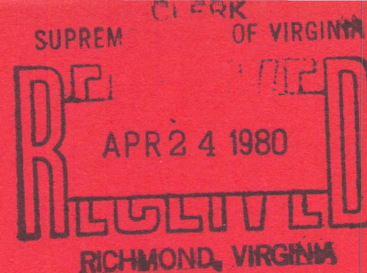


223 Va. 548



IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 791536

ROANOKE ENGINEERING SALES COMPANY, INC.

Appellant

v.

CURTIS ROSENBAUM and ROSENBAUM OF ROANOKE, INC.

Appellees

JOINT APPENDIX

Alan G. Fleischer, Esq.
Keith D. Boyette, Esq.
HIRSCHLER, FLEISCHER
WEINBERG, COX & ALLEN
4 North Fourth Street
Richmond, Virginia 23219

G. Marshall Mundy
MUNDY & STRICKLAND
131 Kirk Avenue, West
Roanoke, Virginia 24009

Counsel for Appellant

S. D. Roberts Moore, Esq.
Harry F. Hambrick, Jr., Esq.
GENTRY, LOCKE, RAKES
& MOORE
800 Colonial Plaza
Roanoke, Virginia 24005

Counsel for Appellees

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BILL OF COMPLAINT

TO THE HONORABLE JUDGES OF SAID COURT:

The complainant, Roanoke Engineering Sales Company, Inc., by counsel, respectfully states:

COUNT I

1. The complainant is a corporation organized under the laws of Virginia, with its principal place of business in Richmond, Virginia, and is engaged in the construction business involving sales and installation of building materials.

2. The complainant and the defendant, Curtis Rosenbaum, entered into an agreement dated January 1, 1970, and amended January 15, 1977, a copy of which is attached hereto as Exhibit

1. Defendant, Curtis Rosenbaum, continued his employment with complainant from January 1, 1970, until his resignation from the complainant's employment on April 29, 1978. Thereafter,

the defendant, Curtis Rosenbaum, accepted employment with the defendant, Rosenbaum of Roanoke, Inc. The nature of the business of the defendant, Rosenbaum of Roanoke, Inc., is virtually identical to the complainant's business.

3. By obtaining employment with the defendant, Rosenbaum of Roanoke, Inc., the defendant, Curtis Rosenbaum, violated paragraph 4 of the said agreement dated January 1, 1970, and amended January 15, 1977, between himself and complainant, which provides:

"For a period of three years after the termination of this agreement, for a reason other than the cessation of Roanoke's business or its bankruptcy, Employee will not, in the territory covered by Roanoke, directly or indirectly, own, manage, operate, control, be employed by, participate in, or be associated in any manner with the ownership, management, operation, or control of any business similar to the type of business conducted by Roanoke at the time of the termination of this agreement."

4. The violation of the restrictive covenant as stated in the preceding paragraph by the defendant, Curtis Rosenbaum, has caused, and continues to cause, irreparable harm to the complainant for which there is no adequate remedy at law. Specifically, complainant is irreparably harmed as follows:

a. Defendant, Curtis Rosenbaum, was privy to certain business secrets of the complainant and customer lists of the complainant, and now makes use of this information to the detriment of the complainant; and

b. Defendant, Curtis Rosenbaum, has caused and will continue to cause customers of the complainant to enter into business transactions with the defendant, Rosenbaum of Roanoke, Inc., which is directly competing with the complainant within the area in which complainant does business.

WHEREFORE, complainant prays that this Court grant a temporary injunction restraining the defendant, Curtis Rosenbaum, from violating paragraph 4 of the attached contract dated January 1, 1970, and amended January 15, 1977; that said injunction be made permanent after a hearing on the merits of this cause; and that the complainant be awarded such other relief as the nature of its cause may merit.

COUNT II

1. - 4. For paragraphs one through four of Count II, complainant repleads and incorporates by reference paragraphs one through four of Count I:

5. This violation of the employment contract, as stated in the preceding paragraphs, by the defendant, Curtis Rosenbaum, has been intentional, malicious, reckless, and in total disregard of complainant's rights under said contract.

6. As a proximate result of the defendant, Curtis Rosenbaum's breach of the said employment contract, complainant has suffered and will continue to suffer severe economic losses.

WHEREFORE, complainant moves the Court for compensatory and punitive damages against the defendant, Curtis Rosenbaum, in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

COUNT III

1. - 4. For paragraphs one through four of Count III, complainant repleads and incorporates by reference paragraphs one through four of Count I.

5. Defendants have combined, conspired and agreed mutually for the purpose of wilfully and maliciously injuring complainant in its business in contravention of Section 18.2-499, Code of Virginia, as amended. Complainant has been injured and will continue to be injured in the future by reason of said violation, and, therefore, pursuant to Section 18.2-500, Code of Virginia, as amended, complainant is entitled to recover from defendants threefold damages, costs of this suit, and reasonable attorneys' fees. Damages are estimated to be \$100,000.00, and costs and attorneys' fees have not been determined.

WHEREFORE, complainant moves the Court for judgment against both defendants in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) trebled to THREE HUNDRED THOUSAND DOLLARS (\$300,000.00), together with its costs and attorneys' fees to be later determined.

ROANOKE ENGINEERING SALES
COMPANY, INC.

By _____

G. Marshall Mundy
MUNDY & GARRISON
131 W. Kirk Avenue
P. O. Box 2240
Roanoke, Virginia 24009
Counsel for Complainant

Exhibit 1

AGREEMENT made January 1, 1970, and amended January 15, 1977, between ROANOKE ENGINEERING SALES COMPANY, INCORPORATED, a Virginia Corporation, with principal offices in Richmond, Virginia, herein called "Roanoke", and Curtis Rosenbaum of Roanoke, Virginia, herein called "Employee".

WHEREAS, Employee is presently employed as Treasurer of Roanoke, and General Manager of its Roanoke, Virginia, Branch, and

WHEREAS, the parties hereto wish to set forth in writing the terms and conditions of his employment and compensation, therefore, it is agreed as follows:

1. Roanoke hereby employs Employee and Employee hereby accepts employment by Roanoke as Treasurer, and General Manager of Roanoke's Roanoke, Virginia Branch Office for a term of three years commencing January 1, 1970, and ending December 31, 1972, and thereafter on a year to year basis, unless terminated by either party giving written notice to the other of termination at least ninety days prior to December 31 of any year after 1972.

2. Employee shall devote his entire time, energy and ability to the best interests of Roanoke and to the performance of his duties hereunder, and to such other duties as shall be assigned to him from time to time by the board of directors of Roanoke, and shall not engage in any other business activity without the prior approval of Roanoke.

3. Employee shall be paid an annual salary of \$24,000.00 per year, plus non-discretionary bonuses to be determined as follows:

A sum equal to the net commission credited each period ending May 31 and November 30 on sales made by or through the Roanoke Branch Office, less (a) the salary paid Employee for the period and (b) all items of business expenses incurred by the Roanoke Branch and charged against its operations for the period, as shown by the cash basis financial statement for the period.

If in any period, the sum of the branch office expenses and the branch manager's salary shall be in excess of the net commission credited to the branch, then such excess shall be carried over to the succeeding period or periods and charged against net commissions for such succeeding period or periods, before any non-discretionary bonus is paid.

For the purposes of this agreement, "net commission" is defined as 2/3 of gross commission received by the Accounting Office and credited to the Roanoke Branch. "Gross commission" is defined as the difference between realizable selling price and direct costs (exclusive of overhead) relating thereto. Net commissions to be paid only for completed jobs and after 100% collection of the receivable.

4. For a period of three years after the termination of this agreement, for a reason other than the cessation of Roanoke's business or its bankruptcy, Employee will not, in the territory covered by Roanoke, directly or indirectly, own, manage, operate, control, be employed by, participate in, or be associated in any manner with the ownership, management, operation, or control of any business similar to the type of business conducted by Roanoke at the time of the termination of this agreement.

5. If, during the term of this agreement, Employee should become totally disabled by reason of sickness or accident, and thereby prevented from performing his duties hereunder, Roanoke shall pay to Employee the sum of \$1,000.00 per month for a period of six months from the beginning date of such total disability. Thereafter disability income payments shall be paid to Employee under the terms of the non-cancelable, guaranteed renewable, disability income policy which Roanoke has purchased on behalf of Employee (Union Mutual Policy #N 116 472) and which will provide payments beginning after a continuous period of disability which has lasted for one hundred eighty (180) days. The policy will provide a monthly payment of \$1,000.00 payable for up to ten years or to age sixty-five. Roanoke shall pay the policy premiums, which shall not be charged to Employee. The determination of total

disability shall be in accordance with the terms of the disability income policy, a copy of which has been delivered to Employee.

6. If Employee should die or resign during the term of this agreement or any extension thereof, Roanoke shall pay to his estate or to him the net commission that would have been payable to him on jobs sold through his branch prior to his death or resignation. Resignation or post-death commissions shall be reduced by (a) any excess expenses from preceding periods and (b) any overhead expenses incurred by Roanoke in completing unfinished jobs. Roanoke's determination of expenses and of net commission due, if any, shall be conclusive and binding upon all parties.

The company has the obligation to pay commissions in accordance with the provisions of paragraph 2 of section 3 above for the next six commission periods after death or resignation. If, at the end of six commission periods after date of death or resignation, there remain unfinished jobs, or jobs that have not been fully collected, the Board of Directors will evaluate each on the basis of collectibility. After such evaluation the Board of Directors, notwithstanding any other provisions of this agreement, may make cash payment of commissions on such unfinished or not fully collected jobs either in cash or by promissory note. The Board of Director's determination of such net commission payable or not, less related expenses, shall be conclusive and binding upon all parties.

The phrase "sold through this branch" is not limited to orders received in the Accounting Office, but shall include orders in transit, commitment documents or letters and confirmable verbal commitments with customers.

7. Any notices required to be given pursuant to this agreement shall be in writing and mailed to the parties at the following addresses:

Richmond - Roanoke Engineering Sales Company, Inc.
P. O. Box 4397
Richmond, VA 23229

Employee - Mr. Curtis Rosenbaum
P. O. Box 8055
Roanoke, VA 24014

007

✓ Comm. Period =
each period ending
5/31 & 11/30.

This agreement shall be interpreted and construed under the laws of the State of Virginia and its provisions shall be binding upon and inure to the benefit of the parties, their successors and assigns.

WITNESS the following signatures and seals:

ROANOKE ENGINEERING SALES COMPANY, INC.

By: Joseph L. [Signature]
President

ATTEST:

[Signature]
Secretary

[Signature] (SEAL)
Employee

ANSWER

Come now Curtis Rosenbaum and Rosenbaum of Roanoke, Inc., by counsel, and file this their Answer to the complainant's Complaint without in any way waiving their Demurrer and Motion to Require Complainant to Elect filed simultaneously herewith.

COUNT I

1. The allegations contained in numbered paragraph 1 of the complainant's Complaint are admitted.

2. It is admitted that Curtis Rosenbaum entered into the agreement attached to the complainant's Bill of Complaint identified as "Exhibit 1".

3. The complainant fired or dismissed without cause Curtis Rosenbaum as the manager of its Roanoke Branch Office and terminated without cause or legal reason the employment of Curtis Rosenbaum as Treasurer of Roanoke Engineering Sales Company, Inc.

4. It is the position of Curtis Rosenbaum that under the facts and circumstances of this case the complainant is not entitled in equity to enforce the terms of the covenant not to compete contained in the agreement marked "Exhibit 1".

5. Following his wrongful termination as Manager of the complainant's Roanoke Branch Office and as Treasurer of Roanoke Engineering Sales Company, Inc. Curtis Rosenbaum sought work in a field of employment with which he was familiar and he did agree to purchase certain assets of Mahone, Inc. and did begin to operate the business known as Mahone, Inc. However, Mahone, Inc. has never changed its name to Rosenbaum of Roanoke, Inc.

6. Curtis Rosenbaum has not sought to represent nor has he represented any manufacturer or supplier represented by the complainant since the wrongful termination of his employment with the complainant.

7. It is denied that Curtis Rosenbaum has caused or will in the future cause irreparable harm to the complainant by virtue of his past, present, or future business activities.

Wherefore Curtis Rosenbaum moves the Court to deny the request for injunctive relief of the complainant and moves the Court to dismiss this action.

COUNT II

1. Curtis Rosenbaum adopts his answer to Count I as a portion of his answer to Count II of the complainant's Complaint.

2. It is denied that Curtis Rosenbaum has acted in any manner which would give rise to the claim for compensatory and punitive damages set forth in Count II of the complainant's Complaint.

3. It is denied that the complainant has suffered any economic loss by virtue of the business activities of Curtis Rosenbaum past, present, and future.

Wherefore Curtis Rosenbaum moves the Court to dismiss those allegations against him in Count II of the complainant's Complaint.

COUNT III

1. The defendants incorporate their answer to Count I as a partial response to Count III.

010

2. Each of the allegations contained in numbered paragraph 5 under Count III of the complainant's Complaint are denied.

Wherefore Curtis Rosenbaum and Rosenbaum of Roanoke, Inc. deny that they or either of them are liable in damages to the complainant.

CURTIS ROSENBAUM
ROSENBAUM OF ROANOKE, INC.

BY


Of Counsel

S. D. Roberts Moore
GENTRY, LOCKE, RAKES & MOORE
800 Colonial Plaza
P.O. Box 1018
Roanoke, Virginia 24005

CERTIFICATE OF MAILING

I hereby certify that a true and exact copy of the foregoing Answer has this date been mailed to Marchall Mundy, Esq. MUNDY & GARRISON, 131 W. Kirk Avenue, P.O. Box 2240, Roanoke, VA 24009.

Given under my hand this 27 day of October, 1978.


S. D. Roberts Moore

Rec'd
6/21/79

TWENTY-THIRD JUDICIAL CIRCUIT OF VIRGINIA

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

CIRCUIT COURT FOR THE COUNTY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF SALEM

June 20, 1979

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Post Office Box 1018
Roanoke, Virginia 24005

Re: Roanoke Engineering Sales Company, Inc.
v. Curtis Rosenbaum and Rosenbaum of Roanoke, Inc.
In the Circuit Court of the City of Roanoke
In Chancery No. 7761 C

Gentlemen:

Roanoke Engineering Sales Company, Inc. (Company) seeks to enforce a restrictive, non-competitive provision of an agreement dated January 1, 1970, between Company and Curtis Rosenbaum (Curtis). The agreement was the last in a number of employment agreements between the parties. The particular provision provides:

For a period of three years after the termination of this agreement, for a reason other than the cessation of Roanoke's business or its bankruptcy, Employee will not, in the territory covered by Roanoke, directly or indirectly, own, manage, operate, control, be employed by, participate in, or be associated in any manner with the ownership, management, operation, or control of any business similar to the type of business conducted by Roanoke at the time of the termination of this agreement.

Company was founded over fifty years ago in Roanoke, Virginia, by Henry L. Rosenbaum, now Chairman of the Board. Its principal office is recited to now be in Richmond, Virginia. It operates four branches,

TWENTY-THIRD JUDICIAL CIRCUIT OF VIRGINIA

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G. Marshall Mundy, Esquire
S. D. Roberts Moore, Esquire
Alan G. Fleischer, Esquire
June 20, 1979

each branch managed from 1963 to 1978 by a son of Henry L. Rosenbaum, Sr. Joseph L. Rosenbaum is manager of the Richmond, Virginia, Branch. Henry L. Rosenbaum, Jr. manages the Charlotte, North Carolina, Branch, Robert F. Rosenbaum manages the Washington, D.C. Branch, and Curtis R. Rosenbaum manages the Roanoke Branch. Company operates in Virginia, North Carolina, and Washington, D.C. Company's business is the sale of building supplies such as windows and doors, and sales are usually on a competitive bid basis. Company is a manufacturer's representative for building products.

The evidence is that by agreement dated January 1, 1970, amended January 15, 1977, Company continued the employment of Curtis as Treasurer and as General Manager of its Roanoke Branch, on a year-to-year basis. The agreement contained the restrictive provisions above set out. Curtis had always been employed in the Roanoke Branch, managed the Roanoke Branch, never managing or been employed for an extended period at any of the other three branches. He owned 25% of the Company stock and served on its Board of Directors.

In April 1978, differences arose among the four brothers which resulted in the termination of Curtis's association with Company as a member of the Board of Directors, manager of the Roanoke Branch, and salesman. Curtis is now competing with Company as owner of a business called Rosenbaum of Roanoke, Inc.

As manager of the Roanoke Branch, Curtis became familiar with the business practices and methods of Company, its suppliers, and customer lists, pricing policies, its strengths and weaknesses, all peculiar to the Roanoke Branch. As a Company officer, stockholder, and member of the Board of Directors, he became familiar with the business practices, pricing policies, and general operating practices of the other three branches.

Now Company seeks to enforce the restrictive agreement in the territory covered by all four branches.

In Richardson v. Paxton Company, 203 Va. 790 (1962), at page 794, the Supreme Court of Virginia stated the criteria for the validity of restrictive competitive covenants:

TWENTY-THIRD JUDICIAL CIRCUIT OF VIRGINIA

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G. Marshall Mundy, Esquire
S. D. Roberts Moore, Esquire
Alan G. Fleischer, Esquire
June 20, 1979

* * * *Modern courts have usually, in passing on these contracts, employed three criteria: (1) Is the restraint, from the standpoint of the employer, reasonable in the sense that it is no greater than is necessary to protect the employer in some legitimate business interest? (2) From the standpoint of the employee, is the restraint reasonable in the sense that it is not unduly harsh and oppressive in curtailing his legitimate efforts to earn a livelihood? (3) Is the restraint reasonable from the standpoint of a sound public policy?

Here the provision seeks to restrain Curtis as an employee, not stockholder or Board of Director member, for a period of three years from April __, 1978, from going into . . .the territory. . . covered by Roanoke, directly or indirectly, own, manage, operate, control, be employed by, participate in, or be associated in any manner with the ownership, management, operation, or control of any business similar to the type of business contracted by Roanoke at the time of the termination of this agreement."

The covenant not only restricts Curtis Rosenbaum from engaging in any business activities in the area covered by the Roanoke Branch but also restricts him from engaging in this business in any territory in which Company (the four branches) conducts business. The restraint encompasses territory and business activities in which Curtis was not engaged as an employee of the Roanoke Branch. The covenant applies to Curtis as an employee but not as a stockholder or member of the Board of Directors. Such restraint is unreasonable in that it is greater than is necessary to protect Company in its legitimate business interests, and it is unreasonable from the standpoint of Curtis because it is unduly harsh on him in conducting his legitimate efforts to earn a livelihood. The Court is of opinion that the covenant cannot be enforced.

The Court is also of opinion that the covenant would be reasonable if the restraint on Curtis was only in the territory covered by the Roanoke Branch. The Court does not have the authority to restrict the

TWENTY-THIRD JUDICIAL CIRCUIT OF VIRGINIA

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G. Marshall Mundy, Esquire
S. D. Roberts Moore, Esquire
Alan G. Fleischer, Esquire
June 20, 1979

covenant to the Roanoke Branch territory, and it cannot rewrite the covenant for the parties. Richardson v. Paxton Company, supra. A different result was reached in National Homes Corp. v. Lester Industries, Inc., 293 F.Supp. 1025, affirmed in part, 404 F2d 225 (4th Circuit 1968).

The Court has carefully considered the evidence, all of the excellent legal memoranda submitted by the parties, and the authorities cited therein.

Counsel for the defendant, Curtis Rosenbaum, may present an appropriate order.

Very truly yours,


Ernest W. Ballou

EWB:hg

O R D E R

On December 6, 1978, the parties to this action, in person and by Counsel, appeared before the Court and announced they were ready for trial upon the pleadings previously filed in this action and it was agreed by all parties that all questions of law and fact would be submitted to the Court without any request having been made by either party for an Issue out of Chancery.

WHEREUPON, Counsel for the plaintiff announced that the plaintiff desired to non-suit Counts 2 and 3 of its complaint. Accordingly, it was ORDERED that Counts 2 and 3 of the plaintiff's complaint be non-suited and the matter proceeded to trial on the issues raised in Count 1 of plaintiff's complaint.

After both sides presented their evidence, it was stipulated and agreed that Counsel for both sides would submit a memoranda of law in support of their respective positions and, thereafter, memoranda of law was received from Counsel from both sides and the matter remained under advisement.

Thereafter the plaintiff moved the Court to conduct an additional evidentiary hearing for the purpose of receiving additional evidence, which motion the defendants objected to. After hearing oral arguments of Counsel, the Court determined that an additional evidentiary hearing should be allowed and it was determined that the additional evidentiary hearing would be held on May 22, 1979.

On May 22, 1979, the parties again appeared before the Court, in person and by counsel, and additional evidence was presented. Thereafter the Court took the matter under advisement.

It is the opinion of the Court for the reasons expressed in its letter opinion to counsel dated June 20, 1979, that the request for injunctive relief by the plaintiff should be denied. Accordingly, it is ADJUDGED, ORDERED and DECREED that the request for injunctive relief set forth in Count 1 of the plaintiff's complaint be and the same hereby is denied and this request is dismissed. Judgment is entered in favor of the defendants against the plaintiff for the defendants' taxable cost.

Plaintiff has indicated its intention to file a petition for appeal of this decision to the Virginia Supreme Court and, therefore, it is ORDERED that the transcripts of all the evidence in this case be filed and made a part of the record for the purpose of appeal.

The Clerk is directed to forward to counsel of record a certified copy of this order.

ENTER:

Judge

Entry of this order is requested:

Counsel for defendants

I object to the entry of this order:

Counsel for plaintiff

*Entered
7-31-79*

ASSIGNMENTS OF ERROR

1. The trial court erred in holding that the non-competitive covenant was unenforceable.

1

2

3

THE COURT: All right, separate the
witnesses.

4

5

(All witnesses were excluded from the
Courtroom.)

6

7

8

MR. MUNDY: All right, Mr. Rosenbaum, come
around.

9

10

11

12

JOSEPH L. ROSENBAUM

13

14

15

was called as a witness and after having first been duly
sworn to tell the truth, the whole truth and nothing but
the truth, was examined and testified as follows:

16

17

DIRECT EXAMINATION

18

19

BY MR. MUNDY:

20

Q Please state your name.

21

A I am Joseph L. Rosenbaum.

22

Q What is your age?

23

A I am fifty.

24

Q Where do you live?

25

A At 804 Keene Road, Richmond, Virginia.

019

1 Rosenbaum - Direct

2 Q Are you married?

3 A Yes, sir.

4 Q And how many children do you have?

5 A Four.

6 Q By whom are you employed?

7 A Roanoke Engineering Sales Company, Incorporated.

8 Q How long have you been employed by Roanoke
9 Engineering Sales Company, Incorporated?

10 A Since its inception in 1962.

11 Q What is your position with the company?

12 A I am President of the company.

13 Q Would you tell the Court something about the
14 history of Roanoke Engineering Sales Company, Incorporated?

15 A Well, to do that I would have to start by
16 identifying Roanoke Engineering Sales Company which was
17 founded in 1920 by my father.

18 Q What is your father's name?

19 A Harry L. Rosenbaum, Senior. He founded
20 Roanoke Engineering Sales Company in 1920 and operated it
21 as a sole proprietorship until 1962 at which time he
22 incorporated it with four sons in the business and at that
23 time the company was continued to be operated as father and
24 four sons.

020

25 Q Is your father still associated with the

2 company?

3 A Yes, sir.

4 Q What is his position?

5 A He serves as Chairman of the Board.

6 Q Is it essentially a family corporation?

7 A Yes, sir.

8 Q And do your father and your other three
9 brothers constitute the only stockholders of the corporation?

10 A Yes, sir; the four brothers constitute the
11 stockholders; my father no longer owns stock.

12 Q I take it that he has given his stock to
13 his sons?

14 A That is exactly right.

15 Q Which members of your family are now
16 associated with the company?

17 A At this moment my father continues to serve
18 as the Chairman of the Board and my brothers, Harry L.
19 Rosenbaum, Jr. and Robert F. Rosenbaum, along with myself.

20 Q And what positions do you and your two
21 brothers occupy with the company?

22 A Well, we are officers. My brother Harry L.
23 Rosenbaum, Jr. is Vice-President of the Company and Robert F.
24 Rosenbaum serves as Secretary-Treasurer.

25 **021** Each of us has a position as branch manager

1 Rosenbaum - Direct

2 of the particular area is which he is domiciled.

3 Harry L. Rosenbaum, Jr., serves as branch
4 manager of the Charlotte branch and Robert F. Rosenbaum
5 is manager of the Washington branch and I serve as manager
6 of the Richmond branch and I am also acting as manager now
7 of the Roanoke branch.

8 Q Are there then four branches of the company?

9 A Yes.

10 Q But these are not subsidiary corporations,
11 that is separate entities, are they?

12 A They are not subsidiaries, they are a part
13 of the corporation, they are divisions of the corporation.

14 Q However, do you keep separate financial
15 records for each branch?

16 A Yes, sir.

17 Q But then at the end of the fiscal year, are
18 these financial statements for each branch consolidated
19 into an overall financial statement for the company itself?

20 A Yes, sir; we pay taxes as one single
21 corporation, we report as one single corporation, however,
22 for the purposes of remuneration, branch-wise, we keep
23 separate records for each branch.

24 We treat each branch as a separate profit-
25 making center.

022

2 Q And is there a bonus arrangement for each
3 of the branch managers based on the results of his particular
4 branch?

5 A Yes, sir.

6 Q What is the nature of the business of
7 Roanoke Engineering Sales Company, Incorporated?

8 A Well, historically we have been in the
9 business of architectural metal building products. Starting
10 in 1920, we were manufacturers' representatives.

11 We served in the twenties and thirties,
12 prior to World War II, as a subcontractor installing
13 steel windows on jobs like the Veterans' Administration
14 Hospital which was built during the thirties.

15 Subsequent to World War II, we re-opened
16 our doors and the company grew as a manufacturers'
17 representative and as a dealer in metal building specialties
18 such as doors, windows, partitions, things of that nature
19 up until the late sixties when we embarked upon a program
20 of promoting the use of partition systems, interiors, if
21 you will, building interior systems at which point we
22 became heavily involved as a subcontractor and a contractor
23 dealing in both materials and labor.

24 Q And the items which you sell are doors,
25 windows, partitions and so on?

023

1 Rosenbaum - Direct

11

2 A Yes.

3 Q What type of partitions?

4 A All types of partitions, metal, of course,
5 but wire mesh partitions, metal toilet partitions, movable
6 office partitions, folding partitions; just all types.

7 Q Who are the customers of your company?

8 A We deal with general contractors who treat
9 us as subcontractors; we deal with school boards and with
10 building owners who treat us as a contractor.

11 Q In what territory does your company operate?

12 A Basically we are operating in the North
13 Carolina, Virginia, Washington, D.C. and Maryland districts.

14 Q How long has the company operated throughout
15 this territory?

16 A Since, let's see, we have operated in Virginia
17 all of our lives and we have been active in North Carolina
18 since 1958.

19 We have been active in Maryland and D.C.
20 since 1962.

21 Q How many employees does the company have?

22 A Twenty-three.

23 Q Is that throughout the company?

24 A Yes, sir.

024

25 Q How many employees are in the Roanoke branch?

2 A Six.

3 Q Who is now the manager of the Roanoke branch?

4 A I am.

5 Q What position does Mr. Hugh Garth operate
6 in or occupy with the company?

7 A He is a Vice-President of our corporation
8 and he has been acting as, I suppose, assistant branch
9 manager.

10 Q Of the Roanoke branch?

11 A Yes, sir.

12 Q Why is Mr. Garth not here today?

13 A He is recuperating from some surgery that
14 he had a couple of weeks ago.

15 Q He had open heart surgery?

16 A Yes, sir.

17 Q And he is a patient at the University of
18 Virginia Hospital?

19 A He has been, he is home now.

20 Q That is why we took his de bene esse depo-
21 sition on November the 15th, 1978, because we did not think
22 that he could be with us today?

23 A Yes, sir.

025

24 Q Who is comptroller of your corporation?

25 A Mr. Buzz Eversole.

2 Q Where is he located?

3 A In Richmond, Virginia.

4 Q You have indicated that your father is now
5 Chairman of the Board of the corporation and has given
6 his stock to you and your brothers.

7 Does your father still maintain a vital
8 interest in the company's operation?

9 A Yes, sir.

10 Q Where does your father reside?

11 A He is in an apartment house, he has just
12 moved to the corner of 25th and Avenham.

13 Q I mean he is in Roanoke?

14 A Oh, yes.

15 Q Was your brother, the Defendant, Curtis
16 Rosenbaum, formally associated with Roanoke Engineering,
17 Incorporated?

18 A Yes, sir.

19 Q When did Curtis join the company?

20 A 1962.

21 Q In what capacity?

22 A He came on board as a salesman working for
23 our office in Roanoke, what then constituted our only
24 office in Roanoke which was on Franklin Road.

25 Q And what was his position with the corporation

2 prior to the termination of his employment?

3 A He was Senior Vice-President, Treasurer and
4 Roanoke branch manager.

5 Q Did your corporation enter into an employment
6 agreement with Curtis Rosenbaum dated January 1, 1970 and
7 amended January 15, 1977?

8 A Yes, sir.

9 Q Was a copy of that agreement, an executed
10 copy of that agreement filed with our Bill of Complaint as
11 Exhibit One?

12 A I believe it was.

13 MR. HENRY: Your Honor, I have another copy
14 and just to be sure that the Record is complete,
15 we would offer this as Complainant Exhibit Number
16 One.

17 THE COURT: Any objection?

18 MR. MOORE: No objection.

19 THE COURT: Mark that as Complainant Exhibit
20 One.

21 (Thereupon, the document
22 entitled "Employment Agreement" dated 1/1/70
23 and amended 1/15/77 was marked as Complainant
24 Exhibit Number One and entered into the Record

2 BY MR. MUNDY:

3 Q Do you or did you and the other two brothers
4 who are also branch managers have an agreement similar to
5 the agreement with Curtis Rosenbaum?

6 A Yes, sir.

7 Q Does Paragraph Two of that Agreement require
8 Curtis Rosenbaum, and each of you under your separate
9 agreements, to devote your entire time, energy and ability
10 to the best interest of the corporation?

11 A Yes, sir.

12 Q And does Paragraph Three set forth a salary
13 provision and also a bonus provision for each of you?

14 A Yes, sir.

15 Q Does Paragraph Four of the Agreement set
16 forth the non-competition provision which is the subject
17 of the request of the corporation for an injunction against
18 Curtis Rosenbaum?

19 A Yes, sir.

20 Q Do you request this Court to restrain him
21 from competing with Roanoke Engineering Sales Company,
22 Incorporated?

23 A Yes, sir.

24 Q As manager of the Roanoke branch, what were
25 Curtis Rosenbaum's duties?

2 A The branch manager responsibilities are to
3 oversee the operation of the office; to coordinate the
4 activities of the employees, to direct them, to instruct
5 them and perhaps to correct them, certainly to have a
6 thorough knowledge of what is going on on a day-to-day
7 basis in the operation of the office; to operate the office
8 on a profitable basis; and to take whatever steps are
9 necessary to keep the operation viable.

10 Q How many hours were there in his normal work
11 week?

12 A I would say that a normal work week for a
13 branch manager would constitute 50 hours.

14 Q Would this apply also to yourself and your
15 other brothers who are branch managers?

16 A Yes, sir.

17 Q Does Roanoke Engineering Sales Company,
18 Incorporated have an association with Colonial Installation
19 Company?

20 A It did have an association with Colonial
21 Installation and Erection Company, Colonial Installation
22 and Erection Company is no longer active.

23 Q When was Colonial Installation and Erection
24 Company founded?

25 A Oh boy, I believe that it was founded in

1971; it was founded by Curtis.

Q What was the purpose of the forming of Colonial Installation?

A Colonial was formed to act as a sales tool to perform the installation work of the materials that were being sold by Roanoke Engineering Sales and to do it in such a manner as to fully satisfy the needs of our various customers, to do the work in a very workman-like way and a very proficient way which could be done by people experienced and well trained in that type of work.

Q Was Colonial a subsidiary of Roanoke Engineering?

A No, sir; it was perhaps a sister corporation.

Q It was a corporation, though?

A Yes, sir.

Q Were separate books of accounts maintained for Colonial?

A Yes.

Q Has Colonial been a successful operation?

A No, sir.

Q And what is the current status of Colonial?

A It is inactive, it has been inactive since mid April.

Q Have the financial problems experienced by

2 Colonial affected Roanoke Engineering?

3 A Yes, sir.

4 Q How?

5 A Well, Colonial's failure to succeed was
6 costly and those costs had to be borne for the lack of
7 any other source of revenue, by funds from Roanoke Engineering
8 Sales.

9 THE COURT: Colonial was an installing
10 company for Roanoke Engineering, is that right?

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay.

13
14 BY MR. MUNDY:

15 Q Did the officers and directors of Roanoke
16 Engineering discuss Colonial's problems?

17 A Yes, sir.

18 Q Tell us who the officers and directors of
19 Roanoke Engineering were while your brother, Curtis, was
20 associated with the company?

21 A Curtis was the President and I believe the
22 Treasurer and I served as Vice-President.

23 Q Wait a minute, of what company are you
24 speaking?

25 A Colonial.

1

Rosenbaum - Direct

19

2

Q I asked you about Roanoke Engineering.

3

A I am sorry.

4

Q Who were the officers and directors?

5

A The officers and directors of Roanoke

6

Engineering Sales Company, Incorporated at that time were

7

Harry L. Rosenbaum and the four brothers; Harry Rosenbaum,

8

Sr. and the four brothers.

9

Q And your brother, Curtis, was President of

10

Colonial?

11

A Yes, sir.

12

Q When did Curtis terminate his employment

13

with Roanoke Engineering Sales?

14

A April the 29th, 1978.

15

Q As of that date?

16

A Yes, sir.

17

Q Was the subject of Colonial's problems a

18

source of discussion among the officers and directors of

19

Roanoke Engineering Sales prior to the termination of his

20

employment?

21

A Yes, sir.

22

Q What was Curtis' recommendation regarding

23

the approach to Colonial's problems?

24

A Well, the problem was one of having no money

25

to pay its bills and an exhausted line of credit, I guess.

at the bank.

Curtis' suggestion was that Colonial Installation and Erection could be bankrupted.

Q Did you and your father and your other two brothers agree with that approach?

A No, sir.

Q Why?

A We did not think it was the honorable thing to do, we didn't think it was the fair thing to do and we were very vocal in our opposition to that course of action.

Q Did he agree with you or did he ever agree with you?

A He never indicated that he agreed with us.

Q Was this discussed at the board meeting or at a meeting of the Board of Directors of Roanoke Engineering in Roanoke on April 14, 1978?

A The board meeting took place on April the 15th - - the special meeting of which you speak - - which was a rather informal sort of meeting at which we laid down a suggestion or set forth a suggestion for a course of action that we thought would be proper for Colonial to follow and we asked Curtis to be governed accordingly.

The course of action was that money sufficient to cover the debts of Colonial be given or transmitted to

2 Colonial by change order from the Roanoke branch of the
3 Roanoke Engineering Sales Company.

4 Q And is that reflected in the minutes of
5 your corporation's April 14th, 1978 meeting?

6 A Yes, sir.

7 MR. MOORE: I don't have a copy of those
8 minutes, I have got a copy of the stockholders'
9 meeting minutes which was April the 15th.

10
11 BY MR. MUNDY:

12 Q Prior to a stockholders' meeting on April 15th,
13 1978, had Curtis Rosenbaum been a director of the company?

14 A Yes, sir.

15 Q Was he re-elected as a director during the
16 April 15, 1978 meeting of stockholders?

17 A No, sir.

18 Q Was there a meeting of the Board of Directors
19 on April 14th and 15th, 1978?

20 A Yes, sir.

21 Q At that time, were officers elected?

22 A The officers were elected on the 15th, yes,
23 sir.

24 Q And was your brother, Curtis, re-elected as
25 an officer of the corporation?

2 A No, sir.

3 Q Why was he not re-elected as an officer and
4 director of the corporation?

5 A Because of his failure to accept and to
6 embrace the philosophy that we had set forth in the meeting
7 on the 14th as to the solution to Colonial's financial
8 problems.

9 Q Were there any other problems discussed at
10 that point with respect to the requirements in Curtis'
11 employment agreement that he devote his entire energy and
12 ability to the best interest of the corporation?

13 A We had contended for some time that he had
14 not been tending to his knitting, if that is a good
15 expression, that he had been spending far less time than
16 we thought he should be to conduct the affairs and to
17 oversee the affairs of the branch office.

18 Q Was that discussed with him?

19 A Frequently.

20 Q Over what period of time had that situation
21 existed?

22 A I would say for a number of years we had
23 contended that and he had - -

24 Q What number of years?

25 A I would say from 1970, '71 on.

2 (Thereupon, the minutes of the
3 stockholders' meeting of April 15th, 1978
4 was marked as Complainant's Exhibit Number
5 Three and entered into the Record.)

6
7 THE COURT: All right, let's proceed.

8 MR. MUNDY: Give me just a minute, Your
9 Honor.

10
11 BY MR. MUNDY:

12 Q Prior to the April 14th, 1978 meeting, was
13 Curtis given a memorandum in the nature of an ultimatum
14 from you?

15 A I would say that he was given an ultimatum
16 in the form of a memorandum, yes.

17 Q And is this a copy of the memorandum from
18 yourself to Curtis?

19 A Yes, sir.

20 Q Is that dated April 14, 1978?

21 A Yes, sir.

22 MR. MUNDY: Mr. Moore, I believe you have
23 a copy of that.

24 MR. MOORE: I do.

25 MR. MUNDY: We would offer this as Complainant

2 Exhibit Four.

3 THE COURT: Any objection?

4 MR. MOORE: No objection.

5 THE COURT: So entered.

6 (Thereupon the memorandum dated
7 April 14, 1978 was marked as Complainant's
8 Exhibit Number Four and entered into the
9 Record.)

10

11 BY MR. MUNDY:

12 Q Essentially what message was given to Curtis
13 in that memorandum?

14 A Essentially he was directed to take steps
15 to institute change orders to Colonial that would provide
16 Colonial with funds that would enable Colonial to pay its
17 debts for work that Colonial had performed for the Roanoke
18 branch, these change orders to emanate from the Roanoke
19 branch office.

20 In other words, this was to effectively
21 reduce the amount of profit or markup or margin that the
22 Roanoke branch had by the amount of money that it took to
23 set Colonial's financial woes in good standing.

24 Q All right, and what was Curtis' position with
25 respect to that?

037

2 A He did not respond, he gave us no indication.

3 Q You have stated that Curtis was not re-elected
4 as an officer and director of the corporation?

5 A Yes, sir.

6 Q Was he also terminated as branch manager of
7 the company?

8 A Yes, sir.

9 Q Now was he terminated by the company or did
10 he resign?

11 A He resigned.

12 MR. MOORE: Now excuse me, did he resign or
13 are you saying that the terms of this ultimatum were
14 not complied with and that you, therefore, accepted
15 that as a resignation?

16 THE WITNESS: When he did not comply with the
17 terms of the memorandum, we terminated him as
18 branch manager and as an officer.

19 MR. MOORE: You said he resigned.

20 THE WITNESS: He subsequently resigned.

21 MR. MOORE: Not as branch manager?

22 THE WITNESS: No, sir.

23 MR. MOORE: I didn't mean to interrupt.

24 THE WITNESS: I didn't use the words "branch
25 manager".

038

2 legal conclusion to be drawn by the Court and not
3 by the witness.

4 MR. MUNDY: I think that, as President of
5 this corporation, that the witness can testify that
6 he would have been paid a salary.

7 MR. MOORE: Well, the contract says that he
8 will be \$24,000 plus some other monies in his
9 position as Roanoke branch manager and not for the
10 position of salesman.

11 MR. MUNDY: Your Honor, I think the President
12 of the corporation knows whether he would have been
13 continued on a salary as a salesman of the company
14 and whether he would have received a bonus based
15 on his sales had he not resigned as an employee of
16 the company and I think that he can certainly
17 testify to that.

18 THE COURT: I will agree with that, overrule
19 the objection.

20
21 BY MR. MUNDY:

22 Q Mr. Rosenbaum, although Curtis was terminated,
23 or not re-elected as an officer and director of the
24 corporation and was terminated as branch manager, would he
25 have continued as a salesman of the corporation?

2 A Yes, sir.

3 Q And would he have continued to receive his
4 salary of \$24,000 per year as a salesman of the corporation?

5 A Yes, sir.

6 Q Would he also have continued to receive a
7 bonus based on the provisions set forth in his employment
8 agreement?

9 A Yes, sir.

10 Q Did Curtis send you a letter dated April 29,
11 1978 terminating his status as an employee of the company?

12 A Yes, sir.

13 MR. MUNDY: We would offer this as Complainant's
14 next-numbered exhibit, Your Honor.

15 MR. MOORE: No objection.

16 THE COURT: It will be received.

17 (Thereupon, the letter dated
18 April 29, 1978 was marked as Complainant's
19 Exhibit Number Five and entered into the
20 Record.)

21 BY MR. MUNDY:

22 Q Mr. Rosenbaum, for what period of time
23 prior to April, 1978, did you feel that Curtis was not
24 complying with Paragraph Two of the Agreement requiring
25

2 Q What was it upon the termination of his
3 employment at the end of April, 1978?

4 A At that point, the negative figure had
5 reached \$79,595.31.

6 Q Do you attribute any of these results to
7 Curtis' failure to comply with Paragraph Two of the agree-
8 ment?

9 A Yes, sir.

10 Q Do you know of any other economic situation
11 such as the nature of the construction business or interest
12 rates or anything like that that may account for this
13 situation?

14 A Certainly some of that could be attributed
15 to the economic situation but this was nationwide, it
16 applied to all of us, not just to the Roanoke branch.

17 Q In your judgment, if Curtis had fully
18 complied with Paragraph Two of the Agreement, would the
19 commission picture as set forth in this Agreement be
20 different?

21 A Absolutely.

22 Q Would it reflect, in your judgment, would
23 it reflect a plus rather than a negative?

24 A In my judgment, it would.

25 Q After Curtis Rosenbaum terminated his

2 employment with Roanoke Engineering, did he accept
3 employment with another company?

4 A Yes.

5 Q What company?

6 A Mahone, Incorporated.

7 Q What is the nature of Mahone, Incorporated's
8 business?

9 A Mahone, Incorporated sells the same products
10 that we, Roanoke Engineering Sales Company sells as far as
11 commodity products are concerned: Windows, doors, building
12 specialties and so on.

13 Q Are you familiar with the corporate history
14 of Mahone, Incorporated?

15 A No, sir. I do know that - -

16 Q Was there a predecessor corporation?

17 A Oh yes, ever since I have been a part of
18 Roanoke Engineering Sales Company, a firm then known as
19 A. L. Horwitz - -

20 Q How do you spell that?

21 A H-O-R-W-I-T-Z, operated in direct competition
22 with us. That firm had, as one of its key employees, Bill
23 Mahone who subsequently bought out Mr. Horwitz and changed
24 the name to Mahone, Incorporated.

25 Q All right, was the predecessor corporation,

2 that is A. L. Horwitz, founded by Mr. Horwitz?

3 A Yes, sir.

4 Q And were Mr. Horwitz and your father
5 competitors in the early days?

6 A Yes.

7 Q And did your firm, Roanoke Engineering
8 Sales, Incorporated continue to be competitive with Mahone
9 after Mahone, Incorporated succeeded Mr. Horwitz?

10 A Yes, sir.

11 Q By whom is Curtis Rosenbaum now employed?

12 A I understand that he has become, that he
13 now trades as Rosenbaum of Roanoke, Incorporated.

14 Q And do you know what the nature of his business
15 is?

16 A It is a successor of Mahone, Incorporated
17 and as far as I can determine, it is doing the same work
18 that Mahone, Incorporated did do.

19 Q As far as you know, is he, therefore, still
20 competing with your corporation?

21 A Yes, sir.

22 Q Is it the desire of your father and brothers

23 - -

24 MR. MOORE: I object to what the desire of
25 the father and brothers might be.

2

MR. MUNDY: No further questions.

3

4

CROSS EXAMINATION

5

6

BY MR. MOORE:

7

Q Mr. Rosenbaum, now Roanoke Engineering was
your father's company solely until 1962, is that correct?

9

A Yes, sir.

10

Q Now when did you join your father in the
business?

11

12

A January the 26th of 1953.

13

Q Did you work in Roanoke with him?

14

A Yes, sir.

15

Q When did you go to Richmond?

16

A On July the 15th of 1955.

17

Q And did you operate a business called

18

Roanoke Engineering Company?

19

A Roanoke Engineering Sales Company.

20

Q Is that the business that you operated in
Richmond?

21

22

A Yes.

23

Q Is that because there wasn't enough business
in Roanoke for two people or was it decided that it would
be best for you and your father to work in different places?

24

25

A What happened was that I was the oldest of four brothers and I served out what I would call an apprenticeship during the first years of my association until Number Two brother, Harry L. Rosenbaum, Jr. separated from the Army and when he came on board, I, having spent my apprenticeship, if you will, moved to Richmond to open a branch office.

Then Buddy stayed, Harry L. Rosenbaum, Jr. stayed until Bob separated from the Army in 1958 at which time Bob came to do the apprenticeship and Buddy went to Charlotte to open a branch office.

Bob stayed until when Curtis separated from the Navy and Curtis came on board in Roanoke and Bob moved to Arlington to operate what we call the Washington office.

Q Was that because there was not enough business in Roanoke for everybody to stay in Roanoke?

A I don't think you could characterize it that way, I think you would better characterize it by saying that we simply wanted to grow and expand our horizons.

My move to Richmond was decided upon because Richmond is identified as the architectural center of the State, most of the architectural work is done in

Richmond for work throughout the State and so that was the natural move.

The move to Charlotte was chosen because Charlotte is the hub of the Carolinas and that was our next area of expansion, if you will.

I would say that my father always envisioned that the corporation would expand. In the thirties he oversaw a territory that extended from Maryland to Florida to Texas to Tennessee and he foresaw that as a branch manager or a regional manager for a couple of corporations that he was working with.

Q Well, are you familiar with the time that Curtis came with Roanoke Engineering?

A Yes, sir.

Q And that was in 1962, at the same time that the company was incorporated?

A Yes, sir.

Q Now how long was it before Curtis became the branch manager of the Roanoke office?

A I believe it was almost immediately, Curtis came on board to serve his apprenticeship and early on it became evident that he wasn't going to succeed or he wasn't going to conduct a very successful apprenticeship with Dad

~~so Dad elected to send him to Richmond for a period of a~~

2 couple of months and then to Charlotte for a period of a
3 couple of months where he learned from us and sort of got
4 his feet wet in basic training.

5 He then moved back to Roanoke and I believe
6 that within a short time he opened a branch office stating
7 that he wanted to do his own thing.

8 Q He wanted to do his own thing, in Roanoke?

9 A Within the bounds of Roanoke Engineering.

10 Q And were you doing your own thing in Richmond
11 within those bounds and were your brothers, one in Charlotte
12 and one in Washington, doing their own thing in Roanoke
13 Engineering within the bounds of the company?

14 A Yes, sir.

15 Q And isn't it a fact that the growth of the
16 Richmond branch depended solely on your desires? If you
17 wanted to hire somebody - -

18 A Yes.

19 Q - - then you would hire somebody and if your
20 brother in Charlotte wanted to hire somebody, he would do
21 so, he did not need to consult the others?

22 A Within the bounds of the corporation.

23 Q And so it really is four separate businesses
24 operating under the canopy of Roanoke Engineering Sales
25 Company, Incorporated?

2

A Well, all right, if you will.

3

Q I mean is that the way that you would

4

categorize it? The provision for payment indicates that

5

everybody is going to get a base salary of \$24,000 and

6

everything over that depends on how well you do?

7

A Correct.

8

Q And it depends on how well you individually

9

do, not on how well the corporation, as a corporation, does?

10

A Correct. When you say "individually", that

11

is as a branch.

12

Q Yes, sir.

13

A That is how well the branch does.

14

Q Yes, sir.

15

A Yes, sir.

16

Q Now after Curtis became manager of the

17

Roanoke branch, I take it that there came a time when your

18

father sort of eased himself out of the business from an

19

active standpoint?

20

A It happened over a period of time. He had a

21

heart attack in 1964, he had an aneurysm, and he had a very

22

serious operation that really leveled him in 1968.

23

Q When did he divest himself of his stock?

24

A 1966 is when he completely divested himself.

25

Q Did he become Chairman of the Board at

2 that time?

3 A No, he became Chairman of the Board in 1962.

4 Q Were you President in 1962?

5 A Yes, sir.

6 Q And you have continued since 1962 as President?

7 A Yes, sir.

8 Q Who were the Vice-Presidents in 1962?

9 A There was one Vice-President in 1962.

10 Q Who was that?

11 A Harry L., Jr.

12 Q And he has remained as a Vice-President?

13 A He has remained as a Vice-President.

14 Q Since 1962?

15 A Since 1962.

16 Q And what did your other brother do?

17 A Curtis was Treasurer and Bob was Secretary
18 of the corporation.

19 Q And until April 1978 they both continued
20 in those capacities, didn't they?

21 A Yes, sir; we added some people but they had
22 those basic titles.

23 Q I think you testified that Curtis also had
24 the position of Executive Vice-President?

25 A That happened when we elected some key men

2

to Vice-President.

3

Q Hugh Garth among others?

4

A Hugh Garth and Keith Middleton in Charlotte

5

and Gene Windsor in Richmond and at that point Curtis

6

continued as Treasurer and was given the additional title

7

of Senior Vice-President and Bob became a Senior Vice-

8

President and Secretary and Bud became Executive Vice-

9

President.

10

Q Now Mr. Rosenbaum, you have testified about

11

your opinions concerning the amount of time and energy

12

that Curtis was devoting to the Roanoke Engineering Sales.

13

A I only testified to what I experienced.

14

Q Right, and your opinions relating to that

15

experience.

16

A All right, sir.

17

Q Now Mr. Rosenbaum, was he engaged in any

18

other business?

19

A Was he engaged in any other business?

20

Q Yes, other than Roanoke Engineering Sales.

21

A I know not.

22

Q Did he devote his time to any business

23

enterprise other than the ones directly associated with

24

Roanoke Engineering Sales Company, Incorporated?

25

A I don't know.

2

3

4

5

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25

Q Did you as President or did the Board at anytime tell Curtis that he was not devoting his entire energy and ability to the best interest of Roanoke Sales Company, Incorporated - -

A Frequently.

Q Did you ever tell him that he would be terminated because of that?

A We told him that he could be.

Q Did you ever suggest to him that he would be?

A We suggested to him that he might well be.

Q And in what context did you make that suggestion?

A "You ought to do your job, you are not doing your job."

Q What was his response?

A He smiled as a brother would smile to a brother.

Q Now when you had your meeting on April 15th, 1978, what had happened before that meeting to cause you to write an ultimatum to Curtis?

A Curtis had let it be known and he told me that the end of the road was in sight for Colonial and that there was no other way but to turn to bankruptcy but we

2 could not abide that, we told him that that was not right,
3 that that wasn't fair, that it wasn't good and that it
4 would reflect badly on the family.

5 He said that that was not a matter of concern
6 and that is what precipitated all of this.

7 Q When you met on the 14th of April, who
8 attended that meeting?

9 A The four brothers.

10 Q Including Curtis?

11 A Yes, sir.

12 Q This memo that you wrote that is identified
13 as Exhibit Number Four starts off, "Dear Curt," and it is
14 dated, I think that date is April 14th?

15 A Yes, sir.

16 Q It states, "Last night I tried to give you
17 an idea of what was going to be said today but you cut me
18 off by saying that you would wait until today to hear it.

19 "This note will have to serve the purpose."

20 Now when you say, "last night", you mean
21 there was a conversation on the 13th?

22 A We had a meeting, a very informal meeting,
23 not a problem-solving meeting but a problem-discussing
24 meeting on the 13th with the four brothers where we were
25 asking, "What are your problems?"

2 Q And it was at that meeting that Curtis said
3 that in his opinion the prudent business decision would
4 be to bankrupt Colonial and you and your two brothers said
5 that in your opinion, the prudent business decision would
6 not be that?

7 A We didn't say it then, it had been said
8 before that meeting.

9 Q Was that discussed on the 13th?

10 A Not in any great depth, we weren't worrying
11 about that particular problem, that particular problem
12 was going to be the subject of Colonial Installation and
13 Erection Company's informal meeting on the 14th.

14 Q Who was associated with Colonial?

15 A The same stockholders, the Roanoke Engineering
16 Sales Company stockholders also were the Colonial Installation
17 and Erection Company stockholders; all four brothers.

18 Q Were they officers also of that corporation?

19 A I don't believe so, I believe the officers
20 were Curt and I.

21 Q Well, when were the lines drawn as to who
22 thought a certain course of action was the best course to
23 follow?

24 That is what I am trying to get at, was that
25 sometime before the 13th of April?

2 A Yes, sir; the lines had been drawn the week
3 or two weeks preceding that.

4 Q So was the meeting held in Roanoke on the
5 15th?

6 A The 13th, 14th and 15th.

7 Q So when you came to Roanoke, you know how
8 Curtis felt and you knew how you and your two brothers felt?

9 A Yes, sir.

10 Q Well, you then say: "You are my brother and
11 I love you as a brother and I will always love you as a
12 brother but business is business and brotherly love can't
13 be allowed to mix in business.

14 "You know that I and your other two brothers
15 have not always agreed with you in the past but we have
16 pretty well let you have your say but now we have reached
17 a point that we can't afford to let you have your way.

18 "We hope that you will agree to go along
19 with us. If so, you should tell us so when the question is
20 put to you.

21 "If you don't indicate agreement, if you
22 choose to be silent or non-committal or if you simply walk
23 out on our meeting or if you don't attend our meeting, any
24 of these will be taken by us as a no on your part and we
25 will: One, accept your resignation from the firm; Two,

at tomorrow's annual stockholders' meeting, elect three officers and release you as branch manager if you don't resign."

Now the question that I have, Mr. Rosenbaum, is: If the majority of the directors felt that way, why couldn't you simply make a corporate decision that you were going to do those things with Colonial that you have indicated should be done and vote to do it without terminating anyone's employment?

Why was it necessary for the corporation to terminate Curtis Rosenbaum's employment simply because he disagreed as to what the prudent business decision should be?

A I didn't say that he should agree with what we said, I said that he should do it. He could do it without agreeing to the fact that it was right.

Q Well, you said, "If you don't indicate agreement . . ."

A Okay, by doing it.

Q "Or if you walk out and don't say anything, then we will . . ." and then you go into these other things such as "accept your resignation from the firm," and so on and you say, "The issue is simply, we require: One, a Roanoke branch change order to Colonial; Two, to terminate

2 Colonial," meaning to desolve the corporation, I assume,
3 "Three; award contracts to Colonial's successor only if it
4 provides a bond on each job."

5 Now that is clear that if he does not come
6 in to you and say, "I agree with this decision," or if he
7 says nothing at all, then you are going to terminate him,
8 isn't that clear?

9 A That is very clear, sir.

10 Q And then you have the meeting on the 15th
11 which Curtis attended and there was you and your two
12 brothers and Curtis, is that correct?

13 A Yes, sir.

14 Q Now there was - -

15 A Excuse me, which date?

16 Q The 15th.

17 A The meeting on the 15th had a number of
18 people in attendance.

19 Q Who else was there?

20 A The Board which included my father and four
21 brothers, the corporation's assistant secretary, Mrs.
22 Bergman, and our comptroller, Mr. Ebersol.

23 Q Okay, at that meeting, and I expect it is
24 one of the exhibits that has been introduced although I
25 don't see it.

2 THE COURT: I have it, the minutes of the
3 15th, the stockholders' meeting.

4 MR. MOORE: It says those present - -

5 THE COURT: There was a directors' meeting
6 on the 14th, now which meeting are you talking
7 about?

8 MR. MUNDY: Mr. Moore, these are the minutes
9 of the April 14th meeting and at the end of the
10 meeting it shows that at 10:00 o'clock in the
11 morning on April the 15th it was to be reconvened.

12 MR. MOORE: That may or may not be important
13 but my point is that when the meeting was called to
14 order there were two, well, four officers of the
15 corporation present and as a matter of fact, the
16 only stockholders of the corporation were present.

17 Now did someone not make a nomination for
18 officers?

19 THE WITNESS: Yes.

20

21 BY MR. MOORE:

22 Q And you went ahead and elected the President
23 and Vice-President and Secretary-Treasurer?

24 A And Vice-President.

25 Q I meant to include that.

2

Now that was while Curtis was present?

3

A Yes, sir.

4

Q And you did not elect him to any of those positions?

5

6

A Correct.

7

Q Did you have any discussion as to what his role in the corporation was going to be?

8

9

A He gave us no opportunity before that.

10

Q Did you say anything about that?

11

A Did I say anything about it?

12

Q At that meeting on the 15th?

13

A Can I put it in context?

14

Q Yes, sir.

15

A The first thing we did on the 15th was to

16

reconvene the 14th meeting and I turned to Curtis and I

17

said, "Curtis, can you tell us now, please, that you do

18

accept the things that were set forth in the memorandum?"

19

Curtis did not say anything. I said, "Curtis,

20

can you respond?"

21

He said, "I can't." And so I said, "Okay."

22

It was a tough thing but we had to go ahead

23

then.

24

Q At that time Mr. Rosenbaum, why couldn't

25

the corporation's decision have been made to do the same

2 things that you had said you and your other two brothers
3 felt should be done and continue Curtis' role with the
4 corporation?

5 A Which role would you have him continue?

6 Q As the manager of the Roanoke branch and as
7 the Treasurer of the corporation.

8 A The manager of the Roanoke branch is the
9 person that controls what that branch does and the branch
10 had to write those change orders and if he would not write
11 them at the instruction of the Board, then the branch had
12 to have a branch manager that would.

13 Q There was no indication that Curtis would
14 refuse to follow the instructions given him by the corporation,
15 was there?

16 A Sir, we had discussed this thing over a
17 period of some two or three years - -

18 Q I understand.

19 A Excuse me, let me finish. We had discussed
20 it over some two or three years by saying, "Look, we are
21 getting deeper and deeper into problem, our fiscal woes
22 of Colonial are growing, they are snowballing and the
23 answer is not to go to the bank to borrow money, the answer
24 is to give Colonia the amount of money that it should have
25 had to start with to install the jobs that it did for your

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branch so do it by change order."

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Now if, in fact, the job was worth a thousand dollars and for whatever reason, you write an order for Colonial to do it for \$700, you increase the amount of profit for your Roanoke branch but you decrease the amount that Colonial has to work with to become a successful entity and this had been going on for a number of years.

Q Well, is it your response that you did not believe that Curtis would follow a corporate decision?

A Absolutely, I did not believe that he would.

Q Why didn't you give him a chance?

A Sir, we had been giving him a chance.

Q The Board had never decided that that would be the course of action to follow, had it?

A The Board had said time and time again, "You are getting deeper and deeper into trouble, all you have to do is to write these change orders."

Q I understand that the Board said that but nobody ever said that that was what the Board directed him to do, did they?

A The reason that the Board did not do that was because over and over the Board was assured by Curtis that Colonial was going to come out of it, that Colonial was going to succeed, just to give it a chance and to let

2 it have some time, that Colonial got into the home improve-
3 ment business to improve its fiscal situation, that that
4 was designed to pull itself up by its boot straps.

5 Q Was that done with your concurrence?

6 A Absolutely not.

7 Q Did you object to it?

8 A Yes, sir.

9 Q In what form?

10 A By saying that I didn't think that he was
11 doing the right thing, that I didn't see where there was
12 a market for it.

13 He assured me that the key man that he had
14 in the organization, Whitney Markley, knew his business and
15 that he would make a go of it.

16 Q And as of the time of the meeting on the
17 15th of April, Curtis Rosenbaum had been terminated as
18 the manager of the Roanoke branch office of Roanoke Engineer-
19 ing Sales Company, Incorporated and had been relieved of
20 his position as Treasurer of the corporation?

21 A All right sir, I chose to believe that he
22 relieved himself of all of these things by his failure to
23 indicate that he would do what we asked.

24 Q I understand what you chose to believe but
25 the fact was that because of his silence at the meeting of

2 April 15th, he was terminated from those two jobs?

3 A Correct.

4 Q Now who became the manager of the Roanoke
5 branch effective April 15th?

6 A I did.

7 Q And you have remained in that capacity?

8 A Yes, sir.

9 Q Do you continue to stay in that capacity?

10 A Yes, sir.

11 Q After April 15 Curtis stayed with the
12 company for approximately two weeks?

13 A Yes, sir.

14 Q And he was then occupying the position of
15 salesman?

16 A I thought he was occupying the position of
17 salesman but to my knowledge, he did not do any selling
18 during those two weeks.

19 Q Was he upset at the action that had been
20 taken?

21 A Would that be a conclusion on my part?

22 Q If you know.

23 A I believe that he should have been upset,
24 he never did indicate to me that he was.

25 Q Now how many salesmen are there in the

2 A Yes, sir.

3 Q Had he hired the other two?

4 A Yes, sir.

5 Q Hugh Garth and Darlene Webb?

6 A Yes.

7 Q Had he trained them, to the best of your
8 knowledge?

9 A Yes, sir.

10 Q As of April the 15th he occupied the same
11 status, authority-wise, as did Darlene Webb and Hugh Garth
12 although Hugh Garth was a Vice-President at that time?

13 A Yes, sir.

14 Q Curtis was not an officer at all?

15 A From a very practical standpoint, I am sure
16 that that is not so but on paper, perhaps, yes.

17 Q And it is in evidence that on April 29,
18 Curtis wrote you a letter resigning his position as sales-
19 man - -

20 A Yes, sir.

21 Q - - of the Roanoke Engineering Sales Company,
22 Incorporated?

23 A He resigned from the firm, period.

24 Q Now Mr. Rosenbaum, there is an agreement
25 between you and the other stockholders of Roanoke Engineering

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we got wind of the fact that he had, in fact, gone to work at Mahone, Incorporated and subsequent to that we learned that he, in fact, was buying Mahone, Incorporated.

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We suspected sir, that he needed the money that we were going to pay him on this buy-sell agreement to buy Mahone, Incorporated and that is why we stayed that payment.

Q Of course, Curtis will testify what he did after he left.

A Yes, all of mine is conjecture.

Q As of April 15, 1978, describe, as fully as you can, the business of Roanoke Engineering Sales, Incorporated.

I know you have said that you were a subcontractor but what kind of subcontractor were you?

A You mean what did we do? What kind of contracts did we have?

Q Yes.

A What kind of work did we do?

Q Let me say that Hugh Garth has already testified, and you were there when he testified, that about 90 percent of the contracts of Roanoke Engineering Sales, Incorporated during the time when Curtis was the branch manager dealt with institutional-type sales meaning to church

2 and schools and big jobs like that and doing the system
3 concept for the insides of buildings, is that correct?

4 A That is pretty much correct, yes, by 1977
5 that is what had happened.

6 Q Now to what do you attribute that?

7 A I attribute it to two things. Number One,
8 the efforts of Allen Milton, Hugh Garth and Darlene Webb
9 in the direction of those institutional sales, if you will
10 and the almost apathetic posture taken by Curtis toward
11 what we will refer to, for the lack of a better word, as
12 commodity sales of the late sixties and early seventies
13 which is when we were very, very heavy in the Roanoke
14 branch in commodity sales.

15 Q What are "commodity sales"?

16 A Windows, doors, what you call "bid items,"
17 competitive bid items such as Mahone, Incorporated sells,
18 such a Nelson of Roanoke sells, such as Roanoke
19 Engineering Sales, Incorporated has traditionally sold.

20 Q All right, commodity items would be windows?

21 A And doors.

22 Q Hollow metal?

23 A Those parts of buildings that become an
24 inherent part of the building when it is first constructed.

25 Q How do you go about selling that?

A First of all you work with the architects who are designing buildings to persuade them to use your particular product.

Q Let's take something like the jail, the Roanoke City Jail.

A Super, okay, fine.

Q What would be the role of Roanoke Engineering Sales in that building?

A In the Roanoke City Jail one item, we will take a small one, the fire extinguishers and cabinets - -

MR. MUNDY: I am sorry, I didn't hear that?

THE WITNESS: The fire extinguishers and cabinets.

Now fire extinguishers and cabinets are made by perhaps a dozen people in the United States, every building should have them and it is our job, our mission to take our catalog to the architect and convince him that our product will do the job and that it will meet his plans and specifications.

Once it has been put into the plans and specifications, perhaps it may be approved or equals are allowed and then the job goes to bidding and the plans and specifications are made available to the general contractor and to the subcontractors

2 and to the material suppliers and through this
3 process, everybody looks at the document, weighing
4 his particular responsibility and putting a price
5 tag on it.

6 These bids are put together and the owner
7 entertains a number of competitive bids for the
8 whole project.

9 Once the project is awarded to the success-
10 ful low bidder, it then becomes our responsibility
11 to go back to that low bidder and say, "We would
12 like to have the order."

13
14 BY MR. MOORE:

15 Q That is a description of commodity sales?

16 A Yes, sir.

17 Q How do you distinguish that from what you
18 have referred to as "institutional sales"?

19 A I suppose that you could say that it is
20 in degrees. We are working normally with different people,
21 our thrust is, instead of toward an architect and a GC,
22 a general contractor, our attention is directed more towards
23 the user, the person who is going to actually live in the
24 building or use the building, owners, so to speak, and of
25 course- if he has an architect working for him, once we

2 have prevailed upon the owner to go along with our thinking,
3 then to work with the architect to design a layout, or
4 what have you, to fit the needs of that particular building.

5 Q Can you give me an example of that?

6 A Take a school: Properly done, you start
7 at the grass roots with the school teachers and you excite
8 them or turn them on, motivate them to a particular project
9 to help them do the teaching job in a school better, you
10 work your way into the department to the individual depart-
11 ment head, the individual teacher and then you work with
12 the principal who is responsible for the day to day maintenance
13 operations of the school, you work with the people who are
14 the janitorial people, the maintenance people to give
15 them some insight as to how this is to be handled in their
16 day-to-day duties.

17 You also work with the school board who must,
18 in the final analysis, approve the expenditure that is
19 going to be made to get the final job done.

20 Q When you say that, is it 90 percent of your
21 business, is that 90 percent of the contract that you get
22 or is that 90 percent of your profits or is it both?

23 A Well, I have got a sheet, can I have that?

24 MR. MUNDY: Yes.

25 THE WITNESS: In 1977, sales-wise, our

2 got your orders for?

3 A Yes, sir.

4 Q How do you get the profit?

5 A That is the projected figure.

6 THE COURT: Is that a gross figure?

7 THE WITNESS: Yes, a total margin or markup,
8 yes.

9 THE COURT: Before any expenses, commissions
10 or anything else come out?

11 THE WITNESS: Yes, sir.

12

13 BY MR. MOORE:

14 Q You have testified, Mr. Rosenbaum, about
15 the agreement that is the essence of this case, that is
16 the one that was made January 1, 1970 and amended January
17 15th, 1977.

18 The agreement states in the first paragraph:
19 "Roanoke hereby employs the employee," meaning Curtis
20 Rosenbaum, "and employee hereby accepts employment by
21 Roanoke as Treasurer and general manager of Roanoke's
22 Roanoke, Virginia branch office for a term of three years
23 commencing January 1, 1970 and ending December 31, 1972
24 and thereafter on a year-to-year basis unless terminated
25 by either party giving written notice to the other of the

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termination at least 90 days prior to December 31 of any
year after 1972."

3

4

A You want me to respond to that?

5

Q Yes.

6

THE COURT: What is the question?

7

THE WITNESS: I think his question - -

8

THE COURT: Wait a minute, now let him state
his question.

9

10

11

BY MR. MOORE:

12

Q It is pretty obvious that the employment
contract relates to the employee as Treasurer and general
manager.

13

14

15

THE COURT: Wait a minute, that is a statement,
now what is your question?

16

17

THE WITNESS: Let me help you if I may?

18

THE COURT: No, now he is the lawyer, let
him ask it.

19

20

21

BY MR. MOORE:

22

Q Do you agree that that is what this employment
contract relates to?

23

24

THE COURT: Everybody agrees that that is
what it relates to. Now what is your question?

25

2 MR. MOORE: Well, I am not so sure that they
3 agree that that is what it relates to.

4 THE COURT: That is what it says in plain
5 English, now what is your question?

6 MR. MOORE: My question is: Why wasn't
7 30 days' notice or 90 days' notice given to Curtis?

8 THE WITNESS: Now, sir, I can answer the
9 question?

10 THE COURT: Yes.

11 THE WITNESS: Now in the lawyer's office in
12 Richmond when we had the meeting that I referred to
13 before, we advised - -

14
15 BY MR. MOORE:

16 Q I am not interested in that. Are you saying
17 that you did not give 90 days' notice because of legal
18 advice?

19 A No, may I please answer the question?

20 Q You may not tell me what your lawyer told
21 you.

22 A Can I tell you what we - -

23 THE COURT: You asked him why, I will over-
24 rule your objection, you asked for it and he is going
25 to tell you.

THE WITNESS: We were told that we had an agreement that at least economically bound us until December 31, 1978, that we were obligated to pay, that we had, in fact, obligated ourselves to pay Curtis for services, whatever services to Roanoke, we had obligated ourselves to pay him \$24,000 and that we could not terminate that agreement before December 31, 1978.

The fact that we relieved him as branch manager, the fact that we relieved him of his responsibilities of branch manager and of his responsibilities as Treasurer didn't negate our economic responsibilities and so we were prepared to pay him this same amount of money that he was getting because that was contractually what we were obligated to do.

The reason that we did not retain his services as branch manager was because he would not perform as branch manager, in fact, he was violating the very essence of it which was that he would be bound by the dictates of the Board.

BY MR. MOORE:

Q Well, are you saying that you did not think

2 that you needed to give him 90 days' notice to terminate
3 him as branch manager?

4 A Absolutely not, we did not think that we
5 had that obligation.

6 Q Mr. Rosenbaum - -

7 A May I complete the answer to that question?

8 Q I thought you had.

9 A I had but I have one more thing that I would
10 like to add: We had historically, over a period of months
11 and years, told him that he had to shape up if he wanted
12 to stay around and that bankruptcy thing is what precipi-
13 tated it all.

14 Q You have testified to that before.

15 A Yes.

16 Q Mr. Rosenbaum, on the sheet that you
17 introduced as Exhibit Six - -

18 A Yes.

19 Q - - you show - -

20 THE COURT: State what that is, would you?

21 THE WITNESS: This is the remuneration and
22 bonus figures.

23 THE COURT: All right.

24

25

2 1978?

3 A Up until now?

4 Q Yes, sir; what are we talking about?

5 A You are talking about a net figure?

6 Q Yes, sir.

7 A I am going to guess in the area of \$15,000
8 to \$20,000.9 Q And your company's position is that the
10 manager of the Roanoke branch was the person who had to
11 write the change orders to effectuate that?12 A He had the responsibility, the obligation
13 and everything else.

14 Q And Curtis would not do that?

15 A No, sir.

16 MR. MUNDY: I have no further questions.

17

18

RECROSS EXAMINATION

19

20 BY MR. MOORE:

21

22 Q Is it fair to say, Mr. Rosenbaum, that if
23 Curtis had come to the meeting on the 15th and said, "I
24 agree with the business decision that you people have
25 reached," that he would probably still be the branch manager
of the Roanoke branch?

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Rosenbaum - Recross:

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2

A And the Treasurer.

3

Q And the Treasurer?

4

A And the Director.

5

Q If he had only said that he agreed with you

6

and your two brothers?

7

A If he had said, "I will write the change

8

orders," everything would have been resolved.

9

Q According to what you say here, if he had

10

agreed with what your position was - -

11

A Yes.

12

MR. MOORE: Okay, no further questions.

13

14

REDIRECT EXAMINATION

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16

BY MR. MUNDY:

17

Q During the two-week period that Curtis

18

remained with the company following April 15th, 1978, did

19

he ever agree to write the change orders?

20

A No, sir.

21

MR. MUNDY: No further questions.

22

THE COURT: Mr. Rosenbaum, what would be the

23

effect of the change orders insofar as Curtis

24

Rosenbaum's compensation was concerned?

25

THE WITNESS: They would reduce his compen-

sation from Roanoke Engineering Sales.

THE COURT: Why?

THE WITNESS: Why? It would reduce the amount of profit. May I give you an example, sir?

If we have a job that we are going to sell for \$10,000 and included in the \$10,000 is a material cost of \$5,000 and a labor cost of \$2,000, we then say that we have got \$2,000 that we are going to give to Colonial for labor and \$5,000 to manufacturer X and \$3,000 then augers as the markup for the branch.

Now of that \$3,000, the total corporate markup, by virtue of our system, one-third of that augers to the corporate hull, the big holding company. if you will, two-thirds goes to the branch and one-third goes to the corporate headquarters.

With that two-thirds, the branch pays its salaries, it pays its expenses and does all of that and whatever is left over after all of those expenses and salaries, office rent, phones and so on have been paid, whatever is left is what augers to the branch manager as what we call a non-discretionary bonus.

Now that is of the \$2,000. If, in fact, the

2 \$2,000-contract that we let to Colonial was really
3 \$3,000, if it should have been \$3,000 and in order
4 to give Colonial enough money to do the work and
5 still turn a decent or modest or respectable profit,
6 then that would diminish that \$3,000 that we had to
7 start with to \$2,000 and the branch take would be
8 two-thirds of that.

9 THE COURT: I am following you.

10 THE WITNESS: So that, at the tail end, would
11 reduce the non-discretionary bonus that the branch
12 manager involved would get.

13 THE COURT: Well, isn't that what this is
14 all about?

15 THE WITNESS: Yes, sir; that is what it is
16 all about, that is what it is really all about,
17 Your Honor, in fact, that is, you know, this has
18 been going on for years.

19 THE COURT: I understand that but isn't that
20 why no change orders were written?

21 THE WITNESS: Well, that calls for a
22 conclusion.

23 THE COURT: Well, if he had written the
24 change orders, it would have reduced his non-
25 discretionary bonus, if he had any?

2 THE WITNESS: Yes, sir.

3 THE COURT: And it would also reduce the
4 holding company's corporate profit, too, but the
5 three of you were willing to eat that?

6 THE WITNESS: Yes, and we have since done
7 that.

8 THE COURT: All right, thank you.

9
10 REDIRECT EXAMINATION

11
12 BY MR. MUNDY:

13 Q Mr. Rosenbaum, when you said that through
14 the years, historically, you had told Curtis for months and
15 years to shape up or, in essence, he would be out, did
16 you have reference there to his work performance, his overall
17 work performance in addition to the Colonial problem?

18 A Yes, sir; we kept being told that things
19 were coming along, everything was going to shape up, we
20 were going to have a good operation and that we would be
21 proud of him and that it would be the best in the company,
22 that sort of thing.

23 MR. MUNDY: All right, thank you.

24 THE COURT: Anything further, Mr. Mundy?

25 MR. MUNDY: No.

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2 MR. MOORE: I would like to ask one or two
3 short questions.

4
5 RECROSS EXAMINATION

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7 BY MR. MOORE:

8 Q Mr. Rosenbaum, in this business of Roanoke
9 Engineering Sales on the commodity end of it: When you go
10 to bid a job, how many other bidders do you traditionally
11 have?

12 A You mean people like us?

13 Q How many other people are bidding for the
14 same work that you are bidding for?

15 A Work that we are bidding for? Well, it will
16 vary from job to job but on an average - -

17 Q Yes.

18 A - - two, three or four.

19 Q And usually those bidders, in the Roanoke
20 area, have been Roanoke Engineering Sales, Mahone, maybe,
21 maybe not - -

22 A Cates.

23 Q - - and Cates Building Supply?

24 A Yes.

25 C And it is fair to say that that has been the

2

situation for years?

3

A Yes, sir.

4

Q And if you get on bigger jobs, you might

5

have seven or eight bidders?

6

A Yes.

7

Q In the installation line, who are you

8

traditionally bidding against?

9

A People like Virginia School Equipment,

10

Flowers, J. H. Pence and folks like that.

11

Q Big companies?

12

A Caldwell-Sites has been in there.

13

MR. MOORE: Okay, that is all.

14

THE COURT: All right, thank you.

15

(The witness was excused.)

16

17

THE COURT: All right, suppose we take a

18

short recess.

19

(Thereupon a short recess was taken. Following

20

the recess, the parties returned to the room and

21

the hearing continued.)

22

23

THE COURT: All right, Mr. Mundy:

24

MR. MUNDY: Your Honor, as our second witness,

25

we would offer the de bene esse deposition of

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Mr. Hugh Garth which was taken on November 15, 1978

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and I believe the original has been filed.

4

THE COURT: All right, any objection,

5

Mr. Moore?

6

MR. MOORE: None, Your Honor.

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8

9

"HUGH GARTH,

10

having first been duly sworn upon his oath, deposes and

11

states:

12

"DIRECT EXAMINATION

13

14

"BY MR. MUNDY:

15

"Q State your name, please.

16

"A Hugh Garth.

17

"Q Where do you reside, Mr. Garth?

18

"A 3518 Verona Trail.

19

"Q Is that in Roanoke County?

20

"A Roanoke County.

21

"Q By whom are you employed?

22

"A Roanoke Engineering Sales Company, Incorporated

23

"Q How long have you been employed by Roanoke

24

Engineering Sales Company, Incorporated?

25

"A Ten years.

1

"Garth - Direct

86

2

"Q And what is your position with this company?

3

"A Vice-President of the Roanoke branch in the marketing area of the Roanoke branch.

5

"Q How many branches of the Roanoke Engineering Sales Company, Incorporated are there?

7

"A Four. Would you like the locations?

8

"Q Yes, please.

9

"A Roanoke, Richmond, McLean, Virginia and Charlotte, North Carolina.

11

"Q And are you an officer of the corporation?

12

"A Yes.

13

"Q What is your office?

14

"A Vice-President.

15

"Q How long have you been a Vice-President of the corporation.

17

"A Five years.

18

"Q Mr. Garth, who was your predecessor as manager of the Roanoke branch of Roanoke Engineering Sales Company, Incorporated?

21

"A Curtis Rosenbaum.

22

"Q Do you know how long Curtis Rosenbaum was manager of the Roanoke branch?

24

"A Now, I stand to be corrected on this, but I believe it was since '65; '62.

25

2 "Q And were you in sufficient contact with him
3 to make such a determination?

4 "A Yes, I was in contact with him constantly.
5 Now, I will have to say it was very difficult to talk with
6 Curtis, because if you really tried to argue a point with him
7 and, you know, get a thorough understanding, instead of
8 arguing, he would just say 'that's it, that's final, I made
9 a decision and I will not listen to any more and you can't
10 change my mind.'

11 "Q Are you familiar with Curtis' employment
12 since he left the company?

13 "A Yes.

14 "Q What did he do?

15 "A He left and I understand he bought Mahone,
16 Incorporated, which was a competitor of ours and had been ever
17 since I had been associated with Roanoke Engineering.

18 "They sell the commercial building products
19 or commodity items like I have referred to, as Roanoke
20 Engineering handled.

21 "Q And did Curtis affiliate with Mahone,
22 Incorporated?

23 "A It's my understanding that he has purchased
24 the name. I'm not sure of the legal makeup of it.

25 "Q Is it your understand that he has also formed

2 Rosenbaum of Roanoke, Inc.?

3 A Yes. In fact, I think we got a notice of that
4 at the office.

5 "Q In any event, to the best of your knowledge,
6 is Curtis now competing with Roanoke Engineering Sales
7 Company, Incorporated?

8 "A Yes, without a doubt.

9 "Q Are you aware of any particular jobs that he
10 has competed with your company on?

11 "A Yes; a product that I handle myself, folding
12 partitions in the schools, commercial buildings, everything;
13 I've had, on two occasions - - three really, that he did bid
14 against us.

15 "Q Now, which jobs were those?

16 "A One was the New River Valley Community
17 College at Dublin, Virginia and now, the product is Panel-
18 fold.

19 "Q And are these partitions?

20 "A Right; they are folding partitions that operate
21 on a heavy track from above and we had bid this and, naturally,
22 Curtis came along and bid the same contract, I mean, it's
23 an open market whenever it comes to bidding and whoever is
24 on the list, but I knew the contractor very well and,
25 naturally, like any job, you want them and I had an

2 opportunity to sit down with him and explore the whole
3 situation and I was trying to give him the reasons why he
4 should buy from Roanoke Engineering and, at the same time,
5 Curtis was doing the same thing.

6 "As a matter of fact, the contractor said he
7 brought in a representative from the factory to go with
8 him and I wound up getting the order and I was given the
9 opportunity, if I took a package that - -

10 "Q How large was that order?

11 "A \$20,886.00.

12 "Q And are you aware of any other jobs in which
13 he has directly competed against you?

14 "A Yes, he bid another job, a School of Education
15 at James Madison University in Harrisonburg, Virginia, and
16 there, he was on the list, but his price was - -

17 "Q He was on the list of bidders?

18 "A In other words - - right; the contractor had
19 received prices from - - at that time, it was called Mahone,
20 Incorporated, but it was after Curtis had bought it,
21 assumed responsibility with Mahone, anyway, and they had
22 a quotation from him, but it was so low that the contractor
23 didn't even consider it and ours was in line in ratio with
24 the others.

25 ~~"Q I have no further questions.~~

2 is it fair to say that represents two or three days a week
3 out of the office?

4 "A Yes.

5 "Q Do you have a schedule as to when you
6 usually leave town and when you usually come back?

7 "A (No response)

8 "Q Do you sometimes leave on Tuesday morning
9 and come back on Tuesday night?

10 "A No, I do not have a schedule like that. I
11 might leave this week, say on Monday, and come back on
12 Wednesday or I might leave on Wednesday and come back on
13 Thursday or Friday.

14 "Q Did the business of Roanoke Engineering Sales
15 Company, the Roanoke branch, tend to be about the same as
16 the economy during the time that Curtis was working there?

17 "A No. Now, we are going back now to the
18 period that I have been associated with Roanoke Engineering?

19 "Q Yes, sir.

20 "A When I came with Curtis, I would say that he
21 was maybe doing like ten percent in what I referred to as
22 the school, the hospital market and the rest of it was done,
23 the remainder of 90 percent was done in the commercial
24 building products, commodity items, which Curtis was
25 handling 100 percent himself and I would say in the last

2 year, I haven't looked at the figures recently to really
3 compare, but I would say it has done a complete flip-flop.

4 "Q You would say that 90 percent of the
5 business is schools, hospitals - -

6 "A And about ten percent was being done with
7 the commodity items.

8 "Q Is that true today, today being November 15,
9 1978?

10 "A No, I would say that it's beginning to swing
11 back some.

12 "Q Well, do you attribute that change to Curtis'
13 inactivity, is that what you are saying?

14 "A Well, yes, inactivity and the lack of being
15 interested in that market.

16 "Q The lack of interest in that market, is that
17 what you said?

18 "A Yes.

19 "Q Well, what market was Curtis interested in,
20 the same as you, the educational and the large - -

21 "A Yes; well, Curtis would really kind of change
22 from month to month thinking.

23 "There were times that he wanted the market
24 that he was responsible for to get stronger and then there
25 were times he said let's go with the educational market,

2 ~~I'm not sure what I'm going to do.~~

3 "Q What is your position now?

4 "A (No response)

5 "Q Are you still Vice - President of Roanoke
6 Engineering?

7 "A Right, and my position is still the same as
8 it has always been.

9 "Q You are not manager of the Roanoke branch?

10 "A No.

11 "Q Are you assistant manager of the Roanoke branch?

12 "A Yes, in essence, I am.

13 "Q In essence or in title? Are you in title?

14 "A Yes, in title.

15 "Q Who is the manager of the Roanoke branch?

16 "A Joe Rosenbaum.

17 "Q He is the one who succeeded Curtis in that job?

18 "A Right.

19 "Q Has the business of Roanoke Engineering, the
20 Roanoke branch of that business, been better since Curtis
21 left and since Mr. Joseph Rosenbaum took over, as far as
22 you are able to tell?

23 "A Do you mean the dollar business? How can we
24 put in terms?

25 "Q You put it in any term you like.

2 "A I would say that the harmony in our office
3 is improving and the business is building slowly.

4 "Q Building from the point that it was when Curtis
5 left?

6 "A Right.

7 "Q So you would say that, in your view, it has
8 improved since he left?

9 "A Yes.

10 "Q As far as you, yourself, are concerned, Mr.
11 Garth, in your end of the business, has Curtis Rosenbaum,
12 in any activity that he's engaged in, adversely affected
13 your business?

14 "I understand that you are not involved in the
15 total picture, but - -

16 "A Right. There has been some confusion. I've
17 had a couple of people to say 'Well, I thought Curtis was
18 still with you all' or 'I thought you all were just expanding,
19 that you had gotten another company,' and this has been a
20 little bit confusing.

21 "In fact, just as early as last week, I ran
22 into a customer, in person, that I hadn't seen for some
23 time and she said, 'I see where you all are growing,' and
24 I said, 'Oh,' and she said, 'Well, I got notice in here
25 that Curtis was operating another company.'

2 "A Yes.

3 "Q And when you bid a job, you are bidding a job
4 using their products?

5 "A That's right.

6 "Q And your competitors will bid a job using a
7 partition manufactured by another partition manufacturer?

8 "A That is correct.

9 "Q Has Curtis, as far as you know, contacted any
10 manufacturer that your company represents, in an effort to
11 represent them in the Roanoke Valley?

12 "A No, now that I'm not aware of.

13 "Q If he has, you don't know of it?

14 "A I believe that - -

15 "Q If you don't know, just say you don't know.

16 "A No. I don't know.

17 "Q Are the other branches of Roanoke Engineering
18 Sales involved in essentially the same kind of operation as
19 the Roanoke branch is?

20 "A All branches are a little different from the
21 items that we represent. In essence, they are. The
22 Richmond branch is more like the Roanoke branch in handling
23 the same and similar products.

24 "The McLean office is not as schooled or as
25 promotional as we are in Roanoke. The Charlotte branch has

2 many of the same products and, there again, it's some
3 promotional but not to the degree it is here.

4 "Q How many employees are there in the Roanoke
5 branch?

6 "A Six.

7 "Q How many of those people are sales people?

8 "A Three. . .

9 "Q How many employees are there in the Richmond
10 branch?

11 "A Six.

12 "Q And how many of those are salesmen?

13 "A Two.

14 "Q Who are the salesmen in the Richmond branch?

15 "A Carl Seeke and Mike Clay.

16 "Q How many salesmen are there in McLean and
17 Charlotte?

18 "A This is going to be strange, but I think
19 there are three in McLean.

20 "Q And how many salesmen in McLean?

21 "A One. Now, incidentally, now, let me clarify
22 one thing. When I'm giving the number of salesmen, I am
23 leaving out the branch manager and he is not included,
24 because I'm looking upon this as primarily the ones that are
25 promoting.

(Thereupon the reading of the deposition
was concluded.)

MR. MUNDY: The Complainant calls Mr. Buddy
Rosenbaum.

HARRY L. ROSENBAUM, JR.

was called as a witness and after having first been duly
sworn to tell the truth, the whole truth and nothing but
the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MUNDY:

Q . State your full name, please.

A Harry Luke Rosenbaum, Jr.

Q Where do you reside, sir?

A 1245 Holroyd Court, Charlotte, North Carolina

28211.

Q By whom are you employed?

A Roanoke Engineering Sales Company, Incorporated

Q What is your position with the corporation?

A Executive Vice President.

2

Q Are you also a branch manager?

3

A Yes, I am.

4

Q And which branch is that?

5

A Charlotte, North Carolina.

6

Q Do you have an agreement with the corporation

7

similar to the agreement which your brother, Curtis

8

Rosenbaum, had dated January 1, 1970 and amended January 15th,

9

1977?

10

A I do.

11

Q Does it contain a salary and bonus provision

12

similar to his?

13

A Yes, sir.

14

Q Mr. Rosenbaum, why was your brother, Curtis,

15

terminated as branch manager and not re-elected as an

16

officer and director of the corporation in April of 1978?

17

A I think it was the culmination of a lot of

18

things over a rather long period of time. Actually, the

19

primary reason was the bottom line, in other words, the

20

branch was not being operated as a profitable branch based

21

on the figures that we saw.

22

Q We have introduced into evidence as our

23

Exhibit Six a memorandum reflecting commissions attributable

24

to the Roanoke branch, have you seen this?

25

A No, I have not.

2 at least available to his employees so that any decisions
3 that have to be made at the last minute can be made.

4 Q He should be available to work on those bids?

5 A That is correct.

6 Q If the Court orders Curtis not to compete
7 with Roanoke Engineering Sales, would he then be welcomed
8 back to your company for employment in your company?

9 A Very definitely under one set of circumstances
10 and that would be if he really got on the ball and did the
11 job that he was appointed to do in the first place, yes,
12 we would be delighted to have him back and I mean that.

13 MR. MUNDY: Thank you. Answer any questions
14 that Mr. Moore might have.

15
16 CROSS EXAMINATION

17
18 BY MR. MOORE:

19 Q Mr. Rosenbaum, are you familiar with this
20 document which has been identified as Complainant's Exhibit
21 Four which is the note that Joe wrote to Curtis?

22 A Yes.

23 Q Did you review that before it was shown to
24 Curtis?

25 A No.

2 Q Did you know of its content?

3 A I knew partially what it would be but I
4 didn't know the entirety of its content, no.

5 Q Well, is that what was told Curtis as far
6 as you know, what is in the note?

7 A To my knowledge, this was given to Curtis
8 and he read it.

9 Q Before the meeting of the 15th?

10 A That is correct.

11 Q Then at the meeting on the 15th, Curtis
12 didn't say anything?

13 A That is correct.

14 Q We are talking about April the 15th?

15 A That is correct.

16 Q Then you went ahead and held an election
17 and you and your other two brothers decided what you were
18 going to do?

19 A Yes, that is correct.

20 Q And you elected three of you as the officers
21 of the corporation?

22 A That is correct.

23 Q And you relieved Curtis of the job of manager
24 of the Roanoke branch?

25 A That is right.

2 Q And you appointed Joe as temporary manager
3 or permanent manager?

4 A I don't believe there was an appointment made
5 at that point.

6 Q But you relieved Curtis?

7 A That is correct.

8 Q And Curtis was at that meeting at the time
9 that you did that?

10 A That is correct.

11 Q Now the reason that he was relieved, according
12 to this paper, is that he did not agree with the decision
13 that the Roanoke branch should issue change orders sufficient
14 to pay off all Colonial's debts except those owing to
15 Curtis, right?

16 A Okay.

17 Q And he did not agree with the decision to
18 terminate or to liquidate Colonial?

19 A He wanted to bankrupt it.

20 Q And he did not agree with the decision to
21 award contracts to Colonial's successor only if it provided
22 a bond on each job? These were the requirements that you
23 told him that he had to agree to, is that right?

24 A I read that, yes.

25 Q If he had come to that meeting and said,

"I agree with that decision," then your brother, Joe, has testified that Curtis would still be the manager of the Roanoke branch and he would still be the Treasurer of the corporation, do you agree with that?

A Under certain circumstances, yes.

Q If he agreed with that decision?

A I think that had these been taken care of as was outlined, then the bottom line figure would have changed automatically over a period of a few months after that.

Q You thought Colonial was a drain on Roanoke Engineering?

A Very definitely.

Q Did you use Colonial in your business?

A No, sir.

Q Did anyone else use Colonial other than the Roanoke branch and the Richmond branch?

A Not to my knowledge.

Q But those two branches did use it?

A To my knowledge, they did at one time.

Q And your other brother in McLean did not use it?

A Not to my knowledge.

Q Mr. Rosenbaum, why didn't the corporation

2 QUENTIN M. TOMLINSON

3 was called as a witness and after having first been duly
4 sworn to tell the truth, the whole truth and nothing but
5 the truth, was examined and testified as follows:

7 DIRECT EXAMINATION

8
9 BY MR. MUNDY:

10 Q State your name.

11 A Quentin M. Tomlinson.

12 Q By whom are you employed?

13 A I own my own business, Q. M. Tomlinson,
14 Incorporated.

15 Q What is the nature of your business?

16 A I am a general contractor.

17 Q How long have you been in the general
18 contracting business?

19 A Actually since 1946; since 1969 under my
20 own name.

21 Q And in what territory does your company
22 operate?

23 A In the Roanoke-Southwest Virginia area.

24 Q All right, in the past, have you done
25 business with Roanoke Engineering Sales, Incorporated?

2 A Yes, sir.

3 Q Over what period of time?

4 A For the last 30 years.

5 Q All right, what is the nature of the business
6 of Roanoke Engineering Sales?

7 A They are manufacturers' representatives
8 for door frames, windows and various building products.

9 Q And do you use that company periodically as
10 a subcontractor on jobs - -

11 A Yes, I do.

12 Q - - for those items which you just related?

13 A That is correct.

14 Q Do you know Curtis Rosenbaum?

15 A Yes, sir.

16 Q Did you know him while he was employed by
17 Roanoke Engineering Sales?

18 A Yes, sir.

19 Q Did you work with him on a number of jobs?

20 A Yes, I did.

21 Q Are you familiar with the company in Roanoke
22 by the name of Mahone, Incorporated?

23 A Yes, sir; I am.

24 Q What is the nature of that company's business?

25 A They are also a manufacturers' distributor.

2 Q Is Mahone, Incorporated in competition with
3 Roanoke Engineering Sales?

4 A They bid on the same items, yes, sir.

5 Q The same type of work?

6 A The same type of work.

7 Q Did you have any association with Curtis
8 Rosenbaum while he was affiliated with Mahone and beginning
9 after he was terminated from his position at Roanoke
10 Engineering?

11 A I can't say I did because when I dealt with
12 Mahone, I dealt with Mr. Holton mostly at that time and
13 so I didn't have any personal contact with him.

14 Q Did you know that he was affiliated with
15 Mahone, Incorporated?

16 A I knew that, yes, sir.

17 Q And did you have business dealings with
18 Mahone, Incorporated during the period that he was with
19 them?

20 MR. MOORE: Does he know when he was with
21 them?

22
23 BY MR. MUNDY:

24 Q Do you know when Curtis Rosenbaum was
25 employed by Mahone, Incorporated?

2 A I am not sure. I knew that he was there
3 but I don't know exactly the dates or the times.

4 Q Do you know that it was after he left
5 Roanoke Engineering Sales?

6 A I couldn't answer that exactly because I
7 really don't know any dates or any times at all as to when
8 he was with them.

9 I knew that he went with them and that they
10 had bid a job that I was working on.

11 MR. MOORE: Excuse me, Your Honor, rather
12 than objecting to this testimony, may I suggest
13 that we just get from Mr. Tomlinson the jobs that
14 he is talking about and when the bids were made
15 and the dates and all and then later it can be
16 decided whether this falls within or without this
17 period.

18
19 BY MR. MUNDY:

20 Q What jobs are you referring to?

21 A May I refer to a note? The only thing that
22 I have is a quotation on a purchase order that I have, I
23 can't keep all of this in my mind.

24 Q Is this from Mahone, Incorporated?

25 A This is from Mahone, Incorporated and the

2 THE WITNESS: No, you can have that.

3 (Thereupon the invoice from
4 Mahone Incorporated dated July 9, 1978
5 and the purchase order from Q. M. Tomlinson
6 dated August 15th, 1978 were marked as
7 Complainant's Exhibit Number Nine and
8 entered into the Record.)

9
10 BY MR. MUNDY:

11 Q Mr. Tomlinson, have you had any correspondence
12 with Curtis Rosenbaum from Rosenbaum of Roanoke, Inc. relative
13 to the Raleigh Court Presbyterian Church?

14 A As I say, I have not had any contact
15 personally with him. This is from his secretary with
16 reference to shop drawings for this particular job.

17 MR. MUNDY: We would offer this as our next-
18 numbered exhibit.

19 THE COURT: That will be Complainant's
20 Exhibit Number Ten, any objection?

21 MR. MOORE: I have not seen it, Your Honor.
22 No, I have no objection.

23 (Thereupon the memorandum from
24 Mr. Curtis Rosenbaum's secretary to Q. M.
25 Tomlinson was marked as Complainant's Exhibit

2 Number Ten and entered into the Record.)

3
4 BY MR. MUNDY:

5 Q Does this refer to items that are in line
6 with the products that Roanoke Engineering Sales handles?

7 A That is correct.

8 MR. MUNDY: All right, Mr. Moore, your
9 witness.

10
11 CROSS EXAMINATION

12
13 BY MR. MOORE:

14 Q Mr. Tomlinson, on the Raleigh Court Presbyterian
15 Church job, what was the size of that?

16 A \$409,000, approximately.

17 Q And you are the general contractor to perform
18 what?

19 A It was the alteration, principally the
20 alteration to the old sanctuary and the Sunday School area,
21 we are remodeling the whole situation.

22 Q Who else bid for the work that you have just
23 talked about wherein the contract was awarded to Mahone on
24 August 15th?

25 A We have a group of people and I couldn't

2 tell you that without looking at my files but we have people
3 like Roanoke Engineering Sales, we have Cates, Incorporated
4 and I am sure that there are other local people that bid
5 the same thing; Skyline Paint and Hardware bid the door
6 frames and that type of thing and we have people from
7 Lynchburg and other areas that do that same type of work.

8 Q Would you say that you had six or seven bids
9 for this same group of items?

10 A As I say, I would hate to tell you how many
11 but, as I say, I had at least four.

12 Q And at the time you awarded the bid to
13 Mahone, you didn't know that Curtis Rosenbaum was even
14 associated with them?

15 A I had no idea.

16 Q You just awarded that to Mahone?

17 A I would say that it would be fair to say
18 that I had heard that Curtis had bought Mahone but I had
19 had no letter from him or anything, I had just heard that.

20 Q It wasn't because of Curtis being there
21 that you took that bid, it was simply that their bid was
22 the low bid?

23 A No, sir; everything goes to the low bidder
24 as far as I am concerned.

25 Q ~~And you have dealt with Mahone, Incorporated~~

1 Q: What does your normal work week consist
2 of in terms of hours?

3 A: 8:30 to 5:00, five days a week.

4 Q: During the two to three year period before
5 Curtis' employment with the company terminated, what
6 would you say his average work-day involved in terms of
7 hours?

8 A: Approximately six hours, probably - when
9 he was in the office.

10 Q: Was he in the office during the middle of
11 the day?

12 A: Not usually.

13 Q: Was Curtis available for assistance to
14 you and the other office personnel in the last year or
15 two of his employment by the company?

16 A: At times, yes sir.

17 Q: And at other times?

18 A: No.

19 BY MR. MUNDY:

20 Answer any questions Mr. Moore may have.

21 BY MR. MOORE:

22 I have no questions, Your Honor.

23 ADA LEE HOLTON, being duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. MUNDY:

25 Q: State your name please?

1 A: Ada Lee Holton.

2 Q: Where are you employed?

3 A: I'm now the owner of Lee's Lines Limited.

4 Q: What is the nature of Lee's Lines Limited?

5 A: I'm a Manufacturer's Representative.

6 Q: What lines do you carry?

7 A: A number of different lines. It concerns

8 metal building products such as toilet partitions and

9 windows, patches.

10 Q: All right, and on those lines do you com-

11 pete with Roanoke Engineering Sales Incorporated?

12 A: At times.

13 Q: Where were you previously employed?

14 A: For Mahone Incorporated, and Rosenbaum

15 Products.

16 Q: And what did you do for those companies?

17 A: I started as secretary and gradually worked

18 up to a manager's position at Mahone Incorporated and

19 worked as an estimator.

20 Q: What was the nature of Mahone's business?

21 A: Manufacturer's Representative.

22 Q: Did they sell lines the same as Roanoke

23 Engineering Sales Incorporated?

24 A: Yes.

25 Q: Was that the same items?

1 A: Yes.

2 Q: And would both companys submit bids to
3 the same contractors?

4 A: As far as I know.

5 Q: As far as you know, is that what Curtis
6 Rosenbaum now does?

7 A: I assume so.

8 BY MR. MUNDY:

9 Answer any questions Mr. Moore has.

10 CROSS EXAMINATION BY MR. MOORE:

11 Q: How long did you work for Mahone In-
12 corporated?

13 A: Approximately eight years.

14 Q: You started as a secretary and worked
15 your way up to an Estimator?

16 A: Yes.

17 Q: When did you become an Estimator?

18 A: I gradually assumed some responsibility
19 in that area over the period of years, more heavily so
20 after Mr. Mahone bought Valley Roofing in January of
21 this year.

22 Q: What you're really saying is that as of
23 January of this year, Mr. Mahone was spending all his
24 time with Valley Roofing and you were the person spend-
25 ing all the time with Mahone - is that right?

1 Q: Yes ma'am. Now your sales price was a
2 price for doing nothing other than delivering the goods
3 to the general contractor so he could install them?

4 A: Most of the time, there was some install-
5 ation.

6 Q: What installation . . .

7 A: We didn't personally do installation, but
8 we hired people to install, sometimes.

9 Q: Was that very often?

10 A: No.

11 Q: It was rare as a matter of fact for Mahone
12 to contract installation, wasn't it?

13 A: That would be hard for me to estimate
14 what you mean by rare.

15 Q: Did Mahone have a regular line of supplier
16 or manufacturers that it represented?

17 A: You mean that no one else sold their pro-
18 ducts except through Mahone?

19 Q: Yes ma'am.

20 A: Some, yes.

21 Q: And Roanoke Engineering, as far as you
22 know, has suppliers that it represents that no one else
23 represents?

24 A: Right, as far as I know, that's true.

25 Q: And that would be true of most everybody

1 who is in this business, isn't it?

2 A: Right, to some extent.

3 Q: All right, now did Mr. Mahone . . .

4 BY THE COURT:

5 Mr. Moore, ask her if they both represent
6 the same line.

7 BY MR. MOORE:

8 As far as you know, does Roanoke Engineering
9 and Mahone - or Mahone - represent the same manufact-
10 urer? As far as you know?

11 A: Possibly, yes.

12 Q: Can you tell me who?

13 A: General Partitions, I don't really know
14 for sure about any other lines except Bliss Steel - wind-
15 ows - that was not an exclusive with either.

16 Q: All right, General Partitions - is that the
17 name of a company?

18 A: Yes, it's a toilet partition company.

19 Q: And you say that no one has an exclusive
20 contract with General Partitions?

21 A: Not at this time. Most toilet partition
22 companies give an exclusive contract, but it's sort of in
23 the air at the moment.

24 Q: You mean there are certain people bidding
25 for the right to represent that company?

1 A: I guess you could phrase it that way.

2 Q: How many different manufacturers did
3 Mahone represent as of January 1, 1978?

4 A: On an exclusive basis or a general basis?

5 Q: On an exclusive basis.

6 A: At least probably 12 or 15 lines.

7 Q: How many on a general basis?

8 A: Maybe as many as 30 to 35. There you
9 have some lines that only come up once or twice a year
10 maybe like a dumbwaiter or something like that.

11 Q: Like what?

12 A: A dumbwaiter, or some particular feature
13 that might be unusual.

14 Q: So you're saying that of all these 42, or
15 some odd number of manufacturers, there is only one you
16 can recall of or you can think of that your company, Mahone
17 and Roanoke Engineering both represent?

18 A: That's the only one I can remember, or
19 had any knowledge of.

20 Q: All right. Now tell me, how would it work
21 with Roanoke Engineering and Mahone both representing
22 General Partitions?

23 A: They would both send a take-off to the
24 factory, and the factory would give a price based on the
25 information furnished. One might see more toilet partitions

1 in a set of plans than another, so there might be differ-
2 ent prices given back but if it was the same - I assume
3 it would be the same price for the same . . .

4 Q: Per quantity?

5 A: Material submitted for pricing. I had no
6 access to anyone elses' records.

7 Q: When did Curtis Rosenbaum join Mahone?

8 A: I believe he officially purchased the
9 company July 1, 1978.

10 Q: Is that when he began working for Mahone
11 or with Mahone?

12 A: Well, I'm sure there was some negoti-
13 ation before that time.

14 Q: But is July 1 the date you recall he started

15 A: That was the date of purchase, yes, as
16 such. He was officially in charge.

17 Q: And what was your position when Curtis
18 came there?

19 A: I was still an Estimator.

20 Q: Were you an employee of Curtis'?

21 A: Yes.

22 Q: How long did that relationship continue?

23 A: Until the middle of September.

24 Q: And what happened in the middle of Sept-
25 ember?

1 A: I resigned to form my own company.

2 Q: And is it true - is it Mrs. Holton?

3 A: Yes.

4 Q: Is it true, Mrs. Holton, that the company
5 that you now have, Lee's Lines Limited, you are in the
6 same business that Mahone Incorporated was in?

7 A: Right.

8 Q: And do you represent some of - did you
9 take any of the business of Mahone Incorporated?

10 A: I did.

11 Q: How much business did you take from
12 Mahone?

13 A: Two or three of the regular accounts, and
14 there are some that are general.

15 BY THE COURT:

16 Do you mean the manufacturers or the users?

17 A: The manufacturers - the users would be
18 open for whoever is low price, usually. The contractors
19 usually purchase from the low bidder.

20 BY MR. MOORE:

21 Q: So then Mrs. Holton, you were with Mahone
22 for approximately two and a half months when Mahone was
23 being run by Mr. Rosenbaum?

24 A: Right.

25 Q: During that period of time, was there any

1 difference in the character of Mahone's business as com-
2 pared with the way it was done before, during the seven
3 and a half - eight years you had worked with Mahone -
4 the nature of the business, the character of the business?

5 A: Are you saying was it still a manufacturer's
6 representative and still bid on general work?

7 Q: Yes ma'am. Still bid - was there any
8 difference in the kind of jobs that you bid on?

9 A: No, I don't think so.

10 Q: Was there any difference in the manufac-
11 turers that you represented?

12 A: Well, in this business you're always seek-
13 ing new manufacturers or . . .

14 Q: I'm talking about the two and a half month
15 that Mr. Rosenbaum was there - was there any difference
16 in the way that business was conducted as compared to
17 before? Did you get any new manufacturers during that
18 two and a half months?

19 A: I don't remember.

20 Q: If you did, you don't know?

21 A: It was not a - you know - something that
22 impressed my mind.

23 Q: Other than the personality of Mr. Rosenbaum
24 being different from the personality of Mr. Mahone, was
25 there any difference in the way the business was run?

1 And if so, just say what it was.

2 A: There was no basic difference.

3 Q: When did Rosenbaum of Roanoke come into
4 being?

5 A: I believe it was around the first of September
6 - sometime in September, I believe.

7 Q: When you left, Rosenbaum of Roanoke was
8 your employer rather than Mahone Incorporated?

9 A: Right - now I think that's true. I think -
10 I do not remember whether the checks still carried Mahone
11 Incorporated or whether they carried the new Rosenbaum of
12 Roanoke name, but Curtis signed checks as I remember.

13 Q: The way I understand your testimony, Mrs
14 Holton, as of today, December 6, 1978, this business has
15 one more company competing in the Roanoke Valley than
16 it had as of July 1, 1978 - that business is your new one

17 A: Okay.

18 Q: Is that right? And who are the other people
19 who are in the business?

20 A: What do you mean in the business - my
21 employees?

22 Q: No ma'am. Who are the other manufacturer's
23 representatives that do the same thing you do?

24 A: Roanoke Engineering Sales, John Yanger,
25 Cates and there are others - Wallace, I believe is a

1 A: They don't have any exclusives.

2 Q: And Carlton?

3 A: That's the same company - Bogart and
4 Carlow.

5 Q: All right - and Kentucky Metal Products,
6 anybody can write and get quotes if they'll give them?

7 A: Right.

8 BY MR. MOORE:

9 All right, thank you.

10 WITNESS ASIDE

11 WILLIAM MAHONE, being duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. MUNDY:

13 Q: State your name, please.

14 A: William Mahone.

15 Q: Where are you employed, Mr. Mahone?

16 A: Valley Roofing Corporation.

17 Q: All right, and what did you do before you
18 were affiliated with Valley Roofing?

19 A: Owned Mahone Incorporated.

20 Q: Through what period of time did you own
21 Mahone Incorporated?

22 A: '57 to '78.

23 Q: 1957 . . .

24 A: '67.

25 Q: All right, '67 - what was the nature of

1 I'm aware that we've lost orders to them for hollow-metal
2 windows.

3 Q: All right. And how did Mahone Incorporated
4 rated go about getting these contracts or purchase orders?

5 A: We bid to general contractors.

6 Q: And during the time that you were with the
7 company, did you know that Roanoke Engineering bid on
8 some of the jobs that your company also bid?

9 A: Yes.

10 Q: Sometimes you would be low bidder and
11 sometimes Roanoke Engineering would be low bidder?

12 A: Yes.

13 Q: Would the job usually go to the low bid-
14 der?

15 A: Yes.

16 Q: At some point did Curtis Rosenbaum become
17 associated with Mahone Incorporated?

18 A: He bought certain assets of it.

19 Q: When did that take place?

20 A: July of '78.

21 Q: Had there been some preliminary negoti-
22 ations?

23 A: Oh yes, about six weeks.

24 Q: So far as you know, did Curtis Rosenbaum
25 continue to operate Mahone in the same manner?

1 A: As far as . . .

2 Q: I take it the operation continued to be
3 the same?

4 A: As far as I know. I was not there.

5 Q: Do you know what his business affili-
6 ation is now?

7 A: He's still doing what I was doing, I
8 suppose.

9 Q: The same type business?

10 A: Yes.

11 BY MR. MUNDY:

12 All right, answer any questions Mr. Moore has

13 CROSS EXAMINATION BY MR. MOORE:

14 Q: Mr. Mahone, you became the owner of
15 Mahone Incorporated in 1967 and you worked full-time
16 in that business from 1967 till July 1 of '78?

17 A: Sometime in the middle of there we bough
18 the Port-o-Jon Corporation, which took some of my time.

19 Q: When did you form that?

20 A: I've forgotten - four or five years ago.

21 Q: Sometime around when?

22 A: Oh, four or five years ago.

23 Q: How much time did you spend at Mahone
24 and how much time did you spend . . .

25 A: They were all operated out of the same

1 it out, but I cannot say that, yes I can sell him a fran-
2 chise to sell a certain company's product.

3 Q: Well, when he moved in on July 1, what
4 did he have other than the furniture that was involved and
5 other than the accounts receivable?

6 A: He had a going Concern.

7 Q: What was the going Concern?

8 A: Mahone Incorporated.

9 Q: But what was between the ears was his,
10 rather than yours?

11 A: It would take somebody who had a know-
12 ledge about business to be interested in it, I would assume.

13 Q: You're saying he could not expect to rep-
14 resent those manufacturers that you had represented?

15 A: There was no guarantee.

16 Q: Well, wasn't there an assurance that he
17 would probably represent those manufacturers?

18 A: I told him I would help or write a letter to
19 the effect that he was buying it and that they should go
20 with him, which I did and which copies are available.

21 Q: And if they didn't go with him, they could
22 go with anybody they wanted to?

23 A: Yes.

24 Q: And did you represent any manufacturers
25 who were also represented by Roanoke Engineering?

1 A: Not that I know of.

2 Q: Did you write any manufacturers repre-
3 sented by Roanoke Engineering and tell them that they
4 ought to do any business with Curtis?

5 A: No, not that I know of.

6 Q: Do you know for a fact that Mrs. Holton -
7 after Mr. Rosenbaum came into the picture - that Mrs.
8 Holton separated, she left and formed her own company?

9 A: Yes.

10 Q: Do you know for a fact that she is now
11 representing some of the manufacturers that Mahone used
12 to represent?

13 A: Yes.

14 BY MR. MOORE:

15 I have no further questions, Your Honor.

16 RE-DIRECT EXAMINATION BY MR. MUNDY:

17 Q: Mr. Mahone, in order for Mahone Incorpo-
18 rated and Roanoke Engineering to compete with each other,
19 it is not necessary - or is it necessary for them to repre-
20 sent the same manufacturers?

21 A: I don't understand your question.

22 Q: Well, can the two companies compete by
23 representing different manufacturers who have the same
24 line of materials?

25 A: Well, I would have the exclusive contract

1 with the people I represent.

2 Q: But if you had that and Roanoke Engineering
3 represented another manufacturer who sold the same item
4 and if you both bid a certain job, then you're in compe-
5 tition, aren't you?

6 A: I felt like I was.

7 Q: Did both companies sell rolling steel doors

8 A: I don't know if they did or not, I did.

9 BY MR. MOORE:

10 No further questions.

11 WITNESS ASIDE

12 BY MR. MUNDY:

13 The Plaintiff Rests, Your Honor.

14 2:00 - 2:10 - RECESS

15 BY MR. MOORE:

16 Your Honor, we offer this as Defendant's
17 Exhibit 1, a statement of accounting from the Roanoke
18 Branch office of Roanoke Engineering for the first, second,
19 and third quarter of 1978. The purpose for the introduction
20 of this, Your Honor, is to demonstrate the fact that after
21 the parting of the Defendant, there has been no economic
22 problems created to the Plaintiff corporation.

23 DEFENDANT EXHIBIT 1

24

25

1 CURTIS ROSENBAUM, being duly sworn, testified as follow

2 DIRECT EXAMINATION BY MR. MOORE:

3 Q: What is your name, age and address?

4 A: Curtis Rosenbaum, 42, 1867 Blenheim Road
5 S.W., Roanoke.

6 Q: You are the Defendant in this case and
7 the former Branch Manager of the Roanoke Office of Roan-
8 oke Engineering Sales Corporation?

9 A: I am.

10 Q: When did you graduate from college?

11 A: 1959.

12 Q: Where did you go to college?

13 A: V.P.I.

14 Q: What did you do when you finished college

15 A: Went into the Navy.

16 Q: How long did you serve there?

17 A: Three years.

18 Q: After the Navy, where did you go to work?

19 A: Roanoke Engineering Sales Company.

20 Q: Where?

21 A: In Roanoke.

22 Q: Was that a family business - there has
23 been testimony about the fact that your father started the
24 business, your three brothers before you went into it - is
25 that correct?

1 A: Yes.

2 Q: You were the fourth child of your father
3 to go into the business?

4 A: Yes.

5 Q: What did you do when you first went to
6 work for Roanoke Engineering Sales?

7 A: I took off-jobs, estimated jobs, called
8 on architects, sold to general contractors - just you name
9 it and I did it.

10 Q: You learned the business?

11 A: Yes.

12 Q: Did there come a time when you were made
13 the manager of the Roanoke Branch?

14 A: Yes.

15 Q: When was that?

16 A: 1963, I think.

17 Q: Where was the office of the Roanoke Branch?

18 A: In Roanoke on Franklin Road.

19 Q: Was that also the general office of the
20 company?

21 A: Yes, it was.

22 Q: Did there come a time when the Roanoke
23 Branch office moved?

24 A: Yes.

25 Q: When was that?

1 A: I'm uncertain, but I think approximately
2 1965.

3 Q: In 1965 what personnel were in the Roanoke
4 Branch office?

5 A: Myself and a secretary.

6 Q: Where was your father?

7 A: He was on Franklin Road.

8 Q: What was he doing?

9 A: Acting in the capacity of . . .

10 Q: Was he the coordinator for the branch
11 offices - is that a fair statement?

12 A: I would say so, yes.

13 Q: Was your brother Joe, doing about the
14 same thing in Richmond that you were doing in Roanoke?

15 A: Yes.

16 Q: And your other brother in Charlotte and
17 the other brother in McLean were doing about the same
18 thing in those places that you were doing in Roanoke?

19 A: Yes.

20 Q: How did the Roanoke Branch office of
21 Roanoke Engineering Sales continue after that?

22 A: Very well - well, what do you mean?

23 Q: What did you do - did you add people?

24 A: Yes.

25 Q: Did sales increase?

1 A: Yes.

2 Q: What was the nature of the business?

3 A: Manufacturers "rep".

4 Q: What did you do?

5 A: I became a sub-contractor.

6 Q: When did the company incorporate?

7 A: 1963 - I believe that's correct.

8 Q: From 1963 until 1978 were there regular
9 Board meetings, members of the Board?

10 A: Yes.

11 Q: And who attended those meetings?

12 A: At the start, four brothers, father and
13 executive secretary.

14 Q: Did there come a time when your father
15 stopped attending?

16 A: No.

17 Q: Well, how about in April of 1978, who
18 attended the meetings - the same people?

19 A: The same people plus a Controller - I
20 think that's it.

21 Q: During that 15 year period from 1963 up
22 until let's say January 1, 1978, were there from time to
23 time differences between you and your brothers as to how
24 the corporation ought to be run?

25 A: Yes.

1 Q: Can you describe what some of those
2 differences were?

3 A: Well basically, the company was struc-
4 tured to perform in a capacity of Manufacturer's Repre-
5 sentatives. In that, I mean we were on a cash account-
6 ing basis and sub-chapter "S" structure, and I felt as
7 the company grew and changed its character that the struc-
8 ture should be altered to accommodate the operation better.

9 Q: Did your brothers agree with that?

10 A: No.

11 Q: Did the Directors make a decision as to
12 the route that would be followed?

13 A: Yes, in fact this subject came up a number
14 of times, and each time of course a decision was made.

15 Q: Did you always follow the decision made
16 by the Board of the corporation?

17 A: Yes.

18 Q: To your knowledge, has there ever been
19 an instance where you did not follow a decision made by
20 the Board?

21 A: No.

22 Q: Were there other differences as to the way
23 the conduct of the corporation or the business should be
24 run?

25 A: Yes. The operation that I speak of - con-
tractor, which entails installation - was not considered

1 a wise idea.

2 Q: Who didn't consider it wise?

3 A: Bud in Charlotte, and I guess Bob, maybe -
4 I'm not real sure about Bob.

5 BY THE COURT:

6 Which one is Bud?

7 A: Bud is this one right here. He's in Char-
8 lotte.

9 BY THE COURT:

10 What is his correct name?

11 A: Harry L., Jr.

12 BY THE COURT:

13 Who is the other one?

14 A: Bob in McLean.

15 BY THE COURT:

16 And what do you call Joe?

17 A: Joe.

18 BY MR. MOORE:

19 Q: Well, what was done about that?

20 A: Nothing - you mean . . .

21 Q: You said they didn't consider it to be a
22 wise procedure?

23 A: Nothing was done.

24 Q: What did you think should happen?

25 A: I thought that we should make the install-
ation end of our business a viable, good part of the

1 organization and make it work because I felt that it was
2 very necessary to perform the end-product, to perform
3 the task of supplying the end-product.

4 Q: Did I understand you to say, Mr. Rosenbaum
5 that you thought that Roanoke Engineering ought to do the
6 installation work itself?

7 A: Yes.

8 Q: Your brothers didn't think that should
9 happen that way?

10 A: Right.

11 Q: Why?

12 A: Because there were tax implications that
13 would cause us to change from a Manufacturer's Repre-
14 sentative status to a sub-contractor's status which would
15 necessitate acquiring a different type license.

16 Q: Would it be a more expensive way to oper-
17 ate?

18 A: Yes.

19 Q: Why was what we've heard as Colonial
20 ever formed ?

21 A: To perform the installation at the pleasure
22 of Roanoke Engineering Sales Company.

23 BY MR. MUNDY:

24 I'm sorry I didn't hear you, sir.

25 BY MR. MOORE:

"To perform the installation at the pleasure
of Roanoke Engineering Sales Company."

1 BY MR. MOORE:

2 Q: When was that accomplished - when was
3 Colonial formed?

4 A: Approximately 1971.

5 Q: Did Colonial perform work for more than
6 one branch of Roanoke Engineering Sales?

7 A: At the beginning, no.

8 Q: At anytime did it?

9 A: Yes.

10 Q: Explain that if you will.

11 A: When Colonial was formed, Roanoke Engi-
12 neering Sales Company was getting into the business of
13 supplying and installing materials for the interiors of
14 institutions, systems work; and being in systems work,
15 it necessitated being in the installation business. As the
16 Roanoke Branch moved forward in that direction, the Rich-
17 mond Branch too moved forward in that direction; and at
18 the first the Richmond Branch acquired their installation
19 capabilities from outside installers until on a particular
20 job the installer went bankrupt and Richmond needed the
21 help of Colonial, so Colonial pitched in and helped Rich-
22 mond.

23 Q: What year was that?

24 A: I'm uncertain. It's the Williamsburg
25 school job and I think it's about 1976, but I'm not sure

1 about that - no, 1966. No, that's not right - wait a min-
2 ute - '73, I'd say about '73.

3 Q: When you say the Richmond Branch, you're
4 speaking of your brother Joe?

5 A: Yes.

6 Q: Did the problems of what to do with Colo-
7 nial take up a lot of the time of the meetings of the Board
8 of Directors from , say 1973 through 1978?

9 A: No.

10 Q: Was it a question that was talked about
11 often?

12 A: Yes.

13 Q: What were the nature of the discussions?

14 A: Well, it was really not much talked about.

15 Q: Well, when it was talked about, what was
16 discussed?

17 A: How are you doing, and you know . . .

18 Q: You mean your brothers asked you how was
19 Colonial doing?

20 A: Right.

21 Q: Who paid the bills of Colonial?

22 A: Colonial. What do you mean, I don't under-
23 stand?

24 Q: Who paid the bills - did Colonial pay them
25 or did Roanoke Engineering pay them?

1 A: Colonial paid the bills. Is that what you
2 mean? Colonial paid the bills, they might have been -
3 Colonial paid the bills.

4 BY THE COURT:

5 Out of the same office?

6 A: Same building, but like Roanoke Engineer-
7 ing was in this office and across the hall was Colonial.

8 BY MR. MOORE:

9 Q: Did they have any of the same employees?

10 A: No.

11 Q: How did you consider the two companies,
12 Roanoke Engineering Sales and Colonial?

13 A: Well, I tried very hard to consider them
14 separate companies, and I think I succeeded in doing that.

15 Q: Did there come a time when Colonial was
16 in severe financial - or had severe financial problems?

17 A: Yes.

18 Q: Did you negotiate a loan for Colonial?

19 A: Yes, but that wasn't in a particular time
20 and space; that was over a period of time.

21 Q: Did you personally guarantee or endorse
22 a note for the loan for approximately 40-some thousand
23 dollars?

24 A: Yes.

25 Q: Did there come a time when the corporation
made or had serious discussions about the future of

1 Colonial and what should be done with it?

2 A: Yes.

3 Q: How about in April of 1978 - what did you
4 believe should be done with Colonial?

5 A: I thought Colonial should be bankrupt.

6 Q: Why did you think that?

7 A: Because it failed on its own merits.

8 Q: What did your brothers say?

9 A: They didn't agree with that.

10 Q: What did they think should be done?

11 A: They felt that the money should be - that
12 it should be discontinued but not bankrupt.

13 Q: Did you make any suggestions to your
14 brothers as to what should be done in the event that the
15 bills of Colonial were paid by Roanoke Engineering?

16 A: I didn't understand that.

17 Q: Who was going to pay the bills of Colonial,
18 if they were paid, if Colonial didn't have any money?

19 Who did your brothers suggest pay them?

20 A: The Roanoke Branch of Roanoke Engineering
21 Sales Company.

22 Q: What was your reaction to that?

23 A: Well, I felt like either we were or we
24 weren't, either we were Roanoke Engineering Sales Company
25 or we were Colonial, but you can't be both at one time
and separate another time.

1 BY MR. MUNDY:

2 I'm sorry, I didn't hear that.

3 A: Both at one time and separate at another
4 time. You cannot be both Colonial and Roanoke Engineer-
5 ing in one instance, and separate in another instance.

6 BY MR. MOORE:

7 Q: Do you recall having a meeting or conver-
8 sation with your brothers in April of 1978 and discussing
9 that question?

10 A: Yes.

11 Q: You heard your brother, Joe, testify about
12 meeting with you and giving you an ultimatum - do you
13 recall that?

14 A: Yes.

15 Q: Do you recall what happened before he
16 handed you the paper? What were the discussions about
17 what had gone on?

18 A: Well, it was a difference of opinion of
19 how to operate a business. He felt that the operation, I
20 guess should be the Manufacturer's Representative way;
21 I felt that it should be a sub-contractors way - is that
22 the point?

23 Q: No, I'm just asking you - is that what you
24 all discussed?

25 A: Well no, I guess - there was no discussio

1 at that time, it was just - a piece of paper was handed
2 to me.

3 Q: Where were you when the paper was handed
4 to you?

5 A: In a motel on Franklin Road.

6 Q: And how did you happen to be there?

7 A: This is where they usually stay when they
8 come to Roanoke, and this was the place where we met.

9 Q: Did he call you and ask you to come and
10 give you a piece of paper, or what were the circumstances?

11 A: I don't recall.

12 Q: But you got the paper?

13 A: Yes.

14 Q: Did you understand what the paper said?

15 A: Yes sir.

16 Q: What did you understand it to say?

17 A: Well, to me it said either you do what I
18 think you should do or get out - that's what I read it to
19 say.

20 Q: The next day, did you attend a meeting?

21 A: Yes.

22 Q: Well let me ask you this: That night after
23 you got the paper from your brother Joe, did you have any
24 conversations with Joe or any other member of your family
25 as best you can recall?

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A: No.

Q: The next day, did you attend a meeting?

A: Yes.

Q: Was that a regularly scheduled meeting of the Board of Roanoke Engineering Sales Company Incorporated?

A: Yes.

Q: Where was that meeting held?

A: On Franklin Road at the Roanoke Engineering Sales Company.

Q: What happened at the meeting?

A: Those points were brought up and questioned, and I did not reply.

Q: Did you say anything at all?

A: No.

Q: What did the Board do?

A: Voted.

Q: Voted to do what?

A: Voted for the directors.

Q: You were not included among those elected?

A: That's right.

Q: What else did they vote to do?

A: I'm not real sure.

Q: Were you terminated as manager of the Roanoke Branch?

1 A: Yes.

2 Q: Now Mr. Rosenbaum, if at that Board Meet-
3 ing the Board had brought up the question raised in this
4 ultimatum and the Board had voted for the Roanoke Branch
5 office to issue change orders to Colonial Installations
6 sufficient to pay off all Colonial debts except for those
7 that you owed, and the Board had voted to terminate Colo-
8 nial, and the Board had voted that contracts should only
9 be awarded to an installer corporation if it provided bonds
10 on each job - would you have followed those directions?

11 A: Yes.

12 Q: What day of the week was April 15 - do
13 you remember?

14 A: You mean the day of the motel incident?

15 Q: The day that the meeting was held that
16 we just discussed?

17 A: The Board Meeting?

18 Q: Yes sir.

19 A: I think it was Saturday.

20 Q: Do you remember the next work day?

21 A: Monday.

22 Q: Tell the Court how you felt when you went
23 to the office on Colonial Avenue among all the people that
24 you had hired - had you hired everybody in that office?

25 A: Yes.

1 Q: How did you feel going in there among
2 all the people you had hired? As best you can recall?

3 A: I felt like I couldn't stay, effectively,
4 in that position.

5 Q: Did you try?

6 A: You mean did I try to stay there?

7 Q: Yes - did you try to make things work?

8 A: I don't think I really tried that hard, no.
9 I think that - I didn't feel like that there was any - in
10 other words, you know, it's like, I guess it's like grow-
11 ing with a group and then you're no longer in that group.
12 You can't get back in, you know. You can't come back in
13 with that group in a different - or I didn't feel like I
14 could.

15 Q: Did you think there was any way you
16 could effectively operate as a salesman for Roanoke Engi-
17 neering Sales Company Incorporated?

18 A: No.

19 Q: Did you, in fact, submit a letter of resig-
20 nation as a salesman on the 29th of April?

21 A: Yes.

22 Q: When did you first learn of Mahone Incor-
23 porated, or when did you and Mahone Incorporated first
24 have any contact after the 29th of April?

25 A: About a week following the resignation,

1 Mr. Mahone telephoned me to state that he had heard
2 about the separation and that I was welcome to come over
3 and hang my hat at his place anytime I wanted to.

4 Q: Did you thereafter talk with Mr. Mahone
5 about hanging your hat at his place?

6 A: Yes.

7 Q: You've heard his testimony that effective
8 July 1 you purchased certain of the assets of that com-
9 pany - is that right?

10 A: Right.

11 Q: What did you purchase?

12 A: Good will, the name of Mahone and the
13 chance to represent the lines that he had.

14 Q: Did Roanoke Engineering Sales Company
15 Incorporated represent any of the lines that Mr. Mahone
16 had?

17 A: Yes, General Partitions.

18 Q: Who else represented General Partitions -
19 anybody that wanted to?

20 A: I would imagine so, I really don't know.
21 I was unaware that - of course I was unaware that Mahone
22 did, but I thought when I was at Roanoke Engineering that
23 we had an exclusive with General Partitions.

24 Q: Then you found that Mahone had the
25 same sort of an agreement?

1 A: Yes.

2 Q: From April 29 till July 1, did you engage
3 in any business other than negotiations for the purchase
4 of certain of Mahone's assets?

5 A: No.

6 Q: On July 1, tell me what you did at Mahone's

7 A: I became the owner and manager of Mahone
8 Incorporated.

9 Q: What was the business that you were en-
10 gaged in?

11 A: Manufacturer's "rep".

12 Q: And as a Manufacturer's "rep" at Mahone,
13 what were you doing? What were you doing in order to
14 earn money?

15 A: Taking off-jobs that general contractors
16 bid on that architects specify material - in other words,
17 what I was doing when I first went in business.

18 Q: Did you have any help - anybody else
19 working there at Mahone?

20 A: Yes.

21 Q: Who was that?

22 A: Lee Holton and a secretary.

23 Q: How long did you continue to operate under
24 the name of Mahone?

25 A: Until approximately the first part of Octo-
ber.

1 Q: Did you change the name of the business
2 under which you were operating?

3 A: Yes, I did.

4 Q: Q: What did you change the name to?

5 A: Rosenbaum of Roanoke.

6 Q: Did you change the nature of the kind of
7 work that you were doing when you changed the name?

8 A: No, I did not.

9 Q: Today are you representing any of the
10 manufacturers that Roanoke Engineering Sales Company
11 Incorporated represented when you worked there?

12 A: Am I representing any of the manufac-
13 turers?

14 Q: Yes sir.

15 A: Yes.

16 Q: Which ones?

17 A: General Partitions.

18 Q: Other than General Partitions?

19 A: No.

20 Q: Have you, as far as you know, taken any
21 business from Roanoke Engineering Sales Company Incor-
22 porated since you began working on July 1, 1978? As far
23 as you know?

24 A: I don't know, I really don't know. My
25 answer is no, as far as I know.

1 BY MR. MUNDY:

2 I'm sorry, I didn't hear you.

3 A: My answer is no, as far as I know.

4 BY MR. MOORE:

5 Q: Are you doing anything now, Mr. Rosen-
6 baum, that was not being done by someone else working
7 for Mahone in the last eight years?

8 A: No.

9 Q: How many other people are involved in
10 this same business?

11 A: You mean . . .

12 Q: In the Roanoke Valley. You've heard
13 Mrs. Holton testify . . .

14 A: Oh, I'd say six, I can think of six right
15 now - I'm sure there's more than that - seven, I forgot
16 Lee's Lines.

17 Q: Seven?

18 A: Yes.

19 Q: The kind of work that you're doing now
20 is that the kind of work also done by Roanoke Engineer-
21 ing Sales?

22 A: To a slight degree and - may I explain
23 that?

24 Q: Yes, I wish you would, and your refer-
25 ence point should be Roanoke Engineering Sales Company
as it was on April 15, 1978.

1 A: The work that Roanoke Engineering Sales
2 was doing when I was the manager of the institutional
3 interior design and supply and installation and service
4 work; and by that I mean the method, the marketing method,
5 of performing that work is different than what I am doing
6 now. The marketing method of performing the interior
7 work for schools is such that your customers, your prime
8 customer, becomes the school board and the teacher with
9 the architect involved; and in other words what it amounts
10 to, that the work is 99 percent up front. The award of
11 the contract is a matter of just really paperwork, but the
12 work that is done and a conceptual sale is 99 percent up
13 front whereas the manufacturer's work is a product sale,
14 is a low-dollar sale, a bid item sale, so it's a different
15 method, different way of operating.

16 Q: In the work that you're doing now, do you
17 have any need for an interior designer?

18 A: No.

19 Q: Do you have any need to have a salesman
20 that does what Hugh Garth does?

21 A: No, not what he does now, no. What he
22 started out doing maybe yes, but not now.

23 Q: Are you able to tell the Court or give the
24 Court some idea in terms of total overall volume of how
25 much is done by Roanoke Engineering Sales, or was done

1 when you were last there, that you are now engaged in
2 doing?

3 A: Less than 10 percent - of what I'm doing
4 now, based on what I was doing when I left?

5 Q: Yes.

6 A: Less than 10 percent.

7 Q: Now what is less than 10 percent - of
8 what?

9 A: In other words, the work that I'm perform
10 ing is a Manufacturer's Representative-type of work, and
11 the work that I was performing at Roanoke Engineering
12 Sales Company - or the work the company was performing
13 was a contracting, sub-contracting nature. One is in-
14 stalling the job, the other is selling the product.

15 Q: Which one is installing the job?

16 A: The institutional interior sales is the
17 installation.

18 Q: Mr. Rosenbaum, you've heard the people
19 testify about your work efforts while you were at Roanoke
20 Engineering Sales - did anyone on the Board or any offi-
21 cer of Roanoke Engineering Sales ever tell you that you
22 were going to lose your job because you weren't working
23 hard enough?

24 A: I don't recall ever hearing that, no.

1 BY MR. MUNDY:

2 I'm sorry, I didn't hear you.

3 A: No. We were all vulnerable to that, I
4 suppose.

5 BY MR. MOORE:

6 Q: As far as you are concerned, did you de-
7 vote your entire time, energy and ability to the best in-
8 terest of Roanoke Engineering Sales Company Incorporated
9 and to the performance of your duties as manager of the
10 Roanoke Branch and as Treasurer up until the time that
11 you were terminated?

12 A: Yes, and I might just say there that Treas-
13 urer is simply a title.

14 Q: There are no duties involved in that?

15 A: No.

16 Q: Did you go to the office every morning?

17 A: Yes.

18 Q: You heard your former secretary say that
19 she guessed you worked about six hours a day - what's
20 your comment about that?

21 A: She's right, but I think that where she
22 may not see my physical appearance was on the job six
23 hours a day, but my thoughts and my management actions
24 were much more than six hours a day.

25 Q: Did you work at night?

1 A: When I felt it necessary, and again, how
2 do you identify work - yes. Yes, at times I did.

3 Q: Other than your involvement with Colonial
4 were you ever engaged in any other business pursuit other
5 than that connected directly with Roanoke Engineering
6 Sales?

7 A: No.

8 Q: You 've heard some conversation about
9 the importance of the bidding time - do you know what
10 they're talking about?

11 A: Well, here again the type of work and a
12 Manufacturer's Representative way of doing business, it
13 is a bid, competitive nature; but in a sub-contract and
14 conceptual sales kind of business all the work is done
15 when it comes to the bid time, so really most of the time
16 it is not necessary. It's not a critical time, in other
17 words. It's critical in a Manufacturer's "rep" business,
18 but it isn't in a sub-contractor's business.

19 Q: Did you ever fail to bid a job that your
20 brothers thought you should have bid?

21 A: Possibly.

22 Q: As far as you know, did you?

23 A: I can't really think of any, but I'm sure
24 there may have been.

25 Q: Let me just ask you one last question the

1 A: I don't follow you.

2 Q: Well, you said that no one else but
3 Mahone or Cates, or any of these other people - well,
4 you stated you're not doing anything now that was not
5 done by someone at Mahone or Cates or some of these
6 other places for the last eight years?

7 A: Right.

8 Q: But none of those people, other than your-
9 self, had an Employment Contract with Roanoke Engineer-
10 ing which contained a non-competitive clause?

11 A: I can't answer that. I know what I had.

12 Q: You don't know of anyone at Mahone or
13 Cates or anybody else that had a Contract with Roanoke
14 Engineering, do you?

15 A: No.

16 Q: But you did?

17 A: Right.

18 Q: Now have you, either during your employ-
19 ment with Mahone Incorporated or now with Rosenbaum of
20 Roanoke Incorporated, bid a job that you know was also
21 bid by Roanoke Engineering?

22 A: Have I bid jobs that I know were bid?

23 Q: Yes - or that you didn't know about.

24 A: Yes.

25 Q: Which ones?

1 A: Raleigh Court Church.

2 Q: That would have been the one that Mr.
3 Tomlinson testified to this morning?

4 A: That's correct.

5 Q: Any others?

6 A: Wasn't there one mentioned the other day.

7 Q: How about New River Community College?

8 A: Yes.

9 Q: And how about James Madison University?

10 A: Right.

11 Q: And how about the Roanoke County Jail?

12 A: Right.

13 BY THE COURT:

14 Who got the Roanoke County Jail?

15 BY MR. MUNDY:

16 Q: Who got the Roanoke County Jail?

17 A: It hasn't been gotten yet.

18 BY UNIDENTIFIED PERSON:

19 It was awarded to J. M. Turner.

20 BY MR. MUNDY:

21 Q: Are you familiar with a company called
22 J.L. Industries?

23 A: Yes.

24 Q: Does Roanoke Engineering represent that
25 manufacturer?

1 A: Right, yes sir.

2 BY MR. MUNDY.

3 Q: Curtis, you have said that you would
4 have - with regard to the April 15, 14-15 Meeting -
5 that you would have followed the directions with regard
6 to the change order?

7 A: Yes.

8 Q: All right, now you've read that ultimatum
9 I'm sure - we've called it an ultimatum, that's the way
10 we've referred to it - I'm sure you've read that a number
11 of times?

12 A: Right.

13 Q: A hand-written memorandum to you from
14 your brother, Joe?

15 A: Yes.

16 Q: And didn't he indicate in Paragraph D:
17 "We hope you'll agree to go along with us. If so, you
18 should tell us so when the question is put to you. If
19 you don't indicate agreement, if you choose to be silent
20 or non-committal or if you tend to walk out of our meet-
21 ing, or if you don't attend our meeting at all, any of
22 these will be taken by us as a "no" on your part." You
23 knew that before you went to the meeting?

24 A: Correct.

1 Q: And yet you testified on Direct Exami-
2 nation, that at the meeting you said nothing?

3 A: True.

4 Q: Well hadn't you been forewarned that
5 silence was going to be equivalent in their minds to a
6 "no"?

7 A: True.

8 Q: Well, why didn't you simply put up your
9 hand and say I have been out-voted, but yes I'll go along
10 with it?

11 A: Had I been out-voted, I would have.

12 Q: Well, the Minutes reflect that . . .

13 A: I wasn't out-voted, this was an ultimatum.

14 Q: All right, it's now an ultimatum, but at
15 the meeting, the Minutes reflect that after discussing the
16 unbalanced financial condition of Colonial Installation
17 in its relation to the Rosenbaum family and Roanoke Engi-
18 neering, a motion was made and seconded to write change
19 orders to be charged to the Roanoke Branch for an amount
20 sufficient to cover Colonial's indebtedness. The motion
21 carried with one Director abstaining: Curtis Rosenbaum.
22 You were out-voted there, weren't you? On that point?

23 A: True, yes. Had it taken place there origi-
24 nally - had the question come up at that meeting, I would
25 have voted as I felt I should have but had it - in this

1 instance - this had happened on numerous occasions.

2 Q: Who wrote the change orders for the
3 Roanoke Branch while you were there?

4 A: What do you mean?

5 Q: Did the Branch Manager write the change
6 orders?

7 A: Yes.

8 Q: So either at the meeting on April 14 or
9 April 15 or during the two weeks thereafter while you
10 continued in the company's employment, at no time did
11 you say, yes I'll write that change order to cover Colo-
12 nial's situation?

13 A: True.

14 Q: Why didn't you?

15 A: Because it wasn't an action of the corpo-
16 ration. It was either you think the way I want you to
17 think or get out, and that's how I felt when I read it.

18 Q: All right, you say it wasn't an act of the
19 corporation . . .

20 A: Originally.

21 Q: Well, it was at the April 14 meeting.
22 That's what the Minutes reflect.

23 A: Originally.

24 Q: What are you talking about?

25 A: In other words, the action took place

1 BY MR. MUNDY:

2 Q: Now you testified you joined Mahone
3 Incorporated effective July 1, 1978?

4 A: Right.

5 Q: Do you recall writing a letter to your
6 brother, Joe, on Mahone stationery dated June 8, 1978?
7 (SHOWING TO WITNESS)

8 A: Yes, I do recall writing that.

9 Q: How could you have written that on June 8
10 if you weren't affiliated with Mahone then?

11 A: I didn't say I wasn't affiliated, I said
12 I bought out the company July 1.

13 Q: When did you join Mahone - I thought
14 you said you joined them then?

15 A: No, it was about six weeks prior to that.

16 Q: When you sent out the Notice on Mahone's
17 stationery, reflected in our Exhibit 8, who did this go
18 to? Showing your new name, mailing address, telephone
19 number - Rosenbaum of Roanoke Incorporated?

20 A: Manufacturers and customers.

21 Q: All right, did you know for a fact that it
22 went to some of the manufacturers and customers of
23 Roanoke Engineering?

24 A: Yes, I'm sure it did.

25 Q: Now let's turn our attention briefly to

1 A: Right.

2 Q: Why couldn't you go - maybe not at 6:00
3 in the morning, but how about 6:00 in the afternoon?

4 A: Because it was helpful to me to go in the
5 middle of the day. I enjoyed that break from work.

6 Q: Even though it may have created problems
7 as far as the company was concerned - in their minds?

8 A: Well, it may, again, appear in their minds;
9 but from the performance, I don't think that that is true.
10 I don't think that it did deter the performance.

11 Q: Something resulted in an eighty thousand
12 dollar deficiency - did it not?

13 A: There again, you're looking at an eighty
14 thousand dollar deficiency and saying that is bad-bad.
15 I don't agree that it's bad.

16 Q: You testified on Direct Examination that
17 when you joined Mahone in July, 1978, that you essen-
18 tially did what you were doing when you first went in
19 business with Roanoke Engineering Sales?

20 A: That's true.

21 Q: And did that carry over to your work with
22 Rosenbaum of Roanoke, Incorporated?

23 A: Yes.

24 BY MR. MUNDY:

25 May I have just a moment, Your Honor?

1 done was to either be in the installation contractual
2 business all the way, and this is what, of course, I
3 did want, this is the direction I went in . . .

4 BY THE COURT:

5 Which one?

6 A: That is Roanoke Engineering Sales Com-
7 pany. Colonial was the company for Roanoke Engineering
8 to do the installation, but I either wanted to get into it
9 all the way or get out of it all the way, but it's difficult
10 to try to do two opposite things.

11 BY MR. MUNDY:

12 Q: And you thought Colonial should be bank-
13 rupt?

14 BY THE COURT:

15 Let's don't go into that; we've been through
16 that.

17 BY MR. MUNDY:

18 Q: All right sir, now when you joined Mahon
19 Incorporated, were you aware of the Non-competition
20 Provision in Paragraph 4 of your Employment Agreement
21 that is dated for a period of three years after termina-
22 tion of the Agreement? (READING NON-COMPETITION PRO-
23 VISION TO WITNESS) You certainly were aware of that
24 when you formed Rosenbaum of Roanoke, weren't you?

25 A: Yes.

THE COURT: Another point is whether or not to restrain the restricted covenant to the type of business.

I believe that was an issue last. Those two points I think were the things you ought to confine your evidence to.

All right.

MR. MUNDY: Your Honor, we do not have any more opening statements at this point.

THE COURT: I do not need one unless you all want to make them.

Does either party desire a separation of witnesses?

MR. MUNDY: I do, Your Honor.

THE COURT: Okay.

MR. MUNDY: I call Mr. Ebersol.

LAWRENCE EBERSOL

was called as a witness and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MUNDY:

Q State your name, please.

A Lawrence Ebersol. My nickname is Buzz.

Q What is your position for Roanoke Engineering Sales?

A I am the Comptroller for Roanoke Engineering Sales, Incorporated. I am Comptroller of Roanoke Engineering Sales located in the Accounting Office in Richmond, Virginia.

Q As Comptroller, what do your duties involve?

A I am responsible for the general accounting fundings in the corporation for the four branch offices and the executive office, accounts receivable, payrolls, preparation of financial reports and general administrative nature.

Q How long have you been with the company?

A I have been with the company for four years.

Q Are you familiar with Roanoke Engineering's financial records?

A Yes, very much.

Q During the fifteen years in which Curtis Rosenbaum was employed by Roanoke Engineering Sales, would he have had access to all financial records of Roanoke Engineering?

A He would have been a number of a select group. It is a small number of people. Certainly, the financial secrets of a financial nature, other than myself, would have been shared by five others.

Q Who were the other five?

A Chairman of the Board, Mr. Rosenbaum, Sr.; the branch managers; and myself; and the assistant secretary.

Q Do we understand that these experts are the only employees that Roanoke Engineering had that had access to all financial records?

A That's true.

Q Is there any person who is now an outsider of Roanoke Engineers other than Curtis Rosenbaum who have had access to these records?

A The only people who have had access would be the founding company. They would not have any intimate details.

Q I assume they would not be in competition?

A Definitely not.

Q When we refer to these financial records, what do they include?

A Daily, weekly, monthly, quarterly, semi-annual and annual information relating to number of cash submissions; number of orders by branch; what the gross profit was by

branch; a profit and loss statement for each of the four branches; the gross profit for profit margin; the overhead of a given branch in relationship to the other branches; and the corporation and relative responsibility of a given branch.

Q I am going to introduce these into evidence, but first I want to ask you certain general questions with regard to these records.

Did Curtis Rosenbaum's access to these records during his fifteen years in the company ever generate financial insight into the company's business operations?

A I believe it would. Particularly in relationship to the nature of the report and particularly ones relating to the number of orders from a given manufacturer.

The gross profit on the various orders, the gross profit for the given branch which would give him a percentage of mark-up to which no one else would be privy.

Q Mr. Ebersol, would these financial records to which you have referred enable Curtis Rosenbaum to calculate the cost of products sold by Roanoke Engineering, the mark-ups on these products and the profit margins effected by Roanoke Engineering?

A Yes, it would. By his knowledge of the overhead factors for the given branch, Roanoke, and also of the profit margin that might be different between different

suppliers.

Q How would he have known the profit margin of different suppliers?

A By the nature of the orders that were written by the branch which would indicate a buy-and-sell price and you can compute the percentage of profit at that point.

Q Would this information also have apprised Curtis Rosenbaum of the overhead experienced by Roanoke Engineering Sales through the years?

A Yes, that would be evidenced two ways. One is by monthly financial statements for the branch and other branches and also by a commission statement which is generated every six months for nondescriptive performances to the branch manager.

Q Would these records and information contained in the records, would you consider this confidential?

A Very definitely.

Q Would these records and the information contained therein have been available to anybody outside of the employment of Roanoke Engineering?

A Not in the intimate detail that they were prepared.

Q During the period of his employment with Roanoke Engineering, would Curtis have been familiar and

become familiar with the bidding process utilized by Roanoke Engineering in conjunction with its sealed-bid business?

A Yes, he would have been largely involved in that.

Q With this knowledge which Curtis Rosenbaum gained during his fifteen years employment with Roanoke Engineering, in your judgment now, give him a competitive advantage?

MR. MOORE: Your Honor, those are all questions for the Court to decide. Mr. Mundy has asked the witness for several opinions and I have not objected up to this point.

They are questions for the Court to decide.

THE COURT: I think I will have to decide that.

BY MR. MUNDY:

Q Mr. Ebersol, based on the information which Curtis Rosenbaum acquired during his period of employment, should he now be able to determine what Roanoke Engineering's bid is going to be on a particular job for which his own company is also bidding?

A He could very well use the information that he acquired in this process of bidding.

Q Should he thereby be able to calculate what

Roanoke Engineering's bid is going to be on a particular job?

A He can make a very close approximation based on past experience as to what the price or mark-up over cost would be.

Q Is there anyone engaged in business with your competitors other than Rosenbaum with Roanoke, Inc., who would have any knowledge at all about Roanoke's bids on a particular job?

A That would be highly unlikely.

THE COURT: You hope not anyway.

THE WITNESS: I certainly would hope that.

BY MR. MUNDY:

Q I am going to show you the various records and if you would go through and tell us what each of these represents.

MR. MUNDY: Your Honor, I would introduce these as a package as Plaintiff's next exhibit.

MR. MOORE: I have never seen the records.

THE COURT: Show them to Mr. Moore first.

MR. MUNDY: I will be glad to have you look at them.

THE COURT: Okay.

MR. MOORE: The records, I am not sure what

they are. I will reserve any right to examine them and enter into evidence at a later time.

THE COURT: That will be all right.

BY MR. MUNDY:

Q Mr. Ebersol, if you would go through all the records and state briefly what the record is, then I will intend to offer all the records as one exhibit.

A The daily cash is the corporate cash position and the number of orders, purchase orders that were written for the day and the amount of gross profit in those for the month to date and from year to date by branch and by the total corporation.

The second report, this is a regular copy of our regular monthly financial statement, the balance sheet of profit and loss statement reflecting our assets and liabilities as of the end of every month of the year.

There are various charts showing our position from a historical point of view and our receivables and payable in cash position and the amount of monies the corporation has borrowed.

There is a profit and loss statement by branch showing the gross sales for the branch and cost of sales; gross profit and branch salaries and expenses; operating

profit or loss of a given branch; and the net profit or loss of a branch.

There is a commission statement by branch showing where the individual branch stood at a particular month throughout the year.

A report, quarterly, as part of our financial statement showing working process, orders not processed which is an indication of our backlog position and this is broken down by branch which also gives you the amount of gross profit in the backlog by the individual branch.

There is a copy of a commission statement for the Roanoke branch showing the collections, gross profit for various orders that were generated by the Roanoke branch and collected in a six-month period.

A listing of the branch expenses and salaries and wages paid during that six-month period and as a relationship as to whether there was a commission payable to the branch manager or to some of his commissioned sales people.

A listing of the salaries of the people within the branch, what they were paid. A listing of all the individual orders that were collected, what the amount was of gross profit with commission and the date that it was paid.

Quarterly, each branch manager generates a quarterly report listing his visitors to the branch, the

visits he has made and as to what is involved in that individual branch as to the number of orders that he has written by the individual supplies and what the gross profit was on those orders which is indicative of the mark-up by suppliers.

This would be for all or individual branches. In addition, I attended all directors meetings as a guest since July of 1975 at which time I would present our monthly financial statement or our quarterly or at the annual meeting I would present the audited financial statement prepared by our independent auditor.

I would discuss the financial statement and answer any questions and be a part of the discussion. Once each year we would combine all of the branch reports and generate a number of orders.

Our gross profit in the sales dollars by supplier for the entire corporation is a overall view of who the strongest suppliers were, who were the smallest, what was to be discussed with regard to future activity.

The last statement is our audited financial report on a comparative basis for the two prior years, ending December 31, 1977 and '76.

MR. MUNDY: Your Honor, we would offer these as the next exhibit for the sales.

THE COURT: All right. I do not know what

number it is, but I will make it Exhibit A.

(Thereupon the above-mentioned documents were marked as Plaintiff's Exhibit A and entered into the Record.)

MR. MUNDY: We have no further questions, Your Honor.

CROSS EXAMINATION

BY MR. MOORE:

Q Mr. Ebersol, do you engage in the acquisition of business for Roanoke Engineering Sales?

A In some aspects, limited to my duties and responsibilities.

Q What would that be?

A Such as drawing Dun and Bradstreet reports and preparing notations as to the strength of either a customer or a supplier.

That's one example and another one would be as the accounting office prepares all of the purchase orders which have been sent in from the branches, I am aware of the relative profitability of an individual order and combination of orders.

I can make an opinion with regard to the

relative profitability of orders between branches.

Q The matter of mark-up is a matter that varies from job to job and product to product, isn't it?

A And from branch to branch.

Q Depending on whoever it is that is making the quote and many other factors involved, there is no set mark-up that Roanoke Engineering has based on its financial structure, is there?

A No. There is no specific mark-up.

MR. MOORE: That's all.

MR. MUNDY: We have no further questions.

THE COURT: All right. Thank you very much,

sir.

(The witness was excused.)

THE COURT: Call your next witness.

JOSEPH L. ROSENBAUM

was called as a witness and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MUNDY:

Q State your name, please.

A Joseph L. Rosenbaum.

Q What is your position with Roanoke Sales Company, Inc.?

A I am the President.

Q You previously testified in this case at the Hearing in December, 1978, is that correct?

A Yes, sir.

Q Was the Defendant employed from 1963 until April 29, 1978?

A Yes, sir.

THE COURT: All that is in the evidence.

Go ahead.

BY MR. MUNDY:

Q What other office did he occupy?

A He was a stockholder or member of the Board of Directors. He was a branch manager and treasurer.

Q In his position as Roanoke branch manager, did Curtis Rosenbaum acquire certain information regarding the company's business operation which he can now use to the

advantage of a competing company?

A I am sure.

MR. MOORE: Your Honor, he can testify as to what information he got.

THE COURT: That's a conclusion. Let him testify as to what he actually acquired. That is kind of a shotgun question, probably prepared by that Richmond lawyer.

BY MR. MUNDY:

Q Mr. Rosenbaum, would you describe the nature of any information which Curtis Rosenbaum acquired during the course of employment by Roanoke Engineering in which he can now use to his advantage?

A Yes, sir. May I rephrase that by saying what I might use if I were the party?

THE COURT: You have been in the business all your life. Tell us what you would acquire and how you would use it.

THE WITNESS: I started out with the fact that I went to work for my father. I learned from him from day one through his tutelage.

I got off the ground and started running. As the years evolved, I developed techniques with the

help of my father and the help of my brothers. I became more expert in running a business.

With the help of suppliers that I purchased from, with the help of their representatives that helped me promote out in the field, I gained a foothold in the business.

The insight that I got from financial records let me know what was profitable and what was not profitable.

We do have a margin or we have a target margin or a goal margin that we work to which is dictated by what it costs to do business.

I know that by looking at the financial statement. I developed contacts, not only from the standpoint of source, but from the standpoint of my customers, architects and contractors.

These things are invaluable to me, are necessary to me in running a business. All these things I developed over a period of years with Roanoke Engineering Sales.

BY MR. MUNDY:

Q Did Curtis Rosenbaum have the same business experience and the opportunity to glean the same knowledge

during his employment as Roanoke branch manager?

A Yes, sir.

Q During the time that Curtis Rosenbaum was employed by Roanoke Engineering, would you describe the working relationship which he had with the contractors, suppliers, manufacturers and, in particular, architects?

A In the normal process of doing his job over that period of years, you develop relationships which are key to being successful in business and he developed friendships and relationships that enabled him to make a going thing of his branch.

Q How important are these relationships to him now in his affiliation with Rosenbaum of Roanoke, Inc.?

A They have got to be vital.

Q There has been previous evidence to the effect that your company utilizes sealed bids, is that correct, in connection with part of its business operations?

A That is correct.

Q Would this information to which Curtis Rosenbaum had access during the time he was employed by Roanoke Engineering be an advantage to him now in connection with the sealed-bid nature of the operations?

A Not only would it give him a foundation on which to run his own business, but it would also give him an

insight into what we were going to do in a competitive situation.

Q You have heard Mr. Ebersol describe the various financial records of Roanoke Engineering to which Curtis had access during his employment?

A Yes, sir.

Q How could he now use the information contained in those records to his advantage in connection with the sealed-bid competition?

A Well, it would apply to any of our bidding, sealed or otherwise. He would have a knowledge of our basic margins.

He would have a knowledge of our basic mark-ups. He would have a knowledge of what it would cost us to do business and what we strive for in dealing with our customers.

Q In your judgment, should Curtis now be able to determine what Roanoke Engineering's bid is going to be?

MR. MOORE: I object to what his judgment is.

THE COURT: I do not believe you can ask him that type of question.

MR. MUNDY: All right, Your Honor. I will try and rephrase it.

BY MR. MUNDY:

Q Mr. Rosenbaum, given the information which is contained in the records now in evidence submitted by Mr. Ebersol, would a person who is engaged in business such as yours be able to determine what Roanoke Engineering's bid is going to be on a particular project?

A Would I have a good idea?

Q Yes.

A Yes, sir. I would have a very good idea.

Q If you were no longer employed, would you be able to determine what Roanoke's bid is going to be on a particular project?

A I would come real close.

Q If you were in competition with Roanoke Engineering and you wanted a particular job that Roanoke Engineering was bidding for, what would you do?

A I would make sure that I undercut what I projected that Roanoke Engineering Sales Company was going to bid.

Q Do you know for a fact whether Curtis Rosenbaum took any customer lists or supplier lists with him when he left the employ of Roanoke Engineering?

A I do indeed.

Q What did he take?

A The key thing that we picked up right away was the telephone index that had all the contacts that you use from day to day in conducting your business.

Beyond that, of course, he had his customer list, his supplier list which he has, I understand. The supplier list he has used since then.

Q During his period of employment by Roanoke Engineering, did Curtis Rosenbaum have access to all business methods utilized by Roanoke Engineering?

A Yes, sir.

Q Did he during that period have knowledge of the costs of materials and overhead of Roanoke Engineering?

A Yes, sir.

Q Was he during that time familiar with the company's mark-up and profit margins?

A Yes, sir.

THE COURT: You have already asked him that.

BY MR. WINDY:

Q During this period, did Curtis Rosenbaum attend trade meetings regularly?

A Yes, sir.

Q Did you and your other brothers attend those meetings?

A Yes, sir.

Q Is there anybody else outside of Roanoke Engineering who would have access to the information contained in the financial records which Mr. Ebersol produced?

A Not to my knowledge.

Q Approximately what percentage of your company's work is attained through sealed bids?

A With sealed bids, I would say that up until about a year ago the 10 percent total volume of the Roanoke branch office was counted for by commodity sales and 90 percent by what we call "Institutional work" which is the sealed bid portion of our work.

That figure varies in other offices. If I had to draw across-the-state kind of a figure, I would probably say something on the order of 25 percent for commodity and 75 percent for sealed goods.

Q If you were now branch manager of the Roanoke branch of Roanoke Engineering and left the company to establish a competing business, would you have the same duties, powers and responsibility as you had exercised as Roanoke branch manager?

A Yes, sir.

Q When Curtis Rosenbaum's employment was terminated, was there a stock purchase agreement in effect which

required - -

MR. MOORE: We have been through all this.

We went through every bit of this on December the 6th.

MR. MUNDY: We can update that, Your Honor.

THE COURT: What is the purpose of this?

MR. MUNDY: Your Honor, the purpose is simply to establish that when he left Roanoke Engineering there was an agreement which required the company to purchase his 25 percent interest in the corporation.

So, in effect, he has sold back in the company his interest in the company.

MR. MOORE: I would like to know how that's possible since we have a suit in this Court on that exact thing.

We have been through all this and I object to it.

MR. MUNDY: The question is very relevant.

THE COURT: Has it been done?

MR. MUNDY: Mr. Rosenbaum can very quickly tell you his position on that and I think Mr. Moore and his client would be very interested.

I realize that case is being heard by another Judge, but I think the Court in this case must know the status of that case.

THE COURT: I just know it is on the docket.
That's all I know about it. I have got enough work
by myself without worrying about the other Judges.

MR. MOORE: Judge, we have been through the
exact same thing before.

BY MR. MUNDY:

Q Was there such an agreement?

A Yes, sir.

Q Do you now concede that Roanoke Engineering
has to purchase his stock?

A Yes, sir.

Q Have you purchased it yet?

A No, sir.

Q Why not?

A We have to make a determination of the real,
honest valuation of the stock and we have to take into consi-
deration the offset that we have.

MR. MOORE: Judge, that's in another law-
suit and I do not want to have to cross examine him
on something that's in litigation.

THE COURT: Strike all that out if that is in
litigation.

MR. MUNDY: Your Honor, I am not sure whether

we previously offered this agreement into evidence.

THE COURT: It is in evidence.

BY MR. MUNDY:

Q Mr. Rosenbaum, you have referred to the opportunity and the relationship which Curtis was able to establish with Roanoke Engineering with suppliers, contractors and architects.

In connection with sealed-bid operations, is it important for one to have the architect's ear?

A Indeed.

Q Describe that in some detail.

A The process of getting work in this business begins with selling the concept or the idea or the notion of a product to whoever is going to stipulate its use, be it an architect or an owner.

So, it is important. It is vital that you use your personal contacts that you have developed over a period of years, to get that down on paper, committed to what we call the working document.

Having done that, if you have got the right kind of relationship, you can sort of assure your position and it is done frequently by working with the architect to make sure that the specification is held by, perhaps, in a

sense, stacking specifications.

In other words, providing for the substitution of competitive products, a better competitive name, but perhaps not so competitive in price.

That's done frequently. We like to think that we are as qualified, Roanoke Engineering Sales, as anybody in the business.

It is your relationship, the relationships, the personal relationships that you establish are just absolutely vital to our business.

MR. MUNDY: We have no further questions,
Your Honor.

CROSS EXAMINATION

BY MR. MOORE:

Q Mr. Rosenbaum, you heard Mr. Ebersol testify that there is no set mark-up on any given job?

A I heard him say that.

Q Is that right or wrong?

A I would simply add to that that there is absolutely, positively trending. There is a trend. While it might be ten and a-half percent on one job, it could just as easily be ten and three-quarters on the other job.

You have trends, predictable trends.

Q The point is that anyone trying to determine what Roanoke Engineering is going to bid on a given job will not know what percentage mark-up Roanoke Engineering is going to apply to that job, will they?

A They absolutely, positively will.

Q How will anyone know what Joe is going to put as a mark-up on a bid?

A Let me tell it to you. I can now tell you what either one of my present partners are going to - - I can predict what they are going to mark up on a given job.

Q Have you ever had as much as a 50 percent mark-up on a job?

A Sure.

Q How about 10 percent?

A Yes.

Q How does anyone predict whether it is going to be a 10 percent or a 50 percent mark-up?

A By knowing what the ground rules are. That was the point that I made a little while ago about stacking a specification.

If you have got a strong specification that you can pretty well govern and you pretty well call shots with, then you are able to make a larger mark-up and all you

do is read the paper and know the architect that you are dealing with and with that sort of thing you can pretty well determine what you can apply with a mark-up.

Q That depends on what?

A Whoever the decision maker is.

Q That does not depend on anything on Roanoke Engineering, that depends on architects, owners or someone other than you?

A What are you trying to say?

Q I just asked a question.

A Well, ask it again, please.

Q Your knowledge, that you are just talking about, that allows you to make a bigger mark-up, depends on your knowledge of the specifications of a given job, the architect on the given job and/or the general contractor on a given job, whoever you are putting your orders with and that is what determines your percentage of mark-up that you can, you think, you can put on a job and still be the low bidder for that job?

A Absolutely.

Q Since December 6, 1978, until this date, with all of this knowledge that Curtis Rosenbaum gained while he worked with Roanoke Engineering, how many bids has your company lost to him?

A I do not know.

Q Have you lost any?

A I do not know.

Q You have been manager of the Roanoke branch, haven't you?

A Yes.

MR. MUNDY: This goes beyond the scope of using trade secrets.

THE COURT: I think that's probably okay.

BY MR. MOORE:

Q You are aware of every bid made by the Roanoke branch of Roanoke Engineering, are you not?

A I am.

Q You are aware of every bid that you got?

A I am aware of the ones that I got.

Q Did the ones that you were concerned about, didn't you look to see who was the low bidder?

A We do not always get the information.

Q Have you in any one time been given information that Rosenbaum of Roanoke or Mr. Curtis Rosenbaum got a bid from you since December 6, 1978?

A I cannot honestly answer the question.

Q If you did, you would have known about it.

wouldn't you?

A Perhaps, but I do not remember.

Q Wouldn't you have made a note of it?

A Not necessarily.

MR. MOORE: I have no other questions,
Your Honor.

THE COURT: All right. Thank you, sir.

(The witness was excused.)

MR. MUNDY: Your Honor, I am going to ask
for a Motion to Strike the last portion of
Mr. Rosenbaum's testimony and the last questions
that Mr. Moore has asked.

In the case Worrie vs. Boze, the landmark
case is 191 Va. 916 and it's page 928. The Court
stated it is not necessary to show actual damage
by instances of successful competition.

It is sufficient if such competition in
violation of the covenant may result in injury.
The inability to prove actual damage is one of the
grounds upon which equity intervenes.

The covenant is lawful as to the time and
area and the Defendant shall be held to compliance.

MR. MOORE: Your Honor, in response, I would
like to show that the evidence is offered for the

MR. MUNDY: May we have a few minutes?

THE COURT: All right.

(Thereupon a short recess was taken and the parties left the room. Following the recess the parties returned to the room and the Hearing was continued.)

MR. MUNDY: Your Honor, we would call Curtis Rosenbaum as an adverse witness.

THE COURT: All right. Have a seat on the witness stand.

CURTIS ROSENBAUM

was called as a witness and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MUNDY:

Q State your name, please.

A Curtis Rosenbaum.

Q Mr. Rosenbaum, do you recall testifying at a Hearing in this case before Judge Ballou on December 6, 1978?

A Yes.

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Q At that time did you testify that in your present business you did not solicit the so-called institutional-type business of Roanoke Engineering, that is, a sealed-bid business?

A There is a difference between sealed business and institutional/agricultural business. Correct, I did not scope institutional business.

Q That would involve business such as Roanoke City School Board, would it not?

A From Roanoke City School Board was institutional and conceptual products.

Q Do you recall writing a letter to Mr. James Eavey dated March 8, 1979 to Roanoke Public Schools? Is this your signature?

A That is correct.

Q This is a very brief letter, only two sentences. Would you read those to the Court?

A "Dear Mr. Eavey, I talked with Joe Ingram today who suggested that I write this letter to you. I would like to be included on your list of bona fide bidders for furnishing and installing mountable and movable partition systems. Thank you very much for your consideration."

Signed Mr. Curtis Rosenbaum.

Q Did Mr. Foster on behalf of Roanoke City

School Board then respond to your letter by his letter dated March 12, 1979?

A That is correct.

Q Did he tell you he would be happy to include you on the bidders list?

A That is correct.

Q They would send you specifications on any future bids on this equipment?

A Yes.

Q Is there any question that you were soliciting sealed-bid business?

A Sealed-bid business is not the same as conceptual business. The buyer indicated to me that Joe Rosenbaum said that conceptual business is where you go in and you develop a specification with an owner from a conceptual standpoint.

You work with any Roanoke school system encouraging and explaining, convincing them that they can use the product that we sell on a conceptual basis.

In other words, it helps them develop their training or educational process and that is the conceptual-type of bid when you sell your product on a conceptual idea to help them educate.

THE COURT: You are doing that?

THE WITNESS: No, sir.

THE COURT: What are you doing?

THE WITNESS: Selling a product like, for example, a movable partition is designed or is called for by an architect to close an opening and the question is what manufacturer is the architect going to use to close that opening with a movable partition.

We are saying that we represent a manufacturer who does manufacture a movable partition that will work.

BY MR. MUNDY:

Q Mr. Rosenbaum, what architects are you referring to? Can you name just a few of them?

A Smichey & Boynton; Hayes, Seay, Mattern & Mattern; Frantz & Chapplear; Sherertz, Franklin & Shaffner.

Q When did you get to know all of these architects?

A During the last twenty years.

Q During the time you were employed by Roanoke Engineering?

A Yes. I would also say though that, of course, the company I bought out had an equally good relationship with these architects.

1
2 Q You testified with regard to the conceptual-
3 bid business. Isn't it a fact that partitions are a part of
4 the conceptual bid business?

5 A True. But, it is not a concept unless it is
6 the whole. In other words, partitions by themselves are not
7 a conceptual system, what we call the conceptual system, with-
8 out the cabinets and face work that go with it.

9 They have to work in harmony with one another.

10 Q Partitions and perhaps cabinets, any other
11 components?

12 A Tables, anything that would make up a system
13 to satisfy the conceptual idea.

14 Q Isn't this precisely the business that Roanoke
15 Engineering is also engaged in?

16 A Right.

17 Q And you are too?

18 A No.

19 Q You are not?

20 A No.

21 Q What were you soliciting when you wrote
22 Roanoke City School Board?

23 A Being able to sell to them movable and
24 mountable partitions.

25 Q You did not state that in your letter, did you?

You just asked to be put on the bidders list?

A That's correct.

MR. MOORE: I would object. He did say the
mountable and movable partition systems in the letter.
You just said he did not say it.

MR. MUNDY: I would like this as Exhibit 2.

THE COURT: Okay.

MR. MUNDY: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. MOORE:

Q We spent a lot of time on December 6 distin-
guishing between conceptual sales and institutional sales
and product sales.

That is what you were referring to just then,
is that correct?

A Right.

Q Do you recall on December 6 that Mr. Thompson
testified as general contractor for the bid for a church
that he received a bid from your company, Mahone, Inc., and
the low bid was from your sales company and it was awarded
although he did not know that you were involved in it.

Do you recall that?

A Yes.

Q Would that exact same situation prevail with Roanoke City, that is, if you were the low bidder, you would get it if you would submit a bid?

A Yes.

Q Please explain as briefly as you can the question of mark-up to Judge Ballou. What determines the mark-up that anybody is going to put on a product?

A The mark-up in our company, when I say our company, Roanoke Engineering Sales Company, when I was there, was a discretion of each branch manager.

In other words, I, as branch manager, had the discretion as to the amount of mark-up that I wished to put on a product and it could have been, well, it could have varied considerably.

And it did vary. The mark-up did vary.

Q Does theory about mark-up vary among you and your brother Joe and your other two brothers?

A Yes.

Q Is there any way you now know what mark-up Roanoke Engineering Sales is going to put on any particular bid?

A No.

Q Do you think the evidence was before that you

represent different manufacturers than does Roanoke Engineering Sales?

A Yes.

MR. MOORE: That's all. The Court may have some questions.

THE COURT: You have some that are the same, I believe?

THE WITNESS: There are none that I know of that are the same today, that I know of. There could be.

At the time of our last Hearing, I think there was a manufacturer that we both were buying from. When Mahone was existing and Roanoke Engineering, when I was there, both companies were buying from the same manufacturer, unbeknownst to the company.

MR. MUNDY: What manufacturer was that?

THE WITNESS: General Partitions, but I did not know that.

MR. MUNDY: Aren't you in a position to buy from a manufacturer that Roanoke Engineering buys from without knowing it if you did not know it there?

THE WITNESS: Yes.

MR. MUNDY: No reason why you could not?

THE WITNESS: Right.

2 REDIRECT EXAMINATION

3
4 BY MR. MENDY:

5 Q Mr. Rosenbaum, if Roanoke Engineering does a
6 total bid, that is, all parts of the concept, I believe you
7 testified that's the way they do submit their bid, isn't
8 that correct?

9 A Yes.

10 Q If competitor A bids the partitions and B bids
11 the cabinets and C bids chairs and tables, isn't the net
12 effect of that or can it be detrimental to Roanoke Engineering,
13 bidding the total project?

14 A It really should not be. I will put it that
15 way. I will explain that. The conceptual sales when I was
16 with Roanoke Engineering, the big selling point was that the
17 manufacturer in this particular case, Hauser Manufacturing
18 Company manufactured the whole system themselves.

19 In other words, they manufactured the walls,
20 cabinets and tables, the bulk of the system. This is important
21 because the partitions and the cabinets have to interface and
22 in order for them to interface properly even though it could
23 be two foreign manufacturers, the chance that they interface
24 successfully with two foreign manufacturers is not very good.

25 And that's why the architects in the school

system would prefer to buy the system from one manufacturer rather than two different manufacturers.

We feel like, when I was there, we felt like it was not a true system unless the interface was right. This is the point I am sold on.

Q Isn't it a fact that economically if on a half-million dollar job the total bids from the three separate competitors is \$20,000 less than Roanoke Engineering's total bid, then the work is going to go to the three different competitors, isn't it?

A This is true. This is when conceptual sales goes out the window. This is when it becomes a commodity low bidder sale.

This is a choice of the buyer. That system has to be maintained. Once the system is destroyed, once that continuity is destroyed, then it becomes a product sale and it becomes a low bid product commodity item.

Q Aren't you now in a position to be quite capable of bringing about that result?

A That is correct.

MR. MUNDY: No further questions, Your Honor.

THE COURT: Anything further, Mr. Moore?

MR. MOORE: No, sir.

THE COURT: Have a seat.

(The witness was excused.)

THE COURT: Call your next witness.

MR. MUNDY: The Plaintiff rests.

THE COURT: Any additional evidence, Mr. Moore?

MR. MOORE: We have nothing else, Your Honor.

MR. MUNDY: We would like a few minutes
before closing.

MR. MOORE: It is not usual to argue a case
before a Memorandum has been considered.

THE COURT: I have read it, but I want to
reread it.

MR. MUNDY: Your Honor, we would ask that the
Court hear a brief argument today.

(Discussion off the Record.)

CURTIS ROSENBAUM

was recalled as a witness and testified further on his oath
as follows:

DIRECT EXAMINATION

BY MR. MOORE:

Q You were quite capable of bringing about that
result. What did you understand the question to refer to as

2 that result?

3 A I was able to bid a single product such as
4 folding partitions.

5 Q You would not bid conceptually a total job?

6 A No.

7 THE COURT: Does that occur? Does that
8 situation occur?

9 THE WITNESS: It has not. But, it did occur
10 while I was with Roanoke Engineering.

11
12 CROSS EXAMINATION

13
14 BY MR. MUNDY:

15 Q Is there any reason why it cannot now occur?

16 A No reason.

17 Q In fact, if you bid the partitions for a job
18 in which Roanoke Engineering is going to bid the total project
19 and somebody else bid the cabinets and somebody else bid the
20 chairs, you would certainly like to get the partitions,
21 wouldn't you?

22 A Correct.

23 Q If you were the other two conceptual bidders
24 put together?

25 A Not conceptual bidders.

Copy 1. Ex II,
Ends

AGREEMENT made January 1, 1970, and amended January 15, 1977, between ROANOKE ENGINEERING SALES COMPANY, INCORPORATED, a Virginia Corporation, with principal offices in Richmond, Virginia, herein called "Roanoke", and Curtis Rosenbaum of Roanoke, Virginia, herein called "Employee".

WHEREAS, Employee is presently employed as Treasurer of Roanoke, and General Manager of its Roanoke, Virginia, Branch, and

WHEREAS, the parties hereto wish to set forth in writing the terms and conditions of his employment and compensation, therefore, it is agreed as follows:

1. Roanoke hereby employs Employee and Employee hereby accepts employment by Roanoke as Treasurer, and General Manager of Roanoke's Roanoke, Virginia Branch Office for a term of three years commencing January 1, 1970, and ending December 31, 1972, and thereafter on a year to year basis, unless terminated by either party giving written notice to the other of termination at least ninety days prior to December 31 of any year after 1972.

2. Employee shall devote his entire time, energy and ability to the best interests of Roanoke and to the performance of his duties hereunder, and to such other duties as shall be assigned to him from time to time by the board of directors of Roanoke, and shall not engage in any other business activity without the prior approval of Roanoke.

3. Employee shall be paid an annual salary of \$24,000.00 per year, plus non-discretionary bonuses to be determined as follows:

A sum equal to the net commission credited each period ending May 31 and November 30 on sales made by or through the Roanoke Branch Office, less (a) the salary paid Employee for the period and (b) all items of business expenses incurred by the Roanoke Branch and charged against its operations for the period, as shown by the cash basis financial statement for the period.

If in any period, the sum of the branch office expenses and the branch manager's salary shall be in excess of the net commission credited to the branch, then such excess shall be carried over to the succeeding period or periods and charged against net commissions for such succeeding period or periods, before any non-discretionary bonus is paid. . . .

For the purposes of this agreement, "net commission" is defined as $\frac{2}{3}$ of gross commission received by the Accounting Office and credited to the Roanoke Branch. "Gross commission" is defined as the difference between realizable selling price and direct costs (exclusive of overhead) relating thereto. Net commissions to be paid only for completed jobs and after 100% collection of the receivable.

4. For a period of three years after the termination of this agreement, for a reason other than the cessation of Roanoke's business or its bankruptcy, Employee will not, in the territory covered by Roanoke, directly or indirectly, own, manage, operate, control, be employed by, participate in, or be associated in any manner with the ownership, management, operation, or control of any business similar to the type of business conducted by Roanoke at the time of the termination of this agreement.

5. If, during the term of this agreement, Employee should become totally disabled by reason of sickness or accident, and thereby prevented from performing his duties hereunder, Roanoke shall pay to Employee the sum of \$1,000.00 per month for a period of six months from the beginning date of such total disability. Thereafter disability income payments shall be paid to Employee under the terms of the non-cancelable, guaranteed renewable, disability income policy which Roanoke has purchased on behalf of Employee (Union Mutual Policy #N 116 472) and which will provide payments beginning after a continuous period of disability which has lasted for one hundred eighty (180) days. The policy will provide a monthly payment of \$1,000.00 payable for up to ten years or to age sixty-five. Roanoke shall pay the policy premiums, which shall not be charged to Employee. The determination of total

disability shall be in accordance with the terms of the disability income policy, a copy of which has been delivered to Employee.

6. If Employee should die or resign during the term of this agreement or any extension thereof, Roanoke shall pay to his estate or to him the net commission that would have been payable to him on jobs sold through his branch prior to his death or resignation. Resignation or post-death commissions shall be reduced by (a) any excess expenses from preceding periods and (b) any overhead expenses incurred by Roanoke in completing unfinished jobs. Roanoke's determination of expenses and of net commission due, if any, shall be conclusive and binding upon all parties.

The company has the obligation to pay commissions in accordance with the provisions of paragraph 2 of section 3 above for the next six commission periods after death or resignation. If, at the end of six commission periods after date of death or resignation, there remain unfinished jobs, or jobs that have not been fully collected, the Board of Directors will evaluate each on the basis of collectibility. After such evaluation the Board of Directors, notwithstanding any other provisions of this agreement, may make cash payment of commissions on such unfinished or not fully collected jobs either in cash or by promissory note. The Board of Director's determination of such net commission payable or not, less related expenses, shall be conclusive and binding upon all parties.

The phrase "sold through this branch" is not limited to orders received in the Accounting Office, but shall include orders in transit, commitment documents or letters and confirmable verbal commitments with customers.

7. Any notices required to be given pursuant to this agreement shall be in writing and mailed to the parties at the following addresses:

Richmond - Roanoke Engineering Sales Company, Inc.
P. O. Box 4897
Richmond, VA 23229

Employee - Mr. Curtis Rosenbaum
P. O. Box 8055
Roanoke, VA 24014

This agreement shall be interpreted and construed under the laws of the State of Virginia and its provisions shall be binding upon and inure to the benefit of the parties, their successors and assigns.

WITNESS the following signatures and seals:

ROANOKE ENGINEERING SALES COMPANY, INC. :

By: Joseph L. Nash
President

ATTEST:

Robert S. [Signature]
Secretary

[Signature] (SEAL)
Employee

MINUTES OF SPECIAL DIRECTORS MEETING
(ROANOKE ENGINEERING SALES (. INC.

April 14, 1978

12/16/78
Compl. Ex # 2
CW

PLACE: 2203 Franklin Road, Roanoke, Virginia

PRESENT: Harry L. Rosenbaum, Chairman
Joseph L. Rosenbaum, President
Harry L. Rosenbaum, Jr.: Exec. Vice President
Robert F. Rosenbaum, Senior Vice President & Secretary
Curtis Rosenbaum, Senior Vice President & Treasurer

Guests: Nellie P. Bergman, Assistant Secretary
Laurence D. Ebersole, Controller

All Directors having waived notice on April 13, 1978 of the call of this special Directors meeting, the meeting was convened at 2:00 p.m. by Joseph L. Rosenbaum, President.

Following the discussion of the unbalanced financial condition of the Colonial Installation and Erection Co. and its relation to the Rosenbaum family and Roanoke Engineering Sales Co., Inc., a motion was made and seconded to write change orders to Colonial to be charged to the Roanoke Branch for an amount sufficient to cover Colonial's indebtedness to suppliers and others except for indebtedness guaranteed personally by Curtis Rosenbaum. The motion carried with one Director abstaining (Curtis Rosenbaum).

It was agreed that Colonial should immediately terminate all operations, and be phased out as promptly as possible.


After discussion of alternative successor installation companies, a motion was made and seconded that a successor company be required to furnish a performance bond. The motion carried with one Director abstaining (Curtis Rosenbaum).

There being no further business to discuss, the meeting was adjourned at 3:15 p.m.

At 10:00 a.m. April 15, 1978, the Special Directors Meeting was reconvened by Joseph L. Rosenbaum, President.

A discussion was held concerning elements of the adjourned meeting and the reasons the Director (Curtis Rosenbaum) who had abstained from voting, might have for not voting and a request was made for him to reconsider his action and to vote in favor of the two motions previously considered. This Director (Curtis Rosenbaum) declined. Joseph L. Rosenbaum, President, advised that such declination was considered a no vote.

There being no further business, the Special Directors Meeting was adjourned at 10:10 a.m.


Robert F. Rosenbaum, Secretary

Attest:


Joseph L. Rosenbaum, President

MINUTES OF ANNUAL STOCKHOLDER MEETING
ROANOKE ENGINEERING SALES CO. INC.

April 15, 1978

12/6/78
Exhibit No. 3.
RFR

Present: Joseph L. Rosenbaum
Harry L. Rosenbaum, Jr.
Robert F. Rosenbaum
Curtis Rosenbaum

The meeting was called to order at 10:10 a.m. at 2203 Franklin Road, Roanoke, Virginia, by Joseph L. Rosenbaum, President.

The Minutes of the last Annual Stockholders meeting were approved as written.

A motion made by Harry L. Rosenbaum, Jr. and seconded by Robert F. Rosenbaum, that the actions of the past year taken by the board of directors be ratified, carried unanimously.

A motion made by Harry L. Rosenbaum, Jr., and seconded by Robert F. Rosenbaum that the following Board of Directors be elected for the current year: Robert F. Rosenbaum, Harry L. Rosenbaum, Jr., Joseph L. Rosenbaum, and Harry L. Rosenbaum, Sr. The motion carried.

Copies of the Corporation's financial statement dated March 31, 1978 were distributed showing the valuation of the stock and the Corporate net worth (Corp. adjusted Book Value).

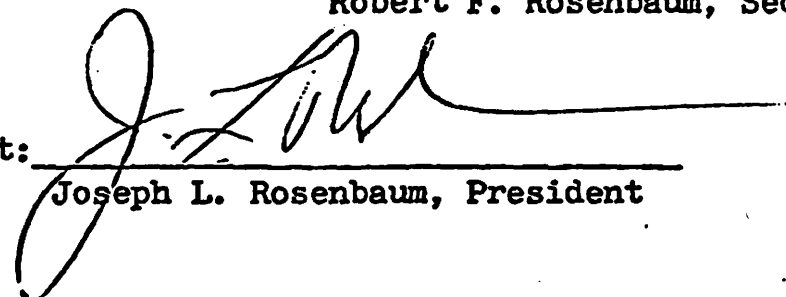
The value of the stock was discussed and no change was recommended.

All stock was directly represented at the meeting.

There being no further business, the meeting was adjourned.



Robert F. Rosenbaum, Secretary

Attest: 
Joseph L. Rosenbaum, President

Dear Curt:

End

[A] Last nite I tried to give you an idea of what was going to be said today, but you cut me off by saying that you'd wait until today to hear it. This note will have to serve the purpose.

[B] You're my brother, and I love you as a brother — and I'll always love you as a brother. But business is business, and brotherly love can't be allowed to influence basic business decisions.

[C] You know that Bert, Bob & I haven't always agreed with you in the past, but we've pretty well let you have your way. But now, we've reached a point on which we can't afford to let you have your way.

[D] We hope you'll agree to go along with us. If so, you should tell us so when the question is put to you. If you don't indicate agreement, if you choose to be silent or non-committed, or if you simply walk out of our meeting (or if you don't attend our meeting at all) — any of these will be taken by us as a "No" on your part, and we will

① accept your resignation from the firm

② at tomorrow's Annual Stockholders' Meeting, elect 3 directors

③ at tomorrow's Annual Directors' Meeting, elect 3 officers

④ relieve you as Branch Manager if you don't resign.

[E] The issue is simple. We require:

① Roanoke Branch change order to Colonial sufficient to pay off all Colonial debts, except those owing to you

② Terminate Colonial

③ Award contracts to a Colonial successor only if it provides Bond on each job.

[F] We love you.

Compt Ex #5
CWB

REGISTERED MAIL

1867 Blenheim Road, S. W.
Roanoke, Virginia 24015
April 29, 1978

Mr. Joseph L. Rosenbaum
Roanoke Engineering Sales Company, Inc.
P. O. Box 4897
Richmond, Virginia 23229

Dear Joe:

This letter is to notify you that, effective this date, I am terminating my status as an employee of Roanoke Engineering Sales Company, Incorporated.

In accordance with the stock buy-sell agreement dated January 1, 1970, and several amendments thereto, please consider this as my offer to the corporation to sell my stock at the price determined by said agreement.

Very truly yours,


Curtis Rosenbaum

MAHONE, INC.

Comp EXT # 8
gmb
DIAL (703) 774-4296
774-8304

MANUFACTURERS' REPRESENTATIVES

P. O. BOX 8586 ROANOKE, VIRGINIA 24014

PLEASE NOTE OUR NEW NAME, MAILING ADDRESS AND TELEPHONE NUMBER:

We have changed our name and moved our physical location to the Boxley Building on South Jefferson Street in Downtown, Roanoke. For the convenience of our customers and suppliers, our new mailing address will be Rosenbaum of Roanoke, Inc., P. O. Box 749, Roanoke, Virginia, 24004. We have also installed a rotary line with the number 345-0941. In the future, please use the following address and phone number:

ROSENBAUM OF ROANOKE, INC. 703-345-0941
P. O. Box 749
Roanoke, Va. 24004

MAHONE, INC.

Comp/Ex 77
DIAL 703 774-4296
774-9304

MANUFACTURERS' REPRESENTATIVES

P. O. BOX 8566 ROANOKE, VIRGINIA 24014

mate No. 03 - 78779 Date July 7, 1978 July 14, 1978
Principal Various Project: Raleigh Court Presbyterian Church
duct Various Location: Roanoke, VA
oted to General Contractors - Confirming to William B. McPeak & Q.M. Tamlinson
hitect Smithey and Boynton

propose to furnish the following:

ction 8A - Hollow Metal Frames by Allied Steel - Approved by architect.

17 - Hollow Metal Door Frames

THIS PROPOSAL IS BASED ON SHIPPING ALL FRAMES AT ONE TIME. IF
ADDITIONAL SHIPMENTS ARE REQUIRED, ADDITIONAL FREIGHT CHARGES WILL
BE ADDED FOR EACH ADDITIONAL SHIPMENT.

F.O.B. Miami, freight allowed to jobsite, no taxes or erection,
for the sum of \$711.00.

ction 8J - Folding Doors by Holcomb & Hoke - approved by architect.

2 - single door openings 10' x 4'
1 - single door opening 6'8" x 6'6"

Partitions will be X16 Super Soundguard, Fuftax 360 fabric,
with Aircscape.

F.O.B. Factory, including freight, tax and erection by qualified
installers, for the sum of \$1,109.00.

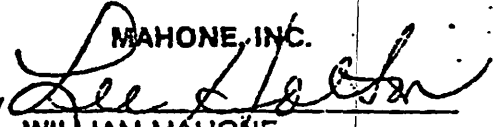
on hollow metal, we exclude weatherstripping, hardware
other than noted, lead, glass, screens and screening, rubber
placers, structural steel frames, thresholds, taxes and
erection.

voices payable within thirty days of issue or finance
charge of 1 1/2% monthly will be added to amount due.

Prices subject to revision if not accepted within 30 days.
Prices are exclusive of sales, excise, federal, state or local
taxes now in effect and/or any which may later be imposed,
unless otherwise noted. We exclude erection unless
specifically noted above, and unloading, storage and bond
at location at proper opening, electrical connections. If
erection is included, opening must be fully prepared to
receive door.

This quotation is subject to prompt acceptance, approval,
fabrication and shipment. Delays will require application of
prevailing costs at the time of manufacturing. All shortages
must be reported within thirty days after receipt of goods.

202

By 
WILLIAM MAHONE or
A. LEE HOLTON

MAHONE, INC.

DIAL 703 774-4296
774-9304

MANUFACTURERS' REPRESENTATIVES

P. O. BOX 8566 ROANOKE, VIRGINIA 24014

Estimate No. 07 - 70780

Date July 7, 1978

July 14, 1978

Principal Holcomb & Hoke - Folding Partitions

Project Raleigh Court Presbyterian Church, Roanoke, VA

Noted to General Contractors - Confirming to William B. McPeak + QM Tomlinson

Architect Smithey and Boynton

We propose to furnish the following:

Section 10C - Folding Partitions as approved by architect

One Model 3700 38'2" x 8'8" with 2½" panels.

Two Model 3700 31'10" x 8'8" with 2½" panels.

Standard vinyl, two pass doors, standard latch, standard aluminum trim as approved by addendum #1.

F.O.B. Factory, freight allowed to jobsite, including erection by qualified installers, and Virginia state taxes, all for the sum of \$6,420.00.

Invoices payable within thirty days of issue or finance charge of 1½% monthly will be added to amount due.

Prices subject to revision if not accepted within 30 days. Prices are exclusive of sales, excise, federal, state or local taxes now in effect and/or any which may later be imposed, unless otherwise noted. We exclude erection unless specifically noted above, and unloading, storage and bond fee, electrical connections. No Bond fees included.

This quotation is subject to prompt acceptance, approval, fabrication and shipment. Delays will require application of prevailing costs at the time of manufacturing. All shortages must be reported within thirty days after receipt of goods.

203

MAHONE, INC.

By Lee Holton
WILLIAM MAHONE/ LEE HOLTON

PURCHASE ORDER

Q. M. TOMLINSON, INC.

GENERAL CONTRACTORS

601 FIRST FEDERAL BUILDING

ROANOKE, VIRGINIA

August 15, 19 78

COMM. NO. 1276

○ Mahone, Inc.
P. O. Box 8566
Roanoke, Virginia 24014

FURNISH AND CHARGE THE FOLLOWING MATERIAL TO

Q. M. Tomlinson, Inc.
601 First Federal Building
Roanoke, Virginia 24011

SHIP TO

Q. M. Tomlinson, Inc.
C/O Raleigh Court Presbyterian Church
1837 Grandin Road, S. W.
Roanoke, Virginia

Furnish all labor, material and equipment to complete all Folding Doors (Section 8J) and all Folding Partitions (Section 10C), in accordance with plans and specifications, as prepared by Smithy and Boynton, Architects and Engineers, and as per your quotation:

Complete for the sum of

(Section 8J)	\$1,199.00
(Section 10C)	<u>6,420.00</u>
	\$7,619.00

All taxes, freight and erection included.

- Note: (1) Submit six (6) copies of all shop drawings for Architects approval.
(2) Submit copy of certificate of insurance.

No extra work or changes under this contract will be recognized or paid for, unless agreed to in writing before the work is done or the changes made.

COMMISSION NUMBERS MUST APPEAR ON ALL INVOICES
MAIL ALL INVOICES TO Q. M. TOMLINSON, INC., ROANOKE, VA

Q. M. TOMLINSON, INC.

Compl Ex # 10
RUB

ROSENBAUM OF ROANOKE, INC.
P. O. Box 749
Roanoke, Virginia 24004
703-345-0941

October 11, 1978

Q. M. Tomlinson, Inc.
601 First Federal Building
Roanoke, Virginia

Re: Raleigh Court Presbyterian Church
Roanoke, Virginia

Gentlemen:

Enclosed are six copies of drawings 2-FWC-3291-1-2-4-5 for approval.

Before shipment of track is possible, we must know:

When shipment is required.

Supporting steel heights so support rods may be cut to required length.

Before shipment of panels is possible, we must have:

An approved drawing.

Guaranteed or field checked dimensions.

Folddoor wallcovering card enclosed.

Tuftex 360 card for fabric accordian door enclosed.

Total floor covering thickness.

Please remember that fabrication of overhead will require 30 days after release, and panels will require 90-120 days after release. Release date is when information listed above is received.

Sincerely yours,

ROSENBAUM OF ROANOKE, INC.

RECEIVED

OCT 12 1978

Judith Clayton
Secretary

Q. M. Tomlinson, Inc.

Enclosures

ROANOKE BRANCH OFFICE ACCOUNTING - THIRD QUARTER, 1978

12/6/78.
2x10.
2x10

	ORDERS	SALES		PROFIT		2x10. 2116
<u>DOORS & FRAMES</u>						
Bymoco	3	\$ 8,223.00	\$ 8,223.00	\$ 888.00	\$ 888.00	
<u>WINDOWS:</u>						
Ware	2	\$ 3,157.00	\$ 3,157.00	\$ 504.75	\$ 504.75	
<u>PARTITIONS:</u>						
Am. Accord. Fold	2	\$ 368.00		\$ 102.00		
Hauserman	13	22,739.68		6,293.68		
Panelfold	2	1,861.46		340.41		
Robart	1	683.00	\$ 25,652.14	100.00		\$ 6,836.09
<u>SCHOOL, OFFICE & LAB EQUIPMENT:</u>						
American Desk	12	\$ 8,533.52		\$ 1,676.69		
Brodart	1	568.70		88.70		
Cole	2	1,943.14		384.39		
Gotham	2	582.50		139.60		
Hamilton	4	11,459.48	\$ 23,087.34	1,414.15		\$ 3,703.53
<u>INSTALLATION:</u>						
Arcom	1	\$ --0---		\$ (150.00)		
Cieco	2	74.00		74.00		
DC Const.	1	127.00		27.00		
Hiley-Bryant	1	--0---		(150.00)		
C. Markley	6	6,352.57	\$ 6,553.57	1,027.57		\$ 828.57
<u>MISCELLANEOUS:</u>						
ASI	1	\$ 1,362.00		\$ 210.00		
Abal Storage	1	4,039.00		791.00		
Ajusto	1	129.20		64.60		
Arch. Art	1	589.00		100.00		
Carter-Miot	2	863.50		237.05		
Everett-Waddey	1	655.00		229.25		
Home Lumber	1	131.78		22.34		
Magna Chart	2	239.41		61.41		
Marion Glass	1	143.00		31.25		
Nelson Harkins	1	18.00		8.50		
Skutt	1	400.00		134.00		
Skyline Paint	1	55.00		27.40		
Vogel Peterson	2	1,799.61		324.89		
Wilson, Andrew	2	17,730.88	\$ 28,155.38	3,503.08		\$ 5,744.77
TOTALS			\$ 94,828.43			\$ 18,505.70
CHANGE ORDERS			(3,741.20)			(212.64)
			\$ 91,087.23			\$ 18,293.06
From Other Offices -----						\$ 625.67
TOTAL FOR THIRD QUARTER						\$ 18,918.73
TOTAL FOR SECOND QUARTER						33,802.62
TOTAL FOR FIRST QUARTER						66,143.79
TOTAL FOR YEAR TO DATE						\$118,865.14

Profit to Other Offices, Third Quarter, 1978: \$137.83

ORDERS

SALES

PROFIT

*ISCELLANEOUS (cont):

. L. Industries	1	\$ 2,630.00	\$ 698.00	
Jasper	1	7,023.00	938.60	
Krueger	1	1,884.00	208.00	
Marion Glass	1	793.50	278.50	
Magna Chart	1	12.23	2.63	
Miller	1	370.00	50.00	
Nelson Harkins	1	42.00	21.00	
Penco	2	12,586.00	1,814.28	
Rich-John-Wynn	4	1,580.79	803.78	
Resco	1	537.00	71.70	
Skyline Paint	1	--0--	(392.00)	
South Rke. Lumber	1	11,325.32	1,252.74	
Williams Supply	1	240.00	44.00	
Wilson, Andrew	1	602.00	346.60	
Unknown	1	188.13	37.63	\$ 9,247.70
		\$ 55,926.78		

TOTALS	\$368,341.77	\$ 47,596.41
CHANGE ORDERS	(9,333.92)	(13,879.88)
	\$359,007.85	\$ 33,716.53

From Other Offices -----		86.09
TOTAL FOR SECOND QUARTER	\$359,007.85	\$33,802.62
TOTAL FOR FIRST QUARTER	460,330.77	66,143.79
TOTAL FOR YEAR, 1978	\$819,338.62	\$99,946.41

Profit to Other Offices, Second Quarter: Richmond: \$5,536.11

ORDERS

SALES

PROFIT

DOORS AND FRAMES:

Apton	1	\$ 1,142.00		\$ 122.00	
Arch. Doors	1	---0---		(4,823.00)	
Bymoco	3	16,904.00	\$ 18,046.00	1,910.00	\$ 2,791.00

WINDOWS:

Efco	1	\$ 458.00		\$ 100.00	
Ware	2	8,863.00	\$ 9,321.00	1,065.00	\$ 1,165.00

PARTITIONS:

American Accord.					
Fold	2	\$ 1,212.00		\$ 224.00	
General Partitions	1	1,515.00		252.00	
Hauserman	12	38,521.36	\$ 41,248.36	6,561.15	\$ 7,037.15

SCHOOL, OFFICE &
LAB EQUIP:

All Steel	3	\$ 2,081.76		\$ 286.76	
American Desk	7	6,680.60		2,492.21	
Brodart	2	186,465.55		21,901.87	
Cole/Litton	1	644.00		69.10	
Gotham	4	14,361.56		1,513.76	
Hamilton	5	4,593.25	\$214,826.72	2,404.25	\$ 28,667.95

WALL, WINDOW &
FLOOR TREATMENTS:

H & S Sales	1	\$ 482.00		\$ 93.50	
Marschell's	1	916.59		188.98	
Kravet Fabrics	1	8.00		--0--	
Reed	3	298.02		62.38	
Seabrook	1	58.00	\$ 1,762.61	--0--	\$ 344.86

INSTALLATION:

Brodart	1	\$ 6,233.00		\$ 833.00	
Cieco	4	243.00		243.00	
Custom Services	2	253.25		65.20	
D C Construction	2	775.00		265.00	
Gilmore	1	302.50		52.50	
Markley, C.W.	14	19,403.55	\$ 27,210.30	2,466.05	\$ 3,924.75

MISCELLANEOUS:

ASI	2	\$ 1,219.00		\$ 349.60	
ABAL Storage	1	---0---		(35.05)	
American Flagpole	1	798.44		434.44	
Andco	1	467.00		57.00	
Arch. Art	4	561.21		132.71	
Blaine	1	13.00		3.56	
Carter Miot	1	646.00		193.80	
Childers	3	9,608.10		1,275.10	
Davenport, A.C.	1	2,319.00		562.12	
Ewald Clark	1	90.00		14.00	
Graves Humphreys	1	52.31		18.21	
Hajoca	1	236.00		29.00	
Kutter, J.B. & C.A.	1	102.75		37.75	

ROANOKE BRANCH OFFICE ACCOUNTING - FIRST QUARTER, 1978

ORDERS

SALES

PROFIT

TOTALS	\$459,133.39	\$71,970.08
CHANGE ORDERS	<u>1,197.38</u>	<u>(6,067.84)</u>
	\$460,330.77	\$65,902.24

From Other Offices -----	241.55
	<u>\$66,143.79</u>

To Other Offices, First Quarter, 1978 ----- (\$188.67)

ROANOKE BRANCH OFFICE ACCOUNTING - FIRST QUARTER, 1978

ORDERS		SALES		PROFIT	
DOORS & FRAMES:					
Bymoco	4	\$ 15,945.00		\$ 244.00	
Mahone	1	1,145.00	\$ 17,090.00	149.00	\$ 393.00
WINDOWS:					
Ware	1	\$ 171.00		\$ 26.00	
Window Corp. Am.	1	108.00	\$ 279.00	37.00	\$ 63.00
PARTITIONS:					
General Partitions	1	\$ 1,926.00		\$ 292.00	
Hauserman	11	319,945.04		53,093.14	
Panelfold	6	6,977.74	\$328,848.78	1,182.04	\$54,567.18
SCHOOL, OFFICE & LAB EQUIP:					
All Steel	4	\$ 6,095.00		\$ 1,111.50	
American Desk	10	8,221.35		1,725.28	
Brodart	3	2,475.00		476.90	
Gotham	1	18,120.00		1,960.00	
Hamilton	5	892.20	\$ 35,803.55	863.00	\$ 6,136.68
WALL, WINDOW & FLOOR TREATMENTS:					
Patcraft	1	\$ 490.64		\$ 75.54	
eed	1	434.50		85.27	
Seabrook	1	29.00	\$ 954.14	--0--	\$ 160.81
INSTALLATION:					
Cieco	15	\$ 56,233.75		\$ 8,860.26	
Gilmore	2	3,243.00		440.03	
Milton	3	190.94		46.94	
Rotenizer	1	87.35	\$ 59,755.04	12.69	\$ 9,359.92
MISCELLANEOUS:					
ASI	2	\$ 1,866.88		\$ 200.00	
Acme Nat'l. Sales	1	1,249.00		293.00	
Auth Elec.	1	1,408.00		274.00	
Carpenter	1	39.08		5.87	
Cates Building	1	81.00		43.00	
Childers	1	59.26		59.26	
Cole	1	137.00		34.40	
Cothran	1	--0--		(206.50)	
General Bronze	1	55.00		27.47	
Graves Humphreys	1	123.58		21.28	
Hesse & Hurt	1	72.00		12.00	
J.L. Industries	1	900.00		223.74	
Just	3	5,929.75		1,021.17	
Magna Visual	3	91.60		(9.72)	
Marion Glass	1	1,581.15		375.15	
Murphy	1	36.90		--0--	
PG	2	779.00		122.00	
R-J-W	4	424.00		(1,650.70)	
Southern Photo	1	872.00		217.10	
Vogel Peterson	3	226.00		97.50	

ROANOKE ENGINEERING SALES CO., INC.
CASH AND ORDERS REPORT

Date 4-28-78

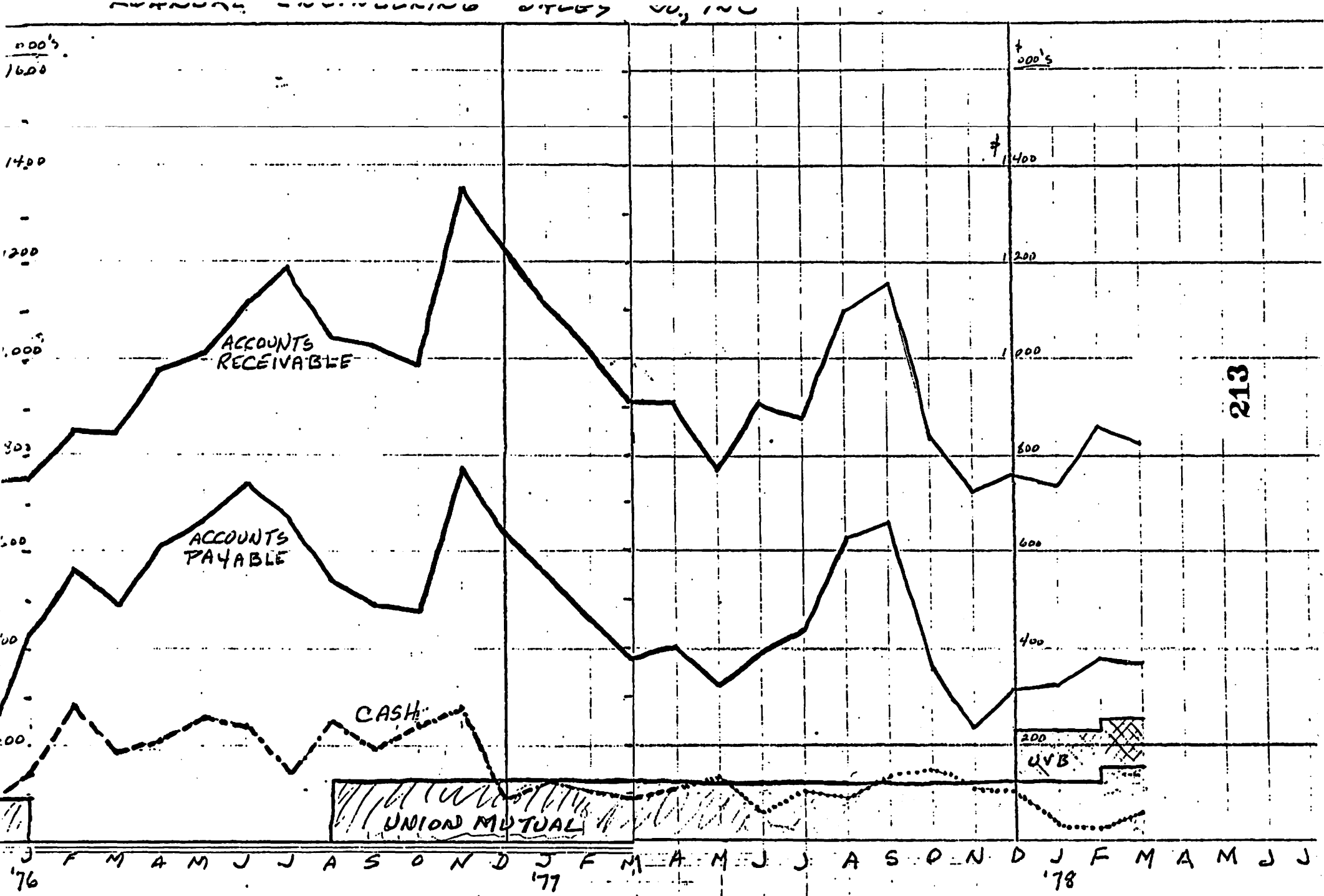
	BEG. BALANCES	RECEIPTS	DISBURSEMENTS	END. BALANCES
UVB <i>3/22/79</i>	\$ 38,350.61	\$ 14,670.73	\$ 40,270.03	\$ 12,751.31
TRANSFER			<i>2/11</i>	<2000.00>
MN				10,751.31
TRANSFER				<i>OK</i>
UVB Payroll	146.65	-	-	<i>OK</i> 146.65
TRANSFER				
TOTAL	\$ 38,497.26	\$ 14,670.73	\$ 40,270.03	\$ 12,897.96

	TODAY		MONTH TO DATE		YEAR TO DATE	
	ORDERS	CHANGES	ORDERS	CHANGES	ORDERS	CHANGES
RI	<u>5</u>	<u>0</u>	<u>16</u>	<u>15</u>	<u>139</u>	<u>123</u>
RO	<u>6</u>	<u>3</u>	<u>45</u>	<u>27</u>	<u>142</u>	<u>133</u>
CH	<u>1</u>	<u>0</u>	<u>16</u>	<u>14</u>	<u>89</u>	<u>52</u>
WA	<u>0</u>	<u>1</u>	<u>2</u>	<u>7</u>	<u>37</u>	<u>40</u>
TTL	<u>12</u>	<u>4</u>	<u>79</u>	<u>63</u>	<u>407</u>	<u>348</u>
RI	\$ <u>1753</u>	\$ <u>0</u>	\$ <u>29,188</u>	\$ <u><68></u>	\$ <u>68,332</u>	\$ <u><296></u>
RO	<u>9554</u>	<u>95</u>	<u>20,184</u>	<u><12,917></u>	<u>92,023</u>	<u><16,883></u>
CH	<u>150</u>	<u>0</u>	<u>7547</u>	<u><710></u>	<u>45,231</u>	<u>1855</u>
WA	<u>0</u>	<u>100</u>	<u>140</u>	<u>148</u>	<u>29,960</u>	<u>955</u>
TTL	\$ <u>11,457</u>	\$ <u>195</u>	\$ <u>57,059</u>	\$ <u><13,547></u>	\$ <u>235,546</u>	\$ <u><14,369></u>

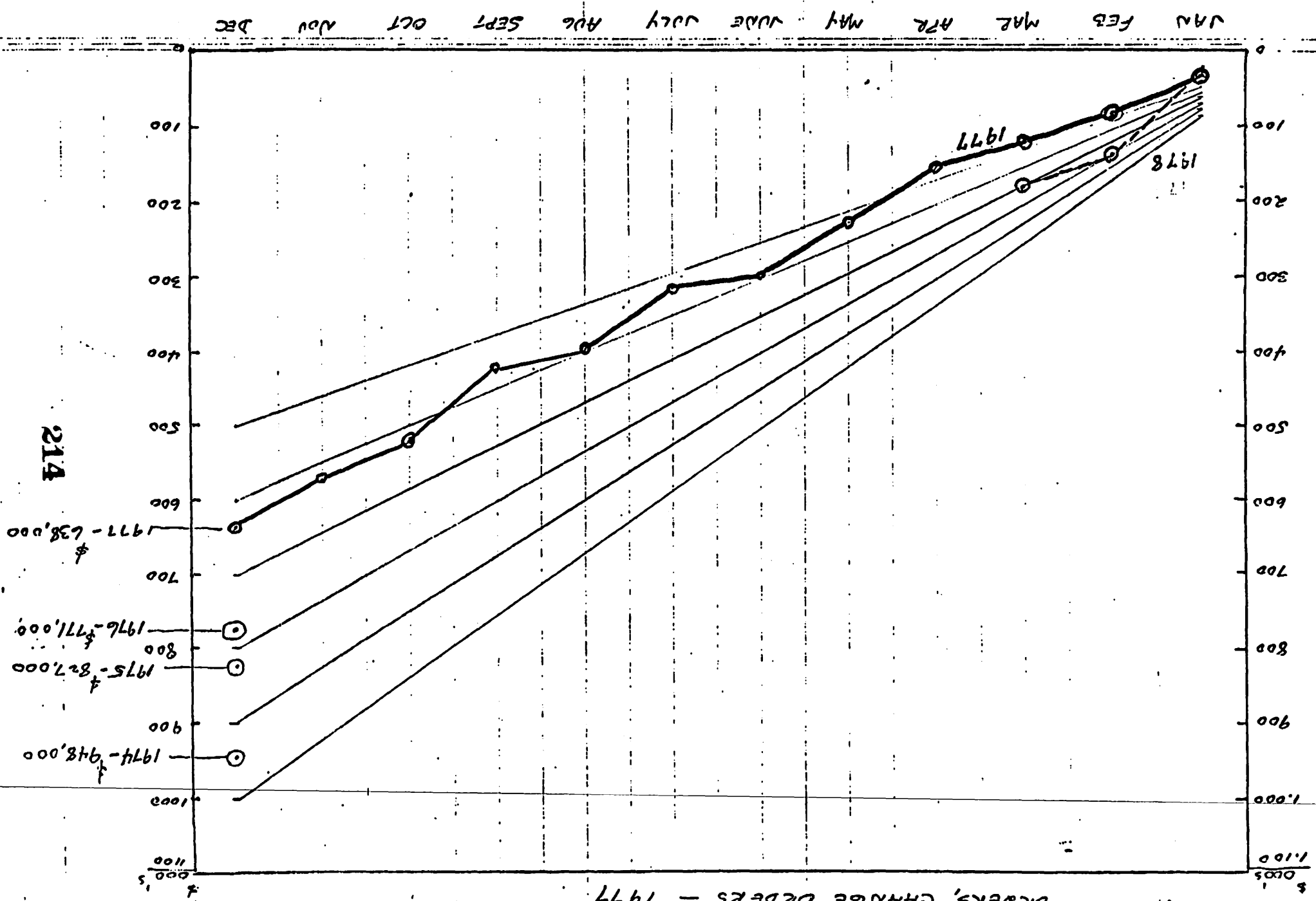
ROANOKE ENGINEERING SALES COMPANY, INC.

Balance Sheet

	<u>ASSETS</u>	<u>MARCH</u>
	<u>1977</u>	<u>1978</u>
CURRENT ASSETS		
Cash in bank	\$ 97,153	\$ 62,623
Accounts rec., Trade	912,180	825,506
Accounts rec., Other	24,498	23,398
Less: Doubtful account reserve	(14,513)	(15,000)
Loans to officers	30,000	58,830
Accrued interest receivable	291	980
Prepaid expenses	6,913	11,515
	<u>\$1,056,522</u>	<u>\$ 967,852</u>
FIXED ASSETS		
Automobiles	43,529	55,817
Furniture & fixtures	54,759	60,783
Leasehold improvements	8,795	8,794
Less: Depreciation reserve	(51,696)	(68,345)
	<u>\$ 55,387</u>	<u>\$ 57,050</u>
OTHER ASSETS		
C.S.V. Life Insurance	128,092	145,012
Airline deposit	425	425
	<u>\$ 128,517</u>	<u>\$ 145,437</u>
Total Assets	<u><u>\$1,240,426</u></u>	<u><u>\$1,170,339</u></u>
<u>LIABILITIES AND EQUITY</u>		
CURRENT LIABILITIES		
Accounts payable, trade	\$ 379,510	\$ 370,516
Accounts payable, branches	17,614	15,366
Employee taxes withheld	10,756	10,848
Sales taxes payable	13,484	10,120
Accrued profit sharing	10,964	11,488
Accrued commissions	(74,694)	(46,026)
Bank Loans	---	100,000
	<u>\$ 357,634</u>	<u>\$ 472,312</u>
DEFERRED LIABILITY		
Life insurance loans	<u>\$ 126,100</u>	<u>\$ 154,257</u>
STOCKHOLDERS' EQUITY		
Capital stock	\$ 30,000	\$ 30,000
Retained earnings	578,713	405,902
Retained earnings U.T.I.	169,148	171,767
Profit (loss) year to date	(21,169)	(63,899)
	<u>\$ 756,692</u>	<u>\$ 543,770</u>
Total Liabilities and Equity	<u><u>\$1,240,426</u></u>	<u><u>\$1,170,339</u></u>



ORDERS, CHANGE ORDERS - 1977



ROANOKE ENGINEERING SALES CO., INC.
COMMISSION STATEMENTS
MARCH, 1978

	TOTALS	WASHINGTON	CHARLOTTE	RICHMOND	ROANOKE
Commissions Payable	\$ 100,517.23	\$ 17,537.50	\$ 8,115.41	\$ 47,034.68	\$ 27,829.64
Less: 1/3rd	<u>(33,505.75)</u>	<u>(5,845.83)</u>	<u>(2,705.14)</u>	<u>(15,678.23)</u>	<u>(9,276.55)</u>
Net: 2/3rds	<u>67,011.48</u>	<u>11,691.67</u>	<u>5,410.27</u>	<u>31,356.45</u>	<u>18,553.09</u>
Less: Salaries & FICA	26,441.09	4,303.52	5,037.39	8,116.25	8,983.93
Expense-Office	18,655.20	1,154.29	1,995.92	9,375.72	6,129.27
Depreciation	825.68	37.44	20.52	376.69	391.03
Other	<u>355.68</u>	<u>-</u>	<u>138.92</u>	<u>216.76</u>	<u>-</u>
TOTAL Deductions	46,277.65	(5,495.25)	(7,192.75)	(18,085.42)	(15,504.23)
Net Payable - Mar. 31	20,733.83	6,196.42	(1,782.48)	13,271.03	3,048.86
Net Payable - Prior	<u>(66,759.56)</u>	<u>(44,454.14)</u>	<u>2,677.17</u>	<u>43,215.66</u>	<u>(68,198.25)</u>
Total Net Payable	<u>\$ (46,025.73)</u>	<u>\$ (38,257.72)</u>	<u>\$ 894.69</u>	<u>\$56,486.69</u>	<u>\$ (65,149.39)</u>

ROANOKE ENGINEERING SALES CO., INC.

PROFIT/(LOSS) STATEMENT

TO: 3/31/77

3 Months to 3/31/78

		Totals	Executive	Wash	Charlotte	Richmond	Roanoke
REVENUE							
Sales	\$ 864,505	\$ 791,281		\$ 40,793	\$ 212,679	\$ 383,377	\$ 154,431
Cost of Sales	691,848	634,902		30,732	168,973	306,012	129,184
Gross Profit	\$ 172,657	\$ 156,379		\$ 10,061	\$ 43,706	\$ 77,365	\$ 25,247
OPERATING EXPENSES							
Salaries	\$ 82,530	\$ 89,258	\$ 15,967	\$ 10,874	\$ 14,250	\$ 22,066	\$ 26,101
Payroll Taxes	6,843	7,175	1,301	886	1,062	1,798	2,127
Travel & Entertainment	28,306	32,878	1,251	2,123	4,392	17,299	7,813
Medical & Group Ins.	8,828	6,912	1,072	732	944	3,286	879
Office Expense	7,800	10,166	1,604	428	1,337	4,289	2,509
Postage, Telephone	9,519	12,610	1,170	1,153	3,132	3,949	3,205
Rent	10,424	8,514	1,074	885	1,236	3,056	2,263
Advertising	1,526	4,662	72	117	943	1,501	2,030
Prof. Organizations & Mags.	1,762	3,144	484	206	442	1,661	351
Blue Prints & Specs.	1,436	1,093	--	10	328	406	349
Professional Services	1,619	10,932	3,994	1,763	1,725	1,725	1,725
Other Taxes	12,410	9,695	1,662	58	95	7,073	807
Other Insurance	3,200	3,647	2,438	248	241	330	391
Depreciation	4,947	4,651	610	543	601	1,532	1,366
Maintenance, Utilities	1,717	1,535	1,535	--	--	--	--
Total Operating Expenses	\$ 182,867	\$ 206,871	\$ 34,234	\$ 20,024	\$ 30,726	\$ 69,972	\$ 51,915
Operating Profit (Loss)	\$ (10,210)	\$ (50,491)	\$ (34,234)	\$ (9,962)	\$ 12,980	\$ 7,394	\$ (26,669)
OTHER INCOME & EXPENSE							
Trade & Sales Tax Disc.	\$ 1,185	\$ 302	\$ 302	\$ --	\$ --	\$ --	\$ --
Interest Income	291	981	981	--	--	--	--
Interest Expense	1,471	3,201	3,201	--	--	--	--
Profit Sharing Contribution	10,964	11,489	1,752	1,228	2,138	3,152	3,219
Administrative Prorated	--	--	(37,905)	4,417	6,830	15,198	11,459
NET PROFIT (LOSS)	\$ (21,169)	\$ (63,899)	\$ --	\$ (15,607)	\$ 4,012	\$ (10,957)	\$ (41,347)

	ORIGINAL CONTRACT	CHANGE ORDERS	TOTAL CONTRACT	AMOUNT INVOICED	AMOUNT TO COMP.	COST TO DATE	COST TO COMPLETE	GROSS PROFIT
WASHINGTON/ORDERS IN PROCESS	\$157,738.18	\$ 21,124.82	\$178,863.00	\$ 175,920.50	2,942.50	134,914.70	2,561.53	41,386.77
ORDERS TO BE PROCESSED	<u>320,183.33</u>	<u>(230.00)</u>	<u>319,953.33</u>		<u>319,953.33</u>		<u>258,832.43</u>	<u>61,120.90</u>
TOTAL - WASHINGTON	\$477,921.51	\$ 20,894.82	\$498,816.33	\$ 175,920.50	322,895.83	134,914.70	261,393.96	102,507.67
CHARLOTTE/ORDERS IN PROCESS	\$1,592,710.17	(21,043.00)	1,571,667.17	1,526,526.17	45,141.00	1,320,419.47	38,434.00	212,813.70
ORDERS TO BE PROCESSED	<u>657,479.00</u>	<u>6,650.00</u>	<u>664,129.00</u>		<u>664,129.00</u>		<u>579,602.98</u>	<u>84,526.02</u>
TOTAL - CHARLOTTE	\$2,250,189.17	(14,393.00)	2,235,796.17	1,526,526.17	709,270.00	1,320,419.47	618,036.98	297,339.72
RICHMOND/ORDERS IN PROCESS	\$1,261,154.10	24,015.49	1,285,169.59	1,270,133.32	15,036.27	1,033,828.41	11,980.62	239,360.56
ORDERS TO BE PROCESSED	<u>499,565.64</u>	<u>(1,581.46)</u>	<u>497,984.18</u>		<u>497,984.18</u>		<u>409,603.79</u>	<u>88,380.39</u>
TOTAL RICHMOND	\$1,760,719.74	22,434.03	1,783,153.77	1,270,133.32	513,020.45	1,033,828.41	421,584.41	327,740.95
ROANOKE/ORDERS IN PROCESS	\$ 311,431.08	8,948.69	320,379.77	298,208.28	22,171.49	248,942.20	19,048.15	52,389.42
ORDERS TO BE PROCESSED	<u>1,039,664.14</u>	<u>2,284.79</u>	<u>1,041,948.93</u>		<u>1,041,948.93</u>		<u>889,228.90</u>	<u>152,720.03</u>
TOTAL - ROANOKE	\$1,351,095.22	11,233.48	1,362,328.70	298,208.28	1,064,120.42	248,942.20	908,277.05	205,109.45
COMMISSIONS	\$ 97,291.62	362.00	97,653.62	27,717.38	69,936.24			97,653.62
TOTAL/ALL OFFICES	<u>\$5,937,217.26</u>	<u>\$ 40,531.33</u>	<u>\$5,977,748.59</u>	<u>\$3,298,505.65</u>	<u>2,679,242.94</u>	<u>2,738,104.78</u>	<u>2,209,292.40</u>	<u>1,030,351.41</u>
								\$1,030,351.41

ROANOKE ENGINEERING SALES CO., INC. WORK IN PROCESS - MARCH 31, 1970

	GROSS PROFIT	WASHINGTON	OTHER	CHARLOTTE	OTHER	RICHMOND	OTHER	ROANOKE	OTHER
WASHINGTON/ORDERS IN PROCESS	\$41,386.77	40,886.77							
Comm. - Charlotte									
Richmond					J 500.00				
Roanoke									
ORDERS TO BE PROCESSED	61,120.90	60,218.45							
Comm. - Charlotte									
Richmond					J 627.29				
Roanoke					C 275.16				
TOTAL - WASHINGTON	<u>\$102,507.67</u>	<u>101,105.22</u>	<u>1,402.45</u>						
CHARLOTTE/ORDERS IN PROCESS	\$212,813.70			212,813.70					
Comm. - Washington									
Richmond									
Roanoke									
ORDERS TO BE PROCESSED	\$ 84,526.02			83,995.77					
Comm. - Washington									
Richmond									
Roanoke									
TOTAL - CHARLOTTE	<u>\$297,339.72</u>			<u>296,809.47</u>	<u>C530.25</u> <u>530.25</u>				
RICHMOND/ORDERS IN PROCESS	\$239,360.56					233,434.25			
Comm. - Washington									
Charlotte							R 1,591.83		
Roanoke							H 1,765.82		
ORDERS TO BE PROCESSED	88,380.39					80,669.05	C 2,568.66		
Comm. - Washington									
Charlotte							R 7,035.97		
Roanoke							H 162.50		
TOTAL - RICHMOND	<u>\$327,740.95</u>					<u>314,103.30</u>	<u>C 512.87</u> <u>13,637.65</u>		
ROANOKE/ORDERS IN PROCESS	\$ 52,389.42							50,416.27	
Comm. - Washinton									R 857.74
Charlotte									H 756.91
Richmond									J 358.50
ORDERS TO BE PROCESSED	\$152,720.03							151,804.96	
Comm. - Washington									
Charlotte									H 753.57
Richmond									J 161.50
TOTAL - ROANOKE	<u>\$205,109.45</u>							<u>202,221.23</u>	<u>2,888.22</u>
COMMISSIONS	\$ 97,653.62	31,235.00	J 2,710.03	29,193.00		28,391.97		2,123.62	J 4,000.00
TOTAL ALL OFFICES	<u>\$1,030,351.41</u>	<u>132,340.22</u>	<u>12,195.57</u>	<u>326,002.47</u>	<u>3,438.80</u>	<u>342,495.27</u>	<u>1,647.29</u>	<u>204,344.85</u>	<u>7,886.94</u>
COMBINED GROSS PROFIT	\$1,030,351.41	144,535.79		329,441.27		344,142.56		212,231.79	

ROANOKE ENGINEERING SALES CO., INC.

Stock Valuation

Buy-Sell and Employment Agreements

Total Equity at 3/31/78 \$543,769.77

Add: Gross Profit on Orders to be
Processed, not included in equity
above at 3/31/78

Washington	\$ 61,120.90
Charlotte	84,526.02
Richmond	88,380.39
Roanoke	152,720.03

386,747.34 (A)

\$930,517.11

Deduct: Gross Profit on Orders in
Process and Orders to be Processed
times 2/3 per Employment Agreements

Washington	\$ 144,535.79
Charlotte	329,441.27
Richmond	344,142.56
Roanoke	212,231.79
	<u>\$1,030,351.41</u>

X 2/3 rds

686,900.94

Net Stock Valuation

\$243,616.17

Per Shareholder \$60,904.04

Current Buy/Sell
Purchase Price \$150,000.00

(A) Does not include orders in transit from branches
or in hands of branch managers.

ROANOKE

COMMISSION STATEMENT #26, November 30, 1977

June 1 - Nov. 30, 1977 Commission	\$90,573.46	
Less 1/3rd	<u>(30,191.15)</u>	
Net 2/3rds		\$60,382.31
Branch Expenses		
June	\$3,595.05	
July	4,918.87	
Aug.	3,723.31	
Sept.	4,790.20	
Oct.	3,195.65	
Nov.	<u>3,484.28</u>	
	\$23,707.36	
Salaries & FICA (See attached)	51,223.10	
Depreciation June 1-Nov. 30.	2,625.10	
Auto Insurance - Hugh, Allen, Darlene	921.50	
Woods Rogers-non FNEB costs	<u>256.66</u>	
Deduct Total Expenses		(78,733.72)
Net		(18,351.41)
Overdrawn, Statement #25		<u>(25,426.24)</u>
Overdrawn, statement #26		(43,777.65)

Resco - November 30, 1977
Commission

Roanoke

	1	2	3	4	5	6
	June	July	Aug	Sept	Oct	Nov
Curtis - Salary	2000.00	2000.00	2000.00	2000.00	2000.00	2000.00
- FICA	117.00	117.00	117.00	29.35	-	-
Hugh	1166.68	1166.66	1166.66	1166.68	1166.66	1166.66
	68.75	68.75	68.75	68.75	68.75	68.75
Allen	883.34	883.33	883.33	883.34	883.33	883.33
	51.68	51.67	51.67	51.68	51.67	51.67
Darlene	604.20	604.20	604.20	604.20	750.00	750.00
	35.34	35.34	35.34	35.34	43.88	43.88
Candy	758.96	758.96	758.96	758.96	758.96	758.96
	44.40	44.40	44.40	44.40	44.40	44.40
Becky	-	-	-	758.96	758.96	758.96
	-	-	-	44.40	44.40	44.40
David	570.00	617.00	617.00	617.00	617.00	617.00
	33.34	36.68	36.68	36.68	36.68	36.68
Dennis	736.77	693.32	693.32	693.32	693.32	693.32
	43.10	40.56	40.56	40.56	40.56	40.56
Beth	814.23	693.32	693.32	693.32	693.32	693.32
	47.63	40.56	40.56	40.56	40.56	40.56
Schwinn	433.33	520.00	520.00	-	-	-
	25.35	30.42	30.42	-	-	-
Hugh - Comm.						33.78
						1.98
						\$ 51223.10

Commissions Payable #26

Roanoke Branch
6/1/77 - 11/30/77

	Order No.	Customer and Job	Amount	Date Paid
DW	✓27245	Candy Smith	1.22	10/18/77
		Resco		
1/3DW, AM, HG	✓27241	Resco/Roanoke DW 2 ²³ Am 2 ²³ HC 2 ²⁴	(7.00)	10/13/77
		Same		
1/3DW, AM, HG	✓27240	Resco/Roanoke " " "	(7.00)	10/13/77
		Same		
1/3DW, AM, HG	✓27239	Childers Manufacturing Co. 112 6 ²	337.86	10/13/77
DW	✓7229	Mr. Van Bramblett	49.20	11/11/77
		Same		
HG	✓7225	R&S Development Corp.	113.65	11/14/77
		Catawba Mercatile Emporium		
1/3DW, AM, HG	✓27215	Childers Manufacuring Co. 59 ¹²	177.51	9/15/77
DW	✓7208	Dennis Humston	2.72	10/14/77
		Same		
HG	✓7203	Days Construction Co.	6.17	10/ 3/77
		Marriott Inn		
DW	✓72199	Cieco	1.63	10/31/77
		Resco		
HG	✓72198	Roanoke Valley Christian Schools	23.05	11/18/77
		Same		
HG	✓72196	City of Salem Schools	90.71	10/17/77
		Salem High School		
DW	✓72195	Babcock & Wilcox Co.	1,353.65	11/30/77
		Same		
HG	✓72191	Acorn Construction Co.	11.41	11/11/77
		Botetourt Health Center		
HG	✓72189	J. H. Fralin & Son	59.05	10/19/77
		First Church of God		
HG	✓72186	H.A. Lucas & Sons, Inc.	100.00	10/17/77
		Salem High School		
DW	✓72185	Candy Smith	5.28	10/18/77
		Resco		
DW	✓72182	Bethel Baptist Church	54.49	10/ 3/77
		Same		
1/2DW, HG	✓72177	J.E. Jamerson & Sons DW 67.67 HG 67.68	135.35	9/16/77
		Brookneal Elementary School		
1/2DW, HG	✓72175	Aerofin Corp. 77 ⁰⁰	154.00	11/ 7/77
		Cieco		
HG	✓72162	Shedd School	815.87	10/ 7/77
		Same		
DW	✓72159	Dr. George Hull	200.56	9/ 9/77
		Resco		
AM	✓72157	Henry Elementary School	55.64	9/16/77
		Same		
DW	✓72155	Babcock & Wilcox Co.	912.00	10/10/77
		Same		

DW 6892 55
200 77
1531 70

Commissions Payable #26
Roanoke Branch
6/1/77 - 11/30/77
Page 2

	Order No.	Customer and Job	Amount	Date Paid
HG	✓ 27154	Southwest Const. Inc.	200.00	10/21/77
		WLRG Office Building		
DW	✓ 27149	G. Lewis Craig & Assoc.	16.00	10/18/77
		Resco		
DW	✓ 27147	Equity Leasing	715.01	9/ 6/77
		Resco		
HG	✓ 27143	Roanoke Co. School Borad	148.69	11/17/77
		Penn Forest Elem.		
HG	✓ 27142	Zion Hill Baptist Church	34.60	10/13/77
		Same		
HG	✓ 27141	First Church of Christ Scient.	103.45	10/24/77
		Same		
HG	✓ 27139	English Construction Co.	210.00	10/21/77
		Va. Baptist Hospital		
AM	✓ 27137	Pulaski Co. School Board	275.00	10/13/77
		Pulaski Co. High School		
HG	✓ 27134	Lynchburg School Board	201.25	10/17/77
		New Lynchburg High School		
HG	✓ 27128	R.G. Reeves Const.	103.37	9/ 7/77
		Bridgewater Home for Aging		
DW	✓ 27126	General Electric	(25.30)	10/17/77
		Same		
HG	✓ 27125	Viking Lanes	5.24	7/12/77
		Same		
AM	✓ 27122	Frizzell Const. Co.	358.40	10/24/77
		Haysi Elem. School		
HG	✓ 27118	Montgomery Co. Schools	143.36	8/10/77
		Blacksburg High School		
HG	✓ 27115	Cieco	4.95	7/25/77
		Same		
HG	✓ 27110	Days Construction Co.	140.25	10/ 7/77
		Bank of Smithfield		
1/2HG,DW	✓ 27106	County of Roanoke DW 32 ⁹³ HG 36 ⁹⁴	725.87	9/26/77
		Headquarters & Vinton Lib.		
1/2HG,DW	✓ 27105	Limitorque Corp. 116 ⁵²	233.00	9/13/77
		Same		
HG	✓ 27104	New River Electrical Corp.	333.58	10/11/77
		V.A. Hospital		
HG	✓ 27103	Hamilton Industries	56.00	10/ 3/77
HG	✓ 27098	Montgomery Co. Schools	285.95	9/12/77
		Salem High School		
HG	✓ 27097	Days Construction Co.	84.25	9/21/77
		Westhampton Christian Church		
HG	✓ 27096	H.A. Lucas & Sons	100.00	8/18/77
		Salem High School		
1/2AM,HG	✓ 27095	Beavers & Cecil 1984 ⁸	396.96	7/25/77
		Commercial Bank of Bluefield		
HG	✓ 27092	City of Salem School Board	219.10	6/20/77
		Salem High School		

DW 1185¹⁰
AM 221⁹³
HG 2081⁹⁶
CR ---

Commissions Payable #26

Roanoke Branch

6/1/77 - 11/30/77

Page 3

	Order No.	Customer and Job	Amount	Date Paid
HG	✓ 27090	R.H. Feagens & Co., Inc. Diamond Hill Rec. Ctr.	100.00	10/31/77
HG	✓ 27085	Rustburg High School Same	636.98	8/ 4/77
HG	✓ 27084	Western State Hospital Same	232.11	10/24/77
AM	✓ 27082	Wise Co. School Board Same	172.97	9/16/77
HG	✓ 27080	City of Salem School Board Cave Spring High School	174.06	7/21/77
AM	✓ 27077	Wise Co. School Board Pound Elementary School	2,942.60	9/16/77
HG	✓ 27068	City of Salem School Board Salem High School	2,365.69	9/16/77
HG	✓ 27066	City of Salem School Board Salem High School	130.00	9/16/77
HG	✓ 27065	Greene Co. School Board Greene Co. Primary School	574.49	10/ 7/77
HG	✓ 27064	Acorn Construction Co. New Health Center	62.00	10/13/77
HG	✓ 27061	Botetourt Co. School Board Troutville Elem. School	905.00	7/ 6/77
HG	✓ 27059	Roanoke City Schools Same	63.25	9/ 1/77
HG	✓ 27058	Roanoke County Schools Same	11.29	6/14/77
HG	✓ 27050	Central United Meth. Church Same	132.32	8/30/77
HG	✓ 27047	Hamilton Industries V.A. Hospital	22.00	8/ 2/77
HG	✓ 27045	Rittenhouse Brothers Blue Ridge School	180.00	8/15/77
HG	✓ 27038	Amherst Co. Schools New Monelison Jr. High School	3,482.65	11/14/77
HG	✓ 27037	Hamilton Industries V.A. Hospital	8.00	7/ 6/77
AM	✓ 27033	Wise Co. Schools Wise Middle School	1,641.41	7/15/77
1/2AM, HG	✓ 27031	Mr. Maynard Hylton Laurel Branch Church	53 ⁵³ 107.06	10/24/77
✓ DW	✓ 27027	City of Lynchburg Same	1,333.77	10/31/77
HG	✓ 27026	Hamilton Industries Resco	573.00	10/ 3/77
HG	✓ 27014	Hodges Lumber Corp. McCleary Elem. School	525.00	9/14/77
✓ HG	✓ 27013	Hodges Lumber Corp. McCleary Elem. School	52.00	8/10/77
HG	✓ 27008	Lantz Const. Co. Same	48.40	10/13/77
HG	✓ 27005	Clyde Cahill, Contractor Senior Citizens Center	34.85	6/16/77

DW 1,333.77
AM 1,810.51
1,162

Commissions Payable #26
Roanoke Branch
6/1/77 - 11/30/77
Page 4

	Order No.	Customer and Job	Amount	Date Paid
HG	✓ 127003	Hodges Lumber Co.	200.00	9/14/77
		V.A. Hospital		
DW	✓ 127002	Babcock & Wilcox Co.	3,154.95	6/ 6/77
		Same		
AM	✓ 127001	Thomas J. Crowder	43.31	6/21/77
		Woods Job		
HG	✓ 126993	Ellis & Company	(53.10)	11/21/77
		Madison College Locker Rooms		
AM	✓ 126991	Click Const. Co., Inc.	174.00	7/13/77
		Smyth Co. Vocational School		
HG	✓ 126975	Roanoke City School Board	2,927.00	10/ 7/77
		Westside Elem. School		
DW	✓ 126965 & ✓ 122962	Heyward & Llorens/ R.E. Lee	9,209.05	11/ 8/77
		Albemarle Charlottesville Health Ctr.		
HG	✓ 126962	University of Va.	37.67	11/ 7/77
		Medical Center		
DW	✓ 126961	Babcock & Wilcox Co.	10.00	6/ 6/77
		Same		
HG	✓ 126960	Creative Const. & Dev.	221.00	8/ 3/77
		William Fleming High School		
HG	✓ 126952	H.A. Lucas & Sons, Inc.	129.00	8/18/77
		Westside Elem. School		
HG	✓ 126951	H.A. Lucas & Sons, Inc.	107.00	6/20/77
		Westside Elem. School		
ret in → HG	✓ 126946	City of Salem School Board	8.40	8/18/77
		Salem High School		
HG	✓ 126940	University of Va.	2,214.98	7/ 6/77
		Same		
DW	✓ 126937	Babcock & Wilcox Co.	364.90	6/ 6/77
		Same		
AM	✓ 126924	Franklin Co. School Board	(4,269.29)	9/16/77
		Franklin Co. Middle School		
	✓ 126923	Resco		
DW	✓ 126906	Allstate Insurance	(90.00)	
DW	✓ 122964	Albemarle Char. Health Ctr.	(120.00)	
ret in → AM	✓ 127138	Pulaski Co. High School	(30.00)	11/30/77
		Roanoke Va		
HG	✓ 126915	R.E. Lee & Son, Inc.	20.99	6/ 4/77
		U. of Va. School of Law		
DW	✓ 126905	Allstate Insurance Co.	352.12	7/29/77
		Same		
HG	✓ 126902	H.A. Lucas & Sons, Inc.	150.75	6/24/77
		C & P Telephone Co.		
HG	✓ 126129	H. A. Lucas & Sons, Inc.	65.00	7/20/77
		Salem High School		
HG	✓ 123087	Watts & Breakell, Inc.	43.36	7/18/77
		Woodrow Wilson Jr. High School		

DW 12,881.62
AM <4,081.98>
HG 6072.95

Commissions Payable #26
Roanoke Branch
6/1/77 - 11/30/77
Page 5

	Order No.	Customer and Job	Amount	Date Paid
HG	✓ 23081	English Const. Co.	(185.06)	7/ 5/77
1/2CR, HG	✓ 22974	Martha Jefferson Hospital Skyline Paint & Hardware 1298 ⁰⁰	2,797.00	11/10/77
AM	✓ 22957	V. A. Hospital Martinsville Iron & Steel Co.	735.00	6/16/77
DW	✓ 22939	Film Processing Facility Babcock & Wilcox Co.	3,975.20	7/ 6/77
not in file HG	→ 22904	Same Acorn Construction Co.	25.66	6/27/77
HG	✓ 22791	Botetourt Co. Health Ctr. Hill & Kutz	44.86	8/17/77
not in file HG	→ 22721	Same R.E. Lee & Son	47.02	6/21/77
HG	✓ 22720	Lee-Hill Elem. School Resco	(25.93)	7/ 6/77
AM	✓ 22653	George W. Fultz T.C. Brittain Co.	1,236.00	8/ 8/77
HG	✓ 22641	Franklin Co. Middle School Armay Const. Co.	2,308.60	10/ 3/77
AM	✓ 22423	New Phar. Production Facility Armstrong Const. Co., Inc.	124.26	11/ 8/77
HG	✓ 22270	Pound Elem. School Hill & Kutz	91.80	8/17/77
not in file HG	→ 22255	Same Graves Const. Co.	211.00	8/15/77
HG	✓ 22168	Montgomery Co. Courthouse Nielsen Const. Co.	7,172.64	11/21/77
AM	✓ 21692	Rockingham Mem. Hospital Clark Brothers Co., Inc.	6,607.29	8/12/77
HG	✓ 21680	R.J. Reynolds Patrick Co. Hospital Greene Co. School Board	4.62	11/ 4/77
AM	✓ 21547	Greene Co. Primary School Tazewell Co. School Board	323.12	7/ 5/77
AM	✓ 21545	Richlands Middle School Tazewell Co. School Board	425.73	7/ 6/77
AM	✓ 21543	Richlands Middle School Tazewell Co. School Board	229.01	7/ 5/77
AM	✓ 21407	Richlands Middle School Tazewell Co. School Board	2,700.76	7/ 6/77
CR	✓ 19705	Richlands Middle School George Hyman Const. Co.	(650.00)	10/24/77
CR	✓ 19318	1st Nat'l Exchange Bank Bldg. J. W. Bateson Co.	17,407.52	7/14/77
HG	✓ 18807	U.S. Courthouse & Fed. Bldg. English Const. Co.	(342.66)	10/ 3/77
HG	✓ 22624	Martha Jefferson Hospital James R. Vannoy & Sons, Inc.	625.00	11/21/77
HG	✓ 22755	Extended Care Facility New River Valley Det.	11.93	11/30/77
		Same		

Commissions Payable #26
Roanoke Branch
6/1/77 - 11/30/77
Page 6

	<u>Order No.</u>	<u>Customer and Job</u>	<u>Amount</u>	<u>Date Paid</u>
	HG <u>LJ21504</u>	L.F. Jennings, Inc. Culpeper Jr. High School	606.04	9/22/77
	HG <u>LJ21895</u>	Robert R. Marquis, Inc. Operations Center	756.97	7/27/77
	HG <u>LJ22077</u>	Rahman Construction Corp. Wastewater Treatment Plant	107.75	11/11/77
not in file	HG <u>LJ22079</u>	Rahman Construction Corp. Wastewater Treatment Plant	25.00	11/11/77
	HG <u>LJ22264</u>	Kenbridge Const. Co. Hermitage Homes Infirmary	21.10	10/21/77
	HG <u>LJ22823</u>	Bass Const. Co. Washington & Lee University	750.00	11/28/77
	HG <u>LJ23026</u>	L. H. Wingfield Roofing & Metal Hermitage Homes Infirmary	250.00	6/13/77
	HG <u>LJ23202</u> <i>check</i>	Kenbridge Const. Co. Darden School Exec. Center	33.00	11/28/77
	HG <u>LJ23273</u>	Daniel International Merck, Sharp & Dohme	27.93	6/16/77
in file	HG <u>LJ23329</u> <i>Ally. Co. Me. check Waverly</i>	Augusta Steel Corp. Highway Rest Area Building	773.56	8/ 8/77
	HG <u>LJ23328</u>	Augusta Steel Corp. Acorn Const. Co.	198.75	9/27/77
not in file	HG <u>LJ23398</u> <i>Verona</i>	Augusta Steel Corp. Weyer's Cave Rest Area	18.75	9/30/77
1/3DW, AM	HG <u>R31473</u>	Lisbon Madeira, Ltd. <i>DW 208 AM 208 HG 205</i> Chain Bridge Booster Pump Station	6.25	11/18/77
			=====	
			\$90,573.46	

DW 2⁰⁸
AM 2⁰⁸
HG 3570⁹⁰
CR -

Grand Total:
Darlene 22,269⁷⁶
Allen 14,166⁴³
Hugh 35,981²⁵
Curtis 18,156⁰²
90,573⁴⁶

Commissions Payable #26
Roanoke Branch
6/1/77 - 11/30/77
Page 6

	<u>Order No.</u>	<u>Customer and Job</u>	<u>Amount</u>	<u>Date Paid</u>
HG	J21504	L.F. Jennings, Inc. Culpeper Jr. High School	606.04	9/22/77
HG	J21895	Robert R. Marquis, Inc. Operations Center	756.97	7/27/77
HG	J22077	Rahman Construction Corp. Wastewater Treatment Plant	107.75	11/11/77
HG	J22079	Rahman Construction Corp. Wastewater Treatment Plant	25.00	11/11/77
HG	J22264	Kenbridge Const. Co. Hermitage Homes Infirmary	21.10	10/21/77
HG	J22823	Bass Const. Co. Washington & Lee University	750.00	11/28/77
HG	J23026	L. H. Wingfield Roofing & Metal Hermitage Homes Infirmary	250.00	6/13/77
HG	J23202	Kenbridge Const. Co. Darden School Exec. Center	33.00	11/28/77
HG	J23273	Daniel International Merck, Sharp & Dohme	27.93	6/16/77
HG	J23329	Augusta Steel Corp. Highway Rest Area Building	773.56	8/ 8/77
HG	J23328	Augusta Steel Corp. Acorn Const. Co.	198.75	9/27/77
HG	J23398	Augusta Steel Corp. Weyer's Cave Rest Area	18.75	9/30/77
L/3DW, AM, HG	R31473	Lisbon Madeira, Ltd. Chain Bridge Booster Pump Station	6.25	11/18/77

=====
\$90,573.46

Darlene	\$22,269.76
Allen	14,166.43
Hugh	35,981.25
Curtis	<u>18,156.02</u>
	\$90,573.46

ROANOKE ENGINEERING SALES COMPANY, INC.

Board of Directors Meeting

January 21, 1978

WASHINGTON BRANCH OFFICE REPORT

Visitors to Washington during 4th Quarter 1977:

10/19	Joe & Joyce	"A Chorus Line"
10/26-27	Cal Cooper	Panelfold
11/23-27	Uncle Curtis, Curt & Susan	Thanksgiving
12/19	Jim Gattling	Panelfold

Trips by Bob Rosenbaum during 4th Quarter 1977:

10/13-14	Roanoke	RESCO B.O.D. Meeting
12/16	Richmond	Special RESCO B.O.D. Meeting

SALES BREAKDOWN

WASHINGTON BRANCH OFFICE

October 1 through December 31, 1977

<u>PRODUCT</u>	<u>ORDERS</u>	<u>GROSS SALES</u>	<u>GROSS PROFIT</u>
American Flagpole	2	Commission	237.00
" "	1	1,143.27	161.14
American Accordion-Fold	1	2,254.00	257.50
Arcom	2	---	---
Capitol Mail Chute	4	17,164.00	4,171.75
Efco	3	5,983.22	1,300.75
EPI	2	Commission	5,000.00
"	1	63,600.00	11,600.00
International Fabricators	1	712.00	50.00
JMB	4	---	---
Kentucky Metal	2	1,056.00	200.00
Panelfold	1	9,675.00	4,020.00
SUB-TOTAL	24	101,587.49	26,998.14
Change Orders	21	---	3,639.35
Change Orders by Others	6	---	(8,268.64)
Split Commission by Others	3		90.00
TOTAL FOURTH QUARTER		101,587.49	22,458.85
TOTAL THIRD QUARTER		77,367.00	16,710.40
TOTAL SECOND QUARTER		29,205.00	14,143.65
TOTAL FIRST QUARTER		43,031.60	16,045.53
TOTAL FOR YEAR 1977		251,191.09	69,358.43

Fourth Quarter Contributions to Other Branches:

Richmond	468.64
Roanoke	6.25

SALES BREAKDOWN
WASHINGTON BRANCH OFFICE
January 1 through December 31, 1977

<u>PRODUCT</u>	<u>ORDERS</u>	<u>GROSS SALES</u>	<u>GROSS PROFIT</u>
Acme	3✓	3,042.00✓	524.80✓
American Accordion-Fold	1✓	2,254.00✓	257.50✓
American Flagpole	4✓	Commission✓	328.00✓
American Flagpole	1✓	1,143.27✓	161.14✓
Arcom	2✓	---✓	---✓
Bliss	5✓	8,378.60✓	2,118.19✓
Campbellsville	2✓	4,390.00✓	927.00✓
Capitol Mail Chute	11✓	46,671.00✓	8,949.40✓
Cassidy	1✓	---✓	(1,040.00)✓
Childers Mfg. Co.	1✓	Commission✓	19.94✓
Commercial Glass	1✓	500.00✓	---✓
Crane Fulview	1✓	10,600.00✓	2,014.00✓
Efco	3✓	5,983.22✓	1,300.75✓
Enterprise	1✓	---✓	(11,100.00)✓
EPI	5✓	Commission✓	10,400.00✓
EPI	1✓	63,600.00✓	11,600.00✓
Fabricated Products	1✓	4,000.00✓	929.00✓
Fulton	2✓	12,327.00✓	1,869.00✓
Gotham	1✓	325.00✓	100.00✓
Haag	3✓	---✓	---✓
Hauserman	1✓	1,722.00✓	456.00✓
International Fabricators	1✓	712.00✓	50.00✓
J. L. Industries	1✓	312.00✓	134.16✓
J.M.B.	14✓	---✓	---✓
Kentucky Metal	2✓	Commission✓	67.00✓
Kentucky Metal	6✓	14,879.00✓	2,730.00✓
Michaels Art	2✓	4,343.00✓	974.00✓
Millstone Erectors	1✓	---✓	---✓
Overly	3✓	8,477.00✓	1,770.00✓
Panelfold	8✓	36,704.00✓	12,053.59✓
Reynolds Alum. Bldg. Products	1✓	233.00✓	100.40✓
Trussbilt Inc.	1✓	1,670.00✓	250.00✓
U.S. Metals	1✓	7,850.00✓	861.00✓
Usona	1✓	Commission✓	900.00✓
Williamsburg Steel	1✓	10,600.00✓	4,010.00✓
Winco	1✓	475.00✓	52.00✓
Sub-Total	95	251,191.09	53,766.87
Change Orders	67	---	18,271.21
Change Orders by Others	25	---	(8,454.48)
Split Commission by Others	11	---	5,773.89
TOTALS FOR 1977		251,191.09	69,358.43

1977
ROANOKE BRANCH SALES BREAKDOWN

MANUFACTURER	ORDERS	SALES	PROFIT
<u>Doors and Frames:</u>			
Apton	2 ✓	\$ 3,158.00 X	\$ 384.00 X
Bymoco	26 ✓	77,508.00 X	9,096.50 X
Jamison	1 ✓	1,613.00 X	161.00 X
Overly	2 ✓	1,738.00 X	321.00 X
Richmond Fireproof Door	1 ✓	875.00 X	132.00 X
	<u>32</u>	<u>\$ 81,734.00</u>	<u>\$ 10,094.50</u>
		84,892.00	
<u>Windows:</u>			
Bliss	1 ✓	\$ 416.25 X	\$ 84.25 X
Conalco	1 ✓	1,191.00 X	201.00 X
Efco	4 ✓	4,874.00 X	757.25 X
Rusco	1 ✓	2,136.00 X	501.60 X
Southern GF Corporation	1 ✓	421.92 X	133.92 X
WCM Corporation	1 ✓	109.80 X	38.70 X
Ware	1 ✓	835.00 X	100.00 X
	<u>10</u>	<u>\$ 9,983.97</u>	<u>\$ 1,816.72</u>
<u>Partitions:</u>			
American Accordion Fold	3 ✓	\$ 2,742.32 X	\$ 643.32 X
General Partitions	5 ✓	1,525.00 X	197.00 X
Hauserman	49 ✓	488,234.81 X	96,859.33 X
Panelfold	8 ✓	6,409.68 X	1,062.72 X
	<u>65</u>	<u>\$ 498,911.81</u>	<u>\$ 98,762.37</u>
<u>Office, School & Lab Equipment:</u>			
All Steel	16 ✓	\$ 18,264.77 X	\$ 2,898.94 X
Ajusto	1 ✓	3,385.00 X	476.42 X
American Desk	54 ✓	114,226.65 X	22,489.13 X
Brodart	1 ✓	42.00 X	4.00 X
Hamilton	26 ✓	124,918.13 X	19,174.64 X
Jasper Seating	3 ✓	3,444.92 X	501.99 X
Jasper Table	3 ✓	2,804.49 X	496.89 X
Krueger	6 ✓	16,730.02 X	3,639.51 X
	<u>110</u>	<u>\$ 283,815.98</u>	<u>\$ 49,681.52</u>
<u>Wall, Window & Floor Treatments:</u>			
ArcCom	1 ✓	\$ 299.00 X	\$ 65.47 X
Collins, P.	2 ✓	2,740.00 X	619.24 X
Carpenter, W.C.	1 ✓	---0---	(368.69) X
Design Tex	1 ✓	58.76 X	10.76 X
Greenhouse Fabrics	1 ✓	13.38 X	1.22 X
H & S Sales	1 ✓	---0---	(579.65) X
Kirsch	3 ✓	1,056.00 X	285.25 X
Patcraft	3 ✓	10,283.27 X	4,351.17 X
Reed	5 ✓	7,381.56 X	1,725.78 X
Seabrook	9 ✓	2,381.96 X	675.28 X
Superior Carpet	1 ✓	641.00 X	173.00 X
	<u>28</u>	<u>\$ 24,854.93</u>	<u>\$ 6,958.83</u>

1977
ROANOKE BRANCH SALES BREAKDOWN
- Page 2-

MANUFACTURER	ORDERS	SALES	PROFIT
<u>Installation:</u>			
Baker, Burrel	7 ✓	\$ 1,226.82 X	\$ 120.32 X
Cieco	65 ✓	155,242.92 X	24,741.02 X
Cox	1 ✓	532.00 X	117.00 X
Custom Service	4 ✓	1,065.30 X	87.32 X
Gilmore	1 ✓	3,153.00 X	653.00 X
Humston, Dennis	2 ✓	22.00 X	(8.00) X
Robinson	1 ✓	1,000.00 X	---0--- ✓
Rotenizer	1 ✓	---0--- ✓	(685.17) X
Webb, Darlene	1 ✓	---0--- ✓	(110.00) X
Wright Construction	1 ✓	236.00 X	40.00 X
	84	\$ 162,478.04	\$ 24,955.49
<u>Miscellaneous:</u>			
ASI	3 ✓	\$ 3,835.00 X	\$ 477.40 X
ADC	1 ✓	5,636.00 X	892.04 X
Adley Express	1 ✓	21.77 X	---0--- ✓
Allen Products	4 ✓	979.00 X	223.00 X
American Dispenser	1 ✓	74.80 X	11.41 X
American Flagpole	3 ✓	2,781.00 X	551.00 X
American Floor Products	1 ✓	218.00 X	119.86 X
Architectural Art	2 ✓	106.06 X	63.29 X
Asbeka	1 ✓	---0--- ✓	(8,500.00) X
BFG	2 ✓	1,068.32 X	227.32 X
Bass Mfg.	1 ✓	1,958.00 X	442.50 X
Capital Cubicle	1 ✓	---0--- ✓	(491.00) X
Carter Miot	3 ✓	540.17 X	177.75 X
Childers	6 ✓	9,478.60 X	2,037.45 X
Challenge	1 ✓	2,060.00 X	314.00 X
Cieco Manufacturing	1 ✓	1,263.52 X	75.76 X
Construction Specialties	1 ✓	5,000.00 X	(1,760.00) X
Continental Products	2 ✓	8,476.00 X	846.00 X
Daniels Plumbing	1 ✓	---0--- ✓	(887.11) X
Durable Mat	1 ✓	200.00 X	65.00 X
Everett Waddey	1 ✓	527.00 X	170.00 X
Easter Supply	1 ✓	---0--- ✓	(4.02) X
Gotham	4 ✓	9,466.50 X	1,001.00 X
Graves Supply	1 ✓	190.00 X	38.00 X
Hajoca	1 ✓	3,659.00 X	274.00 X
Hutter	1 ✓	---0--- ✓	(66.00) X
J.L. Industries	9 ✓	4,153.00 X	706.46 X
Just	2 ✓	1,409.00 X	144.10 X
Kane	1 ✓	115.00 X	81.70 X
Lee, Richard	1 ✓	---0--- ✓	(70.76) X
LeFebure	1 ✓	1,100.00 X	(1,040.00) X
Lynchburg Glass	1 ✓	1,324.00 X	324.00 X
London Associates	1 ✓	300.00 X	75.00 X
Lyon	1 ✓	2,520.00 X	420.00 X
Mahone	1 ✓	254.00 X	70.00 X
Magna Visual	5 ✓	337.90 X	127.60 X
Murphy Door	2 ✓	2,535.20 X	474.27 X
Nelson Harkins	2 ✓	414.00 X	79.00 X
PPG	2 ✓	584.00 X	58.20 X

1977
ROANOKE BRANCH SALES BREAKDOWN
-Page 3-

MANUFACTURER	ORDERS	SALES	PROFIT
Miscellaneous (cont.):			
Parker, Charles	4 ✓	\$ 735.00 X	\$ 174.52 X
Penco	1 ✓	15,490.00 X	2,048.00 X
Plasta-Flex	1 ✓	2,485.00 X	486.80 X
Pitzer	1 ✓	---0--- ✓	(90.00) X
Red Line	1 ✓	---0--- ✓	(150.00) X
R-J-W	5 ✓	25.00 X	(560.00) X
Skutt	1 ✓	516.00 X	72.62 X
Smith & Shcaeffe	1 ✓	611.00 X	611.00 X
Snyder Plumbing & Heating	1 ✓	---0--- ✓	(83.34) X
South Roanoke Lumber	1 ✓	1,518.24 X	324.24 X
Tubelite	1 ✓	3,426.00 X	576.00 X
Vogel Peterson	7 ✓	2,517.56 X	807.47 X
Warner Supply	1 ✓	---0--- ✓	(212.60) X
WESCO	1 ✓	239.37 X	44.97 X
Western Manufacturing	1 ✓	---0--- ✓	(81.72) X
Wilson, Andrew	9 ✓	9,059.26 X	1,964.91 X
Wire & Iron Products	1 ✓	2,120.00 X	63.50 X
Wolverine Brass	1 ✓	---0--- ✓	(635.51) X
Zero Weatherstripping	1 ✓	---0--- ✓	(67.32) X
Unspecified	3 ✓	9,429.00 X	1,326.50 X
	118	\$ 120,746.27	\$ 4,368.26

GRAND TOTAL	447 ✓	\$1,182,525.00	\$196,638.44
Change Orders			(19,678.22)
Profit From Other Offices			\$176,960.22
TOTAL PROFIT FOR 1977			+2,735.85
			\$179,696.07
To Branch Offices for 1977	-----		\$ (3,211.69)

ROANOKE ENGINEERING SALES CO., INC.
BOARD OF DIRECTORS MEETING
CHARLOTTE BRANCH OFFICE REPORT
JANUARY 21, 1978

Visitors to Charlotte during period October 1, 1977 through December 31, 1977:

10/6/77	Marty Martinussen	Monitor Products	
10/7/77	Pat Saine	M.A. Saine, Inc.	
10/7/77	Tim Parrish	Ceco Corp.	
10/7/77	Dan Atkins	Parke Construction Company	
10/7/77	Guy Bradford	Russ Jones Corp.	
10/10/77	Larry Nelson	Wooster Products	
10/11/77	Sonny Greco	Auth Electric Company	
10/11/77	Al Comelitti	Mobex Corp.	
10/12/77	Frank Holmes	Duke Power Company	
10/12/77	Dennis Scronce	Duke Power Company	
10/12/77	John R. Weber	Nicolet, Inc.	
10/17/77	Len Murrans	Square D Company	
10/17/77	Jack Woodall	Square D Company	
10/19/77	Jack Woodall	Square D Company	
10/20/77	Bill Payne	LabPipe, Inc.	
10/27/77	Les Bass	BFG Sales Company	
10/27/77	Jack Borum	Pitney-Bowes	
10/28/77	Bill Payne	LabPipe, Inc.	
11/11/77	Pat Saine	M.A. Saine, Inc.	
11/13/77	Bill Payne	LabPipe, Inc.	
11/16/77	Bob Waples	Architectural Doors	
11/18/77	Kemp Lee	Cook & Boardman	
11/18/77	Bruce Barber	Federal Glass	
12/1/77	Pat Saine	M.A. Saine, Inc.	
12/1/77	Les Bass	BFG Sales Company	
12/2/77	Pat Saine	M.A. Saine, Inc.	
12/6/77	George Anderson	Monitor Products	
12/6/77	Pat Saine	M.A. Saine, Inc.	
12/7/77	Ed Williams	Hauserman-Educator	
12/12/77	Jim Langstaff	Liberty Mutual Insurance Co.	

Trips by Bud Rosenbaum 10/1/77 through 12/31/77:

10/13 - 10/15	Roanoke, Virginia	Board of Directors Meeting
10/29 - 11/2	Boca Raton, Florida	AGC Convention
11/4 - 11/6	Blacksburg, Virginia	25th Reunion
12/16	Richmond, Virginia	Special Board Meeting

Trips by Keith Middleton 10/1/77 through 12/31/77:

10/29 - 11/15	Boca Raton, Florida	AGC Convention & Vacation
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CHARLOTTE BRANCH OFFICE

SALES BREAKDOWN

OCTOBER 1, 1977 thru DECEMBER 31, 1977

<u>MANUFACTURER</u>	<u>ORDERS</u>	<u>GROSS SALES</u>	<u>GROSS MARK UP</u>
<u>DOORS & FRAMES</u>			
symoco	23	\$ 96,524.00	\$ 12,839.00
eco	2	2,484.00	641.00
SUB-TOTAL	25	\$ 99,008.00	\$ 13,480.00
<u>WINDOWS</u>			
efco	3	\$ 2,396.00	\$ 447.00
issen	1	348.00	150.00
SUB-TOTAL	4	\$ 2,744.00	\$ 597.00
<u>HOSPITAL & LAB EQUIPMENT</u>			
amilton	2	\$ 3,385.00	\$ 2,467.00
onitor	3	17,266.00	3,880.00
aine	2	3,190.00	- -
SUB-TOTAL	7	\$ 23,841.00	\$ 6,347.00
<u>MISCELLANEOUS</u>			
ndco	1	\$ 1,985.00	\$ 384.25
rchitectural Art	2	3,941.73	1,075.00
arter-Miot	1	992.00	255.00
.C. Davenport	1	54.01	30.00
avis Products	1	121.00	50.00
liason Easy Swing	1	3,988.99	600.00
eneral Partitions	3	6,385.00	800.00
ane Mfg.	1	754.00	240.00
ing Refrig.	1	775.00	120.00
nickerbocker	1	1,295.00	73.00
iller Wire Works	1	2,253.00	403.00
ooster	1	273.40	100.00
SUB-TOTAL	15	\$ 22,817.14	\$ 4,130.25
<u>COMMISSION ACCOUNTS</u>			
amilton	--	\$ --	\$ 12,745.00
ooster	--	--	509.93
SUB-TOTAL	--	\$ --	\$ 13,254.93
CHANGE ORDERS	(13)	\$ 10,596.00	\$ 2,089.92
PLIT COMMISSIONS	(1)	\$ --	\$ 96.26
TOTAL 4th QUARTER	51	\$ 159,006.14	\$ 39,995.36
st thru 3rd QUARTERS	155	\$ 698,434.23	\$ 109,875.93
TOTAL 1977	206	\$ 857,440.37	\$ 149,871.29

**TOTAL 1977 SALES BREAKDOWN
CHARLOTTE BRANCH OFFICE**

<u>MANUFACTURER</u>	<u>ORDERS</u>	<u>GROSS SALES</u>	<u>GROSS MARK-UP</u>
DOORS & FRAMES			
Bymoco	84 ✓	\$ 290,582.00 ✓	\$ 40,989.00
Ceco	7 ✓	7,843.00 ✓	1,741.00
Cook & Boardman	1 ✓	155.00 ✓	45.80
Dittco	2 ✓	3,200.00 ✓	506.00
Emerson Engr.	1 ✓	355.00 ✓	100.00
Trussbilt	2 ✓	6,174.00 ✓	1,350.00
SUB-TOTAL	97	\$ 308,309.00	\$ 44,731.80
WINDOWS			
Bliss	5 ✓	\$ 3,994.20 ✓	\$ 1,276.75
Efco	10 ✓	41,802.30 ✓	7,067.00
Nissen	1 ✓	348.00 ✓	150.00
Russell-Anaconda	1 ✓	2,414.00 ✓	400.00
SUB-TOTAL	17	\$ 48,558.50	\$ 8,893.75
HOSPITAL & LAB EQUIPMENT			
Hamilton	17 ✓	\$ 137,448.15 ✓	\$ 21,139.00
LabPipe	1 ✓	13,000.00 ✓	--
Monitor	10 ✓	107,134.00 ✓	15,543.00
Saine	11 ✓	42,981.00 ✓	4,185.00
Watson	3 ✓	13,141.00 ✓	1,400.00
SUB-TOTAL	42	\$ 313,704.15	\$ 42,267.00
MISCELLANEOUS			
American Accordion-Fold	1 ✓	\$ 1,229.00 ✓	\$ 410.00
American Flagpole	1 ✓	790.00 ✓	150.00
Andco	1 ✓	1,985.00 ✓	384.25
Architectural Art	6 ✓	13,016.81 ✓	3,379.00
BFG Sales	1 ✓	689.00 ✓	130.00
J.L. Brasher	1 ✓	--	(186.80)
Carter-Miot	1 ✓	992.00 ✓	255.00
A.C. Davenport	1 ✓	54.01 ✓	30.00
Davis Products	4 ✓	8,845.00 ✓	1,751.34
Dittco Div.	2 ✓	14,270.00 ✓	4,559.00
Eliason Easy Swing	1 ✓	3,988.00 ✓	600.00
EPI Arch. Systems	2 ✓	37,050.00 ✓	5,400.00
Fiberglass Specialties	1 ✓	4,470.00 ✓	1,000.00
Flagpoles, Inc.	4 ✓	2,766.00 ✓	571.00
General Partitions	9 ✓	13,034.00 ✓	1,700.00
Kane Mfg.	3 ✓	2,987.00 ✓	690.00
King Regrig.	2 ✓	2,673.00 ✓	420.00
Knickerbocker	1 ✓	1,295.00 ✓	73.00
Michaels Art Bronze	1 ✓	6,938.00 ✓	1,200.00
Mid-South Mfg.	2 ✓	9,819.00 ✓	1,470.00
Miller Wire Works	1 ✓	2,253.00 ✓	403.00
Roanoke Iron & Bridge	1 ✓	19,150.00 ✓	5,150.00
Schwab Safe	1 ✓	875.00 ✓	200.00
Wooster	2 ✓	501.40 ✓	193.96
SUB-TOTAL	50	\$ 149,670.22	\$ 29,932.75

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TOTAL 1977 SALES BREAKDOWN
CHARLOTTE BRANCH OFFICE

<u>MANUFACTURER</u>	<u>ORDERS</u>	<u>GROSS SALES</u>	<u>GROSS MARK-UP</u>
<u>COMMISSION ACCOUNTS</u>			
Architectural Art	--	\$ --	\$ 192.88
Hamilton	-- /	-- /	16,228.00
Wooster			1,009.84
SUB-TOTAL	--	\$ <i>857,440.37</i>	\$ 17,430.72
			<i>143,256.02</i>
CHANGE ORDERS	(70)	\$ 37,198.50	\$ 4,266.84
SPLIT COMMISSIONS	(10)	\$ --	\$ 2,200.93
TOTAL 1977	206	\$ 857,440.37	\$ 149,871.29
1976	170	\$1,283,513.48	\$ 231,193.54
1975	181	\$1,050,645.10	\$ 169,420.50

MINUTES OF BOARD OF DIRECTORS MEETING
ROANOKE ENGINEERING SALES CO., INC.
January 21, 1978

Place: The Homestead, Hot Springs, VA.

Present: Joseph L. Rosenbaum, President
Harry L. Rosenbaum, Jr., Exec. Vice President
Curtis Rosenbaum, Sr. Vice President & Treasurer

Absent: Harry L. Rosenbaum, Sr., Chairman
Nellie P. Bergman, Assistant Secretary
Robert F. Rosenbaum, Sr. Vice President & Secretary

Guest: Laurence D. Ebersole, Controller

The meeting was called to order at 1:00 p.m. by Joseph L. Rosenbaum, President, and opened with a prayer by Curtis Rosenbaum.

It was noted that the absentees were unable to attend the meeting due to inclement weather conditions.

The minutes of the Special Board of Directors Meeting held December 16, 1977 were approved as written.

Buzz reported a cash position as of January 18, 1978 of \$58,578.60. He reported that the Corporation had taken down a note for \$100,000 with United Virginia Bank as of January 16, 1978 due in 92 days. The need for funds for working capital were discussed. Total loans now amount to \$226,100 of which \$126,100 is on stockholder life insurance loans with Union Mutual.

The balance sheet, profit and loss statement, commission statement, orders booked, work in process, and stock valuation reports were discussed for the 12 month period ending December 31, 1977. Progress of the 1977 audit was noted to be on schedule at this time.

The Branch Managers reported on their evaluation of 1977 results and their projections for 1978.

Under Old Business, it was noted that the Franklin Road property had been transferred to the four Rosenbaum Brothers and their wives. In the absence of Mr. Rosenbaum, details of the transactions were not available at the meeting.

The contribution to Roanoke Engineering Profit Sharing plan was \$57,198.73. It was noted that the Trustee had advised that the 1977 Performance report and certificates should be available about the middle of February.

There was considerable discussion concerning the legal fees for the preparation of the Profit Sharing Plan to conform to the new Federal Regulations. As this work had been negotiated by Curtis Rosenbaum, it was agreed that he would discuss the matter with Al Knighton.

Progress of the IRS audit was discussed. It was indicated that notices to the four stockholders would probably be mailed prior to the end of January for their individual disposition.

Following a discussion of the retention of a new auditing firm effective with 1978, a motion was made and seconded to retain Ernst & Ernst as the new auditing firm. In view of questions raised by the Directors, action was tabled until the April Annual Meeting. Mr. Joseph Rosenbaum was to review with Ernst & Ernst the questions raised concerning the proposal and report back at the next meeting.

Mr. Joseph Rosenbaum reported on the series of meetings prior to the Director's Meeting. The series was referred to as the Corporate Policy Meeting. These meetings included meeting of the four stockholders and separate meeting of the four stockholders with the three Vice Presidents and the Controller. Mr. Rosenbaum reported that the meeting had been productive and would provide a framework for future corporate activity.

Upcoming Dates:

- 3/31 Branch Reports to be mailed to each Director
- 4/1 Agenda Items for Annual Stockholders, Annual Directors, and Regular Directors Meetings to be in Richmond
- 4/15 Board Meeting, 10:00 a. m. Roanoke Executive Office

There being no further business, the meeting was adjourned at 3:10 p. m.

Robert F. Rosenbaum, Secretary

Attest: _____
Joseph L. Rosenbaum, President

X Monthly Statements to users
X Job 1900 - Use, with
Cico employee "moonlighting"

Acad X Prompt order typing
Payment to Supplier

X Accounting Office collection of Acids receivable
Consistent schedule for Salomon compensation

Cal Board Approval of Branch Budgets
Develop alternate sources of supply

Keith Branch Policy Book - private use of auto
Expense: Columbia S.C. with

Increase Board Membership to include outsiders

X Change Orders: new form
AECs - 4 companies

Brokers - 4 presidents

Order & Change Order Writing by subordinates
Salesman participation in Trade Assoc (AEC, etc.)

One Institution Co.

$2/3 - 1/3$

Regular Corp vs Subchapter S

Cash vs Accrual Bookkeeping

Set limit on deficit financing for Branch / personal loan

3rd Generation Problems - Continuity

Realign territories - move Bob? - Va. = 1 Branch? - How many?

5-yr plan - 10-yr plan - future growth?

1 unified Corp or 4 corps + a holding co.

Assign 4 brothers to give each a total responsibility

ROANOKE ENGINEERING SALES COMPANY, INC.

BOARD OF DIRECTORS MEETING

January 24, 1978

VISITORS TO RICHMOND DURING 4th QUARTER, 1978

10/6	Bill Cox	Hamilton Industries
10/6	Gordon Radandt	Hamilton Industries
10/25	Vince Brennan	Hauserman, Inc.
11/14 & 15	Joe Juradovac	Hauserman, Inc.
11/16	Art Dilleuth	Hauserman, Inc.
11/16	Dick Majors	Hauserman, Inc.
12/15	Bud Rosenbaum	RESCO - Charlotte Branch
12/15	Bob Rosenbaum	RESCO - McLean Branch

TRIPS BY MIKE CLAY DURING 4th QUARTER, 1978

11/28 & 29	Cleveland, OH	Hauserman, Inc.
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TRIPS BY CARL SICH I DURING 4th QUARTER, 1978

10/16 & 17	Roanoke, VA	RESCO - Roanoke Branch
11/9	Roanoke, VA	RESCO - Roanoke Branch

RICHMOND BRANCH ACCOUNTING - FOURTH QUARTER, 1978

<u>DOORS</u>									
Appton	4	18,718.00				3,315.60			
Arch. Hdwe.	1	220.00				7.84			
Bymoco	7	13,545.00				1,865.00			
Lockhart	2	18,473.00	50,956.00			2,109.00	7,297.44		
<u>WINDOWS</u>									
Bliss	1	530.00				245.00			
Efco	1	304.00				150.00			
Ware	1	1,203.00	2,037.00			285.00	680.00		
<u>ERECTORS</u>									
Arcom	32	62,927.63				15,981.93			
Belcher	1	801.00				201.00			
Door Trble.	2	1,812.00	65,540.63			87.00	16,269.93		
<u>PARTITIONS</u>									
Am. Accord	1	1,547.00				200.20			
Hauserman	7	74,693.35				17,432.44			
Panelfold	2	1,491.00				649.52			
Robart	7	6,986.00				1,600.20			
W & L	2	516.00	85,233.35			139.00	20,021.36		
<u>MISCELLANEOUS</u>									
ASI	11	26,619.20				4,926.30			
Allen	1	27.00				14.00			
Am. Desk	1	107.90				21.40			
Am. Flag	4	23,344.00				7,519.82			
Amerex	1	274.00				126.74			
Auth	1	216.30				102.07			
BFG	1	3,412.00				487.50			
Coley	2	492.00				-645.00			
Crestlyn	1	2,082.00				221.82			
Dages	1	106.00				50.51			
Dawson	1	3,583.00				300.00			
EPI	1	24,290.00				7,290.00			
G. S.	3	2,300.00				450.00			
Griffith-Hope	1	91.00				50.27			
Hamilton	12	59,410.00				17,806.00			
JL	1	446.00				100.00			
Mosler	1	920.00				104.71			
Murphy	1	3,710.00				700.00			
Porterfield	1	172.00				100.60			
RJW	5	152.50				-125.10			
V-P	1	1,185.00	152,939.90	356,706.88		900.00	40,501.64	84,770.3	
<u>OTHER</u>									
CO	67			1,698.82				1,490.6	
<u>SPLIT COMM.</u>									
Charlotte						2,130.50			
Roanoke						403.15			
Washington						-286.29	-	2,247.3	
Total 4th Qtr.			358,405.70					88,508.4	
Total 3rd Qtr.			443,606.75					105,303.7	
Total 2nd Qtr.			241,495.24					60,656.0	
Total 1st Qtr.			158,320.74					41,370.2	
TOTAL FOR YEAR			\$ 1,201,828.43					\$ 295,838.3	

Contributions to other Branches:

Roanoke	633.34
Washington	71.90

RICHMONT BRANCH ACCOUNTING, 1973

<u>DOORS</u>							
Apton	20	64,107.00			9,224.82		
Arch. Hdwe.	4	235.00			-885.06		
Bymoco	10	16,545.00			2,465.00		
Lockhart	8	25,848.00	106,735.00		3,153.75	13,958.51	
<u>WINDOWS</u>							
Bliss	2	812.00			295.00		
Efco	4	3,474.00			540.87		
Ware	3	3,636.00	7,922.00		635.00	1,470.87	
<u>ERECTORS</u>							
Arcom	127	219,595.76			47,440.98		
Belcher	1	801.00			201.00		
Door Trble.	16	8,874.00			743.00		
Eastern	1	890.00	230,160.76		81.00	48,465.98	
<u>PARTITIONS</u>							
Am. Accord.	4	6,709.00			1,641.50		
General	5	5,668.46			1,110.48		
Hauserman	42	313,329.24			86,271.66		
Panelfold	16	73,819.08			14,462.99		
Robart	41	38,216.00			7,707.38		
W & L	2	516.00			139.00		
Weis	1	24,783.00	463,040.78		2,647.00	113,980.01	
<u>MISCELLANEOUS</u>							
ASI	40	55,229.20			10,382.14		
Acme	4	3,322.00			586.00		
Allen	11	2,405.00			676.00		
Am. Desk	1	107.90			21.40		
Am. Disp.	5	1,787.00			404.74		
Am. Flag.	12	31,198.00			9,333.82		
Am. Floor	1	150.00			49.00		
Amerex	1	274.00			126.74		
Arch. Art	1	-0-			16.07		
Atl. Elec.	1	-0-			-73.92		
Auth	1	216.30			102.07		
Auto Equip.	1	-0-			-258.50		
BFG	2	3,412.00			227.50		
Bldg. Equip.	1	73.00			10.23		
Colite	1	329.00			100.00		
Coley	3	1,368.00			-445.00		
Cotton	1	-0-			-1,000.00		
Crestlyn	3	2,812.83			237.39		
Cushing	1	337.00			25.00		
Dages	2	989.00			550.51		
Davenport	2	3,218.00			379.33		
Dawson	1	3,583.00			300.00		
EPI	1	24,290.00			7,290.00		
G. S.	5	6,815.00			1,320.00		
Gotham	1	530.00			100.00		
Griffith-Hope	1	91.00			50.27		
Hamilton	35	199,716.97			52,033.72		
JL	15	7,753.00			2,230.00		
Kane	1	5,126.00			1,400.00		
Ky. Metal	3	3,169.00			760.25		
King	5	2,554.00			885.00		
Mach. & Conv.	3	970.25			350.60		
Mag. Vis.	8	447.32			235.34		
Miller	2	792.00			137.50		
Monarch	1	-0-			-110.58		
Mosler	5	6,027.00			1,154.71		
Murphy	1	3,710.00			700.00		
N-H	6	2,732.00			751.00		
Parker	3	129.43			-709.37		
Pleasants	1	-0-			-51.10		
Porterfield	1	172.00			100.60		
RJW	15	152.50			-631.85		
Raymond Eng.	1	80.00			69.25		
Re-Top	1	959.00			294.00		
Rich. Glass	1	132.00			25.45		
Sears	1	-0-			-249.57		
V-P	12	5,362.00			2,876.33		
Waddey	1	707.17	383,319.69	1,191,178.23	347.15	94,101.16	271,976.5:
<u>OTHERS</u>							
CO	238			10,831.84			11,067.5:
<u>SPLIT COMM</u>							
Charlotte				244	5,533.20		
Roanoke					6657.44		
Washington					603.69		12,794.3:
TOTAL FOR YEAR				1,201,828.43			295,838.39

RESCO - Branch Accounting, 1977

Supplier	#	Sales \$	Gross Profit \$
ADC	1	\$ 5,636.00	\$ 892.04
ASI	25	31,729.00	6,072.09
Acme	6	5,183.00	1,061.55
Acorn	1	1,110.00	200.00
Adjusto	1	3,385.00	476.42
Allen	12	3,997.00	1,397.50
All Steel	17	19,461.77	3,099.44
Adley Express	1	21.77	-0-
American Desk	56	121,493.05	23,419.73
American Disp.	13	13,446.80	3,127.56
American Flagpole	19	12,828.27	2,906.14
American Floors Prod.	1	218.00	119.86
American Accordion Fold	11	32,709.32	6,755.90
Apton	12	29,556.00	5,022.22
Arch. Art.	9	12,122.87	3,677.69
Arch. Hardware	5	2,154.20	3,315.12
Arcom	58	137,174.00	17,264.55
Andco	1	1,985.00	384.25
Asbeka	1	-0-	(8,500.00)
BFG Sales	6	3,104.32	734.00
Baker, Burrell	7	1,226.82	120.32
Bass Mfg.	1	1,958.00	442.50
Buildings Equipment	2	616.00	50.67
Bliss	12	13,614.05	3,629.19
J. L. Brasker	1	-0-	(186.80)
Brodart	1	42.00	4.00
Burntex	3	736.25	736.25
Bymoco	114	386,732.00	53,309.25
Campbellsville	2	4,390.00	927.00
Carpenter, W. C.	1	-0-	(368.69)
Capital Mail Chute	11	46,671.00	8,949.40
Capital Cubicle	1	-0-	(491.00)
Ceco	7	7,843.00	1,741.00
Cassidy	1	-0-	(1,040.00)
Ceico	66	156,506.44	24,816.00
Challenge	1	2,060.00	314.00
Childers Mfg. Co.	7	9,478.00	2,057.39
Clay	1	300.00	33.00
Colite	2	1,668.00	466.03
Colonial	11	18,967.39	3,855.55
Collins, P.	2	2,740.00	619.24
Conalco	1	1,191.00	201.00
Construction Spec.	1	5,000.00	(1,760.60)
Continental Products	2	8,476.00	846.00
Cook & Boardman	1	155.00	45.80
Carter-Mint	1	1,532.17	432.75
Commercial Glass	1	500.00	-0-
Crane Fulview	1	10,600.00	2,014.00
Cox	1	532.00	117.00
Custom Service	4	1,065.30	87.32
Daniel Plumbing	1	-0-	(887.11)
A. C. Davenport	1	54.01	30.00
Davis Products	4	8,845.00	1,751.34
Design Tex	1	58.76	10.76
Desert Ray	1	1,987.00	1,000.00
Dittco	4	17,470.00	5,065.00
Durable Mat.	1	200.00	65.00
EPI Arch Systems	8	100,065.00	27,400.00
Eastern	8	3,957.00	834.00
Eastern O.S.	1	-0-	(12.08)
Eastern Supply	1	-0-	(4.02)
Educators	2	1,695.52	345.52
Efco	22	77,363.52	12,575.00
Elec. Equipment	1	-0-	(27.35)
Eliason Easy Swing	1	3,988.00	600.00
Emerson Eng.	1	355.00	100.00
Enterprise	1	-0-	(11,100.00)
Fab. Products	2	5,501.75	1,729.00
Everett Waddey	1	527.00	170.00

Supplier	#	Sales \$	Gross Profit \$
Fiberglass Spec.	1	4,470.00	1,000.00
Flagpole Inc.	4	2,766.00	571.00
Fulton	2	12,327.00	1,869.00
General Partitions	26	30,998.00	5,256.00
GE	1	-0-	(94.68)
Gilmore	1	3,153.00	653.00
Gotham	6	10,171.50	1,101.00
Greenhouse Fab.	1	13.38	1.21
Graves Supply	1	190.00	38.00
Hagg	3	-0-	-0-
H&S Sales	1	-0-	(579.65)
Hajoca	1	3,659.00	274.00
Hamilton	70	411,893.11	84,161.80
Hamilton Paper	1	451.00	50.36
Hauserman	87	898,295.45	203,519.04
Humston, Dennis	2	22.00	(8.00)
Hutler	1	-0-	(66.00)
International Fab.	1	712.00	50.00
J.L. Industries	27	11,418.00	3,202.62
JMB	14	-0-	-0-
Jamison	1	1,613.00	161.00
Jasper Seating	3	3,444.92	501.99
Jasper Table	3	2,804.49	496.89
Johnson	1	1,426.00	490.00
Just	2	1,409.00	144.10
Kane	5	3,342.00	815.70
King	3	3,846.00	649.00
Kentucky Metal	14	19,974.00	3,872.00
Kirsch	3	1,056.00	285.25
Knickerbocker	1	1,295.00	73.00
Krueger	6	16,730.02	3,639.51
Lee, Richard	1	-0-	(70.76)
LeFebure	1	1,100.00	(1,040.00)
Lickhart	7	21,969.00	4,189.64
London Associates	1	300.00	75.00
Lynchburg Glass	1	1,324.00	324.00
Lyon	1	2,520.00	420.00
Lab Pipe	1	13,000.00	-0-
Mahone	1	254.00	70.00
Magna Visual	14	3,104.89	728.22
Martin	1	220.00	50.00
Michaels Art	3	11,281.00	2,174.00
Miller	3	4,283.00	853.00
Millstone Erectors	1	-0-	-0-
Mid South Mfg.	2	9,819.00	1,470.00
Monitor	10	107,134.00	15,543.00
N-H	7	4,490.00	1,399.00
Nelson Harkins	2	414.00	79.00
Nessen	1	348.00	150.00
Noland	1	-0-	(300.00)
Overly	5	10,215.00	2,091.00
PPG	2	584.00	58.20
Panel Fold	23	71,583.68	16,985.50
Parker	4	18,143.00	2,769.65
Parker, Charles	4	735.00	174.52
Patcraft	3	10,283.27	4,351.17
Penco	1	15,490.00	2,048.00
Petzer	1	-0-	(90.00)
Plasta-Flex	1	2,485.00	486.80
RJW	15	137.00	(1,733.08)
Red-Line	1	-0-	(150.00)
Reed	5	7,381.56	1,725.78
Reynolds Alum. Bldg. Prod.	1	233.00	100.40
Rich. Fireproof	2	1,510.00	232.00
Richmond Glass	8	1,633.59	190.82
Robart	16	21,281.00	5,611.59
Roanoke Iron & Bridge	1	19,150.00	5,150.00
Robinson	1	1,000.00	-0-
Rotenizer	1	-0-	(685.17)
Russell-Anaconda	1	2,414.00	400.00
Ryder	1	-0-	(139.72)
Rusco	1	2,136.00	501.60

<u>Supplier</u>	<u>#</u>	<u>Sales</u> <u>\$</u>	<u>Gross Profit</u> <u>\$</u>
Saine	11	42,981.00	4,185.00
Schwab Safe	1	875.00	200.00
Seabrook	9	2,381.96	675.28
Sears	1	440.00	50.00
Skutt	1	516.00	72.62
Smith & Shcaeffe	1	611.00	611.00
Snyder Plumbing & Heat.	1	-0-	(83.34)
Southern G.F. Corp	1	421.92	133.92
Southern Roanoke Lumber	1	1,518.24	324.24
Superior Carpet	1	641.00	173.00
Trussbelt Inc.	3	11,270.00	2,176.00
U.S. Metal	1	7,850.00	861.00
Usona	2	347.00	1,000.00
Virginia Auto	1	-0-	(175.76)
Vogel Peterson	19	13,553.56	4,900.34
W&L	5	3,398.37	935.54
WCM Corp.	1	109.80	38.70
Ware	2	1,604.00	325.00
Watson	4	12,141.00	1,340.00
Webb, Darlene	1	-0-	(110.00)
Wenco	1	475.00	52.00
Wesco	1	239.37	44.97
Warner Supply	1	-0-	212.60
Western	3	1,413.00	118.28
Williamsburg Steel	1	10,600.00	4,010.00
Superior	3	16,536.00	3,353.50
Wilson, Andrew	9	9,059.26	1,964.91
Wire and Iron Prod.	1	2,120.00	63.50
Wolverine Brass	1	-0-	(635.51)
Worster	2	501.40	1,203.80
Zero Weatherstripping	1	-0-	(67.32)
Unspecified	3	9,429.00	1,326.50
	<u>1,154</u>	<u>\$3,310,452.09</u>	<u>\$626,488.04</u>

ROANOKE ENGINEERING SALES COMPANY, INC.

FINANCIAL STATEMENTS
December 31, 1977 and 1976

BERRY, DAIL & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS

BERRY, DAIL & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS

108 BOULEVARD

SALEM, VIRGINIA 24153

MEMBERS
AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS

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WILLIAM T. DAIL
RICHARD H. BERRY
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EDWARD O. VANCE
ENDLETON W. SMITH
ROBERT M. SHULTS

WILLIAM S. SPRINCLE, JR.
RALPH E. LAWTON
ALLAN D. BRUNE

Board of Directors
Roanoke Engineering Sales Company, Inc.
Roanoke, Virginia

We have examined the balance sheet of Roanoke Engineering Sales Company, Inc. as of December 31, 1977 and 1976, and the related statements of loss (earnings) and retained earnings, and changes in financial position for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying balance sheet and the related statements of loss (earnings) and retained earnings and changes in financial position present fairly the financial position of Roanoke Engineering Sales Company, Inc. at December 31, 1977 and 1976, and the results of its operations and changes in financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Berry, Dail & Company

February 3, 1978

ROANOKE ENGINEERING SALES COMPANY, INC.

BALANCE SHEET
December 31, 1977 and 1976

ASSETS

	<u>1977</u>	<u>1976</u>
CURRENT ASSETS		
Cash	\$ 101,310.40	\$ 94,831.04
Accounts receivable (net of provision for doubtful accounts - \$15,000)	743,189.74	1,169,255.74
Costs in excess of billings	56,964.79	23,669.31
Loans to officers	2,114.36	4,226.50
Accrued interest receivable		725.00
Prepaid expenses	13,028.87	8,752.03
Total Current Assets	<u>916,608.16</u>	<u>1,301,459.62</u>
FIXED ASSETS - AT COST (Note 1)		
Automobiles	52,500.26	43,529.01
Furniture and fixtures	60,534.28	54,563.56
Leasehold improvements	8,794.70	8,794.70
	<u>121,829.24</u>	<u>106,887.27</u>
Less accumulated depreciation	68,239.40	46,953.27
Net Fixed Assets	<u>53,589.84</u>	<u>59,934.00</u>
OTHER ASSETS		
Cash value of officers' life insurance (net of policy loans)	14,933.00	4,135.50
Deposit	425.00	425.00
Total Assets	<u>\$ 985,556.00</u>	<u>\$1,365,954.12</u>

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES		
Accounts payable	\$ 335,069.65	\$ 601,422.75
Accrued branch commissions (Note 1)	9,429.05	79,161.85
Sales taxes payable	4,207.73	27,781.76
Payroll taxes withheld and accrued	19,871.78	9,828.01
Total Current Liabilities	<u>368,578.21</u>	<u>718,194.37</u>
COMMITMENTS AND CONTINGENCIES (Notes 1 and 2)		
STOCKHOLDERS' EQUITY		
Common stock: \$10 par value, authorized 5,000 shares, issued and outstanding 3,000 shares	30,000.00	30,000.00
Retained earnings	586,977.79	617,759.75
Total Stockholders' Equity	<u>616,977.79</u>	<u>647,759.75</u>
Total Liabilities and Stockholders' Equity	<u>\$ 985,556.00</u>	<u>\$1,365,954.12</u>

The accompanying notes are an integral part of these financial statements.

ROANOKE ENGINEERING SALES COMPANY, INC.
STATEMENT OF LOSS (EARNINGS) AND RETAINED EARNINGS
For the Years Ended December 31, 1977 and 1976

	<u>1977</u>	<u>1976</u>
SALES	\$3,940,892.90	\$4,755,387.45
COST OF SALES	<u>3,184,060.37</u>	<u>3,757,737.18</u>
Gross Profit	<u>756,832.53</u>	<u>997,650.27</u>
OPERATING EXPENSES		
Salaries - officers	165,810.45	357,897.74
Salaries - other	195,052.73	197,138.08
Profit-sharing contribution (Note 3)	57,198.73	65,771.75
Travel	57,387.41	44,404.08
Rent	42,268.27	41,848.19
Telephone	34,319.03	34,851.46
Insurance	42,804.96	27,134.65
Office expense	27,829.55	28,529.32
Taxes - payroll	21,712.87	19,441.87
Automobile expenses	14,570.34	19,297.54
Depreciation	21,598.26	18,062.37
Entertainment	19,730.26	15,454.96
Conventions and meetings	15,504.97	12,008.21
Dues and subscriptions	7,958.45	11,558.21
Taxes - other	15,048.30	9,523.92
Professional services	16,833.87	8,113.16
Sales office expense - unclassified		7,834.40
Postage	6,245.42	6,254.52
Blue prints drafting	5,713.10	5,732.53
Advertising	7,287.34	5,693.51
Repairs and maintenance	3,033.11	2,704.34
Utilities	3,159.44	2,607.78
Freight	<u>1,226.00</u>	<u>339.74</u>
Total	<u>782,292.86</u>	<u>942,202.33</u>
Loss (Earnings) From Operations	<u>25,460.33</u>	<u>(55,447.94)</u>
OTHER EXPENSE (INCOME)		
Interest income	(1,568.22)	(10,231.64)
Interest expense	6,485.71	4,578.51
Other	<u>404.14</u>	<u>(1,760.71)</u>
Total	<u>5,321.63</u>	<u>(7,413.84)</u>
NET LOSS (EARNINGS)	30,781.96	(62,861.78)
RETAINED EARNINGS, Beginning of Year	617,759.75	620,897.97
Less dividends paid		<u>66,000.00</u>
RETAINED EARNINGS, End of Year	<u>\$ 586,977.79</u>	<u>\$ 617,759.75</u>
LOSS (EARNINGS) PER SHARE	<u>\$ 10.26</u>	<u>\$ (20.95)</u>

The accompanying notes are an integral part of these financial statements.

ROANOKE ENGINEERING SALES COMPANY, INC.
STATEMENT OF CHANGES IN FINANCIAL POSITION
For the Years Ended December 31, 1977 and 1976

	<u>1977</u>	<u>1976</u>
FUNDS WERE PROVIDED FROM		
Decrease (increase) in accounts receivable	\$ 426,066.00	\$ (434,233.62)
Decrease in loans to officers	2,112.14	2,121.30
Decrease in accrued interest receivable	725.00	1,962.50
Increase (decrease) in payroll taxes withheld and accrued	10,043.77	(19,447.46)
Increase in life insurance loans		<u>31,300.00</u>
Total Funds Provided (Required)	<u>438,946.91</u>	<u>(418,297.28)</u>
FUNDS WERE REQUIRED FOR		
Operations:		
Net loss (earnings) for the year	30,781.96	(62,861.78)
Add (deduct) depreciation charges not requiring cash outlay	<u>(21,598.26)</u>	<u>18,062.37</u>
Funds Required (Provided)		
Operations	9,183.70	(80,924.15)
Increase in excess of costs over billings	33,295.48	23,669.31
Increase in prepaid expenses	4,276.84	1,002.57
Purchase of fixed assets - net of disposals	15,254.10	19,536.99
Increase in cash value of life insurance	10,797.50	20,954.50
Decrease (increase) in accounts payable	266,353.10	(403,871.67)
Decrease (increase) in sales taxes payable	23,574.03	(24,940.54)
Payment of dividends		66,000.00
Increase in deposits		425.00
Decrease (increase) in accrued branch commissions	<u>69,732.80</u>	<u>(40,152.36)</u>
Total Funds Required (Provided)	<u>432,467.55</u>	<u>(418,300.35)</u>
RESULTING IN AN INCREASE IN CASH	<u>\$ 6,479.36</u>	<u>\$ 3.07</u>

The accompanying notes are an integral part of these financial statements.

ROANOKE ENGINEERING SALES COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS
December 31, 1977 and 1976

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- A. ACCOUNTS RECEIVABLE, ACCOUNTS PAYABLE AND COMMITMENTS - The Company operates through four branch offices as sales representative for numerous manufacturers of steel specialty construction materials; although it does not carry physical inventories, it is solely responsible for the collection of accounts generated by its sales to customers. Sales invoices are prepared and accounts receivable recognized only as shipments are made by the manufacturers to the customer. The Company consistently follows the practice of recognizing its liability to the manufacturer only as the related billings to customers are made. At December 31, 1977 the Company is contingently liable to its vendors for open contracts unshipped and unbilled in the amount of \$2,029,384.03; billings to customers against these contracts will total \$2,529,642.23.
- B. INCOME TAXES - The Company has, since its inception, elected under applicable sections of the Internal Revenue Code to be taxed as a Sub S Corporation and uses the cash basis of accounting for income tax reporting. Inasmuch as the Company shareholders are responsible for income taxes on profits, no deferred income tax liability is recognizable. Should its tax election be terminated or revoked, the liability for future taxes on the net accrual balances would revert to the Corporation.
- C. ACCRUED BRANCH COMMISSIONS - Accrued commissions consist entirely of amounts owing to the four branch office managers who collectively own all of the Company's outstanding common stock. Commissions are a function of gross profit on sales and are payable when contracts are complete and all billings have been collected by the Company. At December 31, 1977 the branches have received advances on their accrued commissions in the amount of \$104,326.40. These advances have been netted against commissions payable of \$113,755.45.
- D. ACCUMULATED DEPRECIATION - Depreciation for book and tax purposes has been computed using the straight-line and the declining balance methods as follows:

	<u>Cost</u>		
Automobiles	\$ 52,500	Straight-line	3 years
Furniture and equipment	4,152	Declining balance	10 years
Furniture and equipment	56,382	Straight-line	3 - 10 years
Leasehold improvements	1,149	Declining balance	15 years
Leasehold improvements	<u>7,646</u>	Declining balance	10 years
	<u>\$121,829</u>		

(continued)

ROANOKE ENGINEERING SALES COMPANY, INC.
 NOTES TO FINANCIAL STATEMENTS (continued)
 December 31, 1977 and 1976

2. COMMITMENTS AND CONTINGENCIES - The Company leases premises at each of its four branch locations in addition to its accounting office in Richmond and executive office in Roanoke. Annual lease payments are as follows:

<u>Location</u>	<u>1978</u>	<u>Lease Expiration</u>
Richmond	\$ 5,094	May 31, 1978
Richmond - accounting office	1,650	May 31, 1978
Charlotte		Open - month to month rental of \$412
Washington	2,348	Expired
Roanoke	6,788	September 30, 1978
Roanoke - executive office		Open - month-to month rental of \$200
Automobiles	<u>11,565</u>	
Total	<u>\$ 27,445</u>	

The Company is a party to various employment contract agreements with key employees at management level. These agreements stipulate various salaries and commissions to be paid out of future collections on sales commissions and contracts.

3. PROFIT-SHARING PLAN - The Company has a profit-sharing plan covering substantially all employees. The total profit-sharing expense for the year ended December 31, 1977 was \$57,199.