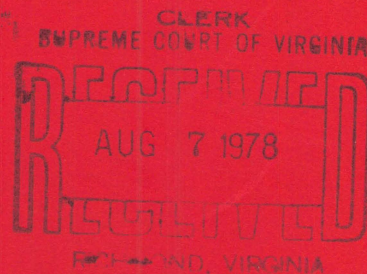


220VA800

IN THE
SUPREME COURT OF VIRGINIA



RECORD NO. 780207

VICTOR F. FOTI

Appellant

VERSUS

WILLIAM A. COOK, JR.,
JAMES M. DILLON,
LACY W. HANSON,
ISAAC O. PERKINS,
R. DAVID ROTTY,
JOSEPH B. WRIGHT,
and
GLENN D. McMILLION,
Partners trading as
Andrews, Burket & Co.

Appellees

APPENDIX TO APPELLANT'S BRIEF

Charles D. Fox, III
John Davis Feldman
HUNTER, FOX & WOOTEN
P. O. Box 12247
Roanoke, Virginia 24024

Counsel for Appellant

IN THE
SUPREME COURT OF VIRGINIA

RECORD NO. 780207

VICTOR F. FOTI

Appellant

VERSUS

WILLIAM A. COOK, JR.,
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APPENDIX TO APPELLANT'S BRIEF

Charles D. Fox, III
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HUNTER, FOX & WOOTEN
P. O. Box 12247
Roanoke, Virginia 24024

Counsel for Appellant

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

WILLIAM A. COOK, JR.,
 JAMES M. DILLON,
 LACY W. HANSON,
 ISAAC O. PERKINS,
 R. DAVID ROTTY,
 JOSEPH B. WRIGHT,
 and
 GLENN D. McMILLION,
 Partners trading as Andrews, Burket & Co.,

Plaintiffs,

v.

VICTOR F. FOTI,
 4713 Easthill Drive, S.W.
 Roanoke County, Virginia 24018,

ROBERT K. FLYNN,
 2428 Stanley Avenue, SW
 Roanoke, Virginia 24014,

MARION L. POWELL,
 1737 Braeburn Drive, Apt. C18
 Salem, Virginia 24153,

KENNETH RATLIFF,
 3615 Brambleton Avenue, S.W.
 Roanoke County, Virginia,

W. VERNON HICKS,
 2576 Inglewood Avenue
 Roanoke, Virginia 24015

C. THOMAS BREWER,
 5008 Keithwood Drive
 Roanoke, Virginia,

Partners trading as Persinger, Foti & Co.,

Defendants.

MOTION FOR
 DECLARATORY
 JUDGMENT

3560

TO THE HONORABLE JUDGES OF SAID COURT:

Come now the plaintiffs, William A. Cook, Jr., James
 M. Dillon, Lacy W. Hanson, Isaac O. Perkins, R. David Rotty,

Filed in the Clerk's Office the 20th day of Oct, 1976
 JWC: Fax \$ 5.00
 JWC: Fax \$ 5.00
 JWC: Fax \$ 1.00
 Total Paid \$ 11.00
 Walker R. Carter, Jr. Clerk
 Brenda Scott D.C.

Joseph B. Wright, and Glenn D. McMillion, and petition the Court for a Declaratory Judgment on the following grounds:

1. The plaintiffs, William A. Cook, Jr., James M. Dillon, Lacy W. Hanson, Isaac O. Perkins, R. David Rotty, Joseph B. Wright and Glenn D. McMillion, are Certified Public Accountants, and partners trading as Andrews, Burket & Co., a Virginia partnership ("Andrews, Burket & Co."), with its principal place of business at 500 Shenandoah Building, Roanoke, Virginia.

2. The defendant, Victor F. Foti, was a partner in the partnership of Andrews, Burket & Co. through September 30, 1976.

3. The plaintiffs are advised that the defendants, Victor F. Foti, Robert K. Flynn, Marion L. Powell, Kenneth Ratliff, W. Vernon Hicks, and C. Thomas Brewer, as of October 1, 1976, were, and remain, partners in the Roanoke office of Persinger, Foti & Company, a Virginia partnership with offices at 3615 Brambleton Avenue, S.W., Roanoke County, Virginia 24018.

4. This is an action for Declaratory Judgment pursuant to §8-578 et seq., of the Code of Virginia, 1950, as amended, for the purpose of determining a question of actual controversy between the parties regarding the interpretation of an instrument of writing, to-wit, that Partnership Agreement dated October 1, 1974, entered into by and between William A. Cook, Jr., James M. Dillon, Victor F. Foti, Lacy W. Hanson, Isaac O. Perkins, R. David Rotty and Joseph B. Wright.

5. On August 1, 1976, the defendant, Victor F. Foti, while a partner in Andrews, Burket & Co. gave to the other

partners written notice of his intention to resign from the partnership, effective September 30, 1976, pursuant to ARTICLE V, Section V.1, of that Partnership Agreement. A copy of said notice is attached hereto as Exhibit A.

6. Subsequently, certain clients of Andrews, Burket & Co. have given plaintiffs notice of their intention to have Victor F. Foti and C. Thomas Brewer, who resigned from Andrews, Burket & Co. to go with Victor F. Foti, render them services as certified public accountants.

7. That the defendant, Victor F. Foti and the other defendants acting in concert with him or on his behalf, have offered to perform or performed services as a Certified Public Accountant or Public Accountant to certain clients of Andrews, Burket & Co.

8. Subsequent to August 1, 1976, and prior to October 1, 1976, there arose a dispute between the plaintiffs and the defendant, Victor F. Foti, as to the application of ARTICLE VI, Section VI.1 (iv) of the Partnership Agreement, which Section provides in part:

During the twenty-four months immediately following the termination of his membership in the partnership, unless such termination is involuntary under the provisions of ARTICLE V.2 of this agreement, a partner will not offer to perform or perform services as a Certified Public Accountant or Public Accountant to any client of the partnership. A partner violating this subsection shall pay to the partnership an amount equal to one-third of each year's fee collected for a period of three years. Such amount is due when collected from the client by the former partner.

9. Specifically, the defendant, Victor F. Foti, has taken the position that through their actions the other partners

of Andrews, Burket & Co. terminated his status as a partner and that because of said termination he is no longer bound by the terms of the Partnership Agreement and that he is not obligated to make payments as provided. His letter dated August 30, 1976, is attached hereto as Exhibit B.

WHEREFORE, the plaintiffs pray:

a. That the Court declare the provisions of the Partnership Agreement to be valid, binding and enforceable against the defendant, Victor F. Foti, and those acting in concert with him or on his behalf.

b. That the Court declare that the defendant, Victor F. Foti, voluntarily terminated his association with Andrews, Burket & Co.

c. That the Court declare that the defendant, Victor F. Foti, is in violation of the Partnership Agreement.

d. That the Court declare that Andrews, Burket & Co. is entitled to all payments provided for in the Partnership Agreement and specifically the payments provided for in ARTICLE VI, Section VI.1 (iv).

e. That the Court order that the defendants periodically account to the plaintiffs and keep plaintiffs fully apprised of all transactions by the defendants with clients of Andrews, Burket & Co.

f. That the Court assess the costs of this proceeding, plus reasonable attorneys' fees, against the defendants.

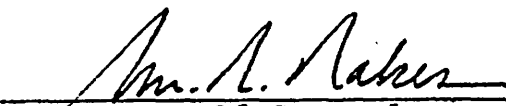
LAW OFFICES
GENTRY, LOCKE,
RAKES & MOORE
ROANOKE, VIRGINIA

g. That the Court make such further findings and enter such Orders as it deems necessary.

Respectfully,

WILLIAM A. COOK, JR.,
JAMES M. DILLON,
LACY W. HANSON,
ISAAC O. PERKINS,
R. DAVID ROTTY,
JOSEPH B. WRIGHT,
and
GLENN D. McMILLION,
Partners trading as
Andrews, Burket & Co.

By:


Of Counsel

William R. Rakes
GENTRY, LOCKE, RAKES & MOORE
Suite 300 Shenandoah Building
Roanoke, Virginia 24005

Counsel for Plaintiffs

August 1, 1976

PREP. BY

To: The Partners

DATE

REV. BY

From: Vic Fati

DATE

I hereby give my notice to resign from the
Partnership of Anderson, Burkett & Co. effective September
30, 1976.

This has been a very difficult decision for
me and I have reluctantly prepared it for some
time.

I hope that this severance can be amicable,
and I will do everything to keep it so from my
standpoint.

I have not solicited any of our present clients
and don't intend to do so. I do feel that I
will stay in public accounting in Kansas after
I have completed all obligations I have under the
present Partnership Agreement.

I am sorry that I have come to this conclusion
but feel that I must now look elsewhere in the future.
I came to Anderson, Burkett & Co. and enjoyed my

relationships for years. I feel that I cannot
enjoy the future as the past and this has
brought on my decision to resign.

Sincerely,

Victor J. Jotti

Mr. Victor F. Foti
4713 Easthill Drive, S.W.
Roanoke, Virginia 24018
August 30, 1976

Isaac O. Perkins
William A. Cook, Jr.
Lacy W. Hanson
James M. Dillon
R. David Rotty
Joseph B. Wright
Andrews, Burket & Company
P. O. Box 13445
Roanoke, Virginia 24034

Gentlemen:

It has been brought to my attention by a copy of the minutes of the last firm meeting and by verbal conversation with Mr. I. O. Perkins that the following decisions have been made by you:

1. I was not to have any chargeable time to clients.
2. I was to work on clients' work only if the clients directly requested me to and should take a partner, manager, or supervisor with me upon any visiting of the client.
3. I was not to remove any working papers from the office under any circumstances.
4. Clients were removed from my responsibility and assigned to other staff members.
5. You have personally visited all corporate and partnership clients that were my responsibilities and told them to contact some person other than me with any questions.
6. You have done various other acts which are not consistent with my status as a partner in the firm of Andrews, Burket & Co.

Your acts have in fact terminated my status as a partner in the partnership known as Andrews, Burket & Co. and I will henceforth conduct myself accordingly.

Demand is hereby made upon you for all monetary sums due me as a partner who has been caused to involuntarily

Isaac O. Perkins
William A. Cook, Jr.
Lacy W. Hanson
James M. Dillon
R. David Rotty
Joseph B. Wright
Page 2
August 30, 1976

withdraw under the various partnership agreement and
appendices thereto. Any monies received by me, to which
I was not entitled since termination, can be subtracted
from the total sums due me.

Very truly yours,

Victor F. Foti

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

WILLIAM A. COOK, JR.,
JAMES M. DILLON,
LACY W. HANSON,
ISAAC O. PERKINS,
R. DAVID ROTTY,
JOSEPH B. WRIGHT,
AND
GLENN D. McMILLION,
Partners trading as
ANDREWS, BURKET & CO.,

Plaintiffs

v.

VICTOR F. FOTI,
ROBERT K. FLYNN,
MARION L. POWELL,
KENNETH RATLIFF,
W. VERNON HICKS,
AND
C. THOMAS BREWER,
Partners trading as
PERSINGER, FOTI & CO.,

Defendants

ANSWER OF

VICTOR F. FOTI

RECEIVED
NOV 10 1976
AND FILED
Virginia Wright
DEPUTY CLERK

This defendant, by counsel, for his answer to the motion for declaratory judgment states as follows:

1. The allegations contained in Paragraph numbered "1" of the plaintiffs' motion for declaratory judgment are admitted.

2. The allegations contained in Paragraph numbered "2" of the plaintiffs' motion for declaratory judgment are admitted to the extent that it is alleged that Victor F. Foti was a partner in the partnership of Andrews, Burket & Co., but it is denied that he was a partner through September 30, 1976, he having been terminated involuntarily during the month of August, 1976.

HUNTER, FOX & TRABUE
ATTORNEYS-AT-LAW
ROANOKE, VA.

3. It is denied that the defendants, collectively, comprise the partnership known as Persinger, Foti & Co., as alleged in Paragraph numbered "3" of the plaintiffs' motion for declaratory judgment.

4. Regarding Paragraph numbered "4" of the plaintiffs' motion for declaratory judgment, the defendant, Victor F. Foti, admits the subject cause for declaratory judgment does involve potential issues of dispute between he and the plaintiffs, but states that they are much broader than those stated in Paragraph numbered "4" of the plaintiff's motion for declaratory judgment.

5. The allegations contained in Paragraph numbered "5" of the plaintiffs' motion for declaratory judgment are admitted but the defendant, Victor F. Foti, states that he was terminated involuntarily during the month of August, 1976, and before the effective date of his resignation, to-wit: September 30, 1976.

6. The allegations contained in Paragraph numbered "6" of the plaintiffs' motion for declaratory judgment are not within the knowledge of this defendant and therefore are denied.

7. This defendant denies the allegations in Paragraph numbered "7" of the plaintiffs' motion for declaratory judgment and specifically denies that he has acted in concert with the other defendants or on their behalf in any matters touching upon the subject of this motion for declaratory judgment.

8. The allegations contained in Paragraph numbered "8" of the plaintiffs' motion for declaratory judgment are denied and the defendant, Victor F. Foti, would state that during the month of August, 1976, he was terminated involuntarily and that

the said paragraph has no applicability to the facts and circumstances as they exist and further that even if his termination would be determined by the Court to be voluntary rather than involuntary, then the disputes between Victor F. Foti and the plaintiffs deal with the validity of the paragraph set forth in plaintiffs' motion for declaratory judgment numbered "8" as well as its interpretation should same be held valid.

9. The allegations contained in Paragraph numbered "9" state the position of Victor F. Foti.

10. As further answer to the motion for declaratory judgment, Victor F. Foti states the following:

a. That he was terminated by his partners and the partnership of Andrews, Berket & Co., during the month of August, 1976, and that only those portions of the partnership agreement between the plaintiffs and Victor F. Foti that deal with the status of an involuntarily terminated partner apply to him.

b. That Article VI, Section VI.1 (iv) of the partnership agreement between the plaintiffs and Victor F. Foti is void and therefore invalid.

c. That should the Court determine that Victor F. Foti was not involuntarily terminated by his partners in the partnership of Andrews, Berket & Co., and that Article VI, Section VI.1 (iv) is valid, then said paragraph is subject to dispute concerning the rights of the parties and to whom it applies.

11. All matters not expressly admitted in the plaintiffs' motion for declaratory judgment are denied.

HUNTER, FOX & TRABUE
ATTORNEYS-AT-LAW
ROANOKE, VA.

WHEREFORE, having fully answered, this defendant prays:

a. That the motion for declaratory judgment be dismissed as to him.

b. That the Court declare that Victor F. Foti was involuntarily terminated from the partnership known as Andrews, Berket & Co., by the individual partners and the partnership, and that Article VI, Section VI.1(iv), of the partnership agreement between the plaintiffs and the defendant, Victor F. Foti, be declared void and invalid.

c. That should the Court determine Article VI, Section VI.1(iv) to be valid, it is requested that the Court make declaration as to the interpretation of said paragraph and particularly to whom said paragraph is applicable.

d. That the Court declare that Andrews, Berket & Co., is entitled to no payments pursuant to contract.

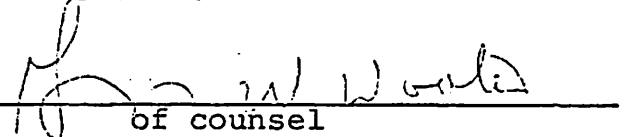
e. That the Court order the partnership of Andrews, Berket & Co., to conclude a full and complete settlement with Victor F. Foti based on the status of Victor F. Foti as a terminated partner.

f. That the Court assess the costs of this proceeding, plus reasonable attorney's fees against the plaintiffs.

g. That the Court make such further findings and enter such orders as it deems necessary.

VICTOR F. FOTI

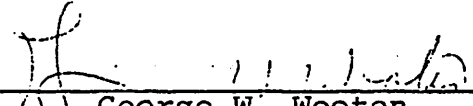
By


of counsel

HUNTER, FOX & TRABUE
Suite 310, 707 Building
P. O. Box 12247
Roanoke, Virginia 24024

CERTIFICATE OF MAILING

I, George W. Wooten, counsel for the defendants, do hereby certify that a true copy of the foregoing was mailed to William R. Rakes, Esquire, Gentry, Locke, Rakes & Moore, Suite 300, Shenandoah Building, Roanoke, Virginia, 24005, counsel for the plaintiffs, this 10 day of Nov, 1976.


George W. Wooten

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

RECEIVED

NOV 10 1976

AND FILED

Virginia Wright
DEPUTY CLERK

WILLIAM A. COOK, JR.,
 JAMES M. DILLON,
 LACY W. HANSON,
 ISAAC O. PERKINS,
 R. DAVID ROTTY,
 JOSEPH B. WRIGHT,
 AND
 GLENN D. McMILLION,
 Partners trading as
 ANDREWS, BURKET & CO.,

 Plaintiffs

v.

VICTOR F. FOTI,
 ROBERT K. FLYNN,
 MARION L. POWELL,
 KENNETH RATLIFF,
 W. VERNON HICKS,
 AND
 C. THOMAS BREWER,
 Partners trading as
 PERSINGER, FOTI & CO.,

 Defendants

DEMURRER OF

ROBERT K. FLYNN,

MARION L. POWELL,

KENNETH RATLIFF,

W. VERNON HICKS, AND

C. THOMAS BREWER

The defendants, by counsel, state that the motion for declaratory judgment is insufficient in law and that the issues set forth are not the proper subject for declaratory judgment.

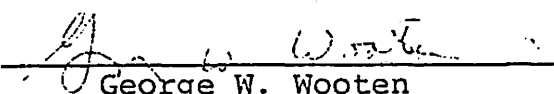
ROBERT K. FLYNN,
 MARION L. POWELL,
 KENNETH RATLIFF,
 W. VERNON HICKS, AND
 C. THOMAS BREWER

By *George W. Wooten*
 George W. Wooten, of counsel

HUNTER, FOX & TRABUE
 Suite 310, 707 Building
 P. O. Box 12247
 Roanoke, Virginia 24024

CERTIFICATE OF MAILING

I, George W. Wooten, counsel for the defendants, do hereby certify that a true copy of the foregoing was ailed to William R. Rakes, Esquire, Gentry, Locke, Rakes & Moore, Suite 300, Shenandoah Building, Roanoke, Virginia, 24005, counsel for the plaintiffs, this 12th day of Nov, 1976.


George W. Wooten

HUNTER, FOX & TRABUE
ATTORNEYS-AT-LAW
ROANOKE, VA.

RECEIVED

FEB 9 1977

AND FILED

DEPUTY CLERK

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

WILLIAM A. COOK, JR., et als,)

Plaintiffs)

v.)

STIPULATION

VICTOR F. FOTI, et als,)

Law No. 3560

Defendants)

It is stipulated and agreed by and among the parties hereto that the client list of Andrews, Burket & Co. which is attached hereto and delivered to the defendants shall be considered confidential and privileged information and shall not be filed with the court at this time or in any way made public or used for any purpose other than this litigation, and that no name thereon shall be disclosed to any one other than the parties hereto and their counsel, except in answers to interrogatories or in answers to questions during depositions, or except as may be permitted by an order of court. It is further agreed that at the conclusion of this litigation, the list will be returned to the plaintiffs.

Given under our hands this 4th day of February, 1977.

Mr. R. Atkins
Counsel for Plaintiffs

W. Wooten
Counsel for defendants

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

WILLIAM A. COOK, JR.,
et als,

Plaintiffs

v.

VICTOR F. FOTI,
et als,

Defendants

Received and filed
Feb. 9, 1977
Patty Testerman, Deputy Clerk
 PLAINTIFFS FIRST INTERROGATORIES
 TO DEFENDANT VICTOR F. FOTI

Law No. 3560

TO: VICTOR F. FOTI, c/o George W. Wooten, Esquire, counsel of
 record for the Defendants:

Come now the plaintiffs, by counsel, and pursuant to
 Rule 4:8, Rules of the Supreme Court of Virginia, file the follow-
 ing Interrogatories to be answered under oath by the defendant,
 Victor F. Foti.

1. List the names and addresses of all individuals,
 partnerships, corporations or firms for whom you did work* during
 the months of August and September 1976, and for whom the time or
 charges made for said work was not turned in to Andrews, Burket
 & Co.

- a. For each list the date or dates on which
 work was done and the amount of time
 expended.
- b. For each state the dollar amount of fee
 and expenses charged and the date the
 bill was sent.
- c. For each state whether the bill was sub-
 mitted by Victor F. Foti individually or
 by the firm known as Persinger, Foti &
 Company, or by some other individual or
 firm.

- d. For each state whether the bill has been paid and, if so, the date on which payment was received.
- e. For each state to whom payment was made.

2. List the names and addresses of all clients** of Andrews, Burket & Co. for whom you have personally done work sub-

*For purposes of these Interrogatories "work" shall mean all professional services rendered as an accountant, CPA, or Bookkeeper providing accounting, auditing, consulting, or other related services.

**For purposes of these Interrogatories "client of Andrews, Burket & Co." means any client listed on the client list dated December 21, 1976 and submitted to defendants by Andrews, Burket & Co. pursuant to stipulation between the parties dated February 4, 1977.

sequent to October 1, 1976.

3. List the names and addresses of all clients of Andrews, Burket & Co. for whom any partner or employee of the firm of Persinger, Foti & Company has performed work subsequent to October 1, 1976 and identify the name of the partner or employee doing said work.

- a. State the amount of time in inventory for all such work.
- b. State the amount of the charges made for all such work.
- c. State the amount of payments received for all such work and the date on which payment was received and from whom it was received.

Respectfully.

WILLIAM A. COOK, JR.
JAMES M. DILLON
LACY W. HANSON
ISAAC O. PERKINS
R. DAVID ROTTY
JOSEPH B. WRIGHT
GLENN D. McMILLION
Partners trading as
Andrews, Burket & Co.

By Wm. R. Rakes
Of Counsel

William R. Rakes
GENTRY, LOCKE, RAKES & MOORE
Suite 300 Shenandoah Building
Roanoke, Virginia 24005

Counsel for Plaintiffs

CERTIFICATE

This will certify that a true copy of the foregoing
Interrogatories was served on George W. Wooten, Esquire, Hunter,
Fox & Trabue, P. O. Box 12247, Roanoke, Virginia 24024, by mail-
ing same to him on this 8th day of February, 1977.

Wm. R. Rakes

LAW OFFICES
GENTRY, LOCKE,
RAKES & MOORE
ROANOKE, VIRGINIA

RECEIVED

MAR 1 1977

AND FILED

Virginia Wright

VIRGINIA :

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND, VIRGINIA
CLERK

WILLIAM A. COOK, JR., et al,)

Plaintiffs)

v.)

VICTOR F. FOTI, et al,)

Defendants)

VICTOR F. FOTI'S ANSWERS

TO PLAINTIFFS' FIRST

INTERROGATORIES

LAW NO. 3560

Pursuant to Rule 4:8 of the Supreme Court of Virginia, Victor F. Foti, after being duly sworn, does hereby file his answers to plaintiffs' first⁸ interrogatories and does state that the answers are true to the best of his knowledge, information and belief.

1. An exhibit encompassing an answer to Interrogatory #1, parts A through E is attached hereto and Victor F. Foti states that the exhibit was prepared by him personally and truly represents the facts as they exist concerning the information requested in plaintiffs' Interrogatory #1.

2. Objected to and the reasons therefore are stated in objections filed by separate document.

3. Objected to and the reasons therefore are stated in objections filed by separate document.

Victor F. Foti

Victor F. Foti

STATE OF VIRGINIA)
) to-wit:
 CITY OF ROANOKE)

I, Commissioned as Deborah L. Duncan
Deborah L. Duncan, a Notary Public,
 in and for the City of Roanoke, State of Virginia, do hereby
 certify that Victor F. Foti, whose name is signed to the foregoing
 answers, personally appeared before me and made oath that said
 answers are true to the best of his knowledge, information and
 belief.

GIVEN under my hand this 1st day of March, 1977.

My commission expires: June 3, 1977

Deborah L. Duncan
 Notary Public
 Commissioned as Deborah L. Duncan

HUNTER, FOX & TRABUE
 Suite 310, 707 Building
 P. O. Box 12247
 Roanoke, Virginia 24024

By George W. Wooten
 George W. Wooten, of counsel

CERTIFICATE OF MAILING

I, George W. Wooten, counsel for Victor F. Foti, do hereby
 certify that a true copy of the foregoing answers was mailed to
 William R. Rakes, Esquire, Gentry, Locke, Rakes & Moore, Suite
 300, Shenandoah Building, Roanoke, Virginia 24005, counsel
 for the plaintiffs, this ^{1st} 28th day of ^{March} February, 1977.

George W. Wooten

Interrogatory No. 1:

August, 1976 -- ALL TIME TURNED IN ON TIME
SHEETS AT ANDREWS, BURKET & CO.

SEPTEMBER, 1976:WEEK ENDED September 11, 1976:

	HOURS	AMOUNT CHARGED	DATE BILLED	DATE PAID
VIRGINIA Motor Lodges, Inc.	2 1/2	87.50	12-11-76	1-28-
DR.'s NEWTON, PETERSON & Gilliland	1 1/2	52.50	10-25-76	10-29-
RIB LEASING	1 1/4	43.75	—	—
Smeltzer & HART	1/2	17.50	—	—
SKYMASTER CORP.	1 1/4	43.75	—	—
Cates Bldg. Specialties	1/2	17.50	—	—

WEEK ENDED September 18, 1976:

MARSTELLER CORP.	1.0	35.00	12-11-76	1-28-
DR.'s NEWTON, PETERSON & Gilliland	2.0	70.00	10-25-76	10-29-
VIRGINIA Motor Lodges, Inc.	4.0	140.00	12-11-76	1-28-

WEEK ENDED September 25, 1976:

White Cross Hospital	5 3/4	250.00	10-25-76	2-4-
MARSTELLER CORP.	2.0	70.00	12-11-76	1-28-
Valley STEEL CORP.	3 1/4	113.75	1-31-77	2-2-
TINKERVIEW WATER CO.	1/2	17.50	—	—
KOSSEN GREGORY	1/2	17.50	—	—
COOPER WOOD PRODUCTS, INC.	1.0	35.00	—	—

PERIOD (4 DAYS) ENDED SEPT 30, 1976:

Valley STEEL CORP.	1/2	17.50	1-31-77	2-2-
ROANOKE IRON & BRIDGE WORKS, INC.	1/2	17.50	12-11-76	1-11-
TINKERVIEW WATER CO.	3 1/4	113.75	—	—
HUB WATER CO.	3/4	26.25	—	—
SAM English, INC.	1 1/4	43.75	1-31-77	-

VICTOR F. Foti has NOT SUBMITTED ANY INVOICES. ALL AMOUNTS billed HAVE BEEN SENT BY PERSINGER, Foti & Company.

ALL PAYMENTS THAT HAVE BEEN RECEIVED, HAVE BEEN RECEIVED BY PERSINGER, Foti & Company.

RECEIVED

MAR 1 1977

AND FILED

Virginia Wright
DEPUTY CLERK

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

WILLIAM A. COOK, JR., et al,
Plaintiffs

v.

VICTOR F. FOTI, et al,
Defendants))))))))))
OBJECTIONS TO
PLAINTIFFS' INTERROGATORIES
TO VICTOR F. FOTI
LAW NO. 3560

COMES NOW, Victor F. Foti, by counsel, and objects to Interrogatory #2 and #3, and states as follows:

1. Interrogatory #2 is objected to on the grounds that it is immaterial and irrelevant to the declaratory judgment action pending before the Court in that the defendant has admitted that there does exist a controversy concerning the interpretation of an agreement between the plaintiffs and the defendant, Victor F. Foti, and that for purposes of the interpretation of that agreement, he has previously admitted that he has done work for "clients of Andrews, Burket & Company".

2. This defendant objects to Interrogatory #3 and states that the agreement in question in the declaratory judgment was between the plaintiffs and the defendant, Victor F. Foti, and that no partners or employees of the firm of Persinger, Foti and Company are parties to the agreement and therefore requests that

the information is irrelevant and immaterial to the declaratory judgment action now pending.

VICTOR F. FOTI

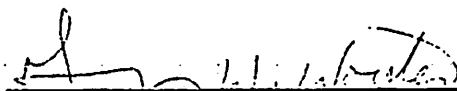
By 
George W. Wooten, of counsel

HUNTER, FOX & TRABUE
ATTORNEYS-AT-LAW
ROANOKE, VA.

HUNTER, FOX & TRABUE
Suite 310, 707 Building
P. O. Box 12247
Roanoke, Virginia 24024

CERTIFICATE OF MAILING

I, George W. Wooten, counsel for Victor F. Foti, do hereby certify that a true copy of the foregoing was mailed to William R. Rakes, Esquire, Gentry, Locke, Rakes & Moore, Suite 300, Shenandoah Building, Roanoke, Virginia, 24005, counsel for the plaintiffs, this ^{1st}~~28th~~ day of ^{March}~~February~~, 1977.


George W. Wooten

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

WILLIAM A. COOK. JR.,)
 JAMES M. DILLON,)
 LACY W. HANSON,)
 ISAAC O. PERKINS,)
 R. DAVID ROTTY,)
 JOSEPH B. WRIGHT,)
 AND)
 GLENN D. McMILLION,)
 Partners trading as Andrews,)
 Burkett & Co.,)
 Plaintiffs)

v.)

VICTOR F. FOTI,)
 ROBERT K. FLYNN,)
 MARION L. POWELL,)
 KENNETH RATLIFF,)
 W. VERNON HICKS,)
 AND)
 C. THOMAS BREWER,)
 Partners trading as Persinger,)
 Foti & Co.,)
 Defendants)

O R D E R

LAW NO. 3560

~~THIS DAY~~ Came the parties to this suit, by counsel, pursuant to a pre-trial conference to determine the order of proceeding with this case. Upon agreement of all counsel and upon consideration of the Court, it is therefore

ORDERED that the trial of this case be set for Monday, September 26, 1977, at 9:30 a.m., in this Court and that a jury will be impaneled to consider the issues involving the question of whether Victor F. Foti's departure from Andrews, Burkett & Co., was voluntary or involuntary, and to respond to interrogatories in connection with said issues, and that at the same date and time, all evidence on all other issues of

liability regarding the defendant, Victor F. Foti, will be presented for the Court's consideration. Issues as to other parties and issues as to damages are reserved for future consideration; and it is further

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AUG 29 1977

ORDERED that plaintiffs file their trial memorandum by September 2, 1977, and that defendants file their reply trial memorandum by September 20, 1977, with all parties reserving the right to file post-trial memoranda.

ENTER this 29th day of August, 1977.

Ernest W. Breen
Judge

Requested:

John S. Edwards
John S. Edwards, counsel for plaintiffs

Seen:

George W. Wooten
George (W.) Wooten, counsel for defendant

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

WILLIAM A. COOK, JR.,)	
JAMES M. DILLON,)	
LACY W. HANSON,)	
ISAAC O. PERKINS,)	
R. DAVID ROTTY,)	
JOSEPH B. WRIGHT,)	
and)	At Law 3560
GLENN D. McMILLION,)	
Partners trading as Andrews,)	PLAINTIFFS' TRIAL
Burket & Co.,)	MEMORANDUM
)	
Plaintiffs)	
)	
v.)	
)	
VICTOR F. FOTI,)	
ROBERT K. FLYNN,)	
MARION L. POWELL,)	
KENNETH RATLIFF,)	
W. VERNON HICKS,)	
C. THOMAS BREWER,)	
Partners trading as Persinger,)	
Foti & Co.,)	
)	
Defendants)	

Plaintiffs, partners in an accounting firm trading as Andrews, Burket & Co., by counsel, have filed this suit for declaratory judgment, and further relief, under the Virginia Declaratory Judgment Act in order to determine the liability of the former partner Victor F. Foti, and others, under the partnership agreement of the firm. In particular, plaintiffs have alleged that defendant Victor F. Foti has violated Article VI, Section VI.1(iv) of the partnership agreement which provides:

"During the twenty-four months immediately following the termination of his membership in the partnership, unless such termination is involuntary under the provisions of ARTICLE V.2 of this agreement, a partner will not offer to perform or perform services as a Certified Public Accountant or Public Accountant to any

client of the partnership. A partner violating this sub-section shall pay to the partnership an amount equal to one-third of each year's fee collected for a period of three years. Such amount is due when collected from the client by the former partner."

This Trial Memorandum of the plaintiffs will discuss the legality of this provision of the partnership agreement; evidence will be presented at trial also to show as a matter of fact that defendant Foti terminated his membership in the partnership voluntarily so that plaintiffs are entitled to receive payments in accordance with the terms of this covenant.

THE PARTNERSHIP COVENANT
IS REASONABLE AND VALID

The above quoted covenant of the Andrews, Burket & Co. partnership agreement is clearly reasonable and valid and should be enforced by this court. The obvious purpose of this agreement is to protect the partnership from a partner capitalizing on his former position as a partner to the disadvantage of the firm by taking away clients of the partnership; it provides for compensation to the partnership resulting from this loss of clientele at the stipulated rate of one-third the fees collected from former clients for three years. ^{deleted} [on work performed during the 24 months immediately following voluntary termination of membership in the partnership.] The provision thus serves a valid and necessary purpose in protecting the partnership from loss of clients while at the same time does not unduly restrict the former partner from engaging in his profession of accounting. Finally the provision is reasonable from the standpoint of the public

since it does not tend to cause monopoly in the accounting business and clients of the partnership are not without competent accounting services.

The Virginia Supreme Court has upheld similar covenants more restrictive than in the present case. For example, in Worrie v. Boze, 191 Va. 916, 62 S.E.2d 876 (1951) the court upheld a restrictive covenant which precluded a former employee from competing in the same business with the employer for a period of two years within 25 miles of the City of Richmond. There the employee was restricted under the terms of his employment contract with the Arthur Murray Dancing School from engaging in the business of dancing in any form. The court determined that enforcement of such provision was necessary to protect the former employer from detrimental competition and that the provision was not harsh and inequitable to the employee.

Similarly, in Meissel v. Finley, 198 Va. 577, 95 S.E.2d 186 (1956) the court upheld a declaratory judgment holding valid a provision prohibiting a limited partner in an insurance firm from engaging in the insurance business after dissolution of the firm for a period of five years within a radius of fifty miles of the City of Norfolk. As in Worrie v. Boze, the partner was restricted from competing with the former employee and from engaging in his former business. By contrast, in the present case defendant Foti is less restricted in his activities. The covenant in the Andrews, Burket agreement does not preclude the former partner from competing with his former firm or from practicing accounting; it merely precludes his

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taking away those clients belonging to the firm upon voluntary termination of his membership in the partnership.

Plaintiffs clearly have a legitimate business interest in protecting the clientele which the firm has built up over the years. In Ebbeskotte v. Tyler, 142 N.E.2d 905 (Ind. 1957) the court upheld a covenant restricting a former employee of an accounting firm from dealing with clients of the partnership on the grounds that the covenant protected the legitimate business interest of the accounting firm.

"Courts scrutinize carefully all contracts limiting a man's natural right to follow any trade or profession anywhere he pleases and in any lawful manner. But it is just as important to protect the enjoyment of an establishment in trade or profession, which its possessor has built up by his honest application to every day duty and the faithful performance of the task which every day imposes upon the ordinary man. What one creates by his own labor is his. Public policy does not intend that another than the producer shall reap the fruits of labor. Rather it gives to him who labors the right by every legitimate means to protect the fruits of his labor and secure the enjoyment of them to himself. 'Freedom to contract must not be unreasonably abridged. Neither must the right to protect by reasonable restrictions that which a man by industry, skill, and good judgment has built up, be denied.'" Id. at 910 quoting from Granger v. Craven, 159 Minn. 296, 199 N.W. 10, 11, 52 A.L.R. 1356 (1924).

A former partner is in a position to jeopardize seriously the firm's client relationships as a result of the position of confidence which he holds. Accordingly, the partnership covenant of Andrews, Burket is clearly reasonable and necessary to protect the interest of the firm. In Meissel v. Finley, supra, the court stated that the fact that a partner held such a position of confidence was sufficient to uphold the validity of a restrictive covenant.

"The possession of trade secrets and confidential information is an important consideration in testing the reasonableness of a restriction on competition." 198 Va. at 583.

In that case, the former partner was entrusted with insurance "expiration lists" and had access to client's records which could be used to great disadvantage of the partnership. Moreover, the court noted that the former partner had agreed to the restrictive covenant over a period of years and thus must have believed in the need for such a covenant to protect the interests of the partnership. "It is to be presumed that in the that time and experience, he was himself convinced that the restrictions he and his associates agreed on were reasonable and adviseable." Id.

In Ebbeskotte v. Tyler, supra, the court also found that an accounting firm employee who was not even a partner possessed confidential information which could be used to the disadvantage of the partnership. The covenant in that case was broader than in the present case and provided that an employee could not during or after termination of employment accept, solicit or offer services from or to clients of the accounting firm or accept or solicit employment from clients of the accounting firm. The covenant was indefinite as to time and not confined to a particular geographical area although the court construed it as applicable to the City of Mishawaka and vicinity. In upholding the agreement the court found it was necessary to protect the accounting firm from injurious consequences resulting from the employee's use of confidential information acquired in the course of her employment.

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"It seems obvious that both parties appreciated the value of the employer's list of clients, the data concerning the client's business, the fees paid to the employer for the services rendered in accounting or auditing services and other similar confidential information which became open to the appellee as a result of her employment." Id. at 909

Finally, in Racine v. Bender, 252 P. 115 (Wash. 1927) the court upheld a covenant regarding an accounting business on the grounds that the employee possessed confidential information which could be used to the disadvantage of the company. There the agreement was also broader than in the present case and provided that an employee would not solicit or perform accounting or auditing work for a period of three years for any person, firm or corporation with whom he had come in contact with as representative of the company including the company's clients, their staffs and occupants of their offices. In upholding this agreement the court noted that through his work as representative of the accounting company the employee was able to acquire knowledge of the client's business and become intimate with members of the staff of such business.

"In the broadest sense the restriction is nothing more than to prohibit respondent from taking appellant's clients with him when he severs his connection with appellant, or to perform services for them so intimately connected with such clients as to be fairly classified as his future clients. That such a requirement so accords with common honesty between men, and a failure to observe it leads to such direful results, is so well established that it seems strange that it should be contended that one engaged in a position where confidence is the basis of the relation between client and the employee, and that confidence results through the employer, and is the foundation stone of his business, then the employee may, disregarding his employer's rights, visit ruin upon him." Id. at 116.

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 ROANOKE, VIRGINIA

As a former partner in the firm, defendant Foti was intimately acquainted with the firm's business and client relations and was in a position of trust and confidence with the firm and its clients. Thus, the covenant in the Andrews, Burket & Co. partnership agreement is clearly reasonable and necessary to protect the business of the firm from the injurious consequences which a former partner could cause it.

The covenant in the Andrews, Burket & Co. partnership agreement is also not unduly restrictive of the rights of the former partner. Indeed, compared with the other similar cases discussed above, it is quite narrowly drafted and is not harsh or unfair to the former partner's interests. The restriction only applies for two years, a period which is clearly within the bounds of reasonableness. Moreover, the former partner is only precluded from dealing with those clients belonging to Andrews, Burket & Co. and is not restricted from continuing his practice of accounting for any period of time or in any area including the City of Roanoke and vicinity. Thus, defendant Foti is free to continue practicing accounting and even to compete with his former firm by seeking to attract the business of clients other than those of Andrews, Burket & Co. As so limited, the provision is clearly not unreasonable. See Bates Chevrolet Corp. v. Haven Chevrolet, Inc., 213 N.Y.S.2d 577, 581 (1961).

Even in the event of a breach of this agreement the former partner is only required to compensate the firm for a portion of the loss of business, i.e. one-third of the fees

collected for three years from those clients taken away from the firm for which work is performed during twenty-four months following termination. The provision is therefore neither harsh nor unfair on the former partner, but is designed merely to compensate the firm [for a portion of the ^{dis(ol)} loss of business caused by the practices of a former partner.]

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Finally, this covenant does not adversely affect the public interest. It cannot be seriously contended that this limited provision creates monopoly or is an unreasonable restraint of trade in view of the fact that accounting is a highly competitive business. Moreover, the clients of the partnership which the former partner desires to perform services for cannot be adversely affected by enforcement of this covenant since they will not be denied competent accounting services by a qualified certified public accountant. The fact that the defendant Foti is familiar with their business as a result of previous work performed through the firm of Andrews, Burket & Co. does not mean that he is the only person who has the ability to perform accounting services for them. Indeed, as the court stated in Racine v. Bender "the law presumes that the service [of accounting] can well be performed by someone else." 242 P. at 117. Thus, the public interest cannot be adversely affected by enforcement of this covenant.

Instances where courts have held restrictive covenants invalid have been where an employee has been precluded from reasonably earning a livelihood (Stoneman v. Wilson, 169 Va. 239, 245, 192 S.E. 816 (1937)) or the restriction covers activities of which he is not engaged and is broader than

necessary to protect the employer, quite unlike the present case. Thus, in Richardson v. Paxton Co., 203 Va. 790, 127 S.E. 2d 113 (1962) the court ruled invalid an agreement restricting a salesman from engaging for a period of three years in any branch of "marine or industrial supplies, equipment, services business" in the states of Virginia, North Carolina, South Carolina and Maryland. This covenant not only restricted the salesman from selling, but prohibited him from entering or engaging in "any branch" of activities relating to any kind or type of marine or industrial supplies or service in the restricted area. The court found that the restriction was too broad because it encompassed activities in which the salesman was not engaged and greater than necessary to protect the employer's legitimate business interests.

Likewise, in Welcome Wagon v. Morris, 224 F. 2d 693 (4th Cir. 1955) the court held unenforceable a restriction in an employment contract which prevented the former employee from engaging in the same or similar business for five years in any of some 1200 cities in the country where the employer operated and in a number of other cities where it intended to operate. The court found that the area was too vast and that the employee possessed no distinctive techniques, trade secrets or confidential information which could be used to the detriment of the employer.

In contrast to these cases, the covenant in the Andrews, Burket & Co. partnership agreement only precludes the former

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partner from offering to perform or performing services to clients of the partnership. It does not restrict him from reasonably earning a livelihood in accounting or from engaging in other activities and is necessary to protect the firm from a former partner capitalizing on his prior position by taking away the business of the firm.

In National Homes Corporation v. Lester Industries, Inc., 293 F. Supp. 1025 (W.D. Va.) aff'd. in part and rev'd. in part, 404 F.2d 225 (4th Cir. 1968) the court upheld a restrictive covenant covering the entire United States and a ten-year period of time which precluded the former employee from engaging in the prefabricated housing business in competition with the employer. There a smaller corporation manufacturing prefabricated housing units was bought by a larger corporation manufacturing such units and the smaller corporation's president became a member of the board of directors of the larger corporation and agreed to continue in employment and covenanted not to compete with the parent corporation anywhere in the United States for a period of ten years. In upholding this agreement the court stated that the defendant had been successful in the prefab business and as director of the larger corporation would become familiar with the modus operandi of the larger corporation including its financial structure, trade secrets and price scale. Upon termination of his employment he would be in an excellent position to establish or work for a competing company in the same prefabricated housing business.

The court held that the agreement in this case was not unduly harsh or oppressive to the employee since he received

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adequate consideration for sale of his business and as an astute business man was capable of earning a comfortable living in many ways. Finally, the court held that the public interest would not suffer since no monopoly was established and since there would be no shortage of this type of services brought about by enjoining the defendant.

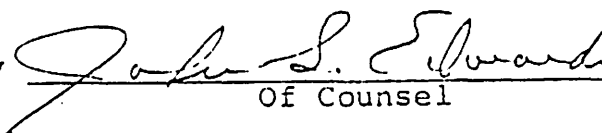
Plaintiffs are not asking this court to enjoin the defendants from performing accounting services for clients of Andrews, Burket & Co. in order to enforce this covenant. Rather, they are merely asking that the agreement be declared valid and enforceable and that Andrews, Burket & Co. be entitled to all payments as provided in this covenant. Defendants are thus free to perform accounting services for clients of the plaintiffs so long as they compensate plaintiffs pursuant to this covenant. The obligations imposed upon defendants pursuant to this covenant for taking away clients of Andrews, Burket & Co. are therefore not burdensome or unreasonable.

For the foregoing reasons, this court should declare the provisions of the partnership agreement of Andrews, Burket & Co. to be valid, binding and enforceable.

Respectfully submitted,

WILLIAM A. COOK, JR.,
JAMES M. DILLON, LACY W.
HANSON, ISSAAC O. PERKINS,
R. DAVID ROTT, JOSEPH B.
WRIGHT, and GLENN D. McMILLION,
Partners trading as Andrews,
Burket & Co.

By


Of Counsel

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

WILLIAM A. COOK, JR.,
 JAMES H. DILLON,
 LACY W. HANSON,
 ISAAC O. PERKINS,
 R. DAVID ROTTY,
 JOSEPH B. WRIGHT,
 and
 GLENN D. McMILLION,
 Partners trading as Andrews,
 Burkett & Co.,

Plaintiffs

v.

VICTOR F. FOTI,
 ROBERT K. FLYNN,
 MARION L. POWELL,
 WINNIE PATLIFT,
 W. VERNON HICKS,
 C. THOMAS BREWER,
 Partners trading as Persinger,
 Foti & Co.,

Defendants

At Law 3560

DEFENDANT'S REPLY

TRIAL MEMORANDUM

Victor F. Foti, defendant in this suit under the
 Virginia Declaratory Judgment Act, has asked the court to
 declare:

I. that Article VI, Section VI. 1(iv) of the
 partnership agreement between the plaintiffs is an
 unreasonable postemployment restrictive covenant and
 is therefore invalid and unenforceable, and

II. that he was involuntarily terminated by the
 partnership known as Andrews, Burkett & Co., and

III. the effect and interpretation of
 Section VI. 1(iv), if valid, with respect to whom
 it is applicable and what, if any, payments are required
 under its provisions.

Defendant's Trial Memorandum will discuss these points in sequence with replies made when appropriate to the arguments made in Plaintiffs' Trial Memorandum.

ARTICLE VI, SECTION VI.1, iv OF THE ANDREWS, BURKET PARTNERSHIP AGREEMENT IS AN UNREASONABLE POST-EMPLOYMENT RESTRICTIVE COVENANT AND IS THEREFORE INVALID AND UNENFORCEABLE.

The burden is upon the plaintiff partners to prove the reasonableness and the validity of the restraint.

(Richardson v. Paxton 203 Va. 790, 795, 127 S.E. 2d 113; 117, (1962)) The test for reasonableness, simply stated, takes into account 1) the legitimacy of business interest to be protected; 2) the effect upon the rights of the employee; and 3) the effect upon the interest of the public. (See Meissel v. Finley, 198 Va. 577, 95 S.E.2d 186 (1956)). Most Virginia cases on the reasonableness issue turn upon the geographical area and duration limitations placed upon the employee. These limitations must be examined in this case as well. However, perhaps the most important item at issue in the present case, one in which Virginia case law gives us little explicit help, is the issue of the legitimacy of the business interest protected. In recognition of this seeming lack of Virginia precedent, plaintiffs refer the court to a 1957 Indiana case, Ekbeskote, to support its contention that "plaintiffs clearly have a legitimate business interest in protecting clientele which the firm has built up over the years." (p.3, Plaintiffs' Memorandum) Whether as a factual matter the employer Ekbeskote actually built up his clientele was not known to the court. Ekbeskote was brought to the Court of Appeals on a sustained demurrer and therefore the court was construing the factual allegations

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ROANOKE, VA.

of the plaintiff/employers complaint most favorably to plaintiff to see if a cause of action might exist. Nevertheless, Ebbeskote is distinguishable on factual grounds in that the present case does not involve the taking by an employee of an established clientele which an employer has built up by "honest application to duty, industry skill and good judgment." It is defendant's position that the testimony will show that the clients who chose to follow him are those which he obtained or retained for the firm through his own industry and skill and who would have left the plaintiffs had he not personally serviced them in their accounting needs. Strong support for the validity of defendant's position lies in the fact that the clients did terminate their relationship with Andrews, Burket when defendant left. The firm has no legitimate business interest in protecting a client following which the defendant built up with his own industry and skill. Once testimony is put forth at trial demonstrating defendant's "application to every day duty and the faithful performance of ... task" (p.3, Plaintiffs' Memorandum) the language of the Ebbeskote case will provide support for defendant's own contention that "what one creates by his own labor is his" and that any restriction which tends to take it away is violative of public policy and therefore invalid.

Defendant's position on this point follows the accepted law on this point which is that in the case of a professional partnership, the good will, which in the professions normally consists of the client following, is not an asset of the partnership. Rather, the client following attaches to the skill and knowledge of each professional. (60 Am Jur 2d, Partnership,

204:115) Any good will which may arguably attach to the name of the partnership has been retained by plaintiff-partners.

The Elbeskote decision is misleading in still another respect. Plaintiffs also cite Elbeskote to establish a legitimate business interest based upon the confidential nature of an accounting firm's (1) list of clients, (2) data concerning client's business, and (3) fees paid to it by client. As plaintiff points out, the Weissel case affirms that possession of trade secrets and confidential information is a circumstance to be considered in testing a restrictive covenant. However, the mechanical application of the term "confidential," evident in the Elbeskote decision, should not mislead the court in the present case. The case as indicated was presented on a sustained demurrer with the question of the confidentiality of this material not yet considered by the trial court. Restrictive covenant litigation between employer and employee usually involves a businessman/employer who has developed a secret manufacturing process or particular sales technique, or tapped an unknown market and made this information available to an employee provided the employee has agreed not to use it against employer. The Elbeskote court tried to press the accounting firm situation into the prior developed case law. In so doing, the court failed to realize that it was collapsing two different uses of the word confidential. There is a difference in material which may be confidential between partnership and client and that which is confidential between employer and employee. Thus, in one sense, the client list, business data, and fees paid by the client to Andrews, Burket are "confidential." But the requirement of confidentiality runs to the client. The "trade secrets

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ROANOKE, VA.

and confidential information" which an employer may legitimately protect are techniques or procedures or information known only to him which allow him to create and maintain his market. Only in the latter circumstance does the requirement of confidentiality run to the employer.

A recent New York decision affirms the inpropriety of classifying client lists as protectable confidential information. In Reed, Roberts Associates, Inc. v. Strauman 353 N.E.2d 690 (1976) the New York Court of Appeals considered the attempt by an accounting firm to enforce a restrictive covenant against a former top employee. The court rejected plaintiff's argument that client lists were the sort of secret or confidential information which would permit the enforcement of a restrictive covenant to protect a legitimate business interest. The court found in the Strauman case that any business or firm was a potential client and that their names were generally available in business directories or through other public sources. The court's comment was

"It strains credulity to characterize this type of information as confidential." (at 680)

The court felt that to restrict employees in the application of their own skills and knowledge, where the knowledge does not qualify as a trade secret, would make them hostages of their employers and thus inhibit the free flow of services and talent upon which our economic system is premised. In Strauman, as in the present case, the defendant's knowledge consisted of techniques and procedures which were developed through his accountant training and overall employment experience. An

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ROANOKE, VA.

employer has no legitimate interest in restricting the use of this sort of knowledge under a claim of confidentiality. The New York decision deserves respect for its sensible disentanglement of a legitimate business interest in protecting trade secrets and an illegitimate business interest in holding employees and clients hostage with a postemployment restrictive covenant.

The Strauman case could be read as a clarification and extension of Virginia precedent on the point of what constitutes ^{protectable} ~~unprotectable~~ confidential information. In Stoneman v. Wilson 169 Va. 232 (1937) the court in holding a restrictive covenant invalid stated its concern for protecting "business methods and trade secrets." The Meissel v. Finley case explicitly involves insurance client lists, but it is clear that the court felt constrained to emphasize the secretive nature of information contained in the lists, specifically expiration and renewal dates, in order to find a protectable interest. (Meissel at 533)

On the basis of the Strauman decision and Virginia precedent, it is defendant's contention that plaintiffs cannot establish the legitimacy of the business interest. Plaintiffs contend on the basis of Ekbeskote that the client information is confidential and protectable, but the defendant submits that the closer analysis of the New York decision recommends it as sounder precedent. If the court agrees that plaintiffs have not satisfied their initial burden of establishing the legitimacy of the business interest, required for a restrictive covenant to be reasonable, then the court must deny plaintiffs' request for a declaration that the Andrews, Furket restrictive covenant is valid.

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ROANOKE, VA.

As argued above, it is defendant's position that a protectable business interest does not exist and that the case can be resolved on this point. However, in the interest of providing to the court a full review of defendant's position with regard to the three part test for reasonableness, the following discussion is provided.

The second part of the test requires that a restrictive covenant not be unduly harsh or oppressive upon the employee in order to be reasonable and valid. In discussing the effect upon the departing employee, plaintiffs' memorandum argues for the liberality of the Andrews, Burket restrictive covenant, noting the absence of an area limitation, the two year duration limitation and the provision for payment of 1/3 fees (p.6, Plaintiffs' Memorandum). Contrary to plaintiffs' contention, the cumulative effect of these provisions is in fact quite harsh. Defendant worked for Andrews, Burket for 17 years prior to his termination. Individuals and firms with whom he was in contact during that period became clients of the partnership. If he attempts to service any of his former contacts, defendant is required to pay a severe penalty to plaintiffs, making it economically infeasible for the defendant to service these clients. Further, it is difficult for the defendant to obtain new clients, not because the accounting field is "highly competitive" as plaintiffs' memorandum suggests but rather because potential clients are tied up with other firms. The accounting firms rely upon a client's reluctance to leave an accountant who has learned their business. The firms are then able to maintain some control over the clients by tying all

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ROANOKE, VA.

inspiring partners and senior supervisors to the firm by requiring them to agree to the anti-competitive restriction to confirm their earned promotion. Thus, though not explicitly limited as to area or time by the provision, in effect the employee is severely restricted in any attempt to establish an accounting practice outside of Andrews, Burket.

Plaintiffs' memorandum places considerable emphasis on the absence of a geographical limitation to support the reasonableness of the covenant. Section VI, 1, (iv) of the agreement only restricts services to former clients. The restrictive covenant contested in Ebbeskote was also only limited to former clients and contained no express geographical limitation. However, the Ebbeskote court still found it necessary to imply a geographical restriction in order to find the restrictive covenant reasonable in its effect upon the employee (Ebbeskote v. Tyler, 142 S.F.2d 205, 209). A subsequent Indiana decision has questioned the authority of the Ebbeskote court to imply a geographical limitation in order to find the restrictive covenant reasonable. (1)

Plaintiff's memorandum contains a quotation from Granger v. Craven, a 1924 Minnesota case, suggesting that the Minnesota courts give primary consideration to the interest of the employer in testing for reasonableness. A review of the more current Minnesota decisions indicates that along with many jurisdictions, the modern approach of the Minnesota courts regarding anti-competitive covenants has been to "evidence a concern for the average individual employee who as a result of his unequal bargaining power may be found in oppressive circumstances."

(Josten's Inc. v. Cugnet, 383 F. Supp. 224, 226 (1974))

Further, the court states that

A covenant that serves primarily to bar an employee from working for others or for himself in the same competitive field so as to discourage him from terminating his employment is a form of industrial peonage without redeeming virtue in the American economic order. (Josten's, Inc. at 299, citing Eutectic Welding Alloys Corporation v. West, 160 N.W.2d 566 at 571 (1968)).

The Eutectic court qualifies its broad condemnation of restrictive covenants commenting that covenants against competition in a commercial transaction "are completely distinguishable" and that covenants upon professional employees "may be significantly different" citing Granger. The equivocation in the case of professional employees in the use of the phrase "may be" indicates the Minnesota courts are willing to review the strong language of Granger in light of their general concern for the

Note 1. Whether the authority of the Phbeskote case is questioned for implying a duration limitation and geographical limitation or just the duration limitation is not entirely clear. (See Frederick v. Professional Building, 344 NE 2d 299, 301 n.1). However, it is fairly certain that its value as precedent is diminished.

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economically oppressed individual employee. Certainly if, as defendant Foti in the case at bar contends, it is shown that plaintiff-employer is trying to retain by means of a restrictive covenant clients which it did not obtain through its industry and skill, then the Minnesota courts would find this to be an oppressive inequity to the employee.

It is defendant's position that the court should avail itself of the wide discretion given it by Virginia law in that each [restrictive covenant] case must be determined on its own

particular facts," and follow the lead of many respected jurisdictions in holding invalid restrictive covenants of this sort.

Part 3 of the test for reasonableness recognizes the interest of the public as an important consideration in assessing the validity of restrictive covenants. It is defendant's position that on its very terms, Article VI, Section VI. 1(iv) of the agreement is detrimental to the public interest. The public to be considered, including all former clients of Andrews, Purket as well as future clients of defendant, could potentially be harmed by the enforcement of a covenant which operates to restrict access to professional services. A client of Andrews, Purket who for any reason decided to leave the firm and seek the services of defendant might be 1) turned down because of defendant's inability to service them properly at a 33% reduction in fee, or 2) subjected to a surcharge to cover the salary and expense of the service provided. Future clients might also be subjected to increased fees so that defendant might be able to meet the payments required under the restrictive covenant provision. If enforced, a covenant such as the section under consideration not only restricts a client's access to an accountant of his choice but also subjects a potential client to the adverse effects of an agreement to which he is not a party. Regarding the legal presumption that an accounting service can well be performed by someone else (Racine v. Pender, see p. 7, Plaintiffs' Memorandum), the defendant contends that a question of the comparative ability of individual accountants and the harm done to the public in restricting the availability of the individual accountants is an issue which must be decided based on the facts of each case.

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It is because of the harm done to the public that efforts by employers to preserve a captive market were not enforced at common law as restraints of trade. Exceptions have been permitted but only after close scrutiny reveals a legitimate interest, the protection of which does not unduly harm the employee and has minor adverse effects upon the public interest. It is clear that when the above mentioned considerations are applied to the facts of the instant case, an exception is not warranted.

II. DEFENDANT WAS INVOLUNTARILY TERMINATED BY THE PARTNERSHIP KNOWN AS ANDREWS, BURKET & CO.

As plaintiffs' memorandum contains no discussion or legal reference for the court to consider in characterizing the termination, plaintiffs apparently believe that the issue as to the nature of the termination is purely factual. It is defendant's position that the termination issue requires the resolution of legal as well as factual questions. The occurrence or non-occurrence of certain alleged acts on the part of plaintiffs and defendant must be established by testimony or documentary evidence, but the characterization of these acts is a legal issue.

Subsequent to the submission of Victor Foti's resignation on August 1, but prior to September 30, the effective date of the resignation, the Andrews, Burket partnership and the partners, individually and collectively, committed the following enumerated acts against the defendant:

Vic Foti was:

- (1) excluded from partners' meetings
- (2) not consulted in the client reassignment decision-making process
- (3) not consulted in the decision regarding the handling of delinquent or bad debts of the partnership
- (4) not permitted to accumulate chargeable time for work done for clients
- (5) not permitted free use of working papers
- (6) severely restricted in his contact with clients, i.e., client contact was not permitted without the accompaniment of another member of the partnership.

It is defendant's contention that these actions constitute a denial of defendant's property rights as a partner in the Andrews, Burkett partnership as provided for in Virginia Code Sections 50-24 through 50-26. Specifically, the actions recited in Items 1, 2 and 3 constitute a denial of defendant's right to participate in the management of the partnership (Va. Code §50-24(3); Items (3), (4) and (6) are actions which adversely affected the profit and surplus of the partnership, a share of which is defendant's interest in the partnership (Va. Code §60-26). Finally, Item (5) is an instance of the denial of defendant's right of equal possession of partnership property (Va. Code §50-25(2) (c)).

The denial to defendant of his rights and interest in the

partnership and his exclusion from participation in the business may be properly characterized in one or more of the following ways:

(1) This denial constitutes an "expulsion" mentioned in Article II, Section II.2 and contemplated under the partnership agreement.

(2) The denial of defendant's rights were an expression of the will of the plaintiff-partners not to let the partnership as constituted continue until September 30, but rather to contravene the partnership agreement and terminate the relation of the defendant to the partnership in August.

(3) The denial constitutes a termination in early August of Victor Foti's participation in the Andrews, Burket partnership, pursuant to Article V, Section II.2 and against his volition and expressed intentions.

There is legal support for arguing that all of the above are proper characterizations of the denial activities of plaintiff-partners. It is important that the most appropriate characterization be determined as each gives rise to somewhat different legal consequences.

(1) TERMINATION BY EXPULSION

The use of "expulsion" in Article II, Section II.2 and Article III, Section III.1, of the Andrews, Burket partnership agreement indicates that the parties to the agreement must have considered a power of expulsion to have been conferred upon the partners under the agreement. Since there are no provisions in the agreement as to how an expulsion may be deemed to have taken place, defendant can properly maintain that the partners'

decision to deny his rights and abridge his interest in the partnership effects his expulsion from the partnership. Under Va. Code §50-31, if the agreement is not violated by the partners "the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners" causes dissolution. The consequences of dissolution will be discussed below.

(2) TERMINATION BY EXPRESSED WILL OF PLAINTIFF-PARTNERS

The denial to defendant of his rights and interest in the partnership is a manifest expression of the will of the plaintiff-partners, collectively and individually, to disassociate the defendant from the conduct of partnership business. This termination of the defendant's rights in the partnership was not undertaken pursuant to the terms of the agreement. In circumstances such as this, the Virginia Code provides that when the terms of the partnership agreement are contravened, a dissolution may be caused by the expressed will of any partner at any time. (Va. Code §50-31(2))

Whether (1) or (2) is found to be the proper characterization, the dissolution of the partnership is the result of plaintiff-partners' actions toward defendant.

CONSEQUENCES OF DISSOLUTION

Generally, the Virginia Code sections pertinent to partnership dissolution use dissolution in the sense of final dissolution with the "winding up of affairs" the only legitimate activity of the partnership until termination. (Va. Code §50-30) In recognition of modern business practice, where the partnership articles provide that the partnership will not terminate despite

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the departure of a partner, a number of jurisdictions permit the continuation of the partnership business. Article VII, Section III.1, of the Andrews, Burket agreement makes provision for the continuation of the partnership. In this situation, something akin to a "partial dissolution" has been said to occur. (60 Am Jur 2d Partnership §199, p. 112) Instead of dividing and distributing all firm assets as in a final dissolution, a distribution in a partial dissolution would be made of the pro rata share of the departing partner according to the terms of the agreement. Unfortunately, in the Andrews, Burket agreement under consideration, express provision is made only for the division of salary, benefits and capital assets (and then only in the event of a withdrawal or termination). However, as it is the major issue of this suit to determine the proper division of the client following of the partnership, putatively an asset of the firm, the terms of the agreement dealing explicitly with distribution of assets do not provide express guidelines.

Article VI, Section VI 1(iv) of the Andrews, Burket agreement is basically a penalty provision and thus of very little help as it attempts to divide the client following according to the voluntariness or involuntariness of the termination. If a partner's termination is voluntary, he is not permitted to service any clients without a substantial financial penalty. If involuntary, e.g., due to misconduct, the terminated partner can service as many clients as he wishes. A section which has the effect of rewarding misconduct does not establish an equitable basis for the distribution of a partnership asset in the circumstance of a dissolution. It is

defendant's position that in the absence of an express provision for the distribution of a putative partnership asset, i.e., the client following of the partnership, that the division should be among the partners according to their respective interests.

(3) TERMINATION AGAINST DEFENDANT'S VOLITION

The enumerated acts of the plaintiff-partners denying to defendant his rights and interest in the partnership, effectively terminated his status as partner against his volition. The decision to terminate the defendant was made by the partnership and concurred in by the partners at the several meetings held in early August from which the defendant was excluded. The partnership agreement provides in Article V, Section V.2, that if the partners determine by vote that it is in the best interest of the partnership for a partner to withdraw from the partnership then he shall be requested to do so and shall be considered to have withdrawn as of the last day of the month requested. According to the testimony of the plaintiff-partners, no formal minutes or record of the August partnership meetings were kept. But from the enumerated acts listed above and the general conduct of the plaintiff-partners toward the defendant, as well as the deposition testimony indicating that plaintiff-partners had decided and agreed that it would be in the best interest of the partnership for defendant to absent himself from the partnership, it must be inferred that the plaintiffs had determined by vote that Victor Foti be requested to withdraw prior to the effective date of his resignation.

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ROANOKE, VA.

The consequence of declaring the termination involuntary is clear. Article VI, Section VI.1 (iv) of the partnership agreement, upon which this suit is based, is not applicable to involuntary terminations. Thus, no payments or compensation are required by defendant.

Summarizing the arguments presented under II, defendant contends that the court has factual and legal grounds for declaring that plaintiff-partners acts effected a termination of defendant by 1) expulsion in accordance with Article II, Section II.2 of the agreement, 2) dissolution of the partnership by the express will of the partners in contravention of the agreement, or 3) involuntary termination pursuant to Article V, Section V.2 of the agreement. All of the above achieve the equitable result of providing to a terminated partner an equal opportunity to share in the assets of the partnership upon termination or dissolution. The remaining partners of a partnership are prevented from disenfranchising a partner by treating him unfairly and then reducing his share in partnership assets when he is disassociated from the partnership.

III. THE EFFECT AND INTERPRETATION OF ARTICLE IV, SECTION VI.1,iv, IF FOUND TO BE VALID

The defendant admits that he has performed services (though unsolicited) for former clients of the Andrews, Burkett partnership. If Section VI. 1,iv is held to be valid and enforceable, it is defendant's position

- (1) that the penalty provision only applies to fees generated for services actually performed by him, and

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ROANOKE, VA.

(2) that the measurement of damages must be based upon a reasonable assessment of the actual harm done to plaintiff-partners by the breach of the agreement.

It is a general rule of contract construction that when the proper interpretation of a contract provision is in dispute, the language must be construed most strictly against the party for whose benefit the language was inserted. (4B Michie's Jurisprudence, Contracts §45, p.59) In the present case the plaintiff partners have asked the court to declare the penalty provisions of the partnership agreement to be binding and enforceable against the defendant and "those acting in concert with him or on his behalf." The relevant portion of the agreement sought to be enforced is the language from Section VI.1(iv)

"a partner will not offer to perform or perform services...." (emphasis mine)

"A partner violating this subsection will pay...." (emphasis mine)

Applying the rule of construction stated above, it appears to the defendant that the prohibition and penalty provisions must be declared to operate only against a partner and not against any other. Plaintiffs' request of the court to broaden the application of these provisions is not warranted by the language of the agreement. It is defendant's position therefore that the penalty provision, if valid, applies only to fees generated for services performed by him.

Article VI, 1, iv, provides for the payment of 1/3 of each years fee for three years for "violating" the covenant not to perform services for any client of the partnership. Though not explicitly characterized as such, this is certainly

a provision for liquidated damages in the event of breach of the agreement. In order to be enforceable, the liquidated damages must bear a reasonable relationship to the actual damages incurred due to the breach; otherwise, they are to be construed as penalties. When from the nature of the work performed, it is not difficult or impossible to ascertain the damages, the stipulated sum will generally be regarded as a penalty.

(5 Michie's Jurisprudence, Damages 761) In the instant case, actual damages can be fairly determined and defendant will present evidence at trial concerning the appropriate figures and methods upon which such a computation may be based.

CONCLUSION

On the basis of the various legal theories discussed under I, II, and III, defendant contends that the plaintiffs' claims are without validity or substantial support in the law. For these reasons the defendant asks that Section VI.1, (iv) of the Andrews, Burkot agreement be declared invalid and unenforceable.

Respectfully submitted,

VICTOR F. FOTI

By _____

OF Counsel

John D. Feldmann
Hunter, Fox & Wooten
P. O. Box 12247
Roanoke, Virginia 24024

HUNTER, FOX & WOOTEN
ATTORNEYS-AT-LAW
ROANOKE, VA.

OCT 13 1977

355X

17 PAGE 525

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

WILLIAM A. COOK, JR.,
et als.,

Plaintiffs

v.

VICTOR F. FOTI, et als.,

Defendants

ORDER

Law No. 3560

On September 26, 1977, came the parties to this action pursuant to Order entered herein on August 29, 1977, and each side announced ready for trial upon the plaintiff's Motion for Declaratory Judgment and the defendant's Answer.

Thereupon came a jury summoned in the manner prescribed by law, from which counsel for both the plaintiffs and the defendant exercised their preemptory strikes, leaving seven jurors who were sworn to well and truly try the issue joined, and thereupon the plaintiffs presented their evidence and rested their case in chief. The defendant presented his evidence and rested. The plaintiffs presented rebuttal evidence after which both sides rested. At the conclusion of all the evidence, out of the hearing of the jury, the plaintiffs, by counsel, moved the Court to find as a matter of law that Victor F. Foti voluntarily terminated his membership in the partnership of Andrews, Burket & Co. by resigning,

and to discharge the jury, there being no issue upon which reasonable men could differ. After argument by counsel and consideration of the motion, the Court sustained the motion and the jury was discharged, to which action of the Court the defendant, by counsel, objected and excepted.

Thereupon, the parties, by counsel, argued all other issues relating to the question of liability and the court

EWB
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OCT 13 1977

made the following findings which are ADJUDGED, ORDERED and DECREED.

1. That Victor F. Foti voluntarily resigned from the partnership of Andrews, Burket & Co. effective September 30, 1976.
2. That the partnership agreement of Andrews, Burket & Co. is valid and in particular that Article VI, Section VI.1(iv) is reasonable, valid and enforceable.
3. That within twenty-four months immediately following September 30, 1976, Victor F. Foti directly and through R. L. Persinger and Company and/or R. L. Persinger and Company trading as Persinger, Foti & Company, has performed services as a Certified Public Accountant or Public Accountant for clients of Andrews, Burket & Co.; clients of Andrews, Burket & Co. are defined as those names appearing on the client list which was the subject of the stipulation filed herein dated February 4, 1977.

4. That for all clients of Andrews, Burket & Co. for whom Victor F. Foti has performed services as a Certified Public Accountant or Public Accountant either directly or through any partner or employee of the partnership in which he is a partner within twenty-four months immediately following September 30, 1976, the defendant shall pay to Andrews, Burket & Co. an amount equal to one-third of each year's fee collected from each said client for a period of three years from the date said Victor F. Foti either directly or indirectly begins performing services for each said client.

5. That the payments are due Andrews, Burket & Co. when collected from the client by Victor F. Foti or the partnership of which he is a partner.

Upon motion of the plaintiffs, the Court directs and Orders that defendant, Victor F. Foti, and the partnership of which he is a member, furnish an accounting to the plaintiffs prior to October 21, 1977, at 12:00 Noon, which said accounting

QUB

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shall set forth specifically the name of each client of Andrews, Burket & Co. for whom work as a Certified Public Accountant or Public Accountant has been performed by Victor F. Foti or any partner or employee of the firm of R. L. Persinger and Company and/or R. L. Persinger and Company trading as Persinger, Foti and Company subsequent to October 1, 1976; the date on which work was first performed for each client; the dates and amounts of all bills to each client

showing the fee charged and disbursements charged the client; the date and amounts of all payments received from each said client. Thereafter, a similar accounting shall be provided each sixty days as long as any payments are due Andrews, Burket & Co. under the terms of the agreement. It is further Ordered that the defendant shall make his books and records and the books and records of his partnership relating to clients served and fees charged available for inspection and audit by a third-party Certified Public Accountant retained and paid by Andrews, Burket & Co. at reasonable times agreeable to the parties but no more often than once each ninety days.

This matter is continued until October 27, 1977, at 2:00 p.m. at which time the Court will hear such evidence and arguments as may be presented by the parties on the question of damages.

ENTER this 3rd day of October, 1977.

Ernest W. Ballou
Judge

We Request the Entry of
this Order:

GENTRY, LOCKE, RAKES & MOORE

By Mr. R. Rakes
Counsel for Plaintiffs

Seen and Objected to:

HUNTER, FOX & WOOTEN

By H. Wooten
Counsel for Defendants Victor F. Felt

NOV 16 1977

BOOK

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

WILLIAM A. COOK, JR.)
JAMES M. DILLON)
LACY W. HANSON)
ISAAC O. PERKINS)
R. DAVID ROTTY)
JOSEPH B. WRIGHT)
and)
GLENN D. McMillion,)
Partners trading as Andrews,)
Burket & Co.,)
)
Plaintiffs)
)
v.)
)
VICTOR F. FOTI)
ROBERT K. FLYNN)
MARION L. POWELL)
KENNETH RATLIFF)
W. VERNON HICKS)
C. THOMAS BREWER,)
Partners trading as Persinger,)
Foti & Co.,)
)
Defendants)

O R D E R

Law No. 3560

(1)

This day came the plaintiffs, by counsel, and moved the Court to suffer a voluntary nonsuit as to the defendants, Robert K. Flynn, Marion L. Powell, Kenneth Ratliff, W. Vernon Hicks and C. Thomas Brewer, and it appearing unto the Court that the plaintiffs are within their rights, it is accordingly ORDERED that said defendants be, and they hereby are, nonsuited and this action is dismissed as to them without prejudice. This action shall remain on the docket with Victor F. Foti as the only defendant.

Enter this 16th day of November, 1977, *name pro*
tune as 7 10/27/77.

Barnett W. Ballou
Judge

We ask for the entry of this
Order:

GENTRY, LOCKE, RAKES & MOORE

By *M. R. Raker*
Counsel for Plaintiffs

SEEN:

HUNTER, FOX & WOOTEN

By *H. W. Wooten*
Counsel for Defendants

LAW OFFICES
GENTRY, LOCKE,
RAKES & MOORE
ROANOKE, VIRGINIA

17 PAGE 676

NOV 16 1977

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

WILLIAM A. COOK, JR.)
JAMES M. DILLON)
LACY W. HANSON)
ISAAC O. PERKINS)
R. DAVID ROTTY)
JOSEPH B. WRIGHT)
and)
GLENN D. McMILLION,)
Partners trading as Andrews,)
Burket & Co.,)
)
Plaintiffs)
)
v.)
)
VICTOR F. FOTI,)
)
Defendant)

O R D E R

Law No. 3560

②

On October 27, 1977 came the parties to this action for a further hearing relating to the plaintiffs' damages pursuant to the declaratory judgment heretofore entered on October 13, 1977. Upon evidence heard ore tenus and argument of counsel the Court makes the following additional findings of fact and conclusions of law:

1. That plaintiffs are entitled to interest on payments due them from defendant at the legal rate of 8% from the date such payments are collected from each such client by defendant or his partnership.

2. That the date payments are due plaintiffs shall be the date when collected by defendant or his partnership from each such client regardless of when in the fiscal or calendar year such fees may be collected.

3. That in determining the reasonable disbursements charged clients, defendant is entitled to charge no more than \$0.40 per original page for copying regardless of the number of copies made of each original page for the client.

This case is continued until November 16, 1977 at 2 P.M.

Enter this 16th day of November, 1977, *sum pro*

time us 2 10/27/77.

Ernest W. Ballan
Judge

LAW OFFICES
ENTRY, LOCKE,
AKES & MOORE
ROANOKE, VIRGINIA

NOV 16 1977

BOOK 17 PAGE 677

We ask for the entry of this Order:

GENTRY, LOCKE, RAKES & MOORE

By *Wm. A. Rakes*
Counsel for Plaintiffs

SEEN: *and objected to:*

HUNTER, FOX & WOOTEN

By *H. Wooten*
Counsel for Defendant

[Signature]

NOV 16 1977

17 DEC 678

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

WILLIAM A. COOK, JR.)
 JAMES M. DILLON)
 LACY W. HANSON)
 ISAAC O. PERKINS)
 R. DAVID ROTTY)
 JOSEPH B. WRIGHT)
 and)
 GLENN D. McMILLION,)
 Partners trading as Andrews,)
 Burket & Co.,)

Plaintiffs

O R D E R

Law No. 3560

v.

VICTOR F. FOTI,

Defendant

This day came the parties to this action for a further hearing relating to the plaintiffs' damages pursuant to the declaratory judgment heretofore entered on October 13, 1977. The defendant has requested a final appealable order be entered herein with a money judgment. Accordingly, pursuant to the declaratory judgment rendered herein and based upon the evidence heard ore tenus and the exhibits filed herein, it is ADJUDGED, ORDERED and DECREED that the plaintiffs recover from Victor F. Foti the sum of \$ 40,264³¹ representing his liability pursuant to the declaratory judgment covering the period October 1, 1976 through September 30, 1977.

The defendant having indicated his intention to appeal this judgment, it is ORDERED that the transcripts of the hearings

held herein be made a part of the record as soon as they are received from the court reporter; and

It is further ORDERED that execution of this judgment be suspended so long as defendant timely prosecutes the appeal and thereafter so long as the matter is under consideration by the Supreme Court; provided, however, that defendant or someone for him shall file an appeal bond in the clerk's office of this Court within thirty (30) days of the entry of this Order, with surety in the penalty of \$ 42,000⁰⁰, reciting this judgment and defendant's intention for appeal, which bond shall be conditioned

AWB

NOV 16 1977

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to perform and satisfy this judgment in case this judgment be affirmed, or the appeal not timely prosecuted, or the appeal be denied, and which bond shall also be conditioned to pay all damages, costs and fees which may be awarded against the appellant in the Supreme Court and all actual damages incurred in consequence of the suspension. *This judgment shall not be docketed until further order of court.*

Enter this 16th day of November, 1977.

Ernest W. Ballou
Judge

We request the entry of this Order:

GENTRY, LOCKE, RAKES & MOORE

By

M. A. Raker
Counsel for Plaintiffs

LAW OFFICES
GENTRY, LOCKE,
RAKES & MOORE
ROANOKE, VIRGINIA

Seen and objected to:

HUNTER, FOX & WOOTEN

By M. W. Wooten
Counsel for Defendant
JWB

RECEIVED

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AND FILED

Leann Wooten
DEPUTY CLERKVIRGINIA:IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

WILLIAM A. COOK, ET AL

Plaintiff

v.

VICTOR F. FOTI, ET AL

Defendant

NOTICE OF APPEAL

TO THE CLERK OF THE CIRCUIT COURT FOR THE CITY OF ROANOKE:

The defendant in the above-styled action, Victor F. Foti, by his attorney, hereby gives notice pursuant to the provisions of Rule 5:6 of the Rules of the Supreme Court of Virginia of his appeal from all those certain orders entered in the above-styled cause on October 13, 1977, and November 16, 1977, in which the plaintiff's petition for a declaratory judgment was granted and a money judgment awarded. The transcript of the case will be filed with the Clerk at a later time, pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia.

John D. Feldmann
John D. Feldmann

CERTIFICATE OF MAILING

I, John D. Feldmann, counsel for the defendant, do hereby certify that a true copy of the foregoing notice of appeal

was mailed to William R. Rakes, Esquire, Gentry, Locke, Rakes & Moore, P. O. Box 1018, Roanoke, Virginia, counsel for plaintiff, on this 8th day of December, 1977.

John D. Feldman

HUNTER, FOX & WOOTEN
ATTORNEYS-AT-LAW
ROANOKE, VA.

COPY

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

- - - - - x
WILLIAM A. COOK, JR., et al.
vs.
VICTOR F. FOTI, et al.
- - - - - x

Case # 3560

BEFORE

ERNEST W. BALLOU
Circuit Judge

DATE

September 26, 1977

TIME

9:30 A.M.

PLACE

Courthouse
Roanoke, Virginia

APPEARANCES

WILLIAM R. RAKES, Esquire
JOHN S. EDWARDS, Esquire
Roanoke, Virginia
Attorneys for Plaintiffs

CHARLES D. FOX, III, Esquire
GEORGE W. WOOTEN, Esquire
JOHN FELDMANN, Esquire
Roanoke, Virginia
Attorneys for Defendants

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P. O. Box 12562

Roanoke, Virginia 24026

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1 [10:30 a.m. THE REPORTER WAS SWORN]

2 THE COURT: Andrews, Burket & Co. vs.
3 Persinger, Foti & Company. Are you ready, Mr. Rakes?

4 MR. RAKES: Yes, Sir, Your Honor.

5 THE COURT: Are you ready, Mr. Wooten?

6 MR. WOOTEN: Yes, sir.

7 THE COURT: All right. Call the jury.

8 MR. WOOTEN: Your Honor, we'd like to make a
9 motion to exclude the witnesses.

10 THE COURT: All right. All those who are not
11 parties to the suit will be excluded as witnessess.

12 [All witnesses not parties were separated and excluded from
13 the courtroom. A jury of seven was empaneled and sworn and heard
14 opening statements of counsel.]

15 THE COURT: All right. Mr, Rakes, call your first
16 witness.

17 ISAAC O. PERKINS,

18 a plaintiff, called as a witness in his

19 own behalf, being first duly sworn, testified

20 as follows:

21 DIRECT EXAMINATION

22 BY MR. RAKES:

23 Q Mr. Perkins, please state your name.

24 A Isaac O. Perkins, better known as Ike.

25 Q Where do you live, Ike?

26 A Roanoke, Virginia.

1 Q How long have you lived in the Roanoke area?

2 A About twenty-five years.

3 Q I believe you are a certified public accountant by
4 profession.

5 A I am a certified public accountant.

6 Q And I also believe you are with, and have been with
7 for some time, the accounting firm of Andrews, Burket & Co.?

8 A Yes. I was made a partner in 1958, almost twenty
9 years ago.

10 Q Are you one of those partners that might be referred
11 to as senior partners of the firm?

12 A We do not have a designation of senior partners, but
13 I shared in the profits and responsibility the same as Mr. Foti did.

14 Q And were there others at that same level?

15 A Yes, there are about five of us, I suppose.

16 Q Mr. Perkins, tell us a little bit about Andrews,
17 Burket & Co. as far as the location of offices and the type of work
18 you do.

19 A We were founded in Richmond, Virginia, in 1922. I
20 think the office in Roanoke was opened about 1932, or thereabouts.
21 We now have -- as of September 30, 1976, we had six partners, an
22 office in Blacksburg, Virginia, and one in Roanoke.

23 We do general accounting work, as most CPA firms
24 do, such as auditing, tax returns, management services, which is
25 deciding whether someone should put in a computer or not. I hope
26 you won't ask me too much about some of these services. I know so
27 very little about them.

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1 We are interested in one thing as a firm, and that is
2 to provide good service to our clients.

3 Q Your firm, from what you know of it, Mr. Perkins, is
4 somewhat similar to the firm of R. L. Persinger and Company in that
5 it is a regional western Virginia type of accounting firm?

6 A That is correct. R. L. Persinger is about the same
7 size that we are, but they have got more office locations than we do.
8 We are very similar in the means in which we operate.

9 Q Mr. Perkins, of course you know Mr. Foti. And
10 would you tell us when you first met Mr. Foti.

11 A Well, I guess about 1958. I don't really recall when
12 Vic came to work, but it's been many years ago. I think he was with
13 the firm about seventeen years.

14 Q Do you recall when he came with the firm?

15 A Yes.

16 Q And have you worked with him from time to time since
17 his coming to the firm?

18 A Yes, I have worked with Vic through all the various
19 levels of responsibility in our firm.

20 Q Did you and other partners older than Vic participate
21 in the training as he came along before he became a partner?

22 A Yes, we did, Mr. Rakes. When we hire a man right
23 out of college, he knows practically nothing about auditing except
24 maybe some general background material, certainly nothing of the
25 technical requirements. So they rely on us and we rely on them, and
26 we have trained them up through the various levels of responsibility.

1 Q I take it he, during the course of his stay with
2 Andrews, Burket, he went through those various levels of
3 responsibility, including becoming a CPA and a partner in the firm?

4 A That is correct. Vic -- we hired Vic -- as I recall,
5 he was working for his uncle or someone in Richmond for about a year
6 after he got out of Concord College, and then he came to work for us
7 as a junior accountant, passed the CPA exam, and came up through
8 the ranks from a junior accountant to a semi-senior to a senior to a --
9 well, at that particular time when Vic was made a partner, that was
10 all the levels we had. He went from senior accountant to a partner.
11 His equity in the firm started out to be very small, and in six years
12 we thought enough of Vic to increase his percentage of equity in the
13 firm to where he was, you might say, an equal partner or a senior
14 partner.

15 Q During the last year or so of Vic's being a partner in
16 the firm, what type of work did he do and what responsibilities did he
17 have?

18 A He was primarily audit partner. Our firm is broken
19 down into three sections -- audit, taxes, and management services.
20 Vic was in the audit area. He worked on a variety of clients, and it's
21 rather hard to characterize what his specialty might have been
22 because he was a generalist, and he audited about anything that came
23 down the pike.

24 Q In your firm, Mr. Perkins, does every client -- is a
25 partner assigned to every client, to be the person ultimately in
26 charge of the client?

1 A We feel that a client should have the personal
2 attention of a partner. Therefore, a client is assigned to a partner,
3 and the partner accepts responsibility for servicing that client.
4 Therefore, there were a number of clients assigned to Vic; there were
5 a number of clients assigned to other partners. But one partner has
6 the responsibility of servicing the client, billing that client, seeing
7 that that client is completely happy with everything that we do.

8 Q Does that mean that partner does all the work for
9 that client, or do other accountants within the firm also work for him?

10 A No, the partner frequently has very little chargeable
11 time. Let me explain chargeable time. Chargeable time is time that
12 that individual spends working on that account. So a partner may
13 have very little chargeable time to that account. So he would be
14 assisted by maybe a junior accountant or two, a senior accountant, a
15 supervisor, a manager. It may be a ten-man job and he may not even
16 go out there but one day. The job may last a month.

17 Q On the other hand, can a partner also be very much
18 involved in a client's work?

19 A A partner can be very much involved; he can do
20 essentially all the work. There is no rule of thumb as to how much
21 time a partner may spend on a job.

22 Q Now, Mr. Perkins, in your partnership, did you have
23 a written partnership agreement governing the relationship among the
24 partners in your firm?

25 A All the partners have signed a partnership
26 agreement.

1 Q Was there one in effect at the time Mr. Foti submitted
2 his resignation?

3 A Yes, there was.

4 Q Was that agreement signed by each of the partners to
5 the partnership, including Mr. Foti?

6 A That is correct.

7 Q All right. When a partnership agreement is
8 presented for signature to the partners, is it discussed or do they
9 have an opportunity to comment in any way?

10 A Most of the time I will probably write the
11 partnership -- write the first draft. Then it is circulated around the
12 partners and adjustments and amendments are made and put in the
13 agreement. When we get it like the partners want it, then we sign it.

14 Q Every partner has to agree to it before it's signed?

15 A Yes.

16 Q It is not a majority-vote type situation?

17 A That is correct.

18 Q Now had your firm had prior partnership agreements
19 prior to the one in effect at the time Mr. Foti resigned?

20 A Yes, we had. We had a partnership agreement
21 starting October 1, 1969.

22 Q Would that have been the first day on which he
23 became a partner?

24 A That was the first day when Vic became a partner.
25 Subsequent to that time, we had four or five -- I don't know how
26 many, but they have been amended and adjusted.

1 Q Did each of those agreements contain provisions
2 governing the withdrawal of a partner from the firm and his
3 obligations to the firm?

4 A That is correct. Each agreement had substantially
5 the same words to it, the same sense of the paragraph in regard to
6 withdrawals.

7 Q And likewise, are there provisions in the agreement
8 that provide what the remaining partners or the remaining firm owes
9 to the withdrawing partner?

10 A Yes.

11 Q And I take it that there are amounts owed to a
12 withdrawing partner.

13 A That is correct.

14 Q Was Mr. Foti owed any monies from Andrews, Burket
15 upon his resignation from the firm?

16 A At the effective date, yes, there were quite
17 substantial amounts owed.

18 Q Has he been paid some of those monies?

19 A Yes, he has. He has been paid according to the
20 terms of the agreement.

21 [DOCUMENT SHOWN TO COUNSEL]

22 Q I think I can do this better. Do you have the
23 original agreement with you?

24 A Yes, I do.

25 Q May I have it?

26 And, Mr. Perkins, I hand you a document that is
27 titled "Andrews, Burket & Co. Articles of Partnership." And on page

1 eight thereof, there is a signature page, then an Appendix A with a
2 signature page on it, and then an Appendix B with a signature page
3 on it.

4 I ask you if that constitutes the partnership
5 agreement of Andrews, Burket & Co.?

6 A Yes, it does.

7 MR. RAKES: Your Honor, I ask that this be
8 admitted into evidence.

9 THE COURT: Any objections?

10 MR. WOOTEN: We have no objections.

11 THE COURT: All right. Exhibit I.

12 MR. RAKES: May we later substitute a Xerox copy
13 in lieu of the original?

14 THE COURT: Yes.

15 [PLAINTIFF EXHIBIT 1 marked for identification and received
16 in evidence]

17 Q Now, Mr. Perkins, I ask if Article 5 of the
18 partnership agreement confirms the manner in which partners are --
19 the partners resign or are terminated or expelled from the
20 partnership?

21 A Yes, it is.

22 Q And it -- I believe the first line provides for a
23 sixty-day written notice if there is a voluntary withdrawal?

24 A If a partner wishes to withdraw from the
25 partnership, he has to give sixty-days prior written notice.

26 Q How is a partner expelled or involuntarily terminated
27 under this paragraph?

1 A If a partner is involuntarily terminated, the
2 remaining partners vote on it.

3 Q All remaining partners vote?

4 A All of the remaining partners.

5 Q Is that other than the man under consideration?

6 A Other than the man under consideration.

7 Q Did the partners of Andrews, Burket & Co. ever vote
8 to expel or terminate Vic Foti's relationship with the firm?

9 A It was never considered. We considered Vic a
10 partner through September 30 in accordance with his letter of
11 resignation.

12 Q Mr. Perkins, I hand you a Xerox copy. Is this Mr.
13 Foti's letter of resignation?

14 A Yes, it is.

15 Q Dated August 1, 1976?

16 A Yes.

17 MR. WOOTEN: I move that this be admitted as
18 Plaintiff's Exhibit 2.

19 [PLAINTIFF EXHIBIT 2 marked for identification and received
20 in evidence]

21 Q Mr. Perkins, I hand you a letter dated August 2,
22 1976, addressed to Mr. Foti. Is that your letter accepting the
23 resignation?

24 A Yes.

25 MR. RAKES: I move that this be admitted as
26 Plaintiff's Exhibit 3.

1 THE COURT: Exhibit 3.

2 [PLAINTIFF EXHIBIT 3 marked for identification and received
3 in evidence]

4 Q Mr. Perkins, in the firm of Andrews, Burket & Co.
5 are the partners permitted to have private personal clients which they
6 perform services for and bill on a personal basis?

7 A No, there is no -- everything goes through the firm.
8 They are all firm clients.

9 Q When bills are submitted to clients, are they
10 submitted on statements of Andrews, Burket & Co.?

11 A That is correct. They are submitted on statements of
12 Andrews, Burket & Co. The bookkeeper records them, pays the
13 accounts, and takes care of all administrative details.

14 Q When the payments come in, does a particular partner
15 share in a particular fee or are all fees put into the partnership
16 account?

17 A All fees are put into the partnership account. The
18 partner's personal prediction of chargeable time has nothing to do
19 with his share of the profits or his compensation.

20 Q Now provided for in the agreement that has just been
21 admitted into evidence, is there a provision for retirement of
22 partners?

23 A Yes, there is.

24 Q Could you give us a brief summary of how the
25 retirement of partners works?

26 A The partners must retire at age sixty-two. They are
27 compensated by a retirement fund, which is unfunded by insurance or

1 any such thing, comes out of the general profits of the partnership,
2 is based on the individual partner's earnings average for the last five
3 years. It is paid to him monthly for a period of five years at one
4 rate, then a second rate for another five years, and six thousand
5 dollars a year for life.

6 Q Now is that what they refer to as a funded agreement
7 where an insurance company or somebody underwrites it?

8 MR. FOX: If it please the Court -- excuse me, sir.
9 I do not believe this is relevant to the issue at hand.

10 MR. RAKES: May it please Your Honor, it has to do
11 with the responsibilities of the partnership upon a partner
12 withdrawing. The witness is testifying relating to the obligation left
13 on the remaining partners when one partner terminates himself from
14 the partnership.

15 THE COURT: But the issue for the jury is a
16 question of whether he was voluntarily or involuntarily terminated.
17 How does this relate to that issue?

18 A This does not relate to that specific issue, but it
19 does relate to the issues the court will be deciding.

20 THE COURT: Let me hear him out of the presence of
21 the jury.

22 MR. RAKES: I have no objection to that as long as I
23 have an opportunity --

24 THE COURT: You will have an opportunity to do
25 that. Let's move on with the jury and present that part of the
26 evidence that pertains to the termination. I know it will get mixed up
27 some.

1 [Mr. Rakes, resuming]:

2 Q Mr. Perkins, before going into some of the specific
3 events following his resignation, what role do you play in the firm?
4 What is your job with Andrews, Burket?

5 A My job is the administrative partner. I handle all the
6 administrative details of that firm.

7 Q Does that mean that you spend more time running the
8 firm, so to speak, than you do servicing clients?

9 A Yes. Normally a partner will have anywhere from
10 1500 chargeable hours a year downward. In my case, it runs about
11 200 hours per year of time actually spent on clients' work. The rest
12 of my time is spent on office administration.

13 Q In that connection, do you keep records and
14 memoranda relating to partners' activities and decisions?

15 A If you are referring to the partners' meetings, I
16 usually circulate an agenda. First let me back it up. Our partners'
17 meetings are regularly scheduled on the third Tuesday of each month.
18 So on the Friday previous to that Tuesday, I submit an agenda to the
19 partners as to what is coming up. They are free and frequently do
20 add to that agenda.

21 During the partners' meetings, which are held on the
22 third Tuesday, my job is, shall we say, chairman of the
23 meeting -- chairman of the partners' meetings, and I also make
24 notes. And after the meeting is over -- as I say, I am in charge of
25 the meeting. After the meeting is over I transcribe these notes for
26 my own reasons, for my own purposes, and also to circulate it to the
27 partners in order that they may know, and maintain a file if they so

1 desire, as to what decisions the partners have made. And also to get
2 their concurrence if I have said something wrong, and I frequently
3 do, then they frequently tell me I've got something wrong or I
4 misinterpreted something. They will tell me.

5 Q Mr. Perkins, are these minutes in the sense they are
6 voted on or signed, or in the nature of records of the meeting?

7 A They are not minutes. They are strictly my
8 interpretations as to what happened.

9 Q When did you learn that Vic had tendered a letter of
10 resignation?

11 A About eleven or twelve o'clock on Monday morning,
12 August 2.

13 Q What happened when you got to the office? I believe
14 you were late that day getting to the office?

15 A I had a medical examination that morning. I got to
16 the office around eleven, thereabouts. Two of the partners, Hansen
17 and Foti said, "Have you opened the mail yet?"

18 I said, "No, I haven't."

19 They said, "You better open it." So I did, and there
20 was the letter.

21 Q Hansen and Foti said that?

22 A Hansen and Wright. Excuse me.

23 Q What happened after you read the letter?

24 A Well, after recovering from the shock, we decided the
25 best thing we had better do was to get together and discuss it and
26 see what action we should take. And we did.

1 Q Did you do that on that day?

2 A Well, we met after lunch out of the office building,
3 out of the fifth floor of the Shenandoah Building, and decided to
4 accept the resignation with regret, and wished Vic the best of
5 success. Because his letter did state that he was going to remain a
6 public accountant.

7 Q Was Vic present in the office on that day?

8 A No, Vic was checked out that day with his secretary
9 as a day of vacation.

10 Let me explain that a minute. We do have a secretary
11 sitting there, a receptionist, and she keeps a tablet in front of her
12 that tells where people are. The partners and staff are required to
13 inform the secretary, or the receptionist, as to their whereabouts at
14 all times during working hours, in order that if we need to get hold
15 of them in a sudden emergency, we know where they are. Vic for
16 that particular day was signed out on vacation.

17 Q Did you write a letter on behalf of the firm,
18 acknowledging receipt of his letter of resignation and accepting it?

19 A Yes, I did.

20 Q Now what was the next thing that you recall that took
21 place relating to Vic's resignation from the firm?

22 A We decided the main thing we had to do was to
23 provide uninterrupted service to our clients, since Vic was resigning.
24 So we instructed the bookkeeper to prepare a list of clients that Vic
25 had client responsibility for. Then we would meet later on in the
26 week and decide what to do with these clients -- what partners we
27 would transfer the partner responsibility to.

1 Q Was that done later in the week?

2 A It so happened that we thought this list would not be
3 ready until Wednesday. It was ready on Tuesday, so we met Tuesday
4 with the partners and made the partner-responsibility assignments for
5 the major clients.

6 Q Do you recall if Vic was in the office on Tuesday?

7 A During that period of time Vic appeared to be coming
8 to the office late. I don't recall whether he was in that particular day
9 or not.

10 Q When was the first time you discussed the matter with
11 Vic?

12 A With Vic?

13 Q Yes, sir.

14 A Tuesday morning. I went in and talked to Vic and
15 handed him our letter accepting his resignation and told him how
16 sorry we were that he was leaving the firm.

17 Q Was this done prior to the time you had the meeting
18 assigning clients?

19 A I don't really recall. I don't recall.

20 Q So you don't recall whether Vic was there all day or
21 part of the day or what?

22 A No, I do not.

23 Q All right. Mr. Perkins, what else -- you were going
24 to tell us about your discussion with. What else took place?

25 A Well, we did meet that morning. Come to think about
26 it, Vic must not have been there, because we decided that Vic was
27 due three weeks' vacation. And he was going to the Virginia Society

1 of CPAs' annual meeting in Arlington, I believe, so we decided that
2 we would give him a leave of absence through September 30, realizing
3 that it must be hardship on him to come to the office since he was
4 resigning.

5 We communicated this leave-of-absence theory to Vic,
6 and that this would only give him about four or five weeks' additional
7 time.

8 We thought it was justified because of his years of
9 longevity with the firm. We communicated this to Vic, and he rejected
10 this leave-of-absence theory.

11 Q What happened after that?

12 A We started making client visitations to advise the
13 client that Vic was withdrawing from the firm and introduced -- the
14 client did not know the partner -- the new partner responsibility --
15 and introduced the partner and advised the client as to what we were
16 doing and how we continued -- how we expected to continue to
17 provide the service to the client. Then we met on Thursday and
18 made final partner-responsibility assignments.

19 Q That was on Thursday, the first week in August?

20 A Yes. Vic was invited to a management group
21 meeting, the management group of the fifteen top people of our
22 company, partners, supervisors, and managers, which was held on
23 Friday morning, August 6. He said that he had no input for that
24 meeting. He saw no reason for him to attend.

25 He was also invited to either Tuesday or Wednesday
26 to make a special effort to attend the regularly scheduled partners'
27 meeting on August 17 to criticize the partners or to provide input so

1 that we could have a better firm. If we had done something wrong or
2 were doing something wrong, we wanted to know about it. Again he
3 refused to attend.

4 We had a staff meeting on August 30, which is a
5 Monday, which was a professional development seminar. Vic was
6 specifically invited to attend that. He also refused to attend that,
7 saying that he was leaving, that he had no input to put in the firm.

8 Q Mr. Perkins, is it customary with your firm to send
9 out invitations to the partners to attend partners' meetings?

10 A No, it is not. The partners' meetings are scheduled
11 on the third Tuesday of each month at nine-thirty, and if you are not
12 there, you are just not there. The wheels of progress must turn.

13 Q Is it frequent that all the members can't be there for
14 a partners' meeting?

15 A That is quite true. To give you an example, last
16 week was the 20th of September. There were two partners -- myself
17 and one other partner -- who were not there because we were in
18 Cincinnati doing something else for the firm. So we did not object to
19 giving the responsibility of making decisions to the other partners in
20 our absence.

21 Q And you say it is a regularly scheduled meeting and
22 no particular notices or invitations are sent out?

23 A That is correct. No notices were sent out.

24 Q But I believe you testified in this particular instance
25 Mr. Foti was invited to attend -- was requested to?

26 A He was specifically requested to attend in order that
27 we may have a better firm.

1 Q Now during the course of the month, other than
2 these regularly scheduled meetings, do items or issues come up that
3 require partners to get together from time to time to make decisions?

4 A Well, frequently we will get together with the --
5 Hansen and I are next-door neighbors, you might say, officewise. If
6 I need to consult with him or want his opinion on something, I go to
7 his office or he will come to mine, or we'll go back into the back of
8 the office where Bill Cook's office is. And we will just collect
9 whoever is there, and we'll make some sort of decision as to what we
10 are going to do.

11 Q Now was Mr. Foti ever excluded from any meeting?

12 A No, he was not.

13 Q Did he ever request to attend a meeting that he was
14 denied attendance?

15 A He never requested to attend any meetings, or
16 never -- this was complete news to me that he even suggested that he
17 was excluded from meetings.

18 Q Mr. Perkins, did you have several conversations with
19 Mr. Foti during the month of August?

20 A During the first Monday, Tuesday, Wednesday,
21 Thursday of that week, I would say I met with him practically every
22 day. After that, I did not meet with him too often.

23 Q During that period of time, what was Mr. Foti's
24 attitude regarding his resignation?

25 A Fairly -- he was headed toward resignation as of
26 September 30. We did tell him that his main responsibility should be
27 the orderly transfer of partner responsibility from himself to some

1 newly assigned partner, but he did not help us in any way with
2 regard to this. He made no calls with the newly assigned partner.

3 Q Was he asked to allow the newly assigned partner to
4 take over and coordinate the work of the client rather than him
5 continuing right on up to the last day?

6 A We felt like that in a case where inasmuch as Vic was
7 resigning, that we had new partner assignment, that this new partner
8 had to be familiar with the work and with the client, and with the
9 client problems and opportunities.

10 Therefore, we wanted Vic to assist in transferring
11 the responsibility. We didn't want the client to call Vic right up until
12 September 30, and then Vic would be gone and no one knew anything
13 about the client in particular. So consequently, we wanted Vic to
14 work towards transferring the client and not do any productive work
15 himself, but have someone else in the organization do the work.

16 Q Was there any indication by Vic that he did not
17 intend to comply with the provisions of the agreement dealing with
18 voluntary resigning from the firm?

19 A None whatsoever.

20 Q Was there any comment on that at all by Mr. Foti?

21 A Mr. Foti said he intended to live by the agreement.

22 Q Said that to you personally?

23 A Personally, yes.

24 Q Did the partnership consult with Mr. Foti in regard
25 to assigning these clients to other partners?

26 A We did not consult with him. We felt like that,
27 really, his input would be worthless because he was leaving the

1 firm -- leaving us with a can of worms, so to speak, and we had to
2 service these clients. And we assigned what we felt like was the best
3 partner to be in charge of that job, taking into consideration his
4 other partnership responsibilities.

5 Q During August, prior to the time he left, did he
6 continue to talk with clients on the telephone and have contact with
7 clients?

8 A Yes, he did. He continued to talk, to receive
9 telephone calls right on through September 30. He performed
10 services for clients; he was seen in clients' offices; he had meetings
11 with clients -- profit sharing. So he was working on client work
12 during the months of August and September.

13 Q When was the last time that he worked -- was in the
14 office at Andrews, Burket?

15 A He came in the office on Tuesday morning, August
16 31, after he had written us a letter that he felt like that he had been
17 involuntarily terminated, and turned in his office keys, travel cards,
18 telephone card, and all the other little goodies that partners have
19 personally. At that time he told me he intended to live by the
20 partnership agreement.

21 Q And then he did not come back in the office as far as
22 his office and desk and work, and this kind of thing, after September
23 1?

24 A Sometime, I don't know exactly when since Vic had
25 keys to the office, he cleaned out his desk sometime during the
26 weekend -- cleaned out his office sometime during the weekend of
27 Saturday, August 28 or Sunday, August 29. I'm not quite sure.

1 When we got to the work on the 30th, we noticed that his office was
2 completely cleaned -- nothing left but the telephone and the adding
3 machine and the desk. All the books and papers were gone.

4 Q During the month of September did he continue to
5 stop by the office for telephone calls and mail?

6 A Yes. I found it rather interesting that he made
7 about ten or fifteen visits to the office or had someone visit for him.

8 Q Did you make a list of the times after he had said he
9 was involuntarily terminated that he did come to the office for mail
10 and telephone calls?

11 A Yes, I did make a list.

12 Q Why did you make that list?

13 A I thought it was very interesting that he was acting
14 like a partner even though he said that he wasn't.

15 Q Would you enumerate briefly the visits that he made
16 to the office and the purpose for which he made them during
17 September?

18 A Well, I wrote in this memorandum to myself that on
19 Wednesday September 1 Tom Brewer, who was one of our supervisors
20 who went with Vic in his new endeavors, Tom delivered Vic's mail and
21 telephone calls to him on September 1. Tom didn't realize what a
22 hornet's nest he was getting in. On Thursday September 2, Vic
23 called in for his telephone calls. On the third, Friday, he came by
24 and picked up his telephone calls and came to my office and got his
25 mail. Monday was Labor Day. Tuesday he came by the office, picked
26 up the mail and telephone calls. Wednesday he did the same thing.
27 Friday -- I mean Thursday. Friday he did the same thing. On

1 Monday September 13, his wife came by and picked up his calls and
2 mail for him. Tuesday he came by and picked up his calls and mail.
3 On Wednesday he called in and told our secretary that he would be at
4 the CPA convention in Arlington for the Thursday and Friday. And
5 also she relayed his telephone calls to him. On Friday the 24th he
6 picked up his calls. On Tuesday the next week he picked up his calls
7 and mail -- Wednesday and Thursday, which took him up through
8 September 30.

9 This was written primarily for disclosure to our
10 management meeting in February.

11 Q Mr. Perkins, was Mr. Foti furnished copies of the
12 minutes or memoranda, or whatever you call them, of the partners'
13 meetings for the month of August and September?

14 A Vic was given a copy of the August 17 partners'
15 meeting and went over the meeting with in September, the third
16 Tuesday, as well as the annual financial statements.

17 Q And the question of bad debts was mentioned in
18 counsel's opening statement. Were bad debts considered at the
19 September partners' meeting?

20 A Bad debts were considered at the September
21 partner's meeting, but the wheels of progress must continue to turn.
22 The end of our year was coming, and we had to make some
23 preparations. So we considered that the bad debts would be a
24 substantial figure, and we made an understanding that if these bad
25 debts were collected prior to the end of the year, then they would not
26 be charged off. If they were not paid by December 31, then we would
27 take them as a bad-debt expense, which in effect reduces the

1 Q Mr. Perkins, did you and the other partners of
2 Andrews, Burket receive a letter from Mr. Foti dated August 30,
3 1976?

4 A Yes.

5 Q Is that a copy of that letter?

6 A Yes.

7 MR. RAKES: I ask that this be admitted as
8 Plaintiff's Exhibit 5.

9 Did you write a response to Mr. Foti's letter of
10 August 30, '76?

11 A Yes, I did.

12 Q And I hand you what proports to be your letter of
13 August 31, '76. Is that your response?

14 A Yes.

15 MR. RAKES: I ask that this be admitted as
16 Plaintiff's 6.

17 THE COURT: All right. Any objections?

18 MR. WOOTEN: No.

19 THE COURT: Exhibit 5 and Exhibit 6.

20 PLAINTIFF EXHIBITS 5 and 6 marked for identification and
21 received in evidence]

22 Q This letter of August 30, '76, Mr. Perkins, is this
23 the first time you heard any mention made that Mr. Foti considered
24 himself expelled from the firm or involuntarily terminated?

25 A That is correct. He had never discussed it with me.

26 Q And this letter came at about the time he cleaned out
27 his desk and turned in his keys?

1 A This letter came on a Tuesday, I believe.

2 Q And I believe it questioned some of the comments in
3 the August 17 minutes or a summary of the partnership meeting?

4 A I presume it does. Yes.

5 Q Did you consider the items raised by Mr. Foti in your
6 reply of August 31?

7 A Yes, I did.

8 Q Did you as of this time consider Mr. Foti still to be a
9 partner in the firm of Andrews, Burket?

10 A I sure did.

11 Q Did you consider him to be a partner in the firm
12 through September 30, the effective date of his resignation?

13 A Yes, we considered him a partner for a full year.

14 Q Was he paid his compensation as a full partner in the
15 firm through September 30, 1976?

16 A Yes, sir. As far as we were concerned, his
17 withdrawal was effective September 30. He was a partner for a full
18 year.

19 Q My question was, was he paid his full partnership
20 income for the full year?

21 A Yes, he was.

22 Q And that was given to him in a check in accordance
23 with the provisions of the partnership agreement?

24 A In accordance with the partnership agreement, yes.

25 Q And to your knowledge he has cashed the check and
26 has not complained about receiving it?

1 A That's correct.

2 MR. RAKES: Your Honor, could we have two or
3 three minutes to gather my thoughts? I think the jury has been
4 sitting a considerable period.

5 THE COURT: All right. Do you want a short
6 recess? All right. Members of the jury we'll take a short recess.

7 [Recess]

8 THE COURT: All right. Proceed.

9 [Mr. Rakes, resuming]

10 Q Mr. Perkins, Plaintiff's Exhibit I, the partnership
11 agreement, I hand it to you and ask you to look at Article VI, little
12 iv, and ask you to read that paragraph, please.

13 A [Reading] "During the twenty-four months
14 immediately following the termination of his membership in the
15 partnership, unless such termination is involuntary under the
16 provisions of Article B2 of this agreement, a partner will not perform
17 services as a Certified Public Accountant or a public accountant to
18 any of the clients of the partnership. A partner violating this
19 subsection shall pay to the partnership an amount equal to one-third
20 of each year's fee collected for a period of three years. Such amount
21 is due when collected from the client by the former partner. Nothing
22 herein shall be construed in preventing a partner whose membership
23 in the partnership is terminated from performing bookkeeping or
24 accounting services as a full-time employee of any person, firm, or
25 corporation which is not engaged in the business of providing
26 bookkeeping or accounting services for others. Benefits of this
27 subsection shall inure to and be enforceable by any partnership or

1 other organizations into which or with which the partnership of
2 Andrews, Burket & Co. is merged or consolidated."

3 Q That's that entire paragraph?

4 A That's the entire paragraph.

5 Q Mr. Perkins, was that paragraph in the agreement
6 that Mr. Foti signed?

7 A Yes, it is.

8 Q And that all the other members of Andrews, Burket &
9 Co. signed?

10 A Yes.

11 Q Is it an agreement among all of the partners equally
12 or is it an agreement wherein certain partners enter into the
13 agreement just with certain other partners?

14 A It is an agreement that is entered into by all partners
15 of the partnership.

16 Q All partners of the partnership get the benefits of
17 the agreement?

18 A That's right. Get the benefits of the agreement.

19 Q And now in the prior agreements that you have
20 mentioned that the partnership has had since Mr. Foti became a
21 partner in 1969, were paragraphs along this line in those agreements?

22 A They were along this line or may have been the
23 identical paragraph. I don't recall whether we actually changed a
24 word or two in this paragraph or not.

25 Q Has this been a rather standard approach in the
26 partnership of Andrews, Burket?

1 A It is a standard approach to give a partner a method
2 by which he may withdraw if he so desires.

3 Q And spelling out the financial consequence?

4 A Right.

5 Q Now did Mr. Foti at any time during consideration of
6 either of these partnership agreements, since he has been a partner,
7 voice any objection to or indicate a desire not to have that paragraph
8 in the partnership agreement?

9 A No, nothing detrimental has been said about this
10 paragraph. It is something that all the partners wanted in the
11 agreement for their own protection.

12 Q Was there ever any debate or discussion about the
13 meaning of the paragraph?

14 A I thought that everybody thoroughly understood
15 what the paragraph was intended to say.

16 Q To your knowledge, has Mr. Foti offered to perform
17 or performed accounting services for clients of Andrews, Burket &
18 Co. subsequent to his leaving the firm?

19 A Yes, we have received numerous letters from our
20 clients, saying that they were transferring their work to Persinger,
21 Foti and Company.

22 Q Has Mr. Foti or his colleagues from Persinger Foti
23 and Company visited your offices for purposes of copying or
24 reviewing working papers for those former clients of Andrews,
25 Burket?

26 A As is standard in the profession, when one
27 accountant succeeds another accountant, the succeeding accountant

1 normally contacts the predecessor accountant and reviews the working
2 papers. We have afforded members of, or employees of, the
3 Persinger, Foti firm this opportunity. They have taken advantage of
4 it. We have told them they can look at anything they want to. We
5 will make Xerox copies of whatever they want to for their records,
6 but we must keep the permanent working papers or the original
7 working papers in case any lawsuit should come up between us and
8 the client.

9 Q Has Mr. Foti or Persinger, Foti and Company refused
10 to make payments under that paragraph to Andrews, Burket & Co.?

11 A We have not received any.

12 Q They have denied --

13 A They have denied us any payments.

14 Q Can you enumerate, Mr. Perkins, some of the clients
15 who have left Andrews, Burket & Co. and are presently being
16 serviced by Mr. Foti or his firm?

17 A I have a list of them here. They are approximately
18 four pages of them. I don't think the jury or the judge either one
19 wants to listen to all of the names. Some of the major clients are
20 Roanoke Iron and Bridge Works, Roanoke Concrete Products, Colony
21 Manor Furniture Company, the Boxley group. The Boxley group
22 includes such firms as Blue Ridge Stone, Pounding Mill Quarry,
23 Martinsville Stone Corporation, and so forth. A whole slue of them.
24 Davis H. Elliott Company, Virginia Motor Lodge.

25 Q These were all clients of Andrews, Burket & Co. over
26 a period of time?

1 A These were all of our clients that have written us
2 letters, saying that they were going with Persinger Foti or some
3 associates.

4 And I might add that some of these clients are clients
5 that we purchased in 1970 and '71. In February of 1970 Alexander
6 Grant decided to close its office down when their managing partner
7 was made Comptroller of the State of Virginia. We bought these
8 clients from Alexander Grant.

9 Alton Kidd was a sole practitioner in Rocky Mount,
10 Virginia, in 1971. We bought some clients from Alton Kidd. Of this
11 list of clients -- and there are others, I am sure, that have not
12 notified us -- but the ones that we have actually received letters
13 from, approximately \$18,700 we purchased from Grant; \$9,550 we
14 purchased from Kidd; and about \$64,000, I would say, represent
15 firms that have been our clients for many years, such as the Boxley
16 group that I mentioned.

17 Q Would that be even before Vic came with the firm?

18 A That was before Vic came with the firm. The Boxley
19 group amounts -- fees for the fiscal year ended September 30, 1976,
20 amounted to approximately \$26,000.

21 Q Mr. Perkins, you mentioned that you purchased the
22 practice of some other accountants, and some of those clients were
23 assigned to Mr. Foti as his primary responsibility. How does the
24 payment work when you take over another accounting firm's practice
25 or its clientele?

26 A It works in different ways in regard to the --

1 MR. FOX: Your Honor, I think again we have gone
2 way far afield here in the issue before the jury, and I object to this
3 line of questioning.

4 MR. RAKES: May it please Your Honor, the
5 plaintiff's brief takes the position that Mr. Foti took with him clients
6 that he had generated. And we feel like it is important to put
7 evidence in because the jury has been told about this paragraph.
8 And the reasonableness of the paragraph has something to do, it
9 seems to me, with how they construe the actions of both my client and
10 Mr. Foti.

11 THE COURT: I think they can testify to the clients
12 that have been taken over by Mr. Foti, but how one accountant buys
13 another accountant's clients and services, I believe, is going a little
14 far afield. I sustain the objection.

15 Q Mr. Perkins, as I understand your testimony then, a
16 number of these large clients whose names you have revealed are
17 clients that were brought to Andrews, Burket & Co. through either
18 other people in the company or by means other than Mr. Foti
19 generating that business? are clients that were brought to Andrews,
20 Burket & Co. through either other people in the company or by means
21 other than Mr. Foti generating that business?

22 A That is correct.

23 Q And that he was assigned partner responsibility for
24 these various clients that you have just enumerated?

25 A Yes, the Boxley group, for example, is an old, old
26 client of our company that we have been doing for many, many years.
27 Our retired partner, Al Knighton, used to be in charge of that
28 group.

1 MR. FOX: Your Honor, I don't think that is
2 responsive to the question.

3 THE COURT: I think he is entitled to show where
4 the clients came from.

5 MR. FOX: I think he is entitled to show where they
6 came from --

7 A Mr. Al Knighton used to service that account before
8 he retired. Vic grew into the account -- the series of accounts.
9 They were assigned to him, and he didn't even know the Boxley
10 group before he came to Roanoke. It was just given to him. We
11 asked him to service the account and he did a very good job, I might
12 say.

13 Q Then to try to shortcut it and not go through that
14 four-page list, am I correct in assuming that there are a number of
15 clients on that list that Vic did develop, and they came to him and
16 asked them to do their accounting work?

17 A Yes, I would say so. It is hard to tell really where a
18 client comes from.

19 Q But in your practice in your firm the clients are
20 considered clients of the firm and are handled as a firm client rather
21 than an individual's client?

22 A That is correct. That is one reason for the clause in
23 the agreement that we have, that we have no fear of what we call
24 downgrading the work by getting someone else to help you with it.
25 Because we know that if that guy decides that he is going to leave
26 and take that client with him, then he is going to pay for it.

1 Q Do you require a similar type provision for your
2 managers, the people at the level where they are beginning to have
3 responsibility, that are not yet partners in the firm?

4 A We have a level immediately below the partners called
5 managers. Managers do share in the profits of the company and they
6 do sign an agreement.

7 Q Is the agreement somewhat similar to the paragraph
8 you read?

9 A Very similar, drafted by me.

10 Q Were such agreements given to managers to sign
11 while Vic was a partner in your firm?

12 A Yes.

13 Q Did he ever have any objection to tying up the
14 managers' ability to leave the firm with clients?

15 A None whatsoever. It was only a fair thing to do.

16 Q The paragraph that you read a moment ago, Mr.
17 Perkins, relating to the consequences of a partner retiring -- rather,
18 resigning -- and his agreement not to perform work for the clients of
19 the firm for a two-year period and the financial consequences if he
20 does perform such work, is there any limitation in that from a
21 geography standpoint as to what clients are involved?

22 A No. We feel like if a partner wants to leave, he may
23 leave anytime, open up an office next door, and if he takes any
24 client, pay us for it. That's all we ask of him.

25 So there is no geographical limitation as to where he
26 might establish his office.

1 Q In the accounting profession, is there any kind of
2 prohibition against an accounting firm buying another firm's practice
3 or taking over clients for compensation?

4 A The American Institute of Certified Public
5 Accountants that issues a monthly magazine called The Journal of
6 Accountancy. and there are usually two or three pages of accounting
7 firms for sale or people who want to buy accounting firms, want to
8 buy the volume.

9 Nothing precludes a client from going with the
10 purchaser of the accounts. The client may decide that he doesn't like
11 John Doe; he's not going with that person, so he may go with someone
12 else.

13 Q So there is nothing in these agreements then that
14 would preclude a client from being free to select his own accountant
15 at any time?

16 A That is true.

17 Q The agreements simply involved the accounting firm
18 or firms who have a contract with each other?

19 A It is an agreement between the firms as to who is to
20 service the account, but the client still reserves the right or has the
21 right to change accountants anytime he wants.

22 MR. RAKES: I believe that's all on direct, Your
23 Honor.

24 THE COURT: Mr. Wooten, any questions?

25 MR. WOOTEN: Yes, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. WOOTEN:

3 Q Mr. Perkins, you mentioned Article 5 of the
4 partnership agreement, covering the withdrawing of a partner from
5 the firm, is that correct?

6 A That's correct, yes.

7 Q 5.1 of the agreement covers a situation where a
8 partner may give a sixty-day notice and voluntarily retire from the
9 firm -- withdraw from the firm?

10 A That's correct.

11 Q The second part of that article, 5.2, deals with
12 situations where partners can be asked to leave, or expelled, or
13 whatever you want to call it, from the firm, is that correct?

14 A That is correct.

15 Q That is determined by the rest of the partners,
16 excluding the one being asked to leave or expelled if they determine
17 it's in the best interest of the firm then they vote the person out, is
18 that true?

19 A That is quite true, yes.

20 Q Now of the minutes that you and the remaining
21 partners of Andrews Burket held, the meetings beginning the very
22 day you received Mr. Foti's resignation, I believe it has been
23 indicated that there were no formal minutes, but occasionally you did
24 make some memorandums for your own use.

25 A That is quite true. At the regularly scheduled
26 meetings we do make memorandas, but there may be other meetings
27 where no memorandums are made. For example, last week we had a

1 meeting to consider whether we wanted to do an audit or not for a
2 financial institution or a financial district. And we -- about four or
3 five of the seven partners we have in the Roanoke office now met in
4 one office. Two of the partners weren't there. Great. So they
5 weren't there. But the ones that were there made a decision. Now
6 no memorandum of this meeting was made. I can't now tell you who
7 was there.

8 Q I understand that. So there was no -- if votes were
9 taken back in August of 1976 there are no minutes reflecting those
10 votes as a results of it, is that correct?

11 A We very rarely take votes, but what you say is quite
12 true.

13 Q At these meetings there were certain acts that were
14 done regarding -- in addition to other firm business -- regarding Vic
15 Foti, were there not?

16 A That is true.

17 Q A few of those acts are covered by your memorandum
18 of August 17, or it's dated that day, of a meeting that occurred that
19 day or some other day, is that correct?

20 A Is that what you refer to, George, as the minutes of
21 the partners' meetings? I can't see what you're looking at.

22 A I'm looking at the exhibit that was introduced.

23 A I don't have it with me.

24 THE COURT: Exhibit 4.

25 Q Did you prepare that -- those minutes?

26 A Yes. This is my dictation.

1 Q In the last full paragraph, other than the one that
2 just says, "The meeting is adjourned at twelve noon," it is indicated
3 that -- and this is in relation I gather to Vic Foti -- that he is to
4 work on client work only if he communicates and takes a partner,
5 manager, or supervisor with him on visitation of a client. Third line
6 down in that last paragraph, is that correct?

7 A I think -- I really don't know what you're driving at,
8 George, but I think you should read the whole paragraph. But I
9 think in order to get the sense of the meaning of the paragraph, the
10 whole paragraph has to be read rather than a portion of it.

11 Q I understand it is your testimony that everything the
12 firm did was in furtherance of providing continuous service to the
13 clients.

14 A That's true.

15 Q That was one of the things that you say you insisted
16 on providing -- continue to provide to your clients, is that correct?

17 A That's correct. In other words, if Vic went out on
18 the job, he should take someone with him who was going to continue
19 on with the work of the client.

20 Q Were there any other partners of your firm who had
21 such limitations placed on them?

22 A No other partners had resigned, so at that particular
23 time, no.

24 Q But in any event, Mr. Foti was not treated the same
25 as other partners in regard to his freedom of contacting clients, is
26 that correct?

1 A Well, Foti was resigning, so we had the clients'
2 interest at heart. We put that foremost, and our interest was
3 secondary, so he was requested to communicate with the other
4 partners as to his activities in client affairs.

5 Q You testified that there were quite a few meetings
6 held in August, and I think on three occasions you said Mr. Foti was
7 specifically invited. I believe on the 6th, 17th, and the 30th were the
8 days?

9 A That's correct.

10 Q But there were numerous other meetings held?

11 A Let me clarify this point: that the meeting of the
12 17th was a partners' meeting. The meeting on the 7th and the 30th --
13 the 6th was a management meeting, and the 30th was a staff meeting.

14 Q I understand. There were other meetings held with
15 the partners during that month?

16 A Yes. If I go next door and talk to Bizz Hansen,
17 we're having a meeting, I suppose.

18 Q There were other meetings held that were called
19 meetings of the partners where specific places to meet were set aside
20 such as the Shenandoah Club, and so on and so forth, were there
21 not?

22 A I think that is probably true, George, that we got
23 together and said, "Let's go to the Shenandoah Club for lunch, and
24 after lunch we'll talk about the partner-responsibility assignments."

25 Q Are you trying to convey the impression to the jury
26 that --

1 MR. RAKES: I object to the phrase.

2 THE COURT: I sustain the objection. Just ask the
3 questions.

4 Q The only meetings that you are testifying to were
5 casual meetings, is that what you're saying?

6 A That's what I'm saying, yes. The regularly
7 scheduled meeting is on the third Tuesday. To carry this a step
8 further I think it was on Tuesday or Wednesday that week we had a
9 meeting, and Joe Wright, one of our partners, was on vacation down
10 at the lake that day. That didn't stop us; the ones that were there
11 made a decision. The wheels of progress kept on turning.

12 Q I understand Mr. Foti was not in any of the meetings
13 held during the month of August, is that correct?

14 A That is correct.

15 Q Sometime during those meetings, whether there was
16 two of you together or all of you together, the decision was made
17 regarding his limitation in contacting clients, was it not?

18 A You use the word limitation. I prefer to use the
19 word cooperate with us to transfer the responsibility of that client to
20 the newly assigned partner. I don't feel like he was limited. He was
21 requested to do something that he didn't do.

22 Q If I used the same words you did, we wouldn't be
23 here. That's what we're here about.

24 The decision was made to reassign the clients, were
25 was it not?

26 A That is correct. No, the decision was made for the
27 client responsibility to be changed.

1 Q Mr. Foti was advised that he was not to accumulate
2 chargeable time to clients, was he not?

3 A Without the consent and approval and communication
4 to the newly assigned partner, so that the newly assigned partner
5 would know what the heck he's doing.

6 Q All right. Normally, I would assume, you would
7 expect the members of your firm to be responsible for a certain
8 number of hours a week or a year or however you would handle your
9 year, would you not?

10 A We have a time sheet, George, that each partner
11 accounts for forty hours a week because that is a standard workweek.
12 Whether it is chargeable or nonchargeable, really, at the partner
13 level makes very little difference. And no, there is no standard as to
14 how many chargeable hours, which is billable hours, that a partner
15 puts in.

16 Q But if the partner didn't work all year obviously the
17 income to the firm would be down, would it not?

18 A No, the income to the firm would probably not be
19 down. It could be, but we would probably expel him under article
20 so-and-so if he didn't work all year.

21 Q And you would expel him because his lack of work
22 would have an effect on the financial well-being of the firm?

23 A Because he was doggone lazy and wasn't carrying his
24 part of the load.

25 Q That's right. So if a partner doesn't work for two
26 months it has a financial effect on the firm, does it not?

1 A Not necessarily, because if a partner is not working,
2 that work is going to get done. So some other partner may do the
3 work if the partner is gone for two months.

4 Q You testified regarding the bad debts. The decisions
5 were made concerning bad debts during this period of time?

6 A The first decision on bad debts were made in July.
7 The bad debts for the year ending September 30, '76, were
8 substantially higher than normal, so we started talking about them in
9 July and decided we would defer any final decision until the
10 September meeting and ask Jim Dillon, who is primarily responsible
11 for the clients that were not paying us, to see what he could do
12 towards collecting the bad debts. Foti was at the July meeting, by
13 the way.

14 Q And that decision that was made then would affect a
15 partner's compensation for the year?

16 A If you don't get the money, George, you can't pay
17 the people.

18 Q Your partnership agreement VI-iii, top of page 4,
19 indicates the partner in the firm should devote his full time to the
20 business or the partnership. Is there any question that prior to his
21 resignation on August 1 Mr. Foti devoted his full time to the business
22 of Andrews Burket?

23 A That question never came up among the partners as
24 to whether he was devoting full time. Vic had mentioned to me
25 earlier, and I have forgotten exactly when, that he was interested in
26 some sort of construction business and would it be all right if he did
27 that, and I said I saw no reason why he shouldn't as long as he didn't
28 devote an excessive amount of time to it.

1 Q Over the seventeen years that he was there -- I am
2 speaking as far as you are concerned -- did he devote his full time?

3 A Yes. We were very happy with the way Vic
4 performed.

5 Q At the meeting of August 2, you determined at that
6 time that possibly Vic should conclude -- I believe the words were
7 conclude all work by Thursday or Friday of that week?

8 A George, I think that happened on Tuesday the
9 second. I think about the only thing I think I recall that we decided
10 was that should we not accept his resignation or should we accept it.
11 We decided we would, and at the meeting on the third we said we
12 thought that Vic, due to his years of longevity with the company and
13 with three weeks' vacation coming, plus the CPA convention, should
14 go ahead and take a leave of absence through September 30. And we
15 asked him to complete his client work by Friday, the sixth of August
16 and start a leave of absence, but he said he didn't know how to
17 approach that; he would think about it and be back in touch with me.
18 That was the morning of Friday. Friday afternoon, I presume after
19 talking to his attorney, he decided that he would reject that motion.

20 Q Well, whatever the reasons were, you-all preferred
21 that he be out of there by that Friday initially?

22 A No, George. We actually wanted Vic to help us
23 transfer the client responsibility to the new partners. We felt like
24 due to his years of service that he was entitled to it, that we should go
25 ahead and give him a leave of absence for his remainder of tenure in
26 office as a partner.

1 Q You conveyed to him this feeling that you felt his
2 only responsibility should be for the remaining time he would assist
3 you in transferring client responsibility?

4 A This was after he refused or rejected the leave of
5 absence.

6 Q And at that time during that discussion he indicated
7 to you he intended to perform his services to the firm through the
8 30th and abide by the partnership agreement?

9 A I don't recall whether he said that at that meeting or
10 not, George.

11 Q Early in August or at some point he told you he
12 intended to abide by the agreement?

13 A At some point during the month of August he told me
14 that he intended to abide by the partnership agreement.

15 Q Nothing was said until the end of August, or was
16 expressed to you, regarding his feelings as to whether he intended to
17 be a partner or be treated as a partner, is that right?

18 A That is correct. If we were doing anything wrong
19 during the month of August, he did not communicate with me.

20 Q You mentioned the fact that your firm had been --
21 either hadn't received or been denied payments pursuant to the
22 partnership agreement as you interpreted it, is that correct?

23 A That's correct.

24 Q Your firm instituted this action before any such
25 payments were due, did they not?

26 A I don't know when they were due because I don't
27 know when he collected the money.

1 Q This action was instituted right around October 1,
2 was it not?

3 A I don't recall. May I ask my attorney when he
4 instituted action?

5 MR. WOOTEN: The Judge will tell us.

6 MR. RAKES: Your Honor, I admitted in the suit
7 papers that there was a controversy as to whether the fee would
8 be --

9 THE COURT: October 20, 1976, was the petition for
10 declaratory judgment.

11 A So whether or not he collected his money during
12 August I have no way of knowing -- during October, I mean.

13 Q You mentioned that you considered Mr. Foti to be a
14 partner in the firm through the 30th and that you sent a check to
15 him, paying him for the 30th, and insofar as you know he received
16 the check?

17 A I said I sent him a check according to terms of the
18 partnership agreement.

19 Q He was paid through September 30, is that what you
20 said?

21 A No. We still owe Vic some money.

22 Q I mean, he was paid up to date through September?

23 A Yes, he got credited for it. Let's put it that way.
24 Credited for a full share of the profits.

25 Q Now this section of the partnership agreement which
26 deals with expulsion, termination involuntarily, says that the
27 partner's tenure will end on the last business day of the month, does
28 it not?

1 A I don't -- you say involuntary?

2 Q Yes.

3 A I don't know what section you are referring to,
4 George. It is rather bulky.

5 Q V.2.

6 A Yes, it does say that if a partner is expelled, if I
7 may use that word, from the partnership that he will be considered to
8 have retired or withdrawn as of the last day of the month requested
9 to withdraw.

10 Q Okay. You sent Mr. Foti his check, received a letter
11 indicating his check was being accepted as credit for any sums due
12 him in view of his termination in the partnership?

13 A I don't recall exactly what those checks represented,
14 but we did send some checks to Vic, and he wrote back -- or his
15 attorney wrote back -- somebody wrote back that his checks were
16 being accepted and would be applied to any amounts that we may owe,
17 or something. I would have to read the letter to refresh my memory.

18 Q The clients that you mentioned on your list I believe
19 you testified -- I just want to clarify this -- that some of those may
20 have been generated by Vic Foti; some of them from other sources?

21 A That is true. It is very difficult to tell why a client
22 chooses Andrews, Burket & Co. to do their accounting work.

23 Q And it may be true that Andrews Burket continues to
24 do accounting work for clients that initially came to the firm because
25 of Victor Foti?

26 A That is quite true.

1 Q The fact that there is no geographical limitation in
2 this agreement that was gone over -- and you mentioned that if Vic
3 Foti opened up an office next door it would make no difference to
4 you -- if he voluntarily withdrew you would be entitled to payment.
5 That would be true if he opened an office in Norfolk and continued to
6 do work for one of your clients?

7 A That's true. If he opened it in Los Angeles and did
8 work for one of our clients.

9 Q So the agreement would apply throughout the
10 country?

11 A Yes, foreign countries included -- the world.

12 Q And you would -- you mentioned your claim for sums
13 under the agreement based on voluntary withdrawal. I assume that
14 you agree that if the termination was involuntary no sum is due, is
15 that correct?

16 A That is true. I wish, George, that we had
17 somewhere put in the partnership agreement that a withdrawing
18 partner takes some of the liabilities for retirement benefits, lease
19 payments, note payments, and so forth, with him. But unfortunately
20 that's not in the agreement.

21 Q Well, of course any new partner that you bring into
22 the firm, that's the way partnerships work? He becomes a partner of
23 the firm; you assume what's there. Is that not right?

24 A I presume so. You're a lawyer; I'm not.

25 Q Well, they do as a matter of fact in your firm. If you
26 bring in a new man October 1 he will assume along with the rest of
27 you equal responsibility?

1 A Not equal, no, no. Very small percentage. The old
2 guys like me get stuck with the big part of the liability.

3 Q Well, he would assume responsibility to the same
4 extent that he is an owner?

5 A Yes.

6 MR. WOOTEN: Thank you, Mr. Perkins.

7 THE COURT: Mr. Rakes?

8 REDIRECT EXAMINATION

9 BY MR. RAKES:

10 Q Mr. Perkins, your firm is not a national or world-
11 wide accounting firm, is it?

12 A No, sir. It is what is referred to as an independent
13 CPA firm.

14 Q Most of the clients you service in the Roanoke office
15 and that Vic took with him are Roanoke area clients, are they not?

16 A That is true.

17 Q Virtually all of the large ones are right here in the
18 Roanoke Valley?

19 A Yes, I would say so. Certainly within one day's
20 commuting distance.

21 Q And there might be one or two outside of the Roanoke
22 County area?

23 A Yes.

24 Q But the bulk of it is right here in this area?

25 A The bulk of it is in the Valley.

26 Q Now your partnership year-end is September 30, is
27 that correct?

1 A That's correct.

2 Q Am I correct in assuming that the August and
3 September period of time is not one of the busier periods for an
4 accounting firm such as yours?

5 A That is quite true.

6 Q Did that go into the selection of the September 30
7 date as a year-end date for your firm?

8 A September 30 is a low period of activity in the CPA
9 firm.

10 Q During the months of August and September are
11 partners in the firm generally spending their time working on audits
12 and what you refer to as client work, or are they spending a
13 substantial amount of their time attending meetings, seminars,
14 continuing education, that type thing -- vacation?

15 A July, August, and September are the three heavy
16 vacation months and when a lot of our professional development takes
17 place. There is a lot of nonchargeable time; the staff isn't busy; the
18 partners aren't busy; things are just plain dead -- if you'll pardon
19 the expression.

20 Q And compared to that, I would assume, year-end,
21 January 1 and April, and so forth, are the big times for your
22 business?

23 A To give you a relative position, normally, during a
24 normal workweek during August you might have as much as, say,
25 firm-wide, six hundred chargeable hours for the whole month. But
26 during the busy season, January, February, and March, you may
27 have as much as 1800 chargeable hours a month -- I mean week.

1 MR. RAKES: I believe that is all.

2 THE COURT: All right. Anything further, Mr.
3 Wooten?

4 MR. WOOTEN: No, Your Honor.

5 [WITNESS EXCUSED]

6 THE COURT: = I think it's time we took a recess for
7 lunch. We'll recess until two o'clock.

8 [RECESS]

9 THE COURT: All right. Mr. Rakes, you may
10 proceed.

11 WILLIAM COOK,

12 a plaintiff, called as a witness in his own behalf, being first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. RAKES:

16 Q Please state your name.

17 A William A. Cook, Jr.

18 Q Where do you live, Mr. Cook?

19 A 3008 Lofton Road, Southwest, Roanoke, Virginia.

20 Q I believe you are a partner in the firm of Andrews
21 Burket & Co.?

22 A That's correct.

23 Q Practicing in the Shenandoah Building?

24 A Yes.

25 Q Mr. Cook, when did you first get to know Vic Foti?

26 A I was an employee at the same time that he came to
27 work seventeen years ago.

1 Q What type of work do you do in the firm?

2 A For the last six years I have been the partner in
3 charge of the tax department. Prior to that I was on the audit staff.

4 Q Have you ever worked -- Mr. Foti, I believe, was on
5 the audit staff at the time he left. Have you ever worked closely with
6 Mr. Foti?

7 A Yes. When Mr. Foti first came to work with the firm
8 as a junior I guess my title -- if we had actually had titles -- would
9 have been a senior accountant. And so very frequently Vic would be
10 working with me on the same job, my having a greater responsibility
11 than he had. As he progressed, I turned over the actual
12 responsibility and detail work on several jobs to Vic. And then when
13 he became a partner and I moved primarily into taxes we were both
14 working on the same client's affairs. He would work on the --
15 primarily on the audit aspect and I would work primarily on tax
16 problems.

17 Q You are familiar, I believe, with his letter to resign?

18 A Yes, sir.

19 Q Did you get a copy of that on the morning on August
20 2, '76?

21 A Yes. When I came to work it was in an envelope on
22 my desk.

23 Q What time -- were you one of the first people there
24 in the morning?

25 A Normally I am there by seven-thirty. I think that
26 was no exception that morning.

1 Q What happened after you got the letter? What did
2 you do?

3 A As I recall, Mr. Perkins called that he was going to
4 be late since he had a medical appointment, and then we started
5 around eight or eight-fifteen. Some of the other partners came in
6 and we all kind of congregated. I don't remember whether it was in
7 my office or someone else's office -- and discussed it and decided we
8 really wouldn't do anything until Ike got there -- all the partners
9 that we knew were going to be in the office that day.

10 Q That's all the partners except Vic?

11 A He was signed out on the receptionist's book as being
12 on vacation that day.

13 Q Was a meeting held later that day?

14 A We ate lunch together and met that afternoon to
15 decide what we would do with Vic's letter. And it was the unanimous
16 decision of the partners that, with regret, we would accept his
17 resignation from the firm.

18 Q Was that communicated to him?

19 A Yes. The administrative partner of the firm, Mr.
20 Perkins, was instructed to write a letter on behalf of all the partners
21 to Mr. Foti, expressing that.

22 Q You have been present in the courtroom during Mr.
23 Perkins' testimony. And it has been put in evidence that a discussion
24 was held at some point in that week regarding the reassignment of
25 partner responsibility to other members of the firm from Mr. Foti.
26 Did you participate in that?

1 A Yes. I don't know that I attended, but if they
2 weren't -- I wouldn't call them partners' meetings. It was more
3 meetings of the partners -- a very fine distinction. Two or three or
4 more partners would just get together to discuss whatever was the
5 immediate problem at hand. Sometimes I would participate. Sometimes
6 I might have a client in my office and not be able to attend. But if
7 we say, "Well, we're going to meet at noon tomorrow to reassign client
8 responsibility for the larger clients that Mr. Foti had been
9 responsible for," then I did attend those.

10 Q During this period of time, say, two or three weeks
11 after Mr. Foti submitted his resignation, did you also have meetings
12 with Mr. Foti, discussions with him, and so forth?

13 A I didn't have any discussions with him, no.

14 Q He didn't come to your office or you didn't talk to
15 him about it at any point?

16 A To the best of my recollection he never came in my
17 office. Our offices are adjacent. I stopped at his door and spoke to
18 him very, very briefly one time. As a general rule, either he was out
19 of the office or I was out of the office.

20 Q All right. Without taking you step by step through
21 each of the items that we have covered previously, having heard Mr.
22 Perkins' description of the events that took place relating to
23 assignment of partnership responsibility and the handling of Mr.
24 Foti's resignation, are you in general agreement with the description
25 that he provided?

26 A Yes, the only thing I might add is to reiterate the
27 firm's concern that we have a continuing relationship with the client,

1 that we don't have revenue agents' examinations in the process, for
2 example, if it has gotten up to some point and Mr. Foti had been
3 handling it. Then on October 1 he is not there, and the agent -- the
4 client wanted to know who is going to look after the balance of the
5 examination. It's that type of thing that we were so interested in
6 preventing.

7 Q Was it your objective to begin at as early a time as
8 possible this transition process so that a new partner in charge of a
9 particular client would have full knowledge of what was going on
10 relating to that client?

11 A That is correct.

12 Q Now, Mr. Cook, during the month of August were
13 you there the entire month or out on vacation?

14 A I believe I was working in town all of that month. I
15 was not on vacation.

16 Q And you participated in the August 17 partners'
17 meeting?

18 A Yes, sir.

19 Q And were you advised that Mr. Foti had declined to
20 attend that?

21 A Yes, I think it was my suggestion that we made a
22 special invitation, out of the ordinary, to Vic to attend that meeting.
23 We wanted to get whatever input we could that what is so wrong with
24 Andrews, Burket & Co. that you want to quit. Please come and meet
25 with us. I think I made the suggestion. But he did not attend.

26 Q At the end of the month, it has been testified to,
27 that he cleaned out his office and left. Were you cognizant of that
28 fact?

1 A As I came to my office the next morning I noticed
2 that his office was completely empty.

3 Q Did you see him in and out of your office from time to
4 time following that to pick up mail, telephone messages, and so forth?

5 A I don't believe I saw him. My office is rather far
6 removed from the front entrance, and I probably would not have seen
7 him had he come in.

8 Q And you haven't had any discussions with Vic
9 regarding this matter, really, since the time of his resignation?

10 A No, sir.

11 Q At what point did you become aware that he was
12 taking the position that he been expelled from the firm?

13 A I guess it must have been his letter of August 31.

14 Q Did the remaining partners -- that is, the partners
15 other than Vic -- get together to discuss that letter and reply to it?

16 A I believe we did, yes.

17 MR. RAKES: I believe that's all.

18 THE COURT: Mr. Wooten.

19 CROSS-EXAMINATION

20 BY MR. WOOTEN:

21 Q Mr. Cook, during the month of August, whether you
22 classified them as formal meetings, there were numerous meetings
23 involving all the partners or part of the partners of Andrews Burket,
24 were there not?

25 A If you consider two of the partners getting together
26 and talking a meeting, yes.

1 Q And there were other times when there were more
2 than two, were there not?

3 A Yes, sir.

4 Q The week of the second there were two or three
5 meetings held?

6 A During the first week of August, I would say, there
7 were probably three meetings with the majority of the partners
8 present.

9 Q And it was during the first -- the meetings of the
10 first week that you voted the idea that Mr. Foti should wind up his
11 matters by the 6th, which was Friday of that week, is that correct?

12 A That is correct. That was our suggestion to him.

13 Q That was in the form of a leave of absence?

14 A That's correct. It was a rather strained atmosphere
15 of everybody concerned, I think.

16 Q Obviously the firm would have preferred that he be
17 out of there by the end of that week?

18 A Our first preference would have been, of course,
19 that he did not leave, but once a decision was made, then after the
20 consideration of working with someone for that period of time, we
21 said, "Let's be easy on everyone's feeling and not have a strained
22 relationship."

23 Q During the meetings that were held during August,
24 matters concerning client assignments were discussed?

25 A That's correct.

26 Q Matters concerning the handling of delinquent or bad
27 debts of the partnership were discussed?

1 A Not the first week, no. The regular partners'
2 meeting.

3 Q Sometime during the month of August?

4 A I'm not positive whether it was the August partner's
5 meeting or the September meeting. I believe it was the September
6 meeting a decision was made regarding bad debts.

7 Q All right. That was some discussion -- was there
8 some discussion to the effect that Vic was not to accumulate
9 chargeable time for clients?

10 A The idea was that he should spend his time having a
11 transition of clients that he had had prime responsibility for to the
12 new partner that had prime responsibility. Don't go out and get
13 involved in say a project you're not going to be there to complete.

14 Q And he was also advised that he was not to see the
15 clients unless another member of the firm were present?

16 A That's correct.

17 Q Would you -- until you received a letter of
18 resignation on the second day of August, Vic had been a partner or
19 member of the firm seventeen years either as an employee or partner?

20 A That's correct.

21 Q During that time would you classify him as a hard-
22 working member who devoted his full time to the development of the
23 firm and the practice?

24 A I think all -- I did, and I think all the partners did,
25 witnessed by the fact that he became a partner equal with me who had
26 been there much longer.

1 MR. FOX: That's all, Your Honor.

2 THE COURT: Anything further, Mr. Rakes?

3 MR. RAKES: I believe that's all, Your Honor.

4 THE COURT: Call your next witness.

5 [WITNESS EXCUSED]

6 R. DAVID ROTTY,

7 called as a witness for the plaintiff, being

8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. EDWARDS:

11 Q Would you please state your name and address for the
12 record.

13 A R. David Rotty, 5705 Penguin Drive, Roanoke,
14 Virginia.

15 Q Are you a partner in the accounting firm of Andrews,
16 Burket & Co.?

17 A Yes, I am.

18 Q How long have you been a partner?

19 A Since October 1, 1969.

20 Q When did you start working with this firm?

21 A I started July 15, 1959.

22 Q Was this about the same time that Vic Foti started
23 with the same firm?

24 A Fifteen days after he first started.

25 Q So you-all were more or less contemporaries, is that
26 right?

1 A Yes.

2 Q Directing your attention to the summer of 1976, a
3 year ago, had you had any prior discussion prior to the first of
4 August 1976 with Mr. Foti regarding any plans he may have had to
5 leave the firm?

6 A Yes. In 1975 Vic came into my office one day and
7 asked about going out on our own together, starting a new firm.

8 Q Did you have any further discussion about that
9 afterwards?

10 A I told him basically I wasn't much interested in that,
11 and I never heard any more of it.

12 Q Are you and Mr. Foti social friends as well as prior
13 business partners?

14 A Yes, he was an usher in my wedding.

15 Q You feel you know him pretty well?

16 A Yes.

17 Q Now directing your attention to the second of August
18 1976 when you came in to work that day, could you describe what you
19 saw and observed?

20 A Well, I came in and found the letter on my desk.
21 And I was rather shocked, standing there in disbelief, when Buzz
22 Hansen came in and asked what I thought of it. I told him I was
23 shocked and I really didn't know what to think, hadn't had any real
24 warning, because I thought that from the year before had died down.
I 25 knew he was unhappy the year before, but he seemed to be happy all
26 through the summer of '76.

1 Q And you read his letter of resignation which had
2 been placed on your desk?

3 A Yes.

4 Q What did you do after that?

5 A I went around to see what the other partners'
6 reactions were and found out that Ike Perkins would not be in until
7 later. So then I went back to work and waited for Ike to come in to
8 hold a partners' meeting.

9 Q And did you-all have a get-together or conference of
10 some sort to decide what to do?

11 A Just some informal conferences until we met for lunch
12 and then took a -- decided we would accept his resignation with
13 regret.

14 Q Now that partners' meeting or get-together was at
15 the Shenandoah Club luncheon?

16 A Yes, sir.

17 Q What else did you decide besides accepting the
18 resignation?

19 A That we would request the bookkeeper to make up a
20 list of his client responsibilities so we could start assigning clients to
21 continue giving them service.

22 Q What was the purpose of doing this?

23 A What? Assigning clients? To have an orderly
24 transition to the new partner who was going to get some new -- pick
25 up some additional work and needed to know what was going on with
26 them and start to learn their business to serve them.

1 Q Now Mr. Foti, I believe, or his attorneys have
2 alleged that he was excluded from some of the meetings of the
3 partnership. Now what is the custom in your firm with regard to
4 holding partnership meetings and get-togethers?

5 A We have the regularly scheduled meeting that there is
6 no notice. And if we decide to have another meeting sometime during
7 the week, we kind of go around the office and gather up the partners
8 that are there and have the meeting. We do not call them up and tell
9 them we're having one. It's just a get-together with who is in the
10 office.

11 Q Was he requested to attend the August 17 partnership
12 meeting, which is a regular monthly meeting?

13 A I understand Mr. Perkins gave him a specific
14 invitation to come to that meeting.

15 Q How about the very week that he resigned? Was he
16 requested to meet with the partnership that week?

17 A No, he was not because he wasn't in the office when
18 the partners' meetings were called, or partner get-togethers.

19 Q Did you feel that you were treating Mr. Foti as a
20 partner throughout this entire period?

21 MR. WOOTEN: I object to how he felt.

22 THE COURT: Sustain the objection.

23 MR. EDWARDS: I'll withdraw the question.

24 Q Did you have any personal conversations with Mr.
25 Foti during this period?

26 A Yes, I did. I went into his office on Tuesday
27 afternoon to sit down and talk to him, told him I was sorry he was

1 resigning and tried to find out for my own reasons why he was,
2 because I hadn't been given a good reason.

3 Q What did he relate to you?

4 A He just said he felt it would be better if he left
5 instead of waiting three or four more years and then have to come to
6 this same conclusion. And after that, he called me on the phone
7 once, and he never came into my office. And I would speak to him
8 and usually get a cold shoulder.

9 Q When did you first learn from Mr. Foti that he was
10 taking the position that he was being expelled from the partnership?

11 A His letter of August 31.

12 Q You received no indication prior to that?

13 A No, I did not.

14 Q Under the terms of the partnership agreement, there
15 is a provision regarding expulsion. Was Mr. Foti expelled under the
16 terms of the partnership agreement by a vote of the partners?

17 A No, no vote was ever taken. It never was discussed.

18 MR. EDWARDS: I have no further questions.

19 CROSS-EXAMINATION

20 BY MR. WOOTEN:

21 Q Mr. Rotty, you say the partners never voted to expel
22 Mr. Foti?

23 A Never discussed it.

24 Q Did you discuss reassigning of the clients?

25 A Yes.

26 Q Did you discuss that he wasn't to have chargeable
27 time to clients?

1 A He wasn't supposed to have chargeable time without
2 talking to the partner who had the new assignment.

3 Q Did you discuss that no working papers or files were
4 to be taken out of the office?

5 A This was discussed -- we did his uncle's work, and
6 we knew that he was going to take his uncle with him as his client.
7 And he wanted to take working papers when he left the firm. And at
8 that time we said he could take them out of the office to use while he
9 was a partner, but after, when he was not a partner, they would
10 have to stay with the firm.

11 Q His uncle's papers?

12 A Yes.

13 THE COURT: Whose papers?

14 MR. WOOTEN: His uncle's papers.

15 Q At some point you discussed the handling of the bad
16 debts, which I think we can agree affects the partners' income?

17 A Yes.

18 Q And all of those things were discussed at meetings at
19 which Mr. Foti was not present?

20 A That's correct.

21 Q You testified that you began contacting the clients.
22 Did you do some of that yourself?

23 A Yes, I contacted four of the clients that I can
24 remember.

25 Q The purpose of that was for transition and also, I
26 assume, to advise the client Mr. Foti would no longer be present?

1 A That he had resigned from the firm effective
2 September 30.

3 Q And the instances in which you were involved, was
4 that how the clients learned that Mr. Foti was resigning?

5 A Three of them knew before I arrived, and I assumed
6 the fourth one did. I'm not really sure. There is a family
7 relationship with the fourth one, so he probably knew also.

8 Q From some other source?

9 A Yes, sir.

10 Q Did you ever have a situation where the firm
11 conducted one of these informal meetings of two or three partners,
12 and some decision was arrived at that did not set well with another
13 partner who did not happen to be in the office at the time?

14 A I can think of one situation where that was done, and
15 I was the one that it didn't set well with.

16 Q Was the matter reconsidered at your request?

17 A No.

18 Q You were bound by it?

19 A Yes.

20 Q So whether they are two or three partners or formal
21 partnership meetings, whatever the people do binds everybody else?

22 A If you have the majority of the vote under the terms
23 of the agreement.

24 Q You mentioned that in 1975 Mr. Foti discussed with
25 you the possibility of leaving the firm. Do you know whether he
26 discussed it with any other member of the firm in 1975?

1 A Not that I know of. He stood in my doorway and
2 asked me, and nothing else came of it.

3 Q Just in the doorway?

4 A Yes.

5 Q Was it that type of discussion?

6 A Yes.

7 Q Passing by the office?

8 A Standing in the doorway.

9 Q Did you ever express to Mr. Foti any dissatisfaction
10 with the firm in which you were both partners or tell him you
11 would consider the possibility of leaving?

12 A Possibility of leaving?

13 Q Yes.

14 A I never discussed the possibility of leaving. I have
15 had some dissatisfaction and I'm sure I will in the future.

16 Q Okay. Were those informal discussions with Mr. Foti?

17 A Yes. If I had any real serious dissatisfaction, I
18 would take it to a partners' meeting and bring it up there where it
19 should be brought out.

20 MR. WOOTEN: That's all. Thank you.

21 REDIRECT EXAMINATION

22 BY MR. EDWARDS:

23 Q Referring to Mr. Foti's uncle, Mr. Sam English, what
24 kind of a client is he?

25 A I believe he is an unaudited -- we do unaudited
26 statements -- his unaudited statements and tax returns.

1 Q Is this a company or an individual?

2 A It's a company. I think it is a construction company.
3 I'm not that familiar with the account, but I think it's a construction
4 company in Richmond.

5 Q Do you know approximately how large the account is?

6 A It's four or five thousand dollars, I believe. I could
7 be wrong.

8 Q One more question. Regarding the so-called
9 restrictions that have been brought up on Mr. Foti's activities in the
10 month of August and September 1976, what was the general purpose
11 for these restrictions on not accumulating chargeable time, regarding
12 the work papers, regarding having a partner go with him, another
13 partner go with him, to cover the clientele? What was the purpose of
14 these restrictions?

15 A Just so you -- the ones that I was taking over, so I
16 would know what was happening on that client, what their business
17 problems were, if there were any tax examinations going on, any
18 particular inventory problems -- just general business problems so I
19 would be able to serve them after he was no longer with us.

20 Q And did Mr. Foti cooperate in going with you to these
21 clients?

22 A He never once mentioned any dealings he had with
23 them. I know I went up to a client's office one time and I found him
24 there, getting ready to leave the client. I know he had lunch with
25 one of them at the Shenandoah Club -- this is a client we still do. He
26 never once mentioned what was happening with that client.

1 MR. EDWARDS: No further questions.

2 THE COURT: Anything further, Mr. Wooten?

3 RECROSS-EXAMINATION

4 BY MR. WOOTEN:

5 Q Did you ever ask Mr. Foti specifically to go with you
6 to these meetings with clients?

7 A No.

8 MR. WOOTEN: That's all.

9 [WITNESS EXCUSED]

10 JOSEPH B. WRIGHT,

11 called as a witness by the plaintiff, being

12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. EDWARDS:

15 Q Would you please state your name and address for the
16 record.

17 A Joseph B. Wright, 1035 Sherwood Avenue, Southwest,
18 Roanoke.

19 Q And are you a partner in the firm of Andrews,
20 Burket & Co.?

21 A Yes, I am.

22 Q This is an accounting firm in the Shenandoah
23 Building in Roanoke?

24 A Yes.

25 Q Do you know the defendant Vic Foti?

26 A Yes, I do.

1 Q How long have you known Mr. Foti?

2 A I started work in November 1962, so I met him during
3 that month.

4 Q And he's a few years older than you?

5 A I think probably a year. I went in service three
6 years before I started to work.

7 Q So you-all are contemporaries?

8 A Yes.

9 Q When did you become a partner?

10 A October 1, 1974.

11 Q Now have you worked with Mr. Foti on accounts in
12 the past?

13 A Yes, quite closely.

14 Q When was the first time you became aware that Mr.
15 Foti wanted to resign from the firm?

16 A Monday, August 2, '76.

17 Q Can you describe what happened that morning?

18 A I had been out of the office the prior week. I had a
19 lot of mail on my desk. Came in, saw a letter in handwriting with my
20 name on it. I opened it; I read it; I sat down and read it again and
21 walked up to Jim Dillon's office. He was reading the letter. In a few
22 minutes Buzz Hansen came in and said, "I see you have opened your
23 mail." So we talked about it for a few minutes.

24 Q And what did you-all decide to do after that?

25 A Well, during the course of the morning we decided to
26 have lunch together and see which direction we would go in.

1 Q And when did you get together to make a decision as
2 to whether or not to accept his resignation?

3 A At lunch on Monday.

4 Q What did you decide to do?

5 A That we would accept his resignation with regret and
6 send him a letter to that effect.

7 Q What else did you decide insofar as the transfer of
8 clientele was concerned?

9 A Ike would have the bookkeeping prepare a list of
10 Vic's clients. We would meet again on Wednesday or Thursday for
11 reassignment of those clients.

12 Q Did you then assign other partners to take over his
13 clientele?

14 A Not at the meeting on Monday, we didn't.

15 Q When did you decide that?

16 A I took a day of vacation on Tuesday. And the list
17 was ready, apparently, early on Tuesday. So they met while I was
18 not there and assigned clients, or substantially all of them.

19 Q Did you place any so-called restrictions on Mr. Foti's
20 activities as far as his dealing with clients were concerned?

21 A Only that he would go with a partner or manager or
22 supervisor who had worked on that client or assigned to it.

23 Q What was the purpose of that?

24 A Continuity of service to our clients, which is not
25 unusual with other people in the firm.

26 Q Did you place any other so-called restrictions on Mr.
27 Foti?

1 A Not that I can recall. He still participated in the
2 firm, had his office, got his monthly draws as the rest of the
3 partners did.

4 Q In regard to -- you have a monthly partnership
5 meeting, do you not?

6 A Yes.

7 Q I understand you had a meeting on the 17th of
8 August 1976. Was Mr. Foti invited to this regular monthly meeting?

9 A I think Ike invited him.

10 Q What is the common practice in regard to inviting
11 partners to the regular monthly meeting?

12 A You don't receive any special invitation. You know
13 you are going to have twelve of them a year, on the third Tuesday of
14 each month.

15 Q He was not excluded from these meetings, was he?

16 A No. In fact, we tried to encourage him to meet with
17 us to discuss why he left us.

18 Q Did he ever come to these meetings to explain to you
19 why he left?

20 A No, he did not.

21 Q When was the first time you had heard that Mr. Foti
22 was taking the position that he was being expelled from the firm?

23 A I guess it was a letter we received the end of
24 August.

25 Q That was the August 30 letter -- 1976?

26 A Yeah.

1 Q How did that letter hit you? How did you react to it?

2 A Well, initially I though Charley Fox had written the
3 letter. It didn't sound like Vic's wording or anything.

4 Q Who is Charley Fox?

5 A He is one of Vic's attorneys.

6 Q The attorney. Did you-all respond to that letter of
7 August 30?

8 A Yes. Ike, as our administrative partner, prepared
9 the response.

10 Q The August 31 letter is his response, is that right?

11 A I think that's correct.

12 Q Now under the partnership agreement there is a
13 provision regarding expulsion of partners. Was Mr. Foti expelled
14 from the partnership pursuant to this agreement -- this provision?

15 A No, sir.

16 MR. WOOTEN: That's objected to. That's a
17 conclusion that is up to this jury to decide. I think he can ask a
18 question as to whether they voted on it, or something of that nature.
19 That's what this case is all about, whether that constituted, in the
20 minds of this jury, expulsion.

21 THE COURT: Restate the question.

22 Q Under the partnership agreement there is a provision
23 regarding expulsion that requires a vote of the partnership. Was Mr.
24 Foti ever voted out of the partnership by the partners?

25 A It was never discussed.

26 THE COURT: Now answer the question. Was he or
27 wasn't he?

1 A Pardon me?

2 THE COURT: Was he or wasn't he? You said it was
3 never discussed. Was there ever any vote taken?

4 A No, sir.

5 MR. EDWARDS: No further questions.

6 CROSS-EXAMINATION

7 BY MR. WOOTEN:

8 Q Were you present at the meeting where a leave of
9 absence was discussed?

10 A No, I was not.

11 Q Were you aware of the fact that Mr. Foti was offered
12 a leave of absence?

13 A Yes, I was told the next day.

14 Q Were you at any meetings where it was discussed
15 whether the resignation should be accepted by the firm as opposed to
16 immediate termination of Mr. Foti?

17 A On Monday, the day we became aware of it, we
18 agreed to accept his resignation.

19 Q Did you discuss at that meeting the possibility of
20 immediate termination of Mr. Foti?

21 A No, sir.

22 Q Prior to any visits that you personally made to clients
23 of the firm, did you advise Mr. Foti of the appointments or the time of
24 the appointments, or did you ask him to accompany you?

25 A As I recall, he wasn't in the office a whole lot. I
26 know the first week I was going in to say something to him and he
27 was either on the phone or his door was closed or he was out, so I
28 didn't get to talk to him until the second week.

1 Q So you did not advise him of the times of your
2 appointments with clients or ask him to go with you?

3 A That is correct.

4 Q At the meetings of the partners where Mr. Foti was
5 not present, did you make reassignments of the clients?

6 A Yes.

7 Q Did you determine the disposition of delinquent or
8 bad debts of the firm?

9 A That was done at our July 20 partners' meeting, the
10 initial discussion of it. We decided to wait and see if we could collect
11 some of the debts.

12 Q Was this all to be done at a meeting when Mr. Foti
13 was present?

14 A Yes.

15 Q Was the information communicated to Mr. Foti that he
16 was not to accumulate chargeable time to clients or to remove working
17 papers from the office?

18 A I think I wrote him a letter and told him that we
19 required a manager or supervisor to go with him on any client
20 contact.

21 MR. WOOTEN: Thank you, sir.

22 REDIRECT EXAMINATION

23 BY MR. EDWARDS:

24 Q When you made the decision to reassign clients, was
25 this in the September meeting, the regular meeting of the
26 partnership?

1 A We decided on Monday, August 2 that we would
2 reassign as soon as we got a list of Vic's clients, and that was done
3 on the next day.

4 Q The bad debts, I believe, was something that was
5 discussed in the September regular meeting, is that correct? Do you
6 recall that?

7 A I don't recall the minutes without reading them.

8 Q Was this done at a regular meeting of the
9 partnership, though?

10 A As I recall, it was, yes. We wanted to put it off as
11 long as we could to see if we couldn't collect the accounts.

12 Q And Mr. Foti was not excluded from this regular
13 meeting of the partnership?

14 A No, he was not.

15 Q Where the bad debts were discussed?

16 A I think the final determination was made sometime
17 after September 30. We waited till we closed out the books.

18 MR. EDWARDS: I have no further questions.

19 MR. WOOTEN: No questions.

20 THE COURT: Thank you.

21 [WITNESS EXCUSED]

22 JAMES M. DILLON,

23 a plaintiff, called as a witness in his own behalf being first
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

26 BY MR. RAKES:

- 1 Q Your name is James M. Dillon?
- 2 A That's correct.
- 3 Q I believe you are a partner in the firm of Andrews
- 4 Burket?
- 5 A That's correct.
- 6 Q And were you a partner in that firm at the time that
- 7 Victor Foti, the defendant in this case, was a partner in Andrews
- 8 Burket?
- 9 A That's correct.
- 10 Q Mr. Dillon, when did you first get to know Mr. Foti
- 11 and have a professional relationship with him?
- 12 A I came to work with the firm in 1961, and I believe he
- 13 had been there since '58 or '59, and I had worked with him on several
- 14 clients during the process.
- 15 Q And during the last few years of his partnership in
- 16 the firm, you were both partners in the firm, is that correct?
- 17 A Yes.
- 18 Q When did you first learn that Mr. Foti was intending
- 19 to resign from the firm?
- 20 A When I received his letter on August 2.
- 21 Q And it has been testified to by various of the other
- 22 partners that this letter was on your desk the morning of August 2.
- 23 A That's correct.
- 24 Q And did you participate with the other partners in a
- 25 discussion in the formulation of a reply to that letter?
- 26 A Yes.

1 Q Did you attend the discussions that have been
2 described by Mr. Perkins and Mr. Cook and others relating to client
3 reassignment?

4 A Yes, I did.

5 Q And did you attend the regularly scheduled
6 partnership meeting on the 17th of August 1976?

7 A Yes, I did.

8 Q Did you attend the regular scheduled partnership
9 meeting on September 21, 1977?

10 A Yes.

11 Q Did Mr. Foti make an appearance at either of those
12 meetings?

13 A He did not.

14 Q Did he -- was he excluded from or told that he could
15 not attend any of those meetings?

16 A Not to my knowledge.

17 Q Had he appeared at any of those meetings, would he
18 have been permitted to sit and participate as any other partner?

19 A Yes, indeed.

20 Q Did you consider Mr. Foti to be a member of your
21 partnership until the end of the year, which was September 30, 1976?

22 A Yes.

23 MR. RAKES: I believe that's all.

24 CROSS-EXAMINATION

25 BY MR. WOOTEN:

26 Q Mr. Dillon, was Mr. Foti notified in advance of any of
27 the meetings the partners held during the month of August?

1 A It is my understanding that Mr. Perkins invited Mr.
2 Foti to attend the meetings. To my knowledge he was not.

3 Q I assume you know that because Mr. Perkins told
4 you?

5 A Mr. Perkins was directed by the partners to do so,
6 yes.

7 Q He was not invited to any other meetings specifically?

8 A Not specifically, no.

9 Q When Mr. Foti's resignation was discussed, what to
10 do about it, was there any possibility or any consideration given to
11 the possibility of immediately terminating Mr. Foti?

12 A No, sir.

13 Q Was it discussed that he should wind up his matters
14 by Friday that week and take a leave of absence for the balance of
15 the two months?

16 A Yes.

17 Q After his rejection of that proposal, he was advised
18 that he should not contact the clients without someone else in the firm
19 being present and that he should accumulate no further chargeable
20 time, is that correct?

21 A That's correct. Except he was to spend his time in
22 transition of the accounts of the firm.

23 Q Did you visit some of the clients of the firm?

24 A Yes, I did.

25 Q Did you advise Mr. Foti of the times of the
26 appointments?

1 A I did not.

2 Q Did you ask him specifically to accompany you to any
3 of those clients?

4 A I did not.

5 MR. WOOTEN: Thank you. That's all.

6 MR. RAKES: We don't have any questions, Your
7 Honor.

8 [WITNESS EXCUSED]

9 LACY W. HANSEN,

10 a plaintiff, called as a witness in his own behalf, being first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. RAKES:

14 Q Please state your name.

15 A Lacy W. Hansen.

16 Q Mr. Hansen, I believe you are a partner in the
17 accounting firm of Andrews, Burket & Co.?

18 A Yes, sir.

19 Q Have you been a partner in that firm for some several
20 years?

21 A Yes, since 1954.

22 Q Were you a partner in the firm when Mr. Foti was
23 also one of the partners?

24 A Yes, I was.

25 Q Have you had occasion over the years to work with
26 Mr. Foti in the performance of accounting services for clients of the
27 firm?

1 A Yes, sir.

2 Q When were you first aware that Mr. Foti was
3 considering resigning from the firm?

4 A When I received his letter of resignation on August
5 2.

6 MR. RAKES: Without intending to lead the witness
7 too much, Mr. Wooten, I will try to hurry through, out of respect for
8 all the people involved in the case.

9 MR. WOOTEN: Mr. Rakes, a lot of this testimony is
10 repetitive. If you want to lead him through the repetition, it will be
11 satisfactory with me.

12 MR. RAKES: Thank you. I'll try to be as
13 expeditious as I can.

14 [Mr. Rakes, resuming]

15 Q Mr. Hansen, you have been present in the courtroom
16 during the testimony of all the witnesses in this case. Can we
17 correctly assume that you participated in the various discussions and
18 meetings with other partners of the firm relating to the acceptance of
19 Vic's resignation, the reassignment of certain clients of the firm to
20 other partners, the visitation of those clients, and so forth?

21 A Yes, I was present at all of those meetings.

22 Q Do you have anything to add to what we have already
23 put before the jury?

24 A Well, we have discussed the fact that we requested
25 that he not visit any of the clients. And on one occasion when we
26 were visiting a client we found him there, and we said nothing at all
27 to him about it and took no action.

1 Q Was it the firm's objective to make certain that the
2 that the new partner who was responsibility for the client was up-to-
3 date and knew everything that was going on relating to that
4 particular client?

5 A Yes.

6 Q When did you first find out that Mr. Foti was taking
7 the position that rather than resigning from the firm he was being
8 expelled?

9 A When I received his letter of August 30.

10 Q August 30?

11 A Is that what it was? August 30 or 31.

12 Q From the firm of Andrews Burket's standpoint, was
13 he considered a partner throughout that fiscal year until September
14 30, 1976?

15 A Yes, sir.

16 Q Did he receive all compensation that any other
17 partner at his level received?

18 A Yes, sir.

19 Q Have payments been made to him pursuant to the
20 terms of this written partnership agreement upon his resigning from
21 the firm?

22 A Yes, sir.

23 Q Relating to capital and those types of things in
24 addition to earning?

25 A Yes, sir.

26 Q And are additional payments due to him under the
27 terms of this agreement?

1 A Yes, sir. Two additional substantial payments.

2 Q But they are not due yet?

3 A That's right. They are being paid.

4 MR. RAKES: I believe that's all.

5 CROSS-EXAMINATION

6 BY MR. FOX:

7 Q Mr. Hansen, you stated you went to a client's place
8 and saw Mr. Foti there.

9 A No, I did not state that I did. I said we did,
10 referring to some member of our firm.

11 Q You don't know that yourself? You weren't there?

12 A No, I was not.

13 Q So you don't know whether it really happened or not
14 of your own knowledge.

15 A I know that we did not mention it to him.

16 Q Now, Mr. Hansen, you've shown some familiarity --
17 you were the senior audit partner, is that correct?

18 A That's correct.

19 Q You have shown some familiarity with the agreement.
20 Maybe you're the proper person to tell us about this agreement.
21 Would you look at it?

22 [Document shown to witness]

23 Are the payments that have been made to Mr. Foti, if
24 in fact he had been involuntarily terminated, that payment would have
25 been due as of when? What would have been the close-out date under
26 your agreement?

1 A I do not know.

2 Q Isn't it the month prior to that in which he is
3 terminated?

4 A I don't know.

5 Q Will you look at the agreement and tell us?

6 A Yes, I will.

7 THE COURT: Mr. Fox, so we don't have a hide-and-
8 seek game, would you tell him what section you are referring to.

9 MR. FOX: I'll show it to him.

10 Q "As of the last day of the month requested."

11 A That's right. That doesn't relate to the payments. I
12 don't know whether I could explain it quickly or not.

13 Q Assume this happened during the year, it would have
14 been a different month other than September 30, the year-end?

15 A No. I think this section is right here. Any partner
16 who voluntarily or involuntarily withdraws or resigns before reaching
17 his retirement date, or early retirement date, shall be entitled to
18 receive the benefits determined under A of this Article. These are
19 payable one-third --

20 Q That's under A. But what month does that refer to?
21 Don't you determine it as of the month prior to the withdrawal?

22 A That's right. He will be determined to have retired
23 or withdrawn under this section right here.

24 Q Which would be the month prior -- the month of
25 what?

26 A On the last day of the month requested.

1 Q In this case wouldn't that have been July 31?

2 A No, that would have been August 31, as I understand
3 it.

4 Q Let's use that date. Now knowing how your firm
5 flows, in view of Mr. Perkins's testimony that August and September
6 are relatively dead months, would the amounts owed Mr. Foti be
7 greater or lesser on August 31, by your determination?

8 THE COURT: Greater or lesser than what?

9 MR. FOX: Than September 30.

10 A Well, we have had an operating cycle that -- I'm not
11 really sure how the payments under that section are computed.
12 There is a section where you prorate the entire year in the case of a
13 debt, and I think probably we would have prorated and given him
14 eleven-twelfths of the entire year.

15 In any case then there would have been no
16 difference. It would have been greater by his staying until
17 September 30, by his remaining a partner until September 30, than
18 had he withdrawn during August.

19 Q Would you have closed out the books, though, as of
20 August?

21 A No, we did not.

22 Q In case of the involuntary termination, wouldn't the
23 books have been closed out as of August?

24 A No. We don't.

25 Q Have you ever had an involuntarily terminated
26 partner?

1 A No, but it's provided for.

2 Q All right. What does it say? I realize that's
3 complicated. I'm not an accountant.

4 [Reading] "It shall then be reduced by any net
5 capital account deficiency."

6 Wasn't that at that point a capital account plus?

7 A I don't really know. We didn't close the books, and I
8 don't know. I think there may have been a deficiency.

9 Q Well, now, during the month of September were you
10 aware of the demand made by Mr. Foti, made by me on behalf of Mr.
11 Foti, that all sums due him as a terminated partner based on Andrews
12 Burket's company statement of July 31 be paid to him?

13 A Yes, I'm aware that that was in your letter.

14 Q So you knew then of his demand?

15 A Yes.

16 Q The position he was taking?

17 A That's correct.

18 Q That it would be based on July 31?

19 A That's right. That was not in accordance with the
20 partnership agreement.

21 MR. RAKES: What was the date of that letter?

22 MR. FOX: September 16.

23 MR. RAKES: That was after the August 30 letter?

24 Q You were aware then of the particular date which the
25 demand was made?

26 A That's correct. I knew that July 30 was the date
27 that was in your letter.

1 Q All right, sir. What did the partners decide to do
2 about that? Did you-all have a meeting on that?

3 A We made no decision because we still considered Vic
4 to be a partner.

5 Q Well, you-all had many other meetings in which Mr.
6 Foti wasn't present. Let me ask this question just to clear up the
7 situation. Was Mr. Foti ever notified of any of these meetings, to
8 your knowledge, other than the special invitation to him to come to
9 the one on August 17?

10 A No. Let me say this. During the month of August,
11 Vic only came to the office like at ten o'clock and left by two, plus
12 leaving for lunch. When he was in his office, a good part of the time
13 his door was closed. So had I wanted to communicate with him it
14 would have been difficult.

15 Q You-all were holding meetings fairly regular during
16 that first week.

17 A [INDICATED AFFIRMATIVE]

18 Q How many would you say you had during that first
19 week?

20 A The same number everyone else said -- three.

21 Q Three? Monday, Tuesday --

22 A Monday, Tuesday, and Wednesday.

23 Q Wasn't there one on Thursday?

24 A Well, if there were one on Thursday, then there
25 wasn't one on Wednesday. There were three.

26 Q Plus some sort of meeting on Friday, a staff meeting?

1 A Yes, that is regularly scheduled.

2 Q That would not have been the appropriate place to
3 discuss these matters?

4 A Oh, no.

5 Q Much has been made of the fact Mr. Foti didn't come
6 to the meeting on Friday. You just wouldn't discuss this kind of
7 thing there, would you?

8 A No, we wouldn't have.

9 Q So there were three meetings that week. All right.
10 How many were there the following week?

11 A I don't know. I would say there were none, because
12 at least three of us were at Myrtle Beach that week.

13 Q All right. Wait a minute. We have had testimony
14 that two or more constituted a meeting. Did you-all discuss this down
15 in Myrtle Beach?

16 A No, we didn't.

17 Q All right. I'm being facetious.

18 The next week, the week of the 17th, how many
19 meetings did you have?

20 A There was only one meeting that week. That was the
21 regularly scheduled meeting.

22 Q Now Mr. Foti was asked to come to that for a
23 particular purpose, was he not?

24 A Yes. I understand he was.

25 Q That purpose being to discuss why he was leaving?

26 A [INDICATED AFFIRMATIVE]

1 Q How many other meetings were held thereafter?

2 A None that I can recall.

3 Q No meetings held between then and the September

4 meeting?

5 A None that I can recall.

6 Q So the various matters like the August 30 letter

7 didn't bring about a meeting?

8 A It brought about discussions. I can't recall the

9 meeting of more than two of them. I talked to Ike about it.

10 Q You-all decided how to reply to it?

11 A No, I think we had counsel advice as to how to reply

12 to it.

13 Q You did have counsel at the point of the August

14 letter?

15 A Yes.

16 Q You and Ike met with counsel?

17 A No, I don't think -- I don't recall. I did meet

18 with --

19 Q Mr. Hanson, since you remember some things better

20 than others, it's only natural --

21 A That's right. It has been approximately a year.

22 Q But as far as you know there could have been a

23 number of meetings?

24 A And I'm sure there were, yeah.

25 Q Now to your knowledge, was Vic Foti ever invited to

26 any of those meetings other than the one on August 17 where he was

27 invited for a very limited purpose?

1 A No, to my knowledge he wasn't.

2 Q Were decisions made at all those meetings affecting
3 the firm and affecting Vic?

4 A Yes, but we didn't feel it was appropriate for him to
5 be there. We were talking about his termination.

6 Q All right. Now that's the point. You did not feel it
7 was appropriate for Vic Foti to be there?

8 A His resigning, right.

9 Q You didn't feel it was appropriate for him to be
10 there, since he was no longer with you?

11 A Well, on Monday, the first day, when we were
12 discussing this letter --

13 Q Thereafter you felt --

14 THE COURT: Let him answer.

15 Q Excuse me. Finish.

16 Q Excuse me. Finish your answer.

17 A On Monday we were discussing the letter we had
18 received from him. He was not in the office. We were deciding what
19 we should do about his resignation.

20 Q How about on Tuesday? It has been testified, if you
21 remember, Mr. Foti was there early.

22 A At that time we didn't give any consideration as to
23 whether he should be invited.

24 Q Did you ask him?

25 A No, we did not.

26 Q Since there has been testimony he was there all day
27 that day. I think Mr. Cook testified he was there early that morning
28 when he came in.

1 A I don't recall.

2 Q And the next meeting, the same thing?

3 A Yes, whenever that was.

4 Q You didn't ask him then?

5 A No.

6 Q All right. So this was more or less deliberately you
7 did not ask him?

8 A Not deliberately because I don't think it occurred to
9 us. We were just -- we were discussing his resignation.

10 Q Therefore it wasn't appropriate for him to be there,
11 in your opinion?

12 A Yes.

13 MR. FOX: Thank you, Mr. Hansen.

14 MR. RAKES: That's all.

15 [WITNESS EXCUSED]

16 WILLIAM E. SPENCER, JR.

17 called as a witness by the plaintiff, being

18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. EDWARDS:

21 Q Would you please state your name and address for the
22 record.

23 A William E. Spencer, Jr., 4937 Greenlee Road,
24 Roanoke, Virginia.

25 Q And by whom are you employed?

26 A Andrews, Burket & Co.

1 Q In what capacity?

2 A I'm on the audit staff. My title is manager.

3 Q And how long have you been employed by Andrews
4 Burket as a manager?

5 A I'm not sure of the exact year as a manager -- three
6 or four or five years. I'm not sure. I have been with the firm twelve
7 years.

8 Q You work in the Roanoke office, is that right?

9 A That's true.

10 Q Directing your attention to August of 1976, around
11 the first of August, can you tell the jury when you first learned that
12 Mr. Vic Foti, a partner in the firm, was resigning?

13 A Ike Perkins had a meeting of the people in the office
14 and informed us that Vic Foti had resigned from the firm.

15 Q And approximately when was this?

16 A I think it was after lunch on a Monday morning.

17 Q And what was your reaction to this?

18 A I was surprised.

19 Q Did you participate in any of the meetings later on
20 regarding the determination -- regarding his resignation and in
21 particular in regard to the transfer of clientele to the other partners
22 in the firm?

23 A Meetings with who?

24 Q Are you aware that the partners had other various
25 meetings and get-togethers later in the month -- later on that week?

26 A Yes.

1 Q Did you participate in any of these meetings? Were
2 these partnership meetings?

3 A No, I did not participate in any of these meetings.

4 Q So this was a partners matter and not someone who
5 was not a partner? It was not your business, in other words, to get
6 involved in this?

7 A That's true.

8 Q Does the firm of Andrews, Burket & Co. have any
9 restrictions on your employment if you were to resign? Upon your
10 activities if you were to resign from the firm?

11 A I have an agreement that if I resign from the firm
12 and go into public accounting and -- I should say continue in public
13 accounting -- that any Andrews Burket clients that may ask for my
14 services, I have agreed that I will pay a portion back to Andrews
15 Burket.

16 Q I'd like to show you this document and ask if you can
17 recognize it.

18 [Document shown to counsel and witness]

19 A Yes.

20 Q And what is this document? What is this?

21 A Do you want me to read it?

22 Q Well, what is it?

23 A It's a manager's agreement.

24 MR. WOOTEN: Your Honor, I would object to further
25 questions along this line until such time as any agreement Mr.
26 Spencer may have with the firm becomes relevant to Mr. Foti's
27 situation.

1 MR. EDWARDS: Your Honor, we're trying to show
2 that this is a common thing among accountants and that this
3 agreement is very similar to, if not exactly identical to, the agreement
4 that Mr. Foti had.

5 THE COURT: Well, I think the issue for the jury is
6 whether he voluntarily or involuntarily terminated with the company.
7 I don't believe it is material. I sustain the objection.

8 MR. EDWARDS: I have no further questions.

9 THE COURT: Mr. Wooten?

10 MR. WOOTEN: No questions.

11 [WITNESS EXCUSED]

12 ODELL HAMDEN,

13 called as a witness by the plaintiff, being

14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. RAKES:

17 Q Mr. Hamden, please state your name.

18 A Odell Edward Hamden.

19 Q I believe you are a partner in the firm of Persinger,
20 Foti & Company?

21 A That's correct.

22 Q Mr. Foti is currently a partner in that same firm?

23 A Yes.

24 Q And thus a partner of yours in the practice of
25 accounting?

26 A That's correct.

1 Q Locally, R. L. Persinger & Company, I believe,
2 operates under the name of Persinger, Foti & Company, is that
3 correct?

4 A That's correct, sir.

5 Q But the partnership -- the correct name of the
6 partnership is R. L. Persinger & Company?

7 A That's correct, sir.

8 Q And Vic is a partner in that partnership along with
9 you? And how many other partners are there?

10 A Six other partners.

11 Q You have an office in Roanoke. Where else do you
12 have offices?

13 A Galax, Virginia, Covington, Staunton, and Beckley,
14 West Virginia.

15 Q Mr. Hamden, when did you first consider with Vic
16 Foti the possibility of his becoming a partner in your firm?

17 A In terms of time, sir, it was approximately a year ago
18 or a little over. Sometime after he had resigned from his firm and
19 also had indicated to, I suppose, the general public that he was
20 considering going into business for himself.

21 Q I believe an announcement went out with an October
22 1, 1976, date indicating that Mr. Foti had joined the firm and that the
23 name of the Roanoke office would be Persinger, Foti & Company, is
24 that correct?

25 A Yes, sir.

26 Q So it would have had to have been sometime prior to
27 October 1 --

1 A It was.

2 Q That that you considered with Mr. Foti his possible
3 role in your firm?

4 A Yes, sir.

5 MR. WOOTEN: Your Honor, again I would object to
6 the relevancy of this questioning, unless there is some contention
7 that there was some arrangement made with this gentleman and his
8 partners prior to August 1, or that it had something to do with Mr.
9 Foti's either voluntary or involuntary termination during the month of
10 August?

11 MR. RAKES: Your Honor, Mr. Wooten and Mr. Fox
12 keep talking about August 1 as being an important date. The
13 resignation in evidence that Mr. Foti submitted said he was resigning
14 effective September 30. He was treated as a partner in the firm of
15 Andrews Burket until September 30. He received payments as a
16 partner in the firm until September 30. And I think it is relevant on
17 this allegation that he was expelled from the firm, to determine what
18 was going on during the month of August and September insofar as
19 Mr. Foti is concerned.

20 THE COURT: I overrule the objection.

21 MR. RAKES: I've forgotten the question, Mr.
22 Hamden.

23 THE COURT: Start all over again.

24 Q I was inquiring as to your best estimate of when you
25 first started discussions with Mr. Foti relating to his joining the firm.
26 We have established that it would have had to have been prior to
27 October 1, 1976.

1 A Yes, it was prior to October 1. I'm not absolutely
2 certain with respect to when we made the first contact. I think it was
3 the last part of August. I'm not absolutely certain, but it was after
4 it was clearly determined he was not going to remain with them.

5 Q Did you personally consider this with him or did you
6 have a committee of your firm to do that?

7 A I asked one of my partners, who was a schoolmate of
8 Mr. Foti, to call him and inquire if there would be any possibilities
9 that he would be interested in coming with our firm.

10 Q And I take it that led to some discussions which
11 ultimately led to a partnership of Mr. Foti and your firm?

12 A Yes, sir.

13 Q Is your firm currently performing accounting work,
14 your firm and Mr. Foti as a partner in your firm, currently
15 performing accounting work for a number of clients who are former
16 clients of Andrews Burket?

17 A Yes, sir.

18 Q And I take it that these clients are being handled in
19 the customary fashion, whereby you submit bills for your services
20 rendered and you get paid for the services rendered?

21 A Hopefully.

22 Q Are you aware of Mr. Foti performing any accounting
23 work during the month of September of 1976 prior to the time you
24 officially went into partnership with him on October 1?

25 A Only by virtue of the fact that he had some contact
26 with some of his clients.

1 Q Are you aware that Mr. Foti performed accounting
2 work for some of those clients during the month of September, and
3 then after October I billed for that work, and payments were made to
4 Persinger, Foti and Company?

5 A I think that would be a fair statement.

6 Q At the time Mr. Foti became a partner in your firm,
7 Mr. Hamden, or when you were considering a partnership for Mr.
8 Foti, were you aware that he was a party to a partnership agreement
9 with the partners of Andrews, Burket & Co.?

10 A Yes, sir.

11 Q Had you had occasion to review that agreement?

12 A I believe I reviewed it on a limited basis, yes, sir.

13 Q Were you aware that it had a provision in it that if
14 Mr. Foti performed work for any of the clients of Andrews, Burket &
15 Co. that certain payments would be required to be paid back to
16 Andrews Burket?

17 A Yes, sir.

18 Q And he was made a partner in your firm on that
19 basis?

20 A He was made a partner in our firm, sir, on the basis
21 that we wanted him. If he brought work with him and he had a
22 commitment for that work, why, we were perfectly willing to honor it.

23 Q And if it were determined that payments were due
24 and owing to Andrews Burket you agreed, Persinger, Foti &
25 Company, to make those --

26 MR. FOX: Your Honor, this is objected to as having
27 no relevance.

1 THE COURT: It's relevant in terms of his going to
2 the company. Overrule the objection.

3 Q Mr. Hamden, did R. L. Persinger & Company enter
4 into an agreement with Mr. Foti that any payments required to be
5 made under this agreement that he had with Andrews Burket would be
6 paid by R. L. Persinger & Company?

7 A Mr. Foti expressed -- made the observation that he
8 wanted to live up to his commitments, and we said that if he had any
9 obligations as a result of this action that we expected to honor them.

10 Q So any payments he would have to make under this
11 agreement were not out of his pocket; they are out of the firm of
12 which he is a partner?

13 A That's correct, sir.

14 MR. RAKES: I believe that's all.

15 CROSS-EXAMINATION

16 BY MR. WOOTEN:

17 Q Mr. Hamden, the contacts -- the discussion between
18 your firm and Mr. Foti, who initiated those discussions?

19 A We did, sir.

20 Q You contacted Foti?

21 A Yes, sir.

22 Q And this was sometime either the end of August or
23 sometime in September?

24 A Yes, sir.

25 Q Then was it necessary to have discussions about
26 whether you could come to an agreement as far as his becoming a
27 partner in your firm?

1 A Well, if I might explain just a second. We had known
2 Mr. Foti for a number of years. And as I stated earlier, one of my
3 partners is a schoolmate of his. We had a lot of respect and regard
4 for Mr. Foti in our firm. We felt that we needed a man of his ability
5 to become a part of our Roanoke office. The fact that he could or
6 could not bring business with him was immaterial. We wanted him.

7 Q All right. You indicated to Mr. Rakes that you were
8 aware of the agreement that Mr. Foti had. And Mr. Foti, I think you
9 said, told you he intended to live up to his agreement to whatever
10 extent he was obligated to do so?

11 A Yes, sir.

12 Q Were you aware of the fact that there was some
13 question in his mind as to whether he had been involuntarily
14 terminated by his partners?

15 A Yes, sir.

16 Q In any event there was certainly nothing as far as
17 you or the present partners in your firm had to do with anything that
18 Mr. Foti did prior to August 1, 1976.

19 A None whatsoever.

20 MR. WOOTEN: That's all.

21 THE COURT: Anything further?

22 MR. RAKES: No, sir.

23 [Witness excused]

24 MR. FOX: I wish to take exception to the Court's
25 ruling in allowing Mr. Hamden to testify to the contract he personally
26 had with Mr. Foti on the grounds that it is irrelevant to the question
27 before the jury.

1 ADDISON DALTON,

2 called as a witness by the plaintiff, being first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. RAKES:

6 Q Would you please state your name and address.

7 A My name is Addison Dalton, 6000 Upham Drive,
8 Richmond, Virginia.

9 Q I believe you are a certified public accountant, Mr.
10 Dalton, is that correct?

11 A That is correct.

12 Q When did you become a CPA?

13 A I passed the examination in 1947 and received my
14 certificate in 1949.

15 Q Would you give us a brief resume of your educational
16 background as well as your professional experience?

17 A I received a Bachelor of Arts degree from the
18 University of Richmond in 1943, Master of Science and Business
19 Administration, 1946.

20 I went into public accounting after I graduated, was
21 in -- worked for a CPA firm for four years, then opened up a
22 proprietorship. Two years later I became a partner in a firm. I have
23 been a partner in a number of firms since then.

24 I am a member of the American Institute of CPAs, the
25 American Accounting Association, the Virginia Society of CPAs. I
26 have been made a member of the Board of Directors of the Virginia
27 Society, editor of its magazine, past president of the Richmond
28 chapter of the Virginia Society of CPAs.

1 Q You indicated that you had been a partner in several
2 partnerships in the course of your accounting career.

3 A That is correct.

4 Q In these partnerships that you have personally been
5 involved in, Mr. Dalton, has it been customary to have a written
6 partnership agreement?

7 A Yes, in all instances.

8 Q In those agreements, Mr. -- let me back up here and
9 ask you another question.

10 At my request, have you had occasion to review the
11 partnership agreement of Andrews, Burket & Co., which has been
12 introduced into evidence as Plaintiff's Exhibit Number 1 and
13 particularly paragraph Roman numeral VI, little iv of that agreement
14 on page 4?

15 A Yes, I have read that agreement.

16 Q And I believe it has been placed in evidence that that
17 paragraph that I have just enumerated has to do with a partner
18 leaving the firm and performing work for clients of the firm, and
19 compensation that would be required for that. Is that correct?

20 A That's correct.

21 Q In the written agreements that you have been a party
22 to over the years, have there been provisions in those agreements,
23 though maybe not identical to this provision, but the same type of
24 provision?

25 A Yes. Normally there has been an agreement of this
26 sort. Not this exact wording, but similar.

1 Q In your experience both as an officer of various CPA
2 organizations and being active in these various organizations, has
3 it -- is it your understanding that this type of provision is commonly
4 employed in the accounting profession?

5 A Yes, I would say that is correct.

6 Q Is there any regulation or rule that you know of, Mr.
7 Dalton, that would suggest or indicate that such a provision in an
8 agreement is improper from a professional standpoint for CPAs to
9 enter into?

10 A Not to my knowledge.

11 Q During the course of your experience and career as a
12 CPA, has your firm or any of your firms had occasion to buy the
13 practices from other individual accountants or other accounting firms?

14 A Yes, we have on occasion.

15 Q And in doing that, could you just give us a little
16 brief resume of the type of arrangements that are made from time to
17 time for the payment for those clients?

18 A Normally it will relate to the volume of fees or
19 business that the CPA is carrying on. And it will vary, depending
20 upon the quality and the type of practice. But it will normally be
21 related to the, what we call, volume of fees or gross receipts of the
22 practice, figured out over a period of years.

23 Q Have you been familiar with any, Mr. Dalton, that
24 have resulted in maybe a third of the fee for a period of three years
25 or such as is indicated in this agreement?

26 A That would not be unusual for that type of
27 arrangement.

1 Q Having had experience with these types of
2 agreements as well as with the purchasing of practices, in your
3 opinion, Mr. Dalton, is a payment schedule as indicated in the
4 paragraph you've just referred to a reasonable one?

5 A I would say so.

6 MR. RAKES: Those are all the questions I have.

7 CROSS-EXAMINATION

8 BY MR. WOOTEN:

9 Q Mr. Dalton, when you indicate that there is no rule
10 that you are aware of, you are speaking of rules within the profession
11 and not necessarily legal rules.

12 A That's correct. I'm not qualified to comment on that.

13 Q When you buy another man's accounting practice, I
14 assume that before you buy it you would review his clients as to who
15 they are and how many he has and what they bill, and so on and so
16 forth.

17 A Usually you would make a careful review of the
18 situation.

19 Q So when you entered into the agreement to get these
20 clients you would know what you were getting?

21 A To the best of your ability, right.

22 Q If the person that were selling or offering to sell
23 their accounting business asked for a percentage that would not
24 enable you to service the clients on an economical basis, you would
25 have to refuse to buy the practice, wouldn't you?

26 A I would say that would be correct.

1 Q And if you were obligated under one of these
2 termination agreements to pay a certain percentage of a fee back to
3 someone else who claimed the client, and that client came to you for
4 legal -- for accounting services, and based on your expenses and
5 your firm you could not service that client and pay the percentage
6 back, you would again have to decline the representation of that
7 client, wouldn't you?

8 A I think if you came to the conclusion that it was not
9 economically feasible, it would discourage you from accepting the
10 client.

11 MR. WOOTEN: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. RAKES:

14 Q Mr. Dalton, in an agreement like you have before you
15 unlike where a firm goes out and buys the practice of another
16 accountant, the partners to this agreement would know better than
17 anyone else the quality of the clientele involved and the profitability
18 of serving those clients, would they not?

19 A If you had been a partner in the firm you would
20 normally be familiar with the clientele.

21 RECROSS-EXAMINATION

22 BY MR. WOOTEN:

23 Q One further question. If you purchase clientele from
24 someone else, do you get the working papers or the file along with
25 the client, if the client chooses to use your firm at no further cost?

26 A I would say in most cases this would be -- of course
27 all of these agreements are subject to the approval of the clients
28 themselves.

1 Q I understand. Ultimately, no matter which type of
2 agreement you're talking about, it's the client's choice as to who does
3 his accounting work?

4 A That is correct.

5 MR. WOOTEN: That's all.

6 [WITNESS EXCUSED]

7 VICTOR F. FOTI,

8 a defendant, called as an adverse witness by the plaintiff,

9 being first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. RAKES:

12 Q Please state your name.

13 A Victor F. Foti.

14 Q Where do you live, Mr. Foti?

15 A 4713 Easthill Drive, Southwest, in Roanoke.

16 Q Mr. Foti, it has been testified to here today, and you
17 have been present during the proceeding, that you were a partner in
18 the firm of Andrews, Burket & Co. for some period of time prior to
19 submitting a letter of resignation dated August 1, 1976, is that
20 correct?

21 A Yes, it is.

22 Q I hand you Plaintiff's Exhibit 2 -- and this is on
23 checked paper, which I suppose is accounting-type paper -- and ask
24 you if this is the letter of resignation that I have just referred to?

25 A Yes, it is.

26 Q Mr. Foti, would you please read, starting at who it's
27 directed to, and read that letter into the record.

1 A It is dated August 1, 1976. [Reading] "To the
2 partners, from Vic Foti: I hereby give you my notice to resign from
3 the partnership of Andrews, Burket & Co. effective September 30,
4 1976. This has been a very difficult decision for me, and I have
5 reluctantly postponed it for some time. I hope that the severance can
6 be amicable, and I will do everything to keep it so from my
7 standpoint. I have not solicited any of our present clients, and don't
8 intend to do so. I do feel that I will stay in public accounting in
9 Roanoke after I have completed all my obligations I have under the
10 present partnership agreement. I am sorry that I have come to this
11 conclusion, but feel that I must now look elsewhere for the future. I
12 came to Andrews, Burket & Co. and enjoyed my relationship for
13 years. I feel that I cannot enjoy the future as the past, and this has
14 brought on my decision to resign. Sincerely, Victor F. Foti"

15 Q I believe the firm of Andrews Burket responded to
16 your letter, or at least Mr. Perkins did on behalf of the firm, by
17 letter dated August 2, 1976, which is Plaintiff's Exhibit 3, is that
18 correct?

19 A Yes.

20 Q Mr. Foti, as a partner in the firm of Andrews,
21 Burket & Co., did you -- were you a party to a partnership
22 agreement?

23 A Yes, I was.

24 Q During all the period of time that you were a partner
25 with Andrews Burket, was there a partnership -- one or more
26 partnership agreements in effect?

1 A Yes, there was.

2 Q And from time to time was that partnership agreement
3 amended so as to let a new partner in or change the percentages of
4 interest, and then a new one would be typed up and signed by
5 everybody?

6 A That's correct.

7 Q And I believe it has been testified to that between
8 1969 and the one that was in effect at the time you left that there were
9 some four or five of these agreements. Is that your recollection?

10 A Yes, sir. It's basically an amendment or appendix on
11 October 1 of each year.

12 Q The substance of the agreements generally remained
13 the same and the numbers and the partners -- names of new partners
14 were added is what was changed?

15 A That's what was changed.

16 Q In each of those agreements, do they contain a
17 paragraph similar to paragraph VI, iv, relating to the responsibilities
18 of a partner upon resignation vis-a-vis clients of Andrews Burket?

19 A Yes.

20 Q And you were familiar with that paragraph?

21 A Yes.

22 Q All right. Did you ever express any objection or
23 concern in connection with that paragraph being in this agreement?

24 A No, I did not.

25 Q Did you understand what the consequences of the
26 paragraph were -- what the paragraph means?

1 A Yes.

2 Q There was never any problem among the partners of
3 the firm as to what the paragraph was intended for, is that correct?

4 A Not to my knowledge.

5 Q The paragraph that I just referred to, Mr. Foti,
6 begins with this sentence, and I quote, "During the twenty-four
7 months immediately following the termination of his membership in the
8 partnership, unless such termination is involuntary under the
9 provisions of Article V.2 of this agreement" -- let me stop right there
10 and ask you if your termination was under the provisions of Article
11 V.2 of this agreement?

12 A The termination as submitted on August 1 was
13 according to that first sentence.

14 Q Was according to the first sentence?

15 A [INDICATED AFFIRMATIVE]

16 Q So the last, then, would not be applicable according
17 to this situation?

18 A That's right, as of that day.

19 Q At any later date were you ever terminated pursuant
20 to the provisions of Article V.2 of this agreement, to your knowledge?

21 A It is my opinion that I was.

22 Q All right. Let's look at Article V.2.

23 A Is that dealing with involuntary?

24 Q V.2. Would you read the first sentence of V.2?

25 A [Reading] "If the partners (other than the partner
26 with respect to whom action is under consideration) determine by vote
27 that it would be to the best interest of the partnership because of a

1 partner's disability, incapacity, misconduct, or neglect of duty, or
2 any other reason, for a partner to retire or withdraw from the
3 partnership, he shall be requested to retire or withdraw as the case
4 may be."

5 Q To your knowledge, was there ever any affirmative
6 vote by those partners other than yourself to terminate you under
7 Article V.2?

8 A Are you talking about a specific vote? No, not to my
9 knowledge.

10 Q Do you know of any vote or discussion on the part of
11 the other partners to terminate you under the provisions of Article
12 V.2 of this agreement?

13 A No.

14 Q And going on in the sentence that I was reading and
15 because I interrupted myself, let me start at the beginning again:

16 "During the twenty-four months immediately following
17 the termination of his membership in the partnership, unless such
18 termination is involuntary under the provisions of Article V.2 of this
19 agreement, a partner will not offer to perform or perform services as
a 20 certified public accountant or public accountant to any client of the
21 partnership."

22 During the twenty-four months following your
23 termination in the partnership have you offered to perform or
24 performed services as a certified public accountant or public
25 accountant to any client to the partnership of Andrews, Burket &
26 Co.?

1 A Only those clients that have come to me first.

2 Q But you have performed the services for those
3 clients?

4 A Yes, sir.

5 Q And the next sentence, Mr. Foti, "A partner
6 violating this subsection shall pay to the partnership an amount equal
7 to one-third of each year's fee collected for a period of three years.
8 Such amount is due when collected from the client by the former
9 partner."

10 Have you collected any fees from former clients of
11 Andrews, Burket & Co.?

12 A Yes, after October 1976.

13 Q After October 1976?

14 A [INDICATED AFFIRMATIVE]

15 Q That would be the time that you went into
16 partnership with R. L. Persinger & Company?

17 A That's correct.

18 Q And have you remitted one-third of each year's fees
19 collected to the firm of Andrews, Burket & Co.?

20 A No, I have not.

21 Q Did you collect any fees after October 1, 1976, for
22 work you performed during the month of September of 1976?

23 A Yes.

24 Q During September 1976 you were not a member of the
25 partnership of R. L. Persinger & Company, were you?

26 A That's correct.

1 Q And during September -- your resignation as it was
2 tendered to the firm of Andrews Burket specified that you were
3 resigning as a partner as of September 30, 1976, is that correct?

4 A Yes.

5 Q And from Andrews Burket's standpoint you have
6 been considered as a partner, for purposes of accounting, payments,
7 and so forth, through September 30, 1976? I'm saying from their
8 standpoint, now.

9 A You will have to ask them. I suppose that is a matter
10 of opinion.

11 Q From your standpoint were you a partner in the firm
12 of Andrews, Burket & Co. during the month of September 1976?

13 A No, I was not.

14 Q Who made the decision as to the point when you no
15 longer were a partner? .

16 A I made the decision after consulting with legal
17 counsel.

18 Q You made that decision? The partnership had no
19 part in it, is that correct? The partnership of Andrews Burket?

20 A Only by their acts.

21 Q And you communicated to them in your letter of
22 August 30 that it was your opinion that you were no longer resigning,
23 but instead had been terminated --

24 A That's correct.

25 Q -- or expelled from the firm.

26 A Yes.

1 Q But yet there is no specific meeting or vote or a
2 specific act of the partnership which you can describe to us which
3 expelled you from the firm.

4 A I have no record of any of the minutes. I couldn't
5 state that there has not been any.

6 Q Did any partner of Andrews, Burket & Co. ever
7 exclude you from any meeting that they had during the months of
8 August and September?

9 A If you are discussing the fact that meetings were
10 held without my knowledge, I would say yes.

11 Q I'm asking about being excluded. Did you ever
12 attempt to attend any meeting of that partnership during the month of
13 August and September 1976 that you were not granted admission to
14 that meeting?

15 A No.

16 Q Were you in fact requested to attend at least one or
17 possibly more meetings of the partnership of Andrews Burket when
18 you declined to attend?

19 A Mr. Perkins asked me specifically to attend the
20 August 17 meeting and critique each partner individually, personally,
21 in my opinion of each one of them. And I told him that was personal
22 and I did not choose to get in that ballgame.

23 Q Did you tell him that while you chose not to get in
24 that ballgame, that you would be present to consider any other
25 partnership business that would be pertinent?

26 A It was not discussed.

1 Q It was not discussed by either c

2 A At the time.

3 Q You were aware that client resignments
4 were being made during the week following y, were
5 you not?

6 A Yes.

7 Q And there was nothing secret was
8 going on from that standpoint, was there, Mr.

9 A I did not know when the decig made,
10 who was visiting who, or when, or anything el

11 Q As a person leaving the ficted to
12 resign from the firm, was this something? really
13 interested in insofar as what partner would with
14 responsibility for a particular client?

15 A It was customary for the fi was a
16 change of partners on the job, that the old visit the
17 client with the new partner and introduce h and to
18 make a smooth transition.

19 Q That custom involved situatiopartners
20 were remaining with the firm? For example, an audit
21 into taxes, something of that nature, is that c

22 A Not necessarily, because someone
23 terminating with the firm, and he took the p produced
24 the partner. It would be someone other thanating.

25 Q Has there ever been an in were a
26 partner in the firm, Mr. Foti, when one irm was
27 leaving and his clients were being assigned as being
28 the responsible partner?

1 A Yes.

2 Q When did that occur?

3 A When Mr. Al Knighton retired.

4 Q That was a retirement?

5 A Yes.

6 Q And Mr. Knighton, I believe, is still receiving checks
7 monthly from Andrews Burket?

8 A As far as I know.

9 Q And under a contract he is entitled to those checks,
10 I guess, during the remainder of his life, is that correct?

11 A I suppose.

12 Q And while you were a partner at that firm you
13 participated in making those payments to Mr. Knighton?

14 A That's correct.

15 Q But now that you are no longer a partner you don't
16 participate?

17 A That's right.

18 Q And you say when Mr. Knighton retired he took
19 another partner around and introduced him to the client and said,
20 "Now that I'm retiring, this gentleman will be in charge of your
21 account"?

22 A Yes.

23 Q Did you expect that in this instance?

24 A It would be my opinion that that's the way that it
25 should be handled for a proper and orderly transition from one
26 partner to another.

1 Q You think it should be handled this way from a
2 personal standpoint or because it's better for the client or better for
3 you?

4 A I feel like it's better for the client; it's better for
5 me; it's better for the resigning partner; it's better for the firm.

6 Q How would it be better for the resigning partner?

7 A I think that the resigning partner has nothing to
8 hide from the client, and it would be perfectly okay for him to go out
9 and tell the client that he is resigning and that this person is being
10 assigned to the client. I see nothing wrong with that.

11 Q Did you want to participate in that?

12 A I would have been glad to.

13 Q Did you ever express to anybody in the partnership
14 that you would like to accompany him on these visits?

15 A No. I was not asked.

16 Q Mr. Foti, you keep saying you were not asked to
17 attend meetings or asked to do this. Is it a matter of your feelings
18 being hurt or is there a partnership requirement that you should
19 have participated?

20 A No. I told Mr. Perkins in the meeting that I felt like
21 that the partnership required a sixty-day notice for the lining up of
22 affairs, and that I had the responsibility of conducting myself as a
23 partner for those sixty days, and that I would do so like any of the
24 other partners and do what the -- because of the interest I had in
25 the partnership through September 30. And that is the way that I
26 wanted to end up the partnership -- on amicable terms.

1 Q And you feel like since what you wanted to do was
2 not carried out, then this justifies you, in effect, in withdrawing
3 your resignation and taking the position that you were in effect
4 expelled, isn't that --

5 A That and other things that have been enumerated.

6 MR. RAKES: That's all, Your Honor.

7 THE COURT: Mr. Wooten? Mr. Fox?

8 MR. FOX: Give us one second, Your Honor.

9 MR. WOOTEN: Your Honor, I can cross-examine this
10 witness, who is obviously going to be my witness. He will be my first
11 witness. I would like to go on in an orderly manner, and he would be
12 my witness for any questions that go beyond the direct examination.

13 MR. RAKES: However you prefer to do it is fine
14 with me.

15 THE COURT: Any way you want to do it.

16 BY MR. WOOTEN:

17 Q Mr. Foti, where did you get your education?

18 A I went to Concord College at Athens, West Virginia.

19 Q What year did you conclude your studies?

20 A 1958.

21 Q What was your degree from this school?

22 A It was a BS in Business Administration with a major
23 in accounting.

24 Q What was your first employment after you left
25 Concord?

26 A I went to Richmond, Virginia, and accepted a general
27 accounting position with a construction firm.

- 1 Q What year did you come to Roanoke?
- 2 A July 1, 1959.
- 3 Q Did you have a job when you came to Roanoke?
- 4 A Yes.
- 5 Q And where was your position?
- 6 A Andrews, Burket & Co.
- 7 Q What was your beginning position with them?
- 8 A As a junior accountant.
- 9 Q Were you a CPA when you came to Roanoke?
- 10 A I became a CPA in 1963.
- 11 Q Did you become a partner in the firm?
- 12 A In 1969, yes.
- 13 Q Where do you reside here in Roanoke? Where do you
- 14 live?
- 15 A 4713 Easthill Drive, Southwest.
- 16 Q Do you still live there now?
- 17 A Yes.
- 18 Q All right. You have already testified to the fact that
- 19 you submitted a letter, which you read to the jury, resigning from
- 20 the firm August 1, 1976. When you submitted that letter of
- 21 resignation had you made any definite plans regarding your future?
- 22 A None at all.
- 23 Q Had you had any discussions with any other firms
- 24 regarding -- particularly with R. L. Persinger about becoming a
- 25 member of that firm?
- 26 A None at all.

1 Q Sometime after, or shortly after, your initial letter of
2 resignation, what were your thoughts as to the future?

3 A I had anticipated that I would start an accounting
4 firm on my own, and I had discussed the setting up of offices in the
5 Boxley Building on South Jefferson Street and going into business
6 there -- in the accounting business.

7 Q All right. When did Persinger come into play?

8 A As I recall, it was the evening of about the last part
9 of -- one evening the last couple of days of August that I received a
10 call from Kenny Elmore, which was one of my old classmates at
11 Concord College. He asked me if -- he said that he heard about my
12 situation, that he would like to sit down and discuss it with me. And
13 I said that would be fine. That was on the telephone. He lives in
14 Staunton.

15 Without anything to refer to, I believe that it was
16 right after Labor Day that I had dinner with him, he and Odell
17 Hamden, and discussed it.

18 Q All right. So that was your first contact that led to
19 your present employment situation as a partner in Persinger Foti?

20 A That's correct.

21 Q When you -- Mr. Rakes has asked you, and you may
22 have stated it, when you submitted your letter of resignation it was
23 voluntarily submitted and you were fully aware of the terms of the
24 partnership agreement regarding a voluntarily terminated partner?

25 A That's correct.

26 Q In response to his further questions you mentioned
27 the fact that you submitted a letter, I believe, the 30th of August,
28 stating the position that you felt you were involuntarily terminated?

1 A That's correct.

2 Q Would you tell the jury what went through your mind
3 as to the events of that month that led you to write that letter?

4 A Well, I had been a very active partner within the firm
5 and within the profession. And I considered myself a very,
6 business -- busy partner in both situations, for the firm and for the
7 profession.

8 As I say, I was quite active. I would, I think, in a
9 normal day get anywhere from ten to twenty phone calls a day from
10 clients asking various questions. If I was not in the client would
11 normally leave a message and have me call back or something like
12 that.

13 And the first four days of August I basically
14 received none of these. I mentioned it to Mr. Perkins, and he told me
15 that he had instructed any calls coming in to me that they would be
16 turned over -- to inquire as to what account it concerned, and to
17 turn it over to the new partner that had been assigned to the
18 account. And that is what had been done as far as my clients'
19 service was concerned.

20 I think I stated to him that that was not, I thought,
21 in the best interest of the client and that this was an unusual
22 situation as far as I was concerned. And I think on Friday of that
23 first week, after I had mentioned this to Mr. Perkins, I began to
24 start receiving phone calls again, and the phone calls probably that
25 he mentioned earlier.

26 I received -- which was very unusual -- very little
27 if any correspondence other than just advertising that would come
28 across anyone's desk.

1 On the Tuesday morning I talked with Mr. Perkins,
2 and he said that the partners had met and discussed it. He gave me
3 the letter expressing regrets at my resignation and said that the
4 situation was going to get mighty sticky around there, and said the
5 partners felt like that I should, in lieu of vacation time that I had
6 coming and attending the Virginia Society convention, that I should
7 wrap up everything that I had to do as of Friday August 6 and take a
8 leave of absence through September 30.

9 I told him that I would have to think about that. I
10 went and discussed with legal counsel the situation, and it was
11 decided that I had to and should live according to the partnership
12 agreement and there was no provisions in the partnership agreement
13 for a leave of absence, and I should continue through September 30
14 and protect my interest in the partnership to that date.

15 I called Mr. Perkins from the attorney's office that
16 afternoon and informed him of that decision. I think we skipped a
17 day; there wasn't too much said. Then it was either Thursday or
18 Friday that week Mr. Perkins came back to me and said that the
19 partners would like for me to reconsider not accepting the leave of
20 absence. And I told him that, you know, it was not in the
21 partnership agreement and that there was five or six of them and one
22 of myself. And the only way that I could be sure that everything
23 would go, is that I should remain there through September 30 and live
24 by the partnership agreement. After the meeting, the partnership
25 meeting on August 17, on the morning of the 18th. Mr. Perkins came
26 into my office and he gave me a copy of the minutes.

1 Q Are those the minutes that have been previously
2 introduced in evidence?

3 A Yes. And said that he was the s.o.b. that had to
4 break all the bad news to me and that I was not to have any
5 chargeable time as far as clients are concerned, that anytime that I
6 went to visit a client that I had to take a partner or manager or
7 supervisor or someone else with me, that I was not to remove any
8 working papers from the office, and I was to -- that was the wishes
9 of the other partners.

10 After reviewing the leave of absence that was offered
11 twice, and after reviewing the restrictions -- and also I told Mr.
12 Perkins that these restrictions were restrictions placed on me, that I
13 didn't feel like they were placed on any other partner, and I wasn't
14 being treated accordingly. At the culmination of all this, and after
15 discussion with legal counsel, it was the opinion that I was
16 inoperative as a partner, and that from there on I would treat myself
17 as being terminated from the firm.

18 This was arrived at not immediately -- after
19 consideration with legal counsel. And finally on August 30 -- I think
20 that's the day -- I submitted the letter notifying them that from that
21 time on I would consider myself as a terminated partner of Andrews,
22 Burket & Co.

23 And that's how I arrived at that.

24 Q All right. Did you in fact so consider yourself as far
25 as further windup dates with the company goes, and so on?

26 A Yes.

1 Q Rather than September 30?

2 A Yes.

3 Q The clients of the firm -- the former clients of
4 Andrews Burket that you have stated that you do accounting work
5 for, -- you answered this for Mr. Rakes I think -- did you solicit any
6 of those clients?

7 A None whatsoever.

8 Q Did you ever make the first contact with any client
9 regarding you or your firm becoming their accounting firm?

10 MR. RAKES: I object to the question. That's not in
11 controversy here -- how the clients came to Mr. Foti. What is in
12 controversy is whether or not he performed services for those clients
13 under the terms of the --

14 THE COURT: Well, you put into evidence that he
15 performed services in September and billed them on Persinger
16 stationery in October. I think he's got a right to answer that.

17 A I didn't solicit them.

18 MR. WOOTEN: That's all.

19 THE COURT: Mr. Rakes?

20 BY MR. RAKES:

21 Q Mr. Foti, you said you thought it was very peculiar
22 that during this first week or so in August that you didn't get the
23 kind of mail that you customarily got. Do you have any evidence that
24 anybody took your mail or did anything with it?

25 A No.

26 Q And of the telephone calls you indicated that you --
27 it was a period of time that you didn't get very many calls and

1 subsequently started getting the usual amount. Do you have any
2 evidence that a partner in Andrews Burket asked that your calls be
3 screened or withheld from you?

4 A Only to the extent of what Mr. Perkins told me. I
5 think he stated that --

6 Q Were you not present when the receptionist's
7 deposition was taken in this matter?

8 A No, I wasn't.

9 Q You have heard Mr. Perkins's testimony that even
10 during the month of September, after you said you and your counsel
11 made the decision that you were no longer a partner in the firm but
12 had effectively been terminated, that twelve, fifteen, eighteen times
13 during that month you either came by the office, sent someone to
14 Andrews Burket, or came personally and picked up mail and telephone
15 conversations, is that correct?

16 A Yes, correct.

17 Q During that month?

18 A Uh-huh.

19 Q And some of these messages, I assume, were
20 messages from clients of Andrews Burket?

21 A Yes. I would probably say so.

22 MR. RAKES: I believe that's all.

23 MR. WOOTEN: No further questions.

24 THE COURT: Have a seat, Mr. Foti. Call your next
25 witness.

26 MR. WOOTEN: Since I didn't officially rest I --

1 MR. RAKES: I think I technically rested when I
2 finished with Mr. Foti and you sort of picked him up as your witness
3 technically.

4 MR. WOOTEN: That is the case, Your Honor.

5 THE COURT: Any further evidence on your part?

6 MR. RAKES: Yes, sir. I have one further witness
7 in rebuttal. The plaintiff rested; the defendant rested. I guess
8 technically this is rebuttal, is that correct?

9 THE COURT: Rebuttal.

10 ISSAC O. PERKINS,

11 a plaintiff, recalled as a witness in rebuttal

12 for the plaintiff, being first duly sworn,

13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. RAKES:

16 Q Mr. Perkins, with reference to Mr. Foti's telephone
17 conversations during the first week in August 1976, did you at any
18 time instruct the receptionist to withhold his calls, screen his calls,
19 or not to put them through to him?

20 A Never.

21 Q How about any written messages that might have been
22 taken from people wanting him to return a call while he was not in the
23 office? Did you direct that they not be given to him?

24 A The direction was that he was to be treated as any
25 other partner. There was no difference between Vic's calls,
26 telephone calls, and mail than anybody else.

1 A Yes, that's true through September. He wasn't in
2 the office in September, but we did furnish secretarial-receptionist
3 services for him and accumulated his calls, and he picked them up or
4 had someone pick them up or called in for them.

5 Q And his mail also?

6 A Yes.

7 Q And I believe his mail was picked up from you?

8 A No. Picked up from her.

9 Q It was not held by you?

10 A No.

11 Q So you don't know -- you had a list. You testified
12 that this was where he had come to you. You had a long list this
13 morning.

14 A No, I did not say come to me. I said he came in and
15 picked his mail up and his telephone calls.

16 Q On this list was not something you saw yourself, but
17 something told you by somebody else?

18 A No, the receptionist is right outside of my office so I
19 could hear him when he came in. And I would ask the girl, "Did Vic
20 come in and get his mail today?"

21 Q And she would tell you?

22 A She would say, "Yes, he did" or "No, he hasn't come
23 in yet."

24 Q So that list was not of your own knowledge?

25 A Except that some days it was in my knowledge
26 because I heard him outside of my office.

1 Q But some days you didn't?

2 A Some days I did not. He may have come in when I
3 was out of the office.

4 Q You don't really know how many times he was there
5 except for what somebody else told you?

6 A I don't know, Charlie; and furthermore, I don't care.

7 MR. FOX: Fine.

8 MR. RAKES: That's all.

9 THE COURT: All right. Have a seat.

10 [WITNESS EXCUSED]

11 SANDRA THOMPSON,

12 called as a witness by the plaintiff in rebuttal, being first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. RAKES:

16 Q Speak up now so everybody can hear you.

17 Miss Thompson, please state your name.

18 A Sandra Thompson.

19 Q And are you employed with the accounting firm of
20 Andrews, Burket & Co.?

21 A Yes, sir.

22 Q Have you been employed with them for some period of
23 time?

24 A Approximately two years.

25 Q Were you employed by them during the summer and
26 fall of 1976, last year?

- 1 A Yes, sir.
- 2 Q And were you employed by that firm and were you
3 acting as receptionist for the firm during the first week of August
4 1976?
- 5 A Yes, sir.
- 6 Q What were your duties as receptionist?
- 7 A To answer all incoming telephone calls and to greet
8 anyone that would be coming into the office.
- 9 Q If a person calls Andrews Burket to speak to a
10 person in that firm, a partner or any other accountant, is it your job
11 to put that call through if the person is there?
- 12 A Yes, sir.
- 13 Q And if the person is not there, what do you do?
- 14 A You ask the party if the party that they want can
15 return their call when they return to the office.
- 16 Q Do you have a little standardized pink slip that you
17 fill out?
- 18 A It is a little white slip that has a place for the name
19 and who the party calling is with, a number, and there is a spot at
20 the bottom where you can take a message if there is a message in
21 addition to the number.
- 22 Q Does that little white slip also have a place for the
23 time the call came in and the date?
- 24 A Yes, sir.
- 25 Q You filled that out as well?
- 26 A [INDICATED AFFIRMATIVE]

1 Q All right. If a partner is not in the office, are these
2 little white slips collected for him so that they will be available when
3 he comes in the office?

4 A Yes, sir.

5 Q During the week of August 1, 1976, when Mr. Foti
6 tendered his resignation to the firm, did you put all calls through to
7 him if he was there?

8 A Yes, sir.

9 Q Were you told by anyone not to put calls through to
10 him?

11 A No.

12 Q During that week was he out of the office from time
13 to time?

14 A Yes, sir.

15 Q And during the time that he was out of the office, if
16 people called for him, did you fill out one of these little white slips
17 and keep it for him?

18 A Yeah, we collected them and put them on a -- his
19 little slot-type thing for him to pick up at his convenience.

20 Q Then did he pick them up when he came back into the
21 office?

22 A As far as I know, he did.

23 Q Did any partner in the firm, or specifically Mr.
24 Perkins, ever ask you to screen Mr. Foti's calls or to give his
25 messages to someone other than him?

26 A No, sir.

1 Q Did Mr. Foti ever come and complain to you about his
2 calls not being recorded for him or his messages not being given to
3 him?

4 A No.

5 Q After that first week in August, during the rest of
6 the month of September, when Mr. Foti was not in the office, were
7 the messages recorded for him and given to him when he called for
8 them?

9 A Yes.

10 Q Did he sometimes call in by telephone and say, "Do I
11 have any calls?"

12 A Yes, sir.

13 Q And if that occurred, were they given to him?

14 A Yes, we'd give him the party calling and the number.

15 MR. RAKES: I believe that's all.

16 CROSS-EXAMINATION

17 BY MR. WOOTEN:

18 Q You indicated that you accumulated these messages
19 and put them in a slot or box or something. You answered Mr.
20 Rakes's question that Mr. Foti picked them up. I assume you
21 presumed so? You didn't see him do it, I gather?

22 A Well, in some instances, yes, but in some instances
23 it's hard to say who picks up what.

24 Q So anybody could have picked them up? I assume
25 you are not at your desk a hundred percent of the time?

26 A Well, if they came in before eight-thirty, say, or got
27 there before I did, I wouldn't have known who picked them up.

1 MR. WOOTEN: All right. That's all.

2 [WITNESS EXCUSED]

3 MR. RAKES: We have nothing further, Your Honor.

4 THE COURT: All right. Let the jury go to the
5 room. You have no further evidence?

6 MR. WOOTEN: No.

7 [In open court; jury not present]

8 THE COURT: I have been tendered two instructions,
9 but I'll hear argument on the question of whether this ought to go to
10 the jury or not.

11 MR. RAKES: Do you have a motion, Mr. Wooten?

12 MR. WOOTEN: I assume you have one.

13 MR. RAKES: I'm going to make one. If you want to
14 make one first, you're welcome to.

15 MR. WOOTEN: Go ahead.

16 MR. RAKES: If it please Your Honor, at the
17 conclusion of the evidence of this hearing, and pursuant to the order
18 which was entered by this Court relating to the hearing today -- an
19 order dated -- my file copy is dated blank, but I am advised that the
20 order was entered by the Court.

21 THE COURT: August 29, almost that August 30
22 date.

23 MR. RAKES: The 29th?

24 THE COURT: Yes, sir.

25 MR. RAKES: Thank you, sir. It was provided in
26 that order that the jury would be impaneled to consider the issue
27 involving the question of whether Victor F. Foti's departure from

1 Andrews Burket was voluntary or involuntary; and to respond to
2 interrogatories in connection with said issues; and that at the same
3 date and time all evidence on all other issues of liability would be
4 submitted.

5 We would submit to Your Honor that even in the case
6 of an advisory jury that it's inappropriate to submit to the jury a
7 factual question, unless, number one, there is a dispute in those
8 facts on which reasonable men might differ; but, number two, and
9 even more importantly, that facts that are in dispute, if there be
10 any, must relate to something under the law that would give the
11 party -- or would entitle a party to relief under that set of facts.

12 I think prior to Your Honor submitting this case to
13 the jury Your Honor would have to make a legal determination that,
14 number one, there is such a thing as an involuntary expulsion under
15 the facts that we have heard today, that in the law there is such a
16 theory -- we have been able to find no statute and no precedent for
17 that type of thing -- or, number two, that there is some provision in
18 the partnership agreement which could be construed in such a fashion
19 as to claim the defendant has been involuntary terminated -- we can't
20 find anything in the partnership agreement, either.

21 We feel that the evidence in the case -- that there is
22 really very little dispute in the evidence in this case. We feel like
23 that very clearly the plaintiff has borne the burden of proving that
24 there was a written partnership agreement, that it was validly
25 entered into, that everybody knew what it meant, that Mr. Foti
26 submitted his notice of resignation from the firm, and that the firm in
27 all reasonable respects considered him a partner through September

1 30, 1976. And to permit the jury to speculate on something other
2 than that would be inappropriate in this case. We would therefore
3 ask the Court to enter a declaratory judgment that Mr. Foti was not
4 involuntarily terminated and that in fact he resigned from the
5 partnership of Andrews, Burket & Co. We would further ask the
6 Court to adjudicate that the paragraph in question in the partnership
7 agreement is valid and schedule this matter for a hearing or request
8 briefs on the issue of damages.

9 THE COURT: You would have to have evidence on
10 damages.

11 MR. RAKES: Yes, sir.

12 THE COURT: Mr. Wooten?

13 MR. WOOTEN: May it please the Court, Your Honor,
14 we think there has been an issue that we can submit to the jury on
15 this basis. The Code provides in certain sections the rights of
16 partners within the partnership. They have the right to participate
17 in the management of the partnership; they have a right to take a
18 profit in and determine the distribution of property in a partnership;
19 they have a right to otherwise participate in the management decisions
20 that may come up from time to time on a day-to-basis; and of course
21 they have a right to protect their own interest in whatever way they
22 see fit.

23 We cannot prove in this case by direct evidence that
24 the partners, the main partners, of Andrews Burket cast a vote to
25 expel Mr. Foti from the partnership after receiving his letter of
26 resignation. We can only show -- and we can't do that because there
27 are no minutes and Mr. Foti wasn't present. We can only show
28 acts --

1 THE COURT: Well, let me ask you this, Mr. Wooten,
2 in the operation of this partnership business, they had a partnership
3 agreement?

4 MR. WOOTEN: Yes, sir.

5 THE COURT: And they had a monthly meeting on
6 the third Tuesday of each month?

7 MR. WOOTEN: Yes, sir.

8 THE COURT: And all the partners knew about it?

9 MR. WOOTEN: Yes, sir.

10 THE COURT: And then in addition to that they had
11 a date -- I would call that a board of directors' meeting similar to a
12 corporation, wouldn't you? You would go along with that analogy?

13 MR. WOOTEN: Yes, sir.

14 THE COURT: And then the next thing they had,
15 they had the day-to-day operation of the business?

16 MR. WOOTEN: Yes, sir.

17 THE COURT: And whoever was present participated
18 in making a decision on a day-to-day board of operations. I'd call
19 that the general management of operations, wouldn't you?

20 MR. WOOTEN: Yes, sir. And it bound the rest of
21 them.

22 THE COURT: Sir?

23 MR. WOOTEN: And it bound the rest of the people.

24 THE COURT: It bound all the people, whoever was
25 there and whoever wasn't there, participated or not participated.

26 But that really wasn't a partnership meeting as such,
27 a formal meeting, would you agree with that?

1 MR. WOOTEN: No, but it had the same effect.

2 THE COURT: Well, it may have had the same effect,
3 but the partnership on the seventeenth could overrule obviously any
4 decisions made up to that time -- I mean in a regular meeting, not the
5 seventeenth.

6 MR. WOOTEN: Well, Mr. Rotty said when such
7 things happened that he was grieved by it and it was not
8 reconsidered. That's the only information I have.

9 THE COURT: Well, it could be brought up and
10 discussed and passed on by all the partners. Wouldn't you say that's
11 fair?

12 MR. WOOTEN: Yes, sir.

13 THE COURT: And wouldn't you also say it would be
14 fair and reasonable for this partnership, where a partner is
15 resigning, retiring, or whatever, to make arrangements to transfer
16 his operation?

17 MR. WOOTEN: Yes, sir, I think that would be
18 expected. Mr. Foti so testified.

19 THE COURT: He indicated he was willing to do that,
20 but he never told anybody he was willing to do that?

21 MR. WOOTEN: Yes.

22 THE COURT: I thought he said they excluded him
23 and he excluded them. So it was kind of a mutual operation.

24 MR. WOOTEN: Well, Mr. Foti testified that he told
25 Mr. Perkins that he had been an active partner and intended to be an
26 active partner through the end of September and that he had
27 responsibilities to the firm and to the clients and that he intended to
28 fulfill them to the fullest extent.

1 THE COURT: Why didn't he go to the September --
2 the August meeting?

3 MR. WOOTEN: His testimony on that was that he was
4 invited there for the particular purpose to critique each partner
5 individually and that he did not wish to do that. He preferred --

6 THE COURT: Couldn't he go there and transact the
7 other partnership business?

8 MR. WOOTEN: I suppose he could've if he --

9 THE COURT: You're insisting on his rights which
10 you've just enumerated. Isn't that one of his rights?

11 MR. WOOTEN: I suppose he could have gone there.
12 He may not have been expelled or --

13 THE COURT: I don't mean to interrupt or give you a
14 rough time.

15 MR. WOOTEN: I understand.

16 THE COURT: But didn't he in effect withdraw just
17 as much as the partners started transferring his business?

18 MR. WOOTEN: I think there's no question about the
19 fact that on August 1 he withdrew -- intended to withdraw
20 voluntarily. The issue was created by the acts as indicated by the
21 witnesses. And --

22 THE COURT: Well, excuse me, go ahead and finish
23 your argument now.

24 MR. WOOTEN: That's basically it, Your Honor.

25 THE COURT: All right.

26 MR. WOOTEN: The acts of the -- as I said, we can't
27 prove by direct evidence that there was a vote taken. The only thing
28 we have is the acts as expressed by the partners.

1 THE COURT: Well, is that an effective expulsion?
2 What is an involuntary expulsion from the partnership? Do you have
3 any law on that?

4 MR. WOOTEN: We have statutory law on it. It's the
5 treating of any -- any partner any differently from any other by the
6 rest of the group -- the dissolution of the partnership.

7 THE COURT: Let me ask you this. Where you have
8 the situation where a partner is withdrawing, don't you think the
9 majority partners can assign duties to the resigning partner different
10 from what he's been assigned prior thereto in the next two months?

11 MR. WOOTEN: I'm sure they can.

12 THE COURT: Can't you do that, not necessarily
13 with his consent? And if he refuses, then that immediately terminates
14 the partnership, isn't that right?

15 MR. WOOTEN: Yes, but do different duties and
16 restrictions are two different things.

17 THE COURT: Well, either one. Either one, you
18 know. If you and your other partners get together and you put
19 restrictions on one partner or another as to dealing with particular
20 accounts -- I'm sure of that. And if you don't do it, you're the only
21 firm that doesn't do it.

22 MR. WOOTEN: Well, I don't know -- I don't recall
23 doing that.

24 THE COURT: Oh, come on.

25 MR. WOOTEN: No, I really don't.

26 THE COURT: Well, okay. All right. Do you want to
27 say anything else?

1 MR. RAKES: No, sir, Your Honor.

2 THE COURT: Well, you know, this is an interesting
3 case, and it is unfortunate that professional people are in court; and
4 I wish they would resolve their differences without coming to court.
5 The courts are not the best place for professional people to be
6 fussing at each other, and that's just an observation. I'm not
7 criticizing Mr. Foti or the Andrews Burket firm or the Persinger firm.
8 I just -- any professional group, whether it be lawyers or anybody
9 else.

10 I don't see any issue to submit to the jury.
11 Obviously, Mr. Foti was not expelled pursuant to the agreement; and
12 if he wasn't expelled pursuant to the agreement, I think he's bound
13 by the agreement. There isn't any evidence the parties got together
14 and expelled him. They did restrict him from soliciting their clients,
15 and I think that's a reasonable restriction under the circumstances.
16 And I think that I'm going to rule that he was not involuntarily
17 expelled and that the agreement was valid.

18 Bring the jury back. Your exceptions are noted,
19 and you can state them in just a minute.

20 MR. FOX: Did you rule the agreement was valid?

21 THE COURT: I'm ruling insofar as the expulsion is
22 concerned. Now, I'll hear argument on the question of the
23 agreement, the reasonableness of the restrictions, and that sort of
24 thing -- what you've covered in your brief.

25 But insofar as the factual determination --

26 MR. FOX: All right. I just wanted to get it clear.

1 THE COURT: All right. Bring the jury back.

2 [In open court, jury present]

3 [The Court, resuming]

4 Members of the jury, because certain legal motions
5 were made and rulings of the Court, it will not be necessary for you
6 to decide this case. I have made certain rulings and it's taken out of
7 the hands of the jury.

8 And I thank you for serving today, and you are
9 excused for the term.

10 [Jury excused]

11 [The Court, resuming]

12 It's a quarter of five, do you want to argue those
13 issues today or do you want another day?

14 MR. RAKES: We're prepared to do it today, Your
15 Honor.

16 THE COURT: What do you want to do? What about
17 the other evidence?

18 MR. RAKES: Unless they have further evidence, we
19 have no further evidence.

20 THE COURT: You've got to have some evidence.
21 How can you fix damages if you don't have any evidence?

22 MR. RAKES: No, no, I'm sorry. I misunderstood
23 Your Honor. I thought you --

24 THE COURT: You mean on these points?

25 MR. RAKES: I mean on the things that have been
26 briefed and on the legality of the paragraph in the agreement.

1 THE COURT: Do you want to argue it today or do
2 you want to argue it another day?

3 MR. WOOTEN: Sir?

4 THE COURT: Let's set --

5 MR. FOX: Your Honor, we've submitted a
6 memorandum.

7 THE COURT: All right. I've been over those. I'll
8 be glad to give you time, if everybody's tired and wants another day
9 to argue.

10 MR. RAKES: I'd like to do the paragraph thing while
11 it's fresh in my mind. We're all geared up, and I'll go off to
12 something else tomorrow. I think it's been pretty thoroughly briefed
13 by both parties. I think argument would be pretty minimal.

14 THE COURT: All right. Do you want to say
15 anything? Let's go.

16 MR. FOX: We want to submit it all on the brief.

17 THE COURT: Do you want it on the brief?

18 MR. RAKES: Yes, sir.

19 THE COURT: All right. My ruling is briefs. As to
20 time and place --

21 MR. RAKES: May I prepare an order on that part of
22 the case?

23 MR. FOX: Wait, Your Honor, there's still another
24 issue.

25 THE COURT: All right. What's the other issue?

26 MR. FOX: Define those words for us.

1 THE COURT: Sir?

2 MR. FOX: Look at the paragraph itself.

3 THE COURT: What kind of words do you want to
4 define, Mr. Fox?

5 MR. FOX: Look at the paragraph itself, Your Honor.

6 THE COURT: All right.

7 MR. FOX: These are issues we've raised. I thought
8 we raised them.

9 THE COURT: Read the paragraph and what you
10 have in mind.

11 MR. FOX: "A partner violating this subsection shall
12 pay to the partnership an amount equal to one third of each year's
13 fees collected for a period of three years."

14 What is the fee? What does that mean? A fee
15 collected by whom? and so on.

16 THE COURT: Well, it would be my feeling about it,
17 if he went to R. L. Persinger and an account came to them that they
18 did not previously have that was Andrews Burket's, then he would
19 have to pay the fee. That would be my interpretation of it.

20 But if, on the other hand, R. L. Persinger was
21 servicing them before and they came with additional work, then that's
22 another proposition.

23 But if I was with Andrews Burket and I went to
24 Persinger because Foti --

25 MR. FOX: I know, but there you go, Your Honor.

26 THE COURT: Not even "because," it's just a two-
27 year deal, I think.

1 MR. RAKES: If it please Your Honor, we have
2 stipulated earlier -- we have done a computer printout of the client
3 list of Andrews Burket, and we have submitted that to counsel for the
4 defendant, and we have said that only those people on that list are we
5 claiming are clients of Andrews Burket.

6 And those were people who have paid fees to
7 Andrews Burket during the year immediately preceding Mr. Foti's
8 leaving.

9 THE COURT: One year previous.

10 MR. RAKES: So we don't have to worry about
11 whether they did a tax return for them ten years ago or five years
12 ago. We're willing to look only to that one year.

13 THE COURT: I think that if you interpreted it
14 literally, you can go way on back.

15 MR. FOX: Well, no, Your Honor, a partner violating
16 this section shall pay to the partnership. And that's our argument in
17 there, Your Honor. I hope you haven't ignored it.

18 It says, "A partner shall pay" --

19 THE COURT: I would say it refers to the person --

20 MR. FOX: -- "amounts equal to one third of each
21 year's fee, collected for a period of three years."

22 Collected by whom? Now are you interpreting this
23 agreement to say collected by anybody that partner works for?

24 THE COURT: No, I interpret that to mean that if he
25 goes with R. L. Persinger, Mr. Fox, and they do work for a client
26 that Andrews Burket has serviced, then they owe the fee. He can't
27 do by indirection what he can't do directly. He can't take that

1 account and give it to John Jones, CPA, for Persinger. He can't do
2 indirectly what he can't do directly.

3 There's just no way. You can't have a subterfuge
4 like this.

5 MR. FOX: Your Honor, I'm not asking for a
6 subterfuge.

7 THE COURT: I know you're not; and I'm ruling you
8 can't have it.

9 MR. FOX: Your Honor --

10 THE COURT: He -- excuse me, go ahead. I didn't
11 mean to interrupt you.

12 I have this problem: What does three years mean?
13 Does he do it for two years or does he do it for three years? Does it
14 give him three years to pay the account or does it give him two years
15 to pay the account?

16 MR. RAKES: I would submit that if you just take
17 that one sentence and look at it, it says that during a two-year
18 period anybody that goes to him is a client of Andrews Burket for
19 which he would have to pay a fee. And then he has to pay one third
20 of the fees collected from that client for a period of three years.

21 MR. FOX: That means if somebody comes to him the
22 last day of two years, he's got to go on for three years?

23 MR. RAKES: That's right. And if he comes to him
24 two years and one day later, then he doesn't have to pay a penny.
25 That's the way it's written.

26 THE COURT: Send them out and tell them to wait?

1 MR. RAKES: Well, I think that is -- I think that's a
2 consideration. There's nothing we can do about it. If several major
3 clients want to come to him and wait for two years and one day,
4 absolutely there's nothing we can do about it.

5 One third of each year's fee collected for a period of
6 three years -- the partners have testified that they understood --

7 THE COURT: All right.

8 MR. FOX: Your Honor, I'm afraid I'm not making
9 myself clear.

10 THE COURT: Well, I'm going to try and understand
11 you.

12 MR. FOX: Sir?

13 THE COURT: I'm going to try and understand you.

14 MR. FOX: This is being construed, I think you will
15 agree, against Andrews Burket, is that correct?

16 THE COURT: All right.

17 MR. RAKES: No.

18 MR. FOX: Is that correct, Mr. Rakes?

19 MR. RAKES: No, sir, I object to that completely.

20 THE COURT: Well, that's all right. That's his
21 position. Let's go.

22 MR. RAKES: Oh, I'm sorry.

23 MR. FOX: Mr. Perkins testified he drew this
24 agreement. He's the party -- one of them -- seeking to enforce it;
25 it's construed against -- against him. That's his testimony -- he
26 drafted it.

1 That being the case -- and I think our brief goes
2 into this in some length -- that a partner violating this subsection
3 shall pay to the partnership an amount equal to one third of each fee
4 collected for a period of three years. Now, collected by whom and
5 what kind of fee?

6 Now you're stating that if he goes with another firm,
7 no matter how business comes to that firm, the fact he's with it is
8 going to penalize that firm. I don't think they can go that far, Your
9 Honor.

10 THE COURT: I think --

11 MR. FOX: Suppose, for example, is this going to
12 keep a client from going to R. L. Persinger -- we know of one case;
13 we put evidence on -- not because of Vic; Vic never serviced it. It
14 was serviced by Perkins -- it wasn't, but I'll use him -- and they
15 want to go to R. L. Persinger for reasons that have nothing to do
16 with Vic. Are we going to penalize them just because Vic's there?

17 THE COURT: I think that's what the agreement
18 says.

19 MR. FOX: Well, how can the agreement bind R. L.
20 Persinger?

21 THE COURT: It doesn't bind Persinger; it binds Mr.
22 Foti.

23 MR. FOX: That anybody who comes there -- and
24 there, Your Honor, we would submit that under our -- our brief that
25 this is an unreasonable agreement.

26 THE COURT: Well, I don't think it's unreasonable.
27 I think it's quite reasonable, one of the fairest I've seen. It really
28 is.

1 They don't say you can't go in business. They just
2 say don't solicit their clients for a couple of years.

3 MR. FOX: It doesn't say not solicit.

4 THE COURT: I know it doesn't say that.

5 MR. FOX: It says don't really work for our clients.

6 THE COURT: Don't do any work. And if you do,
7 then pay us a part of the fee. That's all it says.

8 MR. FOX: Or pay us the whole fee for one year.

9 THE COURT: No, it doesn't say pay the whole fee
10 for one year.

11 MR. FOX: One third for three years.

12 THE COURT: That's right. "Pay us one third for
13 three years."

14 And this man from Richmond says that's a reasonable
15 way in which accounting practices are sold. And I have to take his
16 word for that; there's no evidence to the contrary. I understand
17 what you're talking about, but I don't agree with you.

18 MR. FOX: And now could you define fees for us,
19 Your Honor?

20 THE COURT: Aw, c'mon, Charlie, for Lord's sake,
21 expenses are one thing and fees are something else.

22 MR. FOX: Your Honor, no --

23 THE COURT: What do you have in mind?

24 MR. FOX: Computax, where a fee is paid to an
25 outside firm for the work they do.

26 THE COURT: Well, that's an expense, isn't it?

1 MR. FOX: Well, to me it is, Your Honor. We
2 wouldn't be here today if we could agree on these things.

3 THE COURT: If you drive your car to Pulaski and
4 they pay you for it, then that's an expense.

5 MR. FOX: Xerox costs?

6 THE COURT: That's an expense.

7 MR. FOX: Fees are those for services rendered?

8 THE COURT: Why, sure.

9 MR. FOX: By members of the firm?

10 THE COURT: Not necessarily by members of the
11 firm. By people who are employed by R. L. Persinger.

12 MR. FOX: That's what I mean. By members of R.
13 L. Persinger.

14 MR. RAKES: I don't think we will have any problem
15 with that, Judge.

16 THE COURT: I got paid a lot of expenses every
17 month by the State of Virginia --

18 MR. FOX: Your Honor, I agree with you.

19 THE COURT: -- for traveling. And, certainly,
20 they're not taxable. I'd say taxable income. That's what I would
21 define it as.

22 MR. FOX: Taxable income to the partners.

23 THE COURT: If these accountants don't understand
24 that, then we had better quit.

25 MR. RAKES: When you say taxable, it does cause me
26 a little concern. I thought I was agreeing with you up until you said
27 that.

1 If you bill a client, one portion of the bill is fee and
2 the other portion is expenses. I think this deals with the fee
3 portions. Now the salaries they pay their secretaries, their
4 telephone, and overhead bills are not expenses.

5 THE COURT: I would agree with that.

6 MR. RAKES: All right, sir.

7 THE COURT: It is the fee. It isn't the fee for
8 employing somebody in Washington on the computer services, or
9 traveling expenses, or that sort of thing. It's just a net fee.

10 I wish you-all would go settle it. Anything else?

11 MR. RAKES: Shall we submit an order on this part
12 of it?

13 THE COURT: Yes, sir.

14 MR. RAKES: Can we have the date for the damage
15 part?

16 THE COURT: Yes, sir. How long will it take you?
17 Can't you-all agree on the damages -- you can't -- two years isn't up
18 yet.

19 MR. RAKES: I think we should take a stab at a
20 stipulation.

21 THE COURT: Your two years aren't up yet. Why
22 don't we just hold it under advisement for two years?

23 MR. RAKES: Well, because the agreement requires
24 that they be paid as collected, and we're accumulating a lot of
25 interest.

26 THE COURT: Well, they can pay the interest on it.

1 MR. FOX: How can you pay when you collect it when
2 the agreement itself refers to one year's fee?

3 THE COURT: You've got to pay it at the end of each
4 year. It isn't due until the end of September.

5 MR. RAKES: No, sir, it says to be paid as
6 collected -- as collected from the client. If they bill this client four
7 times in a year, I think we get a third of each of them.

8 THE COURT: I'd give you a fourth if it were me.
9 That's what you said, a fourth -- four times a year.

10 MR. RAKES: I can't believe it. I can't get you-all
11 to agree with anything I say. Okay. My arithmetic's not very good.

12 THE COURT: Let's give you a date in the latter part
13 of October and then we can be through September 30.

14 [Court adjourned 5:15 p.m.]

CERTIFICATE

I, Anna J. Tester, Verbatim Reporter, do hereby certify:

THAT the proceedings herein were duly reported by me and transcribed to the best of my ability;

THAT this transcript is a true and accurate record of the proceedings set forth in the caption; and

THAT, further, I am employed solely for the purpose of reporting the proceedings, and have no interest in this matter or its outcome; nor am I related to or in the employ of any of the parties or their counsel or attorneys.

GIVEN under my hand this 15th day of Jan 1978.


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Case # 3560

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ERNEST W. BALLOU
Circuit Judge

October 27, 1977

2:00 P.M.

Courthouse
Roanoke, Virginia

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1 [2:15 p.m.]

2 THE COURT: All right. Mr. Wooten -- I don't know
3 who's supposed to go first.

4 MR. RAKES: I'm the plaintiff for a change, so
5 maybe --

6 MR. WOOTEN: I'll just give you this, because this is
7 the thing that's being referred to, so the Court will have a copy of
8 it.

9 THE COURT: Well, let me ask this. Mr. Rakes,
10 today is the day for an accounting, and are you having any problems
11 with the accounting?

12 MR. RAKES: May it please Your Honor, the order
13 that was entered back as a result of the hearing on the 26th of
14 September provided for an accounting. The best I can tell we've
15 made a good faith effort to furnish the information, and I have no
16 indication or evidence that there are any inaccuracies in the
17 accounting.

18 However, I had hoped to have the opportunity today
19 to ask Mr. Foti some questions about the accounting, how various
20 things were done. And, for an example, my client has received
21 letters from some half a dozen clients saying that they would no
22 longer use Andrews Burket, that they were having Mr. Foti do their
23 work. But those clients do not show up on the accounting.

24 And out of this many it could have very clearly been
25 an oversight, but it's something I'd like to inquire into. And I had
26 not subpoenaed Mr. Foti. I had just --

1 THE COURT: Well, just give them to Mr. Wooten and
2 let him check them and see. I'm sure Mr. Wooten and his client --
3 they're professional people; they'll tell you the truth.

4 MR. RAKES: But there are a number of questions
5 about the accounting that I'd just like to ask about, to have clarified.
6 I think the real purpose of today is the Court made its declaratory
7 judgment at the last hearing and an order has been entered,
8 interpreting the contract. But no evidence at all regarding damages
9 and no accounting was available at that time.

10 And before entering a final order in this matter we
11 wanted to establish that there were in fact, you know, monetary
12 considerations --

13 THE COURT: Why don't we just take that under
14 advisement until all the accounting is done and then enter --

15 MR. RAKES: The accounting is done.

16 THE COURT: You're through?

17 MR. RAKES: Yes, sir, the accounting is done. I
18 have no --

19 THE COURT: You're not through yet because you
20 have some more questions to ask.

21 Let me ask you. Is Mr. Foti available?

22 MR. WOOTEN: I don't know whether he's at his
23 office or not.

24 THE COURT: Where is his office?

25 MR. WOOTEN: The Boxley Building downtown.

26 MR. RAKES: I'd like to request that they call him.

1 THE COURT: Well, why don't we just take a short
2 recess. You give the questions that you want Mr. Foti to answer,
3 and let him call him and ask him, if he's there, to get that information
4 and come on up here.

5 MR. RAKES: I'm sure the questions that I have he
6 can answer from memory. They're not --

7 THE COURT: Well, just give them to Mr. Wooten,
8 and let him call and see.

9 MR. RAKES: I would like, if we can, to go through
10 whatever areas we have so we can get a final order, rather than --

11 THE COURT: Well, it isn't going to be a final order.
12 It's going to be continuing for a couple of years.

13 MR. RAKES: Well, I think we're entitled -- I think
14 that a declaratory judgment can be appealed, can it not, before the
15 end of the two-year period?

16 THE COURT: Are you going to appeal it?

17 MR. RAKES: Well, I've been told that they're not
18 going to pay, so I assume that they're going to appeal.

19 THE COURT: Well, if you're going to appeal, I'll
20 enter a final judgment. If you're not going to appeal -- I mean, what
21 I'm saying is, I don't care whether you appeal or don't. But if you
22 want to appeal, I'll enter a final judgment, so you can appeal. That's
23 what I mean. I'm not trying to put you on terms about whether you
24 can appeal or not.

25 MR. RAKES: That's why we want final judgment, if
26 my indication is correct.

1 MR. WOOTEN: It's my understanding that they do
2 intend to appeal.

3 THE COURT: All right. We'll get that information
4 and let's go through it, and then we'll fix damages, and then we'll let
5 the chips fall.

6 All right. We'll take a short recess.

7 [Recess 2:25 p.m. - 2:55 p.m.]

8 MR. RAKES: Your Honor, I believe we're going to
9 have to take some evidence on the question of expenses. The order
10 and the partnership agreement provided that Andrews Burket is
11 entitled to one third of the fees collected over the period of time.

12 And then in the accounting that Your Honor
13 required, you specified to break down between fees and
14 disbursements. And I think there's some question as to -- what they
15 gave us was expenses. And some of the expenses that are included
16 in that column, we would take the position, are not disbursements;
17 they are not amounts paid out on behalf of the client. They're just
18 simply firm overhead.

19 And these fees we're talking about are gross fees,
20 without any deductions for secretarial help or electric bill or rent, or
21 anything else. And, for example, xerox copying, we would take the
22 position that where the client is not billed specifically for xerox
23 copying that that's not an expense that can be deducted from the
24 amount of fee that is charged the client.

25 And, while we've asked some questions about it, I
26 think one of the problems is, we lawyers do our billings differently
27 than the way accountants do. And, for example, I'm told by Mr.

1 Wooten today that the defendant firm charges a dollar a page for
2 copying, which entitles you to the original and five copies of what is
3 being copied. So at a dollar a page, you know, a ten- or fifteen-page
4 tax return, you know, you're getting on up there. And it's not
5 charged specifically to the client; it's just a portion of the fee is
6 allocated, as I understand it, at a dollar a page.

7 THE COURT: All right.

8 MR. RAKES: So I think it's unfair to ask the Court
9 to rule, unless we have some testimony on the thing. But we would
10 like to have a final order entered in this matter as soon as is
11 reasonable.

12 THE COURT: How can I enter a final order without
13 that?

14 MR. RAKES: Well, I understand. I understand,
15 Your Honor. I thought we were coming today for -- I didn't realize
16 Mr. Foti wasn't going to be here.

17 THE COURT: You mean you want the Court to hear
18 the question of expenses on every one of these?

19 MR. RAKES: No, sir, I think if the Court makes a
20 ruling of how it's handled, we don't need to worry about the specific
21 files.

22 I guess what we need is for the Court to make a
23 ruling on what is a disbursement which can be deducted.

24 THE COURT: I thought we'd said that the other
25 day. Well, give me the different categories.

26 MR. RAKES: I think we very clearly would agree
27 that if a client for doing an audit is charged a thousand dollars for

1 fee and then is also charged a hundred and fifty dollars for "out-of-
2 pocket expenses," for a total bill of a \$1150, then under the out-of-
3 pocket-expenses category -- which would include out-of-town travel,
4 long distance telephone calls, postage, overnight accomodations while
5 out of town -- all of that is clearly a disbursement that is made on
6 behalf of that client.

7 But, as I understand it, in the billings that are made
8 by accounting firms, there is --

9 MR. FOX: Excuse me, Your Honor, Mr. Rakes is
10 making argument that we -- there's no evidence --

11 MR. RAKES: Well, His Honor asked me a question
12 and I'm telling him what I understand.

13 THE COURT: He's not arguing. You'll have an
14 opportunity to explain it in a minute.

15 MR. RAKES: But it's my understanding that, for
16 example, this dollar-charge-per-page thing is not charged to the
17 client as an expense item or disbursement item on the bill that's sent
18 to the client, that some way they take a portion of the fee -- that
19 thousand-dollar fee may show up on their books internally as being
20 \$950 fee and \$50 copying. And it's simply a way of breaking down
21 the fee.

22 And to be very blunt and to the point, we don't want
23 the fees diluted by taking part of what they're charging to the client
24 and calling it internal operating overhead.

25 THE COURT: What does your client do on xerox
26 copies?

1 MR. RAKES: What does my client do?

2 THE COURT: Yes, sir.

3 MR. RAKES: My client handles them the same way
4 Mr. -- I think I'm right about this -- handles them as far as the
5 billing the same way that Persinger, Foti & Company does. They do
6 not show them as a disbursement, as an expense item.

7 THE COURT: Do they charge them as a separate
8 item on their books?

9 MR. RAKES: On the books, yes, but not on the
10 bills.

11 THE COURT: In other words, when you have ten
12 accounting hours, you charge so much per hour for accounting and
13 then you add in so much for xerox copying, and then you send them
14 a bill for that total, right?

15 MR. RAKES: Yes, sir. And the xerox copying is
16 not related to what it costs as far as the -- how much you pay the
17 Xerox Company for the rent of the machine or for the paper. They
18 add in a figure to cover the secretary's time, you know, that type
19 thing, which we would say is general office overhead and not a
20 disbursement.

21 THE COURT: What other categories of expenses are
22 you talking about?

23 MR. RAKES: I believe I've covered the principal --
24 there's one called Computax, where, for example, as I understand
25 it -- and I don't mean to disparage either of these firms -- and I
26 think the fact that they both do it the same way -- if you go down to
27 have a tax return prepared, they feed the information into this

1 computer system called Computax, and it comes back with a nice filled
2 out tax return.

3 And the accounting firms don't specifically discuss
4 that with the client as to whether it's done off in New York or
5 whether it's done locally. And the client is simply billed \$200 for the
6 preparation of the tax return. But maybe \$60 of that \$200 figure, the
7 accounting firm has had to pay to the Computax people, and that
8 doesn't show on the bill, either.

9 But I think we would agree that that \$60, which was
10 paid out by the accounting firm to the Computax people, is not fee.
11 That is a disbursement that they have had to make in order, you
12 know, to generate the business.

13 THE COURT: They don't disagree with you there?

14 MR. RAKES: I don't think they disagree with us on
15 that. I think we're in agreement on that. That's probably the
16 biggest item of disbursement that we're talking about.

17 THE COURT: So that and the xeroxing are the two
18 items in dispute, because the other items where they bill them
19 separately for out-of-pocket expenses, you don't have any problem?

20 MR. RAKES: They're obvious, yes, sir. And I
21 don't think we have any trouble with the Computax as long as there's
22 not a profit or something added to it. Now if the Computax people
23 charged \$60 and then the accountant in turn, you know, adds a
24 factor to that as profit, then that profit part would be fee.

25 THE COURT: All right.

26 MR. RAKES: Now if I've misstated anything, I'd be
27 happy to have it, you know, corrected.

1 THE COURT: Don't worry. They will.

2 MR. RAKES: But that's the way I understood it.

3 MR. FOX: Could we have Mr. Perkins take the stand
4 for a minute to clarify something, Your Honor?

5 THE COURT: Yes, sir.

6 MR. PERKINS: Could I just sit here?

7 MR. FOX: Yes, you can sit there. I would just like
8 to have it under oath.

9 [The witness was sworn]

10 THE COURT: Come on around and take the stand.

11 THE WITNESS: Okay.

12 ISAAC O. PERKINS,

13 called as a witness by the defendants, being first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. FOX:

17 Q Would you look at that and see if you can identify it
18 for us, Mr. Perkins?

19 A That is an invoice that I sent to Mr. Brugh at
20 Howard Johnson's Motor Lodge that's owned by Firestone for the time
21 that I spent for getting sales tax work sheets off the seventh floor
22 from the period of August 1974 through September 1975 -- fifty
23 dollars.

24 Q All right. That's a client that is on Mr. Foti's list?

25 A Yes.

26 Q And one in which you expect to receive payment for?

1 A Yes, sir.

2 Q And you have charged them for making copies of
3 sales tax returns?

4 A No, I've charged him for getting copies out of our
5 files, which Foti should have had.

6 Q Now, are any copying charges involved in that
7 billing?

8 A No.

9 Q Tell the Judge what the bill states.

10 A Retrieval and reproduction of sales tax work sheets,
11 August 1974 through September 1975, \$50.

12 Q All right. So that is retrieval from the seventh floor?

13 A Yes.

14 Q And what is the reproduction charge?

15 A None. No charges were made; it was just a flat fifty
16 bucks.

17 Q I understand. But it says there was a reproduction
18 charge.

19 A But there was no reproduction charges, Charlie.

20 Q Oh, so the way you bill, you do not break down any
21 reproduction. You just state it on here -- on the bill.

22 A On this particular bill, there was no reproduction
23 charges.

24 Q Well, what's the word "reproduction" --

25 A There are words there, but there was no charge
26 made per copy.

1 Q All right, sir. So this is what you call retrieval; and
2 so on any client that went to Mr. Foti you would charge then for
3 retrieval and any reproduction charge?

4 A And any clients we currently have, if we have to go
5 to the file and get something out for them, the time is charged for
6 getting that out.

7 Q All right, sir. But there was no reproduction on this
8 particular one?

9 A Not on this particular one, no.

10 Q So these were the original sales tax returns you got?

11 A No, these were copies of the work sheets.

12 Q All right. Your original work sheets?

13 A Yes.

14 Q And you delivered those original work sheets then to
15 the client?

16 A To the front desk. He came down and picked them
17 up.

18 MR. FOX: I'm sorry, Your Honor. I got a little bit
19 lost. I thought there was a reproduction charge here, and I was
20 going to try to get this straightened out, but apparently the bill is
21 mistaken.

22 THE COURT: All right.

23 [Mr. Fox, resuming]

24 Q Now, Mr. Perkins, let's assume there was a
25 reproduction charge for a client that's gone to Mr. Foti, and you also
26 have retrieval, how would that bill be treated?

CERTIFICATE

I, Anna J. Tester, Verbatim Reporter, do hereby certify:

THAT the proceedings herein were duly reported by me and transcribed to the best of my ability;

THAT this transcript is a true and accurate record of the proceedings set forth in the caption; and

THAT, further, I am employed solely for the purpose of reporting the proceedings, and have no interest in this matter or its outcome; nor am I related to or in the employ of any of the parties or their counsel or attorneys.

GIVEN under my hand this 15th day of

Jan. 1978.

Anna J. Tester
VERBATIM REPORTER

1 A The same way.

2 Q The same way?

3 A Yes, the same way. We never show on the bill how
4 much has been allocated reproduction charges, with the exception of
5 some of the clients that we have charged Foti particularly. I think
6 it's ten cents a copy, or something like that.

7 Q Now, for internal purposes you did charge a
8 reproduction charge? You would charge --

9 A Some clients, yes. If we make a copy, we do. Now I
10 don't mind telling you, we charge forty cents a copy.

11 MR. FOX: I'd like to get this introduced in the
12 record, if we can, Your Honor.

13 THE COURT: All right. I've forgotten the exhibit
14 numbers. Make that exhibit X.

15 [DEFENDANTS EXHIBIT X marked for identification and
16 received in evidence]

17 CROSS-EXAMINATION

18 BY MR. RAKES:

19 Q Mr. Perkins, I take it, on the bill that Mr. Fox has
20 just introduced in evidence that that fifty dollars, as far as Andrews
21 Burket is concerned, is fee?

22 A It is fee. And there's been no time charged to that
23 client because that client does not have a client number. Our system
24 could not handle any charges.

25 Q The forty cents that you allocate out of the fee for
26 xerox copying, does that include profit for your firm?

1 A Yes, it does. But I can't tell you exactly what our
2 cost is because we've never been able to -- we've never figured it.
3 But it does not cost us forty cents a copy for the copying machine
4 and supplies.

5 We feel like the forty cents a copy on an average will
6 recover the cost of the machine rental, supplies, the secretary's time
7 probably running the machine, assembling anything that needs to be
8 assembled -- any processing of the copies. And forty cents a copy in
9 the long run will take care of this.

10 Q That would defray then part of the secretary's
11 salary?

12 A It would defray part of the secretary's salary. It's
13 just a method of arriving at a tentative fee.

14 Q To charge for the copying?

15 A That's what it amounts to.

16 MR. RAKES: I believe that's all.

17 BY THE COURT:

18 Q Well, some clients owe you a hundred dollars, and
19 you've done ten dollars worth of copying work for them at the rate of
20 forty cents a copy, so you bill them for what?

21 A You look at the what you judge to be the value of the
22 services rendered. That is the total bill; that's a hundred dollars.
23 Internally, you may break that hundred dollars down between ten
24 dollars for photocopy charge --

25 Q No. But you've done a hundred dollars worth of
26 work and you've done ten dollars worth of copying, what do you bill
27 them?

1 A One hundred and twenty-five dollars.

2 Q A hundred and twenty-five?

3 A Yes. I wouldn't bill them a hundred and ten. I
4 would either bill them a hundred or a hundred and twenty-five.

5 I bet you that on all the bills we've got that there
6 aren't five that will be for a hundred and ten dollars. It will either
7 be for a hundred dollars or a hundred and twenty-five.

8 Q Well, but if you've done a hundred dollars worth of
9 work and twenty-five dollars worth of copying, what would you do?

10 A A hundred and twenty-five dollars.

11 Q And if you hadn't done the copying, what would you
12 bill them?

13 A I would bill them a hundred dollars. It's a judgment
14 call as to how much you think the value of the services are worth.

15 Q I understand.

16 A Billing is not an exact science.

17 Q I expect I know that as well as you do. If you've
18 ever practiced law --

19 A I should say the billing of accounting is not an exact
20 science.

21 THE COURT: All right. Thank you.

22 [Witness excused]

23 [The Court, resuming]

24 What else do you want to put on, Mr. Fox?

25 MR. FOX: We have nothing really to put on. We just
26 tried to help, Your Honor, and I just fouled up. I thought there was
27 a reproduction charge shown and there was none.

1 MR. RAKES: Your Honor, I don't really know that
2 what I've said or what Mr. Fox has said is particularly conflicting. I
3 don't know if Your Honor desires further evidence on this or not.

4 THE COURT: Well, Mr. Rakes, here's the way I feel
5 about it. And it's why I was trying to get it from Mr. Perkins. Even
6 though it's shown as one bill -- a hundred and twenty-five dollars --
7 if an item of that is for xeroxing and they've added that in to get to
8 the hundred and twenty-five -- they've said their bill is for a
9 hundred, and it's twenty-five for xeroxing, so they're making a
10 hundred and twenty-five -- then I think you're entitled to the
11 percentage of the hundred.

12 But even if on the other hand they've done some
13 xeroxing incidental to their work and it's not taken into consideration
14 when they do the billing, then you ought to get a percentage of the
15 full fee.

16 MR. RAKES: Judge, I don't disagree with you, with
17 one proviso -- and that is that they don't have the discretion every
18 time they send out a bill to allocate between fee and xeroxing on some
19 arbitrary dollar-a-page-type basis.

20 We all know that the actual expense of xeroxing is a
21 nickel or a dime a page. And anything above that, you're getting
22 reimbursed for your secretary's time or you're making money on it.
23 And we don't want to be in the position to where we've got our
24 adversary in this proceeding making a judgment call every time they
25 send in a bill as to how much they're going to allocate over this --
26 because, their bills, if you look down this list, their bills are fifty or
27 sixty dollars and their expenses are thirty or forty.

1 THE COURT: Well, I agree with that. They can't
2 replace the cost --

3 MR. RAKES: If we could say up to fifteen cents a
4 page --

5 THE COURT: Well, what's the matter with forty
6 cents? You charge forty cents a page.

7 MR. RAKES: Well, we admit and know that that's
8 profit; that's a way of allocating fee and --

9 THE COURT: Well, it may be. But you charge that
10 much. I'd use your measure on it. You're not talking about a lot of
11 money.

12 MR. RAKES: We allocate it that way, but we
13 recognize that we're making a profit on xeroxing.

14 THE COURT: There isn't any way to arrive at the
15 actual cost, is it?

16 MR. RAKES: Probably not.

17 THE COURT: And you're not talking about much
18 money.

19 MR. RAKES: Well, we could be talking about over
20 three years five or six thousand dollars.

21 THE COURT: Oh, not that much for copying. You
22 may at a dollar a page. I certainly wouldn't go along with a dollar a
23 page. But I would go along with forty cents a page.

24 MR. RAKES: Suppose that we just decided on some
25 arbitrary basis that they were going to just from here on out allocate
26 twenty dollars a page --

1 THE COURT: I'm saying I wouldn't approve of that.

2 MR. RAKES: Yes, sir. Well, what I would like --
3 what I'm asking about, I guess --

4 THE COURT: I say he uses forty cents, and I've
5 used forty cents, if you wanted to allocate it per page. And I say
6 that in most cases that I doubt that they even allocate it per page.

7 They probably do the same thing that you do in
8 practicing law; you just make copies and forget it, and that's part of
9 your overhead.

10 MR. RAKES: We seldom charge.

11 THE COURT: You seldom charge. I suspect that
12 they seldom charge, but when they have a substantial amount of
13 copying, I would expect that they take that into consideration. And I
14 expect in most cases I like doesn't charge.

15 MR. RAKES: Well, Judge, I guess that what I'm
16 saying is that so over the next three years, when we're having
17 accountings and so forth, we'll just ask Your Honor to give us some
18 guidance on that so we don't fuss with each other.

19 THE COURT: I'd just say forty cents a page, where
20 they take that into consideration as a part of their billing and where
21 they say the fee is worth a hundred dollars -- and obviously they're
22 not going to have a hundred dollars worth of copying charges; and if
23 so, then I think somebody ought to look into that. But if they've got
24 a reasonable fee for copying charges -- and you-all know what's
25 reasonable in a certain type of accounting work about charges.

26 MR. RAKES: I think what has thrown us off is -- I
27 know our firm, and I expect Charlie's -- on our bill we have a fee,
28 and then we have expenses; and we put "Xerox copying, \$15."

1 Well, there's no problem there because the client is
2 paying the fifteen dollars. It's not part of the fee. But here a
3 portion of the fee is being set aside or allocated to copying, and it's a
4 little bit less precise because it doesn't show up on the bill.

5 THE COURT: Well, but what he says is, they take it
6 into consideration when they fix their bills, that they've made x
7 number of copies, and they just show it as one bill. And if they make
8 ten copies in connection with that bill, then allow them four dollars
9 expense. That's what I'd do.

10 Now, when they're out of pocket, you don't have any
11 problems for xeroxing. Of course, your secretary is out of pocket;
12 so is everything else.

13 MR. RAKES: That's part of the problem: to
14 determine whether you're talking about a disbursement to a client or
15 office overhead. Because, you know, office overhead --

16 THE COURT: If you want me to refer that matter to
a 17 commissioner, I will -- and let him hear every one of them.

18 MR. RAKES: I don't go with that.

19 THE COURT: I didn't think you would. Your
20 client's going to know whether a certain number of pages is realistic
21 or not, really. I think a dollar a page is a little outrageous, Mr.
22 Fox.

23 MR. FOX: It isn't a dollar a page. It's a dollar for
24 five pages.

25 THE COURT: Well, even that.

26 MR. RAKES: Five copies of one page.

1 THE COURT: Five copies of one page. That's a
2 little expensive.

3 MR. FOX: Well, it would be two dollars then at forty
4 cents a page.

5 THE COURT: No, if you get one page and you copy
6 ten, it's still going to be forty cents. That's all.

7 MR. FOX: If that's Your Honor's ruling, it's the will
8 of the Court.

9 THE COURT: It's forty cents for one page; and if
10 you make ten copies, fine; or if you make one, fine.

11 But there's no way to arrive at an exact figure. And
12 you've just got to make an arbitrary rule and go with it.

13 MR. FOX: That's obvious, Your Honor. From the
14 evidence here, there was a charge for reproduction, and there was no
15 reproduction. So I agree, there's no way to do it.

16 THE COURT: There's no way to do it. And, you
17 know, if it's speculated, then I just won't allow it at all. But I don't
18 think that's fair to your client. It is kind of speculative as to what
19 the actual costs are.

20 So if you just say forty cents for copying one page,
21 whether you make ten copies of that page or one, you'll get
22 compensated for your actual expense on it.

23 MR. FOX: I'm not arguing.

24 THE COURT: Anything else?

25 MR. RAKES: Your Honor, could you give us some
26 guidance as to what type order should be presented to the Court
27 under the caption of "Final Order"?

1 I understand from Mr. Fox that they are
2 contemplating an appeal; I think it only fair to come up with whatever
3 kind of order that best suits the situation. As I understand the law,
4 we are entitled to a declaratory judgment proceeding to at any time
5 come back and petition for an additional relief, notwithstanding the
6 final order having been entered -- an appeal order.

7 For example, Your Honor has ordered an accounting
8 every sixty days. If a year and a half from now we don't get our
9 accounting, I believe we're entitled in this action to petition Your
10 Honor to enter an order.

11 THE COURT: You mean I've got to put up with you
12 that long?

13 MR. RAKES: Yes, sir, and we're going to cite you
14 some authority.

15 THE COURT: Well, I would think that you would
16 take an accounting similar to this, for whatever period of time it
17 covers -- and if you-all can agree, based on the guidelines we've
18 discussed, as to what the figure is, based on this particular
19 accounting for this period of time, we'll enter a judgment for that
20 amount, and continue the matter on the docket. And that will be a
21 final judgment for that amount.

22 Now, whether that's an appealable judgment, because
23 it doesn't dispose of the case, I don't know. I don't know whether
24 you have to hear it and dismiss the suit and require you to bring a
25 new suit in order to get an appealable order -- you-all will have to
26 look up the law on that. I don't know.

1 MR. FOX: Your Honor, we still have one other
2 problem. We have parties still parties to this suit.

3 MR. RAKES: I hereby nonsuit those.

4 THE COURT: He'll nonsuit those.

5 MR. RAKES: Do you want a separate order for that,
6 or can we do it right in this same proceedings?

7 THE COURT: Well, just bring a separate order on
8 that, and then that will be out of the picture.

9 But do you what -- it will in effect an interim
10 judgment, but it will be a final order insofar as --

11 MR. FOX: I don't think it is appealable, Your
12 Honor. It was so ruled in one case recently, but there were different
13 circumstances. I would like very much to have an appealable order.

14 THE COURT: Well, I'm trying to help you get one.
15 That's the reason I'm not --

16 MR. FOX: Otherwise, we are going to find ourselves
17 be placed in the position of having to be put in contempt of court to
18 bring it on. And we do not want to do that.

19 THE COURT: What do you mean?

20 MR. FOX: Well, refusing to carry out the Court's
21 order.

22 MR. RAKES: They're not going to pay until they
23 appeal it. And if they feel like they should appeal it, I don't fault
24 them for that.

25 But I do want to get the -- another thing I want to
26 talk about in a minute is the interest on this thing.

1 But it seems to me that the best way to do it, instead
2 of converting it to a law action and getting a money judgment, the
3 Court has already ruled on his interpretation of the agreement -- I'd
4 like to have a supplemental order entered today saying, "Yes, there
5 are amounts due and owing; an accounting has been filed; the
6 plaintiffs are entitled to interest from the date such amounts were due
7 and owing; and this declaratory judgment proceeding is hereby
8 dismissed from the docket."

9 THE COURT: And if you do that, then you've got an
10 appealable order?

11 MR. RAKES: I think so.

12 THE COURT: And I think -- I'm just speculating,
13 I'm not sure -- I think that even if I entered a money judgment and
14 continued it on the docket for future accountings I still think you've
15 got an appealable order.

16 MR. RAKES: On the declaratory judgment part, I
17 think that's true.

18 THE COURT: On the declaratory judgment part.
19 Now we could try it either way you-all want to try it. I prefer the
20 second, rather than you coming back and entering it again. And
21 then if they say you don't have an appealable order when you
22 petition, then we can dismiss the case and you will just have to start
23 all over again later on.

24 MR. RAKES: I believe -- we've looked up the law on
25 it, too --

26 THE COURT: Look up the law before we go either
27 way, so -- you want to help him get an appealable order, too. Both
28 of you want to do the same thing.

1 MR. RAKES: That's right. One thing we have
2 looked up -- and I think this is clear -- in a declaratory judgment
3 proceeding, even after the Court has rendered its declaratory
4 judgment, the parties can come back by way of petition and have the
5 Court enter further judgment or grant further relief, pursuant to its
6 declaratory judgment.

7 THE COURT: Even though the case is off the
8 docket?

9 MR. RAKES: Yes, sir.

10 THE COURT: Then let's just enter a money judgment
11 and let the case go off the docket --

12 MR. RAKES: And I'll be glad to --

13 THE COURT: -- if you feel that that's correct law.
14 I'm not sure because I haven't been involved in that.

15 MR. RAKES: I'm not even asking for a money
16 judgment, as long as we get the -- you know, I don't care about the
17 judgment going down against Vic Foti -- as long as the declaration
18 goes down, because that is really what we're appealing, as I
19 understand, is the interpretation.

20 THE COURT: Well, I'd go on and enter the money
21 judgment. You can direct it not be docketed, unless you want it
22 docketed.

23 MR. RAKES: Well, the only problem with entering
24 the money judgment is we haven't seen any figures; we've just taken
25 that accounting for it.

26 THE COURT: Well, we don't have to do it today.

1 MR. RAKES: And once the judgment is entered, I
2 think that would preclude us from questioning this period of time.

3 THE COURT: Well, do you want to continue it over
4 and check -- he's got to do some accounting on it, anyway, in regard
5 to the copying.

6 MR. FOX: Your Honor, I'm leaving in thirty minutes
7 for Hawaii.

8 THE COURT: That's nice.

9 MR. FOX: I think, perhaps, if you would set it
10 down and give us a chance to work on it a little bit. But obviously
11 the plaintiffs are here and wish to take evidence and go behind this
12 accounting, it's fine.

13 THE COURT: Well, let's don't delay it too long, Mr.
14 Fox. I know you're going to go --

15 MR. FOX: I'd like to be back here for that.

16 THE COURT: Sir?

17 MR. FOX: I'd like to be back here for the hearing.

18 MR. RAKES: I'd like to go ahead and get a final
19 judgment entered today, Judge, even if we do get --

20 THE COURT: How can you do that when you've still
21 got the copying problem?

22 MR. RAKES: Your Honor has just indicated that
23 copying up to forty cents per page --

24 THE COURT: Do you know which ones they've
25 charged copying for?

26 MR. RAKES: No, sir.

1 THE COURT: I say, how can I enter a judgment?

2 MR. RAKES: But I don't want a dollar judgment, I
3 don't believe. I think what I would like is just an order that says
4 we've come subsequent to the prior order and the Court adjudges,
5 orders, and decrees that the plaintiffs are entitled to one third of the
6 fees, which you have already said, that expenses, or disbursements,
7 shall be considered to be travel, telephone, et cetera, and copying,
8 up to forty cents per page --

9 THE COURT: Regardless of the number of pages --
10 forty cents per page -- and not a duplicate page.

11 MR. RAKES: Yes, sir. And that interest shall run
12 under the terms of the agreement from the date that the payments
13 were due, and that this matter is dismissed from the docket.

14 Then they can appeal your declaratory judgment. We
15 won't be worried with any numbers at this point.

16 MR. FOX: Sir, I'm concerned about the interest
17 running -- the due date. If the Court's going to determine what the
18 due date was, fine.

19 THE COURT: Well, the Court's provided for that.

20 MR. RAKES: From the date the payments were
21 received, and your accounting specifies the dates they were received.

22 THE COURT: The agreement provides for that.

23 MR. FOX: The word "yearly" has no meaning then,
24 Your Honor.

25 THE COURT: No, I didn't say that.

26 MR. FOX: The word "yearly" is in there, Your
27 Honor.

1 THE COURT: It also says it's due when received.

2 MR. FOX: No, it doesn't say that, Your Honor.
3 Look at the agreement.

4 MR. RAKES: It does say that.

5 THE COURT: Yes, it does, too, Mr. Fox.

6 MR. FOX: Your Honor, I admit I've had trouble
7 throughout this thing.

8 THE COURT: No, we aren't having any trouble.

9 MR. FOX: But if you'll read the paragraph, there's
10 a word in there -- and I would submit to the Court that this
11 agreement, being drawn by the plaintiffs herein --

12 MR. RAKES: What it says very precisely is: "Such
13 amount is due when collected from the client by the former partner."

14 Now how that can be any more clear, I don't know.

15 MR. FOX: Read the whole sentence, Mr. Rakes.

16 MR. RAKES: All right. Prior to that it says, "A
17 partner violating this subsection" -- which the Court has ruled has
18 occurred -- "shall pay to the partnership an amount equal to one
19 third of each year's fee collected for a period of three years. Such
20 amount is due when collected from the client by the former partner."

21 Now prior in this paragraph it says during thirty-six
22 months is the period we're talking about; and in each of those years
23 you've got to pay us one third of the total amount collected during
24 that year, and you have to pay us when you receive it. It looks
25 pretty clear to me.

26 MR. FOX: Your Honor, that's not a correct reading
27 of that.

1 THE COURT: Well, you read your copy.

2 MR. FOX: I mean the correct "interpretation" of it.

3 THE COURT: Well, when you say it's due when
4 collected, what does that mean?

5 MR. FOX: No, Your Honor, you have to read the
6 whole sentence.

7 THE COURT: All right. Let's read it all.

8 MR. RAKES: It's in the complaint, Your Honor.

9 THE COURT: All right. Let's read the whole
10 paragraph.

11 "During the twenty-four months' period immediately
12 following the termination of his membership in the partnership, unless
13 such termination is involuntary under the provisions of Article V(2)
14 of this agreement, a partner will not offer or perform services as a
15 certified public accountant or public accountant to any clients of the
16 partnership. A partner violating this subsection shall pay to the
17 partnership an amount equal to one third of each year's fee collected
18 for a period of three years. Such amount is due when collected from
19 the client by the former partner."

20 That's a separate sentence.

21 MR. FOX: All right. Well, how can that be
22 determined till one year has gone by?

23 MR. RAKES: One third of each dollar that is sent in
24 would have to be one third of the fee.

25 MR. FOX: It says one third of each year's fee.

26 THE COURT: Okay. Well, I'm going to rule that it's
27 due when you collect it, Mr. Fox. And if you can get the Supreme

1 Court to change it, that's fine. I won't be upset with either you or
2 the Supreme Court, but that's just the way I read it.

3 MR. FOX: We're not upset with you.

4 THE COURT: I know you're not upset with me.
5 Everybody's got to read it and interpret it the way they interpret it.

6 MR. FOX: If I could say to the Court, I would
7 remind you that we're entitled to have the agreement interpreted in
8 the most favorable light to us.

9 THE COURT: All right. Well, I can't interpret that
10 section favorable to anybody. I just have to read that as I
11 understand the English language. I can't interpret it any other way.

12 MR. RAKES: I assume we're talking about the legal
13 rate, since there's been no agreement --

14 THE COURT: Yes, sir, it would have to be the legal
15 rate. I think you probably ought to have a money judgment, but if
16 you want it that way, and if they're satisfied with that so they can
17 appeal it, that's fine.

18 Are you satisfied with that?

19 MR. FOX: No, sir.

20 THE COURT: You want a money judgment?

21 MR. FOX: Yes, sir.

22 MR. RAKES: All right. We'll get a money judgment.

23 THE COURT: All right.

24 MR. RAKES: When will you be back, Charlie?

25 MR. FOX: Two weeks, we'll be back the fourteenth.

26 MR. RAKES: And you would want to be back before
27 an order is entered?

1 MR. FOX: Yes, sir, unless we could agree on an
2 amount today.

3 THE COURT: Well, do you know how many copies
4 were made?

5 MR. RAKES: If Your Honor could give us a time for
6 presentation of an order a few days after the fourteenth.

7 THE COURT: Can you-all agree on it in the
8 meantime?

9 MR. RAKES: I'd rather have a time to present the
10 order.

11 THE COURT: I know. But in the meantime can you
12 get together on the number of copies?

13 MR. RAKES: Yes, sir.

14 [Recess]

15 [Mr. Rakes, resuming]

16 I have not formally moved, but I would ask that a
17 copy of the accounting be marked as an exhibit and filed.

18 THE COURT: So it would be exhibit Y, consisting of
19 five pages.

20 [PLAINTIFFS EXHIBIT Y marked for identification and
21 received in evidence]

22 MR. FOX: If it please the Court, we object to the
23 order requiring the accounting and likewise object to the entry of this
24 accounting as a part of the evidence. We request that the Court mark
25 it "Sealed" and that it not be made available to the public because the
26 information contained therein about a number of people.

1 THE COURT: Well, your client prepared it --

2 MR. FOX: Yes, sir.

3 THE COURT: -- pursuant to order of the Court.

4 MR. FOX: Pursuant to order of the Court, to which
5 we objected to, Your Honor.

6 THE COURT: I understand.

7 MR. RAKES: I have no objection, Your Honor, to
8 the accounting itself being sealed in the Court record. I do object to
9 any order being suppressed. If we're going to enter a money
10 judgment, it's going to be a matter of public record, as far as I'm
11 concerned.

12 THE COURT: I'm not going to seal this. Nobody
13 comes and looks at these files.

14 MR. FOX: Your Honor, you previously granted Mr.
15 Rakes a like motion.

16 THE COURT: Sealing papers?

17 MR. FOX: Yes, sir. It was more a motion of
18 confidentiality. We were supplied with papers on the grounds that we
19 kept them confidential. We have not tried to introduce them into the
20 record.

21 THE COURT: Do you want me to hold this on my
22 desk?

23 MR. FOX: I don't care where you hold it, Your
24 Honor. I think the problem with it is, it's a matter that we objected
25 to the order, that being one of the reasons we objected.

26 THE COURT: I understand that.

1 MR. RAKES: I have no objection to your putting it
2 in a sealed envelope.

3 THE COURT: I'll just seal it in an envelope, Mr.
4 Fox. There isn't anybody -- all right.

5 Now you're coming back when?

6 MR. FOX: Monday, the 14th.

7 THE COURT: How about the 16th? Well, let's just
8 set it for two o'clock in the afternoon. That's not going to take all
9 day.

10 MR. RAKES: I would assume, Your Honor, that this
11 will be for hearing any additional evidence either party has and
12 giving an order.

13 THE COURT: Yes, sir. And if you will prepare an
14 order in the meantime, and if you want to present evidence on the
15 expenses or anything else you want me to hear, I'll do it.

16 How much time would you allocate for it?

17 MR. RAKES: I would think an hour.

18 THE COURT: Okay. Thank you-all.

19 [Court adjourned 3:30 p.m.]

CERTIFICATE

I, Anna J. Tester, Verbatim Reporter, do hereby certify:

THAT the proceedings herein were duly reported by me and transcribed to the best of my ability;

THAT this transcript is a true and accurate record of the proceedings set forth in the caption; and

THAT, further, I am employed solely for the purpose of reporting the proceedings, and have no interest in this matter or its outcome; nor am I related to or in the employ of any of the parties or their counsel or attorneys.

GIVEN under my hand this 15th day of

Jan. 1978.

Anna J. Tester
VERBATIM REPORTER

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

WILLIAM A. COOK, JR., et al.

vs.

VICTOR F. FOTI, et al.

Case # 3560

BEFORE

ERNEST W. BALLOU
Circuit Judge

DATE

November 16, 1977

TIME

2:00 P.M.

PLACE

Courthouse
Roanoke, Virginia

APPEARANCES

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1 [2:30 p.m.]

2 THE CLERK: This is the case of William A. Cook,
3 Jr., and others, plaintiff, against Victor F. Foti, and others.

4 THE COURT: All right. Now we're going to
5 continue this on from the hearing we had in October. And you have a
6 nonsuit order that's --

7 MR. RAKES: Yes, Your Honor, this is an order
8 which has been endorsed counsel for the defendant, wherein all the
9 defendants except Mr. Foti are being nonsuited.

10 THE COURT: All right, sir. Suppose we enter this
11 November 16 non pro tunc as of -- what day was that?

12 MR. RAKES: Last year was the 27th of October.

13 THE COURT: As of 10/27/77.

14 All right. Do you have another order there
15 incorporating the Court's judgment as of the last time?

16 MR. RAKES: Your Honor, the order is being typed
17 in my office right now that Mr. Wooten's looked at that brings the
18 record up to date.

19 It's hot off the press, I might add. This order,
20 Your Honor, sets forth the rulings the Court made on October 27,
21 having to do with the interest rate, when the payments are due, and
22 disbursement charge for copying.

23 THE COURT: All right.

24 MR. RAKES: I would like, Your Honor, for the
25 record to show that with regard to paragraph 3 of this order Your
26 Honor gave the defendant the choice of computing this copying
27 disbursements on an actual cost basis or on a flat basis of forty cents
28 per page, regardless of number of copies of that particular page.

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1 And it's my understanding that the defendant prefers
2 that it be done on the forty-cent basis in that it's easier to compute
3 and to account for.

4 THE COURT: And you're not sure that's more than
5 his cost or less than his cost?

6 MR. RAKES: I think that's correct.

7 THE COURT: All right.

8 MR. WOOTEN: That's right.

9 THE COURT: All right. Mr. Wooten, you have not
10 seen this order because Mr. Edwards just brought it in. I realize you
11 object to the rulings of the Court, but do you have any objection to
12 the way the order is written insofar as to whether that was the actual
13 ruling of the Court?

14 MR. WOOTEN: I understand those to be the rulings
15 of the Court.

16 THE COURT: All right. Suppose we enter this
17 order as of October 27 also -- non pro tunc as of October 27.

18 MR. RAKES: Your Honor, at the last hearing --

19 THE COURT: Wait a minute.

20 MR. RAKES: I'm sorry, I thought I detected a nod,
21 but it must have been a flinch.

22 THE COURT: I'm not old enough for either one.

23 If you-all will endorse this order as seen or seen and
24 objected to, I would appreciate it.

25 [Handing to counsel for the defendant]

26 [The Court, resuming]

1 All right.

2 MR. RAKES: Your Honor, at the last hearing,
3 certain evidence was taken on the question of damages, and it's my
4 understanding that the defendant has asked for an appealable order
5 with a money judgment; and because of the Court's ruling relating to
6 the copying charges and also because the plaintiffs called to the
7 defendant's attention the names of five or six people who were not on
8 the accounting, the defendant, Mr. Foti, was asked to prepare a new
9 accounting and furnish it to us, which they have done.

10 And now, if Your Honor please, we would like to
11 present some evidence relating to the actual amount of the judgment
12 which we contend we're entitled to.

13 THE COURT: All right.

14 [The witnesses were sworn]

15 ISAAC O. PERKINS,

16 called as a witness by the plaintiffs, being first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. RAKES:

20 Q Please state your name.

21 A My name is Isaac O. Perkins.

22 Q Mr. Perkins, you're one of the plaintiffs in this
23 lawsuit, and I believe have testified previously herein?

24 A That is correct.

25 Q Following the last hearing that was held in this case
26 on October 27, 1977, a revised accounting has been filed by Mr. Foti.
27 And I hand you a xerox copy of the revised accounting and I ask you

1 if you can identify that as being the revised accounting that has been
2 furnished to the plaintiffs?

3 A Yes, that's a copy.

4 MR. RAKES: I would ask that this be marked the
5 next --

6 THE COURT: I don't know what exhibit it is.

7 MR. RAKES: -- plaintiffs' exhibit.

8 THE COURT: Let's make it exhibit AA.

9 MR. RAKES: All right, sir.

10 THE COURT: Yes, sir, you can mark it. That's the
11 revised accounting -- accounting as of what?

12 MR. RAKES: The accounting was for the year
13 October 1, 1976, through September 30, 1977.

14 [PLAINTIFFS' EXHIBIT AA marked for identification and
15 received in evidence]

16 [Mr. Rakes, resuming]

17 Q Mr. Perkins, have you, or has anyone on your
18 behalf, examined the books of Persinger, Foti & Company or of Victor
19 Foti to ascertain or confirm the accuracy of this accounting?

20 A No, we have not.

21 Q So this is the accounting that has been furnished to
22 you, and you have reviewed it and are familiar with it?

23 A That's correct.

24 Q Mr. Perkins, based upon this accounting, which has
25 just been introduced in evidence, have you made a compilation
26 regarding the appropriate to be charged for photocopying and
27 regarding the interest that's due and payable pursuant to the Court's
28 previous ruling herein?

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1 A Yes, I have. The photo fees collected amounted to
2 \$1536, and the total photo fees have been copied, so -- have been
3 subtracted, so sixty percent of the \$1500 should be added back, or
4 \$921.60.

5 We also computed the --

6 THE COURT: Wait a minute. Say that again.

7 THE WITNESS: \$921.60 should be added back to the
8 gross fees collected.

9 THE COURT: I don't understand what you're talking
10 about. You were talking about \$1500. Start from the beginning and
11 explain it.

12 Now, you remember, Mr. Perkins, you're familiar
13 with that accounting. I haven't seen it, even. So start like I'm in
14 the first grade.

15 [The witness, resuming]

16 A Okay. Your Honor, there were \$1874.50 fees -- total
17 fees included in the accounting.

18 THE COURT: Total fees for what?

19 THE WITNESS: Total photocopying fees.

20 THE COURT: Eighteen hundred and fifty-four
21 dollars?

22 THE WITNESS: Eight hundred and seventy-four
23 dollars and fifty cents.

24 THE COURT: Wait a minute. Say that again.

25 THE WITNESS: Eighteen hundred seventy-four
26 dollars and fifty cents --

1 THE COURT: All right.

2 THE WITNESS: -- were the total photocopy charges
3 included in the accounting.

4 THE COURT: All right.

5 [The witness, resuming]

6 A Of this amount, \$338.50 was uncollected, which means
7 that there was \$1536 of fees collected --

8 THE COURT: Photo fees collected.

9 A -- photo fees collected -- for the year, at one dollar
10 per page.

11 We agreed on forty cents per page, so sixty percent
12 of that is unallowable -- unallowable charges. Let me go back to the
13 beginning.

14 THE COURT: I understand what you're talking
15 about.

16 [The witness, resuming]

17 A So there's a \$120,000 of fees. This has been reduced
18 by expenses of five thousand. Of this reduction of five thousand,
19 sixty percent of the fifteen hundred -- \$921 -- should not have been
20 deducted.

21 THE COURT: I understand that. All right.

22 [Mr. Rakes, resuming]

23 Q As the accountants say, what's the bottom line of all
24 that?

25 A The bottom line of all the fees collected for the year
26 is \$115,974.48.

1 THE COURT: That's all fees collected less
2 chargeable expenses?

3 THE WITNESS: That's right.

4 Q All right, sir. Now, based on that, Mr. Perkins,
5 have you computed interest on those fees at the legal rate of eight
6 percent from the time the fees were collected by Persinger, Foti &
7 Company as those dates are shown on the accounting?

8 A We have. The total interest at eight percent, figured
9 on a daily basis from the date the receipt was collected, was
10 \$4,818.44.

11 THE COURT: That's interest from when to when?
12 Interest to what date? From the date collected --

13 THE WITNESS: From the date collected to November
14 16.

15 THE COURT: To date. All right.

16 [Mr. Rakes, resuming]

17 Q Now, in reviewing the accounting, Mr. Perkins, it
18 appears that some fees charged these clients were collected in
19 installments. Sometimes there would be four or five different
20 payments on a fee. And it further appears from reviewing the
21 accounting that no dates are given when those particular installments
22 were received by Persinger, Foti & Company, is that correct?

23 A That's correct.

24 Q In an instance where you had, for example, four
25 payments made on a fee that was charged, and there's no indication of
26 when those four payments were made, how did you compute the
27 interest?

1 A In the case of Wendon -- W E N D O N Chemical --

2 Q Can I interrupt you. Can you state a rule that was
3 consistently followed throughout, rather than just give us examples?

4 A Yes. In this particular case, there were seven
5 payments. We took the last payment date and computed the interest
6 from the last payment date, ignoring the six previous payments.

7 Q So you only charged interest in your computation
8 then from the date of the last payment received by Persinger Foti on
9 a particular account?

10 A That is correct.

11 THE COURT: How do you know the last payment
12 date? Do you have that?

13 THE WITNESS: Yes, I have that.

14 Q So, in effect, you waived interest on the partial
15 payments for purposes of this computation?

16 A Yes.

17 Q All right, sir. Adding the interest figure that you
18 have just analysed to the other figures, based on your computations
19 from that accounting, what is the total amount due Andrews Burket as
20 of today, covering fees collected from clients through September 30,
21 1977?

22 A \$40,264.31.

23 Q And that represents one third of the fees?

24 A One third of the fees and one third of the total
25 interest.

26 Q Well, interest at the rate of eight percent, not one
27 third of the total interest?

1 A That's right. Interest at the rate of eight percent.

2 MR. RAKES: You may question the witness.

3 MR. WOOTEN: No questions.

4 [Witness excused]

5 THE COURT: Any further evidence?

6 MR. RAKES: May I have just one second?

7 THE COURT: Yes, sir.

8 MR. RAKES: We have no further evidence, Your
9 Honor.

10 MR. WOOTEN: Your Honor, Mr. Rakes and I have
11 agreed to put into evidence a computation prepared by Mr. Foti,
12 which lists clients that he will testify came to Persinger Foti with some
13 accountant other than him, some former employees of Andrews
14 Burket.

15 THE COURT: Mr. Foti had nothing to do with the
16 clients when he was employed or associated with Andrews Burket?

17 MR. WOOTEN: That's right.

18 THE COURT: And those clients have come to R. L.
19 Persinger & Son subsequent to Mr. Foti leaving the firm?

20 MR. WOOTEN: Yes, sir. And he has not personally
21 performed any work for these clients since being at Persinger Foti.

22 THE COURT: These clients are listed in the
23 accounting which R. L. Persinger furnished to Andrews Burket for
24 which Mr. Perkins just testified he was entitled to a judgment,
25 included in that forty-two thousand plus dollars, is that right?

26 MR. WOOTEN: Yes, sir.

1 THE COURT: All right.

2 MR. WOOTEN: And pursuant to our previous
3 argument made, of course, we want to put this list in.

4 THE COURT: All right.

5 MR. RAKES: May I have a copy of this. We may
6 want to ask Mr. Foti some questions relating to this list.

7 THE COURT: All right. That will be exhibit AB.

8 [DEFENDANT'S EXHIBIT AB marked for identification and
9 received in evidence]

10 [The Court, resuming]

11 Let me ask you-all this question about that list. I'll
12 get to it in a minute.

13 MR. RAKES: May I ask Mr. Wooten a question
14 pertaining to the stipulation?

15 THE COURT: Yes, sir.

16 MR. RAKES: Mr. Wooten, do I understand from you
17 that this list that you've presented that it's Mr. Foti's testimony that
18 he did not do the work for these people while he was a partner at
19 Andrews Burket & Company and that the work was done by other
20 people at Andrews Burket, and then these people came to Persinger,
21 Foti & Company and he hadn't done any work for them there, either?

22 MR. WOOTEN: Yes, sir. And those people are
23 included on the big list, the figures were exactly the same --

24 MR. RAKES: But it has already been established
25 that he was a partner in the firm of Andrews Burket while the work
26 was being done there --

1 MR. WOOTEN: That is correct.

2 MR. RAKES: -- and he is now a partner in the firm
3 of Persinger Foti while the work is being done there?

4 MR. WOOTEN: That is correct.

5 THE COURT: All right. Now, for the purpose of
6 the accounting, how much of this \$42,264.31 is included on that list,
7 Exhibit AB?

8 MR. FOTI: That was forty thousand, wasn't it, sir?

9 MR. RAKES: Forty thousand.

10 THE COURT: I stand corrected -- \$40,264.31.

11 MR. RAKES: Judge, this shows a gross fees of
12 about sixteen thousand dollars, and a third of sixteen is four, so it
13 would represent about four thousand --

14 MR. FOTI: A third of sixteen is fifty-three
15 hundred.

16 MR. FOX: Fifty-three hundred, plus your interest.

17 MR. RAKES: I'm sorry, fifty-three hundred.

18 THE COURT: Plus the interest. I want the exact
19 figure.

20 MR. RAKES: But we also don't know how much was
21 collected of this.

22 THE COURT: Well, was it all collected?

23 MR. FOTI: Yes.

24 MR. FOX: That's all included in the collected
25 portion.

26 THE COURT: Well, how long will it take you to
27 compute the interest on that and give me that figure so it will be in
28 evidence?

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1 MR. RAKES: Judge, I think we're getting off base.
2 If Windon is already included on the main accounting we've filed, then
3 part of it hasn't been collected.

4 THE COURT: He says that all of it has not been
5 collected, Mr. Foti.

6 MR. FOTI: The total out of that would be one third
7 of four thousand dollars that has been collected. The total is fifty-
8 eight hundred dollars. Four thousand out of the fifty-eight has been
9 collected.

10 THE COURT: For that one client?

11 MR. FOTI: Yes, sir.

12 THE COURT: Okay.

13 MR. RAKES: I don't know anything about the rest of
14 them. I thought this was being introduced only to show that there
15 are clients that have gone to Persinger Foti from Andrews Burket that
16 Mr. Foti disclaims having performed work for at either place.

17 Now, you know, for that proposition, based on his
18 testimony, I think that's fine. But I haven't scrutinized these
19 figures at all, and I'm not willing to --

20 THE COURT: I'm just trying to put a figure in here
21 in case -- you know, when you appeal it, the Supreme Court says
22 they should not be included, that they can arrive at a figure, you
23 know, without coming back and computing it.

24 MR. RAKES: There's no evidence, for example, that
25 even though he didn't do work for these at Andrews Burket whether
26 or not he had any client responsibility for them. He was the chief
27 audit partner at Andrews Burket. So --

1 THE COURT: Put him on the stand and ask him.

2 MR. RAKES: This is not my evidence. This is
3 theirs.

4 MR. WOOTEN: Your Honor, the purpose of the
5 exhibit as offered has been stated, and that's why it's offered in
6 support of legal argument that was presented in brief: that those
7 people ought not to be included.

8 THE COURT: All right. But I'm just trying to get
9 the figure you-all are talking about, but you-all won't give it to me.
10 And if you don't want it, I'm not going to worry about it.

11 MR. WOOTEN: I understand, Your Honor.

12 MR. FOX: Your Honor, there's no way we could
13 figure that figure in a very short time, because of the interest and
14 other factors.

15 MR. FOTI: Also the photocopy costs, too.

16 THE COURT: I'm sorry I got into that photocopy
17 business.

18 Okay. Any other evidence?

19 MR. WOOTEN: Your Honor, we have one more
20 exhibit that you've already ruled on. We have a list of charges paid
21 by Persinger, Foti & Company to Andrews Burket. Your Honor has
22 ruled that we're not entitled to deduct those as an expense, but we
23 do, for the record, want to put a listing of those expenses in.

24 THE COURT: All right. That will be Exhibit AC.

25 [DEFENDANT'S EXHIBIT AC marked for identification and
26 received in evidence]

1 MR. RAKES: Your Honor, I would object to this on
2 the grounds that what we're talking about here is charges made for
3 copies of work papers which Persinger Foti got from Andrews Burket
4 following the client changing accounting firms. And I don't see where
5 this has any pertinence under the partnership agreement that's
6 being --

7 THE COURT: Well, I agree with you, and I've
8 already ruled that way. But I'm going to let him put it in evidence
9 for such purposes he may deem appropriate on appeal.

10 MR. RAKES: I understand.

11 MR. WOOTEN: That would be all we have.

12 THE COURT: No further evidence?

13 MR. WOOTEN: No, sir.

14 MR. RAKES: No, sir.

15 THE COURT: May I have the order so I can enter
16 the judgment.

17 MR. RAKES: I've already managed to lose it.

18 THE COURT: Forty thousand two sixty-one, is that
19 correct?

20 MR. RAKES: Yes, sir.

21 Your Honor, in the paragraph at the bottom of the
22 page, I would ask the Court to require a bond with surety for the
23 amount of the judgment plus costs. I would think five hundred to a
24 thousand dollars would be adequate to cover costs.

25 THE COURT: Well, when you get that -- I was just
26 thinking forty-five thousand dollars.

1 MR. RAKES: That's fine with me.

2 THE COURT: Any objection to that? Forty-two
3 thousand?

4 MR. RAKES: I have no objection.

5 MR. FOX: No objection.

6 THE COURT: All right. When are you going to post
7 your appeal bond?

8 MR. FOX: Give us thirty days to post it and we'll
9 post it right away.

10 THE COURT: Well, it will be docketed as of today,
11 unless I direct that it not be docketed.

12 MR. FOX: We would move -- request the Court that
13 you not docket it, Your Honor.

14 MR. RAKES: I thought the objective of bond here
15 was to suspend judgment.

16 THE COURT: Well, it is. It is to suspend execution
17 on the judgment.

18 MR. RAKES: I'm willing to give them whatever time
19 they think they need to post it. I have no intent to worry about
20 executing on the judgment.

21 MR. FOX: No, we're worrying about docketing the
22 judgment.

23 THE COURT: I'm talking about docketing the
24 judgment.

25 MR. RAKES: I would agree that it not be docketed.

26 MR. FOX: Thank you.

1 THE COURT: All right. I will just put it in --

2 MR. RAKES: Wait a minute, let's think a minute. I
3 may be confused. But it's the execution on it that we're
4 suspending --

5 THE COURT: That's all you're doing --

6 MR. RAKES: Doesn't the judgment have to be
7 docketed?

8 THE COURT: Unless you agree not to do it -- to
9 docket it.

10 MR. RAKES: No, I think the judgment would be
11 docketed, but we would agree that execution is going to be suspended
12 for thirty days, as set forth in the order.

13 MR. FOX: We would request, Your Honor, the
14 judgment not be docketed.

15 MR. RAKES: How can we appeal it if it's not
16 docketed?

17 MR. FOX: It's being entered, but it's not being
18 docketed.

19 Mr. Rakes, the only difference is -- off the record,
20 please.

21 [Discussion off the record]

22 THE COURT: Then let me put in this order then
23 directing this judgment not be docketed until further order from the
24 Court.

25 Then if you want it docketed, you can give him
26 notice you're going to move the judgment be docketed and then docket
27 it.

1 MR. RAKES: This is not in any way going to affect
2 that a judgment has been entered; the thirty days starts to run from
3 today; and interest is going from today?

4 THE COURT: The judgment is -- the only difference
5 is the judgment is not put in the judgment lien docket book; there's
6 not a lien on any of his real estate; no execution is issued on it.

7 And if he doesn't post his bond, you can come up
8 here in thirty days and say, "Docket it, and I want to execute on
9 anything you got."

10 MR. RAKES: That's okay. As long as the bond is
11 posted.

12 THE COURT: And if he posts the bond, you see,
13 you get your money out of the bond. Otherwise, in thirty days, you
14 just proceed.

15 All right.

16 [Hearing adjourned 2:50 p.m.]

CERTIFICATE

I, E. Wayne Perdue, Verbatim Reporter, do hereby certify:

THAT the proceedings herein were duly reported by me and transcribed to the best of my ability;

THAT this transcript is a true and accurate record of the proceedings set forth in the caption; and

THAT, further, I am employed solely for the purpose of reporting the proceedings, and have no interest in this matter or its outcome; nor am I related to or in the employ of any of the parties or their counsel or attorneys.

GIVEN under my hand this 15th day of

January 1978.

E. Wayne Perdue

VERBATIM REPORTER

ARTICLES OF PARTNERSHIP

THIS AGREEMENT made as of the 1st day of October, 1974; bet
WILLIAM A. COOK, JR., JAMES M. DILLON, VICTOR F. FOTI, LACY W. HANSO
PERKINS, R. DAVID ROTTY, AND JOSEPH B. WRIGHT, hereinafter sometime
"the partners".

WHEREAS, the partners and their predecessors have been conducting a
public accounting practice for a number of years under the names of T. Coleman
Andrews & Co., and Andrews, Burket & Co., pursuant to the terms and conditions of
a partnership agreement dated October 1, 1942, as amended from time to time; and

WHEREAS, it is desired to restate the provisions of the agreement dated
October 1, 1942, as heretofore amended, and to make certain additional amendments
thereto;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the
mutual advantage to be derived and other valuable considerations, the parties here-
to do hereby covenant and agree as follows, to-wit:

ARTICLE I

1.1 The name of the partnership shall be ANDREWS, BURKET & CO.

1.2 The duration of the partnership shall be as hereinafter set forth
in ARTICLE III.

1.3 The business of the partnership shall be the practice of public
accounting and all other related activities.

1.4 The principal office of the partnership shall be in Roanoke,
Virginia.

ARTICLE II

II.1 The name of the firm and all prior names used by the partnership
or its predecessors shall belong to and may be used by the partnership until the

partnership is terminated and may not be sold or otherwise disposed of for value as long as the partnership exists.

II.2 Upon the death, retirement, withdrawal, resignation or expulsion of any partner, the name of the partnership and all prior names shall remain and be vested in the remaining active partners.

II.3 Upon final termination of the partnership, the name shall belong to the then surviving active partners and may be disposed of in such manner as may be determined by them.

II.4 The name of the partnership may be changed in the manner hereinafter provided for the amendment of this agreement, but no such change shall result in the relinquishment of any rights herein stated to any prior name thereof.

ARTICLE III

III.1 The duration of the partnership shall be continuous, and the death, retirement, withdrawal, resignation or expulsion of a partner, or the admission of additional partners shall not act to terminate the partnership.

III.2 The partnership may be terminated at any time with the consent of the partners.

ARTICLE IV

IV.1 The fiscal year of the partnership, unless otherwise provided by amendment hereto, shall end on the 30th day of September in each year, and within a reasonable time thereafter, each partner shall be entitled to receive financial statements of assets and liabilities at the end of each year and of earnings for the year ended that date.

IV.2 The distribution of profits and losses of the partnership and determination of capital accounts shall be made in accordance with the provisions of "APPENDIX A" herewith attached and made a part of these articles.

ARTICLE V

V.1 Any partner shall have the right to voluntarily withdraw or resign from the partnership upon sixty (60) days prior written notice to the other partners, unless such notice is waived by unanimous consent of the other partners.

V.2 If the partners (other than the partner with respect to whom action is under consideration) determine by vote that it would be to the best interest of the partnership, because of a partner's disability, incapacity, misconduct or neglect of duty, or any other reason, for a partner to retire or withdraw from the partnership, he shall be requested to retire or withdraw as the case may be. A partner to whom such request is directed shall be considered to have retired or withdrawn as of the last day of the month requested.

V.3 A partner, who voluntarily withdraws or resigns, or who is requested to withdraw or resign, shall not, except for severance and/or disability benefits which he may be entitled to receive under APPENDIX B, be entitled to any benefits unless the partners (other than the withdrawing or resigning partner) shall otherwise agree.

V.4 The retirement of partners shall be controlled by APPENDIX B attached hereto. The benefits payable upon retirement or death shall also be determined in accordance with said appendix.

V.5 No payments made by agreement of the partners to a withdrawing or resigning partner shall be considered as payments made in consideration for any assets or property of any kind.

ARTICLE VI

VI.1 Each of the partners covenants and agrees that:

(i) He will pay and satisfy his personal debts so that no claims may arise which would in any wise hamper or interfere with the operations of the partnership;

(ii) No partner shall have the right to assign any interest he may have in the partnership or any of its assets;

(iii) Each partner will devote his full time to business of the partnership and will not, without the prior written consent of the other partners, engage in any other profession, trade or business.

(iv) During the twenty-four months immediately following the termination of his membership in the partnership, unless such termination is involuntary under the provisions of ARTICLE V.2 of this agreement, a partner will not offer to perform or perform services as a Certified Public Accountant or Public Accountant to any client of the partnership. A partner violating this subsection shall pay to the partnership an amount equal to one-third of each year's fee collected for a period of three years. Such amount is due when collected from the client by the former partner. Nothing herein shall be construed as preventing a partner, whose membership in the partnership is terminated, from performing bookkeeping or accounting services as a full time employee of any person, firm or corporation which is not engaged in the business of providing bookkeeping or accounting services for others. The benefits of this subsection shall inure to and be enforceable by any partnership or other organization into which or with which the partnership of ANDREWS, BURKET & CO., is merged or consolidated.

ARTICLE VII

VII.1 Wherever in these Articles or in the Appendixes thereto it is provided that any action may be taken by or with the approval or consent of the Partners, or when in the opinion of the Partners certain conditions exist, such action, approval or consent, or opinion shall require the affirmative vote of those members of the partnership who, under the provisions of APPENDIX A, are at that time entitled together to at least sixty-six percent (66%) of the net earnings (after salaries) of the partnership, or where by reason of the death of a Partner, one hundred percent (100%) of the net earnings are not at that time allocated to Partners, or where in consideration of any matter, a Partner is not entitled to vote or act

thereon, then such action, approval, or consent, or opinion, shall require the affirmative vote of those members of the partnership who, under the provisions of APPENDIX A, are at that time entitled together to sixty-six percent (66%) of the net earnings (after salaries) of the partnership at that time allocated among the Partners entitled to act on the matter. Unless expressly otherwise provided, no action shall require the unanimous consent of the Partners.

VII.2 In this agreement, "Partners" shall include only persons who are active members of the partnership and shall not include former partners who have retired, resigned, withdrawn or died.

ARTICLE VIII

VIII.1 The provisions of this Agreement shall control, as of its effective date, the rights and obligations of the Partners on such date and of those persons thereafter admitted as Partners. The provisions hereof shall not affect rights and obligations under any agreement heretofore entered into with a deceased or retired partner or with any third party.

ARTICLE IX

IX.1 APPENDIX A and APPENDIX B shall be a part of this Agreement and Articles of Partnership to the same extent as if set forth in full in this instrument.

ARTICLE X

X.1 Amendments to these Articles of Partnership and to APPENDIXES A and B may be made at any time upon the consent of the Partners.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the 1st day of October, 1974.

William A. Cook, Jr. (SEAL)
WILLIAM A. COOK, JR.

James M. Dillon (SEAL)
JAMES M. DILLON

Victor F. Foti (SEAL)
VICTOR F. FOTI

Lacy W. Hanson (SEAL)
LACY W. HANSON

Isaac O. Perkins (SEAL)
ISAAC O. PERKINS

R. David Rotty (SEAL)
R. DAVID ROTTY

Joseph B. Wright (SEAL)
JOSEPH B. WRIGHT

ARTICLES OF PARTNERSHIP OF ANDREWS, BURKET & CO.OCTOBER 1, 1975ARTICLE INet Profits - Salaries - Distributions

(a) The net profits or losses of the Partnership for each fiscal year shall be determined on a cash basis.

(1) Net unrecorded assets is defined as accounts receivable, work-in-process at 95% of standard billing rates and other prepaid expenses less accounts payable and other unrecorded liabilities including retirement, death or severance benefits accrued under ARTICLE II OF APPENDIX B. (Retirement or death benefits based on the "Fund" shall be accrued on a monthly basis when payable.)

(2) The proceeds of insurance payable to the Partnership at the death of a Partner shall not be taken into account in determining the amount of such net profits or losses. The insurance proceeds shall be disbursed in the manner provided in Paragraph (f) of this Article.

(b) In determining the net profits or losses for each fiscal year, there shall be taken into account, disability and death benefits paid as provided in APPENDIX B, any interest paid to Partners, former Partners and the estates of former Partners, and also the then current annual salaries of the Partners, which annual salaries as presently agreed upon to be \$25,600 each, except for Joseph B. Wright, whose salary shall be \$22,000.

(c) Until the number of units and their allocation shall have been changed in the manner hereinafter provided, the net profits or losses as defined in (a) above and after the deductions set forth in (b) above, shall be divided into twenty thousand (20,000) units, and shall be allocated to each in proportion to the number of units set forth opposite his name as follows:

William A. Cook, Jr.	\$ 3,200
James M. Dillon	3,200
Victor F. Foti	3,200
Lacy W. Hanson	3,200
Isaac O. Perkins	3,200
R. David Rotty	3,200
Joseph B. Wright	800
	<u>\$20,000</u>

The number of units into which the net profits or losses are divided and the allocation of units among the Partners may be changed at any time by consent of sixty-six percent (66%) in interest of the Partners, and shall be changed as to number or allocation, or both, as of the first day of the first month following the date upon which a Partner's membership in the Partnership is terminated. The disposition of the units that were allocated to a person who is no longer a Partner shall be made in accordance with the decision of sixty-six percent (66%) in interest of the remaining Partners.

(d) For the fiscal year in which a Partner's membership in the Partnership is terminated, such Partner or his estate shall be entitled to receive, in addition to any benefits provided under APPENDIX B of the Articles of Partnership, such portion of such Partner's salary and such portion of the net profits or losses allocated to him under (c) above as the number of months elapsed from the first day of such fiscal year to the last day of the month during which such termination occurs bears to the total number of months in such fiscal year. The share in the net profits or losses shall be combined with the net balance or deficit of the combined balance of the capital account and current account as determined in accordance with ARTICLE II (b) and (c). Any credit balance remaining after combining these amounts shall be paid as soon as practicable after the last day of the calendar year which includes the last day of the fiscal year of the Partnership.

(e) Reserved

(f) Proceeds of insurance payable to the partnership at the death of a partner, as determined under (a) above, shall be apportioned among the then surviving partners who remain as partners through the following September 30, giving to each of them that ratio of the total which the number of units of the net profits of the partnership allocated to him on the date of said death for the then current year

bears to the total number of units then allocated to all such partners remaining through the following September 30. Neither the deceased partner nor his estate nor any person who ceases to be a partner prior to the following September 30, shall receive any part of such insurance proceeds.

ARTICLE II

Partnership Capital - Current Accounts

(a) Fixed Capital:

(1) Sixty-six percent (66%) in interest of the partners shall, by consent, determine the aggregate capital required from time to time by the Partnership. Such aggregate capital, and the amount thereof to be contributed by each partner, shall be referred to hereinafter as the "fixed capital". As of the date of this agreement, the fixed capital is one-hundred-fifty-five thousand dollars (\$155,000).

(2) The fixed capital of the Partnership may be increased or decreased at any time by consent of sixty-six percent (66%) in interest of the partners.

(3) The fixed capital of each partner shall be an amount which bears the same ratio to the aggregate capital as his portion of the net profits or losses after partners' salaries bears to all such net profits. The net profits or losses and portion thereof referred to here are those set forth in ARTICLE I of this APPENDIX A.

(4) If a deficiency exists in the fixed capital of a partner as the result of an increase in the fixed capital of the partnership, or in the fixed capital of the partner, such partner shall pay such deficiency as promptly as reasonably

possible, and after the expiration of thirty (30) days from the date of action resulting in the deficiency, such Partner may be charged by the Partnership interest on the deficiency at the rate of twelve percent (12%) per annum.

(b) Capital Accounts:

(1) There shall be carried in the general books of the Partnership a separate capital account in the name of each Partner. The capital account of each Partner shall be credited with his contribution of fixed capital as determined in accordance with the foregoing Paragraph (a).

(2) No Partner may withdraw any part of his capital account without the consent of sixty-six percent (66%) in interest of the Partners or such other Partner as may be from time to time designated by sixty-six percent (66%) in interest of the Partners to approve such withdrawals.

(c) Current Accounts:

(1) There shall be carried in the general books of the Partnership a separate current account in the name of each Partner. The current account of each Partner shall be credited on the first day of each month with one-twelfth (1/12) of his annual salary; and, as at the end of each fiscal year, shall be credited or charged, as the case may be, with his portion of net profits or losses and the interest, if any, to which he becomes entitled or is chargeable in accordance with ARTICLE III of this APPENDIX A. The current account of each Partner shall be charged with all withdrawals of funds made by him. Amounts available for withdrawal by Partners from their current accounts shall be determined by adding to or deducting from the prior year's profits or losses their proportionate share, based on the units set forth in ARTICLE I (c), of the increase or decrease of net unrecorded assets, as defined in ARTICLE I (a) (1), at September 30 as compared to October 1 of that fiscal year. These amounts shall be withdrawn 45% on November 14, 25% on January 14, 20% on April 14, and 10% on June 14. No Partner may withdraw more than the amount so determined to be available for withdrawal without the consent of sixty-six percent (66%) in interest of the Partners or such other Partner as may be from time to time

Withdrawals.

(2) Any retired, disabled, withdrawn or expelled Partner, or the estate of any deceased Partner may withdraw from such Partner's current account, on the conditions set forth in Paragraph (d) below.

(3) When units allocated among the Partners are reallocated, net unrecorded assets as defined in ARTICLE I (a) (1) will be reallocated in proportion to the reallocated units set forth in ARTICLE I (c). Each Partners' share of net profits or losses, as determined under the provisions of ARTICLE I (c), will be decreased when his share of net unrecorded assets increases and will be increased when his share of net unrecorded assets decreases to the extent this increase or decrease resulted from the reallocation of units.

(d) Payment of Capital Account of a Partner Whose Membership in the Partnership is Terminated Shall be as Follows:

The amount of fixed capital standing to the credit of a Partner at the time his membership is terminated shall be reduced by the debit balance, if any, in his current account. Any credit balance remaining shall be paid as soon as practicable after the last day of the calendar year which includes the last day of the fiscal year of the Partnership. Any deficiency remaining will be applied as a reduction in the Partner's share, based on the units set forth in ARTICLE I (c), of the net unrecorded assets as defined in ARTICLE I (a) (1). The remainder of the Partner's share of net unrecorded assets will be considered death, retirement or severance benefits and will be payable one-third ($1/3$) on January 10 of each of the succeeding three years following the year ending on September 30 in which such event occurred. For the purpose of reducing the amount in the Partner's capital account by any debit balance in his current account, the debit balance, if any, in his current account, in the case of death, withdrawal or expulsion shall be determined as of the end of the month in which his death, withdrawal or expulsion occurs, after crediting or debiting, as the case may be, thereto his share of the Partnership net income or loss for the year ending on the September 30, following such event.

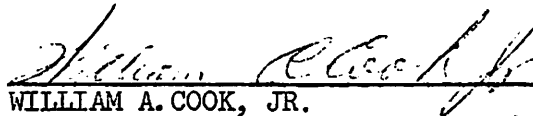
ARTICLE III

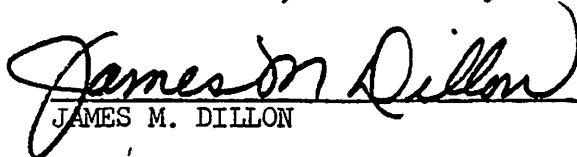
Interest on Capital - Interest on Current Account Balance

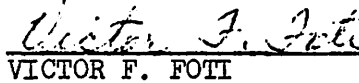
(a) No interest shall be paid to any Partner on the amount of fixed capital required under Paragraph (a) of the foregoing ARTICLE II.

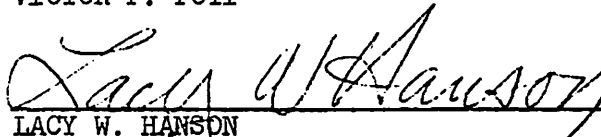
(b) Sixty-six percent (66%) in interest of the Partners shall determine, annually or at such other time as they deem appropriate, whether interest will be charged against or credited to Partner's current accounts because of debit or credit balances therefor. If they determine interest is to be charged or credited, they shall also determine the rate of interest to be used for all Partners and the method of determining the amount of interest to be charged or credited to each of them.


IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the 1st day of October, 1975.


 (SEAL)
WILLIAM A. COOK, JR.

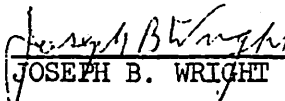
 (SEAL)
JAMES M. DILLON

 (SEAL)
VICTOR F. FOTI

 (SEAL)
LACY W. HANSON

 (SEAL)
ISAAC O. PERKINS

 (SEAL)
R. DAVID ROTTY

 (SEAL)
JOSEPH B. WRIGHT

to
ARTICLES OF PARTNERSHIP OF ANDREWS, BURKET & CO.

RECITAL

WHEREAS, the Articles of Partnership dated as of October 1, 1974, provided that, upon death, withdrawal or retirement, a Partner shall be entitled to receive the benefits provided for in APPENDIX B and any amendments thereto; and

WHEREAS, the members of the Partnership have agreed that, until hereafter changed by consent of sixty-six percent (66%) in interest of the Partners at the time of such change, the rights of a Partner to death, retirement, severance and disability benefits (hereinafter collectively sometimes referred to as "benefits") shall be as hereinafter set forth;

NOW, THEREFORE, in consideration of the premises, the members of the Partnership of ANDREWS, BURKET & CO., hereby agree as follows:

ARTICLE I

Retirement

Each present Partner shall retire on the first day of October next following such Partner's sixty-second (62nd) birthday (such date being hereinafter referred to as the "retirement date") and may retire voluntarily on the first day of any month following such Partner's fifty-seventh (57th) birthday provided he gives to the Partnership at least twelve (12) months' prior written notice (such date being hereinafter referred to as the "early retirement date"). A Partner who gives such notice shall not be allowed to rescind the same. Any Partner who voluntarily or involuntarily withdraws or resigns before reaching his retirement date or early retirement date shall not be entitled to any benefits except severance benefits determined under ARTICLE II (c) below unless sixty-six percent (66%) in interest of the Partners (other than the withdrawing or retiring Partner) may otherwise agree under the provisions of ARTICLE V of the Articles of Partnership. For purposes of determining

each Partner certifies the date of his birth, the date on which he first became a Partner, and his retirement date to be that set opposite his name as follows:

	<u>Date of Birth</u>	<u>Partner</u> <u>October 1</u>	<u>Retirement</u> <u>Date</u> <u>October 1</u>
Isaac O. Perkins	Feb. 18, 1928	1958	1990
William A. Cook, Jr.	Jan. 13, 1930	1961	1992
Lacy W. Hanson	May 30, 1933	1964	1995
James M. Dillon	Sept. 7, 1935	1969	1997
Victor F. Foti	Feb. 25, 1936	1969	1998
R. David Rotty	Nov. 13, 1933	1969	1996
Joseph B. Wright	Aug. 20, 1937	1974	1999

ARTICLE II

Benefits

The provisions of this ARTICLE II cover the benefits payable on account of the retirement, death, withdrawal or disability of a Partner. These benefits are based on share of "net unrecorded assets" and "fund".

(a) Net Unrecorded Assets:

The Partner's share of net unrecorded assets as defined in ARTICLE I

(a) (1) of APPENDIX A shall be determined as of September 30 of the year in which the retirement, death, withdrawal or disability occurred based on his share of the units set forth in ARTICLE I (c) of APPENDIX A. The amount so determined shall then be reduced, as required by ARTICLE II (d) of APPENDIX A, by any net capital account deficiency. The amount then remaining is available for benefits under this Article.

(b) Fund:

The benefits of the Partner shall be based on a "fund" which shall be, at any time, twice (2 times) the average of the total of his amounts available for withdrawal under ARTICLE II (c) of APPENDIX A and his salary from the Partnership as set forth in ARTICLE I (b) of APPENDIX A plus three thousand dollars (\$3,000) for the five (5) full fiscal years most recently completed prior to a Partner's death, retirement, withdrawal, disability or the September 30 next following his fifty-seventh

(57th) birthday whichever is earlier.

(c) Severance Benefits:

Any partner who voluntarily or involuntarily withdraws or resigns before reaching his retirement date or early retirement date shall be entitled to receive the benefits determined under (a) of this Article. These amounts will be payable one-third ($1/3$) on January 10 of each of the succeeding three (3) years following the year ending on September 30 in which such withdrawal occurred.

(d) Death Benefits:

(1) The estate of each Partner who shall die before his retirement date shall be entitled to benefits described in (a) of this Article. These amounts will be payable one-third ($1/3$) on January 10 of each of the succeeding three years following the year ending on September 30 in which the Partner's death occurred. The right is reserved to anticipate these payments on such earlier dates following the forementioned September 30 as sixty-six percent (66%) of the then Partners shall agree.

(2) The estate of each Partner who shall die before his retirement shall also be entitled to receive, in the manner hereinafter stated, one-twentieth ($1/20$) of the death benefits which are the "fund" for each full year that he shall have been a Partner prior to his death up to twenty (20) years. For the purpose of this paragraph, a Partner whose death occurs after the sixth (6th) month of the Partnership's fiscal year shall be considered to have been a Partner for the entire fiscal year in which his death occurred; but a Partner whose death occurs in or prior to such sixth (6th) month shall not be considered to have been a Partner for the fiscal year in which his death occurs.

(3) The estate of each Partner who shall die after his retirement shall be entitled to receive the same death benefits as those determined in Paragraph (d) (1) and (2), less the retirement benefits, if any, theretofore paid to such Partner.

(4) The benefits described in (d) (2) of this Article which the estate of a deceased Partner who dies prior to retirement is entitled to receive shall be paid on one hundred and twenty (120) consecutive equal installments to such estate or the assignee of such estate with the first installment payable on the last day of the month following the month in which such Partner died and one installment being payable on the last day of each of the next following one hundred and nineteen (119) months. These death benefits payable to the estate of a Partner who dies after retirement shall be paid in such number of consecutive monthly installments as is equal to one hundred and twenty (120) less the number of months elapsed from the first day of the month of his retirement.

(e) Retirement Benefits:

(1) Each Partner who retires on his retirement date shall be entitled to receive benefits described in (a) of this Article. These amounts will be payable one-third ($1/3$) on January 10 of each of the three succeeding years following the year ending on September 30 in which such retirement occurs.

(2) Each Partner who retires on his retirement date shall also be entitled to receive, out of the earnings of the Partnership, the following amounts: For each of the five (5) years next following the date upon which he retires (i) ten percent (10%) of the amount which would have been his death benefits determined under (d) (2) of this Article had his death occurred on his retirement date, or (ii) Twelve Thousand Dollars (\$12,000) whichever of (i) or (ii) is the greater; for each of the succeeding five (5) years (i) twenty percent (20%) of the balance of the said amount which would have been his death benefits remaining after the payments made during the first five (5) years or (ii) Ten Thousand Dollars (\$10,000), whichever of (i) or (ii) is the greater; and for each of the remaining years that he lives, Six Thousand Dollars (\$6,000) per year. The retirement benefits payable for each year shall be paid to the retired Partner in equal monthly installments on the tenth (10th)

day of the month within which his retirement occurs and on the tenth day of each of the following months until his death. No retirement payment shall be made after that for the month in which the Partner's death occurs. The retirement benefits shall be prorated for any fractional part of a year.

(3) Each Partner who retires on an early retirement date shall be entitled to receive out of earnings of the Partnership the following amounts: Retirement benefits described in (e) (1) above plus for each year next following the date upon which he retires (i) the amount which would have been his death benefits under (d) (2) of this Article had his death occurred on his retirement date, or (ii) One Hundred and Ten Thousand Dollars (\$110,000), whichever of (i) or (ii) is the greater, payable in equal annual installments to the September 30 next following his seventy-second (72nd) birthday; and for each of the remaining years that he lives, Six Thousand Dollars (\$6,000) per year. Annual payments will be made in equal monthly installments.

(4) A Partner who receives benefits shall use his best efforts to promote the interests of the Partnership and shall not engage in any activity that is in competition with or detrimental to the Partnership. If, in the opinion of sixty-six percent (66%) in interest of the Partners, a Partner receiving benefits violates the requirements of this paragraph, he shall no longer be entitled to any benefits, and all such future benefits shall be cancelled. The Partner shall be given prompt written notice of the termination of his benefits. Sixty-six percent (66%) in interest of the active Partners may restore such benefits if, in their opinion, the violation is corrected within a reasonable time, but within not more than thirty (30) days, in any event.

(f) Disability Benefits:

If, in the opinion of sixty-six percent (66%) in interest of the Partners (other than the Partner whose disability is under consideration), a Partner, prior to his retirement date, becomes permanently disabled the Partnership shall pay

amount and in the same manner as would be payable to his estate had his death occurred on the date of his disability. If the death of the Partner occurs prior to his having received all payments to which he is entitled hereunder, the remaining payments shall be made to his estate. The provisions of ARTICLE II (e) (4) shall be applicable to any person receiving disability benefits.

(g) Limitation on Benefits:

(1) In the event the aggregate benefits, except those described in ARTICLE II (a), required to be paid by this Appendix and any amendments or supplements thereto or by consent of the Partners shall for any fiscal year of the Partnership exceed twenty-five percent (25%) of the net profit of the Partnership for such year, after deducting therefrom those portions of the salaries of the Partners not in excess of Twenty Five Thousand Dollars (\$25,000), but before deducting therefrom any benefits paid or payable to former Partners or the estates of former Partners, then the benefits, except those described in ARTICLE II (a), required to be paid or payable by consent of the Partners to a retired or disabled Partner or the estate of a deceased Partner shall be reduced prorata among the beneficiaries for such fiscal year to an aggregate amount which does not exceed twenty-five percent (25%) of such net income of the Partnership. When computing the amount subject to the 25% limitation, any amounts received or receivable under the letter agreement from Arthur Young & Co. of October 3, 1969, shall serve to reduce the total amount considered paid to Mr. A. L. Knighton. If, in any year, the payments made to any retired or disabled Partner or to the estate of a deceased Partner are in excess of the amount such person or estate is entitled to because of the provisions of this paragraph for the reduction of such payments, any such excess shall be repaid by such former Partner or estate upon demand, or, at the election of the Partnership, such excess may be deducted from future payments becoming due. The Partnership may waive, if it elects

so to do, its right to demand payments or to make deductions from future payments as herein before provided. The Partnership shall not be released of its obligation with respect to any reduction made pursuant to this section (g), and any such reduction shall be repaid to the person(s) or estate(s) concerned in equal monthly installments over the number of months remaining in the period provided in paragraph (d) (4) after the reduction is completed plus twelve (12) months, or in such lesser number of months as sixty-six percent (66%) in interest of the Partners may select.

(2) Should a Partner die or become disabled as a result of an accident as described in the exclusions contained in the accident policy in force, the death benefits in ARTICLE II (d) and the disability benefits in ARTICLE II (f) shall be reduced by \$50,000.

ARTICLE III

The death benefits payable hereunder to the estate of a deceased Partner shall be paid to the personal representative of the deceased Partner or to the assignee of such personal representative. Wherever reference is made herein to the estate of a deceased Partner, estate shall be held to include the assignee of any estate.

ARTICLE IV

Nothing in this APPENDIX B shall entitle any Partner who, because of a violation of his duties and obligations as a member of the Partnership, is expelled from the Partnership, to receive any benefits hereunder except severance benefits determined under ARTICLE II (c).

ARTICLE V

The provisions of this APPENDIX B, as from time to time amended in the manner herein provided, shall, as to the matters covered hereby, control the rights of all persons who shall hereafter become members of the Partnership to the same extent as if such persons were members at the time of the adoption hereof.

ARTICLE VI

The provisions of this APPENDIX B may be amended from time to time by the consent of sixty-six percent (66%) in interest of the then Partners, but no such amendment shall affect the rights of a Partner who shall have theretofore retired or become disabled or the rights of the estate of a Partner who has theretofore died.

August 1, 1976

PREP. BY

DATE

REV. BY

DATE

To: The Partners

From: The Fati

I hereby give my notice to resign from the
Partnership of Anderson, Burkett & Co. effective, September
30, 1976.

This has been a very difficult decision for
me and I have reluctantly postponed it for some
time.

I hope that this severance can be amicable,
and I will do everything to keep it so from my
standpoint.

I have not solicited any of our present clients
and don't intend to do so. I do feel that I
will stay in public accounting in Kansas after
I have completed all obligations I have under the
present Partnership Agreements.

I am sorry that I have come to this conclusion
and feel that I must now look elsewhere to the future.
I came to Anderson, Burkett & Co. and enjoyed my

relationships for years. I feel that I cannot
enjoy the future as the past and this has
brought on my decision to resign.

Sincerely,

Victor J. Jasti

ANDREWS, BURKET & CO.

CERTIFIED PUBLIC ACCOUNTANTS

500 SHENANDOAH BUILDING
POST OFFICE BOX 13445
ROANOKE, VIRGINIA 24034

703 343-8081

MEMBERS
AMERICAN INSTITUTE OF C. P. A.'S
AND
THE AMERICAN GROUP OF
C. P. A. FIRMS WITH OFFICES
IN PRINCIPAL CITIES

ISAAC Q. PERKINS
WM. A. COOK, JR.
LACY W. HANSON
JAMES M. DILLON
VICTOR F. FOTI
R. DAVID ROTT
JOSEPH B. WRIGHT

August 2, 1976

Victor F. Foti

Dear Vic:

This letter is to acknowledge receipt of your notice to resign from the Partnership of Andrews, Burket & Co., effective September 30, 1976. As always, you have the best wishes of the Partners.

I see no reason why your resignation should not be held in an amicable way.

The terms of the Partnership Agreement will be adhered to.

Cordially yours,



For the Partners

IOP/pc

VF
Andrews, Burket & Co.
Partners' Meeting
August 17, 1976

The meeting began at 9:30 with all partners present except Foti. Jim Dillon discussed the Bank of Stuart Directors' examination. He estimates that the standard fee will be approximately \$10,000. The development cost of test deck would be about a hundred hours or \$2,000. He proposed that we give them a range of \$10,000 to \$15,000 for the ~~practice~~ ^{practice} exam and finally move into an opinion audit. The partners decided that Jim should make a proposal for \$13,000 with conditions that they furnish personnel for routine work, etc. The \$13,000 is to include the amortization of the test deck of \$2,000 a year. He is to try to convey to them that this is a three year amortization schedule.

The partners discussed and decided on managers' salaries and profit distribution.

The partners decided on partner compensation and distribution of points. Partners are encouraged to join the Jefferson Club after October 1.

Capital was set at 8.50 per point.

The partners decided to distribute one dollar per point on September 10.

It was decided to put on the Dale Carnegie course by Cook and Associates to Supervisors on down. No partners or managers are to attend and if they want to take a Dale Carnegie course the firm will pay the fee. The course is to be held on Monday morning, if possible. This is to be worked out and decisions are to be made by Hanson.

The firm's relationship with Vic was discussed and it was decided that since he has resigned that the rest of his tenure as a partner should be directed on efforts to transfer his client responsibility to other partners in the firm. He is to work on client work only if he communicates and takes a partner, manager or supervisor with him upon visitation of the client. This is to be done in order that Andrews, Burket & Co. may continue to render service to their clients. Under no circumstances are working papers to leave the office. The partners felt that the working papers should remain in our file because the firm has a liability for the work to be done. Vichas ~~has~~ permission to study any working papers until September 30. After September 30, with proper notice from the client to release information to noncompany personnel, he may examine the working papers and photocopy any papers he desires at a charge of 10¢ per copy.

The meeting adjourned at 12:00 noon.

Mr. Victor P. Foti
4713 Easthill Drive, S.W.
Roanoke, Virginia 24018
August 30, 1976

Isaac O. Perkins
William A. Cook, Jr.
Lacy W. Hanson
James M. Dillon
R. David Rotty
Joseph B. Wright
Andrews, Burket & Company
P. O. Box 13445
Roanoke, Virginia 24034

Gentlemen:

It has been brought to my attention by a copy of the minutes of the last firm meeting and by verbal conversation with Mr. I. O. Perkins that the following decisions have been made by you:

1. I was not to have any chargeable time to clients.
2. I was to work on clients' work only if the clients directly requested me to and should take a partner, manager, or supervisor with me upon any visiting of the client.
3. I was not to remove any working papers from the office under any circumstances.
4. Clients were removed from my responsibility and assigned to other staff members.
5. You have personally visited all corporate and partnership clients that were my responsibilities and told them to contact some person other than me with any questions.
6. You have done various other acts which are not consistent with my status as a partner in the firm of Andrews, Burket & Co.

Your acts have in fact terminated my status as a partner in the partnership known as Andrews, Burket & Co. and I will henceforth conduct myself accordingly.

Demand is hereby made upon you for all monetary sums due me as a partner who has been caused to involuntarily

Isaac O. Perkins
William A. Cook, Jr.
Lacy W. Hanson
James M. Dillon
R. David Rotty
Joseph B. Wright
Page 2
August 30, 1976

withdraw under the various partnership agreement and
appendices thereto. Any monies received by me, to which
I was not entitled since termination, can be subtracted
from the total sums due me.

Very truly yours,

Victor P. Foti

ANDREWS, BURKET & Co.

CERTIFIED PUBLIC ACCOUNTANTS

500 SHENANDOAH BUILDING
POST OFFICE BOX 13445
ROANOKE, VIRGINIA 24034

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WM. A. COOK, JR.
LACY W. HANSON
JAMES M. DILLON
VICTOR F. FOTI
R. DAVID ROTT
JOSEPH B. WRIGHT

August 31, 1976

Mr. Victor F. Foti
4713 Easthill Drive, S. W.
Roanoke, Virginia 24018

Dear Vic:

This letter is in response to your letter of August 30, 1976, addressed to the firm and the partners of Andrews, Burket & Co. Your letter sets forth alleged actions by the partnership which you believe to terminate your status as a partner. I shall attempt to answer each one of the enumerated items.

The Partners' Meeting Minutes of August 17, 1976, were intended to state that you would work on client work (chargeable time) only after you had communicated with the partner who has responsibility for that client.

The Minutes of August 17, 1976, also state that you should take a partner, manager or supervisor with you upon visiting the office of a client. This is to be done in order that Andrews, Burket & Co. may continue to render service to their clients.

These Minutes also state that you are to remove no working papers from the office under any circumstances. Although it is not stated in the Minutes, this decision was intended to mean that after September 30, when your resignation becomes effective, you are to take no working papers with you because the firm has liability for the work performed for the client, and these papers may be needed to defend any legal action which may be brought by the client. A reading of the entire paragraph in the Minutes makes this intention clear.

On Tuesday, August 3, the partners met and assigned different partners responsibility for the firm's clients. This was done because you have resigned, effective September 30, 1976, and the firm has the responsibility of maintaining service to our clients on a continuing basis.

All major clients have been contacted and they were informed of new partner responsibility assignment. They were requested to contact the newly assigned partner for any questions. This was done in order that there might be an orderly transfer of partner/client responsibility from you to the newly assigned partner.

August 31, 1976

I am unaware of any other acts which are not consistent with your status as a partner in the firm of Andrews, Burket & Co. Therefore, I cannot answer this charge. You have been invited to all Partners' Meetings and been given Minutes of these meetings. We have fulfilled all of the terms of the Partnership Agreement.

You are erroneous in stating that our acts have, in fact, terminated your status as a partner in the partnership of Andrews, Burket & Co. Since your resignation of August 2, 1976, we have treated you in all respects as a partner of the firm and you will remain a partner until September 30, 1976, unless you take some action in violation of the Partnership Agreement which would immediately terminate your partnership status. You are entitled to your share of gains and losses through September 30.

As stated in the Partners' Meeting Minutes of August 17, 1976, your client responsibility has been transferred to other partners in the firm and you are to utilize the rest of your tenure as a partner toward the efforts of orderly transferring your client responsibility to other partners in the firm.

On September 1, you will receive your normal salary allowance and on September 10, you will receive an advance distribution as agreed to in the Partners' Meeting. No additional distributions have been authorized for payment to any partner.

Cordially yours,



IOP/pc

PREPARED BY	INITIALS	DATE
APPROVED BY		

LINE NO.	NAME OF CLIENT	DATE WORK FIRST BEGAN	DATE OF	TIME CHARGED	EXPENSES CHARGED	TOTAL P. 11	DATE CASH RECEIVED	CASH RECEIPTS AMOUNT	FEE FOR PHOTOGRAPHY	ESTIMATED NO. OF PHOTOCOPIES	COMPUTER FEE
11922	A.M. ARRINGTON, T/A ARRINGTON	11-6-76	5-21-77	298.59	64.60	400.00	6-11-77	400.00	6.00	6	42.58
✓			9-10-77	66.27	8.09	75.00	9-17-77	75.00	-	-	-
13069	E.F. BLANKENSHIP CO.	11-20-76	1-31-77	1237.50	26.70	1275.00	3-11-77	1275.00	-	-	-
✓			6-4-77	321.775	109.20	3325.00	7-23-77	3325.00	21.00	1	33.70
✓				490.00	7.50	-		-	-	-	-
13308	BLUE RIDGE STONE CORP.	1-8-77	6-25-77	7636.00	89.00	7725.00	7-16-77	7725.00	39.00	-	-
✓				836.50	7.00	-		-	9.00	-	-
13861	ADNEY S. BOXLEY, JR.	1-15-77	4-15-77	326.25	101.45	425.00	5-28-77	425.00	11.00	-	90.45
✓				28.75	6.00	-		-	6.00	17	-
14025	FRANK A. BOXLEY	1-15-77	4-15-77	385.00	130.15	500.00	5-28-77	500.00	11.00	-	94.13
✓				28.75	6.00	-		-	6.00	-	-
14174	VIRGINIA A. BOXLEY	10-30-76	4-15-77	638.00	29.87	675.00	5-14-77	675.00	12.00	21	17.87
14182	ESTATE OF A.S. BOXLEY	6-18-77	6-26-77	488.00	7.00	520.00	6-26-77	520.00	7.00	-	-
✓			10-8-77	200.00	-	200.00		-	-	-	-
14249	H. W. BOXLEY & CO.	1-9-77	8-13-77	414.50	-	725.00	9-3-77	725.00	-	-	-
✓				103.50	8.00	-		-	8.00	23	-
14265	BOXLEY QUARRIES			-	-	-		-	-	-	-
14281	BOXLEY BUILDING TRUST	4-30-77	8-6-77	1582.00	25.00	1300.00	8-20-77	1300.00	25.00	51	-
✓				57.50	8.00	-		-	8.00	22	-
14702	EUGENE F. BRADY	11-27-77	4-15-77	364.00	69.91	300.00	5-7-77	300.00	-	-	69.91
✓				20.00	-	-		-	-	-	-
15718	CATES BUILDING SPECIALTIES, INC.	9-11-77	3-15-77	4962.50	52.39	5075.00	6-25-77	5075.00	-	-	-
✓				863.50	5.00	-		-	5.00	13	-
15784	CERTIFIED WELDERS OF REC.	1-22-77	5-7-77	639.00	22.00	500.00	6-11-77	500.00	22.00	54	-
16261	COLONIAL INSTALLATION & ERECTION CO.	11-27-77	12-31-77	132.75	11.00	155.00	3-4-77	155.00	11.00	26	-
✓				313.25	-	-		-	-	-	-
16427	COLONY MANOR FURNITURE CO.	9-25-77	11-20-77	506.00	9.00	525.00	12-22-77	525.00	9.00	34	-
✓				367.25	9.00	-		-	9.00	34	-
16568	COOPER WOOD PRODUCTS, INC.	9-25-77	2-28-77	606.20	41.41	650.00	3-17-77	650.00	-	-	-
✓			5-7-77	3512.55	116.44	3811.83	5-21-77	3811.83	21.00	57	38.27
✓				720.50	105.53	-		-	-	-	-
17136	HENRY A. DAVIS	4-2-77	4-15-77	56.50	18.97	80.00	5-14-77	80.00	-	-	18.97
✓				6.25	5.50	-		-	-	-	-
17267	WALTER H. DICKEY, DDS	3-19-77	4-15-77	165.25	44.06	185.00	5-28-77	140.00	1.00	2	43.06
17722	DOMINION SIGNS, INC.	3-12-77	4-15-77	204.00	15.00	250.00	6-4-77	250.00	15.00	40	-
18241	DAVIS H. ELLIOT CO., INC.	11-13-76	5-22-77	4164.25	176.75	3525.00	6-11-77	3525.00	11.00	271	-
✓				187.00	3.00	-		-	3.00	1	-
18316	DHE LEASING, INC.	3-5-77	5-21-77	350.00	-	350.00	5-28-77	350.00	-	-	-

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18481	ENGLISH & GARNER	3-5-77	4-15-77	75.25	12.00	100.00	12.75	5-14-77	100.00	12.00	29	48	1
18556	ENGLISH LAND CO.	11-13-76	8-20-77	140.50	19.00	125.00	(34.50)	9-24-77	125.00	19.00	48	51	2
18689	SAM ENGLISH, INC.	10-2-76	1-31-77	1786.25	198.32	2120.00	135.43	3-17-77	2120.00	27.00			3
	✓		8-20-77	3307.83	405.71	3925.00	211.11	9-17-77	3925.00	43.00		23	4
				222.80	364.97				10.00				5
18788	SAM ENGLISH, II, DDS	10-9-76	4-15-77	322.75	50.60	385.00	11.65	5-14-77	385.00	11.00			6
	✓			106.60	6.60				4.00				7
20048	FERGUSON-REED-SPRADLIN, INC.	3-5-77	4-15-77	308.00	59.31	370.00	2.67	5-14-77	370.00				8
	✓		10-8-77	527.00	16.00	550.00	7.00		16.00				9
				82.50									10
20379	JAMES J. FIVES	2-19-77	4-15-77	48.50	16.84	85.00	17.66	7-2-77	85.00	1.00			11
	✓			15.00									12
20832	FRANKLIN TIE & WOOD CO., INC.	12-18-76	4-15-77	1035.25	186.98	1300.00	77.77	5-7-77	1300.00	27.00			13
	✓			70.00	9.11								14
21294	CURTIS P. GARDNER, DDS	3-12-77	4-15-77	205.00	63.17	275.00	6.83	6-4-77	275.00	3.00			15
	✓		7-23-77	26.25	3.00	30.00	75	10-1-77	30.00	3.00			16
21442	MRS. ELVA F. GARST	3-19-77	4-15-77	66.25	30.96	100.00	279	5-21-77	100.00				17
21517	FREDERIC GARST	4-9-77	4-15-77	61.25	30.82	100.00	793	6-11-77	100.00	4.00			18
21515	JACK GARST	1-29-77		345.00	11.35					3.00			19
21955	CHARLES GILLILAND, M.D.												20
22416	KOSSEN GREGORY	9-25-76	4-15-77	94.00	28.43	135.00	12.57	5-7-77	135.00	1.00			21
	✓			18.75									22
23646	J. BRUCE HAUSER, M.D.	2-12-77	4-15-77	111.00	33.77	145.00	23	5-7-77	145.00	5.00			23
	✓		8-6-77	50.00		50.00		8-27-77	50.00				24
24123	HERITAGE SQUARE ASSOC., INC.	1-29-77	2-28-77	55.25	9.00	75.00	10.75	3-17-77	75.00	9.00		27	25
	✓			75.00									26
24652	J. HAYDEN HOLLINGSWORTH, M.D.	1-29-77	4-15-77	107.75	42.52	175.00	24.73	5-7-77	175.00	4.00			27
24868	VIRGINIA L. HOUGHENS	3-26-77	4-15-77	47.50	15.81	75.00	11.69	5-7-77	75.00				28
25121	FLUB WALTER CO.	10-2-76	4-15-77	473.50	24.25	500.00	2.25	6-11-77	500.00	11.00			29
	✓			50.25	35.89								30
25527	DR. ALVIN J. HURT	4-2-77	4-15-77	183.25	53.54	215.00	(21.77)	6-4-6-25-77	215.00	4.00			31
25725	A. ANSON JAMISON	12-18-76	5-7-77	522.25	90.98	600.00	(13.23)	6-25-77	600.00				32
	✓			15.00	3.00					3.00			33
25808	PHIL H. JAMISON CO., INC.	3-12-77	4-15-77	139.00	53.59	200.00	7.41	6-4-77	200.00	12.00			34
25824	J. A. JAMISON	4-30-77			5.00		(5.00)			5.00			35
25858	P. G. JAMISON	4-30-77			5.00		(5.00)			5.00			36
27036	H. H. JONES, DDS	3-5-77	4-15-77	245.25	84.53	335.00	5.22	5-7-77	335.00	2.00			37
			10-01-77	125.00		125.00							38

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28563	ROGER W. LITWILLER, M.D.	10-30-76	4-15-77	186.25	40.38	200.00	7-16-77	200.00	1.00	3	30.02	1
30039	MACBAIN BUILDING CORP.	1-8-77	3-15-77	518.25	13.00	450.00	3-31-77	450.00	13.00	39	-	2
	✓			444.00	-	-		-	-	-	-	3
30162	THOMAS S. McCALLIE, III	4-2-77	4-15-77	95.25	30.23	135.00	5-28-77	135.00	1.00	3	29.23	4
30493	MARSTELLER CORPORATION	9-8-76	12-11-76	441.25	3.75	450.00	1-28-77	450.00	-	-	-	5
	✓		4-15-77	1621.00	42.00	1875.00	9-17-77	1875.00	42.00	121	-	6
	✓			762.50	-	-		-	-	-	-	7
30526	DUDLEY L. MARSTELLER, JR.	3-19-77	4-15-77	141.50	68.70	225.00	5-7-77	225.00	-	-	68.70	8
	✓			3.25	3.50	-		-	3.00	-	-	9
30857	MARTINSVILLE STONE CORP.	3-19-77	6-25-77	2935.00	50.00	2985.00	7-16-77	2985.00	-	-	-	10
	✓		8-27-77	2508.75	24.00	2535.00	9-17-77	2535.00	24.00	72	-	11
	✓			103.25	-	-		-	-	-	-	12
30914	ESTATE OF RALPH MASINIER	11-27-76	4-15-77	247.50	45.72	325.00	5-7-77	325.00	2.00	6	39.92	13
31293	WILLIAM M. MEADOR	1-8-77	4-15-77	210.75	75.11	275.00	5-28-77	275.00	15.00	15	60.11	14
	✓			1.48	-	-		-	-	-	-	15
32259	C.C. MURCHISON	4-9-77	4-15-77	62.50	37.71	100.00	6-11-77	100.00	-	-	37.71	16
32895	DRS. NEWTON, PETERSON & GILLILAND	9-11-76	10-25-76	291.50	15.00	350.00	10-29-77	350.00	15.00	-	-	17
	✓		12-31-76	135.25	2.00	140.00	1-28-77	140.00	2.00	-	-	18
	✓		5-28-77	368.25	1.00	385.00	6-25-77	385.00	1.00	5	-	19
	✓		9-24-77	526.00	17.00	575.00	32.00	-	14.00	-	-	20
32978	DR. RICHARD M. NEWTON	1-29-77	4-15-77	156.50	50.20	225.00	5-7-77	225.00	-	-	50.20	21
	✓			10.00	3.80	-	18.30	-	-	-	-	22
33071	WILLIAM A. OARKEY	12-11-76	4-15-77	240.50	46.18	275.00	5-7-77	275.00	51.00	5	41.18	23
	✓			17.50	-	-	11.68	-	-	-	-	24
33257	OLD COLONY BOX CO., INC.	11-6-76	7-23-77	2603.50	213.42	2878.36	8-6-77	2878.36	19.00	57	66.06	25
	✓			18.00	14.50	-	61.44	-	10.00	9	-	26
34776	PHILLIPS ANESTHESIOLOGISTS	12-11-76	4-15-77	247.25	33.13	280.00	5-7-77	280.00	13.00	37	20.13	27
	✓			51.25	-	-	38	-	-	-	-	28
35196	POUNDING MILL QUARRY	11-13-76	12-11-76	1436.25	8.00	1445.00	12-22-76	1445.00	3.00	-	-	29
	✓		3-15-77	5641.50	94.21	4625.00	3-30-77	4625.00	29.00	-	-	30
	✓			1036.25	19.08	-	1110.71	-	12.00	-	-	31
35873	ROANOKE CONCRETE PRODUCTS	10-30-76	4-15-77	3767.14	177.61	4325.00	5-7-77	4325.00	25.00	-	45.17	32
	✓			383.75	-	-	18.25	-	-	-	-	33
36079	ROANOKE IRON & BRIDGE WORKS, INC.	10-2-76	12-11-77	18539.93	210.07	18750.00	1-11-77	18750.00	17.00	-	-	34
	✓		4-30-77	3421.32	429.30	5850.00	5-21-77	5850.00	36.00	2	113.98	35
	✓			5205.00	128.61	-	111.35	-	68.00	-	-	36
40797	SCHILKE BUILDING TRUST	1-8-77	3-15-77	268.25	16.00	300.00	3-31-77	300.00	16.00	-	-	37
							5.75	-	-	-	-	38
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411391	JOE B. SELMAN, INC.	1-1-77	1-31-77	178.63	21.37	200.00	3-4-77	200.00	16.00	48	-
	✓		3-15-77	178.63	28.49	175.00	4-5-77	175.00	6.00	18	22.49
	✓			17.75	2.47	-		-	-	-	-
41614	SHENANDOAH ICE CO., INC.	2-12-77	5-21-77	2.75	-	150.00	5-21-77	150.00	-	-	-
41755	Drs. SHINER & HOLLINGSWORTH	1-29-77	4-15-77	236.50	15.00	285.00	5-28-77	285.00	15.00	60	-
	✓			112.00	4.00	-		-	4.00	6	-
41812	DR. PHILLIP T. SHINER	3-26-77	4-15-77	141.75	56.98	195.00	6-11-77	195.00	1.00	3	55.98
42026	HARRIETT H. SIMPSON	10-9-76	6-25-77	199.50	11.91	200.00	6-25-77	200.00	11.00	35	-
42159	SMELTZER & HART	9-11-76	4-15-77	468.00	89.87	565.00	5-14-77	565.00	14.00	56	67.37
	✓		10-1-77	263.00	2.00	280.00	15.00	-	2.00	1	-
42282	DONALD G. SMITH	3-26-76	4-15-77	96.25	61.09	160.00	5-21-77	160.00	2.00	3	59.09
	✓			7.50	-	-		-	-	-	-
42696	SOUTHWEST CONS. CO.	10-16-76	9-17-77	4284.75	98.85	4400.00	16.40	-	43.00	37	-
	✓			379.00	-	-		-	-	-	-
44113	LEIGH H. STOCKSTILL, MD, PC	10-30-76	4-15-77	438.45	53.17	495.00	5-21-77	495.00	12.00	3	39.37
	✓		7-9-77	379.05	2.00	385.00	7-23-77	385.00	2.00	-	-
44311	STOUT DOOR CORP.	11-13-76	1-31-77	616.50	25.00	715.00	2-17-77	715.00	25.00	-	-
	✓		5-7-77	104.25	31.08	140.00	4-67	140.00	3.00	-	28.08
	✓			113.75	5.69	-		-	-	-	-
44733	JAMES I. SUBLETT	4-16-77	5-28-77	156.25	34.45	190.00	6-25-77	190.00	2.00	-	32.45
45385	TINKERVIEW WATER CO.	9-25-76	2-28-77	1264.25	46.29	1317.29	6-25-77	1317.29	15.00	45	-
	✓			402.50	74.68	-		-	13.00	39	-
45666	TREGO STONE CORP.	11-13-76	12-11-76	901.00	14.50	900.00	12-22-76	900.00	3.00	9	-
	✓		3-15-77	4445.25	79.94	3625.00	3-30-77	3625.00	25.00	75	-
	✓			999.00	12.00	-		-	12.00	36	-
46177	VALLEY AUTO SUPPLY CORP.	1-15-77	1-31-77	367.75	14.00	385.00	3-1-77	385.00	14.00	42	-
	✓		6-25-77	99.00	7.00	100.00	7-16-77	100.00	7.00	21	-
46317	VALLEY STEEL CORP.	9-25-77	1-31-77	4789.00	47.29	4850.00	2-24-77	4850.00	20.00	60	-
	✓			438.00	49.50	-		-	17.00	31	-
46367	ALLAN G. VICTOR	11-27-76	4-15-77	87.75	19.81	145.00	7-30-77	145.00	-	-	19.81
	✓			10.00	-	-		-	-	-	-
46474	Vas. - HERITAGE SQUARE Co.	1-22-77	2-28-77	467.75	14.00	515.00	3-25-77	515.00	14.00	5	-
46531	Va. MOTOR LODGES, INC.	9-11-76	12-11-76	2894.00	136.31	3325.00	1-28-77	3325.00	23.00	15	-
	✓		5-7-77	1814.74	88.77	1950.00	6-25-77	1950.00	25.00	5	35.27
	✓		9-10-77	932.75	4.00	950.00	10-1-77	950.00	4.00	12	-
	✓			144.50	1.00	-		-	1.00	3	-
4896	MICHAEL E. WARNER	3-17-77	4-15-77	76.50	21.03	100.00	6-11-77	100.00	1.00	3	20.03

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1											
2	47109 WEN-DON CHEMICAL CORP.	10-2-76	12-31-77	3531.50	19.00	3550.00	(50) 2-24, 4-5, 5-7	4500.00	2.00	19.00	57
3	/		5-7-77	938.75	8.40	1025.00	225 6-4, 6-25, 8-6			21	
4	/		7-23-77	717.50	4.50	725.00	3.00 9-3, 10-8				
5	/		9-17-77	495.00	6.50	500.00	(150)				
6	/			933.75	49.77						
7	47381 WETHERINGTON & FLIPPIN	1-22-77	4-15-77	361.50	21.00	375.00	(7.50) 5-7-77	375.00	21.00		
8	/			57.50							
9	47456 J. M. WHITE	11-27-76	1-15-77	341.25	56.84	350.00	(48.09) 6-11-77	350.00			56.84
10	/			134.25							
11	48595 C. R. WOODFORD, DDS	3-5-77	4-15-77	152.50	37.60	200.00	9.90 5-7-77	200.00			37.60
12	48678 WOODFORD, JOHN, DICKEY, LEVICKI	12-4-76	4-15-77	268.00	18.00	350.00	64.00 5-7-77	350.00	18.00	72	
13	SNOPE DENTAL ASSOC.		9-10-77	403.50	16.50	400.00	(20.00)		15.00	75	
14									82.00	15	94.44
15											
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			R. C. CARRBS	C. T. BREWER	
1	D. M. Arrington		33540		
2	✓ ✓ ✓		6691		
3	E. F. Blankenship			321580	
4	✓ ✓ ✓			124810	
5	✓ ✓ ✓			49000	
6	Domision Ligna		23500		
7	Ferguson-Reed-Isradlin		31069		
8	✓ ✓ ✓		53400		
9	✓		8250		
10	Franklin Lee + Wood		111302		
11	✓ ✓ ✓		7000		
12	E. J. Garst		6904		
13	J. Garst		6918		
14	J. Garst		34500		
15	Reed H. Garrison Co.		14641		
16	R. W. Lintwiler		15962		
	Phillips Anesthesiologists		24687		
	✓		5125		
19	Jac. B. Selman, et al.		17863		
20	✓ ✓		14651		
21	✓ ✓		1775		
22	Remondah Stee		15000		
23	Wen-Don			353100	
24	✓ ✓			94100	
25	✓ ✓			72050	
26	✓ ✓			49350	
27	✓ ✓			93375	
28					
29			432778	1157365	
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INITIALS	DATE
PREPARED BY	
APPROVED BY	

LINE NO.	NAME OF CLIENT	DATE WORK FIRST BEGUN	DATE OF BILL	TIME CHARGED	EXPENSES CHARGED	TOTAL BILL	UNBILLED BALANCE 9-30-77	DATE CASH RECEIVED	CASH RECEIPTS AMOUNT	BALANCE DUE 9-30-77	LINE NO.
1	11922 A.M. ARRINGTON, T/A ARRINGTON	11-6-76	5-21-77	335.40	64.60	400.00		6-11-77	400.00		1
2	✓		9-10-77	66.91	8.09	75.00		9-17-77	75.00		2
3	13069 E.F. BLANKENSHIP CO.	11-20-76	1-31-77	1248.10	26.90	1275.00		3-11-77	1275.00		3
4	✓		6-4-77	3215.80	109.20	3325.00		7-23-77	3325.00		4
5	✓			49.00	7.50		497.50				5
6	13308 BLUE RIDGE STONE CORP.	1-8-77	6-25-77	7636.00	89.00	7725.00		7-16-77	7725.00		6
7	✓			836.50	9.00		845.50				7
8	13861 AGNEY S. BOXLEY, JR.	1-15-77	4-15-77	323.55	101.45	425.00		5-28-77	425.00		8
9	✓			28.75	6.00		34.75				9
10	14025 FRANK A. BOXLEY	1-15-77	4-15-77	369.85	130.15	500.00		5-28-77	500.00		10
11	✓			28.75	6.00		34.75				11
12	14171 VIRGINIA A. BOXLEY	10-30-76	4-15-77	645.13	29.87	675.00		5-14-77	675.00		12
13	14182 ESTATE OF A.S. BOXLEY	6-18-77	6-26-77	513.00	7.00	520.00		6-26-77	520.00		13
14	✓		10-8-77	200.00	-	200.00				200.00	14
15	14249 A. W. BOXLEY & CO.	1-5-77	8-13-77	725.00	-	725.00		9-3-77	725.00		15
16	✓			103.50	8.00		111.50				16
17	14265 BOXLEY QUARRIES			-	-	-					17
18	14281 BOXLEY BUILDING TRUST	4-30-77	8-6-77	1275.00	25.00	1300.00		8-20-77	1300.00		18
19	✓			57.50	8.00		65.50				19
20	14402 EUGENE F. BRADY	11-27-76	4-15-77	230.09	69.91	300.00		5-7-77	300.00		20
21	✓			20.00	-		20.00				21
22	15718 CATES BUILDING SPECIALTIES, INC.	9-11-76	3-15-77	5022.61	52.39	5075.00		6-25-77	5075.00		22
23	✓			863.50	5.00		868.50				23
24	15784 CERTIFIED WELDERS OF REC.	1-22-77	5-7-77	478.00	22.00	500.00		6-11-77	500.00		24
25	16261 COLONIAL INSTALLATION & ERECTION CO.	11-27-76	12-31-77	144.00	11.00	155.00		3-4-77	155.00		25
26	✓			313.25	-		313.25				26
27	16427 COLONY MANOR FURNITURE CO.	9-25-76	11-20-77	516.00	9.00	525.00		12-22-77	525.00		27
28	✓			367.25	9.00		376.25				28
29	16568 COOPER WOOD PRODUCTS, INC.	9-25-76	2-28-77	608.59	41.41	650.00		3-17-77	650.00		29
30	✓		5-7-77	3695.39	116.44	3811.83		5-21-77	3811.83		30
31	✓			720.50	105.53		826.03				31
32	17136 HENRY A. DAVIS	4-2-77	4-15-77	61.03	18.97	80.00		5-14-77	80.00		32
33	✓			6.25	5.50		11.75				33
34	17269 WALTER H. DICKEY, DDS	3-19-77	4-15-77	140.94	44.06	185.00		5-28-77	140.00	45.00	34
35	✓			235.00	15.00	250.00		6-4-77	250.00		35
36	17722 DOMINION SIGNS, INC.	3-12-77	4-15-77	235.00	15.00	250.00		6-4-77	250.00		36
37	18241 DAVIS H. ELLIOT CO., INC.	11-13-76	5-22-77	3348.25	176.75	3525.00		6-11-77	3525.00		37
38	✓			187.00	3.00		190.00				38
39	18316 DHE LEASING, INC.	3-5-77	5-21-77	350.00	-	350.00		5-28-77	350.00		39
40											40
		298		35406.29	1340.72	32551.83	4195.28		32306.83	245.00	

	INITIALS	DATE
PREPARED BY		
APPROVED BY		

													(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)
L I N E N O		NAME OF CLIENT			DATE WORK FIRST BEGAN			DATE OF BILL	TIME CHARGED	EXPENSES CHARGED	TOTAL BILL	UNBILLED BALANCE 9-30-77	DATE CASH RECEIVED	CASH RECEIPTS AMOUNT	BALANCE DUE 9-30-77										L I N E N O	
1	18481	✓ ENGLISH & GARNER			3-5-77			4-15-77	88.00	12.00	100.00		5-14-77	100.00											1	
2	18556	✓ ENGLISH LAND CO.			11-13-76			8-20-77	106.00	19.00	125.00		9-24-77	125.00											2	
3	18689	✓ SAM ENGLISH, INC.			10-2-76			1-31-77	1921.68	198.32	2120.00		3-17-77	2120.00											3	
4		✓						8-20-77	3519.29	405.71	3925.00		9-17-77	3925.00											4	
5		✓							222.80	364.97		587.77													5	
6	18788	✓ SAM ENGLISH, II, DDS			10-9-76			4-15-77	334.40	50.60	385.00		5-14-77	385.00											6	
7		✓							106.60	6.60		113.20													7	
8	20048	✓ FERGUSON-REED-SPRADLIN, INC.			3-5-77			4-15-77	310.69	59.31	370.00		5-14-77	370.00											8	
9		✓						10-8-77	534.00	16.00	550.00				550.00										9	
10		✓							82.50			82.50													10	
11	20379	✓ JAMES J. FIVES			2-19-77			4-15-77	68.16	16.84	85.00		7-2-77	85.00											11	
12		✓							15.00			15.00													12	
13	20532	✓ FRANKLIN TIE & WOOD CO., INC.			12-18-76			4-15-77	1113.02	186.98	1300.00		5-7-77	1300.00											13	
14		✓							70.00	9.11		79.11	6-4-77												14	
15	21294	✓ CURTIS P. GARDNER, DDS			3-12-77			4-15-77	211.83	63.17	275.00		7-23-77	275.00											15	
16		✓						7-23-77	27.00	3.00	30.00		9-30-77	30.00											16	
17	21442	✓ MRS. ELVA F. GARST			3-19-77			4-15-77	69.04	30.96	100.00		5-21-77	100.00											17	
18	21517	✓ FREDERIC GARST			4-7-77			4-15-77	69.18	30.82	100.00		6-11-77	100.00											18	
19	21575	✓ JACK GARST			1-29-77				345.00	11.35		356.35													19	
20	21955	✓ CHARLES GILLILAND, M.D.																							20	
21	22416	✓ KOSSEN GREGORY			9-25-76			4-15-77	106.57	28.43	135.00		5-7-77	135.00											21	
22		✓							18.75			18.75													22	
23																									23	
24																									24	
25																									25	
26	24123	✓ HERITAGE SQUARE ASSOC., INC.			1-29-77			2-28-77	66.00	9.00	75.00		3-17-77	75.00											26	
27		✓							7.50			7.50													27	
28	24652	✓ J. HAYDEN HOLLINGSWORTH, M.D.			1-29-77			4-15-77	132.48	42.52	175.00		5-7-77	175.00											28	
29		✓																							29	
30	25221	✓ HUB WATER CO.			10-2-76			4-15-77	475.75	24.25	500.00		6-11-77	500.00											30	
31		✓							50.25	35.89		86.14													31	
32	25527	✓ DR. ALVIN J. HURT			4-2-77			4-15-77	161.46	53.54	215.00		6-4-77	215.00											32	
33	25725	✓ A. ANSON JAMISON			12-18-76			5-7-77	509.02	90.98	600.00		6-25-77	600.00											33	
34		✓							15.00	3.00		18.00													34	
35	25808	✓ PAUL H. JAMISON CO., INC.			3-12-77			4-15-77	146.41	53.59	200.00		6-4-77	200.00											35	
36	25824	✓ J. A. JAMISON			4-30-77				(5.00)	5.00															36	
37	25853	✓ P. G. JAMISON			4-30-77				(5.00)	5.00															37	
38	27636	✓ W. H. JONES, DDS			3-5-77			4-15-77	250.47	84.53	335.00		5-7-77	335.00											38	
39								10-08-77	125.00		125.00														39	
40									1126.85	1920.47	11825.00	1364.32		11150.00	675.00										40	
					299				46675.24	3261.19	44376.83	5559.60		43456.83	920.00											

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PREPARED BY	INITIALS	DATE
APPROVED BY		

LINE NO.	NAME OF CLIENT	DATE FIRST BEGAN	DATE OF BILL	TIME CHARGED	EXPENSES CHARGED	TOTAL BILL	UNBILLED BALANCE 9-30-77	CASH RECEIVED	CASH RECEIPTS AMOUNT	BALANCE DUE 9-30-77		LINE NO.
1	41391 JOE B. SELMAN, INC.	1-1-77	1-31-77	178.63	21.37	200.00		3-4-77	200.00			1
2	✓		3-15-77	146.51	28.49	175.00		4-5-77	175.00			2
3	✓			17.75	2.47		20.22					3
4	✓											4
5	41614 SHERMAN & ICE CO., INC.	2-12-77	5-21-77	150.00		150.00		5-21-77	150.00			5
6	41755 DRS. SHINER & HOLLINGSWORTH	1-29-77	4-15-77	270.00	15.00	285.00		5-28-77	285.00			6
7	✓			612.00	40.00		114.00					7
8	41812 DR. PHILLIP T. SHINER	3-26-77	4-15-77	138.02	56.98	195.00		6-11-77	195.00			8
9	42026 HARRIETT H. SIMPSON	10-9-76	6-25-77	188.09	11.91	200.00		6-25-77	200.00			9
10	42159 SMELTZER & HART	9-11-76	4-15-77	475.13	89.87	565.00		5-14-77	565.00			10
11	✓		10-1-77	278.00	2.00	280.00				280.00		11
12	42282 DONALD G. SMITH	3-26-77	4-15-77	98.91	61.09	160.00		5-21-77	160.00			12
13	✓			7.50			7.50					13
14	42696 SOUTHWEST CONS. CO.	10-16-76	9-17-77	4301.15	78.85	4400.00				4400.00		14
15	✓			379.00			379.00					15
16	44113 LEIGH H. STOCKSTILL, MD, PC	10-30-76	4-15-77	441.83	53.17	495.00		5-21-77	495.00			16
17	✓		7-9-77	383.00	2.00	385.00		7-23-77	385.00			17
18	44311 STOUT DOOR CORP.	11-13-76	1-31-77	690.00	25.00	715.00		2-17-77	715.00			18
19	✓		5-7-77	108.92	31.08	140.00		5-28-77	140.00			19
20	✓			113.75	56.9		119.44					20
21	44733 JAMES I. SUBLETT	4-16-77	5-28-77	155.55	34.45	190.00		6-25-77	190.00			21
22	45385 TINKERVIEW WATER CO.	9-25-76	2-28-77	1271.00	46.29	1317.29		6-25-77 9-24-77	1317.29			22
23	✓			402.50	74.68		477.18					23
24	45666 TREGO STONE CORP.	11-13-76	12-11-76	885.50	14.50	900.00		12-22-76	900.00			24
25	✓		3-15-77	3545.06	79.94	3625.00		3-30-77	3625.00			25
26	✓			979.00	12.00		1011.00					26
27	46177 VALLEY AUTO SUPPLY CORP.	1-15-77	1-31-77	371.00	14.00	385.00		3-1-77	385.00			27
28	✓		6-25-77	93.00	7.00	100.00		7-16-77	100.00			28
29	46317 VALLEY STEEL CORP.	9-25-76	1-31-77	4802.71	47.29	4850.00		2-24-77	4850.00			29
30	✓			438.00	49.50		487.50					30
31	46367 ALLAN G. VICTOR	11-27-76	4-15-77	125.19	1.981	145.00		7-30-77	145.00			31
32	✓			10.00			10.00					32
33	46474 VAS. - HERITAGE SQUARE CO.	1-22-77	2-28-77	501.00	14.00	515.00		3-25-77	515.00			33
34	46531 VA. MOTOR LODGES, INC.	9-11-76	12-11-76	3188.69	136.31	3325.00		1-28-77	3325.00			34
35	✓		5-7-77	1861.23	88.77	1950.00		6-25-77	1950.00			35
36	✓		9-10-77	946.00	4.00	950.00		9-30-77	950.00			36
37	✓			144.50	1.00		145.50					37
38	46896 MICHAEL E. WARNER	3-19-77	4-15-77	78.97	21.03	100.00		6-11-77	100.00			38
39												39
40				28297.09	1173.54	26697.29	2773.34		2201.29	4680.00		40
				131207.92	6349.42	121032.48	16524.86		114857.48	6175.00		

And this is the case. The following table shows the results of the 1992 election in the 100th Congress.

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