

A. DOUGLASS KRELL,	§	IN THE CIRCUIT COURT OF
Plaintiff	§	BALDWIN COUNTY, ALABAMA
vs.	§	AT LAW
ALABAMA BALDWIN CORPORATION, a corporation,	§	
Defendant	§	CASE NO. 6449

NOTICE OF TAKING OF DEPOSITION UPON ORAL EXAMINATION PURSUANT TO  
GENERAL ACTS OF ALABAMA NO. 375 (APPROVED SEPTEMBER 8, 1955)

To: ALABAMA BALDWIN CORPORATION, c/o Norborne C. Stone, their  
Attorney

Please take notice that at 9:30 A.M., on Thursday, October 14, 1965, in the offices of Feuerstein, Feibelman & Kaminsky, situate in the Columbian Mutual Tower, Memphis, Tennessee, the Plaintiff, A. Douglass Krell, will take the deposition of J. W. Withers, Memphis, Tennessee, upon oral examination and pursuant to the above stated Act of the Legislature of the State of Alabama, before a person ~~authorized to administer oath~~ under the Laws of the State of Tennessee, and duly authorized to take depositions and swear witnesses in said County and State. The oral examination will continue from day to day until completed; and you are invited to attend and cross examine.

HOLBERG, TULLY & HODNETTE  
Attorneys for Plaintiff

By: 

Of Counsel

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 29<sup>th</sup>  
day of September, 1965, served a copy of  
the foregoing pleading on counsel for all parties  
to this proceeding by mailing the same by  
United States mail, properly addressed and  
first class postage prepaid.

HOLBERG, TULLY & HODNETTE

By: 

**FILED**

SEP 30 1965

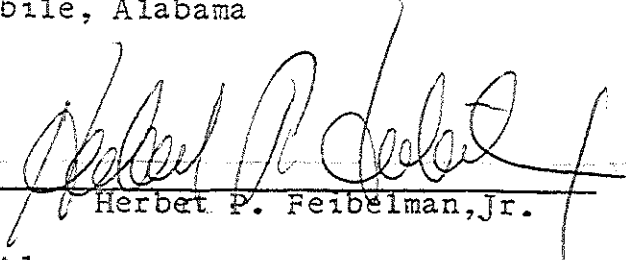
ALICE L. DICK CLERK  
REGISTRAR

A. DOUGLASS KRELL, )  
Plaintiff, ) IN THE CIRCUIT COURT OF  
vs ) BALDWIN COUNTY, ALABAMA  
ALABAMA-BALDWIN CORPORATION, )  
a corporation, )  
Defendant ) CASE NO. 6449  
)

COUNT ONE

Plaintiff claims of the defendant, Four Thousand and no/100ths (\$4,000.00) Dollars, due by promissory note made by it on, to-wit, the 30th day of November 1962 and payable on, to-wit, the 1st day of December, 1964, with the interest thereon.

HOLBERG, TULLY & HODNETTE  
Attorneys for Plaintiff  
1107 Milner Building  
Mobile, Alabama

By   
Herbet P. Feibelman, Jr.

Defendant may be served at Loxley, Ala.

FILED  
MAR 25 1965  
ALICE L. DUCK, CLERK  
REGISTER

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

Circuit Court, Baldwin County

STATE OF ALABAMA  
BALDWIN COUNTY

No.....

.....TERM. 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Alabama-Baldwin Corporation, a Corporation

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed  
in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against.....  
Alabama-Baldwin Corporation, a Corporation....., Defendant.....

by A. Douglass Krell.....  
....., Plaintiff.....

Witness my hand this..... 25th ..... day of March 19<sup>65</sup>.....

64-3-31-65

Alise J. Luck Clerk

No. 6449 Page.....

STATE OF ALABAMA  
Baldwin County

CIRCUIT COURT

A. DOUGLASS KRELL

Plaintiffs

vs.

ALABAMA-BALDWIN CORPORATION,

a corporation

Defendants

SUMMONS AND COMPLAINT

Filed ..... 19.....

FILED  
MAR 25 1965

..... Clerk

ALICE L. DUCK, CLERK  
REGISTER

HOLBERG, TULLY & HODNETTE  
1107 Milner Bldg. Plaintiff's Attorney  
Mobile, Ala.

Defendant's Attorney

Defendant lives at

Loxley, Ala.

RECEIVED  
Received in Office  
SHERIFF

..... 19.....  
MAR 26 1965

....., Sheriff  
I have <sup>TAYLOR WILKINS</sup> ~~executed~~ this summons  
SHERIFF

this 3-31 1965  
by leaving a copy with

Tommy Serinache  
Manager

Sheriff claims 40 miles at

Ten Cents per mile Total \$ 4.00

TAYLOR WILKINS, Sheriff

BY W. O. Baine  
DEPUTY SHERIFF

..... Sheriff  
C. A. McWhorter Deputy Sheriff

Loxley

A. DOUGLASS KRELL	)	
Plaintiff	)	IN THE CIRCUIT COURT
vs.	)	OF
ALABAMA BALDWIN CORPORATION	)	BALDWIN COUNTY, ALABAMA
a corporation	)	
Defendant	)	6449

PLEAS

Comes now the Defendant in the above styled cause, by its attorneys, and files the following separate and several pleas to the Complaint heretofore filed by the Plaintiff in said cause:

1. The allegations of the Complaint are untrue.
2. The Defendant, for answer to the Complaint saith that the note upon which the action was founded, was not executed by it or by anyone authorized to bind it in the premises and it makes oath that this plea is true.

CHASON, STONE & CHASON

By: *Malone P. Stone*

STATE OF ALABAMA  
COUNTY OF BALDWIN

Before me, the undersigned authority, personally appeared T. Sorimachi, who is known to me, and who, after being by me first duly and legally sworn did depose and say under oath as follows:

My name is T. Sorimachi and I am Vice President of Alabama Baldwin Corporation, a corporation. I have read the above "Plea 2" and have personal knowledge of the facts alleged therein and they are true and correct.

*Thru Sorimachi*  
T. Sorimachi

Sworn to and subscribed before me  
this 28th day of April, 1965.

*Thomas L. Lundy, Jr.*  
Notary Public, State of Alabama

**FILED**

APR 30 1965  
ALICE L. DICK, CLERK  
REGISTER

The Defendant respectfully demands  
a trial of this cause by jury.

CHASON, STONE & CHASON

By: M. G. Stone

FILED

APR 30 1965

ALICE L. DUCK, CLERK  
REGISTER

FILED  
DEC 2 1965  
CLERK  
JAMES A. WALKER, JR.

=====

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

AT LAW

=====

A. DOUGLASS KRELL, )  
 )  
Plaintiff, )  
 )  
Vs. ) CASE NO. 6449  
 )  
ALABAMA BALDWIN CORPORATION, )  
A Corporation, )  
 )  
Defendant. )

=====

It is stipulated and agreed by and between the parties hereto, acting through their attorneys, that the Deposition upon oral examination of Mr. J. W. Withers be taken before Bernard Schnierer, a Notary Public in and for the County of Shelby, State of Tennessee, in the Office of H. L. Feibelman, Attorney, Memphis, Tennessee, on October 14, 1965, at 1:15 P. M.

It is further stipulated and agreed that objections to questions propounded to the witness or to testimony sought to be elicited are reserved except as to form.

It is further stipulated and agreed that the filing of the deposition is waived. The signature of the witness was waived.

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APPEARANCES:

For the Plaintiff ..... H. L. FEIBELMAN, ESQ.  
For the Defendant ..... NORBORNE C. STONE, ESQ.

=====

J. W. WITHERS,  
the witness, after having been first duly sworn, testified as  
follows:

DIRECT EXAMINATION

BY MR. FEIBELMAN:

Q. Please state your name.  
A. J. W. Withers.  
Q. Your address?  
A. 4829 Barfield Road, Memphis, Tennessee.  
Q. Are you a resident citizen of Memphis, Tennessee?  
A. Yes, sir.  
Q. What is your age, Mr. Withers?  
A. Forty-two.  
Q. By whom are you presently employed?  
A. E. L. Burgen Company, Inc.  
Q. Where is that located?  
A. 3340 Poplar Avenue, Memphis.  
Q. How long have you been in their employ there?  
A. About 14 months.



1 Q. Were you at any time employed by or with Alabama  
2 Baldwin Corporation?  
3 A. Yes, sir.  
4 Q. For what time?  
5 A. From July 1, 1962, until April 1, 1964.  
6 Q. What was your position or employment with Alabama  
7 Baldwin Corporation?  
8 A. I was president and general manager.  
9 Q. As such, were you the chief executive officer of the  
10 Corporation?  
11 A. Yes, sir.  
12 Q. Where were you employed by Alabama Baldwin Company?  
13 A. In Loxley, Alabama. That is where my job was.  
14 Q. Did your duties take you elsewhere?  
15 A. No, not really.  
16 Q. In addition to your employment with Alabama Baldwin  
17 Corporation, did you during the period you have indicated  
18 have any ownership of stock in the Corporation?  
19 A. Yes, sir.  
20 Q. What per cent or number of shares?  
21 A. I owned five shares of \$100.00 a share.  
22 Q. What percentage of the issued stock did that represent?  
23 A. One-half of one per cent.  
24 Q. As president and general manager, did you represent the

1 Corporation in dealings with third parties?

2 A. Yes, sir.

3 Q. Was your authority ever specifically set out in any  
4 minutes or any memorandum by a Board of Directors?

5 A. It was set forth in an employment contract which was  
6 executed at the time I went into the employ of the company.

7 Q. Was the essence of this contract that you were the  
8 president and general manager?

9 A. Yes, sir.

10 Q. In this capacity, did you deal on behalf of the  
11 Corporation in matters, for instance, where loans were made  
12 by the Corporation?

13 A. Yes, sir.

14 Q. Did you sign the indenture which represented that loan  
15 obligation?

16 A. Yes, sir.

17 Q. Specifically, tell us whether or not you ever dealt  
18 with a bank on behalf of the Corporation?

19 A. I did deal with a bank, with the First National Bank  
20 of Mobile, Alabama.

21 Q. What was the amount of the loan that was made by the  
22 bank to the Corporation?

23 A. At times it would aggregate in excess of one million  
24 dollars.

1 Q. Were there any other officers than you who signed the  
2 indenture which represented this loan obligation?  
3 A. No, sir.  
4 Q. Were there other transactions where you obligated the  
5 Corporation in the regular course of business?  
6 A. Yes, sir.  
7 Q. Was this a day-by-day function?  
8 A. Yes, sir.  
9 Q. State, Mr. Withers, whether there was a local Board of  
10 Directors which regularly supervised the operations of the  
11 Corporation.  
12 A. There was not.  
13 Q. With whom did you communicate to make known the progress  
14 and activities of the business?  
15 A. My immediate superior was Mr. S. Ishihara, the Chicago  
16 Manager of Kanematsu New York, Inc.  
17 Q. Did Kanematsu and its associates own the stock of the  
18 Alabama Baldwin Corporation other than which you owned?  
19 A. Yes, sir.  
20 Q. Was there ever at any time during the period when you  
21 served as principal executive officer of the Corporation,  
22 from July 1, 1962, to April 1, 1964, when you were not in  
23 such authority and so constituted as president and general  
24 manager?

1 A. No, sir.

2 Q. Did Mr. Ishihara or any of the directors at any time  
3 ever repudiate any of your acts or state that you didn't have  
4 such authority?

5 A. No, sir, not to my knowledge.

6 Q. Were your communications with Mr. Ishihara principally  
7 by letter or by telephone?

8 A. Almost entirely by telephone.

9 Q. Daily?

10 A. Yes, sir, and sometimes almost hourly.

11 Q. Mr. Withers, how long have you known A. Douglass Krell?

12 A. Since 1961.

13 Q. Are you related to him in any manner?

14 A. No, sir.

15 Q. Do you have any personal interest in the outcome of  
16 the litigation between Mr. Krell and Alabama Baldwin  
17 Corporation?

18 A. None whatsoever.

19 Q. Were your dealings with Mr. Krell of a business nature?

20 A. Yes, sir.

21 Q. When did you undertake any business dealings with Mr.  
22 Krell on behalf of the Corporation?

23 A. In the Summer of 1962, when it became necessary for the  
24 Corporation to secure a party who would construct and lease

1 our proposed grain facilities.

2 Q. In Loxley, Alabama?

3 A. In Loxley.

4 Q. Were you then at that time dealing with Mr. Krell to  
5 obtain such a contract for you?

6 A. Yes, sir.

7 Q. Did Mr. Krell render services on behalf of the  
8 Corporation in this matter?

9 A. Yes, sir.

10 Q. Was that acknowledged by all parties?

11 A. Yes, sir.

12 Q. I will ask you whether or not the services were per-  
13 formed and at that time compensation due Mr. Krell?

14 A. Yes, sir.

15 Q. Had he before that time been paid anything?

16 A. No, sir.

17 Q. What was the agreed compensation to Mr. Krell for the  
18 services performed?

19 A. Five per cent of the cost of the facilities, which fee  
20 amounted to \$15,000.00.

21 Q. Was it intended that this be paid to Mr. Krell when the  
22 facility was completed?

23 A. Yes, sir.

24 Q. Was that by contract between himself and the Corporation?

1 A. It was by verbal agreement. No written contract was  
2 made.

3 Q. State whether or not at that time, and by that time I  
4 mean the point in the dealings at which Mr. Krell was en-  
5 titled to compensation, there was a meeting in Mobile between  
6 yourself and Mr. Ishihara.

7 A. During the Autumn of 1962 there was a time when Mr.  
8 Ishihara and Mr. Hashimoto of the parent company were in  
9 Mobile, and at that time the matter of Mr. Krell's fee was  
10 brought up. I was asked by Mr. Ishihara and Mr. Hashimoto  
11 to attempt to negotiate a reduction in the fee.

12 Subsequently, I contacted Mr. Krell, and it was agreed  
13 that the fee would be reduced to \$14,000.00 to be paid in  
14 three installments. The first installment of \$5,000.00 to  
15 be paid upon completion of the facility, a second installment  
16 of \$5,000.00 to be paid a year later and a third installment  
17 of \$4,000.00 to be paid two years later.

18 Q. Was it agreed between yourself and Mr. Krell that these  
19 obligations were to bear interest?

20 A. Yes, sir.

21 Q. Was this reduction on the part of Mr. Krell made known  
22 to Mr. Ishihara?

23 A. It was.

24 Q. Was there any dispute whatsoever on his part with your

1 negotiations and accomplishment of the reduction?

2 A. They felt that I had secured as good a deal as was  
3 possible, and it helped to spread the expense over three  
4 years.

5 Q. At the time that you made this agreement with Mr.  
6 Krell, whereby he reduced and, I should say extended, his  
7 payment, did you reduce to writing the obligation of Alabama  
8 Baldwin Corporation?

9 A. Three notes were executed.

10 Q. I hand you a paper writing and ask you, please, Mr.  
11 Withers, if you can identify it?

12 A. This is quite proper.

13 Q. State what that paper is that has been handed to you.

14 A. This is a promissory note dated November 30th, 1962,  
15 promising to pay Mr. A. Douglass Krell the sum of \$4,000.00.  
16 The note was due on December 1, 1964, and interest to accrue  
17 at the rate of 6 per cent.

18 MR. FEIBELMAN: I offer in evidence the paper  
19 which has been identified by the witness, and ask that  
20 it be marked Exhibit 1 to his testimony.

21 It is stipulated by and between the parties that  
22 there may be substituted for Exhibit 1, a photo copy  
23 which the witness identifies as a true and identical  
24 copy of the note.

1 Q. (By Mr. Feibelman) Is that true, Mr. Withers?  
2 A. It is.  
3 MR. FEIBELMAN: I offer the photo copy in evidence  
4 as Exhibit 2, and the stipulation further provides  
5 that this will be forwarded with the deposition, and  
6 the original of the note returned by the Plaintiff.  
7 (Whereupon, the said original and photo copy of  
8 the note were accordingly marked Exhibits 1 and 2,  
9 respectively, to the testimony of the witness, and the  
10 photo copy will be found among the exhibits hereto.)  
11 Q. (By Mr. Feibelman) Now, Mr. Withers, was this one of  
12 the three notes you have mentioned?  
13 A. Yes, sir, it was.  
14 Q. At that time, were the other two notes of \$5,000.00  
15 each drawn in the same manner or substantially the same manner?  
16 A. Yes, sir.  
17 Q. Were all three delivered to Mr. Krell?  
18 A. Yes, sir.  
19 Q. I will ask you whether or not at the time that these  
20 notes were executed by the Corporation, by you as president,  
21 this was in your capacity as president and general manager?  
22 A. Yes, sir.  
23 Q. With the full knowledge and understanding of any  
24 director or representative of directors with whom you had



1 dealt?

2 A. It was with the knowledge of the two men I mentioned

3 before.

4 Q. Were those the men with whom you had dealt as your

5 superiors, as you said?

6 A. Yes, sir.

7 Q. This was with their approval and really upon their

8 suggestion?

9 A. Yes, sir.

10 Q. State whether or not of your knowledge either or both

11 of the other two notes have been paid?

12 A. They were paid.

13 Q. By whom were they paid?

14 A. The Corporation paid them when they became due.

15 Q. Was the first note paid when the facility was com-

16 pleted?

17 A. It was.

18 Q. Was the second note paid on the due date or thereafter?

19 A. On the approximate due date, yes.

20 Q. Was interest which had accrued on the second \$5,000.00

21 note paid?

22 A. It was paid later.

23 Q. Were the Directors of the Corporation aware that the

24 two \$5,000.00 notes had been paid?

1 MR. STONE: We would like to object to the form  
2 of that question.

3 Q. (By Mr. Feibelman) To the best of your knowledge, do  
4 the books and records of Alabama Baldwin Corporation reflect  
5 the payment of the first two \$5,000.00 notes?

6 A. Yes, sir.

7 Q. At any time during your employment by the Alabama  
8 Baldwin Company and prior to the time this litigation  
9 commenced, had you had any word whatever that this obligation  
10 was disputed by the Alabama Baldwin Corporation?

11 A. During the early part of 1965, that was during my  
12 tenure -- this was after I had left -- but during the early  
13 part of 1965, Mr. Krell told me that he had put the note  
14 through the bank for collection and that it had been rejected.

15 Q. This was subsequent to your termination of your em-  
16 ployment there, is that right?

17 A. Yes, sir.

18 Q. Who drew the checks for Alabama Baldwin Corporation,  
19 Mr. Withers?

20 A. I did.

21 Q. All of the obligations of the Corporation were paid by  
22 you?

23 A. That's right.

24 MR. FEIBELMAN: I have no further questions.

CROSS-EXAMINATION

BY MR. STONE:

Q. Mr. Withers, I want to ask you some questions now, please, sir. If I don't make myself clear to you, you let me know and I will be sure that you understand every question that I propound to you.

When was the idea of installing a grain elevator or a grain elevator facility at Loxley first presented to you or formulated by you?

A. In 1953.

Q. You realized that Baldwin County was a good source of supply of soybeans, is that correct?

A. Yes, sir.

Q. That there was perhaps an opportunity for the purchase and resale of soybeans in and through an elevator facility in that area?

A. Yes, sir.

Q. What were you doing at the time, Mr. Withers?

A. I was in the grain brokerage business.

Q. Where?

A. Here in Memphis.

Q. What was the name of your company?

A. At the time I first came upon this idea?

Q. Yes, sir.

1 A. In 1953?

2 Q. Yes, sir.

3 A. I was employed by E. L. Burgen Company.

4 Q. The same company by whom you are now employed?

5 A. Yes, sir.

6 Q. When did you leave their employment the first time?

7 A. In 1958.

8 Q. You remained with them for five years after this idea

9 first came to you?

10 A. Yes, sir.

11 Q. I presume from your testimony that it was your idea

12 and not something that somebody else -- not a seed somebody

13 else had planted?

14 A. Oh, no, sir. I had discussed it with Mr. Burgen, of

15 course, and with a number of people over the years.

16 Q. In 1958 you left the employment of E. L. Burgen and

17 Company?

18 A. Yes, sir.

19 Q. By whom were you then employed?

20 A. I went in business for myself.

21 Q. What was the name of your business, Mr. Withers?

22 A. Overley & Withers.

23 Q. Were you a partner?

24 A. Yes, sir.

1 Q. How long did you remain a partner in that business?  
2 A. Until 1961.  
3 Q. Did you withdraw from that partnership?  
4 A. It was dissolved.  
5 Q. And then what did you do?  
6 A. I organized my own firm, Associated Brokerage Company.  
7 Q. This was still in 1961?  
8 A. Yes, sir.  
9 Q. Associated Brokerage Company?  
10 A. Yes, sir.  
11 Q. Where was it headquartered, Mr. Withers?  
12 A. In Memphis.  
13 Q. Were you the sole owner of that company?  
14 A. I was.  
15 Q. An individual proprietorship?  
16 A. Yes, sir.  
17 Q. How long did you remain in business as Associated  
18 Brokerage Company?  
19 A. The business ceased active operations on June 30th,  
20 1962, but it was quite some time being settled up, if you  
21 know what I mean.  
22 Q. No, sir, I don't. Would you explain what you mean by  
23 it was quite some time while the business was being settled  
24 up?

1 A. Well, sir, as in many businesses there are accounts,  
2 and so forth. We had sales contracts which were made for  
3 the future and on which brokerage would become due in the  
4 future, and that sort of thing. But the company ceased as an  
5 active entity at that time.

6 Q. As of June 30th, 1962, it ceased buying and selling  
7 grain?

8 A. Yes, sir.

9 Q. I presume this was a grain brokerage business?

10 A. Yes, sir.

11 Q. But it did have outstanding contracts?

12 A. That's right.

13 Q. Did it have any outstanding debts?

14 A. Yes, sir.

15 Q. Was your business insolvent on June 30th, 1962?

16 A. I would say this, it wasn't in very good financial  
17 condition.

18 Q. Is that the reason you went out of business, Mr.  
19 Withers?

20 A. It was one of them; yes, sir.

21 Q. You were in very poor financial shape on June 30th,  
22 1962 and for several months prior thereto, weren't you?

23 A. Yes, sir.

24 Q. Had you talked to any representative of Kanematsu of

1 New York, Inc., prior to June 30th, 1962?

2 A. Oh, yes.

3 Q. In your brokerage business, either as an individual  
4 owner or as a partner or as an employee, did you have any  
5 dealings with Kanematsu of New York, Inc.?

6 A. Yes.

7 Q. Were they buying grain in this country?

8 A. Grain and other commodities, yes, sir.

9 Q. You had sold them grain, I presume?

10 A. Yes, sir.

11 Q. Had you ever acted as their agent during the time that  
12 you were in business for yourself in the purchase of grain  
13 or any other commodity?

14 A. Only as an independent broker.

15 Q. Not as their agent?

16 A. No, sir.

17 Q. Now, when did you first talk to anybody with Kanematsu  
18 about this Loxley, Alabama operation?

19 A. As I recall, it came up quite casually in a conversation  
20 with Mr. Ishihara in Chicago during, I believe, February of  
21 1962.

22 Q. February of 1962?

23 A. Yes, sir.

24 Q. Was anybody with you then?

1 A. Not during the conversation; no, sir.

2 Q. So you and Mr. Ishihara discussed this, just the two  
3 of you, and it came up quite casually?

4 A. It came up quite casually, and in that particular con-  
5 versation no particular interest was expressed by Kanematsu.

6 Q. When did you next discuss this matter with Mr. Ishihara  
7 or any other representative of Kanematsu?

8 A. I don't recall just when, but sometime after that the  
9 subject was reopened by Mr. Ishihara.

10 Q. Do you remember where?

11 A. I think it was probably over the telephone.

12 Q. Would you give us your best judgment as to when that  
13 was?

14 A. I would say probably March, 1962.

15 Q. Did Mr. Ishihara at that time express an interest in a  
16 Loxley, Alabama operation on behalf of Kanematsu?

17 A. Yes, he was quite interested.

18 Q. Did he request that you take any steps to make this  
19 operation a reality?

20 A. He asked me to give him all of the information that I  
21 had available which I had accumulated over a period of time,  
22 as well as my thoughts and opinions. Here again, this  
23 developed through a number of conversations, and so forth.  
24 There was some correspondence, but primarily it was handled



1 over the telephone.

2 Q. Between January of 1962 and the date in February of  
3 1962 when Mr. Ishihara expressed a definite interest, had  
4 you continued to work on this idea?

5 A. Yes, I had.

6 Q. Had you talked to manufacturers or contractors about  
7 the installation of grain facilities?

8 A. I tried to get some information as to approximate costs  
9 and what was necessary in the way of facilities.

10 Q. To whom did you talk about that?

11 A. I talked to Mr. W. F. Regenold.

12 Q. Spell his last name for me, please.

13 A. R-e-g-e-n-o-l-d.

14 Q. Did you talk to anybody else?

15 A. I don't recall specifically.

16 Q. At this time you were not in good financial condition,  
17 were you, Mr. Withers?

18 A. No, sir.

19 Q. Did you discuss with anyone how this operation might  
20 be financed?

21 A. Yes. I investigated with the State of Alabama in  
22 Montgomery.

23 Q. To whom did you write there, Mr. Withers?

24 A. I do not recall.

1 Q. Department of Industrial Relations, perhaps?  
2 A. I think so. I don't recall the exact one.  
3 Q. Did you discuss financing this operation with anybody  
4 else?  
5 A. No, sir, no one except Kanematsu.  
6 Q. Did you discuss it with Mr. Regenold?  
7 A. No, sir.  
8 Q. Did he give you the figures on what it would cost to  
9 put a facility of the type that you had in mind in Loxley,  
10 by that I mean ways, works and machinery? I presume that  
11 is what your conversation with him concerned.  
12 A. Yes, sir.  
13 Q. Did he give you any figures on that?  
14 A. He gave me rough estimates, because at that time there  
15 was no specific equipment or anything else decided upon.  
16 Q. You hadn't decided on what capacity this elevator would  
17 be or any of the other details of the operation?  
18 A. No, sir.  
19 Q. Did Mr. Regenold ever ask you how the project would be  
20 financed?  
21 A. No, sir. He had no reason to.  
22 Q. Did you discuss this matter with anybody else other  
23 than Mr. Regenold, the State of Alabama and Mr. Ishihara?  
24 A. Well, in only very general terms.

1 Q. Did you ever discuss it in general terms with Mr. Hagan  
2 A. Oh, yes. Only at first, through Mr. Regenold. Mr.  
3 Regenold and Mr. Hagan are partners.  
4 Q. That is H-a-g-a-n, is it not?  
5 A. Yes.  
6 Q. What was the name of their business at that time?  
7 A. Hagan Manufacturing Company.  
8 Q. Did they prepare blueprints for you? Let me ask you  
9 this, Mr. Withers, were you in the market-- To try to  
10 shorten this a little bit -- getting up a package, so to  
11 speak, to sell somebody on the idea of establishing a grain  
12 elevator operation at Loxley, Alabama?  
13 A. None specifically until Kanematsu expressed active  
14 interest in it.  
15 Q. Then I want to be sure that we understand each other  
16 on the dates, now. I presume, and if I am wrong, please  
17 correct me, that we are still in March, February or early  
18 March of 1962, now?  
19 A. I would say sometime during that spring.  
20 Q. All right, sir. Now, did you ever discuss this with  
21 Mr. Krell -- at this time, now, before the plans became  
22 finalized, we will say?  
23 A. I would say only as we were friends and neighbors.  
24 Mr. Krell's office was next door to mine, and we ate lunch

1 together, and it was a friendly conversation, if anything.

2 Q. Maybe over coffee?

3 A. Yes, sir, nothing as to details or anything like that.

4 Q. Did you ever mention the name of Kanematsu to Mr.

5 Krell?

6 A. Possibly. I think Mr. Krell probably met Mr. Ishihara

7 on one of his visits to Memphis. Whether it was prior to the

8 time that I talked about Loxley or not -- Mr. Ishihara had

9 visited me on more than one occasion.

10 Q. Let me ask you if you have any judgment, Mr. Withers,

11 and I want you to give me your best judgment about this --

12 of course, I don't expect you to remember particular dates --

13 as to when Mr. Ishihara first met Mr. A. Douglass Krell?

14 A. I have no idea.

15 Q. You have no idea?

16 A. No, sir.

17 Q. You do not know that he met him?

18 A. To the best of my recollection, yes, sir.

19 Q. When did Kanematsu give you the green light, so to

20 speak, to go ahead and get this matter up for submission to

21 their home office? What I am trying to ask you is when did

22 they express enough interest in this project for you to really

23 get out and get all the figures together and put them in a

24 package?

1 A. I would say in late March of 1962.

2 Q. Did they ask you to find out anything about financing?

3 A. Our original proposal -- I am saying, when I say our  
4 original proposal, I am speaking now of Mr. Ishihara and  
5 myself, because we were both interested in the project and  
6 trying to get it going; both of us felt that it was a workable  
7 project, and so forth -- our original proposal was for  
8 Kanematsu to purchase the land and erect the facility with  
9 their own funds.

10 Q. You got up the package with that in mind that they  
11 would finance the operation themselves?

12 A. Yes, sir.

13 Q. Did they do that?

14 A. The plan, under those terms, was not approved.

15 Q. Now, when was this?

16 A. To the best of my recollection, it was in April.

17 Q. You were not on the pay roll of Kanematsu of New  
18 York at that time?

19 A. No, sir.

20 Q. Alabama Baldwin Corporation did not exist, as far as  
21 you knew, at that time?

22 A. No, sir.

23 Q. You were not on the pay roll of Alabama Baldwin  
24 Corporation?

1 A. No, sir.

2 Q. Did you own any stock at that time in any other  
3 brokerage companies?

4 A. No, sir.

5 Q. Did you own any stock in Southern Grain Company?

6 A. Yes, sir.

7 Q. That is not a brokerage company?

8 A. No, sir.

9 Q. What is that company; what is its function?

10 A. It had been a grain merchandising operation.

11 Q. You did own stock in a company known as Southern Grain  
12 Company?

13 A. I did.

14 Q. At this time?

15 A. Yes, sir.

16 Q. Who were the other stockholders, Mr. Withers?

17 A. Mr. Regenold and Mr. Hagan.

18 Q. Those are the same two gentlemen with whom you talked  
19 about the manufacturing aspects of this Loxley operation?

20 A. The construction aspects.

21 Q. I am sorry, I mean the construction aspects.

22 A. Yes, sir.

23 Q. What percentage of the stock did you own?

24 A. A third.

1 Q. Did Mr. Regenold own a third?

2 A. Yes.

3 Q. And Mr. Hagan a third?

4 A. Yes.

5 Q. Are they still in business in Memphis, Tennessee?

6 A. You mean Mr. Hagan and Mr. Regenold?

7 Q. Yes, sir.

8 A. Yes, sir.

9 Q. Is Southern Grain Company still in business?

10 A. No, sir.

11 Q. Were you an officer of Southern Grain Company?

12 A. Yes, sir.

13 Q. Is that a Tennessee corporation?

14 A. It was; yes, sir.

15 Q. At the time?

16 A. Yes, sir.

17 Q. Where was its principal place of business?

18 A. At my office.

19 Q. Memphis, Tennessee?

20 A. Yes, sir.

21 Q. What office did you hold?

22 A. Secretary.

23 Q. Who was the president?

24 A. Mr. Regenold.

1 Q. And was Mr. Hagan an officer?  
2 A. I believe he was the vice-president.  
3 Q. Was Southern Grain Company actively engaged in their  
4 business at that time?  
5 A. No, sir.  
6 Q. In 1959, were there more than three stockholders?  
7 A. Yes, sir.  
8 Q. Who were they, if you remember?  
9 A. Mr. J. S. Williford, Jr., of Memphis, and there was  
10 another man, I believe his name was Boyd from Arkansas.  
11 Q. So there were five of you in the corporation at one  
12 time?  
13 A. At its inception, yes.  
14 Q. Did you formulate the idea to incorporate Southern  
15 Grain Company?  
16 A. No, sir.  
17 Q. It was not your idea?  
18 A. Not alone, no, sir.  
19 Q. Were you the managing officer of Southern Grain Company?  
20 A. You might say so, yes.  
21 Q. In late 1959, Mr. Williford and Mr. Boyd sold out  
22 their interests, did they not?  
23 A. That's right.  
24 Q. Did you and Mr. Regenold and Mr. Hagan purchase in



1 equal proportionate share their stock?

2 A. Their stock was retired.

3 Q. Retired?

4 A. Yes, sir.

5 Q. Now in 1961, isn't it a fact that Mr. Regenold and

6 Mr. Hagan sold out their interests, also?

7 A. Well, they agreed -- we agreed to cease operations as

8 grain merchandisers; yes, sir.

9 Q. This was in what year?

10 A. I believe in 1961.

11 Q. They didn't surrender their stock, then?

12 A. No, sir.

13 Q. Did you ever retire your stock or surrender it?

14 A. No, sir.

15 Q. Was the corporation ever dissolved?

16 A. Well, when the corporation became inactive, then the

17 charter was rescinded by the State of Tennessee.

18 Q. Do you know when that was?

19 A. I don't recall the exact day.

20 Q. Was Mr. A. Douglass Krell ever a stockholder in

21 Southern Grain Company?

22 A. No, sir.

23 Q. Were you ever informed that he was a stockholder?

24 A. No, sir.

1 Q. Did Mr. Regenold or Mr. Hagan ever inform you that they  
2 had sold any or all of their stock in Southern Grain Company  
3 to Mr. Krell?

4 A. No, sir.

5 Q. You had no knowledge of any transaction whereby Mr.  
6 Krell might have acquired any interest in Southern Grain  
7 Company, is that correct?

8 A. I have no knowledge of it.

9 Q. Did you ever discuss with Mr. Regenold the question of  
10 whether or not Mr. Krell was a stockholder in Southern Grain  
11 Company?

12 A. No, sir.

13 Q. I would like to show you, Mr. Withers, a copy of a  
14 letter dated September 8, 1962, on the stationery of Alabama  
15 Baldwin Corporation over what purports to be your signature,  
16 and ask that you examine that, please, sir.

17 A. Yes, sir.

18 Q. Do you remember writing that letter?

19 A. Yes, I wrote that letter.

20 Q. Now your answer is that you did write this letter?

21 A. Yes, I wrote that letter.

22 MR. STONE: We would like this letter introduced  
23 in evidence and attached to this deposition and marked  
24 Defendant's Exhibit 1.

1 (Whereupon, the said letter was accordingly  
2 marked Defendant's Exhibit 1, to the testimony of the  
3 witness, and will be found among the exhibits hereto.)

4 Q. (By Mr. Stone) Now, Mr. Withers, in this letter it  
5 states that, and this is the letter to Mr. Ishihara that  
6 had been identified as Defendant's Exhibit 1, you make the  
7 statement:

8 "I had talked with Mr. Regenold early this week  
9 and he had assured me that Mr. Krell was not a stock-  
10 holder," referring to Mr. Krell's ownership of  
11 Southern Grain Company stock.

12 A. Yes, sir.

13 Q. Do you now recall that conversation, Mr. Withers?

14 A. Yes, sir, and I can explain why.

15 Q. All right, sir. You say that you were surprised that  
16 Mr. Krell was the owner of stock in Southern Grain Company  
17 or that somebody had made a statement that he was the owner  
18 of stock in Southern Grain Company, is that correct?

19 A. Yes, sir.

20 Q. Did you ever discuss with Mr. Krell whether he owned  
21 any stock in Southern Grain Company?

22 A. No, sir, not to my knowledge.

23 Q. At that time, Mr. Withers, Kanematsu of New York,  
24 Inc. was dealing with Southern Grain Company, was it not?

1 A. Not as such, no, sir.

2 Q. What was Southern Grain's presence -- what was the  
3 reason for Southern Grain Company's presence in the entire  
4 transaction at that time, then, Mr. Withers?

5 A. When our original investor withdrew his support --  
6 here again, let me say some of this information I am giving  
7 you is secondhand; I don't have direct knowledge, but this  
8 came to me from Mr. Regenold -- Mr. Krell had talked with  
9 Mr. Regenold and Mr. Hagan about the three of them building  
10 these facilities and leasing them to Alabama Baldwin  
11 Corporation under the terms of the lease agreement. At that  
12 time, inasmuch as the Southern Grain Company was a corporate  
13 entity, it was felt that it could be used to own the  
14 facilities.

15 Q. All right, sir. You were a stockholder in Southern  
16 Grain Company at that time, were you not?

17 A. The agreement was that I would release my ownership of  
18 any part of it. I would have no part in it whatsoever.

19 Q. Did anybody discuss that you transfer your stock to  
20 Mr. Krell?

21 A. No. Because almost immediately after this letter was  
22 written, the idea was dismissed, because Mr. Regenold and  
23 Mr. Hagan decided that they would rather not include Mr.  
24 Krell in the ownership.

1 Q. Of Southern Grain Company?

2 A. Of the facility at Loxley.

3 Q. Do you know whether Mr. Krell is a stockholder or

4 ever has been a stockholder of Hagan Manufacturing Company?

5 A. No, sir, I do not know that.

6 Q. Do you know of the existence of any agreement between

7 Mr. Hagan, Mr. Regenold and Mr. Krell, whereby those three

8 gentlemen would contract for the construction of the facility

9 with Hagan Manufacturing Company, and that those three

10 gentlemen would own the facility and lease it to Kanematsu?

11 A. State that again, please, sir.

12 (Whereupon, the court reporter read the question.)

13 A. (Continuing.) I know of no such agreement.

14 Q. Have you ever been told about one?

15 A. It was discussed with me merely as a possibility.

16 Q. So at that time, Mr. Krell occupied the position of

17 dealing with Kanematsu, Inc., with respect to this facility,

18 did he not?

19 A. Yes, sir.

20 Q. And he was not acting as the agent of Kanematsu of

21 New York, Inc., in that particular phase of the matter, was

22 he, Mr. Withers?

23 A. I don't know as I exactly understand.

24 Q. All right, sir. He was at that time interested in this

1 venture as an individual to have a percentage of ownership of  
2 the facilities and of the lease which would be made of the  
3 facilities. Is that correct?

4 MR. FEIBELMAN: Let me object to that question.

5 I think that that is testimony on the part of Counsel  
6 rather than a question to the witness. I think the  
7 witness can tell what he knows of Mr. Krell's activities.  
8 The conclusion is one which will have to be drawn from  
9 the testimony. If that is anything you can answer, you  
10 can try it.

11 A. As I said, I don't know of any agreement. I think that  
12 Mr. Krell's participation in it was merely brought in as a  
13 possibility under discussion and was never any more than  
14 that.

15 Q. I am not asking you your understanding, Mr. Withers,  
16 whether or not it was ever done that way, but at one time it  
17 was contemplated that it would possibly be done that way?

18 A. In terms of a remote possibility, perhaps.

19 Q. To the same extent, perhaps, that Kanematsu would  
20 finance the whole thing itself?

21 A. That is a conclusion.

22 Q. My question is this, Mr. Withers, that was just as much  
23 a possibility as was Kanematsu of Japan financing the whole  
24 operation itself?

1 A. As well as it was a possibility that Kanematsu would  
2 own the facility?

3 Q. Yes, sir, and issue bonds.

4 A. That's right.

5 Q. Did Hagan Manufacturing Company build this facility?

6 A. Yes, sir.

7 Q. I don't know whether I have asked you this or not.  
8 Do you own any stock in Hagan Manufacturing Company?

9 A. I do not.

10 Q. Do you own any stock of any -- in any subsidiary  
11 corporation of that company?

12 A. No, sir.

13 Q. Do you still own stock in Southern Grain Company?

14 A. It ceased to exist.

15 Q. Do you know how Hagan Manufacturing Company finances  
16 the construction of this facility?

17 A. Only vaguely.

18 Q. You were familiar with the financing of it at the  
19 time it was built, weren't you, Mr. Withers?

20 A. Well, to some extent. I was not familiar with any of  
21 the personal financing of the principals.

22 Q. Let me ask you this. To whom was rent paid by Alabama  
23 Baldwin Corporation during the time that you were the  
24 president-manager of the Loxley grain facility?

1 A. The checks were made out to First National Bank of  
2 Mobile.

3 Q. Did you as the managing officer at that time under-  
4 stand that Hagan Manufacturing Company was the owner?

5 A. No, sir. I understood that Mr. Hagan and Mr. Regenold,  
6 as individuals, were the owners.

7 Q. Do you know how Mr. Hagan and/or Mr. Regenold financed  
8 the construction of this facility?

9 A. I know that part of it was financed by a first mortgage  
10 held by the First National Bank of Mobile.

11 Q. And that mortgage was extended -- the debt secured by  
12 that mortgage was extended to Mr. Hagan and Mr. Regenold,  
13 was it not?

14 A. You mean the proceeds from that mortgage?

15 Q. That loan was made by the First National Bank of Mobile  
16 to Mr. Hagan and to Mr. Regenold on their credit?

17 A. That is my knowledge of it. I never saw the documents  
18 nor was I present when they were executed.

19 Q. Do you not understand it to be a fact that part of  
20 the security for their debt to the First National Bank of  
21 Mobile was an assignment of the lease from Alabama Baldwin  
22 Corporation, the lease to Alabama Baldwin Corporation by  
23 Hagan Manufacturing Company or by Mr. Hagan and Mr. Regenold,  
24 individually?



1 A. I don't know that.

2 Q. You do not know that?

3 A. No.

4 Q. Have you heard that?

5 A. Not specifically.

6 Q. You did make rent checks payable to the First National  
7 Bank of Mobile, Alabama?

8 A. That's right.

9 Q. Did Mr. Lee Seifert handle this transaction at the  
10 First National Bank?

11 A. To my knowledge, yes.

12 Q. When, if you know, Mr. Withers, was Alabama Baldwin  
13 Corporation formed?

14 A. In the Summer of 1962. I don't recall the exact date.

15 Q. Let me ask you one more question before I leave the  
16 Hagan Manufacturing Company and the Mr. Hagan and Mr.  
17 Regenold individually aspect of this matter.

18 Have you ever been on their pay roll?

19 A. As an employee?

20 Q. Yes, sir.

21 A. No, sir.

22 Q. As an independent contractor?

23 A. Well, I was paid finder's fees for other construction.

24 Q. Were you paid a finder's fee on this construction?

1 A. No, sir.

2 Q. Were you paid anything by Hagan Manufacturing Company  
3 or by Mr. Hagan or Mr. Regenold, individually, as a result  
4 of or because of this Loxley operation?

5 A. I was not.

6 Q. You received no funds from them?

7 A. Not in regard to this project.

8 Q. In regard to the Loxley project, that is what I am  
9 referring to?

10 A. No, sir.

11 Q. Would it be fair to say, Mr. Withers, that you were  
12 instrumental in securing this contract for Hagan Manufacturing  
13 Company?

14 A. Yes.

15 Q. Would it be also fair to say that you were instru-  
16 mental in securing this transaction for Mr. Hagan and for  
17 Mr. Regenold, and by the word "transaction", I mean by the  
18 arrangement whereby they financed the construction on their  
19 own credit and now own the grain facility?

20 A. No, sir. As a matter of fact, when I was told that  
21 they were going to do this, it was a surprise to me.

22 Q. Just as much a surprise as when you heard that Mr. Krel  
23 was a stockholder of Southern Grain Company?

24 A. I think so. I mean, at some time during the negotiation

1 in conversations with Mr. Krell, it was brought up that they  
2 might participate.

3 Q. Did you ever meet Mr. Ishihara in Mobile prior to the  
4 actual go-ahead, we will call it, on this particular project,  
5 and go to Loxley with him and examine the site?

6 A. I believe I did.

7 Q. On that particular occasion, did the two of you not  
8 return to Memphis in Mr. Regenold's private plane?

9 A. We did.

10 Q. Was Mr. Regenold along?

11 A. He flew it.

12 Q. He was the pilot?

13 A. Yes, sir. He was an acquaintance of Mr. Ishihara for  
14 some time.

15 Q. Was Mr. Krell along on that trip?

16 A. No, sir.

17 Q. Was there just one such trip as that when Mr. Regenold  
18 flew you all back to Memphis?

19 A. I believe so. We made several trips during the time  
20 down there, and I am not exactly aware of just the exact  
21 chronology of it, or who was with who when.

22 Q. At this time, was Mr. David M. Lide supposed to be the  
23 investor?

24 A. That was the name that I was given.

1 Q. When you referred a while ago to the fact that you  
2 thought somebody else was going to be the investor or the  
3 person putting up the finances for this operation, you had  
4 reference to Mr. David Lide, did you not?  
5 A. Yes. You bring the name back to my mind. I had long  
6 since forgotten it.  
7 Q. You understood that he was a man from Texas interested  
8 in investing funds?  
9 A. That's right.  
10 Q. This is the man that Mr. Krell had put you in touch  
11 with, had he not?  
12 A. That's right. I was never in touch with the gentleman.  
13 Mr. Krell was handling all the negotiations.  
14 Q. At that time, you thought that Mr. Krell had secured  
15 Mr. Lide as an investor?  
16 A. Or was in the process of doing so.  
17 Q. Do you ever recall Mr. Krell telling Mr. Ishihara that  
18 he could probably find an investor in Arkansas?  
19 A. I don't recall that.  
20 Q. Did you ever tell Mr. Ishihara that the investor would  
21 probably be Southern Grain Company?  
22 A. Only as regards to this letter and our conversation  
23 only a very short period of time -- I think it only amounted  
24 to a couple of days.

1 Q. So your answer is that, yes, you did tell him that at  
2 one time?

3 A. Yes.

4 Q. This is at the time when it was contemplated that  
5 Southern Grain Company would be the corporate entity to be  
6 used by Mr. Hagan, Mr. Regenold and Mr. Krell?

7 A. Actually, it was discussed that that might be the  
8 entity, no matter who was in on it, I mean, whether it was  
9 two people or three people.

10 Q. Was it your understanding in your dealings with Mr.  
11 Ishihara that all of his actions were subject to approval  
12 by Kanematsu of New York, and that Mr. Hashimoto was his  
13 superior?

14 A. Yes, sir.

15 Q. That Mr. Ishihara didn't have the final say on any of  
16 this?

17 A. No, sir. As a matter of fact, I don't think even  
18 Mr. Hashimoto had the final say-so.

19 Q. The final decisions were always made in Japan?

20 A. Yes, sir.

21 Q. When did you say -- if you did say, I don't remember  
22 if you did or not, Mr. Withers, -- that the charter of  
23 Southern Grain Company was faulted by the State of Tennessee  
24 or recalled or whatever you did with it?

1 A. Yes, sir.

2 Q. Did you say when?

3 A. I don't recall exactly when.

4 Q. Would you say that it was sometime in 1962?

5 A. I believe so.

6 Q. In December, 1963, you were writing checks on a Southern

7 Grain Company account, were you not, Mr. Withers?

8 A. Yes, sir.

9 Q. You were also writing checks on the account of

10 Associated Brokerage Company?

11 A. Yes, sir.

12 Q. You were doing this while you were the managing officer

13 of Alabama Baldwin Corporation in Loxley?

14 A. Yes, sir.

15 Q. With that bit of information, would you say it was

16 later than 1962 when Southern Grain Company became defunct?

17 A. No, sir. As I recall, I think there were some checks

18 issued even after the corporation -- after the charter was

19 withdrawn.

20 Q. Yes, sir. And your purpose in issuing those checks

21 to which I referred was to cover up certain shortages which

22 you had in the Loxley operation of Alabama Baldwin Corporation

23 was it not?

24 A. That's right.

1 Q. Are you now indebted to Alabama Baldwin Corporation?

2 A. Yes, sir.

3 Q. You are no longer in their employ?

4 A. No, sir.

5 Q. You have not been in their employ since April 1, 1964?

6 A. That's right.

7 Q. I would like, Mr. Withers, for you to examine what

8 purports to be a copy of a letter from you to Mr. Y. Hashimoto

9 Kanematsu New York, Inc., One Whitehall Street, New York,

10 New York, dated March 23rd, 1964.

11 A. Yes, sir.

12 Q. Did you write the original of that instrument which

13 purports to be a copy of a letter?

14 A. Yes, sir.

15 MR. STONE: We would like to introduce that copy  
16 as Defendant's Exhibit 2.

17 MR. FEIBELMAN: Amplifying this much on our  
18 caption, I want to object to the introduction of this  
19 letter because it is wholly irrelevant to the issue  
20 here, and there is no predicate which the record  
21 presently reflects to associate any item in this letter  
22 whatsoever with the matter at issue in this cause.

23 (Whereupon, the said letter was accordingly  
24 marked Exhibit 2, to the testimony of the witness, and  
will be found among the exhibits hereto.)

1 Q. Now, Mr. Withers, this instrument which has been  
2 introduced as Plaintiff's Exhibit 1, and a copy substituted,  
3 which purports to be a note signed by you as president of  
4 Alabama Baldwin Corporation, did you type that yourself?  
5 A. Yes, sir.  
6 Q. Did you type the other two notes yourself that you  
7 testified about?  
8 A. I did.  
9 Q. Did you have custody at that time of the seal of the  
10 Corporation?  
11 A. I did.  
12 Q. You did not place the seal of the Corporation on this  
13 instrument?  
14 A. No, sir.  
15 Q. Mr. L. E. Mickelsen, Jr., who acknowledged your signa-  
16 ture to this instrument, do you know him personally?  
17 A. I do.  
18 Q. Was he an employee of Alabama Baldwin Corporation at  
19 the time?  
20 A. He was.  
21 Q. Was he dismissed from employment during the time that  
22 you were an employee of Alabama Baldwin Corporation?  
23 A. At the same time.  
24 Q. Do you know why he was dismissed?



1 A. No, sir, I do not.

2 Q. Mr. Withers, in Defendant's Exhibit 1, which you have  
3 identified as a letter that you wrote to Mr. Ishihara, you  
4 state in that letter:

5 "I am in receipt of a copy of a letter from Mr.  
6 Twitty to Kanematsu - New York."

7 Will you examine this copy of what purports to be a  
8 copy of that letter, and tell me if you recognize that as  
9 being a copy of the letter to which you refer in Defendant's  
10 Exhibit 1?

11 A. I believe this is the letter.

12 Q. That is the letter to which you refer?

13 A. I believe it is. I believe the dates tie in.

14 MR. FEIBELMAN: I shall object to the introduction  
15 of this letter, because obviously this letter contains  
16 some statements which could not have been within the  
17 knowledge of the writer, which are purely hearsay.

18 MR. STONE: We would like to now offer the copy  
19 that the witness has just identified as Defendant's  
20 Exhibit 3.

21 (The said letter was accordingly marked  
22 Defendant's Exhibit 3, to the testimony of the witness,  
23 and will be found among the exhibits hereto.

24 Q. (By Mr. Stone) Mr. Withers, I would like to have you

1 examine what purports to be a copy of a proposal executed  
2 on behalf of Alabama Baldwin Corporation by, I believe,  
3 you and also executed by Mr. Krell, Mr. Regenold and Mr.  
4 Hagan.

5 Do you recognize that instrument, that it is a copy of  
6 an instrument that you executed for and on behalf of Alabama  
7 Baldwin Corporation?

8 A. Yes. This is an outline of the construction, and a  
9 statement of what the facilities were to be, and where they  
10 were to be located. I will say that this is my signature  
11 down here. During that time, there were so many things  
12 going on that I don't exactly recall what was done.

13 Q. All right, sir. We would like to introduce this into  
14 evidence as Defendant's Exhibit 4.

15 (Whereupon, the said document was accordingly  
16 marked Defendant's Exhibit 4, to the testimony of the  
17 witness, and will be found among the exhibits hereto.)

18 Q. (Continuing.) Mr. Withers, did you ever inform Mr.  
19 Ishihara or any of the other officers or agents of Kanematsu  
20 New York, Inc., that you had ever been associated with  
21 Southern Grain Company?

22 A. Yes, sir. I explained to them that I was a stockholder,  
23 but that my stock would be -- that in the event this contract  
24 was made with Southern Grain Company that I would relinquish

1 my part of it, and I explained to Mr. Ishihara why we were  
2 using this particular entity company, that they would not  
3 have to set up another corporation.

4 Q. Who was "they"?

5 A. Mr. Hagan, Mr. Regenold and Mr. Krell.

6 Q. And Mr. Krell?

7 A. But at that time Mr. Krell was not, to my knowledge, --

8 Q. (Interposing.) You stated Mr. Ishihara had known  
9 Mr. Regenold prior to all this, is that correct?

10 A. Yes, sir.

11 Q. Had he known him prior to January, 1962, to your  
12 knowledge?

13 A. I believe so, yes.

14 Q. Do you know whether he had known Mr. Hagan prior to  
15 January, 1962?

16 A. I don't think he had met Mr. Hagan.

17 Q. It would be your testimony then, would it not, Mr.

18 Withers, that Mr. Ishihara was not introduced to Mr. Regenold  
19 as a result of the efforts of Mr. Krell?

20 A. On a personal acquaintance basis, no.

21 Q. By "no", you mean that Mr. Ishihara knew him before  
22 Mr. Krell came into the picture, so to speak?

23 A. On a personal basis only.

24 Q. Do you know Mr. James P. Gates? Do you know a company

1 by the name of Investors Mortgage Service, Inc.?

2 A. No, sir.

3 Q. It is your testimony that you have never received any  
4 money from Mr. Hagan, Mr. Regenold or Hagan Manufacturing  
5 Company in consideration for any of your efforts in getting  
6 them this contract at Loxley?

7 A. No, sir.

8 REDIRECT EXAMINATION

9 BY MR. FEIBELMAN:

10 Q. Mr. Withers, I want to hand you, please, Exhibit 2,  
11 which has been identified here as an exact copy of the  
12 note assigned to Mr. Krell, and I want to be sure, sir, that  
13 you can identify that as your signature?

14 A. It is.

15 Q. ~~This instrument~~, Mr. Withers, did Mr. Ishihara negotiate  
16 any of the financing in this matter with Mr. Regenold, of  
17 your knowledge, or Mr. Hagan?

18 A. No, sir.

19 Q. Am I correct, sir, in saying that the Defendant here  
20 is doing business in a facility in Loxley, Alabama?

21 A. Yes, sir.

22 Q. Is that the facility that was built by Hagan and  
23 Regenold?

24 A. Yes, sir.

1 Q. Was Mr. Krell the agent in obtaining their interest  
2 in financing this project?

3 A. To my knowledge, yes, sir.

4 Q. Is that the basis of the compensation which he received?

5 A. Yes, sir.

6 Q. Is that the compensation which Mr. Ishihara asked to  
7 be reduced to \$14,000.00?

8 A. Yes, sir.

9 Q. Is that the \$14,000.00 represented by the notes which  
10 you signed as president of the corporation?

11 A. Yes, sir.

12 AND FURTHER DEPONENT SAITH NOT.

13 (Signature waived.)

14 =====

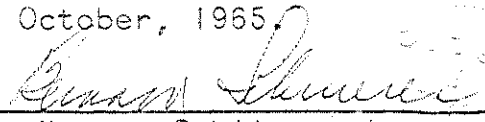
15 STATE OF TENNESSEE)

16 COUNTY OF SHELBY ) ss

17 I, Bernard Schnierer, a Shorthand Reporter and Notary  
18 Public, in and for said County and State, hereby certify  
19 that the above-named J. W. Withers was by me first duly sworn  
20 to testify to the truth in the above-named cause; that the  
21 foregoing deposition was written by me in shorthand and  
22 transcribed under my direction. I further certify that I am  
23 not related to any party in said action nor in any way  
24 interested in said action.

1 I further certify that the seal of my office hereunto  
2 attached is the official seal of such office duly issued and  
3 in my custody in my official capacity.

4 IN WITNESS WHEREOF, I have hereunto set my hand and  
5 fixed my seal this 14th day of October, 1965.

6   
7 Notary Public at Large

8 My Commission Expires:

9 March 15, 1967.

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1. Project Title  
2. Project Number  
3. Project Manager  
4. Project Sponsor  
5. Project Start Date  
6. Project End Date  
7. Project Budget  
8. Project Status  
9. Project Description  
10. Project Objectives  
11. Project Deliverables  
12. Project Risks  
13. Project Issues  
14. Project Change Log  
15. Project Communication Plan  
16. Project Stakeholder Register  
17. Project Resource Management Plan  
18. Project Risk Management Plan  
19. Project Quality Management Plan  
20. Project Procurement Management Plan

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19. Project Quality Management Plan  
20. Project Procurement Management Plan



ALABAMA  
BALDWIN  
CORPORATION

PHONE: WO 4-3162

P. O. BOX 111  
LOXLEY, ALABAMA

November 30, 1962

On December 1, 1964 we promise to pay to Mr. A. Douglass Krell the sum of Four thousand and no/100 Dollars (\$4,000.00) at the First National Bank, Memphis, Tennessee plus interest at the rate of 6% per annum accruing from this date.

ALABAMA BALDWIN CORPORATION

By J. W. Withers  
President

STATE OF ALABAMA

COUNTY OF BALDWIN

I, L. E. Mickelsen, Jr., do hereby certify that the above named J. W. Withers did before me appear on this 30th day of November, 1962.

SEAL

L. E. Mickelsen Jr.  
Notary Public

My commission expires Oct. 7, 1964

(21)  
P. L. 2  
Withers

ALABAMA  
BALDWIN  
CORPORATION

PHONE WO 4-3162

P. O. BOX 111  
LOXLEY, ALABAMA

September 8, 1962

Mr. S. Ishihara  
Kanematsu New York, Inc.  
208 S. La Salle Street  
Chicago 4, Illinois

Dear Mr. Ishihara:

I am receipt of a copy of a letter from Mr. Twitty to Kanematsu - New York. The letter indicates that you received a copy of the letter also.

Mr. Twitty appears to have covered the matter of the new investor pretty thoroughly, and I think that further explanation is unnecessary. I would like to say, however, that the comment about Mr. Krell's ownership in the Southern Grain Company was a surprise to me. I had talked with Mr. Regenold early this week, and he had assured me that Mr. Krell was not a stockholder.


After receiving Mr. Twitty's letter, I contacted Mr. Regenold this morning, and was told that while at this moment Mr. Krell still does not own any stock in the Southern Grain Co., he plans to purchase a small interest. Mr. Regenold said that the amount of stock he would purchase would be very small, and the exact amount had not been determined by him and Mr. Hagan.

Personally, I do not feel that Mr. Krell's participation will in any way affect our relationship to the Southern Grain Company because the lease agreement is very complete, and I feel that Mr. Twitty is doing everything to protect our interests in the matter. I expect to discuss this matter very thoroughly with Mr. Twitty on Monday or Tuesday of next week.

The reason why I cannot say specifically that I will talk to him on Monday is the status of the construction. If Mr. Michael is back on the job Monday, I will have time to talk to Mr. Twitty. On the other hand, if Mr. Michael has not returned, I am certain that I will spend nearly all of my time at the site. With construction moving so well, I do not want anything to make for a delay of any sort.

Yours very truly,

ALABAMA BALDWIN CORP.

  
J. W. Withers

CC: Kanematsu - New York

March 23, 1964

Mr. Y Hashimoto  
Kamematsu New York, Inc.  
One Whitehall Street  
New York, New York

Dear Mr. Hashimoto:

It is my painful duty to report to you about some events which took place at Alabama Baldwin Corporation during the past 18 months. To begin with, while I make no excuses or justification for my actions, I would like to remark that such events would not have taken place had I not been under extreme personal financial pressure at the time. Had not such pressures existed, the actions I took would have been completely unthinkable.

1. At the time I closed my brokerage business in Memphis and moved to Loxley I was in dire financial straits. Some months previously one of my best customers, Mr. Joe Clifton of Wynnburg, Tennessee, had been forced to close his grain elevator business because of financial difficulties. At the time he owed me some \$9,000.00 in past due commissions on grain I had sold for him. Investigation revealed that Mr. Clifton had no assets that could be converted to pay off this indebtedness. Further, my brokerage business had become increasingly unprofitable, and prospects for the cash brokerage business in Memphis were extremely poor. (Subsequent events have proved this to be true, but such details are not pertinent to this matter.) Suffice it to say that at that time my circumstances were desperate.
2. Shortly after moving to Loxley pressure from some of my creditors became extreme, and I was forced to take some action to protect myself and also the financial position of my mother who had loaned me some stock certificates to use as collateral for a loan from the First National Bank of Memphis. Realizing the jeopardy in which I had placed her savings, I explored every financial resource possible without success. As a last desperate resort I issued Alabama Baldwin Corp. check No. 27 on August 16, 1962 to the order of Associated Brokerage Co. in the amount of \$2,500.00 and deposited this check to the account of Associated Brokerage Co. The funds were then used to satisfy the most pressing debts. On September 28, 1962, when pressure again began to become desperate, I issued Alabama Baldwin Co. check No. 60 in the amount of \$3,500.00 to Associated Brokerage Co., deposited this check to the brokerage company account, and paid off additional obligations. Again on October 2, 1962 I issued Alabama Baldwin Corp. check No. 78 in the amount of \$6,000.00 to Associated Brokerage Co. to pay off brokerage company creditors. The issuance of these three checks was duly recorded in the books and accounts of Alabama Baldwin Corp., but the amounts were charged to the "Advances on Purchases" account.
3. Before proceeding further, I would like to make an explanation about my relationship with Southern Grain Co. so as to clarify its position in this entire matter. Southern Grain Co. was organized in Memphis, Tenn. in 1959 for the purpose of merchandising in cash grain. At the start there were five participating members including myself. In late 1959 two of the participants sold out

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Winters

their interests, and subsequently in 1961 two others sold out leaving me as the remaining holder. The operation of the company during its entire existence has been under my control by mutual agreement of all concerned, and while my signature was not authorized at the bank for the drawing of checks, I retained possession of the checkbook which contained signed blank checks. The foregoing is to explain the reason why I could freely and legally issue checks against the account of Southern Grain Company. On December 6, 1962, upon learning from the First National Bank of Mobile that my credit line was used up and that there were drafts at the bank to be paid covering soybean shipments to Mobile, I issued Alabama Baldwin Corp. check No. 587 in the amount of \$48,000.00 to Southern Grain Co. and Alabama Baldwin Co. check No. 588 in the amount of \$27,000.00 to Associated Brokerage Co. Both checks were deposited to the account of Southern Grain Co., and a Southern Grain Co. check in the amount of \$74,400.00 was deposited to the account of Alabama Baldwin Corp.

On the following day, December 7, 1962, I issued another Alabama Baldwin Corp. check in the amount of \$48,000.00 to Southern Grain Co., deposited this check to the account of Southern Grain Co., and deposited a Southern Grain Co. check in the amount of \$47,205.50 to the account of Alabama Baldwin Corp.

The First National Bank of Mobile, realizing what I had done, reprimanded me for this action. In the meantime Alabama Baldwin Corp. had loaded a cargo of soybeans aboard the "Giovanni Grimaldi", received payment for such, and had deposited in First National Bank of Mobile ample funds to cover the shortage, repay outstanding loans from FNB Mobile, and have a good cash balance left over.

4. In late May, 1963, realizing that our current business was slowing up, and that the balance of \$13,394.50 would show in the monthly statement, I deposited to the Alabama Baldwin Corp. account a check from Southern Grain Co. in this amount and covered it with Alabama Baldwin Corp. check No. 1076 in the amount of \$14,000.00. The ABC check was mistakenly entered by the bookkeeper to the account of Southern Cotton Oil Company.
5. On August 27, 1963 I deposited to the ABC account a Southern Grain Co. check in the amount of \$14,000.00 and covered this check with ABC check No. 1485 dated September 3, 1963 to Southern Grain Co. in the amount of \$13,500.00.
6. On September 3, 1963 I issued ABC check No. 1565 in the amount of \$12,500.00 to Southern Grain Co. This check was deposited to the Southern Grain Co. account to cover a check issued by Southern Grain Co. and deposited to the account of ABC in the amount of \$12,000.00.
7. On September 28, 1963 I deposited a Southern Grain Co. check in the amount of \$14,000.00 to the ABC account and covered it with ABC check No. 1635 dated October 1, 1963 in a like amount issued again to Southern Grain Co.
8. On October 31, 1963 I deposited to ABC account a check from Southern Grain Co. in the amount of \$14,000.00. Of this amount, \$5,000.00 was covered by a deposit from Associated Brokerage Co. to Southern Grain Co. and ABC check No. 2104 dated Nov. 1, 1963 issued to Southern Grain Co. in the amount of \$9,000.00.
9. On November 29, 1963 I deposited to ABC account a Southern Grain Co. check

Mr. Y. Hashimoto, March 23, 1964, Page 3.

in the amount of ~~only~~ \$9,000.00. This check was covered by a check from Associated Brokerage Co.

10. Finally, on December 3, 1963, I issued ABC check No. 2275 in the amount of \$8,000.00 to Gargill, Inc., endorsed the check to Associated Brokerage Co., deposited the check to the account of Associated Brokerage Co., and deposited a check from Associated Brokerage Co. to account of Southern Grain Co. to cover the Southern Grain Co. check to ABC.

While I realize that my actions in the above are inexcusable, I would like to state that I had no idea or intention that they would lead to difficulties between ABC and its banking connections. The purpose in the large number of transactions was to prevent their disclosure on the monthly statements of ABC. I now fully understand the precarious position in which such conduct has placed not only ABC but also my associated in Kanematsu New York, Inc.

Further, I would like to say that the involvement of the innocent people of Kanematsu New York, Inc. and this breach of trust which all of you had in me weighs heavily upon my conscience and causes me the utmost distress. Also, I would like to point out that I alone was involved in this matter. This was all done without the knowledge or connivance of any other person either in or out of ABC.

In regard to the original \$12,000.00 which was paid to Associated Brokerage Co., I would like to state that of that amount \$4,000.00 was returned to ABC at the end of October, the \$2,000.00 difference between the \$12,000.00 and the \$14,000.00 transferred back and forth was held virtually intact in the account of Southern Grain Co. during the period, and at the present time Associated Brokerage Co. owes ABC only the \$8,000.00 which was the ABC check No. 2275. Of the \$12,000.00 involved, I was able to return \$4,000.00 because of receipt of an inheritance which was partly paid off in 1963. I am now in a position to return the balance of \$8,000.00 within a few days.

I would like to make clear the point that Mr. Ishihara was as completely unaware of what was going on as yourself. In no way was he responsible for any of this. During my acquaintance with him I have found him to be trusting and a true friend as well as a capable associate. I realize that he has staked his personal and business reputation on our venture and on me, and in my opinion it would be unfair to place on him any of this responsibility. The same thing is true in your case. A better man that you would have long since lost patience with my mistakes, and this final breach of trust would more than justify your complete alienation from me. Please try to understand my deepest regret for having done such a grievous wrong to such valued friends.

My present concern is to somehow repair the damage which has been done by my inexcusable conduct and to make every effort to rebuild, if possible, at least a part of the wonderful confidence you have placed in me in the past. Consequently, I place myself completely at your mercy knowing that any decision you reach will be in the best interests of ABC and Kanematsu New York, Inc.

Sincerely yours,

J. W. Withers

INGE, TWITTY & DUFFY

LAWYERS

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

MAILING ADDRESS

P.O. BOX 1104

MOBILE, ALA.

CABLE ADDRESS

TWITTY

TELEPHONE

HEMLOCK 3-5441

September 6, 1962

Kanematsu New York, Inc.  
150 Broadway  
New York, New York

Attention: Mr. Gargano

Re: Proposed Grain Elevator  
Loxley, Alabama

Dear Sirs:

I beg to confirm my telephone call to Mr. Gargano this morning as follows:

Although I anticipate that the various contracts with which we are concerned will be fully executed by this time next week, we have encountered repeated delays in getting these agreements into a form acceptable to the investor. I regret very much that these delays have been encountered as I know that you are anxious to have these contracts executed and in your files, however let me hasten to assure you that the delay has not been our fault. The delay stems from the fact that we were not advised until two weeks ago who the investor would be. I assume that Mr. Krell probably did not know who the investor would be definitely himself until he informed me recently that we would be dealing with Mr. David M. Lide, Jr. of Dallas as the investor and that Mr. Lide's lawyer here in Mobile is Mr. Nick McGowin.

When Mr. Hashimoto was in Mobile during the early part of August, we had all of these contracts ready for execution in form acceptable to us. However, until such time as the investor became definitely known I was not in a position to go over the contracts with the investor's lawyer to see if any changes would be required by the investor. Immediately upon being advised that Mr. McGowin would handle the matter for Mr. Lide, I got in touch with Mr. McGowin and went over the entire situation with him and left copies of the lease and construction contract for his study. He looked these documents over

*John B. Twitty*



September 6, 1962

and then I got with him again about two days later to iron out any matters that were troubling him. Frankly, I got the impression from talking to Mr. McGowin after he had reviewed the documents that he felt that the investment was not a good one for Mr. Lide to make, and he was reluctant to recommend the investment to Mr. Lide without the insertion of further provisions in the agreement designed for Mr. Lide's protection. None of these provisions would have been of any particular consequence as far as we were concerned, and they were perfectly acceptable to us. However, Mr. McGowin kept the matter under consideration for about a week or ten days without communicating with us further. Then, last week Mr. Withers suggested that in view of the delays which were being encountered on account of Mr. Lide, perhaps another investor could be obtained. I had further discussions with Mr. Withers and he in turn discussed the matter with Mr. Krell in Memphis and last Tuesday I received a call from Mr. Krell in which he advised me that he thought he had an alternative investor and would know something more definite in the next day or so. On Thursday of last week Mr. Krell called again and advised me that the First National Bank of Mobile had tentatively agreed to lend Southern Grain Company of Memphis a substantial portion of the construction costs of the elevator, and that Southern Grain would be the investor in place of Mr. Lide. I am informed that Southern Grain Company is a Tennessee corporation which is owned by Mr. Krell, Mr. Hagan and Mr. Regenold of Memphis. I immediately got in touch with Mr. Lee Seifert at the First National Bank and gave him copies of the agreement which I had prepared and he told me that he would submit the matter to the Bank's attorneys for consideration.

Finally, yesterday at noon Mr. Alex Lankford, who is one of the attorneys here for the First National Bank of Mobile, called to say that he was ready to discuss the matter further. He came over to my office and we spent some three to four hours yesterday afternoon going over the matter thoroughly. For the Bank's protection from a lending standpoint he wishes to make several alterations in the construction contract and lease, all of which are relatively insignificant as far as you are concerned. When I left him yesterday he assured me that he would return to his office and do what he could to redraft the provisions that he wanted to change and then he would get with me again today. So far I have heard nothing further from him although I have left my number for him to call. I was informed by his office this morning that he would be in court most of the day, however he will probably call late this afternoon.

In any event, I do not anticipate that Mr. Lankford will make any changes in the agreement except as to form. I further anticipate that the

September 6, 1962

changes which he makes will be entirely acceptable to you, and that we will have all of this in final form ready for signature by all involved towards the latter part of next week.

In the meantime, I am advised by Mr. Withers that Hagan Manufacturing Company is going ahead with the construction of the elevator and that actually the construction work has been in progress for some two weeks now. This being the case, the delays which we have encountered in getting the contract into final form will not operate to delay completion of the elevator in any respect.

Since my return from San Francisco, I have been working at a frenzied pace trying to catch up on back correspondence, and I am sorry that I have not been able to get off a written report to you on these matters before now. I have talked to Mr. Ishihara on at least one occasion and Mr. Withers and Mr. Krell on many occasions, and I am sending a copy of this letter to Mr. Ishihara so that he will know I am putting forth my best efforts and giving this matter my preferred attention on your behalf.

You may be assured that I will keep you fully advised and as soon as I have more definite information on the final contracts I will let you know immediately.

Yours very truly,

Thomas E. Twitty, Jr.

for

INGE, TWITTY & DUFFY

cc: Mr. S. Ishihara  
Mr. Withers  
Mr. H. Suzuki



## PROPOSAL

This proposal is herewith submitted by Hagan Manufacturing Company, a Tennessee corporation (sometimes hereinafter referred to as "We") to Lewis F. Hagan, William S. Regenold, Jr., and A. Douglass Krell, (sometimes hereinafter referred to as "You") for approval. If the terms of this proposal are approved by you, this proposal will become a contract between us by its execution at the end hereof.

We propose to erect a grain elevator and associated handling facilities in Baldwin County, Alabama, upon land to be acquired by us, and we offer to sell this facility, including the land, to you upon the terms and conditions hereinafter set forth.

The facility will consist of the aforesaid grain elevator built to the following specifications:

### MATERIALS HANDLING MACHINERY

- 1 - Air-O-Flex dumper pitless type truck scale Model. 50' 50 Ton with metal deck equipped with only 25 HP motors.
- 2 - Starters A.C. magnetic across the line for 440 volts, 3 phase, 60 cycle with 2 push button stations for above 25 HP motors. Type 5 dust tight enclosure NEMA 12.
- 1 - 10' x 50' x 50 Ton Cardinal motor truck scale with type registering beam for concrete deck.
- 1 - 7 1/2 Ehram truck hoist 440 volts, 3 phase, 60 cycle, Model CTG 75 B.
- 1 - Steel truck hoist support.
- 1 - 8' x 4'-6" deep dump hopper 10 Ga. with rack and pinion gate - 3'-6" straight concrete wall above this hopper for an overall hopper depth of 8'-0" capacity approximately 530 bushels.

*Def 4  
within*

- 1 - 3 x 3 x 3/8" angle drive over grill with 4 only 8" x 18.4 pound I beam supports and 2 only 8" Junior I beams for location at extreme sides of pit.
- 1 - 5' x 12' x 3'-0" deep 10 Ga. dump hopper - capacity approximately 220 bushels 3' above this steel hopper to be concrete for overall depth of 6'
- 1 - 5' x 12' drive over grill with support members, 3 x 3 x 3/8" angle.

#### RECEIVING SCREWS AND DRIVES

- 1 - <sup>54'</sup> 53' long 14" receiving screw - nylon bearing hangers.
- 1 - 15 HP drive 440 volts, 3 phase, 60 cycle; motor, reducer, V-drive, starter and push button.
- 1 - 35' long 12" screw conveyor - nylon bearing hangers.
- 1 - 7.5 HP drive 440 volts, 3 phase, 60 cycles, motor, reducer, V-drive, starter and push button station. For above 35' long screw.

#### DISTRIBUTING SCREW OVER TANKS, DRIVE, CONVEYOR SUPPORTS AND CATWALK

- 1 - 96' long 14" x 2 7/16" screw conveyor, nylon bearing hangers with 3 stub discharges with hand slide gates with 3 short spouts with rain shields with 9 saddles, with flat bolt on weather cover. <sub>17</sub>
- 1 - 25 HP drive; motor, reducer, V-drive, starter and push button station, 440 volts, 3 phase, 60 cycle.
- 96' - conveyor support with 14 Ga. floor plate deck and hand rail Deck and hand rail one side.
- 6 - Short supports for above attach to tank walls
- 1 - Knee bracket support from #1 tank to conveyor frame.
- 2 - Support brackets from elevator casings.

#### RECLAIM CONVEYOR AND DRIVE, UNDER TANKS.

- 1 - 96' long 14" x 2 7/16" screw conveyor, nylon bearing hangers, with 3 stub discharges 2 with gates, 1 without gate with flat bolt on cover.
- 1 - 25 HP drive for above reclaim screw; motor, reducer, V-drive, starter and push button, 440 volts, 3 phase 60 cycle.

DISTRIBUTING CONVEYOR, DRIVE, CONVEYOR SUPPORTS AND WALKWAY  
OVER BUILDING: DOWN SPOUTS WITH RAIN SHIELDS

- 1 - 192' long size 14" conveyor nylon bearing hangers, with flat bolts on weather cover -  $\sqrt{120'}$  to be 14" x 3 balance 14" x 2  $7/16"$  with 14 stub discharges with hand slide gates.

192' of catwalk with 14 Ga. floor plate deck and hand rail for 1 side of conveyor with 10 combination conveyor and catwalk supports and 10 intermediate supports for catwalk with 14 approximately 3' x 3' roof flashing sheets for spouts

- 14 - 15" x 15" x 12 Ga. spouts approximately 3'-6" long with rain shields.

- 1 - 40 HP drive for above screw.

BUILDING RECLAIM CONVEYOR, DRIVE, FLOOR SPOUTS WITH RACK AND PINION GATES.

- 1 - 210' long size 12" screw conveyor, nylon bearing hangers with flat cover.  $\sqrt{60'}$  to be 12" XX by 2  $7/16"$  balance to be 12" x 2" standard

- 16 - Floor spouts with rack and pinion gates  $\sqrt{\text{cut tooth}}$  gearing/cast iron hand wheels.

- 1 - 30 HP drive for above screw.

BUCKET ELEVATORS # 1, 2 and 3

- 3 -  $\textcircled{75'}$  center to center shafts 56" x 16" casing size as follows:

80' TYPE: High speed single leg construction  
HEAD: 12 Ga. with 7 Ga. discharge - front sheet rubber lined.  
BOOT: 10 Ga.  
LEGGING: First 20' all 10 Ga.  
Second 20', 12 Ga. sides, 12 Ga. ends  
Third 31' 14 Ga. sides, 12 Ga. ends.  
Total 71' legging.

BELT: 12" x 5 ply 35 ounce friction surface x friction surface.

BUCKETS: 11" x 6" x on 8 1/2" spacing.

HEAD PULLEY: 36" diameter cast iron rubber lagged mounted on 2  $15/16"$  anti friction bearings

BOOT PULLEY: 36" diameter mounted on 2  $3/16"$  anti friction screw type take-ups.

CAPACITY: 4000 bushels per hour at 75% cup efficiency.

DRIVE: 15 HP with back stop.

MISCELLANEOUS: Machinery platform with floor plate deck and hand rail, included.

- 1 - Cage type ladder adapted to fit elevator #1, 56' long.

#### ELEVATOR # 4

Same specifications as above elevators, except 54' center to center shafts with 10 HP drive, machinery platform and 52' of cage type ladder:

LEGGING: 20' - 12 Ga. and 10 Ga.  
29' - 14 Ga. and 12 Ga.

- 1 - Lot of guy wires and ground anchors for elevators.
- 1 - X brace assembly for tieing elevator together.

#### SWIVEL LOADER AND ASSOCIATED EQUIPMENT

- 1 - 16" S. & A. swivel loader with 3 HP drive.
- 1 - Cushion box for loader.
- 1 - Steel support stand for S. & A. loader.
- 1 - A.C. magnetic starter and push button station.

#### SHIPPING SCALES AND ASSOCIATED EQUIPMENT

- 1 - Model MM 15 bushel Richardson shipping scale complete with solenoid lock and flow control switch.
- 1 - Bin above scales.
- 1 - Bin below scales.
- 1 - Support tower with hand rail and floor plate deck.

#### RAILING AND LADDER FOR ELEVATOR PIT AND COVER FOR SCREW CONVEYOR PIT

58' of hand rail for installation around elevator pit.

- 1 - Ladder for elevator pit, 18' with 10' of cage.
- 1 - 5' x 20' x 12 Ga. floor plate covering for screw conveyor pit - with 4" channel support frame for walk over service.

#### SPOUTING

##### IN ELEVATOR PIT

From Receiving screws: To #2 and #3 boots  
2 - 15" x 15" x 10 Ga. Y valves.  
4 - 15" x 15" ells 10 Ga.  
26 feet of 15" x 15" Ga. spouting.

From Tank Reclaim Screw to # 1, 2 and 3 boots.  
48' of 15" x 15" x 12 Ga. spouting.

From Building Reclaim to #3 Boot  
1 - 15" x 15" x 10 Ga. & valve.  
4 - 15" x 15" x 10 Ga. ells.  
24' of 15" x 15" x 12 Ga. spouting.

OVERHEAD SPOUTING

FROM ELEVATOR # 1

TO: Over Tanks conveyor and Over Building Conveyor

- 1 - 2 Way Y valve, square inlet 9 5/8" round outlets,  
3/16" plate.
- 18' of 9 5/8" round x 10 Ga. spouting.
- 4 - 9 5/8" x 10 Ga. ells.

FROM ELEVATOR # 2

TO: Over Tanks Conveyor

- 1 - 5 Hole weather tight distributor.
- 2 - 9 5/8" x 10 Ga. ells.
- 10' of 9 5/8" round x 10 Ga. spouting.

TO: Over Building Conveyor

- 2 - 9 5/8" round x 10 Ga. ells.
- 9' of 9 5/8" round x 10 Ga. spouting.

TO: Dryer

- 38' of 9 5/8" x 10 Ga. ells.
- 2 - 9 5/8" x 10 Ga. ells.

TO: Scalper

- 56' - 11" deep x 10" wide x 14 Ga. spout, rubber lined  
3 sides.
- 1 - Rubber lined elbow.
- 1 - 10 Ga. elbow.

FROM ELEVATOR # 3

TO: Over Building Conveyor

- 1 - 5 Hole weather tight distributor.
- 9' of 9 5/8" round spouting 10 Ga.
- 2 - Ells 10 Ga.

TO: Over Tanks Conveyor

- 10' of 9 5/8" x 10 Ga. Spouting.
- 2 - Ells 10 Ga.

TO: Scalper

- 56' - 11" deep x 10" wide x 14 Ga. spout, rubber lined  
3 sides.
- 1 - Rubber lined ell.
- 1 - 10 Ga. ell.

TO: Shipping scales.

- 55' - 11" deep x 10" wide x 14 Ga. spout, rubber lined  
3 sides.
- 1 - Rubber lined ell.
- 1 - 10 Ga. ell.

SPOUT FROM ELEVATOR # 4 to S. & A. LOADER

- 1 - 56' long x 11" deep x 10" wide 14 Ga. spout, rubber  
lined 3 sides.
- 2 - Rubber lined ells.

SPOUT FROM SCALPER TO ELEVATOR # 1

- 1 - 12" x 12" x 10 Ga. spout 18' long.
- 2 - 12" x 12" x 10 Ga. ells.

SPOUT FROM SHIPPING SCALE TO ELEVATOR # 4

- 9' of 12" x 12" x 10 Ga. spout.
- 2 - Ells 10 Ga.

#### WORKING TANKS

- 3 - 21' diameter x 55' high, 12,000 bushel capacity 21C15 all steel Butler Storomatic tanks.

#### AERATION FOR WORKING TANKS.

- 1 - Tank to have 4 only 1 1/2HP individual fans each with approximately 10' of 16" round perforated duct.  
2 - Tanks to have 2 only 3 HP individual fans each with approximately 10' of 16" round perforated duct.

#### FLAT STORAGE BUILDING

- 100' clear span x 200' long x 24' side walls x 6/12 roof pitch, sidewall sheets. To be 22 Ga. galvanized VARCO sheets. Roof 26 Ga. galvanized VARCO sheets, 10 only 20" roof vents.  
2 - Gable access doors, platforms and ladders, ladder to roof.  
1 - 12' x 12' double sliding door and grain bulkhead.

#### AERATION FOR FLAT STORAGE BUILDING

- 10 - Units consisting of 96' of 16" round perforated duct each with 5 HP individual fan and motor.

#### HOT SPOT SYSTEM FOR FLAT STORAGE BUILDING

Full coverage remote reading console in office. System designed and installed by Hot Spot Detector, Inc.

#### BUILDING OVER ELEVATOR PIT, SCALPER AND DUMP PITS.

30' x 70' x 24' sidewall VARCO building with 12 skylite sheets, less one end wall as this building will be connected to the grain building. Driveway opening to be framed.

#### SCALPER AND ASSOCIATED EQUIPMENT

- 1 - Duplex scalper unit consisting of two only 2248 D clipper with one:  
1 - 15 HP motor, starter and drive.  
1 - Cyclone and dust collecting system.  
1 - Collecting system for thrus.  
1 - 650 bushel surge hopper with supports.

#### DRYER

- 1 - Hess Capacitor # 4 Grain dryer and collar.  
1 - 14" screw conveyor and drive from dryer to elevator #1.

#### CONCRETE AND ERECTION

##### Foundation and Floor for 100 x 200 x 24' side wall VARCO grain building

The concrete foundation will be 9" above grade.  
The concrete slab will be 5" thick reinforced with 6-6-10-10 wire mesh and have steel trowel finish.  
The vapor barrier will be 4" gravel topped with 4 mill plastic.  
The wall's piers and wall reinforcement will be according to plans provided by VARCO and attached to this proposal as Exhibit B and made a part hereof.  
The conveyor tunnel in the building will be 4' x 4' inside dimensions.  
The walls and floor of the tunnel shall be 8" thick.  
The top of the tunnel shall be reinforced with 5/8" steel.  
All concrete design based on 2500 # strength, 28 days.

#### Three 21' x 55' tank Foundation

The concrete tank foundations will be according to plans provided by Butler tank Co. and attached to this proposal as Exhibit C and made a part hereof.

#### Elevator and Dump pits.

The concrete bottom of the elevator pit shall be 1' thick reinforced with 1/2" steel 1' on centers.

The lower 9' of the elevator pit wall shall be 1' thick concrete reinforced with 1/2" steel 6" on centers.

The upper 9' of elevator pit shall be 8" thick reinforced with 1/2" steel 12" on center.

All walls and floor of the dump pit shall be 8" thick concrete reinforced with 1/2" steel 1' on centers.

All joints in both pits shall have a metal water stop. The concrete in the lower 9' of the elevator pit shall be 6 sack mix.

The concrete in the upper 9' of the elevator and all of dump pit shall be 5 sack mix.

A sump pit shall be provided in the elevator pit.

#### 10 x 50 Cardinal Scale

The concrete scale pit shall conform with the plans furnished by Cardinal scale co., and attached to this proposal as Exhibit D and made a part hereof.

#### Air-O-Flex Hydraulic Dumper (pitless type)

Concrete supports and piers shall conform with plans provided by Air-O-Flex Company, and attached to this proposal as Exhibit E and made a part hereof.

#### Concrete Foundation and Slab for 70 x 30 x 24' sidewall machinery building

The concrete slab shall be 6" thick in driveway and under machinery, and in all other areas 4" thick. Concrete will be reinforced with 6-6-10-10 wire mesh. The wall shall be 8" thick and reinforced with 1/2" steel 1' on centers.

#### 20 x 40 x 8" Side Wall Office Building Foundation

This building will have concrete foundation properly reinforced and 4" concrete floor with 4" gravel fill, 4 mill plastic vapor barrier and floor to be reinforced with 6-6-10-10 wire mesh. Floor will be 8" above grade and floor and foundation will be Monolithic. Walls of building to be 8" x 8" x 16" light weight concrete block. Building to be divided into 3 separate rooms and 2 rest rooms using 4" x 8" x 16" light weight concrete blocks. Roof to have 2 x 6's rafters 16" on center and ceiling joists to be 2 x 10's 16" on center. Decking to be 5/8" plywood with 30 pound felt and 210 shingles. Blocks to be painted outside and inside of building. Building will have 8 windows and 5 doors. All doors to be metal with steel frames, windows to be steel construction. Adequate lighting to be provided and plumbing for 2 rest rooms. (Lav. and commode) Septic tank and field lines to be provided for in plumbing. Air conditioning will consist of 2 only 1 Ton window air conditioners. Floor covering to be asphalt tile. Ceiling to be Celotex with insulation above ceiling.

### Erection of Grain Building

### Erection of Machinery Shed

### Erect three Butler bolted Tanks

#### Install the following Equipment:

- 1 - 10' x 50' Cardinal scale.
- 1 - Air-O-Flex dumper
- 2 - Steel dump pit hopper drive over grill, supports and remote gates.
- 1 - Truck hoist support.
- 1 - Truck hoist.
- 2 - Dump pit screws and necessary spouting.
- 4 - Elevators 11" x 6"
- 1 - Distributing screw for tanks with A frames, catwalk, motor and drive.
- 1 - Reclaim screw for tanks, motor and drive.
- 1 - Distributing screw for building, catwalk, motor and drive.
- 1 - Reclaim screw for building including remote gates.
- 1 - Twin scalper including hoppers over scalper and necessary spouting.
- 1 - Shipping scales, over and under hoppers and supports.
- 1 - Swivel loader and support.
- 1 - Handrail around elevator pit and ladder.
- 1 - Hess drier.
- 1 - Dust collector system.
- 1 - Aeration for building.
- 1 - Aeration for B tanks.
- all spouting as shown on drawings.

### Electrical Wiring and Lighting

Electrical panel and distribution system, including all materials and equipment making up the same, to be furnished and installed by us and to be designed to your reasonable specifications by an electrical engineer, all at our expense. All wiring to be performed in accordance with standard practice and all applicable codes. You must provide service to contractors entrance switch. Plant voltage will be 440 volts, 60 cycle. Lighting voltage will be 110 volts, 60 cycle. All starters, push buttons and disconnects to be NEMA 1 general purpose enclosure. Combination type starter and switches will be used. Outside lighting will be provided on the dump pit building floodlighting the driveways on both sides of the building. Adequate lighting within the machinery building as well as all machinery platforms on elevators and conveyors.



### Plans and Drawings

We shall furnish all of the equipment, material and service described in this proposal in conformity with the plans and drawings entitled: "

attached hereto as "Exhibit A" and made a part hereof; and we shall furnish all other equipment and material, if any, and perform all work and do everything required by said plans and drawings.

### Location

The facilities described in this proposal shall be constructed and located on such portion or portions of the following described tract of land in Baldwin County, Alabama as you, or your representative, shall designate, viz:

That certain lot of land bounded by a line described as follows: To find the point of beginning, start at the Northwest corner of Section 14, Township 5 South, Range 3 East, run thence East along the North line of said Section a distance of 1028.4 feet, to a point on the Western boundary of the L & N Railroad right of way, thence run South 27 degrees 30 minutes East, along the West side of said right of way, 1493 feet to the point of beginning; thence run West 366.8 feet; thence run South 00 degrees 48 minutes West 897.5 feet; thence run South 89 degrees 02 minutes East 401.5 feet, thence run North 01 degrees 23 minutes West 135 feet; thence run North 88 degrees 37 minutes East 370 feet to a point on the said West side of said L & N right of way, thence run North 27 degrees 30 minutes West, along said right of way 841.3 feet to the point of beginning. Tract contains 11.15 acres, more or less, and lies in the Southeast Quarter of the Northwest Quarter of Section 14, Township 5 South, Range 3 East Baldwin County, Alabama.

It is understood that you, or your nominee, have/has an option to purchase the above described tract of land for the sum of Four Thousand Eight Hundred Fifty and 00/100 (\$4,850.00) Dollars, and that prior to the commencement of any work herein described, said Option to Purchase will be assigned to us. Immediately thereafter, we shall (1) duly record said assignment in the Office of the Judge of Probate of Baldwin County, Alabama, at our sole expense, and (2) exercise said Option to Purchase and acquire and take title to said tract of land as set forth and provided therein. Thereafter said tract of land will remain our property until such time as the work described in said plans, drawings and

specifications, a part hereof, has been fully performed by us strictly in accordance with said plans, drawings and specifications, and you have accepted such work, and we have otherwise completed the performance of this agreement on our part. Thereupon, we shall convey said tract of land, together with all improvements thereon, to you by deed with full covenants of warranty, in form first to be approved by you, free and clear of all liens and encumbrances whatsoever. All costs of acquisition of said tract of land, including the purchase price thereof, shall be for our account, and shall be included in the contract price set forth hereafter for the equipment, materials, work and service herein described. Also, we agree to reimburse you, or your nominee, as the case may be, for any earnest money which you and/or your nominee have/has put up to acquire said Option to Purchase and which shall apply on the purchase price of said tract of land, upon our exercise of said Option, as provided therein.

#### Materials. Appliances. Employees

Unless otherwise expressly stipulated herein, we shall provide and pay for, at our sole expense, all materials, equipment, labor, contracting to others, subcontracting, engineering, designing, installation service, supplies, tools, water, lights, power, utilities, transportation and any and everything else necessary for the execution and completion of the work herein described strictly in accordance with this agreement, and all materials and equipment shall be new, undamaged and of good quality and condition, and all work and services hereunder shall be performed by us in a prudent and workmanlike manner and shall be of excellent quality. We shall at all times enforce good order among our employees, and we shall not employ on such work any unfit person or subcontractor not skilled in the work assigned to him.

#### Surveys. Permits and Regulations

We shall secure and pay for all surveys required for the work herein contemplated and all permits and licenses of a temporary nature necessary for the prosecution thereof.

We shall give all notices and comply with all laws, ordinances, rules and regulations governing or affecting such work, and in the event we shall observe that the plans, drawings and specifications for such work are at variance therewith, we shall promptly notify you in writing, and any necessary changes shall be adjusted as provided hereinafter for changes in the work. In the event we perform any work knowing it to be contrary to such laws, ordinances, rules and regulations, we shall bear all costs arising therefrom.

#### Protection of Work and Property

We shall continuously maintain adequate protection of all of the work hereunder from damage and shall make good any such damage, at our expense, except such as may be directly due to errors in the plans, drawings or specifications, or shall be directly caused by your agents or employees. We shall adequately protect adjacent property, and we shall take all necessary precautions for the safety of our employees on the work. We shall erect and properly maintain at all times, as required by the conditions and progress of the work, all

necessary safeguards for the protection of workmen and the public and shall post conspicuous danger signs warning against any and all hazards created by the work, including, but not limited to, protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, stairways and falling materials, and we shall comply with all applicable provisions of federal, state and municipal laws, regulations and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed.

#### Inspection of Work

You and your representatives shall at all times have access to the work wherever it is in preparation or progress, and we shall provide proper facilities for such access and for inspection.

We will notify you, or your designated representative, of the readiness for testing and/or inspection as each structure and/or facility and/or phase of the work shall be completed and/or ready for testing and/or inspection. All such notices shall be reasonable and timely and you and/or your designated representative shall have the right to be present at any and all such testings and/or inspections. If any work should be covered up without approval or consent of yourselves, it must, if required by you, be uncovered for examination at our expense.

#### Superintendent

We shall keep on the work, during its progress, a competent superintendent who shall represent us and shall be our agent, and all directions and/or notices given to him shall be binding as if given to us.

#### Changes in the Work

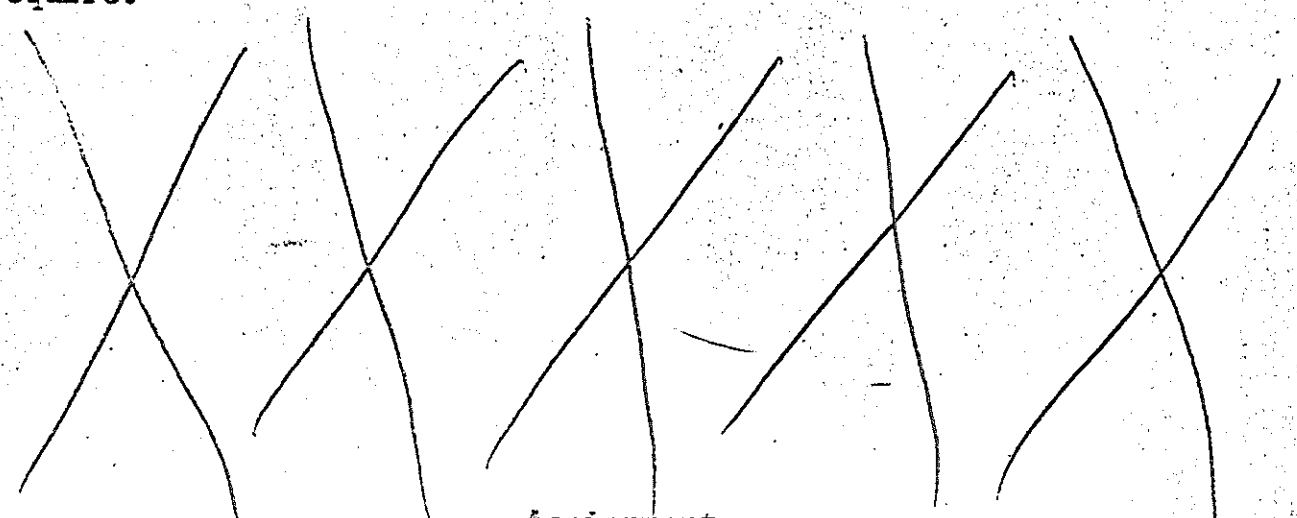
You shall have authority to make minor changes in the work from time to time, not involving extra cost, and not inconsistent with the purposes of the facilities to be constructed.

Without invalidating this agreement, you may also order extra work or make changes involving extra cost, however the reasonable cost of such work or changes involving extra cost shall be added to the contract price hereinafter set forth. All such work and changes shall be executed and made under the conditions of this agreement, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

In the event you order extra work or make changes involving extra costs, we shall not claim such extra costs unless, before proceeding to execute such work or make such changes, we shall give you written notice of such claim and the extra costs involved.

### Liability Insurance

We shall provide and maintain, at our expense, such insurance as will protect us from claims under all applicable workmen's compensation acts and from claims for damages because of bodily injury, including death, which arise from and during operations under this agreement, whether such operations be by ourselves or any subcontractor or anyone directly or indirectly employed by us or any such subcontractor. Such insurance shall be in an amount not less than \$100,000.00 with respect to injury to any one person, nor \$300,000.00 with respect to any one accident. Certificates of such insurance shall be filed with you, if you so require.



### Assignment

Neither of us shall assign this agreement, in whole or in part, to any other person or party without the prior written consent of the other, nor shall we assign any monies due or to become due to us hereunder, without your previous written consent.

### Subcontracts

We shall not employ, or subcontract any work to, any person or party who is incompetent, unfit or unskilled in such work, and we shall remain fully responsible to you at all times for the acts and/or omissions of our employees and/or subcontractors and/or persons directly or indirectly employed by

### Arbitration

All disputes, claims or questions that may arise under this agreement or in the performance of the work hereunder, shall be submitted to arbitration at the choice of either of us. In such case, the one of us desiring arbitration, shall mail a written demand for arbitration to the other, and, within twenty (20) days from the mailing of any such demand, each of us shall appoint one arbitrator and the two thus chosen shall appoint a third, and such dispute, claim or question shall be referred to the three arbitrators thus appointed. In the event, the arbitrators chosen by the two of us fail to agree upon and designate the third arbitrator, within thirty (30) days from the mailing of such demand for arbitration, then, upon the request of either of us, the American Arbitration Association shall designate the third arbitrator, and each of us shall be

bound by its decision and designation in such respect. None of the arbitrators shall be a person having any financial, business or family relation with either of us or any relation whatever which would tend to prejudice the rights of either of us to a fair and impartial arbitration. When a hearing is to be held, the arbitrators shall name the time and place and shall notify each of us thereof in writing. Each of us may be present and/or represented by counsel at such hearing. All such hearings shall be so conducted that the complaining party and its witnesses shall be heard and may be subject to questioning by the other party, or by its counsel, and thereafter the defending party, and its witnesses, shall be heard and may be subject to question by the other party, or by its counsel. Exhibits may be introduced at any time during such hearing, and all proof shall be taken in the presence of each of us and in the presence of all the arbitrators, unless one of us has absented itself by its own fault, after due notice of such hearing and that such proofs will be taken, or unless we have mutually authorized such proofs to be taken in our absence. The arbitrators may, at their discretion, permit us, or our counsel, to sum up and submit briefs, and the arbitrators shall have the sole right to specify the time in which we, or our counsel, must file such briefs.

The expenses of all such arbitration shall be borne by each of us, but the arbitrators, if they deem that the case requires it, are authorized to award to the party whose contention is sustained, such sums as they, or a majority of them shall deem proper to compensate such party for the time and expense incident to the arbitration, and, if the arbitration was demanded without reasonable cause, they may also award damages for delay. The arbitrators shall be entitled to reasonable compensation for their services, and, within such limits, shall fix their own compensation, based upon the amount of the claim involved and upon the number of hearings held.

All decisions and/or awards of the arbitrators shall be made and rendered within a period of thirty (30) days from the close of the arbitration proceedings. Such decisions and/or awards shall be in writing and shall be binding on each of us, subject to the right of either of us to appeal any such decision and/or award to any Court having jurisdiction over our persons and the subject matter in controversy. All decisions of the arbitrators shall be final, unless an appeal therefrom shall be taken on or prior to the fifteenth (15th) day following the receipt of the decision and/or award appealed from by the appealing party. On appeal, the decision and/or award of the arbitrators appealed from shall be presumed to be just and correct until overcome by clear and convincing proof to the contrary, otherwise, however, such appeals shall be trials de novo.

We shall not cause a delay of the work during any arbitration proceedings, except where such work is the very essence of such proceedings, or appeal therefrom, or with your prior written consent.

#### Use of Premises

We shall confine our equipment and apparatus and the stowage of materials and the operations of our workmen to

limits indicated by law, ordinances, permits or reasonable directions of yourselves, and we shall not unreasonably encumber the premises with materials nor shall be load, or permit to be loaded, any part of any of the structures to be constructed with a weight that will endanger its safety.

In addition, at all times we shall keep the premises free from accumulations of waste material or rubbish caused by our employees or the work, and at the completion of the work we shall remove all such rubbish and all tools, scaffolding and surplus materials from the premises and shall leave the work and the premises "broom clean", and in the event of our failure so to do, you may cause the same to be removed therefrom at our expense, for which we will reimburse you in full immediately upon receipt of a statement for such expenses from you.

#### Designation of Representative

If you desire, you may designate a representative to inspect the work and/or do such other act or acts for you and in your place and stead as you shall designate. We shall not be obliged to recognize any such representative, however, unless he be designated in writing by you. Such writing shall not be deemed effective until such time as the same shall have been delivered to us or our superintendent on authority and the limits thereof.

#### Your Right to Terminate

In the event we should be adjudged a bankrupt at any time, or if we shall make a general assignment for the benefit of our creditors, or if a receiver shall be appointed on account of our insolvency, or if we shall persistently or repeatedly refuse or fail, except in cases for which extension of time is herein provided, to supply enough properly skilled workmen or proper materials, supplies or equipment, or if we should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or regulations governing or affecting the work, or otherwise, be guilty of the substantial violation of any provision of this contract, then you shall have the option, at your sole election, (1) to terminate this agreement, without prejudice to any other right or remedies that you might have, by giving us seven days written notice thereof and/or (2) make good yourself any such deficiencies in the prosecution of the work hereunder, and thereafter deduct the cost thereof from the contract price due us hereunder upon completion of the work as hereinafter set forth.

#### Time of Completion

Time is of the essence of this agreement.

The work to be performed hereunder shall be commenced by us immediately upon our acquisition of the title to the above described property in fee, and thereupon shall be diligently prosecuted and shall be completed strictly in conformity with the plans, drawings and specifications in accordance with the following schedule of completion:

At the end of the twelfth (12th) week the work and construction will have progressed to the point that you can receive into the working tank and will have the use of three elevator legs.

At the end of the thirteenth (13th) week, the work and construction will have progressed to the point that you will be able to ship out of the shipping elevator leg and swivel loader.

At the end of the fourteenth (14th) week, the work and construction will have progressed to the point that you will be able to clean and dry.

At the end of the fifteenth (15th) week, the work and construction will have progressed to the point that you will be able to receive into the grain building.

At the end of the sixteenth (16th) week, all of the work will be fully completed.

All of the times in the above schedule of completion shall relate to the date of this agreement.

Provided, however, that in the event we shall be delayed at any time in the progress of the work by changes ordered in the work by you, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any other causes beyond our control, or by delay authorized by yourselves pending arbitration, then, in any of such events the time or times set forth in the schedule of completion above shall be extended accordingly.

#### Acceptance and Payment

No payment shall be due from you to us until final completion of the work strictly in accordance with the plans, drawings and specifications, and your acceptance thereof. Upon final completion of the work strictly in accordance with the plans, drawings and specifications, and the full performance of this agreement on our part, we shall give you written notice that the work is ready for final inspection and acceptance, and thereupon Mr. J. Wellford Withers, Memphis, Tennessee, acting as your designated representative, shall promptly make such inspection. If upon such final inspection he finds the work acceptable and this agreement otherwise fully performed on our part, you shall promptly issue a written acceptance thereof to us stating that the work provided for in this agreement has been completed and is accepted by you under the terms and conditions hereof. In the event, upon such final inspection, J. Wellford Withers shall determine that the work has not been completed strictly in accordance with the plans, drawings and specifications and/or that we have not otherwise fully performed this contract, then you shall notify us in writing of what needs to be done, and thereafter we shall immediately do all such work and/or perform such obligations required hereunder and then remaining undone.

When we shall have completed the work strictly in accordance with the plans, drawings and specifications and shall have otherwise fully performed this agreement on our part, and you have accepted the same as set forth above, we



shall convey said tract of land and all of the improvements and facilities constructed and placed thereon by us under this agreement to you by deed with full covenants of warranty, in form first to be approved by you, free and clear of all liens and encumbrances whatever, and simultaneously therewith you shall pay to us in full the balance of the contract price for the work hereafter set forth.

#### Liens

If any lien remains unsatisfied upon the conveyance of the premises to you, we shall refund to you all monies that you may be compelled to pay in discharging such lien or liens, including all costs and a reasonable attorney's fee, and your act in accepting the work shall not be deemed to be a waiver of this provision on your part.

#### Contract Price

The total contract price for all equipment, material, work and services furnished and performed by us hereunder, the tract of land on which the work is to be constructed, all taxes on machinery, equipment and materials used in the work or furnished hereunder, all insurance premiums, permit fees, survey expenses and similar items required of us hereunder, and all freight to the job site of any and all material, equipment and supplies and machinery used in the work shall be Three Hundred Thousand (\$300,000.00) Dollars. Total price includes Alabama State Sales tax based on 1 1/2% on all machinery, 3% on balance of materials, and also includes freight to job site on all materials and machinery used in job.

#### Warranties

Warranties on any or all machinery, equipment, or merchandise specified in this contract are limited to standard new machines, equipment, or merchandise warranties covering defective workmanship and materials as furnished by the respective manufacturers to the Seller.

Warranty will limit Seller's responsibility to the replacement of any part deemed defective by the Seller after inspection in Seller's plant. All parts claimed defective and returned by the Purchaser for inspection shall have transportation paid by the Purchaser.

Machinery and equipment is warranted to produce its rated capacity when operated or handled according to Seller's instructions in normal service for that particular machine or equipment, for a period of one hundred eighty (180) days from beginning of operation. The grain storage building will be warranted for a period of three hundred sixty-five (365) days.

The use of recommended lubricating oils and fuels are a part of the Purchaser's responsibility and warranties are void if other than recommended oils and fuels are used. Recommendations as to proper oils and fuels will be made by Seller at request of Purchaser.



Warranty applies to all new machines and equipment covered by this contract unless exception is made on face of contract.

No warranty shall apply to any article covered by this contract that shows indication of mistreatment, or on any article on which there is default in payment or delinquency in payments or obligations due and payable at time of mechanical failure.

Purchaser agrees to insure equipment covered by this contract, so long as any part thereof remains unpaid for, against fire, theft, or any other cause that may devalue said equipment, except wear and damage caused by normal use.

Purchaser further agrees that such insurance shall protect its interest may appear. as

#### Miscellaneous

The following definitions shall apply:

(a). The word "work" where used herein, unless the text clearly indicates to the contrary, shall mean and include and refer to all work, services, equipment and materials which we and/or our subcontractors and/or others working through and/or under us shall be obliged to furnish and/or perform hereunder.

(b) The words "plans, drawings and specifications" shall mean and include and refer to the plans and drawings attached hereto and made a part hereof as "Exhibit A" and the specifications set forth therein and hereinabove.

When this proposal is accepted by you in writing, in the space provided below, and approved by Alabama Baldwin Corporation, your proposed Lessee, the same shall be a binding contract between the two of us upon the terms herein set forth, effective as of the date of your acceptance, and shall be governed and construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, we have subscribed our names as  
the President and Secretary of HAGAN MANUFACTURING COMPANY,  
on this 24 day of August, 1962.

HAGAN MANUFACTURING COMPANY

By Louis Z. Hagan  
President

ATTEST: [Signature]  
Secretary

The foregoing proposal has been received and accepted  
by us, and we, by this acceptance, do intend that the fore-  
going proposal shall become a contract between the parties  
hereto. Dated - 27<sup>th</sup> day of August, 1962

ATTEST: [Signature] Secretary

Louis Z. Hagan  
[Signature]  
A. Douglas Knell

Approved on this the 27<sup>th</sup> day of  
August, 1962.

ALABAMA BALDWIN CORPORATION

By: J. W. Witter  
As its President

LAW OFFICES  
HOLBERG, TULLY AND HODNETTE

1107 MILNER BUILDING

P.O. BOX 47

MOBILE, ALABAMA

36601

RALPH G. HOLBERG, JR.  
ALBERT J. TULLY  
ROBERT E. HODNETTE, JR.  
HERBERT P. FEISELMAN, JR.  
A. NEIL HUGGENS  
RALPH G. HOLBERG, III

TELEPHONE  
432-8863

December  
1st  
1965

Circuit Court of Baldwin County  
Baldwin County Courthouse  
Bay Minette, Alabama

Re: A. Douglass Krell  
vs.  
Alabama Baldwin Corporation  
Case No. 6449

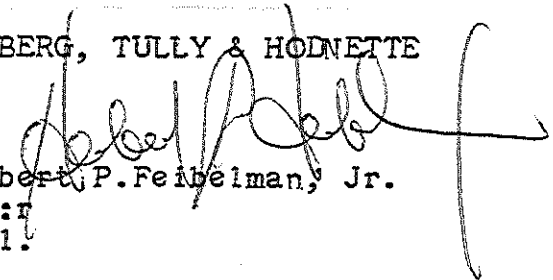
Gentlemen:

Norborne Stone and I have arrived at a settlement in the above case; and he will be taking care of the formalities at the appropriate time. I am enclosing herewith a deposition which was taken of Mr. J. W. Withers in this case, the original of which has been in my file and is now enclosed. It was felt that this should properly be a part of the court file; and I am sure that you agree.

Thanking you, I am,

Very sincerely yours,

HOLBERG, TULLY & HODNETTE

  
Herbert P. Feibelman, Jr.  
HPF:r  
encl.

cc: Mr. Norborne C. Stone, Jr.

STATE OF ALABAMA)

CIRCUIT COURT FOR THE

BALDWIN COUNTY )

28th JUDICIAL CIRCUIT OF THE STATE OF ALABAMA

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon ALABAMA-BALDWIN CORPORATION,  
to appear within thirty days from service of this process, in  
the Circuit Court of Baldwin County, Alabama, at the place of  
holding the same, then and there to answer the complaint of  
A. DOUGLASS KRELL.

WITNESS: Alice J. Duck, Clerk of said Court, this the \_\_\_\_\_  
day of \_\_\_\_\_, 1965.

Attest: \_\_\_\_\_  
Clerk

SHERIFF'S RETURN

Received \_\_\_\_\_ day of \_\_\_\_\_, 1965 and on  
the \_\_\_\_\_ day of \_\_\_\_\_, 1965 I served a copy  
of the within \_\_\_\_\_ on \_\_\_\_\_  
\_\_\_\_\_ by service on \_\_\_\_\_.

TAYLOR WILKINS, SHERIFF

By \_\_\_\_\_ D.S.

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