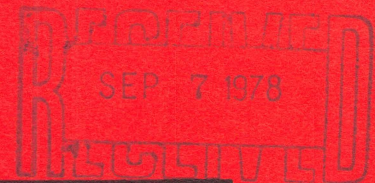


220 VA1015

CLERK
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 780299

VALJAR, INCORPORATED,

.....Appellants

v.

MARITIME TERMINALS, INCORPORATED,

.....Appellee

APPENDIX

MORRIS H. FINE
FINE, FINE, LEGUM & FINE
720 Law Building
Norfolk, Virginia 23510

Counsel for Appellants

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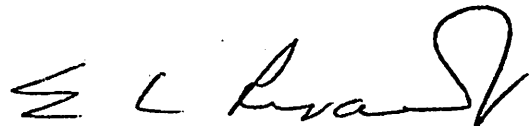
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ORDER

This day came the Plaintiff by Vincent L. Reca, its president, and by counsel, and the Defendant by James N. Crumbley, its general manager, and by counsel, and thereupon came a jury, to-wit: Frances Bolton Woolard Frank A. Niegro, Katherine B. Harrell, Millicent K. Branighan, Lonnie R. Pinkins, Theodore J. Mangus and John Lee Brown, who were duly sworn truth to speak upon the issue joined.

Thereupon at the conclusion of the Plaintiff's evidence, the Defendant, by counsel, moved the Court to strike the Plaintiff's evidence and to enter summary judgment in its behalf, which motion after having been fully heard and maturely considered by the Court is overruled, to which action of the Court the Defendant, by counsel, duly excepts.

Now Court was adjourned at 4:30 o'clock P.M. until 10:00 o'clock A.M. on the 16th day of January, 1976.


EDWARD L. RYAN, JR.
JUDGE

ORDER

This cause came on to be heard on a Motion for Judgment filed by the plaintiff, VALJAR, INCORPORATED, to which the defendant, MARITIME TERMINALS, INC., answered by, among other things, asserting as a grounds of defense that the contract alleged by the plaintiff violated Section 11-2 of the Code of Virginia since it purported to be an oral agreement which could not be performed within one year. The Court reserved ruling on this defense until after evidence on the merits was heard before a jury. Thereafter the defense of Statute of Frauds, was briefed and argued by counsel.

Upon consideration thereof the Court concludes that the alleged oral agreement was not an agreement which could be performed with one year and that the plaintiff's claim is barred by Section 11-2 of the Code of Virginia. It is therefore ordered, adjudged and decreed that the claim of VALJAR, INCORPORATED, be dismissed and that judgment be entered for the defendant, MARITIME TERMINALS, INC.

Enter this Order: 1977

Edward L. Ryan, Jr., Judge

We ask for this:


Joseph A. Gawrys
Attorney for Defendant

Seen and objected to:


Morris H. Fine
Attorney for Plaintiff

VIRGINIA:

In the Circuit Court of the City of Norfolk.

Valpar, Incorporated

Plaintiff

v.

Docket No.

Maritime Terminals, Incorporated

Defendant LT-1692

For Plaintiff in full amount allowed

VERDICT

We the jury find for the plaintiff
+ fix its damages at \$10,243.44

Frank J. Morgan
FOREMAN

ASSIGNMENTS OF ERROR

1. The Court erred in entering the final judgment of December 2, 1977.

2. The Court erred in determining that the Statute of Frauds, §11-2, Code of Virginia, had been violated in that the contract between the parties was an oral agreement that could not be performed within a year and that the writings were not sufficient to remove the contract from §11-2, Code of Virginia.

3. The Court erred when it did not increase the jury verdict to the amount it allowed into evidence as evidence of damages, to-wit: \$45,529.84.

4. The Court erred when it set aside the jury verdict.

5. The Court erred when, after allowing into evidence the damages of \$45,529.84 of the appellant, it arbitrarily eliminated certain elements and thus reduced the amount recoverable to \$10,243.44, without explanation or without permitting counsel to put on further evidence of the elements of damage.

6. Did the Court err when it "pierced the corporate veil" and set aside profit as an element of damage when there was no showing of fraud or dishonesty between the corporations, Triway Crane, Inc. and Valjar, Inc.?

V. ASSIGNMENT OF CROSS-ERROR

As previously stated appellee contends that the Order complained of deals only with the issue of the Statute of Frauds and that no other issues are mature for decision by this Court. In the event that this court should disagree with that contention and in order to preserve its rights in accordance with Rule 5:27 of the Supreme Court of Virginia appellee states as its assignment of cross error:

1. The evidence at trial was insufficient, as a matter of law, to support the existence of a contract.
2. The jury verdict "in full amount allowed" was improper in form.
3. The trial court erred, as a matter of law, in amending the jury verdict without reducing the damages by the amount of profit made on the sale of the crane.
4. The trial court erred by including as an element of damages, the four percent sales tax made on the monthly installment payments by appellant.

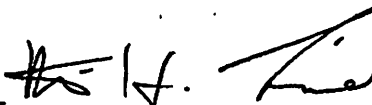
NOTICE OF APPEAL

LAW OFFICES • FINE, FINE, LEGUM & FINE • NORFOLK, VA.
NOW COMES Plaintiff, Valjar, Incorporated, and does hereby note its appeal from a Judgment of the Circuit Court of the City of Norfolk, Virginia, dated December 2, 1977, from which it is aggrieved.

The transcript has heretofore been filed with the Court.

VALJAR, INCORPORATED

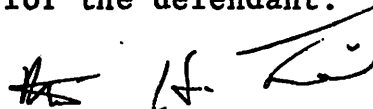
By



Of Counsel

MORRIS H. FINE, p.q.
720 Law Building
147 Granby Street
Norfolk, Virginia 23510

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was mailed this 19th day of December 1977, to Mr. Robert L. O'Donnell, Vandeventer, Black, Meredith and Martin, Virginia National Bank Building, Norfolk, Virginia 23510, counsel for the defendant.



CIRCUIT COURT

Filed... DEC 20 1977

BY... *POJW* ...B.D.

MOTION FOR JUDGMENT

NOW COMES Valjar, Inc., and moves the aforesaid Court to enter a judgment against you, defendants, in the sum of Seventy Five Thousand (\$75,000.00) Dollars, with interest from October 1, 1974, for this, to-wit:

1. That on or about May 15, 1974, the Plaintiff and Defendants did enter into an agreement, wherein the Plaintiff was to provide a 140 ton truck-crane on the premises of the Defendants and the Defendants were to allow the crane to be domiciled on the premises, with no fees, no storage, or other charges for domiciling the crane. The term of the agreement was for a period of twelve (12) months, beginning on the date that the crane was placed on the premises.

Further, the Defendants agreed that they would not allow other cranes of more than 100 tons to be used on the dock at the Norfolk International Terminal. Plaintiff was to charge customers of the Defendants at an hourly rental rate approved by the Defendants, all of which was agreed upon by the parties.

3. That the Plaintiffs did perform their duties under the contract, and in fact, did make available and place on the premises of the Defendants one 140 ton crane, on or about October 16, 1974, with operator, oiler and other necessary equipment, so that the crane could be rented to the customers of the Defendants, including insurance requested by the Defendants.

4. That thereafter, the Defendants did breach the contract of the parties by ~~not~~ permitting the Plaintiffs to continue to use the crane on the docks as contemplated by the parties.

5. That as a result of the breach on the part of the Defendants, among other things, the Plaintiff has been caused to expend monies now and in the future for operator, oiler, insurance, interest and regular payments to a financing organization; and the Plaintiff has lost profits and will lose profits in the future.

6. That said crane was a unique crane in that it was designed to do only the type of work necessary on the type of jobs of the Defendants, in that the machine was tailored to the needs of the Defendants, among other things, a longshoreman certification was placed on the crane, load computer as required by the federal government, four by four (4x4) foot aluminum outrigger floats, dual tagline winders for container handling.

WHEREFORE, Plaintiff demands judgment against you, Defendants, in the sum of Seventy Five Thousand (\$75,000.00) Dollars, with interest from October 1, 1974.

VALJAR, INC.

By _____
Of Counsel

Morris H. Fine, p.q.
720 Law Building
147 Granby Street
Norfolk, Virginia 23510

ANSWER AND GROUNDS OF DEFENSE

NOW COMES the Defendant, by counsel, and for this its Answer to the Motion for Judgment, alleges as follows:

1. That the allegations of paragraphs 1, un-numbered paragraph two, 3, 4 and 5 are denied.
2. That the Defendant is without sufficient information to permit it to answer the allegations of paragraph 6 of the Motion for Judgment, but, if material, strict proof thereof is demanded. Defendant further says that the allegations of paragraph 6 should be immaterial because there was no contract between plaintiff and defendant.
3. Defendant denies the existence of any contract between defendant and the plaintiff and denies that it is guilty of any breach thereof.
4. Defendant reserves the right to assert such other defenses to this action which may be appropriate.

WHEREFORE, Defendant asks that the Motion for Judgment be dismissed and that it have its costs herein expended.

MOTION FOR A BILL OF PARTICULARS

Defendant, by counsel, moves this Honorable Court to require the plaintiff to file a Bill of Particulars within ten (10) days particularizing in detail the following:

1. Specifying in detail each and every fact on which Plaintiff expects to rely to establish that there was any agreement between plaintiff and defendant.

2. Particularizing in detail all of the terms and conditions of any such alleged agreement, including terms and conditions of each and every document relied upon by the plaintiff, or in the alternative, annexing each such document to its Bill of Particulars.

3. Specifying in detail each and every item of damage claimed by the plaintiff.

MARITIME TERMINALS, INCORPORATED

BY Joseph A. Gawrys
Of Counsel

Joseph A. Gawrys
VANDEVENTER, BLACK, MEREDITH &
MARTIN
2050 Virginia National Bank Building
Norfolk, Virginia 23510

Certificate of Service

I certify that on 9/30/75
I mailed or delivered a true copy of the foregoing
pleading(s) to each counsel of record.

Joseph A. Gawrys

CIRCUIT COURT

Filed OCT 01 1975
BY: R. M. Mable D.R.

S T I P U L A T I O N

The parties, plaintiff and defendant, by counsel, hereby stipulate and agree as follows:

1. That all discovery proceedings in which the parties engaged in the case of Valjar, Inc. v. Maritime Terminals, Inc. - Law Number L-75-348 - shall be incorporated in this pending proceeding as if originally taken herein. This includes the following:

a. Motion for a Bill of Particulars filed by the defendant.

b. Bill of Particulars filed by the plaintiff and all documents attached thereto.

c. Motion for Production filed by the plaintiff.

d. Response to Motion for Production filed by the defendant.

e. Interrogatories propounded to the plaintiff by the defendant.

f. Answers of the plaintiff to said Interrogatories.

g. All Depositions taken for purposes of Discovery or any other purpose.

Dated: November 5, 1975

VALJAR, INCORPORATED

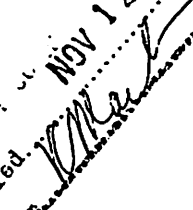
BY


Of Counsel

MARITIME TERMINALS, INCORPORATED

BY


Of Counsel

Filed NOV 12 1975
BY 

BILL OF PARTICULARS

NOW COMES the Plaintiff and pursuant to the Order of Court states as follows:

1. The Plaintiff expects to rely on the following facts to establish a contract:

A) That there was an oral meeting of the minds between representatives of the Plaintiff and Defendants on or about May 15, 1974.

B) That the terms and conditions of said agreement were as follows:

1. Length of agreement was for twelve (12) months.
2. Plaintiff was to provide on the premises of the Defendants a 140 ton crane.
3. Defendants were to allow the crane to be domiciled on the premises with no fees, no storage and no other charges.
4. That the Defendants would not allow other rental cranes of 100 tons or more to be used on the docks of the Defendants.
5. That the Plaintiff would make the crane available for use by the customers of the Defendants, subject to an hourly rate mutually agreed upon.
6. Plaintiff was to have the right to remove the cranes from the premises of the Defendants on a non-interference basis.
7. That the Defendants were not liable for any acts or omissions of the Plaintiff's agents or servants.

8. That the Plaintiff agreed to indemnify and save the Defendants harmless by reason of any accident resulting from the use of the crane.

9. That certain minimum coverage of public liability ~~shall~~ be obtained by the Plaintiff.

10. That thereafter, the Plaintiff and Defendants acted ~~under~~ the terms and conditions as set forth.

2. A) Letter of July 18, 1974, copy attached

B) Letter of Maritime Terminals, Inc., dated November 15, 1974, with enclosure of a contract prepared by the attorneys for the Defendants, a copy attached.

C) Invoices of crane purchased by Plaintiff, copy attached.

D) Invoices of crane financed by the Plaintiff, a copy attached.

E) Insurance liability policy, a copy is not available.

F) Payroll of Plaintiff, a copy is not available.

G) Insurance payments, a copy is not available.

H) Advertisements of Defendants, copy not available.

I) Pictures of Defendants of the crane, copy not available.

J) All memoranda in files of Defendants, copies are not available.

K) Engineering studies of crane specifications by Defendants, copies not available.

L) Engineering studies of pier by Defendants, copies not available.

3. Damages of Plaintiff:

A) Payment of principal interest and taxes on crane of \$434,490.46.

B) Overhead - \$85,000.00.

C) Direct salary costs to operations to date, \$10,000.00.

D) Loss of profits - \$200,000.00.

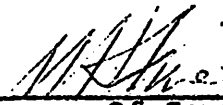
E) Insurance - \$50,000.00.

F) Miscellaneous Damages - \$50,000.00.

G) Overhead and executive time lost - \$50,000.00.

H) Such other items as may be properly proved at the time of trial.

VALJAR, INCORPORATED

By 
Of Counsel

MORRIS H. FINE, p.q.
720 Law Building
147 Granby Street
Norfolk, Virginia 23510

THIS IS TO CERTIFY THAT THE FOREGOING
PLEADING WAS MAILED TO COUNSEL OF
RECORD, THIS 27 DAY OF April, 1975.


OF COUNSEL

PRINTERS NOTE:

ATTACHMENTS TO THE BILL OF PARTICULARS INCLUDE THE FOLLOWING EXHIBITS:

DEFENDANT'S EXHIBIT NUMBER 1 (Letter, November 15, 1974,
MTI to Mr. Recca)

DEFENDANT'S EXHIBIT NUMBER 2 (Agreement between MTI
and Valjar)

PLAINTIFF'S EXHIBIT NUMBER 14 (Installment sale, Valjar
purchasing from Equitable Leasing Corp.)

City
Via
Crane
Sales

BOX 26 - 181 WELLMAN STREET
NORFOLK, VIRGINIA 23502
424-3322

P. O. No. 7414

CORPORATION

Harnischfeger Corporation
Lexington Tower Apartments #1605
104 W. Franklin Street
Richmond, Virginia 23220

Please Furnish the Material Specified Below Subject to the Conditions and Instructions Set Forth on the Face Hereof.

SHIP TO ARRIVE AT JOB BY Earliest Date (30Days)		SHIP VIA Rail - Prepaid		DATE OF ORDER May 30, 1974	
TERMS		P.O.D.		REQUISITION NO.	
TYPED BY		COST CODE		DATE OF CUST. ORDER	
CUSTOMER ORDER					

QTY	QUANTITY	DESCRIPTION	UNIT	PRICE	TOTAL PRICE
	1	9125TC 140 Ton truck crane 50' Boom			\$255,000.
20	1	Cummins V903 with torque convertor			3,720.
27	1	Power load - front drum			240.
29	1	Power Load - rear drum			240.
31	1	5 parts line with 3-sheave block			2,730.
70	1	Spare tire & rim			120.
79	1	Heater & defroster			220.
81	1	West Coast Mirrors			125.
83	1	Hydraulic outriggers			6,725.
84	1	Front bumper counterweight			6,510.
87	1	Front bumper float			500.
105	1	Boom Backstops			1,075.
107	1	10' boom insert			1,600.
110	2	50' boom inserts	2	4,320.00	8,640.
108	1	20' boom insert			3,240.
109	1	30' boom insert			2,735.
111	1	Single Sheave block			815.
112	1	Weighted hook			345.
113	1	swivel for hook			210.
25	1	20' jib with standard strut			1,600.
29	2	20' jib inserts	2	985.00	1,970.
30	660'	jib cable			126.
40	1	Center hitch			250.
41	1	Mast gantry			3,000.
42	1	lower cable rollers			290.
43	1	Middle cable rollers			190.
44	1	Extra rear counterweight			4,700.
45	2	(continued)			

IMPORTANT INSTRUCTIONS

P. O. No. 7414

TRIWAY CRANE SALES CORP.

Please acknowledge receipt and specify shipping date.
Send itemized invoice in three copies to Triway Crane Sales Corp., attaching original bill of lading or shipping receipt.
Invoice must show item number shown on Purchase Order.
When prepaid attach original transportation receipt.

By _____

**Triway
Crane
Sales
CORPORATION**

BOX 12326 - 161 WELLMAN STREET
NORFOLK, VIRGINIA 23502
434-3332

P. O. No. _____

Harnischfeger Corporation

Please Furnish the Material Specified Below Subject to the Conditions and Instructions Set Forth on the Face Hereof.

SHIP TO ARRIVE AT JOB BY		SHIP VIA		DATE OF ORDER	
TERMS		P.O.D.		REQUISITION NO.	
TYPED BY		COST CODE		DATE OF CUST. ORDER	
CUSTOMER'S ORDER					

QTY	QUANTITY	DESCRIPTION	UNIT	PRICE	TOTAL PRICE
40	1	Boom Hoist kickout			150.
50	1	Signal Horn kit - upper			55.
53	1	Foot pedal throttle			195.
65	1	Special material for self-removal ctrwt.			1,205.
		Longshoreman's Certification (to be furnished at no charge according to Ray Morgan)			NO CHARGE
		Lode-Safe-T Computer			NO CHARGE
	7	Programming Cards: <u>all with outriggers</u>			
		60' Boom			NO CHARGE
		80' Boom			NO CHARGE
		100' Boom			85.
		140' Boom			85.
		160' Boom			85.
		210' Boom			85.
		210' Boom with 50' Jib			85.
	2	Drum Turn Indicators			?
		<u>DUAL TAGLINE WINDERS</u> — 31.00			31.00
		<u>4 X 4' ALUM FLOATS - ADD'N TO STD</u> - 21.15			62.15
		UNIT SUBJECT TO 3% SPECIAL DISCOUNT AS PER RAY MORGAN			372.061
					1.00
					333.061

IMPORTANT INSTRUCTIONS

P. O. No. _____

TRIWAY CRANE SALES CORP.

NEED APRX \$290,000.00

By _____

17

Please acknowledge receipt and specify shipping date.
Send itemized invoice in three copies to Triway Crane Sales Corp., attaching original bill of lading or shipping receipt.
Show item number shown on Purchase Order.

ADDITIONAL GROUNDS OF DEFENSE

As an additional grounds of defense, the defendant, by counsel, says that this action cannot be maintained because the contract alleged by the plaintiff violates § 11-2 of the Code of Virginia since it purports to set forth an oral agreement that is not to be performed within one year.

MARITIME TERMINALS, INC.

BY Joseph A. Gawrys
Of Counsel

MOTION

Defendant, by counsel, moves this Honorable Court to permit defendant to file Additional Grounds of Defense since it appears from the testimony elicited that plaintiff is apparently relying on an oral contract.

MARTIME TERMINALS, INC.

BY Joseph A. Gawrys
Of Counsel

JOSEPH A. GAWRYS
Vandeventer, Black, Meredith
& Martin

2050 Virginia National Bank Building
Norfolk, Va. CIRCUIT COURT

Filed 1/16/76
16 DEC 1976
ZLR

Certificate of Service
I certify that on 1-16-76
I mailed or delivered a true copy of the foregoing
pleading(s) to each counsel of record.

Joseph A. Gawrys

Filed
1/16/76
ZLR

ORDER

This day came again the plaintiff, by Vincent L. Reca, its president and by counsel, and the defendant, by James N. Crumbley, its general manager and by counsel and came as well the same jury heretofore impaneled and sworn pursuant to adjournment on the 15th day of January, 1976.

Thereupon at the conclusion of all of the evidence, the defendant, by counsel moved the Court to strike the plaintiff's evidence and enter summary judgment in its behalf, which motion after having been fully heard and maturely considered by the Court, is overruled, to which action of the Court, the defendant, by counsel, duly excepts.

Now the jury having heard all of the evidence and argument of the parties, by counsel retired to its chamber to consider its verdict and after some time returned into Court with a verdict in the following words: "For Plaintiff in full amount allowed".

Thereupon the plaintiff, by counsel moved the Court to amend the jury's verdict and for the Court to enter judgment for the plaintiff on the amount shown by the evidence which is greater than the amount awarded by the Jury (in exhibit #7), or to grant the plaintiff a new trial on damages only.

Thereupon the Court amended the verdict of the jury to read: "We the jury find for the plaintiff and fix its damages at \$10,243.44".

Thereupon the defendant, by counsel moved the Court to set aside the verdict as being contrary to the

law and the evidence and to enter summary judgment in its behalf, or in the alternative to grant it a new trial.

The further hearing of which motions are continued and the parties are granted leave to later file in writing their specific and further post-trial motions.

WLP
Enter 11/16/76

E. L. Ryan

Edward L. Ryan, Jr., Judge

Per Long



FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

EDWARD L. RYAN, JR.
JUDGE

100 ST. PAUL'S BOULEVARD
NORFOLK, VIRGINIA 23510

June 14, 1976

Robert L. O'Donnell, Esquire
Vandeventer, Black, Meredith & Martin
2050 Virginia National Bank Building
Norfolk, Virginia 23510

Morris H. Fine, Esquire
Fine, Fine, Legum & Fine
Law Building
Norfolk, Virginia 23510

Re: Valjar, Inc. v. Maritime Terminals,
Inc. At Law L-75-1692

Gentlemen:

The issues for decision are:

1. Was the alleged agreement sued upon one "that is not to be performed within a year" and thus requiring some memorandum or note thereof in writing, signed by the party to be charged thereby? Code § 11-2 (7).
2. Was there sufficient evidence at trial to show that an agreement, oral or written, was entered into by the parties?
3. Was there sufficient evidence at trial to support the plaintiff's claim for damages?

Issues 1 and 2 are so-called threshold questions and a decision as to either, adverse to plaintiff, would render issue No. 3 moot.

In its memorandum of law dated June 7, 1976, the plaintiff generalizes that "firstly, the contract, though oral, is memorialized by writing, the terms of which basically were agreed upon by both the plaintiff and the defendant. The writing itself would take it out of the Statute of Frauds"; that "It is submitted that the reason why this contract could be performed in one year is that the plaintiff could take the crane off of the premises without any prejudice to it at any time, under the terms of the contract"; and

Robert L. O'Donnell, Esquire
Morris H. Fine, Esquire
Page 2
June 14, 1976

that "In addition to the ability of the contract to be performed in one year, part performance is also an element that takes this case out of the Statute of Frauds."

In its memorandum of law dated May 20, 1976, (filed June 11, 1976), the defendant generalizes that "The evidence introduced by plaintiff purports to set forth an oral agreement which was reached in May, 1974. The term of the alleged agreement was for a period of twelve months, beginning on the date that the crane was placed on the premises. The testimony of plaintiff indicated that the crane arrived at the terminal in October, 1974, and that he was ready to begin operation shortly thereafter. That being the case, plaintiff by his own testimony is seeking to enforce an oral agreement which was made in May, 1974, and which would not be performed until October, 1975. Action on such oral contract is barred by the Virginia Statute of Frauds."

Neither litigant addresses itself to issue No. 2. (Considerable comment is made by both as to issue No. 3.)

As issues Nos. 1 and 2 are of considerable importance, leave is hereby granted to the parties to brief the court with an analysis of the transcript of the evidence, giving reference to page and line numbers.

Sincerely yours,

E. L. Ryan, Jr.
Edward L. Ryan, Jr.
Judge

ELRJr:meg



FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

EDWARD L. RYAN, JR.
JUDGE.

November 25, 1977

100 ST. PAUL'S BOULEVARD
NORFOLK, VIRGINIA 23510

Morris H. Fine, Esquire
Fine, Fine, Legum and Fine
720 Law Building
Norfolk, Virginia 23510

Robert L. O'Donnell, Esquire
Vandeventer, Black, Meredith & Martin
Virginia National Bank Building
Norfolk, Virginia 23510

Re: Valjar, Inc.
v. Maritime Terminals, Inc.
At Law No. L-75-1692

Gentlemen:

The Court concludes that (1) the alleged oral agreement was not an agreement that could be performed within one year and that (2) the defendant's letter of November 15, 1974, is not sufficient to remove the contract from the ambit of the statute of frauds.

Sincerely yours,

Edward L. Ryan, Jr. (se)

Edward L. Ryan, Jr.
Judge

ELRjr:se

1 are affiliated with?

2 A I'm president of Valjar, Incorporated.

3 Q And what is the business of Valjar,
4 Incorporated?

5 A The rental of construction equipment,
6 backhoes, loaders, cranes.

7 Q And, Mr. Reca, how long has that company
8 been in existence?

9 A Since October of '65.

10 Q Were you one of the founders of it?

11 A Yes.

12 Q It's been alluded to another company called
13 Triway Sales Company, Incorporated -- are you affiliated
14 with this company?

15 A Yes, sir.

16 Q And what is the function of that company?

17 A Triway Crane Sales Corporation is a -- is
18 a sales corporation that was set up specifically at the
19 request of Harnischfeger Corporation when we were granted
20 the local franchise for sale of P and H cranes. They
21 preferred that a separate organization be set up to handle
22 the sales of their products.

23 Q Will you tell us, Mr. Reca, whether or not
24 your company rents as well as sells cranes?

25 A Yes, sir, we do.

1 Q And is this true for Valjar, Incorporated?

2 A Yes. Most of the new cranes are sold by
3 Triway Crane Sales, but from time to time we will sell cranes
4 out of our rental fleet, and those sales are handled by
5 Valjar.

6 Q And what is the main business of Valjar,
7 Incorporated?

8 A Rental.

9 Q And can you explain to the members of the
10 jury panel how you work a rental on a crane?

11 A Well, there are two types. Normally the
12 rental on a short term basis with an operator -- and most
13 of our machinery is rented that way -- with an operator.
14 We take the responsibility for the operation and the
15 maintenance of the machinery, and the bills are sent out
16 according to the number of hours or we will lease a machine
17 on a bare rental where the customer has the responsibility
18 of providing the operator, the fuel, the maintenance, the
19 insurance and what not.

20 Q Approximately how many cranes in 1974 did
21 Valjar own?

22 A About twenty-two. Twenty-two.

23 Q And were these specifically for rental
24 purposes?

25 A We had two units that were new that we had

1 Maritime Terminals, Incorporated, took over the
2 operation July 1, 1972.

3 THE COURT: It's six of one and half a
4 dozen of the other.

5
6 BY MR. FINE:

7 Q All right. Mr. Reca, what was the interest
8 of Maritime Terminals in cranes at the area there?

9 A Well, our initial contact with the terminals
10 was prompted by Harnischfeger's development of a large mobile
11 crane that they geared specifically for container traffic.
12 Harnischfeger Corporation in developing this made note of
13 all the ports they felt could use it, and they specifically
14 pointed out to us that they felt that an application was here
15 in the port of Norfolk in this area, very famous port; and
16 so we decided that we should look into it.

17 Q All right. Now, can you give us any idea
18 how many times you contacted Mr. Ray Brewer:

19 A Well, we talked. I did not talk to
20 Mr. Brewer in 1972 I don't believe, but members of our firm
21 talked to him in '71, and there was a continuing discussion
22 that went on over the years about this machine. There was
23 interest expressed. It was a machine that was proven
24 capable of working on the docks.

25 Q All right. What -- who was Mr. Brewer?

1 BY MR. FINE:

2 Q When was the first time that you met with
3 someone other than Mr. Brewer?

4 A In May of 1974.

5 Q And who met at that time, Mr. Reca?

6 A Well, Creston Sutch, the representative
7 from Harnischfeger, and myself called on Ray Brewer.
8 Mr. Crumbley said he would see us, and we left Mr. Crumbley's
9 office on the pier and went up to the main building and met
10 with Mr. Crumbley.

11 Q All right. Now, let me ask you this.
12 What, if any, representations were made as to number of lifts
13 that could be made in applications of your crane on and about
14 the pier?

15 MR. GAWRYS: I object to that, Your Honor.

16 THE COURT: Overruled.

17 A We had -- we had made a proposal earlier on
18 the 62-50, on the 250-ton truck crane; and they were not in
19 a position to accept that. We determined -- my partner and
20 myself -- that a need did exist, and the terminal or the
21 representatives that I was talking to felt that a crane of
22 this size would be a definite asset to the port.

23
24 BY MR. FINE:

25 Q Why?

1 A Oh.

2 Q Based on your discussions did you come up
3 with --

4 A We came up with an idea that if we had some
5 reasonable expectation of usage on a crane at the piers, that
6 we had been led to believe by Mr. Brewer that there was such
7 traffic.

8 Q Specifically what?

9 A Well --

10 MR. GAWRYS: If Your Honor please, I'm
11 going -- I hate to keep getting up and objecting,
12 but when he said, "We were led to believe," that
13 is a conclusion. I think he can testify what his
14 conversations were.

15 THE COURT: He could say, "We were told,"
16 couldn't he? Were you told that?

17 THE WITNESS: Yes, sir.

18
19 BY MR. FINE:

20 Q Specifically that?

21 A We were told we could anticipate twelve
22 to fourteen hours a week. That was barge traffic and the
23 offloading or the unloading of containers onto rail cars.

24 Q Wait a minute. Did he tell you any degree
25 of certainty what areas, whose containers of barge traffic

1 you would be lifting?

2 A We are going back now. I don't -- I don't
3 specifically recall. The Dart Lines as I recall, and Ray
4 Brewer also indicated that they had another container line
5 that they had anticipated would be coming -- would be using
6 the Norfolk terminals. He also felt that having this
7 mobility, this crane would increase the amount of general
8 cargo going through the port of Norfolk, so we anticipated
9 and we relied upon twelve to fourteen hours a week of crane
10 time, and then looking to the increase in the general cargo
11 I specifically recall that they talked about a lot of
12 Harnischfeger equipment that was not coming through the port
13 of Norfolk. They are the largest exporter, and we thought
14 maybe the port of Norfolk would get some of Harnischfeger's
15 work; so all in all we felt that we had a minimum of twelve
16 to fourteen hours a week of usage that we were going to get.
17 We worked from there.

18 Q All right. Now, did you use those
19 calculations in determining whether this was feasible for
20 you as a businessman and your company as a crane renter to
21 purchase a crane?

22 A Yes. Yes. We used those figures.

23 MR. GAWRYS: May I approach the bench,
24 Your Honor?

25 THE COURT: Yes, sir.

1 crane being loaded on the docks, we suggested to the port
2 that we would put a 140-ton crane on the piers and make it
3 available when it was needed and as it was needed and there
4 would be no cash commitment from the port.

5 THE COURT: To the manufacturer?

6 THE WITNESS: Sir?

7 THE COURT: To the manufacturer?

8 THE WITNESS: No, sir. To us. We would
9 purchase the crane.

10 THE COURT: I see.

11 THE WITNESS: Valjar was going to purchase
12 the crane. There were several conditions that
13 we asked for.

14
15 BY MR. FINE:

16 Q Did you have an agreement?

17 A Yes, sir.

18 Q All right. Tell His Honor and the members
19 of the jury what that agreement was.

20 MR. GAWRYS: If Your Honor please,
21 objection.

22 THE COURT: Overruled.

23 A What we finally worked out was that Valjar
24 would buy a 140-ton crane. It would be equipped in such a
25 manner as to make it ideal for offloading containers and

1 general cargo. For instance, it came in with large floats.
2 It came in with dual tag line winders so that in handling a
3 container the operator had control of the container so that
4 it wouldn't swing or whip. You had two tag lines. The
5 whole crane had a longshoreman's certification from the
6 U. S. Department of Labor to comply with the law that governs
7 this operation. It was equipped with -- what P. and H
8 refers to as a computer to determine when an operator took
9 a lift that he was within the capacity of that crane.

10 We agreed to furnish all of this. I asked
11 for a minimum rental of \$140.00 an hour with a four-hour
12 minimum charge so that each time we made a pick we would
13 get four hours.

14 Q What is a pick?

15 A A lift. A lift. If we had a single
16 container to be picked up and we moved the crane onto the
17 piers or wherever the lift was, we would get four hours.
18 I would operate the crane. I would have an operator --

19 MR. GAWRYS: If Your Honor please, I have
20 a matter I would like to take up with the Court.

21 THE COURT: All right, sir.

22 MR. GAWRYS: I filed a motion, a Bill of
23 Particulars.

24 THE COURT: Excuse the jury?

25 MR. GAWRYS: Possibly, Your Honor.

1 same discovery the answer was, "\$14,350.00 per
2 month. We anticipated that as a minimum.
3 Beginning no later than the fourth month, it would
4 have amounted to five jobs, because we were on a
5 four-hour minimum charge."

6 MR. GAWRYS: What does that have to do with
7 my question that I asked?

8 THE COURT: Overrule the objection. Let's
9 take a recess.

10 (The trial recessed at 11:10 A. M. At
11 11:18 A. M. the trial continued as follows:)

12 THE COURT: Bring in the jury.

13 MR. GAWRYS: I want to take this up with
14 the Court. Plaintiff is contending that this
15 came out of discovery, and he jumps from Page 22
16 to Page 49, and I submit that is not correct.

17 THE COURT: Tell me why.

18 MR. GAWRYS: On Page 23 of the discovery
19 depositions, "In Paragraph 5 Mr. Crumbley advised
20 you that arrangements for the rental of the crane
21 would be made with the Pier Division Supervisor?

22 "Answer: That is correct."

23 I think that point I was talking about in
24 the letter of July 18th, which was addressed to
25 Norfolk International Terminals and attention

1 were explaining that to the Court and the members of the jury.
2 Would you proceed further, sir.

3 A I don't recall what I have said.

4 Q I think --

5 A We were discussing the make-up of the crane,
6 the terms of the agreement. There would be -- there would
7 be no cost to the port. The crane would be domiciled on
8 the port property. We wanted an agreement that no cranes
9 of a hundred tons or more capacity would be permitted on the
10 port unless we were not in a position to take care of it,
11 in which case they could.

12 Our reasoning behind that was that if we
13 were going to bring this crane in and run this risk, that if
14 it proved -- if it proved profitable, we would want to
15 recover our losses that we knew we were -- that we were
16 anticipating in the first two or three months. We wanted
17 a contract for one year on a noncompetitive basis. The
18 rental rate was set at \$140.00 an hour.

19 I believe that is pretty much it. Let me
20 see. That we would operate the crane. We would have the
21 operator and oiler standing by during the day in the event
22 that a call came in, and we wanted the right to remove the
23 crane occasionally on a noninterference basis, and by that
24 we meant if we did not anticipate a lift at the pier we
25 wanted to be able to remove the crane if we had a lift

1 somewhere else but only if it did not interfere with work
2 on the port. The prime reason for bringing it in obviously
3 was the port.

4 THE COURT: Is that "port" you are saying?

5 THE WITNESS: Yes. Port.
6

7 BY MR. FINE:

8 Q Mr. Reca, what other terms and conditions
9 were there to this agreement?

10 A We would have to insure the crane. We would
11 have -- we discussed insurance. The thought came up that
12 we might drop a container or something like that and do
13 damage to a ship. We were in agreement that five million
14 dollars worth of -- of additional coverage beyond what we
15 had would be sufficient to take care of anything that might
16 happen.

17 Q Did you live up to that agreement by the way?

18 A Yes. Yes.

19 Q With that particular clause?

20 A Yes. Yes. We got our insurance carrier
21 to give us an umbrella policy for five million dollars.
22 We also were concerned with writing into our insurance
23 coverage the premiums for the coverage for stevedoring
24 operations in our workman's compensation policy which up
25 until then we had no need for.

1 We also increased the coverage on the
2 exposure that you have when you take something into your
3 care, custody and control. Most insurance policies
4 specifically excluded anything in your care, custody and
5 control, so you have to have the separate coverage, so we
6 were not sure what we would be lifting, so we increased our
7 coverage on that.

8 Q I take it that the defendant's representatives
9 wanted this in the contract?

10 A Yes. Well, all of us were concerned that
11 we have sufficient insurance to cover anything that Mr. --

12 Q Any other conditions that the defendants
13 asked you about?

14 A Well, there was some discussion about
15 certificates of insurance, and I believe there was some
16 discussion of a hold-harmless agreement which --

17 Q With which you were agreeable?

18 A Yes. We were agreeable on that. We had
19 overcome the major thing.

20 Q Now, Mr. Reca, was there any doubt in your
21 mind when you left the room about having an agreement?

22 THE COURT: That is for the jury to decide,
23 isn't it?

24 MR. FINE: Well, of course, it would be
25 his intent, wouldn't it?

1 MR. FINE: Well, what weights it imposed.

2 THE COURT: On the pier?

3 MR. FINE: Yes, sir.

4 THE COURT: Well, clarify your question.

5 MR. FINE: Yes, sir.

6 MR. GAWRYS: My only request, Your Honor,
7 is that when he testifies he not say they are
8 referring to the port but that he specify the
9 person to whom they furnished that information.

10 THE COURT: Do that.

11 MR. GAWRYS: So that I can attempt to
12 verify it.

13 THE COURT: Do that, Mr. Reca.

14 THE WITNESS: Yes, sir.

15
16 BY MR. FINE:

17 Q First, when did you give these statistics?

18 A We are talking about this particular crane?

19 Q This particular crane and who did you give
20 the statistical information?

21 A I know that specifically the day that we
22 spoke with Mr. Brewer and Mr. Crumbley, Mr. Sutch was with
23 us at Mr. Crumbley's office, that we had a complete set of
24 specifications on the 140-ton crane.

25 THE COURT: What month was that?

1 THE WITNESS: That was in -- that was in
2 May, Your Honor.

3 THE COURT: I didn't know whether it was
4 May or October.

5 THE WITNESS: It was in May.

6
7 BY MR. FINE:

8 Q Did you turn it over to them at that time?

9 A Yes.

10 Q Did you ever have any further discussions
11 about what weights this particular crane would impose on the
12 pier prior to delivery in October of 1974?

13 A No, sir, not that I recall.

14 Q Did you at a later time have discussions
15 with anybody who is employed by the defendant?

16 A Yes. On October the 10th, the day that
17 Mr. Crumbley and Mr. Brewer and Mr. Thompson and myself were
18 looking at the crane, Mr. Thompson -- who I later found out
19 was the engineer -- port engineer -- asked me did I have some
20 specification sheets on that crane. He was concerned. He
21 wanted to know what the crane weighed.

22 I had some specification sheets with me.
23 We furnished those to Mr. Thompson as well as a copy. I
24 believe we gave him a copy of the operator's manual that
25 came along with the crane.

1 Q All right. Now, Mr. Reca, did this
2 particular crane actually make any lifts at the Maritime
3 Terminals after it was set up?

4 A It made one lift, and that was in -- I believe
5 in January of 1975. We were given an area to park the crane.
6 It was in a parking lot, and they had a piece of construction
7 machinery that had been pulled in a railcar adjacent to us.
8 We were asked to make that lift, which we did.

9 Q All right. Why didn't it make other lifts?

10 A Originally when the crane was offloaded
11 Mr. Brewer told me that he had a barge coming in. I think
12 we put it together on a Friday. I think it was a Thursday
13 or a Friday. Was when Mr. Crumbley and all of us looked
14 at the crane. Mr. Brewer said he had a barge coming in
15 probably Wednesday that we would be offloading. When we did
16 not get that barge job, we were told that the Paceco had
17 offloaded it, which was understandable.

18 Q Tell the jury what the Paceco is and what
19 the priorities are.

20 A The Paceco cranes are the large portainers.
21 The booms go out over the ship and pick up the container
22 and bring it in. It was made very clear to us that the
23 portainers would have priority on the offloading.
24 Mr. Crumbley made that very clear, that he could not allow
25 this crane to compete with portainers, so when we were told

1 that the first lift was not made because it was offloaded by
2 the portainers, we had no cause for concern. It was about --
3 I think about three and a half weeks later that I was -- it
4 was told to me.

5 Q Who told you?

6 A I believe it was Ray Brewer. That I was
7 becoming concerned as to why we were getting no work, that
8 there was a question as to the weight of the crane and the
9 ability of the piers to handle it and that some study was
10 going to be made.

11 THE COURT: This was in January of '75?

12 THE WITNESS: No, sir. This was -- this
13 was I believe in November of 1975.

14 THE COURT: November of '75?

15 THE WITNESS: I beg your pardon, Your
16 Honor. In 1974.

17 THE COURT: '74?

18 THE WITNESS: Yes, sir. The crane was
19 there for three or four weeks.

20
21 BY MR. FINE:

22 Q Did you follow up that information?

23 A I was concerned, of course. I was greatly
24 concerned because we were -- we were making payments on this
25 crane. We were generating no revenue and later -- I'm not

1 sure I have it in here. Mr. Crumbley sent to me a copy of
2 a -- of a report that was prepared by Joe Glenn and
3 Associates with a cover letter saying to read it and that he
4 would get with me to discuss the report. That was the first
5 concrete thing that I had seen which indicated that the crane
6 was going to have some problems.

7 Q Had you had discussions with either
8 Mr. Thompson or Mr. Brewer relative to making load picks on
9 the pier after -- between, say, the 1st of November and the
10 time you got this letter?

11 A There were some discussions. I believe --
12 no, I did not speak to Mr. Thompson.

13 THE COURT: Mr. Fine --

14 MR. FINE: Yes.

15 THE COURT: Mr. Fine, I think we have a
16 general idea as to who Mr. Thompson and Mr. Brewer
17 and Mr. Crumbley are. Would you have Mr. Reca
18 explain exactly who Mr. Thompson is and who
19 Mr. Brewer is and who Mr. Crumbley is, their titles
20 and offices.

21
22 BY MR. FINE:

23 Q All right. Who is Mr. Thompson?

24 A As I understand it, he is the port
25 engineer.

1 United States. I spoke to some exporters. We were just
2 simply not able to move the crane.

3 Q All right. What did you finally end up
4 doing with the crane?

5 A I sold it to Mr. Julius Peck at Peck Iron
6 in Portsmouth.

7 Q And approximately when was that?

8 A It was in -- get my notes, my file. In
9 May. In May of 1975.

10 Q All right. Now, what did Valjar,
11 Incorporated, pay for the crane?

12 A Valjar paid \$293,654.00. That was freight
13 included to Norfolk.

14 Q Did they pay cash for it, Mr. Reca?

15 A No, sir. We arranged financing on it.

16 Q And through whom?

17 MR. GAWRYS: If Your Honor please, I didn't
18 think the question of financing is relevant at all
19 in this case.

20 THE COURT: It's a good question.

21 MR. GAWRYS: Pardon?

22 THE COURT: A good question. I will let
23 it in in this case but take care of it on
24 instructions.

25 MR. GAWRYS: Note our objection.

1 THE COURT: Yes.

2
3 BY MR. FINE:

4 Q Who did you finance it through, Mr. Reca?

5 A The Equitable Leasing Corporation.

6 Q And how much did you finance?

7 A We financed \$293,654.00.

8 Q And how much were the payments per month?

9 A Payments were \$6,034.59 a month.

10 Q And, Mr. Reca, have you prepared a statement
11 of what your direct expenses were in connection to the --
12 with the crane and what you sold it for and that sort of
13 thing? Would you tell us what that was, sir.

14 MR. GAWRYS: If Your Honor please, I don't
15 think this is the best evidence.

16 MR. FINE: All right. I have got checks
17 of everything.

18 THE COURT: You are going to ask him for
19 an aggregate figure and then supplement it by
20 proofs?

21 MR. FINE: No. I will put the proof in
22 first.

23 THE COURT: Put the proof in first.

24 MR. FINE: Yes, sir.
25

1 BY MR. FINE:

2 Q Give me the check that you paid for the
3 crane, Mr. Reca. In fact, you can bring them all to me
4 and we will give them all to him.

5 THE COURT: Do them one at a time and I
6 will mark them separately.

7
8 BY MR. FINE:

9 Q All right. What is this check?

10 A This is the check -- wait a minute. I
11 beg your pardon. This is the check to Harnischfeger
12 Corporation from Triway Cranes for \$274,000.00.

13 MR. GAWRYS: I just -- I have never seen
14 these documents. I wonder if we can go over
15 these out of the presence of the jury.

16 THE COURT: You could have done that in
17 pretrial conference long ago. Let's go ahead and
18 try the case.

19 Suppose you hand him one document at a time.

20 MR. FINE: That's what I'm doing.

21 THE COURT: All right, sir. Plaintiff's
22 Exhibit Number 2.

23 (Marked in evidence by the Court as
24 Plaintiff's Exhibit Number 2.)
25

1 BY MR. FINE:

2 Q Did you have a check from Valjar to Triways?

3 A I checked for the freight.

4 Q All right. Give me those.

5 A All right. There are two checks. They
6 are with another account paid in with these. However, here
7 are the car numbers on the four cars that shipped this one
8 in, and I can give you the freight was approximately \$7,600.00.

9 THE COURT: All right. What are you
10 referring to now, Mr. Fine?

11 MR. FINE: These are two checks for the
12 freight.

13 THE COURT: That looks like a whole lot
14 of papers to me. Tell me what that one is.
15 State for the record what that is -- all those
16 papers.

17 MR. FINE: Well, we will just put the check
18 in.

19 THE COURT: Well, you handed --

20 MR. FINE: I'm sorry, Judge.

21 THE COURT: Check dated February the 17th
22 to Norfolk and Western Railway Company, Plaintiff's
23 Exhibit Number 3, \$7,114.80.

24 (Marked in evidence by the Court as
25 Plaintiff's Exhibit Number 3.)

1 THE COURT: Triway Crane Sales to N and W
2 Railway Company, November the 1st, 1974, \$4,066.31.

3 (Marked in evidence by the Court as
4 Plaintiff's Exhibit Number 4.)

5 BY MR. FINE:

6 Q What is this, Mr. Reca, you are handing me?

7 A That is the payment book that we had from
8 Equitable Leasing Company.

9 Q What were the payments per month?

10 A \$6,034.59. We had seventy-two payments.

11 Q And how many did you actually make?

12 A Six. I have those checks.

13 Q Do you have the checks as well?

14 MR. GAWRYS: Object to this.

15 THE COURT: Mark it for identification only
16 at this time. Six payment checks.

17 MR. GAWRYS: I object to these documents also.

18 MR. FINE: These are the payments pursuant
19 to the financing.

20 THE COURT: These are the checks of Valjar.
21 They are one, two, three, four, five, six. Will
22 be stapled together, Checks 3781, 3893, 3993, 4108,
23 4206, 4352. Marked Plaintiff's Exhibit 5.

24 (Marked in evidence by the Court as
25 Plaintiff's Exhibit Number 5.)

1 MR. GAWRYS: What --

2 THE COURT: Mark these exhibits.

3 MR. FINE: The court reporter said that the
4 numbers are confused on the exhibits.

5 (A side-bar conference was had out of the
6 hearing of the jury.)

7 THE COURT: I see. This will be Exhibit 5,
8 this bunch of checks. Right?

9 MR. FINE: No. There are two Number 2's.

10 THE COURT: This will be Exhibit 4 then.

11 MR. GAWRYS: The letter was Number 1. The
12 checks for \$274,000 was Number 2. One check to
13 N and W would be 3 and the other one to N and W
14 would be 4.

15 THE COURT: These checks would be 5, this
16 bunch of checks.

17 (Marked in evidence by the Court as
18 Plaintiff's Exhibit Number 5.)

19 MR. FINE: How about the book, Judge.

20 THE COURT: I just marked that for
21 identification only at this time.

22 MR. GAWRYS: All right, sir.

23 THE COURT: Thank you, gentlemen.

24 MR. GAWRYS: And we object to this next one.

25 THE COURT: All right, sir.

1 BY MR. FINE:

2 Q This is the payoff on the crane after you
3 sold it?

4 A That's correct.

5 THE COURT: What does that mean?

6 THE WITNESS: That paid off -- we sold the
7 crane, Your Honor, and that was the balance of the
8 money that we still owed on it.

9 THE COURT: What is Equitable Leasing?

10 THE WITNESS: That was the firm that
11 financed the crane for Valjar. We borrowed the
12 money from them.

13 THE COURT: All right. I will mark it
14 Exhibit 6.

15 (Marked in evidence by the Court as
16 Plaintiff's Exhibit Number 6.)

17
18 BY MR. FINE:

19 Q Now, what other expenses did you have,
20 Mr. Reca, during the time you owned this crane?

21 A Your question is expenses. We calculated
22 to set up the crane at NIT \$1,762.16.

23 Q How did you arrive at that?

24 A That was our labor figure and our crane
25 figure for offloading the crane, assembly and checking out of

1 the crane.

2 Q All right, sir. What other expenses did
3 you have?

4 A Eighty dollars to paint our name on the
5 crane, \$3,864.41 for the operator -- the operating engineer.

6 Q Why did you have that?

7 A He was standing by to operate the crane in
8 the event we received a call.

9 Q Did you have direct expense?

10 MR. GAWRYS: So I don't have to keep getting
11 up, we object to this line of questioning.

12 THE COURT: The entire line. You stipulate
13 his objection runs to the entire line?

14 MR. FINE: Yes.

15 THE COURT: Overruled.

16 A We had labor costs for the oiler, the
17 apprentice, who works with the crane operator of \$2,310.00.

18 THE COURT: What time period? Shouldn't
19 go beyond January.

20 THE WITNESS: No, sir. No.

21

22 BY MR. FINE:

23 Q Does this document here help you, sir?

24 A Yeah. This is mine. To the end of
25 December, 1974.

1 THE COURT: All right, sir.

2
3 BY MR. FINE:

4 Q All right, sir. What other expenses did
5 you have?

6 A The disassembly of the crane to remove it
7 from NIT to our yard. We calculated \$1,525.84.

8 Q Is that direct labor?

9 A Yes. And crane costs and lowboy hauling.
10 There were quite a few number of lowboy truck trips.

11 Q Any overhead in that --

12 THE COURT: What is a lowboy truck trip?

13 THE WITNESS: It's a trailer, Your Honor,
14 a tractor-trailer, a particular type of tractor-
15 trailer.

16 THE COURT: Take it part by part?

17 THE WITNESS: We had to disassemble the
18 crane and move it back to our yard. There were
19 quite a few number of truck trips.

20 THE COURT: I see. Thank you.

21 THE WITNESS: Thirty-five dollars to print
22 out the name for resale. I hired that out. When
23 we sold the crane to Mr. Peck, in order to move the
24 crane to Portsmouth it was necessary that we
25 remove the entire upper structure from the crane

1 carrier, which necessitated our getting -- at the
2 time we were engaged in a strike, and it was
3 necessary that we call in a technician from
4 Harnischfeger. It required two cranes to lift
5 the upper works off and load it on a lowboy trailer.
6 Then we sent the carrier part of the crane through
7 the tunnel. That was the only way to get it
8 through. \$769.92 to disassemble it and transport
9 it to Mr. Peck.

10 The reassembly was a little more. \$1,160.76,
11 which we also had to carry all of the boom, all of
12 the counterweights, the hook lots, everything to
13 Mr. Peck's yard.

14 My insurance bill for --

15 MR. GAWRYS: I call for production of the
16 insurance policy and also for the insurance bill
17 itself.

18 MR. FINE: I have a copy of it.

19 THE COURT: Can you forward that to
20 Mr. Gawrys?

21 MR. GAWRYS: I would like to see the
22 insurance policy.

23 THE COURT: Hand it to Mr. Gawrys right
24 now.

1 BY MR. FINE:

2 Q Can you point out where Maritime --

3 A We talk about an endorsement. This is one
4 area of it.

5 MR. FINE: Can get that on cross-examination.
6 I assume he can get it on cross-examination.

7 THE COURT: That's all there, Mr. Gawrys.

8 MR. GAWRYS: I don't know. I have never
9 seen these documents.

10 MR. FINE: Well, you never asked for them.

11 MR. GAWRYS: I had a Bill of Particulars
12 that I filed.

13 THE COURT: What items did you demand?
14 What did you ask for?

15 MR. GAWRYS: I asked for the best evidence
16 of what he is testifying to. The insurance policy.

17 THE COURT: There they are. There they
18 are.

19 MR. GAWRYS: And I think that is what
20 should go in and not his testimony.

21 THE COURT: You look it over. There may
22 be something in there you don't want to go in.

23 Go ahead, Mr. Fine.
24
25

1 BY MR. FINE:

2 Q All right, sir. What was that expense?
3 How much was that?

4 A \$826.87.

5 THE COURT: The insurance premium?

6 THE WITNESS: Yes, sir. The umbrella
7 policy was \$1,125.00. Our advertising costs to --
8

9 BY MR. FINE:

10 Q What was that for?

11 THE COURT: He was about to tell you.

12 A To advertise the crane for sale.
13

14 BY MR. FINE:

15 Q How much was it?

16 A \$1,052.00.

17 Q All right, sir.

18 A \$143.05 in long distance telephone calls,
19 and the sales tax -- the four per cent sales tax on the
20 payments came to \$1,400.00.

21 Q And how much is that total?

22 A \$45,529.84.

23 Q Have you made a list of the resume?

24 A Yes, sir.

25 (Document handed to Mr. Gawrys for

1 examination.)

2 MR. GAWRYS: I'm going to object to the
3 resume going in. The evidence is in.

4 THE COURT: Is this a resume of what he
5 testified to at this point?

6 MR. FINE: Yes, sir.

7 THE COURT: Overruled.

8 MR. GAWRYS: Exception.

9 THE COURT: This will be Number 7.

10 (Marked in evidence by the Court as
11 Plaintiff's Exhibit Number 7.)
12

13 BY MR. FINE:

14 Q How much did you sell the crane to Peck for?

15 A \$290,000.00.

16 Q Do you have the check there?

17 A Yes, sir. I have a copy. We cashed it.

18 MR. FINE: So he has the original I take
19 it.

20 (Document handed to Mr. Gawrys for
21 examination.)

22 THE COURT: Plaintiff's Number 8.

23 (Marked in evidence by the Court as
24 Plaintiff's Exhibit Number 8.)

25 MR. FINE: Your witness, sir.

1 of an agreement between our organizations. Please let me
2 have your comments on it.

3 "If it is satisfactory, as is, give me a
4 telephone call and we'll decide on a beginning date for the
5 term. Yours truly, James N. Crumbley, General Manager,"
6 with a copy to Mr. Brewer.

7 Q You never called Mr. Crumbley in response
8 to that letter, did you?

9 A I'm not sure whether it was Mr. Crumbley
10 or Mr. Brewer. The only thing that concerned me about that
11 agreement was a change in the noncompetitive part.

12 Q Did you have the draft of the agreement that
13 was sent to you?

14 THE COURT: You want to introduce that
15 letter first?

16 MR. GAWRYS: The letter has already been
17 introduced, Your Honor.

18 THE COURT: All right. I just marked it.

19 MR. GAWRYS: Defendant's Exhibit Number 1.

20 THE WITNESS: I'm not sure this is the one
21 that he sent me or a copy. I believe this is it.

22
23 BY MR. GAWRYS:

24 Q Now, you are handing me a copy of a
25 proposed agreement, and there is a change on the first page.

1 The figures 100 have been written in in place of 140 in
2 Paragraph 4; is that correct?

3 A Yes, sir.

4 Q Who wrote that in?

5 A I did.

6 Q After you received the letter from
7 Mr. Crumbley?

8 A Yes, sir.

9 THE COURT: Number 2.

10 MR. GAWRYS: Ask that you receive Number 2.

11 (Marked in evidence by the Court as
12 Defendant's Exhibit Number 2.)
13

14 BY MR. GAWRYS:

15 Q Now, sir, I'm going to hand you another one,
16 which is a Xerox copy of the same agreement, and ask you if
17 it isn't identical in all respects except that that Xerox
18 copy I'm giving you is as Mr. Crumbley sent it to you
19 without any change of numerals?

20 A Yes, that's correct.

21 Q So there was some disagreement then between
22 Mr. Crumbley and you as to what the monopoly provision or
23 the noncompetitive provision would provide?

24 A No, sir. There was no disagreement.
25 There was simply an error as was explained to me, and I

1 cannot say whether it was Mr. Brewer or Mr. Crumbley that
2 said to me that that was just an error.

3 Q Anyway, you made a change?

4 A Yes.

5 Q After you received it?

6 A Yes. I read it over.

7 Q Did you ever sign that agreement?

8 A No, sir.

9 Q Did you ever communicate with Mr. Crumbley
10 and tell him the terms that the agreement was to start?

11 THE COURT: Exhibit Number 3.

12 MR. GAWRYS: Yes.

13 A No.

14 (Marked in evidence by the Court as
15 Defendant's Exhibit Number 3.)

16
17 BY MR. GAWRYS:

18 Q Mr. Crumbley asked you to decide on a
19 beginning date for the term; isn't that right?

20 A Yes.

21 Q He asked you in Exhibit Number 1?

22 A That 's correct. Mr. Crumbley asked me
23 for a beginning date for the term. I did not communicate
24 to him a beginning date.

25 MR. GAWRYS: Thank you, sir. This is the

1 A The matter was out of Mr. Brewer's hands.
2 The fact that Mr. Brewer may not have gone along with that
3 report didn't matter. The issue was at that point being
4 controlled by Mr. Thompson who endorsed that report and said
5 that it was correct.

6 Q Mr. Thompson requested another study, did
7 he not? And you know that?

8 A Yes. I found out later that Mr. Thompson
9 , had requested another study.

10 Q Yes, sir.

11 A But at that point in time Mr. Thompson --
12 it was communicated to me in that discussion that our crane
13 would not be allowed to work on those piers.

14 Q That is if this report was correct?

15 A Mr. Thompson was going on the assumption
16 that that report was correct until he received something to
17 the contrary.

18 Q Yes, sir.

19 A And at that time that was dated you must
20 remember that we had had a tremendous amount of idle time.

21 Q Well, this had nothing to do with Maritime
22 Terminals, did it?

23 A I don't understand that.

24 Q Well, Maritime Terminals had nothing to do
25 with your idle time up to December 6, 1974, did it?

1 A Maritime Terminals had all to do with it.

2 Q What did it have to do with it?

3 A They would not allow me access to the
4 piers.

5 Q This was after the report of December 6, 1974?

6 A No, sir. No, sir. That was prior. That
7 was prior to that report. As it was communicated to me,
8 Mr. Thompson -- by Mr. Brewer and later in the discussion
9 with Mr. Crumbley, Mr. Brewer and Mr. Thompson, that
10 Mr. Thompson had expressed concern about the ability of the
11 piers to withstand the loads that would be imposed by this
12 crane, and until he received a report he issued an order --
13 this was communicated to me. He issued an order not
14 allowing that crane to go near those piers.

15 Q Because he was concerned about the safety
16 of the piers; isn't that right?

17 THE COURT: What was the date you were
18 ordered not to go on the piers approximately?

19 THE WITNESS: Your Honor, I never found
20 out. To say we were originally given a date to
21 be offloading --

22 THE COURT: It was there from October to
23 January and made one lift?

24 THE WITNESS: But that was in the parking
25 lot.

1 THE COURT: When were you told not to go
2 on the piers? At the beginning?

3 THE WITNESS: No, sir. No. We
4 originally -- the crane was purchased to work on
5 the piers. There was an area designated where
6 the crane would be offloading barges.

7 THE COURT: But you have testified that it
8 was brought to your attention that you shouldn't
9 go on the piers for the time being?

10 THE WITNESS: That report was the first
11 official notification.

12 THE COURT: But up till December the 6th --
13 from early October to December the 6th your
14 equipment was there?

15 THE WITNESS: That's correct.

16 THE COURT: Why didn't you go on the pier?

17 THE WITNESS: They wouldn't allow it.

18 Ray Brewer.

19 THE COURT: Oh. From the very beginning?

20 THE WITNESS: From early October.

21
22 BY MR. GAWRYS:

23 Q When were you told you couldn't go on the
24 piers?

25 A It was about -- it was about four or five

1 November?

2 A That payment was made -- do you have the
3 checks? I think they are dated. I think the first check
4 was dated November the 12th.

5 Q One dated November 11, 1974. You decided
6 at that time, sir, that this probably wasn't going to be a
7 good deal for you; is that right?

8 A I wouldn't quite put it that way.

9 Q How would you put it, sir?

10 A I would put it that Mr. Brewer had
11 communicated it to me and I am sure he would say the same
12 thing. That the port engineer had said that the crane was
13 too heavy for the piers. He was not going to allow it on
14 the piers. The couple of jobs that we were promised did
15 not materialize, and it did not look like the crane was going
16 to be allowed to go on the piers.

17 At that point in time, yes, I became quite
18 concerned. I'd signed a note for \$441,000. This put a
19 whole new complex on this thing. We were prepared to
20 accept the idle time that would come with shipping. We were
21 not prepared to argue over whether we were going to have
22 access to the piers.

23 Q Nobody was arguing with you at that point
24 on November 11th?

25 A Nobody would tell me the truth either.

1 That's what you have alleged?

2 A Yes.

3 Q And the agreement was reached in May of 19 --

4 A Yes.

5 Q May, 1974. And was that agreement complete
6 in all particulars?

7 A The agreement that we reached in May of '74?

8 Q Yes, sir.

9 A No. I'm sure that it was not complete in
10 every detail, but essentially we were in agreement. We
11 were in agreement. We had -- it was made very clear that
12 we were going to order this crane after we reached this
13 agreement in Mr. Crumbley's office. We said we would go
14 back and order the crane and that we would get it shipped in
15 right away.

16 Q You say you met with Mr. Crumbley?

17 A I met with Mr. Crumbley and Mr. Brewer,
18 Mr. Sutch with Harnischfeger Corporation.

19 Q Did you say you met Mr. Crumbley in May,
20 1974?

21 A Yes, sir.

22 Q On how many occasions did you meet with
23 Mr. Crumbley in May, 1974?

24 A As I recall, one.

25 Q What date was that, sir?

1 Q How, sir, did you determine that you
2 positively met with Mr. Crumbley in May, 1974?

3 A In a conversation with Mr. Sutch.

4 Q Mr. Sutch. You don't have any present
5 recollection of your own of meeting Mr. Crumbley?

6 A No, sir. No. Because I was asked that
7 question and I do not recall it.

8 Q Yes, sir. In fact, you were asked on a
9 discovery deposition taken in my office on May 20, 1975,
10 Page 50. "You never met with Mr. Crumbley prior to your
11 ordering the crane, did you?

12 "Answer: I don't believe I did."
13 Was that your answer on that occasion?

14 A I think so. What page?

15 Q Page 50, sir.

16 A That is correct.

17 Q Is it not correct that throughout that
18 deposition you were vague as to when you met with Mr. Crumbley?
19 Would that summarize it essentially?

20 THE COURT: What is your answer? What was
21 your answer to that question in the deposition?

22 THE WITNESS: I said that's correct.

23 THE COURT: What did he say to you? What
24 was the question?

25 THE WITNESS: He said, "You never met with

1 "Valjar, Incorporated, by V. L. Reca,
2 president," and the signature line.

3 Q At the time you handed this to Mr. Crumbley
4 he told you this letter was not correct; this letter was not
5 acceptable; is that correct?

6 A Mr. Crumbley told me there would have to
7 be changes made.

8 Q The letter was not acceptable?

9 A That's correct.

10 Q First of all you had never signed it?

11 A That is correct.

12 Q You never signed any copy of it?

13 A No.

14 Q At any time?

15 A No.

16 Q Even up till today?

17 A (No response)

18 Q One of the first changes he told you was
19 that the company is Maritime Terminals Incorporated? Isn't
20 that correct?

21 A Yes.

22 Q And then he said the Lamberts Point Docks
23 had to come out of the first paragraph?

24 A Yes.

25 Q And you took out the garage aspect of

1 Paragraph 2?

2 A Um-hum.

3 THE COURT: What is the garage aspect?

4 MR. GAWRYS: Well, it says 140-ton crane to
5 be domiciled and garaged.

6 THE COURT: That's what I thought it said.

7
8 BY MR. GAWRYS:

9 Q That was taken out?

10 A Yes.

11 Q Lamberts Point Docks was taken out in
12 Paragraph 4. In Paragraph 3 the word "initial" was taken
13 out?

14 THE COURT: What? In what connection was
15 it used?

16 MR. GAWRYS: "The initial term of this
17 agreement shall be for twelve months."

18
19 BY MR. GAWRYS:

20 Q He also discussed with you the fact that
21 the crane would have to be scheduled by the pier supervisor?

22 A Yes. That is correct.

23 Q Isn't that right?

24 A Um-hum.

25 Q None of that was in your memorandum of any

1 agreement, was it?

2 A Um-hum.

3 Q He also discussed with you the hold-harmless
4 provision and this would be required; isn't that right?

5 A Yes.

6 Q He also told you that it had to be in
7 writing? The indemnity agreement?

8 A Yes.

9 Q That Valjar to indemnify Maritime Terminals
10 for any losses?

11 A Our insurance carrier.

12 Q That Valjar would indemnify them and you
13 would provide insurance?

14 A We would get coverage and a hold-harmless
15 agreement from our insurance carrier.

16 Q Well now, does Exhibit 3 contain anything
17 that is not correct as to your understanding of any
18 agreement?

19 A The 140-tons.

20 Q That should be 100 tons according to your
21 understanding; is that correct?

22 A Um-hum.

23 Q With that exception is there anything in
24 there that is not consistent with your understanding?

25 A No, sir.

1 Q In other words, Exhibit Number 3 is
2 consistent with your understanding of the agreement?

3 A Had the crane been able to work on the piers,
4 there was nothing in that contract that I would have found
5 undesirable or that would in any way have -- have interfered
6 with my signing of that contract.

7 Q Well, you agreed that you would purchase
8 general liability insurance, did you not?

9 A Yes.

10 Q You agreed that Maritime Terminals and
11 Virginia Port Authority would be named as parties -- as
12 insured in that contract? I will have you take a look at
13 it. Not rely on memory. Would you look at Paragraph 10.

14 A Yes. Says they would be named as --
15 included as named insureds.

16 Q And you were agreeable to that, weren't you?

17 A Yes.

18 Q Well, I am going to hand you your insurance
19 package and ask you if you can find anywhere in that policy
20 where you have caused Maritime Terminals, Inc., or Virginia
21 Port Authority to be named as insureds.

22 THE COURT: Is that the policy?

23 MR. GAWRYS: That's what he produced as
24 being the policy. I don't know. We have never
25 seen it.

1 THE COURT: Is that the policy?

2 THE WITNESS: Yes, sir. Yes, sir.

3
4 BY MR. GAWRYS:

5 Q That is your blanket policy for your whole
6 company and whole operation?

7 A That's correct.

8 Q Everything that your company owns and
9 operates including subsidiary corporations?

10 A No. This is only for Valjar. This is
11 Valjar, Incorporated. We also have a firm called Valjar
12 Backhoes, Incorporated.

13 Q Is that another corporation?

14 A Yes.

15 Q And that policy includes that, too?

16 A No, sir.

17 Q There is an endorsement in here?

18 A I beg your pardon. The umbrella policy
19 does touch.

20 THE COURT: None of which is important at
21 all in this case.

22 MR. GAWRYS: No, sir.

23 THE WITNESS: The only reference to the
24 Norfolk International Terminals is in that --
25

1 BY MR. GAWRYS:

2 Q I may ask you, sir, please talk about
3 Maritime Terminals, Incorporated.

4 THE COURT: Where is the defendant named
5 as additional named insured in that policy?

6 THE WITNESS: No, sir.

7 THE COURT: Let's go on to something else.

8 MR. GAWRYS: Okay.

9
10 BY MR. GAWRYS:

11 Q Now, did you sign a document which would
12 indemnify and hold harmless Maritime Terminals, Incorporated,
13 for any losses?

14 THE COURT: I don't follow your question.
15 My fault.

16 MR. GAWRYS: I'm sorry.

17
18 BY MR. GAWRYS:

19 Q When I say "you", Valjar, Incorporated,
20 sign any document agreeing to hold harmless Maritime
21 Terminals, Incorporated, from all liabilities, losses, damages,
22 penalties and claims of any kind of nature which may be
23 brought about by reason of any accident arising out of the
24 operation of your crane?

25 A No, sir.

1 Q Yet Exhibit 3 required such an indemnification,
2 did it not?

3 A Yes, it did.

4 THE COURT: Mr. Gawrys, can you finish in
5 two minutes? We are going to lunch.

6 MR. GAWRYS: I think we are going longer.
7 Shall we take a break at this point?

8 THE COURT: Yes. Ladies and gentlemen,
9 I will let you go to lunch at this time, and I
10 admonish you not to discuss the case at this time
11 and do not let anyone discuss it with you.
12 Please return a little before 2:00 o'clock and
13 return right to the jury room. Everybody be back
14 on time.

15 (The trial recessed at 1:00 P. M. At
16 2:00 P. M. the trial continued as follows:)

17 THE COURT: Bring the jury in, please, sir.

18 (The jury was recalled to the courtroom,
19 and the following took place in the presence of
20 the jury:)

21
22 BY MR. GAWRYS:

23 Q Mr. Reca, do you recall on December --
24 rather, when I was examining you in my office on May 20,
25 1975, that I asked you a number of questions pertaining to

1 that your answer on that occasion?

2 A That was my answer. Yes.

3 Q Is it also correct that I asked you whether
4 or not the first time you met with Mr. Crumbley was when you
5 handed him this letter of July 18, 1974?

6 A Where did you ask me that, sir?

7 Q On Page 15. And do you recall what your
8 answer was at that time?

9 A I said -- my answer was that I don't recall.

10 Q Your answer was, "I believe, but I have no
11 way of saying with any degree of assurance that I spoke with
12 Mr. Crumbley prior to this." Is that correct?

13 A That is correct.

14 Q And you weren't sure whether it was in
15 person or on the telephone?

16 A That was correct. That was my answer.
17 Yes.

18 Q Now, is it not correct that when you handed
19 him the letter of July 18, 1974, that there remained a lot of
20 other details to be worked out?

21 A That there remained a lot of details to be
22 worked out?

23 Q Yes, sir.

24 A I expect so. Yes. Into the mechanics of
25 the thing.

1 We could have gotten that from our insurance company without
2 any difficulty.

3 Q The contract doesn't call for a hold-harmless
4 from your company but from you, Valjar. Not from your
5 insurance company but from you?

6 A I never had counsel look that over. Bear
7 in mind that my draft to Mr. Crumbley was drawn by myself.
8 This was drawn by counsel, and they were a lot more complete
9 in things that I would not --

10 Q That you would what, sir?

11 A Well, that I would not be.

12 Q In other words, these were things that you
13 had not considered?

14 A No.

15 THE COURT: He said that he isn't a lawyer.

16 THE WITNESS: That is correct.

17 THE COURT: It's not a polished contract.

18 THE WITNESS: That's correct.

19

20 BY MR. GAWRYS:

21 Q Well now, Mr. Crumbley made it perfectly
22 clear to you, did he not, that before your crane did any
23 work on the pier --

24 A I didn't hear the first part.

25 Q Mr. Crumbley made it perfectly clear that

1 feel that I had been misled. We had an agreement. This --
2 this was simply to reduce it to writing. I'm not in the
3 habit of spending \$300,000 on a whim.

4 Q You were taking a gamble, were you not?

5 A I was taking a gamble but not in the sense
6 that you are speaking of it.

7 Q You became concerned that you might not
8 have enough lifts to make it profitable; isn't that correct?

9 A No, sir. Only to the extent that we were
10 not going to have free and easy access to the piers.

11 Q Why didn't you call Mr. Crumbley up when
12 you got the letter -- his letter of November 15th, whatever
13 it was, and express your concern about these problems?
14 Letter of November 15, 1974, Exhibit Number 1.

15 A Why didn't I -- did I not call him and
16 express to him my fears?

17 Q Yes.

18 A I had already communicated them to
19 Mr. Brewer, and I felt like it was very obvious what was
20 happening. That crane was not going -- was not going to
21 work. There was some speculation.

22 Q You had made certain assumptions?

23 A There was speculation made that there were
24 certain areas of the waterfront that the crane would be
25 allowed to travel, but we had not bargained for that. What

1 we had bargained for was the rental of the crane, and what
2 we had agreed upon was the rental of the crane. The crane
3 would be there. We would offload barges. We were looking
4 for increases in general cargo, but there was never a
5 discussion that this crane is going to have to sit in this
6 area of the pier or over here, and I don't know if you
7 have any familiarity with cranes; but as you get further away
8 from the load, your capacity decreases tremendously. We
9 looked and saw absolutely nothing.

10 Q Did you meet with Mr. Crumbley on the 10th
11 of December or the 11th of December, 1974, at Norfolk
12 International Terminals?

13 A You are throwing a date at me now. I don't--
14 that doesn't ring a bell.

15 Q Well, after you somehow obtained a copy of
16 the report from Joe Glenn Associates?

17 A Are you talking about the first report?

18 Q Yes, sir.

19 A Yes. I met.

20 Q That was about the 10th of December; isn't
21 that right?

22 A Oh, where is --

23 Q Or the 11th?

24 A Where is the report? What was the report
25 dated?

1 single lift.

2 Q You will agree, of course, that Mr. Crumbley,
3 the general manager, the Number 1 man at Maritime Terminals,
4 Incorporated, was not aware of the problems until he got Joe
5 Glenn's report?

6 A I don't guess anyone was officially aware
7 of what the situation actually was until that point.

8 Q By the way, did Triway Sales get a
9 commission on the sale of this crane to Valjar?

10 A They had a four per cent profit -- four
11 per cent on the net -- net cost.

12 Q So the cost of that crane to you then was
13 four per cent less than the figures given I take it?

14 A I think it was eleven and four per cent.
15 Eleven per cent was passed on to Valjar. The four per cent
16 was retained by Triway, so the crane was sold to Valjar less
17 the standard dealer discount. They kept four per cent
18 because Triway was responsible for handling all of the
19 warranty work which was always done, as you know, at a
20 considerably reduced hourly amount.

21 Q I don't know. I don't sell cranes.

22 A Well --

23 Q But Triway is you and your partner, and
24 Valjar is you and the same partner?

25 A That is correct.

1 Q So it goes in one pocket and out the other?
2 Isn't that correct?

3 A No, no, it isn't.

4 Q You gave no thought to staying on the
5 terminals until the second study was completed, did you?
6 You simply took the crane and went back?

7 A I took the crane and attempted to minimize
8 my losses.

9 Q Okay.

10 A The situation at that time for the sale of
11 cranes of that size was not very good. I had a time in
12 selling it.

13 Q But if the study being made by Joe Glenn
14 would permit the use of the crane at the pier, then you could
15 be using the crane today; isn't that right?

16 A But as it turned out, we could not have used
17 the crane at the pier with any degree of frequency.

18 Q Did you expect to have carte blanche
19 authority to run any place up and down that pier that you
20 desired?

21 A Yes, frankly.

22 Q And if the pier structure couldn't take it,
23 it was up to Maritime Terminals to build a new pier?

24 MR. FINE: If Your Honor please, that is
25 argumentative.

1 THE COURT: Sustained.

2 MR. GAWRYS: No further questions.

3
4 REDIRECT EXAMINATION

5
6 BY MR. FINE:

7 Q Mr. Reca, would you tell us what you meant
8 by risk or gamble when you answered Mr. Gawrys' question.

9 A We attempted to find some way in which we
10 could give the port what they felt they would like to have
11 and also at the same time generate some profit for ourselves.
12 They made it very clear. When I said "they" I am talking
13 about Mr. Brewer made it very clear that the port could not
14 make any cash commitment to us in exchange for bringing in
15 a crane, so we dropped the size of the crane from 250-ton
16 to a 140-ton. There was a difference of a few hundred
17 thousand. We discussed it with Mr. Brewer, and Mr. Brewer
18 felt that that crane was capable of making the lifts that
19 they would encounter.

20 We talked to him, and he felt that he could
21 give us twelve to fourteen hours a week. Well, at twelve
22 to fourteen hours a week, using our figure of \$140.00 an
23 hour cranking in the payment on the crane, the cost of
24 operations, we felt that we would have a plus or minus of
25 \$1,000 a month.

1 Q Against what?

2 A Against our expenses of owning that crane
3 for the first three or four months. We felt there was a
4 degree of risk, but it was an ideal accommodation. The
5 Port of Norfolk or the MTI was not going to commit itself
6 for a single dollar. We thought that we had put together
7 a unique package to where they would have this extra
8 capability without it costing them anything. With our
9 looking at twelve to fourteen hours a week, we felt that
10 our risk was minimal, but we were willing to bring it in with
11 absolutely no cash outlay from the port.

12 Q All right.

13 A We were going to make ourselves at a later
14 time when this general cargo that everyone talked about was
15 by-passing the Port of Norfolk and began to come through the
16 Port of Norfolk.

17 Q Now, Mr. Reca, I hand you Exhibit 3 which
18 was I believe transmitted to you by letter of Mr. Crumbley
19 on November the 16th. I assume you got it within the next
20 day or two. Why didn't you sign that, sir?

21 A In my opinion we had an agreement.

22 Q All right. Mr. Reca, what things did you
23 do relative to carrying out the agreement for insurance?

24 A We increased the -- the limits of our
25 liability by \$5,000,000 to comply with the \$5,000,000

1 umbrella.

2 Q Let me ask you this then. Was Norfolk
3 International Terminals, NIT, named in the insurance policy?

4 A Yes. They are mentioned in the coverage.

5 Q Can you point that out for us?

6 A Here it is in the original policy.

7 Q All right. Read that to us if you will.

8 A The Installation Floater. U8148.

9 "It is agreed that for the premiums charged
10 the Installation Form U8148 and Endorsement Number 1 are
11 amended to \$500,000 Limit of Liability at any one site and
12 any one loss or disaster while engaged in any and all
13 activities and operations at the Norfolk International
14 Terminals; offloading of containers; unloading of containers
15 from trucks, barges, ships, railcars, general cargo both
16 loading and unloading from trucks, barges, ships and railcars.
17 The premium for this insurance is based on the gross receipts
18 received from the rigging operation at the Norfolk
19 International Terminal and shall be adjusted on anniversary
20 or termination. The Estimated Annual Premium is based on
21 estimated gross receipts of \$133,300 at a rate of \$1.50 per
22 \$100.00 of Gross Receipts.

23 "Estimated Annual Premium: \$2,000.00."

24 MR. FINE: Are these clips?

25 Judge, with regard to the policy, of course,

1 that we are hoisting to \$500,000. We did increase
2 our workman's compensation insurance to include
3 stevedoring classifications for our crane operators
4 and they are included in here, and we advanced a
5 premium for those.

6
7 BY MR. GAWRYS:

8 Q Does the name Maritime Terminals, Inc.,
9 appear in any way, shape or form in that policy?

10 A No, sir, it does not.

11 Q Does the name Virginia Port Authority appear
12 in any way, shape or form in that policy?

13 A No, sir.

14 Q Did I understand you correctly, sir, that
15 you had no intention whatsoever of signing the proposed
16 agreement sent to you by Mr. Crumbley?

17 A I don't think that's exactly what I said.

18 Q Well, your counsel asked you why you didn't
19 sign it, and you said, "Because I felt we already had an
20 agreement."

21 A At that point, Mr. Gawrys, everything was
22 up in the air. I was out of pocket better than \$15,000,
23 and then somebody sends me an agreement. I still do not
24 know whether the crane will work. I still do not know
25 whether the crane will be able to go down on the piers.

1 Q And what education do you have, sir?

2 A High school and two years of college.

3 Q Now, how long have you known Mr. Reca here?

4 A Oh, approximately four years.

5 Q And what has been your association with him?

6 A Mr. Reca is my dealer in the Tidewater area.

7 He represents our company.

8 Q And how long has that been, sir?

9 A Five years.

10 Q All right. Now, Mr. Sutch, I'm going to
11 direct your attention to May of 1974 and ask you whether or
12 not you had occasion to come to Norfolk, Virginia.

13 A Yes, that's true.

14 Q And do you know by your records when that
15 was that you came here?

16 A It was the latter part of May. About the
17 22nd.

18 Q And what did you do at that time?

19 A Mr. Reca and I visited Maritime Terminals,
20 Incorporated.

21 Q And what did you do when you got there?

22 A We were discussing the possibility of
23 placing a -- you might call it a specialized crane to handle
24 containers.

25 A And who did you meet there? Where did you

1 meet?

2 A We met with Ray Brewer.

3 Q Do you remember where you met with him?

4 A In Mr. Brewer's office.

5 Q And how long? Did you know him?

6 A Yes.

7 Q Had you met him before that time?

8 A Yes, I had.

9 Q Approximately how many times?

10 A Twice before.

11 Q All right. What happened after you met
12 with Mr. Brewer?

13 A On which occasion, sir?

14 Q This is in May of 1974?

15 A In May. Well, the meeting we had -- the
16 final meeting we had with Mr. Brewer in May of 1974 was to
17 basically attempt to finalize the placement of this 140-ton
18 container crane at the terminal at the port to use as a
19 supplemental unit to units that are in existence there now.

20 Q All right. How long did you meet with
21 Mr. Brewer?

22 A Our meeting with Mr. Brewer was very brief
23 initially, and then we went I believe to Mr. Crumbley's
24 office.

25 Q Who went with you?

1 A Mr. Brewer and Mr. Reca.

2 Q And tell us what happened and what occurred
3 and what you recollect at that meeting.

4 A Basically we were finalizing the feasibility
5 of utilizing this crane to the extent where Mr. Reca would
6 maintain ownership of the crane and it would be basically a
7 lease arrangement or agreement between Valjar, Incorporated,
8 and Maritime Terminals, Incorporated.

9 Q What did they discuss there, sir?

10 A We discussed the utilization. That is to
11 say, how frequent the crane can be used and the limitations
12 regarding the removal of the crane when it was not being
13 used and the time of the agreement that the agreement would
14 run, which I believe was twelve months.

15 Q Was this all discussed in your presence,
16 sir?

17 A Yes.

18 Q Did the parties agree?

19 A Yes.

20 MR. GAWRYS: Objection to that, Your Honor.
21 I think that is a conclusion for the jury to reach.

22 THE COURT: How do you know they agreed,
23 sir? How do you know they agreed?

24 THE WITNESS: Well, let me say it was my
25 impression that we had an agreement.

1 financing this crane, so the degree of utilization at the
2 hourly rate of \$140.00 had to generate enough yield moneywise
3 to cover his commitment and hopefully make some profit, so
4 we were thinking in terms of basically fourteen hours a week.
5 Hopefully more.

6 Q Was this --

7 MR. GAWRYS: If Your Honor please, I'd like
8 to make a request. That the witness rather than
9 saying "we" or "this was discussed" if he could
10 identify the person who may have said that.

11 THE COURT: Do that, sir.

12 A (Continuing) This discussion was between
13 Mr. Reca and Mr. Crumbley and Mr. Brewer. I didn't enter
14 into this area. I entered into this area very little if at
15 all.

16
17 BY MR. FINE:

18 Q All right. As a result of the discussion
19 on that particular term, what was the conclusion, sir?

20 A The conclusion --

21 MR. GAWRYS: Object to the conclusions.

22 THE COURT: Do you know what the parties
23 agreed to? Did you hear them? Did you hear them
24 vocally agree to do something?

25 THE WITNESS: Yes.

1 THE COURT: Will you say exactly what they
2 said if you remember. Because they all were
3 present.

4 THE WITNESS: As I recall, everybody was
5 in agreement that this could be done.

6 MR. GAWRYS: If Your Honor Please, I object
7 to the word "agreement". That is a conclusion.
8 I would like this witness to testify to what
9 somebody said as near as he can but not the
10 conclusion.

11 THE COURT: Ask your witness why. That's
12 all you have to do. One word.

13
14 BY MR. FINE:

15 Q Why?

16 A Why what?

17 THE COURT: Two words. What did you see
18 or hear or feel or smell that indicated to you
19 that agreement had been reached? You can testify
20 to anything factual, but you can't say that --
21 by just generalizing that people agreed on
22 something.

23 THE WITNESS: Regarding the rate which was
24 \$140.00 an hour, I -- my impression was that it
25 was --

1 MR. GAWRYS: Object again to impression.

2 THE COURT: Sustain the objection.

3 MR. GAWRYS: I been telling this witness --

4 THE COURT: Sustain the objection.

5 THE WITNESS: It was discussed that the
6 rate of \$140.00 an hour was not only agreeable but
7 might be low.

8 MR. FINE: All right.

9 MR. GAWRYS: If Your Honor please, the
10 Court instructed this witness to mention names.

11 THE COURT: Any other facts? Well, we
12 know. Do we need names every time? We know it
13 was Mr. Crumbley, Mr. Brewer and Mr. Sutch and
14 Mr. Reca were present. Right?

15 MR. FINE: Yes.

16 THE WITNESS: That's true.

17 THE COURT: Can we assume that -- when you
18 break up this meeting tell us so we can get some
19 more names. Okay?

20

21 BY MR. FINE:

22 Q All right. Now, Mr. Sutch, with respect
23 to the discussions about the number of hours that the crane
24 was to work per week, tell us why you came to the conclusion
25 that you did, sir.

1 introduced him as Mr. Crumbley.

2 Q But you wouldn't recognize him if you saw
3 him again?

4 A There were four of us involved in that
5 meeting, and it was not a one-to-one relationship. I would
6 not be sure.

7 Q I believe the crane was ordered by Mr. Recca
8 immediately following that meeting; isn't that correct?

9 A That's correct. Verbally.

10 Q And the order was placed right that -- that
11 day?

12 A Later that day.

13 Q Yes, sir.

14 A By phone.

15 Q Yes, sir. That was the 29th or 30th of
16 May; isn't that right?

17 A Somewhere in there. Yes.

18 Q Yes, sir. So you met with Mr. Recca,
19 Mr. Crumbley and Mr. -- and yourself, Mr. Brewer on May 29th
20 or 30th; isn't that right?

21 A That date doesn't seem right to me. It
22 was more like the 22nd as I recall.

23 Q Well, let me ask you this, sir. If you
24 didn't testify on discovery deposition in my office on
25 September 3, 1975; do you recall testifying in my office?

1 A That's right.

2 Q And you sent that telex out?

3 A On the 30th.

4 Q On the 30th of May --

5 A Right.

6 Q -- 1974? When you got the order from
7 Mr. Reca the same day that you met -- as you say, you met
8 with Mr. Crumbley and Mr. Reca and Mr. Brewer?

9 A He gave me the order verbally that day.

10 Q And that's when you sent all this out?

11 A Well, this telex would have gone out first.

12 Q The telex would have gone out first?

13 A Yeah. This would have been subsequently.

14 Well, of course, this purchase order might have been -- might
15 have been dated May the 30th, but he may have made it out --
16 you know -- later.

17 Q All right, sir.

18 A This could have been made out any time.

19 This is a form that we use that my secretary made up, and
20 this is an acknowledgement which came from our company in
21 Milwaukee acknowledging the purchase order. To double check--

22 MR. GAWRYS: If Your Honor please, I'd like
23 to have the expense account record marked as an
24 exhibit.

25 THE COURT: Defendant's Number 7.

1 A Um-hum.

2 Q Not May 22nd; is that correct?

3 A I'm not sure. I'm really not sure.

4 Q Well, if you placed the order on May 30th
5 and if you placed --

6 A I know the sequence of events that took
7 place. Now, that telex went out. I phoned the telex in
8 to my secretary, and she sent it out the same day while I
9 was still here in Norfolk.

10 Q You phoned in the same day Mr. Reca gave
11 you the order. And Mr. Reca gave you the order the same day
12 you say you met with Mr. Crumbley and Mr. Brewer, right?

13 A Right.

14 Q So this couldn't have been May 22, 1974?

15 A It apparently wasn't. It must have been
16 an error on my expense report.

17 Q So there must be another expense account for
18 May 30, 1974, which you haven't produced then?

19 A No. That's the only copy of it.

20 Q I see. Well, do you make up an expense
21 account weekly?

22 A Generally.

23 Q Well, this one which is Exhibit 7, end of
24 week, start of week, total for week?

25 A Yes, sir.

1 THE COURT: Let's take a break.

2 (The trial recessed at 3:20 P. M. At
3 3:32 P. M. the trial continued as follows:)

4 MR. FINE: Judge, before the jury comes
5 back, in anticipation of my -- in anticipation
6 that my friend has motions, I will rest and you
7 can hear his motions.

8 THE COURT: Let's go ahead and hear them.

9 MR. GAWRYS: All right, sir. May I bring
10 the exhibits in?

11 THE COURT: Yes, sir.

12 (The Court, counsel for both sides and the
13 court reporter went into chambers, where the
14 following took place out of the presence of the
15 jury:)

16 THE COURT: Let's go, gentlemen.

17 MR. GAWRYS: If Your Honor please, defendant
18 moves to strike the plaintiff's evidence and to
19 enter summary judgment in favor of the defendant
20 on the grounds that it's perfectly obvious that
21 taking the plaintiff's testimony in the best light
22 that there was in fact no contract ever entered
23 into between the parties.

24 THE COURT: Not even implied?

25 MR. GAWRYS: There wasn't any implied

1 contract. It was clear that a written agreement
2 was contemplated. Mr. Reca said he would have
3 signed it. There was no implied contract.
4 Before there can be an implied contract, there has
5 to be a meeting of the minds on every essential
6 element thereof, and he has not established anything
7 before this court except what he thought some
8 understandings were. He attached the documents
9 to the Bill of Particulars.

10 THE COURT: What is it? \$230,000?
11 Not look at his pier and go into all that and get
12 experts in the field? I feel that I ought to let
13 it go to the jury on damages only if this is all
14 the evidence I have.

15 MR. GAWRYS: The evidence was clear that
16 Mr. Reca brought in a document to Mr. Crumbley.

17 THE COURT: What's that document? Yeah.

18 MR. GAWRYS: And then he agreed
19 Mr. Crumbley had told him that this document is
20 not proper.

21 THE COURT: I'm sure that there are reams
22 of law that there is no contract until a contract
23 is signed under certain facts and circumstances.
24 They make it clear that there is, but under all the
25 facts and circumstances of this case I think you

1 had a contract.

2 MR. GAWRYS: If Your Honor please, where
3 is the contract? We didn't tell them to order
4 the crane.

5 THE COURT: That man changed his position
6 and ordered \$290,000 worth of equipment, but this
7 is what he was doing -- taking a gamble on his own?

8 MR. GAWRYS: He didn't have a contract at
9 this point. Now, on whether he changed his
10 position, he simply brought the crane down there
11 and he found out there was some problem with the
12 piers. He took his crane out.

13 THE COURT: Yeah.

14 MR. GAWRYS: In fact, in the middle of
15 November -- the middle of November he was already
16 trying to sell this crane. At the same time he
17 was sent a contract by Maritime Terminals to sign.

18 THE COURT: I think I'd try to protect
19 myself if I was spending \$6,000 a month and got
20 one lift or one whatever you call it.

21 MR. FINE: Pick.

22 THE COURT: Pick. And found out that the
23 people had doubts about whether the piers could
24 hold this crane and not telling him anything,
25 keeping him in the dark. That is evidence.

1 MR. GAWRYS: The evidence is going to come
2 out that that lift was made.

3 THE COURT: All the inferences must be
4 construed in the light most favorable to this
5 plaintiff.

6 MR. GAWRYS: Yes, sir, but where -- what
7 is the contract? What is the contract?

8 THE COURT: To get a crane and bring it
9 down there and put it on the property.

10 MR. GAWRYS: We allowed him to do that.

11 THE COURT: Joe, I have to overrule your
12 motion.

13 MR. GAWRYS: Your Honor, we respectfully
14 note our exception, Your Honor. Really I can't
15 see any contract here at all.

16 THE COURT: Maybe if I had a chance to look
17 at the law. You all haven't given me any
18 authorities, but common sense says to me to
19 overrule that motion at this time. I think my
20 common sense may not be so sensible, but I'm going
21 to overrule it at this point.

22 MR. GAWRYS: Well, I thought it was
23 hornbook law that if a written agreement was
24 contemplated there was no contract until it was
25 signed, and let's assume it had been signed. The

1 BY MR. GAWRYS:

2 Q Who operated the terminals prior to July 1,
3 '72?

4 A Norfolk Terminal Corporation.

5 Q And under whose auspices did Norfolk
6 Terminal Corporation operate?

7 A Under the Norfolk Port and Industrial
8 Authority and the City of Norfolk.

9 Q And did the City of Norfolk own the piers
10 at that time?

11 A Yes.

12 Q What was your connection?

13 A I was the general manager of the Norfolk
14 Port Authority and a director on the board of Maritime --
15 of Norfolk Terminal Corporation.

16 Q Who was the general manager of Norfolk
17 Terminal Corporation at that time?

18 A Mr. Brewer. Ray Brewer. The State of
19 Virginia through the Virginia Port Authority acquired the
20 facilities and several of my staff and I moved into the
21 Norfolk International Terminals when the new operating
22 organization was formed.

23 Q Directing your attention, sir, to the crane
24 with which we are involved in this case and Mr. Reca, first
25 of all, can you tell us, sir, how long have you known

1 Mr. Reca?

2 A Since July the 18th, 1974.

3 Q On what are you relying for that specific
4 date, sir?

5 A Well, several things. One, appointment
6 calendar and, Number 2, the proposed agreement, letter of
7 agreement that he brought to me to discuss concerning the
8 domiciling of the crane at NIT.

9 Q Would you tell us what transpired at that
10 meeting, sir. First of all, did he have an appointment to
11 see you?

12 A Yes. First he had an appointment on July
13 the 16th in the afternoon at 2:00 o'clock. This was
14 cancelled and we rescheduled it for July the 18th at
15 9:00 A. M. He and Mr. Ray Brewer came to my office at
16 9:00 o'clock; and when I was first introduced to him and he
17 had the letter and we sat down and discussed the letter --
18 his proposal, and I told him that it was not satisfactory.
19 There were a number of things in it that were not satisfactory
20 or not applicable to the operation at NIT, and there were
21 certain omissions which would have to be complied with.

22 Q First of all, sir, I believe you testified
23 you met Mr. Reca before that time?

24 A That's right.

25 Q Was there anyone else with Mr. Reca or with

1 Mr. Brewer at that time?

2 A No. We were there alone.

3 Q Now, you were here when Mr. Sutch testified?

4 A Yes.

5 Q Have you ever seen Mr. Sutch before today?

6 A No.

7 Q Did you see him in May, 1974?

8 A No.

9 Q Do you have your appointment calendar with
10 you, sir?

11 A My appointment calendar is over in my
12 briefcase. Yes.

13 Q Is this for 1974?

14 A Yes.

15 Q Would you look at July 16th, July 18th,
16 and take them out, sir.

17 A Yes.

18 Q Do these show your appointments with
19 Mr. Recca?

20 A Yes. Valjar. Yes.

21 Q That's Valjar?

22 A Valjar. Yes. On Thursday, the 18th at
23 9:00 A. M. was when we met, and this was 2:00 o'clock on the
24 16th which was cancelled.

25 Q What was the reason for the cancellation?

1 be subjective.

2 THE COURT: Sustain the objection. It's
3 the same objection you made earlier.

4 MR. GAWRYS: Well, let me --

5 THE COURT: It's opinion evidence. The
6 jury is the only one who has an opinion.
7

8 BY MR. GAWRYS:

9 Q Was a written agreement contemplated?

10 A It was required. Yes.

11 Q By whom, sir?

12 A Our policy of our own company required a
13 written agreement and all the provisions be fully complied
14 with before we will do business.

15 Q Now, was this made clear to Mr. Reca?

16 A Yes.

17 Q By whom?

18 A By me.

19 Q And when did you make that clear to Mr. Reca?

20 A On July the 18th during the meeting.

21 Q What conversations did you have with Mr. Reca
22 concerning the drafting of the proposed agreement?

23 A Well, I told him that I would provide him
24 with a draft of an agreement, and we discussed a number of --
25 all these various provisions of an agreement, and I asked our

1 Q Did you anticipate that the crane would be
2 able to operate?

3 A I personally thought it would. Yes.

4 Q When was the first time that you discussed
5 any problem with Mr. Reca and knew that he was unhappy?

6 A Well, Mr. Reca first became unhappy in
7 October because of the delay in the shipment of the crane.
8 There was some manufacturing problems, and he said there was
9 no particular hurry about the draft of the agreement because
10 the crane wouldn't be in Norfolk quite as soon as he had
11 originally thought, and then later on the crane was delivered
12 to the terminal, and I saw it a couple days after it was on
13 the terminal, and we took a look at it, and then I began to
14 feel some dissatisfaction because of some problems that might
15 be encountered if it was used on certain parts of the terminal
16 but all that was just speculation at that time.

17 Q I see. However, I believe you said that
18 Mr. Reca said something about there was no problem with the
19 draft of the agreement?

20 A He never commented on the agreement after
21 I sent it to him.

22 Q Yes, sir. But in October when you
23 mentioned that the crane was being delayed?

24 A Oh, there was no pressure to get the
25 agreement to him as quickly as I had anticipated.

1 Q I see. Now, what is Mr. Thompson's
2 position?

3 A He is the manager of engineering and
4 maintenance for our company.

5 Q Were you present when Mr. Thompson reviewed
6 the crane after it arrived and was assembled?

7 A Yes.

8 Q Was there any request made of Mr. Reca for
9 any information at that time to your knowledge?

10 A Mr. Reca gave Mr. Thompson I believe some
11 of the brochures and an operating manual on the crane.

12 Q Give any loading information as far as you
13 know?

14 A I'm not aware.

15 Q I see. What was your first indication that
16 Mr. Reca was unhappy with some problems involving the crane
17 after it had arrived?

18 A (No response)

19 Q When did he first communicate anything to
20 you?

21 A I saw Mr. Reca just a few days after the
22 crane -- after it was assembled. We went over and viewed
23 it together, and I'm not sure I saw him any more until
24 around mid-December.

25 Q Was that after the preliminary report of

1 terminals as far as the insurance was concerned?

2 A The certificate of insurance would have to
3 be in my hands.

4 Q Now, was there an occasion when a lift was
5 made by this crane at the terminal?

6 A Yes.

7 Q Was this with your approval or not?

8 A No.

9 Q What was your reaction when this occurred?

10 A I was very concerned. The crane had -- the
11 lift had been made although it is done with some of our own
12 personnel. Some of our foremen under the pressure of
13 operations made the lift. I was very concerned about it.

14 Q Are you putting it rather mildly as to what
15 your reaction was?

16 MR. FINE: If Your Honor please, that is
17 also subjective. We are getting far afield. His
18 reactions.

19 THE COURT: Sustained.
20

21 BY MR. GAWRYS:

22 Q Where was this lift made?

23 A It was made -- it was out in the yard
24 between some railroad sidings.

25 Q I see. It wasn't down on the piers?

1 July?

2 A No.

3 Q It wasn't?

4 A No.

5 Q Were there other things to be agreed upon
6 later?

7 A Yes.

8 Q That you didn't tell Mr. Reca in July?

9 A There were things that were discussed, but
10 they were not agreed on.

11 Q Well, let's see. Let's see what we are
12 talking about. You knew it was -- he already ordered the
13 crane you said?

14 A Yes.

15 Q You knew it was coming there?

16 A Yes.

17 Q You said you had to have a written
18 agreement?

19 A Yes.

20 Q Isn't that right?

21 A Yes.

22 Q You knew the crane was going to be delivered
23 in early October, didn't you, or late September?

24 A Yes.

25 Q And you knew that they were going to charge

1 \$140.00 an hour and you thought that was too modest? You
2 felt \$175.00 would be a proper charge?

3 A I thought \$140.00 would be too modest.

4 THE COURT: Too much?

5 MR. FINE: I said too modest. I may have
6 dropped my voice.
7

8 BY MR. FINE:

9 Q That was too modest. That was in
10 agreement, wasn't it?

11 A Um-hum.

12 Q You agreed on the length of the contract,
13 twelve months, didn't you?

14 A Yes.

15 Q You agreed that the -- that the crane would
16 be domiciled there at the piers?

17 A Um-hum.

18 Q And that you further agreed that the crane
19 could be taken away on a noninterference basis?

20 A Yes.

21 Q You also agreed that the Paceco cranes that
22 you had there already would be given priority?

23 A Yes.

24 Q And that wasn't put in the agreement, was it?

25 A No, but only in an indirect way. That we

1 would have control of the crane in scheduling.

2 Q But that wasn't put into the agreement, but
3 you all agreed on it?

4 A Yes.

5 Q And you also agreed that there would be a
6 certain amount of insurance?

7 A No.

8 Q Five million dollars, wasn't it?

9 A No.

10 Q You never discussed the amount?

11 A We did not agree on the amount on July the
12 18th. I said that we would require insurance and that I
13 would -- before we would put that in the agreement I would
14 have to discuss it with our attorney.

15 Q All right. Did you discuss it with
16 Mr. Brewer that you had to have five million dollars worth of
17 insurance?

18 A No.

19 Q Do you know where Mr. Reca got five million
20 dollars on the policies that he has shown here?

21 A (No response)

22 Q You didn't discuss it with him?

23 A I didn't discuss it with him -- the amount
24 with Mr. Reca. No.

25 Q All right. And you also discussed the

1 save-harmless?

2 A Yes.

3 Q He didn't object to any of that?

4 A No.

5 Q A very amicable meeting?

6 A Yes. Yes.

7 Q And everybody went out of the room
8 essentially in agreement?

9 A (No response)

10 Q Is that what your discussions were at that
11 time?

12 A Basically for the things that we talked,
13 we were pretty much in agreement.

14 Q You were in total agreement?

15 A We were not.

16 Q What were you in disagreement on?

17 A We were not in disagreement. We never
18 completed the agreement. We never decided when the contract
19 would begin.

20 Q All right. But was there a discussion
21 over this issue? When the contract was to begin?

22 A When I submitted Mr. Reca a contract, a
23 proposed agreement in November, I asked him at that time if
24 we could decide on the beginning date of the agreement.

25 Q All right. Did you receive technical data

1 In the Circuit Court of the City of Norfolk,
2 before Hon. Edward L. Ryan, Jr., Judge, and jury,
3 at 10:06 A. M., January 16, 1976, pursuant to
4 adjournment.

5 Appearances, same as heretofore noted.
6
7
8

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9
10

11 (The Court, counsel for both sides and the
12 reporter went into chambers, where the following
13 took place out of the presence of the jury:)

14 MR. GAWRYS: They are now really trying to
15 claim that they have an oral contract as opposed
16 to a written contract.

17 THE COURT: Well, what he is relying on,
18 take more than a year to complete.

19 MR. GAWRYS: Yes, sir. And I'd like to
20 file that if I may, sir.

21 THE COURT: I will mark it "Filed".

22 MR. GAWRYS: Thank you, sir.

23 THE COURT: All right. Let's go.

24 (The Court, counsel for both sides and the
25 court reporter returned to the courtroom, where

1 A With the predecessor company, Norfolk
2 Terminals Corporation.

3 Q What was your job with that corporation?

4 A General manager.

5 Q How long were you general manager of the
6 Norfolk Terminal Corporation?

7 A 1967.

8 Q What are your duties as manager of operations
9 at the Maritime Terminals, sir?

10 A Supervisor of the utilization of labor for
11 the handling of freight to and from railcars.

12 Q Under whom do you work?

13 A Under Mr. Crumbley.

14 Q Do you have any contractual authority, sir?

15 A No, sir.

16 Q Do you know Mr. Reca?

17 A Yes, sir.

18 Q In what connection do you know Mr. Reca?

19 A From dealings with Valjar.

20 Q What business was Mr. Valjar in from the
21 time that you have known him?

22 A Mr. Reca.

23 Q Excuse me. Mr. Reca. Pardon me.

24 A I was dealing with him from the standpoint
25 of crane rental with Valjar.

1 Q Did you meet with him again?

2 A Yes, sir. A number of times.

3 Q What happened on those other meetings?

4 A It developed more concrete information
5 regarding the -- the lifts that were involved and the
6 potential use and this type of thing.

7 Q What inquiries was he making of you, if any?

8 A Primarily -- of course, the initial
9 consideration again was containers, but primarily the volume
10 of containers that were moving in and out of Hampton Roads
11 by barge. Of course, the 140-ton lift capacity crane is
12 limited as far as the vessel use is concerned because of
13 limiting capacity and the working radius of the crane, so
14 we are primarily talking about barges which could be worked
15 with the 140-ton crane.

16 Q Was he interested in selling you a crane
17 or having one there to rent for your customers?

18 A My impression was just to domicile and rent
19 it to customers of the terminal and, of course, to the
20 terminal also on occasion.

21 Q I see. Why would -- why did he want to
22 have it domiciled there?

23 A Well, the crane itself is -- is too large
24 to travel on state highways. It's above the weight limits
25 and the height restrictions of the state highways.

1 Q Explain that,

2 A Well, to develop the potential you have to
3 have the capability to handle. There were a number of
4 inquiries. There still are a number of inquiries that we
5 do not even get because they know that we do not have this
6 lift capacity.

7 Q Did you discuss it with Mr. Reca?

8 A Yes.

9 Q Was there any discussion concerning potential
10 usage?

11 A Yes, sir.

12 Q Number of hours per week and so forth?

13 A Pardon?

14 Q The number of hours per week and things of
15 that type. Tell us what that discussion was.

16 A The discussion I think -- I think Vince
17 needed twelve to fourteen hours a week if I'm not mistaken.
18 Felt he would have to feel he would rent it out for that
19 period of time to justify the purchase.

20 Q Well, what inquiries did he make of you in
21 this regard?

22 A Well, my opinion as to whether he could or
23 could not.

24 Q What did you tell him?

25 A You know, again I was optimistic.

1 Q What did you tell him?

2 A I told him I believed it could develop into
3 that. Yes.

4 Q Did you make it clear that you had nothing
5 on which to make it except your opinion?

6 MR. FINE: If Your Honor please --

7 THE COURT: Leading this witness.
8

9 BY MR. GAWRYS:

10 Q Did you have any factual data on which to
11 base your opinion?

12 A Only the customers we were currently working.
13 The barge traffic to and from Baltimore and then one
14 additional customer we were talking to right at that time.
15 A fellow by the name of Moore.

16 Q Was Mr. Reca aware of this?

17 A Yes, indeed.

18 Q What discussion did you have with Mr. Reca
19 concerning your authority to make any agreements on behalf
20 of the terminal?

21 A Well, all I could do was just lay the
22 preliminary groundwork; and, of course, Mr. Crumbley is the
23 final agreement on it.

24 Q Well, what did you tell Mr. Reca in this
25 regard?

1 BY MR. GAWRYS:

2 Q Did you discuss it with Mr. Reca?

3 A Yes.

4 Q Would you explain to the jury the nature of
5 the work which was contemplated. First of all, did you
6 discuss with Mr. Reca what areas it was contemplated where
7 the crane could be utilized?

8 A Yes.

9 Q Would you come down here and explain this
10 to the jury.

11 A Primary usage of the crane envisioned then
12 and even now if we had the capability is to place the crane
13 between Piers 1 and 2 on the bulkhead and work the container
14 barges here. (Indicating) You have got a little less than
15 425 feet between the two piers. The NBC barges are 425 feet
16 long, so you place them here. These are in storage there
17 now. They would be -- the barge would be placed in here.
18 The containers would be pulled off of there. The crane
19 setting on CB -- I mean bulkhead between 1 and 2 so that the
20 crane would actually be setting here reaching out over the
21 barges here and pulling the containers off and hung them into
22 the marshalling area.

23 Q Where else was it envisioned the crane would
24 work?

25 A Well, on occasion we use it also on both

1 A Yes.

2 Q Did there come a time that you have met with
3 someone else besides Mr. Reca? Some man named Sutch?

4 A Yes.

5 Q When did you meet with Mr. Sutch?

6 A I don't have an exact date on it. Sometime
7 in May.

8 Q Was Mr. Crumbley present at that meeting?

9 A No.

10 Q When did Mr. Crumbley first meet with
11 Mr. Reca as far as you know?

12 A July the 18th.

13 Q Excuse me?

14 A July the 18th.

15 Q Which year?

16 A Of 1974.

17 Q Was an earlier meeting scheduled with
18 Mr. Reca -- Mr. Crumbley?

19 A I was on vacation the week prior to that.
20 Actually the two weeks prior to it, and a meeting was set up
21 for -- on the 10th for the 16th, and then due to congested
22 calendar from one or the other -- I don't know exactly who --
23 it was set back to the 18th. It was held at 9:00 o'clock
24 on the 18th.

25 Q Where did that take place?

1 have the certificate of insurance. Does that answer your
2 question?

3 Q Yes. Prior to the meeting of July 18, 1974,
4 were you aware that Mr. Reca had ordered the crane?

5 A (No response)

6 Q Before the meeting of July 18th?

7 A Yes.

8 Q You were aware of it?

9 A Yes.

10 Q When did you become aware that he had
11 ordered the crane?

12 A In one of our conversations -- and I don't
13 know which one. I don't know exactly when Vince decided,
14 "Okay, it's a good risk. I'll order."

15 Q It's what?

16 A I don't know when Vince decided, "Okay, it's
17 a good risk. I'll order."

18 Q So he mentioned he was going to order
19 before he did order; is that correct?

20 A Well, I don't know whether it was before
21 he ordered or after. I have no way of knowing.

22 Q Did you meet with him in June?

23 A I have met with Vince every month from
24 March until actually July or August.

25 Q Well, do you know prior to May 30, 1974, that

1 Q But did you tell him to order the crane?

2 A No, I didn't tell him to order it. I
3 can't make his decision. It was his decision.

4 Q Tell us, sir, what -- what transpired
5 thereafter. After the meeting of July 18, 1974, in relation
6 to this crane.

7 A There was a considerable length of time
8 between this document being presented and the finalized
9 agreement coming from -- from Braden. Close to a month I
10 believe. Vince called on quite a number of times and in
11 October -- I don't know the exact date. The crane was
12 delivered by rail to NIT.

13 Q You mentioned a month, sir. Are you sure
14 of that date?

15 A Which?

16 Q You said a month getting it back from Braden
17 Vandeventer?

18 A I said I believe about a month.

19 Q You don't know though?

20 A No.

21 Q It didn't come back to you?

22 A No. It came to Mr. Crumbley. Then, of
23 course, when the crane -- when the railcars arrived at NIT,
24 we called Vince; and Vince offloaded the crane, carried it to
25 the lot that I indicated before in front of Pier 2; and the

1 Q What was mentioned about it?

2 A That we didn't have them.

3 Q What was Mr. Reca concerned about? Was
4 that meeting in early November?

5 A I believe it was.

6 Q All right, sir.

7 A Around the first or second week in
8 November.

9 Q All right, sir.

10 A Vince had a crane down there that was not
11 being utilized is what he was concerned about.

12 Q All right, sir.

13 A And we went from Mr. Crumbley's office to
14 Mr. Thompson's office, the engineer, and Mr. --

15 Q First of all let's keep it in Mr. Crumbley's
16 office and tell us what transpired in Mr. Crumbley's office.

17 A I thought I already covered that. We
18 discussed the fact that the agreement was not fully
19 consummated.

20 Q What did you say to Mr. Reca and what did
21 he say to you about the loadings?

22 A You're -- I was a witness to the
23 conversation more than a part of the conversation. The
24 conversation was between Mr. Crumbley and Mr. Reca.

25 Q All right.

1 Q And did you do anything?

2 A I called Mr. Thompson and asked him.

3 Q Don't tell us what Thompson said, but you
4 tell us what you said to Mr. Thompson. What I'm saying to
5 you, sir, is you cannot tell us what Mr. Thompson said to
6 you, but you can tell us what you inquired of Mr. Thompson.

7 THE COURT: You just reported to Mr. Thompson
8 your conversation with Mr. Recca?

9 THE WITNESS: I told him that Vince had
10 called and said that the crane could not be used at
11 NIT because the place was falling apart and
12 somebody had been commissioned to pull a study on
13 the terminal and -- at that time I asked if he had
14 anything in writing back from them or any report
15 back from Mr. Glenn. He said he did not.

16
17 BY MR. GAWRYS:

18 Q Did you then get back to Mr. Recca?

19 A I called Vince back, and I said I don't
20 know -- I don't know what's involved. I can't find out
21 anything from the standpoint of what you are talking about
22 on the report. Then the letter was sent by Joe Glenn and --
23 from a layman's standpoint, and I will speak from my own.
24 The general tone of the letter to me indicated that Vince
25 was pretty well correct.

1 Q Do you now, having read it, recollect
2 something about discussions in this proposal made in this
3 letter?

4 A Some with Harnischfeger. I have discussed
5 a heavy lift crane since 1967 for the terminal with various
6 people. Valjar and Hoffman -- not Valjar. Harnischfeger
7 and American and several other crane manufacturers.

8 MR. FINE: Maybe we ought to mark it for
9 identification and my client identify it later.

10 THE COURT: Go ahead.

11
12 BY MR. FINE:

13 Q Mr. Brewer, when was the first time that
14 you recollect that there was any discussion about the
15 140-ton crane?

16 A In '74. In that period of time.

17 Q Now, as I understand it, it was in March
18 or April of 1974?

19 A Someplace in there.

20 Q And as I understand it, this culminated
21 according to your testimony in July of 1974 when you had a
22 meeting with Mr. Crumbley to finalize the agreement?

23 A Yes, sir.

24 MR. GAWRYS: Object to that. That's a
25 conclusion by counsel.

1 MR. FINE: He testified, Judge. He
2 testified that the purpose of the meeting on
3 July the 18th was to finalize the agreement.

4 THE COURT: That's all in evidence. You
5 just asked the question over again.

6 MR. FINE: Yes, sir.

7 THE COURT: It's a repetitious question
8 from both of you gentlemen. I don't blame you.
9 I know you want the jury to understand, but I think
10 we all understand after the question is asked two
11 or three times.

12
13 BY MR. FINE:

14 Q Isn't that true, Mr. Brewer?

15 A What, sir?

16 Q That you all had these negotiations
17 according to your understanding from March or April up till
18 July the 18th, and July the 18th you were going to finalize
19 the agreement?

20 A I think -- you would have to read it back,
21 but I believe what I said -- it was carried to Mr. Crumbley
22 for Mr. Crumbley to get involved in the finalizing of an
23 agreement. I think that's what I said.

24 Q Okay.

25 A Yes, sir.

1 the agreement was signed.

2
3 BY MR. FINE:

4 Q Mr. Brewer, isn't it a fact without me
5 going through every one of the items in that exhibit, which
6 is Exhibit --

7 A 14.

8 Q -- 14, that everybody agreed to the
9 information and terms on that agreement?

10 A I think that the terms that are listed here
11 were agreed, and then they were to be put in legal language
12 from the standpoint of making an agreement and executing and
13 the transaction of the papers that are required.

14 Q All right. So your testimony is, as I
15 understand, that this -- the terms were agreed upon, but it
16 was to be later reduced to writing?

17 A Yeah. That's --

18 Q All right. You also knew at that time,
19 July the 18th, that the crane had been ordered; is that
20 right?

21 A On that date I believe Vince said he had
22 ordered the crane.

23 Q All right. Now, prior to that date you and
24 Mr. Reca had discussed the uses of the crane on the piers;
25 isn't that correct?

1 A Yes, sir, I did.

2 Q Did Joe Glenn Associates perform some
3 studies of the piers, any repairs which might be necessary
4 there?

5 A Yes. We were asked to make an inspection
6 of some piers to determine if repairs were necessary.

7 Q What piers were involved?

8 A These were Pier 1 and Pier 2 and the
9 bulkhead between Pier 1 and 2.

10 Q The areas that were examined at that time --
11 strike that, please. Did there come a time that you were
12 asked to make a subsequent study on behalf of Maritime
13 Terminals, Incorporated?

14 A Yes, sir. In November of 1974 we were
15 asked to make a study of the waterfront structures to
16 determine their ability to support a crane.

17 Q Did that study have anything to do with
18 the earlier study you did?

19 A No, sir, because the areas in which we were
20 asked to make the weight study were not areas in which we
21 had previously determined that repairs were necessary.

22 Q I see. Would you tell us, sir, what
23 transpired in connection with the second study that was made.
24 Who made it?

25 A Well, I made the study. I was assisted by

1 to make the crane study on.

2 Q Did you subsequently submit a preliminary
3 report dated December 6, 1974?

4 A Yes, I did.

5 Q Tell us what steps you took to prepare that
6 preliminary report.

7 A Well, the first thing we determined was
8 the weight of the crane.

9 Q Where did you get the information?

10 A I got it from two sources. We were
11 furnished some manufacturer's literature which gave us the
12 wheel loads that the crane would impose when it was
13 travelling.

14 Q Did you require any additional information?

15 A Yes. In addition to that we needed to
16 know the loads that the crane would impose while it was
17 lifting a weight.

18 Q Of whom did you make inquiries to obtain
19 this information?

20 A I called Mr. Reca on the telephone, and he
21 gave me some information on that.

22 Q Did you make any inquiries of anyone else?

23 A I also wrote a letter to P and H Company,
24 the manufacturer of the crane, and asked them for some
25 further information on weights that would be imposed while

1 the crane was lifting. However, we never received an answer
2 to that letter.

3 Q Do you base your report on the information
4 furnished by Mr. Reca? Is that correct?

5 A Yes. He gave us information on the
6 maximum load that would be imposed under one of the
7 outriggers of the crane, and we used that as a basis for our
8 study.

9 Q Would you explain to the jury the conclusion
10 that you reached in your letter of December 6th and the
11 reasons for your conclusion.

12 A This letter of December 6th addresses the
13 problems that the crane imposes while it's being moved. In
14 other words, while it's being driven. Not while it's
15 lifting, and at this point in our study we had found that
16 in general the structural slabs and the waterfront structures
17 would not support the crane while it was travelling, and we
18 felt that Mr. Thompson should be aware of this; and,
19 therefore, we wrote this letter -- actually before our
20 complete study was made -- informing him that there was
21 several areas where the crane could not be driven; and when
22 I say "not driven" I mean driven without restrictions.

23 Q All right, sir. Now, in your letter which
24 is -- which has been marked as an exhibit -- copy which has
25 been marked as an exhibit -- in Paragraph A you say, "Our

1 findings and recommendations are summarized as follows:

2 Bulkhead between Piers 1 and 2. The structural slab
3 adjacent to the bulkhead would be severely overstressed under
4 wheel loads imposed by crane travel. It is recommended that
5 the crane be restricted from this area."

6 Would you tell the jury what you mean by
7 that paragraph.

8 A It appeared to us at that time that the --
9 since the slabs would be overstressed, that it would not be
10 safe to allow unrestricted travel of the crane in that
11 particular area.

12 Q Did you mean the crane couldn't go in that
13 area?

14 A No. No, I did not mean that.

15 MR. FINE: If Your Honor please, it speaks
16 for itself.

17 THE COURT: Let him explain it. Go ahead,
18 Mr. Gawrys.

19
20 BY MR. GAWRYS:

21 Q Would you explain this to the jury by either
22 a drawing on the board or by a diagram.

23 THE COURT: See if he can't explain it
24 vocally first.

25

1 BY MR. GAWRYS:

2 Q All right, sir. Now, based on your studies,
3 sir, with the crane and based on your report of December 6,
4 1974, with the 140-ton crane --

5 MR. FINE: If Your Honor please --

6 THE COURT: Let him finish his question.

7 MR. FINE: We have two different things,
8 two different questions.

9 THE COURT: Let him finish his question.

10 MR. FINE: All right.

11 THE COURT: State your question again.

12
13 BY MR. GAWRYS:

14 Q Based on your report, your conclusions that
15 you reached, your report of December 6, 1974, could the
16 crane travel on the north and south sides of Pier 1?

17 A Yes.

18 Q Now, based on your report again, could the
19 crane travel on Container Berth Number 1?

20 A On Container Berth Number 1 we indicated
21 that the structural slab would be overstressed if the crane
22 was allowed to travel. Container Berth Number 1 is the
23 same type of construction which I just described as -- on
24 the bulkhead between Piers 1 and 2, so that is the same
25 situation there.

1 Q And the same reasoning would apply?

2 A Yes.

3 Q The crane could travel over the stronger
4 portions?

5 A Yes, sir.

6 Q Can you tell us what your conclusion --
7 what conclusion you reached as far as Container Berth
8 Number 2 was concerned?

9 A Container Berth Number 2 we found that the
10 slabs were adequate for the crane to travel if the crane
11 is kept inboard of the outboard crane rail. That's the
12 crane rail which supports the Paceco crane which operates
13 in that area.

14 Q What conclusion did you reach on Container
15 Berth Number 3?

16 A Container Berth Number 3 we found that the
17 slabs would be overstressed and that the crane could not
18 travel there.

19 Q Would it be the same situation as you
20 explained earlier?

21 A No. Container Berth Number 3 is a
22 different type of construction and that it does not have the
23 strong supports spaced closely enough to permit the crane to
24 straddle them.

25 Q Where is Container Berth Number 3 located

1 on this photograph?

2 A Container Berth Number 3 is down at this
3 end. (Indicating)

4 Q The extreme end of the pier, is it not?

5 A Yes. Right in here. (Indicating)

6 Q Thank you. Would you tell us, sir, if you
7 conducted another more definitive study.

8 A Yes. Subsequent to our submission of this
9 letter of December 6, 1974, Mr. Glenn and myself went to NIT,
10 and we met with Mr. Thompson and Mr. Brewer, and we discussed
11 studying this problem further. At that time we learned that
12 the restrictions which were apparent were -- they were
13 willing to accept these restrictions insofar as the crane's
14 ability to travel; so, therefore, they asked us to pursue
15 this study further and determine the further restrictions
16 which might be imposed by the crane when it was lifting.

17 Q Tell us how many cranes your study
18 encompassed.

19 A Well, in addition to this 140-ton crane
20 they asked us to include in the same study two other cranes,
21 an eighty-ton crane and another smaller crane, and also to
22 check on the effect of heavy-tracked vehicles on these piers.

23 Q Did your study follow this?

24 A Yes. Our study addressed these problems.

25 Q What conclusions did you reach concerning

1 BY MR. GAWRYS:

2 Q What conclusion did you reach from the
3 letter of December 6, '74?

4 A I knew there was a risk of using the crane
5 in some locations.

6 Q Could the crane be used on the piers?

7 A From that report it would be rather
8 restricted.

9 Q I see. And you commissioned a further
10 study?

11 A I did.

12 Q Was that study --

13 A It was on December the 12th.

14 Q When was the report on the study concluded?

15 A I think the date of the report is January
16 27th.

17 Q Do you have anything in your file?

18 A May I look at it and see?

19 THE COURT: Yes, sir, you sure may.

20 A (Continuing) The report was dated the
21 27th. It was transmitted on the 28th.

22
23 BY MR. GAWRYS:

24 Q Of what?

25 A January, 1975.

1 ahead.

2
3 BY MR. GAWRYS:

4 Q Now, sir, if you had been furnished this
5 information in June or July, would your studies have been
6 completed by the time the crane arrived?

7 A Yes, I think so. Definitely.

8 MR. GAWRYS: Answer Mr. Fine's questions,
9 please.

10
11 CROSS EXAMINATION

12
13 BY MR. FINE:

14 Q Mr. Thompson, you never knew from
15 Mr. Brewer that this crane was ever going to arrive till
16 it arrived, did you?

17 A That's right.

18 Q And you were apprehensive when it arrived?

19 A I was apprehensive when I saw it assembled
20 and went down and visited with Mr. Reca at the site.

21 MR. FINE: That's all I have.

22 MR. GAWRYS: No further questions. I'd
23 like to recall Mr. Brewer.

24 If Your Honor please, I neglected to
25 mention to the Court, with the Court's permission,

1 look at them, and he brought in the photographs and showed
2 them to me.

3 Q And you all discussed at that time a study
4 that was completed in September, 1974; isn't that right?

5 A No, sir. As I recall, my recollection was
6 Mr. Glenn said that that survey had been completed in July
7 of that year -- of 1974.

8 Q Well, in any event, it was a survey to
9 which Mr. Callahan alluded in his testimony; isn't that
10 right, sir?

11 A Yes.

12 Q And based on what you have learned at that
13 time you decided to get -- dispose of your crane; is that
14 right?

15 A Mr. Glenn expressed it to me in very strong
16 terms that there was some doubt as to whether or not that
17 crane would work there. Yes, I became most concerned at
18 that point that my crane would be allowed to work.

19 Q And you never called Mr. Crumbley and
20 discussed it with him?

21 A No. I spoke -- I believe I spoke with
22 Mr. Brewer. We later discussed the report in December when
23 it came out.

24 Q And your decision had already been made
25 before you ever saw the study -- the report -- preliminary

1 report of Edward Callahan of Joe Glenn and Associates dated
2 December 6th?

3 A I -- my decision -- yes. I could have
4 some -- you have a copy of my letter to DuPont. I was most
5 concerned.

6 Q Now, sir --

7 A I didn't have the resources to hold onto
8 anything like that.

9 Q You told us yesterday in your testimony
10 that you made this inquiry or sent this proposition or
11 proposal to DuPont about the 13th of November, whenever it
12 was; isn't that right -- of 1974?

13 A Somewhere. Yes. Somewhere along in
14 there.

15 Q Do you recall when you testified in my
16 office on May 20, 1975, that I asked you what efforts you
17 made to sell the crane? Page 45 of the deposition.

18 A What was your question, Mr. Gawrys?

19 Q I asked you at that time at that deposition
20 what efforts you made to sell the crane, did I not?

21 A Yes.

22 Q Did you tell me at that time that you were
23 soliciting a sale from DuPont Company in November, 1974?

24 A No, sir.

25 Q In fact, you only referred to making

1 of law.

2 MR. GAWRYS: All right, sir.

3 MR. FINE: Judge, I would --

4 THE COURT: Overrule your motion for
5 summary judgment and to strike plaintiff's evidence
6 with exception.

7 Now, what is the matter with Number 1?

8 MR. FINE: Let me make the same motion.

9 THE COURT: Go ahead.

10 MR. FINE: Without elucidating on it,
11 there was a contract, and there was a breach by
12 the defendants, and that the only thing left to
13 the jury is the amount of damages.

14 THE COURT: Overrule with exception.

15 MR. FINE: Okay.

16 THE COURT: Any objection to Number 1?
17 Granted.

18 MR. GAWRYS: Objection and exception.

19 THE COURT: All right. Okay. Number 2?

20 MR. O'DONNELL: Your Honor, instruction
21 Number 2 is not applicable on the basis of --

22 THE COURT: Not what?

23 MR. O'DONNELL: Instruction Number 2.

24 THE COURT: Um-hum.

25 MR. O'DONNELL: Is not warranted in this

1 one will be 3, burden of proof.

2 MR. FINE: That is also to be taken out,
3 Judge.

4 THE COURT: Well, he hasn't raised that
5 point.

6 MR. FINE: Right. Same thing with that
7 next one. This is the damage instruction.

8 MR. GAWRYS: Object to that instruction,
9 Your Honor.

10 THE COURT: That's your only damage
11 instruction?

12 MR. FINE: I haven't anything I was going
13 to offer on damages.

14 THE COURT: This is just a generalized
15 instruction. I can grant that as is, but when you
16 get to arguing this case -- put an X on it in case
17 anybody wants to object.

18 MR. GAWRYS: I got an objection, and I
19 think I ought to be heard.

20 THE COURT: Let me get my file.

21 MR. GAWRYS: Okay.

22 THE COURT: All right.

23 MR. FINE: Judge, I agree that the Bill of
24 Particulars involves a lot of things that we
25 didn't even attempt to prove. It's on that list.

1 THE COURT: Bill of Particulars?

2 MR. FINE: Judge, if you will get that
3 list -- that one exhibit we can see what it looks
4 like if you don't mind.

5 THE COURT: Oh, here it is. Damages to
6 plaintiff. That's what I'm looking for. Can't
7 go beyond the Bill of Particulars in any event.

8 MR. FINE: That's right.

9 THE COURT: All right. Payment of
10 principal, interest and taxes on crane. What do
11 you say about that, Joe?

12 MR. GAWRYS: I don't think he can get
13 principal, interest and taxes.

14 MR. FINE: Judge, if you --

15 THE COURT: Doesn't that naturally flow
16 from it if I am right in letting it go to the jury?

17 MR. GAWRYS: No, sir. The only interest
18 that he would be allowed to recover is that
19 interest which the law permits you to recover. We
20 can't take into consideration that he had to
21 finance the purchase of the crane.

22 MR. FINE: Why not?

23 MR. GAWRYS: If it has a value of a hundred
24 thousand dollars and let's assume it was completely
25 demolished, the only thing the law would permit him

1 to recover is the amount of that money plus eight
2 per cent interest which the statute now provides.

3 THE COURT: Legal interest.

4 MR. GAWRYS: Yes, sir. The legal interest;
5 and he has contemplated paying under the
6 arrangements he made for financing this purchase.
7 He didn't --

8 THE COURT: What is the taxes? Sales tax?

9 MR. FINE: Some kind of tax.

10 THE COURT: Is there any evidence about it?
11 No evidence.

12 MR. FINE: He testified that he had to pay
13 it.

14 THE COURT: How much?

15 MR. FINE: Four per cent, Judge. He
16 testified what it was on the sheet.

17 THE COURT: Well, you have no evidence as
18 to the time period he paid interest.

19 MR. FINE: It was some type of sales tax
20 that he testified to, Judge, that he paid.

21 MR. GAWRYS: He testified he had four per
22 cent commission.

23 MR. FINE: May I get the exhibit and then
24 you can put it there in front of you, and it may
25 be of some aid to the Court.

1 THE COURT: What is overhead? \$85,000.

2 MR. FINE: Well, Judge, we dropped that.

3 THE COURT: All right. All right. You
4 dropped the overhead. Are you going back to taxes?

5 MR. GAWRYS: I object to that exhibit going
6 in.

7 THE COURT: I am not going to let the jury
8 have this. Sales tax, four per cent on monthly
9 payments. That what you are talking about?

10 MR. FINE: Yes, sir. That's what he said.

11 MR. GAWRYS: There was no testimony as to
12 sales tax.

13 THE COURT: I'm not going to allow principal--
14 principal, interest and taxes. Overhead is out.
15 Direct salary costs to operations to date, \$10,000.
16 What evidence is there? He had men out there.

17 MR. FINE: It's right there on that list.

18 THE COURT: He made that up. I'm not
19 looking at that.

20 MR. FINE: But he testified to these exact
21 sums, and this was the culmination of it, Judge,
22 is what I'm trying to bring to the Court's
23 attention.

24 THE COURT: I see. So many hours.

25 MR. FINE: Yes, sir.

1 THE COURT: Um-hum. I'm not going to let
2 this go to the jury. All right. Set up at NIT.
3 That was a direct expense. Allow that. Lettering
4 crane. Allow that. And the salaries and removed
5 from NIT to our yard. Allow that. No. He has
6 to remove it in any event sometime. I mean if
7 you had your contract for a year, you would have to
8 remove it.

9 MR. GAWRYS: Yes, sir.

10 THE COURT: I'm not going to allow him to
11 remove it because the time would come when he would
12 have to eventually remove that thing.

13 MR. FINE: But, Judge, might I make this
14 point? If he had brought it to his own yard,
15 Judge, he wouldn't have had to remove it.

16 MR. GAWRYS: But it was brought to our
17 terminal for his convenience.

18 THE COURT: He wouldn't have bought it if
19 he wasn't buying it to put it at NIT.

20 MR. FINE: But the breach caused the
21 extra removal.

22 THE COURT: What's this transfer to Peck?

23 MR. FINE: He had to take it over.

24 THE COURT: This is for sale and transfer
25 to Peck.

1 MR. GAWRYS: If he was going to sell to
2 anybody, he would have that cost. This hasn't
3 even come up. If he had removed it and sold it
4 to somebody else, he would have that cost.

5 THE COURT: What have you got to say about
6 that?

7 MR. FINE: He set it up one time at NIT.
8 That would be an extra expense.

9 THE COURT: I allowed that. I am not
10 going to allow anything on removal. Reassembly
11 at Peck. Insurance, \$826.87. I will allow that.
12 Umbrella policy. They asked for five million
13 dollars.

14 MR. GAWRYS: This is an umbrella policy for
15 the whole company.

16 THE COURT: He sure did say that.

17 MR. GAWRYS: For the whole company.

18 THE COURT: And he didn't differentiate.

19 MR. FINE: He said this was broken down.
20 The testimony as I recall it, Judge, was for this --
21 for this particular -- this was based on the pro
22 rata for this crane only. The increase.

23 THE COURT: My problem is I can't remember
24 him ever giving any breakdown on the umbrella
25 policy when he said, "This was my whole business."

1 MR. GAWRYS: Yes, sir. And it was a
2 subsidiary corporation involved in that, too.

3 THE COURT: That is true. I am bad with
4 my memory, and I'm not going to allow it.

5 MR. FINE: May we look it up because I
6 would submit to the Court -- and my memory may not
7 be any better than the Court's -- but my memory --
8 and I wasn't paying particular attention to it --
9 was that this was for the increase for this crane
10 only. I might be mistaken.

11 MR. GAWRYS: It was the whole policy.

12 THE COURT: I don't remember it. I'm not
13 going to allow it. What about the advertising
14 costs, \$1,052.00?

15 MR. GAWRYS: If he was going to sell it
16 anyplace, he had to advertise it.

17 MR. FINE: Not necessarily, Judge. He did
18 this only for trying to mitigate his damages.

19 THE COURT: His testimony is that this was
20 unique. To me it might be just a big old,
21 ordinary crane, but he says it was unique, and the
22 jury may accept that.

23 MR. GAWRYS: But he was in the crane
24 business, and if he worked for twelve months there
25 and removed it and put it up for sale, it would be

1 the same advertising expenses.

2 MR. FINE: Judge, this is an effort to
3 mitigate his damages.

4 THE COURT: I know it is.

5 MR. FINE: And that was a direct cost.
6 I would beg to differ with the Court. He would
7 not have had that kind of expense if it had not
8 been for the breach I would submit.

9 THE COURT: That's all I'm going to allow.
10 I may be wrong, but that's all I'm going to allow
11 is the matters I've checked.

12 MR. FINE: Judge, as I understand the
13 Court's ruling, that you are not going to allow
14 the differential in price?

15 THE COURT: Where is that?

16 MR. FINE: \$29,000 at the top. That's
17 less what credits he got on that one list, the
18 \$700.00 less.

19 THE COURT: Oh, I see it. I will allow
20 that.

21 MR. GAWRYS: Your Honor, you're allowing
22 this man, based on what he put in and what I
23 developed from him, actually his cost of this crane
24 was four per cent less than he testified to because
25 he has Triway Sales Corporation.

1 THE COURT: You would have to reduce it by
2 that.

3 MR. GAWRYS: Yes, reduce it by four per
4 cent.

5 MR. FINE: Well, is the Court saying as a
6 matter of law that Triway Sales is one and the same
7 as Valjar and that Triway Sales which sold the
8 crane to Valjar -- they are two different business
9 entities, can't have a modest profit of four per
10 cent on a crane? He testified that the warranty
11 work has to be done at reduced rates because of
12 that, and it was a very favorable, reasonable
13 profit; and I don't know how as a matter of law the
14 Court can rule that out. It amounts to \$11,000,
15 Judge. There is a calculation.

16 THE COURT: Four per cent of --

17 MR. GAWRYS: -- of \$293,000.

18 THE COURT: I see.

19 MR. GAWRYS: It would be unconscionable
20 for him to put money from one pocket into the other
21 and claim it as damages. The testimony is that
22 the same two stockholders own both, and that is
23 putting it from one pocket to another.

24 THE COURT: I will pierce the corporate
25 veil and not allow it. What about your corporate

1 profits?

2 MR. FINE: No.

3 THE COURT: Not allow it. Miscellaneous
4 damages. That is out. Overhead and executive
5 time lost and such other items. All right.

6 MR. GAWRYS: Can we reduce this someplace
7 by four per cent of \$293,000?

8 MR. FINE: It's on one of the figures --
9 one of the papers that you introduced.

10 THE COURT: Yeah. Pierce the corporate
11 veil.

12 MR. FINE: Before we argue the case, I can
13 get the document and show it to you.

14 MR. GAWRYS: Yeah. I would like to see
15 that.

16 THE COURT: Let's get over the instructions
17 and work.

18 MR. FINE: Of course, I object and except
19 to the Court's ruling on that for the previous
20 reasons stated. As I understand, we will be able
21 to make exceptions to the Court's ruling after we
22 argue the case.

23 THE COURT: Sure. Suits me.

24 MR. FINE: Is that all right with you?

25 MR. GAWRYS: Yes, that's fine.

1 attached. Well, Number 18 -- let's see. 19.

2 MR. FINE: Do you want me to make up a new
3 list?

4 THE COURT: Well, I'm not going to allow
5 that to go in.

6 MR. FINE: But should I make another list
7 which is a correct list?

8 THE COURT: You can put it on the
9 blackboard. Can you do that?

10 MR. FINE: If the Court will give me a
11 minute or two.

12 THE COURT: Speed it up.

13 MR. GAWRYS: Is there anyplace that we can
14 put this up?

15 (A side-bar conference was had out of the
16 hearing of the court reporter.)

17 MR. GAWRYS: So what the Court is allowing
18 him is the difference between the purchase price
19 and the sales price, and it turns out he made a
20 profit. He made a profit on the transaction.

21 THE COURT: Suppose the defendant is faced
22 by two plaintiffs. One pays financing interest
23 and one --

24 MR. FINE: That is his problem.

25 MR. GAWRYS: You don't get the financing

1 interest because the law provides the interest.

2 THE COURT: That is for the plaintiff's
3 convenience. He doesn't have the money so he
4 borrows it. I have already ruled I won't allow
5 interest.

6 MR. GAWRYS: So he can't get his payments
7 to principal and then also the difference in price.
8 Suppose he lost money and he wouldn't be able to
9 add them together. It turns out he sold it at
10 a profit, so his damages are reduced by the profit
11 he made.

12 MR. FINE: Judge, he didn't make a profit
13 when you consider the fact that he had to make
14 payments. If you buy a piece of equipment, no
15 matter where you buy it, you are either investing
16 your capital, which costs you money, which you
17 could have invested somewhere else.

18 THE COURT: I agree with Joe.

19 MR. FINE: I don't know how to calculate it,
20 Judge, in accordance with the Court's ruling.

21 THE COURT: You can claim these payments.
22 All of these items that I checked. You can put
23 them on the blackboard.

24 MR. GAWRYS: And then you have got to
25 offset it with the profit on the sale of the

1 property.

2 MR. FINE: Well, Judge, I may not have
3 anything here based on your ruling because he has
4 taken \$36,000; and we are out of court according
5 to what you say; and that is absolutely not true.
6 We have lost \$45,000 out-of-pocket expense.
7 Judge, the misnomer, I would submit --

8 THE COURT: Wait a minute. Let me see.
9 Paid \$283,000 for it. Well, if you add six
10 payments, you are putting the price up to \$320,000.

11 MR. FINE: But, Judge, that reduces his
12 payoff on it, which they are getting credit for.

13 MR. GAWRYS: Financing again is a
14 convenience for the plaintiff, and he cannot charge
15 the defendant with his financing charges.

16 THE COURT: See, when you make six payments
17 at \$6,000, you reduce your \$283,000 by \$36,000.
18 Of course, there is some interest.

19 MR. FINE: All interest.

20 THE COURT: So you run the purchase price
21 up to \$320,000.

22 MR. FINE: That's the actual dollars that
23 he had in it, Judge. Might I say this to the
24 Court? Suppose he had the cash in the bank. If
25 he had the cash in the bank, it was drawing interest

1 A It amounted to \$36,207.54.

2 Q All right. And when you sold the crane,
3 how much was the payoff to Equitable Leasing Corporation?
4 Is that contained in this check which is already an exhibit,
5 6?

6 A Yes, sir. \$283,937.29.

7 Q So that the difference between \$293,000
8 which was financed roughly and the \$283,000 which was the
9 payoff -- that \$10,000 was reduction of principal?

10 A Yes, sir.

11 Q And the remainder of the \$36,000 was some
12 \$26,000 was interest?

13 A That's correct.

14 MR. FINE: Judge, I would submit that it's
15 clear.

16 THE COURT: It may be clear for a layman,
17 but for the law it doesn't have the reasonable
18 certainty required, and I refuse to allow it to be
19 used in this case. Sustain the defendant's
20 objection to that.

21 MR. GAWRYS: Thank you, sir.

22 MR. FINE: Judge, what do we have left here?

23 THE COURT: The things I checked you got
24 left. Let's bring the jury in, Mr. King.

25 MR. GAWRYS: Can they offset their profit

1 jury, and this is my concern for my client.

2 THE COURT: You got it in the record not
3 in the presence of the jury. Your man took the
4 stand.

5 MR. FINE: Not in the presence of the jury.

6 THE COURT: That's right.

7 MR. FINE: But that was after.

8 THE COURT: You are excepting to my not
9 allowing it to go to the jury.

10 MR. FINE: And also to the fact that it
11 went to the jury and then you later ruled --

12 THE COURT: I had to rule as a matter of
13 fact that those elements were not --

14 MR. FINE: I understand, but I wasn't able
15 because my client was then off the witness stand.
16 I wasn't able to make any amends or corrections
17 in compliance with the Court's rulings because I
18 didn't know what the Court was going to rule.

19 THE COURT: Well, you may have something.
20 No objections were made to that evidence at the
21 time. Did you make objection to the introduction
22 of the yellow sheet?

23 MR. GAWRYS: Yes, sir, I certainly did.

24 THE COURT: You all two objected to
25 everything else, and you certainly objected to that.

1 MR. GAWRYS: I wouldn't miss one.

2 THE COURT: All right. He made objection.

3 MR. FINE: He made objection.

4 THE COURT: And if I erred in that ruling
5 in overruling because the points weren't made at
6 that time or the evidence introduced -- maybe that
7 is the evidence of the case.

8 MR. FINE: But that is what bothered me.
9 I was never able to understand the reasoning of
10 the Court so that I could put my client on during
11 the case in chief.

12 THE COURT: We may have to review it later.
13 It may entitle you to a new trial. I don't know.
14 If you are entitled to it, you are entitled to it.

15 (Counsel for both sides and the court
16 reporter returned to the courtroom, where the
17 following took place out of the presence of the
18 jury:)

19 MR. GAWRYS: For the purposes of the record
20 to show how the Court arrived at certain figures
21 and computations and eliminated certain items from
22 damages, the documents presented to the Court
23 showed that there was a cost of the crane to Triway
24 Sales of \$283,937.29. Triway Sales received a
25 commission of \$11,426.22, having a net cost of

1 \$272,511.07. Added to that should be the cost
2 of freight for bringing the crane to Norfolk, and
3 that figures as given to the Court by the
4 plaintiff showed a cost in of \$282,100. The crane
5 was subsequently sold to Peck Iron Works or Peck
6 Metal Company for \$290,000, leaving a profit of
7 \$7,900.

8 The defendant took the position that
9 \$7,900 must be deducted from the total damages
10 which the Court said the jury could consider in
11 the amount of \$10,243.44, leaving a gross amount
12 of damages of \$2,343.44 as a net figure.

13 (At 4:40 P. M. the jury indicated they had
14 arrived at a verdict.)

15 THE COURT: Please be seated.

16 (The jury was recalled to the courtroom,
17 where the following took place:)

18 THE COURT: Ladies and gentlemen of the
19 jury, have you reached your verdict? Is this
20 your unanimous verdict?

21 THE FOREMAN: Yes, sir, we have, Your
22 Honor.

23 THE COURT: Thank you, sir. The verdict
24 is for the plaintiff in full amount allowed. I
25 have got to amend that. What was your figure?

1 MR. FINE: Judge, it was \$10,240 --

2 THE FOREMAN: I couldn't remember the
3 exact figure.

4 MR. FINE: \$10,243.00.

5 THE COURT: Wait a minute. Let me write
6 this down. All right. Give me the figure,
7 please.

8 MR. FINE: \$10,243.44.

9 THE COURT: All right. Ladies and
10 gentlemen of the jury, is this your verdict? We
11 the jury, find for the plaintiff and fix his
12 damages at \$10,243.44?

13 THE FOREMAN: It is, Your Honor.

14 THE COURT: Is that your verdict? So say
15 you all?

16 JURORS: Yes.

17 THE COURT: Ladies and gentlemen, thank
18 you very much for your trying this two-day case.
19 It's more than you usually are called upon to try,
20 and I thank you for your kind consideration and
21 your patience and et cetera, and you are now
22 excused with my thanks and the thanks of the
23 lawyers and the thanks of the litigants. You are
24 now excused. Some may want to get their coats.

25 THE BAILIFF: They have them, Your Honor.

1 THE COURT: All right.

2 (The jury left the courtroom.)

3 THE COURT: All right. Motions,
4 gentlemen? Assuming we get them from all angles.

5 MR. GAWRYS: Yes, sir, if Your Honor please.
6 Plaintiff -- rather the defendant --

7 THE COURT: There are two motions on our
8 form, Mr. Gawrys. One is defendant moves to set
9 aside as contrary to the law and the evidence and
10 to enter summary judgment, or in the alternative
11 to grant a new trial, and the second is the
12 defendant moves to set aside as contrary to the
13 law and the evidence as excessive. You make
14 whatever motion you want.

15 MR. GAWRYS: Yes, sir. The defendant's
16 motion is to set aside the verdict as contrary to
17 the law and the evidence and to enter summary
18 judgment in favor of the defendant or in the
19 alternative to award a new trial, and we make this
20 on several grounds.

21 THE COURT: You may state them for the
22 record.

23 MR. GAWRYS: Yes, sir. First of all the
24 verdict is not in proper form. The jury could
25 have been confused by the amounts mentioned in

1 argument. I think as a matter of law the evidence
2 established that the plaintiff made a profit on the
3 sale of the crane of \$7,900. That amount had to
4 be deducted as a matter of law from the maximum
5 damages proven by the plaintiff of \$10,243.44,
6 which would leave a net figure of \$2,343.44.

7 Contract case such as this is subject to
8 mathematical computation, and certainly insofar as
9 determining maximum amounts which a plaintiff can
10 recover. The second aspect, of course, Your
11 Honor, is that the plaintiff essentially relied on
12 an oral contract, which is violative of the statute
13 of frauds, and the verdict should be set aside on
14 that grounds and summary judgment entered in favor
15 of the defendant because it clearly called for a
16 contract to be performed in more than a year's
17 period of time. Called for twelve months after
18 the arrival of the crane. So we ask that it be
19 set aside on that ground.

20 Third, it's perfectly clear from the
21 defendant's evidence -- rather, it's perfectly
22 clear that the defendant contemplated that there
23 would be a signed and written agreement. One was
24 never executed and, as a matter of law, Your
25 Honor, there was no contract between the parties,

1 motions continued.

2 MR. FINE: All right, sir.

3 THE COURT: Wait a minute. Let me get
4 this. You have my pencil.

5 MR. FINE: I'm sorry, Judge.

6 THE COURT: Motions -- I'm going to make
7 this clear. Motions continued and parties
8 granted leave to later file in writing their
9 specific and further -- their after-verdict motions.

10 MR. FINE: Post-trial motions.

11 THE COURT: That's the word. Post-trial.
12 See how that grabs you.

13 MR. FINE: I'm sure that's correct. Well,
14 Judge, with regard to what you previously wrote
15 down and discussed with counsel, is that to be
16 disregarded and just this latter checkmark for
17 the motions continued? Parties granted leave to
18 later file in writing a specific post-trial motion?
19 That's going to be the only ruling right this
20 second I assume?

21 THE COURT: You want me to scratch through
22 the other things you wanted?

23 MR. FINE: I think that would be preferable,
24 Judge.

25 MR. GAWRYS: Do what now?

FILMED

PL. EX.
1

JOE D. GLENN, JR.
& ASSOCIATES, P.C.
consulting engineers
A PROFESSIONAL CORPORATION

BUILDINGS
FOUNDATIONS
INDUSTRIAL PLANTS
MARINE STRUCTURES

P. O. BOX 12154/5661 VIRGINIA BEACH BOULEVARD/NORFOLK, VA. 23502/AREA (804) 420-9030

December 6, 1974

Exhibit No. 1
Initiated for RP
Identification ELR
Judge

Maritime Terminals, Incorporated
7737 Hampton Blvd.
Norfolk, Virginia 23505

Attention: Mr. W. J. Thompson
Manager, Engineering & Maintenance

RE: Load Capacity of Waterfront Structures for
Crane Operation

Dear Mr. Thompson:

In accordance with your letter of November 12, 1974, we have evaluated the capability of waterfront structures at Norfolk International Terminals to support a 140-ton mobile crane, P&H Model 9125-C. It is our understanding, from information provided by the owner, that the crane has a total weight of approximately 205,000 lbs. and will impose a maximum load of 200,000 lbs. at one outrigger when operating.

Our findings and recommendations are summarized as follows:

- (a) Bulkhead between Piers 1 & 2. The structural slab adjacent to the bulkhead, would be severely overstressed under wheel loads imposed by crane travel. It is recommended that the crane be restricted from this area.
- (b) North and south sides of Pier 1. The crane may approach and travel on the pier only when centered over the railroad tracks. Wheel loads outside of the track area will impose severe overstressing in the apron slabs. In order to lift on the pier, careful positioning of the crane outriggers in relation to the pile caps would be necessary.

*De fundand Dep. Ex 1
17992-5/20/75*

FILMED

Maritime Terminals, Inc.
Attn: Mr. W. J. Thompson

- 2 -

December 6, 1974

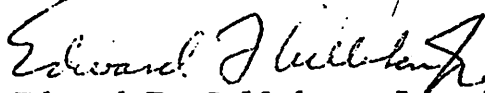
- (c) Container Berth No. 1. The structural slab would be severely overstressed under wheel loads imposed by crane travel. It is recommended that the crane be restricted from this area.
- (d) Container Berth No. 2. The structural slabs east of the outboard crane rail is adequate for crane travel. The slab between the outboard crane rail and the edge of the wharf would be overstressed under crane wheel loads. In order to lift in this area, the crane could be used only to the east of said rail and careful positioning of the crane outriggers in relation to the pile caps would be necessary.
- (d) Container Berth No. 3. The structural slab would be greatly overstressed under wheel loads imposed by crane travel. It is recommended that the crane be restricted from this area.

If view of the severe restrictions which would have to be imposed, it is our opinion that use of this crane is not practicable at the Norfolk International Terminal waterfront. The crane can be safely used only on Pier 1 and Container Berth No. 2 and then only when carefully positioned. If you desire, we will provide further recommendations on limitations to be imposed if the crane is to be used at those two locations.

Please advise if we can be of further assistance in this matter.

Very truly yours,

JOE D. GLENN, JR. & ASSOCIATES, P.C.
CONSULTING ENGINEERS



Edward F. Callahan, Jr., P.E.

EFCjr/m

Total of the
Initial of the
Identification

Net payoff

Pymts made 6 @ 6034.57

Net Sale Price

PL. EX.
7

Net left at N.T. 4 hrs @ 175⁰⁰

283,931.79

36,207.51

370,144.83

290,000

30,144.83

700.00

29,444.83

Expenses at Cost

Set up at N.T.

Letting Crane

op & riler 10/10/74 12/31/75

byr. 43 hrs wk @ 8.17 (\$351.31 - 11 wks)

riler - 4 hrs wk @ 5.75 (211.00 - 11 wks)

Removal from N.T. to auryard

Printing out name.

Re-assy for sale + trans to Peck

Re-assy at Peck Hon

Ins. Oct 74 - May 15, 75

Umbrella policy 5000,000

Advertising Cost

Telephone Calls

Sales Tax + T. on pymts

1767.16

80.00

3864.41

2,310.00

1525.84

35.00

769.92

1160.76

826.87

1175.00

1057.00

143.05

1400.

\$15,529.84

This exhibit did not
go to the jury

SLR

1/16/76

4. TITLE. Seller shall retain title to the equipment until Buyer has paid in full the total Time Balance and any additional payments as provided herein, at which time title to the equipment shall pass to Buyer on an "as is, where is" basis. All documents of title and evidences of delivery shall be delivered to Seller. Buyer will not change or remove any marking which is on the equipment indicating Seller's ownership thereof, and at any time during the term of this agreement upon request of Seller, will affix to the equipment, in a prominent place, markings supplied by Seller stating that the equipment is owned by Seller. Seller is hereby authorized by Buyer, at Buyer's expense, to cause this agreement or any applicable Uniform Commercial Code statement showing the interest of Seller in the equipment to be filed or recorded and refiled and re-recorded and Buyer agrees to execute and deliver any statement or instrument requested by Seller for such purpose. Buyer shall at its expense protect and defend Seller's title against all persons claiming against or through the Buyer at all times keeping the equipment free from any legal process or encumbrance whatsoever, and shall give Seller immediate written notice thereof and shall indemnify Seller from any loss caused thereby.

5. CARE AND USE OF EQUIPMENT. Buyer shall maintain the equipment in good operating condition, repair, and appearance, and protect the same from deterioration, other than normal depreciation and wear, shall not make modification, alteration or addition to the equipment (other than normal operating accessories or controls) without the consent of Seller, which shall not be unreasonably withheld; shall not so affix the equipment to realty so as to change its nature to real property and agree that the equipment shall remain personal property at all times regardless of how attached or installed; shall keep the equipment at the location shown herein, and shall not remove the equipment therefrom without the consent of Seller, which shall not be unreasonably withheld. All modifications, repairs, alterations, additions, operating accessories and controls shall accrue to the equipment and become the property of Seller. Seller shall have the right, during normal business hours, subject to applicable laws and regulations to enter upon the premises where the equipment is located in order to inspect, observe, or remove the same, or otherwise protect Seller's interest. For the purpose of assuring Seller that the equipment will be properly serviced, Buyer agrees to cause the equipment to be maintained by the Manufacturer pursuant to the Manufacturer's standard preventive maintenance contract.

6. NET INSTALLMENTS. Buyer intends the installment payments hereunder to be net to Seller, and Buyer shall comply with all laws with respect to, and shall pay all taxes, license and registration fees, and similar charges imposed on, the ownership, possession, purchase, sale or use of the equipment during the term of this agreement and shall pay all taxes (except Federal or state net income taxes) imposed on Seller or Buyer with respect to the installment payments hereunder.

7. INDEMNITY. Buyer shall and does hereby agree to indemnify and save Seller, its agents, servants, successors and assigns, harmless from any and all liability, damage or loss, including reasonable attorney's fees arising out of the purchase, sale, ownership, selection, possession, operation, control, use, maintenance, and delivery of the equipment (including but not limited to latent or other defects, whether or not discoverable by Buyer), but shall be credited with any amounts received by Seller with respect thereto from liability insurance procured by Buyer. The indemnities and obligations herein provided shall continue in full force and effect notwithstanding the termination of this agreement.

8. INSURANCE. Buyer shall keep the equipment insured against all risks of loss or damage from every cause whatsoever for not less than the aggregate amount of unpaid Time Balance, provided that the amount of such insurance shall be sufficient so that neither Seller nor Buyer will be considered a coinsurer. Buyer also shall carry public liability insurance, both personal injury and property damage, covering the equipment. All such insurance shall be in form and with companies satisfactory to Seller. All insurance for loss or damage shall provide that losses, if any, shall be payable to Seller and Buyer as their interests may appear, and all such liability insurance shall be joint names of Seller and Buyer. Buyer shall pay the premiums for such insurance and deliver to Seller evidence satisfactory to Seller of the insurance coverage required hereunder. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to Seller, that it will give Seller 30 days prior written notice of the effective date of any alteration or cancellation of such policy. The proceeds of such insurance payable as a result of loss or of damage to any item of the equipment shall be applied to satisfy Buyer's obligations under Paragraph 9 hereof.

9. RISK OF LOSS. Buyer hereby assumes the entire risk of loss, damage or destruction of the equipment from any and every cause whatsoever commencing with delivery of such equipment to Buyer, an agent of Buyer, or to a carrier consigned for shipment to Buyer or an agent of Buyer, whichever is earlier. In event of loss, damage or destruction of any item of equipment, Buyer at its expense (except to the extent of any proceeds of insurance provided by Buyer which shall have been received by Seller as a result of such loss, damage, or destruction), and at Seller's option, shall either (a) repair such item, or (b) pay Seller all unpaid installments of the Time Balance as may be allocated to such item, or (c) replace such item with a like item acceptable to Seller and in good condition and of equivalent value, which shall become the property of Seller and included within the term "equipment," as used herein. Upon payment or replacement as provided for in clauses (b) or (c) hereof, this agreement shall terminate with respect to the items of equipment so paid for or replaced and Buyer shall take title to same on an "as is, where is" basis.

10. PERFORMANCE BY SELLER OF BUYER'S OBLIGATIONS. In case of the failure of Buyer to comply with any provision of this agreement, Seller shall have the right upon 10 days' prior notice to Buyer, but shall not be obligated, to effect such compliance on behalf of Buyer. In such event, all monies spent by and expenses of Seller in effecting such compliance shall be deemed to be additional installments, and shall be paid by Buyer to Seller at the time of payment for the next monthly installment payment hereunder.

11. OTHER COVENANTS AND WARRANTIES OF BUYER. Buyer agrees that its obligations under this agreement are absolute, and shall continue in full force and effect regardless of any disability of Buyer to use the equipment or any part thereof because of any reason, including, but not limited to, war, Act of God, governmental regulations, strike, loss, damage, destruction, obsolescence, failure of the equipment to properly operate, or any other cause, including operation of laws, and that its obligations shall not abate due to any claim or set-off against Seller, except for breach of Seller's warranty as to its title to the items of equipment. Buyer agrees that the application, statements and financial reports submitted by it to Seller are material inducements to the execution by Seller of this agreement, and Buyer warrants that such applications, statements and reports are, and all information hereafter furnished by Buyer to Seller will be, true and correct in all material respects as of the date submitted. Buyer agrees to procure for Seller such estoppel certificates, landlord's and mortgagee's waivers or other similar documents as Seller may reasonably request. Buyer agrees not to transfer its rights hereunder without the written consent of Seller. Buyer warrants that this agreement has been duly authorized, and that no provision of this agreement is inconsistent with Buyer's charter, by-laws, or any loan or credit agreement or other instrument to which Buyer is a party or by which Buyer or its property may be bound or affected. Buyer warrants that the equipment is to be used solely for business or commercial purposes.

12. DEFAULT. If any one of the following events (each of which is herein called an "event of default") shall occur: (a) Buyer shall default in the payment of any installment or in making any other payment hereunder when due and such default shall continue for 5 days; or (b) Buyer shall default in the payment, when due, of any indebtedness of Buyer to Seller arising independently of this agreement and such default shall continue for 5 days after written notice thereof to Buyer by Seller, or (c) Buyer shall breach any warranty hereunder, or (d) Buyer shall default in the performance of any other agreement hereunder and such default shall continue for 5 days after written notice thereof to Buyer by Seller, or (e) Buyer becomes insolvent or makes an assignment for the benefit of creditors, or (f) Buyer applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Buyer or of all or a substantial part of its assets, or such receiver, trustee, conservator or liquidator is appointed without the application or consent of Buyer, or (g) a petition is filed by or against Buyer under the Bankruptcy Act or any amendment thereto (including, without limitation, a petition for reorganization, arrangement or extension) or under any other insolvency law or laws providing for the relief of debtors, then, if and to the extent permitted by applicable law, Seller shall have the right to exercise any one or more of the remedies hereinafter provided.

Whenever any payment is not made by Buyer when due hereunder, Buyer agrees to pay to Seller (as liquidated damages occasioned by such delay), not later than one month thereafter, an amount calculated at the rate of five cents per one dollar of each such delayed payment, but only to the extent allowed by law. Such amount shall be payable in addition to all amounts payable by Buyer as a result of exercise of any of the remedies hereinafter provided.

REMEDIES. If an event of default shall occur and be continuing, Seller may, at its option, at any time (a) declare the entire unpaid amount of the Time Balance due and payable, whereupon Buyer shall become obligated to pay such amount to Seller forthwith, and (b) without demand or legal process, enter into the premises where the equipment may be found and take possession of and remove the same and sell the same at private or public sale, and (c) exercise all rights and remedies of a secured party under the Uniform Commercial Code and other applicable laws. Seller may, at its option, ship, store and repair all equipment so removed. Buyer hereby waives notice of, or hearing with respect to, such retaking. In the event Seller takes possession of the equipment, Seller shall give Buyer credit for any sums received by Seller from the resale or rental of the equipment, after deduction of the expenses of the resale or rental. Buyer shall also be liable for and shall pay to Seller all expenses incurred by Seller in connection with the enforcement of any of Seller's remedies, including all expenses of repossessing, storing, shipping, repairing and selling the equipment and legal expenses and reasonable attorney's fees of 20% of the unpaid Time Balance.

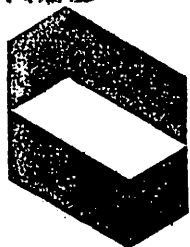
All remedies of Seller hereunder are cumulative, are in addition to any other remedies provided for by law and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of Seller to exercise, and no delay in exercising any right or remedy shall operate as a waiver thereof or modify the terms of this agreement, nor shall any single or partial exercise by Seller of any right or remedy preclude any other or further exercise of the same or any other right or remedy.

13. ASSIGNMENT. This agreement, the equipment and any installments and other sums due or to become due hereunder, or any part of the foregoing, may be transferred or assigned by Seller without notice, and in such event Seller's transferee or assignee shall have, to the extent transferred or assigned to it, all rights, powers, privileges and remedies of Seller hereunder. Buyer agrees that no such transferee or assignee shall assume any obligations of Seller hereunder (except for the application pursuant hereto of any proceeds which shall be received by such transferee or assignee of insurance provided by Buyer), and that, as against any such transferee or assignee, the obligations of Buyer hereunder shall not be subject to any defense, set-off or counterclaim available to Buyer against Seller and that the same, if any exist, may be asserted only against Seller. It is understood and agreed, however, that Buyer may separately claim against Seller as to any matters which Buyer may be entitled to assert against Seller. Unless otherwise specified herein, this agreement shall be prior and superior to any mortgage or security interest heretofore or hereafter granted by Seller with respect to the equipment or this agreement.

14. AMENDMENTS. This agreement contains the entire agreement between the parties with respect to the equipment, and may not be altered, modified, terminated or discharged except by a writing signed by an officer of the party against whom such alteration, modification, termination or discharge is sought.

15. MISCELLANEOUS. This agreement shall be binding when accepted by Seller in the State of North Carolina and, except for local recording acts, shall be governed by the laws of the State of North Carolina. Seller and Buyer intend this agreement to be a valid and subsisting legal instrument, and no provisions of this agreement which may be deemed unenforceable shall in any way invalidate any other provisions of this agreement, all of which shall remain in full force and effect. Buyer waives, insofar as permitted by law, trial by jury in any action between the parties. This agreement shall be binding upon the parties, their successors, legal representatives and assigns. All notices shall be by certified mail, addressed to the parties at the addresses set forth herein.

FILMED



Maritime Terminals, Incorporated

OPERATORS OF NORFOLK INTERNATIONAL TERMINALS
7737 HAMPTON BOULEVARD • NORFOLK, VIRGINIA 23505
(804) 489-2400 TWX 710-881-1142

November 15, 1974

DEF. EX.
1

Exhibit No. 1
Initialed for FD
Identification SLR
Judge

Mr. V. L. Reca
President
Valjar, Incorporated
161 Wellman Street
Norfolk, Virginia 23502

Dear Vince:

Attached is a proposed draft of an agreement between our organizations. Please let me have your comments on it.

If it is satisfactory, as is, give me a telephone call and we'll decide on the beginning date for the term.

Yours truly,


James N. Crumbley
General Manager

JNC:adb
Enclosure

cc: Mr. Raymond R. Brewer, Manager, Operations

DEF. EX.
2

Exhibit No. -2
Initialed for Δ
Identification SLR
Judge

AGREEMENT

This Agreement, made this ____ day of November, 1974 by and between MARITIME TERMINALS, INC., a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal office in the City of Norfolk, Commonwealth of Virginia, (MTI), and VALJAR, INCORPORATED, a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal office in the City of Norfolk, Commonwealth of Virginia.

W I T N E S S E T H :

That MTI herein grants permission to Valjar to domicile a new 140-ton crane on the premises of Norfolk International Terminals for the use of MTI and its customers, however, such permission being given on and subject to the following terms, conditions and agreements:

1. Valjar will make available a new 140-ton crane at Norfolk International Terminals.
2. MTI will allow the crane to be domiciled on the premises NIT with no fees, no storage and no other charges for domiciling the crane.
3. The term of this Agreement shall be for twelve (12) months, beginning on the ____ day of _____, 1974, and ending on the ____ day of _____, 1975.
4. MTI will not allow any other rental cranes of

~~140~~-tons or more to be used on the docks at the Norfolk International Terminals unless Valjar cannot reasonably service the job needed.

5. Said crane will be available for use of the customers of MTI subject to an hourly rental rate to be approved by MTI.

6. Valjar shall operate said crane, however, arrangements for rental of the crane shall be made with the MTI Pier Division Supervisor.

7. Valjar shall have the right to remove the 140-ton crane from the premises of Norfolk International Terminals on a non-interference basis.

8. Under no circumstance shall MTI be liable for any acts or omissions of Valjar, its agents, servants, employees or independent contractors.

9. Valjar hereby agrees that during the continuance of this Agreement it will indemnify and hold harmless MTI from all liabilities, losses, damages, penalties and claims, of every kind and nature, incurred by or asserted or imposed against MTI and the Virginia Port Authority (VPA), by reason of any accident, injury (including death) or damage to any person or property, howsoever caused, resulting from the use of the crane by Valjar.

10. Valjar agrees to purchase and continue in force during the term hereof a policy of general liability insurance which insurance shall be written or endorsed so as to protect Valjar, MTI and VPA, as their respective interests may appear.

The aforesaid insurance shall have a minimum public liability coverage of \$500,000, an umbrella coverage of \$5,000,000 with a \$10,000 deductible and a minimum contractual liability of \$500,000. Insofar as said insurance provides protection against liability for damages to third party for personal injury, death and property damage, the MTI and VPA shall be included as named insureds, provided, however, such liability insurance coverage shall also extend to damage, destruction and injury, to MTI or VPA owned or leased property and MTI or VPA personnel, and caused by, or resulting from work, acts, operations or omissions of Valjar, its officers, agents, employees, licensees, invitees and independent contractors. MTI and VPA shall have no liability for any premiums charged for such coverage, and the inclusion of the MTI and VPA as named insureds is not intended to, and shall not make either of them a partner or joint venturer with Valjar. The minimum coverage herein set forth is in no way to be construed to limit the amounts of coverage desired by Valjar.

Certificates of such insurance will be delivered to MTI; and said policies shall contain an endorsement that same shall not be cancelled or fail to be renewed without first requiring the carrier to give ten (10) days written notice of its intention to MTI.

IN TESTIMONY WHEREOF, the parties hereto have caused this lease to be signed in their corporate names by their respective presidents, and their corporate seals to be hereunto affixed, attested by their respective secretaries, the day and year first above written.

MARITIME TERMINALS, INC.

By _____
GENERAL MANAGER

ATTEST:

ASSISTANT SECRETARY

VALJAR, INCORPORATED,

By _____
V. L. RECA, PRESIDENT

ATTEST:

LAURA G. RECA, SECRETARY/TREASURER

DEF. EX.
3

Exhibit No. 3
Initiated by DA
Identification ELR
Judge

AGREEMENT

This Agreement, made this ____ day of November, 1974
by and between MARITIME TERMINALS, INC., a corporation organized
and existing under the laws of the Commonwealth of Virginia,
with its principal office in the City of Norfolk, Commonwealth
of Virginia, (MTI), and VALJAR, INCORPORATED, a corporation
organized and existing under the laws of the Commonwealth of
Virginia, with its principal office in the City of Norfolk,
Commonwealth of Virginia.

W I T N E S S E T H :

That MTI herein grants permission to Valjar to domicile
a new 140-ton crane on the premises of Norfolk International
Terminals for the use of MTI and its customers, however, such
permission being given on and subject to the following terms,
conditions and agreements:

1. Valjar will make available a new 140-ton crane at
Norfolk International Terminals.

2. MTI will allow the crane to be domiciled on the
premises NIT with no fees, no storage and no other charges
for domiciling the crane.

3. The term of this Agreement shall be for twelve
(12) months, beginning on the ____ day of _____, 1974,
and ending on the ____ day of _____, 1975.

4. MTI will not allow any other rental cranes of

140-tons or more to be used on the docks at the Norfolk International Terminals unless Valjar cannot reasonably service the job needed.

5. Said crane will be available for use of the customers of MTI subject to an hourly rental rate to be approved by MTI.

6. Valjar shall operate said crane, however, arrangements for rental of the crane shall be made with the MTI Pier Division Supervisor.

7. Valjar shall have the right to remove the 140-ton crane from the premises of Norfolk International Terminals on a non-interference basis.

8. Under no circumstance shall MTI be liable for any acts or omissions of Valjar, its agents, servants, employees or independent contractors.

9. Valjar hereby agrees that during the continuance of this Agreement it will indemnify and hold harmless MTI from all liabilities, losses, damages, penalties and claims, of every kind and nature, incurred by or asserted or imposed against MTI and the Virginia Port Authority (VPA), by reason of any accident, injury (including death) or damage to any person or property, howsoever caused, resulting from the use of the crane by Valjar.

10. Valjar agrees to purchase and continue in force during the term hereof a policy of general liability insurance which insurance shall be written or endorsed so as to protect Valjar, MTI and VPA, as their respective interests may appear.

The aforesaid insurance shall have a minimum public liability coverage of \$500,000, an umbrella coverage of \$5,000,000 with a \$10,000 deductible and a minimum contractual liability of \$500,000. Insofar as said insurance provides protection against liability for damages to third party for personal injury, death and property damage, the MTI and VPA shall be included as named insureds, provided, however, such liability insurance coverage shall also extend to damage, destruction and injury, to MTI or VPA owned or leased property and MTI or VPA personnel, and caused by, or resulting from work, acts, operations or omissions of Valjar, its officers, agents, employees, licensees, invitees and independent contractors. MTI and VPA shall have no liability for any premiums charged for such coverage, and the inclusion of the MTI and VPA as named insureds is not intended to, and shall not make either of them a partner or joint venturer with Valjar. The minimum coverage herein set forth is in no way to be construed to limit the amounts of coverage desired by Valjar.

Certificates of such insurance will be delivered to MTI; and said policies shall contain an endorsement that same shall not be cancelled or fail to be renewed without first requiring the carrier to give ten (10) days written notice of its intention to MTI.

IN TESTIMONY WHEREOF, the parties hereto have caused this lease to be signed in their corporate names by their respective presidents, and their corporate seals to be hereunto affixed, attested by their respective secretaries, the day and year first above written.

MARITIME TERMINALS, INC.

By _____
GENERAL MANAGER

ATTEST:

ASSISTANT SECRETARY

VALJAR, INCORPORATED,

By _____
V. L. RECA, PRESIDENT

ATTEST:

LAURA G. RECA, SECRETARY/TREASURER



161 WELLMAN ST., NORFOLK, VIRGINIA 23502
(703) 424-3322

Exhibit No. 4
Initialed for Δ
Identification SLR
Judge

MEN AND MACHINES — A Service System

FILMED

DEF. EX.
4

November 13, 1974

Mr. W. M. Uhrich
E. I. DuPont Engineering Dept.
Louviers Building
Newark, Delaware 19711

Dear Mr. Uhrich:

We are offering for sale one new P&H model 9125TC 140 ton truck crane, serial number 39231 with extras, as shown below. Prices quoted are current as of November 1, 1974.

9125TC with 50 foot boom	\$289,085.00
Cummins V903 diesel with torque convertor upper	4,215.00
Planetary lowering front drum	1,060.00
Planetary lowering rear drum	1,060.00
5 parts line with 3 sheave block	3,085.00
Cummins NTF365 diesel - carrier	STD
Spare rim and tire	850.00
14:00 x 24 - 24 ply tires	STD
Heater and defroster - carrier	135.00
West Coast mirrors	120.00
Hydraulic outriggers	7,610.00
Front bumper counterweight	7,475.00
Front bumper float	560.00
Backstops	1,510.00
10' boom insert with guy cables	1,915.00
20' boom insert with guy cables	2,590.00
30' boom insert with guy cables	3,160.00
TWO (2) 50' boom inserts with cables 4,960.	9,920.00
Single Sheave hook block	1,035.00
Weighted hook	390.00
Swivel for hook	235.00
20' jib with standard strut and cables	3,480.00
TWO (2) 20' jib inserts with cables \$1,115.	2,230.00
660' Jib hoist line - 1" T25	819.00
Center hitch	395.00
Mast gantry	3,390.00
Lower cable rollers	215.00
Middle cable rollers	215.00
Extra rear counterweight (21,000#)	5,310.00

continued - page two

CONSTRUCTION EQUIPMENT — RENTALS & LEASING

CRANES • BACKHOES • CRAWLER LOADERS • DOZERS • COMPRESSORS • LOW BOY SERVICE
WITH OR WITHOUT OPERATORS

165

NORFOLK — 424-3322

TWO OFFICES SERVING YOU

HAMPTON — 247-0411



161 WELLMAN ST., NORFOLK, VIRGINIA 23502
(703) 424-3322

MEN AND MACHINES — A Service System

Proposal, 9125TC, to Mr. W. M. Uhrich, E. I. DuPont, Nov 13, 1974

Boom Angle Indicator	80.00
Boom hoist kickout	170.00
Signal horn	60.00
Foot pedal throttle control	220.00
Heater and defroster upper	115.00
Sheave material for self-removal of ctrwt.	1,250.00
Set of 4x4' aluminum floats in addition to standard	3,080.00
Longshoremen's Certification	960.00
Drum turn indicator - both drums	440.00
Dual tagline winders	3,915.00 <i>Removes</i>
Insulated operator's coop	<u>735.00</u>
Price, F.O.B. Escanaba, Michigan	\$362,979.00
Freight to Norfolk, Virginia	<u>9,100.00</u>
	\$372,079.00

Our price to you, F.O.B. Norfolk, Va. \$335,000.00*

*Price quoted is for payment within ten (10) days of invoice and does not include dismantling for shipment or loading on trucks. Buyer pays all applicable taxes.

Valjar Incorporated

V. L. Reca
President

CONSTRUCTION EQUIPMENT — RENTALS & LEASING

CRANES • BACKHOES • CRAWLER LOADERS • DOZERS • COMPRESSORS • LOW BOY SERVICE
WITH OR WITHOUT OPERATORS



161 WELLMAN ST., NORFOLK, VIRGINIA 23504
(703) 424-3322

MEN AND MACHINES — A Service System

Exhibit No. 1 for identification

FILMED

DEF. EX.
5

July 18, 1974

Exhibit No. 5
Initialed for
Identification
SLR
Judge

Norfolk International Terminal
Norfolk, Virginia
Attn: Mr. Ray Brewer

Gentlemen:

This letter will serve as the culmination of our conversations ending into our agreements as follows:

1. Valjar Incorporated will make available a new 140 ton crane on your property at Norfolk International Terminals and Lamberts Point Docks.
2. Norfolk International Terminals will allow the 140 ton crane to be domiciled and garaged on the premises (NIT or Lamberts Point Docks) with no fees, no storage and no other charges for domiciling the crane.
3. The initial term of this agreement shall be for twelve months.
4. Norfolk International Terminals will not allow any other rental cranes to be used on the docks - Norfolk International Terminals or Lamberts Point Docks - of 100 tons or more unless Valjar Incorporated cannot reasonably service the job need.
5. Valjar shall operate the crane.
6. The rental rate of said crane will be \$140.00 per hour fully operated and maintained.
7. Valjar Incorporated shall have the right to remove the 140 ton crane off the premises of Norfolk International Terminals and Lamberts Point Docks on a non-interference basis.

Valjar Incorporated

by

V. L. Reca
President

CONSTRUCTION EQUIPMENT — RENTALS & LEASING

CRANES • BACKHOES • CRAWLER LOADERS • DOZERS • COMPRESSORS • LOW BOY SERVICE
WITH OR WITHOUT OPERATORS

NORFOLK — 424-3322

TWO OFFICES SERVING YOU

167 HAMPTON — 247-0411

FILMED
TUESDAY

JUNE 1974						
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16

JULY 1974

AUG. 1974						
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30	31					

- APPOINTMENTS -

8:00 7:30 Pancake House
8:30 Wendy Carner
9:00 Paul Cogdon
9:30 Human Committee
10:00
10:30 LABOR Dreams -
11:00 Hugh Matthews office
11:30
12:00
1:00
1:30
2:00 Valjar re CRANE
2:30
3:00 ~~Tricia Bass~~
3:30
4:00
4:30
5:00
5:30

Exhibit No. 10
Initialed for
Identification A
SLR
Judge

MONDAY

1974 JULY 1974						
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15

JULY 1974

DEF. EX.
10

Meeting with ARSA
re LABOR DEMANDS

9:15 9:30
MATT +
Thompson
I gave this
week

CSA
7/15/74

196

MON, JULY 15, 1974

169

168

FILMED THURSDAY

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18
JULY 1974

AUG. 1974						
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- APPOINTMENTS -

8:00	
8:30	
9:00	VH Jan
9:30	
10:00	Miss Bessie-13
10:30	
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WEDNESDAY

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17

JULY 1974

Check on [unclear] for [unclear]
yes
Call John Buck
Call [unclear] [unclear]

7/17/74

198

WED, JULY 17, 1974

167

FILMED
WEDNESDAY

APR. 1974						
S	M	T	W	T	F	S
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

22

MAY 1974

JUNE 1974						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

- APPOINTMENTS -

8:00	Exhibit No. <u>11</u>
8:30	Initiated for <u>Identification</u>
9:00	<u>Thurston</u> <u>S. R.</u>
9:30	Judge
10:00	
10:30	
11:00	
11:30	
12:00	<u>Steve Seaford - Clerk</u>
1:00	<u>Mark Brewer Jr</u>
1:30	
2:00	
2:30	
3:00	
3:30	
4:00	
4:30	
5:00	
5:30	

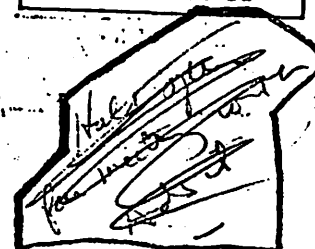
TUESDAY

MAY 1974						
S	M	T	W	T	F	S
						1
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5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

21

MAY 1974

DEF. EX.
11



5/21/74

141

TUES, MAY 21, 1974

224

FILMED
WEDNESDAY

APR. 1974						
S	M	T	W	T	F	S
	1	2	3	4	5	6
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

29

MAY 1974

JUNE 1974						
S	M	T	W	T	F	S
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9	10	11	12	13	14	15
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- APPOINTMENTS -

8:00	
8:30	
9:00	CAPT - MR SPASSARD
9:30	
10:00	
10:30	
11:00	Capt. Dodd
11:30	
12:00	
1:00	
1:30	
2:00	
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5:00	
5:30	

12
Δ
ELR

DEF. EX.
12

TUESDAY

1974 MAY 1974						
S	M	T	W	T	F	S
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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

28

MAY 1974

"Coca"

Mr. Eddie
Corp. & Engineers
625-8261
will call me
about house
for lease

5/28/74

148

TUES., MAY 28, 1974

217

FILMED
THURSDAY

APR. 1974						
S	M	T	W	T	F	S
1	2	3	4	5	6	
7	8	9	10	11	12	13
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21	22	23	24	25	26	27
28	29	30				

30

MAY 1974

JUNE 1974						
S	M	T	W	T	F	S
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

- APPOINTMENTS -

8:00 _____ Exhibit No. 13
 8:30 _____ Unfiled for Δ
 9:00 _____ Identification ELR
 9:45 Adm. Halim - re budget
 10:00 _____
 10:30 _____
 11:00 _____
 11:30 C & O Group -
 12:00 _____
 1:00 _____
 1:30 _____
 2:00 _____
 2:30 _____
 3:00 _____
 3:30 _____
 4:00 _____
 4:30 _____
 5:00 _____
 5:30 _____

WEDNESDAY

1974 MAY 1974						
S	M	T	W	T	F	S
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5	6	7	8	9	10	11
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19	20	21	22	23	24	25
26	27	28	29	30	31	

29

MAY 1974

Capt. Dodd

11 am

DEF. EX.
13

5/29/74

149

WED., MAY 29, 1974

216



161 WELLMAN ST., NORFOLK, VIRGINIA 23502
(703) 424-3322

MEN AND MACHINES — A Service System

July 18, 1974

Norfolk International Terminal
Norfolk, Virginia
Attn: Mr. Ray Brewer

DEF. EX.
14

Gentlemen:

This letter will serve as the culmination of our conversations ending into our agreements as follows:

1. Valjar Incorporated will make available a new 140 ton crane on your property at Norfolk International Terminals and Lamberts Point Docks.
2. Norfolk International Terminals will allow the 140 ton crane to be domiciled and garaged on the premises (NIT or Lamberts Point Docks) with no fees, no storage and no other charges for domiciling the crane.
3. The initial term of this agreement shall be for twelve months.
4. Norfolk International Terminals will not allow any other rental cranes to be used on the docks - Norfolk International Terminals or Lamberts Point Docks - of 140 tons or more unless Valjar Incorporated cannot reasonably service the job need.
5. Valjar shall operate the crane.
6. The rental rate of said crane will be \$140.00 per hour fully operated and maintained.
7. Valjar Incorporated shall have the right to remove the 140 ton crane off the premises of Norfolk International Terminals and Lamberts Point Docks on a non-interference basis.

Valjar Incorporated

by _____
V. L. Rea
President

CONSTRUCTION EQUIPMENT — RENTALS & LEASING
CRANES • BACKHOES • CRAWLER LOADERS • DOZERS • COMPRESSORS • LOW BOY SERVICE
WITH OR WITHOUT OPERATORS

Plaintiff's Dep. Ex. 1
(THP-5/20/75)