

215 Va. 106

CLERK  
SUPREME COURT OF VIRGINIA



**Record No. 730582**

IN THE SUPREME COURT OF VIRGINIA

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BRISTOL REDEVELOPMENT AND  
HOUSING AUTHORITY,  
APPELLANT

v.

FARMBEST, INC.,  
APPELLEE

---

APPENDIX TO BRIEF

---

BRADLEY ROBERTS  
Reynolds Arcade Building  
Bristol, Virginia 24201

COUNSEL FOR APPELLANT

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R E C O R D

VOL. 1 ) IN THE CORPORATION COURT FOR THE CITY OF  
page 1 ) BRISTOL, VIRGINIA

BRISTOL REDEVELOPMENT AND HOUSING  
AUTHORITY.

V.

FARMBEST, INC., a Delaware Corporation  
(name changed from Hometown Foods, Inc. by  
charter amendment dated January 11, 1971)

JAMES R. FARLEY, Registered Agent  
10 South 10th Street  
Richmond, Virginia

\* \* \* \* \*

CONDEMNATION PROCEEDING

TO THE HONORABLE ROBERT B. DAVIS, JUDGE:

Petitioner, Bristol Redevelopment and Housing  
Authority, a political subdivision created under Chapter  
310 of Acts of Assembly of Virginia of the year 1938, as  
amended, and of ordinances of the Council of the City of  
Bristol enacted pursuant thereto, respectfully shows unto  
the Court as follows:

1. In connection with its purposes of redevelopment,  
petitioner has heretofore secured title to a portion of  
the real estate described in Project VA R-51, and it is

necessary to acquire fee simple title to certain other lands hereinafter described located in the City of Bristol, Virginia, and briefly described as follows:

Tract No. 1 - A certain lot or parcel of land lying and being in the City of Bristol, Virginia, bounded on the east by Lee Street; on the north by Sycamore Street; on the west by Moore Street, and on the south by an alley. Said parcel of land fronts 130 feet, more or less, on the east side of Moore Street and extends back along Sycamore Street 347 feet, more or less, to Lee Street, and along said alley 336 feet, more or less, to Lee Street, and fronts 141 feet, more or less, on Lee Street; being designated as Block 2, Parcel 1 on the plat attached hereto.

Vol. 1) Tract No. 2 - Fronting 50 feet, more or less, page 2) on the north side of Sycamore Street and extending back between parallel (or almost parallel) lines to an alley or street (sometimes designated as Beaver Street) in the rear; being 120 feet, more or less, deep on the east side, bounded on the east by other property of petitioner and 110 feet, more or less, deep on the west side; said property adjoining on the west belongs to Sevier and the division line is the center of a party wall; being designated as Block 1, Parcel 3 on the plat attached hereto.

There are no liens or encumbrances of record affecting title to said property, except taxes for year 1972 which are not yet payable.

2. Petitioner, by resolution of its Commissioners, has declared that the acquisition of the property herein described is necessary for the purposes herein mentioned,

3.

and here shows unto the Court that it cannot begin or complete its project without acquiring said property, and that it proposes to acquire a fee simple title thereto. No damage will be done to the property of others in making the proposed improvement.

3. There is filed herewith a plat (marked Exhibit 1) showing description of the land proposed to be taken, and a memo showing the name and address of the owner thereof (marked Exhibit 2). Said plat does not contain a profile showing cuts and fills, trestles and bridges, for the reason that none are involved.

4. Petitioner alleges it has made a bona fide, but ineffectual effort to acquire title to said property from the owner by purchase of the property sought to be condemned, but has been unable to agree with the owner on the purchase price thereof.

5. Said project, designated as VA R-51, has been duly authorized by action of the commissioners of the Bristol Redevelopment and Housing Authority, and attested Vol. 1) copy of the minutes authorizing the institution page 3) of this proceeding and the acquisition of the property herein described is attached hereto marked Exhibit 3.

6. The name and address of the owner of said property is as set out below:

FARMBEST, INC., a Delaware Corporation  
(name changed from Hometown Foods, Inc.  
by charter amendment dated January 11,  
1971)

James R. Farley, Registered Agent  
10 South 10th Street  
Richmond, Virginia

7. Petitioner is, by law, vested with the power to exercise the right of eminent domain.

8. Petitioner, therefore, prays for judgment that the described property be condemned and the fee simple title thereto vested in petitioner; that just compensation for the property to be taken be ascertained in the manner provided by law and awarded to those entitled thereto; that the petitioner be allowed to enter upon said land immediately and for such other relief as may be lawful and proper.

BRISTOL REDEVELOPMENT AND HOUSING AUTHORITY

By Chairman

(Filed September 20, 1972)

Vol. 1 )  
page 47)

\* \* \* \* \*

O R D E R

Pursuant to the provisions of Section 25-46.20 of the Code of Virginia and amendments thereto, there has been submitted to the court by counsel for each party litigant thereto, a list of six names as prospective commissioners, each of whom are residents of this City wherein the property to be condemned is situated. From said two lists the Court has selected the following nine persons, who, it is ORDERED, shall be summoned as Commissioners on the 5th day of April, 1973, at 9:00 A.M.:

(Names omitted)

Enter this March 30th, 1973.

Robert B. Davis, Judge

Vol. 1 )  
page 57)

\* \* \* \* \*

O R D E R

On this day came the parties by their attorneys; the nine commissioners heretofore appointed were examined. The following were selected as provided by law and took the oath prescribed by law: Fred A. Geromanos, Frank Goodpasture, Jr., William C. Burris, William C. Charles and Marcus Conner.

Thereupon, after hearing the opening statements of counsel, the five commissioners (in the custody of the sheriff) viewed the property described in the petition and involved in this proceeding and returned to the courtroom.

The evidence of the parties was presented before said commissioners in open court, and the hour for adjournment having arrived and the evidence not having been concluded, court was adjourned until tomorrow morning, April 6th, 1973, at 9:00 A. M., the commissioners being duly cautioned by the court not to discuss this proceeding with anyone nor to allow anyone to discuss it in their presence.

Enter this April 5th, 1973:

Robert B. Davis, Judge

Vol. 1 )  
page 58)

\* \* \* \* \*

O R D E R

On the 6th day of April, 1973 came the parties by their attorneys and also came the same Commissioners appointed and qualified on April 5, 1973, thereupon the defendant presented further evidence and the petitioner presented rebuttal evidence and both parties announced

they rested. The Court and counsel withdrew and considered instructions and after some time returned to the Court room, the Commissioners returned to the jury box, were instructed by the Court and the case argued by counsel, the Commission withdrew and after some time returned and tendered its report; the clerk read said report and the Court directed it be filed, which was accordingly done. Petitioner moved that it be granted ten (10) days within which to file exceptions in writing, which motion was granted.

The Commission was discharged and Court adjourned.

Enter this April 6th, 1973:

Robert B. Davis, Judge

Vol. 1 )  
page 73)

\* \* \* \* \*

REPORT OF COMMISSIONERS

TO THE HONORABLE ROBERT B. DAVIS, JUDGE:

The undersigned commissioners, appointed by decree of this Court, do certify that after taking the oath required by law, pursuant to directions of the Court and in the custody of the Sergeant or one of his deputies, we viewed the property described in the petition, the Judge accompanying the commissioners.

The lots or parcels of land to be condemned were described to us and pointed out on the grounds as follows:

(NOTE: Metes and bounds description of Tract No. 1 (Parcels A, B, C, D, E and F) and Tract No. 2 omitted)

Vol. 1 )            We further report that after the viewing  
page 76)  
aforesaid, we returned to the court, and then did sit as commissioners in open court and heard such evidence as was presented by the parties and were instructed by the Court, in open court, upon the issues joined and as to the discharge of our duties.

WHEREUPON, after due consideration of said viewing, of the evidence presented in open court, and the instructions given by the Court, we are of the opinion and do ascertain that for the fee simple title to said land and improvements thereon, of the freehold whereof the above-named defendant is the owner, the sum of \$492,800.00 will be just compensation for said property; it being shown that the whole property owned by defendant; that is, Tract 1 (bounded on the east by Lee Street; on the north by Sycamore Street; on the west by Moore Street; on the south by an alley) and Tract 2 (lying on the north side of Sycamore Street, between Moore and Lee Streets) in Bristol, Virginia, is being taken, and it owns no adjoining property.

We further considered evidence as to the reasonable cost of removing or relocating items of personal property from the property taken and upon consideration thereof the commissioners do award the sum of \$43,419.00 as just compensation therefor.

Given under our hands this 6th day of April, 1973.

(Signed by all Commissioners)

Vol. 1 )  
page 77)

\* \* \* \* \*

PETITIONER'S EXCEPTIONS TO COMMISSIONERS' REPORT

Petitioner, Bristol Redevelopment and Housing Authority, excepts to that part of the report of the Commissioners filed herein April 6, 1973, which awarded defendant, Farmbest, Inc., \$43,419.00 for removing or relocating items of personal property. The pertinent portion of the award being here quoted, "We further considered evidence as to the reasonable cost of removing or relocating items of personal property from the property taken and upon consideration thereof the commissioners do award the sum of \$43,419.00 as just compensation therefor," and assigns the following grounds for its exceptions:

1. The action of the Court in granting instruction Fl, given at the request of defendant over the objection

of petitioner. Petitioner excepted to the action of the Court in granting said instruction and the grounds of the exception as appear in the record are here relied upon.

2. Said award for moving expenses and relocating personal property was based on the Court's granting of instruction F1, given at the request of the defendant over the objection and exception of petitioner, as set out in the record. Most of said moving expenses were incurred prior to December 14, 1970 when the budget for Project Vol. 1 ) VA R-51 (defendant's property being located page 78) within the boundaries of said project) was approved and are not recoverable in the pending condemnation action.

3. Such rights as the defendant might have to recover moving expenses are determined by the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1972" (Section 25-235 et. seq. of the Virginia Code of 1950 as amended by the Acts of 1972).

4. The Court erred in refusing instruction 5 as tendered by petitioner, which included the phrase "nor are they (referring to Commissioners) to consider any expenses incurred by the owner (Farmbest) in moving its business." Petitioner excepted to the action of the Court in refusing said instruction and here relies upon

the grounds of the exception as set out in the record.

5. The action of the Court in admitting evidence as to the removing and relocating expense tendered by the defendant over the objection and exception of petitioner. The grounds of said objections and exceptions being set out in the record.

6. Any other objections assigned at bar.

BRISTOL REDEVELOPMENT AND HOUSING  
AUTHORITY  
By Counsel

Vol. 1)  
page 86)

\* \* \* \* \*

FINAL DECREE

This day came again the parties by their attorneys to be heard on the record at large, particularly upon the report of Fred A. Geromanos, William C. Charles, W. C. Burris, Marcus R. Conner and Frank Goodpasture, Jr., filed April 6, 1973, and upon the exceptions to the report filed by petitioner on April 13, 1973.

And it appearing to the Court that more than ten days have elapsed since the filing of said report by the Commissioners, it further appearing that the petitioner herein filed exceptions to the Commissioners' report on the 13th day of April 1973, within ten days from the date

of said award, and said exceptions having this day been argued by counsel for both parties, and the Court now having maturely considered same, is of the opinion to, and doth overrule said exceptions, accordingly it is ADJUDGED, ORDERED and DECREED that said report be, and the same is hereby approved and confirmed. Petitioner by counsel excepted to the action of the Court in overruling the exceptions to said report (which exceptions relate to the action of the Commissioners in awarding defendant the sum of \$43,419.00 for removal or relocating items of personal property);

Vol. 1 ) It further appearing to the Court that  
page 87)  
Petitioner Bristol Redevelopment and Housing Authority paid to the Clerk on April 6, 1973, the award of Commissioners in the amount of \$492,800.00 as just compensation for said property so taken, it is further ADJUDGED, ORDERED and DECREED that absolute and indefeasible title to the land described in the petition, the exhibits and in the report of the Commissioners as

(NOTE: Description as to Tract No. 1,  
Parcel A here omitted)

Vol. 1 ) be, and the same is hereby confirmed to and  
page 90)  
vested in Bristol Redevelopment and Housing Authority,

and said petitioner and its agents shall have the right to enter and construct its project and work on or through the property so described.

The attorney for petitioner stated to the Court that he had examined the records in the Clerk's Office of the Corporation Court for the City of Bristol, Virginia with regard to the title to the property described in the petition, exhibits and report of the Commissioners and has filed a certificate of title herein, which shows there are no liens or encumbrances against said property except taxes for the year 1973 in an amount not yet determined (which said taxes will by agreement be prorated based on the 1972 tax) and to zoning ordinances of the City of Bristol, accordingly the Clerk is directed to pay said sum of \$492,800.00 to defendant, which was done.

It further appearing to the Court that Petitioner Bristol Redevelopment and Housing Authority has also paid to the Clerk of this Court the award of the Commissioners in the sum of \$43,419.00 as the reasonable cost of removing or relocating items of personal property from the property taken as set out hereinabove. Petitioner excepted to the action of the Court in confirming that part of the report of the Commissioners which awarded

defendant \$43,419.00 as the reasonable cost of removing or relocating items of personal property, and said petitioner having indicated that it intends to apply to the Supreme Court of Virginia for an appeal from the order of the Court confirming that portion of the Report Vol. 1 ) of Commissioners wherein \$43,419.00 was page 91) awarded to the defendant as the reasonable cost of removing or relocating items of personal property. By agreement of counsel the Clerk is directed to pay the sum of \$43,419.00 to the defendant, but without prejudice to the rights of either party, with the agreement by the defendant to refund said amount to Petitioner in the event the Supreme Court of Virginia should grant an appeal and thereafter reverse the decision of the Court in confirming said award, and on the further agreement that the defendant will be bound by and conform to such order as may be entered in the Supreme Court of Virginia.

It further appearing to the Court that Petitioner Bristol Redevelopment and Housing Authority by counsel having stated that it intends to apply to the Supreme Court of Virginia for an appeal herein insofar as the award included an allowance to the defendant for the reasonable cost of removing or relocating items of

personal property, it is ORDERED that execution of the judgment herein entered as to the award for removing or relocating items of personal property be suspended for a period of ninety (90) days, and thereafter as provided by law if a petition for appeal be filed, conditioned upon the petitioner or someone for it executing a suspending bond in the amount of \$500.00, within twenty (20) days Vol. 1 ) from the date hereof conditioned as provided by page 92) law.

The Clerk is directed to certify a copy of so much of the orders, judgments and proceedings in this case as shall show the condemnation and record and index the same as required by Section 25-46.27 of the Virginia Code.

Petitioner paid to the Clerk the costs of this proceeding, including \$20.00 per diem for two days allowed to each of the Commissioners that served, and \$5.00 each of those summoned to appear but who did not serve as Commissioners; the fees for making and recording a copy of said report of the Commissioners and of this decree and properly indexing same as required by law.

SEEN AND EXCEPTED TO:

Counsel for Petitioner

SEEN, NO OBJECTION:

Counsel for defendant

Enter this 1st day of May, 1973.

Robert B. Davis, Judge

Vol. 1 )  
Page 95)

\* \* \* \* \*

NOTICE OF APPEAL AND ASSIGNMENTS OF ERRORS

NOTICE OF APPEAL

Pursuant to Rule 5:6 of the Rules of Court of The Supreme Court of Virginia, you are notified the undersigned petitioner, Bristol Redevelopment and Housing Authority, will appeal from the final decree (or order) entered herein May 1, 1973. Transcript of the testimony and other incidents of trial will be filed.

ASSIGNMENTS OF ERRORS

The appeal is taken from final decree (or order) entered May 1, 1973, approving and confirming report of commissioners filed April 6, 1973, and entering judgment thereon, which report included the following:

"We further considered evidence as to the reasonable cost of removing or relocating items of personal property from the property taken and upon consideration thereof

the commissioners do award the sum of \$43,419 as just compensation therefor."

The undersigned petitioner relies upon the following as its assignments of errors:

The action of the Court:

1. In admitting evidence over the objection and exception of petitioner as to the cost of removing and relocating items of personal property (the grounds of Vol. 1 ) objections and exceptions being set out in the page 96) transcript of the record);
2. In permitting the commissioners to consider (over petitioner's objection and exception) any evidence as to the cost of removing and relocating items of personal property from the property taken;
3. In refusing instruction 5 as tendered by the petitioner, which included the phrase "nor are they (referring to commissioners) to consider any expenses incurred by the owner (Farmbest) in moving its business." (Petitioner excepted to the Court's action in refusing said instruction);
4. In granting instruction E (given at the request of defendant) over the objection and exception of petitioner;

5. In granting instruction F-1 (given at the request of the defendant) over the objection and exception of petitioner;

6. In permitting the commissioners to consider items of expense incurred in removing and relocating items of personal property which were incurred prior to December 14, 1970, when the budget for project VAR-51 (defendant's property being located within the boundaries of said property) was approved -- petitioner alleging that such items as were incurred prior to said date were not properly recoverable in the condemnation suit instituted by it in this proceeding. (Petitioner objected to the evidence and excepted to the action of the Court in admitting the evidence);

7. In refusing to adopt petitioner's contention that such rights as the defendant might have to recover moving expenses and for the removal and relocation of items of personal property should be determined by the Vol. 1 ) "Uniform Relocation Assistance and Real Property page 97) Acquisition Policy Act of 1972" (Section 25-235, et. seq. of the Virginia Code of 1950 as amended by the Acts of 1972). (Petitioner's exception to the action

of the Court is set out in the transcript of the record).

BRISTOL REDEVELOPMENT AND HOUSING  
AUTHORITY  
By Counsel

(Filed May 25, 1973)

(Certificate omitted)

Vol. 2 ) O. L. HAMILTON, having been duly sworn,  
page 35) was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROBERTS:

Q State your name and age, please.

A O. L. Hamilton, Jr.; 52.

Q Where do you reside, Mr. Hamilton?

A 157 Woodland Drive, Bristol, Virginia.

Q What is your occupation?

A Executive director, Bristol Redevelopment and  
Housing Authority.

Q How long have you been in that position?

A Seventeen years this coming July 1st.

Q Are you familiar with the petition filed in  
this suit to acquire two parcels of land from Farmbest,  
Incorporated, which is a Delaware corporation, whose  
name was changed from Hometown Foods, Incorporated, by  
charter amendment, dated January 11th, 1971?

A Yes, sir.

Vol. 2 ) Q Are you familiar with the fact that Farm,  
page 36)  
that Hometown Foods, Incorporated, acquired most of this  
property by deed from Foremost Dairies, dated January 27th,  
1965, and recorded in Deed Book 151, page 322?

A Yes, sir.

Q Are you also familiar with the fact that the  
piece of property at the southwesterly corner of Sycamore  
and Lee Streets was acquired by Hometown Foods by deed  
from Irene A. Stone, widow, and others, dated November  
12th, 1965, recorded in Deed Book 151, page 527, in the  
clerk's office of the Corporation Court of the City of  
Bristol?

A Yes, sir.

Q And that the property at the northwesterly  
intersection of Lee Street and the alley which extends  
between, from Lee to Moore Street was acquired by deed  
from W. C. Godsey, and others, dated April 1st, 1967,  
recorded in Deed Book 155, page 265?

A Yes, sir.

Q And you are familiar with the fact that the  
main parcel of the land is in the City of Bristol,  
Virginia, bounded on the east by Lee Street, on the north  
by Sycamore Street, and the west by Moore Street, and on

the south by an alley, and fronting approximately 130 feet, more or less, on the east side of Moore Street and extending back along Sycamore Street 347 feet, more or less, to Lee Street, and along said alley 336 feet, more or less, to Lee Street and fronts 141 feet, (Vol. 2 ) or less, to Lee Street and fronts 141 feet, page 37) more or less, on Lee Street is the first tract of land that we, that the Housing Authority proposes to acquire?

A Yes, sir.

Q And that the second parcel of land is, begins at a point at the intersection of Moore Street and Sycamore Street, in the southeast corner, running east along the south side of Sycamore Street--no, no, that's, strike that, please. That's an error.

The second parcel is a certain tract or parcel of land lying on the north side of Sycamore Street between Moore and Lee Streets described as beginning at the north side of, on the north side of Sycamore Street between Moore and Lee Streets at a point in the center of a concrete block wall, 125 feet east of Moore Street and corner to the property conveyed by Powers to Sevier and, Lyman, certain partners trading under the name of Sevier's Laundry, said property running back 110 feet, more or less, to a street or alley in the rear and fronting 50 feet on

the south side of, on the north side of Sycamore Street?

A Yes, sir.

Q You are familiar with that. Mr. Hamilton, has  
Vol. 2 ) the Housing Authority made an effort to purchase  
page 38) this property by negotiation from the, from Farmbest,

Incorporated?

A Yes, sir.

Q And were you able to agree on a trade with - -

A No, sir.

Q Farmbest, Incorporated?

A No, sir.

Q With whom have your negotiations been conducted?

A Mr. Krill.

Q And who is Mr. Krill, for the purpose of the  
record?

A The gentleman sitting at the table there.

Q Who, I believe, is vice president and an officer  
of Farmbest, Incorporated, and the local manager of its  
project here in Bristol.

A Yes, sir.

Q I don't know if it's material, but have these  
negotiations extended over a considerable period of time?

A Yes, sir.

Q And resulted in this suit here today?

A Yes, sir.

Q Which we are trying today?

A Yes, sir.

Vol. 2 ) Q I believe that's all.  
page 39)

CROSS EXAMINATION

BY MR. MILES:

Q Mr. Hamilton, when was the first official action taken by the Housing Authority with respect to this project?

A Respect to the entire project?

Q Respect to this extension, I believe it's referred to as VA. R-51.

A If I could refer to my notes there on the table, Mr. Miles. I did not bring them with me.

Q Can I refer to them, too?

A They are on our stationery there. I think Mr. Greiner knows where they are. Look in that briefcase.

\* \* \* \* \*

(Counsel approached the bench.)

THE COURT: There is a continuing objection on the ground heretofore assigned of Exhibits 1 through 5, Defendant's Exhibits 1 through 5.

MR. ROBERTS: And also that there is an objection to the question which is asked Mr. Hamilton, any reply thereto, and a continuing objection to any, to the same line of Vol. 2 ) testimony for the reasons already stated in the page 40) evidence.

THE COURT: It will be so considered by me, if it's agreeable with Mr. Miles.

MR. MILES: Yes, sir.

THE COURT: Without repeating it each time.

MR. ROBERTS: Your Honor overrules my objection and I except to the action of Your Honor.

THE COURT: All right.

(The reporter read from the record:

"Q (By Mr. Miles) Mr. Hamilton, when was the first official action taken by the Housing Authority with respect to this project?

"A Respect to the entire project?

"Q Respect to this extension, I believe it's referred to as VA. R-51.

"A If I could refer to my notes there on the table, Mr. Miles. I did not bring them with me.

"Q Can I refer to them, too?

"A They are on our stationery there. I think Mr.

Greiner knows where they are.")

Q (By Mr. Miles) What is your answer, Mr. Hamilton?

A On January 28th, 1966, the City Council authorized Vol. 2 ) the Housing Authority to file a survey and page 41) planning application covering this project, R-51. On February 22nd, 1966, the board of commissioners of the Housing Authority adopted the appropriate resolution authorizing the filing of the application to the Department of Housing and Urban Development.

Q Would you please just enumerate the various steps that the Housing Authority or the Housing and Urban Development Department of the United States of America took after that?

A As I said, we filed the application on February 22nd, 1966. The application was approved by the Department of Housing and Urban Development on April 23rd, 1967. After the April 23rd, '67 date, our consultants proceeded to gather all the necessary data for the filing of the complete project report. That was done, a public hearing was held jointly by the City Council and the Bristol Redevelopment Housing Authority on August 18th, 1969; final City Council approval was given to the project on May 7th, 1970; and the board of commissioners of the Housing

Authority had approved the project on May 5th, 1970. The final application was forwarded to the Department of Housing and Urban Development on May 8th, 1970. We received HUD approval on December 14th, 1970, at which time they approved our project expenditures budget.

Vol. 2 ) Now, we did not get the loan and grant contract page 42) until, I believe, it was June of '71, but we were officially recognized and able to spend money as of December 14th, 1970.

Q When was the first property in this area acquired?

A We acquired the Clark holdings on November 23rd, 1971.

Q And when did you make your first firm offer to the Farmbest?

A We received concurrence as far as acquisition price of Farmbest was concerned from the Department of Housing and Urban Development on February 22nd, 1972. It was after that date that we were able to go to them with an offer.

Q And were negotiations carried on between the Authority and Farmbest after that date up until, say, September 14th, 1972?

A Yes, sir.

Q And without success?

A Yes, sir.

Q Mr. Hamilton, I show you Exhibit, Defendant's Exhibit 1, which purports to be a release or an excerpt from the Bristol Herald Courier on Friday, February 4th Vol. 2 ) 1966, and I'll ask you to read the second page 43) paragraph, please, sir.

A "The two bodies have asked for funds in study redevelopment of an area adjoining the original Urban Renewal tract, but to include the Bristol Hotel, Trayer's Moore Street Restaurant, Seviars Laundry, WCYB Studios, Foremost Dairy and other existing buildings in an area roughly bordered by Beaver Creek and Cumberland Street."

Q And does the phrase Foremost Dairy that you have read, was that intended to refer to what is now Farmbest, Inc.?

A Yes, sir.

Q And to the property involved in this litigation?

A Yes, sir.

Q Was this, Mr. Hamilton, the first public announcement made by the Authority of this project?

A. I believe so, Mr. Miles. I could not say for certain.

Q. At least, this was a public announcement?

A Yes, sir.

Q And was this release prepared by your office?

A Now, that, I - -

Q It might have been edited, but some release

Vol. 2 ) was prepared by your office?  
page 44)

A Possibly so, yes.

Q It got into the paper?

A It was in the paper, yes.

Q Now, Mr. Hamilton, I refer to Defendant's Exhibit Number 2, being an excerpt from the minutes of the City Council meeting held on January 28th, 1966, and there is a resolution adopted entitled "RESOLUTION OF CITY COUNCIL OF BRISTOL, VIRGINIA, APPROVING UNDERTAKING OF SURVEYS AND PLANS FOR A REDEVELOPMENT PROJECT AND FILING OF AN APPLICATION." Now, that is correct, is it not?

A Yes, sir, that is correct.

Q And then I show you Defendant's Exhibit Number 3, being an excerpt from the minutes of the City Council meeting of Bristol, Virginia, held on September 18th, 1969, that, adopting a resolution which is entitled "RESOLUTION OF THE COUNCIL OF THE CITY OF BRISTOL, VIRGINIA APPROVING THE REDEVELOPMENT PLAN AND THE FEASIBILITY OF

RELOCATION FOR PROJECT NO. VA. R-51." Is that correct?

A Yes, sir.

Q Mr. Hamilton, I show you Defendant's Exhibit 4, being an excerpt from the minutes of a meeting of the City Council of Bristol, Virginia, held on February 9th, 1971, in which, among other things, it says, the "City Vol. 2 ) Manager Cooper read a change of Corporation page 45) Agreement for VA R-51 Project with Redevelopment and Housing Authority which lowers the City's required participation . . . ." and other things. Is that correct?

A Yes.

Q And, Mr. Hamilton, I show you Defendant's Exhibit Number 5, purporting to be minutes of a, excerpts of minutes of a meeting of the City Council of Bristol, Virginia, held on May 7th, 1970. A resolution is adopted in these minutes, and the title is "RESOLUTION RESCINDING RESOLUTION OF THE COUNCIL OF THE CITY OF BRISTOL, VIRGINIA APPROVING THE REDEVELOPMENT PLAN AND THE FEASIBILITY OF RELOCATION FOR PROJECT NO. VA. R-51 ADOPTED AS AMENDED ON SEPTEMBER 18th, 1969." Is that correct?

A Yes, Mr. Miles, I believe that that was necessary due to the deletion of the Sevier's parcel at the time that the public hearing was held, the new resolution had

to be prepared.

Q Mr. Hamilton, between approximately January 28th, 1966, until final approval, I believe, May 7th, 1970 - -

A Yes, sir.

Q What happened in between there?

A Well, there were many Federal interventions. I - - we were just caught in the red tape. There is always a Vol. 2 ) delay with a Federal agency.  
page 46)

MR. MILES: If Your Honor, please, I would like to state for the record, since my questions might be construed as a reflection on Mr. Hamilton or the local Housing Authority, that my questions are not designed to do that but to indicate that there was this long delay caused by somebody somewhere in Washington.

THE COURT: All right, sir.

MR. MILES: That's all, Mr. Hamilton.

THE COURT: Let me see those exhibits, please...

MR. MILES: Yes, sir.

REDIRECT EXAMINATION

BY MR. ROBERTS:

Q Mr. Hamilton, one more question. I believe that your negotiation finally fell through on September the 14th, 1972.

A. Yes.

Q And that this proceeding was instituted then on September the 20th, 1972.

A Yes, sir.

\* \* \* \* \*

Vol. 2 ) IRVIN R. KRILL, having been duly sworn, was  
page 97) examined and testified as follows:

DIRECT EXAMINATION

BY MR. MILES:

Q Please state your name, residence, occupation.

A My name is Irvin R. Krill. I live 333 Melrose Street, Bristol, Tennessee. And my position is that of vice president, district manager.

Q And you are over the age of 18?

A I'll soon be 65.

Q Mr. Krill, give us, please, sir, your educational background, training.

A I have a Bachelor of Science degree in dairy science from Ohio State University in 1964 - - '29.

Q By whom were you employed following your graduation from college?

A My first employment was with the Borden Company.

Q What do they manufacture or make?

A And they manufacture milk and dairy products.

Q And how long were you with that company?

A I was with them 13 years.

Q And when did you terminate your employment

Vol. 2) with Borden?  
page 98)

A In 1941.

Q And for what purpose?

A To come down to Bristol and from, and join with Southern Maid, Incorporated, as its production manager.

Q Were you a stockholder in that corporation?

A I was.

Q Did you become an officer?

A In '43, I became secretary-treasurer of the corporation.

Q How long, for whom have you been employed since you came to Bristol in 1942?

A Well, I was employed, first, by Southern Maid, Incorporated. Then by successor companies, namely, the Foremost Dairies, Inc., Hometown Foods, Incorporated, and Farmbest, Incorporated.

\* \* \* \* \*

Vol. 2 )  
Page 105)

IRVIN R. KRILL

Q Are you familiar with the machinery and equipment presently located on the premises that the Housing Authority is condemning in this proceeding?

A Yes, yes.

Q Was that machinery and equipment purchased and installed under your supervision and direction?

A All that has been added since '41, yes.

Q And that proportion of it has been added since 1941?

A Everything except there was one storage room that has not been changed, and there might have been one compressor there.

Q Are you familiar with the manner in which this machinery and equipment was installed and annexed to the real estate?

A Yes, I am

Q Are you familiar with whether or not it was used in that part of the building that's appropriate for

Vol. 2 ) such machinery?  
page 106)

A Yes.

Q Are you familiar with the intention with which the equipment was purchased and installed?

A Yes.

Q Will you state whether or not it was purchased for temporary or permanent use?

A It was purchased for permanent use so far as the life of the building, life of the equipment was concerned.

Q And you have inspected all of the equipment that's in the building as of today?

A Yes.

Q Recently?

A Yes.

Q And would you state whether or not all of that equipment was purchased for permanent use in place in that building?

A Yes.

Q And was it purchased for use in the operation of a dairy?

A Yes, because that's all we did was just production of dairy products.

Q And is that machinery and equipment fastened to or annexed to the building?

Vol. 2 ) A Most of it is fastened to or annexed, practically  
page 107)

all of it, or tied in with that equipment that is permanently attached.

\* \* \* \* \*

Vol. 2 ) Q When did you first learn that your company's  
page 108) property was in the area to be redeveloped?

A Well, we had, we saw some surveying being done in late '50 - - '65, late '65; however, we learned of it publicly on February the 4th.

Q And what - -

A In 1966

Q What action, if any, did you take because of that public announcement?

A Well, naturally, there was a lot of discussion as to what to do. We had a business that had been in operation successfully for a number of years. We had built up a strong organization of 150 people, and we had, we had to think about a lot of things. We had to take economics into consideration. We thought first of, of finding some property in and around Bristol, which we explored the property which

Vol. 2 ) the Reynolds Metal Company now has located it,  
page 109) we explored that. We explored some acreage in the Saul property off of the Gate City Highway. We explored

the property where the Hills Shopping Center is now. And then, of course, we had been offered properties out of town when this word got around to various people in our industry as to the purchase of their property, such as Knoxville.

Q Did your company acquire - -

MR. ROBERTS: Excuse me, Your Honor. I, if Your Honor thinks this is material, why, I object to this as being irrelevant and immaterial. If it be considered for the purpose that I objected to earlier, why, I suppose Your Honor would consider it as admissible, but I would like for it to be treated as a continuing objection to it. They are, I believe that the law is that they are not entitled to any expense for moving or for inconvenience.

MR. MILES: I might say that the questions are not asked for that purpose.

THE COURT: If they are not asked for that, what is the relevancy then?

MR. MILES: Actually, just to show the general atmosphere and background that existed at this time. Later on, we think it will be relevant from the standpoint of the delay.

Vol. 2 ) THE COURT: All right, sir, Go on.  
page 110)

MR. ROBERTS: We except, Your Honor.

THE COURT: Overrule the objection.

MR. ROBERTS: All right, You overrule the objection?

THE COURT: Yes.

MR. ROBERTS: I except.

MR. MILES: Except.

Q (By Mr. Miles) Well, what did you do? What else did you do?

MR. ROBERTS: Excuse me. In order, may we consider this a continuing objection and the same ruling?

THE COURT: I had understood that it was and excepted to as to this matter. The record shows in the record that it is a continuing objection to it.

MR. ROBERTS: All right. Thank you.

\* \* \* \* \*

Vol. 2 ) Q (By Mr. Miles) When did your company  
page 111)  
purchase the Pinemont facility?

A In August, '67.

Q And when did you begin to move your plant or whatever part you did move to the Pinemont facilities?

A We followed a gradual schedule of movement, starting in March of '68, and carrying on through till March '69, until we had the milk department completely shut down.

Q And what - -

A At the downtown plant.

Q And what facilities did you continue to operate on the property being condemned?

A Well, we, of course, operated the cold-storage rooms, of which three of them are still operating. We had our district office there until a few months ago. We still are using some of the space for dry storage. We had a cabinet shop that we just recently moved out on our new location. And that's about what it was.

Vol. 2 ) Q What's a cabinet shop?  
page 112)

A Refrigeration customer, cabinet refrigeration service.

Q If the Housing Authority had not included your property, would your company have continued to operate on the downtown area?

MR. ROBERTS: Your Honor, I think that also is irrelevant and immaterial.

THE COURT: I overrule.

MR. ROBERTS: Exception.

Q (By Mr. Miles) You may answer.

A I, that's a hard question to answer, of course, but being the operator of this particular plant and knowing

of the large investment there, and with the expansion program that we had been carrying on with addition of land and so forth, I would have to say that the ice cream plant would still be there. We would have never purchased French-Broad. As far as the milk operation is concerned, I don't know as to, that would be hard to answer. I rather think we would have been very reluctant, there again, to purchase another plant in the same town.

\* \* \* \* \*

Vol. 2 ) GEORGE D. SINCLAIR, having been duly sworn,  
page 207)  
was examined and testified as follows:

\* \* \* \* \*

DIRECT EXAMINATION

BY MR. MILES:

Q Mr. Sinclair, are you familiar with or have any knowledge or experience with moving of machinery and equipment?

A Yes, sir, I have had.

Q What experience have you had?

A All the work that we do for various condemning authorities, one of the requirements is that we estimate - -

MR. ROBERTS: Your Honor, we object to what he does for other condemning authorities.

Vol. 2 ) THE COURT: He may state what his experience  
page 208)  
is.

MR. ROBERTS: And, your Honor, I object to the question on the ground that that evidence is not material in this proceeding, that there is a, if moving expenses are to be included, that the rights of the parties are pre-empted by Section 25 - - what is it of the - -

MR. MILES: 235.

MR. ROBERTS: What?

MR. MILES: 235 of the Code.

MR. ROBERTS: 235 of the Code, and it's not a part of the proceeding.

THE COURT: Objection overruled.

MR. ROBERTS: May I consider it a continuing objection?

MR. MILES: Yes.

THE COURT: You gentlemen understand then that Mr. Roberts is objecting to all evidence having a bearing on, directly or indirectly, with the question of the moving of personal property here, cost and so forth. Does that cover it?

MR. ROBERTS: That's correct, Your Honor.

THE COURT: That's a continuing objection, and the objection is overruled.

Vol. 2 ) Mr. ROBERTS: That it's not proper in this  
page 209)  
proceeding.

Q (By Mr. Miles) Mr. Sinclair, answer the question.

A My experience is estimating moving costs, all the condemning authorities that we do work for, this is one of their mandatory requirements, and the condemnees that we work for require this as an estimate.

\* \* \* \* \*

THE WITNESS: For the past fifteen or twenty years, I have had to prepare estimates that require the cost of moving, relocation of items, machinery, equipment, which are comparable to the subject plant.

Q (By Mr. Miles) Are you familiar with the items of machinery and equipment which were removed from Farmbest property downtown out to another location?

A Yes, I am.

Vol. 2 ) Q Do you know, specifically, all of the  
page 210)  
items that were moved?

A Yes, sir, I do.

Q Do you have an opinion as to the, the reasonable cost of moving that equipment?

A Yes, I do.

Q What is that opinion?

A There were eighty items of equipment, and my estimate to move these items, excluding the five items that I talked about yesterday that were moved in addition - -

Q They were mentioned in the letter.

A In the letter to Mr. Roberts, was \$43,800.

Q All right, Would you mention the five items that you are, that you referred to?

A Yes, the five items that were in the letter that I made notations on that Mr. Roberts had was a lift that raised the product up, I estimated the moving cost of that at \$500; the cooling tower, which was taken from the roof and reinstalled at the plant, I estimated the total cost to move and reinstall that at \$3,500; the G. E. switch panel that was moved, I estimated the cost of moving that, disconnecting it and reconnecting it, at \$5,000; the liquid recirculator at \$1,500; and the three Watkins cooling units at \$500 each or \$1,500. That makes a total for those  
Vol. 2 ) five items of \$12,000, which would be in addition  
page 211)  
to the \$43,800. So, therefore, the adjusted total would  
be \$55,800.

Q That's all, thank you.

\* \* \* \* \*

CROSS-EXAMINATIONBy Mr. Roberts:

Q What labor costs are you using, local labor costs or are you using Pennsylvania labor costs?

A No, I am using local labor costs, but outside costs. I realize that Farmbest could do this themselves at about 20 or 25 percent cheaper or more reasonable than what my estimate would be, but I prepared it strictly upon outside contract labor costs, not giving it any consideration, any savings that Farmbest would do if they did it themselves. But I realize that does exist.

Q And if Farmbest heretofore submitted a statement of their actual costs which they incurred, which I assume would be reasonably correct, and we have had - -

A It would be about 20 percent less than what I testified to.

Q What would that figure be? Would - -

Vol. 2 ) A I believe that Farmbest could do it with  
page 212)  
their in-house labor for about \$32,000 to \$35,000 for  
what I testified to \$43,000 for.

Q I suppose you have seen Farmbest figures on what actually, what they contend it actually cost to move it,

haven't you?

A I know it's less than what, I don't know the exact figure offhand, but I know it's less than what I did, and this is logical and it's reasonable.

Q If it was \$32,411?

A Yes, sir, that's logical and reasonable, 20 percent.

Q That's logical and reasonable. So you, knowing that, you inflated your costs by 20 percent. Is that right?

A No, sir, I did not inflate my cost by 20 percent. My cost is based upon outside labor, which is the normal appraisal procedure. This is sound appraisal practice.

Q I believe that's all.

THE COURT: Do you gentlemen have any questions?

Vol. 2 ) MR. GOODPASTURE: May I ask?  
page 212A)

THE COURT: Yes, sir.

MR. GOODPASTURE: Is that labor cost in this \$317,000 figure?

THE WITNESS: No, sir.

MR. GEROMANOS: That's additional cost?

THE WITNESS: That's in addition to that.

MR. GOODPASTURE: That's in addition to that?

THE WITNESS: Yes, sir, that's in addition to it.

THE COURT: Any further questions?

MR. GOODPASTURE: Well, is the Housing Authority responsible for that moving cost?

THE COURT: Gentlemen, you'll be instructed on that subsequently at the conclusion of all the evidence.

MR. ROBERTS: I do, I have one omitted cost.

Q (By Mr. Roberts) Your estimate as to the cost to move these additional items, which you totaled, I believe, \$12,000 --

A Yes, sir.

Q Is that based on what it would cost Farmbest to move it or what, on outside costs?

A On outside. I would think that Farmbest could do it for 20 percent less than that.

Vol. 2 ) Q Uh huh. All right, thank you. That's  
page 213)  
all I have.

THE COURT: Any further questions?

MR. MILES: No questions.

THE COURT: Any further from you gentlemen?

Thank you, Mr. Sinclair.

\* \* \* \* \*

Vol. 2 )  
page 213)

IRVIN R. KRILL was recalled

and further testified as follows:

DIRECT EXAMINATION

BY MR. MILES:

\* \* \* \* \*

Q Did Farmbest move any personal property from its downtown plant as a result of this condemnation or threatened condemnation?

A Yes, we did.

Q What was moved?

A (No response)

Q Just in general terms.

A Equipment that we could use in, in our plant on the new location or in other plants.

Q And did you move that with outside labor or with  
Vol. 2 ) labor already employed by Farmbest?  
page 214)

A The only outside labor we used was the use of a crane in lowering the equipment from the second floor to the first floor and things of that nature.

Q You have a tabulation showing the cost of that moving. All this was personal property?

A Yes.

Q All right.

A Starting in 19, in March 1968, we started moving equipment, and we - -

MR. ROBERTS: Excuse me, Your Honor. We understand that my objections to this line of testimony continue, do we?

MR. MILES: Yes, sir.

THE COURT: I understood it was to be throughout.

MR. ROBERTS: All right, and my exception to Your Honor's ruling.

THE WITNESS: And we removed over a period of two years a number of items. We did it all with our own labor other than what we had to employ, so far as crane rentals and so forth. And, of course, our doing with our own labor was a conservative way of doing it, and it was  
Vol. 2 ) most satisfactory to everybody concerned.  
page 215)

Q What was the total cost of moving the personal property which Farmbest has actually moved?

A The way we have it, we have what was moved before the, not taking into consideration the last five items that is in the letter, we have \$32,411 total.

Q Now, have you had experience in moving machinery and equipment from one plant to another?

A Yes, we have. We have moved a lot, and a number.

Q What is your opinion as to the cost of moving the machinery and equipment yet to be moved or that you haven't incurred the expense at this time?

A Well, my estimate would be \$7,500 to move those five pieces of equipment. The considerable cost was lowering some of it from the second floor or from the roof to the ground and then transporting it.

Q Would that machinery and equipment be moved by Farmbest labor?

A Yes.

Q And in the same manner that you moved the other?

A That's right, sir.

Q Is there any other item of expense that you haven't mentioned?

Vol. 2 ) A Well, I did have another item of expense  
page 216) so far as inventory, and it's yet to be moved, and the movement of some office furniture and equipment and parts and so forth from the cabinet refrigeration shop.

Q And what is that figure?

A I have a figure of \$4,027.

Q Now, is the figure of the amount of moving costs that Farmbest is asking the commission to consider from your testimony rather than Mr. Sinclair's?

A. It would be satisfactory.

Q Yes.

MR. MILES: That's all, Your Honor.

CROSS EXAMINATION

BY MR. ROBERTS:

Q Mr. Krill, I believe that among the other items you are requesting reimbursement for moving is the removal of the smoke stacks, and that includes a charge of \$519, doesn't it?

A Well, of course, that was strictly a matter of management judgment of trying to keep from having further damage on surrounding buildings.

Q Well, my question is, you did not actually move them out to your other location.

A Oh, no, we did not move it.

Q And that was merely removing what you thought  
Vol. 2 ) was a hazard?  
page 217)

A That's right.

Q And that cost was \$519, wasn't it?

A Yes, sir.

Q And, incidentally, those stacks were removed in April of 1970, were they not?

A That's right, sir.

Q Thank you.

MR. MILES: No questions.

\* \* \* \* \*

Vol. 2 ) (Thereupon, the Court and counsel retired to  
page 223)  
chambers, and the following proceedings were had in  
chambers out of the presence of the commission).

MR. ROBERTS: Your Honor, when I announced in there  
that I was through, that was with the provision that we  
reserved the right to introduce into the record by Mr.  
Hamilton the HUD regulations.

THE COURT: All right, let's go ahead and get your,  
let's go ahead and do that.

MR. ROBERTS: Do you want to - -

MR. MILES: Before Mr. Hamilton starts, I'd like to  
state our objection into the record, since you have  
announced what you are going to offer, Mr. - -

MR. ROBERTS: I am going to offer certain regulations,  
HUD regulations, regarding the payment of moving expense.

MR. MILES: We would object to the introduction of  
these regulations upon the ground that Section 11 of the  
Constitution of Virginia and Code Section 25 and the  
sections following govern this case, and the rules and

regulations of the Housing Authority and Urban Development of the United States Government are not admissible and not relevant to this proceeding, that this proceeding is being tried in a Court in Virginia, and is governed by the law of Virginia.

Vol. 2 ) THE COURT: Well, of course, I don't even  
page 224)  
know what are in the regulations. But are these regulations going to the point that is in controversy here, that it's improper to instruct the commissioners on allowing them to consider the costs of relocating personal property the cause of which has arisen because of this project?

MR. ROBERTS: That's correct, Your Honor.

THE COURT: Well - -

MR. MILES: My objection was based upon that assumption, of course.

THE COURT: Well, then, I'll sustain your objection to it. Of course, they can be placed in the record and this is out, so the record will show it, this is out of the presence of the commissioners, it being the view of the Court that anything that is contrary to or in conflict with the just compensation laws of the Virginia Constitution and Code Section 25-239 and other applicable sections of that particular portion of the Code, could have no

bearing upon or change the basic law in Virginia. But, now, you may go ahead and put them in.

MR. ROBERTS: We understand now that this testimony will be treated as having been - -

THE COURT: Proffered to the commission.

MR. ROBERTS: Proffered to the commission, and Your Honor refused to permit us to examine Mr. Hamilton on Vol. 2 ) these questions.  
pg. 225)

THE COURT: That's right.

( Still in chambers)

O. L. HAMILTON, JR.,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROBERTS:

Q State your name and age, please.

A O. L. Hamilton, Jr.; 52.

Q And you are the same Mr. Hamilton who is the director of the Bristol Redevelopment and Housing Authority?

A Yes, sir.

Q That testified yesterday.

A Yes, sir.

Q Mr. Hamilton, there has a question come up in

this proceeding as to the allowance of moving costs of certain personal property owned by the condemnee, Farmbest.

A Yes, sir.

Q Are there regulations of the, HUD regulations promulgated by the proper United States authority governing the payment and allowance of relocation costs in urban redevelopment programs?

Vol. 2 ) A Yes, sir.  
page 226)

Q What are those regulations?

A They come under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

Q Do you have a copy of that act?

A Yes, sir.

Q Available?

A Yes, sir.

MR. ROBERTS: We tender, Your Honor, a copy of Chapter 6, designated "Relocation Payments" which we contend is material to the matter before the Court and governs the ruling of the Court on the admissibility of evidence as to the expense of moving personal property.

THE COURT: All right, let it be marked tendered for filing and make it a part of the record.

(PETITIONER'S EXHIBIT NUMBER 4 was marked for identification)

Q (By Mr. Roberts) Now, Mr. Hamilton - -

THE COURT: Which is not to be shown to the commissioners.

MR. ROBERTS: All right.

(By Mr. Roberts) Just state briefly the pertinent portion of the regulations regarding relocation expense

Vol. 2 ) and the cost of moving personal property.  
page 227)

A Chapter 6, Section I, Paragraph 3, "BASIC ELIGIBILITY REQUIREMENTS. For the purpose of establishing eligibility for any relocation payment, a displaced person is a family, individual, business concern, non-profit organization, or a farm operation which moves from real property within a HUD-assisted project or program area or moves his personal property from such real property:

"a. On or after one of the following dates:

"(1) The date of the pertinent contract for Federal financial assistance for a project.

"(2) The date of HUD approval of a budget for project execution activities resulting in displacements, provided that the contract for Federal financial assistance for the contemplated project is thereafter executed."

Q And based on that regulation, what is the

effective date so far as any relocation expenses in connection with Farmbest is concerned?

A The date of approval of the HUD budget was December 1st, 1970.

Q And interpretation of the act would preclude, if applicable to this proceeding, would preclude any moving expense prior to that September the, what was that?

Vol. 2 ) A December 1, 1970.  
page 228)

Q December 1, 1970?

A Yes, sir.

MR. ROBERTS: That's all the questions I have, Your Honor.

MR. MILES: As a further basis for our objection, Your Honor, we would like to cite the case of the City of Richmond vs. Old Dominion Iron and Coal Corporation, 212 Va. 611, this cited by the Supreme Court of Virginia on January the 17th, 1972, decided by the Supreme Court.

THE COURT: All right. Anything further you want in the record?

MR. ROBERTS: No, Your Honor.

MR. MILES: No, sir.

MR. ROBERTS: We understand Your Honor refused

us permission to introduce this evidence, and we except to the ruling of the Court.

THE COURT: Yes, sir, that's correct.

MR. ROBERTS: Thank you.

THE COURT: All right. Are you ready to take up the instructions?

MR. MILES: Yes, sir.

MR. ROBERTS: I believe, Your Honor, we have already tendered the instructions which we request - -

\* \* \* \* \*

Vol. 2 )  
page 233)

INSTRUCTION 5 (REFUSED)

"The Commissioners cannot consider any expenses or annoyances to the owner by reason of having to attend and defend these condemnation proceedings nor are they to consider any expenses incurred by the owner in moving its business, nor shall they take into consideration any loss of business or profits from the business conducted on the premises which the Housing Authority is taking."

MR. MILES: Your Honor, I failed to see on 4, we do object to B of 4 because the defendant will offer an instruction suggesting a different date under our

de facto-taking theory that's been discussed.

THE COURT: All right, sir, I am going to grant  
4. 5?

Vol. 2 ) MR. MILES: No objection.  
page 234)

THE COURT: Well, now, that has are they to  
consider any expense incurred by the owner in moving its  
business?

MR. MILES: No, we object to Number 5.

THE COURT: Well, I'll sustain your objection as  
it's written.

MR. MILES: I had a no on here.

THE COURT: All right. I'll refuse 5 as written.

MR. ROBERTS: We except to the action of the  
Court in refusing Instruction 5. We believe that it  
properly states the applicable law. It's taken from one  
of the, it's one of the model instructions which, as I  
recall it, were promulgated by the Supreme Court.

MR. MILES: The instructions were promulgated  
prior to the decision of Old Dominion Iron.

MR. ROBERTS: Well, certainly, they are not  
entitled to any expense for moving their business. They  
may be entitled, under Your Honor's ruling, they are  
entitled to expense for moving certain items of personal

property.

THE COURT: Yes, sir.

MR. ROBERTS: And not its business.

Vol. 2 ) THE COURT: As far as I am concerned, and for  
page 235)  
the purpose of the record, the portion which the Court  
finds objectionable is, says "nor are they to consider  
any expenses incurred by the owner in moving its business."  
Now, if you want to reoffer Instruction 5 in another form  
with that deleted, because I think it would be confusing  
to the jury to give it in its form that it is here, then  
I would consider it, if you see fit to do so. The other  
portions of the instruction are correct. It's a correct  
statement of the law.

MR. ROBERTS: Read me my exception, please.

(The reporter read from the record:

"Mr. Roberts: We except to the action of the  
Court in refusing Instruction 5. We believe that it  
properly states the applicable law. It's taken from one  
of the, it's one of the model instructions which, as I  
recall it, was promulgated by the Supreme Court.

"Mr. Miles: The instructions were promulgated  
prior to the decision of Old Dominion Iron.

"Mr. Roberts: Well, certainly, they are not

entitled to any expense for moving their business. They may be entitled, under Your Honor's ruling, they are entitled to expense for moving certain items of personal property.

"THE COURT: Yes, sir.

Vol. 2 ) "MR. ROBERTS: And not its business.")  
page 236)

MR. ROBERTS: In view of Your Honor's ruling, and without waiving our exception, we reoffer, we offer Instruction 5A.

\* \* \* \* \*

Vol. 2 ) (Instruction Number F-1 was tendered.)  
page 258)

INSTRUCTION F-1 (GRANTED)

"The Court instructs the Commissioners that in addition to just compensation for the property taken, if you believe from a preponderance of the evidence that

Vol. 2 ) Farmbest has incurred expenses or will incur  
page 259)  
expenses in relocating personal property from the real property taken by reason of the condemnation, you may allow such amount as you find reasonable."

THE COURT: All right. Now, you offer Instruction F-1.

MR. MILES: We offer Instruction F-1, without

waiving our objection to the refusal of the Court to grant Instruction F.

THE COURT: All right.

MR. ROBERTS: Petitioner objects to Instruction F-1 on the ground that it's improper to permit a recovery for the removal, for the expense of removing and relocating personal property in this proceeding. It's petitioner's position that such rights, if any, as the defendant may have to recover for these expenses is pre-empted by the provisions of Section 25-235 of the Virginia Code, which said section provides a specific remedy for the expense of removing property.

Second, under the rules and regulations of HUD, and, that is, Housing and Urban Redevelopment as promulgated by the United States Government, any expense for removal of the property, removing personal property in relocating it prior to December the, December of 1970 is not recoverable. That appears in the evidence of Mr.

Vol. 2 ) Hamilton taken in the absence of the commission-  
page 260)  
ers and in the exhibit filed therewith.

And a third ground is that the machinery and equipment which was moved and which, and for which recovery is sought and for which expense of moving

recovery is sought, is the same type of machinery and equipment, a great deal of which remains in the building and which the defendant takes the position is real property, and as real property there could be no recovery for the expense of removing it under the, any of the authorities cited by the plaintiff. If it be, if the portion of the machinery and equipment moved be personal property, then what remains there is personal property and there could be no recovery for the expense of moving real property.

MR. MILES: Well, of course, we think that Instruction B determines what is real property and what is personal property, and without repeating it again, I would like to be able to rely upon what I said when we offered Instruction F in support of Instruction F-1.

THE COURT: All right, Instruction F-1 will be granted.

MR. ROBERTS: We except on the ground previously stated, that is, that the right of action is pre-empted by Section 25-235 of the Code, by the HUD regulations Vol. 2 ) by the fact that this, that the defendant is page 261) seeking to recover the expense of moving real property.

(Thereupon, the Court and counsel returned to the courtroom, and the following proceedings were had in open Court before the commission.)

\* \* \* \* \*

Vol. 2 )  
page 262 )

SECOND DAY

AFTERNOON SESSION

(Thereupon, the Court and counsel met again in chambers, at 1:15 o'clock, P. M., out of the presence of the commission.)

MR. MILES: \* \* \* \* \*

The defendant, by counsel, objects to the last paragraph of the proposed report of the commissioners which reads, "We further considered evidence as to the reasonable cost of removing or relocating items of personal property from the property taken and upon consideration thereof the commissioners do award the sum of \$ \_\_\_\_\_ as just compensation therefor," upon the ground that whatever amount the commissioners may find that the defendant is entitled to for moving or relocating costs should be included in their determination of the fair market value or just compensation for said property. And in order to include relocating or moving costs as a part of just compensation, there should be added after the words land

and improvements relocating or moving items of personal property. We think it ought to be put in but not separated Vol. 2 ) as a part of just compensation is the basis page 263) of our objection, and not a separate item called damages.

MR. ROBERTS: While I object to the inclusion of anything regarding permitting compensation for the removal of the property, if it's to be included, why, it certainly is a separate element. It's as if the, they may have owned some remaining property and there is damage to the remainder, it certainly is entirely separate and distinct from the main thrust of this proceeding.

MR. MILES: I think there may be a tendency on the part of the commissioners to deduct a moving or relocating cost from what they would otherwise find as just compensation.

(Thereupon, the Court and counsel returned to the Courtroom, at 1:30 o'clock, P. M., and the following proceedings were had in openCourt before the commissioners, all parties present as heretofore.)

\* \* \* \* \*

THE COURT: Gentlemen, give attention, please

Vol. 2 ) to the reading of these instructions.  
page 264)

(Thereupon, the Court read Instructions 1, 2, 3A, 3B, 3C, 4, 5A, 6, 7, 8 B, E, and F-1.)

THE COURT: All right, gentlemen, if you will proceed with your argument.

(Thereupon, counsel for both sides presented final argument to the commissioners.)

THE COURT: Gentlemen, there has been prepared the usual form of a report by the commissioners, and in that form and on the last page provision is made by a blank space for your determination as to suchever amount as you believe the defendant is entitled to for the taking of the property in the first blank space. Then there is a blank space in the next-to-last paragraph providing for such amount as you consider is just award, if any, for the moving, removing or locating of items. So there are two blank spaces to be disposed of by you at the end of your deliberation.

You'll take these instructions with you and the exhibits as have been filed. Knock on the door when you arrive at your awards or award, as the case may be.

(Thereupon, the commission retired from the courtroom at 2:08 o'clock, P. M., to deliberate, and returned at 3:05 o'clock, P. M.)

Vol. 2 ) DEPUTY CLERK: The report of the commission in  
page 265)  
proceeding of Bristol Redevelopment and Housing Authority  
vs. Farmbest, Incorporated, portion thereof reads as  
follows: "WHEREUPON, after due consideration of said  
viewing, of the evidence presented in open court, and the  
instruction given by the Court, we are of the opinion and  
do ascertain that for the fee simple title to said land  
and improvements thereon, of the freehold whereof the  
above-named defendant is the owner, the sum of \$492,800.00  
will be just compensation for said property; it being shown  
that the whole property owned by defendant; that is, Tract  
1 (bounded on the east by Lee Street; on the north by  
Sycamore Street; on the west by Moore Street; on the south  
by an alley) and Tract 2 (lying on the north side of  
Sycamore Street, between Moore and Lee Streets) in Bristol,  
Virginia, is being taken, and it owns no adjoining property.

"We further considered evidence as to the  
reasonable cost of removing or relocating items of personal  
property from the property taken and upon consideration  
thereof the commissioners do award the sum of \$43,419.00 as  
just compensation therefor."

THE COURT: Is that your award, gentlemen, so  
say you all?

COMMISSIONERS: It is.