's no possible way that the plaintiffs
11 could prevail on it. And I consider it no
12 more than aggressive lawyering. So I deny
13 the motion for sanctions.

14 MR. HILL: Please note our
15 exception for the record, Judge.

16 THE COURT: Exception noted.

17 Now, does that take care of what
18 we had today?

19 MR. HILL: Judge, you're treating
20 each issue separately, so you're ruling in
21 favor of the Bill of Review with regard to
22 the attorney's fee issue.

23 THE COURT: Yes. Regarding the 25
24 percent of the \$76,000.00 reduction.

25 MR. HILL: Your Honor, I'm not

1 technically allowed to rebut on that. I'm
2 not trying. Is there a way I could just be
3 a little more articulate with my objections
4 to the Court's ruling on the attorney's fee
5 issue just to make sure it's--

6 THE COURT: I'm sure it's all
7 stated in your argument. I'll note your
8 exception. It's all stated in your
9 argument.

10 MR. HILL: Well, he brought up a
11 recoupment versus set-off issue in his
12 rebuttal which was not, I didn't--

13 THE COURT: That is not the
14 grounds for my ruling, in any event. I
15 think it's just a basic, this is the amount
16 due on the note. This is, whether you call
17 it off-set or a reduction, I don't think it
18 makes any difference. The net amount
19 should have been reduced by the \$76,000.00
20 overstatement.

21 MR. HILL: So it's not based upon
22 the Court's finding that it's recoupment
23 versus set-off?

24 THE COURT: No, sir, it's not.

25 MR. LACHENEY: Just for the

1 record, I wanted to note my exception to
2 the second part of the ruling.

3 THE COURT: Exception is noted,
4 yes, sir.

5 Who is going to draw the order?

6 MR. LACHENEY: I have a decree
7 here.

8 THE COURT: All you have to do is
9 come up with a figure, then, right?

10 MR. LACHENEY: Yes.

11 THE COURT: Can you do that all
12 right?

13 MR. LACHENEY: I don't think we
14 have any disputes. I don't think we will
15 have any dispute on the dollars.

16 THE COURT: That's all it is, is a
17 dollar computation. And it ought to be
18 nothing but putting the amount in.

19 MR. LACHENEY: One issue I might
20 raise, just because they denied the Court's
21 authority to do so in response to the Bill
22 of Review is that this Court, the
23 calculation is going to result in an
24 overpayment, that Mr. Gressman has paid
25 approximately \$12,000.00 too much.

1 And so that there's no dispute,
2 this Court, sitting in its equitable power
3 does have the right to order restitution of
4 that \$12,000.00. I just wanted to make
5 sure that we-- Because they denied the
6 Court has the right to grant relief in the
7 Bill of Review.

8 MR. HILL: Your Honor, with
9 regards that the Court will make whichever
10 rulings it can, he can argue that. We will
11 most likely be appealing that decision. So
12 the Court also needs to set an appeal bond
13 on this issue.

14 The judgment against the Gressmans
15 have been, has been paid in full.

16 THE COURT: Would a \$25,000.00
17 bond be sufficient?

18 MR. HILL: We're going to probably
19 be appealing, so it would be up to his--

20 MR. LACHENEY: What we're going to
21 be seeking is a \$12,000.00 restitution
22 amount. So I'm happy with the \$12,000.00.

23 THE COURT: Okay. 12,000. That's
24 good.

25 MR. HILL: Thank you, Judge.

1 THE COURT: Thank you. ,
2
3

4 HEARING CONCLUDED AT 10:42 P.M.
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VIRGINIA:

IN THE CIRCUIT COURT OF DINWIDDIE COUNTY

GERHARD R. GRESSMAN,
GLORIA M. GRESSMAN,

Petitioners,

v.

CHANCERY NO. 93-127

LOUIS G. THIBAUT, SR., et als,

Respondents.

DECREE

This 24th day of November, 1993 came the parties by counsel and were heard with respect to petitioners' bill of review as properly and timely filed before this Court. Based upon the pleadings filed and the oral arguments made by the parties, it is this Court's judgment that an adjustment of the original judgment entered in Chancery number 92-49 is in order.

On Count I of petitioners' bill of review, it appears from the face of the record that the cross-claimants in the original ^{and interest} suit (the respondents in this bill of review) were awarded attorney's fees in excess of the amount to which they were entitled. This excess amount is \$31,071.17.

It further appearing to this Court that the respondents having fully collected the proper amount owed to them by the petitioners and having collected \$12,288.55 in excess of the amount to which they were entitled, are justly obligated to make restitution to the petitioners in that amount.

It is therefore adjudged, decreed and ordered that the respondents make restitution to the petitioners in the amount of \$12,288.55.

On Count II of the petitioners' bill of review, the Court finds no clear error of law apparent on the face of the record. It appears to this Court that the position of petitioners that paragraph 5.1 of the Stock Purchase Agreement was a contractual right of rescission was not properly and adequately raised at the original trial on this matter, but is an attempt to create a new theory of recovery on the case. Therefore, this Court need not rule on the merits of petitioners' claim. Count II is therefore denied.

The defendants' motion for sanctions is denied. Appeal bond is set at \$15,000.00

IT IS SO ORDERED.

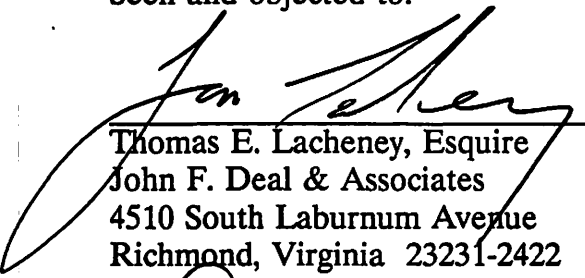
Entered

Dec. 22, 1993



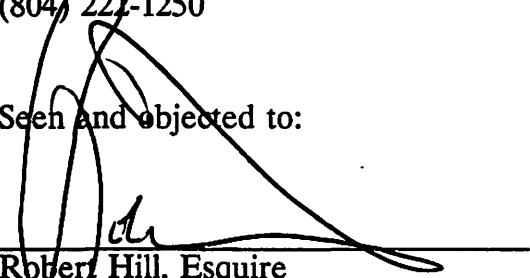
Judge

Seen and objected to:



Thomas E. Lacheney, Esquire
John F. Deal & Associates
4510 South Laburnum Avenue
Richmond, Virginia 23231-2422
(804) 222-1250

Seen and objected to:



Robert Hill, Esquire
Hill & Rainey
Suite 517, Virginia First Building,
Petersburg, Virginia 23803
(804) 861-4200

ASSIGNMENTS OF ERROR

The trial court erred in refusing to consider and grant appellants' bill of review, which contended that as a matter of law the appellants had a contractual right of rescission based on a contract they executed with appellees, because:

1. The trial court's decree finding that appellant's position was a new theory of recovery not raised at the original trial is in direct conflict with the entire trial record which shows that the appellant's position was specifically pled and subsequently raised on numerous occasions during the original proceeding;

2. The clear language of the contract between the appellants and appellees manifests an unambiguous and matured right of rescission on the part of the appellants.

ASSIGNMENTS OF ERROR

The trial court erred in granting the respondent's motion on a bill of review to reduce the judgment amount in the case at bar to disallow attorney's fees and interest on the \$76,569.00.

PETERSBURG DINWIDDIE AVIATION, INC.
SALE OF BUSINESS DOCUMENTS
EXECUTED DECEMBER 5, 1991

FREED, HASKINS & GAYLE, P.C.
Suite 300, The Commonwealth Building
7301 Forest Avenue
Richmond, Virginia 23226

Telephone (804) 285-4318
Telecopier (804) 288-1801

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PETERSBURG DINWIDDIE AVIATION, INC.
1991 SALE OF BUSINESS

1. Stock Purchase Agreement dated December 5, 1991.
2. Exhibit A - Negotiable Promissory Note for \$400,000.00 dated December 5, 1991.
3. Amortization Schedule dated November 16, 1991.
4. Exhibit B - Pledge Agreement dated December 5, 1991.
5. Assignment of Annuity As Collateral - MFS/Sun Life (U.S.) Annuity - dated December 5, 1991.
6. Exhibit C - Purchase Money Security Agreement dated December 5, 1991.
7. Letter to State Corporation Commission filing UCC-1 dated December 5, 1991.
8. Letter to the County of Dinwiddie filing UCC-1 dated December 5, 1991.
9. Letter to Louis G. Thibault, Sr., notifying him of filing of UCC-1's and the renewal in five years of the UCC-1's.
10. Closing Financial Statement dated November 30, 1991.
11. Letter Agreement between Dinwiddie Airport & Industrial Authority and Gerhard R. Gressman dated December 5, 1991.
12. Letter of Resignation by Officers and Directors of Petersburg Dinwiddie Aviation, Inc., dated December 5, 1991.
13. Letter to Louis G. Thibault Sr., Acknowledging Receipt of Corporate Minute Book by Gerhard R. Gressman dated December 9, 1991.
14. Post Closing Checklist .
15. Shearson Lehman Brothers Account Pledge as Additional Security for the \$400,000.00 Note.
 - a. Shearson Lehman Brothers letter dated December 10, 1991.
 - b. Shearson Lehman Brothers Client Agreement.
 - c. Purchase Money Security Agreement dated December 5, 1991.
 - d. UCC-1 for Chesterfield County.
 - e. UCC-1 for State Corporation Commission.

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (the "Agreement") is dated the 5th day of December, 1991, by and among GERHARD R. GRESSMAN and GLORIA M. GRESSMAN ("Buyer"); and LOUIS G. THIBAUT, SR., LOUIS G. THIBAUT, JR., WILLIAM K. THIBAUT, ROSEALMA T. BURTON, and CAROL A. THIBAUT (hereinafter collectively referred to as "Sellers").

WHEREAS, Sellers own, free and clear of all adverse claims, all of the issued and outstanding shares of capital stock of PETERSBURG DINWIDDIE AVIATION, INC., a Virginia corporation (the "Company").

WHEREAS, Sellers desire to sell, and Buyer desires to purchase, all of the issued and outstanding shares of capital stock of the Company for the consideration and upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the provisions and the respective agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. Purchase and Sale of Stock.

1.1 Agreement to Purchase and Sell. Upon the terms and subject to the conditions set forth in this Agreement on the Closing Date, Sellers shall sell, and transfer to Buyer, and Buyer shall purchase from Sellers, all of the issued and outstanding shares of capital stock of the Company (the "Company Shares"). The exact number of Company Shares to be sold by Sellers hereunder is 81,595 common shares, which are sold as follows:

By Louis G. Thibault, Sr.,	46,531 shares
By Louis G. Thibault, Jr.,	8,766 shares
By William K. Thibault,	8,766 shares
By Rosealma T. Burton,	8,766 shares
By Carol A. Thibault,	<u>8,766</u> shares
Total shares to be sold:	<u>81,595</u> shares

1.2 Purchase Price. Buyer agrees to pay to Sellers the sum of SIX HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$675,000.00) (the "Purchase Price") less the adjustments^{*}, if any, required by § 2.4, below. The Purchase Price shall be

allocated to each of the Sellers in proportion to his or her pro rata ownership of the Company Shares.

1.3 Payment of Purchase Price. The Purchase Price shall be payable on the Closing Date as follows:

(i) a "Down Payment" by cashier's check acceptable to the Sellers of Two Hundred Seventy-five Thousand and 00/100 Dollars (\$275,000.00) less the adjustments, if any, required by § 2.4, below;

(ii) by delivery of the Negotiable Promissory Note in the same form as Exhibit A attached hereto, secured by: the Pledge Agreement, Exhibit B, attached hereto; and the Purchase Money Security Agreement, Exhibit C, attached hereto.

1.4 Closing. The closing of the purchase and sale of the Company Shares provided herein (the "Closing") will be at the office of Robert C. Elliott, II, Esquire, attorney for the Sellers, 105 Valley Road, Colonial Heights, Virginia 23834, at 3:15 p.m., local time, on December 5, 1991, or at such other place or at such other date and time as Sellers and Buyer may mutually agree. Such date and time of Closing is herein referred to as the "Closing Date."

2. Representations and Warranties of Sellers.

Sellers, severally, represent and warrant to Buyer as follows:

2.1 Existence and Good Standing. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation.

2.2 Capitalization. The Company has authorized capital stock consisting solely of One Hundred Thousand (100,000) shares of common stock, One and 00/100 Dollar (\$1.00) par value per share, of which Eighty-one Thousand Five Hundred Ninety-five (81,595) shares and no more are presently issued and outstanding.

2.3 Records. The corporate minute books of the Company to be delivered to Buyer at the Closing shall contain true and complete copies of the articles of incorporation, as amended to the Closing Date, bylaws, as amended to the Closing Date, and the minutes of all meetings of directors and shareholders and certificates reflecting all actions taken by the directors or shareholders without a meeting, from the date of incorporation of the Company to the Closing Date.

2.4 Financial Statements. Sellers have furnished to Buyer unaudited financial statements and tax returns of the Company as and for the fiscal years ending June 30, 1989, June 30, 1990, June 30, 1991, and monthly statements for the months ending July 31, 1991, August 31, 1991, and October 31, 1991, (collectively the "Financial Statements"), all of which fairly present the financial condition of the Company.

At Closing, or shortly thereafter, a financial statement will be prepared as of November 30, 1991, prepared in accordance with the same accounting principles to which the Financial Statements have been prepared on a consistent basis which will demonstrate that:

(i) The Total Equity of the Company as of Closing shall not be less than One Hundred Forty-seven Thousand Four Hundred Seventy-four and 00/100 Dollars (\$147,474.00). To the extent that the Total Equity is less than such amount, the Purchase Price and the Down Payment shall be reduced. To the extent that the Stockholder's equity is greater than such number, the Purchase Price and the Down Payment shall be increased.

(ii) The fuel inventory plus the fuel accounts receivable - Army shall be equal to or greater than the fuel account payable to Eastern Aviation Fuels, Inc.

(iii) All insurance shall be prorated as of the Closing Date on a straight line basis.

(iv) All payroll which has accrued but is yet unpaid as of Closing shall be less than or equal to the work-in-progress.

(v) No inventory or property and equipment shall be purchased or sold prior to Closing, except in the ordinary and normal course of business.

(vi) The Purchase Price and the Down Payment shall be reduced, and the Buyer shall immediately contribute to the capital of the Company an amount equal to the difference between: the total liabilities as of Closing; less the sum of the cash, accounts receivable, work-in-progress, and tax deposits calculated as of the time of Closing. Sellers and Buyer shall pay all liabilities of the Company at or shortly after Closing. For example, if Closing had occurred as of the end of business on September 30, 1991, the total liabilities as of such date were One Hundred Ninety-six Thousand Nine Hundred Eighty-five and 11/100 Dollars (\$196,985.11) from which would have been subtracted the sum of cash, accounts receivable charge cards, accounts receivable, accounts receivable - Army, unbilled work-in-

progress, employee advances, federal income tax deposits, and state income tax deposits, all of which subtractions total Eighty-eight Thousand Six Hundred and 69/100 Dollars (\$88,600.69) as of September 30, 1991. Accordingly, the Purchase Price and the Down Payment would have been reduced and the Buyer would have been required to contribute One Hundred Eight Thousand Three Hundred Eighty-four and 42/100 Dollars (\$108,384.42) to the capital of the Company, which sums would have immediately been used to pay all liabilities, including the liabilities of the Company to Louis G. Thibault, Sr., and other Stockholders. Upon Buyer's contribution, all such liabilities shall immediately be paid.

2.5 Undisclosed Liabilities. To the best of each Seller's knowledge and belief, the Company has no liabilities or obligations whatsoever, either accrued, absolute, contingent or otherwise, which are not reflected or provided for in the Financial Statements except: (a) those arising after the date of the last balance sheet, included in the Financial Statements, which are in the ordinary course of business, in each case in normal amounts and none of which is materially adverse, and (b) as, and to the extent specifically described in the Schedules hereto, except as follows:

(i) The lease, the fixed based contract, and the FBO contract with the Petersburg Dinwiddie Airport Industrial Authority.

(ii) Any sales or aviation fuel taxes or any personal property taxes which are lawfully paid after Closing.

(iii) The claim of Tate Engineering, Inc., in the approximate amount of Six Thousand Five Hundred and 00/100 Dollars (\$6,500.00) for the repair of an air conditioning motor and compressor.

(iv) Any liability for additional sales tax as a result of the sales tax audit recently completed by the Virginia Department of Sales Tax.

(v) The Company has a claim against Pittsburgh Plate and Glass Company ("PPG") for defective primer, which PPG sold to the Company. PPG has tentatively agreed to reimburse the Company in the amount of Twenty-two Thousand Five Hundred and 00/100 Dollars (\$22,500.00). The Company has used the defective primer to paint certain airplanes. A list of which airplanes is attached hereto as Schedule 2. To the best of each Seller's knowledge and belief, the warranties with respect to the paintings of such airplanes listed on Schedule 2 expires by the end of December, 1991.

2.6 Taxes. To the best of each Seller's knowledge and belief, the Company:

(i) has duly and timely filed or caused to be filed all federal, state, local and foreign tax returns (including, without limitation, consolidated and/or combined tax returns) required to be filed by it prior to the date of this Agreement which relate to the Company or with respect to which the Company or the assets or properties of the Company are liable or otherwise in any way subject;

(ii) has paid or fully accrued for all taxes shown to be due and payable on such returns (which taxes are all the taxes due and payable under the laws and regulations pursuant to which such returns were filed); and

(iii) has properly accrued for all such taxes accrued in respect of the Company or the assets and properties of the Company for periods subsequent to the periods covered by such returns. No deficiency in payment of taxes for any period has been asserted by any taxing body and remains unsettled at the date of this Agreement.

Copies of all federal, state, local and foreign tax returns of the Company have been made available for inspection by Buyer.

2.7 Title to Company Shares. The Company Shares are duly authorized, validly issued, fully paid and nonassessable and are owned by Sellers free and clear of all liens, encumbrances, charges, assessments and adverse claims. The Company Shares are subject to no restrictions with respect to transferability to Buyer in accordance with the terms of this Agreement. Upon transfer of the Company Shares by Sellers, Buyer will, as a result, receive good and marketable title to all of the Company Shares, free and clear of all security interests, liens, encumbrances, charges, assessments, restrictions and adverse claims.

2.8 Title to Property and Assets. Attached as Schedule 1 is a complete listing of all of the tangible personal property owned by the Company as of the date first written above. Except as may be disposed of in the ordinary course of business, to the best of each Seller's knowledge and belief, the Company shall own these assets as of the Date of Closing. To the best of each Seller's knowledge and belief, the Company has good and marketable title to all of the properties and assets used by it in the conduct of its business (including, without limitation, the properties and assets reflected in the Financial Statements except any thereof since disposed of for value in the ordinary course of business) and none of such properties or assets is, subject to security interests, mortgages, encumbrances, liens or

charges of any kind or character, except as disclosed in the Financial Statements.

2.9 Condition of Personal Property. All tangible personal property, equipment, fixtures and inventories included within the assets of the Company or required to be used in the ordinary course of business are and will be AS IS - WHERE AS. Buyer acknowledges that he has received Schedule 1 prior to the execution of this Agreement on the date first written above, that he has inspected all of the equipment and is satisfied with its operating status and state of repair, and is willing to accept such property AS IS - WHERE AS.

2.10 No Breach or Default. To the best of each Seller's knowledge and belief, the Company is not in default under any contract to which it is a party or by which it is bound, nor has any event occurred which, after the giving of notice or the passage of time, or both, would constitute a default under any such contract. Sellers have no reason to believe that the parties to such contracts will not fulfill their obligations under such contracts in all material respects or are threatened with insolvency.

2.11 Litigation. To the best of each Seller's knowledge and belief, there are no actions, suits or proceedings with respect to the Company involving claims, by or against, Sellers or the Company which are pending or threatened against Sellers or the Company, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality.

2.12 No Brokers. Neither Sellers nor the Company has entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Buyer or the Company to pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement.

2.13 No Misrepresentation or Omission. No representation or warranty by Sellers in this Article 2 or in any other Article or Section of this Agreement, or in any certificate or other document furnished or to be furnished by Sellers pursuant hereto, contains, or will contain, any untrue statement of a material fact, or omits, or will omit, to state a material fact necessary to make the statements contained therein not misleading or will omit to state a material fact necessary in order to provide Buyer with accurate information as to the Company.

3. Representations and Warranties of Buyer. Buyer represents and warrants to Sellers as follows: Buyer has obtained all licenses, permits or other authorizations and has taken all

actions required by applicable laws or governmental regulations in connection with its business as now conducted. Buyer's Personal Financial Statement dated November 1, 1991, previously furnished to Sellers is true and correct. Resume of Gerhard R. Gressman, 14500 Happy Hill Road, Chester, Virginia 23831 is true and correct. Buyer is purchasing shares sold pursuant to this Agreement for investment and not for resale. The Buyer agrees to cause Company to issue such shares which a legend appropriate to Rule 144 issued under Securities Act of 1933.

4. Other Agreements.

4.1 Restrictive Covenants. Each Seller covenants and agrees, that for a period of three (3) years from and after the Closing Date, such Seller will neither permit Seller's name to be used by, nor engage in, or carry on, directly or indirectly, either for himself or as a member of a partnership or as a stockholder, corporation (other than Buyer or a subsidiary or affiliate of Buyer) or as an employee, agent, associate or consultant of (other than Buyer or a subsidiary or affiliate of Buyer), any business in competition with the business as carried on by the Company or any affiliate on the Closing Date, but only for as long as such like business is carried on by (i) the Company or any of its subsidiaries or affiliates, (ii) Buyer or any subsidiary or affiliate of Buyer, or (iii) any person, corporation, partnership, trust or other organization or entity deriving title from Buyer, the Company or the affiliates to the assets and goodwill of the business being carried on by the Company or any affiliate on the Closing Date, within one hundred (100) miles of the Petersburg Dinwiddie Airport.

4.2 Environmental Issues. Buyer understands that the Petersburg Dinwiddie Airport was a military airport until 1988. The airport operates a fuel farm. To the best of the Sellers' knowledge, the airport has tested the properties for contamination. The airport also has three transformers which probably contain PCB's; however, the transformers are not hooked to any electrical circuits. Buyer shall look to the Petersburg Dinwiddie Airport Industrial Authority for comfort and indemnification and shall hold the Sellers harmless from any and all liabilities arising out of, or in anyway connected with, the Company's operations.

4.3 Resignations. At Closing, the Sellers agree that they shall resign as officers and directors of the Company.

5. Conditions of Closing.

5.1 Buyer's Conditions of Closing. The obligation of Buyer to purchase and pay for the Company Shares shall be subject to

and conditioned upon the satisfaction at the Closing of each of the following conditions:

5.1.1 All representations and warranties of Sellers contained in this Agreement and the Schedules hereto shall be true and correct at and as of the Closing Date, Sellers shall have performed all agreements and covenants and satisfied all conditions on their part to be performed or satisfied by the Closing Date pursuant to the terms of this Agreement.

5.1.2 Sellers shall have delivered to Buyer certificates and other instruments representing all Company Shares, duly endorsed for transfer or accompanied by appropriate stock powers (in either case executed in blank or in favor of Buyer with the execution thereof guaranteed by a bank or trust company), together with all other documents necessary or appropriate to validly transfer the Company Shares to Buyer free and clear of all security interests, liens, encumbrances and adverse claims.

5.1.3 The approval and consent of the Petersburg Dinwiddie Airport Industrial Authority shall have been obtained.

5.2 Sellers' Conditions of Closing. The obligation of Sellers to sell the Company Shares shall be subject to, and conditioned upon, the satisfaction at the Closing of each of the following conditions:

5.2.1 Buyer shall have effected payment of the Purchase Price.

5.2.2 Buyer shall have performed all agreements and covenants and satisfied all conditions on their part to be performed or satisfied by the Closing Date pursuant to the terms of this Agreement.

5.2.3 Each and every one of the Sellers shall have been released from any personal obligations, indemnities, guarantees of any of the Company's liabilities, obligations, or expenses. Specifically, each and everyone of the Sellers shall be released from any and all obligations to Sovran Bank, Crestar Bank, Petersburg Dinwiddie Airport Industrial Authority, and Eastern Aviation Fuels, Inc.

6. Miscellaneous.

6.1 Notice. Any notice required or permitted hereunder shall be in writing and shall be sufficiently given if personally delivered or mailed by certified or registered mail, return receipt requested, addressed as follows:

If to Buyer:

Gerhard R. Gressman
Gloria M. Gressman
Route 4, Box 644
Petersburg, Virginia 23803

If to Sellers:

Louis G. Thibault, Sr.
5920 Beville Drive
Southerland, Virginia 23885

Louis G. Thibault, Jr.
Route 4, P.O. Box 330
Georgetown, Delaware 19947

William K. Thibault
206 Battery Place
Colonial Heights, Virginia 23834

Rosealma T. Burton
16104 Gary Avenue
Chester, Virginia 23831

Carol A. Thibault
18601 Branders Bridge Road
Colonial Heights, Virginia 23834

(or to such other address as any party shall specify by written notice so given), and shall be deemed to have been delivered as of the date so personally delivered or mailed.

6.2 Binding Effect; Benefits. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, executors, administrators and assigns.

6.3 Entire Agreement. This Agreement, together with the Exhibits, Schedules and other documents contemplated hereby, constitute the final written expression of all of the agreements between the parties, and is a complete and exclusive statement of those terms. It supersedes all understandings and negotiations concerning the matters specified herein. Any representations, promises, warranties or statements made by either party that differ in any way from the terms of this written Agreement and the Exhibits, Schedules, and other documents contemplated hereby, shall be given no force or effect. The parties specifically represent, each to the other, that there are no additional or supplemental agreements between them related in any way to the matters herein contained unless specifically included or referred

to herein. No addition to, or modification of, any provision of this Agreement shall be binding upon any party unless made in writing and signed by all parties.

6.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Virginia exclusive of the conflict of law provisions thereof.

6.5 Survival. All of the terms, conditions, warranties and representations contained in this Agreement shall survive Closing for a period of one year, at which time all representations and warranties of Sellers shall become unenforceable. No Seller shall be liable for any breach of his or her representations or warranties except to the extent that losses incurred by the Buyer for any such breach exceed Five Hundred and 00/100 Dollars (\$500.00) and only for such losses which exceed Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) in the aggregate, and in no event, shall any Seller be liable for more than his or her share of the Purchase Price.

6.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

6.7 Headings. Headings of the Articles and Sections of this Agreement are for the convenience of the parties only, and shall be given no substantive or interpretive effect whatsoever.

6.8 Merger of Documents. This Agreement and all agreements and documents contemplated hereby constitute one agreement and are interdependent upon each other in all respects.

6.9 Incorporation of Exhibits and Schedules. All Exhibits and Schedules attached hereto are by this reference incorporated herein and made a part hereof for all purposes as if fully set forth herein.

6.10 Assignability. Neither this Agreement nor any of the parties' rights hereunder shall be assignable by any party hereto without the prior written consent of the other parties hereto.

6.11 Spouses' Signatures. The spouse of each Seller signs for the sole purpose of releasing any and all marital rights, including, but not limited to, any right under the Augmented Estate of the State of Virginia and for no other purpose. No spouse assumes any liability under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused the same to be duly delivered on their behalf on the day and year hereinabove first set forth.

SELLERS:

Louis G. Thibault Sr.

LOUIS G. THIBAUT, SR.

Louis G. Thibault Jr.

LOUIS G. THIBAUT, JR.

William K. Thibault

WILLIAM K. THIBAUT

Rosalma T. Burton

ROSEALMA T. BURTON

Carol A. Thibault

CAROL A. THIBAUT

SPOUSES: for the sole purpose stated in
§ 6.12, above.

Margot E. Thibault

MARGOT E. THIBAUT

Kimley Thibault

KIMLEY THIBAUT

L. A. Thibault

LORE ANN THIBAUT

Ronnie L. Burton

RONNIE BURTON

BUYER:

Gerhard R. Gressman

GERHARD R. GRESSMAN

Gloria M. Gressman

SCHEDULE 1 - § 2.8
STOCK PURCHASE AGREEMENT
SCHEDULE OF ASSETS

[ATTACH]

WAS EXCHANGED OUTSIDE OF CLOSING - NOT INCLUDED

SCHEDULE 2

LIST OF AIRPLANES PAINTED WITH PPG DEFECTIVE PRIMER

[ATTACH]

WAS EXCHANGED OUTSIDE OF CLOSING - NOT INCLUDED

EXHIBIT A
NEGOTIABLE PROMISSORY NOTE

V O I D

99. \$ 400,000.00.

Petersburg, Virginia
December 5, 1991

99. For value received, the undersigned promise to pay without offset or deduction to Louis G. Thibault, Sr., Agent, for the Sellers listed in that certain Stock Purchase Agreement made with Gerhard R. Gressman and Gloria M. Gressman, dated the 5th day of December, 1991, the principal sum of Five Hundred Thousand and 03/100 Dollars (\$ 400,000.00) with interest from date at the rate of ten percent (10%) per annum on the unpaid balance until paid. The said principal and interest thereon being payable in lawful money of the United States of America.

Principal and interest shall be payable at such place as the Holder shall designate in writing, payable in seventy-one (71) consecutive, monthly installments of principal and interest of Five Thousand Two Hundred Eighty-six and 03/100 Dollars (\$5,286.03) per month beginning January 1, 1992, and on the first day of each month thereafter. Each such payment shall be applied first to accrued interest and then to principal, until December 1, 1997, at which time all outstanding principal and accrued interest shall be due and payable.

Louis G. Thibault, Sr., Louis G. Thibault, Jr., William K. Thibault, Rosealma T. Burton, Carol A. Thibault, (the "Sellers") under the Agreement described in the first paragraph above, signed this Note for the sole purpose of agreeing that all payments may be made by the maker to Louis G. Thibault, Sr., as Agent for all of the Sellers. Should Louis G. Thibault, Sr., fail or refuse to act as Agent for any reason hereunder, then Margot E. Thibault shall act as Agent. Should Margot E. Thibault fail or refuse to act, then William K. Thibault shall act as Agent. If William K. Thibault shall fail or refuse to act as Agent, then the majority of the then living Sellers shall select a successor agent and the maker of this Note shall, after receipt of written notice of such appointment of the successor agent, make all payments due under this Note to such successor agent.

Interest shall be payable on all matured and unpaid principal amounts owing under this Note at eighteen percent (18%) per annum, if permitted by law, or at the rate provided above, if eighteen percent (18%) is not permitted.

The noteholder may collect a "late handling charge" not to exceed an amount equal to four percent (4%) of any installment which is not paid within ten (10) days of the due date thereof. Failure to exercise this right at any time or times shall not be


deemed a waiver of the right to collect such a late charge at other time or times.

It is hereby agreed that if the payment of any installment of principal or interest hereunder is not paid within fifteen (15) days of the due date, this Note shall be in default. In the event of default the noteholder shall give notice in writing to the maker stating that a default has occurred and specifying the action required to cure such default. The maker shall have the right to cure any default within five (5) days after the date of the notice of default. If the maker fails to cure the aforesaid default within such five (5) day period, the entire unpaid principal sum evidenced by this Note, with all accrued interest, shall, at the option of the holder, become due and payable, such acceleration to be effective upon the sending of notice to the maker, regardless of the receipt thereof.

The maker of this Note hereby waives presentment, demand, protest, and notice of dishonor as well as the benefit of all exemptions or insolvency laws as to this debt and further agrees to pay all expenses incurred in the collection of this Note, including attorney's fees of twenty-five percent (25%) of any sum collected with the aid of an attorney-at-law.

The undersigned acknowledges that, pursuant to the provisions of § 6.1-330.75, the defense of Usury is not applicable to this loan, and represents and warrants that the purpose of the loan, by the terms of this Note, is for business or investment purposes and the initial amount of this loan is \$5,000 or more.

WITNESS the following signatures.


GERHARD R. GRESSMAN


GLORIA M. GRESSMAN

For the value received, the undersigned hereby absolutely and unconditionally guarantees the payment of any and all amounts which may become due and payable under the above Note; waives notice of nonpayment and suit against the maker; consents that payment of this Note may be extended from time to time without affecting his or its liability; and, waive diligence on the part of any holder hereof in collecting the Note, and any defense arising out of lack of diligence in enforcing payment thereof. This guaranty shall be a continuing, absolute, and unconditional guaranty and shall remain in full force and effect until all amounts which may become due and payable under the above Note are made in full by the maker or the guarantors of this Note, as the

case may be. The obligations of the undersigned guarantors shall not be impaired, modified, released or limited by any occurrence or condition whatsoever.

PETERSBURG DINWIDDIE AVIATION, INC.

BY *Gerhard R. Gressman*
GERHARD R. GRESSMAN, PRESIDENT

The undersigned Sellers sign solely to consent to the agency provisions stated above.

Louis G. Thibault Sr
LOUIS G. THIBAUT, SR.

Louis G. Thibault Jr
LOUIS G. THIBAUT, JR.

William K. Thibault
WILLIAM K. THIBAUT

Rosealma T. Burton
ROSEALMA T. BURTON

Carol A. Thibault
CAROL A. THIBAUT

Prepared by: FREED HASKINS & GAYLE, P.C.

Nov 16, 1991

Amount Borrowed	Loan Date	Loan Rate %	1st Pmt Date	#of Pmts Pds /Yr	Amtz Payment Hthd Pts APR %
400,000.00	12/ 1/91	10.0000	1/ 1/92	71 12	5,286.03 STD
			12/ 1/97	1 1	213,957.87
Date	Payment Amount	Principal Balance	Principal This Period	Interest This Period	Interest To Date
1/ 1/92	5,286.03	398,111.23	1,888.77	3,397.26	3,397.26
2/ 1/92	5,286.03	396,206.42	1,904.81	3,381.22	6,778.48
3/ 1/92	5,286.03	394,068.33	2,138.09	3,147.94	9,926.42
4/ 1/92	5,286.03	392,129.18	1,939.15	3,346.88	13,273.30
5/ 1/92	5,286.03	390,066.13	2,063.05	3,222.98	16,496.28
6/ 1/92	5,286.03	388,092.99	1,973.14	3,312.89	19,809.17
7/ 1/92	5,286.03	385,996.77	2,096.22	3,189.81	22,998.98
8/ 1/92	5,286.03	383,989.07	2,007.70	3,278.33	26,277.31
9/ 1/92	5,286.03	381,964.31	2,024.75	3,261.28	29,538.58
10/ 1/92	5,286.03	379,817.72	2,146.60	3,139.43	32,678.02
11/ 1/92	5,286.03	377,757.54	2,060.18	3,225.85	35,903.87
12/ 1/92	5,286.03	375,576.36	2,181.17	3,104.86	39,008.72
Subtotal:	63,432.36	375,576.36	24,423.64	39,008.72	39,008.72
1/ 1/93	5,286.03	373,480.16	2,096.20	3,189.83	42,198.55
2/ 1/93	5,286.03	371,366.15	2,114.01	3,172.02	45,370.57
3/ 1/93	5,286.03	368,928.96	2,437.19	2,848.84	48,219.41
4/ 1/93	5,286.03	366,776.30	2,152.66	3,133.37	51,352.78
5/ 1/93	5,286.03	364,504.87	2,271.43	3,014.60	54,367.38
6/ 1/93	5,286.03	362,314.63	2,190.24	3,095.79	57,463.17
7/ 1/93	5,286.03	360,006.53	2,308.10	2,977.93	60,441.10
8/ 1/93	5,286.03	357,778.09	2,228.44	3,057.59	63,498.69
9/ 1/93	5,286.03	355,530.72	2,247.37	3,038.66	66,537.35
10/ 1/93	5,286.03	353,166.86	2,363.86	2,922.17	69,459.52
11/ 1/93	5,286.03	350,880.33	2,286.53	2,999.50	72,459.02
12/ 1/93	5,286.03	348,478.25	2,402.08	2,883.95	75,342.97
Subtotal:	63,432.36	348,478.25	27,098.11	36,334.25	75,342.97
1/ 1/94	5,286.03	346,151.90	2,326.35	2,959.68	78,302.65

Nov 16, 1991

Date	Payment Amount	Principal Balance	Principal This Period	Interest This Period	Interest To Date
2/ 1/94	5,286.03	343,805.79	2,346.11	2,939.92	81,242.57
3/ 1/94	5,286.03	341,157.17	2,648.62	2,637.41	83,879.98
4/ 1/94	5,286.03	338,768.64	2,388.53	2,897.50	86,777.48
5/ 1/94	5,286.03	336,267.01	2,501.63	2,784.40	89,561.88
6/ 1/94	5,286.03	333,836.95	2,430.06	2,855.97	92,417.85
7/ 1/94	5,286.03	331,294.78	2,542.16	2,743.87	95,161.71
8/ 1/94	5,286.03	328,822.49	2,472.29	2,813.74	97,975.45
9/ 1/94	5,286.03	326,329.20	2,493.29	2,792.74	100,768.19
10/ 1/94	5,286.03	323,725.33	2,603.87	2,682.16	103,450.35
11/ 1/94	5,286.03	321,188.75	2,536.58	2,749.45	106,199.80
12/ 1/94	5,286.03	318,542.62	2,646.12	2,639.91	108,839.70
Subtotal:	63,432.36	318,542.62	29,935.63	33,496.73	108,839.70
1/ 1/95	5,286.03	315,962.02	2,580.60	2,705.43	111,545.13
2/ 1/95	5,286.03	313,359.51	2,602.52	2,683.51	114,228.65
3/ 1/95	5,286.03	310,477.33	2,882.18	2,403.85	116,632.50
4/ 1/95	5,286.03	307,828.23	2,649.10	2,636.93	119,269.43
5/ 1/95	5,286.03	305,072.30	2,755.93	2,530.10	121,799.53
6/ 1/95	5,286.03	302,377.29	2,695.01	2,591.02	124,390.55
7/ 1/95	5,286.03	299,576.55	2,800.74	2,485.29	126,875.84
8/ 1/95	5,286.03	296,834.87	2,741.68	2,544.35	129,420.19
9/ 1/95	5,286.03	294,069.91	2,764.97	2,521.06	131,941.26
10/ 1/95	5,286.03	291,200.89	2,869.02	2,417.01	134,358.27
11/ 1/95	5,286.03	288,388.07	2,812.82	2,473.21	136,831.48
12/ 1/95	5,286.03	285,472.35	2,915.72	2,370.31	139,201.79
Subtotal:	63,432.36	285,472.35	33,070.27	30,362.09	139,201.79
1/ 1/96	5,286.03	282,610.88	2,861.47	2,424.56	141,626.35
2/ 1/96	5,286.03	279,725.11	2,885.77	2,400.26	144,026.61
3/ 1/96	5,286.03	276,661.55	3,063.56	2,222.47	146,249.08
4/ 1/96	5,286.03	273,725.25	2,936.30	2,349.73	148,598.81
5/ 1/96	5,286.03	270,689.02	3,036.23	2,249.80	150,848.61
6/ 1/96	5,286.03	267,701.99	2,987.03	2,299.00	153,147.61
7/ 1/96	5,286.03	264,616.25	3,085.74	2,200.29	155,347.90
8/ 1/96	5,286.03	261,577.65	3,038.60	2,247.43	157,595.33
9/ 1/96	5,286.03	258,513.24	3,064.41	2,221.62	159,816.95

Nov 16, 1991

Date	Payment Amount	Principal Balance	Principal This Period	Interest This Period	Interest To Date
10/ 1/96	5,286.03	255,351.97	3,161.26	2,124.77	161,941.71
11/ 1/96	5,286.03	252,234.69	3,117.29	2,168.74	164,110.46
12/ 1/96	5,286.03	249,021.82	3,212.87	2,073.16	166,183.62
Subtotal:	63,432.36	249,021.82	36,450.54	26,981.82	166,183.62
1/ 1/97	5,286.03	245,850.77	3,171.05	2,114.98	168,298.60
2/ 1/97	5,286.03	242,652.78	3,197.98	2,088.05	170,386.64
3/ 1/97	5,286.03	239,228.20	3,424.58	1,861.45	172,248.09
4/ 1/97	5,286.03	235,973.97	3,254.23	2,031.80	174,279.89
5/ 1/97	5,286.03	232,627.45	3,346.52	1,939.51	176,219.40
6/ 1/97	5,286.03	229,317.16	3,310.29	1,975.74	178,195.14
7/ 1/97	5,286.03	225,915.93	3,401.23	1,884.80	180,079.94
8/ 1/97	5,286.03	222,548.64	3,367.29	1,918.74	181,998.68
9/ 1/97	5,286.03	219,152.75	3,395.89	1,890.14	183,888.82
10/ 1/97	5,286.03	215,667.98	3,484.77	1,801.26	185,690.08
11/ 1/97	5,286.03	212,213.65	3,454.33	1,831.70	187,521.78
12/ 1/97	213,957.07	0.00	212,213.65	1,744.22	189,266.00
Subtotal:	272,104.20	0.00	249,021.82	23,082.38	189,266.00
Total payments:	589,266.00	Principal:	400,000.00	Interest:	189,266.00

EXHIBIT B :
PLEDGE AGREEMENT

PLEDGE AGREEMENT, made as of the 5th day of December, 1991, between LOUIS G. THIBAUT, SR., LOUIS G. THIBAUT, JR., WILLIAM K. THIBAUT, ROSEALMA T. BURTON, and CAROL A. THIBAUT (the "Selling Stockholders"), and GERHARD R. GRESSMAN and GLORIA M. GRESSMAN (the "Buyer"), and REGENCY BANK (the "Escrow Agent").

Concurrently herewith, the Selling Stockholders and the Buyer is entering into an agreement relating to the purchase by the Buyer from the Selling Stockholders of all of the outstanding capital stock of Petersburg Dinwiddie Aviation, Inc., a Virginia corporation (the "Corporation") at the closing of which (the "Closing") shall take place concurrently herewith. The Buyer hereby delivers certificates and bonds listed on Schedule A (the "Securities") sold to Buyer by the Selling Stockholders concurrently herewith, to the Escrow Agent at Closing to secure payment of the promissory note (the "Note") of the Buyer being executed even date herewith and such Note delivered by the Buyer to the Selling Stockholders concurrently herewith, in the principal amount of Four Hundred THOUSAND and NO/100 Dollars (\$ 400,000.00) (the "Note").

In consideration of the mutual covenant contained herein, the parties hereto agree as follows:

1. Deposit of Securities. Concurrently with the execution of this Pledge Agreement, the Buyer is delivering to the Escrow Agent the Securities purchased concurrently herewith by Buyer endorsed in blank. Receipt of said certificates is hereby acknowledged by the Escrow Agent.

2. Stockholder Rights. During the period that any Securities are held by the Escrow Agent hereunder and until such time as the Buyer is in default under the terms of Section 4 below, the Buyer shall have full voting rights with respect to the Securities.

3. Release of the Securities. The Escrow Agent will hold the Securities in its possession until the Note has been paid in full, unless otherwise delivered pursuant to this Agreement, at which time the Securities shall be redelivered to the Buyer.

4. Rights of Selling Stockholders. In the event of a default in the payment of any note or in the event of a default in the payment of the Note which default causes an acceleration of the payment of all amounts due under the Note or any term, warranty, covenant, obligation or condition contained in the Stock Purchase Agreement, Purchase Money Security Agreement, Deed

of Trust or any other agreement which has been executed or is executed concurrently herewith for the purpose of securing said Note causes such an acceleration, the Selling Stockholders' rights with respect to the Securities shall be those of a pledgee under the Uniform Commercial Code of the Commonwealth of Virginia. Any one or more of the Selling Stockholders may give notice to the Escrow Agent of such default. Upon receipt of such notice, the Escrow Agent shall deliver all collateral held under this Agreement to the Selling Stockholders, and upon such delivery, the Escrow Agent shall be released of all further obligations under this Pledge Agreement. Upon the disposition of the Securities under the terms of this Section 4, any surplus proceeds of sale remaining after the payment of expenses of conducting such sale, shall be paid to Buyer.

The Buyer agrees that the fair market value of the securities held by the Escrow Agent pursuant to this Pledge Agreement shall always equal at a minimum one hundred and thirty-five percent (135%) of the outstanding balance of the Note in order to adequately secure the Selling Stockholders. Accordingly, Buyer agrees that upon written notice received from Selling Stockholders, that he shall post additional securities reasonably acceptable to Sellers should the fair market value of the securities, at any time, held by the Escrow Agent be less than the amount determined pursuant to the provisions of the immediately preceding sentence of this Agreement.

5. Concerning the Escrow Agent.

(a) The Escrow Agent may resign and be discharged from its duties hereunder at any time by giving notice of such resignation to the Buyer and the Selling Stockholders specifying a date when such resignation shall take effect. Upon such notice, a successor Escrow Agent shall be appointed with the unanimous consent of the Buyer and the Selling Stockholders or the Selling Stockholders' successor, such successor Escrow Agent to become Escrow Agent hereunder upon the resignation date specified in such notice. If the Buyer and the Selling Stockholders are unable to agree upon a successor Escrow Agent within ten (10) days after such notice, the Escrow Agent shall continue to serve for an additional ten (10) days, or until the Buyer and Selling Stockholders agree upon a successor Escrow Agent, and the successor accepts the escrow and receives the shares and resignations. If, after twenty (20) days of the original notice, the Buyer and Selling Stockholders fail to agree and appoint a successor Escrow Agent, the acting Escrow Agent shall have the right to appoint his successor. The Buyer and the Selling Stockholders shall have the right at any time upon unanimous consent to substitute a new Escrow Agent by giving notice thereof to the Escrow Agent then acting.

(b) The Escrow Agent undertakes to perform such duties as are specifically set forth herein and may conclusively rely, and shall be protected in acting or refraining from acting, on any written notice, instrument, or signature believed by it to be genuine and to have been signed or presented by the proper party or parties duly authorized to do so. The Escrow Agent shall have no responsibility for the contents of any writing contemplated herein and may rely without any liability upon the contents thereof.

(c) The Escrow Agent shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized hereby or within the rights or powers conferred upon it hereunder, nor for action taken or omitted by it in good faith, and in accordance with advice of counsel (which counsel may be of the Escrow Agent's own choosing), and shall not be liable for any mistake or fact or error of judgment or for any acts or omissions of any kind unless caused by willful misconduct or gross negligence.

(d) Each party hereto agrees to indemnify the Escrow Agent and hold it harmless against any and all liabilities incurred by it hereunder as a consequence of such a party's action, and the parties agree jointly to indemnify the Escrow Agent and hold it harmless against any and all liabilities incurred by it hereunder that are not a consequence of any party's action, except in either case for liabilities incurred by the Escrow Agent resulting from its own willful misconduct or gross negligence.

(e) Seller and Buyer agrees to properly pay upon presentation of invoices therefore the fees and expenses billed by the Escrow Agent for services as such hereunder, which shall be reasonable considering the circumstances, time, skill and effort required to perform the task hereunder; provided, however, after any default of the Note or any agreement securing the Note, Buyer shall solely be liable for Escrow Agent's fees and costs.

6. Miscellaneous.

(a) This Escrow Agreement shall be construed by and governed in accordance with the laws of the Commonwealth of Virginia.

(b) This Escrow Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

(c) This Escrow Agreement may be executed in one or more counterparts, but all such counterparts shall constitute one and the same instrument.

(d) Section headings contained in this Escrow Agreement have been inserted for reference purposes only, and shall not be construed as part of this Escrow Agreement.

(e) Notices to any party to this Agreement shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth.

If to Buyer:

Gerhard R. Gressman
Route 4, Box 644
Petersburg, Virginia 23802

If to Selling Stockholders:

Louis G. Thibault, Sr.
5920 Beville Drive
Southerland, Virginia 23885

Louis G. Thibault, Jr.
Route 4, P.O. Box 330
Georgetown, Delaware 19947


William K. Thibault
206 Battery Place
Colonial Heights, Virginia 23834

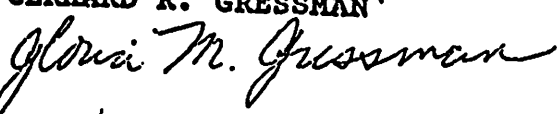
Rosealma T. Burton
16104 Gary Avenue
Chester, Virginia 23831

Carol A. Thibault
18601 Branders Bridge Road
Colonial Heights, Virginia 23834

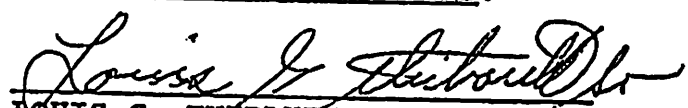
IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed and delivered on the date first above written.

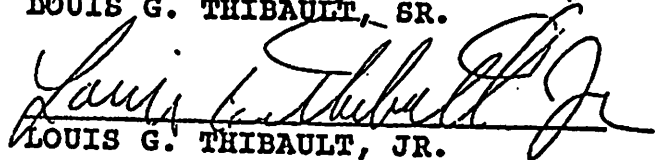
THE BUYER:


GERHARD R. GRESSMAN


GLORIA M. GRESSMAN

THE SELLING STOCKHOLDERS:


LOUIS G. THIBAUT, SR.


LOUIS G. THIBAUT, JR.

William K. Thibault
WILLIAM K. THIBAUT

Rosealma T. Burton
ROSEALMA T. BURTON

Carol A. Thibault
CAROL A. THIBAUT

THE ESCROW AGENT:

REGENCY BANK

M. Henkel

Executive Vice President


148

SCHEDULE A

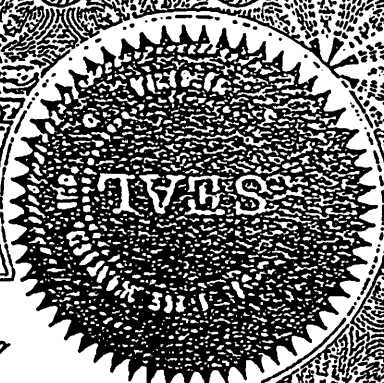
ATTACHED TO PLEDGE AGREEMENT

[COMPLETE]

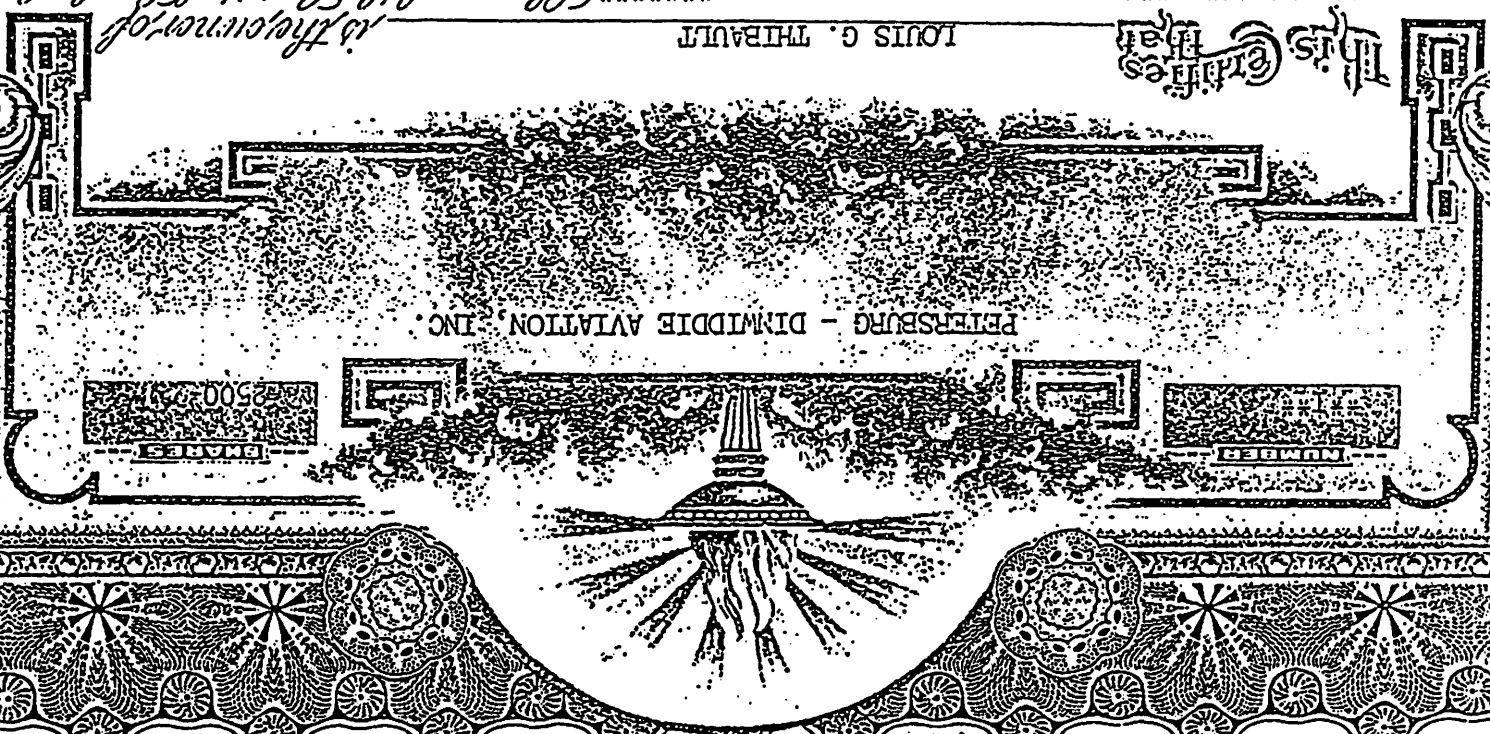
1. 81,595 shares of the issued and outstanding stock of Petersburg Dinwiddie Aviation, Inc., which Buyer agrees shall be the only outstanding stock of Petersburg Dinwiddie Aviation, Inc., until the Note has been paid in full.
2. ~~Those marketable securities listed on Schedule A-1 attached hereto.~~
3. An annuity described as follows: MFS Sun Life U.S. Annuity Policy No. 59-5900-104038 subject only to that prior lien of Regency Bank.


GERHARD R. GRESSMAN


GLORIA M. GRESSMAN



is the owner of
 Shares of the Capital Stock of
 PETERSBURG - DIMMIDIE AVIATION, INC.
 *****Two Thousand Five Hundred*****
 transferred only on the books of the Corporation by the holder hereof in
 person or by attorney in person and under of this certificate in person, and
 IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed
 by its duly authorized officers and its Secretary on this 30th day of June 1935



PETERSBURG - DIMMIDIE AVIATION, INC.

NUMBER 2500-2510
 ENOES

LOUIS G. THIBAUT

W. S. Griffiths

STAMPED

00

THE AIR



PAID 2500

PETERBURG - DINWIDDIE AVIATION, INC.

This Certifies That

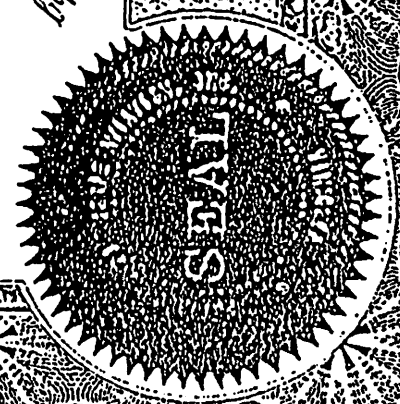
William Kirk Thibault

is the owner of
*****Two Thousand Five Hundred*****Shares of the Capital Stock of

PETERBURG-DINWIDDIE AVIATION, INC.

transferred only on the books of the Corporation by the holder hereon
personally or otherwise in accordance with his Certificate properly endorsed

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
this 30th day of June A.D. 1936



[Handwritten signature]

PAID 2500

PAID 2500

PAID 2500

For Value Received, — Ready, sell, assign, and transfer
into

Handwritten signature

Printed

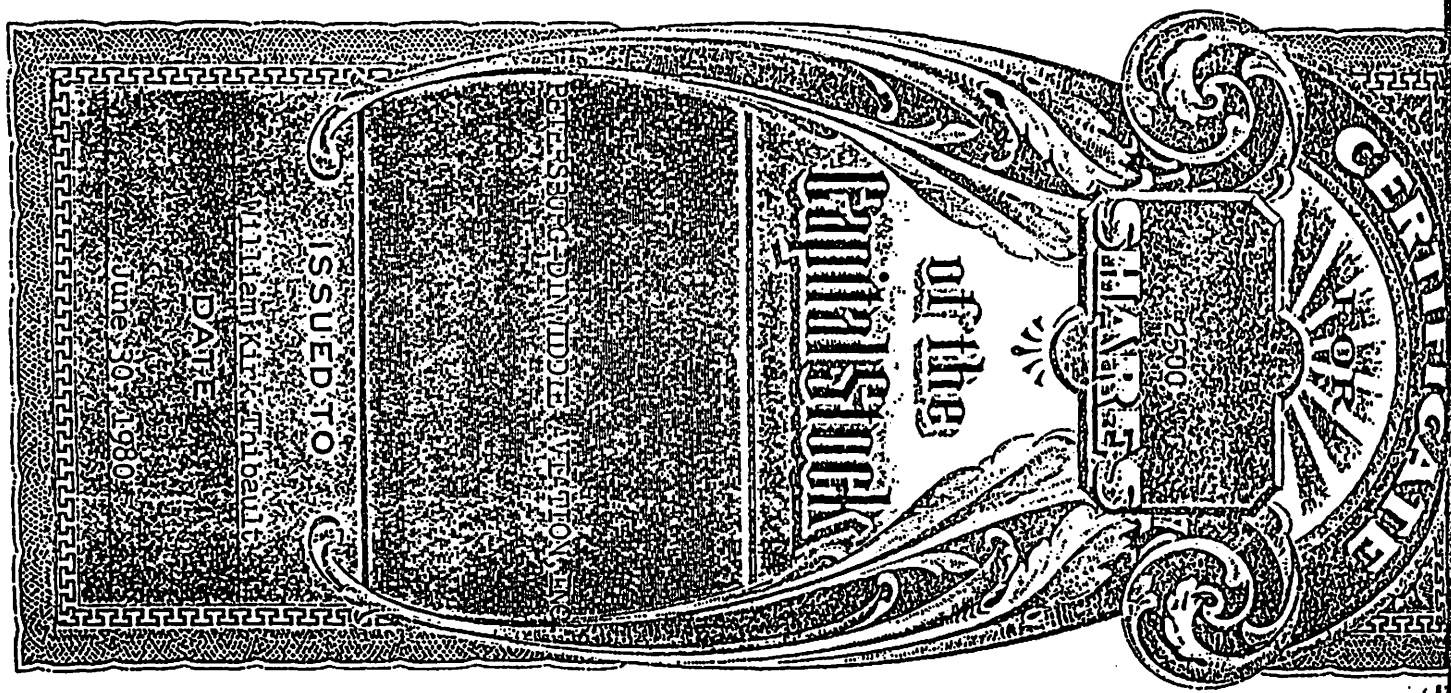
64

Speeches
of the Captains of the northern
Confederate, and, do hereby, irrevocably, constitute and appoint
attorneys

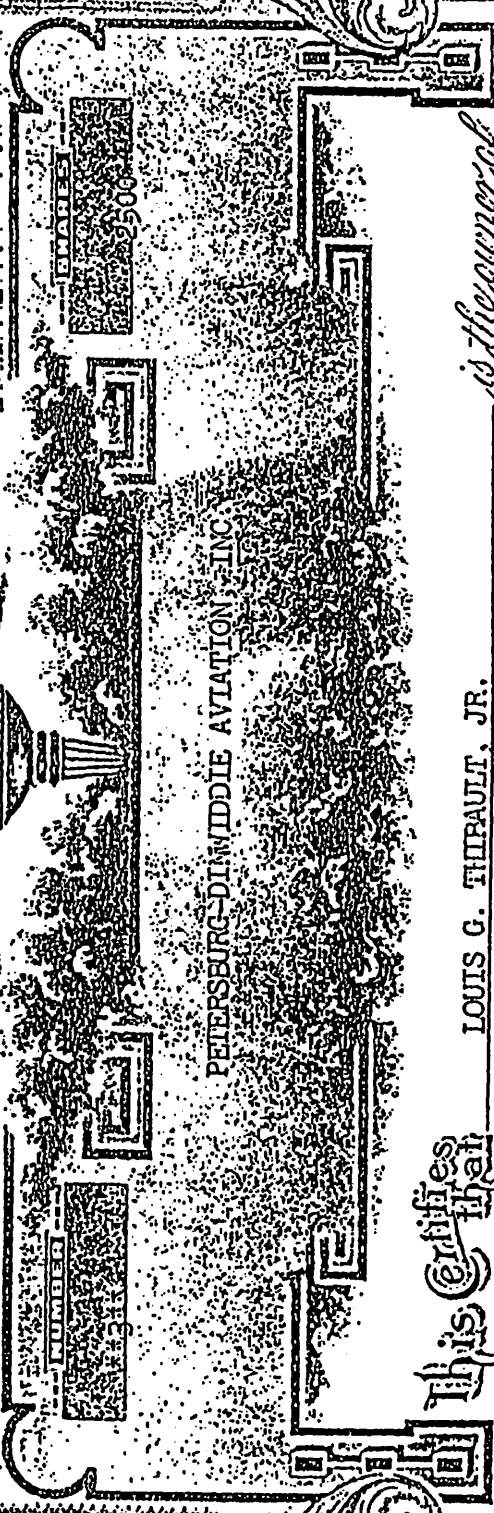
to transfer the said Stock, on the books of the said incorporated
corporation, with full power, of substitution, in the premises;

unto

For Value Received, — Ready, full, assign, and transfer



CHARTER



PETERBURG-DINWIDDIE AVIATION, INC.

This Certifies that

LOUIS G. THIRAUT, JR.

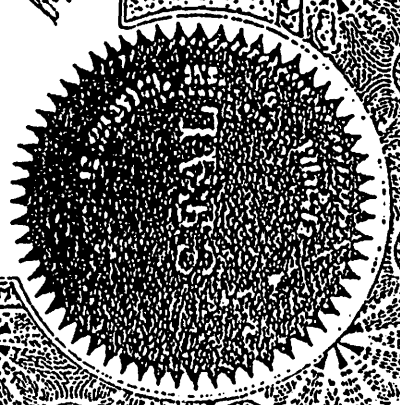
is the owner of _____ Shares of the Capital Stock of

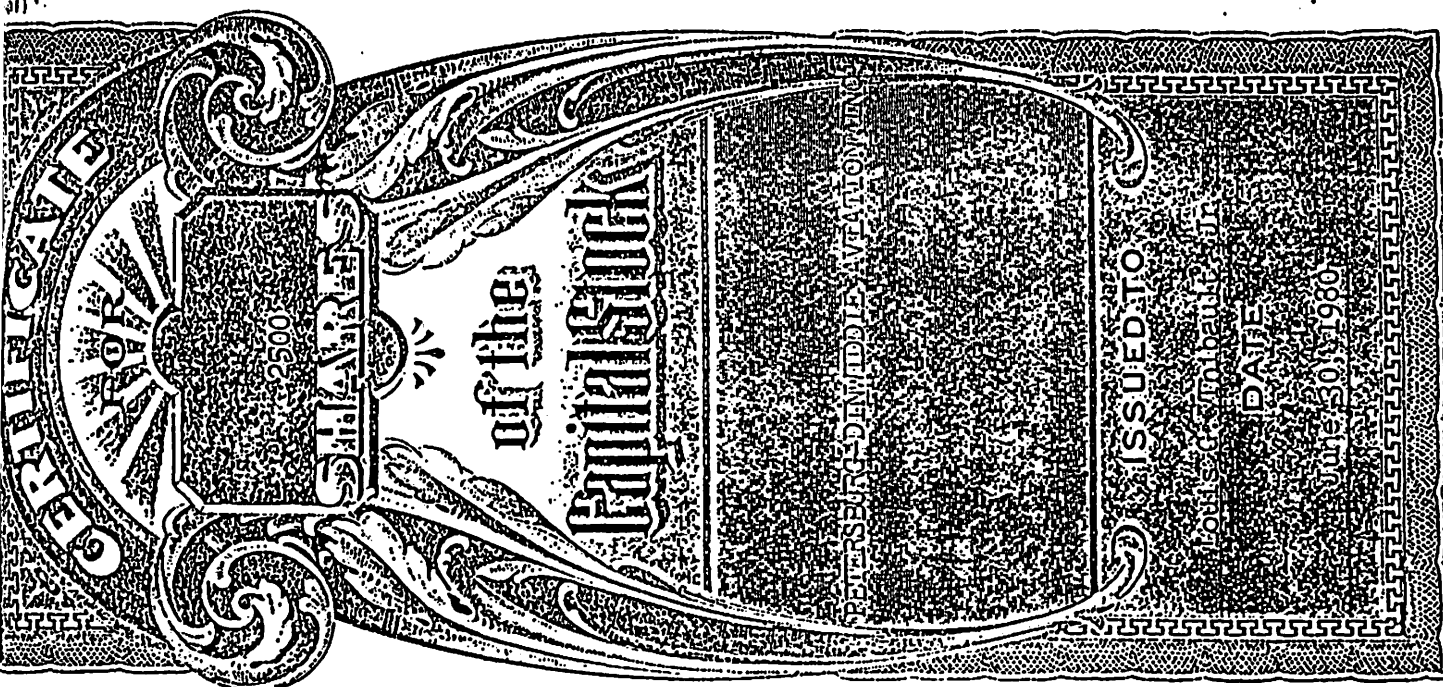
*****Two Thousand Five Hundred*****

PETERBURG-DINWIDDIE AVIATION, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officer, and it Corporate Seal to be hereunto affixed, this 30th day of June A.D. 19__





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

_____ Shares
of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and appoint
_____ Attorney
to transfer the said Stock on the books of the within named
Corporation, with full power of substitution, in the premises.

Dated _____ 19____

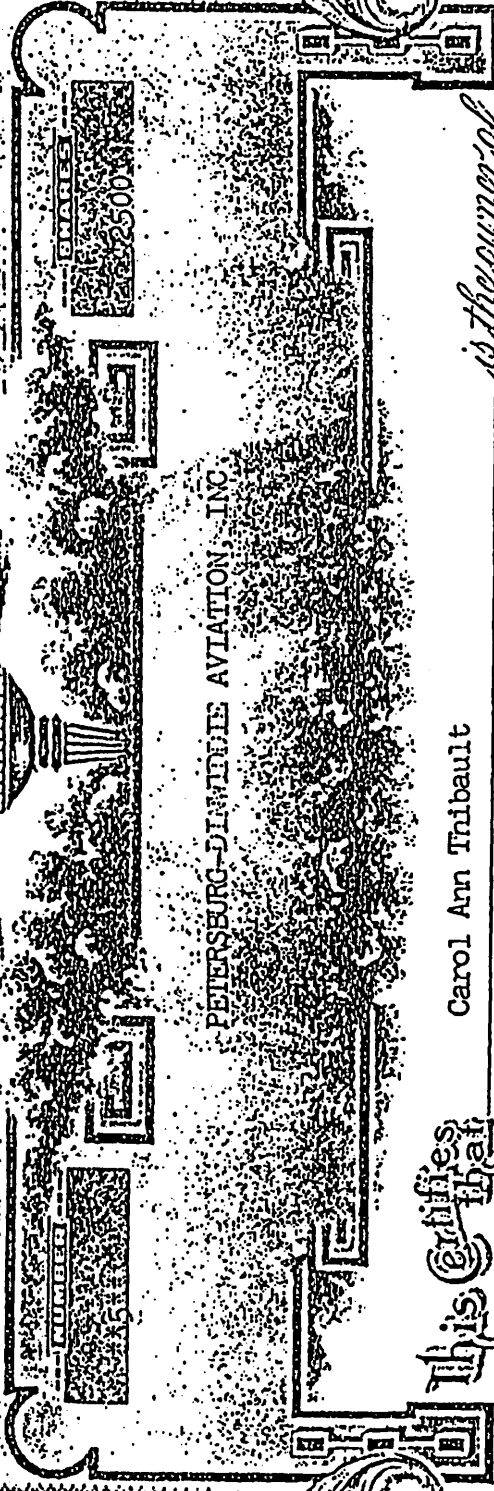
In presence of

William L. Kallman

Larsen & Schultz Jr

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

THE
BRIEFING



PETERSBURG-DINWIDDIE AVIATION, INC.

Carol Ann Tribault

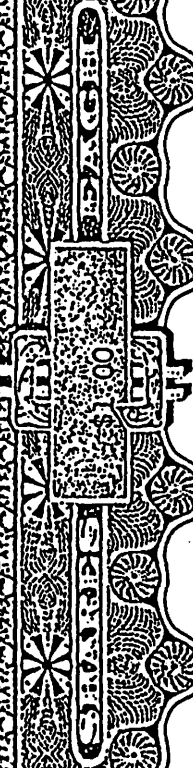
is the owner of

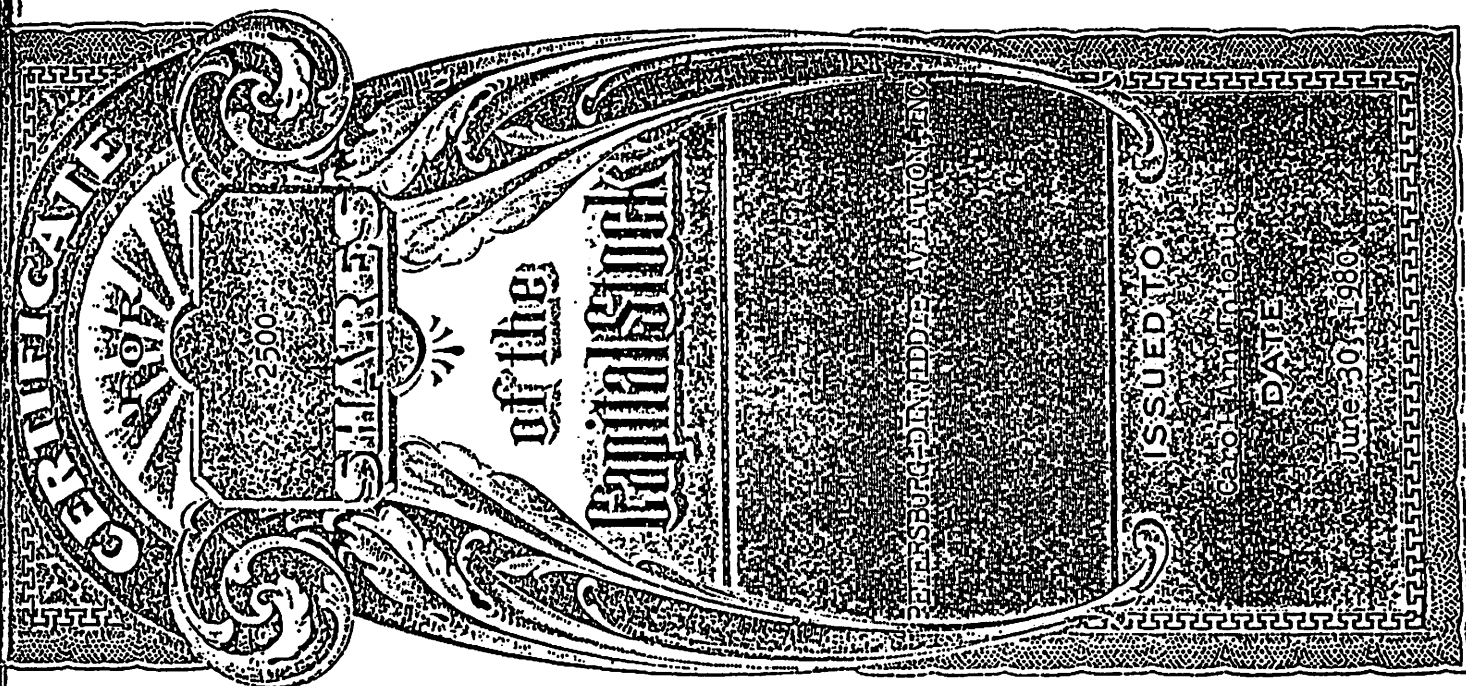
*****Two Thousand Five Hundred*****Shares of the Capital Stock of

PETERSBURG-DINWIDDIE AVIATION, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of his Certificate properly endorsed

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officer and its Corporate Seal to be hereunto affixed this 30th day of June A.D. 19 80





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

_____ Shares
of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and appoint
_____ Attorney
to transfer the said Stock, on the books of the within named
Corporation, with full power of substitution, in the premises.

Dated _____ 19____

In presence of _____

_____ Carol A. Hubaut

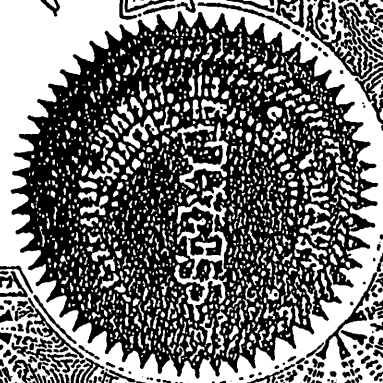
NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN GREAT PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY OTHER WHATSOEVER.

THE
OFFICIAL
STAMP



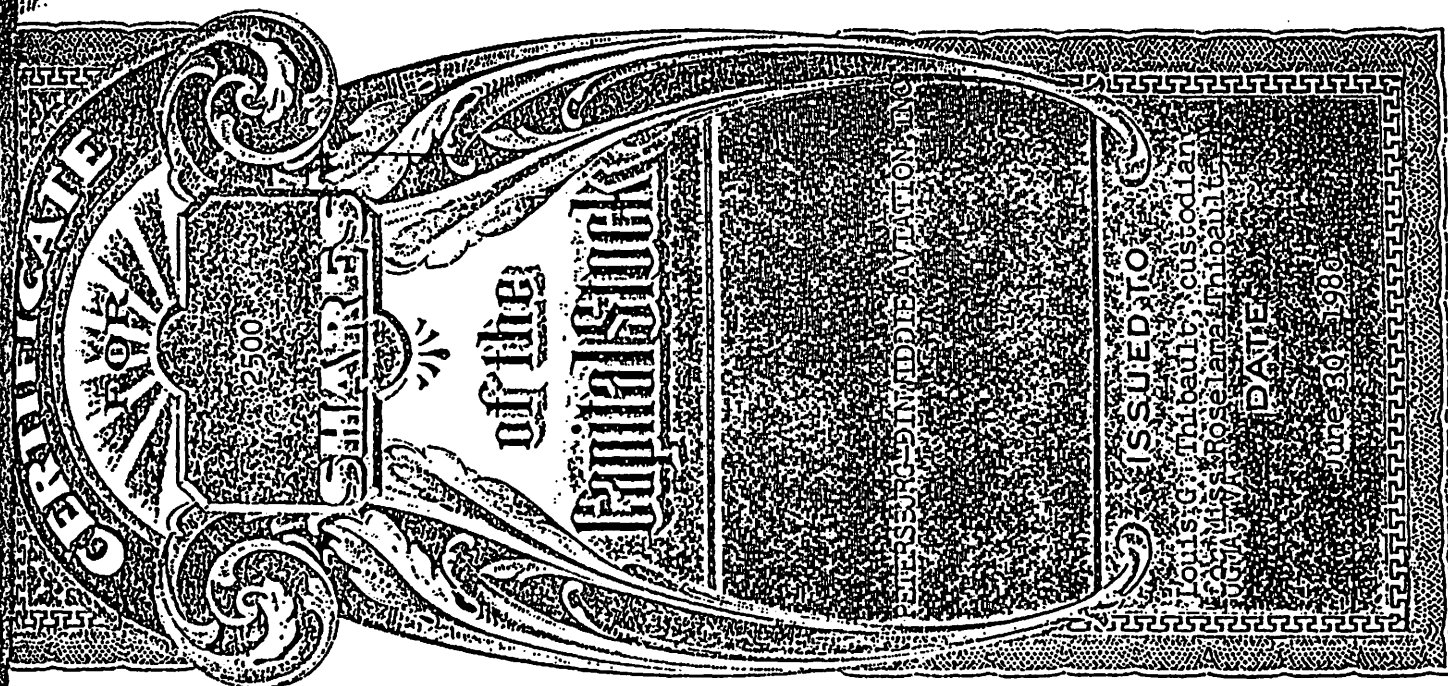
PETERBURG-DINWIDDIE AVIATION, INC.
THIS CERTIFIES Louis G. Tribault, custodian for Miss Roselana Thibault UGMA, VA
THAT Social Security # 196-56-9952
is the owner of
*******Two Thousand Five Hundred******* *Shares of the Capital Stock of*
PETERBURG-DINWIDDIE AVIATION, INC.
transferable only on the books of the Corporation by the holder hereof in person or by Attorney in person or under of his Certificate properly endorsed

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
this 30th day of June A.D. 19



[Handwritten signature]

SEAL OF THE CORPORATION
PETERBURG-DINWIDDIE AVIATION, INC.
NEW YORK, N.Y.
19



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

_____ Shares of the Capital Stock represented by the within Certificate, and, do, hereby irrevocably, constitute and appoint _____ Attorney to transfer the said Stock, on the books of the within named Corporation, with full power of substitution in the premises!

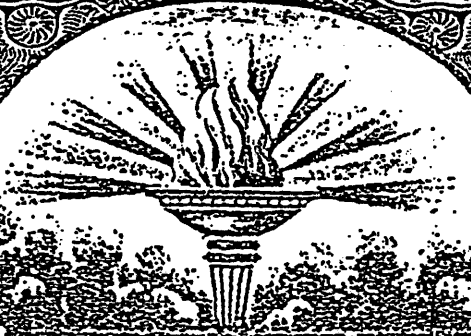
Dated: _____ 19 _____

In presence of _____

Roselma Thibault Guiton

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR UNLAWFUL USE OF ANY OTHER MATERIAL.

ARTIFICIAL



NUMBER
20,765

SHARES
20,765

PETERSBURG-DINWIDDIE AVIATION, INC.

This Certifies that

Louis G. Thibault, Sr.

is the owner of

20,765

Shares of the Capital Stock of

transferable only on the books of the Corporation by the holder hereof in person or by attorney upon surrender of this Certificate properly endorsed

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed
this 4th day of May A.D. 1933

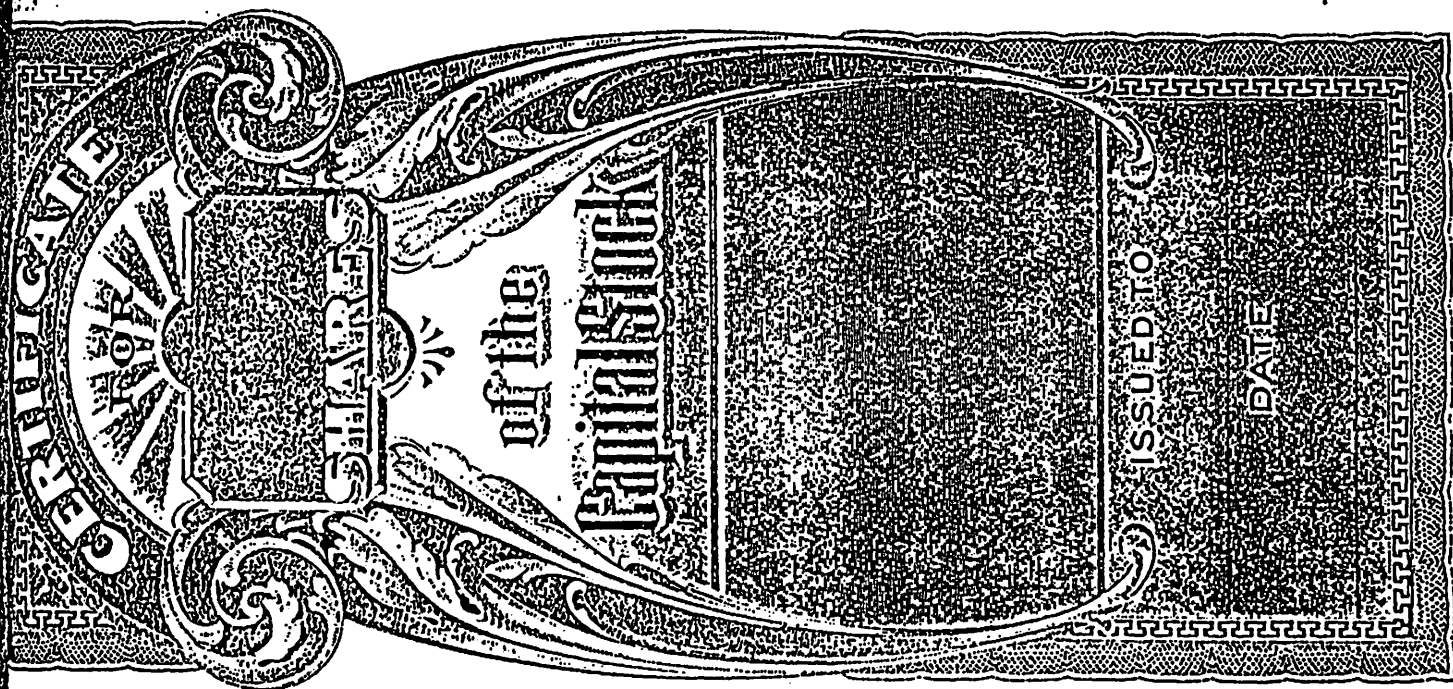
Louis G. Thibault, Sr.
President

SHARES

20,765

PAGE





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

_____ Shares
of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and appoint
_____ Attorney
to transfer the said Stock on the books of the within named
Corporation with full power of substitution in the premises.

Dated _____ 19____

In presence of _____

Louis J. Thibault

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN EXACT PARTICULARS, WITHOUT
ABBREVIATION OR ENLARGEMENT OR ANY OTHER VARIATION.

PETERSBURG-DINWIDDIE AVIATION, INC.

NUMBER
6,266

William K. Thibault

is the owner of
Shares of the Capital Stock of

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed
this 4th day of May A.D. 1983

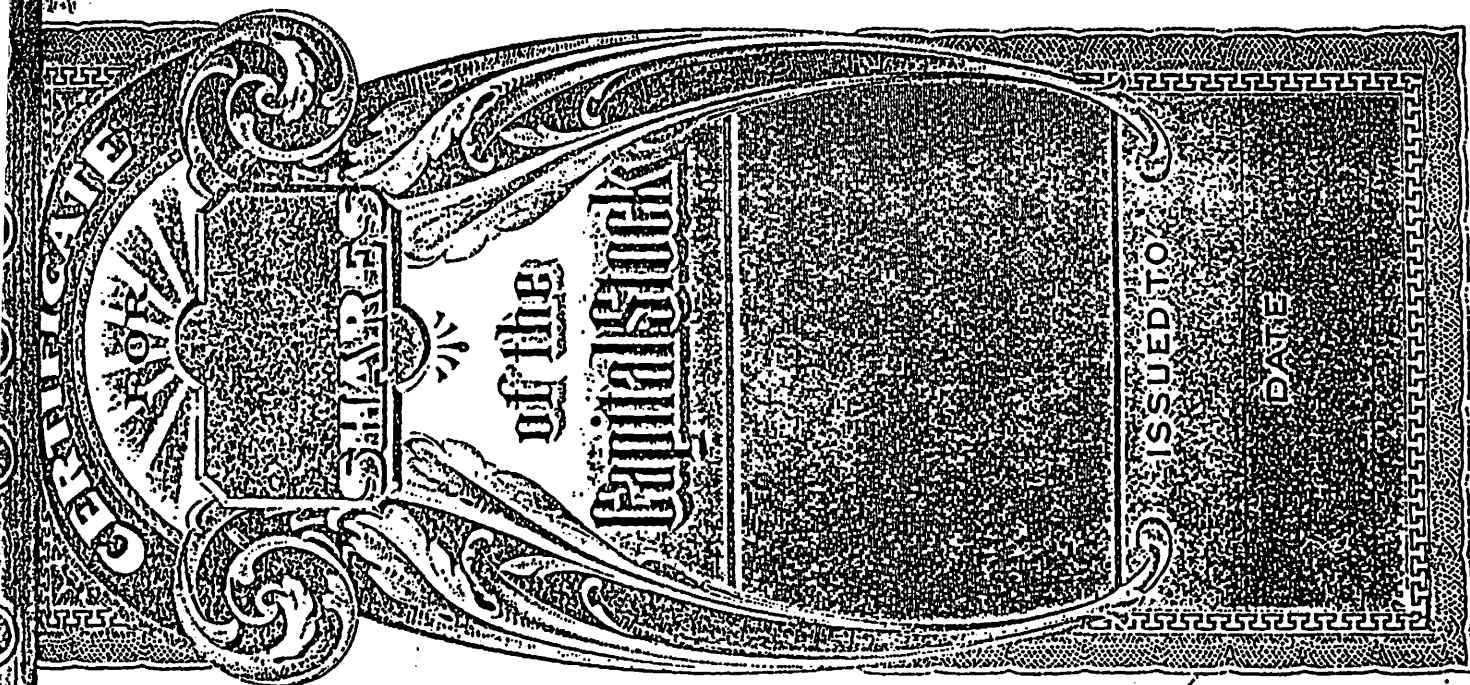
SEAL

James C. Thibault, Jr. President

SHARES

6,266

REACHES



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

_____ Shares
of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and appoint
_____ Attorney
to transfer the said Stock on the books of the within named
Corporation, with full power of substitution in the premises.

Dated _____ 19____

In presence of _____

NOTICE: THE SIGNATURE OF THIS ASSIGNED
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT ON ANY COARSE MATERIAL.

1917-18-19



NUMBER
6,266

SERIAL
6,266

PETERSBURG-DINWIDDIE AVIATION, INC.

This Certifies
that

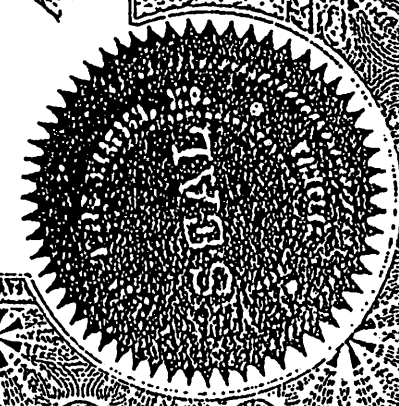
Louis G. Thibault, Jr.

6,266

is the owner of
Shares of the Capital Stock of

transferable only on the books of the Corporation by the holder hereon in
person or by Attorney on surrender of this Certificate properly endorsed

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal hereon to be affixed
this 4th day of May A.D. 1918



James H. Thibault, Jr.
President

GRANDED
6,266

SERIALIZED
6,266



For Value Received, _____ hereby sells, assigns, and transfers
units _____

_____ Shares
of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and appoint
_____ Attorney
to transfer the said Stock on the books of the within named
Corporation with full power of substitution in the premises.

Dated _____ 19 _____

In presence of

William T. Kellerman _____

_____ Harry C. Mitchell _____

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

REGISTERED



NUMBER
6,266

DATE
MAY 4 1933

PETERSBURG-DINWIDDIE AVIATION, INC.

This Certifies that

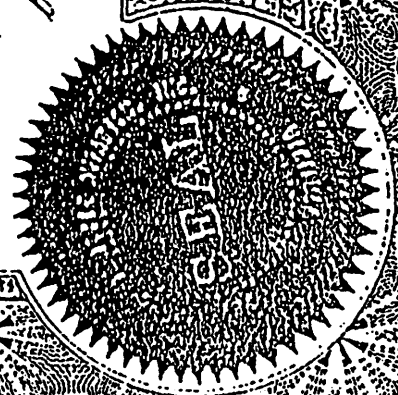
Carol A. Thibault

6,266

is the owner of _____ Shares of the Capital Stock of

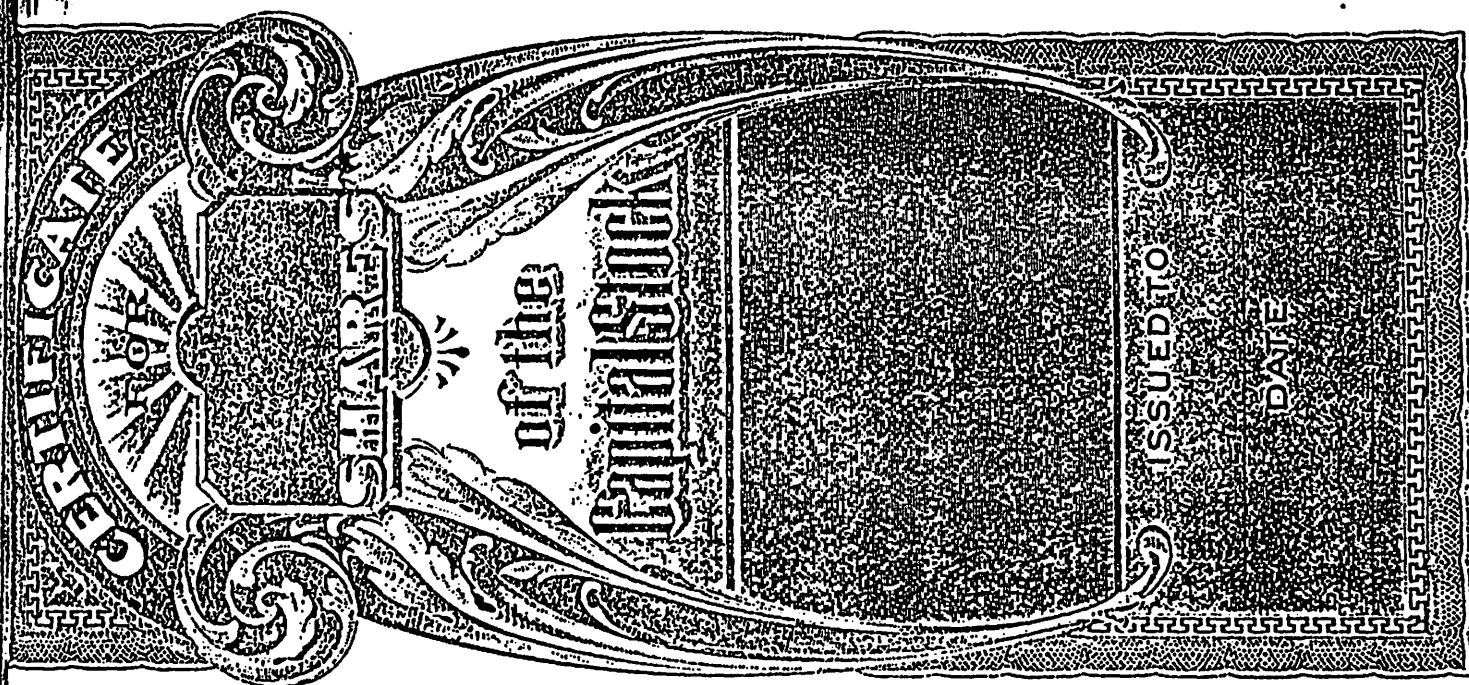
transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate, properly endorsed

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 4th day of May A.D. 1933



Witness my hand and the seal of the Corporation this 4th day of May A.D. 1933
President
Secretary

CHARGES
6,266



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

_____ Shares
of the Capital Stock represented by the within
Certificate, and, do hereby, irrevocably, constitute and, appoint
_____ Attorney
to transfer the said Stock, on the books, of the within named
Corporation, with full power, of substitution, in, the premises.

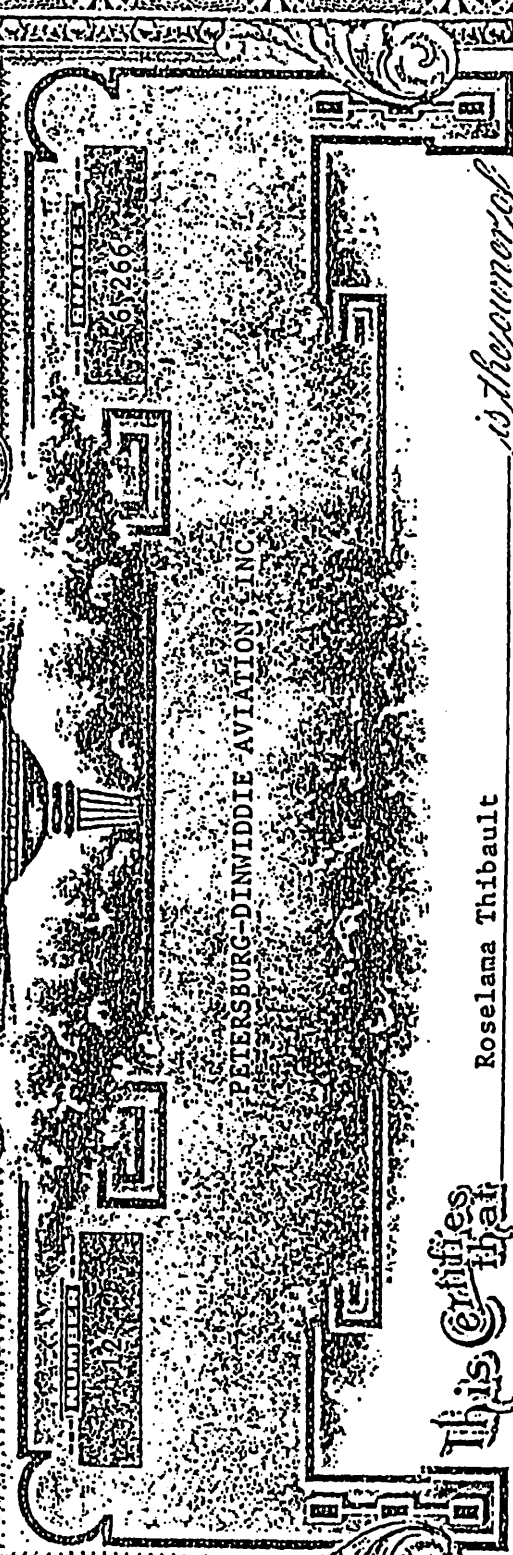
Dated _____ 19____

In presence of _____

_____ Carol A. Thibault

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE. NO CERTIFICATE IS VALID WITHOUT
ASSIGNMENT OR ENDORSEMENT OF ANY CHANGE THEREON.

CERTIFICATE



PETERSBURG-DINWIDDIE AVIATION, INC.

This Certifies that

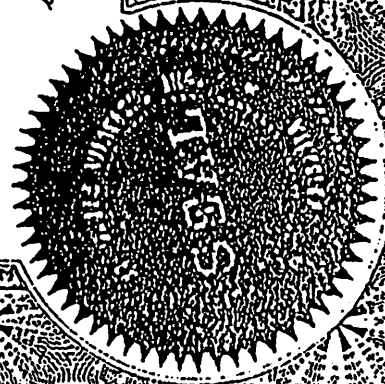
Roselana Thibault

6,266

is the owner of _____ Shares of the Capital Stock of

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate, properly endorsed

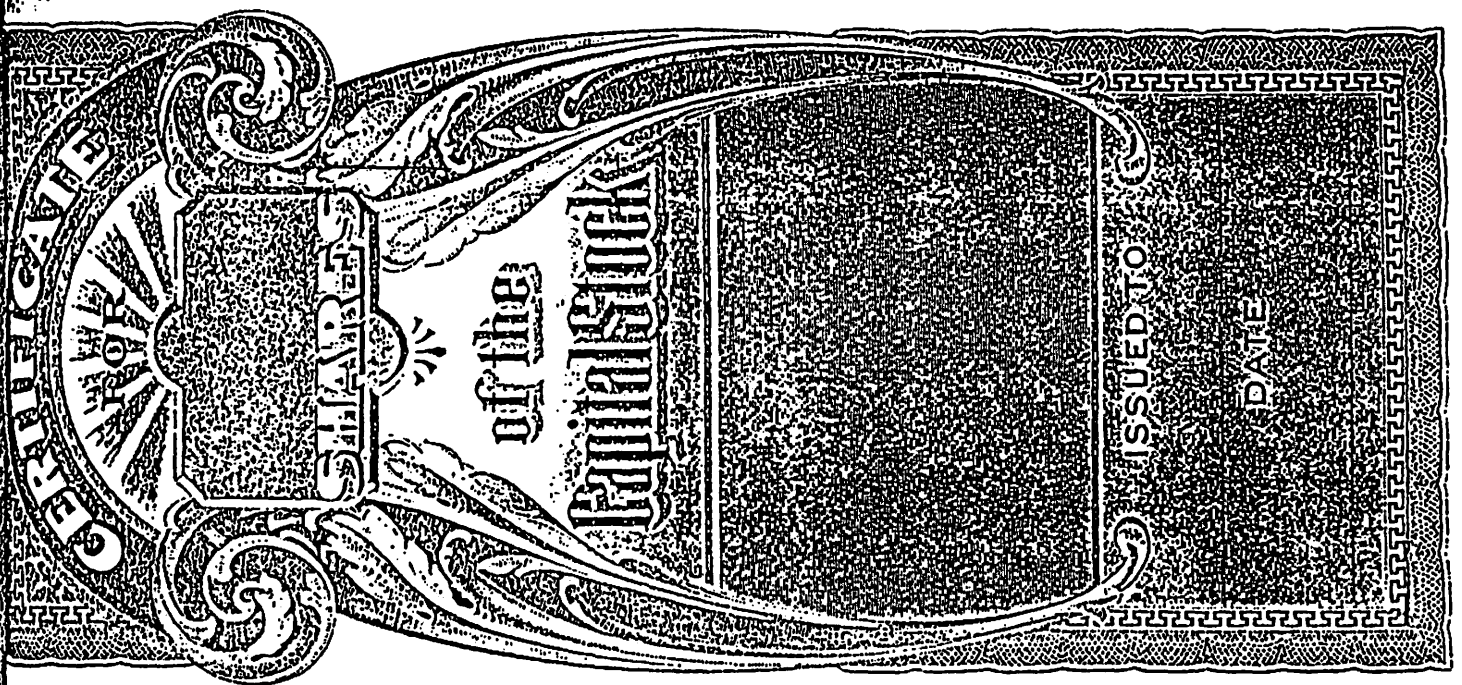
IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 4th day of May A.D. 1983



[Handwritten signature]
Secretary

6,266

6,266



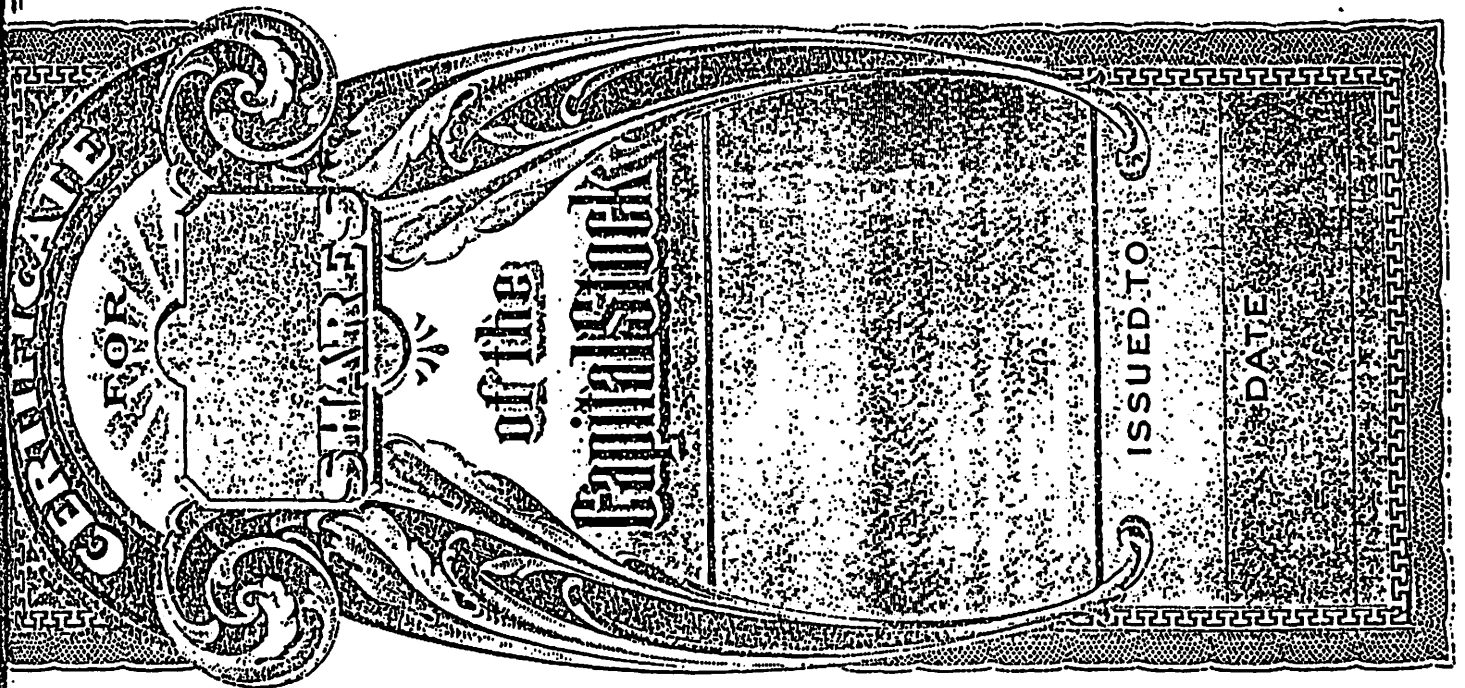
For Value Received, _____ hereby sell, assign, and transfer
unto _____

_____ Shares
of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and appoint
_____ Attorney
to transfer the said Stock, on the books of the within named
Corporation, with full power of substitution in the premises.

Dated _____ 19____
In presence of _____

Rosalma Thibault Benoit

NOTICE: THE SIGNATURE OF THIS ASSIGNEE
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY OTHER UNLAWFUL



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

_____ Shares
of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and appoint
_____ attorney
to transfer the said Stock on the books of the within named
Corporation, with full power of substitution in the premises.

Dated _____ 19__

In presence of _____

Louis J. Thibault

NOTICE: THE SIGNATURE OF THIS ASSIGNEE
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN GREAT PLAIN CAPITAL, WITHOUT
ABBREVIATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

REVENUE

Sales - Parts	24,790.07
Sales - Paint Material	22,469.65
Sales - Interior Sup	3,058.49
Sales - Fuel	166,895.40
Flight Department	39,014.26
Labor - Maintenance	56,422.06
Labor - Paint	42,789.08
Labor - Interior	9,825.38
Storage	4,337.07
He Down	490.00
Sub Contract	0.00
Commissions	386.70
Freight Revenue	768.17
Miscellaneous	11,771.73
Aircraft Sales	72,500.00
Vending	3,129.12
Interest Charged	16.66
Management Fee	38,585.43
TOTAL REVENUE	496,475.87

OTHER INCOME

Interest Earned	0.00
Sale Of Assets	0.00
Tobago Repossessment	0.00
Sales Tax Discounts	0.00
Non Returned Paint Deposit	0.00
TOTAL OTHER INCOME	0.00

REVENUE

	496,475.87
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EXPENSE

COST OF SALES

Purchases - Parts	21,985.94
Purchases - Paint Material	30,887.60
Purchases - Interior Sup.	2,287.47
Purchases - Fuel	131,554.61
Flight Department	5,366.73
Labor - Maintenance	14,955.71
Labor - Paint	26,623.73
Labor - Interior	6,901.01
Labor - Fuel	11,119.98
Labor - Flight	5,454.88
Freight Expense	1,306.97
Miscellaneous	1,422.12
Fuel Service Charges	0.00
Service Charges	1,630.66
Subcontract	4,914.42
Vending	2,834.50
Inventory Change	74,555.67
Shop Supplies	321.96
TOTAL COST OF SALES	343,923.96

GENERAL & ADMINISTRATIVE

Advertising	2,030.80
Auto	298.62
Bad Debts	0.00
Bank Card Charges	213.32
Cash Over (Short)	0.00
Contributions	0.00
Delivery Expense	975.34
Depreciation	5,417.20
Dues & Subscriptions	267.00
Education	0.00
Entertainment	0.00
Gifts & Flowers	0.00
Insurance - Group	8,192.68
Insurance - Business	6,725.50
Interest	3,715.93
Leased Equipment	0.00
Loss On Sale Of Assets	0.00
Management House Charges	22,507.83
Miscellaneous	609.49
Medical Expenses	0.00
Office Expense	4,552.35
Penalties	20.00
Professional Fees	1,316.30
Rent	29,156.71
Repairs & Maintenance	13,015.62
Salaries	0.00
Salaries - Office	18,714.24
Salaries - Officers	18,976.11
Fica Expense	6,368.46
FUTA Expense	0.00
SUTA Expense	0.00
Service Charges	200.68
Small Tools	0.00
Supplies	382.86

Taxes & Licenses	2,220.04
Telephone	5,161.77
Travel	1,217.00
Uniforms & Laundry	767.34
Utilities	5,522.80
SDI Expense	0.00
Loss On Sale Of Asset	0.00
Air Chesterfield Dep Cred	0.00
TOTAL GENERAL & ADMIN. EXP	157,347.01

TOTAL EXPENSE	501,270.97
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INCOME	4,795.10
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Nov 1, 1991 TO Nov 30, 1991

REVENUE

REVENUE

Sales - Parts	2,369.48
Sales - Paint Material	3,741.90
Sales - Interior Sup	424.94
Sales - Fuel	30,702.50
Flight Department	8,207.49
Labor - Maintenance	5,015.77
Labor - Paint	2,059.40
Labor - Interior	805.94
Storage	968.00
Lie Down	90.00
Sub Contract	0.00
Commissions	0.00
Freight Revenue	10.00
Miscellaneous	431.30
Aircraft Sales	0.00
Vending	617.35
Interest Charged	0.00
Management Fee	38,585.43
TOTAL REVENUE	89,910.70

OTHER INCOME

Interest Earned	0.00
Sale Of Assets	0.00
Tobago Repossessment	0.00
Sales Tax Discounts	0.00
Non Returned Paint Deposit	0.00
TOTAL OTHER INCOME	0.00

TOTAL REVENUE

89,910.70

EXPENSE

COST OF SALES

Purchases - Parts	2,052.02
Purchases - Paint Material	5,023.28
Purchases - Interior Sup.	0.00
Purchases - Fuel	43,530.47
Flight Department	295.81
Labor - Maintenance	1,809.75
Labor - Paint	5,031.60
Labor - Interior	172.20
Labor - Fuel	1,695.25
Labor - Flight	745.10
Freight Expense	122.51
Miscellaneous	0.00
Fuel Service Charges	0.00
Service Charges	247.63
Subcontract	3,286.48
Vending	321.71
Inventory Change	14,441.46
Shop Supplies	66.00
TOTAL COST OF SALES	49,958.35

GENERAL & ADMINISTRATIVE

Advertising	586.00
Auto	0.00
Bad Debts	0.00
Bank Card Charges	0.00
Cash Over (Short)	0.00
Contributions	0.00
Delivery Expense	119.40
Depreciation	1,083.44
Dues & Subscriptions	0.00
Education	0.00
Entertainment	0.00
Gifts & Flowers	0.00
Insurance - Group	1,711.40
Insurance - Business	1,139.07
Interest	582.36
Leased Equipment	0.00
Loss On Sale Of Assets	0.00
Management House Charges	4,667.32
Miscellaneous	10.29
Medical Expenses	0.00
Office Expense	183.01
Penalties	0.00
Professional Fees	450.00
Rent	26,990.03
Repairs & Maintenance	838.34
Salaries	0.00
Salaries - Office	2,678.10
Salaries - Officers	3,583.34
Fica Expense	1,149.99
FUTA Expense	0.00
SUTA Expense	0.00
Service Charges	0.00
Small Tools	0.00
Supplies	0.00

Inc
Nov 1, 1991 TO Nov 30, 1991

Taxes & Licenses	606.45
Telephone	695.73
Travel	20.00
Uniforms & Laundry	130.82
Utilities	994.18
SOI Expense	0.00
Loss On Sale Of Asset	0.00
Air Chesterfield Dep Cred	0.00
TOTAL GENERAL & ADMIN. EXP	<u>45,933.13</u>

TOTAL EXPENSE	<u>95,891.48</u>
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INCOME	<u>5,980.78</u>
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INSURANCE DESCRIPTION	POLICY YEAR END	TOTAL PREMIUM	PAID TO DATE	ALLOCATED EXPENSE TO DATE	PREPAID AMOUNT
AIRCRAFT POLICY	8/07/92	\$2,270.00			
AIRPORT POLICY	8/07/92	\$8,245.00	\$4,969.58	\$3,671.67	\$1,297.91 *
COMMERCIAL PACKAGE	4/08/92	\$2,458.00	\$2,458.00	\$1,433.83	\$1,024.17

ADDITIONAL AMOUNT OF \$6045.42 HAS BEEN BOOKED TO PREPAID REPRESENTING THE AMOUNT PAID BY CANNONWIL INSURANCE TO PAY THE PREMIUM IN FULL. THIS AMOUNT IS COMPLETELY OFFSET BY A PAYABLE TO CANNONWIL.

DINWIDDIE AIRPORT & INDUSTRIAL AUTHORITY
23301 Airport Road
Petersburg, VA 23803

GERHARD R. GRESSMAN
c/o Petersburg Dinwiddie Aviation, Inc.
Route 4, Box 544
Petersburg, VA 23803

LETTER AGREEMENT

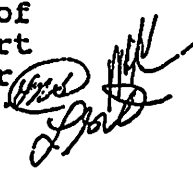
This Letter Agreement, dated this 12-5-91 day of December, 1991, by and between the DINWIDDIE AIRPORT & INDUSTRIAL AUTHORITY (the "Authority"), PETERSBURG DINWIDDIE AVIATION, INC. ("PDA") and GERHARD R. GRESSMAN ("Gressman"), is executed for the purpose of amending that certain Management Contract, dated June 28, 1980, as amended (the "Management Contract") and Fixed Based Operator Lease and Agreement, dated June 28, 1980, as amended ("FBO Lease") currently in effect between the Authority and PDA relating to the Authority's airport facility (the "Airport") in Dinwiddie County, Virginia.

In consideration of the approval by the Authority of the sale of stock in PDA to Gressman and other valuable consideration the receipt and adequacy of which is hereby acknowledged by the parties hereto, the following terms and conditions are hereby agreed to.

Management Contract

1. In addition to the duties and responsibilities between the Authority and PDA as Manager outlined in the Management Contract, PDA agrees to provide and maintain for the Authority office space and a meeting room of a size and nature appropriate for the Authority to carry out its business, maintain its records and hold its meetings, in the current terminal building at no expense to the Authority and to provide similar office and meeting space in any future terminal building at no cost to the Authority.
2. PDA agrees to provide the Authority with (i) quarterly financial statements of PDA within 30 days of the end of each calendar quarter reflecting, in reasonable detail, the income and expenses of PDA and its operations at the Airport and (ii) annual audited financial statements of PDA and its operations at the Airport, in reasonable detail, within 90 days of the end of each calendar year. All monies due the Authority hereunder shall be paid on the date such reports are due.
3. The provisions of the Management Contract prohibiting the Manager from transferring or assigning its interests thereunder remain in full force and effect, and prohibit PDA

from transferring, assigning or selling more than forty-nine percent (49%) of its stock without the prior written approval of the Authority.

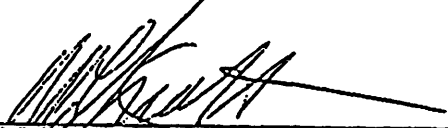
4. PDA agrees to use its best efforts to administer the affairs of the Airport on behalf of the Authority, including, but not limited to assisting and cooperating with the Authority and its agents on the preparation of applications and responses to, and administration of, Federal and State grants for the Airport.
5. PDA agrees to keep the Airport runways clean and cleared of debris or obstacles and to keep grassy areas of the Airport neatly cut as necessary or reasonable for airports similar in size and nature to the Airport, *AT AUTHORITY EXPENSE.* 
6. PDA agrees to initiate and institute work orders for all work done or performed on behalf of the Authority relating to the management of the Airport or construction of improvements to the Airport.
7. PDA agrees to evaluate the administrative needs of the Authority and the Airport, including but not limited to the Authority's telephone system, and recommend changes in such system or needs to the Authority within 30 days of execution of this Letter Agreement.
8. PDA agrees to purchase all of the Authority's interest in the Airport photocopy machine and to recommend a usage cost and agreement to the Authority for such machine or any replacement obtained by PDA within 30 days of execution of this Letter Agreement.
9. PDA agrees to keep the Airport area, including, but not limited to landscaped grounds, in an attractive condition and to recommend, on a monthly basis, any changes to the Airport terminal and external areas of the Airport, which the Authority should undertake to maintain the aesthetics of the Airport.
10. Gressman agrees to guarantee the performance by PDA of all obligations of PDA under the Management Contract as modified by this Letter Agreement.
11. Except as modified by this Letter Agreement, all other terms and conditions of the Management Contract shall remain in full force and effect.

FBO Lease

1. The parties agree that the "corporate hangar" in the Airport is specifically not included in the FBO Lease and any lease of such facility will be negotiated separately between the parties.
2. The provisions of the FBO Lease prohibiting the Lessee from transferring or assigning its interests thereunder remain in full force and effect, and prohibit PDA from transferring, assigning or selling more than forty-nine percent (49%) of its stock without the prior written approval of the Authority.
3. Gressman agrees to guarantee the performance by PDA of all obligations under the FBO as modified by this Letter Agreement.
4. Except as modified by this Letter Agreement, all other terms and conditions of the FBO Lease shall remain in full force and effect.

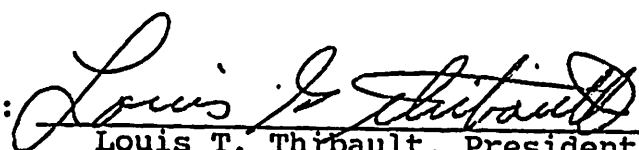
DINWIDDIE AIRPORT & INDUSTRIAL AUTHORITY

By: _____


William C. Knott, Chairman

PETERSBURG DINWIDDIE AVIATION, INC.

By: _____


Louis T. Thibault, President


GERHARD R. GRESSMAN

POST CLOSING CHECK
LIST

1. Purchase Price \$560,487.88
2. Debt Payoff \$60,487.88
3. GEC with Contribution Capital
To Corp. #14,517.12
- 3A. GEC will repay LT, Se - Advance 100,000.00 DP
4. All ^{Corporate} DEBTS will be paid, including loans
from S/H's (40,001.00) as Recountable
Are Collectible, No Later Than 60 Days.

5. GEC hereby grants
LT, Se & GEC To Charge SHEARSON
BROKERAGE a/c To Joint TENANCIES on 12/6/91
OIO.M. BOTH TO SIGN AGR. AGREEMENT THAT:

1. LT, Se WILL NOT WITHHOLD CONSENT
UnReasonably To ^{change BROKERAGE} change charges.
2. GEC MAY WITHDRAW CONSENT > 135%
OF NOTE.

- ~~to Prepare New Agreement Schedule.~~
6. ~~1.~~ Note is \$400,000.
 7. ~~2.~~ GEC has 48 hours to review all data which
became final & effective as 12/7/91 10/6 PM

Louis Whitcomb

LT, Se,

John M. Gussman

GEC
John M. Gussman

William R. Dacey, Jr., CPA, P.C.

5301 New Kent Road
Richmond, Virginia 23225-3031
(804) 231-7924

EXHIBIT PLAINTIFF NO. 44

Gressman vs. Thibault

John

JUDGE

February 9, 1993

Ms. Ronda J. Cobler Wells
John F. Deal & Associates
4510 South Laburnum Avenue
Richmond, VA 23231-2422

Re: Gressman v. Thibault

Dear Ms. Wells:

In accordance with our agreement dated April 28, 1992, I am submitting this report regarding Petersburg Dinwiddie Aviation, Inc. (PDA).

I was retained to provide any consulting services you and your client, Gerhard R. Gressman, President, PDA, might require regarding the pending litigation against Louis G. Thibault, Sr.

I have analyzed certain account balances in an unaudited Balance Sheet dated November 30, 1991 (Attachment 1). This Balance Sheet was included in a purchase agreement entitled "Petersburg Dinwiddie Aviation, Inc. Sale of Business Documents executed December 5, 1991."

Included in my report is a restated Balance Sheet (Attachment 2) for PDA at November 30, 1991. This Balance Sheet has not been audited. Certain individual accounts were analyzed and corrected balances are depicted. However, I did not conduct an audit in accordance with Generally Accepted Auditing Standards and consequently I have no opinion as to the adequacy of any financial statements regarding the financial condition of PDA at November 30, 1991.

Where ever I was presented an incongruity, I resolved the question to the advantage of the Defendant. Thus, the most conservative approach has been used in the preparation of this report.

FINDINGS:

Accounts Receivable - Charge Cards: I received a work paper which Gary R. Thompson, CPA, accountant for PDA, used to prepare 11/30/91 adjusting journal entries. This work paper said, "Balance should be \$3,179.56 per Mrs T." I reduced

the 11/30/91 value of this account balance \$1,455.03 from \$4,634.59 to \$3,179.56.

Accounts Receivable: I analyzed the PDA, Inc. Customer Summary at 11/30/91. I compared this Summary to the House and Flight Account subsidiary ledger cards. This review of those cards revealed that the computer accounting records had not been updated since about 11/13/91. Further, the Customer Summary shows a receivable from the Airport Authority of \$12,576.35. This receivable is also included in the Account Receivable - Airport Authority. Thompson advised that prior to 11/30/91 he was made aware of this double booked asset by a PDA employee. I adjusted the 11/30/91 value of this account down by \$15,322.91 from \$33,065.13 to the correct balance of \$17,742.22.

Accounts Receivable - Army: A through review of the "Blue Notebook" containing the record of military contract fuel sales showed that there have been extensive mathematical errors throughout the history of PDA's contract fuel transactions. I found that only three invoices remained unpaid at 11/30/91. These invoices totaled \$31,046.20. There was also evidence that prior to 11/30/91 PDA had been informed by the U.S. Defense Logistics Agency that PDA had been overpaid by a net of \$2,450.29 during the life of the 01 Oct 1988 through 30 Sept 1990 contract. I reduced the 11/30/91 value of this account by \$8,297.91 from a balance of \$36,893.82 to a correct balance of \$28,595.91.

Unbilled Work in Process: This account included as receivable charges for warranty work on an aircraft belonging to Robert Elliot. Also, this account improperly contained charges for maintenance performed on PDA aircraft. The PDA charges should have been included in Expenses or capitalized in the value of the individual aircraft. I reduced the 11/30/91 value of this account by \$2,673.00 from \$9,281.00 to a correct balance of \$6,608.00.

Inventory - Parts: A physical inventory of aircraft parts was apparently taken in about January 1990 when the parts were initially placed into the computer system, however, there is no evidence of the inventory ever having been properly priced at the lower of cost or market. The sole control found regarding parts inventory was a notation at the bottom of the PDA Work orders Report. This notation consists of the prior month's ending inventory amount followed by the addition of parts purchases and the subtraction of parts sold with the result being the month's ending inventory.

Gressman began a physical inventory of parts at the end of March 1992. He also priced this inventory at cost where ever possible. I applied appropriate tests to this count and pricing and I believe that this inventory is conservatively

priced consistent with the nature of the proceedings for which the inventory and pricing has been conducted. I accept the value of \$104,980.18 placed on this inventory, however, I believe that the true value, in accordance with Generally Accepted Accounting Principles, is significantly lower. An inspection of this inventory revealed many used or salvage parts. Appropriately, these parts are listed on the inventory as having little or no value. In January 1993, a representative of Atlanta Air Salvage Inc., Atlanta, Ga., offered \$26,000 for the parts inventory. Obviously, this offer is at the lowest or liquidation value. I believe that the true (accounting) value is between \$26,000.00 and \$104,980.18. For the purpose of this report, I have reduced the 11/30/91 value of the inventory \$19,352.62 from \$124,332.80 to \$104,980.18.

Property And Equipment: The Property and equipment inventories presented to Gressman at closing included two paint mixing machines, an fuel anti-icing additive mixing device, a refrigerator, and gray lobby furniture that did not belong to PDA. I reduced the 11/30/91 value of the appropriate property and equipment accounts by \$3,826.17 from \$72,461.84 to \$68,635.67.

Accounts Payable: I reviewed the PDA, Inc. Vendor Summary at 11/30/91. I compared this to the Flight and House accounts subsidiary ledger cards and identified all accounts with credit balances. I found that there was no provision for the liability for prepaid flight time. This is unearned income to PDA until the individual has flown the time or received the flight instruction. Further, I reviewed checks and invoices paid in December 1991 and January 1992 and determined that, like the accounts receivable, the accounts Payable had not been brought up to date in the computer system. During my review of invoices, it came to my attention that an invoice from the law firm of Williams, Mullen, Christian & Dobbins had not been included in accounts payable. This invoice for \$10,875.12 was for legal services rendered in 1991. I adjusted upward the 11/30/91 liabilities by \$22,885.65 from \$20,458.31 to \$43,343.96.

Sales Taxes Payable: PDA failed to properly accrue sales and use taxes on the nonmilitary sale of jet aviation fuel and on PDA owned and operated aircraft. I increased this liability at 11/30/91 by \$1,943.80 from \$39.57 to \$1,983.37.

Local Taxes Payable: In January 1992, PDA check number 6190 dated 1/28/91 payable to William E. Jones, Treasurer for \$811.91 cleared the account of PDA. This check was for Dinwiddie County Business taxes for the year 1991. Research showed this check as a reconciling item in February 1991. After February, this check disappeared from the bank reconciliation and during one of the subsequent adjustments of the cash account it was added back or simply forgotten.

I increased this liability at 11/30/91 by \$811.91 from \$00.00 to \$811.91.

The cumulative effect of these adjustments is a significant reduction of Total Equity in PDA at 11/30/91. It is my opinion that the Total Equity of PDA at 11/30/91 was no more than \$71,631.26. Further, depending on the value of the inventory, as discussed above, PDA could easily have had a minimal Net Worth or have been insolvent.

I appreciate the opportunity to be of service.

Very truly yours,

William R Dacey Jr
William R. Dacey, Jr.

Attachments

c: Mr. Gerhard R. Gressman

PDA Inc
BALANCE SHEET Nov 30, 1991

UNAUDITED

ASSETS	Change	Correct Balance	LIABILITIES	Change	Correct Balance
CURRENT ASSETS			CURRENT LIABILITIES		
Cash On Hand	200.00	200.00	Accounts Payable	20,458.31	22,885.65
Cash In Bank - Crestar	18,653.82	18,653.82	Accounts Payable - Other	36,359.45	36,359.45
Acct's Rec. Charge Cards	4,634.59	-1,455.03	Accounts Payable - Eastern	64,611.51	64,611.51
Accounts Receivable	33,065.13	-15,322.91	Deferred Revenue Deposits	12,915.49	12,915.49
Account Receivable - Army	36,893.82	-8,297.91	Accrued Payroll Payable	9,341.68	9,341.68
Acc Receivable-Airport Aut	38,585.43	38,585.43	Employee Savings	80.00	80.00
Unbilled Work In Process	9,281.00	-2,673.00	Sales Tax Payable	39.57	1,943.80
Employee Advances	456.02	456.02	Local Tax Payable	0.00	811.91
Inventory - Dealer	40,073.17	40,073.17	TOTAL CURRENT LIABILITIES	143,806.01	25,641.36
Inventory - Fuel	20,297.65	20,297.65			
Inventory - Parts	124,332.80	-19,352.62	NOTES PAYABLE		
Prepaid Insurance	8,367.50	8,367.50	Cananwill Hargrove	6,045.42	6,045.42
Fed Inc. Tax Deposits	1,350.00	1,350.00	Stockholders	9,110.00	9,110.00
TOTAL CURRENT ASSETS	336,190.93	-47,101.47	Louis G. Thibault Sr.	31,491.08	31,491.08
			Sovran - Installment	70,000.00	70,000.00
PROPERTY AND EQUIPMENT			TOTAL NOTES PAYABLE	116,646.50	0.00
Equipment	142,143.11				
Depreciation Allowance	132,401.48		TOTAL LIABILITIES	260,452.51	25,641.36
Net - Equipment	9,741.63	-3,686.17			
Furniture & Fixtures	13,481.25		EQUITY		
Depreciation Allowance	12,018.73		STOCKHOLDERS' EQUITY		
Net - Furniture & Fixtures	1,462.52	-140.00	Common Stock - \$1 Par	81,595.00	81,595.00
Vehicles	38,007.12		TOTAL STOCKHOLDERS' EQUITY	81,595.00	0.00
Depreciation Allowance	36,500.88				
Net - Vehicles	1,506.24	1,506.24	EARNINGS		
Leasehold Improvements	88,059.23		Retained Earnings	71,400.36	-3,826.17
Depreciation Allowance	28,307.78		Current Earnings - Loss	-4,795.10	-72,742.83
Net - Leasehold Improv.	59,751.45	59,751.45	TOTAL EARNINGS	66,605.26	-76,569.00
Net Property & Equipment	72,461.84	-3,826.17			
			TOTAL EQUITY	148,200.26	-76,569.00
TOTAL ASSETS	408,652.77	-50,927.64	LIABILITIES AND EQUITY	408,652.77	-50,927.64

UNAUDITED

FIN

ASSETS

CURRENT ASSETS

Cash On Hand	200.00
✓ Cash In Bank - Crestar	10,653.82
Cash In Bank - Sovran	0.00
Acct's Rec. Charge Cards	4,634.59
Accounts Receivable	33,065.13
✓ Account Receivable - Army	36,893.82
✓ Acc Receivable-Airport Aut	30,585.43
Unbilled Work In Process	9,281.00
Employee Advances	456.02
Inventory - Dealer	40,073.17
Inventory - Fuel	20,297.65
Inventory - Parts	124,332.80
✓ Prepaid Insurance	8,367.50
✓ Fed Inc. Tax Deposits	1,350.00
State Inc. Tax Deposits	0.00
TOTAL CURRENT ASSETS	336,190.93

PROPERTY AND EQUIPMENT

Equipment	142,143.11
Depreciation Allowance	<u>132,401.48-</u>
Net - Equipment	9,741.63
Furniture & Fixtures	13,481.25
Depreciation Allowance	<u>12,018.73-</u>
Net- Furniture & Fixtures	1,462.52
Vehicles	30,007.12
Depreciation Allowance	<u>36,500.88-</u>
Net - Vehicles	1,506.24
Leasehold Improvements	88,059.23
Depreciation Allowance	<u>28,307.78-</u>
Net - Leasehold Improv.	59,751.45
Less Accum. Depreciation	0.00
Less - Amort. Allowance	<u>0.00</u>
NET PROPERTY & EQUIPMENT	72,461.84

OTHER ASSETS

Refundable Deposits	0.00
Deferred Finance Charges	<u>0.00</u>
TOTAL OTHER ASSETS	0.00

TOTAL ASSETS

408,652.77
=====

LIABILITIES

CURRENT LIABILITIES

✓Accounts Payable	20,458.31
Accounts Payable - Other	36,359.45
✓Accounts Payable - Ins.	0.00
Accounts Payable - Eastern	64,611.51
Accrued Interest	0.00
Sovran 90 Day	0.00
Sovran Line Of Credit	0.00
Deferred Revenue Deposits	12,915.49
Accrued Payroll Payable	9,341.68
Federal Income Tax W/H	0.00
Va Income Tax W/H	0.00
FICA Withheld	0.00
Employee Savings	80.00
Garnishee Payable	0.00
✓Sales Tax Payable	39.57
Federal Income Tax	0.00
Va Income Tax	0.00
Sovran 90 Day	0.00
FUTA Payable	0.00
SUTA Payable	0.00
SDI Payable	0.00
✓Local Tax Payable	0.00
Deduction A Payable	0.00
Deduction B Payable	0.00
Deduction C Payable	0.00
Uniform Fund	<u>0.00</u>
TOTAL CURRENT LIABILITIES	143,806.01

NOTES PAYABLE

✓Cananwill Hargrove	6,045.42
Stockholders	9,110.00
Louis G. Thibault Sr.	31,491.08
Sovran - Installment	70,000.00
Sovran Installment	<u>0.00</u>
TOTAL NOTES PAYABLE	116,646.50

TOTAL LIABILITIES

260,452.51

EQUITY

STOCKHOLDERS' EQUITY

Common Stock - \$1 Par	<u>81,595.00</u>
TOTAL STOCKHOLDERS' EQUITY	81,595.00

EARNINGS

Retained Earnings	71,400.36
Current Earnings	<u>4,795.10-</u>
TOTAL EARNINGS	66,605.26

TOTAL EQUITY

148,200.26

LIABILITIES AND EQUITY

408,652.77

EXHIBIT DEFENDANT NO. 12
James B. Zerk
JW JUDGE

COMPUTATION OF NOTE

PRINCIPLE after two payments.....\$396,206.42

Interest per month \$3147.94

x 2 months Feb & March 92

\$6295.88

Late payment charge \$211.44

Accerleration of the Note

Principle.....\$396,206.42

x .18

\$71,317.15 for 12 months
/ 365 days

\$195.38/day
x 321 days

\$62,716.98 interest accruing
after acceleration

TOTAL PRINCIPLE\$396,206.42

INTEREST for 2 months\$6295.88

LATE HANDLING CHARGE\$211.44

INTEREST ACCELERATION\$62,716.98

TOTAL \$465,430.72

ATTORNEY FEES

\$465,43072 X .25 =\$116,357.68

COSTS\$22,205.00

GRAND TOTAL \$603,993.40

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF DINWIDDIE
EASTERN AVIATION FUELS, INC.
PLAINTIFF

V.

LOUIS G. THIBAUT
AND
MARGOT E. SCHWECHHEIMER THIBAUT
DEFENDANTS

LAW NO. 93-67

DEFENDANTS' ANSWER TO MOTION FOR JUDGMENT
AND MOTION FOR LEAVE TO BRING IN THIRD PARTY DEFENDANTS

Come now your defendants, Louis G. Thibault and Margot Thibault, by counsel, and in response to the motion for judgment hereby respectfully file the following response:

1. The allegations of paragraph 1 are admitted and defendants do not dispute the authenticity of Exhibit A or that of the signature of defendant Louis G. Thibault on Exhibit A.
2. Defendants admit that Exhibit B is a true and correct copy of a guarantee entered into by defendants with Eastern Aviation, and that the remaining allegations of paragraph 2 with respect to the contents of Exhibit B are correct.
3. Defendants admit that Exhibit C is a true and correct copy of a letter sent by them to Eastern Aviation Fuels, Inc.

4. Defendants neither admit nor deny the allegations in paragraph 4, but demand strict proof thereof. Defendants further deny that they are indebted to plaintiffs in any amount and demand strict proof thereof.
5. Pursuant to Rule 3:10 of the Rules of Supreme Court of Virginia, defendants Louis and Margot Thibault move to join Gerhard Gressman, Gloria Gressman, and Petersburg-Dinwiddie Aviation, Inc. as third party defendants in the above-styled action. As more fully set forth in the Third Party Motion for Judgment, which is attached, defendants assert that Gerhard Gressman, Gloria Gressman, and Petersburg-Dinwiddie Aviation, Inc. are or may be liable to defendants Louis Thibault and Margot Thibault for all or part of plaintiff's claims against them.

WHEREFORE, your defendants deny the allegations of damages due and owing from them to plaintiffs and demand strict proof thereof, and hereby request that this Honorable Court join Gerhard Gressman, Gloria Gressman, and Petersburg-Dinwiddie Aviation, Inc. as third-party defendants in this

action for reasons more fully enunciated in the Third Party
Motion for Judgment.

BY LOUIS AND MARGOT THIBAUT
Donald E. Jeffrey, III
OF COUNSEL

Donald E. Jeffrey, III
VSB 34844
Hill and Rainey
Suite 517
Virginia First Building
Petersburg, Virginia 23803
804-861-4200

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing answer to motion for judgment and motion for leave to add third-party defendants on counsel for the plaintiff Stephen G. White, Esquire, White, Hamilton, Wyche & Shell, P.C., 20 East Tabb Street, Petersburg, Virginia 23803 on this 25th Day of October 1993 and via first class mail to Gerhard Gressman, 14500 Happy Hill Road, Chester, Virginia 23831, Gloria Gressman, 14500 Happy Hill Road, Chester, Virginia 23831, and Petersburg-Dinwiddie Aviation, Inc. on Gerhard Gressman, President, 14500 Happy Hill Road, Chester, Virginia 23831 on this 25th Day of October 1993.

Donald E. Jeffrey, III
Donald E. Jeffrey, III

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF DINWIDDIE

EASTERN AVIATION FUELS, INC..
PLAINTIFF

V.

LOUIS G. THIBAUT
AND
MARGOT E. SCHWECHHEIMER THIBAUT
DEFENDANTS AND
THIRD PARTY PLAINTIFFS

LAW NO. 93-67

V.

GERHARD GRESSMAN
SERVE AT: 14500 HAPPY HILL ROAD
CHESTER, VA 23831 (CHESTERFIELD COUNTY)

AND

GLORIA GRESSMAN
SERVE AT: 14500 HAPPY HILL ROAD
CHESTER, VA 23831 (CHESTERFIELD COUNTY)

AND

PETERSBURG-DINWIDDIE AVIATION, INC..
THIRD PARTY DEFENDANTS

SERVE GERHARD GRESSMAN, PRESIDENT
14500 HAPPY HILL ROAD
CHESTER, VA 23831 (CHESTERFIELD COUNTY)

THIRD PARTY MOTION FOR JUDGMENT

Come now your defendants, Louis Thibault and Margot E. Schwechheimer Thibault, by counsel, and hereby set forth the following for their Third-Party Motion for Judgment against Gerhard Gressman, Gloria Gressman, and Petersburg-Dinwiddie Aviation, Inc:

1. Plaintiffs have filed a motion for judgment against defendants, Louis and Margot Thibault

for \$10,443.77 plus interest at 10% per annum from December 5, 1991 and 25% attorney's fees, plus any costs incurred.

2. On December 5, 1991 defendants, along with other parties in their family, were the sellers in a stock purchase agreement regarding Petersburg-Dinwiddie Aviation, Inc. between the sellers and defendants Gerhard and Gloria Gressman (a true and correct copy of which is attached as Exhibit A).
3. When read as a whole, the stock purchase agreement, including, but not necessarily limited to, paragraphs 2.4 and 5.2.3 manifest a clear intent that third party defendants Gerhard and Gloria Gressman were assuming the liabilities of the corporation. Specifically, paragraph 5.2.3 reads that "each and every one of the sellers shall have been released from any personal obligations, indemnities, guarantees of any of the Company's liabilities, obligations or expenses. Specifically each and everyone of the Sellers

shall be released from any and all obligations to Sovran Bank, Crestar Bank, Petersburg-Dinwiddie Airport Industrial Authority, and Eastern Aviation Fuels, Inc." (Emphasis added) To the extent that third party defendants Gerhard and Gloria Gressman have breached this agreement, they are liable to defendants and third party plaintiffs Louis and Margot Thibault.

4. To the extent that defendants Louis and Margot Thibault incur any liability in this action, Petersburg-Dinwiddie Aviation, Inc. is also responsible to indemnify them for damages in that the corporation through its officers has not paid the debts alleged to be due and owing and has breached a duty owed to the Thibaults.

WHEREFORE, your third party plaintiffs hereby respectfully ask that the third party defendants be added to this action, and that said third party defendants be held liable for any judgment obtained by plaintiff against defendants, as well as the attorney's fees and costs of

defendants in defending this action caused by third party
defendants' conduct which has forced the Thibaults to
maintain or defend a suit with a third party and other such
relief as this Honorable Court may deem appropriate.

BY LOUIS AND MARGOT THIBAUT
Donald E. Jeffrey, III
OF COUNSEL

Donald E. Jeffrey, III
VSB 34844
Hill and Rainey
Suite 517
Virginia First Building
Petersburg, Virginia 23803
804-861-4200

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct
copy of the foregoing third party motion for judgment to be
served on counsel for the plaintiff, Stephen G. White,
Esquire, White, Hamilton, Wyche & Shell, P.C., 20 East Tabb
Street, Petersburg, Virginia 23803 on this 25th Day
of October 1993 and via first class mail to Gerhard
Gressman, 14500 Happy Hill Road, Chester, Virginia 23831,
Gloria Gressman, 14500 Happy Hill Road, Chester, Virginia
23831, and Petersburg-Dinwiddie Aviation, Inc. on Gerhard
Gressman, President, 14500 Happy Hill Road, Chester, Virginia
23831 on this 25th Day of October 1993.

Donald E. Jeffrey, III
Donald E. Jeffrey, III