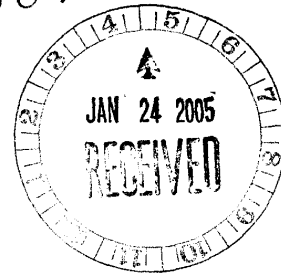


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January 24, 2005

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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**RE: Groome & Associates, Inc. and Lee K. Groome, Complainants v. Greenville
County Economic Development Corporation, Defendant
STB Docket No. 42087**

Dear Secretary Williams:

Enclosed please find an original and eleven copies of Greenville County Economic Development Corporation's Reply To Complainants' Opening Statement filed December 22, 2004. Please note that Attachments 2 and 3 to the Verified Statement of Joseph J. Plaistow are submitted in electronic format only.

Please acknowledge receipt of this filing by date stamping the eleventh copy of the filing and returning it to the individual making this filing to return to me. A copy of this filing is being served today on counsel for Complainants, the only other parties of record to this matter, by hand delivery.

Sincerely yours,

William A. Mullins

Enclosures

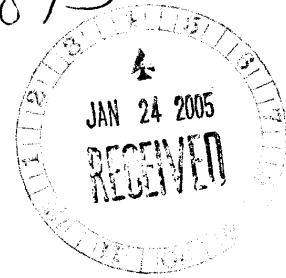
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 42087



GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION'S
REPLY TO COMPLAINANTS' OPENING STATEMENT

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TABLE OF CONTENTS

SUMMARY OF ARGUMENT	3
BACKGROUND	5
ARGUMENT	9
I. AS A MATTER OF LAW, THE COMPLAINT SHOULD BE DISMISSED	9
A. The Complaint Should Be Dismissed as Barred By the Statute of Limitations	9
B. The Complaint Should Be Dismissed Because The Commodities Were Exempt Commodities And As Such GCEDC Did Not Have A Common Carrier Obligation With Respect To Those Commodities	11
II. EVEN IF VIEWED ON ITS MERITS, GROOME'S COMPLAINT MUST FAIL BECAUSE GCEDC WAS NOT OBLIGATED TO PROVIDE COMMON CARRIER SERVICE TO GROOME	14
A. GCEDC Had No Service Obligation Because It Was Only Authorized to Acquire, Not to Operate, The Line	14
B. Even If GCEDC Had a Common Carrier Obligation, That Obligation Was Not Triggered Because Groome Never Made a Reasonable Service Request	17
C. Even If Groome's General Desire for Service Was Enough To Trigger A Common Carrier Obligation, GCEDC Was Excused From Fulfilling That Obligation Because It Had A Valid Embargo In Place On The Line	21
1. GCEDC Had Placed An Embargo On The Line And Publication Of The Embargo Notice With The AAR Was Not Necessary To Effectuate The Embargo	21
2. Because GCEDC Had In Place A Valid Embargo, GCEDC's Obligation, If Any, To Provide Common Carrier Service Over The Line Was Excused	23
a. <i>Condition Of The Track And Cost Of Repairs</i>	24
b. <i>Carrier's Intent</i>	32
c. <i>Volume And Type Of Traffic On The Line</i>	37
d. <i>Carrier's Financial Condition</i>	38
e. <i>Duration of the Embargo</i>	39
D. Serving G&A at a Loss Would Have Been Antithetical to Any Common Carrier Obligation GCEDC May Have Had	41
III. THE DAMAGES SOUGHT BY COMPLAINANTS HAVE NOT BEEN SHOWN TO BE ATTRIBUTABLE TO A LACK OF RAIL SERVICE	42
A. The Damages Alleged By Complainants Were Not Caused By The Lack Of Rail Service But Were Attributable To Groome's Own Business Practices And The Changes In The Paper Industry During The Relevant Time Period	42
B. Groome Also Failed To Mitigate His Transportation Problems And Thus His Transportation Problems Were Largely Self-Inflicted	47
C. Several Types of Damages Sought, Including Mr. Groome's Alleged Personal Damages, May Not Be Awarded Because They Are Beyond the Board's Statutory Authority	50
D. Any Damages Awarded Should Be Limited to Those Which Allegedly Accrued After October 12, 2002	52
CONCLUSION	52

TABLE OF CONTENTS

EXHIBITS

Groome Complaint	1
Groome response to GCEDC discovery request 7	2
Verified Statement of William G. Stewart	3
Federal Register Notice of GCEDC Acquisition Exemption	4
STB Notice of GCEDC Acquisition Exemption	5
Verified Statement of Andrew J. White, Jr.....	6
Groome Response to GCEDC Request for Admission No. 5	7
Groome Response to GCEDC Request for Admission No. 11	8
Verified Statement of David Pettry	9
Verified Statement of David B. Hoff, P.E.	10
Verified Statement of Joseph J. Plaistow	11
April 1999 Estimate of Bridge Repair Cost.....	12
Excerpt from Deposition of Dozier Brooks	13
Excerpt from Deposition of Gerald Seals.....	14

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

**GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION'S
REPLY TO COMPLAINANTS' OPENING STATEMENT**

Greenville County Economic Development Corporation ("GCEDC"), defendant in this matter and a county-created, non-profit economic development corporation, hereby replies to the Opening Statement submitted by complainants Groome & Associates, Inc. ("G&A") and Lee K. Groome ("Mr. Groome") (collectively, "Complainants" or "Groome").

SUMMARY OF ARGUMENT

In this case, Mr. Groome seeks to recover from GCEDC compensation and punitive damages for harm allegedly suffered by his business and himself personally because GCEDC allegedly failed to meet its common carrier obligation under 49 U.S.C. § 11101 to provide Groome with rail service upon reasonable request. In fact, however, no violation of a common carrier obligation occurred, and no damages are due.

As an initial matter, GCEDC renews its arguments set forth in its Motion to Dismiss filed on September 29, 2004. As set forth in that Motion, even if GCEDC violated its common carrier obligation to Groome, which it did not, relief should be denied because the complaint was filed beyond the two year statute of limitations contained at 49 U.S.C. § 11705. Likewise, the complaint involves a commodity which is exempt from regulation. Therefore, absent a

revocation of the exemption, which has not been done in this proceeding, GCEDC cannot be liable for a violation of Section 11101.

If the Surface Transportation Board ("STB" or "Board") refuses to dismiss the complaint on these grounds and examines the merits of Groome's complaint, the facts of this proceeding clearly establish that GCEDC did not violate a common carrier obligation for several reasons.

First, GCEDC never had a common carrier obligation over the Line in the first instance. When GCEDC acquired the former Greenville & Northern Railway line in June 1999, the line had already been out of service for 16 months.¹ At that time, GCEDC specifically informed the Board that it only sought authority to acquire, not to operate, the line. Moreover, GCEDC never held itself out as a for-hire carrier offering to provide common carrier rail service over the line. Absent operating authority or the intention to hold itself out as a for-hire rail carrier, GCEDC never acquired a common carrier obligation over the line.

Second, even if GCEDC had acquired a common carrier obligation over the line, G&A and other shippers never made a specific request for service that would have triggered that obligation, which the law requires a shipper to do. And even if the obligation was triggered, GCEDC still did not have to provide service because it had in place a valid embargo. GCEDC's inability to finance the repairs, the inability to find an operator who would operate the line without those repairs, and the fact that the rates GCEDC would have had to charge to recover both its variable and sunk costs would have been substantially higher than the previous rail rates

¹ The line, extending 11.8 miles from downtown Greenville, SC, to Travelers Rest, SC, was operated until early 1997 by Pinsly Railroad Company's Greenville & Northern Railway Company. The line was sold to RailTex's South Carolina Central Railroad, Carolina Piedmont Division, in late April or early May 1997, see *South Carolina Central Railroad Inc., Carolina Piedmont Division--Acquisition Exemption--Greenville & Northern Railway*, STB Finance Docket No. 33391 (served May 1, 1997), and embargoed on December 4, 1997.

and the trucking rates actually paid by Groome are more than sufficient reasons under Board precedent to find that GCEDC's embargo of the line was reasonable and valid.

Finally, even if the Board finds that GCEDC violated its common carrier obligation, that violation was not the cause of the damages allegedly suffered by Complainants. Rather, Complainants' damages were the result of the nature of G&A's business and G&A's failure to adopt reasonable business strategies to continue its business. As a result, even if GCEDC violated its common carrier obligation, such a violation was not the cause of Complainants' financial failure and GCEDC owes Mr. Groome neither the compensatory damages that he allegedly suffered nor the punitive damages that he seeks. Indeed, punitive damages themselves are beyond the Board's statutory authority.

BACKGROUND

In Spring of 1999, the Greenville to Traveler's Rest rail line in Greenville County, SC (the "Line"), had been embargoed and out of service for more than a year due to deteriorated track and bridge conditions. Shippers had discussed acquiring the Line but, having concluded that they could acquire it for a negligible amount if they pursued an offer of financial assistance ("OFA") before the Board, they rejected an offer by the owning carrier – South Carolina Central Railroad, Inc. ("SCCR") – to sell the Line for \$750,000. Having no offers from the shippers or others to purchase the Line, SCCR filed an abandonment exemption notice covering the two miles of the Line nearest downtown Greenville. The abandonment exemption did not include that portion of the line north of downtown Greenville and running to Traveler's Rest, *i.e.* the northern segment of the Line where Groome was located. The exemption notice took effect and no one submitted an OFA to purchase that portion of the Line. *See generally South Carolina*

*Central Railroad Company, Inc., D/B/A Carolina Piedmont Division--Abandonment Exemption--
In Greenville County, SC, STB Docket No. AB-312 (Sub-No. 2X) (served May 20, 1998).*

Fearing dismemberment of both segments of the entire Line and the potential loss of the rail right of way due to reversionary interests, and believing that preservation of the entire Line was in the public interest, Greenville County negotiated with SCCR to buy the Line, plus a nearby 3.29-mile piece of track at total cost for all segments of \$1.3 million. Greenville County created GCEDC to acquire and own the Line. Before SCCR consummated its abandonment of the two-mile downtown segment, GCEDC obtained an exemption from the Board to acquire all of the lines, with SCCR retaining an easement to operate over the 3.29-mile segment. *Greenville County Economic Development Corporation--Acquisition Exemption--South Carolina Central Railroad Company, Inc., Carolina Piedmont Division, STB Finance Docket No. 33752 (served June 3, 1999).* GCEDC did not seek authority to operate over the lines, but merely to acquire them. SCCR declined to continue to operate the downtown segment or the Greenville to Traveler's Rest segment because of the need for substantial bridge and track repairs that the shippers on the line steadfastly refused to fund. As a result, GCEDC continued the previously existing embargo over the Line, although because it was not a rail carrier holding itself out to provide common carrier service, it admittedly did not file notice of the continued embargo with the Association of American Railroads, nor was it required to do so.

While the embargo remained in place, GCEDC continued to search for an operator for the northern segment, which was the only part of the Line that had any active businesses, although no active rail shippers at that time. Discussions were held with several potential operators, including one who is a witness for the Complainants in this case. All of the potential operators, however, required that GCEDC first fund the substantial cost of repairing the track

and the bridges. Unable to secure funding from the County Council or from other sources that were explored, GCEDC was unable to fund the needed repairs.

During this entire time period, Groome and GCEDC were in constant communication and were at times working together to find a rail operator. Although Groome claimed he required rail service, at no time did Groome ever request cars, rates or service for any particular shipment from GCEDC. Groome knew full well that GCEDC did not have the funds to rehabilitate and repair the Line, did not have an operator over the Line, and was incapable of providing rail service.

Notwithstanding GCEDC's good faith efforts to acquire an operator and funding for the Line and the existence of a de facto embargo over the Line, Groome filed a letter, which it styled a "complaint," with the Board in May 2001, more than three years after service on the Line ceased. Groome did not submit the requisite filing fee for a "formal complaint" nor did it follow any of the procedures at 49 C.F.R. Part 1111 for instituting a formal complaint proceeding. As a result, the Board never docketed Groome's filing as a formal complaint and no proceeding was established.

Groome then began a series of proceedings in state court in South Carolina alleging that GCEDC was obligated to provide rail service to it and that GCEDC was liable to pay damages to it as a consequence of the failure to provide rail service. GCEDC denied that Groome was entitled to rail service (due to the physical deterioration of the Line, the cost of restoring the Line, the existence of an embargo) and also denied that Groome was damaged as a consequence of any lack of rail service. GCEDC also maintained that the STB had exclusive jurisdiction of the claims raised in the state court proceedings and that the Court of Common Pleas for Greenville County had no subject matter jurisdiction to hear the suit. During the course of the

lawsuit, Groome denied that the STB had exclusive jurisdiction of its claims. The Board even began a declaratory order proceeding in order to resolve this jurisdictional issue.² *See Greenville County Economic Development Corporation—Petition For Declaratory Order*, STB Finance Docket No. 34487 (served March 22, 2004).

A non-jury trial of the suit took place in March, 2004, before the Hon. John C. Few. Both Lee Groome and his accountant, John Thombley, testified as witnesses. After hearing testimony over a period of approximately 3 days, Judge Few found in favor of GCEDC and awarded no damages to Groome. Judge Few also found that Groome's complaint was barred by the statute of limitations.

Having lost in state court, Groome decided it would try and resurrect its 2001 STB "complaint" and requested the Board to docket its original complaint. However, not until August 23, 2004, more than six and one-half years after the last car moved on the Line and after a South Carolina state court denied Complainants' suit for damages against GCEDC, did Complainants attempt to cure the deficiency of their "complaint" by seeking a filing fee waiver. The Board waived the filing fee and instituted this proceeding on October 12, 2004. That action mooted the declaratory order proceeding.

² After years of trying unsuccessfully to secure funds to repair and rehabilitate the Line and having failed to find an operator, and being told that it needed to go to the STB to terminate its alleged common carrier obligation, GCEDC attempted in 2003 to obtain discontinuance authority from the Board through a 2-year out-of-service exemption. Groome, however, opposed the exemption. The Board declined to allow GCEDC to use the notice of exemption procedures on the Line. *Greenville County Economic Development Corporation—Discontinuance Of Service Exemption—In Greenville County, SC*, STB Docket No. AB-490X (served Jan. 29, 2004).

ARGUMENT

I. AS A MATTER OF LAW, THE COMPLAINT SHOULD BE DISMISSED

A. The Complaint Should Be Dismissed as Barred By the Statute of Limitations

GCEDC hereby reiterates and incorporates by reference its Motion To Dismiss filed with the Board on September 29, 2004. As shown therein, Groome's complaint is barred by the statute of limitations. The statute of limitations applicable to the complaint in this case is two years from the date the claim accrued. 49 U.S.C. §11705(c). Although service on the Line ceased February 8, 1998, Mr. Groome did not submit his letter to the Board until May 23, 2001. Although Complainants labeled that May 2001 filing as a "Formal Complaint," stating that they "hereby formally file Complaint" with the Board, Complaint (Exhibit 1 hereto), ¶5, Groome did not include the requisite filing fee and did not comply with the requirements of 49 C.F.R. §1111 regarding the content, form, and service requirements of the complaint. As a result, the Board properly did not docket the complaint at that time and did not begin a proceeding.

For more than three years after filing its "Formal Complaint," Groome deliberately chose not to pursue its May 2001 submission. It did not file a request for a waiver of the filing fee requirement. It did not ask the Board to proceed with the complaint. It did not serve the STB complaint on GCEDC nor file discovery under the STB procedures and rules. Instead, as previously stated, Groome pursued numerous actions in state court. In fact, throughout that time period, Groome took the position that the STB did not even have jurisdiction over the complaint, instead insisting that the state statutory procedures governed the proceeding.

Having failed in the state court proceeding, Groome decided to go back to the STB. Instead of filing a new complaint, which it should have been required to do, Groome chose to resurrect its May 2001 "Formal Complaint." Knowing that the filing fee had not been paid,

Groome filed a request to have the filing fee waived and to begin a formal complaint proceeding based upon the May 2001 filing. Over GCEDC's objections, the Board began a formal complaint proceeding.

It is unclear in the Board's decision beginning the formal complaint proceeding what the two year time period is for determining GCEDC's exposure to its alleged liability. GCEDC asserts that the appropriate time period for measuring damages is from the date the Board granted the filing fee waiver, *i.e.* two years prior to October 12, 2004. Service on the Line stopped in February 1998. If there is any date from which to determine when the "claim accrues," that is the date. Accordingly, any complaint should have been filed by February 2000. The Board did not begin a proceeding until October 12, 2004. As this is more than two years from the date the claim accrued, the Board should dismiss the complaint as barred by the two year statute of limitations. Furthermore, if the February 1998 date is the date upon which the claim arose, then Groome had until February 2000 to file the complaint. At best, the complaint could not be considered filed until May 2001. This is again beyond the two year statute of limitations and the complaint should be dismissed.

Finally, even if the Board makes the complaint retroactive to the two year period prior to May 2001, which it would be inconsistent with the statute to do, Groome would still only be able to recover damages for the two year time period prior to May 2001, or no further back than May 1999. Groome's complaint, on the other hand, seeks damages since the day service stopped, which was 1998, until Groome ceased operating on July 31, 2003. Groome has not shown what, if any, portion of the alleged damages accrued within the May 1999 to May 2001 period or attempted to establish GCEDC's liability during that two year period. The same deficiency arises if the complaint is considered as covering the two-year time period prior to the Board's

October 12, 2004 order beginning the proceeding. Groome has made no effort to prove or establish damages or liability from October 12, 2002 until October 12, 2004. As a result, regardless of whether the Board treats the complaint as being filed in 2001 or 2004, Groome has failed to present even a prima facie case. As a result, its complaint should be dismissed. *See CSX Transportation, Inc. – Abandonment Exemption – In Summit County, OH; Terminal Warehouse, Inc. v. CSX Transportation, Inc.*, STB Docket No. 42086 (STB served May 12, 2004) (“*CSX-Summit*”), slip op. at 6-7 (dismissing complaint for failure to present prima facie case).

B. The Complaint Should Be Dismissed Because The Commodities Were Exempt Commodities And As Such GCEDC Did Not Have A Common Carrier Obligation With Respect To Those Commodities

Complainants seek damages from GCEDC for GCEDC’s alleged illegal failure to move shipments of paper and scrap paper. With only limited exceptions, rail shipments of paper products and scrap paper are exempt from Board regulation. This exemption is a complete exemption from compliance with all regulation, including applicability of Section 11101. *See Pejepscot Industrial Park, Inc., d/b/a Grimm Industries-Petition for Declaratory Order*, STB Finance Docket No. 33989 (served May 15, 2003) (“*Grimmel*”), slip op. at 5-6. Absent a revocation of that exemption, GCEDC cannot be found to have violated its common carrier obligation, assuming such an obligation existed in the first place. *Id.* Complainants fail to establish that their shipments were not exempt or that the applicable exemption should be revoked to allow the complaint to proceed. Accordingly, the Board should find that the complaint must be denied because the traffic at issue is exempt from regulation.

The complaint involves shipments of paper and scrap paper. In fact, Complainants admit that their operations generated occasional rail shipments of scrap paper, and that the five-digit

Standard Transportation Commodity Code ("STCC") applicable to such shipments was 40241. See Complainants' response to GCEDC Discovery Request No. 7 (Exhibit 2 hereto). Shipments of "paper waste or scrap," STCC 40241, are exempt from Board regulation. See 49 C.F.R. §1039.11(a). In fact, transportation of all "pulp, paper, or allied products" is exempt except for the following limited categories of paper products:

- Pulp or pulp mill products (STCC 26 1)
- Newsprint (STCC 26 211)
- Ground wood paper, uncoated (26 212)
- Printing paper, coated or uncoated, etc. (26 213)
- Wrapping paper, wrappers or coarse paper (26 214)
- Sanitary tissue stock (26 218)
- Sanitary tissues or health products (26 471)
- Building paper or building board (26 6) except Wallboard (26 613)

None of the freight bills or bills of lading produced by Complainants to GCEDC identified any of the shipments involved as being within these narrow non-exempt categories. While Complainants assert, on Mr. Groome's belief (V.S. Groome, ¶16), that their inbound shipments fell within the narrow categories of paper products whose rail transportation was not exempt from Board regulation, Complainants failed to substantiate Mr. Groome's belief. They produced no bills of lading or any evidence whatsoever indicating that the inbound commodities received or outbound products shipped by Groome were non-exempt commodities.

In contrast, the bills of lading that Groome did produce in discovery, show that the inbound products received by Groome and the outbound products produced were exempt commodities. This was confirmed by GCEDC's expert. GCEDC had Mr. William G. Stewart, who has over 38 years of experiences in the paper industry, review those bills of lading and all of the related documents and statements in the record. As set forth in his attached verified statement, Exhibit 3 ("V.S. Stewart"), the evidence of record indicates that the products shipped and received by Groome were described as simply SBS (*i.e.*, solid bleached sulfate) or SBS

paperboard, as polyboard or pulpboard, or as bales of waste. Based upon his experience and a review of the CSX Transportation exempt circulars (CSX was one of the major carriers that connected to the Line and was a necessary component in the line haul move) and the tariff pages available to him, Mr. Stewart's expert opinion is that the five-digit STCC codes applicable to most or all of the materials received or shipped by Groome were 26 311 or 40 241. *See* V.S. Stewart at 9. None of the commodities fall within the above-listed exceptions to the Board's exemption from regulation of transportation of paper products. All fall within the exempt category.

Because the commodities involved in the complaint were exempt, Complainants must now establish that revocation of these exemptions is justified. Otherwise,

[E]ven if a carrier's conduct would constitute a statutory violation during a period of regulation, the exemption bars regulatory relief during the period when the exemption is in force. See Consolidated Rail Corp. – Declaratory Order – Exemption, 1 I.C.C.2d 895 (1986) (Conrail Declaratory Order), aff'd sub nom. G&T Terminal Packaging Co., Inc. v. Consolidated Rail Corp., 830 F.2d 1230, 1235 (3d Cir. 1987)."

Grimmel, slip op. at 6. Complainants simply have not shown or attempted to show that revocation of the exemption is justified, nor is revocation justified.

Revocation of an exemption requires a showing that revocation is required to serve the National Rail Transportation Policy. "The Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title." 49 U.S.C. §10502(d). Complainants have not addressed the revocation issue. GCEDC, however, believes that revocation of the applicable exemptions would not serve the National Rail Transportation Policy. Specifically, revoking the exemption to allow the complaint to proceed will -

- chill efforts by local governments to preserve rail lines by forcing them to steer away from seeking to preserve lines that are not in immediately operable condition;
- encourage, rather than discourage, government regulatory intervention by allowing complainants such as Groome to engage in forum shopping through filing placeholder complaints with the Board, then bringing cases in state court and, upon losing in state court, to activate their placeholder complaints at the STB;
- encourage regulatory intervention by allowing complainants to file placeholder complaints and let them lie dormant as alleged harms increase, then seeking compensation for the self-inflicted wounds; and
- discourage railroads from obtaining adequate revenues by creating the appearance that shippers are entitled to government-subsidized rail service on lines owned by local governments.

Fundamentally, Groome's complaint is an assertion that GCEDC could not preserve the Line without agreeing to serve his business, regardless of the cost of doing so. This sort of squatter's rights theory of entitlement should not be rewarded by the Board lifting any of the applicable exemptions.

II. EVEN IF VIEWED ON ITS MERITS, GROOME'S COMPLAINT MUST FAIL BECAUSE GCEDC WAS NOT OBLIGATED TO PROVIDE COMMON CARRIER SERVICE TO GROOME

A. GCEDC Had No Service Obligation Because It Was Only Authorized to Acquire, Not to Operate, The Line

GCEDC never proposed to, nor was it authorized to, operate the Line. Accordingly, it held no common carrier obligation with respect to the Line. As GCEDC stated in its exemption notice:

The Greenville County Economic Development Corporation ("Greenville County"), a non-carrier, files this Notice of Exemption . . . to permit Greenville County to acquire two sections of rail line . . .

* * * *

Greenville County is currently seeking an operator for the 11.8-mile section of rail line located between Milepost 0.0, in Greenville, and milepost 11.8, in Traveler's Rest, South Carolina ("Northern Line"). As soon as Greenville County reaches an agreement with the operator of the Northern Line, the operator will file a notice of exemption to operate the Northern Line.

See GCEDC Exemption Petition, STB Finance Docket No. 33752, filed May 21, 1999 (Exhibit E to Complainants' Opening Evidence) at 2.³ The public notices of GCEDC's exemption petition issued by the Board in the Federal Register⁴ and by notice served by the Board on June 3, 1999 (Exhibit 5 hereto), reflected the notion that GCEDC merely was applying for authority to acquire, but not operate, the Line. Both noted that GCEDC would seek an operator for the northern segment of the line and that operator would apply for its own operating authority.

Because it did not acquire operating authority, GCEDC did not acquire the common carrier obligation over the Line. If anything, the common carrier obligation remained with the seller, SCCR, and until such time that a new operator obtains operating authority over the Line, GCEDC does not have a common carrier obligation over the Line. As such, GCEDC is not the proper party in interest and cannot be found to have violated an obligation that it never obtained in the transaction.

Furthermore, GCEDC never held itself out as a providing common carrier service over the Line. Section 11101 provides that "a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request." 49 U.S.C. §11101(a) (emphasis added). Thus, to be found in violation of

³ GCEDC simultaneously acquired a 3.29-mile segment that SCCR retained an easement to operate.

⁴ 64 Fed. Reg. 29942 (June 3, 1999) (Exhibit 4 hereto).

this statute, one must be a rail carrier and be providing transportation subject to the Board's jurisdiction.

GCEDC was not a "rail carrier" for purposes of Section 11101. Under the ICC Termination Act of 1995 ("ICCTA"), a "rail carrier" is a "person providing common carrier railroad transportation for compensation." 49 U.S.C. § 10102(5). GCEDC never provided such transportation for compensation nor held itself as offering to do so.

As the Board said in the *H&M International Transportation, Inc.—Petition for Declaratory Order*, STB Finance Docket No. 34277, 2003 STB LEXIS 722 (served Nov. 12, 2003) case:

To be considered a rail carrier under the statute, there must be a holding out to the public to provide common carrier service. B. Willis, C.P.A., Inc. – Petition for Declaratory Order, STB Finance Docket No. 34013 (STB served Oct. 3, 2001), *aff'd per curiam*, *B. Willis, C.P.A., Inc. v. STB*, No. 01-1441 (D.C. Cir. Nov. 26, 2002), *cert. denied*, 72 U.S.L.W. 3235 (Oct. 7, 2003) (No. 02-1498); *Hanson Natural Resources – Non-Common Carrier Status – Petition for Declaratory Order*, Finance Docket No. 32248 (ICC served Dec. 5, 1994). Here, however, H&M's operations are performed pursuant to agreements with UP that reserve for UP all common carrier rights and obligations and that, in fact, specifically bar H&M from providing common carrier service. Additionally, H&M has never received, nor sought, a license from the Board for common carrier freight rail operations under 49 U.S.C. 10901 (or an exemption from the licensing requirements pursuant to 49 U.S.C. 10502). Further, there is no evidence that H&M has provided any type of rail service to the public for compensation or otherwise, or held itself out as willing to do so.

Applying this reasoning to GCEDC, it is clear that GCEDC never acquired a common carrier obligation over the Line. It did not apply for and receive operating authority.⁵ It did not

⁵ It has at times been somewhat unclear to GCEDC, in light of Groome's claims and GCEDC's inability to find an operator for the Line, whether the terms "rail carrier" or "common carrier" properly applied to it. (In response to Groome's requests for admission, GCEDC admitted that it was a "railroad" subject to the Board's jurisdiction, though by statutory definition, a "railroad" is not the same as a "rail carrier." See 49 U.S.C. §10102(5 & 6)). However, the Board's June 3, 1999, order clearly reflects and exempts only what GCEDC requested – an exemption to *acquire* the Line.

hold itself out as being able to provide rail transportation for compensation. Indeed, GCEDC's Rail Corridor Preservation Policy (*see* Complainants' Exhibit M, page GCEDC 0062) specifically stated "GCEDC shall have the responsibility to the public to maintain rights of way in the rail corridor in such a manner as to allow for transportation use. GCEDC shall own the land encompassing the rail corridor. *GCEDC must not become active in the operation of the railroad itself.*" In short, GCEDC was not a "rail carrier" subject to the common carrier obligation imposed on rail carriers by Section 11101, and its actions with respect to the Line did not violate such an obligation.

B. Even If GCEDC Had a Common Carrier Obligation, That Obligation Was Not Triggered Because Groome Never Made a Reasonable Service Request

By statute, a common carrier is obligated to provide service only if a shipper makes a reasonable request for service. "A common carrier providing transportation or service . . . shall provide the transportation or service *on reasonable request.*" 49 U.S.C. § 11101(a) (emphasis added). Even assuming that GCEDC had been authorized to operate the Line and had a common carrier obligation to provide service over the Line, Complainants never invoked GCEDC's common carrier obligation because Groome never made a reasonable request for service.

Abundant agency and judicial precedent holds that any inquiry about a railroad's common carrier duty to provide service to a shipper must be predicated upon a specific and reasonable request for service by the shipper. 49 U.S.C. § 11101(a); *CSX-Summit*, slip op. at 5; *Grimmel; Louisiana Railcar, Inc. v. Missouri Pacific Railroad Co.*, STB Finance Docket No. 31246, 1989 ICC LEXIS 151 (June 21, 1989); *General Foods Corp. v. Baker*, 451 F. Supp. 873 (D. Md. 1978). Compare, *G.S. Roofing Prods. Co. v. Surface Transportation Board*, 143 F.3d 387, 392 (8th Cir. 1998) ("*GS Roofing II*"). Under these precedents, a shipper must, to trigger the common carrier service obligation, specifically request transportation of a particular type and

quantity of goods between a specific origin and destination. Groome never made such a request. Accordingly, any service obligation GCEDC may have held was never triggered.

While GCEDC does not deny that Groome made comments about the need for service and worked with GCEDC to find an operator for the Line, indicating a desire for service, a general expression of desire for service is insufficient to trigger a common carrier's obligation to provide service, and does not qualify as the "reasonable request," required by Section 11101(a). Historically, the Board has viewed skeptically "general expressions of interest in receiving rates and service" and has chosen to rely upon specific and detailed requests to measure a carrier's service obligation. *CSX-Summit*, slip op. at 5 (holding that prior use and rate quotes made before service ceased does not qualify as a "reasonable request"); *Grimmel*, slip op. at 9 (defines the carrier's service obligation as beginning when the shipper communicated to the carrier a sufficiently detailed request for rates and services, including the type of cargo, quantity to be moved, and origin and destination of movement).

As the above cases illustrate, the Board has clearly held that any analysis of the common carrier obligation is predicated upon a sufficiently detailed request from the complaining shipper for movement of a specific type and quantity of goods. This is true regardless of the reasons why the railroad is unable to provide service. For example, in *Atchison*,⁶ a shipper petitioned for revocation of an abandonment exemption based on the carrier's refusal to reinstall track that was removed due to safety concerns before the carrier received abandonment authority. *Atchison*, at *13-14. The shipper stated that it would provide traffic after restoration of the track. *Id.* The Board rejected the shipper's arguments, findings that illegal cessation of service occurred only in

⁶ *The Atchison, Topeka and Santa Fe Railway Co. – Abandonment Exemption – In Lyon County, KS*, STB Docket No. AB-52 (Sub-No. 71X), 1991 ICC LEXIS 134 at *13 (June 11, 1991) ("*Atchison*").

cases where the requests have been “very specific as to the nature and quantity of the commodities to be shipped.” *Id.*

Similarly, in *CSX-Montezuma*,⁷ a grain company alleged that CSX violated its common carrier obligation by failing to replace a crossing diamond needed to serve the shipper, even though the shipper was not yet operating the facility to which the removed diamond provided access. *Id.*, slip op. at 5. In granting CSX’s motion to dismiss the complaint, the Board held that a “generalized request for replacement of the crossing diamond and for CSX to agree to provide freight cars, rates, and rail service for unspecified traffic at some unspecified future time does not constitute a request for service requiring an immediate response. Thus, we cannot find that CSXT had an obligation to respond.” *Id.*, slip op. at 10. The Board clearly articulated that “A reasonable request is one that is specific as to the volume, commodity, and time of shipment.” *Id.*, citing *Atchison*.

The need for a specific, reasonable request for service is particularly appropriate in this case. Groome and the other companies on the Line gave Greenville County many conflicting indications about their general desire for service. Complainants assert now that GCEDC’s board members knew that G&A would go out of business unless rail service was restored immediately. But when GCEDC acquired the Line, the Line had already been out of service for sixteen months.⁸ At the time of the acquisition, the shippers, led by shipper spokesman Randy Mathena,

⁷ *CSX Transportation, Inc. – Abandonment – Between Bloomingdale and Montezuma, In Parke County, IN; CSX Transportation, Inc. – Abandonment Exemption – In Parke and Vermillion Counties, IN; Montezuma Grain Company, LLP and Parke County Redevelopment Comm’n v. CSX Transportation, Inc.*, ICC Docket No. AB-55 (Sub No. 486); STB Docket No. AB-55 (Sub No. 579X); STB Finance No. 34019 (STB served Sept. 13, 2002) (“*CSX-Montezuma*”).

⁸ See V.S. Groome, ¶24 (last service to Groome’s facility occurred February 8, 1998), and Verified Statement of Andrew J. White, Jr. (“V.S. White”), Exhibit 6 hereto, ¶5(e) (GCEDC acquired the Line on June 14, 1999).

see Groome's Opening Statement, V.S. Mathena at ¶ 3, were encouraging Greenville County to wait – possibly as much as another three years - to acquire the Line,⁹ indicating that they would use truck service in the meantime even though it was more expensive.¹⁰ In light of these conflicting indications from the shippers to the County about the necessity, or lack thereof, for rail service, Board precedent requiring a request for specific service to trigger the common carrier service obligation is particularly appropriate.

Complainants never made the specific request for service that Board precedent requires. Nowhere in their filing do Complainants cite a single instance of having asked GCEDC to quote a price for a specific movement of goods. Indeed, in their responses to GCEDC's discovery requests, Complainants admit that "Complainants never requested GCEDC to pick up or deliver a specific load or loads of freight at Complainants' Business Location." Response to Request for Admission No. 5 (Exhibit 7 hereto). Complainants also admitted, "Complainants never, subsequent to GCEDC's acquisition of the Line, requested GCEDC to pick up or deliver a specific shipment of goods at Complainants' Business Location." Response to Request for Admission No. 11 (Exhibit 8 hereto). Accordingly, even if GCEDC had been authorized to serve the Line, its common carrier obligation was never triggered by Groome.

⁹ Complainants' witness Randy Mathena, spokesman for the shippers on the Line (V.S. Mathena, ¶3) urged that if Greenville County wanted to acquire the Line, it should wait for SCCR to abandon the Line. V.S. Mathena, Attachments 5 and 8. See also V.S. Mathena, ¶¶ 6 - 7. Abandonment, he acknowledged, could be delayed as long as three years, V.S. Mathena, Attachment 6, V.S. Groome Attachment 10, which "would require waiting and patience." V.S. Mathena, Attachment 5.

¹⁰ Mr. Mathena told Greenville County that shippers were interested in restoration of rail service "in that it is quite costly for us to use truck instead of rail," he told SCCR in a letter dated June 5, 1998 (which he shared with the county) that "[I]f our proposal is not acceptable, we will simply use trucks and research other alternatives for rail service." Exhibit 2 to Mathena 8.

C. Even If Groome's General Desire for Service Was Enough To Trigger A Common Carrier Obligation, GCEDC Was Excused From Fulfilling That Obligation Because It Had A Valid Embargo In Place On The Line

Even if Groome had made a "reasonable" (*i.e.*, specific) request for service to trigger a common carrier service obligation of GCEDC, GCEDC's embargo of the Line would have excused GCEDC from fulfilling any such obligation it might otherwise have had. As the Board has previously stated, the "common carrier obligation is not absolute." *G.S. Roofing Prods. Co., Inc. v. Arkansas Midland Railroad*, Docket No. 41230 (STB served March 11, 1997) ("*GS Roofing I*"), *rev'd on other grounds, G.S. Roofing II*. Rather, a valid embargo of a line by a carrier can excuse the carrier from an otherwise extant common carrier obligation. *Id.*

1. GCEDC Had Placed An Embargo On The Line And Publication Of The Embargo Notice With The AAR Was Not Necessary To Effectuate The Embargo

As noted, when GCEDC acquired the Line, service had ceased over a year earlier. Indeed, the previous owner, SCCR, had placed an embargo on the Line and had filed that embargo with the AAR. Because embargoes filed with AAR expire after one year, when GCEDC acquired the Line, there was no longer an AAR embargo in place. Nonetheless, GCEDC instituted its own embargo. All of the shippers, including Groome, knew that the line was out-of-service and could not operate without substantial repair costs. They knew that GCEDC was not the operator and never intended to be the operator, and they knew that the Line had been embargoed by the previous owner and that GCEDC intended to continue that embargo until the Line could be repaired and an operator obtained.

Notwithstanding its knowledge that the Line was considered embargoed, Groome claims that GCEDC's embargo was not valid because it was not published with the AAR, but there is nothing in the statute or STB regulations that requires publication of an embargo notice with the AAR for shippers to be on notice that a valid embargo is in place. Indeed, no authority requires

such a publication, particularly by entities like GCEDC which do not provide transportation service and are not participants in AAR's car hire, car service and interchange agreements.

Complainants cite no ICC or STB authority that holds otherwise. Long ago, ICC regulations at 49 C.F.R. Part 1006.1 specified a particular manner of issuing embargo notices. *See generally General Foods Corp. v. Baker*, 451 F. Supp. 873, 876 (D. Md. 1978) (reciting the regulation) ("*General Foods*"). That section, however, was initially transferred to 49 C.F.R. Part 1059 and then, subsequently, was removed altogether from the agency's regulations. Complainants have identified no comparable regulation among the Board's current rules.

The *General Foods* decision summarizes former Section 1006.1 as follows: "An embargo notice need not be published like a tariff; the carrier simply must notify the shipper that it is physically unable to accept shipments." *Id.* GCEDC's actions clearly met this standard. Complainants assert throughout their opening presentation that they were constantly aware of the lack of rail service, and periodically contacted one or more persons involved with GCEDC about that situation. Clearly, therefore, Complainants were on notice throughout the period in issue that GCEDC was not then able to make service available to them.

Further, GCEDC likely was not entitled to publish an embargo notice through AAR even if it had wanted to. Not having been authorized by the Board to operate the Line, GCEDC was not a participant in any of the standard AAR agreements covering interchange, car hire and car service. GCEDC believes that the embargo notice function that AAR serves falls within its responsibilities to the signatories to its industry-standard interchange agreement. AAR notice serves as notice to participating carriers not to load shipments destined for an embargoed line. In this case, there was no need for such a notice because neither G&A nor any other shipper on the Line ever ordered a shipment or requested specific service.

Because the potentially affected shippers were all well-advised that the Line was not in service, there was no need for GCEDC to publish an embargo notice through AAR, and as noted, Complainants have not pointed to any authority requiring such a publication. Even if there were such authority, however, GCEDC submits that it would more appropriately apply to a party authorized to provide rail service, not just an owner of a rail line as GCEDC was.

2. Because GCEDC Had In Place A Valid Embargo, GCEDC's Obligation, If Any, To Provide Common Carrier Service Over The Line Was Excused

As noted, the common carrier obligation is not absolute and the existence of a valid embargo in place excuses a carrier from having to meet its common carrier obligation. While it is clear that GCEDC had an embargo in place, the question is whether that embargo was "valid." The ICC, the STB and the courts have developed a five-factor test to determine the validity of an embargo instituted by a carrier. The test is applied on a case-by-case basis. *GS Roofing II*, at 392. Embargoes found valid using this test have included those due to weather and flood damage and tunnel deterioration. *GS Roofing II*, at 392; *General Foods*, 541 F.3d at 876. Safety concerns are also a valid basis for embargoing a line. "[W]e will defer to the railroad's judgment as to whether a line is safe to operate at a given point in time, so long as it is reasonable." *Decatur County Commissioners v. Central Railroad Company of Indiana*, STB Finance Docket No. 33386 (STB served Sept. 29, 2000) ("*Decatur I*"), slip op. at 7, citing *GS Roofing I*, slip op. at 9. When one examines each of those five factors with respect to the facts in this proceeding, it is unquestionable that GCEDC's embargo was valid.

The five factors considered by the Board to determine whether an embargo is valid are: (1) the carrier's financial condition; (2) condition of the track and cost of repairs; (3) the carrier's intent; (4) the line's traffic volume and revenues; and (5) length of service cessation. *Decatur I*, slip op. at 7, *aff'd sub nom. Decatur County Commissioners v. Surface Transportation Board*,

308 F.3d 710, 716 (7th Cir. 2002) (“*Decatur II*”). In this case, these factors weigh heavily in favor of finding GCEDC’s embargo reasonable.

a. Condition Of The Track And Cost Of Repairs.

An important factor in the Board’s test of an embargo is the condition of the track and the cost of repairs. The Board generally views costs that are “substantial” as support for an embargo. For example, in *Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc.*, STB Finance Docket No. 34236 (STB served May 13, 2003) (“*BBB*”), CSX represented that the cost to repair a damaged bridge would be in excess of \$200,000 – well above the shipper’s estimates. *BBB*, slip op. at 5. Noting that the cost of repairs is a “very significant issue” in most embargo cases, the Board accepted the carrier’s estimates¹¹ and upheld the embargo in light of the cost - over \$200,000 – that the Board viewed as “substantial.” *BBB*, slip op. at 5-6.¹² Similarly, in *Decatur II* the embargo was considered reasonable where substantial and costly repairs would have been necessary “[t]o operate at all.” *Decatur II*, 308 F.3d at 715. Even in *GS Roofing II*, where an embargo was held invalid, the Eighth Circuit noted that the cost of repairing a line to safe operating condition, and (as discussed above) the carrier’s *ability* to easily carry out such repairs, both physically and financially, are key to the continuing reasonableness of an embargo. *GS Roofing II*, at 392-93 (finding that repairs costing a few thousand dollars and taking only hours were not a sufficient basis for embargo).

¹¹ The Board noted that “we accord some deference to expert representatives of the operating carrier that would be held responsible in the event of some catastrophic event.” *BBB*, slip op. at 6.

¹² See also *Bar Ale, Inc. v. California Northern Railroad Co. and Southern Pacific Transp. Co.*, STB Finance Docket No. 32821 (served July 20, 2001), slip op. at 8 (finding \$250,000 bridge rehabilitation was “substantial” cost of repair).

Moreover, it is the entire length of the embargoed track, not just a subpart thereof, which is subject to the reasonableness analysis.¹³ Complainants' opening statement advocates that providing service only to G&A, while ignoring service to other shippers such as Mr. Mathena's company, was feasible and therefore required. However, Groome cites no precedent to support the notion that G&A was any more entitled to common carrier service than any other shipper.

The expense of putting the Line back in service – even just to serve G&A – was immense,¹⁴ and well beyond GCEDC's financial resources. Attached hereto as Exhibit 9 is the Verified Statement of David Pettry ("V.S. Pettry"), recently-retired Assistant Chief Engineer – System Maintenance for CSX Transportation ("CSX"). On January 13 and 14, 2005, Mr. Pettry conducted an assessment of the condition of the part of the Line relevant to Groome's claims; namely, the approximately 2.6 miles of track between G&A's facility and the Line's connection with CSX. Adopting an extremely conservative approach, Mr. Pettry assessed the condition and rehabilitation cost of only the minimum amount of track necessary to connect G&A's facility to a major trunk line carrier. His analysis did not cover the additional cost to rehabilitate the Line to allow interchange with Norfolk Southern, whose line crosses the Line near the CSX crossing,¹⁵ nor did it cover the additional costs required to serve other potential shippers on the Line, such as Mr. Mathena's company, whose facility is approximately 3.2 miles north of

¹³ Indeed, in *Decatur II*, the Seventh Circuit upheld the Board's inclusion of the *entire line* in its cost of repair analysis because the entire line was necessary to return the track to pre-embargo levels.

¹⁴ Although GCEDC's engineering witnesses' rehabilitation analysis discussed below responds directly to Groome's claims, and is therefore confined to the shortest stretch of track possible that would have allowed service to G&A, GCEDC does not concede that if it had a common carrier obligation to provide service that the cost of serving G&A alone should be the sole cost considered in determining whether the embargo of the Line was reasonable.

¹⁵ V.S. Pettry at n. 2.

G&A.¹⁶ Thus, in order to respond directly to Complainant's claims, Mr. Pettry's analysis encompasses the work needed only for a partial lifting of the embargo, not a complete lifting of the embargo called for by Board precedent. Nevertheless, the cost of even the limited lifting of the embargo is staggering.

Mr. Pettry's examination of 2.6 miles of the Line found "overall track conditions are poor and are not safe for operation." V.S. Pettry at 2. He found the Line to be laid with rail that is over 100 years old, with ties that are, for the most part, useless, and with ballast that is inadequate to provide the required drainage and washout protection the track needs. In this regard, Mr. Pettry's conclusion is similar to the conclusion stated in Complainants' witness Randy Mathena's November 20, 1998 memo to the Greenville County Council and Greenville Chamber of Commerce (V.S. Groome, Attachment 12) which states, "This rail line is going to require a complete rebuild in both the physical and business sense."

Mr. Pettry also found the three bridges on the 2.6-mile segment to have been so badly damaged by a severe flood, probably as a result of Hurricane Floyd which hit the Carolinas in mid-September 1999, that the deck of the largest bridge had been lifted up and displaced between 3 and 4 feet west of where it should be. Various bridge supports had also been washed out. "[T]he bridge near Hampton Avenue shows such extensive damage that, in my opinion, replacement of it would be required for operations to be conducted safely," Mr. Pettry concluded. "The other 2 bridges on this 2.6-mile section of track also exhibit similar, though perhaps not quite as severe damage, and also likely would have to be replaced," he said.

Mr. Pettry's opinion of the condition of the bridges is confirmed by Mr. David Hoff, professional bridge engineer and whose verified statement is attached as Exhibit 10 ("V.S.

¹⁶ See V.S. Mathena at ¶2.

Hoff"). Mr. Hoff accompanied Mr. Pettry on his inspection of the Line on January 14. His conclusions were similar to Mr. Pettry's: "My inspection showed each of these structures to be in a deplorable condition, clearly unsafe for rail operation. Almost anyone, even if they were not an engineer, would recognize that these structures are substantially damaged." V.S. Hoff at 2. Like Mr. Pettry, Mr. Hoff concludes that the bridges are so badly damaged that replacement, rather than mere repair, is required. "Based on my bridge engineering experience, it is my opinion that restoring these three bridges to a condition that would allow safe resumption of rail operations on a going-forward basis would be more expensive than simply replacing them with new, sound structures." *Id.*

Together, Mr. Hoff's and Mr. Pettry's statements establish that the cost of rehabilitating the portion of the Line needed to serve G&A alone as Complainants propose, without providing for service to any other shipper, would be \$2,993,275. Mr. Hoff establishes the bridge replacement cost at \$1,384,600, based on his own experience and consultation with a well-known rail bridge engineering firm.¹⁷ Mr. Pettry's statement establishes the cost of rehabilitation of the track (other than the bridges) as \$1,608,675. Mr. Pettry's estimate encompasses replacement of the old, lightweight, fracture-prone rail in the line with used good quality rail, replacement of a sufficient number of ties to provide a solid base for the rail, and repair of the track drainage system to prevent washouts and instability in the track.

These numbers stand in stark contrast to the \$70,000+ figure proposed by Complainant's witness, Bennie Ray Anderson, Sr. Of course Mr. Anderson's estimates are based on Groome's claim that the Line only needs to be restored to "excepted track" status and that doing so would

¹⁷ To validate his cost estimate, Mr. Hoff compares it to the cost estimate derived for a similar structure from Union Pacific's 1997 cost estimation guide, finding that cost estimate to be nearly

not require substantial repair work. Yet, a physical inspection of the property by two professional engineers completely contradicts this claim.

Responding to Complainants' contention that the track should have been put back in service as "excepted" track, Mr. Pettry disagrees. He explains that "excepted" track is, in reality, not a track maintenance standard; instead, it is a condition for which virtually no standard is prescribed. Thus, operation of a line as excepted track essentially allows the owner of the line to decide how much risk it and the public should absorb from the rail operation. Noting that his inspection showed that "the track structure is unsound in virtually every respect," Mr. Pettry points out that the sort of minimal repairs apparently proposed by Complainants would be wholly inadequate to protect the public from the substantial risk of derailment that is inherent in a line currently comprised of century-old, fracture-prone rail, hollow crossties, and bridges that are completely unsafe for operation. Indeed, even Mr. Anderson recognizes such risks when, in paragraph 8 of his statement, he discusses the uninsurable liability that SCCR would have incurred had it continued to operate over the embargoed bridges.

Mr. Pettry further notes that operating the track with the minimum amount of repair work as proposed by Groome's witness would be extremely risky and unsafe. This is especially true for GCEDC, which is a county-created non-profit corporation for which elected County officials serve as board members. As such, they cannot choose to operate a rail line in a manner that unnecessarily imposes risk on the public. Mr. Groome's demand that GCEDC serve him regardless of the risk cannot change this fact. The track rehabilitation and bridge replacement

60% higher (\$2,199,000 vs. \$1,384,600) than his estimate. Accordingly, if anything, Mr. Hoff's cost estimate is understated.

described in Exhibits 9 and 10 by Messrs. Hoff and Pettry would be required if GCEDC were to reinstitute rail service to G&A without exposing the citizens of Greenville to unnecessary risk.¹⁸

The minimal revenues that might have been earned from serving G&A would not have covered the costs of operating even just the portion of the Line used to serve G&A. Using a well-accepted railroad operating cost development model, Joseph Plaistow, an economist with many years of cost modeling experience in Board proceedings, has developed the cost of serving Groome. Mr. Plaistow's calculations are attached as Exhibit 11 hereto ("V.S. Plaistow"). Using the rehabilitation costs provided by Messrs. Pettry and Hoff, along with standard Region 4 operating costs, Mr. Plaistow concludes that GCEDC would have had to charge \$1,430.17 per car to serve G&A, not counting the linehaul charges from the connecting Class I carrier. This cost is over six times the average per car rate that the 1996 Pinsly bid solicitation for the Line shows that Groome was paying Pinsly in the 1994-1996 period.¹⁹ It is also several times the rate that Groome was paying for warehousing, handling and local delivery by truck, a cost which Complainants claim put G&A out of business.

In light of Groome's participation in a shipper group that opposed the comparatively modest surcharges requested by SCCR in 1998 to repair the bridges, and Mr. Groome's December 10, 1997, letter to fellow shippers stating that the railroad's embargo was designed to "hold us up" for increased revenues, it is impossible to imagine that Groome would have

¹⁸ The bridges, Mr. Pettry notes, would have to be adequate to support a Class 1 track structure, even if the Line were to be operated as excepted track. Both Mr. Pettry and Mr. Hoff, like SCCR, the prior owner of the Line, conclude that these severely damaged bridges would have to be replaced to allow safe operation.

¹⁹ Attachment 1 to V.S. Groome (Exhibit A to Complainants' Opening Statement) shows that Groome paid Pinsly \$61,200 in 1994 to handle 276 cars; paid \$55,385 in 1995 for Pinsly to handle 247 cars; and paid \$56,309 in 1996 for Pinsly to move 249 cars. The average price Groome paid Pinsly over this period is thus about \$224 per car.

tendered any traffic, even had service been available at these rates. In claiming a right to service, therefore, Groome apparently is also claiming a right to having that service subsidized so that he would pay less than the actual cost of the service.

It is clear that GCEDC has never had sufficient funds to accomplish the type of restoration necessary to operate the Line, nor to sustain the money-losing operation proposed by Complainants.²⁰ As stated by Andrew J. White, GCEDC's attorney for the past 4+ years and counsel for GCEDC in Groome's state court lawsuit against the company, whose verified statement ("V.S. White") is attached as Exhibit 6: "Attachment 4 . . . describes the amounts and sources of GCEDC revenues in 2001, 2002 and 2003. Total revenue for all three years aggregated \$75,259.65. GCEDC had no revenue in 1999." V.S. White at ¶6. Such revenues are clearly minuscule as compared to the \$2.9+ million cost of restoring the Line to a safe and usable condition.

As noted previously, Complainants' December 22 filing offers the testimony of Bennie Ray Anderson, Sr., to show that the Line needed only minimal repairs, but that testimony is unpersuasive. First, of course, while Mr. Anderson has some experience operating a shortline railroad, his engineering credentials are no match for those of Messrs. Hoff and Pettry. Second, Mr. Anderson provides no detail to support his assertion that \$70,000 would have been adequate to restore one of the three dilapidated bridges between the CSX connection and G&A's facility, nor does he provide even an estimate of the cost of various other track work needed (rail replacement, ballast, surfacing, alignment, ditching, etc.) needed to make the part of the Line

²⁰ Although Mr. Anderson's testimony for Complainants summarily states that revenues from serving Groome would have covered the cost of that service, he provides no data whatsoever to support that assertion. Moreover, the assertion is based on a gross under-estimation of the cost of restoring the line to service.

serving G&A safely operable. Third, Mr. Anderson's rehabilitation cost estimate is *far* below any other contemporary estimate. Such estimates include Mr. Mathena's estimate of \$2,000,000 to reconstruct the Line (V.S. Mathena, Attachment 1), SCCR's estimate of \$500,000 in needed repairs (*see* V.S. Groome, Attachment 4), and a pre-Hurricane Floyd cost estimate of \$235,444.73 for bridge repair provided by SCCR to Greenville County in April 1999 and produced to Complainants in discovery in this case (Exhibit 12). In short, Mr. Anderson's summary assertions that the bridge repairs necessary to serve G&A could have been accomplished for \$70,000 is too vague, and too contradicted by other, contemporary estimates to be given credibility.

Indeed, Mr. Anderson's recent testimony even contradicts his own company's written advice to GCEDC four years earlier which stated that restoring the Line to service would have required bridge repairs of \$199,982.90 and track work of approximately \$1.3 million. *See* V.S. Groome, Attachment 24: "The infrastructure improvements listed are those that would have to be undertaken to attain an operational status conducive to regular operations on the line for the customers involved," Mr. Anderson's company wrote. Mr. Anderson now attempts to disavow that advice, stating that service only to G&A could have been provided for much less. Even if that were true, however, Complainants have not shown either that GCEDC was free to ignore other shippers on the Line and to serve only G&A, or that Complainants or Mr. Anderson's company ever either requested service limited to G&A or provided GCEDC any estimate of the cost of serving only G&A. For Mr. Anderson to now say, well after the fact, that his company could have told GCEDC different things than it actually told GCEDC four years ago appears merely to be litigation-inspired second-guessing.

As shown above, rehabilitation of the Line, even to serve only Groome, would have entailed an immense expense, one which GCEDC clearly could not afford. Accordingly, the balance on this issue clearly tilts in favor of finding GCEDC's embargo of the Line valid and reasonable.

b. Carrier's Intent

Another factor considered in the Board's analysis of the validity of an embargo is whether the carrier validly embargoed the line because it was prevented from offering service, or whether the carrier was simply avoiding restoration of service, for example, to facilitate abandonment. This test also weighs in favor of finding GCEDC's embargo of the Line reasonable.

It is well accepted that a carrier's intent in embargoing a line is viewed as reasonable where the carrier has been prevented from offering service because of damage to a bridge or portions of the rail, or due to condemnation order by a state agency. *Myers v. Arkansas & Ozarks Railway Corp.*, 185 F. Supp. 35 (W.D. Ark. 1960) (finding that lack of service was not voluntary where state had condemned damaged areas of line, including track and bridges, and where railroad would be required to expend "a great sum of money" to continue operations and refused to grant shipper's request for order enjoining railroad from ceasing service). In fact, an embargo will be found reasonable so long as the carrier is not found to be deliberately downgrading, or actively discouraging traffic on, an otherwise viable line. *Decatur I*, slip op. at 10-11 (carrier's intent in choosing not to invest in repairs is presumed reasonable where shippers offered no credible evidence otherwise, and carrier attempted to assist shipper in finding alternative transportation).

Examples of a carrier's intent to avoid service to the line include railroads that self-inflict their financial and physical inability to provide service. *Louisiana Railcar, Inc. v. Missouri Pacific Railroad Co.*, STB Finance Docket No. 31246, 1989 ICC LEXIS 151 (June 21, 1989) (finding carrier's intent unreasonable where carrier refused to make repairs, despite being financially and physically able to do so); *Interstate Commerce Commission v. Baltimore & Annapolis Railroad Co.*, 398 F. Supp. 454, 462 (D. Md. 1975) (finding an embargo invalid where railroad had financial resources to restore service but refused to use its own funds, failed to request public assistance, and had a history of *de facto* abandonment on other portions of the line). Thus, a demonstration that the carrier has made some effort toward restoring service supports a finding that the embargo is valid.

It is clear in this case that GCEDC was not simply trying to avoid having to repair the Line and that GCEDC did not have the funds to restore service to the Line. While Groome's witnesses may differ with the estimates provided by two professional engineers as to the exact expenditure needed to replace the bridges and otherwise rehabilitate the Line, there is no dispute that the Line was not operable when GCEDC acquired it and needed substantial repair work before it could be operated. When GCEDC acquired the Line, it had been out of service for approximately sixteen months. SCCR, the seller, told GCEDC that the Line required approximately one-half million dollars in repairs, the same advice SCCR gave to the shippers on the line. *See* V.S. Groome, Attachment 4. Other estimates received by GCEDC over the following months were even higher, including the estimate of nearly \$1.5 million provided by Mr. Anderson's company, which wanted to become the operator of the Line. V.S. Groome, Attachment 24. Thus, while there is some dispute as to the precise degree of damage to the Line

and its structures, there is no dispute that the Line, and particularly its bridges, required substantial, costly work.

It is also clear that GCEDC made considerable efforts to find an operator for the Line, but despite those efforts was not able to obtain an operator on affordable terms. One such effort, of course, was GCEDC's discussion with Mr. Anderson's company. That effort foundered on Mr. Anderson's request for \$1.5 million in repairs to the Line in order for his company to operate it. *Id.* Other similar efforts by GCEDC foundered for similar reasons. "GCEDC has been unable to obtain an operator for the Line due to the physical condition of the Line. All potential operators have required that the Line be repaired as a condition to their operating agreements, and GCEDC has not had the funds to do so." V.S. White, ¶8. *See also* Complainants' Opening Presentation, Exhibit I (excerpts of deposition of Scott Case, member of Greenville County Council), page 23, lines 2-12 ("[W]e interviewed several operators . . . to ascertain the feasibility of restarting rail service. And the road block, of course, was the money needed to upgrade, repair, etcetera. . . . [I]n my capacity as a board member, much of our efforts was towards re-establishing service.").

GCEDC has also sought funding to repair the Line, but again without substantial success:

Attachment 5 [to V.S. White] is an exhibit which originally was attached to GCEDC's responses to Groome's production requests in the Lawsuit and which describes the various attempts GCEDC has made to find public grants to use toward the operation and repair of the Line. GCEDC has been unsuccessful in obtaining such grants except as follows: (a) South Carolina Department of Transportation has granted funds to GCEDC to defer the original cost of the Railtex purchase and to pay for a title search of both the Line and the southern rail line which GCEDC also owns; and, (b) Greenville County has granted funds to GCEDC to defer its attorney fees and other legal expenses incurred in the Lawsuit.

V.S. White ¶7. *See also* Exhibit 14 hereto (excerpt from deposition of Dozier Brooks, former chairman of the Greenville County Council and GCEDC's Board) page 20, line 8 (stating that GCEDC was "broke" in December 2002); Complainants Opening Comments, Exhibit J (excerpts

of transcript of deposition of Joe Dill, member of Greenville County Council) page 17, lines 10 – 15 (“I think it would be a – if there was money available, that would be a good thing to do is put it back operating, but I don’t know where the money is coming from. . . . If the money was available, I think it would be wise to put it operational.”), and Complainants Opening Comments, Exhibit K (deposition of Pat Haskell-Robinson, member of Greenville County Council and GCEDC’s board), p. 11, lines 19-20 (GCEDC hasn’t provided service “Because we haven’t had the money to redo the track and the trestles.”).

Complainants’ witnesses Groome and Mathena each erroneously assert that GCEDC officials told them that the corporation had one-half million dollars available to repair the Line. *See* V.S. Groome, ¶54 (“Gerald . . . Seals assured me and Randy Mathena that GCEDC has \$500,000.00 in the bank.”); V.S. Mathena, ¶10 (“During that meeting, Seals assured me and Mr. Groome that GCEDC has \$500,000.00 in the bank.”). However, Mr. Seals’ recollection of that meeting is that he told Messrs. Groome and Mathena that *the County* had funds that the County Council could choose to appropriate for rehabilitation of the rail line and that he would recommend that they be expended for that purpose, but that it was up to the County Council to decide whether to appropriate the funds for that purpose. *See* Exhibit 15, Seals Deposition transcript, pages 75 and 76 (“[W]e had a lot of discussions about, yes, the county had the money in an absolute sense, but it had to be budgeted for that specific purpose. And that my intentions were to proceed with putting it in the budget for that purpose so that the bridges would be repaired.”). The County did not choose to fund rehabilitation of the Line.

GCEDC also sought funding from affected shippers, again without success. *See* Complainants’ Opening Presentation, Exhibit F (excerpts of deposition transcript of Dozier

Brooks, former chairman of Greenville County Council and GCEDC's board and a retired civil engineer), p. 10, lines 17 – 25:

Q: What was your understanding how that [work on the trestles] was going to be paid in connection with the purchase price?

A: We were going to have to find the money to do it. That's the reason as chairman I wrote letters to Duke Power, to the gas company, telephone companies, . . . to see if they would help us fund some of this and never got a favorable response.

See also Exhibit 15 hereto, excerpt of deposition transcript of Gerald Seals, page 74, lines 9 – 20 (stating that he did not recall that Mr. Groome ever offered any specific financial support for the rehabilitation of the rail line). Moreover, although Mr. Mathena and Mr. Groome, each, using the exact same phrase, state that Mr. Groome “personally offered \$30,000.00 on the spot” toward the rehabilitation, Mr. Seals' recollection of the conversation is that Mr. Groome was adamant that the county was responsible to fund the rehabilitation of the line and serve G&A. *Id.*, at pp. 74-75.

GCEDC had good and substantial reasons for its embargo of the Line – hundreds of thousands if not millions of dollars of needed rehabilitation to make the facility safe and operable. GCEDC sought out potential operators - as it told the Board in its acquisition exemption notice that it would do - but none, including Mr. Anderson's company, were willing to undertake operation of the Line without GCEDC investing hundreds of thousands of dollars to repair the Line, money that GCEDC simply didn't have. GCEDC also sought to obtain funds, from governmental and private sources, but again was unable to raise sufficient monies for rehabilitation to be able to make even a significant dent in the immense task.

GCEDC's efforts meet the second portion of the Board's test. GCEDC was not trying to avoid funding the repair work, quite the contrary. GCEDC was constantly trying to find the funds and was in almost continuous discussions with potential operators. Furthermore, given the

unsafe condition of the Line, GCEDC had a substantial reason for continuing the prior embargo of service. It is undisputed that GCEDC made reasonable efforts that were within its means to provide for operation of the Line. Unfortunately, those efforts were not successful.

c. Volume And Type Of Traffic On The Line

A third consideration under the Board's embargo evaluation test is the volume and type of traffic on the line. In *Decatur I*, the Board held that the potential for revenue, or lack of such potential, was a legitimate factor in a carrier's decision to embargo a line. Specifically, the Board recognized that a carrier, which has decided to embargo a line, need not bankrupt itself for repairs where there is little hope that projected revenues are sufficient to cover operating expenses and provide a return on investment. *Decatur I*, slip op. at 11-19, fn.34, citing *Purcell v. United States*, 315 U.S. 381, 385 (1942) ("it is well settled that a carrier cannot legitimately be required to expend money to rehabilitate a line where it will lose money on the operation").

Even where the Board has found an embargo invalid because a carrier had no reasonable justification for refusing to institute service, it firmly noted that a carrier is in no way obligated to provide rates and service at a loss. *Grimmel*, slip op. at 13-14. The Board has recognized that a carrier may make a reasonable business decision based on the amount of anticipated traffic revenue in deciding whether to continue an embargo. *Decatur I*, slip op. at 18. As such, if a carrier can show that revenues will not cover operating and repair costs, then the evaluation tips in favor of finding that the embargo is valid.

GCEDC's embargo clearly satisfies this third portion of the embargo evaluation test. In the first place, by the time GCEDC acquired the Line, 6 of the 8 historical users of the Line were gone. V.S. White, ¶5(f). Thus, the potential traffic and revenue based on the Line was already severely compromised.

Serving G&A alone, as Complainants contend is their entitlement, would simply have resulted in extensive operating losses for GCEDC. From the Pinsly data, it appears that Groome was accustomed to paying approximately \$224 per car for service. GCEDC would have had to charge \$1,430.17 just to cover its costs. Although GCEDC did not have Mr. Plaistow's precise calculations of service costs before it, it was apparent at the time that the Line could not have been served without a several-fold increase in rates. Such rail rates would have been substantially higher than the trucking rates – rates that Groome claims put him out of business because he would have paid less using rail, which simply is not true.

d. Carrier's Financial Condition

Another important factor in analyzing an embargo is the carrier's financial condition. The past and projected future financial condition of a carrier is considered crucial to the *ability* of the carrier to remove the embargo. *Decatur I*, slip op. at 15-19. There, the Board relied upon evidence of the carrier's severe debt as a valid basis for the embargo. *Id.* This position was upheld on appeal. *Decatur II*, at 729 ("We believe that future projected revenues may be considered in determining a common carrier's capacity to carry out repairs.") Under this precedent, a demonstration that the carrier is experiencing financial hardship supports a finding that the embargo is valid.

GCEDC meets this portion of the Board's test as well. As stated by Mr. Brooks at his deposition, GCEDC was "broke" at the end of 2002. As shown further by Mr. White's statement, GCEDC had income of only \$75,259.65 over the course of three years. V.S. White ¶7. Grants that GCEDC has been able to obtain in hopes of restoring service over the Line have instead gone into legal and consulting fees, which were ironically spent defending itself from the numerous lawsuits brought Mr. Groome. Despite the bluster from Groome and other shippers

about the need for service and the willingness to help repair and rehabilitate the Line, when it came to “pony up time,” the shippers were not to be found. While Greenville County at one point had a small surplus that could have been appropriated to rehabilitating the Line, the County Council did not do so, perhaps worried about losing it all in frivolous lawsuits. In short, GCEDC has virtually no money, and its steps to remedy that situation have not borne fruit. Legal expenses associated with defending against Groome’s serial litigation of this matter have merely made a bad situation worse.

e. Duration of the Embargo

The final factor in evaluating the reasonableness of a carrier’s embargo is the duration of the lack of service. Generally, this factor is decided in the context of the other four factors (ability to repair, cost of repair, carrier’s intent and projected traffic). *Decatur I*, slip op. at 19-20 (embargo of 20 months valid). Thus, an embargo lasting over a year and a half has been upheld where a carrier’s actions are viewed as reasonable under the other four prongs of the embargo test. *Id.* In 2003, the Board stated that the length of an embargo “must be examined in the context of how long it would take to arrange for and complete the necessary repairs, and what action the carrier has taken while the line is embargoed.” *BBB*, slip op. at 8. In evaluating the issue of repairs, the Board again noted that the carrier’s repair estimates were “substantial” in comparison to the shipper’s, and that extensive costs weighed in favor of finding a fourteen-month embargo valid, in that case.

As shown previously, GCEDC’s actions to continue the service embargo that was in place when it acquired the Line met the other four prongs of the Board’s test for evaluating the reasonableness of an embargo. Those facts similarly contribute to satisfying the final prong of the test. GCEDC had reasonable grounds (*i.e.*, the condition of the Line) for embargoing service.

It took reasonable steps (*i.e.*, seeking funding and operators) to put the Line back in service. For those efforts to succeed, however, substantial funding was required – money that GCEDC did not have. Having exhausted its efforts to find an operator or to find money to return the Line to service, GCEDC sought a discontinuance exemption from the Board.

Throughout this time, Complainants and any other shipper that might have been interested had several potential remedies available, though they chose not to pursue any of them. Shippers could have sought a directed service order or emergency service order from the Board under 49 U.S.C. §§10705, 11101, 11102 or 11123, and 49 C.F.R. Parts 1146 and 1147. Complainants did not pursue this course, however, because these forms of relief require finding a carrier willing to provide the service, and Complainants would have had (or perhaps actually did have) the same problem finding an operator that GCEDC had.

Complainants and any other shippers interested in service on the Line could also have pursued a feeder line application under 49 U.S.C. §10907.²¹ Inasmuch as Messrs. Groome and Mathena each allege that they and other shippers were willing to support operation of the Line, a shipper group could have worked together on a feeder line application to acquire, or perhaps even just to lease and operate the Line. Such an application would have required a showing of financial responsibility as defined under the statute and, in light of Mr. White's and Mr. Stewart's testimony discussed below, perhaps Complainants could not have made that showing. All that appears, however, is that they did not pursue this avenue of relief either.

²¹ Mr. Mathena's memo of October 28, 1998 (V.S. Mathena, Attachment 5, second page) mentions that the Board's Director of the Office of Compliance and Enforcement advised Mr. Mathena that the shippers could "write the STB and assert that service is inadequate, asking the STB to require the sale of the line to us."

Finally, rather than torpedoing GCEDC's discontinuance exemption filed in 2003, Complainants and/or others might have filed an offer of financial assistance to subsidize the operation of the Line. That, however, would have required a financial outlay that Complainants were unwilling to make. Considering, however, Complainants' claims that the outlays needed to serve G&A were insubstantial and that the lack of rail service was the sole reason for the business failure of G&A (a contention that GCEDC vigorously contests), clearly the logical action would have been to make the small outlay necessary to save G&A's business. Instead, Complainants have done nothing but sue GCEDC, first at the STB, then at in state court, and now at the STB again—all in the hope of finding somebody that would award Groome a pot of money. The STB should see Groome's actions for what they are.

The Complainants' failure to pursue any of the foregoing alternatives to institute service to G&A reinforces the conclusion that GCEDC's embargo was reasonable and valid. If shippers who claim that a lack of rail service is crippling or severely harming their business are not willing to pursue any of the available alternatives to compel service on the Line, it is a strong indication that the embargo existed for good reasons. As shown above, GCEDC's embargo meets each of the five prongs of the Board's test for evaluating embargoes and was a reasonable, valid embargo under all the pertinent circumstances. That valid embargo excused GCEDC from meeting any common carrier service obligation that it may otherwise have had.

D. Serving G&A at a Loss Would Have Been Antithetical to Any Common Carrier Obligation GCEDC May Have Had

Serving G&A would have compromised any common carrier obligation GCEDC might have had because it would have resulted in less money being available to serve the entire Line. As shown previously and as detailed in the accompanying Verified Statement of Joseph Plaistow, serving G&A would have been a money-losing proposition. In fact, the rates GCEDC

would have had to charge in order to cover its variable cost and its cost of capital would have been substantially higher than the trucking rates that Groome was paying. V.S. Plaistow at 2,7. As such, Groome cannot claim that he was at a competitive disadvantage because he was having to use trucks rather than rail.

Likewise, if GCEDC had not raised Groome's rates but had continued to charge what its predecessor was charging before the Line was embargoed, GCEDC would have operated at a substantial loss. See V.S. Plaistow at 2. That loss would have compromised GCEDC's ability to fund restoration of service over the entire Line to an ever-greater degree as GCEDC lost more and more money serving G&A. Thus, serving G&A at a loss would have been antithetical to, not consistent with, any common carrier obligation GCEDC may have had.

III. THE DAMAGES SOUGHT BY COMPLAINANTS HAVE NOT BEEN SHOWN TO BE ATTRIBUTABLE TO A LACK OF RAIL SERVICE

A. The Damages Alleged By Complainants Were Not Caused By The Lack Of Rail Service But Were Attributable To Groome's Own Business Practices And The Changes In The Paper Industry During The Relevant Time Period

The Greenville County Court of Common Pleas has already held that Complainants are not entitled to damages from GCEDC. During that proceeding, GCEDC insisted that this agency, not the court, was the appropriate forum for this dispute. Groome vehemently disagreed, until he lost in state court. Now, Complainants have activated their complaint here, seeking a second bite at the apple. However, as shown by the accompanying verified statements of William G. Stewart and Andrew J. White, the damages claimed by Complainants to be solely attributable to the loss of rail service to G&A are not, and indeed logically cannot be, attributable to that loss of service. Accordingly, the Board should follow the lead of the state court proceeding and find that Complainants are not entitled to compensation under the statute for any damages. This is so even if GCEDC violated its common carrier obligation, which it did not.

Complainants' claim to have been damaged to the extent of over \$3.5 million by an alleged \$285,243 increase in shipping costs is illogical. According to Mr. Groome himself, the lack of rail service resulted in added operational costs for G&A of only \$285,243 during the 4 year (1999-2003) after GCEDC acquired the Line (paragraph 15 of Groome's Verified Statement). Even if this alleged \$285,243 damage were true, these claimed extra operational costs work out to average annual cost increases of merely \$71,310 during the time that GCEDC owned the Line. It is logically implausible to conclude that an alleged extra cost of \$71,310 per year for a business with revenues of between \$5,000,000 and \$10,000,000 per year caused Groome to go out of business and to experience the losses of \$3,538,002 as Complainants claim now. *See also* V.S. White, ¶ 11(a). Similarly, even if the Board were empowered to consider the damages alleged by Groome personally, it would be illogical to conclude that Mr. Groome did not receive a salary of \$204,800 every year and did not receive annual rent of \$180,000 every year simply because of an alleged extra yearly operating cost of \$71,310 due to the lack of rail service. *See* V.S. White, ¶ 11(b). The predominant flaw of Complainants' damage claims, however, is the unproven and indeed unsupportable assumption that G&A's business decline was due to the lack of rail service. Such an assertion is demonstrably untrue.

Initially, it should be noted that Judge Few of the Greenville County Court of Common Pleas conducted a three-day bench trial hearing Groome's claims against GCEDC. After hearing all the evidence, including the testimony of Mr. Groome's accountant, Judge Few found the claim that Complainants damages were solely due to loss of rail service to be false and implausible. As stated in the Court's Order:

Plaintiffs in this action contend that the loss of rail service caused Groome to go out of business and for Mr. Groome to suffer a diminution in his salary and profit sharing payments. Groome also contended that that the lack of rail service increased its storage, handling and shipping costs by \$285,243 during the period

subsequent to June, 1999. However, during the period 1996 to 2002, Groome's annual sales ranged from \$5,000,000 to \$10,000,000 and were subject to substantial fluctuations caused by conditions in the paper market. In fact, Groome's sales already had entered a downward trend even before rail service ceased in February, 1998. Additionally, after June, 1999, Groome suffered other major business reversals, including (a) purchasing an over supply of above-market cost inventory, (b) writing off substantial accounts receivable which were uncollectible, (c) losing favorable sales terms from Continental Paper, its major supplier of inventory, and (d) a general decline in the paper business in concert with the national economic recession in 2000 and afterwards. Therefore, this court finds that a lack of rail service did not put Groome out of business, but rather it increased his operational costs by an aggregate amount of \$285,243 during the time that GCEDC has owned the Line.

V.S. White, Attachment 2, pp. 6-7. Even though GCEDC believes that this agency, not the state court, is the proper forum for this dispute, GCEDC believes that Judge Few's findings of fact based on a three-day bench trial are entitled considerable weight before this agency.

Mr. White was counsel for GCEDC in the South Carolina state court action brought by Complainants. As such, Mr. White is intimately familiar with the record, the depositions, and a multitude of other information relevant to Complainants' claims brought before Judge Few and now brought before the Board. In his accompanying verified statement (Exhibit 6 hereto), Mr. White describes in detail the many facts supporting Judge Few's conclusion that G&A's business failed, not because of the lack of rail service, but because of a complex series of bad business decisions by Mr. Groome and other G&A managers. These facts are verified by memoranda of G&A's lender banks and include matters such as –

- The supplier of over half of G&A's inventory changed from allowing G&A as much as 80 days to pay for shipments to putting G&A on a cash basis until G&A became current on its payments;

- Groome purchased an unusually large inventory of product shortly before the price of such materials dropped, leaving him holding a record amount of inventory for which he had paid well above the rates at which the product could be re-sold;
- As stated by Mr. Groome in an August 1998 letter to his bank, "Paper as an industry is subject to extreme highs and lows, which can be weather related, too wet to harvest timber, sale cost too low for pulp operating companies, the U.S. dollar being too strong, or weak. These are but a simple few reasons as are related. The most difficult item for us to judge is when will the soft markets appear, can we adjust inventories down before the PAPER BEAR wakes, or increase inventories to out wit THE BULL."; and
- One of G&A's major customers, CONPAC, filed for bankruptcy, leaving G&A with unpaid accounts receivable of \$264,679 and costing G&A a customer that accounted for approximately 20% of G&A's sales.

These and other disasters explained in Mr. White's statement, not the loss of rail service, are the reasons for G&A's business failure.

Mr. White's statement also shows that, far from being the "recession proof" business that Mr. Groome tells the Board, G&A existed in a volatile industry. For example, Mr. Groome told his bankers in an October 3, 2000, letter, "Your analysis of volatile (with regards to our industry) is accurate." Similarly, an internal November 2002 memorandum of Complainants' bank stated, "The paperboard business has been in a slump for 3 years. Groome states that this slump was initiated by gross over-production by the paper companies which drove down prices and margins and has been extended by the general downturn in the economy over the past 12-18 months."

The fact that the paper industry is a very volatile business subject to numerous market fluctuations, and that Groome got caught up in those fluctuations, is confirmed by the

accompanying Verified Statement of William G. Stewart (Exhibit 3 hereto), an expert in the paper industry with over 38 years of experience working in that industry. Mr. Stewart explains about the volatility of the paper industry from the mid-1990's to the present, demonstrating some of the larger business currents in that industry that eventually swamped Groome's ship.

Mr. Stewart explains that Mr. Groome's business was, effectively, a second or third tier player in the paper business, largely living off of the mistakes of the larger players. For example, a major source of Groome's raw materials was overproduction by large paper mills due to lost accounts, product quality or other causes of lost sales. The more different paper companies there were, the more the competition among them for customers and the greater the potential for one or another company to have excess inventory. Rather than holding such inventory, these larger companies would sell the products to companies like Groome at reduced prices. This freed the paper mill's capital from being tied up in inventory, and allowed companies like G&A a lower cost product. G&A would then provide value-added services, such as slitting large rolls to smaller ones or re-winding to smaller lot increments, and then would sell these lots to packaging companies for use in consumer packaging materials.

As Mr. Stewart points out, the position of companies like G&A in the industry makes them very sensitive to changes among the major paper mills, and the late 1990's and early 2000's were years of major change for the major players in the industry. For one thing, there was significant consolidation among the major players. This reduced the number of sources of raw materials for companies like G&A, and allowed the merged companies to better manage their inventories. Vertical integration within the industry also reduced the manufacturers' need to sell to non-affiliated companies like G&A.

Mr. Stewart makes it clear that based upon his review and analysis of the record, “Groome’s business was not immune from the fluctuations of the paper market and that the lack of rail service was not the cause of Groome’s damages. Rather, Groome suffered from the effects of an ill-advised accumulation of inventory coupled with insufficient capitalization in a widely fluctuating and less forgiving marketplace that, combined with the bankruptcy of its major customer as well as the refusal of one of its major supply brokers to continue favorable credit terms, were the proximate causes of Groome’s inability to remain in business.” V.S. Stewart at 1. This conclusion is consistent with that of Judge Few, the bank records, and the testimony of Mr. White.

Together, Messrs. White and Stewart amply demonstrate that it was the many business issues unrelated to the availability of rail service that eventually overcame G&A. Indeed, as Mr. White points out, Mr. Groome did not even mention the loss of rail service at G&A to his bankers until October 2002, years after he claims to have started being badly hurt by the loss of rail service. Tellingly, Mr. Groome’s silence with his bankers on the subject of rail service availability shows that the loss of rail service (which Mr. Groome alleges cost G&A only \$71,310/year) was at best an extremely minor problem in G&A’s sea of troubles.

Complainants allege, but do not even attempt to prove, that G&A’s losses were caused by the loss of rail service. Mr. White and Mr. Stewart, on the other hand, show clearly that the absence of rail service was a relatively minute problem to G&A. Accordingly, none of the damages that Complainants claim, but do not prove, resulted from the absence of rail service. Accordingly, no damages should be awarded.

B. Groome Also Failed To Mitigate His Transportation Problems And Thus His Transportation Problems Were Largely Self-Inflicted

It is a fundamental component of any claim for damages, that a complainant should take action to reduce, or mitigate its damages and that a complainant should not be compensated for cost incurred due to failing to take actions to mitigate its damages. *Rules, Regulations, And Practices Of Regulated Carriers With Respect To The Processing Of Loss And Damage Claims*, Ex Parte No. 263, 340 I.C.C. 515, 1972 ICC LEXIS 41, *126 (1972)(“The duty to mitigate damages is a well-established principle of law.”). In this case, as noted, the cause of Groome’s business failure was not caused by the lack of rail service, but were largely self-inflicted, resulting from Complainants’ refusal to take reasonable steps to obtain alternative service and to support restoration of service on this Line. Granting Groome damages would unjustifiably reward this self-destructive behavior.

Complainants’ troubles are almost entirely a result of their own series of bad decisions. They would not agree to a freight surcharge in 1998 that would have funded repair of the Line and replacement of the bridges, choosing instead to transload their freight. They did not seek counsel in 1998, who could have advised them of the availability of directed service and emergency service and alternative service orders from the Board for lines that the owner cannot serve. They did not pursue a feeder line application against either SCCR or GCEDC, even though the Board’s staff told them of that option. Rather, they chose to wait for abandonment, wait to file an OFA, and even to wait more than three years to pursue the complaint in this case, which they submitted to the Board in 2001 without the requisite filing fee.

G&A’s business involved cutting large rolls of paper to sizes required by customers. At the height of its business, G&A brought in about one railcar each weekday. When SCCR embargoed the Line, Mr. Groome actively supported Randy Mathena, another shipper on the Line (who also is a witness here) in discussing how to regain rail service. Eventually, without

benefit of counsel or consultants, they concluded that they would use truck service unless and until they could use OFA procedures to force SCCR to sell them the Line for its net liquidation value, which they considered to be negligible. They suggested that the County follow this plan as well, and stated that they would support the County if it acquired the Line. Documents produced by Groome show that G&A used trucks, either on direct shipments from the mills or from the crossdock warehouse as a substitute for rail service. *See* V.S. Stewart at 11; V.S. Plaistow at 7. "We will simply use trucks and research other alternatives for rail service," Mr. Mathena wrote SCCR in October 1998. *See* Verified Statement of Randy Mathena, Exhibit B to Complainants' Opening Statement, Attachment 3.

Now, however, Mr. Groome blames GCEDC (and, effectively, Greenville County) for acquiring the Line and not being able to put in hundreds of thousands of dollars of repairs which Mr. Groome's own witnesses, Mr. Anderson and Mr. Mathena, told the County would be needed to operate the Line. At the time, however, shipper spokesman Mathena was telling Greenville County that the purchase "would not come with inherent responsibility to spend one dime of government money." V.S. Groome, Attachment 11. Mr. Groome says the County should have hired attorneys and consultants to counsel it on buying and operating the Line, though he and Mr. Mathena didn't think they needed attorneys or consultants if they were to acquire the Line. *See* V.S. Mathena, Attachment 8 ("We do not need an attorney. This is a simple matter.") and Attachment 10 ("believe that [restoring the rail line] can be handled by a group of lay people, if we have fire in our guts. Please remember that the bridges alone will not solve the problem.") He says the County could have put in only a small amount of money and operated the Line solely to serve his facility, yet he and the others at the time told the County that large expenditures were needed, and never themselves sought to become the operator of the Line. And he says that

because the County didn't put hundreds of thousands of dollars into serving his business (money which apparently never would have been recaptured), the GCEDC ought to have to pay his alleged business and personal financial losses over the past 5 years and give him the rail line as punishment for not having served him. His evidence, however, utterly fails to establish that the loss of rail service, as opposed to other business practices and conditions, caused his business to fail.

C. Several Types of Damages Sought, Including Mr. Groome's Alleged Personal Damages, May Not Be Awarded Because They Are Beyond the Board's Statutory Authority

GCEDC has already established that Complainants are not entitled to any damages because GCEDC did not violate any statutory duty imposed upon it, and even if it did violate its common carrier obligation, those violations were not the cause of Complainants' financial problems and were not responsible for Groome's cessation of business. Nonetheless, if the Board awards any damages, which it should not, at most the Board is only empowered to award compensatory damages due to the alleged increased transportation costs. The statute does not allow the Board to award certain types of other damages sought by Complainants. In particular, Groome is not entitled to personal damages allegedly suffered by Mr. Groome nor can the Board award punitive damages. The Board is simply not a court of equity, seeking to remedy whatever it may perceive as wrongful behavior. Rather, the Board is a creature of statute, and has specific, limited authority to award damages.

The Board is not empowered to award punitive damages. Complainants seek punitive damages in the form of an order that they be awarded the Line, in addition to GCEDC being ordered to pay Complainants' alleged business and personal monetary damages. However, the Board is only authorized to award "damages sustained by a person as a result of an act or

omission of that carrier in violation of this subpart.” 49 U.S.C. §11704(b). In other words, the Board is authorized only to award compensatory damages. Punitive damages, such as ordering transfer of the rail line to Complainants, are non-compensatory, and are not within the Board’s authority.

Another limitation on the Board’s power to award damages is that the damages must be the “result of an act or omission . . . in violation of this part.” This limitation precludes awarding the damages sought by Mr. Groome personally. The only damages asserted by Complainants that are even remotely related to a potential violation of the statute are the increased shipping costs Groome allegedly incurred due to lack of rail service. As shown by Complainants’ evidence, those allegedly increased costs amount to only \$285,243. *See* Complainants’ Opening Presentation, Exhibit Q, Schedule 5. As concluded by Judge Few of the Greenville County Court of Common Pleas, that amount is the most that could be attributed to GCEDC’s alleged violations of the statute through failing to provide rail service. *See* V.S. White, Attachment 2, p. 17. Although GCEDC continues to assert that this agency is the only proper forum to hear Groome’s complaint, the logic of Judge Few’s conclusion on this point is unassailable.

Mr. Groome is not personally entitled to any damages from GCEDC. Complainants claim a variety of alleged personal damages to Mr. Groome, including lost salary, lost rent, lost profit sharing contribution, additional personal income taxes due to withdrawing profit sharing funds, and others, but such damages were not the fault of GCEDC. *See* V.S. White ¶11. Mr. Groome is a separate entity from G&A. Mr. Groome individually is not and has not, so far as GCEDC can tell, ever been a user of rail service. Therefore, Mr. Groome cannot be damaged by GCEDC’s alleged breach of rail service obligations. If Mr. Groome were entitled to damages from GCEDC, then every complaint filed with the Board in the future would become a class

action by the complainant's officers and stockholders against the railroad. Clearly such a result would be an abuse of the Board's processes.

D. Any Damages Awarded Should Be Limited to Those Which Allegedly Accrued After October 12, 2002

The complaint procedures of the statute were not intended to allow a party to file an incomplete complaint as a placeholder and to then sit by, failing to prosecute the claim, for more than three years, meanwhile alleging ever-increasing damages. If the complaint herein is not dismissed, then as discussed earlier, the most Complainants should be entitled to would be for damages for two years prior to October 12, 2004, the date the proceeding was docketed and considered filed. Groome as made no effort to show what his damages are from October 2002 to October 2004 and thus the complaint is incomplete and should be dismissed.

CONCLUSION

The facts of this proceeding clearly establish that GCEDC should not be held liable for the alleged damages claimed by Groome. GCEDC never acquired a common carrier obligation over the Line and never received or sought authority to operate over it. Even if it is assumed that GCEDC did have a common carrier obligation over the Line, the obligation was never triggered by Groome because Groome never requested service in the manner required by this Board's precedents. Likewise, even if the obligation was triggered, GCEDC still did not have to provide service because it had in place a valid embargo that excused it from providing that service.

Even if the Board finds that GCEDC violated its common carrier obligation, that violation was not the cause of the damages allegedly suffered by Complainants. Rather, Complainants' damages were the result of the nature of G&A's business and G&A's failure to adopt reasonable business strategies to continue its business. As a result, even if GCEDC violated its common carrier obligation, those actions were not the cause of Groome's financial

failure and GCEDC owes Mr. Groome neither the compensatory damages that he allegedly suffered nor the punitive damages that he seeks. Furthermore, the case should be dismissed because the complaint was filed beyond the two-year statute of limitations and the commodities involved in the complaint are exempt from regulation. Finally, even if Groome is entitled to damages, which it is not, those damages are extremely limited.

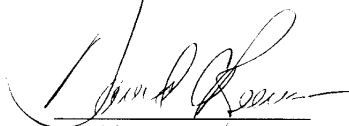


William A. Mullins
David C. Reeves
BAKER & MILLER, PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037

Counsel for Greenville County
Economic Development
Corporation

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 24th day of January, 2005, a copy of the foregoing Greenville County Economic Development Corporation's Reply To Complainants' Opening Statement was served by courier on Complainants' counsel.


David C. Reeves

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 1

GROOME COMPLAINT

SHAREHOLDERS:
ADDISON (JOE) G. WILSON
S. JAHUE MOORE†
J. MARK TAYLOR*
DAVID L. THOMAS
ROBERT B. STEVENS*†
WILLIAM C. CLARK
KENNETH W. BBIENHE
C. VANCE STRICKLIN, JR.
J. EDWARD BRADLEY
SHEILA McNAIR ROBINSON
HEATH P. TAYLOR
MICHAEL E. PASTERDAY

OF COUNSEL AND FOUNDER
STANCEL E. KIRKLAND



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May 17, 2001

GREENVILLE OFFICE:
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VIA CERTIFIED MAIL

SURFACE TRANSPORTATION BOARD
1925 K. St., NW
Washington, DC 20423-0001

RE: Groome & Associates, Inc. and Lee K. Groome vs. Greenville County Economic Development Corporation

Gentlemen:

You will please find enclosed a Formal Complaint which we are hereby filing with your organization. My client, Groome & Associates, Inc. and Lee K. Groome, believe they have been wronged by the Greenville County Economic Development Corporation.

It is our understanding that a Formal Complaint is necessary before your Board in order to preserve my clients' rights. Thus, we are filing this document in this form. If any changes or additions are necessary in order to comply with your procedures, we would greatly appreciate being informed of whatever else is necessary in order to protect our petition.

It is our understanding that the Greenville County Economic Development Corporation can be served at Post Office Box 2207, Greenville, South Carolina, 29602. Please advise as to whether or not you will effect service of our Complaint with your Board or as to whether you desire for us to effect service.

RECEIVED
SURFACE TRANSPORTATION
BOARD
MAY 23 3 16 PM '01
OFFICE OF COMPLAINT
AND RESOLUTION
DIRECTOR'S OFFICE

*Fellow of the American Academy of Matrimonial Lawyers
†Admitted to practice in New York

May 17, 2001

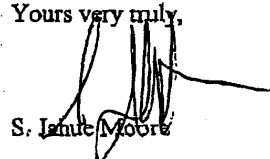
SURFACE TRANSPORTATION BOARD

**RE: Groome & Associates, Inc. and Lee K. Groome vs. Greenville County Economic
Development Corporation**

Page 2 of 2

I would appreciate very much an opportunity to discuss this situation with someone from the Board. Please have someone from the Board contact me at your convenience so we might discuss how we procedure from this point.

Yours very truly,


S. Janice Moore

SJM:dc

Enclosure

cc w/encl.: Linda Morgan, Surface Transportation Board
Mel Clemens, Director of Compliance and Enforcement
Mr. Lee K. Groome, Groome & Associates, Inc.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
BEFORE THE
SURFACE TRANSPORTATION BOARD
OF THE UNITED STATES

Groome & Associates, Inc., and
Lee K. Groome,

Complainants,

vs.

Greenville County Economic
Development Corporation,

Respondent.

FORMAL COMPLAINT

Complainants above-named alleges that:

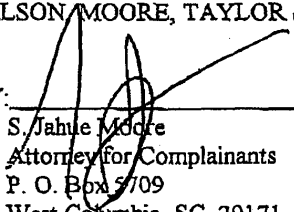
1. Complainants own property located near Greenville, South Carolina, between mile post 2.1 and mile post 11.8 at Travelers Rest, South Carolina.
2. In or about June of 1999, the Respondent, Greenville County Economic Development Corporation, acquired the rail line adjacent to the Complainants' property.
3. At no time has the Respondent ever sought to properly abandon the rail line and the Complainants have regularly requested rail service.
4. Complainants are informed and believe that the Respondent is obligated to provide rail service to the Complainants' place of business.
5. Complainants hereby formally file Complaint with the Surface Transportation Board alleging a violation of their rights to rail service.

6. Complainants have sustained significant loss of income; over charges for freight; loss of profit; and loss of various other funds related to the Respondent's failure to provide appropriate rail service.

7. Complainants are informed and believe that the Surface Transportation Board should look into the matter; should declare the activities of the Respondent to be illegal; should grant such damages as are appropriate in accord with the statute or regulations governing this matter; and should grant attorney's fees and costs as well as an Order requiring the Respondent to provide service.

WHEREFORE, Complainants pray that this Board inquire into the matter; grant the Complainants actual damages; treble damages; punitive damages; injunctive relief; declaratory relief; attorney's fees and costs; and for such other and further relief as this Board might deem just and proper.

WILSON MOORE, TAYLOR & THOMAS, P.A.

BY: 

S. Jahue Moore
Attorney for Complainants
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

West Columbia, South Carolina
May 17, 2001

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 2

GROOME RESPONSE TO GCEDC DISCOVERY REQUEST 7

Request No. 7: Identify on the accompanying chart in Columns A and B, respectively, the proper name and the STCC number of each commodity shipped from and each commodity delivered to Complainants' Business Location by motor carrier since January 1, 1996. (For any commodity for which Complainants are not aware of the proper name and STCC number, such commodity should be identified by its proper name and NMFC number in Columns A and C, respectively.)

Answer: Complainants object to filling out the chart on the grounds that it is burdensome and unnecessary. In further response, Complainants state that the finished commodity shipped by truck from Complainants' Business Location consisted of bales of bleached sulphate paper, coated on one or both sides, made of virgin fiber, which, after being slit into various shapes by Complainants, was used in the food and pharmaceutical industries as wrapping or printing paper, both of which are regulated paper or paper products. STCC 26213 and 26214.

As a by-product of the manufacturing process, bales of scrap paper, STCC 40241, were also shipped.

After rail shipments ceased being delivered by rail in February 1998, the commodity delivered by rail to Complainants' Business Location consisted of bleached sulphate paper, coated on one or both sides, made of virgin fiber, which, after being slit into various shapes by Complainants, was used in the food and pharmaceutical industries as wrapping or printing paper, both of which are regulated paper or paper products. STCC 26213 and 26214.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 3

VERIFIED STATEMENT OF WILLIAM G. STEWART

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION

VERIFIED STATEMENT OF WILLIAM G. STEWART

1. Introduction And Brief Conclusion

My name is William G. Stewart and I have 38 years of experience in the pulp, paper and packaging industries. As an expert in the paper industry, I was retained by Greenville County Economic Development Corporation to review the testimony and evidence presented by Lee K. Groome and Groome & Associates (collectively, "Groome") to the Surface Transportation Board ("STB") in Groome's December 22, 2004 filing. In particular, I was asked to review the assertions of Lee K. Groome and John Thombley that the business of Groome & Associates was virtually "recession resistant" and that its market in the paper industry was "not as subject to economic fluctuations of the market as many other products." (Groome Verified Statement ("Groome VS") paragraph 20). In this testimony, I focus on Groome's assertion that during the period 1998 through 2003 Groome was immune to the downturns in the paper industry and that the sole cause of Groome's claimed damages was a lack of rail service.

Based upon my review and analysis of the record, I agree with the evidence presented by Mr. Andrew White, and conclude that Groome's business was not immune from the fluctuations of the paper market and that the lack of rail service was not the cause of Groome's damages. Rather, Groome suffered from the effects of an ill-advised accumulation of inventory coupled with insufficient capitalization in a widely fluctuating and less forgiving marketplace that, combined with the bankruptcy of its major customer as well as the refusal of one of its major supply brokers to continue favorable credit terms, were the proximate causes of Groome's inability to remain in business. In reaching these conclusions, I have not only relied upon my expertise in the paper industry, but I have reviewed the STB record, portions of the record in the state court proceeding, and the testimony of Mr. Andrew White.

2. Qualifications

The companies I have worked for include: (a) Owens-Illinois, Inc., which at the time was the world's largest manufacturer of glass containers as well as the world's largest corrugated box manufacturer; (b) Union Camp Corporation, which was a major competitor in uncoated free sheet (copy and fax papers), corrugated containers, folding

cartons, bags and chemicals; and (c) MeadWestvaco Corporation, which is a major producer of coated bleached board, folding cartons, coated bleached fine paper, coated unbleached Kraft board and chemicals.

All three of these Fortune 500 companies were fully integrated. This means they grew their own trees to provide much of the fiber for the paper manufacturing and all produced final printed packaging for customers. All three of these firms, on occasion, would find themselves with excess, aged, off-grade or damaged roll inventory which they would sell to paper salvage firms, such as Mr. Groome's, which would either convert them to a pulp substitute or would cut them down to smaller widths.

During my career, I worked closely with three short line railroads owned by Owens-Illinois, and managed private trucking fleets and a private boxcar fleet of 1,800 paper-grade units. I also managed the purchase of over 2,000 tons per day of old corrugated containers (OCC), box plant clippings and sorted white ledger scrap for Union Camp Corporation. I also directly supervised the purchase of recycled material and bleached market pulp purchases for MeadWestvaco as they reported to me as Vice President of Supply Chain Management. My responsibilities throughout my career have included operations analysis, transportation, procurement, systems installation, and merger integration.

In addition I was a member of the American Paper Institute's (now American Forest and Paper Association) Transportation Committee for over 20 years and served a term as Chairman. I also helped form, and then served on, the joint AAR/Paper Industry Box Car Task Force and served several years as its Chairman. At present, I am a member of the Board of Directors of the University of Denver's Intermodal Transportation Institute.

3. A Brief Description Of Groome's Business And Its Relationship To The Marketplace

Groome was in the business of purchasing from the paper manufacturers various types of paper (*i.e.*, rolls of incorrect width, aged rolls, off-grade paper and excess inventory), and then slitting, re-winding and re-processing this paper, which he would then resell to packaging companies who would use the reclaimed product in consumer packaging products. This is a niche market of the overall supply chain in the paper industry and requires a great deal of knowledge of markets and trends. Even the best of such companies can get caught off guard when the market takes an unexpected swing. This is not a business for the faint of heart. It requires firms to have adequate financial resources to handle sudden swings in prices.

For example, you don't want to be caught having committed to buying a substantial amount of paper just as the packaging companies are reducing their demand for your product. Should that occur, you will end up paying more for your inventory than what you can sell it for and you will be stuck with a substantial amount of inventory with no place to sell it, you will incur continuing warehousing carrying costs, you will incur financial carrying costs and your inventory will continue to age and become even less

desirable. Those companies with substantial financial resources, such as those described below as being involved in mega mergers, may be able to "hold-on" through such fluctuating markets, but many small businesses cannot, and may even cease operating. Unfortunately, it appears that is precisely what happened to Mr. Groome during 1998. This initial financial reversal, many times greater than any increase in annual rail and cross dock costs, was a capstone event that commenced financial pressure from his outside sources of funds. Groome simply wasn't able to dispose of the high priced excess inventory or internally finance that inventory when the market price for those items did not go up as he had guessed. Adding less than two percentage points to the cost of his inbound rail material, the lack of rail service had little, if anything, to do with the underlying financial and market problems faced by Groome well before the rail service was curtailed by the embargo. Unlike Groome's characterization of the end use markets, and as I discuss below, the market in which Groome operated was not "recession resistant." It was a market that was extremely volatile and subject to numerous supply and demand fluctuations.

1995 to 2002 was a time when new mega-sized firms were being formed in the U.S paper industry. In my opinion, this industrial consolidation in the pulp and paper industry was analogous to the retail pressures brought on by Home Depot and Lowe's moving in on smaller local and regional hardware operations. It is also similar to the new market dynamics created when a Staples, Toys-R-Us or WalMart comes to town.

4. The Consumer Packaging Industry, Which Bought Groome's Products, Is A Volatile Industry And Subject To Vast Fluctuations In Demand

Mr. Groome has asserted (Groome VS paragraph 20) that the folding carton business, which is an eventual customer of Groome & Associates' slitting and re-wind business, is very "recession proof," inferring that only Groome & Associates' added transportation costs of some \$285,243 over a four-year period (Groome VS paragraph 6) was the sole economic factor (Groome & Associates Memorandum in Support of Complaint, page 30; Groome VS paragraphs 1 and 52) that caused them to cease operation in July 2003. For the reasons set forth below, I disagree with Groome's assertions and note that the folding carton business, waste paper business, and the roll slitting business are not "recession proof." Indeed, these businesses all went through numerous market fluctuations during the 1998-2003 period, and many suppliers of paper and customers of paper salvage firms, like Groome, ceased operations during this period.

To understand why these markets are volatile, it is helpful to understand that the "end product" of most of the product sold by Groome was ultimately used in consumer products and, in particular, the pharmaceutical industry. As such, Groome's business was clearly subject to the ups and downs of the consumer market. Indeed, paper packaging and folding cartons are always facing challenges from alternate materials and the products being packaged are also under constant competitive attack. It is simply not true that these markets produce a steady demand for the products supplied by Groome.

To understand what I mean, take a look at the market for packaging for music. For example, in the 1950's, the 78 RPM record was packaged in paper sleeves. Then technology moved the consumer's interest to the 33 RPM record and the sleeve became a folding carton-based billboard often showing the artist and listing the music selections. By the 1960's, 33 RPM's were on a decline and the upstart product was the short-lived eight track tape. That had less printing but needed a more substantial folding carton retail box. Shortly thereafter the tape cassette came on the scene and printing was greatly reduced to a small paper insert and the retail box was eliminated. Next came the CD package and the record manufacturers asked the paper industry to print thicker inserts to show the artist and carry information about the contents. The market also grew to include multipacks of folding carton material. This quickly spread to DVD's, which are often packaged in a combination of paper and plastic. This short example clearly shows that the competitors in the packaging industry have had to be nimble and resourceful to change with the market dynamics dictated by the public, even though the underlying demand for music was actually growing. You just can not take for granted that a market for your paper packaging will always be available nor that the packaging market will produce a steady demand for your product.

The same theory applies for the packaging involved with pharmaceutical items, with which Groome was involved. The drug and medicine packaging market is much more dynamic than what appears to most consumers. First there is the competition between brands, which we see so clearly on television: Bayer vs. Tylenol vs. Advil vs. Aleve! It also runs into prescription drugs such as Viagra vs. Levitra vs. Cialis. Unless you provide packaging materials for all of the products in an area, which Groome did not do, your business is definitely going to fluctuate in relation to the packaged product's success and certainly will not appear "recession proof." You just can not take for granted that a market for your paper packaging will always be available.

Similarly, even more volatility is present when a drug is approved by the FDA and there is a rush by the manufacturer to advertise and get its package on the shelves. A case in point would be Claritin, an allergy relief pill, which was recently approved for over the counter distribution. The manufacturer had a large TV advertising campaign and wanted to flood drug stores with double the ordinary amount of product to make it hard for the casual shopper to miss the new product. To meet this demand, folding carton manufacturers, at least one of which was located a short distance by truck from Greenville, had to run larger than normal quantities and to stockpile for the product roll out. During such periods, local demand for properly sized rolls of SBS paperboard was extremely high. However, after the huge rush to market, there naturally was a leveling off in demand and then the manufacturers turned their interest from the new product launch to reducing the cost of the packaging. This meant that local demand for properly-sized SBS paperboard, whether from companies like Groome or others, would be significantly reduced, adding increased volatility on the demand side with which to deal.

Prescription drugs are not immune from supply / demand swings either. In May of 1999, Merck & Company gained FDA approval of VIOXX as a non-steroid anti-inflammatory drug for the treatment of arthritis. In November of 2004, Merck voluntarily withdrew the

drug from the U.S. and worldwide markets due to concerns of increased cardiovascular events. The firms who provided packaging to VIOXX (or, like Groome, supplied paper to such packaging companies) of course got whipsawed by this abrupt action. Markets for their paper products evaporated overnight. VIOXX certainly was not an isolated case. In December 2004, Celebrex, another drug approved for the treatment of arthritis, was being used in clinical tests regarding colon polyps. These tests were halted by the National Cancer Institute and Pfizer, Inc. because the drug was believed to have increased cardiovascular events. While still available by prescription, the use of this drug is expected to drop significantly. Again, the packaging manufacturers, and those companies like Groome who provided product to such packaging companies, are significantly impacted by decisions like these. You just can not take for granted that a market for your paper packaging will always be available.

Similar transformations have been evident in the "recession proof" cosmetic area too. For example, for many years Union Camp's folding carton operations produced a beautiful and quite profitable red box for Old Spice deodorants manufactured by American Cyanamid. When this old line product was sold to Proctor and Gamble, they determined the product could be bulk packed and placed on the retail shelf in only its plastic container: same graphics, same color, larger market share, but no folding carton. As a result and to avoid financial failure, Union Camp had to quickly locate new business to replace the substantial lost volume caused by the actions of Proctor and Gamble. You just can not take for granted that a market for your paper packaging will always be available.

Companies, like Groome, which rely on the folding carton business as a major purchaser of their product, know full well that it is an ever-changing environment. This constant ebb and flow of competitive influences can upset routine business returns. It is simply not true that businesses that provide product to packaging companies are "recession proof" or can rely upon a "steady demand" for their product.

A specific example directly related to Groome's business is the relationship it had with Conpac. Conpac was a major purchaser of Groome's products, reportedly accounting for more than twenty percent (20%) of all of Groome's sales. Sometime in the 1999 to 2002 period, the period in which Groome claims his damages were related to the lack of rail service, Conpac ceased doing business. Conpac's going out of business had nothing whatsoever to do with the lack of rail service. Of course the loss of Conpac as a major customer not only cost Groome some \$265,000 in bad debt, but it eliminated a previously reliable and recurring outlet for Groome's products. Indeed, Conpac was not an isolated occurrence. As the record indicates, in 2002 Mr. Groome advised BB&T that three customers had filed bankruptcy since 1999.

This does not surprise me – no! There were major shake-ups in the folding carton industry during this time period. In fact the company I was working for between 1999 and 2002 ceased doing folding carton business at a number of locations, including, Richmond, VA; Newark, DE; Cleveland, TN, and a Mebane subsidiary facility in Greenville, MS. These domestic locations were all closing at the same time

MeadWestvaco was acquiring new folding carton businesses in Europe who certainly would not purchase products from U.S.-located paper salvage companies like Groome.

5. The Supply Side Of The Paper Salvage Business Is Also Extremely Volatile

In addition to the market uncertainties on the sales side of the paper salvage business (*i.e.*, those customers who bought Groome's product) there was, and is, great risk and fluctuation on the supply side (*i.e.*, those paper companies who provided product to Groome). Paper salvage firms, like Groome, depend in large part upon the mistakes or misfortunes of large integrated paper companies to supply them with less expensive material, which Groome then processes and resells to the packaging companies for a profit. Companies like Groome operate in a particularly uncertain atmosphere where the amount and particular caliber of paper available for reprocessing will vary. This is why such companies often have relationships with paper brokers, such as Continental Paper Grading Co., who was one of Groome's largest suppliers of paper. The job of these paper broker companies is to locate paper supplies and opportunities for companies like Groome to purchase excess or off-grade paper. As such, these paper brokers keep in regular contact with the integrated paper manufacturers and frequently offer financial assistance to purchasers like Groome by extending favorable payment terms in order to facilitate transactions.

There were two distinct and significant economic occurrences between 1996 and the 2003 that created a very choppy sea for the manufacturers of paper products used in the packaging of consumer and other products. These occurrences in turn affected those folks, like Groome, who were part of the overall supply chain and who operated in the niche paper salvage areas of independent rewinding and sheeting.

(a) The Paper Industry Suffered A Recession During The 1996-2002 Period

For decades the U.S. pulp and paper industry demonstrated its ability to increase productivity annually even without adding new machinery. Thus when there is an economic stagnation, as the paper industry started to feel in 1996, the U.S. paper industry quickly finds itself with too much capacity in relation to the demand from regular customers.

During such recessionary periods, there is a discernable tendency for large buyers of board or packaging to demand from the paper manufacturers smaller, more frequent shipments so that the packaging companies can reduce their own company's inventory carrying cost. Because the paper manufacturers are not set up to produce small runs, these smaller orders create extreme complications in scheduling the paper mill production runs because the paper machines (often as large as a New York City block) can not "stay on grade" for the optimum time.

Many mill production managers, especially early in a recession, will gamble that a customer will reorder soon. Thereby, they will run their machines for the optimum time knowing that doing so will "run up" excess inventory. They sell a portion to the

packaging company, meeting the request for smaller shipments, and store the excess inventory waiting for a reorder. If the reorder doesn't materialize, which happens more frequently in a highly competitive market as naturally exists during recessions, the mill can end up with more than the usual amount of aged rolls or rolls that have the wrong width or caliper. These inefficiencies at the manufacturing end create opportunities for paper salvage firms like Groome. If the recession lingers on, the manufacturers will look to sell their excess inventory to paper brokers and/or independent companies like Groome. Of course as the economy improves, as it did in 2002, the mills tend to gamble less and return to better schedules. As a result, the percentage of production at the manufacturing level that is matched with valid orders increases and there is proportionately less product available for purchase by companies like Groome.

In 1998, the paper industry was still struggling with the weak U.S. economy and industry consolidations. Most U.S. paper manufacturers had significant amounts of excess inventory or off-grade product. It appears from the record that someone at Groome must have felt that the recession was about to abate mid-year 1998 and, acting on rumors about impending price increases by the paper manufacturers for their first grade product and/or other paper product lines such as Linerboard, took in about 1,000 tons of extra bleached board inventory, which of course needed to be financed. Unfortunately, while Groome was likely hoping to re-wind and re-slit this product for resale to the packaging companies at a handsome profit, the demand from the packaging companies did not materialize. As a result, the value of that inventory did not increase and in fact may have decreased and certainly started to age. Then, as is set forth in the Verified Statement of Andrew White, one of Groome's major paper suppliers (broker), Continental Papers, decided to no longer provide financing for Groome's purchases, requiring upfront cash payment. This would have created major problems for Groome on the supply side. As if to add insult to injury, at approximately the same time period, Groome lost one of its major buyers, Compac. This would have created major problems for Groome on the demand side. Groome was stuck in the middle: paying finance charges for previously ordered inventory, having to pay cash for any future inventory, and then seeing a reduction on the demand side.

It is my opinion that it was ultimately these actions, combined with the overall fluctuations of the paper market during the relevant time period, which caused Groome's finances to spiral downward and for him to elect to stop operating. Conversely, it is my opinion that the cessation of the rail service, resulting from the properly instituted embargo related to safety issues, manifested itself as a coincidental nuisance, but did not cause the failure of Groome's business.

(b) Industry Consolidation Created Wildly Uncertain Markets

Further complicating Groome's traditional business relations is the fact that many of the very large U.S. integrated pulp and paper companies went through an unprecedented period of mergers, consolidations and takeovers during the time period at issue. The first shock was the unfriendly takeover of Great Northern Nekoosa by Georgia Pacific in the early 1990's. This initial action caused other paper manufacturers to decide they had to

grow market share through acquisition or be the possible target of someone else's merger strategy.

By the mid-1990's the paper industry was already struggling for earnings growth. It became clear that new, bigger, faster machines – at a cost of \$500 million to \$800 million per machine – weren't the answer. Those would merely add more unneeded product to an oversupplied market. Instead growth could be attained through mergers, and integration efficiencies would come through rationalizing out smaller old machines. The majority of these large pulp and paper industry consolidations occurred after 1995 and demonstrate further new and challenging market dynamics for small independent paper companies during the period in which Groome claims he suffered damages solely because of the lack of rail service. The new larger organizations set about to improve the management of companywide inventories as well as paper machine scheduling to reduce the percentage of off-grade materials. The new larger organizations would also consolidate their sales effort of off-grade and reject materials. The new larger organizations learned quickly how to more fully exploit internal opportunities to utilize the very materials that the niche players liked best. Thus the environment towards the end of the time period of the dispute became very difficult for small independent paper salvage companies like Groome.

(1) International Paper

International Paper ("IP"), the largest paper manufacturer in the U.S., acquired in succession Federal Paper Board in 1996, Union Camp in 1999, Champion International in 2000 and Shorewood Packaging in 2000. Thus by the end of the century, IP had grown their production of coated board, coated paper and folding carton capability and market share several times over.

(2) MeadWestvaco

Westvaco, which already had the largest U.S. bleached board mill in Covington, VA, added to its capability by purchasing the large Evadale, Texas mill from Inland Container Company in 1999. It went on to add folding carton capability through the acquisition of Mebane Packaging and numerous plants in Europe, including the entire Wall organization. Finally in 2002, Westvaco merged with Mead to form MeadWestvaco. Mead was the world's leader in producing coated unbleached Kraft board (used to package beverages) and also had a large position in coated bleached fine paper that complemented Westvaco's similar business.

(3) Fort Howard Corporation (Harmon Associates)

Fort Howard Corporation, a major recycled tissue manufacturer that owned 100% of Harmon Associates, which itself was a major waste paper dealer, merged with James River Corporation of Virginia in 1997 to form Fort James. This company then was acquired in 2000 by Georgia Pacific, which already produced the Northern Brand of paper tissue and towels.

It should be noted that all three of these consolidations involved multi-billion dollar, highly-integrated companies that were shown as sources of materials in the transportation documentation supplied by Groome & Associates. Groome's firm was not immune to the new market dynamics hostile to small, independent paper salvage companies that accompanied these mega mergers.

There are three other reasons for highlighting this unprecedented industry consolidation.

The first is to explain that the mergers often resulted in large one-time duplications of inventories for common customers. This substantial overlapping inventory was as likely as not to find its way to re-winders, to pulp substitution dealers, such as Groome, or to be returned to a mill within the new larger integrated firm for recycling.

Secondly the spike of duplicative inventory material often exacerbated the over capacity situation created by the recession and was often grade-specific. Therefore you could not rely on the traditional benchmarks of inventory levels to make educated guesses of where pricing was headed. Reportedly Mr. Groome told his bankers at BB&T that his business always followed closely the Linerboard business and that grade was showing some strength and tightened inventories. Thus, while Groome may have believed that prices of SBS grades would likewise increase, and thus warranted his risk in expanding his inventories of SBS before the price increase, Groome guessed wrong. As a result, Groome had what for him was a significant amount of excess inventory of bleached board at the same time that the consolidations were occurring, which themselves were creating significant amounts of excess inventory. These were new and complicating dynamics to those of prior industry cycles.

Third, in each of the consolidations, all of which had supplied Groome, there was a combining into a single organization of the sales of off-grade rolls and scrap paper from the expanded number of plants in the new firm. International Paper, MeadWestvaco, and Georgia Pacific have all made this consolidation on the supply side. Such consolidation of sales of off-grade and aged inventory was done to maximize the return on the off-grade and scrap material they might generate as a by-product of their primary operations. As a result, these companies, who were now more fully integrated, had many more internal options for usage of the materials, had increasingly-savvy sales personnel dealing with off-grade products, and consequently had less need to deal directly with smaller firms, like Groome, who dealt in niche markets.

6. Rail vs. Truck Loading

As I have previously stated, despite Mr. Groome's and Mr. Thombley's contrary assertions, the increased costs incurred when Groome had to turn to trucks rather than rail on a portion of his inbound shipments is not, in my opinion, the proximate cause, or even a significant contributor to the financial collapse of Groome's business.

I am also of the opinion that the claimant has exaggerated the complexity of the cross dock operation primarily to support his claim that these costs were the proximate cause of

Groome's financial failure. For example, he states that "a single railcar transports the equivalent of up to four to four and a half truck trailers." (Groome VS paragraph 14 and Groome & Associates Memorandum in Support of Complaint). While this may be theoretically correct, it needs to be examined in the area of Groome & Associates' receipts. In discovery, Groome produced a number of un-priced bills of lading that typically showed truck volumes in the area of 42,000 to 44,000 pounds. Groome also provided a sampling of rail shipments that were the subject of cross dock handling charges. Those showed:

03/05/03	CSXT139114	113,161 pounds
03/06/03	MB 5035	126,987
03/10/03	RBOX 43555	144,592
04/12/02	SOU 531967	112,203
06/25/02	(Gulf States)	102,268

The simple average of this sample is 119,842 pounds which, if compared to 43,000 pounds, is more on the order of 2.7 trucks per railcar, rather than 4 to 4 and a half. Why would this be? Well, trucks clearly weigh-out before they cube out. Boxcars on the other hand come in different sizes and are harder than a truck to load to full weight capacity with rolls of non-standard size or weight. The rolls shown on the freight documents Groome produced varied in weight from about 500 pounds to nearly 11,000 pounds, and varied from 9 ¼ inches to 102 inches in width. The most common sizes were between 2000 and 3500 pounds and between 29-3/8 and 52 ½ inches in width. The commodities were described as simply SBS (*i.e.*, solid bleached sulfate) or SBS paperboard, as polyboard or pulpboard, or as bales of waste. Based on my experience and on review of CSX Transportation exempt circulars and Standard Transportation Commodity Code tariff pages available to me, I believe that the five-digit STCC codes applicable to most or all of these materials would be 26 311 or 40 241.

Another reason is that the loaders of rail cars (*i.e.*, the paper manufacturers) seem to be less interested in maximizing the load. Instead, they are focused on getting rid of an unwanted product from the manufacturing or warehouse area. They don't add first-grade product to the off-grade merely to get a fully-loaded boxcar.

Mr. Groome also says in the same verified statement paragraph that loaders can unload one boxcar faster than they can unload four to four and a half trailers. I don't agree with that assertion. First, as demonstrated above, the comparison should be closer to three trailers, not four to four and half, which certainly narrows the time gap. Next, when loading a boxcar, the fork lift operator must enter and make a turn. Loading a trailer on the other hand is a straight-in maneuver, which is easier, quicker and less likely to cause vehicle damage. In fact, the single largest damage issue with the U.S. boxcar fleet is damage to doors from fork lift loaders and unloaders. A new replacement door costs as much as an entire trailer.

7. Conclusion

In summary, while trucking and cross docking did add handling expense to some of Groome's inbound shipments, in the overall scheme of the changes in the marketplace that were taking place during the time period in question, those costs by themselves would not have caused Groome to cease operating. My analysis of the record leads me to conclude that Groome's business was not immune from the fluctuations of the paper market as Mr. Groome contends, and that the lack of rail service was not the proximate cause of Groome's damages. Rather, Groome suffered from the effects of an ill-advised accumulation of inventory at the same time there was a reduction in demand for Groome's products. These factors, combined with the bankruptcy of its major customer as well as the refusal of one of its major supply brokers to continue favorable credit terms, were overwhelmingly the principal causes of Groome's inability to remain in business.



WGEK@aol.com
01/24/2005 01:01 PM

To: czorbaugh@bakerandmiller.com
cc:
bcc:
Subject: Signature

8. Verification

I, William G. Stewart, hereby declare under penalty of perjury that the foregoing is true, correct, and accurate to the best of my belief. Further, I certify that I am qualified and authorized to file this verified statement. Executed on January 22, 2005

William G. Stewart

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 4

**FEDERAL REGISTER NOTICE OF
GCEDC ACQUISITION EXEMPTION**

Standard No. 111 *Rearview Mirror*: Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that are self-tensioning and release by means of a single push button at both front and both rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection*: Installation of reinforcing beams if the vehicle is not already so equipped.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1994-1997 Honda Prelude passenger cars near the left windshield post and a reference and certification label must be added in the left front door post area to meet the requirements of 49 CFR part 565. The petitioner also states that the vehicles will be inspected prior to importation and that markings will be added, if necessary, to meet the requirements of the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Marilynne Jacobs,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 99-14092 Filed 6-2-99; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33747]

Adrian & Blissfield Rail Road Co.— Acquisition Exemption—Grand Trunk Western Railroad Inc.

Adrian & Blissfield Rail Road Company (ADBF), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by purchase) approximately 1.38 miles of rail line owned by Grand Trunk Western Railroad Incorporated (GTW) (known as the Lapeer Spur) between milepost 56.28 and milepost 57.62 on GTW's Flint Subdivision at Lapeer, in Lapeer County. In addition, ADBF will lease approximately .88 miles of rail line (known as the Lapeer Second Main) between milepost 289.90 and milepost 290.78 on the Flint Subdivision at Lapeer, in Lapeer County, MI.¹ ADBF will operate both lines.

The transaction was scheduled to be consummated on or shortly after May 20, 1999.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. FD 33747, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Kenneth J. Bisdorf, 2301 West Big Beaver Road, Suite 600, Troy, MI 48064-3329.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 26, 1999.

¹ ADBF certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed \$5 million.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 99-14036 Filed 6-2-99; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33752]

Greenville County Economic Development Corporation— Acquisition Exemption—South Carolina Central Railroad Company, Inc., Carolina Piedmont Division

Greenville County Economic Development Corporation (Greenville County), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire two sections of rail line from the South Carolina Central Railroad Company, Inc., Carolina Piedmont Division (CPDR), in Greenville County, SC, as follows: (1) between milepost AJK 585.34, in East Greenville, and milepost AJK 588.63, in Greenville, a distance of 3.29 miles (Southern Line);¹ and (2) between milepost 0.0, in Greenville, and milepost 11.8, in Traveler's Rest, a distance of 11.8 miles (Northern Line).²

The transaction is expected to be consummated on or shortly after May 28, 1999.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33752, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert J. Svets, Counsel for Greenville County Economic Development Corporation, Greenville County Square, 301 University Ridge, Suite 100, Greenville, SC 29601.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

¹ Greenville County reports that CPDR will continue to be the operator of the Southern Line.

² Greenville County states that it is currently seeking an operator for the Northern Line and that, once it reaches an agreement with the operator of the Northern Line, the operator will file a verified notice of exemption to operate the Northern Line.

Decided: May 26, 1999.
By the Board, David M. Konschnik,
Director, Office of Proceedings.
Vernon A. Williams,
Secretary.
[FR Doc. 99-13934 Filed 6-2-99; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****Submission for OMB Review;
Comment Request**

May 19, 1999.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Interested persons may obtain copies of the submission by calling the OTS Clearance Officer listed. Send comments

regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.

DATES: Submit written comments on or before July 6, 1999.

OMB Number: 1550-0098.

Form Number: Not applicable.

Type of Review: Reinstatement of previously approved information collection without change.

Title: Privacy and Accuracy of Customer Account Information.

Description: Consumer privacy is a growing concern because financial institutions can use new technology to access, compile, and relay account information quickly and easily to the customer, other institution staff, and third parties. New technology also increases the potential for misuse or alteration of customer information.

Before a savings association collects any information from a customer, the OTS policy statement indicates that it should

describe to that customer how the information will be used.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Recordkeepers: 1,200.

Estimated Burden Hours Per Recordkeeper: 40 hours.

Frequency of Response: One.

Estimated Total Recordkeeping Burden: 49,200 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906-6028, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Frank Di Galleonardo,

CIO and Director, Office of Information Systems.

[FR Doc. 99-13965 Filed 6-2-99; 8:45 am]

BILLING CODE 6720-01-P

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 5

**STB NOTICE OF
GCEDC ACQUISITION EXEMPTION**

30277

SERVICE DATE - JUNE 3, 1999

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33752]

Greenville County Economic Development Corporation—Acquisition Exemption—South Carolina
Central Railroad Company, Inc., Carolina Piedmont Division

Greenville County Economic Development Corporation (Greenville County), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire two sections of rail line from the South Carolina Central Railroad Company, Inc., Carolina Piedmont Division (CPDR), in Greenville County, SC, as follows: (1) between milepost AJK 585.34, in East Greenville, and milepost AJK 588.63, in Greenville, a distance of 3.29 miles (Southern Line);¹ and (2) between milepost 0.0, in Greenville, and milepost 11.8, in Traveler's Rest, a distance of 11.8 miles (Northern Line).²

The transaction is expected to be consummated on or shortly after May 28, 1999.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

¹ Greenville County reports that CPDR will continue to be the operator of the Southern Line.

² Greenville County states that it is currently seeking an operator for the Northern Line and that, once it reaches an agreement with the operator of the Northern Line, the operator will file a verified notice of exemption to operate the Northern Line.

STB Finance Docket No. 33752

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33752, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert J. Svets, Counsel for Greenville County Economic Development Corporation, Greenville County Square, 301 University Ridge, Suite 100, Greenville, SC 29601.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 26, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 6

**VERIFIED STATEMENT OF
ANDREW J. WHITE, JR.**

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 42087

GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

1. My name is Andrew J. White, Jr. I am an attorney with, and equity owner in, the law firm of Haynsworth Sinkler Boyd, P.A., and am located at the firm's Greenville, South Carolina, office. I was admitted to the Bar of the State of South Carolina in 1975 and have practiced law in South Carolina since that date. I also am a member of the Bar of the United States District Court for the District of South Carolina and of the United States Court of Appeals for the Fourth Circuit. My law firm has represented Greenville County Economic Development Corporation ("GCEDC") since its inception in 1999, and I personally have represented GCEDC since February, 2000.

2. In 2001 Groome & Associates, Inc. (Groome Associates") and Lee K. Groome ("Lee Groome") (collectively, "Groome" or "Plaintiffs"), brought suit against GCEDC in the Court of Common Pleas of Greenville County, South Carolina. The suit (the "Lawsuit") alleged that GCEDC was obligated to provide rail service to Plaintiffs, that GCEDC had not provided rail service to Plaintiffs, and that GCEDC was liable to pay damages to Plaintiffs as a consequence of the failure to provide rail service. GCEDC in the Lawsuit denied that Plaintiffs were entitled to rail service (due to the physical deterioration of the rail line, the cost of restoring the line, and the existence of an embargo) and also denied that Plaintiffs were damaged as a consequence of

any lack of rail service. GCEDC also maintained that the Surface Transportation Board ("STB") had exclusive jurisdiction of the claims raised in the Lawsuit and that the Court of Common Pleas for Greenville County had no subject matter jurisdiction to hear the Lawsuit. During the course of the Lawsuit, Groome denied that the STB had exclusive jurisdiction of their claims. Of course, having lost in state court, Groome now takes the opposite position.

3. A non-jury trial of the Lawsuit took place in March, 2004, before the Hon. John C. Few. Both Lee Groome and his accountant, John Thombley ("Thombley") testified as witnesses for the Plaintiffs. After hearing testimony over a period of approximately 3 days, Judge Few found in favor of GCEDC and awarded no damages to Plaintiffs. A transcript of Judge Few's trial comments and findings is attached as Attachment 1 hereto. A copy of Judge Few's Order and Judgment is attached as Attachment 2 hereto. Although Judge Few's order may not be binding on the STB, GCEDC does believe that the STB should consider Judge Few's findings of fact, as opposed to his findings of law, inasmuch as he heard the witnesses, observed their demeanor, and was an impartial arbiter who considered all the evidence presented at a full trial.

4. I personally participated in the pretrial discovery of the Lawsuit as well as the trial of the Lawsuit. I personally took the depositions of both Lee Groome and Thombley during pretrial discovery in the case. I am personally familiar with the matters stated herein.

5. Groome at trial testified, and Judge Few in his Order found that:

(a) Groome Associates operated a facility that adjoined a railroad line (the "Line"), which until 1987 was operated by Greenville & Northern Railroad. South Carolina Central Railroad, Inc. d/b/a Railtex ("Railtex") purchased the Line in 1997. In 1996 there were eight shippers on the Line, including Groome Associates. Total rail shipments on the Line in 1996 were 1,089 cars, with Groome Associates accounting for 249 cars. Total revenues generated on

the Line in 1996 were \$426,433, with Groome Associates accounting for \$56,309 (see Attachment 1 to Lee Groome's Verified Statement submitted by Groome in this STB proceeding).

(b) In December of 1997, Lee Groome learned that Railtex intended to embargo the Line due to deterioration of several trestles. Lee Groome was concerned about the impending lack of service on the Line and on December 10, 1997, wrote neighboring businesses to seek their assistance in contesting the embargo. Thereafter, Railtex implemented its embargo, and Groome's last rail service on the Line occurred February 8, 1998.

(c) After learning of Railtex's plan to cease rail service, and before GCEDC purchased the Line, Groome contacted a real estate company and listed the Groome Associates land and building for sale.

(d) During 1998 and the first half of 1999, Groome discussed the Railtex embargo situation with STB personnel and also discussed with the STB Groome Associates' rights and remedies as a rail shipper. During that time Groome also had discussions with Railtex regarding various plans to restore rail service. However, at no time during this period did Groome ever challenge in court or at the STB the lawfulness of the embargo on the Line nor at any time during this period did Groome assert to his bank, the STB or GCEDC that the lack of rail service was the cause of his declining business. Railtex at that time offered to restore service through 2000 if Groome and two other shippers would contribute \$100,000 each to restore the trestles, with Railtex then to spend \$200,000 of its own funds to make additional rail repairs. Groome rejected that offer.

(e) Railtex in January, 1999, offered to sell the Line to Groome and other shippers for \$750,000. After Groome rejected that offer, Railtex filed an abandonment petition with the STB

for a portion of the Line. *See* AB-312 (Sub-No. 2X), *South Carolina Central Railroad Company, Inc., D/B/A Carolina Piedmont Division – Abandonment Exemption – In Greenville County, S.C.*, (STB decided May 7, 1999)

(f) Business and community leaders in Greenville County, South Carolina, learned of the abandonment petition filed by Railtex and approached the Greenville County Council about purchasing the entire Line, not just the portion being abandoned, in order to preserve the entire corridor for future rail use. County Council authorized its Administrator, Gerald Seals, to negotiate with Railtex to purchase the Line. Railtex offered to sell the Line, including the portion that was subject to the abandonment proceeding, as well as an additional separate non-contiguous rail line also owned by Railtex and located in southern Greenville County that also was owned by Railtex, for an aggregate price of \$1,300,000. County Council approved the purchase and determined that the Line actually should be owned by GCEDC. Although the abandonment for a portion of the Line had been approved and before Railtex could consummate its abandonment, GCEDC purchased the entire Line from Railtex on June 14, 1999. *See Greenville County Economic Development Corporation – Acquisition Exemption – South Carolina Central Railroad Company, Inc., Carolina Piedmont Division*, Finance Docket No. 33752 (STB served June 3, 1999). As reflected in STB documents filed by GCEDC in connection with its acquisition of the Line, GCEDC itself was not a railroad operator and did not seek operating authority as part of its acquisition authority. GCEDC always intended to seek a third party to operate the Line and pending such a new operator, it never acquired the common carrier obligation.

(g) Upon acquisition of the Line, it was clear that the Line was in a serious state of disrepair. By that date six of the original eight shippers on the Line either had closed or had

moved away from the Line, leaving Groome and Paper Cutters as the only potential users of the Line.

(h) The Great Walton Railroad Co., Inc., a rail operator which Groome introduced to GCEDC, evaluated the Line in August, 2000, and opined that approximately \$900,000 would be needed to repair the Line to serve Groome and Paper Cutters, which is located north of Groome and was the only other active shipper on the Line at that time. The Great Walton also opined that an additional \$596,000 would be needed to restore the Line above Paper Cutters so as to serve the City of Traveler's Rest, which is located at the end of the line. (See Attachment 23 to Groome's Verified Statement).

(i) While GCEDC admits that Groome has had no rail service whatsoever on the Line since February, 1998, when Railtex ceased service, GCEDC in this STB proceeding does not admit that it had the common carrier obligation to serve Groome. Furthermore, even if GCEDC had a common carrier obligation at that time, it was excused from complying with that obligation because it had in place an embargo which was reasonable due to the substantial costs of rehabilitating the Line and the excessively high rates necessary to justify expenditures of rehabilitations funds, which rates would have been unacceptable to Groome or the other potential shipper on the Line.

(j) As stated by Judge Few in his Order, "Mr. Groome was an experienced and successful businessman who prior to June, 1999, had consulted the STB about his rights and remedies as a rail shipper and who was aware that rail service could not be restored on the Line unless substantial capital expenditures were undertaken for repairs." (Pg. 5 of Judge Few's Order, Attachment 2 hereto).

(k) Groome in the Lawsuit made many claims that Greenville County had promised to restore his rail service on the Line. However, no other witness at the trial of the Lawsuit agreed with Groome on that issue. Gerald Seals, the former Greenville County Administrator and the man who negotiated the purchase of the Line from Railtex, denied ever having made such a promise to Groome. As found by Judge Few in his Order:

Even assuming that GCEDC through Mr. Seals made a statement to the effect that "we've got \$500,000 and we're going to fix the line" as Mr. Groome asserts, such statement is not sufficient to meet the requirements of promissory estoppel. Mr. Groome's claim that he would rely on such a statement simply is not credible and consistent with other the (sic) evidence. At a minimum there is no timing as to when the promise will be acted upon or when repairs will be completed. ... In 1998 *before* GCEDC bought the Line, Mr. Groome realized that he had lost rail service and, admittedly, put his building on the market because of the loss of rail service. Having lost rail service for more than 16 months before ever discussing GCEDC's plans for the rail line, Groome's claim that he relied on Seals statement is not credible. Mr. Groome is an experienced businessman. He started Groome and built it into a 10 million dollar business by the early 1990's.... One does not allow a 5 to 10 million dollar business to undergo that kind of fundamental change in the way it receives its resources and delivers its products by relying on an unsupported statement by the County Administrator knowing that a governmental entity cannot spend half a million dollars without complying with the procurement code and formal action by the Board. ...

For the reasons the court finds that any representations of GCEDC or Greenville County officials to Plaintiffs regarding the restoration of rail service did not rise to the level of unambiguous promises to restore rail service. Further, this court finds that Plaintiffs were experienced in business matters, were aware of their rights and remedies and, therefore, Plaintiffs did not act reasonably in relying on any alleged and unproven representations of GCEDC or officials of Greenville County regarding restoration of the Line.

(Pages 10-11 of Judge Few's Order, Attachment 2 hereto).

6. GCEDC is a not-for-profit corporation and has limited revenues. Attachment 3 is an exhibit which originally was attached to GCEDC's responses to Groome's production requests in the Lawsuit and which describes the amounts and sources of GCEDC revenues in 2001, 2002 and 2003. Total revenue for all three years aggregated only \$75,259.65, and most of these funds came from one-time government grants. GCEDC had no revenue in 1999.

7. Attachment 4 is an exhibit which originally was attached to GCEDC's responses to Groome's production requests in the Lawsuit and which describes the various attempts GCEDC has made to find public grants to use toward the operation and repair of the Line. GCEDC has been unsuccessful in obtaining such grants except as follows: (a) South Carolina Department of Transportation has granted funds to GCEDC to defer the original cost of the Railtex purchase and to pay for a title search of both the Line and the southern rail line which GCEDC also owns; and, (b) Greenville County has granted funds to GCEDC to defer its attorney fees and other legal expenses incurred in the Lawsuit.

8. GCEDC has been unable to obtain an operator for the Line due to the physical condition of the Line. All potential operators have required that the Line be repaired as a condition to their operating agreements, and GCEDC has not had the funds to do so. After being unsuccessful in obtaining an operator, GCEDC on June 30, 2003, filed a Verified Notice of Exemption with the STB seeking to discontinue rail service on the Line.

9. Groome in paragraph 47 of his Verified Statement claims that GCEDC made the following false representations to the STB in its Verified Notice: (a) that no actual traffic had moved over the G & N Line since 1993, and (b) that no "formal complaint" had been filed by a user of rail service on the Line. Groome's statements in this regard are intentionally misleading and are unfairly derogatory to GCEDC because the actual facts show that the Verified Notice did comply with the Board's regulations. The actual facts are as follows:

(a) *No rail use since 1993*

GCEDC admits that in good faith and without knowledge of any factual incorrectness, it made the following statement in the 2003 Verified Notice of Exemption: "No actual traffic has moved over the G&N Line since 1993 because one of the bridges partially washed out and the

line is in extremely poor condition.” GCEDC then had no independent knowledge of when traffic on the Line ceased, and GCEDC based the foregoing statement on a Petition for Exemption which South Carolina Central Railroad Company (“SCCRC”), prior owner of the Line, filed with the STB December 12, 1997, and in which SCCRC on page 2 thereof stated “No train operations have been performed on the northern segment of the Line since 1993 because one of the bridges is partially washed out and the line is in extremely poor condition.”

During pretrial discovery in the Lawsuit, Groome on October 28, 2003, produced evidence to show that traffic moved on the Line through, at the latest, February, 1998. After that revelation, I personally telephoned Nancy Beiter, an attorney with the STB, and informed her of the possible factual error in GCEDC’s filed Verified Notice of Exemption in regard to when rail service last occurred on the Line. Ms. Beiter in that conversation advised me that the 1993 erroneous date issue was irrelevant and was a harmless error because the STB regulations applicable to GCEDC’s Verified Notice of Exemption required only that there have been no rail service on the Line during the two year period immediately preceding GCEDC’s Notice (June, 2003). Because I personally knew there had been no service on the Line since June, 1999, when GCEDC bought the Line, I informed Ms. Beiter that the 2-year non-use condition of the regulation actually was met in GCEDC’s petition. She did not request or require that GCEDC formally amend its petition.

(b) No “formal complaint” was pending

GCEDC’s Verified Notice was filed pursuant to 49 CFR 1152.50 Subpart F, which among other things requires that there be no “formal complaint” at either the STB or in a U.S. District Court pending with respect to the line in question at the time the notice is filed. 49 CFR 1111.1 defines a “formal complaint” and it is clear that a mere letter or other correspondence

cannot constitute a “formal complaint” unless it meets all the criteria of that regulation. In June, 2003, GCEDC was aware that Groome had been writing to Melvin Clemens of the STB and complaining about his lack of rail service (see Attachment 5). However, GCEDC when it filed its Notice was unaware of any “formal complaint” within the meaning of 49 CFR 1111.1 having been filed at the STB; in fact no such complaint had been filed in accordance with applicable federal regulations. Likewise, while Groome had filed a complaint in state court, no such complaint had been filed in a U.S. District Court. In fact, at the trial of the Lawsuit Lee Groome admitted that he had not filed a “formal complaint” with the STB or with a U.S. District Court. Thus, GCEDC’s Notice made no false statement in regard to the issue of a filed formal complaint.

Additionally, and as evidence of GCEDC’s good faith at the time, in May, 2003, I personally sent Groome’s attorney a copy of the discontinuance notice even though such service was not required by 49 CFR 1111.1. (Attachment 6 hereto).

(c) Notwithstanding the fact that GCEDC’s Notice was effectively accurate and was in compliance with the Board’s regulations, the Board nonetheless granted Groome’s request to have the Notice dismissed. AB-490X, *Greenville County Economic Development Corporation – Discontinuance of Service Exemption – in Greenville County, SC* (STB served Jan. 29, 2004). The stated grounds for such dismissal, however, had nothing whatsoever to do with any irregularity or falsification in GCEDC’s Notice.

10. Groome in his Verified Statement claims that he and Groome Associates have suffered damages of more than \$3,500,000 that are attributable “solely to the loss of rail service due to GCEDC’s refusal to provide rail service”. (Paragraphs 1 and 52 of Groome’s Verified Statement). Groome further states that the business of Groome Associates was virtually

“recession resistant” and that its market in the paper industry was “not as subject to economic fluctuations of the market as many other products.” (Paragraph 20, Groome’s Verified Statement). As will be shown later on in this statement, both of these assertions by Groome are false. In fact, while Groome would have the STB believe that during the period 1998 though 2004 Groome Associates was immune to the downturns in the paper industry as well as the severe economic after-effects of September 11, nothing can be further from the truth. Likewise, in Groome’s view, and in the view of his accountant Thombley, *any and all losses* suffered by Groome Associates during 1998-2003 were the sole and exclusive result of a lack of rail service on the Line, and this lack of rail service caused Groome Associates to go out of business. Groome and Thombley positions regarding this damage issue are ludicrous. As is established below by Groome’s own correspondence and by the internal memoranda from his bank, Branch Banking and Trust Company (“BB&T”), Groome during 1998-2003 was in constant financial trouble, had numerous operational and market problems, and, as noted by Judge Few and discussed below, the reasons for the failure of Groome had nothing to do with a lack of rail service on the Line.

11. Groome supports his damage claim by relying on an analysis performed by his accountants, Thombley & Simmons, P.C. (Paragraph 52 of Groome’s Verified Statement and Attachment 28 thereto). The information presented in Attachment 28 is essentially identical to the information Thombley presented and testified to in his deposition in the Lawsuit (Attachment 7 hereto) and in the trial of the Lawsuit.

12. Thombley in his deposition claimed that lack of rail service on the Line caused Lee Groome personally and Groome Associates to suffer damages of \$3,538,002. The methodology

used by Thombley, and as relied on by Lee Groome in Attachment 28 to his Verified Statement, was discussed by Thombley in his deposition and was explained as follows:

(a) Thombley claimed that Groome Associates lost income of \$1,419,358 during 1998-2003 due to the lack of rail service. He computed this figure in a two-step process:

(i) He took Groome Associates' net income for the period 1993 through 1997, annualized it to \$62,007/year, and then multiplied this annualized amount by 5 and 7/12 (*i.e.*, 5 years plus 7 months for the period 1998 through 2003) to get aggregate lost income of \$346,206.

(ii) He then subtracted the retained earnings of Groome Associates in 2003 from its retained earnings in 1998 to get a negative net worth difference of \$1,073,152, which he then added to the above \$346,206 to compute a total net loss of \$1,419,358. (Pages 18-24 of Thombley Deposition, Attachment 7 hereto; also see page 2 of Attachment 28 to Groome's Verified Statement).

The fundamental problem with Thombley's methodology and calculations is not one of arithmetic, but rather one of logic and correct, relevant facts. Thombley assumes in his damage calculations that 100% of Groome's losses during 1998-2003 were caused solely from a lack of rail service on the Line. Therefore, in order for his computed losses validly to be attributable to a lack of rail service, one must also assume that Groome had no other business problems during 1998-2003 which could have caused these same losses. Indeed, Thombley in his trial testimony confirmed that he did not consider changes in market conditions or changes in Groome's sales and customer base when he determined his damage figures.

In fact, and as shown below, Groome was having serious and numerous financial problems during 1998-2003, none of which related to the lack of rail service, which situation

was at most a minor issue for the company. Indeed, Lee Groome himself admits that the lack of rail service resulted in extra operational costs of only \$285,243 during the entire 5 year and seven month period of GCEDC ownership of the Line (Paragraph 15 of Groome's Verified Statement). Even if this alleged damage claim of \$285,243 were true, simple arithmetic shows that these claimed extra operational costs equate to average annual losses of merely \$51,088/year for Groome Associates. It is implausible to believe or to assert that alleged extra costs of \$51,088 per year caused Groome to go out of business and to experience the losses of \$3,538,002 as claimed by Groome and Thombley today. As discussed below, Groome's damage argument not only is implausible (a conclusion Judge Few also reached), but also is contradicted by the historical documents from the relevant time period.

(b) Thombley also claims that Groome personally suffered damages of \$1,083,467 in lost salaries and \$447,000 of lost rentals as a consequence of the lack of rail service to Groome Associates. With respect to the lost salary, Thombley computed this figure by taking the salaries that had been paid to Groome for the period 1993 through fiscal 1998 and then computing \$204,800 as the average annual salary he was paid during that time. He then assumed Groome would have received the same salary each year for the period after 1998, and thus he concluded that Groome was shorted \$1,083,467 of salary he did not receive in 1999-2003.

The rent claim reflects the fact that Groome personally owned the land and building occupied by Groome Associates and that Groome Associates was supposed to pay him rent of \$15,000/month. Thombley determined that during the period 1998-2003 Groome Associates did not pay rent aggregating \$447,000 due Thombley blames this failure entirely on business losses the company was allegedly suffering as a result of lacking rail service on the Line. (Pages 27-29

of Thombley Deposition, Attachment 7 hereto; also see page 2 of Attachment 28 to Groome's Verified Statement).

There are at least two fatal flaws with Thombley's assumptions and methodology regarding this component of his damage claims. First, as noted above, all his calculations assume that 100% of Groome Associates' business losses during 1998-2003 were caused by the lack of rail service. That assumption is demonstrably untrue. While it may be true that Groome did not receive a salary of \$204,800 during any relevant year and that he did not receive his annual rent of \$180,000 during any relevant year, it is implausible to conclude that Groome Associates' financial inability to pay these expenses was due solely to its \$51,088 of alleged extra annual operating costs because of the lack of rail service. In fact, it can be argued that Groome Associates actually benefited by not paying Groome his salary or rental during a relevant year since doing so would have reduced the company's operating costs that year by \$384,800. It is self evident that not having to pay those two classes of expenses produced an annual savings for the company far in excess of the alleged extra annual cost of \$51,088 arising from the lack of rail service.

Secondly, the damage claims for lost salary and rent admittedly are personal claims of Lee Groome and are not damages sustained by the business and rail shipper, Groome Associates. GCEDC did not owe a common carrier obligation (assuming it owed one at all) to Lee Groome, but rather to Groome Associates. GCEDC had nothing to do with Groome Associates' business decision to either pay or not pay Lee Groome's salary or rent. As such, Lee Groome himself has no standing to assert personal damages for lack of rail service unless he was a shipper, and it is clear from his Verified Statement that Groome Associates was the shipper, not Groome

personally. It is both legally and factually improper to comingle Groome's alleged personal damages with those of the shipper, Groome Associates.

(c) Thombley in his damage figures also includes \$281,550 of profit sharing plan contributions not received by Groome personally (due to Groome Associates' lack of money) and \$140,271 of income taxes and penalties incurred by Lee Groome personally in connection with premature withdrawals from his profit sharing account. Lee Groome allegedly used these monies to fund Groome Associates during 1998-2003. (Pages 29-35, Thombley Deposition, Attachment 7 hereto; also see page 2 of Attachment 28 to Groome's Verified Statement).

Again, Thombley here is assuming erroneously that 100% of Groome Associates' business losses flowed from the lack of rail service, which is not the case. Also again, Thombley is improperly co-mingling Lee Groome's personal profit sharing and personal tax losses with losses claimed by the shipper, Groome Associates. As discussed above, Lee Groome was not the shipper and has no legal standing to claim damages for his personal profit sharing losses and personal tax liabilities. GCEDC did not make the decision to forego paying Lee Groome any profit sharing contributions, nor did GCEDC make the decision to cause funds to be withdrawn from Lee Groome's profit sharing account, thereby incurring the claimed tax and penalty liabilities. Groome Associates made those decisions for business reasons, and it is self-evident that Groome Associates actually benefited by not making profit sharing contributions to Lee Groome's retirement account. Further, and in regard to the taxes paid by Lee Groome on early withdrawals from his retirement account, Thombley admitted that these were tax liabilities which Groome would have had to pay some day in the future anyway.

(e) Finally, Thombley in Attachment 28 to Lee Groome's Verified Statement includes \$166,356 in damages as additional losses for the period ended November 30, 2003 (as shown in

Schedule 7 of Attachment 28). It is clear from Schedule 7 that the \$166,356 merely is a pro-
ration of the same net operating losses, lost salaries, lost rental, profit sharing, taxes etc., that
Thombley computed for the period prior to November 30, 2003. Therefore, the same arguments
in 12(a)-(d), above, apply to the \$166,356 claim: (a) Thombley's calculations falsely assume
that 100% of Groome's operating losses arose for its lack of rail service, and (b) the claims
regarding lost salary, lost rent, lost profit sharing contributions and tax liabilities improperly
comingle personal damages of Lee Groome, a non-shipper, with those of Groome Associates, the
rail shipper.

13. As noted above, Thombley's and Lee Groome's damage claims assume that 100%
of Groome Associates losses in 1998-2003 arose because of the lack of rail service. To buttress
this assumption, Lee Groome in his Verified Statement actually states under oath that Groome
Associates was immune from the business cycles of the paper industry and was "for all intents
and purposes recession resistant." (Paragraph 20 of Groome's Verified Statement). Such
statement by Lee Groome is false and is contradicted by numerous documents which GCEDC
obtained from his bank, BB&T, during discovery in the Lawsuit (see discussion below).

14. Judge Few also heard Groome's contention that lack of rail service caused
Groome Associates to go out of business. After hearing all the evidence, including Thombley's
testimony, Judge Few found Groome's claim to be false and implausible.

As stated in the Courts' Order:

"Plaintiffs in this action contend that the loss of rail service caused Groome to go
out of business and for Mr. Groome to suffer a diminution in his salary and profit
sharing payments. Groome also contended that that the lack of rail service
increased its storage, handling and shipping costs by \$285,243 during the period
subsequent to June, 1999. However, during the period 1996 to 2002, Groome's
annual sales ranged from \$5,000,000 to \$10,000,000 and were subject to
substantial fluctuations caused by conditions in the paper market. In fact,

Groome's sales already had entered a downward trend even before rail service ceased in February, 1998. Additionally, after June, 1999, Groome suffered other major business reversals, including (a) purchasing an over supply of above-market cost inventory, (b) writing off substantial accounts receivable which were uncollectible, (c) losing favorable sales terms from Continental Paper, its major supplier of inventory and (d) a general decline in the paper business in concert with the national economic recession in 2000 and afterwards. Therefore, this court finds that a lack of rail service did not put Groome out of business, but rather it increased his operational costs by an aggregate amount of \$285,243 during the time that GCEDC has owned the Line."

(Pages 6-7, Attachment 2 hereto)

The implausible nature of Groome's damage claims was further commented upon by Judge Few at the time of trial:

"It is difficult for me to conceive how an \$11 million or even a \$6 million gross revenue business could be put out of business by a \$100,000 a year increased cost in shipping. ...but to say that that is how that business failed, is, to me, stretching it. You know, there are other factors that were discussed in that letter that Mr. Marion discussed in his closing argument.

(Page 17, Attachment 1 hereto)

15. The "other factors" and "letter" above referred to by Jude Few pertained to a July 28, 2003, e-mail from Brooks Cannon (a BB&T banker in charge of Groome's loan at that time) to other bank employees. This e-mail (Attachment 8 hereto) was introduced by GCEDC as an exhibit to the Lawsuit and in its relevant portions states:

"I have had several conversations during the past 3 weeks with Lee Groome concerning the future of his business that you need to be aware of. In a nutshell, Lee is winding down the operations of Groome and Associates. Despite the fact that Groome has shown significant improvement during the past 18 months, one of his largest suppliers (Continental) has drastically cut back the credit terms granted to Groome. Historically, Continental allowed Groome to run up to 80 days on its AP in exchange for Groome taking large lots of poor quality paper. However, a recent change in management has resulted in their requiring Groome to pay completely current before shipping any more product. Due to the fact that Groome is poorly capitalized, this financing source was critical for Groome to have enough inventory to operate

effectively. As you know, we have seen our ABL line paid \$400M since early May as the company's trading assets shrink."

16. The change in Continental's credit terms to Groome Associates was devastating for the company in two respects, one having to do with its inventory needs and the other having to do with its BB&T loan:

(a) Effect on Inventory Needs

In April, 2003, Continental was a vendor that provided 63.9% of Groome Associate's inventory supply (page 23 of Attachment 9 hereto). It is an understatement to note that Groome Associates was highly dependent on Continental as a source for its inventory needs.

As a consequence of Continental Paper's tightening of Groome Associates' credit terms, Groome Associates effectively lost access to over nearly two-thirds of its inventory supplies, and of course this meant that the company's sales and accounts receivable likewise would shrink as it was deprived of inventory to convert into saleable products. The Continental credit change thus was an economic nuclear bomb for Groome Associates.

(b) Effect on BB&T Loan

"ABL" in the Brooks email means "Asset Based Lending" and refers to the type of loan whereby BB&T allowed Groome Associates to borrow from the bank under a lending formula that went up or down depending on the value of the company's inventory and accounts receivable (which values changed monthly) and the value of its equipment (which value was fixed). The total amount of credit availability to Groome Associates was limited by the value of this asset borrowing base as well as by an over-all loan cap. If the borrowing base increased, the company's ability to borrow increased, subject to the cap. Likewise, if the borrowing base

decreased, the company's lending limit went down and, additionally, the company would have to pay down the existing loan balance to the extent it then exceeded the new borrowing base limit.

Attachment 9 is BB&T's May, 2003, audit of Groome Associates and was introduced by GCEDC as an exhibit in the trial of the Lawsuit. As shown in that audit: (i) Subject to a maximum cap of \$1,188,703 (page 3, line 8, Attachment 9), the company's borrowing base then was \$915,112 (\$792,363 for inventory/receivables plus \$122,750 for equipment); and, (ii) The company's outstanding loan balance was \$810,599.

As discussed above, Continental's credit change severely impacted Groome Associates' ability to obtain inventory and to generate receivables, both of which factors were material components of the borrowing base formula. As inventory and receivables dropped after the Continental credit change took hold, the borrowing base likewise dropped. Cannon in his email refers to shrinkage of \$400,000 in the borrowing base and the borrower's resulting \$400,000 paydown of the loan. Continental Paper's credit change thus had a "double-whammy" negative effect on Groome Associates bank loan. First, it caused the company's borrowing availability to shrink \$400,000, thereby depriving the company of borrowing capacity per the loan formula. Second, the company was forced to pay down its credit line by \$400,000, which amount represented a reduction of approximately 50% of the bank's *entire* loan balance.

That huge monetary hit to the company's cash flow, combined with the inability to obtain inventory from Continental Paper under the previous easy credit terms, was the death knell for Groome Associates.

Lee Groome in his Verified Statement blames all of his company's economic problems on GCEDC and neglects to mention the Continental disaster which devastated Groome Associates and which led to the shut down of that company. Lack of rail service had nothing to

do with the closing of Groome Associates despite Lee Groomes' disingenuous statements to the contrary.

17. Groome Associates' problem in 2003 with Continental Paper was merely one in a series of financial crises which the company had been having since 1998 and which Lee Groome failed to mention in his Verified Statement. These financial problems are evidenced in the following documents (Paragraphs 18-24, below) which were also introduced as exhibits in the trial of Lawsuit.

18. Attachment 10 is an internal BB&T memorandum describing a meeting between a senior vice-president of the bank and Lee Groome in December, 1998. Significantly, this meeting took place six months *before* GCEDC purchased the Line and ten months *after* Railtex terminated rail service on the Line. Among the more interesting points discussed in that memorandum were the following:

- "Lee was clearly nervous that I was there. He knows that his company's performance has been sub par and I think that he may have thought that BB&T was going to pull out on him. Very much to his credit, Lee was very up front on all the problems that his company was having and answered every question that I asked fully and easily."
- "Lee said that their problems were indicative of an over supply of paperboard in the marketplace. This is a problem for them because he was convinced that the market had turned around about 6 months ago. ... and he purchased inventory that he cannot now move without taking a substantial loss."
- "Lee estimated his loss in a 'better market' at about \$100-150M. In the current market, he estimated his loss at about \$300M."
- "He has been approached about selling out to Fort Howard Paper next summer, which he is seriously considering."
- "Lee said that their part of the industry followed the linerboard side, both down and up. I think he feels linerboard is almost ready to 'come back', therefore paperboard will be next."

The 1998 events and other factors surrounding the paper industry make it clear that Groome Associates was not a company that was immune to cycles in the paper industry and was not virtually "recession proof" as Groome now claims to the STB. (Paragraph 20 of Groome's Verified Statement). Further, Lee Groome in the December, 1998, was well aware of the financial problems his business was having then, and indeed he was nervous because he thought the purpose of the meeting was to cut off his credit line. Further, although Groome gave many reasons for the poor economic performance of Groome Associates, it is significant to note that Mr. Groome did not mention to his bank that the causes of his problems were related to a lack of rail service on the Line.

19. Attachment 11 is an August 21, 1998, letter from Lee Groome to BB&T discussing the softness in the paper market and the steps Groome had taken to counter the adverse affects of the paper business cycle. As noted by Groome:

- "Current softness is due to several factors, the primary being overproduction of paperboard by manufacturers, a general cycle soft market and less than robust pulp sales."
- "Paper as an industry is subject to extreme highs and lows, which can be weather related, too wet to harvest timber, sale cost too low for pulp operating companies, the U.S. dollar being too strong, or weak. These are but a simple few reasons as are related. The most difficult item for us to judge is when will the soft markets appear, can we adjust inventories down before the PAPER BEAR wakes, or increase inventories to out-wit THE BULL."
- "Groome has operated profitably 8 years out of 10. This most recent drop in market costs outwitted us this time to a greater degree than previous soft markets due to the fact we had taken our largest inventory position in company history. Our best intention to grow the company through market share has cost us this time."
- "In an effort to curtail costs, I have reduced labor by 40%, eliminated outside warehousing completely, and frozen any purchases not necessary...providing all things being equal and there is no further market softening, it is my belief we should be operating in the black by October's end."

Do the above statements of Lee Groome in 1998 indicate that Groome Associates was immune from the cycles of the paper industry as he now contends? Likewise, do the above statements support Thombley's damage methodology which ignores market conditions and which attributes all of Groome Associates' losses to the lack of rail service? Clearly both Groome and Thombley are wrong in their assertions and assumptions. Further, if rail service was such an important factor in Groome Associates' losses, would not Lee Groome have mentioned that subject in this August, 1998, letter or in the December, 1998, meeting described by the bank above? Obviously, despite what Groome says to the STB, the facts as evidenced by contemporaneous notes and memoranda tell a different story: the lack of rail service had nothing significant to do with Groome's business losses.

20. Attachment 12 is a March 26, 1999 letter from Lee Groome to BB&T. Again, Lee Groome in his letter noted problems in his business caused by cycles of the paper industry. Among other things, he stated:

- "With the major integrated paper mills taking 'down time' and holding the line on available tonnage, finally; market demand is closer to available supply."
- "Linerboard, which is a key indicator for us, has had a \$50 per ton cost increase, which took effect 2/1 & 3/1. SBS pulp rolls and bales for repulping should move \$20.00-30.00 April 1st and with tight supply our 'job lots' used for converting will move \$50.00."
- "Demand has increased and we are starting up a 'moth balled' rewinder as well as gearing up personnel for production."
- "Average inventory cost have continued to drop – partially because of good spot-buying, but, primarily accepting 'write-downs' on sale of inferior goods to repulping markets. I do not foresee any major tonnage with a 'write-down' need."
- "We down sized by approximately 50% and will selectively add manufacturing ability thru labor. There are no capital investments necessary."
- "February showed a modest positive cash flow (+ 20,000.00)."

- “The second half of ’99 should be much improved, however overall growth for the industry forecast is to be 2 ½ %.”
- “Charles, thank you and BB&T for your support during this market condition.”

21. Attachment 13 is an October 3, 2000, letter sent from BB&T to Groome noting that Groome had “significantly” overextended its borrowing base and therefore the Bank was seeking additional collateral to secure the over-extension. The Bank also notes that the Chapter 11 filing of one of Groome’s customers might erode earnings for the year.

22. Attachment 14 is an undated letter from Groome to BB&T replying to the Bank’s October 3, 2000, letter. Groome in the letter notes the problems Groome Associates is having with defaults in the bank’s loan and with Groome’s business, and among other things states:

- “Per our conversation October 3rd, allow me an opportunity to assure you and the Board of BB&T of both my viability personally, and that of Groome & Associates, Inc.”
- “Foremost, I believe this to be the first time in the history of Groome & Associates to be ‘outside covenants’ with a lending institution.”
- “Your analysis of volatile (with regards to our industry) is accurate.”

22. Attachment 15 is a January 9, 2001, letter from Lee Groome to BB&T in which he again notes adverse conditions in the paperboard industry and his hope that the company will be profitable that month.

23. Attachment 16 is an internal BB&T memorandum dated November 5, 2002, reflecting the bank’s discussions with Groome on the subject of Groome & Associates’ bad financial condition. Among the factors causing problems for the company were the following:

- “Lee’s personal financial condition has been significantly negatively impacted by the financial deterioration of Groome & Associates over the past several years as he has liquidated personal assets and borrowed against equity in real estate to continue moving in the fashion to which he had become accustomed.”

- “Lee has restructured the company over the last 12 months, having removed several family members, which contributed to the decline in profitability. The Company has reduced its operating expense nearly 40% in lieu of the market downturn, which occurred during FYE 98 and FYE 99.”
- “Groome is simply attempting to keep the Company afloat long enough to reach the point where the market rebounds and sales (and margins) return to an acceptable level.”
- “Groome admits that he delegated far too much responsibility several years back when he was experiencing a ‘burn-out’ period. This resulted in poor management, lost sales, and poor expense control.”
- “Groome had 3 clients file bankruptcy since 1999 costing the company \$348K in bad debt.”
- “The paperboard business has been in a slump for 3 years. Groome states that this slump was initiated by gross over-production by the paper companies which drove down prices and margins and has been extended by the general downturn in the economy over the past 12-18 months.”
- “It appears as though Groome has stopped the bleeding as the company was slightly profitably for the FYE 7/31/02. While sales were down again, gross margins almost tripled to their highest level of the past 4 years. Groome states that, industry-wide, both margins and demand has improved due in part to the shake-out in the industry that has occurred over the past several years.”
- “In early 1 Q 1998, Groome took a calculated risk purchasing extra tonnage prior to an expected April price increase in paperboard. This caused his inventory to swell from historical levels of 1500 tons to nearly 2500 tons. Unfortunately, the following 2nd through 4 Q has seen a sharp decline. Groome had purchased inventory at 500+ a ton, which is now on the market for 350+. This has eroded any potential profit during this period.”
- “Groome states that his industry is just beginning to come out of a 3 year slump. Groome does not expect to see a significant up-ticke in his company’s sales until late in 2002. According to Groome, many of his competitors have been driven out of business during the past 3 years. Margins have improved but sales are still quite slow.”
- “At FYE98, the company showed a loss of \$391m on revenues of 9.939mm. ...During FYE 98, the Company uncharacteristically took on \$355m in returns or credits whereby the customer was shipped product which was unsatisfactory. This was due to product which was incorrectly accepted during receiving (Lee’s brother’s responsibility) and sales where (nephew) misrepresented certain grades of paperboard. This was further compounded by a significant decline in raw material prices, which left, Groome with a

limited gross profit margin. The trend has been difficult to turn as the paper market has been slow to correct itself as a function of overproduction in 1998.”

- “For the FYE 7/31/01, Groome & Associates reported a net loss of \$737M on gross sales of \$5,420M. Sales were down \$2,050M (27%) from the prior year and gross margins dropped to 6.7% - their lowest point of the past 5 years. Included in this loss is bad debt expense of \$268M of which \$265M is attributable to one client (Conpac as mentioned in the next section) that filed Chapter 11. Further, this bad debt was incurred in the prior fiscal year and should have been charged against operations for the FYE 7/31/00. This would have reduced that year’s net profit of \$153M to a net loss of \$112M.”
- “... BB&T presently is over-advanced by approximately \$275M due to deterioration in the value of the equipment which additionally secures this line. ... This significant depreciation in value is due to age... and the fact that there is a significant amount of this type of equipment on the market due to shakeout that has occurred in the industry.”
- “BB&T is pursuing an ‘out’ strategy as Groome has lost money for 4 consecutive years (assuming 2000 results are re-stated for the bad debt that should have been charged-off), the company’s capital base has been depleted, we are over-advanced, and Groome does not have the ability to correct the collateral shortfall by pledging additional assets or paying down the loan balance. Beyond that, Groome’s frequent hot-tempered reactions to BB&T’s concerns over these issues indicates that this company is not a good fit for BB&T.”

Only then, in 2002 and after filing the lawsuit, did Lee Groome’s rail service issue appear in the Bank’s memoranda of contacts with Groome. However, it is clear from the document that any such rail problems were minor in comparison to Groome Associates’ other longstanding market, management and profitability problems.

24. It is also evident from the above uncontroverted bank records and correspondence that Groome Associates was neither “recession-proof” nor resistant to adverse changes in the paper market. To the contrary, the company had constant pricing and inventory cost issues during the period 1998-2003, and this situation was made even worse by Groome’s gamble in over-purchasing inventory at prices that turned out to be above market rates.

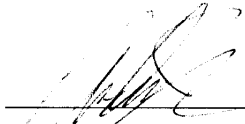
25. The CONPAC Chapter 11 accounts payable loss mentioned by the bank several times above also was a huge blow to Groome Associates. Not only did the bad debt from the

CONPAC bankruptcy result in a monetary loss of \$264,679 to Groome Associates (and caused it to sustain an annual loss for 2000), but also the bankruptcy eliminated a major customer of the company. According to BB&T's July, 2000, audit (a portion of which is attached as Attachment 17 hereto) CONPAC's account represented a total of 20.5% of Groome Associates' *entire* accounts receivable. Groome Associates thus not only lost \$264,679 when CONPAC declared bankruptcy, but also Groome Associates lost a customer that had accounted for *one-fifth of its total* customer base. This loss of a huge account payable, when combined with the loss of 20% of future sales, had to be devastating to Groome Associates. However, both Groome and Thombley conveniently ignore the CONPAC fiasco when calculating their damage claim.

25. The above undisputed facts totally discredit the view that Groome Associates was not subject to business cycles, that it was recession proof and that 100% of its losses in 1998-2003 arose solely because of the lack of rail service. It is ludicrous for Groome and Thombley to contend that GCEDC should pay damages of \$3,538,002 based on such a factually fallacious methodology. Thombley's damage calculations are exaggerated, inaccurate and of no relevance whatsoever to the issue of what damages, if any, can be attributed to the lack of rail service, and because Groome relies exclusively on Thombley's report as the basis for his damage claim of \$3,538,002, Groome's proof of damages in this proceeding totally fails and must be rejected.

VERIFICATION

I, Andrew J. White Jr., hereby declare under penalty of perjury that the foregoing is true and correct. Executed on January 19, 2005.



Andrew J. White Jr.

TABLE OF CONTENTS

Attachment No.	Description
1.	Transcript of Judge John C. Few's trial comments and findings (March 24, 2004)
2.	Copy of Judge John C. Few's Order and Judgment (September 17, 2004)
3.	Amounts and sources of GCEDC revenues in 2001, 2002, 2003
4.	Attempts of GCEDC to obtain public grants
5.	STB letter to GCEDC (February 28, 2003)
6.	Letter of Andrew J. White, Jr. to Groome's attorney (May 13, 2003)
7.	Deposition of John Thombly (December 16, 2003)
8.	Email of Brooks Cannon (July 29, 2003)
9.	BB&T Audit of Groome & Associates (May 22, 2003)
10.	BB&T memo re Groome & Associates (December 11, 1998)
11.	Letter from Lee Groome to BB&T (August 21, 1998)
12.	Letter from Lee Groome to BB&T (March 26, 1999)
13.	Letter from BB&T to Groome (October 3, 2000)
14.	Letter from Lee Groome to BB&T (undated)
15.	Letter from Lee Groome to BB&T (January 9, 2001)
16.	BB&T internal memo re Groome & Associates (November 5, 2002)
17.	Excerpt from BB&T audit of Groome & Associates (July 17, 2000)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 1

**TRANSCRIPT OF JUDGE JOHN C. FEW'S TRIAL COMMENTS
AND FINDINGS**

(MARCH 24, 2004)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF

COMMON PLEAS

GROOME AND ASSOCIATES,)
)
PLAINTIFF.)
)
-vs-)
)
GREENVILLE COUNTY ECONOMIC)
DEVELOPMENT CORPORATION,)
)
DEFENDANT.)
)

TRANSCRIPT OF RECORD
01-CP-23-2351

MARCH 24, 2004
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. FEW

A P P E A R A N C E S:

JOHN S. SIMMONS, Esquire
Attorney for the Plaintiff

W. FRANCIS MARION, JR., Esquire
ANDREW J. WHITE, JR., Esquire
Attorneys for the Defendant

DAWN V. KOFFSKEY
Court Reporter

INDEX

PAGE NO.

RULING

3

INDEX TO EXHIBITS

(NO EXHIBITS WERE ENTERED DURING THIS PORTION OF THE TRIAL)

RULING

1 **THE COURT:** ALL RIGHT. I'VE THOUGHT ABOUT THE CASE A
2 LOT, AND PUT TOGETHER MY THOUGHTS AS THE CASE WAS GOING
3 FORWARD AT NIGHTS AND IN THE MORNINGS, AND I AM READY TO
4 RULE. AND I'M GOING TO DESCRIBE MY RULING, AND I'M GOING TO
5 ASK THAT AN ORDER BE PREPARED TO REFLECT THAT RULING.

6 TO START OFF WITH WITH SOME OF THE PROCEDURAL ISSUES,
7 I'M REALLY NOT ADDRESSING THE QUESTION OF SUBJECT MATTER
8 JURISDICTION BECAUSE, AS I SAID, I BELIEVE JUDGE MILLER'S
9 RULING ANSWERS THAT QUESTION AND IS THE LAW OF THIS CASE AND
10 IS BINDING ON ME AND THAT IT WOULD BE IMPROPER FOR ME TO
11 QUESTION JUDGE MILLER'S RULING.

12 ON THE QUESTION OF PRIMARY JURISDICTION. PRIMARY
13 JURISDICTION IS NOT REALLY A SUBJECT MATTER JURISDICTION
14 QUESTION, ALTHOUGH, YOU KNOW, IT COMES VERY CLOSE TO IT. AND
15 JUDICIAL ECONOMY IS THE PHRASE I WAS LOOKING FOR EARLIER, IT
16 MIGHT REALLY EVEN BE SORT OF GOVERNMENTAL ECONOMY. BUT IT
17 WOULD BE APPROPRIATE THAT EVEN THOUGH I COULD NOT DEMAND THAT
18 THE SURFACE TRANSPORTATION BOARD HEAR THIS, I COULD SAY TO
19 THE PLAINTIFF, I'M NOT HEARING IT BECAUSE OF THE FACT THAT I
20 BELIEVE THE SURFACE TRANSPORTATION BOARD IS UNIQUELY
21 QUALIFIED AND SET UP UNDER FEDERAL LAW TO HEAR THIS AND THAT
22 IT SHOULD GO BEFORE THEM BEFORE IT COMES TO ME.

23 BUT I'M NOT GOING TO SAY THAT IN THIS CASE, AND HERE'S
24 WHY -- AND I'LL GET INTO THIS MORE IN A LITTLE BIT -- I THINK
25 THAT THE FACTS OF THIS CASE ARE SUCH THAT I AM AS QUALIFIED

RULING

1 AS THE SURFACE TRANSPORTATION BOARD TO DECIDE WHETHER OR
2 NOT -- OR TO DECIDE THE ISSUES IN THE CASE. AND I'LL GET
3 AROUND TO EXPLAINING WHY THAT IS IN JUST A MINUTE. AND SO,
4 I'M NOT GOING -- I AM GOING TO GO AHEAD AND ADDRESS THE
5 QUESTION OF WHETHER OR NOT THE DEFENDANT IS LEGALLY OR -- AND
6 WAS LEGALLY OBLIGATED TO PROVIDE RAIL SERVICE.

7 ON THE QUESTION OF DAMAGES, I -- MR. SIMMONS MAKES A
8 GOOD POINT ABOUT THE VALUE OF THE -- YOU KNOW, IF THIS WERE A
9 CASE INVOLVING THE VALUE OF THE REAL ESTATE, THAT WOULD BE
10 ONE THING. BUT IT'S NOT. I MEAN, THIS IS SIMPLY A QUESTION
11 OF WHAT HAPPENED TO THIS BUSINESS AND WHETHER OR NOT IT WAS A
12 -- WHAT ARE THE DAMAGES. I THINK THAT THIS COURT IS -- IS --
13 THERE'S NOTHING ABOUT THE SURFACE TRANSPORTATION BOARD --
14 THERE'S NOTHING ABOUT THAT QUESTION THAT MAKES THE FEDERAL
15 AGENCY MORE QUALIFIED TO ANSWER THAT QUESTION. I DON'T NEED
16 THEIR EXPERTISE IN EVALUATING WHETHER OR NOT DAMAGE WAS DONE
17 TO A BUSINESS AND, IF SO, HOW MUCH. I BELIEVE THAT THIS
18 COURT NOT -- I SAID "I," BUT I'M TALKING ABOUT THE COURT --
19 I'M NOT TALKING ABOUT ME PERSONALLY -- IS QUALIFIED TO DO
20 THAT EQUALLY SO TO THE SURFACE TRANSPORTATION BOARD.

21 ALL RIGHT. NOW, GETTING TO THE MERITS OF THE CASE. THE
22 FIRST THING IS THE FACTS OF THIS CASE ARE UNIQUE IN THAT
23 YOU'VE GOT SOMEBODY WHO COMES IN AND BUYS A RAILROAD LINE AND
24 THEY'RE NOT -- THEY ARE NOT, NEVER HAVE BEEN, AND WHETHER
25 THEY EVER WILL BE OR NOT IS YET TO BE SEEN -- BUT ARE NOT AND

RULING

1 NEVER HAVE BEEN A RAIL CARRIER. THEY'RE NOT A RAILROAD.
2 THEY DON'T KNOW ANYTHING ABOUT RAILROADS EXCEPT WHAT THEY CAN
3 LEARN ALONG THE WAY.

4 THAT REALLY DISTINGUISHES THIS CASE FROM A LOT -- FROM
5 WHAT I THINK MOST OF THE TIME IS INVOLVED WHEN YOU HAVE AN
6 EMBARGO, WHEN YOU HAVE A DENIAL OF SERVICE OR WHATEVER. AND
7 I THINK THAT'S -- I THINK IT'S VERY IMPORTANT TO THE FACTS OF
8 THIS CASE BECAUSE OF SEVERAL REASONS.

9 FIRST OF ALL, IT MAKES THE CONCEPT OF EMBARGO KIND OF
10 LOOK STRANGE ON THE FACTS OF THIS CASE. IT DOESN'T -- THE
11 CONCEPT OF AN EMBARGO DOESN'T REALLY COME UP, I DON'T THINK,
12 VERY OFTEN IN A SITUATION LIKE THIS.

13 I'VE READ THESE CASES AND IT -- I BELIEVE FIRMLY THAT
14 THERE IS THE -- AN EMBARGO IS SIMPLY AN ACKNOWLEDGEMENT BY
15 THE LAW, THE COURTS, BECAUSE IT IS, AS POINTED OUT, A COMMON
16 LAW DOCTRINE. IT IS AN ACKNOWLEDGEMENT OF THE FACT THAT
17 THERE MAY BE SITUATIONS, WILL BE SITUATIONS THAT COME UP THAT
18 REQUIRE RAIL SERVICE TO BE INTERRUPTED, AND THOSE MAY COME UP
19 IMMEDIATELY. AND WHEN THOSE CIRCUMSTANCES COME UP, IT -- IF
20 IT IS REASONABLE FOR THE CARRIER TO DO SO, THEY MAY INTERRUPT
21 SERVICE.

22 NOW, MOST OF THE TIME IT COMES UP IN A SITUATION WHERE
23 YOU'VE GOT A RAILROAD WHO IS A MEMBER OF THE A.A.R. AND
24 THEY'VE GOT A BUNCH OF SHIPPERS ON THE LINE, AND SO THE
25 A.A.R. HAS COME UP WITH A METHOD OF FORMALLY PROVIDING NOTICE

RULING

1 OF THE EMBARGO. AND THERE ARE A LOT OF PEOPLE WHO -- A LOT
2 OF BUSINESSES AND PERHAPS EVEN MAJOR BUSINESSES WHOSE
3 PROFITABILITY AND LIVELIHOOD, AND THERE ARE MANY PEOPLE WHO
4 WORK FOR THOSE BUSINESSES WHO LIVELIHOOD DEPEND ON THE
5 EXISTENCE OF THAT RAIL SERVICE, AND IF IT IS SHUT OFF WITHOUT
6 NOTICE, THEN THAT'S NOT A GOOD THING. AND SO WHAT THE A.A.R.
7 CIRCULAR TRIES TO DO, I BELIEVE, IS TO PROVIDE THE BEST
8 NOTICE THAT IT CAN TO GIVE TO SHIPPERS THE BEST CHANCE THAT
9 THEY CAN HAVE TO COME UP WITH SOME ALTERNATIVE WAY OF GETTING
10 THEIR RESOURCES TO THEM AND THEIR GOODS OUT SO THAT THEY CAN
11 CONTINUE THEIR BUSINESS WHILE WHATEVER NEEDS TO BE DONE TO
12 THE RAILLINE GETS DONE.

13 THAT'S NOT REALLY THE SITUATION HERE. BUT I THINK
14 THAT'S IMPORTANT BECAUSE I DON'T SEE HOW THE INDUSTRY
15 STANDARD OR PRACTICE OF COMPLYING WITH THIS A.A.R. CIRCULAR
16 CAN TAKE ON THE FORCE OF LAW.

17 IT'S MY RULING THAT THE DOCTRINE OR CONCEPT OF AN
18 EMBARGO IS SIMPLY THAT A CARRIER DOES NOT HAVE TO PROVIDE
19 RAIL SERVICE ALL OF THE TIME, AND THERE ARE SITUATIONS WHEN
20 RAIL SERVICE CAN BE INTERRUPTED WITHOUT THE PRIOR PERMISSION
21 OF THE SURFACE TRANSPORTATION BOARD OR WHATEVER APPLICABLE
22 GOVERNMENT AGENCY THERE IS. SO IN THE CONTEXT OF THIS
23 SITUATION, THAT'S WHAT AN EMBARGO IS.

24 BUT ON THE OTHER HAND, REALLY, YOU CAN LOOK AT IT IN A
25 DIFFERENT WAY TOO, AND THAT'S THE SHIPPER HAS GOT A RIGHT FOR

RULING

1 SURE, AND PERHAPS A DUTY, TO PROTECT ITS OWN ACCESS TO THAT
2 RAILLINE. IT'S GIVEN MECHANISMS IN SEVERAL FORUM. IT CAN GO
3 TO THE SURFACE TRANSPORTATION BOARD AND FILE AN ACTION ASKING
4 THE SURFACE TRANSPORTATION BOARD TO REQUIRE THE CARRIER TO
5 PROVIDE SERVICE. IT COULD GO TO THE FEDERAL COURT AND ASK
6 FOR AN INJUNCTION. IT COULD GO TO THE STATE COURT,
7 PRESUMABLY, IF THE JURISDICTION ISSUE THAT WAS DECIDED BY
8 JUDGE MILLER IS CORRECT, AND GET AN INJUNCTION THAT WOULD
9 REQUIRE RAIL SERVICE TO BE MAINTAINED DURING THE SHORT TERM.

10 SO CERTAINLY A SHIPPER, SUCH AS THE PLAINTIFF IN THIS
11 CASE, HAS THE RIGHT TO DO THAT. AND FRANKLY, I THINK THAT
12 THE SHIPPER IN THIS CASE HAS THE DUTY TO DO THAT. I THINK
13 THAT IT'S THE RESPONSIBILITY -- AS I UNDERSTAND THE FEDERAL
14 LAW, IT'S THE RESPONSIBILITY OF THE SHIPPER TO PROTECT
15 THEMSELVES IN TERMS OF KEEPING ACCESS OPEN.

16 NOW, THEY CAN'T ACTUALLY MAKE THE -- I'M NOT SAYING THAT
17 THE SHIPPER ACTUALLY GOES OUT AND FIXES THE BRIDGES AND FIXES
18 THE GRADE CROSSINGS AND ALL OF THAT STUFF. I'M TALKING ABOUT
19 TAKING THE INITIATIVE TO MAKE SURE THAT THE CARRIER DOES WHAT
20 IT'S REQUIRED TO DO UNDER FEDERAL LAW, GETTING THE QUESTION
21 TO THE PROPER FORUM IN TIME FOR THE QUESTION TO BE DECIDED IN
22 TIME TO MAINTAIN THE SHIPPER'S BUSINESS.

23 NOW, SO WHETHER YOU LOOK AT IT AS IT BEING AN EMBARGO
24 QUESTION AND WHETHER OR NOT THE DEFENDANT HERE WAS REASONABLE
25 IN INTERRUPTING SERVICE, OR IF YOU LOOK AT IT AS A DUTY OR

RULING

1 RIGHT ON THE PART OF THE SHIPPER TO INSURE ITS OWN SERVICE,
2 IT ALL BOILS DOWN IN THE END, I BELIEVE, TO THE QUESTION OF
3 WHETHER OR NOT IT IS REASONABLE FOR THE OWNER OF THE LINE TO
4 INTERRUPT SERVICE.

5 AND SO THAT'S WHERE WE ARE HERE. I DON'T THINK IT
6 REALLY MAKES A WHOLE LOT OF DIFFERENCE ON THE FACTS OF THIS
7 CASE WHETHER I SAY THIS IS A VALID EMBARGO OR IT'S NOT. I
8 THINK THE QUESTION COMES DOWN ULTIMATELY TO -- THE CASE COMES
9 DOWN ULTIMATELY TO, IS IT REASONABLE FOR THE COUNTY -- FOR
10 THE DEFENDANT TO NOT PROVIDE SERVICE? AND I WILL SAY THAT I
11 THINK THAT WHETHER THAT QUESTION IS RAISED IN THE EMBARGO
12 CONTEXT OR RAISED BY THE SHIPPER THAT IT IS THE BURDEN OF THE
13 PLAINTIFF TO PROVE THAT RAIL SERVICE SHOULD BE PROVIDED.

14 NOW, YOU KNOW, THE SURFACE TRANSPORTATION BOARD MAY NOT
15 LOOK AT IT QUITE THAT WAY. THEY MAY NOT CONSIDER THINGS IN
16 TERMS OF THE BURDEN OF PROOF. THEY ARE AN ADMINISTRATIVE
17 AGENCY. THEY MAY LOOK AT IT AND SAY, WELL, DO WE THINK IT
18 SHOULD GO THIS WAY OR DO WE THINK IT SHOULD GO THAT WAY?

19 SO THAT BRINGS UP THE STATUTE OF LIMITATIONS. NOW, WHEN
20 THE -- WHEN MR. GROOME -- OR WHEN THE PLAINTIFF FIRST KNEW
21 THAT THERE WAS GOING TO BE INTERRUPTED SERVICE COULD NOT
22 POSSIBLY HAVE BEEN ANY LATER THAN FEBRUARY OF 1998, WHEN RAIL
23 SERVICE STOPPED. I MEAN, THERE IS NO -- THERE IS NO DOUBT
24 THAT THEY KNEW AS OF THAT TIME THAT RAIL SERVICE STOPPED.
25 AND UNDER MY VIEW OF THE LAW THAT IT IS THE SHIPPER'S

RULING

1 RESPONSIBILITY TO PROTECT ITS ACCESS TO THE RAILLINES AROUND
2 IT, THE STATUTE OF LIMITATIONS BEGINS TO RUN AT THAT TIME.

3 THE SUGGESTION IS MADE, I BELIEVE, THAT THE EXISTENCE OF
4 THE EMBARGO THAT WAS PROBABLY FILED, I ASSUME, BY RAILTEX
5 WOULD TOLL THE STATUTE OF LIMITATIONS UNTIL THE EMBARGO
6 EXPIRES. I DON'T BELIEVE SO BECAUSE I THINK THAT IF THAT
7 WERE TRUE, THEN -- AND IF IT WERE TRUE THAT THE EMBARGO
8 AUTOMATICALLY LASTS FOR ONE YEAR, THEN -- I JUST -- I JUST
9 DON'T THINK -- I JUST DON'T THINK THAT THAT'S TRUE.

10 I THINK THAT THE SHIPPER HAS GOT TO TAKE ACTION. IT'S
11 GOT AT LEAST TWO FORUM IN WHICH TO TAKE THAT ACTION, AND THAT
12 WOULD BE WITH THE SURFACE TRANSPORTATION BOARD OR THE FEDERAL
13 COURT, AND POSSIBLY THE STATE CIRCUIT COURT.

14 SO I THINK THE STATUTE OF LIMITATIONS BEGINS TO RUN ON
15 THE DATE OF THE STOPPAGE OF SERVICE ON THE LINE AT THE
16 LATEST. THE RECORD IN THIS CASE INDICATES THAT THE ACTION
17 WAS COMMENCED IN JUNE OF 2002 WHEN SERVICE WAS MADE PROPERLY
18 ON THE DEFENDANT.

19 NOW, THERE IS -- SO WITH THOSE TWO DATES, THAT WOULD
20 MEAN THAT THE PLAINTIFF HAS NOT COMPLIED WITH THE STATUTE OF
21 LIMITATIONS. I'M A LITTLE BIT CONCERNED ABOUT THE FACT THAT
22 SERVICE WAS MADE, THAT AN APPEARANCE WAS MADE, THAT THE THING
23 -- THE CASE WAS LITIGATED TO SOME EXTENT, DEFAULT JUDGMENT
24 WAS ENTERED LONG BEFORE JUNE OF 2002. SO I'M GOING TO --
25 THAT -- I AM GOING TO RULE THAT THE STATUTE OF LIMITATIONS

RULING

1 HAS NOT BEEN COMPLIED WITH, BUT I'M GOING TO GO PAST THAT AND
2 START TALKING -- AND JUST GO STRAIGHT TO THE MERITS OF THE
3 CASE ALSO.

4 SO ON THE QUESTION OF THE REASONABLENESS OF WHETHER --
5 OF THE FAILURE OF THE DEFENDANT TO PROVIDE RAIL SERVICE, YOU
6 KNOW, I THINK IT'S -- I THINK IT'S VERY IMPORTANT TO
7 UNDERSTAND THE CONTEXT IN WHICH THE DEFENDANT TOOK OVER THIS
8 RAILLINE, AND THAT IS, THAT THE SERVICE HAD BEEN STOPPED.

9 AND MUCH EMPHASIS HAS BEEN PUT ON THE FACT THAT THE
10 DEFENDANT NEVER ACTUALLY FORMALLY FILED AND SERVED NOTICE OF
11 AN EMBARGO. AND AS I SAID A MINUTE AGO, THIS IS A SITUATION
12 THAT MUST BE SOMEWHAT UNIQUE IN RAILROAD SITUATIONS.
13 NORMALLY, ONE WOULD ASSUME, YOU'VE GOT A LINE WITH SEVERAL --
14 AT LEAST SEVERAL SHIPPERS ON THE LINE WHO NEED TO KNOW THAT
15 THE SERVICE IS GOING TO STOP BECAUSE THEY NEED A CHANCE TO
16 OBTAIN ALTERNATIVE WAYS OF GETTING THEIR RESOURCES IN AND
17 THEIR GOODS OUT.

18 THAT'S NOT THE CASE HERE. MR. GROOME AND THE PLAINTIFF,
19 GROOME AND ASSOCIATES, KNEW WITHOUT ANY DOUBT SIXTEEN TO
20 SEVENTEEN MONTHS BEFORE THE DEFENDANT ACQUIRED THIS LINE THAT
21 THERE WAS NO RAIL SERVICE ON THAT LINE. AND SO WHEN THE
22 DEFENDANT ACQUIRES IT, THE -- ONE OF THE PURPOSES OF A FORMAL
23 FILING OF AN EMBARGO IS NOT RELEVANT.

24 AND SO I'M NOT PUTTING ANY EMPHASIS ON -- I DON'T FIND
25 ANY SIGNIFICANCE TO THE FACT THAT THE DEFENDANT NEITHER

RULING

1 UNDERSTOOD THAT THERE WAS AN EMBARGO AND IT IS -- I AGREE
2 WITH YOU THAT IT IS KIND OF -- YOU KNOW, IT -- IT SORT OF IS
3 TELLING ABOUT THE CIRCUMSTANCES OF THIS CASE THAT THE
4 DEFENDANT DIDN'T EVEN REALLY UNDERSTAND WHAT AN EMBARGO WAS
5 UNTIL LATE IN THE PROCESS. BUT THE FACT THAT THEY NEVER
6 FILED AND SERVED A FORMAL EMBARGO IS, IN MY VIEW, NOT
7 SIGNIFICANT.

8 I DON'T REALLY -- YOU KNOW, I THINK THAT THE -- I THINK
9 THAT THE BURDEN IN GOING OVER THESE FACTORS SHOULD PROPERLY
10 BE ON THE PLAINTIFF. BUT EVEN SO, THE COST OF REPAIR IS VERY
11 HIGH. WHETHER IT'S \$300,000 OR \$500,000 OR TWO AND A HALF
12 MILLION DOLLARS OR, LOOKING AT THE FIGURES THAT WERE USED IN
13 THAT LAST LETTER, I BELIEVE IT WAS, \$750,000 TO REPAIR THE
14 RAILS AND CROSS TIES UP TO MILE SEVEN, AND \$656,000 FROM MILE
15 SEVEN ON UP TO AIR PRODUCTS, PLUS \$299,000 OR SOMETHING -- OR
16 \$199,000 TO REPAIR THE BRIDGES. THAT'S -- WHATEVER WAY YOU
17 SHAKE IT OUT, IT'S PRETTY BIG MONEY. AND IN THE CONTEXT OF A
18 RAILROAD THAT IS NOT IN SERVICE, WHERE THE NUMBER OF SHIPPERS
19 ON THE LINE IS DWINDLING SIGNIFICANTLY, IT IS A SIGNIFICANT
20 FACTOR IN FAVOR OF THE REASONABLENESS OF THE DEFENDANT IN NOT
21 PROVIDING SERVICE. THE COST OF THE REPAIR IS A SIGNIFICANT
22 FACTOR.

23 THE INTENT OF THE RAILROAD. NOW, THIS IS SOMETHING THAT
24 I THINK IS VERY IMPORTANT. HERE YOU'VE GOT A LOCAL
25 GOVERNMENT WHO SEE -- WHO, AS IT SHOULD, IS LOOKING TOWARD

RULING

1 THE LONG-TERM VIABILITY OF THAT COMMUNITY AND SEES A RAILLINE
2 THAT THEY BELIEVE, RIGHTFULLY OR WRONGFULLY -- IT DOESN'T
3 MAKE ANY DIFFERENCE -- BUT THEY BELIEVE IS USEFUL AND
4 BENEFICIAL TO THE COMMUNITY TO REMAIN AS A USABLE RAILLINE
5 INTO THE FUTURE. THE OWNER OF THE LINE HAS INDICATED -- HAS
6 STOPPED SERVICE AND HAS INDICATED ITS INTENT AT SOME POINT IN
7 THE FUTURE TO ABANDON THE LINE. THE CONSEQUENCES OF AN
8 ABANDONMENT WOULD MEAN THAT THE LINE IS NEVER GOING TO BE --
9 PROBABLY NEVER GOING TO BE USABLE AGAIN. THAT DOESN'T MEAN
10 THAT -- THAT'S NOT TO SAY THAT WE DON'T KNOW -- WE DON'T KNOW
11 WHAT WOULD HAVE HAPPENED IN THE SURFACE TRANSPORTATION BOARD
12 IF IT HAD GONE ON, IF THAT ABANDONMENT PROCEDURE HAD ACTUALLY
13 BEEN SOUGHT AND IF IT HAD BEEN PURSUED. PERHAPS, YOU KNOW, A
14 DIFFERENT RESULT WOULD HAVE -- COULD HAVE BEEN ATTAINED.
15 PERHAPS ANOTHER SHIPPER WOULD HAVE COME IN AND SAID, "HEY, WE
16 LIKE THIS LINE. WE THINK CAN FIX THIS LINE AND RUN IT." BUT
17 WE DIDN'T GET THAT FAR. THE POINT IS THAT THE COUNTY
18 COUNCIL, ACTING AS IT SHOULD, IN ITS VIEW OF THE BEST
19 INTEREST OF THE COUNTY SEES THIS OPPORTUNITY AND DOESN'T WANT
20 IT TO GO AWAY, DOES NOT WANT THAT LINE TO BE LOST, AND TAKES
21 ACTION THAT IT BELIEVES IT SHOULD TAKE TO PREVENT IT FROM
22 BEING LOST AND BUYS THE LINE.

23 NOW, IF THE FEDERAL GOVERNMENT IS GOING TO COME ALONG
24 HERE AND SAY THAT NO COUNTY CAN COME IN AND TAKE ACTION ON
25 BEHALF OF ITS COMMUNITY TO PRESERVE THE QUALITY OF LIFE AND

RULING

1 THE INDUSTRIAL AND RECREATIONAL VIABILITY OF ITS COMMUNITY
2 WITHOUT LOOKING AT SOME SUBSTANTIAL LIABILITY FOR FAILURE TO
3 PROVIDE RAIL SERVICE IN THE MEANTIME, THEN I GOT A SERIOUS
4 PROBLEM WITH THAT. AND I REALIZE THAT I'M NOT THE FEDERAL
5 GOVERNMENT AND THEY CAN SAY WHATEVER THEY WANT TO AND THERE'S
6 NOTHING I CAN DO ABOUT IT. BUT I DON'T BELIEVE THE FEDERAL
7 GOVERNMENT WILL SAY THAT.

8 THE STATE GOVERNMENT, WITH THIS COURT AS ITS
9 REPRESENTATIVE, IS NOT GOING TO SAY THAT. THE STATE -- I
10 BELIEVE THAT IT WOULD BE CONTRARY TO PUBLIC POLICY TO SAY
11 THAT THE COUNTY OR ANY MUNICIPALITY OR ANY LOCAL GOVERNMENT
12 CAN'T COME IN AND DO WHAT THE COUNTY DID.

13 WE CAN'T DANCE AROUND THE FACT THAT THE COUNTY DID THIS.
14 YOU KNOW, THE COUNTY IS ENTITLED TO DO SOME -- A LOT OF
15 THINGS. IT'S ENTITLED TO TAKE ACTION. IT'S ALSO ENTITLED TO
16 PROTECT ITS LIABILITIES BY USING THE CORPORATE FORUM. THAT
17 QUESTION MAY NEED TO BE ADDRESSED IN A DIFFERENT FORUM. BUT
18 CERTAINLY IT WAS THE COUNTY THAT DID THIS. AND I'M NOT
19 SAYING THAT THE COUNTY TAKES ON LIABILITY FOR IT. I'M JUST
20 SAYING THAT IT'S OBVIOUS THAT THE COUNTY IS WHO DID THIS.
21 THAT'S JUST ONE OF THE FACTORS.

22 SO WHEN LOOKING AT THE INTENT OF THE RAILROAD, I THINK
23 THE -- THERE'S ABSOLUTELY NOTHING IN THE INTENT OF THE
24 DEFENDANT IN THIS CASE THAT WEIGHS IN FAVOR OF WHAT THEY --
25 OR THAT WEIGHS AGAINST WHAT THEY DID BEING UNREASONABLE -- I

RULING

1 MEAN, BEING REASONABLE. THAT FACTOR WEIGHS IN FAVOR OF THE
2 DEFENDANT.

3 THE LENGTH OF THE EMBARGO, OBVIOUSLY THE LENGTH OF THE
4 EMBARGO IS VERY LONG, AND IT APPEARS AT THIS POINT TO BE
5 ESSENTIALLY INDEFINITE, IF NOT PERMANENT.

6 THE AMOUNT OF TRAFFIC ON THE LINE IS VERY SMALL. THAT
7 DOES NOT WEIGH IN FAVOR OF THE PLAINTIFF. THAT WEIGHS IN
8 FAVOR OF THE DEFENDANT.

9 AND THE FINANCIAL CONDITION OF THE CARRIER, I JUST -- I
10 DON'T REALLY THINK THAT'S A SIGNIFICANT FACTOR. I MEAN, I
11 THINK THAT THE -- IF ALL OF THE OTHER FACTORS WERE TO WEIGH
12 IN FAVOR OF REQUIRING THE DEFENDANT TO PROVIDE SERVICE, THE
13 DEFENDANT BEING AN ARM OF THE COUNTY GOVERNMENT WITH PLENTY
14 OF RESOURCES TO REHABILITATE THIS LINE IF THEY WANTED TO,
15 THAT FACTOR WOULD PROBABLY WEIGH IN FAVOR OF THE PLAINTIFF.

16 SO HAVING ANALYZED THE FACTORS AND THEN -- IT'S JUST
17 CLEAR TO ME THAT IT'S NOT UNREASONABLE FOR A COUNTY TO COME
18 IN, IN VIEW OF THE PROSPECT -- CERTAINLY NOT A GUARANTEED
19 PROSPECT BUT A REASONABLE PROSPECT THAT THIS LINE WOULD BE
20 LOST PERMANENTLY IF THEY DON'T TAKE ACTION, FOR THEM TO
21 ARRANGE FOR THERE TO BE SOME WAY TO PURCHASE THE LINE. THE
22 COUNTY MADE ATTEMPTS TO TRY TO KEEP THE LINE RUNNING. IT
23 PERHAPS COULD HAVE DONE MORE, BUT IT APPEARS TO ME THAT THE
24 COUNTY DID A LOT TO TRY TO KEEP THE LINE -- TO GET THE LINE
25 RUNNING, AND I JUST THINK THAT THE COUNTY -- THE DEFENDANT

RULING

1 ACTED REASONABLY IN DENYING -- IN CONTINUING TO DENY SERVICE
2 TO THE SHIPPERS ON THAT LINE.

3 NOW, I'M GOING TO GO AHEAD AND, SINCE WE'VE TRIED THIS
4 CASE, I'M GOING TO GO AHEAD AND LOOK AT THE CAUSATION AND
5 DAMAGES QUESTION ANYWAY. BECAUSE, YOU KNOW, I THINK THAT
6 IT'S POSSIBLE THAT THE APPELLATE COURT OF OUR STATE COULD
7 LOOK AT THIS THING DIFFERENTLY AND SAY THAT, "NO, FEDERAL LAW
8 IS VERY CLEAR. THERE HAD TO BE A FORMAL FILING AND NOTICE OF
9 AN EMBARGO, AND, FAILING THAT, THERE IS LIABILITY." AND SO
10 I'M GOING TO GO AHEAD AND ADDRESS THOSE QUESTIONS NOW.

11 I DON'T SEE HOW ANY LEGAL STRUCTURE COULD AWARD DAMAGES
12 WITHOUT REQUIRING THAT THEY BE PROXIMATELY CAUSED BY THE
13 WRONGFUL CONDUCT THAT IS ALLEGED, AND SO I'M GOING TO USE THE
14 BASIC CONCEPT OF PROXIMATE CAUSE THAT WE HAVE IN SOUTH
15 CAROLINA.

16 IF THERE IS LIABILITY, WHAT ARE THE DAMAGES? IT'S CLEAR
17 TO ME THAT THE INCREASED SHIPPING COST TO THE PLAINTIFF WOULD
18 BE RECOVERABLE AS DAMAGES TO THE PLAINTIFF, AND I BELIEVE
19 THAT THE TESTIMONY WAS SOMETHING LIKE OVER THE PERIOD OF TIME
20 THAT WE'RE TALKING ABOUT THE INCREASED SHIPPING COST WAS
21 SOMETHING LIKE \$457,000. I FORGET THE EXACT NUMBER. Y'ALL
22 WILL HAVE IT AND YOU CAN PUT IT IN THE ORDER. WHAT WAS THE
23 EXACT NUMBER, DO YOU RECALL?

24 **MR. SIMMONS:** THAT'S APPROXIMATELY IT.

25 **THE COURT:** ALL RIGHT. NOW, IT CERTAINLY IS THE BURDEN

RULING

1 OF PROOF OF THE PLAINTIFF TO PROVE THE DAMAGES AND -- TO
2 PROVE PROXIMATE CAUSE. WE'RE TALKING ABOUT A BUSINESS THAT
3 IN THE EARLY 1990s HAD GROSS SALES OF AROUND \$11 MILLION; IS
4 THAT CORRECT?

5 MR. SIMMONS: THAT'S CORRECT.

6 THE COURT: AND THE \$457,000 FIGURE IS A TOTAL FIGURE
7 OF INCREASED SHIPPING COST OVER WHAT NUMBER OF YEARS?

8 MR. SIMMONS: '98 TO 2003.

9 THE COURT: SO ABOUT -- A LITTLE OVER FIVE YEARS?

10 MR. SIMMONS: YES, SIR.

11 THE COURT: OR AROUND FIVE YEARS. ALL RIGHT. SO THAT
12 WOULD MEAN THAT THE AVERAGE IS SOMETHING LIKE NINETY, MAYBE A
13 HUNDRED THOUSAND DOLLARS A YEAR IN INCREASED SHIPPING COST.

14 NOW, IT'S DIFFICULT FOR ME TO -- AND I REALIZE THERE IS
15 MORE THAN THAT TOO. MR. GROOME SAYS, "WE DID MORE THAN JUST
16 BRING PAPER INTO OUR MILL, PROCESS IT AND SEND IT OUT TO OUR
17 CUSTOMERS. WE BROUGHT OTHER PROCESSORS PAPER INTO OUR MILL
18 AND WE LOST THAT BUSINESS BECAUSE WE COULDN'T DO -- BRING IT
19 IN BY RAIL. BECAUSE THE WAY WE'D HANDLE IT WAS BRING IT IN,
20 UNLOAD IT FROM THE RAIL CAR, CUT IT IN HALF, DO WHATEVER WE
21 DID TO IT, PUT IT BACK ON THE RAIL CAR. IT'S NOT OUR PAPER.
22 THEY'RE NOT OUR CUSTOMER. THEY'RE SELLING TO OTHER
23 CUSTOMERS. PERHAPS THEY'RE EVEN OUR COMPETITORS. BUT WE
24 EARN SUBSTANTIAL PROFIT OFF OF THAT FIGURE." UNLESS I'M
25 WRONG, THERE IS NO FIGURE FOR THAT LOSS IN THE RECORD, IS

RULING

1 THERE?

2 **MR. SIMMONS:** I THINK THAT'S CORRECT, YOUR HONOR.

3 **THE COURT:** OKAY. SO IT WOULD -- IT'S IMPOSSIBLE THEN
4 FOR ME TO SAY WHAT'S THE IMPACT ON THE VIABILITY OF THE
5 BUSINESS FROM THAT ASPECT OF LOST REVENUE. I MIGHT COULD SAY
6 THAT IT WAS SIGNIFICANT. I MIGHT COULD SAY THAT IT WAS
7 INSIGNIFICANT. BUT IN TERMS OF PUTTING A SPECIFIC DOLLAR
8 FIGURE OR A PERCENTAGE FIGURE ON IT, I COULDN'T DO IT AS A
9 FINDER OF FACT.

10 IT'S DIFFICULT FOR ME TO CONCEIVE HOW AN \$11 MILLION OR
11 EVEN A \$6 MILLION GROSS REVENUE BUSINESS COULD BE PUT OUT OF
12 BUSINESS BY A \$100,000 A YEAR INCREASED COST IN SHIPPING.
13 NOW, I DON'T HAVE ANY DOUBT THAT THAT WOULD HAVE -- YOU KNOW,
14 EVEN THOUGH THERE IS A LOT OF MONEY GOING THROUGH THAT
15 BUSINESS EVERY YEAR, YOU KNOW, THAT MONEY MIGHT HAVE COME --
16 THAT \$100,000 MIGHT HAVE COME DIRECTLY OUT OF MR. GROOME'S
17 POCKET. MAYBE HIS ANNUAL SALARY GOES FROM TWO HUNDRED TO ONE
18 HUNDRED. THAT'S PROBABLY WHERE IT WOULD HAVE COME FROM. BUT
19 TO SAY THAT THAT IS HOW THAT BUSINESS FAILED IS, TO ME,
20 STRETCHING IT. YOU KNOW, THERE ARE OTHER FACTORS THAT WERE
21 DISCUSSED IN THAT LETTER THAT MR. MARION DISCUSSED IN HIS
22 CLOSING ARGUMENT.

23 IT'S NOT FOR ME TO SAY WHAT CAUSED THE FAILURE OF THAT
24 BUSINESS. IT IS FOR ME TO SAY WHETHER OR NOT THE PLAINTIFF
25 HAS PROVEN BY THE PREPONDERANCE OF THE EVIDENCE THAT THE

RULING

1 FAILURE OF THE DEFENDANT TO PROVIDE RAIL SERVICE TO THE
2 PLAINTIFF IS A PROXIMATE CAUSE OF THE DAMAGES THAT GO BEYOND
3 THE INCREASE IN SHIPPING COST. AND I'M COMPELLED ON THE
4 EVIDENCE THAT IS PRESENTED HERE TO FIND THAT THE PLAINTIFF
5 HAS FAILED TO MEET THAT BURDEN OF PROOF, THAT THE INCREASE IN
6 SHIPPING COST WOULD BE, EVEN IF LIABILITY IS ESTABLISHED, THE
7 CAP ON THE DAMAGES.

8 AND SO, IN LIGHT OF THAT, IT'S NOT CRITICAL, BUT I ALSO
9 BELIEVE THAT THE LOSS IN SALARY TO THE -- TO MR. GROOME, THE
10 FACT THAT HE HAD TO PUT MONEY OUT -- TAKE MONEY OUT OF HIS
11 PROFIT SHARING PLAN TO FUND THE BUSINESS IS ALL NOT RELEVANT.
12 NONE OF THAT IS IMPORTANT. WHAT WOULD HAVE BEEN IMPORTANT IS
13 THE LOST PROFIT TO GROOME AND ASSOCIATES. AND HOW THE
14 BUSINESS WAS FINANCED DURING THAT TIME IS NOT REALLY PART OF
15 THE DAMAGES ANALYSIS.

16 SO NOW I HAVE -- I BELIEVE THAT I HAVE COVERED -- LET ME
17 CHECK. (PAUSE) I HAVEN'T DISCUSSED EVERY PIECE OF EVIDENCE
18 I -- FOR EXAMPLE, A POINT WAS MADE THAT SOUNDS COMPELLING BY
19 MR. SIMMONS, THAT THE DEFENDANT NEVER ACTUALLY TOOK A VOTE ON
20 WHETHER OR NOT THEY WERE GOING TO PROVIDE RAIL SERVICE ON
21 THIS LINE.

22 I THINK THAT THE ROLE OF THE COURT HERE IS TO LOOK AT IT
23 A LITTLE BIT DIFFERENTLY. THE ROLE OF IT IS TO LOOK
24 OBJECTIVELY AT WHETHER OR NOT IT WAS REASONABLE TO PROVIDE
25 SERVICE, NOT SUBJECTIVELY AT THE SPECIFIC ACTS OR FAILURES TO

RULING

1 ACT OF THE DEFENDANT. AND WHEN I HAVE DONE THAT OBJECTIVE
2 ANALYSIS, I HAVE SPELLED OUT MY RULING.

3 NOW, IS THERE ANYTHING ELSE THAT I -- THAT EITHER SIDE
4 THINKS I HAVE NOT ADDRESSED?

5 MR. MARION: THE ONLY THING, YOUR HONOR, YOU ALLOWED
6 THE AMENDMENT TO THE COMPLAINT OF PROMISSORY ESTOPPEL.

7 THE COURT: OH, YEAH. AND I INVITED THAT, I KNOW, BY
8 MAKING THAT -- BY RAISING THAT QUESTION TO MR. SIMMONS ON THE
9 FIRST DAY.

10 THERE ARE TWO ELEMENTS THAT ARE -- THAT ARE -- AT LEAST
11 TWO ELEMENTS THAT ARE PROBLEMATIC FOR THE PLAINTIFF THERE.
12 THE FIRST IS, AS MR. MARION POINTS OUT, THE PROMISE MUST BE
13 UNAMBIGUOUS ON ITS TERMS. AND AT BEST -- AT BEST, WHAT THE
14 STATEMENTS WERE OR STATEMENT WAS FROM MR. SEALS IS, "WE'VE
15 GOT \$500,000 AND WE'RE GOING TO FIX THE LINE." THERE IS NO
16 TIMING IN IT. THERE'S NO -- AND I THINK THAT IS PROBABLY THE
17 MOST IMPORTANT THING. I MEAN, I THINK THAT THAT GOES BOTH TO
18 THE REASONABLENESS OF THE RELIANCE AND TO THE UNAMBIGUOUS
19 NATURE OF THE PROMISE. IF THERE IS NO INDICATION AS TO WHEN
20 THE REPAIR IS GOING TO BE COMPLETED, THEN LIABILITY BECOMES
21 -- THAT'S WHY THAT'S AN ELEMENT. BECAUSE HERE MR. GROOMES IS
22 SAYING, "I'M MAKING A DECISION REGARDING HOW I RUN MY
23 BUSINESS," A FIVE TO TEN MILLION DOLLAR A YEAR BUSINESS,
24 "BASED ON A PROMISE THE YOU MADE." AND THAT'S WHY THAT
25 PROMISE HAS TO BE UNAMBIGUOUS. AND AT BEST, IT'S AMBIGUOUS

RULING

1 BECAUSE IT DOESN'T SPELL OUT A TIME FRAME. AND ON THE
2 CONTEXT OF THIS CASE, THE LONGER THE TIME GOES BETWEEN THE
3 TIME THE STATEMENT IS MADE AND THE LINE IS FIXED, THE MORE
4 DISADVANTAGEOUS IT IS TO MR. GROOMES TO RELY ON THAT PROMISE.
5 SO IT IS AN -- IT IS AN AMBIGUOUS PROMISE AS -- LOOKING, I
6 WOULD THINK, AT THE THING MOST FAVORABLE TO MR. GROOMES.

7 AND FRANKLY, AS TO NUMBER TWO, AND REALLY AS TO NUMBER
8 THREE ALSO, IT'S JUST -- IN THE CONTEXT OF THIS CASE, WHEN
9 MR. GROOMES SEES IN 1998 THAT HE'S LOST RAIL SERVICE, PUTS
10 HIS BUILDING ON THE MARKET, IT'S NOT REASONABLE TO RELY ON A
11 STATEMENT MADE BY THE COUNTY ADMINISTRATOR WITH NO EVIDENCE
12 THAT IT'S BACKED UP BY A RESOLUTION OF EITHER THE BOARD OF
13 THE ECONOMIC DEVELOPMENT BOARD -- CORPORATION OR THE BOARD OF
14 THE COUNTY. IT'S JUST NOT REASONABLE TO RELY ON THAT TO THE
15 EXTENT THAT YOU ALLOW A BUSINESS OF THAT MAGNITUDE TO UNDERGO
16 THAT KIND OF FUNDAMENTAL CHANGE IN THE WAY IT RECEIVES ITS
17 RESOURCES AND DELIVERS ITS PRODUCTS.

18 IT IS IMPORTANT AS MR. SEALS POINTS OUT THAT THIS IS A
19 GOVERNMENTAL ENTITY, AND THE GOVERNMENTAL ENTITY CAN'T SPEND
20 A HALF A MILLION DOLLARS WITHOUT DOING A LOT OF THINGS --
21 COMPLYING WITH THE PROCUREMENT CODE -- AND CERTAINLY THEY'VE
22 GOT HAVE A FORMAL ACTION BY THE BOARD.

23 AND SO -- I DID ALLOW THE AMENDMENT PRIMARILY BECAUSE I
24 WAS LOOKING AT THE ELEMENTS WHEN I ALLOWED IT, AND I REALIZED
25 THAT ON THE FACTS OF THIS CASE IT WAS SIMPLY NOT GOING TO BE

RULING

1 POSSIBLE TO FIND LIABILITY FOR THE PLAINTIFF ON THOSE FACTS.

2 I -- ALL RIGHT. ANYTHING ELSE?

3 MR. MARION: NOTHING FROM THE DEFENDANT, YOUR HONOR.

4 THE COURT: MR. SIMMONS?

5 MR. SIMMONS: NOTHING FROM THE PLAINTIFF, YOUR HONOR.

6 THE COURT: ALL RIGHT. THEN I'M GOING TO TAKE A SHORT
7 BREAK AND I'LL GET BACK TO THESE OTHER CASES IN JUST A
8 MINUTE.

9 YOU GOING TO PREPARE AN ORDER?

10 MR. MARION: YES, SIR, WE'LL PREPARE AN ORDER.

11 THE COURT: AND IT DOESN'T NEED TO BE A REAL LONG
12 ORDER. BUT, I MEAN, IT'S GOING TO HAVE TO BE FIVE OR TEN
13 PAGES, I GUESS.

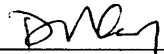
14 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 24TH DAY OF MARCH 2004.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

APRIL 5, 2004



DAWN V. KOFFSKEY
COURT REPORTER

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 2

**COPY OF JUDGE JOHN C. FEW'S ORDER AND JUDGMENT
(SEPTEMBER 17, 2004)**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE) C.A. No. 2001-CP-23-2351

Groome & Associates, Inc. and Lee K.
Groome,

Plaintiff,

- vs. -

Greenville County Economic
Development Corporation

Defendants.

ORDER AND JUDGMENT

FILED
CLERK OF COURT
GREENVILLE COUNTY
SOUTH CAROLINA
2004 SEP 21 A 4 11

The above captioned case was tried by this court non-jury on March 22 and 24, 2004. For the reasons set forth below, the Court finds in favor of Defendant.

Plaintiff Groome & Associates, Inc. ("Groome") is a Georgia corporation which since the early 1990's has operated a paper converting business in Greenville County. Plaintiff Lee K. Groome ("Mr. Groome"), a resident of Greenville County, is the president and principal shareholder of Groome. He also is the owner and lessor of the facility in which Groome operated its business.

Defendant Greenville County Economic Development Corporation ("GCEDC") is a non-profit South Carolina Corporation whose by-laws require that the majority of its board be members of Greenville County Council and that the board chairman be the person who is the chairman of Greenville County Council. GCEDC owns the railroad line which is the subject of this litigation.



Procedural Background

1. Plaintiffs filed their Summons and Complaint on April 17, 2001, in the Greenville County Circuit Court.
2. Plaintiffs, in April, 2001, attempted to serve Defendant, GCEDC by mail. However, the service was mailed to an address which was neither Defendant's place of business nor its registered corporate address.
3. Plaintiffs, on July 11, 2001, filed an Affidavit of Default with the Greenville County Clerk, and on August 17, 2001, the Court of Common Pleas of Greenville County entered a default judgment, with damages to be determined.
4. GCEDC moved to vacate the default judgment, which motion was granted by the court's order entered April 24, 2002.
5. Plaintiffs eventually served GCEDC on June 24, 2002, by actually delivering a copy of the Summons and Complaint. Plaintiffs filed their affidavit of service July 1, 2002.
6. Not knowing of the filing of the affidavit of service, this court on July 2, 2002, administratively dismissed this case based upon non-service of the Summons and Complaint. On September 24, 2002, this court entered its order restoring the case to the active roster of cases.
7. GCEDC, on October 22, 2002, filed a motion to dismiss Plaintiffs' action on the following grounds: (a) all Plaintiffs' claims were federally pre-empted under the Interstate Commerce Commission Termination Act ("ICCTA") and, therefore, this court lacked subject matter jurisdiction of the claims, and (b) Plaintiffs' claims were barred by the applicable statute of limitations.
8. Judge Edward Miller denied GCEDC's motion to dismiss in his order entered June 24, 2003 (the "2003 Order") and therein made the following legal rulings: (a) Plaintiffs' claims,



although they related to railroad services and operations, were not pre-empted by the ICCTA, and the court of common pleas had subject matter jurisdiction of those claims¹, and (b) the statute of limitations applicable to Plaintiffs' claims was 28 U.S.C. §1658, which provides for a four year limitation period.

9. GCEDC, on August 7, 2003, filed its Answer which, among other things, raised the above defenses of subject matter jurisdiction and the passing of the statute of limitations.

10. Plaintiffs, in December, 2003, filed a motion for summary judgment. Judge Miller in his order entered February 13, 2004, denied Plaintiffs' summary judgment motion based on disputed facts involving GCEDC's alleged embargo of rail service during the time period after it purchased the subject railroad line.

Findings of Fact

Based on the preponderance of the evidence, this court makes the following findings of fact.

The Groome facility adjoins a railroad line which extends from the City of Greenville north to Travelers Rest, South Carolina (the "Line"). Until April 29, 1997, the Line was operated by Greenville & Northern Railroad ("G&N"). At that time, South Carolina Central Railroad, Inc., dba Railtex ("Railtex") purchased the Line. For the year 1996, there were 8 shippers, including Groome that used the Line for rail services. Total rail shipments on the Line were 1,089 cars, with Groome accounting for 249 cars, and total revenues generated by the Line that year were \$426,433, with Groome accounting for \$56,309.

¹ Although Defendant has presented legal authorities which hold that this court has no subject matter jurisdiction of Plaintiffs' claims, this court believes it is compelled to abide by the jurisdictional decision made in the 2003 Order and, therefore, will not revisit that legal issue.



- In November, 1997, Plaintiffs learned from a conversation with a rail engineer that Railtex was going to embargo the Line due to deterioration of the track and several trestles. Mr. Groome on December 10, 1997, wrote other shippers on the Line to alert them to the embargo. In that letter, he cast doubt on the legitimacy of Railtex's impending embargo and requested assistance from the recipients to keep the Line opened. Thereafter Railtex, without formal notice to Plaintiffs, implemented its embargo. Plaintiffs' last rail service on the Line was February 8, 1998. Plaintiffs have had no rail service on the Line since that time.

During 1998 and the first half of 1999, Mr. Groome discussed with the Surface Transportation Board ("STB") the Railtex embargo and his rights and remedies as a rail shipper. He also had discussions with Railtex representatives regarding various plans to restore rail service on the Line. By letter dated February 25, 1998, Railtex offered to restore service through 2000 if Groome and two other shippers would contribute \$100,000 each to restore the trestles, with Railtex then to spend \$200,000 of its own money to make additional rail repairs and to make further capital expenditures of an undetermined nature in 1999 and 2000 as needed. Groome rejected that offer.

Railtex expressed its interest in its letter dated January 29, 1999, in selling the Line to Groome and the other shippers for \$750,000. Groome also rejected that offer. Railtex then filed a notice with the STB stating that it intended to abandon the Line within the next three years. If such abandonment were to occur, it is probable that rail service on the Line would permanently and irrevocably end.

The High Speed Rail Committee of the Greenville Chamber of Commerce, then chaired by Pat Haskell-Robinson, learned of Railtex's intent to abandon the Line and approached Greenville County Council about purchasing the Line in order to preserve it for future rail use. County Council authorized Gerald Seals, the County Administrator, to negotiate with Railtex to purchase

A handwritten signature, likely of Gerald Seals, consisting of stylized initials and a surname.

the Line. Mr. Seals presented to County Council a proposal to purchase the Line, as well as a separate southern rail line owned by Railtex, for an aggregate price of \$1,300,000. County Council approved the purchase and determined that the Line should actually be owned by GCEDC. On June 14, 1999, GCEDC took title to the Line. As reflected in STB documents filed by GCEDC in connection with its acquisition of the Line, GCEDC itself was not a railroad operator and intended to seek a third party to operate the Line.

At the time of purchase on June 14, 1999, the Line was in a serious state of disrepair. Six of the original eight shippers on the Line had either closed or moved away, leaving Groome and Papercutters as the only potential users of the Line. GCEDC's board members had numerous discussions regarding the poor condition of the Line and the costs of repairs necessary to restore rail service. GCEDC did not have the funds sufficient to make the needed repairs, nor would the potential rail revenues from Groome and Papercutters be economically sufficient to warrant the expenditures of such funds. GCEDC could, therefore, neither operate the Line nor make repairs to it sufficient to restore rail service.

After the GCEDC's purchase of the Line, Mr. Groome on one or more occasions had discussions with Ms. Haskell-Robinson and Mr. Seals and perhaps others regarding his desire to restore service on the Line. Although the parties dispute the substance of those discussions, this court finds that no persons connected with GCEDC or Greenville County promised Plaintiffs that rail service would be restored on the Line and that, at most, the discussions concerned ways to find state, federal or local funds which, if obtained, could be used to repair the Line and restore rail service. GCEDC made substantial efforts to find public funding to repair the Line and to find an operator for the Line. Great Walton Railroad Co., Inc., a rail operator which Mr. Groome introduced to GCEDC, evaluated the Line in August, 2000, and opined that approximately

(5) 

\$900,000 would be needed to repair the Line to Papercutters and that an additional \$596,000 would be needed to restore the Line above Papercutters. According to GCEDC's own estimates, the cost of fully restoring the Line, and including all street signal upgrades, would be \$8,000,000. Although GCEDC was unsuccessful in obtaining the significant funds necessary to repair the Line, it was able to obtain government grants for such things as title examinations and a \$100,000 purchase cost reimbursement, which GCEDC had to repay Greenville County.

In connection with these discussions, the court notes that Mr. Groome was an experienced and successful businessman who well prior to June, 1999, had consulted the STB about his rights and remedies as a rail shipper and who was aware that rail service could not be restored on the Line unless substantial capital expenditures were undertaken for repairs.

Plaintiffs in this action contend that the loss of rail service caused Groome to go out of business and for Mr. Groome to suffer a diminution in his salary and profit sharing payments. Groome also contended that that the lack of rail service increased its storage, handling and shipping costs from GCEDC's purchase until Groome ceased operations by \$285,243 during the period subsequent to June, 1999. However, during the period 1996 to 2002, Groome's annual sales ranged from \$5,000,000 to \$10,000,000 and were subject to substantial fluctuations caused by conditions in the paper market. In fact, Groome's sales already had entered a downward trend even before rail service ceased in February, 1998. Additionally, after June, 1999, Groome suffered other major business reversals, including (a) purchasing an over supply of above-market cost inventory, (b) writing off substantial accounts receivable which were uncollectible, (c) losing favorable sales terms from Continental Paper, its major supplier of inventory for Groome and (d) a general decline in the paper business in concert with the national economic recession in 2000 and afterwards. Therefore, this court finds that a lack of rail service did not put Groome out of business, but rather



it increased his operational costs by an aggregate amount of \$285,243 during the time that GCEDC has owned the Line.

Conclusions of Law

Federal Preemption and Primary Jurisdiction

Defendant has brought to this Court's attention legal authorities which arguably hold either that railroad embargo issues are federally preempted (with state courts having no subject matter jurisdiction of that issue) or, alternatively, that railroad embargo issues are matters which, under the doctrine of "primary jurisdiction," should be referred to the STB for decision, with the court abstaining from the issue except as necessary to carry out the order of the STB. As noted above, the issue of federal preemption was heard and decided in the 2003 Order wherein Judge Miller ruled that federal preemption did not apply to this case and that this Court has subject matter jurisdiction of Plaintiffs' claims. This Court believes that the 2003 Order is binding on the parties at this stage of the proceedings, and therefore this Court will not disturb the prior order of the court in regard to the federal preemption issue.

Unlike federal preemption, the issue of primary jurisdiction has not been addressed by a prior order in this case. It is clear under the ICCTA that the STB has jurisdiction to hear and decide Plaintiffs' claims in this action, and therefore this Court finds that it shares jurisdiction with the STB in this case. Where adjudicating forums share concurrent jurisdiction of a matter, Courts often have applied the doctrine of primary jurisdiction. That doctrine holds that the forum having the lesser expertise and experience in the matter voluntarily should permit the action to be decided by the forum having the greater expertise and experience in the matter. Pejepscot Industrial Park, Inc. v. Central Railroad Co., 215 F.3d 195 (1st Cir. 2000).



This Court does not believe that the doctrine of primary jurisdiction is applicable to this case. After hearing the evidence at trial, it is apparent that the central issues in this case concern Defendant's right to embargo the Line, the reasonableness of the embargo, and the nature and extent of Plaintiffs' damages. This Court believes that it is at least as qualified as the STB to determine all of those issues and that there are no legal or factual issues here which could be better determined by the STB. The factors supporting implementation of the doctrine of primary jurisdiction do not exist in this case.

Statute of Limitations

As noted above, the 2003 Order makes a legal finding that the applicable statute of limitations in this action is the four-year period established by 28 U.S.C. §1658. Accordingly, this court believes it is bound by that ruling, and therefore it makes no independent examination of this legal issue. Consequently, the factual questions to be answered are: (1) when did the statute begin to run, and (2) did Plaintiffs commence this lawsuit within the applicable four-year period.

With respect to the first question, this court finds that Plaintiffs knew Railtex was implementing an embargo as early as November, 1997, and that only shipments in route would be delivered. No new shipments would be honored. Mr. Groome's December 10, 1997, letter evidences both his great concern about the impending cessation of rail service and his doubts about the justifiability of such cessation. Finally, Groome knew railroad service ceased operations on February 8, 1998, when their last load of goods were received and unloaded. Therefore, the statute of limitations began to run on that date.² Applying the four-year statute of limitations as this court

² Although the Line, after February, 1998, was subject to embargos by Railtex and GCEDC, there is no legal authority justifying a suspension of the statute of limitations due to the embargo. As shown by legal authorities below, a shipper has legal recourse to immediately challenge an embargo and to receive damages if the embargo is unreasonable.

8


is bound to do, all actions commenced after February 8, 2002, are barred. Consequently, the next question to decide is whether Plaintiffs commenced their action within four years.

Rule 3, SCRCF (as it existed in 2001 when this action was filed), states in its relevant part:

(a) A civil action is commenced by the filing *and* service of a summons and complaint.

(b) For the purpose of tolling any statute of limitations, an attempt to commence an action is equivalent to the commencement thereof when the summons and complaint are filed with the clerk of court *and delivered for service to the sheriff of the county in which defendant usually or last resided...*; provided that actual service must be accomplished within a reasonable time thereafter.

(emphasis added)

Although Plaintiffs filed their action on April 17, 2001, they did not serve their pleadings, and thus the action did not commence, until June 23, 2002. McLain v. Ingram, 314 S.C. 359, 444 S.E.2d 512 (S.C. 1992); Blyth v. Marcus, 322 S.C. 150, 470 S.E.2d 389 (S.C. App. 1996). Because the four-year statute of limitations expired February 8, 2002, the Plaintiffs' action was commenced more than four months *after* the limitation period had expired.³ The statute of limitations for damage claims under the Interstate Commerce Act (as now amended by the ICCTA) is not merely a procedural matter. The passing of the limitation date destroys the cause of action and all of the claimant's rights thereunder, and the statute of limitation must be strictly construed. Atlantic Coast Line Railroad Company v. United States, 213 F. Supp. 199 (M.D. Fla. 1963). Consequently, this court finds that the statute of limitations arising under 28 U.S.C. §1658 had expired prior to

³ There is no evidence in the record and, indeed, Plaintiffs have never contended that the summons and complaint ever were delivered to the Greenville County Sheriff. The process server who signed the affidavit of service was not a deputy or other officer of the sheriff's department.



Plaintiffs' commencement of their action and, therefore, Plaintiffs' claims are barred and must be dismissed.⁴

Promissory Estoppel

In an effort to avoid the imposition of the 28 U.S.C. §1658, Plaintiff claims that GCEDC should be estopped from asserting the statute of limitations.⁵ The elements essential for proving promissory estoppel are (1) the presence of a promise unambiguous on its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and, (4) the party to whom the promise is made must sustain injury in reliance on the promise. Prescott v. Farmers Telephone Cooperative, Inc., 328 S.C. 379, 491 S.E.2d 698 (S.C. App. 1997). Plaintiffs cannot meet this burden.

In the first instance, Plaintiff cannot show GCEDC made a promise unambiguous on its terms. Even assuming that GCEDC through Mr. Seals made a statement to the effect that "we've got \$500,000 and we're going to fix the line" as Mr. Groome asserts, such statement is not sufficient to meet the requirements of promissory estoppel. Mr. Groome's claim that he would rely on such a statement is simply not credible and consistent with other the evidence. At a minimum, there is no timing as to when the promise will be acted upon or when repairs will be completed. As to elements 2 and 3 above, there is no basis for Plaintiffs to argue that they relied on statements by Mr. Seals. In 1998 *before* GCEDC bought the Line, Mr. Groome realized that he had lost rail service and, admittedly, put his building on the market because of the loss of rail service. Having lost his rail service for more than 16 months before ever discussing GCEDC's plans for the rail

⁴ Plaintiffs also assert claims under §§58-17-310, 58-17-3950 and 58-17-3980 Code of Laws of South Carolina, 1976. However those statutes are subject to limitations of either one or two years and thus also would have expired by the time Plaintiffs commenced this action.

⁵ At the conclusion of GCEDC's case, Plaintiffs moved to amend their Complaint to conform with the evidence and to allege a cause of action against GCEDC for promissory estoppel. Technically, this cause of action is a matter in reply

line, Groome's claim that he relied on Seals statement is not credible. Mr. Groome is an experienced businessman. He started Groome and built it into a 10 million dollar business by the early 1990's. He had undertaken to place his business next to a rail line precisely to utilize those services. When shipments ceased, he had a duty to take actions in an effort to keep the line open. Plaintiff chose instead to operate without rail service for an extended period of time both before and after GCEDC's purchase. He knew Greenville County Council had to approve purchase of the Line. Indeed, he had discussions with County officials before GCEDC's actual purchase. One does not allow a 5 to 10 million dollar business to undergo that kind of fundamental change in the way it receives its resources and delivers its products by relying on an unsupported statement by the County Administrator knowing that a governmental entity cannot spend half a million dollars without complying with the procurement code and formal action by the Board.

Moreover, there was no evidence Plaintiffs were induced by GCEDC to do some act to their detriment. Dillon County School District No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985). Plaintiffs in their dealings with GCEDC were aware of their rights and remedies.

For the reasons the court finds that any representations of GCEDC or Greenville County officials to Plaintiffs regarding the restoration of rail service did not rise to the level of unambiguous promises to restore rail service. Further, this court finds that Plaintiffs were experienced in business matters, were aware of their rights and remedies and, therefore, Plaintiffs did not act reasonably in relying on any alleged and unproven representations of GCEDC or officials of Greenville County regarding restoration of the Line. Plaintiffs' claim for promissory estoppel is, therefore, denied.

to Defendant's claim that Plaintiffs claims are barred by the statute of limitations. This court allowed that amendment

Embargo Issues

Although Plaintiffs' action is barred by the statute of limitations and dismissed on that basis, this court will address all issues raised at trial in the event this matter is appealed.

The thrust of Plaintiffs' case revolves around whether a legal embargo was in place on the Line when GCEDC purchased it. Plaintiffs contend that they are entitled to damages against GCEDC if no legal embargo existed on the Line. Although GCEDC under 49 U.S.C. §11101 is obligated to provide rail service, that statute assumes that the carrier is physically and economically able to provide such rail service. Logically, if a bridge washes out or if the line cannot be operated due to damage, the carrier cannot provide rail service to the shipper. The common law indeed recognizes that the carrier's duty under §11101 is not absolute and that circumstances can exist which excuse a railroad from offering services to a shipper. Interstate Commerce Commission v. Baltimore and Annapolis Railroad Company, 398 F. Supp 454 (D. Md., 1975). As noted by one court:

The statutory common carrier obligation imposes a duty upon railroads to "provide transportation or services on reasonable request." 49 U.S.C. 11101(a). A railroad may not refuse to provide service merely because to do so would be inconvenient or unprofitable. G.S. Roofing Prods. Co. v. Surface Transp. Bd., 143 F.3d 387,391 (8th Cir. 1998). The common carrier obligation, however, is not absolute. Id. A valid embargo will relieve a carrier of its obligation to provide service. Id. at 392. An embargo can be imposed by a carrier to temporarily cease or limit service when it is physically unable to serve specific shipper locations. Under its common carrier obligation, the embargoing railroad must restore service within a reasonable time. To be valid, an embargo must be reasonable at all times. G.S. Roofing, 143 F.3d at 392. The board employs a balancing test to determine the reasonableness of an embargo. Under this test, the Board considers: (1) the cost to repair the railroad; (2) the intent of the railroad; (3) the length of the embargo; (4) the amount of traffic on the line, and (5) the financial condition of the carrier. Id.

over Defendant's objection.

The reasonableness of an embargo involves a fact-specific inquiry and is to be determined on a case-by-case basis.

Decatur County Commissioners v. Surface Transportation Board, 308 F.3d 710 at 715 (7th Cir. 2002)

As explained in Interstate Commerce Commission v. Baltimore and Annapolis Railroad Company, an "embargo" of service is established by the carrier itself and justifies cessation of service as temporary emergency measure when for some reason the carrier is unable to perform its duty as a common carrier. In order to avoid violating the carrier's duties, the cessation must continue to be beyond the control of the carrier. Once the physical impossibility of service terminates, the carrier must resume service if it is financially able to do so.

Consistent with these interpretations of the Act, I find that an embargo is simply a situation where a common carrier does not have to provide rail service all of the time and rail service can be interrupted without prior permission of the Surface Transportation Board. A shipper damaged by an unreasonable embargo has recourse to the STB, or to a court with jurisdiction of such claim, and has an affirmative duty to protect its rights in such matters.

As noted in Decatur County, in determining whether an embargo is reasonable, thereby absolving the carrier of damages for not providing rail service, the court must examine and weigh all of the following factors:

1. What is the cost of restoring the rail line, and is it economically justifiable to expend those costs in order to restore the line? In the case at bar, it is undisputed that the costs of restoring the Line are substantial (between \$900,000 to \$8,000,000 depending on which cost estimate is believed), and likewise it is undisputed that the expected revenue to be generated on the Line would not economically justify such a large expenditure.

2. What was the intent of the railroad? That is, did the railroad look for ways to restore service, or did it intentionally refrain from making repairs so that the line would deteriorate? In the case at bar, it is undisputed that the Line was unusable when GCEDC acquired it. Therefore, there can be no contention that GCEDC deferred maintenance in order to intentionally cause the Line to become unusable. It likewise is undisputed that GCEDC has the intent to restore the Line if the necessary funds can be obtained. The factual situation presented in this case is substantially different from the situation existing in most other embargo cases. GCEDC, unlike rail operators in other embargo situations, never owned or operated a railroad, and GCEDC acquired the Line not for economic profit, but rather for purposes of preserving the Line from abandonment and protecting the interests of the public in that rail corridor. Such intent of GCEDC is commendable, it is beneficial to the public policy of this state, and this Court finds that the intent and actions of GCEDC then and thereafter have been reasonable under the particular circumstances of this case.

3. How long was the embargo, and what was the traffic on the Line? In the case at bar, the embargo by Railtex began in 1998, and the embargo by GCEDC then continued thereafter to the present date. This is a long period. However, such fact is not necessarily an indication that the embargo has been unreasonable. The length of the embargo in Decatur County was justified by the fact that the repairs were costly and not economically justifiable. Further, the facts in this case are unique. Plaintiffs did not have rail service for about 1½ years before GCEDC purchased the Line, GCEDC was not a rail operator and purchased the Line in order to preserve it for possible future rail use. At the time of purchase, potential traffic on the Line was minimal even if it were restored. Railtex had notified the STB that it intended to abandon the Line. Had abandonment occurred, it most likely would have resulted in the permanent loss of rail service for Travelers Rest and others in northern Greenville County. Under these circumstances, Greenville County acted responsibly

and in the public interest by causing the Line to be purchased to protect and preserve it for future rail use. Such actions on the part of the county are commendable and good public policy.

4. What is the financial condition of the railroad? It is uncontested that GCEDC has very little cash and no financial ability to make the repairs necessary to restore the Line. The relationship of Greenville County to GCEDC does not change this fact. Plaintiffs have shown no liability or responsibility of Greenville County towards the debts or other obligations of GCEDC.

Plaintiffs not only contend that GCEDC's embargo has been unreasonable, but also they claim that the embargo is invalid because (1) GCEDC never officially notified Plaintiffs of the embargo, (2) GCEDC's board never voted on the embargo or otherwise approved the embargo, and (3) under the rules of the American Association of Railroads ("AAR"), any embargo by the GCEDC must be filed with the AAR in order to be valid and expires after one year.

Regarding (1) and (2), it is undisputed: that Railtex never gave Plaintiffs any official notice of its embargo; that Plaintiffs already knew that there was no service on the Line when GCEDC purchased it; and that GCEDC's Board, while never voting on an official embargo, nevertheless was aware of and often discussed the fact that rail service on the Line was not feasible until and unless substantial repairs were made to the Line. The above cases involving embargos under common law do not turn on whether the shipper had notice of the embargo or whether the railroad officially declared an embargo by passing a resolution or taking some other corporate act that officially labeled the cessation of service as an "embargo." Shippers know when rail service ceases because the trains stop coming. Likewise, GCEDC's stoppage of service on the Line can constitute a common law embargo regardless of whether GCEDC was even aware of the legal principles underlying an embargo. A common law embargo arises due to the circumstances under which rail

service is stopped, and the existence of the embargo does not depend upon notice to the shipper or the railroad's formality in calling those circumstances an "embargo."

With regard to the AAR, it is uncontested that GCEDC has never been a member of the AAR. Plaintiffs have shown no statute, regulation or other legal authority which makes the regulations of the AAR applicable to railroads that are not members of the AAR. Therefore, this court rules that any regulations of the AAR concerning embargos are not binding on GCEDC and do not control the legal issue of whether GCEDC's embargo was valid. Further, inasmuch as an AAR embargo filing serves to notify the rail industry that a rail line no longer is in service, such purpose would not have been served by GCEDC's filing with the AAR because service on the Line was "one way" to only a few shippers and, in any event, had been stopped long before GCEDC became owner of the Line.

Based on the above legal authorities, this court rules that Plaintiffs have not proved that GCEDC's embargo was unreasonable. To the contrary, this court rules that GCEDC's embargo has been reasonable under the particular facts of this case. Therefore, GCEDC's stoppage of rail service on the Line constituted a reasonable and valid embargo of the Line, and GCEDC is not liable to Plaintiffs for any damages for failure to provide rail services.

Damages

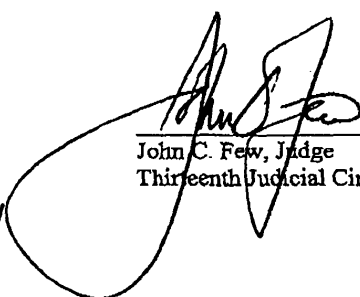
Although this court has ruled that Plaintiffs' statutory claims are barred by the statute of limitations and, further, are not actionable due to the valid embargo established by GCEDC, nevertheless, it will rule on the issue of Plaintiffs' damages in this case. As noted above, both Mr. Groome's individual damages as well as Groome's corporate damages arise under their claim that lack of rail service caused Groome to go out of business, a claim which this court has rejected and found implausible in light of Groome's many other financial problems. However, Groome has

shown credible damages of \$285,243 for its increased storage, handling and shipping costs directly resulting from its lack of rail service and incurred during the period subsequent to June, 1999. Therefore, this court rules that even if GCEDC were liable to Plaintiffs for damages in this action, (1) Mr. Groome has no damages recoverable against GCEDC; and (2) Groome Enterprises, Inc.'s actual damages are \$285,243, and the facts and circumstances of this case do not warrant imposing additional or other damages (including punitive damages) against GCEDC.

Conclusion

For the reasons stated above, Plaintiffs' Complaint is dismissed with prejudice

IT IS SO ORDERED.



John C. Few, Judge
Thirteenth Judicial Circuit

Date:

September 17, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 3

**AMOUNTS AND SOURCES OF GCEDC REVENUES IN
2001, 2002, 2003**

Answer to interrogatory No. 13
Identify all additional funding sources of Defendant. Itemize by date and amount and describe the purpose of the funding.

**GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION
SUMMARY OF ADDITIONAL FUNDING SOURCES/REVENUES**

Fiscal Year	Date	Amount	Check Received From	Source
2001	11/02/01	\$ 830.00	Greenville Airport Commission	Encroachment fee
	11/02/01	\$ 450.00	Gordon Mann	Encroachment fee
	11/02/01	\$ 145.50	Russell Blanton	Encroachment fee
	12/07/01	\$ 450.00	Specialty Shearing & Dyeing	Encroachment fee
2002	12/07/01	\$ 10,645.47	Accommodations tax: first quarter	Grant
	01/14/02	\$ 844.99	Greenville Airport Commission	Encroachment fee
	02/26/02	\$ 6,524.99	Accommodations tax: second quarter	Grant
	07/02/02	\$ 5,043.53	Accommodations tax: third quarter	Grant
	10/09/02	\$ 11,714.46	Accommodations tax: fourth quarter	Grant
	11/20/02	\$ 50.00	Pat Victory	Encroachment fee
2003	11/20/02	\$ 450.00	Specialty Shearing & Dyeing	Encroachment fee
	12/16/02	\$ 142.50	Russell Blanton	Encroachment fee
	12/16/02	\$ 450.00	Mann Enterprises	Encroachment fee
	01/13/03	\$ 855.62	Airport Commission	Encroachment fee
	05/02/03	\$ 459.08	Mann Enterprises	Encroachment fee
	06/25/03	\$ 607.50	Accommodations tax: additional from FY 2001	Grant
	06/25/03	\$ 35,000.00	Greenville County	Financial assistance for STB & legal fees
	10/07/03	\$ 146.01	Russell Blanton	Encroachment fee (not paid yet)
	10/07/03	\$ 450.00	Specialty Shearing & Dyeing	Encroachment fee
Cumulative Total		\$ 75,259.65		

February 11, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 4

ATTEMPTS OF GCEDC TO OBTAIN PUBLIC GRANTS

Answer to Interrogatory No. 11

Identify all local, state, and federal grant applications, appropriations requests, or loan applications submitted by Defendant for its operations. Describe the status of each application or request.

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION GRANT APPLICATIONS

Application Date	Agency/Entity	Amount Requested	Status
June 26, 2000	SC Department of Transportation ¹	\$100,000	Funded
December 7, 2000	Greenville County Accommodations Tax		Funded \$43,977 ²
January 30, 2001	US Department of Transportation (Transportation and Community and System Preservation Program)	\$50,000	Not funded
February 27, 2001	New South Communications (Economic Development Tax Credits Contributions)	\$375,000	Not funded
February 27, 2001	Bell South (Economic Development Tax Credits Contributions)	\$10,000/year for 3 years	Not funded
February 27, 2001	Trivergent Communications (Economic Development Tax Credits Contributions)	\$10,000/year for 3 years	Not funded
February 27, 2001	Duke Power Company (Economic Development Tax Credits Contributions)	\$10,000/year (3 years)	Not funded
February 27, 2001	Piedmont Natural Gas (Economic Development Tax Credits Contributions)	\$10,000/year (3 years)	Not funded
March 14, 2001	Rep. Jim DeMint	\$2,000,000	Not funded
December 6, 2001	Greenville County Accommodations Tax	\$75,000	Not funded
January 9, 2002	SC Department of Transportation (ISTEA Enhancement) ³	\$50,000	Funded
February 15, 2002	Rep. Jim DeMint	\$2,000,000	Not funded
January 14, 2003	Greenville County Accommodations Tax	\$125,000	Not funded
February 26, 2003	SC Department of Transportation	\$100,000	Pending
February 27, 2003	Reps. Jim DeMint and Lindsey O. Graham	\$10,000,000	Not funded
June 24, 2003	County of Greenville	\$35,000	Funded

The Greenville County Economic Development Corporation has not submitted loan applications to any agency or entity.

¹ Funds were paid directly to Greenville County as partial payment for the purchase of the rail lines.

² Funding approval was in the amount of \$43,977. The Greenville County Economic Development Corporation actually received \$34,535.95.

³ To comply with SCDOT's requirements, this application was submitted through Greenville County to SCDOT. The Greenville County Economic Development Corporation did not receive monies directly.

February 11, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 5

STB LETTER TO GCEDC

(FEBRUARY 28, 2003)



Surface Transportation Board
Washington, D.C. 20423-0001

February 28, 2003

Rec'd 3/10/03

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780

Washington, DC 20423-0001

202-565-1573
FAX 202-565-9011

Mr. Gerald Seals, Administrator
Greenville County Economic Development Corporation
301 North Main Street, Suite 2300
Greenville, South Carolina 29601

Re: Rail Service Complaint

Dear Mr. Seals:

This letter is to inform you of a complaint filed by Lee K. Groome, President of Groome & Associates (G&A) and the Northern Greenville Business Association (copy enclosed). Mr. Groome's concern is for the lack of rail service to G&A's facility north of Travelers Rest, SC, which is adjacent to a rail line acquired by the Greenville County Economic Development Corporation (GCEDC).

By way of background, GCEDC purchased two sections of rail line from the South Carolina Central Railroad Company, Inc. (SCCRC), Piedmont Division, in 1999, the northern segment of which is an 11.8 mile line which served the G&A facility. GCEDC's purchase of the line was approved by the Board in Finance Docket No. 33752, served June 3, 1999. With that purchase, GCEDC assumed a common carrier obligation under 49 U.S.C. 11101(a), and GCEDC's failure to institute rail service over the unabandoned line segment would constitute a failure of your obligation and a violation under that section. As such, I need to know GCEDC's intentions with respect to the institution of rail service, and I will expect that response by Close of Business March 17, 2003. Failure to resolve these issues will result in my recommendation to the Board that it institute, on its own motion, a formal complaint proceeding to address the lawfulness of GCEDC's failure to institute service on the line, the appropriateness of damages to involved shippers for any service failures, and whether the acquisition authority granted in Finance Docket No. 33752 should be revoked.

Sincerely,

Melvin F. Clemens, Jr.

Director

Enclosures

cc: Mr. Peter Strub, Board Member GCEDC
Mr. Lee K. Groome, Groome & Associates

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 6

**LETTER OF ANDREW J. WHITE, JR. TO GROOME'S ATTORNEY
(MAY 13, 2003)**

GREENVILLE CHARLESTON COLUMBIA FLORENCE

**Haynsworth
Sinkler Boyd, PA**

ATTORNEYS AND COUNSELORS AT LAW

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

ANDREW J. WHITE, JR.
DIRECT DIAL NUMBER 864.240.3288
EMAIL awhite@hsblawfirm.com

May 13, 2003

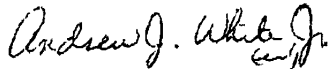
John S. Simmons, Esq.
Simmons Griffin & Lydon, LLP
P.O. Box 5
Columbia, SC 29202

Re: Greenville County Economic Development Corporation
HSB File No. 15159.0140

Dear Mr. Simmons:

Enclosed is a courtesy copy of the notification which Greenville County Economic Development Corporation has sent various public agencies in connection with its intention to seek authorization from the Service Transportation Board to discontinue service on the Greenville and Northern Railroad line (as more fully described in the attached documents).

Yours truly,



Andrew J. White, Jr.

AJWjr/evc
Enclosure

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION

Mailing Address:

Patricia Haskell-Robinson, Secretary
c/o The Robinson Company of Greenville, Inc.
618 North Main Street
Greenville, South Carolina 29602
(864) 238-6277 Ext. 306

May 6, 2003

Board of Directors

Phyllis Henderson
Chairman & President

Patricia Haskell-Robinson
Secretary

Peter Strub
Treasurer

Joe Dill

Scott Case

South Carolina Public Service Commission
Attn: David Butler, General Counsel
101 Executive Center Drive
Columbia, SC 29210

Re: Greenville County Economic Development Corporation-Notice of Exemption

To Whom It May Concern:

This letter is to notify you that Greenville County Economic Development Corporation ("GCEDC") of Greenville, South Carolina, intends to file a verified notice of exemption under 49 CFR 1152.50 with the Surface Transportation Board for authorization to discontinue railroad service on its Greenville and Northern (G&N) Railroad Line, as described below. It is our understanding that no actual rail service has occurred on this line since 1993. GCEDC is seeking funds to repair the G&N Line, and if successful, GCEDC intends to make such repairs and to seek authorization from the Surface Transportation Board to renew rail service on the G&N Line.

GCEDC intends to discontinue service on the G&N rail line, which it purchased from Railtex of San Antonio, Texas, on May 28, 1999. The G&N Line, which was previously owned and operated by Railtex (now RailAmerica, Inc.), runs from the City of Greenville, South Carolina, at mile marker 0.0 to the northern limits of the City of Travelers Rest, South Carolina, at mile marker 11.8, for a distance of 11.8 miles.

The G&N Line runs through United States Postal Service ZIP Codes 29690, 29609, 29613, 29617, 29611, and 29601 in Greenville, South Carolina and 29690 in Travelers Rest, South Carolina.

GCEDC intends to file a verified notice of exemption with the Surface Transportation Board on or about May 20, 2003.

Based on information in our possession, the G&N line does not contain federally granted rights-of-way. Any documentation in the GCEDC's possession will be made available promptly to those requesting it.

Sincerely,

Phyllis Henderson
President, GCEDC

Cc: GCEDC Board of Directors
Andrew J. White, Haynsworth, Sinkler and Boyd, P.A.

South Carolina Public Service Commission
Attn: David Butler, General Counsel
101 Executive Center Drive
Columbia, SC 29210

The letter on the other side
was mailed to these agencies
on or about 5/7/03.

South Carolina Public Service Commission
Attn: Joseph Fianchino, Transportation Department
101 Executive Center Drive
Columbia, SC 29210

United States Department of Agriculture
Attn: Nancy S. Bryson, Esq., General Counsel
1400 Independence SW
Whitten Bldg. Rm. 107W
Washington, DC 20250-1400

United States Department of Agriculture
Chief of the Forest Service
Washington Office
201 14th & Independence, SW
P.O. Box 96090
Washington, DC 20090-6090

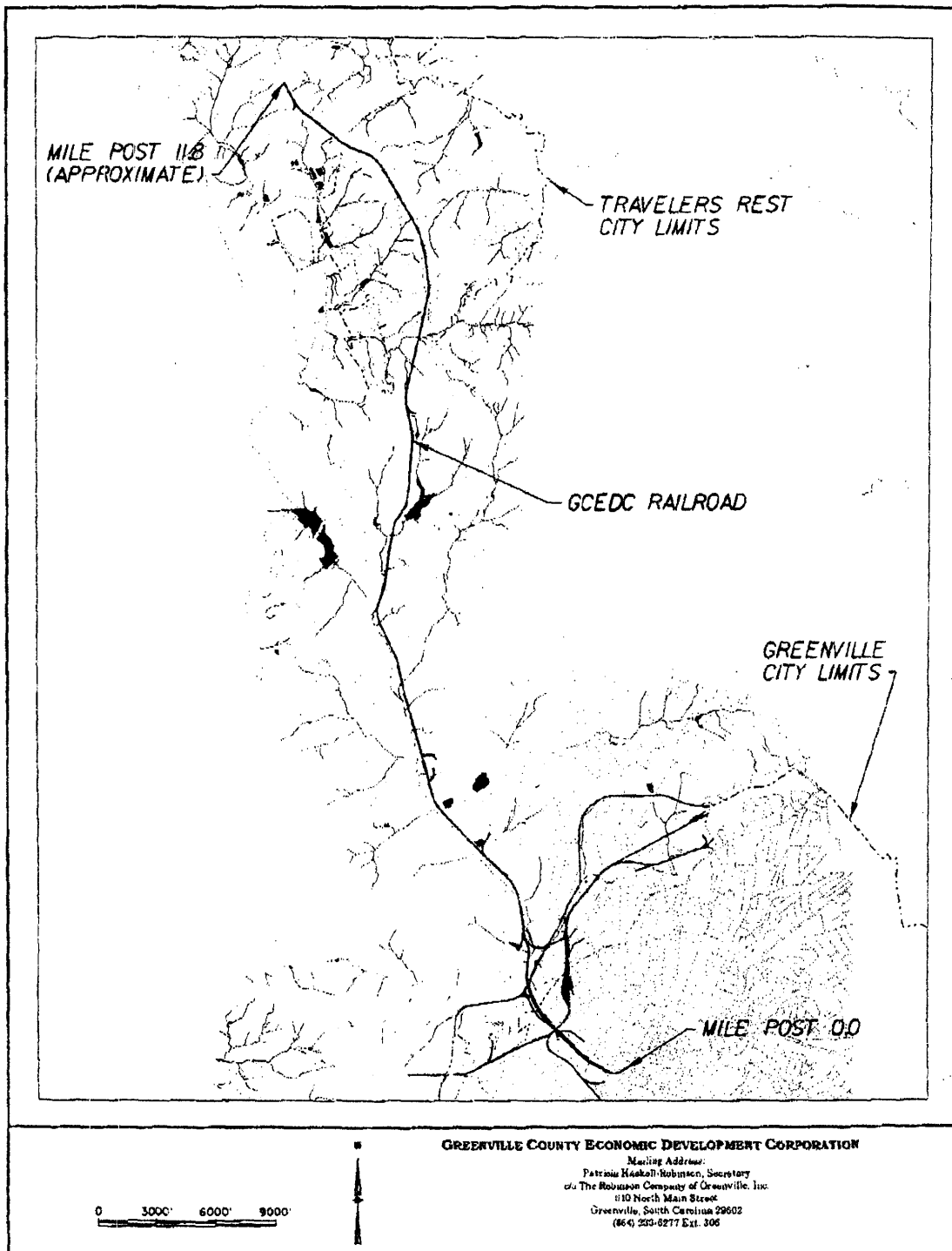
United States Department of Defense
Military Traffic Management Command
Attn: Robert Korpany
MTMCTEA
720 Thimble Shoals Blvd, Suite 130
Newport News, VA 23606

United States Department of Interior
The National Park Service
Attn: Horace Clark, Esq.
Office of the Solicitor
75 Spring St. SW
Richard Russell Federal Bldg.
Atlanta, GA 30303

United States Department of Interior
Recreation Resources Assistance Division
Attn: Horace Clark, Esq.
Office of the Solicitor
75 Spring St. SW
Richard Russell Federal Bldg.
Atlanta, GA 30303

United States Department of Interior
The National Park Service
Southeast Region
Atlanta Federal Center
100 Alabama St. SW
Atlanta, GA 30303

Ms. Barbara Hines
Land Section
U.S. National Forest Service
4931 Broad River Road
Columbia, SC 29212



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 7

**DEPOSITION OF JOHN THOMBLEY
(DECEMBER 16, 2003)**

JOHN THOMBLEY

IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA
CASE NO. 01-CP-23-2351

GROOME & ASSOCIATES, INC.
And LEE K. GROOME,

Plaintiffs,

-vs-

GREENVILLE COUNTY ECONOMIC
DEVELOPMENT CORPORATION,
Defendant.

DEPOSITION OF JOHN THOMBLEY

Tuesday, December 16, 2003
1:55 p.m. - 2:58 p.m.

305 Lawrence Street, Suite 100
Marietta, Georgia

Reported by:
Stephen R. Halwig, CCR
State of Georgia
Esquire Deposition Services
Atlanta Office Job #412049
Phone - 800.787.5302
404.872.7890

 **ORIGINAL**

JOHN THOMBLEY

IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA
CASE NO. 01-CP-23-2351

GROOME & ASSOCIATES, INC.
And LEE K. GROOME,

Plaintiffs,

-VS-

GREENVILLE COUNTY ECONOMIC
DEVELOPMENT CORPORATION,

Defendant.

_____/

The deposition of John Thombley, taken on behalf of
Defendant, at 305 Lawrence Street, Suite 100, Marietta,
Georgia, commencing at 1:55 p.m. and ending at 2:58
p.m., on Tuesday, December 16, 2003, before Stephen R.
Halwig, CCR; Georgia CSR No. CCR-B-2305

JOHN THOMBLEY

I N D E X

WITNESS: JOHN THOMBLEY

EXAMINATION: PAGE

BY MR. WHITE: 5

EXHIBITS:

NO. DESCRIPTION PAGE

1 Report 25

(Retained by Attorneys)

UNANSWERED QUESTIONS:

None

JOHN THOMBLEY

APPEARANCES:

FOR THE PLAINTIFFS:

JASON ELLIOTT
LAW OFFICES OF JOHN S. SIMMONS LLC
1711 Pickens Street
P.O. Box 5
Columbia, South Carolina 29202
(803) 779-4600
Fax: (803) 254-8874
jelliott@simmonslawfirm.com

FOR THE DEFENDANT:

ANDREW J. WHITE, JR.
HAYNSWORTH SINKLER BOYD, P.A.
75 Beattie Place, 11th Floor
Greenville, South Carolina 29601
(864) 240-3200
Fax: (864) 240-3300
awhite@hsblawfirm.com

1

2

3

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4

5

P R O C E E D I N G S

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9

10

MR. WHITE: As we agreed on our
previous depositions to reserve questions,
except as to the form of the question and
attorney-client privilege.

11

12

13

MR. ELLIOTT: That's all right.

14

15

16

17

18

19

20

21

Thereupon ũ

22

23

JOHN THOMBLEY,
Called as a witness, having been first duly sworn, was

1 examined and testified as follows:

2

3

EXAMINATION

4

5 BY MR. WHITE:

6

Q. Mr. Thombley, I believe you know I
7 represent Greenville County Economic Development
8 Corporation in this litigation ---

9

A. Yes.

10

Q. --- the defendant. Just some ground rules:
11 if I ask a question that is unclear, or for any reason
12 you feel you can't readily answer or understand it,
13 please ask me to repeat or clarify it.

14

A. I will.

15

Q. And secondly, if you would just say yes or
16 no, rather than nodding your head or uh-huhs, just so
17 the court reporter can be sure that your correct
18 response is noted.

19

A. I will.

20

Q. Have you had your deposition taken before?

21

A. Yes.

22

Q. Roughly how many times?

23

A. I'd say fifteen, twenty.

24

Q. You are a CPA?

25

A. Yes.

1 Q. Can you give me your personal biography,
2 please?

3 A. I graduated from Georgia State University
4 in Atlanta in 1974 with a bachelor's degree in
5 accounting. I passed the CPA exam in 1976. I went to
6 work for a CPA firm straight out of college in 1974.
7 Was made a partner in that firm in 1979, firm by the
8 name of - which eventually became Powell, Booth, and
9 Thombley. In 1984 I left that firm and started my own
10 firm, which is now known as Thombley and Simmons, CPAs.

11 Q. Do you have any areas that you tend to
12 centralize your practice in, as in businesses or
13 individuals, taxes?

14 A. Our business is primarily closely held
15 businesses that are owned by families or small numbers
16 of individuals, and we typically do the individual work
17 for the principles of those companies.

18 Q. When did you first become an accountant or
19 do any services for Mr. Groome and any of his
20 businesses?

21 A. I believe it was in 1990.

22 Q. How did you come to be an accountant for
23 Mr. Groome?

24 A. I was referred to him by a mutual business
25 associate.

1 Q. And in 1990 did you actually perform
2 professional services for Mr. Groome?

3 A. Yes.

4 Q. What did you do?

5 A. Each year from that point up until 2002, we
6 would typically do a reviewed financial statement and
7 do corporate tax returns and serve as the general
8 business advisor for the company and for him
9 personally. And also we do his personal income tax
10 returns.

11 Q. When you say you would do reviewed
12 financial statements, would you tell me in sort of
13 layman's terms what that means?

14 A. Yes. Financial statements done by CPAs are
15 typically on three levels. One is a compilation, which
16 generally means you take the information from the
17 client - those numbers from the client - and you
18 compile them into an appropriate financial statement
19 format, and that's a compilation. A reviewed financial
20 statement is where you do procedures more than just
21 taking the numbers and putting them together. You do
22 some additional procedures. And then the highest level
23 is an audit, where you do more work and reviews, send
24 out confirmations to the receivables and to the
25 payables, and you observe inventory and that type of

1 thing.

2 Q. On the reviewed financial statements that
3 you do for Mr. Groome, did that include his business
4 called Groome and Associates?

5 A. Yes.

6 Q. Do you know when you started doing
7 financial work for Groome and Associates?

8 A. I believe it was in 1990.

9 Q. And again, on the reviewed financial
10 statements that you would have done for Groome and
11 Associates, what were those sort of extra things that
12 you mentioned you would do? What level of service?

13 A. We would obtain additional information
14 primarily on the balance sheet type item. We would get
15 bank reconciliations that had been prepared by his
16 accountant, and you know, we would make sure that the
17 numbers agreed with what was on the trial balance. We
18 would get a list of the receivables and we would make
19 sure the list of receivables tied in with what was on
20 the trial balance. We would get a list of the payables
21 and make sure they tied in. We would get a list of the
22 inventory, make sure it ties in, things like that. We
23 would just get some more documentation, rather than
24 just taking the numbers and putting them in financial
25 statement format. We would get documentation and make

1 sure that it tied in with the numbers that they would
2 give us.

3 Q. Who did you work with at Groome and
4 Associates to get the financial information in the
5 format that you wanted to gather?

6 A. Primarily Jodie Garrett.

7 Q. What was her position; do you know?

8 A. She was their accountant. I think they may
9 have called her controller.

10 Q. Would you receive monthly statements or
11 monthly financial information from Groome and
12 Associates, or was it just at the end of the year you
13 would do this?

14 A. I would get monthly information and at the
15 end of the year I would get additional information.

16 Q. What would you gauge as the quality of the
17 accuracy of the reports that you would give to Groome
18 and Associates?

19 A. Good.

20 Q. What have you been asked to do, if
21 anything, in connection with this case against
22 Greenville County Economic Development Corporation?

23 A. I've been asked to come up with amounts -
24 from the operation standpoint there appeared to be
25 losses that were suffered as a result.

1 Q. Have you prepared a report?

2 A. Yes.

3 Q. And when was that report prepared?

4 A. December 8th is the day it was finished.

5 Q. We'll come back to that. Have you had
6 occasion to be an expert witness in the past for
7 litigants?

8 A. Yes.

9 Q. What sort of expert work did you do then?

10 A. Let's see, the ones I can remember I did
11 some valuation for damages suffered in default of a
12 contract for a client. I've done some litigation
13 support work for a client who developed a product and
14 it was a patent issue. The customer that he developed
15 it for took the product and started developing it
16 himself. Those are the two I can remember in the last
17 couple of years.

18 Q. Do you have any family relationship to Mr.
19 Groome?

20 A. No.

21 Q. What about to his attorneys?

22 A. No.

23 Q. Originally when this was going to be by
24 subpoena before Mr. Simmons agreed to make you
25 available, we had subpoenaed also certain documents and

1 those also were going to be made available. And I just
2 wanted to ask you whether you have any of these
3 documents?

4 First is a copy of the Plaintiffs', both
5 individual and Groome and Associates, tax returns and
6 financial reports from 1992 to the present.

7 A. I've got some of that information in this
8 report. I may not have '92. I think it starts with
9 '93. I just got that yesterday. '92 is not in my
10 file. It's either in storage or it's been discarded.

11 Q. Do you believe you have those tax returns
12 for 1993 forward?

13 A. Yeah, and I think a good bit of that
14 information is in this report.

15 Q. Would that be the actual tax return, or
16 would that be just portions of it?

17 A. Portions.

18 Q. What we have here are the full things. And
19 then also any and all information provided to the
20 Plaintiffs regarding railroad usage by the Plaintiffs.
21 Have you been provided information regarding railroad
22 usage?

23 A. I've been provided with some information
24 regarding freight charges that were incurred because of
25 the removal of the rail site.

1 Q. These are freight charges that were not for
2 the railroad that used to be there? I'm not quite sure
3 what you mean.

4 A. These were freight charges that were
5 incurred by Groome and Associates to pick up paper off
6 site rather than having the rail bringing it to them.

7 Q. I remember what Mr. Groome said about that.
8 Let's go off the record for a second.

9 (Whereupon, an off-the-record
10 discussion ensued.)

11 BY MR. WHITE: (Resuming)

12 Q. Before we get into your reports and the
13 examination that you did, let me just ask you some
14 general questions about Groome and Associates. Did you
15 ever, prior to this litigation - or your knowledge of
16 this litigation - did you ever have any discussion with
17 Mr. Groome about railroad service?

18 A. Yes.

19 Q. Tell me about those.

20 A. Well, in, I guess, 1998 when the company
21 started on the downward cycle, I would have discussions
22 with Lee in my capacity as his business advisor. And
23 he at that time told me that the rail site had been
24 removed for their use. And initially, he thought it
25 was going to be replaced. It was a temporary thing.

1 Then when the losses continued and not just the fact
2 that the company was not making the profits that it had
3 been making, he was also suffering substantial losses.
4 And in addition, they were not able to pay his salary
5 and certain other benefits, rent. Things that had been
6 paid routinely in the past all of a sudden they weren't
7 able to pay them. He told me that it appeared that it
8 might be permanent, because it had been longer than he
9 had been told it was going to be to be replaced and it
10 still hadn't been. Of course, it wasn't replaced.

11 Q. Did you have any other discussions with him
12 after that point on rail service?

13 A. Not that I recall.

14 Q. Did he ever talk with you about discussions
15 he'd had with other people about reconstituting the
16 rail service?

17 A. Yes. He told me that he had talked to some
18 individuals and he had - I believe at one point he was
19 exploring the possibility of getting some other users
20 of the rail site to try to get together and try to
21 force the site to be replaced, things like that.

22 Q. Did he ever talk to you about contributing
23 some money for upkeep up the track, for repairs of the
24 track?

25 A. I don't recall that.

1 Q. In 1998 forward to the present time, were
2 there any other problems with the business that Mr.
3 Groome mentioned to you, other than the rail service
4 and the ramifications of that?

5 A. Some things that would occur in any
6 business cycle. There were some problems with the
7 paper industry, in general. There was some volatility.
8 But there had pretty much always been since I'd been
9 doing business for him. He had some situations where
10 he had some customers that didn't pay him, so they
11 incurred bad debts. Again, that occurred and has
12 pretty much always occurred in the paper business, so
13 those were general problems and risk that you have in
14 business. I think those are the main things I can
15 remember.

16 Q. Did he ever talk to you about any problems
17 getting a line of credit with BB&T, or not getting
18 enough credit from BB&T?

19 A. Well, yes. When the losses started coming
20 about, he got a good bit of pressure from the bank
21 because of the financial losses that were being
22 incurred. So I not only talked to him, I talked to his
23 bankers from time to time about the problems and
24 issues, because the bank started putting restrictions
25 on the company, and it left their not being able to buy

1 as much paper during times - when the prices of paper
2 would fluctuate and go down in the past he had had the
3 capacity to be able to take advantage of that and buy
4 large sums of inventory that he could make bigger
5 margins and that was no longer available.

6 Q. Now, this situation with the bank that you
7 just described, I take it they weren't giving him
8 enough money to buy the inventory he wanted to buy, is
9 that the ---

10 A. That's correct.

11 Q. Did that start after the rail service
12 ceased or had it been going on before?

13 A. No, I think it was after the railroad
14 service ceased.

15 Q. Was that a contributing issue to the
16 problems of the business, the fact of not having enough
17 bank credit?

18 A. Yes.

19 Q. And you say you also talked with the bank?

20 A. Yes.

21 Q. What sort of conversation did you have with
22 the bank?

23 A. Well, when the bank started restricting the
24 company's capability and they also were trying to beef
25 up their collateral on the loans, Lee would have me

1 call them and talk to them about it. So I would be
2 that type of thing.

3 Q. Did you tell the bank about the railroad
4 problem situation?

5 A. Yes.

6 Q. Did they already know about it?

7 A. I don't recall whether they knew about it,
8 but that was one of the things we discussed.

9 Q. Do you have an extra copy of your report so
10 we can look at it? If you would - since I'm seeing
11 this for the first time, I'm going to ask maybe some
12 dumb questions. Just in general, what would the
13 categories of damages that you were looking at and then
14 after that I want to go into how you analyzed each
15 category to come up with whatever numbers you came up
16 with.

17 A. Okay. The first category listed here is
18 lost net income and operating losses to the company.
19 And that is losses - first of all, I went back and
20 tried to compute the net income the company had been
21 making in its history. So I computed how much loss -
22 net income it appeared they had lost since 1997 when
23 the site was removed - the service was removed. And
24 then - and not only was the company not making the net
25 income it had been making in the past, they began as I

1 mentioned before suffering operating losses, as well.
2 So that first category is trying to document the lost
3 net income they'd been making, and in addition, the
4 operating losses that they suffered.

5 Q. On the net income situation, what was the
6 net - first of all, I understand they had a July fiscal
7 year; is that ---

8 A. That's correct.

9 Q. So are your figures done based on the
10 fiscal years when you're comparing the years?

11 A. It is. It's done sort of quasi. It's done
12 - I tried to start with the - if December of '97 is
13 when it started, you know, I had a period there of
14 seven months out of the twelve.

15 Q. Excuse me. December of '97 is where it
16 started, what do you mean by that?

17 A. That's when the service ceased. So then
18 after that, since the year end information was
19 available through tax returns and financials, I tried
20 to valuate on July 31st fiscal year periods, and then
21 since July 31st of '03 to about November 30th is when I
22 cut it off. There was a short period of time there, a
23 four month period after the July 31st fiscal year.

24 Q. What would the net income figure for the
25 years prior to - let me rephrase that. What were the

1 net income figures for the years when they had rail
2 service? And is that in the report?

3 A. Yes, sir. If you go to the second page -
4 page two of three which is the schedule that's titled
5 Support for December letter, Exhibit A, what I did was
6 I went back to the five years ended before the December
7 31st, '97, event. I took the net income for those five
8 years and averaged what it would be to come up with an
9 average loss net income for a year of 62,007.

10 Q. They had a loss in 1996, I see.

11 A. That's correct.

12 Q. Do you know what occasion that?

13 A. Yes, in 1996 it was a year where the paper
14 costs skyrocketed. And so they had to number one, pay
15 prices that were substantially higher than they had
16 been having to pay for that year, and plus they had to
17 scale back their operations because of the high paper
18 prices.

19 Q. When you were looking at the years after
20 July 31, 1997, did you take into account the paper
21 costs?

22 A. No.

23 Q. Could that have had an effect on the
24 profitability?

25 A. I'm not sure.

1 Q. It did have an effect in 1996.

2 A. It did.

3 Q. And then, let's see, you come up with - as
4 you said, the average for one year of \$62,007. What
5 then did you do after you determined the average
6 income?

7 A. If you look at schedule one, which is the
8 second page of the report, page one of three, I took
9 that lost net income of 62,007 and multiplied it by
10 five and 7/12ths years.

11 Q. That would have taken you through what
12 date?

13 A. July 31st, 2003. That number was \$346,206.
14 And then right below that, you'll see that what I did
15 was the simplest way to determine the net losses was to
16 take the difference in the retained earnings of the
17 company and the retained earnings at December 31st,
18 '97, which is in Exhibit B that's attached back here,
19 the retained earnings at that time were \$571,604. And
20 then the retained earnings at July 31st, '03, which is
21 a deficit now and that number is shown in Exhibit C,
22 that made a deficit of 501,548. So the actual losses
23 during that period of time were 1,073,152. So then I
24 add the lost net income of 346,206 to the actual losses
25 of 1,073,152 to get the total net income and operating

1 losses of 1,419,358.

2 Q. Now the figure \$501,548 that you say was
3 the ending book value.

4 A. Ending retained earnings.

5 Q. Retained earnings as of 7/31/03?

6 A. That's correct.

7 Q. Do you have attached the exhibits that show
8 how the retained earnings looked for 571 to 501?

9 A. Yes, every exhibit and schedule that's
10 listed on each one of these is attached.

11 Q. If the retained earnings went down to
12 minutes \$501,000, just rounding off, and forgive me
13 again for asking stupid questions because I'm no
14 account, does that mean that someone would have to be
15 pumping money - about half a million dollars into the
16 company when the retained earnings hit zero?

17 A. Well, it could. It would either typically
18 have to be that an individual's putting money in or
19 there was additional debt that was put in - that would
20 have been put in either by a stockholder, the bank, or
21 other trade creditors.

22 Q. In the case of Groome and Associates, can
23 you tell me how the retained earnings came to this
24 level?

25 A. You mean how it was supported?

1 Q. Yeah, the various ways which it can occur.
2 I'm just wondering in Groome's case, how did it occur?

3 A. I think it was in all those cases. He had
4 to loan the company money. He had an infusion from the
5 bank of line of credit, and he had trade credit - trade
6 creditors.

7 Q. Does he still have bank debt? Excuse me.
8 Does the company still have bank debt?

9 A. Yes.

10 Q. What about trade creditors?

11 A. Yes.

12 Q. Do you know if there is - if one of these
13 exhibits show that the balance sheet of the company as
14 it presently exists?

15 A. Exhibit C, page two of two is the July
16 31st, 2003, tax return and page four of that tax return
17 is included, which includes a balance sheet. In
18 addition, as you see in this now - I didn't think about
19 it - Lee had put \$230,000 in the company in the form of
20 purchasing capital stocks. That was the other source
21 of supporting that.

22 Q. Did he put it in after July 1997?

23 A. No, it was already in there, July 31st,
24 1997, but it supported those losses because it had been
25 put in there initially.

1 Q. So it would have been part of the \$571,000
2 you showed as it exhibited in '97?

3 A. It would - no. It would be in addition to
4 that. Exhibit B, it shows that on December 31st, '97,
5 the ---

6 Q. What page?

7 A. Exhibit B, two of two.

8 Q. Okay.

9 A. It shows capital stock of 230,500 and the
10 retained earnings - year to date earnings would be the
11 571,604. But the difference in the retained earnings -
12 the reason I reported it that way, the retained
13 earnings means just that. It's earnings retained in
14 the business. That number at December 31st, 1997,
15 earnings since the company's inception that had been
16 retained in the business was 571,604. So the
17 difference, that retained earnings is increased by
18 profits each year or decreased by losses. So that's
19 why the difference between the retained earnings at
20 December 31st, 1997, and July 31st of '03, that number
21 represents the losses since that time.

22 Q. You just sort of got into the next question
23 I was going to ask. There were - you said there were
24 losses of \$346,206 which you projected as your lost
25 income. And then at the same time you're adding to it

1 the actual losses. I'm misunderstanding what you've
2 got.

3 A. Okay. What I did was I tried to come up
4 with a number that would represent the income that they
5 would have made after December 31st, 1997, and not only
6 did they lose the net income that they would have
7 enjoyed, they also in addition had losses, so that's
8 those two elements.

9 Q. Okay. Just want to understand. The second
10 category?

11 A. The second category is salary redemption to
12 Lee personally. After 1997 he had been paid - if you
13 look at Exhibit D.

14 (Whereupon, an off-the-record
15 discussion ensued.)

16 BY MR. WHITE: (Resuming)

17 Q. Okay. I just asked you about the second
18 category and you said it was salary redemption and you
19 were referring me to Exhibit D?

20 A. That's right.

21 Q. Where is Exhibit D?

22 A. This is Exhibit D here.

23 Q. You're referring to page two of three?

24 A. That's right. In Exhibit D, what I did was
25 I took the salaries that had been paid to Lee Groome

1 for the last five years, beginning July 31st, '93, and
2 ending July 31st, '97, and I took an average of those
3 salaries that had been paid to him in those five years,
4 which came to 204,800. And then I multiplied the
5 204,800 which was the average times five and 7/12ths to
6 come up with 1,143,467. During that period of time -
7 during that five years, he was paid a total of \$60,000.
8 And there's an exhibit for that. And so the loss of
9 salaries, I determined, was 1,083,467.

10 MR. WHITE: While we're at it, why
11 don't we go ahead and make this report an
12 exhibit for the deposition. We're making a
13 copy, so you can put a sticker on the copy
14 that comes in, in a minute. Let's wait
15 until it comes in. We are making a copy,
16 right?

17 THE DEPONENT: Uh-huh (affirmative).

18 MR. WHITE: Let's just do that. I'll
19 substitute the copy when it comes in.

20 THE COURT REPORTER: Number 1?

21 MR. ELLIOTT: You can use this as
22 your exhibit if you want to. I made that
23 copy for you.

24 (Whereupon, Exhibit Number 1 was
25 marked for identification.)

1 BY MR. WHITE: (Resuming)

2 Q. All right. Now, jumping ahead a little
3 bit. Did you account for the fact that that was the
4 gross salary, not after taxes? Did you account for
5 taxes anywhere, or does it matter for your reporting?

6 A. Well, all these items I'm figuring before
7 tax because if the amounts that would be paid for the
8 losses then would be subject to tax.

9 Q. Okay. Third category of damages is what?

10 A. Third category is office rent reduction to
11 him personally.

12 Q. By office rent, are you talking about the
13 fact that he owned the building and leased it from -
14 the company paid him rent?

15 A. That's correct. So we go to Exhibit E, I
16 went back again ---

17 Q. Page two of three?

18 A. That's correct. I went back again to the -
19 this time I'm going to the years after 1997, so I'm
20 going by calendar years. The rent was supposed to be
21 \$15,000 a month or \$180,000 a year. So I've got three
22 columns. The first one is the amount of rent he was
23 supposed to be paid for the years and then for the year
24 2003, it was seven months. So a total of 1,005,000
25 should have been paid to him in these periods

1 subsequent to December of 1997. Then the next column
2 shows the amounts that were actually paid to him during
3 those periods of time. And then this last column is
4 the difference between what was due to be paid to him
5 and what was paid to him. And the total of that amount
6 is 447,000.

7 Q. Have you reviewed the lease between the
8 company and Mr. Groome?

9 A. I don't believe I have.

10 Q. Do you know if there is a written lease
11 between the company and Mr. Groome?

12 A. I don't know. I think it - let's see.
13 Okay. In Exhibit V, this was minutes of the board of
14 directors, March 28, 1994, minutes where it indicates
15 that the lease was going to be \$15,000 a month.

16 Q. Was it a triple net lease, or do you know
17 anything about who paid the insurance, the taxes, or
18 the management costs?

19 A. I don't recall that.

20 Q. Would that make a difference as to the
21 value of that rental money to Mr. Groome?

22 A. No, sir.

23 Q. Why not?

24 A. Well, because - I guess, if anything, I
25 mean, I would assume the repairs and the maintenance

1 was either to be paid by him or paid by the company. I
2 would assume - and the insurance and the taxes, so they
3 were paid by somebody or the building would have either
4 deteriorated completely or I would imagine the lender
5 required insurance, that type thing. They were
6 supposed to pay him \$15,000 and if it was triple net
7 they would be paying that plus the other things. But
8 this is the amount they were supposed to be paying him,
9 and then this column here shows the amounts they
10 actually paid.

11 Q. Do you know whether the company with his
12 agreement reduced its lease payments because of this
13 financial hardship?

14 A. Well, yes, exactly. They had to reduce it
15 because they couldn't afford to pay it. So the
16 difference of this 447,000 would have been the rent
17 that the company did not pay him that they were
18 supposed to pay him. It was, because they were
19 suffering losses and they didn't have the availability
20 to ---

21 (Whereupon, an off-the-record
22 discussion ensued.)

23 BY MR. WHITE: (Resuming)

24 Q. Do you have in this report any proof that
25 rent was actually paid him prior to calendar year '98?

1 A. I don't think it's in that report.

2 Q. If, as we requested in the subpoena we got
3 the tax return for either Mr. Groome or the company for
4 1997, would that reflect payment of rent by the company
5 if there was payment?

6 A. Yes.

7 Q. Would it be a separate column category?

8 A. Yes.

9 Q. Do you happen to recall whether rent was
10 actually paid him at 180,000 a year in the previous
11 years?

12 A. I'm pretty sure that it was, but I don't
13 recall for sure.

14 Q. What was the next category?

15 A. The next category is profit sharing plan
16 elimination. And what I did there was again, I went
17 back to the five years ended July 31st, 1997, July
18 31st, '93, '94, '95, '96, and '97, and I showed how
19 much profit sharing was actually paid out. And then I
20 averaged that.

21 Q. Paid out to whom?

22 A. Paid into profit sharing.

23 Q. Paid into profit sharing?

24 A. Contributed into the profit sharing plan by
25 Groome and Associates. And the average for one for

1 that five-year period which included a zero amount for
2 '96 when they had that loss that we had talked about,
3 the average was 52,260. And then - so then I
4 multiplied that again by five and 7/12ths to come up to
5 291,785. And I subtracted out the amounts that were
6 paid for administration of 10,235 to come up with an
7 amount where the profit sharing plan had to be
8 eliminated, contributions of 281,550.

9 Q. Now, the - what sort of profit sharing plan
10 did they have? 401(k) or ---

11 A. No, it was a standard profit sharing plan.

12 Q. Was it tax deferred?

13 A. Yes. It was a plan that all employees
14 participated in after they met eligibility requirements
15 and were still employed by the company at the July 31st
16 date. So that ended up having to be eliminated when
17 the losses started occurring.

18 Q. Now, the first category of damages you
19 testified about, you talked about lost profits of the
20 business. And now we're adding back in on top of that
21 lost profit sharing contributions?

22 A. That's right.

23 Q. How is it that you're not counting that
24 twice, or are you not counting it twice?

25 A. I'm not because if this amount had been

1 paid, it would have reduced the retained earnings. But
2 the fact that it was not paid, the same was an
3 additional amount that the company would have made in
4 profits that it was then paid as contributions into the
5 profit sharing plan.

6 Q. What was the exhibit or was there an
7 exhibit that showed the year by year profit sharing
8 plan contributions?

9 A. This Exhibit J, K, L, M and N.

10 Q. Are those attachments or are those in the
11 body on page two and three?

12 A. They're attachments. It's the copy of part
13 of the corporate tax return for those years that shows
14 the profit sharing contribution amount of the tax
15 return.

16 Q. Now, is this a damage Mr. Groome himself
17 (inaudible) or is this something the corporation is
18 claiming?

19 A. It would be some of both. The profit
20 sharing contribution - that amount of money that the
21 company was making is an election. So what I'm saying
22 is they should have earned that much more money, and he
23 could have elected to put it into the profit sharing
24 plan, which he typically got most of the benefit, or he
25 could have elected to pay it out to himself as

1 compensation. It was an election that he made each
2 year as to whether to put the money into the plan or
3 not. But I'm saying that that money in the past had
4 been made and he had the election to put it in, not put
5 it in, pay himself, which like I said, he got most of
6 the benefit or not. But it was gone.

7 Q. Next category?

8 A. The next category, additional freight costs
9 in Schedule Five.

10 Q. How many pages?

11 A. It starts on this page one of three. And
12 then as you see it, it relates to a schedule of Kathy
13 Hicks who's one of the Groome employees, she prepared
14 this schedule as an Exhibit G. And this sheet is
15 supposed to represent the freight costs that Groome
16 incurred because the rail site service was removed.

17 Q. Did she prepare this for you, or was this
18 historical at the time these costs were being incurred?

19 A. She prepared it for me. What I did, the
20 amount is \$457,000. But as you see in this Schedule 5,
21 I reduced - I backed that back out. Those were damages
22 that were suffered because of the rail service, but
23 that was included in the loss that I had in Schedule 1.
24 So I pulled it back out so as not to double count it.

25 Q. Was it included numerically or was it

1 included conceptually?

2 A. Numerically.

3 Q. Numerically, okay. Where is it included
4 numerically?

5 A. It's part of the losses that they would
6 have because they paid out additional freight costs, so
7 it would have reduced their income for the year, so
8 it's included in this deficit retained earnings number.

9 Q. Okay.

10 A. See what I'm saying? They did have those
11 freight costs, but I've already got it up here. I
12 could have backed it out up here and then shown the
13 457,000 down here.

14 Q. All right. What's your next category?

15 A. The next one is income taxes and penalties
16 on premature profit sharing withdrawals paid by Lee
17 Groome personally. What that represents is 2002 and
18 2003 Mr. Groome had to withdraw money from his profit
19 sharing plan to put into the company, and he had to pay
20 income tax on those withdrawals and he had to pay
21 penalties on those withdrawals. And those amounts are
22 shown - the documentation for those amounts in Schedule
23 6 are Exhibit H and Exhibit BB.

24 Q. When would he otherwise have been entitled
25 to take them out without the penalties?

1 A. When he reached age fifty-nine and a half.

2 Q. And at that point at fifty-nine and a half
3 when he took them out, would he still have to pay
4 taxes?

5 A. Yes.

6 Q. But he wouldn't have penalties?

7 A. That's right.

8 Q. Is there a reason why you chose to include
9 charges for both the taxes, which he would have to pay
10 anyway at fifty-nine and a half and the penalties?

11 A. Well, I thought that was the simplest way
12 to do it. What I could have done was to have taken
13 these amounts that he withdrew - I can still do that.
14 But I could have taken out the amounts he had to
15 withdraw and then try to compute an amount that he -
16 that those amounts would have earned between the time
17 he took it out and probably age sixty-five is when he
18 would have taken it out. He's had lost earnings on
19 that, so I just felt like since I had quantitative
20 numbers - exact numbers on this, that would be paid, I
21 figured that would be the simplest way to show it.
22 Another way, like I say, would be to show what the
23 potential earnings from those amounts he had to take
24 out would be from 2002 and 2003 until he hit age sixty-
25 five.

1 Q. Do you know how much his penalties were?

2 A. It's shown in each one.

3 Q. On Schedule 6?

4 A. Right, 28,125 and for 2003 it's combined
5 because the year hasn't finished - hasn't been
6 completed yet so obviously he hasn't prepared a - we
7 haven't prepared his 2003 return, but that's the amount
8 that had to be withheld to pay by the profit sharing
9 administrator. There'll be penalties on top of that
10 piling up.

11 Q. Did he tell you what he was going to use
12 the money for?

13 A. He told me he put the money into the
14 company.

15 Q. Have you got a total there?

16 A. 140,271.

17 Q. I'm sorry. That's the grand total. And
18 then you have a line, additional losses for four months
19 ending November 30th, 2003, Schedule 7. Where is
20 Schedule 7.

21 A. That's the second page. What I did was I
22 went back and I took some of these other categories ---

23 Q. Could you point to it? Okay. It's page one
24 of three.

25 A. That's right. I went back and figured the

1 lost net income that first schedule, the salary
2 reduction, the office rent reduction, and the profit
3 sharing elimination and the amounts that I had computed
4 for a year, I divided by twelve, and the office when it
5 was 15,000 for one month. So I added those together
6 and figured that most of the losses subsequent to July
7 31st, 2003, would be 41,509. And so for four months, I
8 just multiplied that times four to come up with a
9 166,356.

10 Q. I understand. I meant to ask you this
11 earlier. Did you ever notice Mr. Groome to exhibit
12 characteristics of mental instability?

13 MR. ELLIOTT: Object to the form of
14 the question.

15 BY MR. WHITE: (Resuming)

16 Q. You may answer.

17 A. No.

18 Q. Did he ever break down and cry in your
19 presence?

20 A. No.

21 Q. Did any of his employees ever tell you
22 anything about their concerns about his mental state?

23 A. I don't recall that.

24 Q. What is Mr. Groome doing now for a living?

25 A. Well, as far as I know he's still trying to

1 manage the - basically the liquidation of the company.
2 They ceased day-to-day operations. He's trying to
3 collect the receivables that are still out there and
4 pay the payables he's personally guaranteed on the line
5 of credit, and I believe he's personally guaranteed on
6 substantial amounts of trade credit. So he's trying to
7 collect receivables to pay those things down, and I
8 believe he's been selling some equipment.

9 Q. Do the receivables exceed the payables?
10 And if you can tell me what exhibit you're referring
11 to, I'd appreciate it.

12 A. If you look at Exhibit U, page two of two,
13 this is the tax return balance sheet of July 31st,
14 2003. I forgot to mention July 31st, 2003, we did not
15 do a review financial statement, because the company -
16 Lee Groome determined that the company couldn't afford
17 to pay to have that done, so that was a year we didn't
18 do a financial statement. We just did the required
19 income tax return. But that year shows the receivables
20 of \$323,760. Do you see that on line 2A?

21 Q. Yes.

22 A. And then the accounts payable are
23 372,388.97.

24 Q. Does the accounts payable include the bank
25 debt?

1 A. No.

2 Q. Where is that shown?

3 A. Bank debt is in the next line, seventeen,
4 where we just note bonds payable, 429,073.87.

5 Q. To your knowledge does Mr. Groome have any
6 assets or other businesses to use to clear these debts?

7 A. Not to my knowledge.

8 Q. Do you know when the company ceased
9 operations?

10 A. Well, I believe it was - it's been within
11 the last two or three months.

12 Q. How much did you charge to prepare this
13 analysis?

14 A. I'm not sure we've billed it yet, so I'm
15 not sure.

16 Q. Have you done any work for the 2003 tax
17 return yet?

18 A. July 31st, 2003, tax return, yes. That's
19 the exhibit we're looking at.

20 Q. When do you file the tax returns for this
21 company?

22 A. Well, the first filing deadline would be
23 within two and a half months.

24 Q. Of July 31?

25 A. Right. So it was timely filed. It was

1 filed in August.

2 Q. I was just mixed up, thinking it was April.

3 A. Corporations are two and a half months,
4 individuals are three and a half.

5 Q. So for 2003 you didn't do a financial
6 report?

7 A. That's right.

8 Q. Does that mean that you basically just put
9 the numbers as given you by the client to prepare the
10 tax return for 2003?

11 A. I believe that we still got the same
12 information, the back up from the banks, the
13 receivables, the payables inventory. We just - he just
14 elected not to do it, because he said he couldn't
15 afford it.

16 MR. WHITE: Thank you. That's all
17 the questions.

18 MR. ELLIOTT: I don't have any.
19
20

21 (THEREUPON, THE DEPOSITION WAS ADJOURNED AT 2:58 p.m.)
22
23
24
25

January 6, 2004
Mr. John Thombley, CPA
THOMBLEY & SIMMONS, P.C.
305 Lawrence Street NE, Suite 100
Marietta, GA 30060-2056

RE: GROOME VS. GREENVILLE COUNTY ECONOMIC
DEVELOPMENT CORPORATION
Taken on December 19, 2003

Dear Mr. Thombley:

Please be advised that your deposition taken in the above-captioned matter is now ready for reading and signing. We have enclosed a courtesy copy of the transcript, as well as an original Errata Sheet(s). It is your right to read your deposition and to make corrections to your answers that have been transcribed incorrectly. Please make any changes on the errata Sheets, not on the transcript. Upon completion, sign and date the Errata Sheet.

You must return the executed Errata Sheet(s) within 30 days of the date of this letter. Do not sign or return the transcript.

If you have any questions, please do not hesitate to contact the Esquire office at 404-872-7890.

Sincerely,

Stephen R. Halwig

Stephen R. Halwig, CCR
Esquire Deposition Services, LLC
cc: Andrew J. White, Jr., Esquire
Jason Elliott, Esquire

1 E R R A T A S H E E T S

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Pursuant to Rule 30(7)(e) of the Federal Rules of Civil Procedure and/or Georgia code Annotated 81A-130(B)(6)(e), any changes in form or substance which you desire to make to your deposition testimony shall be entered upon the deposition with a statement of the reasons given for making them.

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

- - -

I, the Undersigned, John Thombley, do hereby certify that I have read the foregoing deposition, and that to the best of my knowledge, said deposition is true and accurate (with the exception of the following corrections listed below).

Page_ _ _ Line _ _ _ should read: _ _ _

Reason for change: _ _ _

Page_ _ _ Line _ _ _ should read: _ _ _

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Signature

23 _____
24 _____
25 DISCLOSURE

26 STATE OF GEORGIA) DEPOSITION OF:

1 COUNTY OF FULTON) JOHN THOMBLEY

2 Pursuant to Article 8.B of the Rules and
3 regulations of the Board of Court Reporting of the
4 Judicial Council of Georgia, I make the following
5 disclosure:

6 I am a Georgia Certified Court Reporter. I am
7 here as an independent contractor.

8 I was contacted by the offices of Esquire
9 Deposition Services to provide court reporting services
10 for this deposition. I will not be taking this
11 deposition under any contract that is prohibited by
12 O.C.G.A 15-14-7(a) or (b).

13 I have no written contract to provide reporting
14 services with any party to the case, any counsel in the
15 case, or any reporter or reporting agency from whom a
16 referral might have been made to cover this deposition.
17 I will charge my usual and customary rates to all
18 parties in the case.

th

19 Dated this 6 day of January, 2004.

20

21

22

STEPHEN R. HALWIG, CCR,

23

GEORGIA CSR NO.: CCR B-2305

24

25

C E R T I F I C A T E

26

1 STATE OF GEORGIA

2 FULTON COUNTY:

3

4 I hereby certify that the foregoing
5 deposition was reported, as stated in the caption, and
6 the questions and answers thereto were reduced to the
7 written page under my direction; that the preceding
8 pages represent a true and correct transcript of the
9 evidence given by said witness.

10 I further certify that I am not of kin or
11 counsel to the parties in the case; am not in the
12 regular employ of counsel for any of said parties; nor
13 am I in any way financially interested in the result of
14 said case. The deponent waived the right to read and
15 sign the transcript.

16

th

17 Dated this 6 day of January, 2004.

18

19

20 

Stephen R. Halwig, CCR

21 Georgia CSR No. CCR 2305

22

23

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26

A able 14:4,7 15:25 16:3 above-captioned 40:8 account 19:20 21:14 26:3,4 accountant 7:18,22 9:16 10:8 accounting 7:5 accounts 37:22,24 accuracy 10:17 accurate 41:17 actual 12:15 20:22,24 24:1 add 20:24 added 36:5 adding 23:25 30:20 addition 14:4 18:3 22:18 23:3 24:7 additional 8:22 9:13 10:15 21:19 31:3 32:8 33:6 35:18 41:11 ADJOURNED 39:21 administration 30:6 administrator 35:9 advantage 16:3 advised 40:7 advisor 8:8 13:22 affirmative 25:17 afford 28:15 37:16 39:15 age 34:1,17,24 agency 44:15 agreed 5:7 9:17 11:24 agreement 28:12 ahead 25:11 26:2 amount 26:22 27:5 28:8 30:1 30:7,25 31:3,14,20 32:20 34:15 35:7 amounts 10:23 26:7 27:2 28:9 30:5 33:21,22 34:13,14,16 34:23 36:3 37:6 analysis 38:13 analyzed 17:14 Andrew 4:19 5:15 40:20 and/or 41:4 Annotated 41:4 answer 6:12 36:16 answers 40:10 45:6 anyway 34:10 APPEARANCES 4:1 appeared 10:24 14:7 17:22 appreciate 37:11 appropriate 8:18 April 39:2 areas 7:11 Article 44:2 asked 10:20,23 24:17 asking 21:13 assets 38:6 assist 41:9 associate 7:25	Associates 1:6 2:6 9:4,7,11 10:4,12,18 12:5 13:5,14 21:22 29:25 assume 27:25 28:2 Atlanta 1:23 7:4 attach 41:12 attached 20:18 21:7,10 attachments 31:10,12 attorney 5:16,18 attorneys 3:19 11:21 attorney-client 5:10 audit 8:23 August 39:1 availability 28:19 available 11:25 12:1 16:5 18:19 average 19:9 20:4,5 25:2,5 29:25 30:3 averaged 19:8 29:20 awhite@hsblawfirm.com 4:25 B b 20:18 23:4,7 44:12 bachelor's 7:4 back 11:5 17:19 19:6,17 20:18 26:16,18 29:17 30:20 32:21,24 35:22,25 39:12 backed 32:21 33:12 bad 15:11 balance 9:14,17,20 22:13,17 37:13 bank 9:15 15:20,24 16:6,17 16:19,22,23 17:3 21:20 22:5 22:7,8 37:24 38:3 bankers 15:23 banks 39:12 based 18:9 basically 37:1 39:8 BB 33:23 BB&T 15:17,18 Beattie 4:21 beef 16:24 began 17:25 beginning 25:1 behalf 2:21 believe 6:6 7:21 9:8 12:11 14:18 27:9 37:5,8 38:10 39:11 benefit 31:24 32:6 benefits 14:5 best 41:16 bigger 16:4 billed 38:14 biography 7:1 bit 12:13 15:20 26:3 board 27:13 44:3	body 31:11 bonds 38:4 book 21:3 Booth 7:8 Box 4:6 BOYD 4:20 break 36:18 bringing 13:6 building 26:13 28:3 business 7:14,24 8:8 9:3 13:22 15:2,6,9,12,14 16:16 23:14 23:16 30:20 businesses 7:12,15,20 38:6 buy 15:25 16:3,8,8 B-2305 44:23 C C 5:5 20:21 22:15 43:25 44:25 44:25 calendar 26:20 28:25 call 17:1 called 5:23 9:4 10:9 capability 16:24 capacity 13:22 16:3 capital 22:20 23:9 caption 45:5 Carolina 1:2 2:2 4:7,22 case 1:2 2:2 10:21 21:22 22:2 44:14,15,18 45:11,14 cases 22:3 categories 17:13 35:22 category 17:15,17 18:2 24:10 24:11,18 26:9,10 29:7,14,15 30:18 32:7,8 33:14 cc 40:20 CCR 1:21 2:25 40:18 44:22 44:23 45:20,21 CCR-B-2305 2:25 ceased 16:12,14 18:17 37:2 38:8 centralize 7:12 certain 11:25 14:5 Certified 44:6 certify 41:15 45:4,10 change 41:22,25 42:2,5,8,11 42:14,17,20,23 43:2,5,8,11 43:14,17 changes 40:11 41:5 characteristics 36:12 charge 38:12 44:17 charges 12:24 13:1,4 34:9 chose 34:8 Civil 41:4 claiming 31:18 clarify 6:13 clear 38:6 client 8:17,17 11:12,13 39:9	closely 7:14 code 41:4 collateral 16:25 collect 37:3,7 college 7:6 Columbia 4:7 column 27:1,3 28:9 29:7 columns 26:22 combined 35:4 come 7:22 10:23 11:5 17:15 19:8 20:3 24:3 25:6 30:4,6 36:8 comes 25:14,15,19 coming 15:19 commencing 2:23 COMMON 1:1 2:1 companies 7:17 company 8:8 13:20 14:2 15:25 17:18,20,24 20:17 21:16 22:4,8,13,19 26:14 27:8,11 28:1,11,17 29:3,4 30:15 31:3,21 33:19 35:14 37:1,15,16 38:8,21 company's 16:24 23:15 comparing 18:10 compensation 32:1 compilation 8:15,19 compile 8:18 completed 35:6 completely 28:4 completion 40:11 compute 17:20 34:15 computed 17:21 36:3 conceptually 33:1 concerns 36:22 confirmations 8:24 connection 10:21 contact 40:15 contacted 44:8 continued 14:1 contract 11:12 44:11,13 contractor 44:7 Contributed 29:24 contributing 14:22 16:15 contribution 31:14,20 contributions 30:8,21 31:4,8 controller 10:9 conversation 16:21 copy 12:4 17:9 25:13,13,15,19 25:23 31:12 40:8 corporate 8:7 31:13 corporation 1:10 2:12 6:8 10:22 31:17 40:5 Corporations 39:3 correct 6:17 16:10 18:8 19:11 21:6 26:15,18 45:8 corrections 40:10 41:10,18
---	--	---	--

costs 19:14,21 27:18 32:8,15 32:18 33:6,11 Council 44:4 counsel 44:14 45:11,12 count 32:24 counting 30:23,24 County 1:1,9 2:1,11 6:7 10:22 40:4 44:1 45:2 couple 11:17 course 14:10 court 1:1 2:1 6:17 25:20 44:3 44:6,9 courtesy 40:8 cover 44:16 CPA 6:24 7:5,6 40:2 CPAs 7:10 8:14 credit 15:17,18 16:17 22:5,5 37:5,6 creditors 21:21 22:6,10 cry 36:18 CSR 2:25 44:23 45:21 customary 44:17 customer 11:14 customers 15:10 cut 18:22 cycle 13:21 15:6	44:16 45:5 depositions 5:8 described 16:7 DESCRIPTION 3:16 desire 41:6 deteriorated 28:4 determine 20:15 determined 20:5 25:9 37:16 developed 11:13,14 developing 11:15 Development 1:10 2:12 6:7 10:22 40:5 difference 20:16 23:11,17,19 27:4,20 28:16 direction 45:7 directors 27:14 discarded 12:10 disclosure 44:5 discussed 17:8 discussion 13:10,16 24:15 28:22 discussions 13:21 14:11,14 divided 36:4 document 18:2 documentation 9:23,25 33:22 documents 11:25 12:3 doing 9:6 15:9 36:24 dollars 21:15 double 32:24 downward 13:21 due 27:4 duly 5:23 dumb 17:12	employed 30:15 employees 30:13 32:13 36:21 enclosed 40:8 ended 19:6 29:17 30:16 enjoyed 24:7 ensued 13:10 24:15 28:22 entered 41:7 entitled 33:24 equipment 37:8 errata 40:9,11,12,13 41:12 Esquire 1:22 40:15,19,20,21 44:8 event 19:7 eventually 7:8 evidence 45:9 exact 34:20 exactly 28:14 exam 7:5 examination 3:10 6:3 13:13 examined 6:1 exceed 37:9 exception 41:17 Excuse 18:15 22:7 executed 40:13 exhibit 19:5 20:18,21 21:9 22:15 23:4,7 24:13,19,21,22 24:24 25:8,12,22,24 26:15 27:13 31:6,7,9 32:14 33:23 33:23 36:11 37:10,12 38:19 exhibited 23:2 exhibits 3:14 21:7 22:13 exists 22:14 expert 11:6,9 exploring 14:19 extra 9:11 17:9	28:13 37:15,18 39:5 financially 45:13 financials 18:19 finished 11:4 35:5 firm 5:18 7:6,7,7,9,10 first 5:23 7:18 12:4 17:11,17 17:19 18:2,6 26:22 30:18 36:1 38:22 fiscal 18:6,10,20,23 five 19:6,7 20:10 25:1,3,5,7 29:17 30:4 32:9 34:25 five-year 30:1 Floor 4:21 fluctuate 16:2 following 41:18 44:4 follows 6:1 force 14:21 foregoing 41:15 45:4 forgive 21:12 forgot 37:14 form 5:9 22:19 36:13 41:5,10 format 8:19 9:25 10:5 forward 12:12 15:1 four 18:23 22:16 35:18 36:7,8 freight 12:24 13:1,4 32:8,15 33:6,11 full 12:18 FULTON 44:1 45:2 furnish 41:12 further 45:10
D D 3:6 5:5 24:13,19,21,22,24 43:25 damage 31:16 damages 11:11 17:13 26:9 30:18 32:21 date 20:12 23:10 30:16 40:12 40:13 Dated 44:19 45:17 day 11:4 44:19 45:17 days 40:13 day-to-day 37:2 deadline 38:22 Dear 40:6 debt 21:19 22:7,8 37:25 38:3 debts 15:11 38:6 December 1:15 2:24 11:4 18:12,15 19:5,6 20:17 23:4 23:14,20 24:5 27:1 40:5 deceased 23:18 default 11:11 defendant 1:11 2:14,22 4:17 5:16 6:10 deferred 30:12 deficit 20:21,22 33:8 degree 7:4 deponent 25:17 45:14 deposition 1:13,22 2:21 6:20 25:12 39:21 40:7,10,19 41:6 41:7,16,17 43:26 44:9,10,11	E E 3:6 5:5,5 26:15 41:1,1,1 43:25 44:25,25 earlier 36:11 earned 31:22 34:16 earnings 20:16,17,19,20 21:4 21:5,8,11,16,23 23:10,10,11 23:13,13,15,17,19 31:1 33:8 34:18,23 Economic 1:9 2:11 6:7 10:22 40:4 effect 19:23 20:1 either 12:10 21:17,20 28:1,3 29:3 elected 31:23,25 39:14 election 31:21 32:1,4 elements 24:8 eligibility 30:14 eliminated 30:8,16 elimination 29:16 36:3 Elliott 4:4 5:11,17,17 25:21 36:13 39:18 40:21 employ 45:12	F F 44:25 fact 14:1 16:16 26:3,13 31:2 families 7:15 family 11:18 far 36:25 Fax 4:9,24 Federal 41:3 feel 6:12 felt 34:19 fifteen 6:23 fifty-nine 34:1,2,10 figure 18:24 21:2 figured 34:21 35:25 36:6 figures 18:9 19:1 figuring 26:6 file 12:10 38:20 filed 38:25 39:1 filing 38:22 financial 8:6,12,14,18,19 9:2 9:7,9,24 10:4,11 12:6 15:21	G G 5:5 32:14 GA 40:3 Garrett 10:6 gather 10:5 gauge 10:16 general 8:7 13:14 15:7,13 17:12 generally 8:16 Georgia 1:17,21 2:23,25 7:3 41:4 43:26 44:4,6,23 45:1 45:21 getting 14:19 15:17,17 give 7:1 10:2,17 given 39:9 41:8 45:9 giving 16:7 go 13:8 16:2 17:14 19:3 25:11 26:15 going 11:23 12:1 13:25 14:9 16:12 17:11 23:23 26:19,20 27:15 35:11 good 10:19 12:13 15:20 graduated 7:3 grand 35:17 Greenville 1:1,9 2:1,11 4:22 6:7 10:22 40:4

Groome 1:6,6 2:6,6 7:19,23 8:2 9:3,4,7,10 10:3,11,17 11:19 12:5 13:5,7,14,17 15:3 21:22 24:25 27:8,11,21 29:3,25 31:16 32:13,15 33:17,18 36:11,24 37:16 38:5 40:4 Groome's 22:2 gross 26:4 ground 6:10 guaranteed 37:4,5 guess 13:20 27:24	information 8:16 9:13 10:4 10:11,14,15 12:7,14,19,21 12:23 18:18 39:12 infusion 22:4 initially 13:24 22:25 instability 36:12 insurance 27:17 28:2,5 interested 45:13 inventory 8:25 9:22 16:4,8 39:13 issue 11:14 16:15 issues 15:24 item 9:14 items 26:6	let's 11:10 13:8 20:3 25:14,18 27:12 level 8:22 9:12 21:24 levels 8:15 line 15:17 22:5 35:18 37:4,20 38:3 41:20,23,26 42:3,6,9 42:12,15,18,21,26 43:3,6,9 43:12,15 liquidation 37:1 list 9:18,19,20,21 listed 17:17 21:10 41:18 litigants 11:7 litigation 6:8 11:12 13:15,16 little 26:2 living 36:24 LLC 4:4 40:19 loan 22:4 loans 16:25 longer 14:8 16:5 look 17:10 20:7 24:13 37:12 looked 21:8 looking 17:13 19:19 38:19 lose 24:6 loss 17:21 19:9,10 25:8 30:2 32:23 losses 10:25 14:1,3 15:19,21 17:18,19 18:1,4 20:15,22,24 21:1 22:24 23:18,21,24 24:1 24:7 26:8 28:19 30:17 33:5 35:18 36:6 lost 17:18,22 18:2 20:9,24 23:24 30:19,21 34:18 36:1	misunderstanding 24:1 mixed 39:2 money 14:23 16:8 21:15,18 22:4 27:21 31:20,22 32:2,3 33:18 35:12,13 month 18:23 26:21 27:15 36:5 monthly 10:10,11,14 months 18:14 26:24 35:18 36:7 38:11,23 39:3 multiplied 20:9 25:4 30:4 36:8 mutual 7:24
H H 33:23 41:1 half 21:15 34:1,2,10 38:23 39:3,4 Halwig 1:21 2:25 40:17,18 44:22 45:20 happen 29:9 hardship 28:13 HAYNSWORTH 4:20 head 6:16 held 7:14 hesitate 40:15 Hicks 32:13 high 19:17 higher 19:15 highest 8:22 historical 32:18 history 17:21 hit 21:16 34:24	J J 4:19 31:9 40:20 January 40:1 44:19 45:17 Jason 4:4 5:17 40:21 jelliott@simmonsfirm.c... 4:10 Job 1:23 Jodie 10:6 John 1:13 2:21 3:8 4:4 5:22 40:2 41:14 44:1 Jr 4:19 40:20 Judicial 44:4 July 18:6,20,21,23 19:20 20:13,20 22:15,22,23 23:20 25:1,2 29:17,17 30:15 36:6 37:13,14 38:18,24 jumping 26:2	M M 31:9 main 15:14 maintenance 27:25 making 14:2,3 17:21,24,25 18:3 25:12,15 31:21 41:8,9 manage 37:1 management 27:18 March 27:14 margins 16:5 Marietta 1:17 2:22 40:3 marked 25:25 matter 26:5 40:8 mean 13:3 18:16 21:14,25 27:25 39:8 means 8:13,16 23:13 meant 36:10 mental 36:12,22 mention 37:14 mentioned 9:12 15:3 18:1 met 30:14 million 21:15 minute 25:14 minutes 21:12 27:13,14	N N 3:6 5:5 31:9 name 7:8 NE 40:3 necessary 41:11 net 17:18,20,22,24 18:3,5,6 18:24 19:1,7,9 20:9,15,24 20:25 24:6 27:16 28:6 36:1 nodding 6:16 note 38:4 noted 6:18 notice 36:11 November 18:21 35:19 number 19:14 20:13,21 23:14 23:20 24:4 25:20,24 33:8 numbers 7:15 8:17,21 9:17,24 10:1 17:15 34:20,20 39:9 numerically 32:25 33:2,3,4
I identification 25:25 imagine 28:4 inaudible 31:17 inception 23:15 include 9:3 34:8 37:24 included 22:17 30:1 32:23,25 33:1,3,8 includes 22:17 income 8:9 17:18,20,22,25 18:3,5,24 19:1,7,9 20:6,9,24 20:25 23:25 24:4,6 33:7,15 33:20 36:1 37:19 incorrectly 40:11 increased 23:17 incurred 12:24 13:5 15:11,22 32:16,18 independent 44:7 indicates 27:14 individual 7:16 12:5 individuals 7:13,16 14:18 39:4 individual's 21:18 industry 15:7	K K 1:6 2:6 31:9 Kathy 32:12 kin 45:10 knew 17:7 know 6:6 9:6,16 10:7 17:6 18:13 19:12 22:12 27:10,12 27:16 28:11 35:1 36:25 38:8 knowledge 13:15 38:5,7 41:16 known 7:10	L L 31:9 43:25 large 16:4 Law 4:4 5:18 Lawrence 1:16 2:22 40:3 layman's 8:13 lease 27:7,10,15,16 28:12 leased 26:13 Lee 1:6 2:6 13:22 16:25 22:19 24:12,25 33:16 37:16 left 7:9 15:25 lender 28:4 letter 19:5 40:13	O O 5:5 43:25 Object 36:13 observe 8:25 obtain 9:13 obviously 35:6 occasion 11:6 19:12 occur 15:5 22:1,2 occurred 15:11,12 occurring 30:17 office 1:23 26:10,12 36:2,4 40:15 offices 4:4 44:8 off-the-record 13:9 24:14 28:21 okay 17:17 23:8 24:3,9,17 26:9 27:13 33:3,9 35:23 ones 11:10 operating 17:18 18:1,4 20:25 operation 10:24 operations 19:17 37:2 38:9 original 40:9 Originally 11:23 owned 7:15 26:13 O.C.G.A 44:12

P P 5:5 page 3:10,16 19:3,4 20:8,8 22:15,16 23:6 24:23 26:17 31:11 32:11 35:21,23 37:12 41:20,23,26 42:3,6,9,12,15 42:18,21,26 43:3,6,9,12,15 45:7 pages 32:10 41:11 45:8 paid 14:6 24:12,25 25:3,7 26:7,14,23,25 27:2,4,5,17 28:1,1,3,10,25 29:10,19,21 29:22,23 30:6 31:1,2,4 33:6 33:16 34:20 paper 13:5 15:7,12 16:1,1 19:13,17,20 part 23:1 31:12 33:5 participated 30:14 parties 44:18 45:11,12 partner 7:7 party 44:14 passed 7:5 patent 11:14 pay 14:4,7 15:10 19:14,16 28:6,15,17,18 31:25 32:5 33:19,20 34:3,9 35:8 37:4,7 37:17 payable 37:22,24 38:4 payables 8:25 9:20 37:4,9 39:13 paying 28:7,8 payment 29:4,5 payments 28:12 penalties 33:15,21,25 34:6,10 35:1,9 people 14:15 perform 8:1 period 18:13,22,23 20:23 25:6 30:1 periods 18:20 26:25 27:3 permanent 14:8 personal 7:1 8:9 personally 8:9 24:12 26:11 33:17 37:4,5 Phone 1:24 pick 13:5 Pickens 4:5 piling 35:10 Place 4:21 Plaintiff 5:19 Plaintiffs 1:7 2:7 4:3 12:4,20 12:20 plan 29:15,24 30:7,9,11,13 31:5,8,24 32:2 33:19 PLEAS 1:1 2:1 please 6:13 7:2 40:7,11,15 41:10,11	plus 19:16 28:7 point 8:5 14:12,18 34:2 35:23 portions 12:16,17 position 10:7 possibility 14:19 potential 34:23 Powell 7:8 practice 7:12 preceding 45:7 premature 33:16 prepare 32:17 38:12 39:9 prepared 9:15 11:1,3 32:13 32:19 35:6,7 presence 36:19 present 12:6 15:1 presently 22:14 pressure 15:20 pretty 15:8,12 29:12 previous 5:8 29:10 prices 16:1 19:15,18 primarily 7:14 9:14 10:6 principles 7:17 prior 13:15 18:25 28:25 privilege 5:10 probably 34:17 problem 17:4 problems 15:2,6,13,16,23 16:16 Procedure 41:4 procedures 8:20,22 product 11:13,15 professional 8:2 profit 29:15,19,22,23,24 30:7 30:9,11,21 31:5,7,14,19,23 33:16,18 35:8 36:2 profitability 19:24 profits 14:2 23:18 30:19 31:4 prohibited 44:11 projected 23:24 proof 28:24 provide 44:9,13 provided 12:19,21,23 pulled 32:24 pumping 21:15 purchasing 22:20 Pursuant 41:3 44:2 put 21:19,20 22:19,22,25 25:13 31:23 32:2,4,4 33:19 35:13 39:8 putting 8:21 9:24 15:24 21:18 P.A 4:20 P.C 40:2 p.m 1:15,15 2:23,24 39:21 P.O 4:6 Q quality 10:16	quantitative 34:19 quasi 18:11 question 5:9 6:11 23:22 36:14 questions 3:23 5:8 13:14 17:12 21:13 39:17 40:15 45:6 quite 13:2 R R 1:21 2:24 5:5 40:17,18 41:1 41:1 43:25 44:22,25 45:20 rail 12:25 13:6,23 14:12,16,20 15:3 16:11 19:1 32:16,22 railroad 12:20,21 13:2,17 16:13 17:3 ramifications 15:4 rates 44:17 reached 34:1 read 40:10 41:15,20,23,26 42:3,6,9,12,15,18,21,26 43:3,6,9,12,15 45:14 readily 6:12 reading 40:8 ready 40:8 reason 6:11 23:12 34:8 41:22 41:25 42:2,5,8,11,14,17,20 42:23 43:2,5,8,11,14,17 reasons 41:8 recall 14:13,25 17:7 27:19 29:9,13 36:23 receivables 8:24 9:18,19 37:3 37:7,9,19 39:13 receive 10:10 reconciliations 9:15 reconstituting 14:15 record 13:8 redemption 24:11,18 reduce 28:14 reduced 28:12 31:1 32:21 33:7 45:6 reduction 26:10 36:2,2 referral 44:16 referred 7:24 referring 24:19,23 37:10 reflect 29:4 regarding 12:20,21,24 regular 45:12 regulations 44:3 relates 32:12 relationship 11:18 remember 11:10,16 13:7 15:15 removal 12:25 removed 13:24 17:23,23 32:16 rent 14:5 26:10,12,14,20,22 28:16,25 29:4,9 36:2	rental 27:21 repairs 14:23 27:25 repeat 6:13 rephrase 18:25 replaced 13:25 14:9,10,21 report 3:18 11:1,3 12:8,14 17:9 19:2 20:8 25:11 28:24 29:1 39:6 reported 1:20 23:12 45:5 reporter 6:17 25:20 44:6,15 reporting 26:5 44:3,9,13,15 reports 10:17 12:6 13:12 represent 6:7 24:4 32:15 45:8 represents 23:21 33:17 requested 29:2 required 28:5 37:18 requirements 30:14 reserve 5:8 response 6:18 restricting 16:23 restrictions 15:24 result 10:25 45:13 Resuming 13:11 24:16 26:1 28:23 36:15 retained 3:19 20:16,17,19,20 21:4,5,8,11,16,23 23:10,11 23:12,13,16,17,19 31:1 33:8 return 12:15 22:16,16 29:3 31:13,15 35:7 37:13,19 38:17,18 39:10 40:13,14 returns 8:7,10 12:5,11 18:19 38:20 review 37:15 reviewed 8:6,11,19 9:2,9 27:7 reviews 8:23 right 5:11 20:14 24:20,24 25:16 26:2 30:22 33:14 34:7 35:4,25 38:25 39:7 40:10 45:14 risk 15:13 Roughly 6:22 rounding 21:12 routinely 14:6 Rule 41:3 rules 6:10 41:4 44:2 S S 4:4 5:5 41:1,1 43:25,25 salaries 24:25 25:3,9 salary 14:4 24:11,18 26:4 36:1 saying 31:21 32:3 33:10 scale 19:17 schedule 19:4 20:7 21:9 32:9 32:12,14,20,23 33:22 35:3 35:19,20 36:1 second 13:8 19:3 20:8 24:9,11
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24:17 35:21 secondly 6:15 see 11:10 19:10 20:3,14 22:18 27:12 32:12,20 33:10 37:20 seeing 17:10 selling 37:8 send 8:23 separate 29:7 serve 8:7 service 9:12 13:17 14:12,16 15:3 16:11,14 17:23 18:17 19:2 32:16,22 services 1:22 7:19 8:2 40:19 44:9,14 seven 18:14 26:24 seventeen 38:3 sharing 29:15,19,22,23,24 30:7,9,11,21 31:5,7,14,20 31:23 33:16,19 35:8 36:3 sheet 9:14 22:13,17 32:14 37:13 40:12 41:12 Sheets 40:11 Sheet(s) 40:9,13 short 18:22 show 21:7 22:13 34:21,22 showed 23:2 29:18 31:7 shown 20:21 33:12,22 35:2 38:2 shows 23:4,9 27:2 28:9 31:13 37:19 sign 40:11,13 45:15 Signature 43:22 signing 40:8 Simmons 4:4 5:18 7:10 11:24 40:2 simplest 20:15 34:11,21 Sincerely 40:16 SINKLER 4:20 sir 19:3 27:22 site 12:25 13:6,23 14:20,21 17:23 32:16 situation 16:6 17:4 18:5 situations 15:9 sixty 34:24 sixty-five 34:17 skyrocketed 19:14 small 7:15 somebody 28:3 sorry 35:17 sort 8:12 9:11 11:9 16:21 18:11 23:22 30:9 source 22:20 South 1:2 2:2 4:7,22 standard 30:11 standpoint 10:24 start 16:11 18:12 started 7:9 9:6 11:15 13:21	15:19,24 16:23 18:13,16 30:17 starts 12:8 32:11 state 1:2,21 2:2 7:3 36:22 43:26 45:1 stated 45:5 statement 8:6,18,20 9:25 37:15,18 41:7 statements 8:12,14 9:2,10 10:10 Stephen 1:21 2:24 40:17,18 44:22 45:20 sticker 25:13 stock 23:9 stockholder 21:20 stocks 22:20 storage 12:10 straight 7:6 Street 1:16 2:22 4:5 40:3 stupid 21:13 subject 26:8 subpoena 11:24 29:2 subpoenaed 11:25 subsequent 27:1 36:6 substance 41:5 substantial 14:3 37:6 19:15 substitute 25:19 subtracted 30:5 sudden 14:6 suffered 10:25 11:11 18:4 32:22 suffering 14:3 18:1 28:19 Suite 1:16 2:22 40:3 sums 16:4 supplemental 41:11 support 11:13 19:5 supported 21:25 22:24 supporting 22:21 supposed 26:20,23 28:6,8,18 32:15 sure 6:17 9:16,19,21,22 10:1 13:2 19:25 29:12,13 38:14 38:15 sworn 5:13,23	22:16,16 26:7,8 29:3 30:12 31:13,14 33:20 37:13,19 38:16,18,20 39:10 taxes 7:13 26:4,5 27:17 28:2 33:15 34:4,9 tell 8:12 13:19 17:3 21:23 35:11 36:21 37:10 temporary 13:25 tend 7:11 terms 8:13 testified 6:1 30:19 testimony 41:6 th 44:18 45:16 Thank 39:16 thereto 45:6 they'd 18:3 thing 9:1 13:25 17:2 28:5 things 9:11,22 12:18 14:5,21 15:5,14 17:8 28:7 37:7 think 10:8 12:8,13 15:14 16:13 22:3,18 27:12 29:1 thinking 39:2 Third 26:9,10 Thombley 1:13 2:21 3:8 5:22 6:6 7:9,10 40:2,2,6 41:14 44:1 thought 13:24 34:11 three 8:15 19:4 20:8 24:23 26:17,21 31:11 32:11 35:24 38:11 39:4 tied 9:19,21 10:1 ties 9:22 time 13:23 15:1,23,23 17:11 18:22 20:19,23 23:21,25 25:6 26:19 27:3 32:18 34:16 timely 38:25 times 6:22 16:1 25:5 36:8 titled 19:4 told 13:23 14:7,9,17 35:13 top 30:20 35:9 total 20:25 25:7 26:24 27:5 35:15,17 track 14:23,24 trade 21:21 22:5,5,10 37:6 transcribed 40:10 transcript 40:9,11,14 45:8,15 trial 9:17,20 tried 17:20 18:12,19 24:3 triple 27:16 28:6 true 41:17 45:8 try 14:20,20 34:15 trying 16:24 18:2 36:25 37:2 37:6 Tuesday 1:15 2:24 twelve 18:14 36:4 twenty 6:23 twice 30:24,24	two 11:16 19:4 22:15,15 23:7 23:7 24:8,23 26:17 31:11 37:12,12 38:11,23 39:3 type 8:25 9:14 17:2 28:5 typically 7:16 8:6,15 21:17 31:24
U			
U 37:12 43:25 Uh-huh 25:17 uh-huhs 6:16 UNANSWERED 3:23 unclear 6:11 Undersigned 41:14 understand 6:12 18:6 24:9 36:10 University 7:3 upkeep 14:23 usage 12:20,22 use 13:24 25:21 35:11 38:6 41:10 users 14:19 usual 44:17			
V			
V 27:13 valuate 18:20 valuation 11:11 value 21:3 27:21 various 22:1 volatility 15:7 vs 1:8 2:9 40:4			
W			
wait 25:14 waived 45:14 want 17:14 24:9 25:22 wanted 10:5 12:2 16:8 wasn't 14:10 way 20:15 23:12 34:11,21,22 45:13 ways 22:1 went 7:5 17:19 19:6 21:11 26:16,18 29:16 35:22,25 weren't 14:6 16:7 We'll 11:5 we're 25:10,12 30:20 38:19 we've 38:14 White 3:12 4:19 5:7,15,15 6:5 13:11 24:16 25:10,18 26:1 28:23 36:15 39:16 40:20 withdraw 33:18 34:15 withdrawals 33:16,20,21 withdrew 34:13 withheld 35:8 witness 3:8 5:13,23 11:6 45:9 wondering 22:2			

THOMBLEY & SIMMONS, P.C.

CERTIFIED PUBLIC ACCOUNTANTS

SUITE 100

305 LAWRENCE STREET

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MEMBER
AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS

MEMBER
GEORGIA SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

December 8, 2003

Mr. Lee Groome, Chief Executive Officer
Groome & Associates, Inc.

VIA FACSIMILE

Dear Lee,

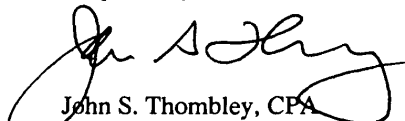
I have completed my analysis of losses incurred by Groome & Associates, Inc. and you, as they relate to the operations of the company.

These losses may increase with further analysis.

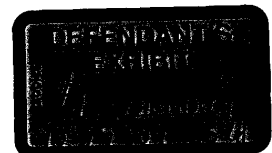
During the period of time from December 31, 1997 to July 31, 2003, losses to the company and to you are estimated as follows:

Lost Net Income & Operating Losses to the Company	\$ 1,419,358	Schedule 1
Salary Reduction to You Personally	1,083,467	Schedule 2
Office Rent Reduction to You Personally	447,000	Schedule 3
Profit Sharing Plan Elimination	281,550	Schedule 4
Additional Freight Costs	0	Schedule 5
Income Taxes and Penalties on Premature Profit Sharing Withdrawals Paid by You Personally	140,271	Schedule 6
Total Losses Through July 31, 2003	\$ 3,371,646	
Additional Losses for the Four Months Ended November 30, 2003	166,356	Schedule 7
Total Losses Through November 30, 2003	\$ 3,538,002	

Respectfully submitted,


John S. Thombley, CPA
Thombley & Simmons, P.C.

JST/mla



GROOME & ASSOCIATES, INC.
 SUPPORT FOR DECEMBER 8, 2003 LETTER
 REGARDING LOSSES FROM 12-31-97 TO 7-31-03

Page 1 of 3

Schedule 1

Lost Net Income (62,007 (Exhibit A) x 5 7/12)		\$ 346,206
Actual Losses:		
Retained Earnings 12-31-97 (Exhibit B)	\$ 571,604	
Retained Earnings 7-31-03 (Deficit) (Exhibit C)	(501,548)	1,073,152
Total Lost Net Income and Operating Losses		\$ 1,419,358

Schedule 2

Salary Reduction (\$204,800 (Exhibit D) Per Year 1998-2002 & 7/12 of 2003 x 5 7/12)	\$ 1,143,467
Less: Salary Paid in 1998 (Exhibit I)	(60,000)
Total Salary Reduction	\$ 1,083,467

Schedule 3

Office Rent Reduction (Exhibit E)	\$ 447,000
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Schedule 4

Profit Sharing Elimination 1998-2002 + 7/12 of 2003 (\$52,260 (Exhibit F) per Year x 5 7/12)	\$ 291,785
Less Amounts Paid for Administration:	
For the Year Ended 7-31-98 (Exhibit P)	0
For the Year Ended 7-31-99 (Exhibit Q)	1,545
For the Year Ended 7-31-00 (Exhibit R)	1,988
For the Year Ended 7-31-01 (Exhibit S)	1,557
For the Year Ended 7-31-02 (Exhibit T)	5,145
	10,235
Total Profit Sharing Elimination	\$ 281,550

Schedule 5

Additional Freight Costs (Cathy Hicks' Schedule - Exhibit G)	\$ 457,000
Less: Included in Loss in Schedule I	(457,000)
	\$ 0

Schedule 6

Income Tax and Penalty on Premature Profit Sharing Withdrawal 2002:	
Income Tax - Federal - Exhibit H	\$ 74,052
Penalty - Federal - Exhibit H	28,125
Income Tax - South Carolina - Exhibit H	18,094
Income Tax and Penalty on Premature Profit Sharing Withdrawal 2003 - Exhibit BB	20,000
	\$ 140,271

Schedule 7

Monthly Losses Subsequent to July 31, 2003	
Lost Net Income (\$62,007 x 1/12)	\$ 5,167
Salary Reduction (\$204,800 x 1/12)	17,067
Office Rent Reduction	15,000
Profit Sharing Elimination (\$52,260 x 1/12)	4,355
Total Monthly Losses Subsequent to July 31, 2003	\$ 41,589

There may be additional operating losses subsequent to July 31, 2003.

GROOME & ASSOCIATES, INC.
SUPPORT FOR DECEMBER 8, 2003 LETTER
REGARDING LOSSES FROM 12-31-97 TO 7-31-03

Page 2 of 3

Lost Net Income & Operating Losses to the Company:

Net Income Per Financial Statements:

	Exhibit A
For the Year Ended July 31, 1993 (Exhibit W)	\$ 74,791
For the Year Ended July 31, 1994 (Exhibit X)	117,194
For the Year Ended July 31, 1995 (Exhibit Y)	68,579
For the Year Ended July 31, 1996 (Exhibit Z)	(9,354)
For the Year Ended July 31, 1997 (Exhibit AA)	58,827

Total Net Income for the Five Years Ended July 31, 1997 \$ 310,037

Average for One Year \$ 62,007

Salary Reduction

Salaries Paid to Lee Groome:

	Exhibit D
For the Year Ended July 31, 1993 (Exhibit J)	\$ 154,000
For the Year Ended July 31, 1994 (Exhibit K)	260,000
For the Year Ended July 31, 1995 (Exhibit L)	200,000
For the Year Ended July 31, 1996 (Exhibit M)	80,000
For the Year Ended July 31, 1997 (Exhibit N)	330,000

Total for the 5 Years Ended July 31, 1997 \$ 1,024,000

Average for One Year \$ 204,800

Office Rent Reduction

	Exhibit V Amount Due	Exhibit O Amount Paid	Exhibit E Amount of Reduction
Calendar Year 1998 (12 @ \$15,000)	\$ 180,000	\$ 90,000	\$ 90,000
Calendar Year 1999 (12 @ \$15,000)	180,000	110,000	70,000
Calendar Year 2000 (12 @ \$15,000)	180,000	185,000	(5,000)
Calendar Year 2001 (12 @ \$15,000)	180,000	120,000	60,000
Calendar Year 2002 (12 @ \$15,000)	180,000	0	180,000
Calendar Year 2003 (7 @ \$15,000)	105,000	53,000	52,000
	\$ 1,005,000	\$ 558,000	\$ 447,000

Profit Sharing Elimination

Profit Sharing Plan Contributions

	Exhibit F
For the Year Ended July 31, 1993 (Exhibit J)	\$ 46,410
For the Year Ended July 31, 1994 (Exhibit K)	80,689
For the Year Ended July 31, 1995 (Exhibit L)	84,000
For the Year Ended July 31, 1996 (Exhibit M)	0
For the Year Ended July 31, 1997 (Exhibit N)	50,203

Total for the 5 Years Ended July 31, 1997 \$ 261,302

Average for One Year \$ 52,260

GROOME & ASSOCIATES, INC.
SUPPORT FOR DECEMBER 8, 2003 LETTER
REGARDING LOSSES FROM 12-31-97 TO 7-31-03

Page 3 of 3

Periods Subsequent to 12-31-97:

- For the Year Ended July 31, 1998 (Exhibit P)
- For the Year Ended July 31, 1999 (Exhibit Q)
- For the Year Ended July 31, 2000 (Exhibit R)
- For the Year Ended July 31, 2001 (Exhibit S)
- For the Year Ended July 31, 2002 (Exhibit T)
- For the Year Ended July 31, 2003 (Exhibit U)

Dec 31, 1997

2:03 pm

GROOME & ASSOCIATES, INC.
Balance Sheet

NO.298 002

Page 1

EXHIBIT B
PAGE 1 OF 2

As of: December 31, 1997

ASSETS:

Current Assets:

FIRST UNION BANK - CHECKING	(\$7,111.82)
ACCOUNTS RECEIVABLE - TRADE	1,119,614.25
Inventory - Stock	1,570,505.27
Inventory - Nonstock	(0.30)

TOTAL Current Assets

\$2,683,007.40

Fixed Assets:

Autos & Trucks	153,164.12
Machinery & equipment	582,440.41
Furniture & office equipment	86,952.48
Leasehold improvements	137,073.31
Computer equipment	22,274.96
Acc. dep/autos & trucks	(62,810.31)
Acc. dep/ furniture & fixtures	(47,838.47)
Acc. dep/leasehold improvement	(30,445.59)
Acc. dep/ Machinery & equip.	(249,769.98)
Acc. dep/Computer equipment	(10,211.64)

TOTAL Fixed Assets

580,829.29

Other Assets:

Deposits	1,130.00
Cash Surrender Value Life Ins.	63,791.00

TOTAL Other Assets

64,921.00

TOTAL ASSETS

\$3,328,757.69

LIABILITIES:

Current Liabilities:

Accounts payable - trade	\$891,716.61
FUTA (940) payable	234.97
SUTA (SC) payable	586.52
Child Support Liability	0.01
Sales tax payable	(82.94)

TOTAL Current Liabilities

\$892,455.17

1997

GROOME & ASSOCIATES, INC.
Balance Sheet

Page 2

EXHIBIT B
PAGE 2 OF 2

As of: December 31, 1997

Other Liabilities:

Notes payable - First Union Cr	1,581,818.67
Federal income taxes payable	(3,375.00)
SC income taxes payable	(1,245.50)
Deferred Income Tax	57,000.00

TOTAL Other Liabilities

1,634,198.17

TOTAL LIABILITIES

2,526,653.34

CAPITAL:

Capital stock	230,500.00
Retained earnings	534,782.27
Year-to-Date Earnings	36,822.08

TOTAL CAPITAL

802,104.35

TOTAL LIABILITIES & CAPITAL

\$3,328,757.69

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2002 or tax year beginning 8/1, 2002, ending 7/31, 2003
▶ Instructions are separate. See page 20 for Paperwork Reduction Act Notice.

EXHIBIT C
PAGE 1 OF 2
OMB No. 1545-0123
2002

- A** Check if a:
- 1 Consolidated return (attach Form 851) ☐
- 2 Personal holding co (attach Sch. PH) ☐
- 3 Personal service corp. (as defined in Regulations sec. 1.441-3(c) — see instructions) ☐

Use IRS label. Otherwise, print or type.

Name
GROOME & ASSOCIATES, INC.

Number, street, and room or suite no. (If a P.O. box, see page 7 of instructions)
P.O. BOX 729

City or town, state, and ZIP code
TRAVELERS REST, SC 29690-0729

B Employer identification number
58-1810366

C Date incorporated
8/31/88

D Total assets (see page 8 of instructions)

E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change \$ 590,439.97

Income	1a	Gross receipts or sales	5,085,722.29	b	Less returns and allowances	98,573.08	c	Bal	1c	4,987,149.21
	2	Cost of goods sold (Schedule A, line 8)							2	4,167,056.87
	3	Gross profit. Subtract line 2 from line 1c							3	820,092.34
	4	Dividends (Schedule C, line 19)							4	
	5	Interest							5	
	6	Gross rents							6	
	7	Gross royalties							7	
	8	Capital gain net income (attach Schedule D (Form 1120))							8	
	9	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)							9	127,000.00
	10	Other income (see page 9 of instructions — attach schedule)							10	
	11	Total income. Add lines 3 through 10							11	947,092.34
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (Schedule E, line 4)							12	3,423.93
	13	Salaries and wages (less employment credits)							13	254,354.04
	14	Repairs and maintenance							14	24,369.05
	15	Bad debts							15	64,138.23
	16	Rents							16	53,000.00
	17	Taxes and licenses							17	51,731.59
	18	Interest							18	75,076.09
	19	Charitable contributions (see page 11 of instructions for 10% limitation)							19	
	20	Depreciation (attach Form 4562)	20	32,158.83						
	21	Less depreciation claimed on Schedule A and elsewhere on return	21a	4,448.46					21b	27,710.37
	22	Depletion							22	
	23	Advertising							23	3,706.45
	24	Pension, profit-sharing, etc., plans							24	1,483.00
	25	Employee benefit programs							25	
	26	Other deductions (attach schedule)							26	269,122.88
	27	Total deductions. Add lines 12 through 26							27	828,115.63
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11							28	118,976.71
	29	Less: a Net operating loss (NOL) deduction (see page 13 of instructions)	29a	118,976.71						
		b Special deductions (Schedule C, line 20)	29b						29c	118,976.71
Tax and Payments	30	Taxable income. Subtract line 29c from line 28							30	0.00
	31	Total tax (Schedule J, line 11)							31	0.00
	32	Payments: a 2001 overpayment credited to 2002	32a							
		b 2002 estimated tax payments	32b							
		c Less 2002 refund applied for on Form 4466	32c							
		d Bal	32d							
		e Tax deposited with Form 7004	32e							
		f Credit for tax paid on undistributed capital gains (attach Form 2439)	32f							
		g Credit for Federal tax on fuels (attach Form 4136). See instructions	32g						32h	
	33	Estimated tax penalty (see page 14 of instructions). Check if Form 2220 is attached							33	
	34	Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed							34	0.00
35	Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid							35		
36	Enter amount of line 35 you want: Credited to 2003 estimated tax							36		

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer

Date

Title

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature

Date

Check if self-employed ☐

Preparer's SSN or PTIN

Firm's name (or yours if self-employed), address, and ZIP code

THOMBLEY & SIMMONS, P.C.

EIN 58-1582344

305 LAWRENCE ST., STE. 100, MARIETTA, GA 30060

Phone No. 770-423-1234

Note: The corporation is not required to complete Schedules L, M-1, and M-2 if Question 13 on Schedule K is answered "Yes."**Schedule L Balance Sheets per Books**

	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
Assets				
1 Cash		66,245.79		124.82
2a Trade notes and accounts receivable	697,393.00		323,760.00	
b Less allowance for bad debts	()	697,393.00	()	323,760.00
3 Inventories		716,654.72		103,864.23
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach schedule)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach schedule)				
10a Buildings and other depreciable assets	704,871.34		695,341.02	
b Less accumulated depreciation	(518,621.75)	186,249.59	(533,780.10)	161,560.92
11a Depletable assets				
b Less accumulated depletion	()		()	
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization	()		()	
14 Other assets (attach schedule) .. DEPOSITS		1,130.00		1,130.00
15 Total assets		1,667,673.10		590,439.97
Liabilities and Shareholders' Equity				
16 Accounts payable		667,182.04		372,388.97
17 Mortgages, notes, bonds payable in less than 1 year		1,226,201.87		429,073.87
18 Other current liabilities (attach schedule) .. ACCRUED EXPENSES		306.87		25.00
19 Loans from shareholders		124,000.00		60,000.00
20 Mortgages, notes, bonds payable in 1 year or more				
21 Other liabilities (attach schedule)				
22 Capital stock: a Preferred stock				
b Common stock	230,500.00	230,500.00	230,500.00	230,500.00
23 Additional paid-in capital				
24 Retained earnings — Appropriated (attach schedule)				
25 Retained earnings — Unappropriated		(580,517.68)		(501,547.87)
26 Adjustments to shareholders' equity (attach schedule)				
27 Less cost of treasury stock		()		()
28 Total liabilities and shareholders' equity		1,667,673.10		590,439.97

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (see page 20 of instructions)

1 Net income (loss) per books	78,969.81	7 Income recorded on books this year not included on this return (itemize):	
2 Federal income tax per books	0.00	Tax-exempt interest \$	
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize):			
5 Expenses recorded on books this year not deducted on this return (itemize):		8 Deductions on this return not charged against book income this year (itemize):	
a Depreciation	\$ 4,999.52	a Depreciation	\$
b Charitable contributions	\$ 2,852.00	b Charitable contributions	\$
c Travel and entertainment	\$ 2,667.28		
OWNERS LIFE INS. \$ 27,088.10			
6 Add lines 1 through 5	40,006.90	9 Add lines 7 and 8	
	118,976.71	10 Income (line 28, page 1) — line 6 less line 9	118,976.71

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1 Balance at beginning of year	(580,517.68)	5 Distributions: a Cash	
2 Net income (loss) per books	78,969.81	b Stock	
3 Other increases (itemize):		c Property	
		6 Other decreases (itemize):	
		7 Add lines 5 and 6	
4 Add lines 1, 2, and 3	(501,547.87)	8 Balance at end of year (line 4 less line 7)	(501,547.87)

john thombley

From: "Cathy Hicks" <cathy@groomepaper.com>
To: <thombley@bellsouth.net>
Sent: Friday, December 05, 2003 4:32 PM
Subject: Revised

John, I hope this will work. Please call as soon as you receive. I want to leave for the day. Thanks, Cathy

Warehousing/Cross Docking Cost					
Year	Month	Vendor	Frt/ Whse	Monthly Total	A/P Detail Payments/Yr
1998	Jan-Dec.	Faucett	F		\$22,845.25
		Piedmont	F		\$7,975.00
		Shaw Whse	W		\$4,796.60
		Welpack	W		\$46,814.51
		Sunland	W		\$82,903.14
		Bearden	F		\$1,695.00
		Dunk Pye	F		\$5,000.00
1998	Total		W/F A/P		\$ 172,029.50
1999	Jan-Dec.	Wellpak	W		\$ 22,869.62
		Commercial	W		\$ 27,930.61
		Faucett	F		\$ 23,375.00
		Bilo	F		\$ 14,410.00
		C & C	F		\$ 2,300.00
		Pennco	W		\$ 9,893.57
		Dunk Pye	F		\$ 300.00
1999	Total		W/F A/P		\$101,078.80
2000	Jan-Dec.	Commerical	W		\$ 6,617.56
		Wellpak	W		\$ 35,449.57
		Faucett	F		\$ 30,063.50
		Bilo	F		\$ 7,500.00
2000	Total				\$79,630.63
2001	Jan.-Dec.	Wellpak	W		\$ 17,293.98
		Penno	W		\$ 320.36
		DSI	W		\$ 1,965.98
		Faucett	F		\$ 12,775.00
2001	Total				\$ 32,355.32

12/5/03

2002	Jan-Dec.	Wellpak	W	\$ 18,939.93
		Pennco	W	\$ 15,080.80
		DSI	W	\$ 100.00
		Faucett	F	\$ 25,296.37
2002	Total			\$ 59,417.10
2003	Jan-Dec.	Wellpak	W	\$ 5,153.00
		Pennco	W	\$ 507.63
		Faucett	F	\$ 7,100.00
2003	Total			\$ 12,760.63
		Grand Total		\$ 457,271.98

1040

U.S. Individual Income Tax Return

2002

(99)

IRS Use Only - Do not write or staple in this space.

EXHIBIT H
PAGE 1 OF 3

Label

(See instructions on page 21.)

Use the IRS label.

Otherwise, please print or type.

Presidential Election Campaign (See page 21.)

For the year Jan. 1-Dec. 31, 2002, or other tax year beginning

2002, ending

20

OMB No. 1545-0074

Your first name and initial

LEE K

Last name

GROOME

Your social security number

248 92 1290

If a joint return, spouse's first name and initial

MARGARET F

Last name

GROOME

Spouse's social security number

250 88 7004

Home address (number and street). If you have a P.O. box, see page 21.

351 FOOTHILLS DRIVE

Apt. no.

City, town or post office, state, and ZIP code. If you have a foreign address, see page 21.

GREENVILLE, SC 29617

▲ Important! ▲
You must enter your SSN(s) above.

Note. Checking "Yes" will not change your tax or reduce your refund.

You

Spouse

Do you, or your spouse if filing a joint return, want \$3 to go to this fund? ▶

Yes

No

Yes

No

Filing Status

1 ☐ Single2 ☒ Married filing jointly (even if only one had income)3 ☐ Married filing separately. Enter spouse's SSN above and full name here. ▶4 ☐ Head of household (with qualifying person). (See page 21.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶5 ☐ Qualifying widow(er) with dependent child (year spouse died ▶) (See page 21.)

Check only one box.

Exemptions

6a ☒ Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a.b ☒ Spouse

c Dependents:

(1) First name

Last name

(2) Dependent's social security number

(3) Dependent's relationship to you

(4) ☐ If qualifying child for child tax credit (see page 22)

No. of boxes checked on 6a and 6b

2

No. of your children on 6c who:

• lived with you
• did not live with you due to divorce or separation (see page 22)

Dependents on 6c not entered above

Add numbers on lines above ▶

2

If more than five dependents, see page 22.

d Total number of exemptions claimed

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see page 23.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7 Wages, salaries, tips, etc. Attach Form(s) W-2

8a Taxable interest. Attach Schedule B if required

b Tax-exempt interest. Do not include on line 8a

9 Ordinary dividends. Attach Schedule B if required

10 Taxable refunds, credits, or offsets of state and local income taxes

STMT 2

STMT 4

11 Alimony received

STMT 5

12 Business income or (loss). Attach Schedule C or C-EZ

13 Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐

14 Other gains or (losses). Attach Form 4797

15a IRA distributions

15a

b Taxable amount (see page 25)

16a Pensions and annuities

16a

b Taxable amount (see page 25)

17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E

18 Farm income or (loss). Attach Schedule F

19 Unemployment compensation

20a Social security benefits

20a

b Taxable amount (see page 27)

21 Other income. List type and amount (see page 29)

22 Add the amounts in the far right column for lines 7 through 21. This is your total income ▶

275219.

Adjusted Gross Income

23 Educator expenses (see page 29)

24 IRA deduction (see page 29)

25 Student loan interest deduction (see page 31)

26 Tuition and fees deduction (see page 32)

27 Archer MSA deduction. Attach Form 8853

28 Moving expenses. Attach Form 3903

29 One-half of self-employment tax. Attach Schedule SE

30 Self-employed health insurance deduction (see page 33)

31 Self-employed SEP, SIMPLE, and qualified plans

32 Penalty on early withdrawal of savings

33a Alimony paid b Recipient's SSN ▶

34 Add lines 23 through 33a

35 Subtract line 34 from line 22. This is your adjusted gross income ▶

275219.

210001
10-29-02

LHA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 76.

Form 1040 (2002)

Tax and Credits

Standard Deduction for:

- People who checked any box on line 37a or 37b of who can be claimed as a dependent.

- All others:
 - Single, \$4,700
 - Head of household, \$6,900
 - Married filing jointly or Qualifying widow(er), \$7,850
 - Married filing separately, \$3,925

35	Amount from line 35 (adjusted gross income)	36	275219.
37a	Check if: ☐ You were 65 or older, ☐ Blind; ☐ Spouse was 65 or older, ☐ Blind. Add the number of boxes checked above and enter the total here	37a	
b	If you are married filing separately and your spouse itemizes deductions, or you were a dual-status alien	37b	
38	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	38	9039.
39	Subtract line 38 from line 36	39	266180.
40	If line 36 is \$103,000 or less, multiply \$3,000 by the total number of exemptions claimed on line 6d. If line 36 is over \$103,000, see the worksheet on page 35	40	2640.
41	Taxable income. Subtract line 40 from line 39. If line 40 is more than line 39, enter -0-	41	263540.
42	Tax. Check if any tax from: a ☐ Form(s) 8814 b ☐ Form 4972	42	74052.
43	Alternative minimum tax. Attach Form 6251	43	0.
44	Add lines 42 and 43	44	74052.
45	Foreign tax credit. Attach Form 1116 if required	45	
46	Credit for child and dependent care expenses. Attach Form 2441	46	
47	Credit for the elderly or the disabled. Attach Schedule R	47	
48	Education credits. Attach Form 8863	48	
49	Retirement savings contributions credit. Attach Form 8880	49	
50	Child tax credit (see page 39)	50	
51	Adoption credit. Attach Form 8839	51	
52	Credits from: a ☐ Form 8396 b ☐ Form 8859	52	
53	Other credits. Check applicable box(es): a ☐ Form 3800 b ☐ Form 8801 c ☐ Specify	53	
54	Add lines 45 through 53. These are your total credits	54	
55	Subtract line 54 from line 44. If line 54 is more than line 44, enter -0-	55	74052.
56	Self-employment tax. Attach Schedule SE	56	
57	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	57	
58	Tax on qualified plans, including IRAs, and other tax-favored accounts. Attach 5329 if required	58	28125.
59	Advance earned income credit payments from Form(s) W-2	59	
60	Household employment taxes. Attach Schedule H	60	
61	Add lines 55 through 60. This is your total tax	61	102177.

Other Taxes

62	Federal income tax withheld from Forms W-2 and 1099	62	56250.	STATEMENT 6
63	2002 estimated tax payments and amount applied from 2001 return	63		
64	Earned income credit (EIC)	64		
65	Excess social security and tier 1 RRTA tax withheld (see page 56)	65		
66	Additional child tax credit. Attach Form 8812	66		
67	Amount paid with request for extension to file (see page 56)	67		
68	Other payments from: a ☐ Form 2439 b ☐ Form 4136 c ☐ Form 8885	68		
69	Add lines 62 through 68. These are your total payments	69	56250.	

Refund	70	If line 69 is more than line 61, subtract line 61 from line 69. This is the amount you overpaid	70	
Direct deposit?	71a	Amount of line 70 you want refunded to you	71a	
See page 56 and fill in 71b, 71c, and 71d.	72	Amount of line 70 you want applied to your 2003 estimated tax	72	
Amount You Owe	73	Amount you owe. Subtract line 69 from line 61. For details on how to pay, see page 57	73	45927.
	74	Estimated tax penalty (see page 57)	74	

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see page 58)? ☒ Yes. Complete the following. ☐ No

Designee's name	PREPARER	Phone no.		Personal identification number (PIN)	
-----------------	----------	-----------	--	--------------------------------------	--

Sign Here

Joint return? See page 21. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Preparer's signature	Date	Your occupation	Daytime phone number
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	
		SALES	
		HOMEMAKER	

Paid Preparer's Use Only

210002 01-31-03

Preparer's signature	Date	Check if self-employed	Preparer's SSN or PTIN
	04/11/03	☐	259-92-6341
Firm's name (or yours if self-employed), address, and ZIP code	THOMBLEY & SIMMONS, P.C. 305 LAWRENCE ST., STE.100 MARIETTA, GA 30060		EIN 58-1582344 Phone no 770-423-1234

Do not write in this space - OFFICE USE

 EXHIBIT H
 PAGE 3 of 3
 SC1040
 (Rev. 10/9/02)

SOUTH CAROLINA INDIVIDUAL INCOME TAX RETURN

2002

For the year January 1-December 31, 2002, or other tax year beginning

2002 and ending

2003

Print Your first name and initial (Sr., Jr., 2nd, 3rd, 4th) LEE K	Last name GROOME	Your Social Security number 248 92 1290
Spouse's first name and initial, if married filing jointly MARGARET F		Spouse's Social Security number 250 88 7004
Present home address (number and street, or P.O. Box) 351 FOOTHILLS DRIVE		Do not write in this space - OFFICE USE
City, state and ZIP code GREENVILLE, SC 29617		

If you do not wish to receive a booklet next year, but need a name and address label for your 2003 return, check here. ☐

Check here, if you are filing SC Schedule NR (Part year/Nonresident) ☐

Check this box if filing a composite return for partnership or "S" corporation. ☐

CHECK YOUR (1) ☐ Single (3) ☐ Married filing separately. Enter spouse's SSN here: _____

FEDERAL FILING STATUS (2) ☒ Married filing jointly (4) ☐ Head of household (5) ☐ Widow(er) with dependent child

Federal Exemptions: Enter the number of exemptions from line 6(d) of your 2002 federal return. 2

How many of the exemptions listed above were under the age of 6 years on December 31, 2002? 0

Enter the number of taxpayers age 65 or older. 0

		Dollars	Cents
1 Enter Federal taxable income from your federal form 1040, line 41; 1040A, line 27; or 1040EZ, line 6 and enter it on line 33 of this return. If zero or less, enter zero here and enter the negative amount on line 49 of this form.	1	263540	00
STOP! Resident filers complete lines 34 through 57 and enter total from line 57. Nonresident filers complete Schedule NR and enter total from line 43.			
2 South Carolina INCOME SUBJECT TO TAX. Do not enter an amount less than zero.	2	263540	00
3 TAX: Enter tax from SOUTH CAROLINA tax tables.	3	18094	00
4 TAX on Lump Sum Distribution (If using SC4972, please attach.)	4	00	00
5 TOTAL South Carolina tax. Add lines 3 and 4. Enter the total.	5	18094	00
6 Child and Dependent Care. (See instructions)	6	00	00
7 Two Wage Earner Credit (See instructions)	7	00	00
8 Other Non-refundable Credits. Attach SC1040TC.	8	00	00
9 TOTAL Non-refundable Credits. Add lines 6 through 8 and enter the total.	9	00	00
10 SUBTRACT line 9 from line 5. Enter the difference BUT NOT LESS THAN ZERO.	10	18094	00
11 SC INCOME TAX WITHHELD (Attach W-2 or SC41.)	11	00	00
12 2002 Estimated Tax Payments	12	00	00
13 Amount Paid with extension	13	00	00
14 NR sale of real estate	14	00	00
15 Other SC Withholding (Attach form 1099)	15	00	00
16 Tuition Tax Credit (Attach form 1-319)	16	00	00
17 ADD lines 11 through 16 and enter the total. These are your Total Payments/Credits.	17	0	00
18 If line 17 is LARGER than line 10, subtract line 10 from line 17 and enter the OVERPAYMENT.	18	00	00
19 If line 10 is LARGER than line 17, subtract line 17 from line 10 and enter the AMOUNT DUE.	19	18094	00
20 USE TAX (Due on Out-of-state Purchases. See page 12.)	20	00	00
21 Amount of line 18 to be credited to your 2003 ESTIMATED TAX.	21	00	00
22 Endangered Wildlife Fund	22	00	00
23 Children's Trust Fund	23	00	00
24 ElderCare Trust Fund	24	00	00
25 Veterans' Trust Fund	25	00	00
26 Gift of Life Trust Fund	26	00	00
27 DARE Fund	27	00	00
28 First Steps Fund	28	00	00
29 War Between States Heritage Trust Fund	29	00	00
30 ADD lines 20 through 29 and enter the total.	30	00	00
31 NET REFUND: If line 30 is larger than line 18, go to line 32. Otherwise, subtract line 30 from line 18 and enter the AMOUNT TO BE REFUNDED TO YOU.	31	00	00
32 NET DUE: ADD lines 19 and 30 and, if applicable, penalty amount. If line 30 is larger than line 18, subtract line 18 from line 30. Enter the AMOUNT YOU OWE. If subject to penalty for Underpayment of Estimated Tax, attach Form SC2210. (See Instructions). Attach a check or money order for the full amount payable to "SC Department of Revenue." Write your Social Security number and "2002 Form SC1040" on the payment.	32	18094	00

ATTACH A COMPLETE COPY OF YOUR FEDERAL RETURN ONLY IF you have income and/or (loss) on federal Schedules C, D, E, F or filed a SC Schedule NR.

PFX 277001 10-18-02

4

9510411 751951 GROLEE93

2002.05000 GROOME, LEE K

GROLEE91

1040

Department of the Treasury - Internal Revenue Service
U.S. Individual Income Tax Return

1998

(99)

IRS Use Only - Do not write or staple in this space

EXHIBIT I

Label

(See instructions on page 18.)

Use the IRS label. Otherwise, please print or type.

LABEL HERE

For the year Jan. 1-Dec. 31, 1998, or other tax year beginning

1998, ending

19

OMB No. 1545-0074

Your first name and initial

LEE K

Last name

GROOME

Your social security number

248 92 1290

If a joint return, spouse's first name and initial

MARGARET F

Last name

GROOME

Spouse's social security number

250 88 7004

Home address (number and street). If you have a P.O. box, see page 18.

351 FOOTHILLS DRIVE

Apt. no.

City, town or post office, state, and ZIP code. If you have a foreign address, see page 18.

GREENVILLE, SC 29617

▲ IMPORTANT! ▲

You must enter your SSN(s) above.

Yes

No

Note: Checking "Yes" will not change your tax or reduce your refund.

Presidential Election Campaign (See page 18.)

Do you want \$3 to go to this fund?

If a joint return, does your spouse want \$3 to go to this fund?

Filing Status

1

Single

2

X

Married filing joint return (even if only one had income)

3

Married filing separate return. Enter spouse's soc. sec. no. above and full name here. ▶

4

Head of household (with qualifying person). If the qualifying person is a child but not your dependent, enter this child's

name here. ▶

5

Qualifying widow(er) with dependent child (year spouse died ▶ 19). (See page 18.)

Check only one box.

Exemptions

6a

X

Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a

No. of boxes checked on 6a and 6b

2

b

X

Spouse

c

Dependents:

(1) First name

Last name

(2) Dependent's social security number

(3) Dependent's relationship to you

(4) ✓ if qualifying child for child tax credit (see page 19)

JOHN K GROOME

256 61 3429

CHILD

X

No. of your children on 6c who:

• lived with you

1

• did not live with you due to divorce or separation (see page 19)

Dependents on 6c not entered above

Add numbers entered on lines above

3

If more than six dependents, see page 19.

d

Total number of exemptions claimed

Income

7

Wages, salaries, tips, etc. Attach Form(s) W-2

7

60000.

8a

Taxable interest. Attach Schedule B if required

8a

4174.

b

Tax-exempt interest. DO NOT include on line 8a

8b

9

Ordinary dividends. Attach Schedule B if required

9

1045.

10

Taxable refunds, credits, or offsets of state and local income taxes

10

11

Alimony received

11

12

Business income or (loss). Attach Schedule C or C-EZ

12

13

Capital gain or (loss). Attach Schedule D

13

<3000.>

14

Other gains or (losses). Attach Form 4797

14

15a

Total IRA distributions

15a

3481.

b Taxable amount (see page 22)

15b

0.

16a

Total pensions and annuities

16a

b Taxable amount (see page 22)

16b

17

Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E

17

<9726.>

18

Farm income or (loss). Attach Schedule F

18

19

Unemployment compensation

19

20a

Social security benefits

20a

b Taxable amount (see page 24)

20b

21

Other income. List type and amount - see page 24

21

22

Add the amounts in the far right column for lines 7 through 21. This is your total income

22

52493.

Adjusted Gross Income

23

IRA deduction (see page 25)

23

24

Student loan interest deduction (see page 27)

24

25

Medical savings account deduction. Attach Form 8853

25

26

Moving expenses. Attach Form 3903

26

27

One-half of self-employment tax. Attach Schedule SE

27

28

Self-employed health insurance deduction (see page 28)

28

29

Keogh & self-employed SEP plans and SIMPLE plans

29

30

Penalty on early withdrawal of savings

30

31a

Alimony paid b Recipient's SSN ▶

31a

32

Add lines 23 through 31a

32

33

Subtract line 32 from line 22. This is your adjusted gross income.

33

52493.

810001

11-02-98

LHA For Privacy Act and Paperwork Reduction Act Notice, see page 51.

13590312 751951 GROLEE93

042 GROOME, LEE K

Form 1040 (1998)

GROLEE91

EXHIBIT J
PAGE 1 OF 3

1120		U.S. Corporation Income Tax Return		OMB No. 1545-0123						
Form Department of the Treasury Internal Revenue Service		For calendar year 1992 or tax year beginning Aug. 1, 1992, ending July 31, 1993		1992						
		Instructions are separate. See page 1 for Paperwork Reduction Act Notice.								
A Check if a: (1) Consolidated return (attach Form 851) ☐ (2) Personal holding co. (attach Sch. PH) ☐ (3) Personal service corp. (as defined in Temporary Regs. sec. 1.441-4T. see instructions) ☐		Use IRS label. Otherwise, please print or type. Name Groome & Associates, Inc. Number, street, and room or suite no. (If a P.O. box, see page 6 of instructions.) P.O. Box 729 City or town, state, and ZIP code Travelers Rest, SC 29690-0729		B Employer identification number 58-1810366 C Date incorporated 8/31/88 D Total assets (see Specific Instructions) \$ 2 341 278 74						
E Check applicable taxes: (1) ☐ Initial return (2) ☐ Final return (3) ☒ Change in address										
Income	1a	Gross receipts or sales	11 117 491 87	b	Less returns and allowances	195 253 95	c	Bal	1c	10 922 237 92
	2	Cost of goods sold (Schedule A, line 8)							2	9 872 466 88
	3	Gross profit. Subtract line 2 from line 1c							3	1 049 771 04
	4	Dividends (Schedule C, line 19)							4	
	5	Interest							5	6 141 78
	6	Gross rents							6	
	7	Gross royalties							7	
	8	Capital gain net income (attach Schedule D (Form 1120))							8	
	9	Net gain or (loss) from Form 4797, Part II, line 20 (attach Form 4797)							9	16 712 16
	10	Other income (see instructions—attach schedule) Recovery of Bad Debts							10	8 839 00
	11	Total income. Add lines 3 through 10							11	1 081 463 98
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (Schedule E, line 4)							12	154 000 00
	13a	Salaries and wages		b	Less jobs credit		c	Balance	13c	296 420 66
	14	Repairs							14	42 698 22
	15	Bad debts							15	
	16	Rents							16	67 560 00
	17	Taxes							17	45 441 02
	18	Interest							18	12 865 35
	19	Charitable contributions (see instructions for 10% limitation)							19	7 462 00
	20	Depreciation (attach Form 4562)			20	93 917 04				
	21	Less depreciation claimed on Schedule A and elsewhere on return			21a				21b	93 917 04
	22	Depletion							22	
	23	Advertising							23	3 431 32
	24	Pension, profit-sharing, etc., plans							24	46 410 04
	25	Employee benefit programs							25	
	26	Other deductions (attach schedule)							26	233 539 31
	27	Total deductions. Add lines 12 through 26							27	1 003 744 96
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11							28	77 719 02
	29	Less: a Net operating loss deduction (see instructions)			29a				29b	
		b Special deductions (Schedule C, line 20)							29c	
Tax and Payments	30	Taxable income. Subtract line 29c from line 28							30	77 719 02
	31	Total tax (Schedule J, line 10)							31	14 674 47
	32	Payments: a 1991 overpayment credited to 1992	32a	1 581 85						
	b	1992 estimated tax payments	32b	14 418 15						
	c	Less 1992 refund applied for on Form 4466	32c							
	d	Bal	32d	16 000 00						
	e	Tax deposited with Form 7004	32e							
	f	Credit from regulated investment companies (attach Form 2439)	32f							
	g	Credit for Federal tax on fuels (attach Form 4136). See instructions	32g						32h	16 000 00
	33	Estimated tax penalty (see instructions). Check if Form 2220 is attached							33	
	34	Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed							34	
35	Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid							35	1 325 53	
36	Enter amount of line 35 you want: Credited to 1993 estimated tax							36		
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.										
Please Sign Here	Signature of officer				Date		Title			
Paid Preparer's Use Only	Preparer's signature				Date		Check if self-employed ☐		Preparer's social security number	
					8/17/93				259 92 6341	
	Firm's name (or yours if self-employed) and address				John S. Thombley, P.C. 305 Lawrence Street, Suite 100 Marietta, GA		E.I. No.		58 1582344	
						ZIP code		30060		

Schedule A Cost of Goods Sold (See instructions.)

1	Inventory at beginning of year	1		
2	Purchases	2		
3	Cost of labor	3	Scheduled	
4	Additional section 263A costs (attach schedule)	4		
5	Other costs (attach schedule)	5		
6	Total. Add lines 1 through 5	6		
7	Inventory at end of year	7		
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	9 872 466	88

9a Check all methods used for valuing closing inventory:

- (i) ☐ Cost (ii) ☐ Lower of cost or market as described in Regulations section 1.471-4
 (iii) ☐ Writedown of "subnormal" goods as described in Regulations section 1.471-2(c)
 (iv) ☐ Other (Specify method used and attach explanation.) ▶

b Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐**c** If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO **9c** ☐**d** Do the rules of section 263A (for property produced or acquired for resale) apply to the corporation? ☐ Yes ☐ No**e** Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☐ No**Schedule C Dividends and Special Deductions** (See instructions.)

	(a) Dividends received	(b) %	(c) Special deductions: (a) x (b)
1	Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)	70	
2	Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)	80	
3	Dividends on debt-financed stock of domestic and foreign corporations (section 246A)	see instructions	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities	41.176	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities	47.059	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction	70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction	80	
8	Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (section 245(b))	100	
9	Total. Add lines 1 through 8. See instructions for limitation		
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958	100	
11	Dividends from certain FSCs that are subject to the 100% deduction (section 245(c)(1))	100	
12	Dividends from affiliated group members subject to the 100% deduction (section 243(a)(3))	100	
13	Other dividends from foreign corporations not included on lines 3, 6, 7, 8, or 11		
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)		
15	Foreign dividend gross-up (section 78)		
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (section 246(d))		
17	Other dividends		
18	Deduction for dividends paid on certain preferred stock of public utilities (see instructions)		
19	Total dividends. Add lines 1 through 17. Enter here and on line 4, page 1		
20	Total deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on line 29b, page 1		

Schedule E Compensation of Officers (See instructions for line 12, page 1.)

Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1, Form 1120) are \$500,000 or more.

	(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
				(d) Common	(e) Preferred	
1	Lee K. Groome	248-92-1290	100 %	100 %	%	154 000 00
			%	%	%	
			%	%	%	
			%	%	%	
			%	%	%	
2	Total compensation of officers					154 000 00
3	Compensation of officers claimed on Schedule A and elsewhere on return					
4	Subtract line 3 from line 2. Enter the result here and on line 12, page 1					154 000 00

Schedule L Balance Sheets		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		301 332 03		164 619 11
2a	Trade notes and accounts receivable	1 021 430 31		1 127 457 01	
b	Less allowance for bad debts	()	1 021 430 31	()	1 127 457 01
3	Inventories		230 872 85		404 049 07
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach schedule)		2 031 06		1 735 05
7	Loans to stockholders		55 000 00		
8	Mortgage and real estate loans				
9	Other investments (attach schedule)				
10a	Buildings and other depreciable assets	373 531 46		732 954 90	
b	Less accumulated depreciation	(56 017 45)	317 514 01	(90 666 40)	642 288 50
11a	Depletable assets				
b	Less accumulated depletion	()		()	
12	Land (net of any amortization)		59 845 96		
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()		()	
14	Other assets (attach schedule) Deposits		1 130 00		1 130 00
15	Total assets		1 989 156 22		2 341 278 74
Liabilities and Stockholders' Equity					
16	Accounts payable		1 614 538 95		1 615 800 02
17	Mortgages, notes, bonds payable in less than 1 year				75 000 00
18	Other current liabilities (attach schedule)		51 628 90		46 963 91
19	Loans from stockholders				
20	Mortgages, notes, bonds payable in 1 year or more				224 500 00
21	Other liabilities (attach schedule)		7 000 00		17 000 00
22	Capital stock: a Preferred stock				
	b Common stock	500 00	500 00	500 00	500 00
23	Paid-in or capital surplus				
24	Retained earnings—Appropriated (attach schedule)				
25	Retained earnings—Unappropriated		315 488 37		361 514 81
26	Less cost of treasury stock		()		()
27	Total liabilities and stockholders' equity		1 989 156 22		2 341 278 74

Note: You are not required to complete Schedules M-1 and M-2 below if the total assets on line 15, column (d) of Schedule L are less than \$25,000.

Schedule M-1		Reconciliation of Income (Loss) per Books With Income per Return (See instructions.)			
1	Net income (loss) per books	46 026 44	7	Income recorded on books this year not included on this return (itemize): Tax-exempt interest \$	
2	Federal income tax	14 674 47			
3	Excess of capital losses over capital gains				
4	Income subject to tax not recorded on books this year (itemize):		8	Deductions on this return not charged against book income this year (itemize): a Depreciation \$34,695.93 b Contributions carryover \$	
5	Expenses recorded on books this year not deducted on this return (itemize): a Depreciation \$ b Contributions carryover \$ c Travel and entertainment \$ 4,928.69 Officers Life Ins. 36,785.35 Deferred Inc. Tax 10,000.00	51 714 04		34 695 93	
6	Add lines 1 through 5	112 414 95	9	Add lines 7 and 8	34 695 93
			10	Income (line 28, page 1)—line 6 less line 9	77 719 02

Schedule M-2		Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)				
1	Balance at beginning of year	315 488 37	5	Distributions:	a Cash	
2	Net income (loss) per books	46 026 44			b Stock	
3	Other increases (itemize):				c Property	
			6	Other decreases (itemize):		
			7	Add lines 5 and 6		
4	Add lines 1, 2, and 3	361 514 81	8	Balance at end of year (line 4 less line 7)		316 514 81

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1993 or tax year beginning Aug. 1, 1993, ending July 31, 1994
▶ Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

EXHIBIT K
PAGE 1 of 3
OMB No. 1545-0123
1993

- A** Check if a:
- 1 Consolidated return (attach Form 851) ☐
 - 2 Personal holding co. (attach Sch. PH) ☐
 - 3 Personal service corp. (as defined in Temporary Regs. sec. 1.441-4T—see instructions) ☐

Use IRS label. Otherwise, please print or type.

Name
Groome & Associates, Inc.
Number, street, and room or suite no. (If a P.O. box, see page 7 of instructions.)
P.O. Box 729
City or town, state, and ZIP code
Travelers Rest, SC 29690-0729

B Employer identification number
58 1810366
C Date incorporated
8/31/88
D Total assets (see Specific Instructions)

E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change of address

Income	1a Gross receipts or sales	10 042 959 48	b Less returns and allowances	338 089 82	c Bal	1c 9 704 869 66
	2 Cost of goods sold (Schedule A, line 8)				2 8 225 947 32	
	3 Gross profit. Subtract line 2 from line 1c				3 1 478 922 34	
	4 Dividends (Schedule C, line 19)				4	
	5 Interest				5 1 995 20	
	6 Gross rents				6	
	7 Gross royalties				7	
	8 Capital gain net income (attach Schedule D (Form 1120))				8	
	9 Net gain or (loss) from Form 4797, Part II, line 20 (attach Form 4797)				9	
	10 Other income (see instructions—attach schedule)				10	
	11 Total income. Add lines 3 through 10				11 1 480 917 54	
Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (Schedule E, line 4)				12 260 000 00	
	13a Salaries and wages		b Less employment credits		13c 393 738 98	
	14 Repairs and maintenance				14 26 061 50	
	15 Bad debts				15 28 854 30	
	16 Rents				16 146 577 50	
	17 Taxes and licenses				17 56 649 09	
	18 Interest				18 25 637 03	
	19 Charitable contributions (see instructions for 10% limitation)				19 4 710 00	
	20 Depreciation (attach Form 4562)	20 157 763 08				
	21 Less depreciation claimed on Schedule A and elsewhere on return	21a 41 574 65			21b 116 188 43	
	22 Depletion				22	
	23 Advertising				23 12 249 45	
	24 Pension, profit-sharing, etc., plans				24 80 689 19	
	25 Employee benefit programs				25	
	26 Other deductions (attach schedule)				26 250 239 39	
	27 Total deductions. Add lines 12 through 26				27 1 401 594 86	
	28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11				28 79 322 68	
	29 Less: a Net operating loss deduction (see instructions)	29a			29c	
	b Special deductions (Schedule C, line 20)	29b				
Tax and Payments	30 Taxable income. Subtract line 29c from line 28				30 79 322 68	
	31 Total tax (Schedule J, line 10)				31 15 219 72	
	32 Payments: a 1992 overpayment credited to 1993	32a 1 325 53				
	b 1993 estimated tax payments	32b 14 674 47				
	c Less 1993 refund applied for on Form 4466	32c				
	d Bal	32d 16 000 00				
	e Tax deposited with Form 7004	32e				
	f Credit from regulated investment companies (attach Form 2439)	32f				
	g Credit for Federal tax on fuels (attach Form 4136). See instructions	32g			32h 16 000 00	
	33 Estimated tax penalty (see instructions). Check if Form 2220 is attached				33	
	34 Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed				34	
35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid				35 780 28		
36 Enter amount of line 35 you want: Credited to 1994 estimated tax ▶ Refunded ▶				36		

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer _____ Date _____ Title _____

Paid Preparer's Use Only

Preparer's signature _____ Date **8/10/94** Check if self-employed ☐ Preparer's social security number **259 92 6341**
Firm's name (or yours if self-employed) and address **Thombley & Simmons, P.C.** E.I. No. **58 1582344**
305 Lawrence Street, Suite 100 ZIP code **30060**
Marietta, GA Cat. No. 11450Q

Schedule A Cost of Goods Sold (See instructions.)

1	Inventory at beginning of year	1	
2	Purchases	2	Scheduled
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	
6	Total. Add lines 1 through 5	6	
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	

9a Check all methods used for valuing closing inventory:

☐ Cost ☒ Lower of cost or market as described in Regulations section 1.471-4

☐ Write-down of subnormal goods as described in Regulations section 1.471-2(c)

☐ Other (Specify method used and attach explanation.) ▶

b Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐

c If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9c ☐

d Do the rules of section 263A (for property produced or acquired for resale) apply to the corporation? ☐ Yes ☒ No

e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☒ No

Schedule C Dividends and Special Deductions (See instructions.)

	(a) Dividends received	(b) %	(c) Special deductions (a) × (b)
1	Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)	70	
2	Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)	80	
3	Dividends on debt-financed stock of domestic and foreign corporations (section 246A)	see instructions	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities	42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities	48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction	70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction	80	
8	Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (section 245(b))	100	
9	Total. Add lines 1 through 8. See instructions for limitation		
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958	100	
11	Dividends from certain FSCs that are subject to the 100% deduction (section 245(c)(1))	100	
12	Dividends from affiliated group members subject to the 100% deduction (section 243(a)(3))	100	
13	Other dividends from foreign corporations not included on lines 3, 6, 7, 8, or 11		
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)		
15	Foreign dividend gross-up (section 78)		
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (section 246(d))		
17	Other dividends		
18	Deduction for dividends paid on certain preferred stock of public utilities (see instructions)		
19	Total dividends. Add lines 1 through 17. Enter here and on line 4, page 1 ▶		
20	Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on line 29b, page 1 ▶		

Schedule E Compensation of Officers (See instructions for line 12, page 1.)

Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1, Form 1120) are \$500,000 or more.

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
			(d) Common	(e) Preferred	
1 Lee K. Groome	248-92-1290	100 %	100 %	%	260 000 00
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
2 Total compensation of officers					260 000 00
3 Compensation of officers claimed on Schedule A and elsewhere on return					
4 Subtract line 3 from line 2. Enter the result here and on line 12, page 1					260 000 00

Schedule L Balance Sheets		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		164 619 11		573 36
2a	Trade notes and accounts receivable	1 127 457 01		958 468 69	
b	Less allowance for bad debts	()	1 127 457 01	()	958 468 69
3	Inventories		404 049 07		650 834 52
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach schedule)		1 735 05		1 105 40
7	Loans to stockholders				
8	Mortgage and real estate loans				
9	Other investments (attach schedule)				123 966 40
10a	Buildings and other depreciable assets	732 954 90		791 602 98	
b	Less accumulated depreciation	(90 666 40)	642 288 50	(172 361 96)	619 241 02
11a	Depletable assets				
b	Less accumulated depletion	()		()	
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()		()	
14	Other assets (attach schedule)		1 130 00		1 130 00
15	Total assets		2 341 278 74		2 355 319 39
Liabilities and Stockholders' Equity					
16	Accounts payable		1 615 800 02		901 611 93
17	Mortgages, notes, bonds payable in less than 1 year		75 000 00		665 988 16
18	Other current liabilities (attach schedule)		46 963 91		80 904 75
19	Loans from stockholders				
20	Mortgages, notes, bonds payable in 1 year or more		224 500 00		
21	Other liabilities (attach schedule)		17 000 00		33 000 00
22	Capital stock: a Preferred stock				
	b Common stock	500 00	500 00	230 500 00	230 500 00
23	Paid-in or capital surplus				
24	Retained earnings—Appropriated (attach schedule)				
25	Retained earnings—Unappropriated		361 514 81		443 314 55
26	Less cost of treasury stock		()		()
27	Total liabilities and stockholders' equity		2 341 278 74		2 355 319 39

Note: You are not required to complete Schedules M-1 and M-2 below if the total assets on line 15, column (d) of Schedule L are less than \$25,000.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (See instructions.)	
1	Net income (loss) per books 81 799 74
2	Federal income tax 15 219 72
3	Excess of capital losses over capital gains
4	Income subject to tax not recorded on books this year (itemize):
5	Expenses recorded on books this year not deducted on this return (itemize):
a	Depreciation \$
b	Contributions carryover \$
c	Travel and entertainment \$ 4 046 30
Officers' Life Ins.	38 324 44
Deferred Inc. Tax	16 000 00
6	Add lines 1 through 5 58 370 74
7	Income recorded on books this year not included on this return (itemize):
	Tax-exempt interest \$
8	Deductions on this return not charged against book income this year (itemize):
a	Depreciation \$ 76 067 52
b	Contributions carryover \$
9	Add lines 7 and 8 76 067 52
10	Income (line 28, page 1)—line 6 less line 9 79 322 68

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)	
1	Balance at beginning of year 361 514 81
2	Net income (loss) per books 81 799 74
3	Other increases (itemize):
4	Add lines 1, 2, and 3 443 314 55
5	Distributions: a Cash
	b Stock
	c Property
6	Other decreases (itemize):
7	Add lines 5 and 6
8	Balance at end of year (line 4 less line 7) 443 314 55

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1994 or tax year beginning 8/1, 1994, ending 7/31, 1995

52-1010-13
OMB No. 1545-0123

1994

Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

A Check if a: 1 Consolidated return (attach Form 851) ☐ 2 Personal holding co. (attach Sch. PH) ☐ 3 Personal service corp. (as defined in Temp. Regs. sec. 1.441-4T) ☐		Use IRS label. Otherwise, please print or type. Name GROOME & ASSOCIATES INC Number, street, and room or suite no. (if a P.O. box, see page 6 of instructions.) P O BOX 729 City or town, state, and ZIP code TRAVELERS REST SC 29690-0729	B Employer identification number 58-1810366 C Date incorporated 8/31/88 D Total assets (see Specific Instructions) \$ 2678103.81				
E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change of address							
Income	1 a Gross receipts or sales	11745147.89	b Loss returns and allowances	214446.56	c Bal	1e	11530701.33
	2 Cost of goods sold (Schedule A, line 8)					2	10136732.78
	3 Gross profit. Subtract line 2 from line 1c					3	1393968.55
	4 Dividends (Schedule C, line 19)					4	
	5 Interest					5	
	6 Gross rents					6	
	7 Gross royalties					7	
	8 Capital gain net income (attach Schedule D (Form 1120))					8	
	9 Net gain or (loss) from Form 4797, Part II, line 20 (attach Form 4797)					9	
	10 Other income (attach schedule)	MISCELLANEOUS				10	4918.27
	11 Total income. Add lines 3 through 10					11	1398886.82
Deductions	12 Compensation of officers (Schedule E, line 4)					12	200000.00
	13 Salaries and wages (less employment credits)					13	363729.83
	14 Repairs and maintenance					14	19254.58
	15 Bad debts					15	33749.12
	16 Rents					16	196680.00
	17 Taxes and licenses					17	60586.45
	18 Interest					18	62927.29
	19 Charitable contributions					19	7422.27
	20 Depreciation (attach Form 4562)		20	132871.84			
	21 Less depreciation claimed on Schedule A and elsewhere on return		21a	44199.98	21b		88671.86
	22 Depletion				22		
	23 Advertising				23		9225.96
	24 Pension, profit-sharing, etc., plans				24		84000.00
	25 Employee benefit programs				25		
	26 Other deductions (attach schedule)				26		209179.08
	27 Total deductions. Add lines 12 through 26				27		1335426.44
	28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11				28		63460.38
	29 Less: a Net operating loss deduction		29a		29b		
b Special deductions (Schedule C, line 20)				29c			
Tax and Payments	30 Taxable income. Subtract line 29c from line 28				30		63460.38
	31 Total tax (Schedule J, line 10)				31		10865.09
	32 Payments: a 1993 overpayment credited to 1994	32a					
	b 1994 estimated tax payments	32b	15219.72				
	c Less 1994 refund applied for on Form 4466	32c					
	d Bal	32d	15219.72				
	e Tax deposited with Form 7004	32e					
	f Credit from regulated investment companies (attach Form 2439)	32f					
	g Credit for Federal tax on fuels (attach Form 4136)	32g			32h		15219.72
	33 Estimated tax penalty. Check if Form 2220 is attached				33		
	34 Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed				34		
	35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid				35		4354.63
36 Enter amount of line 35 you want: Credited to 1995 estimated tax		4354.63	Refunded	36			
Please Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.						
	Signature of officer		Date		Title		
Paid Preparer's Use Only	Preparer's signature	Date		8/16/95	Check if self-employed	☐	Preparer's social security number
	Firm's name (or yours if self-employed) and address	THOMBLEY & SIMMONS PC		E.I. No.		58	1582344
	305 LAWRENCE ST STE 100		ZIP code		30060		
	MARIETTA GA 30060						

Schedule A Cost of Goods Sold

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	SCHEDULE
5	Other costs (attach schedule)	5	
6	Total. Add lines 1 through 5	6	
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	10136732.78

9a Check all methods used for valuing closing inventory:

- ☐ Cost ☐ Lower of cost or market as described in Regulations section 1.471-4
☐ Writedown of subnormal goods as described in Regulations section 1.471-2(c)
☐ Other (Specify method used and attach explanation.)

b Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ☐

c If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO

9c

d Do the rules of section 263A (for property produced or acquired for resale) apply to the corporation? ☐ Yes ☐ Noe Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☐ No

If "Yes," attach explanation

Schedule C Dividends and Special Deductions

	(a) Dividends received	(b) %	(c) Special deductions (a x (b))
1 Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)		70	
2 Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)		80	
3 Dividends on debt-financed stock of domestic and foreign corporations (section 246A)		see instructions	
4 Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5 Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6 Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction		70	
7 Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction		80	
8 Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (section 246(b))		100	
9 Total. Add lines 1 through 8.			
10 Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11 Dividends from certain FSCs that are subject to the 100% deduction (section 246(c)(1))		100	
12 Dividends from affiliated group members subject to the 100% deduction (sec. 243(a)(3))		100	
13 Other dividends from foreign corporations not included on lines 3, 6, 7, 8, or 11			
14 Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15 Foreign dividend gross-up (section 78)			
16 IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (section 246(d))			
17 Other dividends			
18 Deduction for dividends paid on certain preferred stock of public utilities			
19 Total dividends. Add lines 1 through 17. Enter here and on line 4, page 1.			

20 Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on line 29b, page 1

Schedule E Compensation of Officers (See instructions for line 12, page 1.)

Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1, Form 1120) are \$500,000 or more.

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
			(d) Common	(e) Preferred	
1 LEE K GROOME	248-92-1290	100.00	100.00		200000.00
2 Total compensation of officers					200000.00
3 Compensation of officers claimed on Schedule A and elsewhere on return					
4 Subtract line 3 from line 2. Enter the result here and on line 12, page 1					200000.00

Schedule L Balance Sheets		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		573.36		1646.12
2a	Trade notes and accounts receivable	958468.69		1051469.82	
b	Less allowance for bad debts	()	958468.69	()	1051469.82
3	Inventories		650834.52		1014525.13
4	U.S. government obligations				
5	Tax-exempt securities				
6	Other current assets PREPAID EXPENSES		1105.40		5514.61
7	Loans to stockholders				
8	Mortgage and real estate loans				
9	Other investments REAL ESTATE		123966.40		
10a	Buildings and other depreciable assets	791602.98		775749.16	
b	Less accumulated depreciation	(172361.96)	619241.02	(171931.03)	603818.13
11a	Depletable assets				
b	Less accumulated depletion	()		()	
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()		()	
14	Other assets DEPOSITS		1130.00		1130.00
15	Total assets		2355319.39		2678103.81
Liabilities and Stockholders' Equity					
16	Accounts payable		901611.93		814888.19
17	Mortgages, notes, bonds payable in less than 1 year		665988.16		1011254.29
18	Other current liabilities ACCRUED EXPENSES		80904.75		90772.95
19	Loans from stockholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities DEFERRED INCOME		33000.00		45000.00
22	Capital stock: a Preferred stock TAXES				
b	Common stock	230500.00	230500.00	230500.00	230500.00
23	Paid-in or capital surplus				
24	Retained earnings - Appropriated (attach schedule)				
25	Retained earnings - Unappropriated		443314.55		485688.38
26	Less cost of treasury stock		()		()
27	Total liabilities and stockholders' equity		2355319.39		2678103.81

Note: You are not required to complete Schedules M-1 and M-2 below if the total assets on line 15, column (d) of Schedule L are less than \$25,000.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return	
1	Net income (loss) per books 42373.83
2	Federal income tax 10865.09
3	Excess of capital losses over capital gains
4	Income subject to tax not recorded on books this year (itemize):
5	Expenses recorded on books this year not deducted on this return (itemize):
6	Add lines 1 through 5
7	Income recorded on books this year not included on this return (itemize):
8	Deductions on this return not charged against book income this year (itemize):
9	Add lines 7 and 8
10	Income (line 28, page 1) - line 6 less line 9

DEFERRED INCOME TAX 12000.00
COUNTY ROBERTSON DUES 2376.00
OFFICERS LIFE INS 42706.44

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)	
1	Balance at beginning of year 443314.55
2	Net income (loss) per books 42373.83
3	Other increases (itemize):
4	Add lines 1, 2, and 3
5	Distributions: a Cash
b	Stock
c	Property
6	Other decreases (itemize):
7	Add lines 5 and 6
8	Balance at end of year (line 4 less line 7)

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1995 or tax year beginning August 1, 1995, ending July 31, 1996

OMB No. 1545-0123

1995

Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

A Check if a: 1 Consolidated return (attach Form 990) ☐ 2 Personal holding co. (attach Sch. PH) ☐ 3 Personal service corp. (as defined in Temp. Regs. sec. 1.441-4T) ☐	Use IRS label. Otherwise, please print or type.	Name Groome & Associates, Inc.	B Employer identification number 58-1810366
		Number, street, and room or suite no. (If a P.O. box, see page 6 of instructions.) P.O. Box 729	C Date incorporated 8/31/88
		City or town, state, and ZIP code Travelers Rest, SC 29690-0729	D Total assets (see page 6 of instructions)

E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change of address **\$ 2,403,270.85**

Income	1 Gross receipts or sales 9,038,191.15	b Less returns and allowances 306,849.26	c Bal 8,731,341.89
	2 Cost of goods sold (Schedule A, line 8)		2 7,731,866.67
	3 Gross profit. Subtract line 2 from line 1c		3 999,475.22
	4 Dividends (Schedule C, line 19)		4
	5 Interest		5
	6 Gross rents		6
	7 Gross royalties		7
	8 Capital gain net income (attach Schedule D (Form 1120))		8
	9 Net gain or (loss) from Form 4797, Part II, line 20 (attach Form 4797)		9
	10 Other income (attach schedule) Recovery of Bad Debts		10 5,002.50
	11 Total income. Add lines 3 through 10		11 1,004,477.72
Deductions	12 Compensation of officers (Schedule E, line 4)		12 80,000.00
	13 Salaries and wages (less employment credits)		13 304,816.25
	14 Repairs and maintenance		14 43,368.32
	15 Bad debts		15
	16 Rents		16 165,000.00
	17 Taxes and licenses		17 51,086.16
	18 Interest		18 91,314.00
	19 Charitable contributions		19
	20 Depreciation (attach Form 4562)	20 112,946.64	
	21 Less depreciation claimed on Schedule A and elsewhere on return	21a 68,355.62	21b 44,591.02
	22 Depletion		22
23 Advertising		23 5,808.37	
24 Pension, profit-sharing, etc., plans		24	
25 Employee benefit programs		25	
26 Other deductions (attach schedule)		26 216,571.88	
27 Total deductions. Add lines 12 through 26		27 1,002,556.00	
28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11		28 1,921.72	
29 Less: a Net operating loss deduction 29a			
b Special deductions (Schedule C, line 20) 29b		29c	
30 Taxable income. Subtract line 29c from line 28		30 1,921.72	
31 Total tax (Schedule J, line 10)		31 288.26	
32 Payments: a 1994 overpayment credited to 1995 32a 4,271.06			
b 1995 estimated tax payments 32b 9,645.37			
c Less 1995 refund applied for on Form 4468 32c			
d Tax deposited with Form 7004 32d 13,916.43			
e Credit from regulated investment companies (attach Form 2439) 32e			
f Credit for Federal tax on fuels (attach Form 4136) 32f			
g Credit for Federal tax on fuels (attach Form 4136) 32g		32h 13,916.43	
33 Estimated tax penalty. Check if Form 2220 is attached ☐		33	
34 Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed		34	
35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid		35 13,628.17	
36 Enter amount of line 35 you want: Credited to 1996 estimated tax 300.00 Refunded		36 13,328.17	

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			
	Signature of officer	Title		
Paid Preparer's Use Only	Preparer's signature	Date 8/26/96	Check if self-employed ☐	Preparer's social security number 259 92 6341
	Firm's name (or yours if self-employed) and address	Thombley & Simmons, P.C.		
		305 Lawrence Street, Suite 100		
		Marietta, GA		
	E.I. No.	58 1582344		
	ZIP code	30060		

Schedule A Cost of Goods Sold (See page 12 of instructions.)

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	Schedule 1
5	Other costs (attach schedule)	5	
6	Total. Add lines 1 through 5	6	
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	7,731,866.67

9a Check all methods used for valuing closing inventory:

- (i) ☒ Cost as described in Regulations section 1.471-3
 (ii) ☐ Lower of cost or market as described in Regulations section 1.471-4
 (iii) ☐ Other (Specify method used and attach explanation.)

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) ☐

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ☐

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO **9d**

e Do the rules of section 263A (for property produced or acquired for resale) apply to the corporation? ☐ Yes ☐ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☐ No
 If "Yes," attach explanation

Schedule C Dividends and Special Deductions

	(a) Dividends received	(b) %	(c) Special deductions (a) x (b)
1 Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)		70	
2 Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)		80	
3 Dividends on debt-financed stock of domestic and foreign corporations (section 246A)		see instructions	
4 Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5 Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6 Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction		70	
7 Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction		80	
8 Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (section 245(b))		100	
9 Total. Add lines 1 through 8			
10 Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11 Dividends from certain FSCs that are subject to the 100% deduction (section 245(c)(1))		100	
12 Dividends from affiliated group members subject to the 100% deduction (sec. 243(a)(2))		100	
13 Other dividends from foreign corporations not included on lines 3, 6, 7, 8, or 11			
14 Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15 Foreign dividend gross-up (section 78)			
16 IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (section 246(d))			
17 Other dividends			
18 Deduction for dividends paid on certain preferred stock of public utilities			
19 Total dividends. Add lines 1 through 17. Enter here and on line 4, page 1			

20 Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on line 29b, page 1

Schedule E Compensation of Officers

Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1, Form 1120) are \$500,000 or more.

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
			(d) Common	(e) Preferred	
1 Lee K. Groome	248-92-1290	100.000	100.000		80,000.00
2 Total compensation of officers					80,000.00
3 Compensation of officers claimed on Schedule A and elsewhere on return					
4 Subtract line 3 from line 2. Enter the result here and on line 12, page 1					80,000.00

Schedule L Balance Sheets		Beginning of tax year		End of tax year	
Assets:		(a)	(b)	(c)	(d)
1	Cash		1,646.12		
2a	Trade notes and accounts receivable	1,051,469.82		689,086.78	
b	Less allowance for bad debts	()	1,051,469.82	()	689,086.78
3	Inventories		1,014,525.13		1,041,784.65
4	U.S. government obligations				
5	Tax-exempt securities				
6	Other current assets Prepaid Expenses		5,514.61		17,526.45
7	Loans to stockholders				
8	Mortgage and real estate loans				
9	Other investments				
10a	Buildings and other depreciable assets	775,749.16		914,010.41	
b	Less accumulated depreciation	(171,931.03)	603,818.13	(260,267.44)	653,742.97
11a	Depletable assets				
b	Less accumulated depletion	()		()	
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()		()	
14	Other assets Deposits		1,130.00		1,130.00
15	Total assets		2,678,103.81		2,403,270.85
Liabilities and Stockholders' Equity					
16	Accounts payable		814,888.19		668,403.92
17	Mortgages, notes, bonds payable in less than 1 year		1,011,254.29		976,402.62
18	Other current liabilities Accrued Expense		90,772.95		7,019.83
19	Loans from stockholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities Deferred Income Tax		45,000.00		53,000.00
22	Capital stock: a Preferred stock				
b	Common stock	230,500.00	230,500.00	230,500.00	230,500.00
23	Paid-in or capital surplus				
24	Retained earnings - Appropriated (attach schedule)				
25	Retained earnings - Unappropriated		485,688.38		467,944.48
26	Less cost of treasury stock		()		()
27	Total liabilities and stockholders' equity		2,678,103.81		2,403,270.85

Note: You are not required to complete Schedules M-1 and M-2 below if the total assets on line 15, column (d) of Schedule L are less than \$25,000.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return

1	Net income (loss) per books	<17,743.90>	7	Income recorded on books this year not included on this return (itemize):	
2	Federal income tax	288.26		Tax-exempt interest \$	
3	Excess of capital losses over capital gains				
4	Income subject to tax not recorded on books this year (itemize):				
5	Expenses recorded on books this year not deducted on this return (itemize):		8	Deductions on this return not charged against book income this year (itemize):	
a	Deferred Inc. \$	8,000.00	a	Depreciation \$	24,610.23
b	Country Club \$	2,376.00	b	Contributions carryover \$	
c	Travel and Entertainment \$	5,447.59			
	Officer Life Ins.	28,164.00	9	Add lines 7 and 8	24,610.23
6	Add lines 1 through 5	43,987.59	10	Income (line 28, page 1) - line 6 less line 9	1,921.72
		26,531.95			

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1	Balance at beginning of year	485,688.38	5	Distributions: a Cash	
2	Net income (loss) per books	<17,743.90>		b Stock	
3	Other increases (itemize):			c Property	
			6	Other decreases (itemize):	
4	Add lines 1, 2, and 3	467,944.48	7	Add lines 5 and 6	
			8	Balance at end of year (line 4 less line 7)	467,944.48

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return
For calendar year 1996 or tax year beginning AUGUST 1, 1996, ending JULY 31, 1997

EXHIBIT A
PAGE 1 OF 3
OMB No. 1545-0123
1996

Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

A Check if: ☐ 1 Consolidated return (attach Form 851) ☐ 2 Personal holding co. (attach Sch. PH) ☐ 3 Personal service corp. (as defined in Temp. Regs. sec. 1.441-4T)	Use IRS label. Other- wise, please print or type.	Name GROOME & ASSOCIATES, INC.	B Employer identification number 58-1810366
		Number, street, and room or suite no. (if a P.O. box, see page 6 of instructions.) P.O. BOX 729	C Date incorporated 08/31/88
		City or town, state, and ZIP code TRAVELERS REST, SC 29690-0729	D Total assets (see page 6 of instructions) \$ 3,005,699.38

E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change of address

Income	1	Gross receipts or sales	9,710,597.40	2	Cost of goods sold (Schedule A, line 8)		3	Gross profit. Subtract line 2 from line 1c		4	Dividends (Schedule C, line 19)		5	Interest		6	Gross rents		7	Gross royalties		8	Capital gain net income (attach Schedule D (Form 1120))		9	Net gain or (loss) from Form 4797, Part II, line 20 (attach Form 4797)	1,500.00	10	Other income (attach schedule)	Miscellaneous	10,198.84	11	Total income. Add lines 3 through 10	1,504,036.90																																																										
	Deductions	12	Compensation of officers (Schedule E, line 4)		13	Salaries and wages (less employment credits)		14	Repairs and maintenance		15	Bad debts		16	Rents		17	Taxes and licenses		18	Interest		19	Charitable contributions		20	Depreciation (attach Form 4562)	126,113.53	21	Less depreciation claimed on Schedule A and elsewhere on return	85,817.79	22	Depletion		23	Advertising	733.94	24	Pension, profit-sharing, etc., plans	50,203.00	25	Employee benefit programs		26	Other deductions (attach schedule)	328,849.80	27	Total deductions. Add lines 12 through 26	1,430,784.34	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11	73,252.56	29	Less: a Net operating loss deduction		b Special deductions (Schedule C, line 20)		30	Taxable income. Subtract line 29c from line 28	73,252.56	31	Total tax. (Schedule J, line 10)	13,313.14	32	Payments: a 1995 overpayment credited to 1996	300.00	b 1996 estimated tax payments		c Less 1996 refund applied for on Form 4468		d Bal	300.00	e Tax deposited with Form 7004		f Credit from regulated investment companies (attach Form 2439)		g Credit for Federal tax on fuels (attach Form 4136)		33	Estimated tax penalty. Check if Form 2220 is attached	X	34	Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed	13,013.14	35	Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid		36	Enter amount of line 35 you want: Credited to 1997 estimated tax		Refunded	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer _____ Date <u>08/26/97</u>	Title _____
Preparer's signature _____ Firm's name (or yours if self-employed) and address THOMBLEY & SIMMONS, P.C. 305 LAWRENCE STREET SUITE 100 MARIETTA, GA 30060	Check if self-employed ☐ Preparer's social security number 259 92 6341 E.I. No. 58 1582344 ZIP code 30060

Schedule A Cost of Goods Sold (See page 12 of instructions.)

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	SCHEDULE I
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	
6	Total. Add lines 1 through 5	6	
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	8,029,578.13

9 a Check all methods used for valuing closing inventory:

- (i) ☒ Cost as described in Regulations section 1.471-3
 (ii) ☐ Lower of cost or market as described in Regulations section 1.471-4
 (iii) ☐ Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) ☐**c** Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ☐**d** If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d ☐**e** If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? ☐ Yes ☒ No**f** Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☒ No
If "Yes," attach explanation**Schedule C Dividends and Special Deductions**

	(a) Dividends received	(b) %	(c) Special deductions (a) x (b)
1 Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)		70	
2 Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)		80	
3 Dividends on debt-financed stock of domestic and foreign corporations (section 248A)		see instructions	
4 Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5 Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6 Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction		70	
7 Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction		80	
8 Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (section 245(b))		100	
9 Total. Add lines 1 through 8			
10 Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11 Dividends from certain FSCs that are subject to the 100% deduction (section 245(c)(1))		100	
12 Dividends from affiliated group members subject to the 100% deduction (sec. 243(a)(3))		100	
13 Other dividends from foreign corporations not included on lines 3, 6, 7, 8, or 11			
14 Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15 Foreign dividend gross-up (section 78)			
16 IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (section 246(d))			
17 Other dividends			
18 Deduction for dividends paid on certain preferred stock of public utilities			
19 Total dividends. Add lines 1 through 17. Enter here and on line 4, page 1			

20 Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on line 29b, page 1 N/A**Schedule E Compensation of Officers** Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1, Form 1120) are \$500,000 or more.

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
			(d) Common	(e) Preferred	
LEE K. GROOME	248-92-1290	100.000	100.000		330,000.00
2 Total compensation of officers					330,000.00
3 Compensation of officers claimed on Schedule A and elsewhere on return					
4 Subtract line 3 from line 2. Enter the result here and on line 12, page 1					330,000.00

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1 Cash					3,665.80
2a Trade notes and accounts receivable		689,086.78		1,032,155.27	
b Less allowance for bad debts		()	689,086.78	()	1,032,155.27
3 Inventories			1,041,784.65		1,256,271.15
4 U.S. government obligations					
5 Tax-exempt securities					
6 Other current assets Prepaid Expenses			17,526.45		
7 Loans to stockholders					
8 Mortgage and real estate loans					
9 Other investments					
10a Buildings and other depreciable assets		914,010.41		1,004,815.25	
b Less accumulated depreciation		(260,267.44)	653,742.97	(356,129.09)	648,686.16
11a Depletable assets					
b Less accumulated depletion		()		()	
12 Land (net of any amortization)					
13a Intangible assets (amortizable only)					
b Less accumulated amortization		()		()	
14 Other assets Cash Surrender Value			1,130.00		64,921.00
15 Officer's Life Ins.			2,403,270.85		3,005,699.38
Total assets					
Liabilities and Stockholders' Equity					
16 Accounts payable			668,403.92		497,306.31
17 Mortgages, notes, bonds payable in less than 1 year			976,402.62		1,610,563.55
18 Other current liabilities Accrued Expenses			7,019.83		75,547.25
19 Loans from stockholders					
20 Mortgages, notes, bonds payable in 1 year or more					
21 Other liabilities Deferred Income Taxes			53,000.00		57,000.00
22 Capital stock: a Preferred stock					
b Common stock		230,500.00	230,500.00	230,500.00	230,500.00
23 Paid-in or capital surplus					
24 Retained earnings - Appropriated (attach schedule)					
25 Retained earnings - Unappropriated			467,944.48		534,782.27
26 Less cost of treasury stock			()		()
27 Total liabilities and stockholders' equity			2,403,270.85		3,005,699.38

Note: You are not required to complete Schedules M-1 and M-2 below if the total assets on line 15, column (d) of Schedule L are less than \$25,000.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return

1 Net income (loss) per books	37,658.69	7 Income recorded on books this year not included on this return (itemize):	
2 Federal income tax	13,313.14	Tax-exempt interest \$	
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize):			
5 Expenses recorded on books this year not deducted on this return (itemize):		8 Deductions on this return not charged against book income this year (itemize):	
a Deferred Income Taxes \$	4,000.00	a Depreciation \$	23,190.28
b Contributions \$	24,852.00	b Contributions carryover \$	
c Travel and entertainment \$	9,674.01		
CLUB DUES	6,945.00		23,190.28
	45,471.01	9 Add lines 7 and 8	23,190.28
6 Add lines 1 through 5	96,442.84	10 Income (line 28, page 1) - line 6 less line 9	73,252.56

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1 Balance at beginning of year	467,944.48	5 Distributions: a Cash	
2 Net income (loss) per books	37,658.69	b Stock	
3 Other increases (itemize):		c Property	
Transfer In of CSV on Officer's Life Insurance	29,179.10	6 Other decreases (itemize):	
	29,179.10		
4 Add lines 1, 2, and 3	534,782.27	7 Add lines 5 and 6	534,782.27
		8 Balance at end of year (line 4 less line 7)	

SCHEDULE E
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040 or Form 1041.

▶ See instructions for Schedule E (Form 1040).

EXHIBIT 1 OF 6
PAGE 1 OF 6

OMB No. 1545-0074

1998

Attachment
Sequence No. **13**

Name(s) shown on return

Your social security number

LEE K & MARGARET F GROOME

248-92-1290

Part I **Income or Loss From Rental Real Estate and Royalties** Note: Report income and expenses from your business of renting personal property on **Schedule C** or **C-EZ**. Report farm rental income or loss from **Form 4835** on page 2, line 39.

1	Show the kind and location of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days or • 10% of the total days rented at fair rental value? (See page E-1.)	Yes	No
A	OFFICE BUILDING GREENVILLE, SC				X
B					
C					

Income:		Properties			Totals
		A	B	C	(Add columns A, B, and C.)
3	Rents received	3	90000.		3 90000.
4	Royalties received	4			4
Expenses:					
5	Advertising	5			
6	Auto and travel (see page E-2)	6			
7	Cleaning and maintenance	7			
8	Commissions	8			
9	Insurance	9			
10	Legal and other professional fees	10			
11	Management fees	11			
12	Mortgage interest paid to banks, etc. (see page E-2)	12	74563.		12 74563.
13	Other interest	13			
14	Repairs	14			
15	Supplies	15			
16	Taxes	16	9092.		
17	Utilities	17			
18	Other (list) ▶	18			
19	Add lines 5 through 18	19	83655.		19 83655.
20	Depreciation expense or depletion (see page E-3)	20	16071.		20 16071.
21	Total expenses. Add lines 19 and 20	21	99726.		
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see page E-3 to find out if you must file Form 6198 .	22	<9726.>		
23	Deductible rental real estate loss. Caution: Your rental real estate loss on line 22 may be limited. See page E-3 to find out if you must file Form 8582 . Real estate professionals must complete line 42 on page 2.	23	<9726.>		
24	Income. Add positive amounts shown on line 22. Do not include any losses.	24			0.
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter the total losses here.	25			(9726.)
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 39 on page 2 do not apply to you, also enter this amount on Form 1040, line 17. Otherwise, include this amount in the total on line 40 on page 2.	26			<9726.>

821491
10-28-98

LHA For Paperwork Reduction Act Notice, see Form 1040 instructions. 7
13590312 751951 GROLEE93 042 GROOME, LEE K

Schedule E (Form 1040) 1998
GROLEE91

SCHEDULE E
(Form 1040)Department of the Treasury
Internal Revenue Service (900)**Supplemental Income and Loss**(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040 or Form 1041.

▶ See instructions for Schedule E (Form 1040).

EXHIBIT O
PAGE 2 OF 6
OMB No. 1545-0074**1999**Attachment
Sequence No. 13

Name(s) shown on return

Your social security number

LEE K & MARGARET F GROOME**248-92-1290****Part I** **Income or Loss From Rental Real Estate and Royalties** Note: Report income and expenses from your business of renting personal property on Schedule C or C-EZ. Report farm rental income or loss from Form 4838 on page 2, line 39.

1	Show the kind and location of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See page E-1.)	Yes	No
A	OFFICE BUILDING GREENVILLE, SC				X
B	LLBTS - REAL ESTATE LITCHFIELD, SC				X
C					

Income:		Properties			Totals
		A	B	C	(Add columns A, B, and C.)
3	Rents received	110000.	<2870.>		107130.
4	Royalties received				
Expenses:					
5	Advertising				
6	Auto and travel (see page E-2)				
7	Cleaning and maintenance				
8	Commissions				
9	Insurance				
10	Legal and other professional fees				
11	Management fees				
12	Mortgage interest paid to banks, etc. (see page E-2)				
13	Other interest	74876.			
14	Repairs				
15	Supplies				
16	Taxes	9349.			
17	Utilities				
18	Other (list) ▶				
19	Add lines 5 through 18	84225.			84225.
20	Depreciation expense or depletion (see page E-3)	16071.			16071.
21	Total expenses. Add lines 19 and 20	100296.			
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see page E-3 to find out if you must file Form 990.	9704.	<2870.>		
23	Deductible rental real estate loss. Caution: Your rental real estate loss on line 22 may be limited. See page E-3 to find out if you must file Form 8582. Real estate professionals must complete line 42 on page 2		<2870.>		
24	Income. Add positive amounts shown on line 22. Do not include any losses				9704.
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter the total losses here				2870.
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 39 on page 2 do not apply to you, also enter this amount on Form 1040, line 17. Otherwise, include this amount in the total on line 40 on page 2				6834.

921491
10-18-99

LHA For Paperwork Reduction Act Notice, see Form 1040 Instructions.

9

15310320 751951 GROLEE93

1999.04200 GROOME, LEE K

Schedule E (Form 1040) 1999
GROLEE91

SCHEDULE E
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040 or Form 1041.

▶ See instructions for Schedule E (Form 1040).

EMBA/TO
PAGE 3 OF 6
OMB No. 1545-0074

2000

Attachment
Sequence No. 13

Name(s) shown on return

Your social security number

LEE K & MARGARET F GROOME

248-92-1290

Part I **Income or Loss From Rental Real Estate and Royalties** *Note: Report income and expenses from your business of renting personal property on Schedule C or C-EZ. Report farm rental income or loss from Form 4835 on page 2, line 39.*

1	Show the kind and location of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See page E-1.)	Yes	No
A	OFFICE BUILDING GREENVILLE, SC				X
B					
C					

Income:		Properties			Totals (Add columns A, B, and C.)	
		A	B	C		
3	Rents received	3	185000.		3	185000.
4	Royalties received	4			4	
Expenses:						
5	Advertising	5				
6	Auto and travel (see page E-2)	6				
7	Cleaning and maintenance	7				
8	Commissions	8				
9	Insurance	9				
10	Legal and other professional fees	10				
11	Management fees	11				
12	Mortgage interest paid to banks, etc. (see page E-2)	12	109437.		12	109437.
13	Other interest	13				
14	Repairs	14				
15	Supplies	15				
16	Taxes	16	9485.			
17	Utilities	17				
18	Other (list) ▶	18				
19	Add lines 5 through 18	19	118922.		19	118922.
20	Depreciation expense or depletion (see page E-3)	20	16071.		20	16071.
21	Total expenses Add lines 19 and 20	21	134993.			
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see page E-3 to find out if you must file Form 8198	22	50007.			
23	Deductible rental real estate loss. Caution: Your rental real estate loss on line 22 may be limited. See page E-3 to find out if you must file Form 8582. Real estate professionals must complete line 42 on page 2	23				
24	Income. Add positive amounts shown on line 22. Do not include any losses	24			24	50007.
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here	25			25	()
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 39 on page 2 do not apply to you, also enter this amount on Form 1040, line 17. Otherwise, include this amount in the total on line 40 on page 2	26			26	50007.

021491
10-18-00

LHA For Paperwork Reduction Act Notice, see Form 1040 instructions. 11
10590327 751951 GROLEE93 2000.05000 GROOME, LEE K

Schedule E (Form 1040) 2000
GROLEE91

SCHEDULE E
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040 or Form 1041.

▶ See instructions for Schedule E (Form 1040).

EXHIBIT OF 6
PAGE 4 OF 6
OMB No. 1545-0074

2001

Attachment
Sequence No. 13

Name(s) shown on return

Your social security number

LEE K & MARGARET F GROOME

248-92-1290

Part I **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see page E-1). Report farm rental income or loss from Form 4835 on page 2, line 39.

1	Show the kind and location of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See page E-1.)	Yes	No
A	OFFICE BUILDING GREENVILLE, SC				X
B					
C					

Income:		Properties			Totals (Add columns A, B, and C.)	
		A	B	C		
3	Rents received	3	120000.		3	120000.
4	Royalties received	4			4	
Expenses:						
5	Advertising	5				
6	Auto and travel (see page E-2)	6				
7	Cleaning and maintenance	7				
8	Commissions	8				
9	Insurance	9				
10	Legal and other professional fees	10				
11	Management fees	11				
12	Mortgage interest paid to banks, etc. (see page E-2)	12	84092.		12	84092.
13	Other interest	13				
14	Repairs	14				
15	Supplies	15				
16	Taxes	16	11352.			
17	Utilities	17				
18	Other (list) ▶	18				
19	Add lines 5 through 18	19	95444.		19	95444.
20	Depreciation expense or depletion (see page E-3)	20	16071.		20	16071.
21	Total expenses. Add lines 19 and 20	21	111515.			
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see page E-3 to find out if you must file Form 6198	22	8485.			
23	Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See page E-3 to find out if you must file Form 8582. Real estate professionals must complete line 42 on page 2	23				
24	Income. Add positive amounts shown on line 22. Do not include any losses	24			24	8485.
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here	25			25	()
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 39 on page 2 do not apply to you, also enter this amount on Form 1040, line 17. Otherwise, include this amount in the total on line 40 on page 2	26			26	8485.

121491 10-23-01

LHA For Paperwork Reduction Act Notice, see Form 1040 instructions.
09220409 751951 GROLEE93

2001.04000 GROOME, LEE K

Schedule E (Form 1040) 2001
GROLEE91

SCHEDULE E
(Form 1040)

Department of the Treasury
Internal Revenue Service (90)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040 or Form 1041.

▶ See instructions for Schedule E (Form 1040).

EXHIBIT O
PAGE 5 OF 6
OMB No. 1545-0074

2002

Attachment
Sequence No. 13

Name(s) shown on return

Your social security number

LEE K & MARGARET F GROOME

248-92-1290

Part I **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use
Schedule C or C-EZ (see page E-3). Report farm rental income or loss from Form 4835 on page 2, line 39.

1	Show the kind and location of each rental real estate property:	2			Yes	No
		For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days or • 10% of the total days rented at fair rental value? (See page E-3.)				
A	OFFICE BUILDING GREENVILLE, SC	A	B	C		X
B		B				
C		C				
Income:		Properties			Totals (Add columns A, B, and C.)	
3	Rents received	A	B	C		
4	Royalties received					
Expenses:						
5	Advertising					
6	Auto and travel (see page E-4)					
7	Cleaning and maintenance					
8	Commissions					
9	Insurance					
10	Legal and other professional fees					
11	Management fees					
12	Mortgage interest paid to banks, etc. (see page E-4)	50577.			50577.	
13	Other interest					
14	Repairs					
15	Supplies					
16	Taxes					
17	Utilities					
18	Other (list) ▶					
19	Add lines 5 through 18	50577.			50577.	
20	Depreciation expense or depletion (see page E-4)	16071.			16071.	
21	Total expenses. Add lines 19 and 20	66648.				
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a loss, see page E-5 to find out if you must file Form 8198.	<66648.>				
23	Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See page E-5 to find out if you must file Form 8582. Real estate professionals must complete line 42 on page 2.	0.				
24	Income. Add positive amounts shown on line 22. Do not include any losses.				0.	
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here.				0.	
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 39 on page 2 do not apply to you, also enter this amount on Form 1040, line 17. Otherwise, include this amount in the total on line 40 on page 2.				0.	

12/08/03 17:30
4:34 pm

GROOME & ASSOCIATES - 17704231842
GROOME & ASSOCIATES, INC.
Income Statement

NO.142 001
Page 1

SCHEDULE O
PAGE 6A OF 6

January 1, 2003
July 31, 2003

Income		
Sales (income)	\$0.20	0.0%
Sales - Brokered	2,543,144.05	101.7%
Sales discounts & allowances	(34,795.65)	-1.4%
TOTAL Income	2,508,348.60	100.3%

Adjustments		
Sales Discounts - Early Paymen	(7,227.32)	-0.3%
TOTAL Adjustments	(7,227.32)	-0.3%
NET INCOME	2,501,121.28	100.0%

Cost of Goods Sold		
COS - Materials	1,908,222.17	76.3%
Plant labor salaries	126,043.93	5.0%
Warehouse expense	4,245.05	0.2%
Freight - (warehouse exp)	9,591.20	0.4%
COS - Freight	90,471.61	3.6%
COS - Processing costs	15,186.69	0.6%
TOTAL Cost of Goods Sold	2,153,760.65	86.1%
GROSS PROFIT	347,360.63	13.9%

Expenses		
Salaries - officer	3,423.93	0.1%
OTHER OFFICE SALARIES	20,543.58	0.8%
ACTION PAYROLL FEES	2,035.00	0.1%
Accounting	9,000.00	0.4%
COMPUTER(CONSULTING EXP)	2,848.37	0.1%
Advertising	2,299.95	0.1%
Office salaries	38,218.65	1.5%
Sales salaries	83,302.74	3.3%
Auto expenses	18,665.36	0.7%
Bad Debt Expense	64,138.23	2.6%
Bank charges	2,630.06	0.1%
CREDIT CHECKS-NEW ACTS	1,824.78	0.1%
Consulting	571.50	0.0%
Class/seminars	1,546.04	0.1%
Contributions	747.00	0.0%
Depreciation	22,345.00	0.9%

12/08/03

17:30

GROOME & ASSOCIATES + 17704231842
GROOME & ASSOCIATES, INC.

NO.142 D02

Page 2

4:34 pm

Income Statement

SCHWABER O
PAGE 6 B OF 6

	January 1, 2003	July 31, 2003
	-----	-----
Dues & subscriptions	6,269.07	0.3%
Gifts	1,367.13	0.1%
Insurance - group (health)	18,074.74	0.7%
Insurance - Workmen's comp	4,900.52	0.2%
Insurance - disability	2,397.29	0.1%
Insurance-Aflac	752.00	0.0%
Life insurance - Groome	14,327.50	0.6%
Interest - Life Ins Cash	7,252.00	0.3%
Insurance - property	6,291.26	0.3%
Interest expense	25,929.02	1.0%
LEGAL EXPENSES	31,372.06	1.3%
RAILROAD EXPENSE	434.28	0.0%
Meals & entertainment	5,342.84	0.2%
MISCELLANEOUS EXPENSE	2,214.92	0.1%
Office expense	8,258.49	0.3%
Warehouse supplies	3,712.60	0.1%
Postage & freight	3,240.27	0.1%
Rent	53,000.00	2.1%
Repairs & maintenance / office	902.00	0.0%
Repairs & maintenance	8,999.67	0.4%
Mat'l handling equipment rep.	830.90	0.0%
Production supplies	9,760.01	0.4%
Taxes & licenses	13,344.40	0.5%
Taxes, payroll	22,915.19	0.9%
Telephone	11,833.93	0.5%
Travel & lodging	7,586.74	0.3%
Utilities	10,414.05	0.4%

TOTAL Expenses	555,863.07	22.2%

OPERATING PROFIT	(208,502.44)	-8.3%

Other Income & Expenses		
GAIN/LOSS SALE OF ASSET	127,000.00	5.1%

TOTAL Other Income & Expenses	127,000.00	5.1%

PROFIT BEFORE TAXES	(81,502.44)	-3.3%

NET PROFIT	(\$81,502.44)	-3.3%
	=====	

U.S. Corporation Income Tax Return

For calendar year 1997 or tax year beginning 8/1, 1997, ending 7/31, 1998
Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

EXHIBIT P
PAGE 1 OF 3
OMB No 1545-0123

1997

- A Check if a
1 Consolidated return (attach Form 851) ☐
2 Personal holding co. (attach Sch. PH) ☐
3 Personal service corp. (as defined in Temporary Regs. sec. 1.441-4T—see instructions) ☐

Use IRS label. Otherwise, print or type.

Name
GROOME & ASSOCIATES, INC.
Number, street, and room or suite no. (If a P.O. box, see page 5 of instructions.)
P.O. BOX 729
City or town, state, and ZIP code
TRAVELERS REST, SC 29690-0729

B Employer identification number
58-1810366
C Date incorporated
8/31/88
D Total assets (see page 5 of instructions)

E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change of address

\$ **3,173,882.82**

Income	1 a	Gross receipts or sales	9,939,497.89	b	Less returns and allowances	355,707.28	c Bal	1 c	9,583,790.61
	2	Cost of goods sold (Schedule A, line 8)						2	8,743,766.63
	3	Gross profit. Subtract line 2 from line 1c						3	840,023.98
	4	Dividends (Schedule C, line 19)						4	
	5	Interest						5	
	6	Gross rents						6	
	7	Gross royalties						7	
	8	Capital gain net income (attach Schedule D (Form 1120))						8	
	9	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)						9	(8,041.21)
	10	Other income (see page 6 of instructions—attach schedule)	MISCELLANEOUS					10	29.24
	11	Total income. Add lines 3 through 10						11	832,012.01
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (Schedule E, line 4)						12	120,000.00
	13	Salaries and wages (less employment credits)						13	319,090.67
	14	Repairs and maintenance						14	49,382.98
	15	Bad debts						15	11,402.67
	16	Rents						16	159,000.00
	17	Taxes and licenses						17	69,632.17
	18	Interest						18	141,705.22
	19	Charitable contributions (see page 8 of instructions for 10% limitation)						19	
	20	Depreciation (attach Form 4562)	20	99,927.67					
	21	Less depreciation claimed on Schedule A and elsewhere on return	21a	54,084.67			21b	45,843.00	
	22	Depletion					22		
	23	Advertising					23	2,326.06	
	24	Pension, profit-sharing, etc., plans					24		
	25	Employee benefit programs					25		
	26	Other deductions (attach schedule)					26	332,289.11	
	27	Total deductions. Add lines 12 through 26					27	1,250,671.88	
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11					28	(418,659.87)	
Tax and Payments	29	Less: a Net operating loss deduction (see page 9 of instructions)	29a						
		b Special deductions (Schedule C, line 20)	29b				29c		
	30	Taxable income. Subtract line 29c from line 28					30	(418,659.87)	
	31	Total tax (Schedule J, line 10)					31	0.00	
	32	Payments: a 1996 overpayment credited to 1997	32a						
		b 1997 estimated tax payments	32b	13,500.00					
		c Less 1997 refund applied for on Form 4466	32c						
		d Tax deposited with Form 7004			d Bal	32d	13,500.00		
		e Credit for tax paid on undistributed capital gains (attach Form 2439)				32e			
		f Credit for Federal tax on fuels (attach Form 4136). See instructions				32f			
	g Credit for Federal tax on fuels (attach Form 4136). See instructions				32g				
32h						13,500.00			
33	Estimated tax penalty (see page 10 of instructions). Check if Form 2220 is attached					33			
34	Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed					34	0.00		
35	Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid					35	13,500.00		
36	Enter amount of line 35 you want: Credited to 1998 estimated tax					36	13,500.00		

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer _____ Date _____ Title _____

Paid Preparer's Use Only

Preparer's signature _____ Date **08/26/98** Check if self-employed ☐ Preparer's social security number **259-92-6341**
Firm's name (or yours if self-employed) and address **THOMBLEY & SIMMONS, P.C.** EIN **58-1582344**
305 LAWRENCE ST, SUITE 100 MARIETTA, GA ZIP code **30060**

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		3,665.80		0
2a	Trade notes and accounts receivable	1,032,155.27		1,175,259.62	
b	Less allowance for bad debts	()	1,032,155.27	()	1,175,259.62
3	Inventories		1,256,271.15		1,395,218.89
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach schedule)				
7	Loans to stockholders				
8	Mortgage and real estate loans				
9	Other investments (attach schedule)				
10a	Buildings and other depreciable assets	1,004,815.25		915,541.11	
b	Less accumulated depreciation	(356,129.09)	648,686.16	(389,628.80)	525,912.31
11a	Depletable assets				
b	Less accumulated depletion	()		()	
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()		()	
14	Other assets (attach schedule) Deposits & CSV - Life Ins.		64,921.00		77,492.00
15	Total assets		3,005,699.38		3,173,882.82
Liabilities and Stockholders' Equity					
16	Accounts payable		497,306.31		612,471.22
17	Mortgages, notes, bonds payable in less than 1 year ..		1,610,563.55		2,167,994.37
18	Other current liabilities (attach schedule) Accrued Exp.		75,547.25		A7397.57
19	Loans from stockholders				
20	Mortgages, notes, bonds payable in 1 year or more ...				
21	Other liabilities (attach schedule)		57,000.00		
22	Capital stock: a Preferred stock				
	b Common stock	230,500.00	230,500.00	230,500.00	230,500.00
23	Additional paid-in capital				
24	Retained earnings — Appropriated (attach schedule) ..				
25	Retained earnings — Unappropriated		534,782.27		155,519.66
26	Adjustments to shareholders' equity (attach schedule) ..				
27	Less cost of treasury stock		()		()
28	Total liabilities and stockholders' equity		3,005,699.38		3,173,882.82

Note: You are not required to complete Schedules M-1 and M-2 below if the total assets on line 15, column (d) of Schedule L are less than \$25,000.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (See page 15 of instructions.)

1	Net income (loss) per books	(391,069.88)	7	Income recorded on books this year not included on this return (itemize):	
2	Federal income tax			Tax-exempt interest \$	
3	Excess of capital losses over capital gains			Def Tax Credit 57,000.00	
4	Income subject to tax not recorded on books this year (itemize):			Fed Tax Refunds 24,466.49	81,466.49
5	Expenses recorded on books this year not deducted on this return (itemize):		8	Deductions on this return not charged against book income this year (itemize):	
a	Depreciation \$ 6,919.44			a Depreciation \$	
b	Contributions carryover \$ 31,336.00			b Contributions carryover \$	
c	Travel and entertainment \$ 8,676.06				
	Country Club Dues 6945.00				
		53,876.50	9	Add lines 7 and 8	81,466.49
6	Add lines 1 through 5	(337,193.38)	10	Income (line 28, page 1) — line 6 less line 9	(418,659.87)

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1	Balance at beginning of year	534,782.27	5	Distributions: a Cash	
2	Net income (loss) per books	(391,069.88)		b Stock	
3	Other increases (itemize):			c Property	
	Increase in CSV Life Ins		6	Other decreases (itemize):	
	In Excess of Premiums	11,807.27	7	Add lines 5 and 6	
4	Add lines 1, 2, and 3	155,519.66	8	Balance at end of year (line 4 less line 7)	155,519.66

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1998 or tax year beginning 8/1, 1998, ending 7/31, 1999
▶ Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

217B17 Q
PAGE 1 OF 2
OMB No. 1545-0123
1998

A Check if a: 1 Consolidated return (attach Form 951) ☐ 2 Personal holding co. (attach Sch. PH) ☐ 3 Personal service corp. (as defined in Temporary Regs. sec. 1.441-4T — see instructions) ☐	Use IRS label. Otherwise, print or type. Name GROOME & ASSOCIATES, INC. Number, street, and room or suite no. (If a P.O. box, see page 5 of instructions.) P.O. BOX 729 City or town, state, and ZIP code TRAVELERS REST, SC 29690-0729	B Employer identification number 58-1810366 C Date incorporated 8/31/88 D Total assets (see page 5 of instructions) \$ 2,181,890.12
E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change of address		

Income	1 a Gross receipts or sales 5,701,586.96	b Less returns and allowances 185,793.03	c Bal. 5,515,793.93
	2 Cost of goods sold (Schedule A, line 8)		2 5,009,607.29
	3 Gross profit. Subtract line 2 from line 1c		3 506,186.64
	4 Dividends (Schedule C, line 19)		4
	5 Interest		5
	6 Gross rents		6
	7 Gross royalties		7
	8 Capital gain net income (attach Schedule D (Form 1120))		8
	9 Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)		9 121,316.85
	10 Other income (see page 6 of instructions — attach schedule) MISCELLANEOUS		10 1,564.16
	11 Total income. Add lines 3 through 10		11 629,067.65
Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (Schedule E, line 4)		12
	13 Salaries and wages (less employment credits)		13 209,945.88
	14 Repairs and maintenance		14 19,348.22
	15 Bad debts		15 81,066.45
	16 Rents		16 53,000.00
	17 Taxes and licenses		17 37,113.73
	18 Interest		18 133,736.24
	19 Charitable contributions (see page 8 of instructions for 10% limitation)		19
	20 Depreciation (attach Form 4562)	20 94,225.81	
	21 Less depreciation claimed on Schedule A and elsewhere on return	21a 56,023.10	21b 38,202.71
	22 Depletion		22
	23 Advertising		23 810.00
	24 Pension, profit-sharing, etc., plans		24 1,545.00
	25 Employee benefit programs		25
26 Other deductions (attach schedule)		26 201,082.33	
27 Total deductions. Add lines 12 through 26		27 775,850.56	
28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11		28 -146,782.91	
29 Less: a Net operating loss deduction (see page 9 of instructions)	29a	29c	
b Special deductions (Schedule C, line 20)	29b		
Tax and Payments	30 Taxable income. Subtract line 29c from line 28		30 -146,782.91
	31 Total tax (Schedule J, line 12)		31 0.00
	32 Payments: a 1997 overpayment credited to 1998	32a	
	b 1998 estimated tax payments	32b	
	c Less 1998 refund applied for on Form 4466	32c ()	d Bal. 32d
	e Tax deposited with Form 7004	32e	
	f Credit for tax paid on undistributed capital gains (attach Form 2439)	32f	
	g Credit for Federal tax on fuels (attach Form 4136). See instructions	32g	32h 0.00
	33 Estimated tax penalty (see page 10 of instructions). Check if Form 2220 is attached		33
	34 Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed		34 0.00
35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid		35	
36 Enter amount of line 35 you want: Credited to 1999 estimated tax Refunded		36	

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
	Signature of officer	Date	Title
Paid Preparer's Use Only	Preparer's signature	Date	Preparer's social security number
	Firm's name (or yours if self-employed) and address	Check if self-employed ☐	259-92-6341
	THOMBLEY & SIMMONS, P.C. 305 LAWRENCE ST., STE. 100, MARIETTA, GA	EIN 58-1582344	ZIP code 30060

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		0		0
2a	Trade notes and accounts receivable	1,175,259.62		735,168.76	
b	Less allowance for bad debts	()	1,175,259.62	()	735,168.76
3	Inventories		1,395,218.89		976,840.59
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach schedule)				
7	Loans to stockholders				
8	Mortgage and real estate loans				
9	Other investments (attach schedule)				
10a	Buildings and other depreciable assets	915,541.11		751,088.13	
b	Less accumulated depreciation	(389,628.80)	525,912.31	(382,881.36)	368,206.77
11a	Depletable assets				
b	Less accumulated depletion	()		()	
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()		()	
14	Other assets (attach schedule) DEPOSITS & CSV-LIFE INS.		77,492.00		101,674.00
15	Total assets		3,173,882.82		2,181,890.12
Liabilities and Stockholders' Equity					
16	Accounts payable		612,471.22		558,925.33
17	Mortgages, notes, bonds payable in less than 1 year		2,167,994.37		1,284,915.42
18	Other current liabilities (attach schedule) ACCRUED EXPENSE		7,397.57		790.78
19	Loans from stockholders				170,000.00
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach schedule)				
22	Capital stock: a Preferred stock				
	b Common stock	230,500.00	230,500.00	230,500.00	230,500.00
23	Additional paid-in capital				
24	Retained earnings — Appropriated (attach schedule)				
25	Retained earnings — Unappropriated		155,519.66		-63,241.41
26	Adjustments to shareholders' equity (attach schedule) ...				
27	Less cost of treasury stock		()		()
28	Total liabilities and stockholders' equity		3,173,882.82		2,181,890.12

Note: You are not required to complete Schedules M-1 and M-2 below if the total assets on line 15, column (d) of Schedule L are less than \$25,000.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (See page 16 of instructions.)					
1	Net income (loss) per books	-218,761.07	7	Income recorded on books this year not included on this return (itemize): Tax-exempt interest \$	
2	Federal income tax		8	Deductions on this return not charged against book income this year (itemize): a Depreciation \$	
3	Excess of capital losses over capital gains		b	Contributions carryover . \$	
4	Income subject to tax not recorded on books this year (itemize):		9	Add lines 7 and 8	
5	Expenses recorded on books this year not deducted on this return (itemize): a Depreciation \$ 37,879.78 b Contributions carryover \$ 7,713.00 c Travel and entertainment... \$ 13,210.69 OWNERS LIFE INS. \$ 11,074.69 COUNTRY CLUB DUE \$ 2,100.00 71,978.16		10	Income (line 28, page 1) — line 6 less line 9	-146,782.91
6	Add lines 1 through 5	-146,782.91			

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)					
1	Balance at beginning of year	155,519.66	5	Distributions: a Cash	
2	Net income (loss) per books	-218,761.07	b	Stock	
3	Other increases (itemize):		c	Property	
			6	Other decreases (itemize):	
			7	Add lines 5 and 6	
4	Add lines 1, 2, and 3	-63,241.41	8	Balance at end of year (line 4 less line 7)	-63,241.41

Form 1120

U.S. Corporation Income Tax Return

EXHIBIT R
PAGE 1 OF 2
OMB No. 1545-0123Department of the Treasury
Internal Revenue Service

For calendar year 1999 or tax year beginning 8/1, 1999, ending 7/31, 2000

1999

Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

- A Check if a:
- 1 Consolidated return (attach Form 851) ☐
- 2 Personal holding co. (attach Sch. PH) ☐
- 3 Personal service corp. (as defined in Temporary Regs. sec. 1.441-4) ☐ — see instructions

Use
IRS
label.
Other-
wise,
print or
type.

Name
GROOME & ASSOCIATES, INC.

Number, street, and room or suite no. (If a P.O. box, see page 5 of instructions.)
P.O. BOX 729

City or town, state, and ZIP code
TRAVELERS REST, SC 29690-0729

B Employer identification number
58-1810366C Date incorporated
8/31/88

D Total assets (see page 6 of instructions)

E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change of address

\$ 22,653,401.50

Income	1a	Gross receipts or sales	7,503,059.29	b	Less returns and allowances	94,316.29	c	Bal	1c	7,408,743.00
	2	Cost of goods sold (Schedule A, line 8)							2	6,329,050.48
	3	Gross profit. Subtract line 2 from line 1c							3	1,079,692.52
	4	Dividends (Schedule C, line 19)							4	
	5	Interest							5	
	6	Gross rents							6	
	7	Gross royalties							7	
	8	Capital gain net income (attach Schedule D (Form 1120))							8	
	9	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)							9	14,407.49
	10	Other income (see page 7 of instructions — attach schedule)	MISCELLANEOUS						10	331.14
	11	Total income. Add lines 3 through 10							11	1,094,431.15
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (Schedule E, line 4)							12	
	13	Salaries and wages (less employment credits)							13	211,811.49
	14	Repairs and maintenance							14	23,957.06
	15	Bad debts							15	
	16	Rents							16	180,000.00
	17	Taxes and licenses							17	37,354.18
	18	Interest							18	131,001.94
	19	Charitable contributions (see page 9 of instructions for 10% limitation)							19	
	20	Depreciation (attach Form 4562)		20	53,000.33					
	21	Less depreciation claimed on Schedule A and elsewhere on return		21a	24,444.99				21b	28,555.34
	22	Depletion							22	
	23	Advertising							23	1,460.00
	24	Pension, profit-sharing, etc., plans							24	1,988.00
	25	Employee benefit programs							25	
	26	Other deductions (attach schedule)							26	248,384.47
	27	Total deductions. Add lines 12 through 26							27	864,512.48
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11							28	229,918.67
	29	Less: a Net operating loss (NOL) deduction (see page 11 of instructions)		29a	229,918.67					
	b Special deductions (Schedule C, line 20)		29b					29c	229,918.67	
Tax and Payments	30	Taxable income. Subtract line 29c from line 28							30	0.00
	31	Total tax (Schedule J, line 12)							31	
	32	Payments: a 1998 overpayment credited to 1999	32a							
		b 1999 estimated tax payments	32b							
		c Less 1999 refund applied for on Form 4466	32c	()						
		d Bal	32d							
		e Tax deposited with Form 7004	32e							
		f Credit for tax paid on undistributed capital gains (attach Form 2439)	32f							
		g Credit for Federal tax on fuels (attach Form 4136). See instructions	32g						32h	0.00
	33	Estimated tax penalty (see page 12 of instructions). Check if Form 2220 is attached							33	
34	Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed							34	0.00	
35	Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid							35		
36	Enter amount of line 35 you want: Credited to 2000 estimated tax							36		

Sign
Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer

Date

Title

Paid
Preparer's
Use OnlyPreparer's
signature

Date

Check if
self-employed ☐

Preparer's SSN or PTIN

Firm's name (or
yours if self-employed)
and address

THOMBLEY & SIMMONS, P.C.

8/22/00

EIN 58-1582344

305 LAWRENCE ST., STE. 100, MARIETTA, GA

ZIP code 30060

Schedule L		Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)		
1	Cash		0		0		
2a	Trade notes and accounts receivable	735,168.76		877,056.07			
b	Less allowance for bad debts	()	735,168.76	()	877,056.07		
3	Inventories		976,840.59		1,330,062.72		
4	U.S. government obligations						
5	Tax-exempt securities (see instructions)						
6	Other current assets (attach schedule)						
7	Loans to shareholders						
8	Mortgage and real estate loans						
9	Other investments (attach schedule)						
10a	Buildings and other depreciable assets	751,088.13		774,928.61			
b	Less accumulated depreciation	(382,881.36)	368,206.77	(428,775.90)	346,152.71		
11a	Depletable assets						
b	Less accumulated depletion	()		()			
12	Land (net of any amortization)						
13a	Intangible assets (amortizable only)						
b	Less accumulated amortization	()		()			
14	Other assets (attach schedule) DEPOSITS & CSV-LIFE INS.		101,674.00		100,130.00		
15	Total assets		2,181,890.12		2,653,401.50		
Liabilities and Shareholders' Equity							
16	Accounts payable		558,925.33		550,025.54		
17	Mortgages, notes, bonds payable in less than 1 year		1,284,915.42		1,781,648.66		
18	Other current liabilities (attach schedule) ACCRUED EXPENSE		790.78		1,460.40		
19	Loans from shareholders		170,000.00				
20	Mortgages, notes, bonds payable in 1 year or more						
21	Other liabilities (attach schedule)						
22	Capital stock: a Preferred stock						
b	Common stock	230,500.00	230,500.00	230,500.00	230,500.00		
23	Additional paid-in capital						
24	Retained earnings — Appropriated (attach schedule)						
25	Retained earnings — Unappropriated		(63,241.41)		89,766.90		
26	Adjustments to shareholders' equity (attach schedule)						
27	Less cost of treasury stock		()		()		
28	Total liabilities and shareholders' equity		2,181,890.12		2,653,401.50		

Note: The corporation is not required to complete Schedules M-1 and M-2 if the total assets on line 15, col. (d) of Schedule L are less than \$25,000.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (See page 18 of instructions.)

1	Net income (loss) per books	153,008.31	7	Income recorded on books this year not included on this return (itemize): Tax-exempt interest \$	
2	Federal income tax				
3	Excess of capital losses over capital gains				
4	Income subject to tax not recorded on books this year (itemize):				
5	Expenses recorded on books this year not deducted on this return (itemize): a Depreciation \$ 28,801.70 b Contributions carryover \$ 6,772.00 c Travel and entertainment ... \$ 4,685.42 OWNERS LIFE INS. \$ 34,551.24 COUNTRY CLUB DUES \$ 2,100.00	76,910.36	8	Deductions on this return not charged against book income this year (itemize): a Depreciation \$ b Contributions carryover . \$	
6	Add lines 1 through 5	229,918.67	9	Add lines 7 and 8	
			10	Income (line 28, page 1) — line 6 less line 9	229,918.67

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1	Balance at beginning of year	(63,241.41)	5	Distributions: a Cash	
2	Net income (loss) per books	153,008.31	b	Stock	
3	Other increases (itemize):		c	Property	
			6	Other decreases (itemize):	
4	Add lines 1, 2, and 3	89,766.90	7	Add lines 5 and 6	
			8	Balance at end of year (line 4 less line 7)	89,766.90

U.S. Corporation Income Tax Return

For calendar year 2000 or tax year beginning 8/1, 2000, ending 7/31, 2001.
▶ Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

EXHIBIT S
PAGE 1 OF 2
OMB No. 1545-0123
2000

A Check if a: 1 Consolidated return (attach Form 851) ☐ 2 Personal holding co (attach Sch. PH) ☐ 3 Personal service corp. (as defined in Temporary Regs. sec. 1.441-4T — see instructions) ☐		Use IRS label. Otherwise, print or type. Name GROOME & ASSOCIATES, INC. Number, street, and room or suite no. (If a P.O. box, see page 7 of instructions.) P.O. BOX 729 City or town, state, and ZIP code TRAVELERS REST, SC 29690-0729	B Employer identification number 58-1810366 C Date incorporated 8/31/88 D Total assets (see page 8 of instructions)
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E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change of address **\$ 1,554,647.03**

Income	1a	Gross receipts or sales	5,420,213.08	b	Less returns and allowances	60,606.33	c	Bal ▶	1c	5,359,606.75
	2	Cost of goods sold (Schedule A, line 8)							2	4,957,766.04
	3	Gross profit. Subtract line 2 from line 1c							3	401,840.71
	4	Dividends (Schedule C, line 19)							4	
	5	Interest							5	
	6	Gross rents							6	
	7	Gross royalties							7	
	8	Capital gain net income (attach Schedule D (Form 1120))							8	
	9	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)							9	(6,650.00)
	10	Other income (see page 8 of instructions — attach schedule)							10	
	11	Total income. Add lines 3 through 10							11	395,190.71
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (Schedule E, line 4)							12	
	13	Salaries and wages (less employment credits)							13	235,296.67
	14	Repairs and maintenance							14	19,109.81
	15	Bad debts							15	268,115.51
	16	Rents							16	170,000.00
	17	Taxes and licenses							17	34,013.50
	18	Interest							18	152,838.06
	19	Charitable contributions (see page 11 of instructions for 10% limitation)							19	
	20	Depreciation (attach Form 4562)	20	38,401.20						
	21	Less depreciation claimed on Schedule A and elsewhere on return	21a	12,698.62					21b	25,702.58
	22	Depletion							22	
	23	Advertising							23	7,923.00
	24	Pension, profit-sharing, etc., plans							24	1,557.00
	25	Employee benefit programs							25	
	26	Other deductions (attach schedule)							26	207,050.84
	27	Total deductions. Add lines 12 through 26							27	1,121,606.97
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11							28	(726,416.26)
	Tax and Payments	29	Less: a Net operating loss (NOL) deduction (see page 13 of instructions)	29a						29b
		b Special deductions (Schedule C, line 20)							29c	
30		Taxable income. Subtract line 29c from line 28							30	(726,416.26)
31		Total tax (Schedule J, line 11)							31	0.00
32		Payments: a 1999 overpayment credited to 2000	32a							
b 2000 estimated tax payments		32b								
c Less 2000 refund applied for on Form 4468		32c								
d Bal ▶		32d								
e Tax deposited with Form 7004		32e								
f Credit for tax paid on undistributed capital gains (attach Form 2439)		32f								
33	Estimated tax penalty (see page 14 of instructions). Check if Form 2220 is attached	32g						32h		
34	Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed							33		
35	Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid							34	0.00	
36	Enter amount of line 35 you want: Credited to 2001 estimated tax ▶ Refunded ▶							35		
								36		

Sign Here
 Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer	Date	Title
Preparer's signature	8/10/01	Check if self-employed ☐
Firm's name (or yours if self-employed), address, and ZIP code	THOMBLEY & SIMMONS, P.C. 305 LAWRENCE ST., STE. 100, MARIETTA, GA 30060	Preparer's SSN or PTIN 259-92-6341 EIN 58-1582344 Phone no. 770-423-1234

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		0		130,255.25
2a	Trade notes and accounts receivable	877,056.07		560,887.31	
b	Less allowance for bad debts	()	877,056.07	()	560,887.31
3	Inventories		1,330,062.72		617,993.53
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach schedule)				
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (attach schedule)				
10a	Buildings and other depreciable assets	774,928.61		703,629.36	
b	Less accumulated depreciation	(428,775.90)	346,152.71	(459,248.42)	244,380.94
11a	Depletable assets				
b	Less accumulated depletion	()		()	
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()		()	
14	Other assets (attach schedule) DEPOSITS & CSV-LIFE INS.		100,130.00		1,130.00
15	Total assets		2,653,401.50		1,554,647.03
Liabilities and Shareholders' Equity					
16	Accounts payable		550,025.54		577,305.25
17	Mortgages, notes, bonds payable in less than 1 year		1,781,648.66		1,253,031.87
18	Other current liabilities (attach schedule) ACCRUED EXPENSE		1,460.40		1,444.71
19	Loans from shareholders				140,000.00
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach schedule)				
22	Capital stock: a Preferred stock				
	b Common stock	230,500.00	230,500.00	230,500.00	230,500.00
23	Additional paid-in capital				
24	Retained earnings — Appropriated (attach schedule)				
25	Retained earnings — Unappropriated		89,766.90		(647,634.80)
26	Adjustments to shareholders' equity (attach schedule)				
27	Less cost of treasury stock		()		()
28	Total liabilities and shareholders' equity		2,653,401.50		1,554,647.03

Note: The corporation is not required to complete Schedules M-1 and M-2 if the total assets on line 15, col. (d) of Schedule L are less than \$25,000.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (See page 20 of instructions.)					
1	Net income (loss) per books	(737,401.70)	7	Income recorded on books this year not included on this return (itemize):	
2	Federal income tax			Tax-exempt interest \$	
3	Excess of capital losses over capital gains			CASH SURRENDER VALUE IN EXCESS OF PREMIUMS	68,558.00
4	Income subject to tax not recorded on books this year (itemize):		8	Deductions on this return not charged against book income this year (itemize):	
5	Expenses recorded on books this year not deducted on this return (itemize):		a	Depreciation	\$
a	Depreciation	\$ 43,465.40	b	Contributions carryover	\$
b	Contributions carryover	\$ 2,477.00			
c	Travel and entertainment	\$ 4,413.24	9	Add lines 7 and 8	68,558.00
	OWNERS LIFE INS.	\$ 27,087.80	10	Income (line 28, page 1) — line 6 less line 9	(726,416.26)
	COUNTRY CLUB DUES	\$ 2,100.00			
6	Add lines 1 through 5	(657,858.26)			

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)					
1	Balance at beginning of year	89,766.90	5	Distributions: a Cash	
2	Net income (loss) per books	(737,401.70)		b Stock	
3	Other increases (itemize):			c Property	
			6	Other decreases (itemize):	
4	Add lines 1, 2, and 3	(647,634.80)	7	Add lines 5 and 6	
			8	Balance at end of year (line 4 less line 7)	(647,634.80)

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2001 or tax year beginning AUGUST 1, 2001, ending JULY 31, 20 02
▶ Instructions are separate. See page 20 for Paperwork Reduction Act Notice.

EXHIBIT T
PAGE 1 OF 2
OMB No. 1545-0123
2001

A Check if a: 1 Consolidated return (attach Form 851) ☐ 2 Personal holding co. (attach Sch. PH) ☐ 3 Personal service corp. (as defined in Temporary Regs. sec. 1.441-4T - see instructions) ☐	Use IRS label. Otherwise, print or type. Name <u>GROOME & ASSOCIATES, INC.</u> Number, street, and room or suite no. (If a P.O. box, see page 7 of instructions.) <u>P.O. BOX 729</u> City or town, state, and ZIP code <u>TRAVELERS REST, SC 29690-0729</u>	B Employer identification number <u>58-1810366</u> C Date incorporated <u>8/31/88</u> D Total assets (see page 8 of instructions)
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E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change \$ 1,667,673.10

Income	1a	Gross receipts or sales	<u>4,298,798.99</u>	b	Less returns and allowances	<u>69,509.97</u>	c	Bal ▶	1c	<u>4,229,289.02</u>
	2	Cost of goods sold (Schedule A, line 8)							2	<u>3,439,481.33</u>
	3	Gross profit. Subtract line 2 from line 1c							3	<u>789,807.69</u>
	4	Dividends (Schedule C, line 19)							4	
	5	Interest							5	
	6	Gross rents							6	
	7	Gross royalties							7	
	8	Capital gain net income (attach Schedule D (Form 1120))							8	
	9	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)							9	
	10	Other income (see page 8 of instructions - attach schedule)							10	
	11	Total income. Add lines 3 through 10							11	<u>789,807.69</u>
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (Schedule E, line 4)							12	
	13	Salaries and wages (less employment credits)							13	<u>236,629.90</u>
	14	Repairs and maintenance							14	<u>25,492.54</u>
	15	Bad debts							15	<u>1,870.89</u>
	16	Rents							16	<u>15,000.00</u>
	17	Taxes and licenses							17	<u>31,575.72</u>
	18	Interest							18	<u>89,658.71</u>
	19	Charitable contributions (see page 10 of instructions for 10% limitation)							19	
	20	Depreciation (attach Form 4562)			20	<u>26,624.06</u>				
	21	Less depreciation claimed on Schedule A and elsewhere on return			21a	<u>4,903.82</u>			21b	<u>21,720.24</u>
	22	Depletion							22	
	23	Advertising							23	<u>4,119.95</u>
	24	Pension, profit-sharing, etc., plans							24	<u>5,145.00</u>
	25	Employee benefit programs							25	
	26	Other deductions (attach schedule)							26	<u>223,189.04</u>
	27	Total deductions. Add lines 12 through 26							27	<u>654,401.99</u>
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11							28	<u>135,405.70</u>
	29	Less: a Net operating loss (NOL) deduction (see page 13 of instructions)			29a	<u>135,405.70</u>				
	b Special deductions (Schedule C, line 20)			29b				29c	<u>135,405.70</u>	
Tax and Payments	30	Taxable income. Subtract line 29c from line 28							30	<u>0.00</u>
	31	Total tax (Schedule J, line 11)							31	<u>0.00</u>
	32	Payments: a 2000 overpayment credited to 2001	32a							
		b 2001 estimated tax payments	32b							
		c Less 2001 refund applied for on Form 4466	32c	()						
		d Bal ▶	32d							
		e Tax deposited with Form 7004	32e							
		f Credit for tax paid on undistributed capital gains (attach Form 2439)	32f							
		g Credit for Federal tax on fuels (attach Form 4136). See instructions	32g						32h	
	33	Estimated tax penalty (see page 14 of instructions). Check if Form 2220 is attached							33	
34	Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed							34	<u>0.00</u>	
35	Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid							35		
36	Enter amount of line 35 you want: Credited to 2002 estimated tax ▶ Refunded ▶							36		

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No			
	Signature of officer	Date	Title	Preparer's signature	Date	Check if self-employed ☐	Preparer's SSN or PTIN
Paid Preparer's Use Only	Preparer's signature		08/27/02				259-92-6341
	Firm's name (or yours if self-employed), address, and ZIP code	THOMBLEY & SIMMONS, P.C.		EIN 58-1582344		305 LAWRENCE ST., STE. 100, MARIETTA, GA 30060 Phone no. 770-423-1234	

Schedule L		Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)		
1	Cash		130,255.25		66,245.79		
2a	Trade notes and accounts receivable	560,887.31		697,393.00			
b	Less allowance for bad debts	()	560,887.31	()	697,393.00		
3	Inventories		617,993.53		716,654.72		
4	U.S. government obligations						
5	Tax-exempt securities (see instructions)						
6	Other current assets (attach schedule)						
7	Loans to shareholders						
8	Mortgage and real estate loans						
9	Other investments (attach schedule)						
10a	Buildings and other depreciable assets	703,629.36		704,871.34			
b	Less accumulated depreciation	(459,248.42)	244,380.94	(518,621.75)	186,249.59		
11a	Depletable assets						
b	Less accumulated depletion	()		()			
12	Land (net of any amortization)						
13a	Intangible assets (amortizable only)						
b	Less accumulated amortization	()		()			
14	Other assets (attach schedule) DEPOSITS		1,130.00		1,130.00		
15	Total assets		1,554,647.03		1,667,673.10		
Liabilities and Shareholders' Equity							
16	Accounts payable		577,305.25		667,182.04		
17	Mortgages, notes, bonds payable in less than 1 year		1,253,031.87		1,226,201.87		
18	Other current liabilities (attach schedule) ACCRUED EXPENSE		1,444.71		306.87		
19	Loans from shareholders		140,000.00		124,000.00		
20	Mortgages, notes, bonds payable in 1 year or more						
21	Other liabilities (attach schedule)						
22	Capital stock: a Preferred stock						
	b Common stock	230,500.00	230,500.00	230,500.00	230,500.00		
23	Additional paid-in capital						
24	Retained earnings — Appropriated (attach schedule)						
25	Retained earnings — Unappropriated		(647,634.80)		(580,517.68)		
26	Adjustments to shareholders' equity (attach schedule)						
27	Less cost of treasury stock		()		()		
28	Total liabilities and shareholders' equity		1,554,647.03		1,667,673.10		

Note: The corporation is not required to complete Schedules M-1 and M-2 if the total assets on line 15, col. (d) of Schedule L are less than \$25,000.

Schedule M-1		Reconciliation of Income (Loss) per Books With Income per Return (See page 20 of instructions.)		
1	Net income (loss) per books	67,117.12	7	Income recorded on books this year not included on this return (itemize): Tax-exempt interest \$
2	Federal income tax per books			
3	Excess of capital losses over capital gains			
4	Income subject to tax not recorded on books this year (itemize):			
5	Expenses recorded on books this year not deducted on this return (itemize): a Depreciation \$ 32,749.27 b Charitable contributions \$ 3,002.00 c Travel and entertainment \$ 3,349.31 OWNERS LIFE INS. \$ 27,088.00 COUNTRY CLUB DUES \$ 2,100.00	68,288.58	8	Deductions on this return not charged against book income this year (itemize): a Depreciation \$ b Charitable contributions \$
6	Add lines 1 through 5	135,405.70	9	Add lines 7 and 8
			10	Income (line 28, page 1) — line 6 less line 9
				135,405.70

Schedule M-2		Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)		
1	Balance at beginning of year	(647,634.80)	5	Distributions: a Cash
2	Net income (loss) per books	67,117.12		b Stock
3	Other increases (itemize)			c Property
			6	Other decreases (itemize):
			7	Add lines 5 and 6
4	Add lines 1, 2, and 3	(580,517.68)	8	Balance at end of year (line 4 less line 7)
				(580,517.68)

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2002 or tax year beginning 8/1, 2002, ending 7/31, 20 03
▶ Instructions are separate. See page 20 for Paperwork Reduction Act Notice.

SCHEDULE U
PAGE 1 OF 2

OMB No. 1545-0123

2002

A Check if a: 1 Consolidated return (attach Form 851) ☐ 2 Personal holding co. (attach Sch. PH) ☐ 3 Personal service corp. (as defined in Regulations sec. 1.441-3(c) — see instructions) ☐	Use IRS label. Otherwise, print or type. Name GROOME & ASSOCIATES, INC. Number, street, and room or suite no. (If a P.O. box, see page 7 of instructions.) P.O. BOX 729 City or town, state, and ZIP code TRAVELERS REST, SC 29690-0729	B Employer identification number 58-1810366 C Date incorporated 8/31/88 D Total assets (see page 8 of instructions)
--	---	--

E Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change **\$ 590,439.97**

Income	1a Gross receipts or sales 5,085,722.29	b Less returns and allowances 98,573.08	c Bal ▶	1c 4,987,149.21
	2 Cost of goods sold (Schedule A, line 8)			2 4,167,056.87
	3 Gross profit. Subtract line 2 from line 1c			3 820,092.34
	4 Dividends (Schedule C, line 19)			4
	5 Interest			5
	6 Gross rents			6
	7 Gross royalties			7
	8 Capital gain net income (attach Schedule D (Form 1120))			8
	9 Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)			9 127,000.00
	10 Other income (see page 9 of instructions — attach schedule)			10
	11 Total income. Add lines 3 through 10			11 947,092.34
Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (Schedule E, line 4)			12 3,423.93
	13 Salaries and wages (less employment credits)			13 254,354.04
	14 Repairs and maintenance			14 24,369.05
	15 Bad debts			15 64,138.23
	16 Rents			16 53,000.00
	17 Taxes and licenses			17 51,731.59
	18 Interest			18 75,076.09
	19 Charitable contributions (see page 11 of instructions for 10% limitation)			19
	20 Depreciation (attach Form 4562)	20 32,158.83		
	21 Less depreciation claimed on Schedule A and elsewhere on return	21a 4,448.46		21b 27,710.37
	22 Depletion			22
	23 Advertising			23 3,706.45
	24 Pension, profit-sharing, etc., plans			24 1,483.00
	25 Employee benefit programs			25
	26 Other deductions (attach schedule)			26 269,122.88
	27 Total deductions. Add lines 12 through 26			27 828,115.63
	28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11			28 118,976.71
29 Less: a Net operating loss (NOL) deduction (see page 13 of instructions)	29a 118,976.71			
	b Special deductions (Schedule C, line 20)	29b	29c 118,976.71	
	30 Taxable income. Subtract line 29c from line 28		30 0.00	
	31 Total tax (Schedule J, line 11)		31 0.00	
Tax and Payments	32 Payments: a 2001 overpayment credited to 2002	32a		
	b 2002 estimated tax payments	32b		
	c Less 2002 refund applied for on Form 4466	32c ()	d Bal ▶ 32d	
	e Tax deposited with Form 7004		32e	
	f Credit for tax paid on undistributed capital gains (attach Form 2439)		32f	
	g Credit for Federal tax on fuels (attach Form 4136). See instructions		32g	
	33 Estimated tax penalty (see page 14 of instructions). Check if Form 2220 is attached			33
	34 Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed			34 0.00
	35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid			35
	36 Enter amount of line 35 you want: Credited to 2003 estimated tax ▶ Refunded ▶			36

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer _____ Date _____ Title _____

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature _____ Date **8/28/03** Check if self-employed ☐ Preparer's SSN or PTIN **259-92-6341**
Firm's name (or yours if self-employed), address, and ZIP code **THOMBLEY & SIMMONS, P.C.** **EIN 58-1582344**
305 LAWRENCE ST., STE. 100, MARIETTA, GA 30060 **Phone No. 770-423-1234**

Note: The corporation is not required to complete Schedules L, M-1, and M-2 if Question 13 on Schedule K is answered "Yes."

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		66,245.79		124.82
2a	Trade notes and accounts receivable	697,393.00		323,760.00	
b	Less allowance for bad debts	()	697,393.00	()	323,760.00
3	Inventories		716,654.72		103,864.23
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach schedule)				
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (attach schedule)				
10a	Buildings and other depreciable assets	704,871.34		695,341.02	
b	Less accumulated depreciation	(518,621.75)	186,249.59	(533,780.10)	161,560.92
11a	Depletable assets				
b	Less accumulated depletion	()		()	
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	()		()	
14	Other assets (attach schedule) .. DEPOSITS		1,130.00		1,130.00
15	Total assets		1,667,673.10		590,439.97
Liabilities and Shareholders' Equity					
16	Accounts payable		667,182.04		372,388.97
17	Mortgages, notes, bonds payable in less than 1 year		1,226,201.87		429,073.87
18	Other current liabilities (attach schedule) . ACCRUED EXPENSES		306.87		25.00
19	Loans from shareholders		124,000.00		60,000.00
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach schedule)				
22	Capital stock: a Preferred stock				
	b Common stock	230,500.00	230,500.00	230,500.00	230,500.00
23	Additional paid-in capital				
24	Retained earnings — Appropriated (attach schedule)				
25	Retained earnings — Unappropriated		(580,517.68)		(501,547.87)
26	Adjustments to shareholders' equity (attach schedule)				
27	Less cost of treasury stock		()		()
28	Total liabilities and shareholders' equity		1,667,673.10		590,439.97

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (see page 20 of instructions)			
1	Net income (loss) per books	78,969.81	7 Income recorded on books this year not included on this return (itemize): Tax-exempt interest \$ _____
2	Federal income tax per books	0.00	
3	Excess of capital losses over capital gains		
4	Income subject to tax not recorded on books this year (itemize):		8 Deductions on this return not charged against book income this year (itemize): a Depreciation \$ _____ b Charitable contributions \$ _____
5	Expenses recorded on books this year not deducted on this return (itemize):		
a	Depreciation \$ 4,999.52		
b	Charitable contributions \$ 2,852.00		9 Add lines 7 and 8
c	Travel and entertainment \$ 2,667.28		
	OWNERS LIFE INS. \$ 27,088.10	40,006.90	
6	COUNTRY CLUB DUES \$ 2,400.00		10 Income (line 28, page 1) — line 6 less line 9
	Add lines 1 through 5	118,976.71	

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)				
1	Balance at beginning of year	(580,517.68)	5 Distributions: a Cash	
2	Net income (loss) per books	78,969.81		b Stock
3	Other increases (itemize):			c Property
			6 Other decreases (itemize):	
4	Add lines 1, 2, and 3	(501,547.87)		7 Add lines 5 and 6
			8 Balance at end of year (line 4 less line 7)	
			(501,547.87)	

EXHIBIT X

GROOME AND ASSOCIATES, INCORPORATED
STATEMENT OF INCOME AND RETAINED EARNINGS
For the Year Ended July 31, 1994
(See Accompanying Accountants' Report)

Sales		\$10,042,959.48
Less: Returns and Allowances		<u>338,089.82</u>
Net Sales		\$ 9,704,869.66
Cost of Sales:		
Labor	\$ 214,277.46	
Materials	7,147,813.99	
Depreciation - Machinery & Equipment	41,574.65	
Freight	507,781.49	
Processing	206,099.32	
Production Supplies	36,089.04	
Rewinder and Bailer Expense	9,339.20	
Warehouse Expense	<u>62,972.17</u>	<u>8,225,947.32</u>
Gross Profit		\$ 1,478,922.34
General and Administrative Expenses		<u>1,182,720.51</u>
Profit From Operations		\$ 296,201.83
Other Income:		
Interest Income		<u>1,995.20</u>
		\$ 298,197.03
Other Deductions:		
Contributions	\$ 4,720.00	
Bad Debts	28,854.30	
Interest Expense	25,637.03	
Moving Expense	2,787.73	
Officers' Life Insurance	38,314.44	
Profit Sharing Contribution	<u>80,689.19</u>	<u>181,002.69</u>
Net Income Before Income Taxes		\$ 117,194.34
Income Taxes:		
Current	\$ 19,394.60	
Deferred	<u>16,000.00</u>	<u>35,394.60</u>
Net Income		\$ 81,799.74
Retained Earnings - August 1, 1993		<u>361,514.81</u>
Retained Earnings - July 31, 1994		<u>\$ 443,314.55</u>

Groome and Associates, Incorporated
STATEMENT OF INCOME AND RETAINED EARNINGS
For the Year Ended July 31, 1995
(See Accompanying Accountants' Report)

EXHIBIT Y

Sales		\$ 11,745,147.89
Less: Returns and Allowances		<u>214,448.58</u>
Net Sales		\$ 11,530,701.33
Cost of Sales:		
Labor	\$ 250,275.25	
Materials	9,348,371.84	
Depreciation - Machinery and Equipment	44,199.98	
Freight	352,941.69	
Processing	45,408.75	
Production Supplies	43,733.80	
Rewinder and Bailer Expense	13,125.29	
Warehouse Expense	<u>38,676.18</u>	<u>10,136,732.78</u>
Gross Profit		\$ 1,393,968.55
General and Administrative Expenses		<u>1,098,467.03</u>
Profit from Operations		\$ 295,501.52
Other Income:		
Gain on Sale of Fixed Assets		<u>4,918.27</u>
		\$ 300,419.79
Other Deductions:		
Bad Debts	\$ 33,749.12	
Contributions	8,458.00	
Interest Expense	62,927.29	
Officers' Life Insurance	42,706.44	
Profit Sharing Contribution	<u>84,000.00</u>	<u>231,840.85</u>
Net Income Before Provision for Income Taxes		\$ 68,578.94
Income Taxes:		
Federal	\$ 14,205.11	
State	<u>12,000.00</u>	<u>26,205.11</u>
Net Income		\$ 42,373.83
Retained Earnings - August 1, 1994		<u>443,314.55</u>
Retained Earnings - July 31, 1995		\$ <u>485,688.38</u>

The notes to financial statements are an integral part of this report.

Groome and Associates, Incorporated
STATEMENT OF INCOME AND RETAINED EARNINGS
For the Year Ended July 31, 1996
(See Accompanying Accountants' Report)

EXHIBIT 2

Sales		\$ 9,038,191.15
Less: Returns and Allowances		<u>306,849.26</u>
Net Sales		\$ 8,731,341.89
Cost of Sales:		
Labor	\$ 293,934.39	
Materials	6,962,712.61	
Depreciation - Machinery and Equipment	49,224.83	
Freight	323,482.15	
Processing	16,449.94	
Production Supplies	32,075.95	
Rewinder and Bailer Expense	413.56	
Warehouse Expense	<u>34,442.45</u>	<u>7,712,735.88</u>
Gross Profit		\$ 1,018,606.01
General and Administrative Expenses		<u>913,484.43</u>
Profit from Operations		\$ 105,121.58
Other Income:		
Recovery of Bad Debts		<u>5,002.50</u>
		\$ 110,124.08
Other Deductions:		
Interest Expense	\$ 91,314.00	
Officers' Life Insurance	<u>28,164.00</u>	<u>119,478.00</u>
Net Income (Loss) Before Provision for Income Taxes		\$ (9,353.92)
Income Taxes:		
Current	\$ 389.98	
Deferred	<u>8,000.00</u>	<u>8,389.98</u>
Net Income (Loss)		\$ (17,743.90)
Retained Earnings - August 1, 1995		<u>485,688.38</u>
Retained Earnings - July 31, 1996		\$ <u>467,944.48</u>

The notes to financial statements are an integral part of this report.

Groome and Associates, Incorporated
STATEMENT OF INCOME AND RETAINED EARNINGS
For the Year Ended July 31, 1997
(See Accompanying Accountants' Report)

EXHIBIT AA

Sales		\$ 9,710,597.40	
Less: Returns and Allowances		<u>188,681.21</u>	
Net Sales			\$ 9,521,916.19
Cost of Sales:			
Labor	\$ 340,544.46		
Materials	7,155,334.32		
Depreciation - Machinery and Equipment	57,316.59		
Freight	369,921.64		
Processing	17,889.38		
Production Supplies	40,283.34		
Rewinder and Bailer Expense	193.37		
Warehouse Expense	<u>19,593.83</u>	<u>8,001,076.93</u>	
Gross Profit			\$ 1,520,839.26
General and Administrative Expenses		<u>1,294,773.46</u>	
Profit from Operations			\$ 226,065.80
Other Income:			
Gain on Sale of Fixed Asset	\$ 1,500.00		
Miscellaneous Income	<u>10,198.84</u>	<u>11,698.84</u>	
			\$ 237,764.64
Other Deductions:			
Bad Debts	\$ 9,030.28		
Contributions	32,991.00		
Interest Expense	86,713.53		
Profit Sharing Contribution	<u>50,203.00</u>	<u>178,937.81</u>	
Net Income Before Provision for Income Taxes			\$ 58,826.83
Income Taxes:			
Current	\$ 17,168.14		
Deferred	<u>4,000.00</u>	<u>21,168.14</u>	
Net Income			\$ 37,658.69
Retained Earnings - August 1, 1996	\$ 467,944.48		
Cash Surrender Value Increase in Excess of Premiums Paid.	<u>29,179.10</u>	<u>497,123.58</u>	
Retained Earnings - July 31, 1997			\$ <u>534,782.27</u>

The notes to financial statements are an integral part of this report.

EXHIBIT BB**Reynolds
Investment
Management****FAX / TRANSMITTAL**

To: Patricia/Madge
Cousar Associates Inc.
(404) 266-1168

CC: John Thombley, CPA
(770) 423-1842

From: Lora Harrison

Re: Groome & Associates, Inc. Profit Sharing Plan

Date: 5-29-03

Pages Transmitted: 1

Per the Trustee's request the following checks were issued today from the above referenced Profit Sharing Plan:

\$50,000	payable to Lee Groome
<u>20,000</u>	payable to Lee Groome, Trustee (Withholding)
<u>\$70,000</u>	Total Distribution

Lee is picking up the checks at Charles Schwab and will give the withholding check to Jodi for deposit.

 Madge or Patricia, please mail to Jodi a 945 withholding deposit coupon.

It is my understanding this Plan is to be terminated. Please give me a call at 1-800-800-8461 if you need any information or have any questions.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 8

EMAIL OF BROOKS CANNON

(JULY 29, 2003)

Cannon, Brooks

To: Moss, Stan
Cc: Heath, Jeffrey; Mathews, Jeanne A.; Vicars, Sharon; Wayne, Bo
Subject: RE: Groome and Associates

Stan:

Just spoke with the folks at Groome regarding the inventory issue. Jodi Garrett tells me that she is already reporting inventory on a weekly basis - it should be in the reports you have been receiving. Let me know if this is not the case.

Thanks,

Brooks Cannon
BB&T
(864) 282-3395

-----Original Message-----

From: Moss, Stan
Sent: Tuesday, July 29, 2003 9:49 AM
To: Cannon, Brooks
Cc: Heath, Jeffrey; Mathews, Jeanne A.; Vicars, Sharon; Wayne, Bo
Subject: RE: Groome and Associates

Yes, I would suggest weekly on the inventory.

Jeanne, at some time in the near future, you should expect more frequent inventory reporting which needs to be factored into the borrowing base as soon as you get it.

-----Original Message-----

From: Cannon, Brooks
Sent: Tuesday, July 29, 2003 9:25 AM
To: Moss, Stan
Cc: Heath, Jeffrey; Mathews, Jeanne A.; Vicars, Sharon; Wayne, Bo
Subject: RE: Groome and Associates

Stan:

We do have a lien on all equipment and will receive proceeds from that sale. It appraised for around \$165M about a year ago. I will continue watching this account as things wind down. You bring up an excellent point regarding reporting frequency regarding inventory. What do you suggest here? Weekly? I'm OK with future advances provided they are within loan base. Having said that, I don't expect there to be many.

Thanks,

Brooks Cannon
BB&T
(864) 282-3395

-----Original Message-----

From: Moss, Stan
Sent: Tuesday, July 29, 2003 9:15 AM
To: Cannon, Brooks
Cc: Heath, Jeffrey; Mathews, Jeanne A.; Vicars, Sharon; Wayne, Bo
Subject: RE: Groome and Associates

It sounds like your working relationship with the company is very good and that is important. Do you have a lien on equipment? If so, what is the proper sale price to Lee's brother and will we get those proceeds? Will you be watching this as it winds down or will someone from Special Assets do that? What do you want us to

be doing? I would think at the least we would need to have them increase reporting frequency, especially on inventory since it is only updated once per month and will be declining rapidly. How about future advances? Let us know.

-----Original Message-----

From: Cannon, Brooks
Sent: Monday, July 28, 2003 6:54 PM
To: Moss, Stan
Cc: Heath, Jeffrey
Subject: Groome and Associates

Stan:

I have had several conversations during the past 3 weeks with Lee Groome concerning the future of his business that you need to be aware of. In a nutshell, Lee is winding down the operations of Groome and Associates. Despite the fact that Groome has shown significant improvement during the past 18 months, one of his largest suppliers(Continental) has drastically cut back the credit terms granted to Groome. Historically, Continental allowed Groome to run up to 80 days on its AP in exchange for Groome taking large lots of poor quality paper. However, a recent change in management has resulted in their requiring Groome to pay completely current before shipping any more product. Due to the fact that Groome is poorly capitalized, this financing source was critical for Groome to have enough inventory to operate effectively. As you know, we have seen our ABL line pay down by \$400M since early May as the company's trading assets shrink.

Lee plans to sell his remaining inventory, collect his receivables and repay the line as the company shrinks. At this time, he does not plan to add any additional inventory. Lee is also negotiating the sale of his equipment to his brother who may start a paperboard converting operation. Once all assets have been liquidated and our debt repaid, Lee thinks that Groome will still owe approximately \$300M in trade debt and plans to attempt negotiation of terms with them. At this point, Lee is not considering placing the company in Chapter 7 since there will really be no assets left.

Please call me with any questions.

Thanks,

Brooks Cannon
BB&T
(864) 282-3395

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 9

**BB&T AUDIT OF GROOME & ASSOCIATES
(MAY 22, 2003)**

ABL Field Auditor's Internal Comments

Client: Groome & Associates
Report Type: Regular

Review Time: 10
Travel Time: 1

ABL Auditor: Chris Cooke
Audit Date: 05/22/03
Audit Grade: Satisfactory
Risk Grade: 6
Relationship Manager: Brooks Cannon

Detail Summary:
Accounts Receivable: \$749,806
A/R % Eligible: 91.8%
Availability: \$104,513

Advance Rates and Audit Frequency:

Dilution YTD: 3.8%

Approved:

A/R %: 85
INV %: 50
Audit Frequency: Quarterly

Total Concentrations:
Number of accounts: 7
% of A/R: 68%

Total Inventory: \$415,197

Eligible Inventory: \$415,197

ABL Recommends:

A/R %: 80
INV %: 40
Audit Frequency: same

Total Accounts Payable: \$466,600
A/P Over 60 Days: \$195,945
as % of Total: 42%

Other General Comments/Specific Concerns/Specific Recommendations:

An ABL review was completed as of 04/30/03 with a satisfactory rating.

Books and records were in good order and tests performed on AR and inventory showed satisfactory results.

Financial Information: YTD sales were 4.2o and gross profit was 764,632 (18.3%). Operating expenses YTD were at 14.9% of Gross Sales. Retained earnings as of 7/10/02(year end) was (580,518) and current YTD income of 138k

Page 5, A/B/C) The accounts receivable test was completed with satisfactory results. I also completed a cross aging test which was satisfactory as well.

Page 9) Toccoa pkg is a concentration account at 36% of O/S receivables and 24% of Toccoa Receivables are 90+ past due.

Page 10) Accounts receivable invoice test completed with satisfactory results.

Page 12) There is approximately 60k in old receivables that will probably never be collected and should be written off. This would reduce ytd earnings from 138k to 42k.

Page 14) Cash application test completed with satisfactory results. All deposits are being made and posted in a timely manner.

Page 7) Dilution continues to improve. See Page 7 for details. The average turn is in the 50 day range. Page 8) showed that all credit memos tested were credit and rebills.

Page 4) Auditor suggests that a reserve for bad debt be set up to at least cover the old receivables of 65k.

Page 18) Inventory was tested with satisfactory results. They have good perpetual records of inventory.

Call if you have any questions. 864-303-2476.

Internal Comments are for BB&T internal use only.

Letter

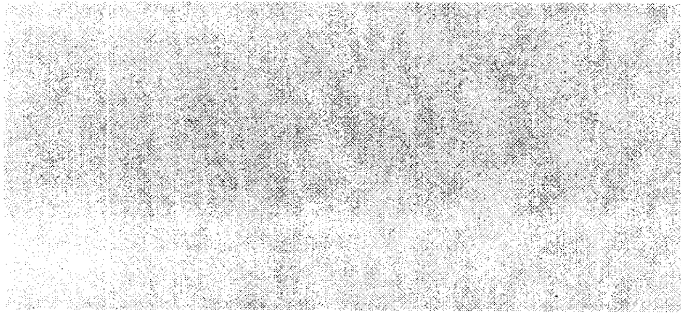
Availability Summary

1. Total A/R per aging dated:	<u>04/30/03</u>	\$	<u>749,806.00</u>
2. Less: Ineligible Accounts (See page 5)		\$	<u>61,669.00</u>
3. Eligible Accounts Receivable		\$	<u>688,137.00</u>
4. Accounts Receivable Advance Rate	x <u>85.00</u> %		
5. Gross A/R Availability		\$	<u>584,916.45</u>
6. Gross Inventory Availability (from page 17)		\$	<u>207,446.00</u>
7. Less Reserves		\$	<u></u>
8. Total Gross Availability (not to exceed <u>\$1,188,703</u>)	)	\$	<u>792,362.45</u>
9. Less end of period loan balance		\$	<u>810,599.00</u>
10. Net Availability (Over Advance)		\$	<u>(18,236.55)</u>
11. Other Availability <u>Equipment</u>		\$	<u>122,750.00</u>
12. Adjusted Availability		\$	<u>104,513.45</u>

85

\$1,188,703.00

Comments:



BB&T

Rating: Satisfactory
Risk Grade: 6

BB&T Audit Program © Asset Based Lending

Filename: GROM0503.XLS

Company Name: Groome & Associates

Address: Box 729,

City: Travelers Rest

State: S.C.

Zip: 29690

Phone #: (864) 294-8001

Fax #: (864) 294-9368

Loan Acct #:

Date: 05/22/03

Examiner: Chris Cooke

Prospect:

Customer: xx

Description Of Business:

Purchases paper seconds and either sells as is it a discount or runs through machine to delete defects and sell at higher cost.

Last Exam Date: 01/10/03

Examiner: Chris Cooke

Company's Fiscal Year End: 07/31

Examiner's Contact:

Jodi Garret, Eric Huggins

Condition Of Company's Books:

Satisfactory

Was ABL operations contacted?

No

Was Account Officer contacted?

Yes

Comments:

Very good records

Results of courthouse search:

Not part of this audit.

Examination Report Distribution:

Account Officer: Brooks Cannon

SCO: Jeff Heath

RLA: Garland Overstreet

Audit Manager: Jack Fisher

Other: Brooks Cannon/Stan Moss

Region: Upstate

Version 1.0

6/2/03 2:08 PM

Regular

Index

	<u>Page</u>
Books and Records / General	2
Availability Summary	3
<u>Accounts Receivable</u>	
Accounts Receivable General Questions	4
Accounts Receivable Aging Analysis	5
Accounts Receivable Ineligible Analysis	5
Accounts Receivable Review and Reconciliation	6
Accounts Receivable Statistics (Proof of A/R)	7
Accounts Receivable Concentrations	9
Shipping Evidence Test	10
Credit Memo Test	11
Past Due Analysis	12
Credit Approval Process	13
Cash Application Test	14
<u>Order Backlog</u>	15
<u>Inventory</u>	
General Questions	16
Inventory Analysis	17
Inventory Test Counts	18
Gross Profit Inventory Test	19
Obsolete Inventory Worksheet	20
Inventory Review Questions	21
<u>Accounts Payable</u>	
A/P Aging Analysis & General Questions	22
A/P Concentrations	23
A/P Review Questions	24
<u>Cash Receipts Review</u>	25

Books And Records / General

General Ledger posted through: 04/30/03

Subsidiary Journals: 04/30/03

	<u>Favorable</u>	<u>Unfavorable</u>
1. Do company's records and LBR's agree with BB&T's loan statement?	<u>x</u>	<u></u>
2. Are reports to ABLS accurate?	<u>x</u>	<u></u>
3. Does company's INV ledger agree with F/S, G/L, and LBR?	<u>x</u>	<u></u>
4. Is company reporting to ABLS in a timely manner?	<u>x</u>	<u></u>
5. Does Borrowing Base Report agree with aging, F/S, and G/L?	<u>x</u>	<u></u>
6. Does company's A/P ledger agree with F/S and G/L?	<u>x</u>	<u></u>
7. Does company's cash account agree with F/S and G/L?	<u>x</u>	<u></u>

Comments:

Good records... They all agree.

Availability Summary

1. Total A/R per aging dated:	<u>04/30/03</u>	\$	<u>749,806.00</u>
2. Less: Ineligible Accounts (See page 5)		\$	<u>61,669.00</u>
3. Eligible Accounts Receivable		\$	<u>688,137.00</u>
4. Accounts Receivable Advance Rate	x <u>85.00</u> %		
5. Gross A/R Availability		\$	<u>584,916.45</u>
6. Gross Inventory Availability (from page 17)		\$	<u>207,446.00</u>
7. Less Reserves		\$	<u></u>
8. Total Gross Availability (not to exceed	<u>\$1,188,703</u>)	\$	<u>792,362.45</u>
9. Less end of period loan balance		\$	<u>810,599.00</u>
10. Net Availability (Over Advance)		\$	<u>(18,236.55)</u>
11. Other Availability	<u>Equipment</u>	\$	<u>122,750.00</u>
12. Adjusted Availability		\$	<u>104,513.45</u>

85

\$1,188,703.00

Comments:

Accounts Receivable

	<u>Favorable</u>	<u>Unfavorable</u>
1. Is billing done only after products are shipped or services rendered?	x	
2. Are credit memos issued on a timely basis?	x	
3. Were any redating or chargebacks noted?	x	
4. Were the ship to and bill to address different?	x	
5. Were any skipped invoice numbers noted?	x	
6. Were any progress billings noted?	x	
7. Does company have any retainage in its A/R?	x	
8. Does company have any contra accounts?	comment	
9. Are there intercompany accounts?	x	
10. Are all customers located in the U.S. or a U.S. territory?	x	
11. Does company sell to any Federal agencies?	x	
12. Has the Bank complied with the Assignment of Claims Act?	na	
13. Were any consignment sales noted?	x	
14. Does company's reserve for bad debts appear adequate?	no reserve	
15. Are customer deposits deducted from the invoice face amount before being assigned to the Bank?	x	
16. Are any accounts settled by notes receivable?	x	
17. Are extended terms granted?	x	
18. Were verifications performed?	no	

Comments:

8. Continental Paper has been noted in prior reviews. Not on the current aging.

Summary Accounts Receivable Analysis

Aged by: Invoice Date

	Current Exam As of <u>04/30/03</u>		Previous Exam As of <u>12/31/02</u>	
<u>current</u>	\$ <u>25,719</u>	<u>3.4</u> %	\$ <u>12,882</u>	<u>1.7</u> %
<u>1-30</u>	\$ <u>344,563</u>	<u>46.0</u> %	\$ <u>303,029</u>	<u>39.5</u> %
<u>31-60</u>	\$ <u>194,488</u>	<u>25.9</u> %	\$ <u>358,931</u>	<u>46.8</u> %
<u>61-90</u>	\$ <u>133,526</u>	<u>17.8</u> %	\$ <u>50,975</u>	<u>6.7</u> %
<u>90+</u>	\$ <u>59,936</u>	<u>8.0</u> %	\$ <u>65,442</u>	<u>8.5</u> %
<u>open credits</u>	\$ <u>(8,426)</u>	<u>8.0</u> %	\$ <u>(24,932)</u>	<u>-3.3</u> %
Total A/R	\$ <u>749,806</u>	<u>100.0</u> %	\$ <u>766,327</u>	<u>100.0</u> %

Accounts Receivable Ineligible Analysis

<u>Ineligibles:</u>	As of <u>04/30/03</u>		As of <u>12/31/02</u>	
90+	\$ <u>59,936</u>	<u>8.0</u> %	\$ <u>65,442</u>	<u>8.5</u> %
50% Rule	\$ <u>0</u>	<u>0.0</u> %	\$ <u>0</u>	<u>0.0</u> %
Aged Credit Balances	\$ <u>0</u>	<u>0.0</u> %	\$ <u>0</u>	<u>0.0</u> %
Contra	\$ <u>1,733</u>	<u>0.2</u> %	\$ <u>5,603</u>	<u>0.7</u> %
Intercompany	\$ <u>0</u>	<u>0.0</u> %	\$ <u>0</u>	<u>0.0</u> %
Foreign	\$ <u>0</u>	<u>0.0</u> %	\$ <u>0</u>	<u>0.0</u> %
COD	\$ <u>0</u>	<u>0.0</u> %	\$ <u>0</u>	<u>0.0</u> %
Discounts	\$ <u>0</u>	<u>0.0</u> %	\$ <u>0</u>	<u>0.0</u> %
Finance Charges	\$ <u>0</u>	<u>0.0</u> %	\$ <u>0</u>	<u>0.0</u> %
Total Ineligibles	\$ <u>61,669</u>	<u>8.2</u> %	\$ <u>71,045</u>	<u>9.3</u> %
Net Eligible A/R	\$ <u>688,137</u>	<u>91.8%</u> %	\$ <u>695,282</u>	<u>90.7%</u> %

Company: Groome & Associates

Aged by: Invoice Date

As Of: 04/30/03

current	Days	\$ 25,719	3%
1-30	Days	\$ 344,563	46%
31-60	Days	\$ 194,488	26%
61-90	Days	\$ 133,526	18%
90+	Other	\$ 59,936	8%
open credits	Other	\$ (8,426)	-1%
Total A/R		\$ 749,806	100%

Company:

Aged by:

As Of:

current	Days	\$	
1-30	Days	\$	
31-60	Days	\$	
61-90	Days	\$	
90+	Other	\$	
open credits	Other	\$	
Total A/R		\$ 0	

Accounts Receivable Ineligible Analysis

Ineligibles:

90+	Days	\$ 59,936	8%
50% Rule			0%
Aged Credit Balances	\$	0	0%
Contra	\$	1,733	0%
Intercompany	\$	0	0%
Foreign	\$	0	0%
COD	\$	0	0%
Discounts	\$	0	0%
Finance Charges	\$	0	0%
Total Ineligibles	\$	61,669	8%
Net Eligible A/R	\$	688,137	92%

Ineligibles:

90+	Days		
50% Rule			
Aged Credit Balances	\$		
Contra	\$		
Intercompany	\$		
Foreign	\$		
COD	\$		
Discounts	\$		
Other	\$		
Total Ineligibles	\$	0	
Net Eligible A/R	\$	0	

Accounts Receivable Review

1. What percentage of sales are:

Direct: 50 %

Drop Shipments: 49 %

Customer Pickup: 1 %

2. Total sales to affiliates YTD

§ _____

This is 0 % of YTD sales.

3. General terms of sales:

N30 Some 2% 10/ Net 30 Toccoa Pkg has 45 day terms.

Any recent change in terms offered? Yes ☐ No ☒

If yes, explain:

Other terms:

Accounts Receivable Reconciliation

Accounts Receivable per A/R Aging	\$.749,806
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Accounts Receivable per General Ledger	\$ 749,806
--	------------

A/R per Borrowing Base Report	\$ 749,806
-------------------------------	------------

A/R per Financial Statements	\$ 749,806
------------------------------	------------

Explain in detail any difference between these three amounts:

Should customer submit a revised LBR to the Bank? ☒ Yes

xx No

(proof of A/R)

Last Year										
DATE	Beginning A/R	Gross Sales	Other Debits	Cash Collect.	Credit Memos	Discounts	Other Credits	Ending A/R	Dilution	Turn Days
Aug-01	829,003	399,458		437,934	19,069	671	268,116	\$502,672	72.1%	58
Sep-01	502,672	353,331		377,588	11,582	474		\$466,359	3.4%	41
Oct-01	466,359	346,336		346,734	9,934	758		\$455,269	3.1%	41
Nov-01	455,269	387,026		331,140	90	588		\$510,477	0.2%	42
Dec-01	510,477	258,136		314,264	8,644	214		\$445,491	3.4%	50
Jan-02	445,491	380,149		348,739	922	96		\$475,883	0.3%	39
Feb-02	475,883	360,397		222,869	33,238	242		\$579,931	9.3%	65
Mar-02	579,931	233,092		287,462	13,307	363		\$511,891	5.9%	62
Apr-02	511,891	443,668		335,124	53,678	824		\$565,933	12.3%	47
May-02	565,933	470,980		260,926	31,962	297		\$743,728	6.8%	66
Jun-02	743,728	284,464		487,480	6,575	2,905		\$531,232	3.3%	47
Jul-02	531,232	585,513		341,840	59,084	18,428		\$697,393	13.2%	47
Total	Last Year	\$4,502,550	\$0	\$4,092,100	\$248,085	\$25,860	\$268,116		12.0%	49

Current Year										
DATE	Beginning A/R	Gross Sales	Other Debits	Cash Collect.	Memos	Credit Discounts	Other Credits	Ending A/R	Dilution	Turn Days
Aug-02	697,393	501,777		460,323	13,566	2,997		\$722,284	3.3%	46
Sep-02	722,284	603,909		455,293	2,201	0		\$868,699	0.4%	48
Oct-02	868,699	662,169		641,757	31,438	716		\$856,957	4.9%	41
Nov-02	856,957	461,099		528,823	4,207	324		\$784,702	1.0%	49
Dec-02	784,702	339,362		330,899	25,737	1,102		\$766,326	7.9%	72
Jan-03	766,326	425,539		540,923	17,542	226		\$633,174	4.2%	43
Feb-03	633,174	457,020		372,474	1,200	665		\$715,855	0.4%	52
Mar-03	715,855	542,211		450,022	7,872	670		\$799,502	1.6%	49
Apr-03	799,502	362,828		356,574	55,229	721		\$749,806	15.4%	68
									0.0%	
									0.0%	
									0.0%	
Total	Current Year	\$4,355,914	\$0	\$4,137,088	\$158,992	\$7,421	\$0		3.8%	50

Cash Sales YTD Is this normal? yes no

Included in Other Credits are all other non-cash deductions from A/R.
Large unusual debits and credits should be investigated and explained below.

What is the true dilution after adjusting for near same day rebilling?

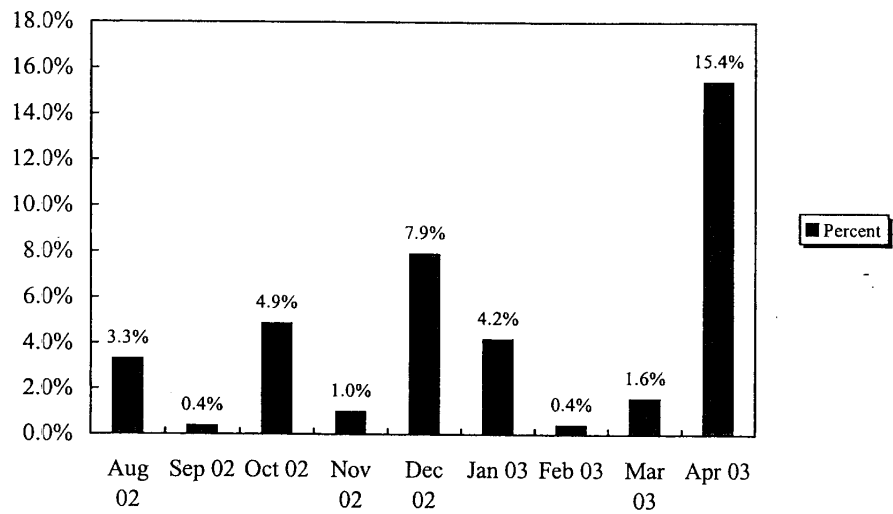
Yes

Comments:

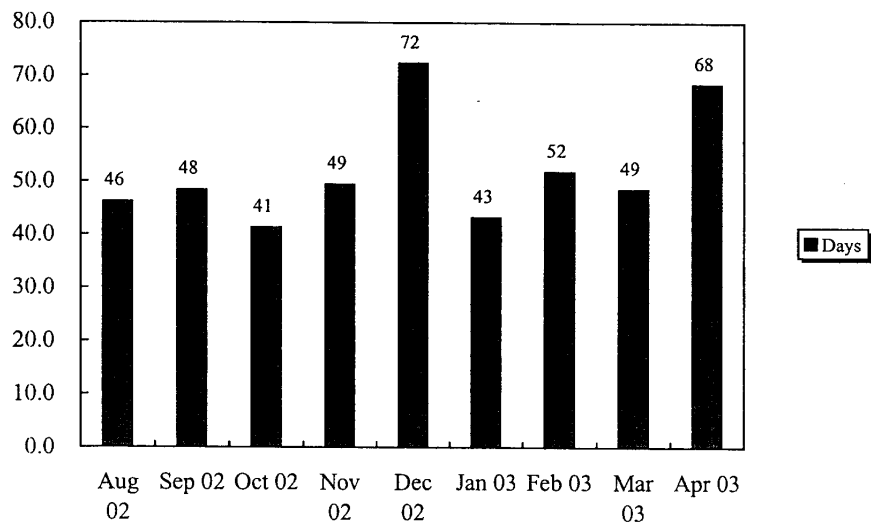
Dilution is continuing to improve.

Source:

Dilution



A/R Turnover



Accounts Receivable Concentrations

Aging Date: 04/30/03

Customer	% of A/R	Total	1-30	31-60	61-90	90+
Atlanta Intercecll	6.3%	47,185	41,022	6,163		
Box Board Supply	5.6%	42,141			13,747	28,394
Norcom	4.8%	36,041	24,051	11,990		
Old Dominion Box Co.	3.9%	29,192	7,501	8,028	13,663	
Field Container-South	8.5%	63,527	23,146	39,071	1,310	
Toccoa Packaging	35.8%	268,727	115,727	89,057	63,943	
River City Paper	2.9%	21,997				21,997
Totals	67.9%	\$508,810	\$211,447	\$154,309	\$92,663	\$50,391

Comments:

Toccoa Packaging is considered a concentration account due to the fact that it is 35.8% of the total receivables as of 04/30/03.

23.7% of the outstanding balance on Toccoa Packaging is 61+ days past due.

Accounts Receivable
Invoice Evidence Test

Customer	Invoice #	Amount	Inv. Date	Ship Date	Carrier	Who Signed	Terms	Date Paid
SFC1	110244	9,189	01/02/03	12/30/03	Brooks	Driver	Net 30	02/17/03
SR1	110286	10,970	01/28/03	01/28/03	Elite	Driver	Net 30	03/13/03
CL1	110300	12,556	01/31/03	01/31/03	Crescent	Driver	Net 30	03/06/03
DCC1	110356	11,116	02/27/03	02/27/03	CPU	Customer	Net 30	03/12/03
TP1	110357	9,294	02/27/03	02/27/03	Hemphill	Driver	Net 30	05/08/03
TP1	110358	4,768	02/27/03	02/27/03	Hemphill	Driver	Net 30	05/08/03
PPT1	110359	10,191	02/28/03	02/28/03	CPU	Customer	Net 30	04/09/03
WP1	110425	15,109	03/31/03	04/02/03	CPU	Customer	Back Order	05/13/03
WBC1	110426	12,433	03/31/03	03/31/03	Winterbell	Driver	Net 30	04/07/03
CPC1	110427	11,426	03/31/03	03/31/03	CPU	Customer	Net 30	05/08/03
SFC1	110475	10,318	04/30/03	05/01/03	Direct	Direct	2% 10/Net 30	05/20/03
SFC1	110477	12,829	04/30/03	04/30/03	Rapid Delivery	Driver	2% 10/Net 30	05/21/03
NC1	110469	11,753	04/28/03	04/28/03	Cline	Driver	Net 30	Open
NC1	110443	12,364	04/09/03	04/09/03	Hall Express	Driver	Net 30	04/22/03
Total:		\$154,316						

Comments:

Invoice evidence test completed with satisfactory results.

Source of information:

Credit Memo Test

Customer	Credit Memo #	Amount	Date	Applied To	Explanation
EK1	10530	6,045	01/20/03	109853	Credit for disputed invoice balances.
Morgpl	10531	12,180	01/27/03	110274	Credit and Rebill
BS1	10532	13,071	01/28/03	110271	Credit and Rebill
SR1	10533	10,960	01/29/03	110280	Credit and Rebill
ACT1	10534	19,676	01/30/03	110279	Credit and Rebill
HP1	10535	10,255	01/31/03	110273	Credit and Rebill
HP1	10536	10,519	01/31/03	110269	Credit and Rebill
HPE1	10537	10,326	01/31/03	110270	Credit and Rebill

Are credit memos issued in a timely manner? ☒ Yes

If not, explain:

Comments:

Source of information:

Accounts Receivable Past Due Analysis

Aging Date: 04/30/03

Customer	Total Due	Total Past Due	Explanation
Canadian Paper Connect.	13,253	1,828	Most likely will be written off
Ekvall International Ltd	17,779	17,779	Most likely will be written off
Finch Paper	14,203	650	Freight charge discrepancy
Infinity Paper	12,448	12,448	To be written off
Morgan Paper Corp	652	652	Freight charge discrepancy
Sterling Paper Corp	4,581	4,581	To be written off
River City Paper	21,998	21,998	To be written off
Totals	\$84,914	\$59,936	

Comments:

Infinity Paper was noted on the last two audits. There was 12448 past due as of 12/31/02. This balance remains on the aging as of 04/30/03.

River City Paper had the outstanding balance in the last two audits.

It is my opinion that these two customers should be written off to bad debt, or a reserve made for at least 65k.

The above past dues represents 100% of all outstanding balances greater than 90 days past due.

Source of information:

Credit Approval Process

1. Describe credit approval process:

D&B, three referrals, and a bank reference.

2. Describe Collection Follow-up:

Call for collection at 31 days past due. Unusual for accounts to go past 45 days.

Is credit and collection policy adequate? _____ Yes _____ No

If no, explain:

3. Who has authority to grant credit? (Name and Title)

Lee Groome

Title: Owner

Jodi Garrett

Title:

Title: Corporate controller

4. Approximate number of invoices generated monthly: 40

Average size of invoices? 8,620

Number Of Customers? 37

Number with open balances? 36

Types of customers? Various

Are monthly customer statements prepared and mailed? _____

5. Bad Debts written off YTD \$ 0

For the 9 months ending 04/30/03

Allowance for Bad Debts \$ 0

This is 0% of credit sales YTD

Bad Debts written off last year \$ 1,870

This was 0% of credit sales

Additional comments:

Appears that approximately 60k

Cash Application Test

Customer	Receipt Amount	Deposit Date	Posting Date	Invoice #
SFC1	9,189	02/17/03	02/17/03	110244
SR1	10,970	03/13/03	03/13/03	110286
CL1	12,556	03/06/03	03/06/03	110300
DCC1	11,116	03/12/03	03/12/03	110356
TP1	9,294	05/08/03	05/08/03	110357
TP1	4,768	05/08/03	05/08/03	110358
PPT1	10,191	04/09/03	04/09/03	110359
WP1	15,109	05/13/03	05/13/03	110425
WBC1	12,433	04/07/03	04/07/03	110426
CPC11	11,426	05/08/03	05/08/03	110427
SFC1	10,318	05/20/03	05/20/03	110475
SFC1	12,829	05/21/03	05/21/03	110477
NC1	12,364	04/22/03	04/22/03	110443
Totals	\$142,563			

Comments:

Traced deposits to AR General ledger detail, and then back to the bank statement.
 Test showed satisfactory results. Deposits are being posted on a timely basis.

Source of information:

Inventory

Description:

Second hand paper used to make boxes

	<u>Favorable</u>	<u>Unfavorable</u>
1. Is physical inventory taken at least annually and observed by approved accountants?	x	
2. Does inventory appear in satisfactory condition?	x	
3. Are storage facilities neat and orderly?	x	
4. Does fire and theft protection appear adequate?	x	
5. Were any potential EPA problems or dangerous conditions noted?	x	
6. Does BB&T have a first lien on all inventory?	x	
7. Any stale inventory noted?	x	
8. Any evidence of overbuying inventory?	x	
9. Is there any bill and hold inventory?	x	
10. Is any of customer's inventory on company's premises?	x	
11. Is any of customer's equipment on company's premises?	x	
12. Is weather a factor in inventory storage?	x	
13. Was there any consigned inventory noted?	x	
14. Is inventory built to customer specification?	x	
15. Is in-transit inventory part of collateral?	x	

Comments:

Summary Inventory Analysis

Current Exam As Of: 04/30/03

	Amount	Ineligible	Availability
Stock	\$ <u>415,197</u>	\$ <u>0</u>	\$ <u>207,599</u>
Other	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Total	\$ <u>415,197</u>	\$ <u>0</u>	\$ <u>207,446</u>

Inventory Cap: \$ 600,000

Inventory Loan Available: \$ 207,446

Inventory Turnover: 33 days

Cost of Goods Sold: \$ 3,424,869

Days in Audit Period: 273

Previous Exam As Of: 12/31/02

	Amount	Ineligible	Availability
Other	\$ <u>810,592</u>	\$ <u>0</u>	\$ <u>405,296</u>
Other	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Total	\$ <u>810,592</u>	\$ <u>0</u>	\$ <u>405,296</u>

Inventory Turnover: _____

Inventory Locations

Address	Amount (\$)	%	New Location?	
			Yes	No
Travelers Rest	415,197	100%		x
		0%		
		0%		
		0%		

Comments:

Inventory cap changed from previous audit . 1,200,000 to 600,000

Inventory Analysis

Company:	Groome & Associates		As Of :	04/30/03
	Amount	Ineligible	Adv. Rate %	Availability
Stock	\$ 415,197	\$	50	\$ 207,599
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Total	\$ 415,197			\$ 207,599

Company:			As Of :	
	Amount	Ineligible	Adv. Rate %	Availability
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Total	\$ 0			\$ 0

Company:			As Of :	
	Amount	Ineligible	Adv. Rate %	Availability
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Other	\$	\$		\$ 0
Total	\$ 0			\$ 0

Inventory Test Count Worksheet

Company Groome & Associates
 Location Travelers Rest % of total inventory tested 2.40% in \$.
 Control Method Perpetual
 Total Inventory \$ 415,197

Item Description	Quantity Per Company	Test Counts	Variance		Unit Cost	Impact of var. +/-	Remarks
			+	-			
36790	1	1			652.40	0.00%	
36755	1	1			661.20	0.00%	
36753	1	1			665.20	0.00%	
36751	1	1			663.21	0.00%	
35048	1	1			1,000.71	0.00%	
36748	1	1			653.60	0.00%	
36791	1	1			653.20	0.00%	
23420	1	1			871.83	0.00%	
35384	1	1			1,115.60	0.00%	
2568F	1	1			1,015.19	0.00%	
34808	1	1			1,045.50	0.00%	
36605	1	1			966.27	0.00%	
						#REF!	
Total Variance %						0.0%	
Total Variance \$						\$0	
Extrapolated Variance \$						\$0	
Absolute Variance \$						\$0	
Absolute Variance %						0.0%	

Comments:

Inventory test satisfactory.

Inventory Review

1. How is inventory priced? Basic cost + freight and handling charges
2. Briefly describe inventory records:
 Perpetual
3. Was spot check of inventory performed? Yes
4. What techniques are used to control inventory?
 Cycle counts
5. How many people and how long does the physical inventory take, including pricing and extension?
 One person one week
6. How much inventory is sold under warranty? None
7. Is there a reserve for obsolete inventory? If so, how much? No
8. Explain repurchase agreements:
 NA
9. Explain inventory ordering/reordering procedure:
 Buy seconds as needed or as available to buy.

 Comments:
 Obsolete inventory written off during monthly cycle counts through Cost of Sales.

Accounts Payable

	<u>Favorable</u>	<u>Unfavorable</u>
1. Is there any sign the company is having difficulty receiving credit?	x	
2. Is company on COD with any suppliers?	x	
3. Does company take advantage of discounts?	x	
4. Were any major purchase returns noted?	x	
5. Were any significant debit balances to A/P noted?	x	
6. Were any unvouched payables noted?		x

Summary Accounts Payable Analysis

Aged By: Due Date

Explain other method:

Current Exam					Prior Exam				
As of: <u>04/30/03</u>					As of: <u>12/31/02</u>				
<u>current</u>	days	\$	<u>169,745</u>	<u>36%</u>	<u>current</u>	days	\$	<u>445,784</u>	<u>41%</u>
<u>1-30</u>	days	\$	<u>100,910</u>	<u>22%</u>	<u>37,286</u>	days	\$	<u>275,675</u>	<u>42%</u>
<u>31-60</u>	days	\$	<u>195,945</u>	<u>42%</u>	<u>31-60</u>	days	\$	<u>140,747</u>	<u>17%</u>
<u>61+</u>	days	\$	<u>0</u>	<u>0%</u>	<u>61-90</u>	days	\$	<u>0</u>	<u>0%</u>
		\$	<u>0</u>	<u>0%</u>	<u>91+</u>		\$	<u>0</u>	<u>0%</u>
Book Overdraft \$			<u>0</u>	<u>0%</u>	Book Overdraft \$			<u>0</u>	<u>0%</u>
Total \$			<u>466,600</u>	<u>100%</u>	Total \$			<u>862,206</u>	<u>100%</u>

Comments:

The unposted amount was \$79,356. The GL balance is \$545,959, the aging balance is \$466,600.

Accounts Payable Analysis

Company: Groome & Associates

Aged By: Due Date

Current Exam As Of : 04/30/03

current	days	\$	169,745	36%
1-30	days	\$	100,910	22%
31-60	days	\$	195,945	42%
61+	days	\$		0%
		\$		0%
Book Overdraft		\$	0	0%
Total		\$	466,600	100%

Company:

Aged By:

Current Exam As Of :

	days	\$		
	days	\$		
	days	\$		
	days	\$		
		\$		
Book Overdraft		\$		
Total		\$	0	

Company:

Aged By:

Current Exam As Of :

	days	\$		
	days	\$		
	days	\$		
	days	\$		
		\$		
Book Overdraft		\$		
Total		\$	0	

Company:

Aged By:

Current Exam As Of :

	days	\$		
	days	\$		
	days	\$		
	days	\$		
		\$		
Book Overdraft		\$		
Total		\$	0	

Accounts Payable Concentrations

Aging Date: 04/30/03

Vendor	%	Total	current	31-60	61-90	Over	Subsequent Payments
Continental Paper Grading	63.9%	298,373	48,799	53,629	195,945		
Gulf States Paper Corporation	22.0%	102,721	62,485	40,236			
Spikes Freight Service	2.9%	13,537	10,983	2,554			
International Paper	5.1%	23,670	23,670				
All Other vendors	6.1%	28,299	23,808	4,491	0	0	
Totals	100.0%	\$466,600	\$169,745	\$100,910	\$195,945	\$0	\$0

Comments:

The vendors above represent the top 4 vendors as of 4/30/03.

Source of Information:

AP Aging

Accounts Payable Review

1. What are normal terms granted by suppliers?

N30

2. Do any suppliers grant special terms? No

If yes, please explain:

3. Have there been any recent changes in purchasing terms?

No

If yes, please explain:

4. Where any foreign suppliers noted?

No

If yes, are letters of credit deducted from availability?

5. Were any obligations to/from officers or affiliates noted?

Loan payable to Sholder 47k

If yes, please explain:

6. What is accounts payable turnover?

37 days

7. Are estimated income tax payments current?

Yes, per Jodie Garret

If no, please explain:

8. Are estimated payroll tax payments current?

Yes, per operating account statement

If no, please explain:

Comments:

Cash Receipts Review

1. Was latest month's bank statements reconciled? Comment

If no, please explain:

2. Were canceled checks reviewed? Yes

Please explain any unusual items:

3. Were any held checks noted: No

If yes, what was the effect on the accounts?

4. Are all A/R collections required to be deposited in a lock box or blocked deposit account? Yes

5. If company has a lock box, what % of A/R collections are remitted directly to the lock box? Comment

6. Deposits in month(s) of:	April	\$536,401	
- Less: Advances under our line of credit		\$178,130	<<<<<<<<
= Deposits from other sources		\$358,271	

Are any of these other deposits cause for concern?

If yes, explain:

Comments:

Lockbox established as of 4/15/03. Auditor will confirm lock box percentage at next quarterly audit.

The bank statement for April was in the process of being reconciled at the time of the audit. It was not completed due to the fact that the lock box was instituted during the middle of the month, and this made it harder to reconcile the bank statement. This will be reviewed again during the next audit.

To: Joyce Morelli

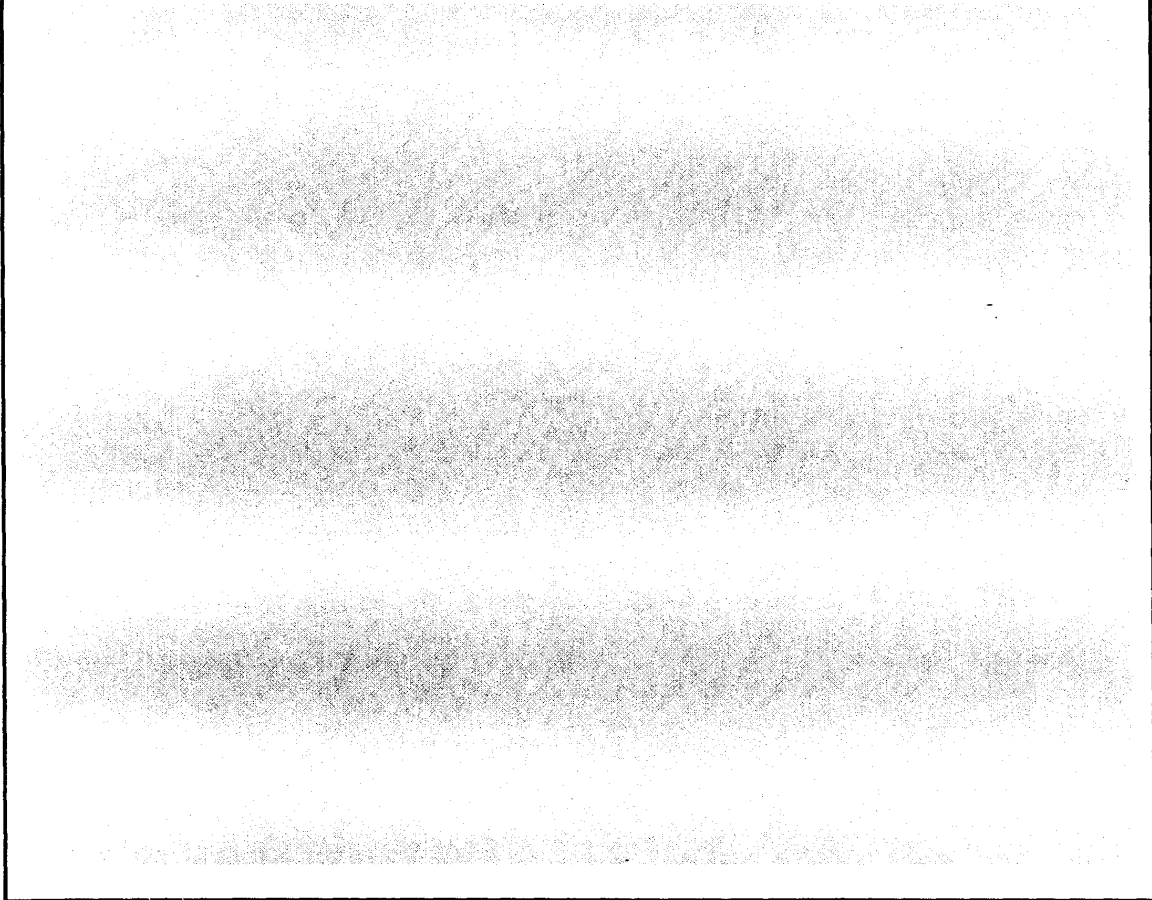
From: Chris Cooke

Below is a list of confirmations completed during the 05/03 audit.

	Date	Client	Customer	Invoice			Confirmed (By Cust.)	Contact
				Number	Date	Amount		
1	05/22/03	Groome & Associates	Boelter	110482	05/06/03	\$13,712.50	X	Melinda
2	05/22/03	Groome & Associates	HPE	110501	05/16/03	\$ 11,825.00	X	Sherry
3	05/22/03	Groome & Associates	Toccoa Pkg	110490	05/08/03	\$5,593.60	X	Berthina
4	05/22/03	Groome & Associates	Toccoa Pkg	110473	04/29/03	\$8,081.10	X	Berthina
5	05/22/03	Groome & Associates	Honeymoon Paper	110472	04/29/03	\$8,125.00	X	Heidi
Totals:						\$47,337.20		

Private Notes

Comments or suggestions intended for the next auditor:



To: Sharon Vicars

From: Chris Cooke

Weekly

Travel expenses which need to be collected from the customer are as follows:

As of Date	Client	Fee	Mileage Cost	Lodging	Meals	Other	Total
05/22/03	Groome & Associates	\$500.00	\$23.04				\$523.04
	Totals:	\$500.00	\$23.04	\$0.00	\$0.00	\$0.00	\$523.04

Expenses

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 10

**B&T MEMO RE GROOME & ASSOCIATES
(DECEMBER 11, 1998)**



Branch Banking and Trust Company
INTER-BRANCH CORRESPONDENCE

December 11, 1998

From: Edward P. (Ted) West, Jr.
Senior Vice President
ABL/Commercial Finance
Winston-Salem
(336) 733-1421
001-16-06-30

To: ABL Credit File

Re: Groome & Associates, Inc.

Charlie Arndt asked that I join him in Greenville on December 9, 1998 to meet with Lee Groome, owner of the above company. Per Charlie's request, the following were my impressions, suggestions, etc. based on that meeting:

- Lee was clearly nervous that I was there. He knows that his company's performance has been sub par and I think he may have thought that BB&T was going to pull out on him. Very much to his credit, Lee was very up front on all the problems that his company was having and answered every question that I asked fully and easily.
- Lee said that their problems were indicative of an over supply of paperboard in the market place. This is a problem for them because he was convinced that the market had turned around about 6 months ago (I'm not sure about exact time) and he purchased inventory that he cannot now move without taking a substantial loss.
- His current average cost/T is \$424, but the value of about 40% of the inventory is about \$210-230/T. He believes that this will turn around within 6-12 months since many paperboard mills have been brought down for "maintenance" recently. This should tighten up the market, he believes.
- Lee estimated his loss in a "better market" at about \$100-150M. In the current market, he estimated his loss at about \$300M.
- He has made a number of adjustments to his overhead to cut costs, most of which Charlie has already documented.
- He is in good shape with the trade, usually paying in 30-35 days from receipt of invoice and still taking discounts (10 days) when he can.
- He has a line of credit from Bank of Travelers Rest against the equity which could provide him with an additional \$200-300M, if needed.
- He has been approached about selling out to Fort Howard Paper next summer, which he is seriously considering.
- I discovered an industry web site at www.paperexchange.com. Info on this (an industry newsletter) confirmed the softness in the market.
- Lee said that their part of the industry followed the linerboard side, both down and up. I think he feels linerboard is almost ready to "come back", therefore paperboard will be next.
- Groome sells much of their paper after they have a poly extrusion coating applied in AL. This allows their board to be converted to shrimp trays, ices cream boxes, chicken boxes, etc. for freezing and similar uses.

We discussed the nature of ABL/CF and what things might be tightened up, etc. We discussed our role as collateral lender and the importance of collateral valuations. He understands the

groome.doc

December 11, 1998

Page 2

problems with our advance rate against his inventory market value. We also discussed pricing, and I told him that a true CF arrangement would be more expensive based on the additional work needed. I think he is more interested in whether we will stick with him or not at this point.

I have not fully reviewed the company FS nor have I seen Lee's. Charlie reports that Lee has little or no debt and about \$700M in liquidity. Based on this admittedly limited information, I recommend the following:

1. Immediately reduce the advance rate on inventory to 25%. I further recommend that we keep the advance at this rate even after things improve. The nature of their inventory may look like a commodity, but it really isn't. I wouldn't get above 40% in the future under good conditions. This reduction in advance rate should require Lee to borrow against the equity in the building from B of TR or put in his own cash in lieu of that. An alternative would be for him to put up a CD or stock, etc. which we could lend against to meet any short fall. An incentive for him would be to offer the Prime rate on any borrowings secured by liquid collateral.
2. Increase the interest rate to Prime + 1.0 % to reflect the increased risk. If shifted to a Standard ABL or CF line, pricing (primarily fees) should be even higher to reflect increased servicing. Lee will not be surprised to hear his price is going up and I don't think he will care that much, as long as we reconfirm the line for another year.
3. Review the Risk Grade and move to a six if the inventory advance is not cut to 25%.
4. Confirm Lee's personal liquidity.
5. Reconfirm the line for another year, but adopt ABL attorney prepared documentation to tighten our position in the event of default and give us a "sixty day out" no matter what happens. We should not get locked into another year without an easy out.

I liked Lee and think his honesty was deserving of our confidence. If he is as strong personally as Charlie thinks he is, we should be OK for another year or so (after making the above changes). I would not, however, miss this opportunity to strengthen our position now, just counting on him to do the "right thing" in the future.

Edward P. West, Jr.

Cc: Charles Arndt
Jeff Heath

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 11

**LETTER FROM LEE GROOME TO BB&T
(AUGUST 21, 1998)**

GROOME &
Associates Inc.

PAPERBOARD CONVERTERS

Post Office Box 729 • Travelers Rest, SC 29690

August 21, 1998

Mr. Charles Arndt
Branch Banking & Trust
301 North Main St.
Greenville, S.C. 29602

Dear Charles,

Per our conversation today, please find the following random thoughts with regard to our industry. Current softness is due to several factors, the primary being overproduction of paperboard by manufacturers, a general cycle soft market and less than robust pulp sales.

Production through consolidation by major manufacturers has increased supply in excess of 10% in the last several years. Paper as an industry is subject to extreme highs and lows, which can be weather related, too wet to harvest timber, sale cost too low for pulp operating companies, the U.S. dollar being too strong, or weak. These are but a simple few reasons as are cost related. The most difficult item for us to judge is when will the soft markets appear, can we adjust inventories down before the PAPER BEAR wakes, or increase inventories to out wit THE BULL. Groome has operated profitably eight years out of ten. This most recent drop in market cost out witted us this time to a greater degree than previous soft markets due to the fact we had taken our largest inventory position in company history. Our best intention to grow the company through market share has cost us this time.

In an effort to curtail cost I have reduced labor by 40%, eliminated outside warehousing completely, and frozen any purchases not necessary. We have also reduced material cost by just over 4% and predict a similar reduction on all inventory in September. Providing all things being equal and there is no further market softening it is my belief we should be operating in the black by Octobers end.

Please take pity on this correspondence, as Jodi is not working today and I am not a typist nor do I know how to operate this PC.

Sincerely,


Lee K. Groome

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 12

**LETTER FROM LEE GROOME TO BB&T
(MARCH 26, 1999)**

GROOME &
Associates Inc.
PAPERBOARD CONVERTERS

Post Office Box 729 • Travelers Rest, SC 29690

March 26, 1999

Mr. Charlie Arndt
BB&T
P O Box 408
Greenville, SC 29602-0408

Re: Market Condition: Improved

With the major integrated paper mills taking "down time" and holding the line on available tonnage, finally; market demand is closer to available supply.

Linerboard, which is a key indicator for us, has had a \$50.00 per ton cost increase which took effect 2-1 & 3-1. SBS pulp rolls and bales for repulping should move \$20.00 - 30.00 April 1st and with tight supply our "job lots" used for converting will move \$50.00. This price will hold, and a further increase is likely before year end, probably October.

Demand has increased and we are starting up a "moth balled" rewinder as well as gearing up personnel for production.

We have picked up, what could prove to be another valuable vendor in Georgia Pacific both Brunswick, Georgia and Crossett, Arkansas.

Average inventory cost have continued to drop - partially because of good spot buying but, primarily accepting "write downs" on sale of inferior goods to repulping markets. I do not foresee any major tonnage with a "write down" need.

Average board cost for uncoated is \$457.72 and coated board is \$364.58. Average sale price should be \$480.00 - \$550.00 respectively.

Total average cost is \$401.27 and should present a grand earnings opportunity.

We down sized by approximately 50% and will selectively add manufacturing ability thru labor. There are no capital investments necessary. With additional labor in place, we should be able to keep pace with market demand.

The second half of '99 should be much improved, however overall growth for the industry forecast is to be 2 ½%.

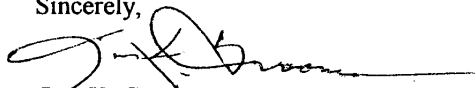
It should be noted as of this date approximately 10% of inventory is work in process.

February showed a modest positive cash flow (+20,000.00).

Charles, thank you and BB&T for your support during this market condition.

Looking forward!

Sincerely,

A handwritten signature in black ink, appearing to read "Lee K. Groome", with a long horizontal flourish extending to the right.

Lee K. Groome

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 13

**LETTER FROM BB&T TO GROOME
(OCTOBER 3, 2000)**

BB&T

**Branch Banking & Trust Co.
of South Carolina**

P.O. Box 408
Greenville, SC 29602
(864) 242-8000

October 3, 2000

Mr. Lee K. Groome
Groome & Associates, Inc.
PO Box 729
Travelers Rest, SC 29690

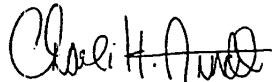
Dear Lee:

I would like to take this opportunity to inform you of our most recent annual review of your Company, Groome & Associates. While the fundamentals of your operation seemed to have returned to profitability, I realize your industry still remains volatile. The Company reported a strong fiscal year ending July 2000, however the unforeseen Chapter 11 filing of one of your customers could erode the previous year's earnings. The decision to repay your shareholder note would not be of great concern if the Company had not suffered the \$200m ineligible receivable. This event has caused the Company to be significantly outside of the borrowing base.

At your earliest convenience, please provide me a written management summary of your 90-180 day outlook for your industry and Company. In the short run, please begin identifying potential collateral to secure the borrowings in excess of your availability. I will recommend your credit line continue to operate "as is", however, there will be continued pressure if you are unable to operate within the advance rates.

As always, I support your efforts and look forward to receiving your information.

Sincerely,



Charles H. Arndt
Senior Vice President

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 14

LETTER FROM LEE GROOME TO BB&T (UNDATED)

GROOME &
Associates Inc.

PAPERBOARD CONVERTERS

Post Office Box 729 • Travelers Rest, SC 29690

Mr. Charles H. Arndt
Branch Banking & Trust Co.
P. O. Box 408
Greenville, S.C. 29602

Dear Charles,

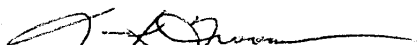
Per our conversation October 3rd, allow me opportunity to assure you and the board of BB&T of both my viability personally, and that of Groome & Associates, Inc.

Foremost I believe this to be the first time in the history of Groome & associates to be "outside covenants" with any lending institution. My name is on the door as well as my personal guarantee to you. I am respectful of your patience with us having several unforeseen situations. I hope you remember me favorably as a client foremost and as a gentleman of integrity and honest secondly.

Your analysis of volatile (with regards to our industry) is accurate. I know you remember helping me analyze Con Pac (our chapter 11 account) when their account was approximately \$100,000.00 and per the D&B rating, which you furnished, we collectively felt comfortable allowing their credit to grow beyond normal limit. I also spoke with Lee Vorseck (Con Pac's owner) and was given personal assurance all was well. You will recall this was a time in which all indicators for us were strong. I spoke specifically on April 11th PM to Mr. Vorseck at home, he personally assured me there were no problems, and our account would be kept in a (45) forty five day pay period. Your D&B report for me was run on March 2, 2000.

In summary, as requested I will gather all data available and give you a written management analysis, to my best effort, with respect to our industry and just where we stand.

Respectfully,



Lee K. Groome

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

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v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 15

**LETTER FROM LEE GROOME TO BB&T
(JANUARY 9, 2001)**

GROOME &
Associates Inc.
PAPERBOARD CONVERTERS

Post Office Box 729 • Travelers Rest, SC 29690

January 9, 2001

Mr. Charles Arndt
BB&T Bank
Greenville, SC

Dear Charles,

Per our conversation, please find enclosed our December sales numbers etc. December is historically slow due to mill down time and folding carton companies being closed.

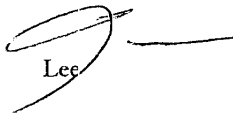
The market continues to weaken with major paper mills reducing their sale price on 1st run prime paperboard. We are finding cost cuts by the mills of \$75-100 per ton.

Our sales for January have already exceeded December sales. At the time I write this letter, here is where we stand.

Already Billed – 1-08-01	\$ 181,152.00
To be billed January	\$ 215,458.00
	\$ 396,610.00

I am hopeful January will be profitable. Upon receipt of this letter, please give me a call.

Thanks,


Lee

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 16

**BB&T INTERNAL MEMO RE GROOME & ASSOCIATES
(NOVEMBER 5, 2002)**

BB&T

COMMERCIAL BANKING CLIENT PROFILE

Date Prepared/Updated: 11/05/2002

Client Name: GROOME & ASSOCIATES INC Acct. #: 7510063672 Exposure Strategy: Out
 DBA: _____ Federal Tax ID #: 58-1810366
 Address: PO BOX 729 City: TRAVELERS REST State: SC Zip: 296900729
 Business Phone #: (864) 294-8001 ext. Fax #: _____
 Account Officer: WEAVER, DAVID M Brooks Carter Region: Upstate
 Risk Rater: _____ City Office: Greenville
 Proposed Risk Grade: 08 Current Risk Grade: 08 Relationship ROA: N/A (RG8)
 Risk Grade Source: Account Officer Relationship ROE: N/A (RG8)
 Industry SIC Code: 5110: Paper and Paper Products
 Sales/Service Segment: None Mkt. Segment: Commercial

Related Borrowing Entities:

Contacts:

Name	Title	Type	Authority	Phone (H)	Phone (W)
GROOME, LEE	President	Primary	Decision Maker	() - ext.	(864) 294-8001 ext. 22

Advisors:

Current Credit Relationship (attach Customer Loan Review or Relationship Summary):

Total Credit Exposure: Committed: \$1,226,202.94 Outstanding: \$1,226,202.94

Current Non-Credit Relationship:

Current Non-Credit Relationship: _____ Last Changed: 11/05/2002
 Business DDA; 12-Month ACB: \$58,440 (As of 11/02)

Business Overview/Organizational Structure

Year Started: 1988

Client Since: 1994

Number of Employees: 10

Primary Line of Business:

Last Changed: 11/01/2002

Paperboard broker until 1993 then expanding into conversion (slice & rewind) process. Groome buys 2nd quality paperboard, cuts out the defects, slices it into narrower widths, and rewinds.

Primary Products/Services:

Last Changed: 11/04/2002

Various grades of solid bleach sulfate (SBS) paper used in the boxing of bakery, cold storage, fast foods, and microwavable food products.

Seasonal or Cyclical Patterns:

Last Changed: 11/01/2002

Industry is subject to domestic and international shifts in demand and supply of paper. Other factors include the potential over production by the paper mills.

Owner(s) and Percentage of Ownership:

Last Changed: 11/01/2002

Lee K. Groome - 100%

Major Customers (include percentage of sales and terms granted):

Last Changed: 11/01/2002

Numerous buyers of lower quality paperboard: Single largest customer is Toccoa Packaging, which represents approximately 50% of A/R at 9/30/02. Other larger clients include: Boelter Industries, Old Dominion Box Company, Rock Team, Sterling Paper Corp.

Major Suppliers (include percentage of product purchased and terms granted):

Last Changed: 11/01/2002

International Paper, Gulf States, Continental Paper, Georgia-Pacific, and various other broker

Major Competitors:

Last Changed: 11/01/2002

Piper Board Co., Inc., AL; Paccs Converting, WA.

Business Overview/Organizational Structure

Individual Overview:

Last Changed: 11/04/2002

Lee started the Company nearly 13 years ago, having spent most of his professional life learning the industry from his father.

4/02 Update

Lee's personal financial condition has been significantly negatively impacted by the financial deterioration of Groome and Associates over the past several years as he has liquidated personal assets and borrowed against equity in real estate to continue living in the fashion to which he had become accustomed. While Groome's 4/17/02 personal financial statement shows a \$1,889M net worth, he shows limited liquidity (\$18M) and his real estate assets are leveraged. Of his total net worth, \$500M is the value assigned to his stock in Groome and Associates, \$350M is a minority interest (16%) in an LLC that is developing a residential subdivision (Hunter's Ridge), and \$268M is his profit sharing account with Groome and Associates. At this point, Lee Groome adds little financial strength to this credit beyond his willingness to further dip into his profit sharing account.

Goals of the Business:

Last Changed: 11/04/2002

Lee has restructured the company over the last 12 months, having removed several family members, which contributed to the decline in profitability. The Company has reduced its operating expense nearly 40% in lieu of the market downturn, which occurred during FYE98 and FYE99.

4/02 Update

Groome is simply attempting to keep the company afloat long enough to reach the point where the market rebounds and sales (and margins) return to an acceptable level. According to Groome, a combination of several factors have caused his company's troubles over the past 4 years:

1. Groome admits that he delegated far too much responsibility several years back when he was experiencing a "burn-out" period. This resulted in poor management, lost sales, and poor expense control.
2. Groome had three clients file bankruptcy since 1999 costing the company \$348M in bad debt.
3. Groome lost its rail service (through no fault of Groome) about 2 years ago. This has added approximately \$9M per month to shipping and handling costs as Groome now contracts with a third party to offload rail cars, inspect the product and truck the rolls of paperboard to Groome. Groome also claims that he was unable to reject \$250M of "junk" product that he could not return after it was taken off of the rail car off site. Had the company still been doing its own inspection of product, this shipment would have been refused. Groome was unable to resell this shipment.
4. The paperboard industry has been in a slump for 3 years. Groome states that this slump was initiated by gross over-production by the paper companies which drove down prices and margins and has been extended by the general downturn in the economy over the past 12-18 months.

In an attempt to both generate cash and cut expenses, Groome has recently listed his building for sale as he could easily get by with less space. Groome's existing facility consists of a 55,000 sf warehouse and 8,000 sf of office space. The asking price is \$1.5MM (it was appraised for \$1.3MM 2 years ago) and the first mortgage balance is approximately \$1,056M. (Note: Property is listed with Ted Lecroy).

11/02 Update

It appears as though Groome has stopped the bleeding as the company was slightly profitable for the FYE 7/31/02. While sales were down again, gross margins almost tripled to their highest level of the past 4 years. Groome states that, industry wide, both margins and demand has improved due in part to the shakeout in the industry that has occurred over the past several years. For the first 2 months of this fiscal year, margins appear to be holding up and sales are up over 50% on an annualized basis from the prior year.

Groome is continuing with his lawsuit against Greenville County over loss of rail service but he is unsure when a decision will be rendered. Groome remains optimistic that a significant 6 figure settlement will be forthcoming.

Groome has had no offers to date for the purchase of his building. Given its location in a relatively stagnant part of town, no easy interstate access, and no rail service, it is the writer's opinion that selling the property for the listed price of \$1.5MM will be difficult and that there is little, if any equity, in the property.

Industry and Economic Risks:

Last Changed: 11/04/2002

The paperboard market has since recovered nicely since a downturn in production in 1998. Paper mills (Westvaco, IP, GP, Gulf States) have rebounded and reported strong performance during 1999-2000.

Industry Risk

In early 1Q 1998, Groome took a calculated risk purchasing extra tonnage prior to an expected April price increase in paperboard. This caused his inventory to swell from historical levels of 1500 tons to nearly 2500 tons. Unfortunately, the following 2nd through 4Q has seen a sharp decline. Groome had purchased inventory at 500+ a ton, which is now on the market for 350+. This has eroded any potential profit during this period. Groome has slowly sold off his high priced inventory, working deals wherever possible. Presently, prices have climbed and Groome's average cost of inventory has been reduced to under \$400 per ton.

At the current levels, Groome has an approximate \$375 per ton in SBS. The conversion market price is holding at roughly \$575.

4/02 Update

Groome states that his industry is just beginning to come out of a 3 year slump. Groome does not expect to see a significant uptick in his company's sales until late in 2002. According to Groome, many of his competitors have been driven out of business during the past 3 years. Margins have improved but sales are still quite slow.

11/30/02 Update

Based on improvements at Groome, there is some evidence that the industry is rebounding from the 3 year slump discussed above. Groome's sales were down again for the FYE 7/31/02 but gross margins were almost 3x the level of the prior year. Sales appear to be improving as well; for the first 2 months of this fiscal year, Groome's sales are up 54% on an annualized basis. As discussed earlier, it is Lee Groome's opinion that the industry reached a bottom earlier this year and is slowly beginning to improve.

Financial Risks and Analysis (including profitability and leverage):

Last Changed: 11/05/2002

At FYE98, the company showed a loss of \$391m on revenues of \$9,939mm. This can be attributed to several significant factors both internally and externally. As previously mentioned, Lee made a difficult decision to layoff his brother and nephew (8/98) who assumed the roles of purchasing and sales respectively. During FYE98, the Company uncharacteristically took on \$355m in returns or credits whereby the customer was shipped product, which was unsatisfactory. This was due to product which was incorrectly accepted during receiving (Lee's brothers responsibility) and sales where (nephew) misrepresented certain grades of paperboard. This was further compounded by a significant decline in raw material prices, which left, Groome with a limited gross profit margin. The trend has been difficult to turn as the paper market has been slow to correct itself as a function of overproduction in 1998.

At FYE99, the company reports a loss of (\$218m). However the last several months the trend has improved greatly with profits reported of \$5m, \$44m, \$25m and \$24m, respectively. The Company has reduced operating expenses from \$1,162m at FYE98 to \$674m at FYE99. Based on a percentage of sales, expenses remain at 12%. Groome has taken an aggressive stance to regain profitability and has injected \$170m as sub-debt to support operations. His objective is to revive revenues back to historical monthly levels of \$750m without adding additional staff. While the Company has suffered significant problems, Groome has been direct in problem resolution and changed course for the future. Since FYE98 leverage has dropped from 7.22 to 5.46 at FYE99.

At FYE00 (7-31-00), Groome has regained profitability reporting NI of \$153m on \$7.5mm in sales. Total operating expense has been trimmed to 9.8% of sales compared to a historical trend of over 12%. Gross margin has improved from 8.5% to 14% from FYE99 to FYE00, simply from market adjustments. A/R days are 43, A/P days are 31, Inventory days are 76, all of which compare favorably to the previous year end. D/NW continues to decline from 12% to 7% for the period. Subordinated debt was retired of \$170m. Through August, trends continue reporting a profit of \$11m on \$706m.

For the FYE 7/31/01, Groome and Associates reported a net loss of \$737M on gross sales of \$5,420M. Sales were down \$2,050M (27%) from the prior year and gross margins dropped to 6.7% - their lowest point of the past 5 years. Included in this loss is bad debt expense of \$268M of which \$265M is attributable to one client (Compac as mentioned in the next section) that filed Chapter 11. Further, this bad debt was incurred in the prior fiscal year and should have been charged against operations for the FYE 7/31/00. This would have reduced that year's net profit of \$153M to a net loss of \$112M. Groome's only bank debt is BB&T's line which had a balance of \$1,253M at 7/31/01. However, the company must also service the \$1,050M loan that Lee Groome has on the building which he leases back to the company. Debt service on this loan is approximately \$108M annually. Lease expense paid to Lee Groome for the year was \$170M. The company's net worth was (\$417M) as of 7/31/01.

4/02 Update

For the seven months ending 2/28/02, sales are down another \$1,230M (22.6%) on an annualized basis. Net income is positive at \$44M however, Groome has expensed only \$15M in rent for the entire year. EBIDA plus rent paid to Groome is \$151M. Debt service for the period (inclusive of the building debt) was \$118M. However, Lee Groome has taken no salary and has relied on distributions from his profit sharing and additional personal borrowing (HEL on personal residence owned by wife) to support his personal and living expenses. The company's net worth improved slightly to (\$373M) at 2/28/02.

11/02 Update

As of 11/02, results for the FYE's 7/31/01, 7/31/02, and 2 months ending 9/30/02 are presented below:

	7/21/01	7/31/02	9/30/02
Sales	\$5,420M	\$4,229M	\$1,087M
Gross Profit	4,999M	3,435	886
Operating Profit	<617>	147	102
Net Income	<737>	67	89
EBIDA	<503>	206	108
Rent to L. Groome	170	15	0
Adjusted Cash Flow	<333>	221	108
Building Payment	108	108	18
Interest Expense	153	80	13
Debt Service	261	188	31
DSC	N/A	1.18	3.48
Excess	N/A	33	77

It should be noted that the company would have shown a loss for the FYE 7/31/02 had rent been paid to Lee Groome for use of the building. Additionally, took no salary during the year. In the absence of rent and officer's salary, the company has been repaying a stockholder note to Lee which has been reduced to from \$140M at 7/31/01 to \$57M at 9/30/02. Personally, Lee's debt service and living expenses are being covered by the repayment of this stockholder note and draws on an equity line secured by his residence which is owned by Mrs. Groome. The business remains heavily leveraged and reports a net worth of <\$350M> and <\$261M> at 7/31/02 and 9/30/02, respectively.

Cash Flow Coverage Analysis:

Last Changed: 11/01/2002

At FYE00, the Company had no term debt to amortize and had an interest coverage of 2.88x. Cash flow included NI of \$153m plus depreciation \$94m, plus interest expense \$131m divided by interest expense resulting in excess cash flow of \$247m. The Company is carrying an account for Compac \$260m, which has declared protection under Chapter 11 bankruptcy. Management has maintained over a 30 year personal/business relationship with the owners and firmly believe a collection will be forthcoming.

See Financial Risks section above.

Major Policy Issues:

Last Changed: 11/05/2002

Advance rates are 85% against eligible A/R and 50% against eligible inventory and \$500m for equipment (AV: \$700m 12/97). To date, the company has remained within its borrowing base limits, in excess of \$100m. The credit relationship was reduced from \$2.5mm to \$2.0mm last review 7/99. All audits to date have been satisfactory.

4/02 Update

While the audits continue to be satisfactory and weekly loan base reports are received on a timely basis, BB&T is presently over-advanced by approximately \$275M due to deterioration in the value of the equipment which additionally secures this line. To date, BB&T has allowed a plug figure of \$500M for the equipment pledged against this line. While we do, in fact, have an outside appraisal as discussed above, Groome tells us that this equipment is now worth approximately \$200M. This significant depreciation in value is due to age (the appraisal is now 4+ years old) and the fact that there is a significant amount of this type of equipment on the market due to shakeout that has occurred in the industry. The \$200M value stated above is the opinion of Groome's brother who, in addition to working for Groome and Associates, is also in the used paper equipment business.

11/02 Update

Groome has cured the above referenced over-advance and would have \$50M of availability (as of 10/21/02 Loan Base Report) if BB&T's loan was still a revolving line. BB&T had the equipment re-appraised in July '02 and the liquidation value was determined to be \$214M. Accordingly, we are now using a "plug" figure of \$160,250 for equipment value in the Loan Base Report. Weekly Loan Base Reports continue to be received in a timely manner.

Management Risks and Analysis:

Last Changed: 11/01/2002

Lee retains an active role in management and has, as a result of current market conditions, become more involved in sales. This will be key in the turnaround of the Company, as his contacts within the industry should accelerate the effort.

Strengths and Weaknesses of the Client:

Last Changed: 11/01/2002

Strengths:

- Lee Groome's many years of experience make him quite knowledgeable of the industry and of his business.

Weaknesses:

- The company's losses have left it heavily leveraged with very limited options for outside sources of financing.
- Lee Groome has exhausted the majority of his personal liquidity and disposable assets in order to keep the company afloat. Further, he has leveraged his residence (via equity line) in order to fund a large portion of his living expenses over the past several years. Neither the company nor Lee Groome personally can afford another downturn in the business.

Bank and Client Satisfaction with Relationship:

Bank and Client Satisfaction with Relationship:

Last Changed: 11/05/2002

4/02 Update

Neither BB&T nor the client is particularly satisfied with this relationship at the present time. BB&T is pursuing an "out" strategy as Groome has lost money for 4 consecutive years (assuming 2000 results are re-stated for the bad debt that should have been charged-off), the company's capital base has been depleted, we are over-advanced, and Groome does not have the ability to correct the collateral shortfall by pledging additional assets or paying down the loan balance. Beyond that, Groome's frequent hot-tempered reactions to BB&T's concerns over these issues indicates that this company is not a good fit for BB&T.

Having said that, Groome has made attempts to move this credit and thus far has been unsuccessful. Based on the financial condition of the company and the fact that we are over-advanced by approximately \$275M, the likelihood of Groome being able to refinance this credit in the near term is not good. It appears that we will have to continue working with Groome and work towards narrowing the gap in the collateral shortfall. Assuming that Groome is able to keep the company afloat, this could be accomplished by putting Groome on lockbox with standard ABL servicing and setting target dates by which the shortfall must be reduced. Once the company is back within loan base, the possibility of refinance by another lender will be improved.

11/02 Update

While Groome's business is beginning to show signs of improvement, BB&T still maintains an "Out" strategy with this client. With the 90 day renewal granted in late October, I informed Lee that BB&T would not "pull the rug out from under him" as long as the company continued to show improvement. Having said that, I strongly recommended that he seek another financing source during this 90 day period as any further renewals would only be considered in conjunction with the line going to ABL Standard and lockbox. It is my belief that Groome has a reasonably good chance of being able to move the line at this point given the improvement his company has shown.

Future Plans And Needs:

Future Plans And Needs:

Future Sales Opportunities - Comment on any aspect of the FICIR/TAPE

Financing (Commercial, Retail, Business Cards, etc.):

Cash Management:

Last Changed: 11/01/2002

If the company is unable to move the loan, we will require lockbox service and ABL Standard monitoring.

Investment:

Retirement Plans:

Insurance and Risk Management:

Taxes:

Advice:

Personal/Private Banking:

Employee Services:

Related Borrowing Entities:

Cannon

Sierra

REVIEW

Reviewed By:

RLC

11-13-02

BLC

LPC

Next Review Date:

11-03

Risk Grade Assigned:

RLC

6

BLC

LPC

Loan Committee Comments/Recommendation:

Outstanding

Client Contact Log

Date	Subject	Creator	Contact
11/01/2002	Line Renewal	MARVIN CANNON	LEE GROOME
Lee called and requested that I put into writing what we discussed in our meeting of Oct 24 regarding any further line renewals so that he can present at next board meeting.			

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF ANDREW J. WHITE, JR.

ATTACHMENT 17

**EXCERPT FROM BB&T AUDIT OF GROOME & ASSOCIATES
(JULY 17, 2000)**

7510663672

BB&T

Rating: Satisfactory

Risk Grade: 6

**BB&T Audit Program ©
Asset Based Lending**

Filename: Groom700.xls

Company Name: Groome & Associates

Address: Box 729

City: Travelers Rest

State: S.C.

Zip: 29690

Phone #: (864) 294-8001

Fax #: (864) 294-9368

Loan Acct #:

Date: 07/12/00

Examiner: Alicia Sims

Prospect:

Customer: x

Description Of Business:

Purchases paper seconds and either sells as is it a discount or runs through machine to delete defects and sell at higher cost.

Last Exam Date: 01/11/00

Examiner: Alicia Sims

Company's Fiscal Year End:

07/31

Examiner's Contact:

Jodi Garret, Eric Huggins

Condition Of Company's Books:

Satisfactory

Was ABL operations contacted? No

Was Account Officer contacted? No

Comments:

Results of courthouse search:

NA

Examination Report Distribution:

Account Officer: Charles Arndt

SCO: Jeff Heath

RLA: Garland Overstreet

Audit Manager: Jack Fisher

Other:

Region: Upstate

Version 1.0

7/17/00 4:12 PM Condensed

ABL Field Auditor's Internal Comments

Client: Groome & Associates
Report Type: Condensed

Review Time: 8
Travel Time: 4

ABL Auditor: Alicia Sims
Audit Date: 07/12/00
Audit Grade: Satisfactory
Risk Grade: 6
Relationship Manager: Charles Arndt

Detail Summary:
Accounts Receivable: \$1,293,480
A/R % Eligible: 89.9%
Availability: \$261,668

Advance Rates and Audit Frequency:

Dilution YTD: 1.3%

Approved:

A/R %: 85
INV %: 50
Audit Frequency: semi-annual

Total Concentrations:
Number of accounts: 3
% of A/R: 42%

ABL Recommends:

A/R %: same
INV %: same
Audit Frequency: same

Total Inventory: \$894,346
Eligible Inventory: \$894,346
Inventory Turn Days \$49
Total Accounts Payable: \$470,120
A/P Over 60 Days: \$0
as % of Total: 0%

Other General Comments/Specific Concerns/Specific Recommendations:

Past dues increased to 8.7% from .1% noted during the last review. CONPAC has a total outstanding of \$264,679 with \$109,422 over 60 days past due. This customer has filed Chapter 11 and Groome is unsure at this point if this amount is collectable. CONPAC makes up 20.5% of total accounts receivable as of the audit date.

All other test on accounts receivable and inventory show satisfactory results.

The attached report is for your review. If you have any questions please call.

Internal Comments are for BB&T internal use only.

The above report is intended to share the Auditor's specific recommendations on advance rates and audit frequency as well as brief general comments about the above proposed or current ABL/CF relationship. Comments represents both objective and subjective observations based on the Field Audit itself and are intended to enhance, but not replace, the Relationship Manager's (and co approver's) full underwriting of this credit. A copy of Comments will be prepared for each new ABL/CF relationship and after any subsequent Field Audit if the Field Auditor believes a change of conditions deserves special comment. All co-approvers will receive a copy of Comments separate from the actual ABL Audit Report.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 7

**GROOME RESPONSE TO GCEDC
REQUEST FOR ADMISSION NO. 5**

Request for Admission No. 5: Complainants never requested GCEDC to pick up or deliver a specific load or loads of freight at Complainants' Business Location.

Admit. In further response, Complainants state that GCEDC was made aware of the Complainants' continuing need for rail service throughout GCEDC's period of ownership.

Request for Admission No. 6: Complainants were aware in May 2001 that a document was submitted to the STB in May 2001, purporting to be a formal complaint on Complainants' behalf against GCEDC.

Complainants object to the phrase "purporting to be", but otherwise admit that a formal complaint on Complainants' behalf was submitted to the STB in May 2001.

Request for Admission No. 7: Complainants were aware in May or June 2001 that the document submitted to the STB in May 2001 purporting to be a formal complaint on Complainants' behalf against GCEDC was submitted without a filing fee.

Complainants object to the phrase "purporting to be", but otherwise admit that no filing fee was submitted with the formal complaint that was submitted to the STB on Complainants' behalf in May 2001.

Request for Admission No. 8: Complainants were notified prior to August 2001 that the document submitted to the STB in May 2001 purporting to be a formal complaint on Complainants' behalf against GCEDC did not comply with the STB's regulations for filing a formal complaint.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 8

**GROOME RESPONSE TO GCEDC
REQUEST FOR ADMISSION NO. 11**

Deny. Complainants object to the phrase "purporting to be", and further respond that the formal complaint that was submitted to the STB on Complainants' behalf complied with the STB's regulations for filing a formal complaint. In any event, it is within the Board's discretion to relax or modify its procedural rules adopted for orderly transaction of business before it, when, in given cases, such as this, the ends of justice require it.

Request for Admission No. 9: Complainants deliberately chose in 2001 not to remedy the fact that the document submitted to the STB in May 2001, purporting to be a formal complaint on Complainants' behalf against GCEDC, lacked the requisite filing fee.

Deny. In further response, Complainants object to the phrase "purporting to be", and further state that the issue is moot in that the Board has chosen to exercise its discretion to relax or modify its general policy with respect to the waiver of filing fees.

Request for Admission No. 10: Complainants were aware, prior to May 2001, that they could file a formal complaint with the STB seeking a remedy for their dissatisfaction with GCEDC's rail service to them over The Line.

Admit

Request for Admission No. 11: Complainants never, subsequent to GCEDC's acquisition of the Line, requested GCEDC to pick up or deliver a specific shipment of goods at Complainants' Business Location.

Admit.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 9

VERIFIED STATEMENT OF

DAVID PETTRY

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF DAVID PETTRY

My name is David Pettry. I am the owner of Pettry Rail Services, LLC, a firm that I founded last year upon my retirement from CSX Transportation ("CSX"). My retirement from CSX concluded 35 years of service with CSX and its predecessor railroads. At the time of my retirement, I was serving as Assistant Chief Engineer – System Maintenance for CSX. In that position, I was responsible for all maintenance operations. While with CSX, I was instrumental in the development of the company's track inspector training program. I was also responsible for developing and implementing plans to restore rail lines to service following natural disasters such as hurricanes and floods. My professional experience is described in more detail on Attachment 1 hereto.¹

The purpose of this statement is to discuss the work needed to restore to a safe and serviceable condition the section of rail line connecting Groome & Associates' facility in Greenville, SC, with the main line of CSX in downtown Greenville. (I refer to that section of rail line herein as "the Line.") This statement is based on my personal, on-the-ground

¹ I also am currently a Senior Associate with Railroad Industries Incorporated, a transportation consulting firm.

inspection of the Line on January 13 and 14, 2005. David B. Hoff, a professional bridge engineer, participated with me on the second day of the inspection, focusing on the three trestles on the Line. I believe that with few exceptions (principally the condition of some of the ties and the degree of brush overgrowth of the Line), the current condition of the Line is similar to the condition of the Line when or shortly after the Line and the adjoining track was acquired by the Greenville County Economic Development Corporation ("GCEDC") in June 1999.

I conducted an on-the ground inspection of the approximately 2.6 miles of rail line between Sulphur Springs Road, just north of the facility of Groome & Associates located at 131 Pinsley Circle, Greenville, and the CSX connection with the Line near Hampton Avenue.² With the exception of the track that was recently rebuilt in conjunction with the relocation of Cedar Lane, over 95% of the right of way is presently covered with heavy vegetation. Although the vegetation prevented me from doing a complete, detailed evaluation of the Line, it is obvious from the track that is visible that the overall track conditions are poor and are not safe for operation.

Inspection Findings

Bridges. One of the major deficiencies of the Line is the condition of the 3 bridges in this 2.6-mile segment. Together, these total over 700 feet of bridge structure, all of which is obviously in very bad shape. Although I am not a professional bridge engineer, it is clear from my inspection that the mud sills, bents, caps, and ties are in desperate need of replacement or repair.

² The connection between the Line and Norfolk Southern's line through Greenville is south of the CSX connection. I did not inspect or evaluate the cost of rehabilitating the additional track necessary to reach the NS connection.

The worst bridge is located approximately 1000 feet north of the connection to CSX. My inspection indicates that this approximately 420-foot³ bridge was somehow lifted off the caps and bents and moved 3 to 4 feet to the west. Central support structures for the bridge were also displaced. The only occurrence that I am aware of in this part of the country that could account for these observations is a severe storm that would cause heavy flooding of the Reedy River, which the bridge spans.

I would deduce from conversations with local residents and from my experience with CSX that the cause of this major displacement of the bridge structure was likely Hurricane Floyd. Hurricane Floyd hit this region particularly hard in mid-September 1999. Shortly after Hurricane Floyd hit, I toured this area by helicopter for CSX and surveyed the extensive damage caused by the severe flooding in the area. Local residents remember Hurricane Floyd as dumping 20 inches or more of rain in Greenville, causing major flooding of the Reedy River. No other storms of that magnitude have hit the Greenville area since 1999, so it appears to me likely that Hurricane Floyd caused this damage to the bridge near Hampton Avenue (unless the damage pre-dated GCEDC's ownership of the Line). In any event, the bridge near Hampton Avenue shows such extensive damage that, in my opinion, replacement of it would be required for operations to be conducted safely. The other 2 bridges on this 2.6-mile section of track also exhibit similar, though perhaps not quite as severe damage, and also likely would have to be replaced.

Rail. The rail in the Line is predominately 70# rail that was rolled in the 1890's. Rail of this age (which pre-dates control-cool rail manufacturing processes) and of this light weight is bound to have an extremely high failure rate under heavy modern axle loadings such as

³ Measurement includes short approaches on either side of the span.

might be incurred, for example, in moving a large electrical generator to or from the Duke Power facility located near the Groome & Associates site. The rail joints that connect the rails are also in poor condition.

Whenever track failures occur, either through rail failure, joint failure or otherwise, there is a high risk of derailment. A derailment, of course, would be a major safety concern on any track because it raises the prospect at least of a substantial diesel fuel spill, if not worse. Safety concerns are particularly acute with this line because it runs through downtown Greenville, along and across the Reedy River, and near major utility lines.

Ties. The condition of the ties and ballast along the Line, as well as the surface and alignment of the Line, is poor. While my inspection showed that some ties had been installed in the past 10 years, many more of the ties that I was able to observe in the Line were worthless. For instance, many ties that appeared sound on the outside turned out, on closer inspection, to be hollow. Because of the heavy vegetation on the Line, it is impossible to be sure of the exact proportion of ties laid in the past 10 years to ties laid previously. However, considering that many of the ties that I saw in the Line are much older than 10 years old and that estimated tie life in this area of the country is less than 25 years, my inspection indicates a large-scale tie replacement would be necessary even to achieve FRA Class 1 standards.

Ballast. The ballast section, where visible, was dirt, cinders, or stone. The stone ballast which had been unloaded was not tamped under the ties as it should have been. This may have been done to cover up the poor ties and fasteners. The shoulder is narrow and there are washout conditions at several locations. Overall the ballast condition does not promote good drainage and would, unless repaired, create many surface and alignment problems if rail operations resume.

Drainage. The existing ballast condition does not promote good drainage. Water is standing in several locations alongside the track. Several new pipes need to be installed under or adjacent to the track structure. There are also areas where headwalls and banks need to be repaired before operations could safely resume. One example is an area just south of Milepost 2, where two 48" culverts had been installed under the railroad but were draining into a single pipe that appeared to be 24" or less. The roadbed has started to deteriorate at this location, and it is only a matter of time before this will result in a major washout.

Surface and alignment. The current profile and alignment of the Line is difficult to assess due to vegetation growth, but considering the current condition of the Line - the water lying in the ditches, the very old, lightweight jointed rail, poor tie condition, etc. - it would be virtually impossible to economically maintain a good surface and alignment. There already exist several areas where poor crosslevel condition exists and where washouts have occurred.

Switches. The portions of switches that I could see had multiple component problems and would not be safe for operation. Some sidings have been partially removed and all switches needed for operation going forward would need to be replaced to maintain a safe operation.

Grade Crossings. This segment of track has 6 road crossings, three public and three private. Two of the three at-grade crossings of public roads are in very poor condition and would have to be replaced if the Line were to be operated. The third – at Cedar Lane, Route 183 – was recently constructed. The 3 private crossings would also need to be upgraded. Crossing protection appears to be adequate for Route 253 and Sulphur Springs Road. The cost of crossing protection for Cedar Lane, Route 183, should be covered by the recent relocation project.

Recommendations for Rehabilitation

I understand that Groome & Associates is advocating in this proceeding that the section of track that I inspected could have been put back in service as excepted track and at minimal cost. I respectfully disagree with that suggestion. FRA's excepted track standards essentially require only that the track be maintained at Class 1 standards on bridges and for 100 feet on either side of a bridge and at grade crossings. In other words, the excepted track 'standard' essentially leaves it up to the rail operator how much risk it is willing to take and to foist upon the public from operating substandard track. Particularly in this instance, where the track is owned by a government-created, non-profit corporation whose board is largely comprised of local elected officials, I believe that the track owner would find exposing the public to such risks to be unacceptable. Rather, for reasons of public safety, as well as economy of operation, my professional recommendation to the owner of this track would be that the track needs to be brought up to FRA Class 1 condition before it could be operated. The reasons for this recommendation are as follows.

As shown above, my inspection of the Line disclosed that the track structure is unsound in virtually every respect. The Line is laid with rail that is over 100 years old. That necessarily means that the rail was manufactured before development of the control-cooling process that reduces internal rail defects. Thus, due to its light weight and time of manufacture, the rail in the Line is highly susceptible to fracture under modern rail loadings. Broken rails often lead to derailments, which normally are costly to clean up, are potentially damaging to the environment, and are a threat to public safety. Even though it is theoretically possible that the Line could be operated with the existing rail, doing so would create a risk of catastrophic track

failure. I think that a government-created, non-profit company like GCEDC would be loath to take such a large risk or to expose the public to that risk.

Similarly, as confirmed by Mr. Hoff's inspection, the damage to the bridges caused by Hurricane Floyd is simply too extensive to be safely remedied with Band-aid type solutions. (Even if the Line were to be operated as excepted track, it would require assuring that the bridges were sound enough to allow the track on and adjacent to them to be Class 1 track.) Rather, if the Line is to be operated, it needs to be put in a condition that its operation is not a constant risk to the operator, the equipment and the public.

Although the initial outlay for bringing the Line to Class 1 condition would be greater than seeking to operate the Line as excepted track, the payoff in safety and economy of operation would be greater. Even setting aside the risk factor, attempting to operate the Line as excepted track would not be economical, particularly in the long term. Doing the minimum initial work possible in order to operate the Line as excepted track would mean a constant stream of expensive maintenance work. If a new component such as replacement rail were added, for example, but the ties and OTM were not upgraded correspondingly, then the rail would inevitably have a much shorter useful life than if adequate supporting components were installed as well. Most of the components of this line appear from my inspection to have reached or exceeded their useful life, and mixing a few new components with those worn out components would in the long run increase overall cost. Also, were GCEDC to sink funds into half measures initially, it might not have funding available when needed to do all of the work required to accomplish the light rail service which is one of the goals for which GCEDC was created.

In short, I would not recommend putting this track back into operation with an excepted or a minimum class 1 status. This track is located too close to crossings, streams and major utilities, along with being in the City of Greenville, for excepted status to be truly adequate. The bridges and the various track components all need to be upgraded to assure a safe operation.

Based on consultations with Mr. Hoff, whose statement is being submitted simultaneously with this one, I estimate that the minimum cost necessary to make the 3 bridges on the 2.6-mile section of the Line safe and functional would be \$1.384 million. While this assumes replacement of timber trestles with steel structures, Mr. Hoff's analysis indicates that replacement with a steel structure would be less costly than replacement of the structure with a steel and timber structure or than attempting to repair these severely-damaged bridges. A breakout of these costs provided by Mr. Hoff is the first table of Attachment 2 hereto. A comparative analysis based on Union Pacific Railroad's cost estimating guide, validating Mr. Hoff's conclusions of the costs of bridge replacement, is also included in Attachment 2. Mr. Hoff's statement explains these materials in greater detail.

Upgrading the track structure to FRA Class 1 condition would cost, I estimate, \$1,608,675. The first step in the process would be to cut and remove all vegetation within the track structure and for 15 feet on either side of the track in order to allow a complete assessment of the track components. After vegetation removal, a ballast regulator should be run to clean off ties so they can be marked for replacement.

I estimate that, considering the age of many of the ties in the Line, replacement of 50% of the ties, or about 1600 ties per mile, would be needed to assure that each and every rail rests on an adequate number of sound ties. While this is a greater number of ties than actually

required to meet the minimum Class 1 standards published in FRA regulations (which would require replacement of at least 30% of the ties in the line), the recommended level of replacement is consistent with FRA's own advisories. Those advisories and FRA training materials recognize that the standards published in FRA regulations are merely the absolute minimum standards with which a track must comply to avoid sanctions, not the recommended level of maintenance. Merely matching this absolute minimum standard provides no margin for error or damage to any of the newly-installed ties, and would be particularly troubling because of the complete worthlessness of many of the ties not being replaced. For 2.6 miles of track, 1600 ties per mile equals approximately 4,200 ties, costing about \$237,390 to obtain and install.

Existing rail would need to be removed and sold, to be replaced with 2.3⁴ track miles (*i.e.*, 2 rails per track foot) of class 2 or 3 rail that is control-cooled and is 115# or larger. This size and class of rail would give the reliability needed for safe operation. Second hand tie plates and spikes would be needed as well. I would recommend installing new rail anchors. The total cost estimated for this work is \$760,986. *See Attachment 3.*

Additionally, GCEDC should remove all switches, replacing only the turnouts that would be needed for service. The switch at Hampton Ave. and the one at Groome & Associates would need to be replaced. In addition, a 500-foot siding with 2 switches should be installed in close proximity to the location at Groome & Associates for operational efficiency (*e.g.*, in order for the locomotive to run around the consist to spot or move cars without having to operate the line haul portion of the move with the cars ahead of the locomotive, a manner of

⁴ The difference between this figure of 2.3 miles of rail and the 2.6 miles of track that I inspected is due to accounting separately for rail on bridges and in crossings and for the work done by the South Carolina DOT in conjunction with recent road work at the new Cedar Lane.

operation that somewhat compromises safety by obstructing the train crew's view of the track ahead). In total, 4 turnouts and 500 feet of new siding, costing \$242,500, should be installed.⁵

The entire segment should have ballast unloaded after rail and tie replacement and should then be surfaced. Some areas may need to be surfaced twice. I estimate that this would require 2,000 tons of A.R.E.A. main line ballast. The ballast would then need to be tamped to throughout the segment. I would also suggest adding 300 tons of Rip Rap for slope protection.

For grade crossings, 5 new crossings are needed. The two major crossings would be at Route 253 and Sulphur Springs Road. (The state recently replaced the Cedar Lane crossing in connection with road construction there.) I recommend installing 200-foot concrete or full depth rubber in each major public road crossing, with private crossings being restored with 45 feet of rail seal per crossing. The estimated cost for this would be \$213,763.

Finally, with respect to drainage, I would recommend that all tree and other debris be picked up along the entire segment. Then, approximately 20% of the Line should have ditches established. This would require use of a grapple truck for 2.6 miles and a ditcher for 1/2 mile. Attachment 3 contains a more complete breakdown of the various components of this estimate.

Conclusion

Based on my inspection of the Line and my 35 years of professional railroad engineering experience, it is my opinion that a Band-aid-type solution of attempting to operate the Line as excepted track would not be either safe or, in the long run, economical for the Line's owner. Rather, considering the age and condition of the track components, the location of the track in a municipality and near a river, and the purposes and responsibilities that

⁵ If Duke Power required service at its facility, as I understand that the evidence presented by Groome & Associates in this case indicated might occur, an additional turnout would be required.

GCEDC has as a publicly-created entity, operation of the Line should require bringing the Line into compliance at least with FRA Class 1 standards. Doing so, including the necessary bridge replacement work, would cost at least \$2,993,275, according to my investigation and evaluation.

Finally again, from my inspection of the Line, I do not believe that the current dilapidated condition of the Line is significantly different from the condition that I would have found had I inspected the Line at the end of 1999, after GCEDC obtained it. The rail would still have been 100 years old. Many of the ties would still have been at or near the end of their useful life. And it appears that the bridges, damaged by flooding as a result of Hurricane Floyd in mid-September 1999, would already have sustained the heavy damage that they show today. While the cost at the end of 1999 to rehabilitate the track (not including replacement of the bridges) might have been somewhat less than the current rehabilitation cost (due largely to the current high price of steel), I estimate that track restoration would have cost at least 85% of the total current cost of the track rehabilitation that I have estimated.

VERIFICATION

I, David Pettry, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on January 20, 2005

David Pettry
Signature

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF DAVID PETTRY

ATTACHMENT 1

Key Personnel – David Pettry

Railroad Industries Incorporated
a full service transportation consultancy

David Pettry

904-273-8286

DP@RailroadIndustries.com

Experience

Railroad Industries Incorporated
Senior Associate, out of Reno, NV

2004 - Present

Railroad Industries is a worldwide management-consulting firm that specializes in transportation and physical distribution. Work has included branch line analysis, equipment utilization and analysis, development of operating plans, market development, transportation costing, intermodal analysis, merger studies, developing short line railroads, and financial analysis. Mr. Pettry is a Senior Associate with Railroad Industries, Inc., specializing in railroad equipment, maintenance, inspection, and cost analysis, with a strong background in rail engineering and management.

Petry Rail Services, LLC, Partner
Ponte Vedra, Florida

2004 - Present

Mr. Pettry formed this Limited Liability Corporation and uses his skills to help others in the rail industry improve Safety, Quality, and Costs. He provides fact based evaluations and recommendations to give clients high impact results. Mr. Pettry has evaluated the Peru Rail System for FRA (213) Standards and developed the presentation leading to his training of the Management Staff of the Peru Rails System. He also developed and implemented a Short Line course for the B&P Railroad which resulted in their FRA test scores improving in excess of 40%.

CSX Transportation Railroads- Subsidiary of CSX Corp., Jacksonville, Florida

Assistant Chief Engineer – System Maintenance

1999-2004

Assistant Chief Engineer – Production and Programs

1993-1998

Division Engineer – Mobile Alabama

1990-1993

Assistant Division Engineer

1977-1990

As Assistant Chief Engineer for System Maintenance, Mr. Pettry managed a staff of 10, responsible for all maintenance operations. He oversaw the improvement of Signal Switch reliability by 70%, 10 mph speed restrictions on Principal Routes by 90%, reduction of total slow order miles by 60%, and the improvement of relations with the FRA on sensitive maintenance issues. He developed and implemented a cost effective way to remove crushed heads, poor or failed welds, and defective insulated joints. He developed the Track Inspectors Training manual. He also surveyed, organized, and directed the recovery for major hurricane, tropical storm, and other catastrophic events.

As Assistant Chief Engineer of Production and Programs, Mr. Pettry worked closely with the Sr. Vice President of Engineering and Mechanical, and the Vice President of Network Operations. He was responsible for the development and execution of the yearly Capital budget between \$200-\$300

Key Personnel – David Pettry

million. He managed a staff of 38 plus traveling teams of 570-1100 employees. He oversaw the improvement of Safety Performance by 75%, the improvement of Track Curfew processes, the improvement in major tie and curve rail teams over 250%, and the improvement of equipment reliability by 50% while reducing cost by absorbing the Work Equipment Group. Mr. Pettry also developed and implemented cost effective teams for night working.

As the Division Engineer, Mr. Pettry reported to the General manager of Transportation and directed all engineering functions for 3582 track miles across Tennessee, Georgia, Alabama, Florida, Mississippi, and Louisiana; 2 major hump yards; 11 flat switching yards; 70 miles of bridges including 31 drawbridges. He managed 45 managers and up to 760 contract employees. He oversaw the improvement of safety performance by 90%, reduction of slow order more than 60%, and reduction of derailments by 90%. His Division earned the awards of the First Engineering Division with a Safety Frequency Index under 1.0, the First Quality sub-division, and the Best Engineering Division in 1992 and 1993.

As Assistant Division Engineer, Mr. Pettry managed track supervisors and contract employees in West Virginia, Ohio, Pennsylvania, Maryland, Virginia, Washington D.C., and New York. He was responsible for Employee Safety and maintaining safe train operations. He acquired the reputation of a troubleshooter and a leader who was capable of dealing with challenging issues. He accomplished safety improvements that included reducing 1 district from 53 injuries to 0 in two years. He also worked on the 8,300 foot clearance improvement project in a major CSX tunnel and stopped track that caused derailments in Pennsylvania to re-establish Engineering credibility.

Education & Training

A.B. Business Management, Mountain State University

Courses in Railway Engineering, Northwestern University

Courses in Railroad Analysis, Design, and Maintenance, University of Delaware

Leadership Training: Tom Peters

Various courses in Experience Compression Laboratory

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VERIFIED STATEMENT OF DAVID PETTRY

ATTACHMENT 2

Bridge
Type: Steel Piles with steel caps and steel stringers
No ballast deck - Timber ties on Steel Stringers

Total Bridge Replacement Costs**: \$1,384,600.00

Cost Per Linear Ft: \$ 1,775.13

BR #	Bridge Length (ft)	Cost
1	420	\$ 745,553.85
2	75	\$ 133,134.62
4	285	\$ 505,911.54
Sum	780	

** Estimated Construction Costs obtained from Bob Brode of
W.M. Brode Construction Co. located in Newcomerstown, Ohio
on January 18, 2005

Alternate estimate – timber stringers rather than steel stringers:

Bridge
Type: Steel Piles with steel caps and Timber stringers
No ballast deck - Timber ties on Timber Stringers

Total Bridge Replacement Costs**: \$2,199,000.00

Approximate Cost Per Linear Ft: \$ 2,819.23

BR #	Bridge Length (ft)	Cost
1	420	\$1,176,000.00
2	75	\$ 225,000.00
4	285	\$ 798,000.00
Sum	780	

Cost Estimate from UP Railroad Cost Estimating Guide Eff
1997 (No increase for inflation since 1997 in above values)

* Values are adjusted for cost savings based on length

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF DAVID PETTRY

ATTACHMENT 3

RAILNET RAIL COSTS

RAIL RELAY

		Per Mile Cost	Miles of Installation	Total Cost #132 rail	Total Cost #115 rail
RAIL					
wt of rail tons	132				
\$/ton	232.34				
	\$ 600.00	\$ 138,404	2.3	\$ 320,829	\$ -
wt of rail tons	115				
\$/ton	202.42	\$ 151,815	2.3	\$ -	\$ 349,175
PLATES					
#/mile	6,200.00				
\$/mile	\$ 5.60	\$ 34,720	2.3	\$ 79,856	\$ 79,856
WELDS					
#/mile	271.00				
\$/mile	\$ 55.00	\$ 14,905	2.3	\$ 34,282	\$ 34,282
ANCHORS					
#/mile	7,000.00				
\$/mile	\$ 1.75	\$ 12,250	6.6	\$ 80,850	\$ 80,850
SPIKES					
spikes/plate	2.00				
#/kg	51.70				
\$/kg	\$ 91.21	\$ 4,716	2.3	\$ 10,846	\$ 10,846
MISC					
Insulated joints		\$ 5,300	2.3	\$ 12,190	\$ 12,190
MATERIAL COSTS				\$ 636,862	\$ 567,198
Unloading/Shipping (20%)				\$ 107,730	\$ 113,440
Scrap Released					
tons	117				
\$/ton	\$ 150.00	\$ (17,550)	2.3	\$ (40,365)	\$ (40,365)
ADJUSTED MATERIAL COSTS		\$ -	0	\$ 606,018	\$ 640,272
Labor					
#/foot	10,560				
\$/foot	\$ 4.25	\$ 44,880	2.3	\$ 103,224	\$ 103,224
Rail trains					
flat fee	\$ 13,044				
#/days	0.76				
\$/day	\$ 1,000.00	\$ 13,802	2.3	\$ 31,744	\$ 31,744
Mobilization					
flat fee	\$ 3,030.30	\$ 3,030	6.6	\$ 20,000	\$ 20,000
TOTAL COST				\$ 760,986	\$ 795,240

Build Runaround Siding	# of feet	Cost Per Foot	Total
	500	125	\$62,500

RAILNET RAIL COSTS

TIE COST

		Total Cost Per Tie	Ties/Mile	Mile of Installation	Total Cost
			1,600	2.30	
Tie \$		\$ 24.00			\$ 88,320
Spikes					
#plate	2.00				
\$/spike	\$ 1.52	\$ 3.04			\$ 11,187
Handling/Shipping/Disposal					
% of Total	40%	\$ 10.82			\$ 39,803
Installation per tie		\$ 16.50			\$ 68,090
Material Cost		\$ 56.38			\$ 207,390
Mobilization					\$ 30,000
Total Tie Cost					\$ 237,390

ROAD CROSSING

	# of feet	Cost per Crossing	# of Crossings	Total Cost
***** Highway Crossing *****				
Rebuild new rail w/ concrete		\$ 700.00		
Rebuild w/ new rail/rail seal per foot		\$ 375.00		
Asphalt w/ concrete		\$ 9,281.00		
Asphalt w/ rail seal	50	\$ 35,000.00		
Insulated joints				
number of joints	4	\$ 5,300.00		
\$/joint	1,325	\$ 1,000.00		
Signage				
Total cost per 80' Highway Crossing		\$ 50,581.00	4	\$ 202,324
***** Private Crossing *****				
Asphalt with Rail Seal per foot		\$ 2,686.00		
Total Cost per 15' Private Crossing	3	\$ 3,813.00	3	\$ 11,439
Total Highway/Private Crossings				\$ 213,763

RAILNET RAIL COSTS

Miscellaneous

		Cost per Miles	# of Miles	Total Cost
Ditching/Tree Removal Equipment				
	\$/day \$350.00			
	# of days 20.0	\$ 7,000.00	2.3	\$ 16,100
Vegetation				
	\$/mile \$ 8,000.00			
	miles 2.3	\$ 18,400.00	2.3	\$ 42,320
Ballast				
	\$/ton \$ 14.00			
	# of tons 1,000	\$ 14,000.00	2.3	\$ 32,200
Shipping/Unloading 80%		\$ 12,880.00	2.3	\$ 29,624
Surfacing				
	\$per foot \$ 2.00			
	#of feet raised per mile 5,280	\$ 10,560.00	3.2	\$ 33,792
Total Vegetation/drainage/ballast/ Surface including mobilization&shipping		\$ 62,840.00		\$ 154,036

Switches			
New Switches			
	\$/switch \$45,000.00		
	# of switches 4.0	\$ 180,000	
Total Switches		\$ 180,000	

SUMMARY OF ALL TRACK COSTS

Category	Total Costs 132# rail	Total Costs 115# rail
Rail	\$ 760,966	\$ 795,240
Ties	\$ 237,390	\$ 237,390
Veg.Drainage, Ballast, Surfacing	\$ 154,036	\$ 154,036
Road Crossings	\$ 213,763	\$ 213,763
Switches	\$ 180,000	\$ 180,000
Build Siding	\$ 62,500	\$ 62,500
TOTAL COSTS	\$ 1,608,675	\$ 1,642,929

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 10

**VERIFIED STATEMENT OF
DAVID B. HOFF, P.E.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF DAVID B. HOFF, P.E.

My name is David B. Hoff. I am a registered professional engineer, working with TranSystems Corporation. I hold a Bachelor of Science degree in Civil Engineering from North Carolina State University, and have been a professional engineer for about 15 years with approximately 20 years experience in my profession.

I specialize in bridge engineering, and serve as the Bridge Team Leader with TranSystems in Greenville, South Carolina. As shown on my resume (Attachment 1 hereto), I have substantial experience in the inspection, design and construction of bridges. Though I have greater experience with highway bridges than with rail bridges (mostly because highway and road bridges are so much more common), as my resume indicates I also have experience with a number of projects involving rail bridges. The purpose of this statement is to discuss the condition of the three rail bridges on a section of rail line extending between approximately Hampton Avenue and Sulphur Springs Road in Greenville, South Carolina (the "Line"), and the actions needed due to the obvious structural damage to those bridges.

On January 14, 2005, I accompanied David Pettry, an experienced railroad maintenance engineer, in an inspection of the bridges on the Line. There are three bridges in this section of

rail line. The first is about 1000 feet north of Hampton Avenue. That structure is the largest of the three bridges, measuring about 420 feet in length. Further north on the line, near Cedar Lane (Route 183) is a second bridge measuring approximately 285 feet in length. Finally, just south of Route 253 is a third bridge, measuring about 75 feet in length. Each of these structures is a timber trestle crossing a creek or river.

My inspection showed each of these structures to be in a deplorable condition, clearly unsafe for rail operation. Almost anyone, even if they were not an engineer, would recognize that these structures are substantially damaged. For example, the deck of the bridge near Hampton Avenue has been displaced about 3 to 4 feet from the centerline of the structure. This appears to have been caused by a flood. In addition, a number of the main supporting timbers providing vertical support for the bridge deck have been dislodged, and rest at an angle under the deck, no longer providing support for the bridge deck. The other two bridges show similar (though not quite as severe) damage, again apparently the result of an extreme flood condition.

Based on my bridge engineering experience, it is my opinion that restoring these three bridges to a condition that would allow safe resumption of rail operations on a going-forward basis would be more expensive than simply replacing them with new, sound structures. Quite simply, the costs that my experience indicates would be involved in attempting to repair these bridges would be very substantial, and in the end one would be left with a structure with a very limited useful life. Accordingly, replacement of the bridges is the logical and cost-effective course at this juncture.

To accomplish this, I would recommend that each bridge be removed and replaced with a steel structure consisting of steel piles driven into the ground and the riverbed, topped with

steel caps with steel stringers to which the crossties and track would be attached. An alternative construction method would be to use timber stringers atop steel caps as the base for the crossties and track, but my investigation of this alternative shows that it would be much more costly than the method that I recommend. Any lesser construction or repair steps than I have recommended would, in my opinion, lead to a less safe and less permanent solution to the severe damage these bridges have suffered, and would be more costly in the long run. With proper maintenance, these replacement structures could be expected to provide a useful life of 50 years or even more.

In order to determine the cost of replacing these trestles, I consulted two sources with special expertise in this type of railroad bridge construction. The first was Robert (Bob) Brode, president of W.M. Brode Construction Company in Ohio. Mr. Brode himself has 37 years' experience in railroad bridge construction. The family-owned business that he heads has been in this line of work for over 100 years. Following a discussion of the current situation and possible solutions with Mr. Brode, he developed an estimated cost of \$1,775.13 per linear foot to construct the type of steel pile/steel cap/steel stringer bridge structure discussed above. For the three bridges on the Line, totaling 780 linear feet, the total cost of this recommended alternative is \$1,384,600.

To cross check the cost estimate from Mr. Brode, I also consulted Union Pacific Railroad's 1997 cost estimating guide. That guide showed an estimated cost of \$2,819.23 per linear foot for the steel pile/steel cap/timber stringer structure described above. For the same 780 linear feet of bridge, that cost totals \$2,199,000, according to UP's guide. Moreover, these costs have not been adjusted to account for inflation in various materials prices (particularly steel) that may have occurred since the 1997 guide was issued. Accordingly, a current estimate

according to UP's standards might well be higher. (A summary of these calculations is Attachment 2 hereto.)

Comparing the cost estimate based on the UP guide with the cost estimate developed by Mr. Brode, I determined that Mr. Brode's estimate was the more conservative and more cost-effective of the two. I therefore communicated that information to David Pettry for consideration in his estimation of the overall cost of restoring the Line to a serviceable condition.

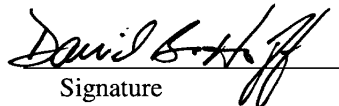
Conclusion

Based on my inspection of the Line and my approximately 15 years of experience as a professional bridge engineer and 20 years in the bridge industry, it is my opinion that the three bridges on the Line are so severely damaged that the only safe, economical and long-term solution to the damage is to replace the bridges with a steel pile/steel cap/steel stringer bridge structure as discussed above. From comparison of available cost information, I estimate the cost of that replacement at \$1,384,600.

VERIFICATION

I, David B. Hoff, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on January 20, 2005.


Signature

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF DAVID B. HOFF

ATTACHMENT 1

TranSystems Corporation
David B. Hoff, P.E

EDUCATION

B.S., Civil Engineering, North Carolina State University, 1983

PROFESSIONAL REGISTRATIONS

Professional Engineer in North Carolina #16335, 1990; Virginia #026230, 1995; West Virginia #12699, 1995, Florida #43701, 1990; New York #067726 (Inactive Status); South Carolina #20006, 1999.

AFFILIATIONS

American Society of Civil Engineers:
NC Section Structural Technical Group Chair 1998-2001
NC Section Secretary 1999-2000 & 2000-2001

SPECIALIZED STUDIES

Technical Core Transition Training - Florida Building Code, 2003
Steel Bridge Design using AASHTO LRFD Bridge Design Spec., 2002
PCI Splicing of Prestressed Concrete Girders, 2001
FHWA Bridge Inspection course, 2000, Audit
High Strength Steel and LRFD Seminar, 2000
PCI Bridge Design Seminar, 1998
Designing Steel for Serviceability, 1997
Steel Bridge Forum, 1995
Curved Girder Bridge Design Seminar, 1991
Seismic Isolation and Design of Highway Bridges Seminars, 1990
Economical and Fatigue Resistant Steel Bridge Details Seminar, 1990

PROFESSIONAL HISTORY

Mr. Hoff is an Associate and the Bridge Team Leader responsible for bridge engineering and other structural activities. Mr. Hoff has been involved in project management, project engineering and the design of structural systems for nineteen years. His broad background includes development of project cost estimates and technical specifications; structural design and analysis for replacement, rehabilitation and upgrade of fixed and movable vehicular, rail and pedestrian bridge projects using structural steel, reinforced and prestressed concrete and timber; structural inspection of fixed and movable bridges; review and analysis of engineering designs and shop drawings for specification compliance; development and quality control of categorical exclusion planning reports. Mr. Hoff has also been responsible for investigation,

development and implementation of design specifications, procedures and standard details for NCDOT's Structural Design Unit.

PROJECT EXPERIENCE (By DISCIPLINE)

Bridge Inspection

Bridge Substructure Inspection, Bristol, Virginia. Team leader involved with the inspection of concrete abutments and approach spans for NSRR rehabilitation plans.

Town of Biltmore Forest Municipal Bridge Inspections (2002) Performed field inspection of 12 structures not meeting Federal minimum span requirements and recommended maintenance needs. Prepared report with inspection notes and photographs using DOT format. Structure types included earth filled reinforced concrete and stone masonry arch culverts, RC box culverts and corrugated pipe crossings

City of Wilson, NC 12th Cycle (2000-2002) and 11th Cycle (1998-2000) Municipal Bridge Inspections. Team leader involved with 4 of 8 condition surveys, rating and report development for vehicular stream crossing bridges. Evaluated the physical condition of bridges and recommended maintenance needs. Prepared report with inspection notes, photographs and analysis computations to describe the existing bridges.

12th Cycle (2000-2002) Municipal Bridge Inspections, NCDOT Project Manager directing the inspections, rating and report development for 129 municipal bridges and Team Leader involved with 58 condition surveys, rating and report development of 129 bridges. 1 of the 58 inspected produced a bridge closure until further engineering could be performed to determine serviceability. Bridge types include vehicular and pedestrian highway and railroad grade crossings and stream crossings of reinforced concrete, prestressed concrete, steel (redundant and fracture critical), steel and timber deck and timber trestles. Three inspection teams evaluated the physical condition of bridges and recommended maintenance needs. Maintenance needs were separated into 1) immediate repairs required (notification within 24 hours of needed) and 2) repairs required within 12 months. Report preparation utilized inspection notes, field photographs and the LRFD analysis computations to describe the existing bridge conditions. All field work and report preparation was completed during a contract duration of 120 days.

11th Cycle (1998-2000) Municipal Bridge Inspections, NCDOT Project Manager directing the inspections, rating and report development for 109 municipal bridges and Team Leader involved with 60 condition surveys, rating and report development of 109 bridges. Bridge types include vehicular and pedestrian highway and railroad grade crossings and stream crossings of reinforced concrete, prestressed concrete, steel (redundant and fracture critical), steel Warren truss, steel and timber deck and timber trestles. Three inspection teams evaluated the physical condition of bridges and recommended maintenance needs. Maintenance needs were separated into 1) immediate repairs required (notification within 24 hours of needed) and 2) repairs required within 12 months. Report preparation utilized inspection notes, field photographs and the LFD

analysis computations to describe the existing bridge conditions. All field work and report preparation was completed during a contract duration of 120 days.

10th Cycle (1996-1998) Municipal Bridge Inspections, NCDOT Team leader involved with 57 condition surveys, rating and report development of 106 bridges. Bridge types include vehicular and pedestrian highway and railroad grade crossings and stream crossings of reinforced concrete, prestressed concrete, steel (redundant and fracture critical), steel and timber deck and timber trestles. Three inspection teams evaluated the physical condition of bridges and recommended maintenance needs. Maintenance needs were separated into 1) immediate repairs required (notification within 24 hours of needed) and 2) repairs required within 12 months. Report preparation utilized inspection notes, field photographs and the LFD analysis computations to describe the existing bridge conditions. All field work and report preparation was completed during a contract duration of 120 days.

RDU Airport Authority Bridge Inspections, (2002) Team member involved with 9 condition surveys and report development for 3 structural steel, 1 continuous flat-slab, 4 reinforced concrete box and metal arch pipe bridges.

City of Raleigh Pedestrian Bridge over Norfolk Southern Railroad, Wake County, N.C. Team leader involved in inspection and report of damaged structure after railroad car impact to determine serviceability. Removal of structure was recommended.

Fisher Island Ferry Terminal, Mainland Side, Miami, FL. Emergency response inspection of the concrete abutment and structural steel damage to determine terminal's serviceability and temporary loading restrictions.

District wide Structural Design and Emergency Response, Florida Department of Transportation, District 4. Inspection of hydraulically operated toe-lock mechanisms and associated bascule span structural steel for rehabilitation plan development on seven bascule bridges.

I-277/Charlotte Outer Loop, Mecklenburg County, N.C. Investigation and inspection of concrete bridge deck cracking after construction of six individual structures.

I-440/Raleigh Beltline over Crabtree Creek, Wake County, N.C. Damage assessment of two existing bridge substructures during a bridge replacement project. Investigation necessitated by possible damages due to blast vibrations.

US 264 over Dutchman's Creek, Davie County, N.C. Emergency response inspection of temporary detour steel pile frame bents to determine serviceability and conformity to contract specifications.

Bridge Rating and Analysis

CSX Railroad Bridge 52.17 over Monongahela River, Southwest PA. Senior engineer review and check of AREA rating calculations using Cooper 80 loading for 6 riveted steel

plate girder approach spans. Approach spans consisted of tangent and curved track alignment and splade and parallel girders to develop rehabilitation contract plans. Review included use of existing plans from 1912 construction and repair plans from 1965 and field inspection data.

Route 38 over I-90, Port Byron, N.Y. Engineer designer performing AASHTO rating calculations of a four-span rolled steel beam grade separation for development of preliminary bridge rehabilitation drawings.

Oakland Rd. over I-90, Brutus, N.Y. Engineer designer checking AASHTO rating calculations of a four-span rolled steel beam grade separation for development of preliminary bridge rehabilitation drawings.

Bridge Design

Norfolk Southern over East Side Thoroughfare, Hickory, NC Project management, design, and development of specifications and contract plans for a 59.5 meter steel two span chorded deck girder bridge with curved reinforced concrete deck supported on end bents with steel piles and an interior bent with drill pier foundations. Bridge superstructure carries two sets of track, a main line and a passing line. Project included track realignment design, adjacent dual track design and detour track design with associated quantities.

Norfolk Southern NB 404.66 over Beaver Creek, Bristol, VA Project management, field inspection, design, specifications, shop drawing review and construction observation of a 100 ft single span steel plate through girder replacement with associated abutment rehabilitation and widening. 120 inch through girders spaced at 22 ft carry 14 inch floor beams located $\frac{1}{2}$ inch off through girder bottom flange with an 8 inch concrete ballast trough. Abutment repair details were developed and each abutment cap was widened to the south side to accommodate the added width of the new structure. Roll-in replacement procedures were utilized for bridge replacement to minimize cost and track time.

SC 34 Bridge Replacements Darlington & Marlboro Counties, SC Project management, design, plan preparation and specifications for replacement of six (6) structures on SC 34 that serve as overflow structures to the main bridge over the Great Pee Dee River. Designs involved conceptual, preliminary, value engineering study and final design. Bridge lengths varied from 480 ft to 780 ft with span configuration involving prestressed concrete girder made continuous for live load supported by reinforced concrete caps with prestressed concrete piles. Two of the six bridges were under direct

Shallow Ford Road Bridge Crossing, Asheville, NC Project management, design, plan preparation, specifications, shop drawing review and construction engineering as necessary for a 80 feet long single span prestressed concrete girder bridge with a clear roadway of 26 feet. Superstructure consists of 4 lines of AASHTO Type IV Prestressed Concrete Beams spaced at 7'-7" with 3'-9" overhangs. The substructure consists of reinforced concrete integral end bent caps supported by steel pile foundations. Beneath the reinforced concrete caps is a soldier pile retaining wall system to retain the approach backfill. Utilization of

such a retaining wall beneath the caps shortened the bridge approximately 20 feet in length. Bridge design is in conformance with AASHTO LRFD Specifications 2nd Edition and SCDOT Bridge Design Memorandums and policies.

Owens Road Bridge Greenville County, SC Project management, design, plan preparation, specifications, shop drawing review of the 120 feet three span hollow cored bridge supported by pile bents. This design build project required the bridge span configuration to be modified after construction began to reduce construction costs. Span configuration was changed to permit the installation of an interior bent further away from the existing stream due to unforeseen shallow bedrock.

Avery Creek Road Bridge Crossing, Asheville, NC Project management, design, plan preparation, specifications, shop drawing review and construction engineering as necessary for this single span bridge design. The bridge consisted of a 60 feet hollow cored slab prestressed concrete superstructure with a 27 feet wide clear roadway. The inside face of the bridge has a 6 inch stone facade. The substructure is a reinforced concrete cantilever retaining abutment wall with turned back wings supported by steel pile foundations.

Cliffs Communities Avery Creek Bridge, Asheville, NC Project management, design, plan preparation, specifications, shop drawing review and construction engineering as necessary for this single span bridge design. The bridge consisted of a 60 feet hollow cored slab prestressed concrete superstructure with a 27 feet wide clear roadway. The inside face of the bridge has a 6 inch stone facade. The substructure is a reinforced concrete cap keyed into substantial rock. Bridge layout was critical to permit construction to occur behind existing historic stone wall abutments.

Brown Lane Bridge Replacement, Greenville County, SC Project management, design, and development of specifications and contract plans for a 37 ft hollow cored slab bridge. Barrier railing was designed for bolt down installation. Superstructure is supported on concrete cap and steel pile abutments. Abutment walls consist of precast concrete panels to retain approach fill and reduce stream impact. A retaining wall 40 feet with bolt down railing in length extends parallel to the roadway to eliminate the possibility of scour of roadway approach fill.

Arsenal Road over BNSF Railway and Jackson Creek, Will County, IL Design engineer involved with the design of a four span 572 feet long continuous steel girder structure with 72 feet clear roadway. Responsibility was to review the superstructure design and reinforced concrete multi-column / multi-drilled shaft substructure.

Meyers Road over E-W Tollway, DuPage County, IL Project engineer, design and plan development of a stage construction tangent two span 265 feet continuous structure with a 56 feet clear roadway and 5 feet sidewalks utilizing high performance steel plate girders crossing over a six lane divided highway. Structure consists of integral abutments, free standing turn back wings on steel piles with sheet pile dead-man to restrain overturning forces, interior pier concrete post and beam construction supported by steel pile cap foundations and temporary sheet pile required between stages during construction.

Piedmont Triad Regional Water Authority Bridge on NC 62 over Deep River Project management, design and plan development of curved structure with 33.33 feet clear roadways utilizing chorded 54 inch prestressed concrete AASHTO shape girders made continuous for live load. The structure has 3 spans equaling 243 feet in length. The substructure consists of drilled pier interior post and beam bents.

Blue Ridge Stone Co, Luck Stone Bridge, Apex NC Project management preliminary cost estimate and final design and detailing of a 20 feet single span cast in place concrete low rise bridge supported by reinforced concrete grade beams with turn back wings.

Duckworth Bridge Replacement, Greenville County, SC Project management, design, and development of specifications and contract plans for a 50 ft hollow cored slab bridge. Barrier railing was designed for bolt down installation. Superstructure is supported on concrete cap and steel pile abutments. Abutment walls consist of precast concrete panels to retain approach fill and reduce stream impact. Plans were developed to permit stage construction for maintain vehicular access to the mountain development. The concrete was tinted brown to blend into the environment.

Holland Road Bridge Replacement, Greenville County, SC Project management, design, and development of specifications and contract plans for a two span 65 ft hollow cored slab bridge. Superstructure is supported on concrete cap and steel pile abutments and a double braced steel pile with concrete cap interior pier.

Dual Bridges on Clayton U.S. 70 Bypass, Johnston County, N.C. Project management, design and plan development of curved dual structures with 12 meter clear roadways utilizing chorded 372mm prestressed concrete AASHTO shape girders made continuous for live load over wetlands and Austin Pond. The left structure has nine spans equaling 226 meters in length and the right structure has eight spans equaling 201 meters in length. The substructure consists of interior post and beam bents supported by reinforced concrete pile caps with 1 meter of exposed piles to minimized wetland impact. Bents are laid out with varying skewers to minimize different girder lengths and maximize cost savings.

NC 42 over Clayton U.S. 70 Bypass, Johnston County, N.C. Project management, design and plan development of a tangent two span 72 meter continuous structure with a 21.6 meter clear roadway utilizing steel plate girders crossing over a four lane divided highway cut section. The interior substructure unit consists of a concrete post and beam bent supported by steel pile cap foundations.

English Hills Subdivision, Mott Road over West Branch Rocky River Tributary, Iredell County, N.C. Project management, design, plan development of a triple 7 feet high by 8 feet wide by 94 feet long reinforced concrete box culvert in accordance with NCDOT Specifications and design practices.

Tanners Creek, Huntersville, N.C. Project management, design, plan development of a triple 12 feet high by 108 feet wide by 70 feet long reinforced concrete box culvert in accordance with NCDOT Specifications and design practices.

Deerfield Creek Subdivision, Tilley Morris Road over Six Mile Creek, Mecklenburg County, N.C. Project management, design, plan development of a triple 8 feet high by 13 feet wide by 56.5 feet long reinforced concrete box culvert in accordance with NCDOT Specifications and design practices.

Environmental Protection Agency, Research Triangle Park, N.C. Project management, design, plan and specification development of a triple 7 feet high by 7 feet wide by 58 feet long reinforced concrete box culvert in accordance with NCDOT Specifications and design practices.

Matthews Market Northeast Parkway Culverts, Mecklenburg County, N.C. Project management, design and plan development of three reinforced concrete box culverts - two culverts (8 feet by 8 feet by 119 feet long and 6 feet by 6 feet by 117 feet long) converge at one point down stream end and a double 8 feet by 8 feet by 126 feet long reinforced concrete box. Culverts and adjoining footings were designed to support 12 to 18 feet of fill and Mechanically Stabilized Earth walls in accordance with NCDOT Specifications and design practices.

SC 296 over I-26, Spartanburg, S.C. Project management, design, contract plan production of the Type, Size and Location Drawings (TS&L) for a two span steel plate girder stage construction single point urban interchange bridge. Superstructure layout consists of 26 lines of girders splayed to match horizontal geometry with numerous frame-in girders at the bents. Horizontal geometry includes a variable superelevation on the bridge to assist tie in with existing business properties in the area.

SC 296 over I-26, Spartanburg, S.C. Project management, design, contract plan production of a 192 feet two span AASHTO Type V prestressed concrete girder stage construction single point urban interchange bridge. Superstructure layout consists of 25 lines of parallel girders. Superstructure deck lay out to minimize construction costs in turn exposing portions of parallel girders outside of deck limits. Hour glass deck dimensions are 321 feet, 158 feet and 315 feet; grooved deck surface area is 3632 square yards. Horizontal geometry includes a variable super elevation on the bridge to assist tie in with existing business properties in the area. Design specifications were AASHTO LRFD 2 edition and SCDOT Seismic Design Specifications for Highway Bridges for the essential structure in seismic category "B". Design also included 30,562 square yards of MSE Wall abutments, reinforced concrete ramp walls and a reinforced concrete box culvert.

I-385 Widening and Improvements, Greenville County, SC Bridge Project Management, design, contract plan production, quantities, pay items and quality control of seven bridge replacements, one bridge widening, reinforced concrete box culvert extension, MSE reinforced concrete retaining walls along the I 385 corridor from I-85 and downtown Greenville. Project was completed seven months ahead of schedule at the request of the

client due to air-quality requirements that would have stopped construction for up to five years. Bridge design groups were located in separate four offices. During the course of the project, monthly design team meetings were held at the Raleigh or Greenville offices. Design procedures and plan production processes were established prior "Notice to Proceed" with weekly contract plans review for detailing consistency, budget, project status and quality reviews. Bridge types included rolled beam and plate girder structural steel tangent and curved girder, replacement and stage construction and cast-in-place reinforced concrete deck slabs. Raleigh office was responsible for the design and plan production of two cast-in-place reinforced concrete deck slab bridges, bridge widening and the retaining walls. Each site had extensive utility coordination. Total estimated construction cost for the nine highway bridges was \$13.7 million

SC 276 (Laurens Rd) over Richland Creek, Greenville County, SC Project management, design, plan development of a 42 ft single span bridge widening using rolled beams. Superstructure layout used variable beam spacing due to numerous utilities located on the existing bridge that could not be relocated. Substructure consisted of reinforced concrete post and beam supported on drilled piers behind and existing stone channel abutments that also could not be removed.

I-385 South Bound Lane Entrance Ramp, Greenville County, SC Project management and quality control of a 90 feet long by 31 ft wide three span continuous flat slab concrete bridge. Substructure consists of reinforced concrete post and beam bents supported on drilled piers. Bridge layout involved partial demolition of existing bridge, location of water, sewer and telephone utilities that could not be moved. These utilities controlled substructure cap configuration and foundation location.

I-385 North Bound Lane Exit Ramp, Greenville County, SC Project management and quality control of a 90 feet long by 63 ft wide three span continuous flat slab concrete bridge. Substructure consists of reinforced concrete post and beam bents supported on drilled piers and augered piles.

Culvert Extension beneath I-385 South Bound Lane Entrance Ramp, Greenville County, SC Project management, design, plan development of a 12 feet high by 22 feet wide by 96 feet long reinforced concrete box culvert extension with skewed headwalls and outlet wings with bottom floor slab

US 29 / NC 49 over Norfolk Southern Railroad, Mecklenburg County, NC Design, check and plan development of a 215 ft. urban three span simply supported structural steel chorded plate girder and rolled beam bridge on a 4 degree horizontal curve. Contract plans were developed for four phase stage construction. Superstructure is supported by reinforced concrete post and beam with drilled pier foundation substructure.

NC 49 over Rocky River, Cabarrus County, N.C. Design of dual 55.0 m. three-span prestressed concrete girder superstructure made continuous for live load concrete deck supported by drilled shaft post and beam bents.

SR 2202 over Lumber River, Robeson County, NC Management and design of a 201 ft three span simple supported prestressed concrete girder made continuous for live load supported by reinforced concrete cap with steel pile bents.

SR 1514 over Moon Creek, Caswell County, NC Management and design of a 307 ft four span simple supported prestressed concrete girder made continuous for live load supported by drilled shaft post and beam interior bents and reinforced concrete cap and steel pile end bents.

U.S. 19E over North Toe River, Avery County, NC Management and design of a 165 ft 135 degree skew three span simple supported rolled beam with cover plates with constant superelevation supported by drilled shaft abutments and interior post and beam drilled shaft bents.

SR 3008 (Hillsborough Street) over CSX and Norfolk Southern Railroads, Wake County, NC Second of two complete bridge designs for the crossing of a 37.9 m. (32.1m, 5.7m) long 90 degree skew urban continuous two span with splayed haunched composite steel plate girders with an integral abutment and concrete deck superstructure. Span 'A' haunched plate girder depth at the bearings is 1000mm and at mid span is 380mm. Substructure will utilize permanent shoring with tie-back anchors and drilled shafts and columns with crashwalls. Railroad clearances and a restrictive vertical alignment required a shallow haunched plate girder design utilizing a fixed frame condition at abutment 1 and post-tension anchorage at end bent 2. Utility hanger designs for multiple duct banks to accommodate 25 fiberglass ducts and a waterline were also needed.

SR 3008 (Hillsborough Street) over CSX and Norfolk Southern Railroads, Wake County, NC Design and check of a 21.3 m. 90 degree skew urban single span composite steel plate girders and concrete deck superstructure. Substructure will utilize permanent shoring with tie-back anchors and drilled shafts and columns with crashwalls. Railroad clearances and restrictive vertical alignment required shallow plate girder design. A special rail design and utility designs for a 25 fiberglass duct bank and waterline were also needed.

SR 1115 over I-85 Greensboro Bypass, Guilford County, NC Project management, design and contract plan preparation of a 122.5 meter bridge over a multiple horizontal alignment "collector distributor" roadway. The bridge is a four span continuous steel plate girder with a 9.2 meter feet clear distance reinforced concrete deck structure supported by drilled shaft post and beam and pile cap footing interior bents and steel pile end bents.

SR 3007 (Morgan Street) over CSX and Norfolk Southern Railroads, Wake County, NC Design of a 69 m. urban, five span simply supported composite steel plate girder superstructure with limited vertical and horizontal clearances and a trapezoidal span supported on drilled shaft interior post and beam bents and augered pile shaft end bents. Utility design for a 25 unit fiberglass duct bank and a waterline supported on the bridge.

Cary Parkway over Norfolk Southern Railroad, Wake County, NC Design check of unequal length dual three span continuous steel plate girder superstructures approximately

367 ft long with a 30 degree skew supported by drilled shaft post and beam bents and steel pile end bents with wings in excess of twenty feet long. One of the two dual structures has a variable super on end span and horizontal curvature on the approach slab.

Brookview Drive over Cedar Falls Creek, Town of Chapel Hill, N.C. Engineer of reinforced concrete precast arch bridge replacement including hydraulic analysis, permitting, water, sewer utility coordination and relocation, development of roadway grade and pre-bid and construction services. Project included development of contract plans, sewer relocation alternate design and water line utility replacement, project specifications and bid documents.

St. Mary's Street Culvert Replacement, City of Raleigh, N.C. Project Manager and Engineer of reinforced concrete box culvert replacement including water power and fiber optic utility coordination and relocation, and development of roadway grade and drainage, and construction services. Project included development of contract plans detailing demolition, construction sequence, utility relocation and water line utility replacement, reinforced concrete box culvert and existing culvert tie-in detailing, elevated parking slabs, project specifications and bid documents.

US 276 over French Broad River, Transylvania County, N.C. Management and quality review of the bridge replacement and highway realignment project including roadway alignment design, hydrological analysis and hydraulic design, design of a 3-span continuous for live load prestressed concrete girder bridge with drilled shaft bents under seismic performance Category 'B'.

Greensboro Outer Loop over Buffalo Creek, Guilford County, N.C. Management and design of dual 97.4 m. four-span prestressed concrete girder superstructure with double two-span continuous for live load concrete deck supported by drilled shaft bents.

I-85/I-40 over Buffalo Creek, Guilford County, N.C. Design check of a 144 ft. L x 108 ft. W, 118 degree skew stage construction prestressed concrete girder superstructure supported by pile bent substructure.

Young's Mill Rd., SR 3029 over I-85, Guilford County, N.C. Design of a 244 ft., 89 degree skew, four-span prestressed concrete girder superstructure by reinforced concrete end bents and bents on spread footings and the associated contract drawing review.

Rock Creek Dairy Rd., SR 3056 over I-85, Guilford County, N.C. NCDOT Structure Design Unit "Plans of the Quarter", Fall, 1991. Redesign and substantial contract drawing updates of a 232 ft., 108 degree skew, four-span prestressed concrete girder superstructure supported by reinforced concrete end bents on steel piles and interior bents on spread footings.

Earnhardt Rd., SR 2126 over I-85, Cabarrus County, N.C. Design and contract drawings of a 279 ft. 59 degree skew, four-span prestressed concrete girder superstructure supported by reinforced concrete end bents and bents on spread footings.

East Dogwood Trail over Unnamed Lagoon, Dare County, N.C. Design of a 77 ft., 90 degree skew, two-span prestressed concrete slab superstructure with a superelevated bituminous wearing surface supported by reinforced concrete pile caps and prestressed concrete pile substructure.

NC 16 over Lyle Creek, Catawba County, N.C. Development of partial demolition drawings and the channel phasing during stage construction of a bridge realignment project.

NC 16 over Whitner Creek, Catawba County, N.C. Design and preparation of contract drawings for a reinforced concrete trash deflector for a triple 10' x 10' reinforced concrete box culvert.

SR 1720 over Mountain Creek, Stanley County, N.C. Design check of 169 ft., two-span prestressed concrete superstructure with a 145 degree skew supported by reinforced concrete substructure, with a 22 ft. end bent wing retaining wall on spread footings.

SR 1440 over US 264, Greenville Bypass, Pitt County, N.C. Design and design check of a 176 ft., 84 degree skew, four-span prestressed concrete girder superstructure supported by reinforced concrete post and beam bents and end bents.

NC 33 over US 264, Greenville Bypass, Pitt County, N.C. Design and check of a 155 ft., 85 degree skew, three-span prestressed concrete girder superstructure supported by reinforced concrete post and beam substructure.

US 264 NW Greenville Bypass, Pitt County, N.C. Design of two triple 11'x11' reinforced concrete box culverts and one double 10'x8' reinforced concrete box culvert for Johnson's Mill Run Creek.

I-40/I-85 Widening over Little Alamance Creek, Guilford County, N.C. Design check on a 31'x19' arch culvert extension and a quad 11'x15.5' reinforced concrete box culvert for Rock Creek.

US 70 over Holts Pond & Moccasin Creek, Johnston County, N.C. Long-hand design calculation of a dual, 70 ft. two-span, 90 degree skew, prestressed concrete slab superstructure supported by pile bents.

US 401 over Upper Little River, Harnett County, N.C. Long-hand design calculation of a 250 ft., five-span prestressed concrete slab superstructure with a 120 degree skew supported by reinforced concrete pile end bents and interior bents on spread footings.

US 64 Business over Little River, Wake County, N.C. Long-hand design calculations of a 150 ft., three-span prestressed concrete slab superstructure with a 75 degree skew supported by reinforced concrete pile end bents and post and beam bents.

NC 97 over Little River, Wake County, N.C. Long-hand design calculation of a 172 ft. four-span prestressed concrete slab superstructure with 90 degree skew supported by reinforced concrete pile end bents and post beam bents.

NC 211 over Big Swamp and Overflow, Robeson County, N.C. Long-hand design calculations of three individual bridges totaling 11 spans and 475 ft. with prestressed concrete slab superstructures and pile bent substructures.

SR 2258 over Stewart's Creek, Surry County, N.C. Long-hand design calculation and plan preparation of a 166 ft. four-span prestressed concrete slab superstructure with a 75 degree skew supported by reinforced concrete pile end bents and post and beam bents on spread footings.

US 401 over Fishing Creek, Warren County, N.C. Long-hand design calculation of a 188 ft., four-span prestressed concrete slab superstructure with a 90 degree skew supported by reinforced concrete pile end bents and post and beam bents.

US 258 over Deep Creek No. 2, Halifax County, N.C. Long-hand design calculation of a 70 ft. two-span, 105 degree skew prestressed concrete girder superstructure supported by reinforced concrete pile end bents and post and beam bents.

SR 1001 over Tar River, Franklin County, N.C. Long-hand design of a 256 ft. 90 degree skew prestressed concrete girder superstructure supported by reinforced concrete pile end bents, reinforced concrete cap and steel pile frame bents and a reinforced concrete hammer head bent pier.

SR 1133 over Shocco Creek, Warren County, N.C. Long-hand design calculation of a 120 ft., two-span prestressed concrete girder superstructure on a horizontal curve supported by a radial layout reinforced concrete pile end bents and post and beam bents.

US 401 over Fishing Creek, Warren County, N.C. Long-hand design calculation of a 140 ft., two-span prestressed concrete girder superstructure supported by reinforced concrete pile and bents and post and beam bents.

SR 3446 over Enka Lake Spillway, Buncombe County, N.C. Long-hand design calculation of a single 59 ft. Prestressed concrete girder and curved concrete deck superstructure supported by radial layout reinforced concrete end bents.

SR 2284 over Winston-Salem Southbound Railway, Davidson County, N.C. Long-hand design calculation of a 179 ft. rolled steel beam superstructure supported by reinforced concrete post and beam substructure with crash walls.

NC 217 over Lower Little River, Cumberland-Harnett Counties, N.C. Long-hand design calculation of a 180 ft. three-span prestressed concrete superstructure supported by reinforced concrete pile end bents and tapered column post and beam bents.

City of Charlotte, N.C. Design of eight reinforced concrete box culverts (of various skews) below new arteries, totaling 1,302 linear feet.

Pedestrian Bridge Design

Anderson Point Park Bridge, City of Raleigh, N.C. Project consists of timber bridge replacement with a pre-manufactured pedestrian truss bridge to tie into the new park development Master Plan. Project included development of bridge length, reversed curvature horizontal alignment and vertical approach alignment, substructure design, surveying, geotechnical testing, railroad approval assistance, contractor bid assistance and construction administration with site visits.

Camp Durant Road over Perry Creek, City of Raleigh, N.C. Corrugated pipe culvert replacement using a reinforced concrete precast arch bridge replacement. Project included including hydraulic analysis, cost analysis of 5 alternate structure types, permitting, utility coordination, development of contract plans and construction services.

White Oak Creek Greenway Pedestrian Bridges, Town of Cary, NC Design, field location layout, detailing and specifications of four pedestrian bridge foundations to support light emergency vehicles. Bridge decks consist of prefabricated glue laminated beams. Design and detailing also included a 50 feet long boardwalk with ornamental railings adjacent to a stream.

North Cary Park Pedestrian Bridge, Town of Cary, NC Project management, design, plan preparation, specifications and shop drawing review of the three span pre-engineered steel truss bridge. Substructure supporting the bridge included reinforced concrete end bents and structural steel tower piers on spread footings.

Movable and Fixed Bridge Rehabilitation

Exchange Park Lane Bridge over Eno River: Project involves the development of bridge repair contract documents. This bridge was closed to truck traffic during the 2002 Municipal Bridge Inspection Program by TranSystems engineers. Report document will be developed in report form utilizing cadd sketches and digital photographs to relay deterioration magnitude and repair requirements. Project work includes follow-up field inspection visits to delineate and quantify repair areas, developing repair details, contract documents and bid documents, and construction engineering assistance.

Fisher Island Ferry Terminal - Mainland Side, Miami, FL. Emergency inspection of the concrete abutment damage and determination of the terminal's serviceability and temporary loading restrictions, development of the inspection reports, contract repair plans and the project's technical special provisions.

District Wide Structural Design and Emergency Response, Florida Department of Transportation, District 4. Retrofit of seven hydraulically operated toe lock mechanisms on five bascule bridge sites throughout District 4, including field inspections, mechanism

layout, design and analysis of lock bars, receivers with sole plates and guides, design of new working service platforms at three bridge sites and bascule balance analysis.

SR 802 over Intercoastal Waterway, Palm Beach County, Fla. Structural design and preparation of plans and specifications for the rehabilitation of two single-leaf bascule bridges with prestressed concrete approach spans, totaling 3,132 ft. in length. The structural work included repair of heavily spalled concrete, repair of deck spalls, strengthening of pier caps by external post-tensioning, replacement of pile fendering, repair of prestressed piles under water, upgrading the existing sidewalk railing to met current safety standards, replacement of bascule span steel grid deck and stringers using panelized construction, installation of inspection catwalks and maintenance platforms, and bascule span balance analysis.

A1A over Hillsboro Inlet, Broward County, Fla. Structural design and layout of new steel trunnion pedestals with post-tension anchor connection to bascule pier.

Route 38 over I-90, Port Byron, N.Y. Development of the inspection report of a four-span rolled steel grade separation and the related preliminary bridge rehabilitation drawings.

Oakland Rd.. over I-90, Brutus, N.Y. Development of the inspection report of a four-span rolled steel grade separation and the related preliminary bridge rehabilitation drawings.

Construction Services

Temporary Detour Bridge

I-85 over Buffalo Creek, Guilford County, N.C. In-depth analysis and review of the temporary detour bridge construction drawings. The bridge was a skewed three-span continuous composite timber deck with rolled steel beams, supported by steel pile timber back wall end bents and welded steel pile frame interior bents substructure.

SR 1384 over Muddy Creek, Forsyth County, N.C. In-depth investigation, analysis and review of the temporary detour bridge construction drawings. The superstructure consisted of the Mabey Universal Bridge System, supported by reinforced concrete end bents with steel piles.

US 64 over Dutchman's Creek, Davie County, N.C. In-depth review and analysis of the temporary detour bridge contract drawings. The superstructure was Mabey Universal Bridge System superelevated by reinforced concrete cap with timber backwall on steel piles and steel pile frame interior bents. Emergency response inspection of the substructure was required to determine its conformity to contract specifications and serviceability.

Heavy Equipment Placement

SR 2560 over Southern Railroad, Gaston County, N.C. Analysis and review of a proposal to place a crane on the bridge deck during construction. Analysis involved calculation of stresses below each crane outrigger and crane axle. Critical loading determined using boom length, payload weight, crane placement and ever changing center of gravity due to multiple lift positions.

SR 2153 over Deep River, Lee-Chatham County, N.C. Analysis and review of a proposal to place concrete delivery and pumping equipment on bridge approach spans during construction. Analysis involved consideration of vehicle loads, position and delivery radius.

Falsework and Formwork Analysis and Review

Norfolk Southern NB 404.66 over Beaver Creek, Bristol, VA Review and analysis of contractors' steel frame falsework drawings and machinery to perform the roll-in of a 100 ft single span steel plate through girder for construction sequence, strength and stability requirements. 2 Steel frame bents consisted of parallel H piles for caps and steel pipe piles filled with concrete driven into place with angle bracing.

North Carolina - Statewide. Review and analysis of contractors' falsework drawings for multiple bridge projects using wood, timber, plywood and steel falsework/formwork materials. Bridge component falsework included pile footings in environmentally sensitive areas, pier caps, deck closure pours, deck overhangs and metal stay-in-place forms.

I-440 Dual Bridge Widening over Norfolk Southern Railway, Wake County, NC
Project management and review of Contractor's proposed bridge deck overhang and closure pour falsework for compliance with special provisions and standard specifications. Reviews included calculation of stresses in wooden formwork and falsework, specified premanufactured falsework components and brackets, connective welds and residual stresses in structural steel.

I-440 Dual Bridge Widening over Norfolk Southern Railway, Wake County, NC
Project management and review of Fabricator's metal stay in place form drawings for compliance with contract drawings, special provisions and standard specifications. Reviews included calculation of loadings, stresses and deflections of forms and material quantities.

Construction Administration

Windemere Island Bridge, Lake Norman, Iredell County, N.C. Project management, construction administration, shop drawing review and design reviews for a private 512' prestressed concrete girder bridge supported by reinforced concrete post and beam interior bents on drilled pier foundations and steel pile end bents. The project involved survey, geotechnical investigation, utility coordination, development of roadway grades,

mechanically stabilized earth walls, project specifications and bid documents. The bridge was designed in accordance with NCDOT design policies and specifications. Construction was monitored throughout construction for compliance and acceptance by NCDOT after completion to be added to the State's maintenance system. The bridge and island roadway development project was worth \$2.6 million.

CSX TransFlo Driveway Modification, Raleigh, NC Construction Administration of intersection improvements for the Old Williamson Road and Capitol Boulevard. Construction involved removal of old roadbed, installation of new asphalt, curb and gutter, fire hydrants, storm drainage, utility location, field surveys, and permanent easement negotiation for CSX Railroad.

Caledonia Correctional Institution High Mast Lighting, Tillery, N.C. Project management, design and analysis, plan review, development of Project Special Provisions and construction inspection. Foundations were for three 100 feet tall single-leg steel high mast pole structures and comprised of 36 inch diameter reinforced concrete drilled shafts.

I-385 On Call Construction Engineering, Greenville SC Shop drawing review and construction engineering during the construction of nine highway bridges and various retaining walls for I 385 Improvements project.

Windemere Island Bridge, Lake Norman, Iredell County, N.C. Construction engineering involving the determination of selective demolition, replacement detailing and observation of 65 linear feet of bridge deck and barrier railing due to low strength cylinder tests.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF DAVID B. HOFF

ATTACHMENT 2

Bridge
 Type: Steel Piles with steel caps and steel stringers
 No ballast deck - Timber ties on Steel Stringers

Total Bridge Replacement Costs**: \$1,384,600.00

Cost Per Linear Ft: \$ 1,775.13

BR #	Bridge Length (ft)	Cost
1	420	\$ 745,553.85
2	75	\$ 133,134.62
4	285	\$ 505,911.54
Sum	780	

** Estimated Construction Costs obtained from Bob Brode of
 W.M. Brode Construction Co. located in Newcomerstown, Ohio
 on January 18, 2005

Alternate estimate – timber stringers rather than steel stringers:

Bridge
 Type: Steel Piles with steel caps and Timber stringers
 No ballast deck - Timber ties on Timber Stringers

Total Bridge Replacement Costs**: \$2,199,000.00

Approximate Cost Per Linear Ft: \$ 2,819.23

BR #	Bridge Length (ft)	Cost
1	420	\$1,176,000.00
2	75	\$ 225,000.00
4	285	\$ 798,000.00
Sum	780	

Cost Estimate from UP Railroad Cost Estimating Guide Eff
 1997 (No increase for inflation since 1997 in above values)

* Values are adjusted for cost savings based on length

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 11

**VERIFIED STATEMENT OF
JOSEPH J. PLAISTOW**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

VERIFIED STATEMENT OF JOSEPH J. PLAISTOW

INTRODUCTION

My name is Joseph J. Plaistow. I am an economist and a Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The Firm's primary office is located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314. My qualifications and experience are attached to this verified statement as Attachment 1. The 45 verified statements that I have sponsored since joining L.E. Peabody & Associates, Inc. in 1998 have primarily been before this Surface Transportation Board (the "Board" or the "STB") and have concerned the variable cost of providing rail service and I have again applied that expertise to the facts of this proceeding.¹

In this proceeding, Lee K. Groome and Groome & Associates (collectively "Groome") claim that Greenville County Economic Development Corporation ("GCEDC") violated its common carrier obligation by failing to provide rail service to Groome's facilities. Groome further claims that it suffered damages due to this failure to provide rail service and due to the fact that Groome had to pay substantially more for truck transportation than it was paying for rail service.

¹ I have also sponsored economic testimony in abandonment and feeder line proceedings. Idaho Public Utilities Commission v. Camas Prairie Railnet, Inc., STB Docket No. AB-564, is an example of an abandonment proceeding verified statement. I was an economic witness in the feeder line proceeding Caddo Antoine and Little Missouri Railroad Company – Feeder Line Acquisition – Arkansas Midland Railroad Company Line Between Gurdon and

To determine whether or not Groome was truly damaged by having to use trucks rather than rail, I have determined what the costs would have been for GCEDC to provide rail service to Groome & Associates, Inc. ("G&A") over the 2.6 mile segment of rail line (that is, a section of rail line extending between approximately Hampton Avenue and Sulphur Springs Road in Greenville, South Carolina) (the "Line") that connects G&A's facility with the mainline of the CSX. In developing my conclusion, I have relied upon data developed by the following Greenville County Economic Development Corporation ("GCEDC") witnesses:

1. David B. Hoff, P.E., a bridge expert and a registered professional engineer who estimated the cost of replacing the three bridges on this 2.6 mile section of track to be \$1,384,600; and
2. David Pettry, an experienced railroad engineer with over 35 years of service with CSX and its predecessor railroads, who, following his personal, on-the-ground inspection of the Line on January 13 and 14, 2005, concluded that in addition to the bridge work it would cost \$1,608,675 to make other required and necessary improvements to the Line.

It is my opinion that if GCEDC had been required to provide G&A rail service during the period of time covered by the complaint or is required to provide rail service now, that the variable costs, plus the associated fixed costs, of moving rolls of paper over just the 2.6 mile segment, and not counting the line-haul charge that CSX or NS would have charged, would have exceeded \$1,430.17 per carload. This is significantly more than what Groome was paying before the line was embargoed and is far in excess of truck transportation charges to move the same rolls of paper. Because of the exorbitant cost of this rail service, I conclude that Groome would never have used GCEDC's rail service even if it had been available and that Groome suffered no damages because of the lack of rail service to his facility.

Birds Mill, AR, STB Finance Docket No. 32479. (This proceeding was appealed to the federal court as GS Roofing I, 143 F.3d at 392.) While at L.E. Peabody & Associates, Inc., I have also testified before federal and state courts.

The remainder of this verified statement is organized under the following topical headings:

- I. Road Property Investment Return and Depreciation
- II. Variable Cost of Providing Rail Service from CSX Connection in Greenville, SC, to Groome & Associates, Inc.

I. Road Property Investment Return and Depreciation

A. Purchase Price of Former G&N Property

To provide service to G&A, GCEDC would have had to make substantial investments in road property assets. These investments would have been in addition to GCEDC's original \$1.3 million investment to purchase the railroad corridor segments formerly owned by the South Carolina Central Railroad Company, Inc., including 11.8 miles of the former Greenville & Northern Railroad ("G&N"). "These two segments are identified as follows:

- 1. 3.29 miles located between North Pleasantburg Road and a point just north of the General Electric lead track in southeastern Greenville; and
- 2. The former Greenville & Northern Railroad running generally between downtown Greenville, along the Reedy River, and northward to Travelers Rest."²

The first segment was offered for \$2,000,000. The second segment was offered for \$750,000.³ Both segments were ultimately sold to GCEDC for \$1.3 million,⁴ or 47.27% of the original total asking price of \$2.75 million. The 2.6 mile segment with which we are dealing in the instant proceeding is in the second segment, and 47.27% of the \$750,000 asking price is

² See January 29, 1999 letter from Todd N. Cecil, Railtex Director – Real Estate, to Mr. Dozier Brooks, Chairman, Greenville County Council included in Attachments A1-A19 to Groome & Associates, Inc.'s "Memorandum in Support of Complaint," filed December 21, 2004.

³ Ibid.

⁴ See deposition of Dozier Brooks, November 19, 2003 in State of South Carolina Court of Common Pleas proceeding C.A. NO. 01-CP-23-2351, page 7 included in Attachments B-G to Groome & Associates, Inc.'s "Memorandum in Support of Complaint", filed December 21, 2004.

\$354,525. Assuming that at least one-third of the value of the second segment should be attributed to the more highly developed downtown Greenville 2.6 mile stretch from the CSX interchange to G&A, the original price of the 2.6 mile section was at least one-third of \$354,525 or \$118,175. The calculation of return and depreciation on this amount of investment is shown in Attachment 2. See line 1 of Attachment 2 to this verified statement.

B. Bridge Expenditures

Attachment 2 also calculates the return and depreciation costs related to the required bridge expenditures of \$1,384,600 estimated by GCEDC witness David B. Hoff. See line 3 of Attachment 2.

C. Other Line Improvement Expenditures

Attachment 2 calculates the return and depreciation costs related to the required Line improvement expenditures of \$1,608,675 estimated by GCEDC witness David Pettry. See lines 2, 4, 5, and 6 of Attachment 2. In Attachment 2, Witness Pettry's total investment is broken down into its component parts: \$154,036 for Grading; \$237,390 for Ties; \$760,986 for Rails and OTM; and \$456,263 for Crossings and Switches from Attachment 3 to Mr. Pettry's Verified Statement.

D. Road Property Investment Return and Depreciation Costing Procedures

Standard URCS costing procedures were applied in Attachment 2 except that line-specific Road Property Investment Return and Depreciation were reflected instead of the Region 4 averages. These cost calculations were then carried forward to Attachment 3, "Variable Cost of Providing Rail Service from CSX Connection in Greenville, SC to Groome & Associates, Inc."

Pages 1 and 2 of Attachment 2 calculate the total running and switching portion of the costs associated with these investments. The running portion of these costs would normally be

brought forward as the return and depreciation portion of line 1, Gross ton mile cost of Attachment 3, page 1. The switching portion of these costs would normally be brought forward as the return and depreciation portion of lines 7, 8, and 9, Switching cost of Attachment 3, page 1. Because the service units were not available that would have allowed the line-specific switching costs to be determined using standard URCS procedures, both the running and switching portion of these costs were allocated on a gross ton-mile basis. This is a reasonable procedure because 100% of the Road Property Investment Return and Depreciation costs must be covered by this service, so it matters little whether it is accounted for as a Switching cost or as a Gross ton-mile cost. Because Switching return and depreciation are accounted for on a gross ton-mile basis, Switching return and depreciation were zeroed out in Attachment 3, page 1, lines 7, 8, and 9.

The costing procedure that I have applied is conservative (that is, understated) in a number of respects. First, the Deferred Tax Reduction in column (6) of page 1 of Attachment 2 is based on Region 4 numbers and will likely overstate the deferred tax credits available to GCEDC. Second, the road investments that I have accounted for are only the new required capital expenditures estimated by GCEDC witnesses Hoff and Pettry. Because of this, the required return and depreciation of all other assets have not been included in the Attachments 2 and 3 variable costs.

Attachment 2 only determines the variable portion of the Road Property Investment Return and Depreciation costs. These cost components are reduced by the 50% variability factor. While this 50% of costs is covered in variable costs, the railroad as a whole must cover the remaining 50% of fixed costs in the margin above costs that must come from the contribution created by rate levels set at a level sufficiently in excess of variable costs.

The variable portion of road return is \$456.83 per car (see Attachment 2, Return On Investment, line 1), while the variable portion of road depreciation is \$120.61 per car (see Attachment 2, Depreciation, line 11). The fixed portion of these costs is identical to the variable portion.

II. Variable Cost of Providing Rail Service From CSX Connection In Greenville, SC, To Groome & Associates, Inc.

Attachment 3 calculates the variable cost per car of providing rail service from the CSX connection in Greenville, SC to Groome & Associates, Inc., 2.6 miles distant from the connection. It is standard procedure to use regional costs in instances involving smaller railroads that are not required to fully disclose financial and operating information to the STB. Since GCEDC's line is in the east, I have used Region 4 costs.

The products moved into G&A's facility were rolls of paper purchased from papermills or paper brokers. Mr. Groome has stated his belief that these rolls of paper are classified as STCC 26213 and 26214, although I understand that Mr. Stewart, an expert in the paper industry, does not agree that those are the applicable STCC codes. Regardless of the exact STCC code, paper and paper products, such as the ones involved in this proceeding, are moved by CSX in equipped boxcars that load out at 55 to 60 tons per car. To be conservative (i.e., to understate costs), my costs reflect lading weights of 60 tons per boxcar. Some other operating parameters are calculated in the footnotes to Attachment 2.

While Attachment 3 reflects line-specific costs for Road Property Investment Return and Depreciation for the Gross Ton Mile costs, the other cost components are regional average costs. Regional average costs understate the costs that would have been incurred by GCEDC because the regional average costs reflect the operations of major railroads operating in the region that have been able to take advantage of the unit cost reductions possible in modern, large scale

railroad operations. Owing to its small size, GCEDC's railroad would not have been able to benefit from economies of scale.

I estimate the variable costs of moving rolls of paper from the CSX interchange to Groome & Associates, Inc. to be \$852.73 per carload. See Attachment 3, page 1, line 16. The fixed costs just for the required expenditures for bridges and improvements to the Line are the same as the corresponding variable costs, so they would add an additional \$577.44 (that is, \$456.83 for return plus \$120.61 for depreciation) per carload. GCEDC rates would have to be set at \$1,430.17 [i.e., \$852.73 (variable costs) plus \$577.44 (fixed costs)] per carload or higher just to cover these conservative measures of the actual costs incurred by GCEDC. That equates to \$550.07 (i.e., \$1,430.17 divided by 2.6) per car per mile just for the 2.6 miles of GCEDC service.

Because truck rates for moving these same commodities average only \$1.20 per mile⁵, Groome & Associates, Inc. would never have chosen to use GCEDC's rail service because truck transportation charges would have been dramatically less than GCEDC's rail transportation charges.

⁵ This number is based on a review of the invoices, bills of lading and related documents furnished in discovery (documents G 00090 through G 000251) concerning G & A's use of trucks and cross docking services.

JOSEPH PLAISTOW

Mr. Plaistow is a Vice President and principal of L.E. Peabody & Associates, Inc., an economic consulting firm whose principal office is located at 1501 Duke Street, Suite 200, Alexandria, VA 22314.

Mr. Plaistow graduated in 1967 from Michigan Technological University with a Bachelor of Science Degree in Metallurgical Engineering. In 1972 he graduated from the University of Minnesota with a Masters Degree in Business Administration. He is a member of Tau Beta Pi (the national honorary engineering fraternity), Alpha Sigma Mu (the national honorary metallurgical fraternity), Phi Eta Sigma (a national academic honor society), and Phi Kappa Phi (a national academic honor society). He is also a member of the Association for Transportation Law, Logistics and Policy, and is a past President of the Washington Chapter of the Cost Analysis Chapter of the Transportation Research Forum.

In 1998, Mr. Plaistow joined L.E. Peabody & Associates, Inc., where he advises clients on transportation economics, rate structures, and rate reasonableness determinations. He came to L.E. Peabody & Associates, Inc. after serving as Vice President of Snavely King Majoros O'Connor & Lee, Inc. where from 1988 to 1998 he provided economic consulting services in the transportation field. In 1987 and 1988, he was Vice President, FMI, Inc., managing the efficient operation of refrigerated boxcars. From 1972 to 1987, Mr. Plaistow was employed by the Burlington Northern Railroad ("BN") (now "BNSF") as Director of Costs and Economic Analysis in the Finance Department, as Director of Equipment and Service, and as Director of Planning and

Equipment in the Food and Manufactured Products Business Unit of the Marketing Department. From 1967 to 1970, Mr. Plaistow was a metallurgical engineer for Pickands Mather designing processing facilities in the iron mining region of northern Minnesota.

While at BN, Mr. Plaistow determined the variable cost of operations using both internal management and regulatory costing procedures. In the late 1970's and early 1980's, he directed the team that designed a complete replacement of BN's management costing systems including the institution of separate and distinct systems for the costing of coal, intermodal, and general freight.

The management costing system renovation at BN preceded the replacement of Rail Form A with URCS for regulatory costing in the railroad industry. Mr. Plaistow participated on behalf of BN in industry meetings evaluating the early versions of URCS components as they went through their developmental stages. He also testified on behalf of BN in numerous ICC proceedings regarding the economic principles underlying the implementation of maximum-rate principles including the proper application of cost of capital and capital investment analyses and procedures.

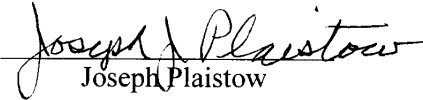
Throughout his 32-year career in transportation, Mr. Plaistow has become thoroughly familiar with the economic analysis of railroad operations and service from the perspective of both the shipper and the transportation provider. He has testified before the Board and its predecessor many times on cost and economic issues, including the presentation of evidence on transportation costs in maximum rate reasonableness cases. He has also made public presentations and written published articles in the areas of transportation economics, maximum rate regulation, corporate investment policies,

competitive effects of mergers, and the competitive access issue.¹

¹ See, e.g., “A Layman’s Guide to Economic Terms in Stand-Alone Costing,” Transportation Practitioner’s Journal, Summer 1994; “Regulation as a Substitute for Competition,” College of St. Thomas, St. Paul, MN, May 5, 1980; “Are Internal Rate of Return and Other Investment Analyses Misleading?” Railroad Capital Investment Conference, St. Charles, Illinois, November 5, 1979; “Analyzing Large Incremental Investments,” Cost Analysts Organization Meeting, Lexington, KY, May, 1978; and “Railroad’s Opportunity to Earn a Fair Return,” ICC Practitioner’s Journal, March-April, 1976.

VERIFICATION

I, Joseph Plaistow, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.


Joseph Plaistow

Executed on: January 21, 2005.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 12

**APRIL 1999 ESTIMATE OF
BRIDGE REPAIR COST**



April 19, 1999

Mr. Gerald Seals
County Administrator
County of Greenville
301 University Ridge, Suite 100
Greenville, SC 29601-3665

Re: Purchase of Greenville to Travelers Rest Corridor and 3.1-Mile
Segment of South Carolina Central Railroad (North of GE lead)

Dear Mr. Seals:

Pursuant to our recent discussions, please find enclosed the following information submitted for the County's review in connection with the proposed sale of the above railroad segments:

1. Draft letter of intent - This has not yet been reviewed by our counsel, yet I believe it is a good start on the letter you need for your Council meeting tomorrow night. Please provide us with your comments.
2. Bridge Replacement Bid Form provided by Lindsey Contractors (of Lake Park, Georgia) covering reconstruction work to be done on bridges located at Mile Posts 1.1 and 2.9. You will note that the estimated cost of these bridge replacements was \$235,444.73.
3. Letter dated September 4, 1998 from John Horney, P.E. (RailTex's Director-Structures) asking Mark Lindsay to provide additional estimates for repairs to bridges at Mile Posts 0.0 and 0.6. (As a note, our telephone discussions with Mr. Horney have confirmed that Lindsay's reply to this letter estimated approximately \$60,000 for this additional work). The bid was obtained under the assumption that the bridges were to be maintained and operated in accordance with recommended practices of the American Railroad Engineering Association. You may contact Mr. Horney, who has indicated his willingness to confirm these details and discuss this situation with the County's Engineering Department, by calling him at Carter Burgess Consultants at (214) 638-0145.
4. Estimated revenues and expenses for 1999 which were prepared by local railroad forces. If you recall our discussions, though, these expenses are largely variable depending upon the volume of business done on the line. Fixed expenses would be right of way maintenance, labor (if hired), inspections (\$1,000 per year), and other miscellaneous. Variable expenses would pertain to actual railroad operations (car hire, locomotive expense, contract labor, etc.). Let's discuss this tomorrow morning so I can be sure we give you the best information we have to fit your situation.

You may reach me by calling (210) 841-7657. I'll be in all day Tuesday.

Sincerely,

Todd N. Cecil
Director - Real Estate

TNC/dn

GCEDC 0079

BRIDGE REPLACEMENT

BRIDGE NO. 1.10 and Bridge 2.90

GREENVILLE, SOUTH CAROLIANA

BID FORM

The following Bid Form must be completed and submitted in a sealed envelope marked "GREENVILLE BRIDGE BIDS." Bids must be submitted to:

Mr. John J. Horney, P.E.
Director Structures
Railtex
San Antonio, TX 78209

no later than 12:00 noon on Tuesday, February 3, 1998.

By signing this Bid Form, the Contractor acknowledges that they have received the bid documents including: a) Letter of Invitation; b) Instruction to Bidders; c) Specifications; d) Plans; and e) Bid Form.

This Bid will be in effect for sixty (60) days following the date of submittal. The winning Contractor must sign a Contract between themselves and the Carolina Piedmont Railroad.

SCHEDULE OF VALUES

BRIDGE 1.1

<u>DESCRIPTION</u>	<u>LUMP SUM</u>
MOBILIZATION.....	\$ <u>15,000.00</u>
STEEL H-PILE.....	\$ <u>33,477.63</u>
STRUCTURAL STEEL.....	\$ <u>60,207.20</u>
TIMBER DECK INSTALLATION.....	\$ <u>17,159.78</u>
BRIDGE REMOVAL	\$ <u>4,500.00</u>
GRADING.....	\$ <u>5,680.00</u>
DEMOLIBIZATION	\$ <u>1,000.00</u>
TOTAL BRIDGE 1.1.....	\$ <u>137,024.61</u>

GCEDC 0080

BRIDGE 2.9

DESCRIPTION	LUMP SUM
MOBILIZATION.....	\$ <u>12,000.00</u>
STEEL H-PILE.....	\$ <u>25,108.22</u>
STRUCTURAL STEEL.....	\$ <u>40,148.60</u>
TIMBER DECK INSTALLATION.....	\$ <u>13,113.90</u>
BRIDGE REMOVAL	\$ <u>3,300.00</u>
GRADING.....	\$ <u>3,750.00</u>
DEMOBILIZATION	\$ <u>1,000.00</u>
TOTAL BRIDGE 2.9.....	\$ <u>98,420.12</u>

TOTAL CONTRACT PRICE:..... \$ 235,444.13TOTAL CALENDAR DAYS TO COMPLETE CONTRACT 90signature Brent L. LindseyTitle: President

name and address of Company:

Lindsey Contractors Inc.Route #2 Box 852Alhira, GA 31632date: Feb 3rd 1998

notary: _____

seal: _____

GCEDC 0081

Mr. Mark Lindsey
Lindsey Contractors
P. O. Box 364
Lake Park, GA 31636

September 4, 1998

Dear Mr. Lindsey:

Please refer to my January 21, 1998, Request for Proposal (FRP) and your February 3, 1998, response for the construction of bridges 1.10 and 2.90 on our Greenville Line of the Carolina Piedmont Railroad. This letter is to follow up on our recent phone conversations and to confirm that we are now ready to proceed with this project.

As noted in the Bid Form you submitted, the prices on the Schedule of Values was valid for only sixty (60) day. You have noted, in our conversations, that the price of steel and bridge ties have changed since your bid submittal. I have enclosed a new Bid Form and would like for you to update the values and submit it to me. This revised Bid Form will be used as the basis for payment. Note that I have added, as a lump sum cost, maintenance repairs to two existing bridges on this same rail line.

The scope of maintenance repairs will include the following:

Bridge 0.0 - 30 span ETOD at Swamp Rabbit Junction

NOTES - Bridge on Framed Bents on Mud Sills. Framed bents from Bent 14 to end are tilted such that the top leans toward Bent 1. Bents 18 - 19; 20 - 21; and 28 - 29 have tower braces. Main water channel flows through spans 16 - 19. Bents 29 and 30 are skewed. There are helper bents with steel piles and concrete caps at 13A, 14A, 15A, 17A, and 27A. Span 25 has helper stringer Lt. Side. Span 28 has helper stringer Rt. Side but is falling out. Bent 27 has double sill. Bent 26 needs shims pile to cap. Mud sills and cap decay at Bent 24. End bearing of stringer 5 is close to edge of Cap at Bent 23. Tie spacers gone at span 14 Lt. And 15 Rt. Cap 10 is decayed on right end and shows crushing under chord. Cap 5 is decayed on Lt. Side and crushing under stringer. Kudzu growth heavy on side of bridge toward center of bridge. Track alignment kinked and not even around curve.

MAINTENANCE SCOPE -

- Reset tilted framed bents to a vertical position and ensure stringers have an adequate end bearing area;
- Reset helper stringers under ties;
- Place shims as required to level bridge;
- Replace mud sills and cap at Bent 24;
- Replace missing tie spacers;

GCEDC 0082

- Replace Cap 5 and 10;
- Remove Kudzu growth from bridge;
- Establish a smooth track alignment across the bridge.

Bridge 0.6 - 17 sp FTOD on mud sills:

NOTES: Helper bents are driven at Bents 5A and 4A using steel piles and concrete caps. Curve Left. Drift under bridge. Bents 5 and 6 are skewed. A sewer line is exposed on concrete pedestals running under span 10. Dump Bent 1 has a helper timber helper bent. Cap 11 decayed on Lt. Side and crushing under stringers. Bent 10 tilted with top toward Bent 1. Sill of Bent 11 decayed with posts crushing into it.

MAINTENANCE SCOPE:

- Remove drift from bridge;
- Replace Cap 11;
- Reset Bent 10 to a vertical position;
- Replace Sill at Bent 11.

Please arrange to have the revised Bid Form to me by Thursday, September 10, 1998. If you have any questions, please let me know.

Sincerely,

John Horney, P.E.
Director Structures

Copy: Chris Dodge - Railtex
Kent Reaves - Carolina Piedmont

GCEDC 0083



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 13

**EXCERPT FROM
DEPOSITION OF DOZIER BROOKS**

STATE OF SOUTH CAROLINA)
IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Groome & Associates, Inc.,)
and Lee K. Groome.)

)
Plaintiffs,)

-vs-) C.A. NO. 01-CP-23-2351

)
Greenville County Economic)
Development Corporation.)

)
Defendant.)

DEPOSITION OF DOZIER BROOKS

Pursuant to notice and/or agreement of the parties, the deposition of Dozier Brooks was taken commencing at the hour of 1:10 p.m. on the 19th day of November, 2003, at the law offices of Haynsworth, Sinkler, Boyd, 75 Beattie Place, Greenville, South Carolina.

REPORTED BY: LEISA K. GEBHARD, R.P.R.

CANNON COURT REPORTING
12 Manly Street
Greenville, South Carolina 29601
(864) 232-9517

Page 3

1 DOZIER BROOKS, having been first duly sworn, was
2 examined and deposed as follows:

3 EXAMINATION BY MR. SIMMONS:

4 Q. Mr. Brooks, good afternoon again. We just met a
5 few minutes ago before we started. My name is John
6 Simmons.

7 A. Right.

8 Q. I appreciate you coming this afternoon. My firm is
9 representing Mr. Groome and his company in this
10 pending lawsuit. Have you ever had your deposition
11 taken before, Mr. Brooks?

12 A. Yes.

13 Q. So you know kind of the ground rules. If you will,
14 let's reach some understanding as we go along. If
15 you do not understand my question, if you would
16 please ask me to restate it.

17 A. Sure.

18 Q. And also, if you would, please give verbal
19 responses to the court reporter rather than "uh-huh
20 or "unh-unh." And also, if you will, Mr. Brooks,
21 be sure that you give verbal responses rather than
22 shaking your head because she can't take that down.

23 A. Sure.

24 Q. And, finally, you and I need to be sure we don't
25 speak over each other. If you'll let me finish my

Page 2

APPEARANCES:

John S. Simmons, Esquire
Law Offices of John S. Simmons, L.L.C.
1711 Pickens Street
Post Office Box Five
Columbia, South Carolina 29201
..... On Behalf of the Plaintiffs
Andrew J. White, Esquire
Haynsworth, Sinkler, Boyd, P.A.
75 Beattie Place, 11th Floor
Post Office Box 2048
Greenville, South Carolina 29602
..... On Behalf of the Defendant

STIPULATIONS:

This deposition is being taken pursuant to South Carolina
Rules of Civil Procedure. The deponent waives the right
to read and sign the transcript of the deposition.

INDEX

PAGELINE

Examination by Mr. Simmons 3/3

INDEX TO EXHIBITS

PAGELINE

Plaintiff's Exhibit No. 1, Letter to Elizabeth
Mabry, SCDOT, from Dozier Brooks dated
September 28, 2000, attached hereto 17/4

Page 4

1 question before answering, and I'll similarly let
2 you say your piece on anything you want. And if I
3 cut you off, Mr. Brooks, please just let me know
4 because that's not my intention.

5 A. Okay.

6 Q. Are you currently a County Council member?

7 A. Yes.

8 MR. WHITE:

9 Do we have the same stipulations as
10 Mrs. Henderson's deposition?

11 MR. SIMMONS:

12 We do, Mr. White.

13 EXAMINATION RESUMED BY MR. SIMMONS:

14 Q. Tell me, Mr. Brooks, how long you've been on
15 Council?

16 A. Since 1997, sworn in on January 6th, I guess it
17 was.

18 Q. Of '97?

19 A. '97.

20 Q. And what district do you represent?

21 A. District 27.

22 Q. Can you tell me just generally where that is, what
23 area of the County?

24 A. That's the southeastern portion, southeastern
25 quadrant from Laurens County, Spartanburg County,

Page 17 1 A. As far as I know it should be. 2 MR. SIMMONS: 3 Could we get that marked, please. 4 (Court Reporter marks Plaintiff's Exhibit Number 1, 5 Letter to Elizabeth Mabry from Dozier Brooks dated 6 September 28, 2000, attached hereto.) 7 EXAMINATION RESUMED BY MR. SIMMONS: 8 Q. Mr. Brooks, let me show you what I've had the court 9 reporter mark as Plaintiff's Exhibit Number 1 and 10 ask you if you recognize that document? 11 A. Yes, I do. 12 Q. Did you send that letter to Ms. Mabry -- 13 A. Absolutely. 14 Q. -- at the D.O.T.? Okay. Can you tell me the 15 circumstances -- this letter is actually dated 16 September 20th of 2000; is that right? 17 A. Right. 18 Q. And in writing to Ms. Mabry, the first paragraph 19 references her letter of May 17th, 2000, which 20 replied to your concerns of April 24th; right? 21 A. Right. 22 Q. Do you remember generally what concerns you 23 outlined in your April 24th letter? 24 A. I really don't, not offhand. I know we were trying 25 to -- I'll say that we were trying back in there to	Page 19 1 you left the Corporation board in December 2002? 2 Do you think that was the expectation? 3 A. Absolutely. 4 Q. And do you have any information as a County Council 5 member of the expectation as of today? 6 A. Not since I left the Board. I've had no contact 7 with the Board since then. 8 Q. This year, calendar year 2003 -- 9 A. Right. 10 Q. -- have you had any discussion that you recall on 11 County Council about the Development Corporation? 12 A. No, not on County Council, not to members or a 13 meeting of the County Council. 14 Q. Have there been any discussion with the County 15 Council about providing Council funding for 16 restoration? 17 A. Not to my knowledge. 18 Q. Have you ever seen any annual reports from the 19 Development Corporation? 20 A. Yes, I guess I did as we got them each year. 21 Q. Do you think those were provided every year? 22 A. I'm not sure what the dates, when they were, but 23 I'm sure we had some reports on those. 24 Q. Who would have prepared annual reports from the 25 Development Corporation?
Page 18 1 get some state funds for the railroad, and I think 2 this is what this all had to do with is trying to 3 obtain some state funds. 4 Q. Were the state funds for restoration, operation, or 5 both? 6 A. I would assume for operation -- not operation but 7 restoration because we couldn't operate it until we 8 repaired the line. 9 Q. In the second paragraph there you say to Ms. Mabry 10 you wish to make clear that the Development 11 Corporation has not abandoned or surrendered; is 12 that right? 13 A. Right. 14 Q. Do you know whether there was a suggestion from 15 D.O.T. that the Corporation had abandoned or 16 surrendered any -- 17 A. I do not. 18 Q. And the next sentence, the second sentence in the 19 second paragraph talks about the expectation that 20 it would be temporary and the rails would be 21 restored? 22 A. Right, with funds. 23 Q. This was in September of 2000; correct? 24 A. Yes. 25 Q. Would that have been a fair statement at the time	Page 20 1 A. The secretary and treasurer. 2 Q. Of the Development Corporation? 3 A. Development Corporation. 4 Q. Are you aware, do you know as of today the finances 5 of the Development Corporation? 6 A. Do not. 7 Q. How about when you left in December of 2002? 8 A. We were broke. 9 Q. Was any money, any funds ever generated on behalf 10 of the Development Corporation? 11 A. I think we received a couple of right of way 12 crossings that people wanted to cross their line 13 to -- for a driveway to business or a sewer line, I 14 believe or something in Travelers Rest, and I 15 believe the State -- did the State give us -- 16 MR. WHITE: 17 I can't say. 18 THE WITNESS CONTINUES: 19 I'm trying to think, I believe \$100,000, I believe 20 we got at one time from the State which we used to 21 check out the lines, the right of ways, to see 22 where they really were because we didn't have a 23 good definition of where the lines were, right of 24 ways were. 25 Q. When you say, Mr. Brooks, to check out the right of

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42087

**GROOME & ASSOCIATES, INC., AND LEE K. GROOME
v.
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

EXHIBIT 14

**EXCERPT FROM
DEPOSITION OF GERALD SEALS**

GERALD SEALS

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE CASE NO. 01-CP-23-2351

GROOME & ASSOCIATES, INC. AND
LEE K. GROOME,

Plaintiffs,

vs.

GREENVILLE COUNTY ECONOMIC
DEVELOPMENT CORPORATION,

Defendant.

COPY

DEPOSITION OF GERALD SEALS

DATE TAKEN: December 22nd, 2003

TIME BEGAN: 2:09 p.m.

TIME ENDED: 4:12 p.m.

LOCATION:

Haynsworth Sinkler Boyd, P.A.
75 Beattie Place
Greenville, South Carolina

REPORTED BY: Deanna M. Bair, CCR
Certified Verbatim Reporter
Notary Public for South Carolina

1 I recall at least once or twice, outside of that
2 meeting.

3 Q. And I take it that that didn't work out?

4 A. In government speed, the answer at that time would
5 be, it was pending. There was some things he
6 expected out of government. He made some
7 commitments on things. But in the end, the direct
8 answer is, no, there was not a contract cut.

9 Q. Okay. During the meetings that you had with
10 Mr. Groome, did he and/or Mr. Mathena offer to
11 provide any financial assistance in helping to
12 repair the line?

13 A. In a very vague sense, in terms of recollection, I
14 believe at one point he did, but my recollection
15 is I think that may have been before the
16 acquisition or somewhere in that timing.

17 Q. So you don't recall Mr. Groome and/or Mr. Mathena
18 offered financial assistance after the acquisition
19 for repairing the line?

20 A. I don't recall anything specific. I do recall
21 that we had a lot of discussion about what it
22 would take. There was a transition, in terms of I
23 think some expectations by Mr. Groome where he
24 became adamant that he expected: Government had
25 acquired it, and government had an obligation to

1 put it into a certain condition so it could
2 operate.

3 Q. Did you agree with that?

4 A. I didn't agree or disagree.

5 Q. And why not?

6 A. Not my job.

7 Q. Whose job was it?

8 A. Council, it's a policy issue.

9 Q. Okay. Did you tell Mr. Groome or Mr. Mathena
10 during these meetings that the county already had
11 half of the money to make the repairs?

12 A. My -- that's not my recollection. My recollection
13 is that I don't recall how much it was to do the
14 repair. What I recall is that I may have said
15 that the county had the money to do the repairs to
16 meet the minimum viability requirements, but that
17 there was a process that needed to -- the council
18 had to go through in order for that money to be
19 released for that purpose. We talked specifically
20 about what did that mean. I would have --
21 meaning, the discussion turned from Mr. Groome's
22 perspective to where -- he was very intense and
23 adamant about, what about all of this money, all
24 the surplus the county was sitting on, and why
25 couldn't the county just use that money.

1 And so we had a lot of discussions about, yes,
2 the county had the money in an absolute sense, but
3 it had to be budgeted for that specific purpose.
4 And that my intentions were to proceed with
5 putting it in the budget for that purpose so that
6 the bridges would be repaired.

7 Q. Okay. Did you ever speak with anybody at Greg
8 Walton about operating the line?

9 A. I don't know.

10 Q. You don't remember that?

11 A. I don't know. It's possible.

12 Q. Do you remember talking to any other potential
13 operators?

14 A. I remember, yes, there was more than one.

15 Q. Do you remember any names of anyone you talked
16 with?

17 A. No, I don't remember actually sitting down in a
18 meeting with -- I remember that we -- there may
19 have been some sort of correspondence put out.
20 How formal the solicitation was, I don't recall
21 without looking at the file. And I believe that
22 there were at least two, perhaps three, entities
23 approached in an informal preliminary way about
24 whether or not they might be available to operate
25 a line.