

Day 4

BEFORE THE  
ARMED SERVICES BOARD OF CONTRACT APPEALS

In the matter of: )  
Appeal of: ) ASBCA No. 43965  
FREEDOM NY, INC. )  
Contract No. )  
DLA13H-85-C-0591 )

Kings County Criminal Court Building  
120 Schermerhorn Street  
Brooklyn, New York

Thursday, May 18, 2000

9:00 a.m.

BEFORE:

DAVID W. JAMES, Administrative Judge

APPEARANCES:

For the Government:

KATHLEEN HALLAM, ESQ.  
Defense Supply Center Philadelphia  
Defense Logistics Agency  
700 Robbins Avenue  
Philadelphia, PA 19111

For the Appellant:

NORMAN A. STEIGER, ESQ.  
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66 North Village Drive  
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Sun Life Building  
20 South Charles Street, 8th Floor  
Baltimore, MD 21201

PROCEEDINGS

(9:00 a.m.)

JUDGE JAMES: Let the record reflect that this is day four in the hearings of Freedom NY, under ASBCA docket number 43965. I believe we were continuing in the examination of witness Henry Thomas. Mr. Thomas do you want to come up and take the stand? Remember you're already under oath.

THE WITNESS: Yes, sir.

Whereupon,

HENRY THOMAS,

the witness on the stand at the time of the recess, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION(resuming)

BY MR. STEIGER:

Q Mr. Thomas, good morning.

A Good morning.

Q Do you remember that we were talking yesterday about the initial period of production? The initial production period under the contract --

A Yes.

Q -- when you first planned to deliver. You remember approximately, per the schedule that had been adjusted, do you remember approximately what time period

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
HENRY THOMAS, JR.	712	765	779	
RICHARD PENZER	799			
DAVID LAMBERT	829	843	850	
WILLIAM ROBBINS	854	868	870	872
CLARENCE STANLEY	873			

E X H I B I T S

Number	Identified	Received
A-397, 399 to 403, 405, 419		853

that was?

A I would say that's in the September, October, November. Right in that time period.

Q What year, sir?

A 1985.

Q Right. Now you testified about not having GFM available. You mentioned Zyglot testing. Were there any other impediments that were imposed upon you that impeded or prevented you from meeting those schedules? Anything else that you could think of?

A In the early first days of production, the AVI was confused as to where they were supposed to inspect.

Q What's the AVI?

A Army Vetrenary -- it's the Health Services Commander. It's the inspection unit. The qualities control unit that's assigned to our plant. They're called AVI. So it's Army Vetrenary

Q What would you think --

A Inspectors. Army Vetrenary Inspectors. I believe.

Q I was just going to ask what you thought the "I" might be.

A It's inspectors.

Q Yes, sir.

A And what happened was as we started our lines

1 to run, they had considered that a lot was a capped and  
2 strapped end item and they -- the first day, they didn't  
3 inspect our line. The first lot was like 240 cases or  
4 200 and some odd cases. And they made out -- had our  
5 people cap and strap. And once -- they made -- busted  
6 loose or cut the strapping, took the top cap off and they  
7 did an inspection. It passed. When I heard that they  
8 had cut the strap and took the boxes out, I said, "You're  
9 not supposed -- that's the end item. You have to do this  
10 as we're making the product."

11 Well, that was a problem and I lost out as far  
12 as them, them understanding what was going on. And the  
13 next day, they -- something came from DPSC that the  
14 strapping material had failed at DPSC. So as we produced  
15 the next day's lot, obviously, we could not cap and strap  
16 the cases. So since the capping and strapping had  
17 failed, they said they cannot inspect until they get a --  
18 some strapping that passed and then they would say,  
19 "That's Okay." Then they'll go into it.

20 Well, this went on for say 30,000 cases.  
21 Meanwhile, we're talking to the PCO and he says we have  
22 to do what the AVI says. And finally we forced the issue  
23 because we are now bumping up production. And our  
24 inspectors, who are new, have never seen this, have never  
25 done it. We're training them. Was passing. Everything

1 was passing. We were failing some and we were finding a  
2 lot of defects. The problem is that we finally said,  
3 "This is wrong. And these guys should be on the floor  
4 doing the moving lot inspection." We had produced,  
5 approximately, 20/30 thousand cases.

6 And finally Frank Bankoff told them that they  
7 had to inspect as the case was cap -- was sleeved and  
8 strapped at that point. The AVI then started to inspect  
9 the lots that we had lined up and they start finding  
10 problems. And they start failing this lot. Failing the  
11 next lot. Failing the next lot. I became alarmed. And  
12 saw what they were failing and ran to the line and we  
13 started adjusting. And says, "Okay, we've got that one."  
14 But now we're not in sync. We're three weeks in front of  
15 them. They're back here. I'm finding this. And so we  
16 were still producing these defects. So finally we got  
17 them to do a dual inspection. Like, fine, put somebody  
18 over there to do that at night. Get on the line today  
19 and as we are producing, you inspect the way this thing  
20 is supposed to. So on say the 19th or whatever day it  
21 was and, it's in the record, the AVI inspected on that  
22 day. It was a short lot. We may have failed the first  
23 two hours. We adjusted it. We started a new lot but we  
24 adjusted everything and the lot passed. The next day  
25 they inspected the lot passed. From that point on the

1 lots were passing as the AVI finally started doing what  
2 the specification was.

3 In other words, we were operating in the blind.  
4 And that's not the way the specification was.

5 Q Yes. That's what I wanted to ask you. Focus  
6 for us on exactly how specification was violated in terms  
7 of this inspection process.

8 A They were supposed to inspect on a moving line  
9 bases as we produced the products. Instead, they produce  
10 -- they inspected at a later time. They aren't even on  
11 the floor as we were inspecting.

12 Q And how did this specifically impact your  
13 operation at that time?

14 A We being a startup, having no idea and never  
15 seeing this operation done before at the other plants.  
16 They wouldn't let us go to another plant to see how it  
17 was done. I put this production together from a set of  
18 specs of how I envisioned it should work. And as we knew  
19 that it said that they was going to be on the floor doing  
20 testing as we are producing, tinsel test, desiccation  
21 tests, all kinds of -- making sure all the product is in  
22 the bag and what have you. If a line is producing wrong,  
23 what it would do is -- I could then quickly stop, correct  
24 that line before the defects come up enough to reject the  
25 whole lot. In other words, we could have two of this,

1 one of this, three of this, and the lot would still pass.  
2 Those are failures. But if you get more than this, then  
3 that means the whole lot will fail.

4 Q Mr. Thomas, let me cut to the quick. How many  
5 weeks of production time, productive production time did  
6 you lose as a result of this action?

7 A We lost from the first day, to the day they  
8 started inspecting our line. So if we started in  
9 September or October sometime and they started in  
10 December, that's what we lost because those 30,000 case  
11 was produced without AVI inspection online.

12 Q So we're talking about the loss here of 30,000  
13 cases?

14 A Whatever the number is. It's approximately  
15 30,000 cases.

16 Q Now one more question on this point. How much  
17 additional start up time did you have to apply in order  
18 to get this thing into production?

19 A What we did was stop the lines and started to  
20 retrain people. And the way I looked at it was that from  
21 the day they got on the line two to three days later, we  
22 had corrections. So I was under -- so if they had  
23 started inspecting the first day, we would have -- two to  
24 three days later, we would have been correcting  
25 everything and we never would have piled up all of these

Page 718

1 uninspected cases that should have been looked at and  
2 inspected at the proper time. And that caused a lot of  
3 confusion as a result of the AVI inspecting at the -- or  
4 not inspecting because they were at the wrong location.

5 Q Now I'll ask you another question. And was  
6 this the mistake of the government agency, the Army  
7 Veterinary Inspection?

8 A Yes. It was.

9 Q And did you complain about it while it was  
10 happening?

11 A Yes. I did.

12 Q Did you -- do you recall if you included this  
13 in your claim to the United States government?

14 A Yes. I did.

15 Q And did you have costs in there and impact in  
16 there for this action?

17 A Yes. We do.

18 Q Thank you. I would like now pick up where we  
19 left off specifically in yesterday's testimony. I -- you  
20 have to look at the failures of the government to provide  
21 the GFM, where these -- did these failures occur all at  
22 once? Where they segmented? How would you define in  
23 terms of time the government failure to provide you GFM?

24 A At the pre-award survey, we asked the PCO to  
25 provide us with a list of when the GFM was to start

Page 719

1 arriving and in what quantities. He did do that. We  
2 then noticed that the PCO had not purchased enough GFM to  
3 meet the 620,000 cases. Let alone the additional loss  
4 ratio of --

5 Q Mr. Thomas, excuse me. I don't think you heard  
6 my question. I was focusing on the failure of the  
7 government to provide you with the GFM called for in the  
8 contract.

9 A That's exactly what I'm talking about.

10 Q During what periods of time are we talking  
11 about here? Is it one period, two. What? Tell us.

12 A From the beginning of the contract, as I was  
13 just talking about --

14 Q Right.

15 A -- We put them on notice. That's what I'm  
16 talking about. From the beginning of the contract at the  
17 pre-award -- at the post-award, I'm sorry if I said  
18 pre-award, the post-award conference we asked for a GFM  
19 schedule. When we got the schedule, we noticed that they  
20 had not planned to give us enough for the contract. The  
21 solicitation says they're going to us enough for the  
22 contract plus we're going to get 2 or 3 or 4 percent loss  
23 ratio that -- that allowed the losses. So that has to be  
24 included to. So by us putting on notice that -- that  
25 they're shorting us already as far as what they're

Page 720

1 scheduling and telling the industry to ship to our plant,  
2 we put them on notice. That was never corrected  
3 throughout this contract.

4 What happened was they start shipping in the  
5 product just like they told all the suppliers, it was  
6 coming. But it was never corrected. So, therefore, we  
7 didn't even have in-house the full 620,000 cases. When  
8 the termination for default of the 114,000 cases came,  
9 they then -- we agreed -- they removed 114,000 units or  
10 the corresponding units, millions of units went out of  
11 plant that reduced that. Okay. So, therefore, that's  
12 why we started to run into GFM problems before the 505  
13 was completed. We constantly were telling them that we  
14 have not received enough GFM. Okay. So the GFM problem  
15 was throughout. It became very -- as we approached the  
16 505 which is the reduction of the 114,000 cases, as we  
17 approached that near July, we started to running out of  
18 jellies, cream substitutes, this -- crackers, that --  
19 and, and, and we're trying to adjust inventory because  
20 sometime the government would come to us and order us to  
21 ship from our existing GFM inventory to another location  
22 and they would replace it. They have that right to do  
23 that, I guess, to do that but they did.

24 So even if we did have GFM in-house and they  
25 were short at Sopakco or short at Rafco, they would call

Page 721

1 us up and say, "Sent a -- bill a lady." Telling us to  
2 reduce our inventory. Ship it over there. We've done  
3 that. So sometime they forgot to ship stuff back to us.  
4 So that's why we had always put them on notice to get it  
5 back to us. But the GFM shortage was throughout the  
6 contract period.

7 JUDGE JAMES: Mr. Thomas, you just mentioned  
8 July. July of which year.

9 THE WITNESS: Okay. This is July '86. When  
10 the a -- when we were getting ready to finish up the 505  
11 and look to start the reinstatement of the cases.

12 MR. STEIGER: The reinstatement of the 100 --

13 THE WITNESS: And 14,000

14 MR. STEIGER: Fourteen thousand. That had  
15 supposedly been given to you with Mod. 25?

16 BY MR. STEIGER:

17 Q Now, let me ask you this. As we got down to  
18 the critical production periods, I think you said,  
19 October, November. What did you say September, October,  
20 November? Around that time? Of '86?

21 A Oh, back in -- okay.

22 Q Did you -- you were experiencing shortages of  
23 GFM at that time?

24 A Yes.

25 Q Did you notify the Government of these

Page 722

Page 724

1 shortages?

2 A Yes.

3 Q Were you also experience -- were you  
4 experiencing any shortages of CFM, Contractor Furnished  
5 Material?

6 A No.

7 Q Did Mr. Liebman ever tell you that he believes  
8 that you were -- that you had shortages of CFM?

9 A Yes.

10 Q He did?

11 A Yes.

12 Q Well, well, was he right?

13 A No. He was right to a degree but it depends on  
14 who's planning the production. If I'm running the shop  
15 and I know that I'm short of cash over here and I need  
16 this over there, I went on a just-in-time inventory with  
17 my suppliers. So, therefore, I don't have to bring in  
18 six weeks or three-month worth of products like he could  
19 do. I could bring in a week at a time. A week at a time  
20 and a week at a time. That way --

21 Q Did this as you put it, "just in time"  
22 schedule, did that impede your ability to produce?

23 A No. We constantly produced -- we got  
24 permission from DPSC to -- which Bankoff gave us to get  
25 cakes and cookies and various other things from Southern

Page 723

1 Packaging. Our supplier, Sterling Bakery, at the time  
2 was giving us some flack but they were tied in now with,  
3 with the -- our opponent, Cinpac. So what we decided to  
4 do was go to another prime which was Sapakco and get them  
5 approved as a supplier. So what Randy Gross did, was  
6 give them -- we gave them a letter of credit. And I  
7 said, "Anything I need that don't come in, I want you to  
8 give to me." Glen Auchu said, "Okay, Henry I'll work  
9 with you." And he did. Since we had it approved from  
10 the PCO that we could do this, we pulled trailers up  
11 overnight and brought products in two days in advance  
12 from them. They wanted to sell us cakes, cookies, and  
13 things like that which we didn't give them any business.  
14 We gave it to Sterling. But Sterling started giving us a  
15 lot of problems because they're the only supplier that  
16 the government had to do cookies, brownies, and what have  
17 you. So if they're the ones that are supplying our  
18 competition, Cinpac, and we're trying to knock them out,  
19 we're not giving it to them. We became a real problem  
20 for us. So we decided to go with Southern Packaging.  
21 And that's how we kept our inventory up to snuff and it's  
22 in the record. Or it's in my file. I hope it's in the  
23 record. Where you can see payments to Southern Packaging  
24 and Storage off and on. And you should be able to see  
25 that the product where it came from.

1 Q Did the fact then that you did not accumulate,  
2 should we say, contractor furnished material impede or  
3 prevent or hamper your ability to perform?

4 A No.

5 Q Was -- did the fact that you did not accumulate  
6 CFM inventory -- did it have anything to do with  
7 availability of funds that you had on hand?

8 A Yes. It did. We constantly told the PCO, we  
9 begged the PCO, to give us money because after July,  
10 August, September time frame we're telling him that the  
11 ceiling that he's imposing on us because of the fast  
12 liquid -- because of the liquidation rate being  
13 liquidated at 95 percent instead of the 82.6 percent was  
14 causing a problem. I wrote many letters. Pat Marra  
15 wrote him many letters. And we said all that we can do  
16 is just write him letters and put it on the records  
17 because he's ignoring us. Even though he sees us running  
18 into a stone wall, we tell him we're going to run into a  
19 stone wall, please, get Marvin Liebman to give us the  
20 progress payments. And he says, "Oh, no. You got to  
21 produce. When you produce, I will increase." And we  
22 say, "It's not based on -- tied to deliveries." But he  
23 keeps tying it to the deliveries and he wouldn't get off  
24 of that. So he didn't understand, I guess, because he's  
25 maybe -- he's not in production -- that the person he

Page 725

1 hired knew more than he knew. I'm the guy they hired to  
2 do this job and then he countermands everything that I'm  
3 trying to do.

4 Q Okay. Did there come a time when you had  
5 produced the complete number of MRE cases that you could  
6 with the exception of the reinstated quantity?

7 A Yes.

8 Q And do you recall when that was?

9 A 22 October 1986. We had completed production  
10 for the 505 portion. We notified the government.

11 Q Thank you. Do you recall submitting a progress  
12 payment request around that time with respect to costs  
13 incurred? Do you recall that? If not, let me call it to  
14 your attention once again. Let's go back to the  
15 government prepared document on progress payments in  
16 their file. Tab G-95, I believe we've been referring to  
17 it. I call your attention to the very last progress  
18 payment number 22.

19 A All right.

20 Q For what amount was that?

21 A One million, four hundred forty-three thousand,  
22 two hundred eleven dollars.

23 Q Did you ever receive a single penny from that  
24 money?

25 A No.

1 Q In fact, Mr. Thomas, did you ever receive a  
2 single penny at all after that?

3 A I don't believe we did.

4 Q Now, I know that you can only attest to the  
5 validity of the factual statements as you said that  
6 appear on the top horizontal line. But if you would  
7 kindly look at the comments in your -- does this explain  
8 why nothing was paid to you for that progress payment?

9 A Well, --

10 Q Well, just -- on what it says. You believe it  
11 says why you were not paid anything?

12 A This whole -- I don't know. I mean --

13 Q Well, if you don't know say, "I don't know."

14 A I have no idea. I was total perplexed by this.

15 Q Were you told by Mr. Liebman why he was not  
16 honoring that particular progress payment at request?

17 A No.

18 Q Did it come to pass a couple weeks later that  
19 Mr. Liebman decided to liquidate progress payments at 100  
20 percent?

21 A Yes. It did.

22 Q And did he give you a reason for doing that?

23 A His reason was that he will not expose the  
24 Government money until Frank Bankoff awards him RE-7.  
25 And he's not going to give us another dime.

1 Q Are you saying that he was telling you that his  
2 giving you money was dependent upon you getting another  
3 contract?

4 A Yes. That's what he said.

5 Q Thank you. Now his 100 percent liquidation  
6 rate that he did, was that consistent with the contract  
7 requirements for liquidation rates?

8 A No.

9 Q At that time, did you still believe you were  
10 entitled to a liquidation rate of 82.6 percent?

11 A Yes. I did.

12 Q Was 84.6 the lower liquidation rate?

13 A Right. Yes. I did.

14 Q Did you continuously tell the Government of  
15 your entitlement to that rate?

16 A Yes. We have.

17 Q Now, you testified that you were missing GFM to  
18 perform the final reinstated quantity of 114,758 -- were  
19 you able to begin to produce any of those items?

20 A We produced about 6,000 two days. About 6,000  
21 cases as a result of Mr. Bankoff giving us, I believe  
22 some substitutions. I think that's what got us going  
23 again.

24 Q Well, let's talk about those substitutions. We  
25 mentioned them earlier in the testimony. Did the

1 Government provide substitutions?

2 A No. The substitutions were really GFM that's  
3 to be used for our existing cases except he said, "Double  
4 up on this one. Double up on that one." So he changed  
5 the -- they changed the configuration of the cases. So  
6 they would let you substitute something that they were  
7 missing. So what they were doing was taking from the  
8 existing inventory. Pulling it down here. But now  
9 they're going to have to replace that at a later date.  
10 So by -- automatically if they're not tracking this --  
11 that they told us to use all these substitutions, then  
12 they won't know in the future what they have borrowed  
13 from us. A substitution is no more than I'm going to  
14 borrow from this lot -- from this inventory, then let you  
15 use it over here.

16 Q Are these substitutions -- give me some example  
17 of what is doubling up --

18 A Let's assume that the Government should have  
19 given us beef slices or something. And there was no beef  
20 slices. Then they say, "Well, use two ham slices  
21 instead." Okay. In other words, we got a beef slice  
22 here in the menu. And this other menu had beef slices.  
23 And we didn't have that so they said, "Well, just grab  
24 another ham slice, put it in that case." All right. And  
25 that's the substitution we're going to allow for that

1 lot.

2 Q And these substitutions, how did they affect  
3 your limited production here that you were doing?

4 A We had our lines set for certain sizes and  
5 certain packages and certain configuration. If we now  
6 have to take two big pieces and try and get it into this  
7 bag along with everything else, it may not fit. If we  
8 then make the bag too big, when we get to the cases in  
9 trying to shove this bag in there, especially, if there's  
10 two substitutions being allowed at the same time, the  
11 case becomes fat. Now the sleeve won't go on it. It  
12 won't close properly. So by them just telling us, "Okay,  
13 substitute this, do this, do that." They have no idea  
14 the impact it has on our production. It may not have an  
15 impact on somebody else's production but the way ours was  
16 configured; we had to be very careful in how the things  
17 were arranged.

18 Q Did you encounter problems with the  
19 substitutions?

20 A Yes. We did.

21 Q And what was the time effect of those, for  
22 example?

23 A If they told us to substitute, we now had to  
24 restock the lines a certain way and then make sure that  
25 there's a person to put that particular item on that --

Page 730

1 in that particular line and make sure that, that person  
2 knew that we wanted them to change. If one thing was one  
3 size and they want us to substitute something, it could  
4 change the configuration of the bag.

5 Q Now, let's focus on how extensive these  
6 substitutions were. To the extent that you were able to  
7 use these substitutions, how many units did they affect?  
8 Approximately.

9 A They -- oh, if he wants us and they didn't have  
10 it for that lot, it affected that whole lot.

11 Q I'm talking about -- I'm talking about the  
12 substitutions they gave you. Did these substitutions  
13 enable you to complete some of the MRE units?

14 A Yes. It would do --

15 Q Approximately, how many were you able to  
16 complete with the substitutions?

17 A I have no idea. It -- we have a -- I have a  
18 schedule in the file somewhere. It talks about all of  
19 the substitutions.

20 Q In relation to the 114,758 units.

21 A Right.

22 Q Do you know how many were affected by your  
23 being able to use substitutions?

24 A No. I could guess. It would be no more than  
25 the 600, the 6,000 cases that I did. So if I got that

Page 731

1 many out, there could have been substitutions in there.  
2 I just don't know. But it would be in that -- that's the  
3 --

4 Q So certainly, with whatever extent the  
5 Government was directing you to make substitutions, it  
6 did not allow you to complete your contract requirement  
7 for the full 114,700.

8 A Oh, no. Absolutely not. They didn't have  
9 enough substitutions to do that.

10 Q Now, we spoke about the 200 -- the DD forms  
11 250. Or units delivered and accepted. Were you ever  
12 told why the Government was not paying these?

13 A No.

14 Q Now, do you recall how early these invoices go  
15 back in your production cycle when you started to submit  
16 the DD250's and when they stopped paying them? Do you  
17 have any idea? Do you recall?

18 A I would say it goes back to FNY 80.

19 Q I'm sorry?

20 A FNY 80 is an invoice number. All right.

21 Q Do you know the time, approximately?

22 A I think it was March of '86, maybe.

23 Q So they did at one time for early shipments,  
24 did they honor DD250? You were getting some DD250 money?

25 A They would --

Page 732

1 Q Did you -- never got DD250? You recall?

2 A The problem with the DD250 is, we should have  
3 been on automated bases. And we were never on automated.  
4 The DD250's were always coming in sporadic and late. So,  
5 therefore, we may have gotten paid invoices but those  
6 invoices were like 200 days late. Eighty days late. The  
7 invoice before it might have been 70 days late. The next  
8 invoice didn't -- was never paid. It was so up and down  
9 -- a jig saw puzzle, you'd have to see the chart that we  
10 prepared as to the timing of when we produced or gave  
11 them the DD250 and the timing they paid the DD250 to see  
12 how many days late they were. And then to see how a  
13 batch got through and they started paying within 30, 40  
14 days. And they all of the sudden a batch would be 60,  
15 70, 80 days late. We had no idea of why Mr. Liebman  
16 would take our DD250s, third based them in his desk --

17 Q I'm sorry.

18 A Third base them on his desk. And then all of  
19 the sudden spoon feeds them to the finance office to pay.

20 Q Wait a minute. I don't understand. You said  
21 Mr. Liebman had your DD250's?

22 A Mr. Liebman held our DD250 payment. He put us  
23 on a manual payment system.

24 Q I don't understand. Didn't your contract  
25 provide that you would submit DD250's to the paying

Page 733

1 office like every other contract in the whole world?

2 A It provides for us. We went to the payment  
3 office and we were told when we tried to give it to them  
4 that they -- that I have to give that to Mr. Liebman for  
5 him to give to them.

6 Q Were you ever told why?

7 A Yes. Mr. Liebman said he told us he put us on  
8 a manual system. He's going to personally supervise our  
9 contract.

10 Q I see. And again, Mr. Thomas, what was the  
11 approximate total value of DD250's that were not paid to  
12 you?

13 A We believe because we're not -- we believe --  
14 we have a number of 1.9 million dollars and we constantly  
15 are waiting for the Government to talk to us. So I have  
16 a number that may need some adjustment once they give me  
17 and I give them -- it could come as a surprise. Right  
18 now on my books, I say a million nine.

19 Q But another number has been, shall we say,  
20 bandied about. What number is that?

21 A Well, if we gave you 5 percent which once I  
22 correct the DD250's on the balance sheet which happens to  
23 be on the "Which do you" so, therefore, we can then  
24 reduce the progress payment rate then what falls out is a  
25 5 percent which is about 90 to 100 thousand dollars. But

Page 734

1 when you apply the prompt payment and whatever the  
2 penalties that the Government's suppose to pay on these  
3 invoices it's going to be a lot more.

4 Q Did it come to pass, Mr. Thomas, that you  
5 ceased final case assembly?

6 A Yes.

7 Q And at that time what happened to your work --  
8 Well, let me ask you, do you recall approximately when  
9 that was?

10 A Around early November 1986.

11 Q Do you recall how that affected your workforce?  
12 Of what you did with your workforce.

13 A Everybody was laid off waiting to be recalled  
14 until we got this financing and GFM issues resolved so  
15 that we can startup and stay running and finish the  
16 contract.

17 Q So even then you had intentions of continuing  
18 or reinstating or starting again with performance of the  
19 contract?

20 A Yes.

21 JUDGE JAMES: Well, why did you stop the final  
22 assembly?

23 THE WITNESS: We stopped the final assembly  
24 because of -- we had notified them in early October that  
25 we didn't have GFM to make the leap once we completed the

Page 735

1 505 into the 114,000 cases. So --

2 JUDGE JAMES: Let's go off the record, please.

3 (Off the record.)

4 JUDGE JAMES: On the record.

5 THE WITNESS: I got distracted here. What  
6 happened --

7 JUDGE JAMES: He answered. He told me lack of  
8 GFM.

9 MR. STEIGER: Right. Okay.

10 THE WITNESS: And those two things, Judge. We  
11 shut down first time as a result of GFM. Okay. To  
12 complete the rest of it. And we put them on notice that  
13 we are now completed the 505 and we were retooling up.  
14 Since they didn't have the GFM for us, we shut down at  
15 that point. Mr. Liebman then realizing we shut down.  
16 And we told him we had shut down for no GFM. He then  
17 turns around and says, "Well, you don't have any CFM.  
18 That's your real reason." And we said, "No. We have  
19 CFM." He says, "Well, I'm suspending pro -- I'm not  
20 paying you anymore money until you get another contract."  
21 So all of the sudden, I had a second problem that I went  
22 to see Frank Bankoff on. When I went down to him and  
23 told him that -- what Marvin said, he says, "Well, Marvin  
24 says it's your bank. You don't have any money." I says,  
25 "I'm begging you people to pay me my money. Marvin's

Page 736

1 holding the money. Marvin says he's not going to pay  
2 until MRE-7 award. We got a positive pre-award, Mr.  
3 Bankoff, issue the contract."

4 MR. STEIGER: And I think you're exceeding the  
5 scope of your Honor's question.

6 THE WITNESS: Lack of GFM and lack of money.

7 BY MR. STEIGER:

8 Q The fact is that's right. The fact is that  
9 even if you had a billion dollars at that time, could you  
10 have performed the contract without the GFM?

11 A No.

12 Q Now, did you advise the Government that -- did  
13 you advise the Government that in the event that you got  
14 the GFM that you were in a position to recall workers and  
15 start work once again?

16 A We advised them of that but then we told them  
17 of the -- of the notice from Mr. Liebman that he's not  
18 going to resume progress payments until another contract  
19 was awarded.

20 Q But you did tell the Government had the  
21 problems been rectified you were ready, willing, and able  
22 to restart and continue the job?

23 A Yes. It is, yes. Yes. I did.

24 Q Now even with -- you said you laid off workers.  
25 Did you -- when you ceased total production, the total

Page 737

1 per case production, did you lay off all your workers?

2 Would you have any workers on hand?

3 A Yes. We had workers on hand in limited area  
4 because we also ran into the accessories and the crackers  
5 in the back. We were running out of crackers that the  
6 Government was trying -- was going to now restaff us with  
7 crackers. So that we could finish that subassembly  
8 operation up.

9 Q Notwithstanding your discontinuance of  
10 production, did you still wish to complete this job and  
11 to participate in future awards beginning with the MRE-7?

12 A Yes. We were a part of the IPP program.

13 Q Now, other than production work on putting  
14 together MRE units, did other work continue in the plant  
15 toward the objective that you just stated?

16 A Yes. We finally had gotten another top case  
17 sealer. We had gotten another bottom sealer which was a  
18 bottle neck in the production. So during this time  
19 frame, we adjusted the final assembly lines higher. We  
20 retooled the production line and added these two other  
21 pieces of equipment that we got to supplement the  
22 struggle buggy equipment that we were using in this  
23 production as the result of not having the, the equipment  
24 that we had planned for a year earlier.

25 Q You were positioning yourself, getting ready to

1 perform MRE-7?  
 2 A Absolutely.  
 3 Q Now, let's talk about MRE-7 at that time.  
 4 Let's zero back in on it. Had an RFP come -- had an RFP  
 5 been issued?  
 6 A Yes. It had.  
 7 Q Right. And you were one of four potential  
 8 awardees at that time?  
 9 A We were the third plant producers of four.  
 10 Q Right. Now, you submitted a proposal?  
 11 A Yes.  
 12 Q Would you tell us what was the standing of your  
 13 proposal?  
 14 A We had received a positive pre-award and we had  
 15 been told we were the low offeror on the third portion.  
 16 Q Positive pre-award low offer.  
 17 A Positive pre-award and we were the low offer on  
 18 the third portion.  
 19 Q Based on that, did you have reasonable  
 20 expectations of receiving award?  
 21 A Yes.  
 22 Q In fact, could you of conceived of any reason  
 23 why at that time you would not receive an award?  
 24 A No.  
 25 Q Did it come to pass that another pre-award

1 survey was ordered?  
 2 A Yes.  
 3 Q And do you recall how that came about? Who  
 4 ordered it?  
 5 A Frank Bankoff ordered it.  
 6 Q Do you know the reason why he ordered it?  
 7 A His reasons were that we had shut down  
 8 production and we -- our financing had dried up. So,  
 9 therefore, he wanted to -- before he awarded us a  
 10 contract he wanted us to have New York DECASMA do another  
 11 pre-awards survey on us to -- to find out whether or not  
 12 we're financially stable. Since production had stopped  
 13 and Marvin Liebman had told him that our -- that we had  
 14 no financial resources.  
 15 Q So a second pre-award was ordered and the  
 16 reasons I believe you said were that you had shut down  
 17 production?  
 18 A Yes.  
 19 Q And again, why had you shut down production?  
 20 A Because Mr. Bankoff hadn't given us a GFM to  
 21 continue production.  
 22 Q And what about this run out of -- what did you  
 23 say -- run out of finances or --  
 24 A Financial resources.  
 25 Q Financial resources.

1 A Because Mr. Liebman had stomped -- put his foot  
 2 on the brake on giving us the money.  
 3 Q I see. And what was the result of the second  
 4 pre-award survey?  
 5 A It came up negative. But it was a trumped up  
 6 negative. It wasn't just --  
 7 Q Mr. Thomas, please.  
 8 A It was negative.  
 9 Q Thank you. Now in spite of that. Did you  
 10 still try to startup production on MRE-5 again?  
 11 A Yes. We went back in because of whatever it  
 12 was. To show Frank the good faith. I told him, "I'll  
 13 start production with my own money. And give me some  
 14 GFM." I didn't have it so we started up an accessories  
 15 alone. That's all we had so we started that up. To show  
 16 them we were ready to go.  
 17 Q And did they take heed of your -- of your  
 18 desire to continue to produce?  
 19 A No.  
 20 Q In fact, did they begin to phase you out?  
 21 A Yes.  
 22 Q What did they, what did they -- you did have  
 23 physical inventory, obviously, in the plant at the time?  
 24 A Right.  
 25 Q Do you recall what -- did they ask you about

1 survey was ordered?  
 2 A Yes.  
 3 Q And do you recall how that came about? Who  
 4 ordered it?  
 5 A Frank Bankoff ordered it.  
 6 Q Do you know the reason why he ordered it?  
 7 A His reasons were that we had shut down  
 8 production and we -- our financing had dried up. So,  
 9 therefore, he wanted to -- before he awarded us a  
 10 contract he wanted us to have New York DECASMA do another  
 11 pre-awards survey on us to -- to find out whether or not  
 12 we're financially stable. Since production had stopped  
 13 and Marvin Liebman had told him that our -- that we had  
 14 no financial resources.  
 15 Q So a second pre-award was ordered and the  
 16 reasons I believe you said were that you had shut down  
 17 production?  
 18 A Yes.  
 19 Q And again, why had you shut down production?  
 20 A Because Mr. Bankoff hadn't given us a GFM to  
 21 continue production.  
 22 Q And what about this run out of -- what did you  
 23 say -- run out of finances or --  
 24 A Financial resources.  
 25 Q Financial resources.

1 that?  
 2 A What happened was they asked us to do an  
 3 inventory which we started to do an inventory. But they  
 4 also started to remove GFM from us because they had an  
 5 emergency at other plants. So all of the sudden --  
 6 Q Can we focus on the time here?  
 7 A Say November, December of '86. As I was shut  
 8 down. They were taking GFM from our plant in an  
 9 emergency mode to take it either to South Carolina or to  
 10 Cinpak or somewhere else.  
 11 Q But what about your physical invent -- I'm  
 12 sorry.  
 13 JUDGE JAMES: Before we leave that point. Now  
 14 you've got the Judge befuddled. If the reason for the  
 15 stop -- shutdown in the end of 1986 was lack of GFM?  
 16 THE WITNESS: Right.  
 17 JUDGE JAMES: How were they now removing the  
 18 nonexistent GFM? How do you do that?  
 19 THE WITNESS: Here it is. We had, as I was  
 20 explaining earlier, there are approximately 500 pieces  
 21 going into one case. It takes --  
 22 JUDGE JAMES: 500 pieces of GFM?  
 23 THE WITNESS: 500 pieces of items funneled down  
 24 in one case.  
 25 MR. STEIGER: Okay.



Page 742

1 JUDGE JAMES: And some are CFM and some are  
2 GFM?  
3 THE WITNESS: Yes. Let me just show you --  
4 JUDGE JAMES: Please don't show me. I don't  
5 need to know which pieces they are. I'm just trying to  
6 find out what's happening here.  
7 THE WITNESS: All right. You've got at least,  
8 say, 500 pieces that we have a bill of material -- a  
9 counting bill of material that funnels down into one  
10 case. Okay. They could be -- anything that's short, one  
11 item is missing, we can't close that case. One item.  
12 So, therefore, if they have other items that they have in  
13 excess on in my plant, they can take that and remove it  
14 and send it to another plant where they have a shortage  
15 of GFM. It appeared that DPSC had a GFM shortage problem  
16 all over the place. Not only with my plant but with  
17 other prime contractors.  
18 JUDGE JAMES: Okay. In a word then, you'd call  
19 it a selective shortage of GFM. Is that right?  
20 THE WITNESS: Selective shortage of GFM, right.  
21 It wasn't a total shortage.  
22 MR. STEIGER: But selective to the extent that  
23 you could not complete the assembly of the unit.  
24 THE WITNESS: Right. Right. I could not close  
25 the case.

Page 743

1 BY MR. STEIGER:  
2 Q I was really referring to the physical  
3 inventory. Did they ask you about the physical  
4 inventory? The fixtures, the equipment, things of that  
5 nature. Did they --  
6 A Yes. I think what happened was they started  
7 doing a -- they started to do a physical inventory, at  
8 least the people from New York, because they were  
9 identifying where Government -- what items were used for  
10 progress payment purposes. Let me say it like that.  
11 What was theirs? What could they touch and say that this  
12 was purchased --  
13 Q In other words, what did they own?  
14 A Yes. What did they own?  
15 Q In other words, they had -- they considered you  
16 now out of business.  
17 A I would say that they were trying to now  
18 identify stuff that they could grab.  
19 Q And what time period now are we talking about?  
20 A Well, this started as I understand it, as I  
21 recall sometime in September, I believe. Let me see now.  
22 It started where they wanted to know what it was.  
23 Q Yes.  
24 A But when it actually started to be done was  
25 sometime in probably November, December time frame.

Page 744

1 Maybe in early January.  
2 Q It may have extended onto 1987.  
3 A Oh, it did. There's no doubt about it.  
4 Q Okay. Now, with respect to that inventory or  
5 -- what eventually happened to it?  
6 A The government seized the inventory after they  
7 shut -- they basically awarded the contracts, future  
8 contracts -- the other contract to some else. And they  
9 started to -- while the contract was still alive, remove  
10 all of the CFM, GFM, and the physical inventory that we  
11 had used progress payments to purchase. They started  
12 moving it out.  
13 Q When you said, "While we still alive," did you  
14 mean before it had been terminated.  
15 A Oh, before it had been terminated.  
16 Q They moved it out. Did they consult with you  
17 as to who owned what or anything like that?  
18 A No. No. I was a pushed aside and they just  
19 took over.  
20 Q Did you give them any reason to believe that  
21 you were going to abscond with this inventory?  
22 A No.  
23 Q They just came into your plant and what did  
24 they do?  
25 A They started removing everything. They

Page 745

1 wouldn't give me any money. He froze the money. So  
2 Conn-Edison says we're going to turn off the lights. So  
3 then they -- I find that Frank Bankoff ordered -- okayed,  
4 Mr. Liebman to use the progress payment money he should  
5 have given to me -- "Okay, use that money and pay  
6 Conn-Edison." Why didn't he give me the money? I would  
7 have paid Conn-Edison.  
8 Q He paid Conn-Edison directly?  
9 A They paid Conn-Edison direct. They paid --  
10 they got fork lift operators in here direct. They used  
11 my money to close out the plant while they kept me at  
12 bay.  
13 Q What happened to the equipment eventually?  
14 A Well, what happened was, bankers saw what was  
15 going on and they say, "Hey, you've -- they've awarded  
16 the MRE-7 contract to Cinpak which you were low bidder  
17 on." They say, "We're going to have to get out of this.  
18 The government is abandoning ship." So they said they're  
19 going to hold an auction. So they started -- they held  
20 an auction. And DPSC participated in it.  
21 Q Do you know the outcome of that auction?  
22 Dollars wise or anything like that?  
23 A No. I don't know the outcome. I just know  
24 that the outcome was that Cinpak came in and bought a lot  
25 of our production equipment. Bought a lot of our stuff.

Page 746

1 And Frank Bankoff is standing there as they were buying  
2 it. With me standing there watching it.

3 Q Was all the equipment that was removed  
4 government-owned equipment?

5 A I -- no. Well, no. Everything -- some was --  
6 belonged to bankers and there was a fight as to -- Well,  
7 basically, whose it was. But bankers just backed up and  
8 say, "If you say this is yours, we're not going to get  
9 into a fight." But if I was there I would have told  
10 everybody where it was. I'm the one that made the  
11 decision on buying what with what money.

12 Q You could of straightened out?

13 A Yes. I would of straightened -- I'm the only  
14 person that can straighten this out.

15 Q Let me ask you this, was any of your own  
16 personal items removed?

17 A Yes. Our school lunch production equipment  
18 that we had, that we put on hold and that we told SBA  
19 that we're putting out SBA business plan on hold and not  
20 doing this was in the plant. Due to the fact of the  
21 UCC's on this by bankers and, what have you, when I came  
22 back in everything was gone. I mean school lunch  
23 packaging equipment, conveyors, kettles, this, that. We  
24 lost everything.

25 Q Was that auctioned off, too?

Page 747

1 A I don't know where it went. Like I said, I'm  
2 still scratching my head asking people, "You all took  
3 over this, will someone come in and tell me what you all  
4 just did?" Instead I got, "You're in default. You're  
5 defaulted." That's what I got.

6 Q Let me get to it.

7 A Okay.

8 Q So before your contract was defaulted, I think  
9 you said they removed your stuff. Did they, did they do  
10 actions that led you to believe that the contract was  
11 still alive and kicking?

12 A Yes.

13 Q What did they do?

14 A Frank Bankoff says to me knowing full well that  
15 I told him, "Because I don't have any money and Mr.  
16 Liebman got it on hold that the landlord is tired of  
17 waiting on money." That we're going to be evicted. And  
18 I say, "I'm not going to go through that embarrassment  
19 like I did at Hunt's Point trying to hold onto a factory  
20 for the United States government." I even went to war in  
21 the old plant with Mayor Koch. There's a whole litany of  
22 a problem where Henry Thomas and Mayor Koch had a big  
23 fight. As well as the court system for allowing me to  
24 stay in a building in Hunt's Point in the interest of  
25 national defense. Because I said I had to have this and

Page 748

1 I wasn't budging. And I wouldn't let them budge me. So  
2 this time I said to Bankoff, "Listen, I'm not going to do  
3 that. Kurt Witteck and I are going to ease this down so  
4 there's no big fight here. This is embarrassing." So  
5 Bankoff says, "Well, Liebman is not giving you any money.  
6 I'm not giving you any GFM." They had already awarded  
7 the contract to Cinpak. I had no follow-on contract.

8 Q Let me ask you this. Without any equipment in  
9 your place that knew, knowing that you didn't have any  
10 money, knowing this job was dead, did they send you a  
11 unilateral modification to the contract establishing  
12 delivery dates to perform?

13 A They sent it after we kept telling them that we  
14 will do this if you will give us GFM money and GFM  
15 material, we would complete. The fact is that they took  
16 it out and then they gave us a Truant Notice.

17 Q I don't think you head my question. So I'm  
18 going to ask it again. I asked you, knowing that you had  
19 no equipment in the house, no resources to perform this  
20 contract, did they give you a unilateral modification  
21 that established revised delivery dates?

22 A Yes.

23 Q Thank you.

24 A They did that.

25 Q Is that modification in the file?

Page 749

1 A Yes. It is.  
2 Q Now, you mentioned something about a cure  
3 notice. Did they send you a cure notice even after that?  
4 A Yes. After --

5 Q And what was that cure notice?

6 A The cure notice was telling me that it appeared  
7 that I did not want to continue or something along those  
8 lines.

9 Q What did it ask for?

10 A It asked for me to cure -- startup production  
11 again or meet this new imposed delivery schedule that he  
12 wants me to meet.

13 Q And before you responded to that cure notice,

14 what happened? Well, let me ask you this. What happened  
15 on this contract?

16 A It was terminated for default.

17 Q It was terminated for default. Did you appeal  
18 the default determination?

19 A Yes. I did.

20 Q Do you recall to whom did you appeal this to?

21 A The Armed Services Board of Contract Appeals.

22 Q You recall the number of that appeal?

23 A I think it was 35671. I believe -- ASBCA  
24 number 35671, I believe.

25 Q And ultimately did this appeal get resolved by

1 the Board?

2 A The Board found --

3 Q What was the decision of the Board?

4 A The Board -- the Board found that Freedom was  
5 not in default. And we had been wrongfully terminated  
6 for default.

7 Q Thank you. Now, as distinctly as possible now,  
8 Mr. Thomas, what then happened to Freedom as a company?

9 A Freedom as a company stalled. It just -- I had  
10 to take it and just put it on a shelf and consider this  
11 as an interruption of my business plan. And say, "I've  
12 got to go back and get this straight so I can now go back  
13 in business and resume my business." I have, I have quit  
14 Freedom and tried to keep things alive so that we can  
15 correct it.

16 Q But did Freedom ever continue as a viable  
17 company producing items and making money?

18 A No.

19 Q In fact, what happened to the creditors that of  
20 RME-5? What happened to them? Are they still around?  
21 What happened?

22 A What I did was I held a meeting or conference  
23 call with various people and told them that I want  
24 everybody to mark time. Wait I'm coming back because I'm  
25 going to go to the Board. We're going to get this thing.

1 Somebody, somebody's got to look at what happened us and  
2 somebody's got to fix this. This is not America. So  
3 that's what -- so no one took me to bankruptcy court.  
4 Nobody's chasing me. All of my creditor who I owe  
5 millions of dollars to -- this very day waiting for me to  
6 come back and correct something that happened 15 years  
7 ago.

8 Q Did you ultimately file a claim for additional  
9 costs?

10 A Yes.

11 Q And is that claim documented in the file?

12 A Yes. It is.

13 Q And is that claim, the document, that we are  
14 disputing today?

15 A Yes. His denial of that claim is why we are  
16 here.

17 Q And would you describe what are the elements of  
18 what you're asking for this claim.

19 A In the claim we're saying that Freedom was  
20 designated as an industrial preparedness plant producer  
21 by the Secretary of Defense. And in the agreement that  
22 we reached with Office of the Secretary of Defense to be  
23 maintained in the, in the Industrial Preparedness Program  
24 that we settled the law suite that we had pending in  
25 Federal court in order to be treated fair and equally.

1 And we were told we would be.

2 This contract was a result of that settlement  
3 with the Department of Defense. And I felt that we had  
4 been taken in and then mugged. Totally mistreated,  
5 discriminated against, and kicked to the curve by Mr.  
6 Bankoff and Mr. Liebman. We want to be treated fairly  
7 and not discriminated against by the system. And we want  
8 the Board to take action to correct Mr. Bankoff over here  
9 and correct Mr. Liebman and put us back where we should  
10 have been. Put us back as the third MRE plant  
11 producer that the Secretary of Defense ordered them to  
12 maintain and keep available in the event of war.

13 Q I would like us to just take a brief look at  
14 the claim in the file. We have it listed it as F-1.  
15 Would you pull that Mr. Thomas?

16 A F-1?

17 Q F-1. Now is this the claim we have been  
18 referring to?

19 A Yes. It is.

20 Q And what do you -- what dollars, not in terms  
21 of the numbers but in the nature of the costs. What are  
22 you seeking here?

23 A In this particular claim, I believe, we was  
24 seeking a -- the relief we wanted here, on page 39, was  
25 an increase in the cost of the contract. And other

1 losses of equipment, special tooling, a lease on  
2 improvements, as well as the loss profits from us not  
3 being included in the Industrial Preparedness Program.

4 Q Were you seeking loss profits on this job?

5 A Yes. We are looking for the loss profits as a  
6 result of being eliminated out of the program.

7 Q Are you also seeking the additional costs  
8 associated with having to perform this job based on acts  
9 of the Government?

10 A Yes. We are.

11 Q Okay. Now, I'd like to call your attention to  
12 Rule 4, 192,

13 A One hundred ninety-two?

14 Q One hundred ninety-two.

15 A All right.

16 Q Mr. Thomas, can you tell us if this is the  
17 Government's response to the claim you just discussed?

18 A Yes. This is the -- Mr. -- Yes. This is the  
19 response.

20 Q I would like to focus your attention on the  
21 decision of the Contracting Officer with respect to your  
22 claim beginning on page 3. Now do you see the first two  
23 paragraphs relating to the termination for default? But  
24 first of all, was this decision written before or after  
25 the default was overturned? You recall?

1 A This was written before.  
 2 Q This decision was written before?  
 3 A Right. It was written before.  
 4 Q So it does not take into consideration the acts  
 5 of the Board in overturning the default?  
 6 A Right.  
 7 Q So as far as this decision is concerned, the  
 8 default action taken by the Government was proper.  
 9 A They think it was proper.  
 10 Q It's what they say in the first two paragraphs.  
 11 A Right. They think this was this was proper.  
 12 Q Now they go on in the third paragraph to talk  
 13 about the allegations concerning improper strapping.  
 14 A Right.  
 15 Q Is this not the same issue that you addressed  
 16 in detail yesterday on the stand?  
 17 A And today.  
 18 Q And today. Right. And today the strapping was  
 19 today.  
 20 A This is the issue about the --  
 21 Q You're right.  
 22 A The strapping.  
 23 Q The next paragraph talks about some kind of a  
 24 medical hold problem. That make any sense to you? What  
 25 was that?

Page 755  
 1 A That was about the Star Food products and the  
 2 impact of the Zyglo testing in micro holes that resulted  
 3 from Frank Bankoff allowing Cinpak to be in the same  
 4 plant with Star Foods or that was a problem. It impacted  
 5 on everybody.  
 6 Q Now if we got to look at this whole decision  
 7 because of what it says in the next paragraph, it says,  
 8 does it not say as you see, the reasons for the rejection  
 9 of your claim is because of the actions set forth above.  
 10 Is that the way you read it?  
 11 A Yes.  
 12 Q So these are the things that the Government has  
 13 used to reject your claim?  
 14 A Yes.  
 15 Q Does it say anything about your entitlement to  
 16 the loss profit?  
 17 A No.  
 18 Q Does it say anything about the late GFM or  
 19 anything like that?  
 20 A No.  
 21 Q Does it say anything here about your assertions  
 22 in the claim regarding the failure to pay progress  
 23 payments?  
 24 A No.  
 25 Q Would you say that this decision covers the

1 matters that you raised in your claim?  
 2 A No.  
 3 Q With respect to the few that are here, would  
 4 you say that these are important or significant in terms  
 5 of the dollars that you asked for in your claim?  
 6 A Some of them, yes.  
 7 Q It's significant. How much did you ask for in  
 8 the claim?  
 9 A I wanted on my claim, I was vague about it, at  
 10 that point I wanted 21 million dollars.  
 11 Q How much?  
 12 A Twenty-one million dollars.  
 13 Q What's the largest item here in terms of costs?  
 14 Would you say?  
 15 A I would say -- I would say maybe 500,000  
 16 dollars.  
 17 Q So the largest item here is 500,000 dollars on  
 18 a 21 million-dollar claim?  
 19 A Right.  
 20 Q Did the Contracting Officer at anytime discuss  
 21 his findings and decisions with you?  
 22 A No.  
 23 Q Were you ever aware if this claim was submitted  
 24 to legal -- government legal office for review?  
 25 A No. I'm not.

Page 757  
 1 Q Were you under -- did you ever understand that  
 2 this claim was submitted to the DCAA for audit?  
 3 A I understand it was not.  
 4 Q You understand that it was not.  
 5 A It was not.  
 6 Q How do you know that?  
 7 A DCAA never contacted me because once they get  
 8 it they will let you know they have a claim, they have an  
 9 action items. And they notify us right away.  
 10 Q And would they not need your assistance,  
 11 obviously, to perform such an audit?  
 12 A That's right.  
 13 Q Thank you. A couple of more questions about  
 14 your claim and about the quantum.  
 15 Going back to the question of loss profits.  
 16 A Right.  
 17 Q You are seeking, if I'm stating this correctly,  
 18 loss profits on future jobs. Is that right?  
 19 A Right.  
 20 Q Future contracts. In addition to this one.  
 21 Future contracts, is that right?  
 22 A That's right.  
 23 Q Okay. What do these future loss profits on  
 24 future contract have to do with the performance on this  
 25 job?

Page 758

Page 760

A This job is under the Industrial Preparedness Program. And one of the programs that's designated by the offices -- by the Secretary of Defense himself and designated under 2304816 specifically under DAR 3216 to maintain productive, productive capability in the event of war. And the way this program is designed is that the Government -- the Secretary of Defense will select companies. They have an entire unit that goes out -- this isn't Mr. Bankoff or Mr. Liebman selecting me. I had -- I had people come from the Pentagon, from DLA, from Georgia, Texas, all over the place to make this decision whether or not I was to be included in this program. So by them making that inclusion, the Secretary of Defense identified me to be maintained and be kept available. We entered into this program and invested in this program for the sole reason of not just the one contract. It was for the entire future. The Industrial Preparedness, IPP, program -- planning schedules that we do are not for this contract. They are for future. We're always planning for the future.

Q Right.

A And that's why we --

Q You have articulated that several times. I believe and well. But now I want us to be a little more specific about why you think what happened to you on

payments. So now I'm frozen in place. Then he decides that he's going to say I am unqualified while he then ushers Cinpak, who happens to have a higher price than me, right into my shoes. Make them the third. Flushed me right down the toilet before my contract was even defaulted.

Q So you're say then that these actions triggered the negative pre-award survey?

A Absolutely.

Q And are you than now saying that is why you didn't get MRE-7?

A Didn't get MRE-7? Yes.

Q All right. Now, that's MRE-7. But we are claiming loss profits for MRE-8, 9, 10, 11, and 12. We're going way beyond that.

A That's right.

Q Where is our entitlement come from there?

A There's a nexus between this contract and the IPP program. Okay. And as this is one but one of one contract and the way they do this, there's a link. The solicitation specifically links eligibility to get this contract with your capability in the IPP program. So, therefore, but for their actions, I would be the third person to be maintained in this program. And this is how they have done this. We have a track, a history. Mr.

Page 759

Page 761

MRE-5 was the cause of your entitlement to profits on the future contracts.

A Okay. Once that determination was made and a contract was issued, but for, all of these things that was done to me here, but for these things, if they had been corrected in a timely fashion and we had been treated fairly, Cinpak would of never been in this program. Because they only have enough room for three contractor and we were the third contractor. Therefore, by the Government's action of preventing me from being and preventing me from delivering under this contract as I negotiated and bargained with them for, they precluded me, bogged me down, and then held my hands while they allowed Cinpak to come in without the same things that I had to do. In other words, that's discrimination.

Q Let me ask you this. What specific actions took away the MRE-7 contract from you?

A The specific action that took the contract was Mr. Liebman stopping the -- doing 100 percent liquidation, pulling the DD250's back, abandoning -- financially abandoning this contract which gave Mr. Bankoff rise to try to now change the positive pre-aware to say, "Let me go and take a look . . ." while he knew himself that he wasn't giving me GFM. I went and told him that this guy had suspended payments and froze the

Barkowitz, Bankoff here can say that he has had only three suppliers since Freedom. And it's the same three. So the shoes, the number three shoes, the boots of number three are marching down in the future. Those were my boots. He took me out of those boots and put Cinpak in them. I want those boots back.

Q Is it clear to you that had these actions not been taken in this MRE-5 as we just described, you would of been in those shoes?

A Absolutely. Absolutely. Absolutely.

Q Did you not prove that you could perform?

A Absolutely. We proved that we can perform even in the face of them not giving me the money that we bargained for.

Q Did you not prove that you were the low bidder?

A Absolutely. We were the lower offeror.

Q Did you not prove that had you gotten the financial resources that you were supposed to get that you would of completed this contract?

A Yes. We did.

Q And had you completed this contract, is there any doubt in your mind that you would of been the winner of MRE-7?

A Absolutely. We were the winners of the MRE-7.

And it should have been no competition for MRE-7 because

1 of the A16 program. It's an exception to competition.  
 2 Q Excuse me. Was there any question that you  
 3 didn't have the production capability that was required  
 4 to perform MRE-7, 8, 9, 10, et cetera, et cetera?  
 5 A We showed that we had the ability to get the  
 6 cases out. We got out six. We got out 512,000 cases  
 7 that they accepted. That showed that I knew how to get  
 8 the cases out. All we had to do was correct our  
 9 production line for problems that Mr. Liebman caused --  
 10 because of us getting the wrong equipment. And for the  
 11 Government to give me the financial resources that they  
 12 gave everybody else. I was the only contractor that they  
 13 refused to give money to. They gave the money to Cinpak  
 14 on time. Rafco on time. Sopakco on time. And when I  
 15 told these people what they did to me, they says, "You've  
 16 got to be kidding." Everybody laughed at me when I told  
 17 them this did this. They did this. It seemed like a  
 18 circus.  
 19 Q In preparation for this work. Did you buy any  
 20 additional equipment?  
 21 A Yes. We did.  
 22 Q What you buy?  
 23 A What we bought was the -- all the APF equipment  
 24 out of Chicago. We spent and invested more money to pull  
 25 all that equipment so that we would be the number one

1 supplier. We had the largest plant. Freedom had a  
 2 400,000 square foot plant. Sapakco only had a 200,000  
 3 square foot plant. I understand that Fafco had a 100,000  
 4 square foot plant plus some off storage. Nobody had a  
 5 400,000 square foot plant. Rafco had, like, two retorts,  
 6 three retorts, I understand. Two retorts. Southern  
 7 Packaging has three retorts. And I ended up with six  
 8 retorts. Okay. Six because I had two from Zeb Robbins  
 9 in California plus I got the equipment from APF. So not  
 10 only did we have the Mitsubishi that Randy drove that we  
 11 purchased. And then we purchased all the APF equipment.  
 12 We had more productive equipment and the plant and space  
 13 to do exactly what I promised the people at the Secretary  
 14 of Defense's office I would do in this program. And I  
 15 was geared to do it except I was stopped by Mr. Bankoff  
 16 here in his administration of his contract.  
 17 Q Now was the Government --  
 18 JUDGE JAMES: Mr. Steiger, we're repeating  
 19 considerably of Tuesday's testimony.  
 20 MR. STEIGER: I'm sorry.  
 21 JUDGE JAMES: We are repeating considerable  
 22 testimony from Tuesday.  
 23 MR. STEIGER: I will stop. One more question.  
 24 Or one more approach that I want to do.  
 25 BY MR. STEIGER:

1 Q You are aware we're going to put before your  
 2 Honor, figures. An amount that we believe we are  
 3 entitled to for loss profits?  
 4 A Yes.  
 5 Q Would you explain what the methodology is that  
 6 we're going to use to determine that?  
 7 A We're taking the gross sales value --  
 8 Q Getting back. You were explaining the  
 9 methodology that you use to calculate your entitlement to  
 10 the loss profit.  
 11 A We use the gross sales value of the contracts  
 12 that was awarded to Cinpak and then multiply that by our  
 13 profit rate of what we would have made on that. And  
 14 calculated that we went up to approximately 1991 or 1992  
 15 when the Government stopped having three plant producers  
 16 and only had two plant producers. Then they -- for like  
 17 two years, I think, they had two plant producers. Then  
 18 they brought the third one back on and they've going  
 19 three ever since. So we capped it at that point until we  
 20 can get some, some better information from Mr. Bankoff  
 21 and them, in good faith. I mean, tell us what went on  
 22 there because they did maintain and we understand when  
 23 they dropped down to two prime contractors they did  
 24 maintain the third prime contractor doing something else.  
 25 But they didn't let -- lose his productive capability so,

1 therefore, they brought him back on board. So if they  
 2 had limited us for two years then we want to go back to  
 3 -- from '94 or '93 forward to today. They have three  
 4 contractors today and we still want to be made whole and  
 5 put back where we should have been had there been no  
 6 breach.  
 7 MR. STEIGER: I believe that concludes my  
 8 examination of Mr. Thomas.  
 9 JUDGE JAMES: Parties want to take break before  
 10 we give the Government an opportunity to cross examine?  
 11 MR. STEIGER: I do, yes.  
 12 THE WITNESS: I do.  
 13 JUDGE JAMES: All right. Let's go off the  
 14 record.  
 15 CROSS EXAMINATION  
 16 JUDGE JAMES: On the record.  
 17 BY MS. HALLAM:  
 18 Q Mr. Thomas, yesterday you mentioned a meeting  
 19 at which you testified Marvin Liebman told Freedom  
 20 industries that it must novae the contract to H.T. Foods.  
 21 Do you recall the date of that meeting?  
 22 A It was in, I believe, sometime in February of  
 23 '85.  
 24 Q '85?  
 25 A I would say February of '85.

1 Q And do you recall how Freedom ended -- NY got  
2 paid the 399,000 dollars -- 99,111 dollars under Mod. 25?  
3 A Yes. It got paid because Frank Bankoff told us  
4 to submit an invoice.  
5 Q Frank Bankoff told you to submit an invoice?  
6 A Right.  
7 Q And you were paid in lump sum?  
8 A Yes.  
9 Q I'd like you to look at that Mod. It's at 119,  
10 Government Rule 4, 119, paragraph two. Yesterday you  
11 indicated that we insisted that this paragraph be in  
12 there to get payments back on track or something to that  
13 effect.  
14 A Beg your pardon?  
15 Q Yesterday you testified, you said, "We," I'm  
16 assuming you meant Freedom, "insisted that paragraph two  
17 on page 3 of 4, the Mod, be included in the Mod, so that  
18 the payments -- the progress payments and perhaps DD250's  
19 --  
20 A Right.  
21 Q -- Gets back on track. Could you explain to me  
22 what you think that paragraph says?  
23 A Where at the bottom? What I was referring to  
24 was the reference to the payment clauses. What I had  
25 said to my representative, Lambert, that we want to make

1 A Yes.  
2 Q Do you recall being deposed on January 12,  
3 1989, in connection with the case entitled: Banker's  
4 Leasing verses David Lambert?  
5 A Yes.  
6 Q Do you recall when asked where that figure came  
7 from that your response was, "It came from me." When  
8 asked, "Where did you take the seven million dollar  
9 figure from?" You said, "Basically, from the 50 percent  
10 that the Government at the time was not putting on the  
11 table." Do you recall that testimony? Do you recall  
12 that you also said, "We made the cash flow for the  
13 Government to show them that it was 7.2 million. They  
14 didn't tell us. We told them this."  
15 A That's right.  
16 Q That's right. It wasn't Bill Stokes that  
17 insisted that you write 7.2 million dollars.  
18 A Yes. It was.  
19 Q It was you. That was your testimony back in  
20 '89. Was not it?  
21 A You, you're taking that out of context.  
22 Q I'll show you the testimony. Maybe you could  
23 put it in the right context for me.  
24 A It's not -- I know what I said. I know what I  
25 said and we have an exhibit, if you want to take a look

1 sure that the Government, once this thing is done, is now  
2 obligated to treat us properly under those payment  
3 clauses including the DD250 clause and the progress  
4 payment clause. I see it buried in this clause. I'm not  
5 -- I'm not talking -- if I said that I wrote this  
6 paragraph, I did not. But these are the things I was  
7 pointed to when I was talking to Mr. Lambert. He says,  
8 "It's in there. It's right here where the Government has  
9 to pay you pursuant to the progress payment clauses, as  
10 they exist. Not as Marvin Liebman wanted them." So  
11 that's what I was talking about as far as that and the  
12 payment portion of this. Not the rest of it.  
13 Q All that paragraph simply says is it -- sets  
14 forth the mechanism by which Freedom would get paid that  
15 399,111 dollars. Doesn't it?  
16 A Fine.  
17 Q Isn't that what it does?  
18 A I believe it does.  
19 Q The progress payment clauses are already in the  
20 contract. Aren't they? They were in there before this  
21 modification.  
22 A Sure. Yes. They're absolutely there.  
23 Q Yesterday, I believe, you also testified that  
24 it was William Stokes that developed the figure of 7.2  
25 million dollars. Is that correct?

1 at it, where the 7.2 came from.  
2 Q The 7.2 according to your depositions came from  
3 you. Not the Government. Is that correct?  
4 A No. According to the way you're listening at  
5 it, it came from my writing with a meeting with Bill  
6 Stokes. I wrote it down on the -- on the cash flow  
7 sheets. When we had a meeting with Bill Stokes. So if  
8 the rest of that was, "Where did it come from?" It came  
9 from my writing right here on it. I know where I got it  
10 from. I know how I --  
11 JUDGE JAMES: All right let's go back on the  
12 record.  
13 MS. HALLAM: I'd like to approach the witness,  
14 your Honor.  
15 BY MS. HALLAM:  
16 Q Recognize this as your deposition transcript  
17 for January 12, of 1989?  
18 A I believe it is. I'm not going to say it's  
19 not. It probably is. I think we gave it to you. Didn't  
20 we?  
21 Q Yes. You did.  
22 A Okay.  
23 Q Do you -- please refer to page 425.  
24 A Yes.  
25 Q And with regard to your answer to the question,

1 "Explain it to me." Review your answer from line 17 to  
2 21.  
3 A Sure.  
4 Q Doesn't that specifically state, "We told them.  
5 The Government did not tell us."  
6 A Yes. It does say that.  
7 Q Says it's based on your cash flows. Is that  
8 correct?  
9 A That we need to bring the cash flows out.  
10 Q And it's based on the fact that the difference  
11 between what the Government was paying in progress  
12 payments and the anticipated contract price. Half of  
13 that was 7.2 million dollars. Is that correct?  
14 A That's correct -- that's what this says.  
15 Q Okay. Also with regard to Modification 25.  
16 One of the provisions to the Mod. dealt with the  
17 consideration that had previously been taken for two  
18 delivery schedule extensions. Do you recall that  
19 testimony?  
20 A In that, in that particular document?  
21 Q Yes. At Rule 4, tab 119.  
22 A Okay. Go ahead. All right.  
23 Q Recall mentioning several times, testifying  
24 several times to the fact that you were not or Freedom  
25 was not paid that 200,000 dollars? Didn't get a dime for

1 it?  
2 A We didn't.  
3 Q "You were never paid back," I think was the  
4 expression that you used. Isn't it?  
5 A That's what I used.  
6 Q Well, you never paid it in the first instance,  
7 isn't that true?  
8 A Was I never -- that I never paid it?  
9 Q Freedom never paid it. Never wrote a check for  
10 it.  
11 A No. We didn't.  
12 Q The arrangement was that it would come from the  
13 funding of the contract. At the rear end of the  
14 contract.  
15 A That's right.  
16 Q Isn't that correct?  
17 A That's correct.  
18 Q Yes. So you were never paid back because you  
19 never paid it in the first instance. Isn't that correct?  
20 A No. It's wrong.  
21 Q Now you expected the Government to pay you back  
22 for something you never paid?  
23 A No. I expected the Government to let me  
24 complete the contract so I could get that 200,000 back in  
25 the price.

1 Q Well, what did you mean by, "We were never paid  
2 back."?  
3 A We was never paid.  
4 Q You were never paid back. What did you mean by  
5 that?  
6 A Well, if the word back was that when we  
7 debited, if you debit and credit, when it was taken from  
8 us it was taken from the back end of our contract. So we  
9 gave it to you. Now you going to give it back to us. I  
10 expect it to be put back on the back end of the contract.  
11 When you don't let me complete the back end of the  
12 contract, you never gave it back to me. That's what I  
13 mean.  
14 Q Okay. So you didn't mean to infer that the  
15 Government somehow didn't pay you a cash payment of  
16 200,000 dollars.  
17 A No. No. Not a cash payment. No, it's a debit  
18 and a credit. And that's how it was to be adjusted. So  
19 we never got the benefit of that.  
20 Q You're also discussing problems that you  
21 incurred with the initial startup of your contract  
22 relative to the fact that you didn't have certain  
23 equipment in-house at the time?  
24 A Right.  
25 Q I believe you indicated that you couldn't

1 perform, well, you couldn't perform intake inspection on  
2 GFM and CFM because you didn't have quality control  
3 equipment at the time. Do you recall that testimony?  
4 A Yes. I do.  
5 Q What is it that you're required to do on --  
6 when GFM or CFM arrives in the plant?  
7 A There's a complete litany of inspection  
8 criteria called income inspection that we have to do.  
9 From weighing or counting. We have to count millions of  
10 units. So what we have is a counter that would take one  
11 case. Run it through it. Know how many's there than  
12 multiply that case based on a representative sample and  
13 that would tell us how many is that truck. By taking  
14 various cases out and running through a counter. If I  
15 don't have that counter, I'm accepting something that I  
16 don't know how many's in there. I have no way of  
17 counting but manually one case. So we don't have  
18 equipment to automatically count or weigh a case to say,  
19 well, if one item weighs a gram or two grams and then  
20 you've got 200 of these things in there, then that equals  
21 so much. Now we can take representative samples of  
22 cases. Weigh those cases and determine how much is in  
23 that truckload.  
24 Q The requirements of GFM and CFM is count,  
25 weight, and condition. Is that correct?



Page 774

Page 776

1 A Count, weight, condition? Yes.  
 2 Q And the count that's referred to in this  
 3 specification, it requires a manual count. Doesn't it?  
 4 A Whatever it count -- whatever it is, I'm not up  
 5 on it right now. It's been 15 years ago. But whatever  
 6 count it is at the time we were using this method of  
 7 counting millions and millions of units of product.  
 8 Q I'm sorry. I mis-spoke when I said it was  
 9 count, weight, and condition. It's actually count,  
 10 condition, and identity. You didn't have to weigh the  
 11 items when they came in. Is that correct?  
 12 A What? No. What I said -- weight? In order to  
 13 get a count you can weigh something and tell how many's  
 14 there. That's how you count it, by weight.  
 15 Q I thought you put them through a machine that  
 16 automatically counted it?  
 17 A Excuse me?  
 18 Q I thought you put them through a machine that  
 19 counted it.  
 20 A I don't have the machine. I told them I was  
 21 going to get a machine. Now the stuff was coming in and  
 22 I don't have the thing. That's the problem. We didn't  
 23 have what we're supposed to have to do this job.  
 24 Q You also said that you couldn't perform at  
 25 tinsel strength?

1 A We were having problems but it wasn't enough to  
 2 fail the lot. Okay.  
 3 Q The lots failed at the end. Did they not?  
 4 A When you say they failed at the end, what do  
 5 you mean?  
 6 Q You had, like, 40,000 cases of materials that  
 7 failed.  
 8 A Okay. One day we may have produced 2,000  
 9 cases. The next day we may have produced 1,000 cases.  
 10 What I said was, over the period of the start up to where  
 11 they finally came online, is the period of time we're  
 12 talking about. Now we did have in our own in-line  
 13 inspection. That's part of our problem that we had with  
 14 AVL. Is that they stood there in certain instances and  
 15 knew -- they was in the building knowing that we was  
 16 running production and knowing that our so-called  
 17 untrained quality control inspectors was handling  
 18 Government furnished material and they didn't step up to  
 19 the plate. They walked away and said because over here  
 20 you don't have that -- we're not doing it.  
 21 JUDGE JAMES: Okay. Let's go off the record.  
 22 (Off the record.)  
 23 JUDGE JAMES: We're now on the record.  
 24 BY MS. HALLAM:  
 25 Q Mr. Thomas, do you recall your testimony with

Page 775

Page 777

1 A Tinsel strength, right.  
 2 Q Yes. That's an end item test. Isn't it?  
 3 A It's also a -- it's also a receipt inspection.  
 4 Q It's an end item inspection test. Isn't it?  
 5 A It might be yours but I said we had it where if  
 6 a bag came in, we wanted to make sure before we used it  
 7 that we did certain tests on it for our own quality  
 8 quote. We didn't have it.  
 9 Q So you wanted to impose additional inspection  
 10 --  
 11 A On myself, maybe.  
 12 Q On yourself. Well, why didn't you impose those  
 13 additional inspections on yourself when you were having  
 14 all the problems with your strapping or with your  
 15 production due to the strapping problem?  
 16 A We did.  
 17 Q You didn't have end line inspection at the  
 18 time. That's how come you ended up putting so much  
 19 through that was bad.  
 20 A No. That's not true.  
 21 Q Yes. It is true. You were --  
 22 A You wasn't there. I just told you that's not  
 23 true. You was not there. I was.  
 24 Q Well, how did it get to the end of the  
 25 production before it just -- the problem was discovered?

1 regard to the side agreement? Specifically, with regard  
 2 to what the priority Freedom had placed on those four  
 3 different conditions of the side agreement. Essentially,  
 4 do you recall saying that you don't know where it came  
 5 from. That the Government had the impression that it was  
 6 very important that you get a follow-on contract.  
 7 A No. I don't.  
 8 Q You don't recall testifying about that  
 9 yesterday?  
 10 A I'm sorry. Say it again.  
 11 Q You don't recall testifying with regard to the  
 12 fact that Freedom was not that concerned about getting a  
 13 follow-on contract that it wasn't the primary purpose of  
 14 that side agreement?  
 15 A No. I think, no, I don't.  
 16 Q Well, was it very important to Freedom to get a  
 17 follow-on contract?  
 18 A Of course, we wanted a follow-on contract.  
 19 Q No. Was it very important though? You needed  
 20 a follow-on contract. Isn't that correct?  
 21 A Yes. We wanted this follow-on contract.  
 22 Q You needed a follow-on contract to survive. Is  
 23 that not correct?  
 24 A Of course, it is.  
 25 Q And that was the primary focus of that side

1 agreement. Was it not? To get the MRE-7.  
 2 A That was part of it. Yes.  
 3 Q Was the primary goal of Freedom in putting  
 4 together that side agreement was to get a follow-on on  
 5 the MRE-7? Is that correct?  
 6 A I think the primary was to get an understanding  
 7 of our understanding.  
 8 Q I'm sorry. I didn't hear that.  
 9 A I think the -- it was to get an understanding  
 10 with them of what our understanding -- the actions were  
 11 going to be taken by the Government to make sure and  
 12 assure that we get a follow-on contract and a guaranteed  
 13 loan.  
 14 Q Mr. Thomas, do you remember your testimony from  
 15 the previous hearing, the one relative to the TD?  
 16 A I don't remember.  
 17 Q This is transcript number 5, page 250.  
 18 Response to a question, "Mr. Thomas, can you describe  
 19 what Freedom sought in those negotiations with DLA?"  
 20 Your response is, "Yes. The same thing that I told Frank  
 21 Bankoff I wanted was -- I wanted a guarantee that we'd  
 22 get a follow-on contract."  
 23 A Okay.  
 24 Q That's what you testified to there.  
 25 A Okay.

1 progress, after progress payment number 15. It's a  
 2 separate tab. Entitled Mod. 25 payment.  
 3 THE WITNESS: Got it.  
 4 BY MR. LUCHANSKY:  
 5 Q It's a Bate stamp number 03985. Would you take  
 6 a look at those three pages behind the Mod. 25 payment  
 7 tab?  
 8 A Right.  
 9 Q And identify what those are.  
 10 A That -- one is the invoice. The other -- I'm  
 11 sorry. The first one is the check. The actual check  
 12 that came on June 13. The other one is the invoice, FNY  
 13 1017, the actual Freedom invoice. And the other is the  
 14 advice of payment from the Government.  
 15 Q And the date of Mod. 25 was May 29, 1986.  
 16 A Yes.  
 17 Q And you invoice for this 399,000 on June 3,  
 18 1986.  
 19 A Right.  
 20 Q And you received a check for that amount on  
 21 June 13, 1986.  
 22 A Right.  
 23 Q Did Mr. Bankoff give you any reason why this  
 24 action couldn't have been taken 10 or 11 months earlier  
 25 when he first came on board as PCO?

1 Q As a matter of fact, thumbing through the next  
 2 ten pages of testimony you mentioned the importance of a  
 3 guarantee of that follow-on contract at least a half  
 4 dozen times. Didn't you?  
 5 A Probably did.  
 6 MS. HALLAM: No further right now.  
 7 JUDGE JAMES: Does the Appellants have any  
 8 redirect examination?  
 9 MR. STEIGER: Yes. Your Honor.  
 10 REDIRECT EXAMINATION  
 11 BY MR. LUCHANSKY:  
 12 Q Mr. Thomas, Ms. Hallam asked you about Mod. 25  
 13 and the payments of 399,111 dollars, how in fact was that  
 14 payment handled by Mr. Bankoff?  
 15 A It was -- we were instructed to submit an  
 16 invoice, just a plain invoice to Marvin Liebman. And it  
 17 was paid.  
 18 Q I'm going to refer you to FT 422. The progress  
 19 payment exhibit under the Mod. 25 payment tab.  
 20 A Four hundred twenty-two?  
 21 Q Yes. FT 422, in the first volume. I'm sorry,  
 22 under the -- in the second volume of 422.  
 23 JUDGE JAMES: You have a particular payment  
 24 number in mind?  
 25 MR. LUCHANSKY: Yes. Your Honor. After

1 A No.  
 2 Q Mr. Thomas, I'm going to ask you to take a look  
 3 at FT 47a.  
 4 A FT?  
 5 Q Forty-seven A.  
 6 A Yes. Okay.  
 7 Q You have that Mr. Thomas?  
 8 A Yes. I do.  
 9 Q This is the -- your -- Freedom's cost proposal  
 10 dated August 2, 1984, together with the cash flow  
 11 statements that supported that proposal.  
 12 A Yes.  
 13 Q These cash flow statements are in Pat Marra's  
 14 handwriting. Is that right?  
 15 A Yes. You have to look --  
 16 Q Okay. Just the general basic overall cash flow  
 17 statements. Correct?  
 18 A Yes.  
 19 Q These were prepared by Pat Marra?  
 20 A Yes. They were.  
 21 Q And they were prepared in connection with  
 22 laying out the August 2 price proposals. Perhaps, I  
 23 don't remember whether it was in July proposal or the  
 24 second.  
 25 A Yes. For that price of \$34.

1 Q That price of \$34.81. If you look at the,  
2 well, looking at these cash flows, are these the cash  
3 flows that you took to Bill Stokes when you sat down and  
4 met with him?

5 A Yes. It is.

6 Q And did you lay all these cash flows out in  
7 front of him. Say, "Okay Mr. Stokes, you wanted cash  
8 flows. You wanted to see how things are working. Here  
9 they are."

10 A Right.

11 Q Now, if you look at the cash flow on 00654.  
12 That first cash flow statement.

13 A Right.

14 Q Is any of this information in your handwriting?

15 A Yes.

16 Q Can you describe where your handwritten  
17 information is?

18 A In the corner of 00645 and we have the  
19 originals --

20 Q In the bottom, right-hand corner?

21 A Yes. The bottom right hand corner. That's  
22 mine. I added that to this document at the meeting.

23 Q In the information that Mr. Marra had prepared  
24 and you've added that information, you said, during that  
25 meeting with Mr. Stokes.

1 A With Mr. Stokes. Right.

2 Q In the information that Mr. Marra had prepared  
3 and it was on these cash flows going into the meeting  
4 with Mr. Stokes.

5 A Right.

6 Q Is there information on how much financing  
7 Freedom thought it would need? Based upon this price  
8 proposal and based upon the terms, at that point, L-4  
9 being at 50 percent.

10 A Yes.

11 Q Where in the cash flows does it show Freedom's  
12 number for financing?

13 A Go to 00646, go down to -- it's a bad copy but  
14 on there you will see it says, fixed assets, progress  
15 payment repaid, financing fixed assets, working capital.  
16 Under working capital --

17 Q Just make sure we're all in the same place. On  
18 Bate stamp 0646, that's the spread sheet entitled July  
19 31, 1984, Best and Final?

20 A Yes.

21 Q And then you're looking in the column all the  
22 way in the left-hand side with the --

23 A Right. I'm running down --

24 Q Description of the line item.

25 A -- With the heading column, right.

1 Q And you're going down to the line item that  
2 says, Financing Fixed Assets, Working Capital --

3 A Working Capital is the line I want.

4 Q Okay.

5 A On that line --

6 Q Go on.

7 A On that line of Working Capital, if you follow  
8 it across we have 5.8 million dollars as a result of  
9 progress payments being kept at 9 million dollars.

10 Q And that means that the L-4 clause at this  
11 point in the negotiations still said 9 million or 50  
12 percent --

13 A Right.

14 Q Or nine million, the lower of nine million or  
15 50 percent.

16 A Fifty percent of the contract price or nine  
17 million which ever is lesser.

18 Q And nine million was lesser at that time.

19 A Nine million was the lesser of the -- of the 21  
20 million dollars.

21 Q Okay, so based upon the \$34.81 price that was  
22 proposed and the nine million dollar cap on progress  
23 payments, Freedom indicated this need for financing of a  
24 total to cover the entire performance of this contract at  
25 this figure 5.87 --

1 A That's -- Pat Marra put 5.8 million dollars and  
2 that's what we went in and I told that to Bill Stokes.

3 Q Now if you can describe, please. Explain what  
4 the information is, turning back one page. Well,  
5 describe what conversation you had with Mr. Stokes about  
6 that information.

7 A Bill Stokes says to me that, "We've calculated  
8 it wrong." And that --

9 Q I'm sorry. We meaning, you or Freedom.

10 A That Freedom. Freedom has calculated it wrong.

11 And that what he wants to do is to see what the amount of  
12 money needed after denied -- after the Government give us  
13 the first nine million dollars then the back end of the  
14 contract was what we had to finance. Had to show him how  
15 we were going to finance it before he would approve these  
16 cash flows to go forth further.

17 Q Is that when you had the discussion with him  
18 about your understanding that the L-4 level could be  
19 increased if all you needed to do was submit cash flows  
20 to the PCO and explain -- demonstrate your need for the  
21 increase? Is that when you discussed those, Mr. Stokes?

22 A That's when -- yes. I told Mr. Stokes that we  
23 believed that --

24 Q I believe --

25 A Yes. That's when.

1 Q Okay. You described before the discussion --  
2 But it's at that point that you had the discussion with  
3 him.  
4 A Yes. That's when I had the discussion.  
5 Q And it's at that point that he responded as you  
6 described in your earlier testimony. "I don't care about  
7 that. All I know is this is the level --"  
8 A This is what he wanted to prove us.  
9 Q "And this is what we're going to calculate the  
10 figure on."  
11 A Right.  
12 Q And by this level he meant nine million  
13 dollars. What he was construing as a cap on progress  
14 payments.  
15 A Right.  
16 Q Okay. Did Mr. Stokes then walk you through  
17 what he considered to be the appropriate calculation?  
18 A The appropriate formula was what I wrote down  
19 right here.  
20 Q Well, tell -- tell me what Mr. Stokes then said  
21 in terms of responding to your pointing out to him, "We  
22 think the figure based upon \$34.81 a case and a nine  
23 million-dollar cap on progress payments is the 5.7 --  
24 5.8." What did he now tell you?  
25 A He told us -- he gave me the formula and I sat

1 there and wrote it down and we together calculated, came  
2 up with this number.  
3 Q Okay. And this number, you're talking about  
4 the information at the bottom right-hand corner?  
5 A It says, "Need 7,158,221." Based on his cap  
6 formula of how he does it.  
7 Q Okay. So do you remember what that formula  
8 was?  
9 A Yes. It's right here.  
10 Q Well, can you describe what formula he's given  
11 you.  
12 A Sure. He says, "You take 19,000,006 which  
13 happens to be a total cost. You multiply the cost times  
14 95 percent and you come up with 18,000,006. That's what  
15 the Government is -- that's how you arrive at that.  
16 Q Go on.  
17 A Then you take the 50 percent ceiling on  
18 progress payments of nine million, you minus that out of  
19 it. Which leaves you 9.6 million. You then take your  
20 profit out which we had our profit at 1,948,143 subtract  
21 that. That came to 7,000,007. He says, "Okay. Now take  
22 out your depreciation." The depreciation at that point  
23 was 555,000. I minus that out. He says, "That's what  
24 you need. That's what I want to see."  
25 JUDGE JAMES: Oh, Mr. Thomas that doesn't seem

1 to make any sense. Because you're proposal was under  
2 discussion was for 21.593 million. Correct?  
3 THE WITNESS: Right.  
4 JUDGE JAMES: So, when you start with 19  
5 million or whatever this number is you just testified to,  
6 that's already taken out profit hasn't it?  
7 THE WITNESS: All I'm saying your Honor, is  
8 what the man told me I had to do in order to get him  
9 satisfied to go to the next step.  
10 JUDGE JAMES: Nineteen point six is a cost  
11 number, is that right?  
12 THE WITNESS: We know that. I know that's a  
13 cost.  
14 JUDGE JAMES: And are you testifying that he  
15 subtracted more profit out of cost?  
16 THE WITNESS: What he did was -- this is his --  
17 this is exactly what I wrote down. I can't change. This  
18 is what he told me to do. Yes. That's what I'm telling  
19 you.  
20 JUDGE JAMES: I'm just trying to understand it.  
21 Go ahead Mr. Luchansky.  
22 MR. LUCHANSKY: Thank you.  
23 BY MR. LUCHANSKY:  
24 Q You said that he's the one that provided you  
25 with the formula. By formula do you mean a description

1 of the steps that he -- that you just described how to  
2 arrive at the figure?  
3 A This is how we arrived at it. He said right  
4 there and walked me through it.  
5 Q Listen. I'm sorry. I have to ask you to  
6 listen very carefully. You said he gave you the formula  
7 for determining the amount of financing that Freedom  
8 would need. By formula did you mean what you just  
9 described which is he told you, "Look to calculate it  
10 you've got to take out the profit. Apply 95 percent."  
11 Is that what he told you? And then -- is that what he  
12 told you? That was his description? That's what you  
13 meant by formula?  
14 A Yes. This is the formula.  
15 Q But did he actually give you -- who actually  
16 calculated the numbers based on that formula?  
17 A As he was talking to me I was writing this  
18 down. He and I did this together. That's where this  
19 came from.  
20 Q Who actually did the calculations?  
21 A I wrote it down as he told me the formula. He  
22 told me what to write and I wrote it and that's how I did  
23 it. And he said, "This is what I want to see."  
24 Q And as you wrote down, for example, 19,644,000  
25 and then he would say and then multiply that by 95 --

Page 790

1 A By 95 percent and I did that. And then he said  
2 minus the nine million. I minus the nine million. I did  
3 exactly as what he told me to do.

4 JUDGE JAMES: So the numbers came from Mr.  
5 Stokes. Is that your testimony?

6 THE WITNESS: Absolutely. Mr. Stokes -- I  
7 wrote down what he told me to, Sir.

8 JUDGE JAMES: But you wrote them down.

9 THE WITNESS: I wrote them down.

10 JUDGE JAMES: Okay. I got it.

11 BY MR. LUCHANSKY:

12 Q Mr. Thomas, Ms. Hallam asked you about the  
13 30,000 cases and the problem with the AVI inspection.  
14 Those 30,000 cases, were those the first cases that  
15 Freedom had ever produced?

16 A Yes. It is.

17 Q How much experience had Freedom's employees had  
18 at that point? At actually inspecting cases?

19 A That was it. This was the training ground. We  
20 never had all the components together at one time until  
21 you start. This is it. This is the beginning.

22 Q Did Freedom put inspector in place on the line  
23 to do their best at performing inspection as these cases  
24 were produced?

25 A Absolutely. The PFJ, Plant Food Inspection

Page 791

1 Job, calls for that. It's approved by the Government.

2 Q And to the best of Freedom's ability, well, did  
3 Freedom do it's best to make sure those cases were  
4 inspected properly?

5 A Yes. We did.

6 Q Did Freedom reject some of those cases?

7 A We found defects and we was correcting it.  
8 Except that we -- certain defects we didn't know what to  
9 look -- we probably didn't know what to look for. At  
10 least they didn't know what to look for. Maybe it got  
11 past them.

12 Q Did the AVI inspectors provide Freedom's people  
13 during these three weeks when there was confusion about  
14 where AVI was suppose to inspect whether it was the  
15 capping strap pallet or what turned out to be correct  
16 which is each case after that's sealed? Did any AVI  
17 inspector assist Freedom's inspectors and say, "Well,  
18 look even we're not doing inspection yet because you  
19 don't have cap and strap pallets but here's how to do it  
20 or let me recommend this. Any suggestions?

21 A None.

22 Q Later in the contract, did Freedom obtain some  
23 additional training?

24 A Yes.

25 Q Approximately when did that happen?

Page 792

1 A I'd say when we realized that we were not  
2 clearly understanding, I guess, some of the -- how it was  
3 done, AVI then said, "We will train your line leaders."  
4 Or "We will show you what all this means."

5 Q And was that after the misunderstanding --  
6 AVI's misunderstanding as to where they were supposed to  
7 inspect. Was that later after that problem had been  
8 resolved?

9 A Yes. That's how we corrected it. In other  
10 words, we saw one way. They saw another way.

11 Q And after AVI was told that they were wrong and  
12 that they weren't supposed to be inspecting your lots  
13 after the entire pallet had been capped and strapped but  
14 rather they were supposed to do line inspections breaking  
15 out individual cases after they had been strapped. Once  
16 they resumed that, you said it took three days for them  
17 to identify the problems that had lead to many of those  
18 30,000 cases being rejected?

19 A Took us three days.

20 Q Took you three days based upon their --

21 A Three production days to turn it around and go  
22 from 90 percent default or rejects to 100 percent  
23 acceptance.

24 Q Based upon the suggestions they made once they  
25 started inspecting the cases again.

Page 793

1 A Absolutely. Once they -- yes, knew something  
2 that we didn't know.

3 Q And each time they would identify a problem  
4 that led to a failed inspection, what action would you  
5 take?

6 A We would then go back to the line and correct  
7 it.

8 Q Does the record reflect this sudden and --  
9 well, this sudden and stark change from failure  
10 introduction rate to virtually complete acceptance of  
11 your cases?

12 A Yes. It's sure. It's somewhere in the record  
13 there.

14 Q Are those found in the plant visit reports?

15 A I don't -- I'm not too sure if it's -- it's  
16 attached to something but it's -- one that with the  
17 schedule look for is in the record.

18 MR. LUCHANSKY: Okay. That's all I have, your  
19 Honor.

20 JUDGE JAMES: Any recross by the Government?

21 MS. HALLAM: No. Your Honor.

22 JUDGE JAMES: Mr. Thomas, in your testimony  
23 you've described numerous instances after the contract  
24 was awarded and after your company started submitting  
25 progress payment requests to the Government where the

Page 794

1 payment didn't come for days and weeks and months. And  
2 much, if not all of that problem you attributed to the  
3 ACO.

4 THE WITNESS: That's right.

5 JUDGE JAMES: Because of his interpretation of  
6 payment provisions --

7 THE WITNESS: Right.

8 JUDGE JAMES: -- Compared with your company's  
9 interpretation of the payment provisions. Right?

10 THE WITNESS: Right.

11 JUDGE JAMES: And it is fair to say that by the  
12 time you got to Mod. 25 in May of '86, that this Mod. in  
13 affect unscrambled the interpretations of the payment  
14 provision said this is how you're going to do it.

15 THE WITNESS: I believe that the -- not I'd say  
16 unscramble because it was always there for him to do it.  
17 We felt that by signing this Mod. we'd put enough focus  
18 on it to -- for everybody to understand that we have to  
19 get paid according to these terms of it. And that's what  
20 we was hoping would happen, but it didn't.

21 JUDGE JAMES: Well, now my question then is, if  
22 you have months of stalled progress payments because of  
23 Mr. Liebman's interpretations and so for and so on, on  
24 which occasions did you the company attempt to resolve  
25 the differences in views between yourself and Mr. Liebman

Page 795

1 with the PCO or any other higher authority in the  
2 Government?

3 THE WITNESS: On numerous occasions. There was  
4 more meetings on this contract that --

5 JUDGE JAMES: On just this subject. I'm  
6 interested in.

7 THE WITNESS: On this subject, we met --  
8 there's D and F's in the record where we went to Frank  
9 Bankoff. We went to Philadelphia. We went to DLA  
10 headquarters. We had big meetings on this. We went --  
11 in Washington they brought DCAA in from Washington  
12 because we were saying even DCAA saying things that were  
13 inconsistent. And they sent an auditor up from --

14 JUDGE JAMES: Wait a second. You got a  
15 problem? Go ahead, Mr. Thomas.

16 THE WITNESS: They sent an auditor named Frank  
17 Summer and it's in one of the -- the record here. Where  
18 they sent him to New York to see if what we say was true.  
19 As a result of that meeting that Mr. Summer from DCA come  
20 up and looked at our books and records, he told DCA New  
21 York, "Cut the crap out." The next -- the very next  
22 progress payment all of the sudden Freedom's accounting  
23 system was miraculously changed. It was okay. And  
24 things were now going the way.

25 JUDGE JAMES: Do you recall what progress

Page 796

1 payment that was?

2 THE WITNESS: It had to be either around eight  
3 or nine. It was -- because seven was -- five, six, and  
4 seven everything was stalled. And they only paid us 1.9  
5 out of 2.9 million dollars that we would do. But it's  
6 right in there were all of the sudden DCAA in it's audit  
7 reports has all the sudden changing. The only thing I  
8 did to solve the problem that I did not want to do was to  
9 back out the cost that we had agreed to would be direct  
10 cost.

11 JUDGE JAMES: Okay. Now as a result of my  
12 questions to the witness do you the Appellant have any  
13 further things you want to ask raised by my question?

14 MR. LUCHANSKY: Yes. Your Honor.

15 JUDGE JAMES: Go right ahead.

16 FURTHER REDIRECT

17 BY MR. LUCHANSKY:

18 Q Mr. Thomas, the Judge asked you about Mod. 25  
19 and it's affect on resolving some of the progress payment  
20 issues. Did Mod. 25 resolve the progress pay -- resolve  
21 the progress payment issues that occurred after Mod. 25?

22 A No. No. It didn't.

23 Q Were there still progress payment reductions  
24 and -- well, reductions that Mr. Liebman was imposing  
25 after Mod. 25?

Page 797

1 A He continued right away. And one of the things  
2 I'd to just point out, is that he was imposing a loss  
3 ratio on us. Before -- because the cases was down to 13  
4 million. And then when Mod. 25 we thought was putting us  
5 back at a traffic level of at least break even level. He  
6 turns around and he imposes right after that ceiling was  
7 raised back to 17 million, he does the same loss. What  
8 did I just settle here? What are we doing? So we wrote  
9 him a letter telling him that. He ignored us. We  
10 realize that --

11 Q That was the next question I was going to ask.  
12 Is that you'd summarized briefly a number of complaints  
13 that you made, efforts that you made with Government  
14 officials, PCO, DLA, Washington headquarters, Washington,  
15 DCAA to try and resolve this problem? Many of those  
16 meetings happened before Mod. 25, right?

17 A Yes.

18 Q From the time progress payment problem started  
19 you started to complaining to people.

20 A Right.

21 Q Did you continue to complain or try to resolve  
22 the progress payment issue with the PCO and other  
23 Government agents after Mod. 25?

24 A Yes.

25 Q Were you -- well, the record speaks for it's

Page 798

Page 800

1 self. You weren't able to get those resolved.

2 A Yes. It speaks for itself. No. We weren't  
3 successful.

4 Q That's all I have.

5 JUDGE JAMES: Does the Government have any  
6 further questions?

7 MS. HALLAM: No.

8 JUDGE JAMES: Thank you ever so much, Mr.

9 Thomas, for your testimony. You may step down from the  
10 witness stand.

11 THE WITNESS: Thank you.

12 JUDGE JAMES: Now we have another witness you  
13 want to call?

14 MR. LUCHANSKY: Well, your Honor, the other  
15 witnesses we had I put on call for after lunch.

16 Expecting that this morning's work would get us to lunch.  
17 So if it's okay with the Government and with the court,  
18 with the Board, if we could adjourn now and I'll call the  
19 witnesses. Have them here after lunch. I told them to  
20 be ready at one o'clock. So if we could say one o'clock  
21 that would be consistent with what I told my witnesses.

22 JUDGE JAMES: Okay. Let's go off the record.

23 (Whereupon, the hearing was recessed, to  
24 reconvene later this same day.)  
25

Page 799

Page 801

1 AFTERNOON SESSION

2 JUDGE JAMES: On the record.

3 Whereupon,

4 RICHARD PENZER,  
5 having been first duly sworn, was examined and testified  
6 as follows:

7 JUDGE JAMES: Please be seated. What I'd like  
8 you to do, Sir, is state for the record your full name,  
9 spell your last name, and give us your address.

10 THE WITNESS: Richard Penzer, P-e-n-z-e-r. 70  
11 Burton, B-u-r-the-o-n. Avenue, Whitmire, New York.  
12 11598.

13 DIRECT EXAMINATION

14 BY MR. LUCHANSKY:

15 Q Mr. Penzer, can you tell the Board what line of  
16 work you're in.

17 A I'm a real estate developer, office and  
18 industrial buildings.

19 Q You reasonably success?

20 A I'm pretty successful.

21 Q Okay. Could you describe for the Board,  
22 briefly, just some of the real estate holdings that you  
23 developed and held throughout the '70s and '80s? Just a  
24 brief summary of some of the projects you were involved  
25 with.

1 A About 20 something buildings in Manhattan that  
2 I made into loft buildings in the '70s and '80s. And  
3 commercial buildings and then in the '80s I owned a  
4 number of the biggest buildings in the burrows of New  
5 York. Some of the biggest buildings for industrial  
6 purposes and loft buildings. And one of the was the  
7 Grastidies building in the Bronx and I've done a number  
8 -- in twice I've done redevelopment of downtown  
9 Pittsburgh. And steel mills there and office buildings.

10 Q What periods of time are those to investments  
11 in the Pittsburgh area?

12 A Mid '80s and late '80s.

13 Q Could you estimate for the Board,  
14 approximately, what you are net worth might have been  
15 during the early to mid '80s?

16 A I don't want to do that. I'd rather not do  
17 that. It's in the millions of dollars.

18 Q In the millions of dollars.

19 A Yes.

20 Q Okay. Can you please describe how you met  
21 Henry Thomas?

22 A I owned the Grastidies building. I purchased  
23 it from the Grastidies Company which was a very large  
24 food company -- supermarket company and I bought it.  
25 They were taken over by the Southland Corporation which

1 was a very large company. They owned 7-Eleven and I  
2 bought it from Southland. He was on the airplane. The  
3 head of Southland, and I bought it in an hour. That's my  
4 trade mark. I buy things for cash. And I made quick  
5 deals and I bought it. Then I put it up for rent and a  
6 firm called Shalemzukabrox, which was a brokerage  
7 concern, brought Henry to see it.

8 Q Okay. Do you remember Mr. Thomas was looking  
9 for -- looking to lease a building?

10 A He was in the food business in the Bronx and  
11 this was a very well known building because you don't get  
12 one story, 400,000 plus refrigerated, freezer buildings  
13 with shelving and fork lifts and -- they're very rare  
14 commodities.

15 Q And he was looking for that type of building  
16 because --

17 A He needed it for his Government -- pending  
18 Government contract.

19 Q Okay. What did Mr. Thomas tell you about the  
20 contract at that time when he was looking to lease this  
21 space?

22 A He said he was going to make rations for the  
23 Government. I paid cash for the building so I'm a very  
24 skeptical -- I'm always very skeptical until somebody --  
25 shows me what's going to be and he said he was going to

1 produce rations, these MRE's. Packaged for the  
2 Government. So I'm fine with it then he could produce  
3 the rentals and I then put my people on. And I spoke to  
4 the Government officials many times.  
5 Q What was your purpose -- what was the reason  
6 you called up these Government officials? First of all,  
7 where did you call these Government officials? You  
8 probably don't remember who they are but do you remember  
9 where you called? What city you called to speak to them?  
10 A I can't recall right now. I think they were in  
11 Philadelphia and Washington but I spoke to a few people  
12 they were colonels and generals and what not and they  
13 were telling me how important this is for the Government.  
14 I'm a proud American and I'm happy to be doing things for  
15 the Government but I still had to see that the rent would  
16 be paid. You're dealing with a 400,000 foot building.  
17 The taxes and the guard services and everything that goes  
18 with it. You're dealing with a lot of money per year.  
19 It's a very expensive building. So I had to check in.  
20 Which I did, constantly. I'm not a sloppy person. I  
21 check and check and check until I was assured that this  
22 was a valid contract.  
23 Q And financially what kind of assurances did you  
24 receive from the Government?  
25 A They said they would be paying every month his

1 rental, basically. Not -- I wouldn't of rented it to  
2 Henry Thomas as Henry Thomas because I don't think he had  
3 the greatest record. He was being sued in -- somehow for  
4 his previous endeavor in the Bronx. It was another --  
5 Q Was that the Hunt's Point plant?  
6 A Yes. The Hunt's Point plant. So the  
7 Government told me how important this is and that they  
8 would be making progress payments every month and I would  
9 receive my check regularly, monthly. And that they would  
10 be picking up the guard -- it was a net, net lease. And  
11 they would pick up the expanses. Guard services,  
12 everything. Electric.  
13 Q And did that satisfy you that the payments were  
14 sufficiently secured to lease the building to Mr. Thomas?  
15 A I wouldn't have rented it if I thought it was  
16 to Mr. Thomas. I rented because I knew it was the U. S.  
17 government. It was -- he was renting the whole building.  
18 It wasn't as if I was breaking it up and I was taking a  
19 chance on maybe him renting 10,000 feet. This was  
20 400,000 plus feet.  
21 Q Do you remember how much the rent was that you  
22 rented it for? Approximately.  
23 A I think it was something -- three something for  
24 a net. Three something a foot net.  
25 Q So what does that mean in -- that's real estate

1 terms. Three dollars per square foot, net lease.  
2 A Well, it's rent for 400 -- I think 410,000 feet  
3 something like that. It's going back 15 years but, say  
4 it's 400,000 feet for quick. It's a -- it's a million  
5 two plus. Plus all expenses.  
6 Q Until the extra expenses -- what you discussed  
7 before the guard services and utilities and those other  
8 things?  
9 A Right. Electric and gas and everything.  
10 Q Now you said that based upon that your  
11 confirmation -- these calls you made to the Government  
12 you were willing to lease the facility to Mr. Thomas. At  
13 that time, did Mr. Thomas also discuss with you asking in  
14 general whether you might be interested to provide  
15 additional financing if he should need it?  
16 A I don't think we discussed it right in the  
17 beginning. Because it was easy to rent it to him with  
18 the Government's backing at that. So why should I  
19 provide any extra financing?  
20 Q Okay.  
21 A There was no necessity at that point.  
22 Q Okay. If you had considered it at the time,  
23 would you have been willing to provide additional  
24 financing for either -- if Mr. Thomas needed production  
25 equipment or if he needed additional working capital.

1 Would you consider -- would you of considered loaning  
2 that to him at the time?  
3 A That happened later on. It wasn't -- it wasn't  
4 when I signed the lease. He came to me and I've done  
5 this many times. I've done it from the biggest companies  
6 in America. You'd be surprised how many times companies  
7 come to the landlord to ask them to give them computer  
8 systems or to build out computer rooms for them or to  
9 lend them money at favorable terms or a host of things  
10 I've done over the years for the smallest companies to  
11 the biggest companies. So when Henry had some problems  
12 with the U. S. government, I remember they needed -- he  
13 needed loans for equipment and such. So I said I would  
14 give him loans under the proper circumstances and having  
15 the proper guarantees and what not. And having UCC's on  
16 the equipment and whatever. I would give him money under  
17 the right circumstances for improvement. And this is  
18 done many times in order to the -- look, you have a  
19 tenant there that's paying a million two -- let's just  
20 use that number for a minute. A million two in real  
21 estate terms and it stays pretty much constant.  
22 Sometimes it's a little higher, sometimes it's a little  
23 lower but you figure about, in commercial real estate,  
24 ten times. The building is worth ten times its net  
25 rental. So that equates to 12 million.



1 Q Why do you multiply by ten? That's --

2 A A ten is a good -- people usually pay that.  
3 Ten times rent roll. Net rent roll.

4 Q And at least for that ten years is average at  
5 least --

6 A U. S. government lease is worth more but let's  
7 say -- let's say you're a guy building a post office for  
8 the Government. You expect a certain return. A little  
9 better than a bond would give you. A little -- you know.  
10 But let's say you use the ten times number it's an easy  
11 way to figure. So ten times a number of a million two  
12 per year which is my net rent roll makes the building  
13 worth approximately 12 million dollars. I think I paid  
14 about three and a half million dollars for that building.  
15 Cash.

16 What I offered to do at the time because he was  
17 having some problems and I saw an opportunity there. You  
18 always -- if you see that opportunity you grab it to get  
19 more money on the building what would have been the  
20 difference if I lent him a million, two million, three  
21 million dollars on a piece of equipment or a bunch of  
22 pieces of equipment or whatever it was for took an  
23 interest in that equipment having increased his rent  
24 roll, that was occurring at the time.

25 Q Okay.

1 A And then -- you want me to continue or --

2 Q Well, let me ask you a specific question. If I  
3 understand correctly --

4 A By the way that makes the building worth a lot  
5 more, too. In addition to getting interest on your  
6 money, which I was talking to Henry, by getting pretty  
7 high interest rates on my money and having good security.  
8 I would have made the building worth more because I would  
9 have gotten higher rental. I would of changed his lease.  
10 He was willing to change his lease and pay me more rental.

11 Q Okay. So for these reasons, lending money to  
12 Mr. Thomas no circumstances would of made financial sense  
13 for you?

14 A I've done it for a lot of companies and I was  
15 willing to do it for Henry. I've done it for companies  
16 that -- in Pittsburgh I must have done it for dozen big  
17 name companies from P and Z Bank to GMC Corporation.  
18 I've done it in New York a lot. I've lent on -- when  
19 people needed money to buy stock, big companies I've lent  
20 them. You always lend your tenant for build out and for  
21 improvements.

22 Q Now at the time that Mr. Thomas approached you  
23 about lending some additional money, you mentioned that  
24 was a time he was having some problems with the  
25 Government. Do you remember what the nature of those

1 problems was?

2 A It was -- I remember perfectly because I was up  
3 there. I must have been up there three dozen times  
4 because I --

5 Q Up there meaning?

6 A -- To his plant. I keep an eye on my money and  
7 he would owe me money so I'd constantly go up there and  
8 I'd call it berate him for my money.

9 Q Okay. And what was his response?

10 A Because I'm supposed to have spoken to the  
11 Government and they assured me they'd be Government  
12 checks all the time for my money. He was -- his response  
13 was that the Government was not giving it to him on time.  
14 And I would make constant calls to the Government, too,  
15 to Mr. Liebman. And the people working for me would call  
16 Marv Liebman. And so --

17 Q And that's -- that's what I'd like to ask you  
18 about. Now before I do Mr. Thomas said that you told Mr.  
19 Thomas, "I need my money. I'm not getting paid." At  
20 that point, although you obviously, you wanted to get  
21 paid, were you willing to carry those costs and basically  
22 -- carry those costs for Mr. -- you did not evict Mr.  
23 Thomas at that point.

24 A Well, you're not willing to carry something  
25 indefinitely but if you think it's the U. S. government

1 and it's rations they've needed and they've told you it's  
2 coming and they have hundreds of people working down  
3 there getting paid by the Government and they're assuring  
4 you the pay you're carrying for certain amount of time --  
5 ultimately, I did become frustrated and I sold the  
6 building that was worth a lot more for a lot less because  
7 I couldn't take it anymore. And your --

8 Q Let's move on now to you said, started to  
9 discuss your efforts now to speak with Mr. Liebman about  
10 these payments. At that point, had Mr. Thomas now come  
11 to you and asked you for some additional financing in  
12 addition to what you were carrying for the rent security,  
13 guards, and that -- those expenses.

14 A I was carrying taxes, security guard, all -- a  
15 lot of things. Yes. He did come to me and ask me for  
16 money. Additional monies.

17 Q Okay. And at that point, what did you do to  
18 try to verify whether the money was going to be coming?  
19 You said you --

20 A This was a daily activity. You might own a  
21 hundred buildings but most of them are bringing money.  
22 It's not hard to  
23 rent commercial buildings. If you have a problem child  
24 you devote your efforts to it. I would call constantly  
25 Marv Liebman and try to work things out with him.

1 Q Okay. So --  
 2 A He was my mayor at that time I was working  
 3 with.  
 4 Q Tell about your phone calls to Mr. Liebman.  
 5 What did you tell Mr. Liebman? And what did he tell you?  
 6 A That we needed the money for the rental and  
 7 what not or we're going to throw them out. You can't  
 8 allow this to keep going on. He kept assuring me it's  
 9 coming in. Then we had the problems with lending Henry  
 10 money. I said I would lend him money under the right  
 11 circumstances if I had security and the equipment or  
 12 whatever he needed it for. And I had additional rentals  
 13 which we worked out or, you know, the interest rates  
 14 would be worked out. Ultimately, it came to -- he kept  
 15 telling me, "We can't have a private person lending money  
 16 here in this case." I don't why he kept trying to talk  
 17 to -- I said if it was the Rothschild bank that's a  
 18 private entity. What's the difference were the -- it's  
 19 U. S. dollars. I'm willing to give it to him. He  
 20 wouldn't accept it.  
 21 Q If he wasn't willing to accept a private person  
 22 did he tell you what it was that he was looking for?  
 23 A He wanted a bank.  
 24 Q Did he --  
 25 A He kept insisting. I kept on saying what's the

1 difference where it comes from. But then I switched  
 2 tactics on him. And I've used this many times. I've --  
 3 My bank was Chemical Bank. Am I getting ahead of your  
 4 question?  
 5 Q Just a moment. Let me ask you just one or two  
 6 other questions. Then I very much want you to describe  
 7 this for the Board. I just want to make sure. You're  
 8 absolutely certain in your conversations with Mr. Liebman  
 9 he used the words, "Look I need a bank. I want -- I want  
 10 a bank." Words --  
 11 A It's 15 years ago but I remember certain  
 12 stupidities like it's yesterday. To me that's crazy  
 13 where the money is coming from but I remember that  
 14 happened.  
 15 Q Okay. Now you mentioned that the arrangements  
 16 -- that you were willing to finance the production  
 17 equipment in part because the production equipment would  
 18 provide security for your investment. Did I understand  
 19 you were also willing to lend Mr. Thomas additional  
 20 money, aside for the production equipment, just for  
 21 additional working capital; if you could work out the  
 22 terms with him?  
 23 A If I could work out the terms, I would of. You  
 24 have a building that you're taking from what I paid three  
 25 million dollars to a value, as I showed you, 12 million

1 dollars. I'm not throwing out the money I'm lending him.  
 2 I'm going to get a proper security. I would not of lent  
 3 him without proper security and a proper interest rate.  
 4 Q And that's the question, did -- we talked about  
 5 progress payments before, did the progress payments play  
 6 any role in what you understood would be your security  
 7 for the additional working capital loan you would  
 8 provide? The question is what security for the working  
 9 capital you were considering? Was the -- was the fact  
 10 that it was a Government contract with progress payments  
 11 to be paid on it, did that play --  
 12 A Oh, if I was assured that the Government was  
 13 paying those progress payments, I would of certainly lent  
 14 him on progress payments. If the U. S. government is  
 15 saying, "I'm going to pay him." Based on payments.  
 16 Q Okay. And that's one of the things you'd  
 17 confirmed with Philadelphia before you leased it to Mr.  
 18 Thomas. Correct?  
 19 A Of course.  
 20 Q But now when you're calling Mr. Liebman did you  
 21 ask Mr. Liebman about progress payments?  
 22 A Of course, I talked to him about progress  
 23 payments.  
 24 Q Okay. And did he -- do you remember what he  
 25 responded? Do you remember what you asked him? What the

1 nature of what you asked him about progress payments?  
 2 A Well, I would ask him where -- I didn't care  
 3 about Henry's progress payments as far as his payroll or  
 4 his operations. I just cared about my -- my little -- at  
 5 that point when he was behind in rent I just cared about  
 6 my rentals. When I intended to lend him money, when he  
 7 needed money to carry on to make the business work, I  
 8 asked him about progress payments in the future.  
 9 Q Is that what you meant when you call it, "Mr.  
 10 Liebman when am I going to be paid?" We'll move on.  
 11 Mr. Penzer, during those times you asked Mr.  
 12 Liebman about progress payments or "When am I going to  
 13 get paid?" did Mr. Liebman ever say anything to you about  
 14 not paying -- that he wasn't going to pay progress  
 15 payments until raw materials and direct labor costs were  
 16 improved by Mr. Thomas? Do you remember? And if you  
 17 don't remember, certainly, everyone here understands  
 18 because it's been a long time.  
 19 A I don't remember him saying those words.  
 20 Q Okay.  
 21 A He could of but I don't remember.  
 22 Q Okay. Do you remember what his response was  
 23 when you kept asking, "Look, when am I going to get  
 24 paid?"  
 25 A In the beginning there were -- it wasn't him.

Page 814

1 There were very gong-ho on doing this whole thing.

2 Q By the time the lease.

3 A Yes. Then I was going to get paid monthly, no  
4 problem. This is a U. S. government lease. We need  
5 these things. Everything was fine. Later on, I don't  
6 remember, but he had a different excuse every day for  
7 finking around. It was one or the other. It was --  
8 every day I was getting terribly frustrated because I  
9 didn't know what was happening and you're supposed to be  
10 getting in -- we're dealing a lot of money here. So  
11 every day it was different excuse for not -- why I wasn't  
12 getting my rental. Anybody would be pretty stupid for  
13 selling the building for what I sold it for if I didn't  
14 get terribly frustrated at what was going on here.

15 Q Okay. Now if you could of gotten confirmation  
16 from Mr. Liebman that your rental was going to be paid  
17 and gotten the assurances you were looking for, do you  
18 remember about how much money you were willing to loan  
19 Mr. Thomas at that point?

20 A It's not any amount of money. Let's say it's  
21 on a piece of equipment, that's a million dollars. The  
22 equipment manufacturer might be willing to extend a first  
23 on it. I might give a second on it. It can be -- it can  
24 be a little flexible here. When you're getting these  
25 kinds of money and the tenant that makes your building

Page 815

1 worth 12 million dollars needs money you tend to become  
2 very flexible in figuring out how you're going to get him  
3 that money on equipment or monies for labor or whatever.  
4 But I -- if I was going to give him on labor -- in the  
5 end it would have to be very well protected. If it was  
6 on labor it would have to be protected by the U. S.  
7 government saying they were going to make these progress  
8 payments. On equipment you take a place, you know, a  
9 lien on the equipment.

10 Q So two or three million dollars total at that  
11 time been -- had been a big deal?

12 A No. That's no big deal when you're talking  
13 about a building you paid 3.5 million for and it's worth  
14 12 by the -- with a viable tenant in there. If it's  
15 empty, it just a noose around your neck, a building like  
16 that but if -- you have a tenant and you do everything to  
17 keep him in there a viable tenant and he was a viable  
18 tenant. He was doing work for the U. S. government. You  
19 can supply him with two, three, four, and five million  
20 dollars. If you think you're going to get your money  
21 back and you get an interest on it and you're increasing  
22 the value of your building. I've done that a lot of  
23 times and I was willing to do it for him.

24 Q I stopped you at a point where you were about  
25 to describe after Mr. Liebman had insisted on only having

Page 816

1 a bank and not private financing, you said that you were  
2 going to tell me -- tell me what you ended.

3 A I did business with Chemical Bank which is now  
4 part of Chase and there's a lot of times you want to give  
5 credibility of a bank on something. Like when I would  
6 buy a building for cash, sometimes it looks good to them,  
7 go get a mortgage from Chemical Bank and sign personally  
8 on 100 percent of it and give them all the money they  
9 lend you back in their COULD so they have total security  
10 but you're establishing that this is a building that  
11 Chemical Bank lend 20 million dollars on. So they might  
12 give me 20 million dollars and I'll put it back in a  
13 COULD and sign on it personally. But the next time  
14 around Morgan thinks, "Oh, Chemical lend on it 20 million  
15 and you have a viable tenant in it. I'll give 40 million  
16 dollars on it.

17 Q So it's a way of establishing credit --

18 A It's a way of establishing credibility.  
19 There's nothing wrong with it and it's done all the time  
20 and that way you just establish a track record and -- on  
21 a building. That's worth it and Chemical Bank thinks  
22 it's worth it and Morgan and the insurance company think  
23 because everybody will go with the guy previous to him.  
24 They thought it was okay. It's okay. And Chemical's  
25 done this many times with me. On buildings, on tenant

Page 817

1 improvements, on loans to tenants.

2 Q And that's all based upon you actually having  
3 the money to back up the loan at the first --

4 A Well, you've got to have the money. They won't  
5 just lend you if you're putting it back in a COULD.  
6 You've got to have a good signature and you got to have  
7 the money to put back in there. Got to have the building  
8 that gets an appraisal of that worth. It's not so simple  
9 as I'm making it seem here.

10 Q Okay. Of course, go on.

11 A They wouldn't lend if they don't think it's all  
12 perfect.

13 Q Of course, go on. So with --

14 A Also, when Marv Liebman said that he'd only  
15 loan to a bank, of course, I said I'll get Chemical Bank  
16 and I had Chemical Bankers call him. We showed him my  
17 net worth. We said we'd be willing to loan on equipment  
18 or on, you know, operating needs or whatever if we get  
19 proper security and it just fell apart he never wanted to  
20 respond to that.

21 Q Okay.

22 A The biggest companies in America responded to  
23 that and do it all the time but he didn't want to respond  
24 to that.

25 Q Do you have any understanding as to why he

1 wouldn't agree with your offer? Wouldn't take your  
2 offer?

3 A No. I don't know why he wouldn't agree but I'm  
4 not in his place. I'm not in --

5 Q All right. I'm not here -- I don't want you to  
6 speculate. I was just wondering if there was --

7 A No. I'm not a government official.

8 Q Okay. Mr. Penzer, you said you got so  
9 frustrated you ended up selling the building. Did Mr.  
10 Thomas have an option to purchase the building in his  
11 lease?

12 A Yes. He had an option to purchase. Even  
13 though was necessary I don't like to give options to  
14 purchase and I done a couple hundred buildings in my life  
15 and I think I've given two options in my life because if  
16 you're going to get the benefits you don't like to have  
17 an option number. And part of my loaning him the money  
18 would of been to get rid of the option but in the  
19 beginning he needed an option to satisfy the Government.  
20 I remember that. They made him get an option to say that  
21 if he -- that's why I gave him a good rental. They made  
22 him say that eventually he might need to purchase the  
23 building. So that's why we had to give him an option. I  
24 would not of given him an option.

25 Q Okay. When you did decide to give him the

1 than it was worth. I was just so sicken at that point.

2 I couldn't take it any more.

3 Q Okay. Now --

4 A Because -- this is a standard. This is not my  
5 makeup. This is a standard. It's usually -- it's about  
6 ten times the net rental.

7 Q Which in this case, would have put it in the  
8 range of maybe 10 to 12 million?

9 A I forgot exactly what he was paying. I think  
10 it was three or three-fifty. I don't remember. But it  
11 went up. It graduated up, I believe, too. But -- and  
12 that would make it worth more. But at \$3 you're dealing  
13 with -- I'm giving the loan number -- 400,000 feet times  
14 three is a million two per year.

15 Q Now you bought the building somewhere --

16 A That makes it worth 12 million dollars.

17 Q Okay. You purchased the building, I believe,  
18 back in August of -- maybe August of 1984. Does that  
19 sound about right?

20 A About right.

21 Q And now, do you remember approximately when it  
22 was that you sold the building?

23 A I couldn't tell you the exact date. I don't  
24 recall. I'd have to see a document.

25 Q Okay.

1 option though did you consider that to be a valid binding  
2 option?

3 A Oh, yes. It was a binding option. It was part  
4 of his lease.

5 Q Okay. That's what I wanted to ask you about.  
6 Did the option to purchase the building come into play  
7 when you then sold the building?

8 A Yes. It came into play. I believe I had to  
9 give him, I think, 400,000 to get rid of the option.

10 Q Okay.

11 A So, of course, it was valid. Wouldn't have  
12 given him 400,000?

13 Q And I realize that --

14 A And probably was worth more than a lot more  
15 than 400,000 at the time but he was strangling at that  
16 point. So I got away with 400,000.

17 Q Why do you say it might have been worth more  
18 than 400,000?

19 A Because you're dealing with the values of  
20 buildings at these numbers. An option on the building is  
21 worth a lot more than \$400,000.

22 Q Well, how much did you agree to sell this  
23 building for?

24 A I don't know. I think it was five and half,  
25 six, I'm going -- I don't know exactly. But a lot less

1 A You're talking about 15 years.

2 JUDGE JAMES: Do you remember which year it was  
3 Mr. Penzer?

4 THE WITNESS: was it -- I believe, it was '86.  
5 Early '86 or '85.

6 BY MR. LUCHANSKY:

7 Q Okay. Maybe we can work it out. If we -- do  
8 you remember after Mr. Thomas' government contract  
9 started?

10 A Yes.

11 Q Was it a couple of months after the contract  
12 started or was an entire year and a couple months?

13 A No. It wasn't a couple of months. Because I  
14 was after him all the time for the rent that's going down  
15 there. And I received some rentals. I remember  
16 sometimes going down there and getting some checks,  
17 sometimes not. But I can't recall the exact dates. I  
18 don't even recall my children's birthdays. I'm not good  
19 at dates.

20 Q If I suggest to you that it might have been in  
21 the spring of -- and I don't have an exact date, to my  
22 understanding it was in the spring of 1985. We'll try to  
23 find a document that might refresh your recollection.

24 But if that --

25 A When I sold it? When I went to contract with

Page 822

1 the seller?

2 Q I don't know about contract. When you were  
3 negotiating to sell it was 1985. Is what --

4 A It could of been.

5 Q Okay.

6 A It was about the time I was -- Whenever I did  
7 the lease with him, it was let's say nine months later or  
8 whatever, when I started having trouble getting my  
9 rentals.

10 Q Okay. And last question just to pin down your  
11 recollection. And, again, if you don't remember exactly  
12 what you said as the appropriate answer, I don't  
13 remember. But do you remember whether it -- whether Mr.  
14 -- whether it was more than a year after you leased that  
15 building to Mr. Thomas that you sold the building? More  
16 or less than a year?

17 A After I leased the building to Mr. --

18 Q Right.

19 A Signed the lease with him? And I can't  
20 remember what the dates. I told us -- the contract or  
21 signed the contract with the buyer. It was enough time  
22 to get frustrated. Very frustrated with owning the  
23 building. I can't recall the exact dates.

24 Q Okay. And the \$400,000 for the -- for Mr.  
25 Thomas' option to buy the building, did you consider that

Page 823

1 to be -- how did you view that payment? You said you  
2 paid for the option. Did you deem it to be that you  
3 considered to be a forgiveness of -- did you ever forgive  
4 any of Mr. Thomas' rent in exchange for payment of that  
5 payment on that option?

6 A I don't remember how I did it but the guy  
7 wanted to buy the building and I negotiated with Henry.  
8 He was being strangled by the Government and I was being  
9 totally frustrated. So I said -- we came to a number  
10 after some negotiation. I don't recall how I gave him  
11 the 400,000. I think I gave him a check. But I don't  
12 remember forgiveness of rental.

13 Q And that's what I want to be clear about my  
14 question. Make sure we're understanding each other. In  
15 terms of -- there's two different mechanisms that I want  
16 to make sure we're clear about. When I'm talking --  
17 there is the physical exchange of money. Whether you cut  
18 a check to him for option for purchasing his option and  
19 he cut a check to you for rent that he owned you verses  
20 offsetting, that's one issue. It's just physically how  
21 did we exchange --

22 A Had nothing to do with an offset? I gave him  
23 money to get him off the option.

24 Q That's the question. The questions is, it's  
25 that scenario verses did you ever say, "Okay, Mr. Thomas

Page 824

1 I am forgiving some of your rent. Some of the rent that  
2 you owe me we will consider as if you don't actually owe  
3 it to me." Did that ever happen?

4 A It's too long ago. I don't remember how I  
5 structured giving him \$400,000. It's 15 years ago. I  
6 have a lot of buildings. I don't remember exactly.

7 Q But to the -- let me ask it this way. To the  
8 extent that you remember, do you remember that you always  
9 demanded that you receive value for all of the rent that  
10 Mr. Thomas owned you?

11 A Well, why would I forgiven rental on --

12 Q That's the question.

13 A No. I figured it was coming from the U. S.  
14 government. They owned it to me. I never forgave value  
15 of rental. I gave him 400,000 to buy out an option and  
16 that was cheap at that.

17 Q Okay. That's all I have.

18 JUDGE JAMES: It is the Government's  
19 opportunity to cross examine if you wish.

20 MS. HALLAM: No. I have no questions.

21 MR. LUCHANSKY: I'm sorry, your Honor, I -- if  
22 I may, I think I might have overlooked a question, if I  
23 could have just a moment.

24 Court's indulgence, I'm sorry.

25 FURTHER DIRECT EXAMINATION

Page 825

1 BY MR. LUCHANSKY:

2 Q Okay. Mr. Penzer, is it fair to say that your  
3 willingness to advance money whether it's to Mr. Thomas  
4 or to anyone else is based upon the economics and  
5 financial elements of the situation?

6 A Well, it's only based on the financial  
7 economics elements.

8 Q In that regard, did there come a time -- even  
9 after that situation with Mr. Thomas and things didn't  
10 work out clearly in 1984, 1985, would you of been willing  
11 to lend money or were you willing to lend money to Mr.  
12 Thomas or any of his entities years in the future if the  
13 economics of the deal made sense to you?

14 A Years in the future?

15 Q The years after 1984, 1985, did it come anytime  
16 years later that you were willing to lend money to Mr.  
17 Thomas or to his -- one of his entities if it was a deal  
18 that made any sense?

19 A If it was the right scenario, I'd lend him  
20 money or I'd take a piece in his building but it have to  
21 be -- basically, I do buildings. It would have to be  
22 where he -- I don't know what you're getting at. Where  
23 he was a tenant in a building of mine or something I  
24 purchased for his usage and I'd lend him money or take a  
25 piece of his company or whatever it may call for and do

1 business with him.  
2 MR. LUCHANSKY: I'm going to show the witness  
3 this document, if you have -- you have any objection?  
4 MS. HALLAM: What tab is that?  
5 MR. LUCHANSKY: Pardon me.  
6 MS. HALLAM: What tab is it?  
7 MR. LUCHANSKY: It's not a tab. This is a  
8 document that is going to be used to refresh his  
9 recollection come out as an exhibit.  
10 MS. HALLAM: I haven't heard anything that he  
11 needs to be refreshed on with regard to this. So yes. I  
12 do object.  
13 MR. LUCHANSKY: Let me ask Mr. Penzer.  
14 BY MR. LUCHANSKY:  
15 Q Do you remember a -- in 1992, a potential deal  
16 involving Skyfix Joint Venture, LT?  
17 A Yes. Henry came to me with an idea and I said  
18 if it made sense and you could put them in a building of  
19 mine or one I purchased, I might be willing to lend -- I  
20 would be willing to lend money if I could get proper  
21 security and proper rentals. Like I said before on a  
22 venture.  
23 Q Same situation. Did you remember about how  
24 much you would be willing to lend the persons of that  
25 deal?

1 A Oh, then I said, "Contact Mr. William Sayer,  
2 Chemical Bank." Yes. I think they did. I remember they  
3 called up.  
4 Q So is this an example of one of the --  
5 A He's still there, Bill Sayer, Chase Bank.  
6 MR. LUCHANSKY: That's all I have, your Honor.  
7 JUDGE JAMES: Anything further?  
8 MR. LUCHANSKY: No. Your Honor.  
9 MS. HALLAM: No. Your Honor.  
10 JUDGE JAMES: All right. Thank you ever so  
11 much Mr. Penzer for your testimony. You may step down.  
12 Your next witness is.  
13 MR. LUCHANSKY: Yes. Your Honor. As I said I  
14 believe that Mr. Steiger has arranged for Mr. Lambert at  
15 two o'clock. At least that's what we were shooting for.  
16 If we might take a break for a moment or two I'll call  
17 Mr. Steiger and see if he's arranged that.  
18 JUDGE JAMES: All right let's go off the  
19 record.  
20 (Recess.)  
21 MR. STEIGER: You want to swear in Mr. Lambert?  
22 JUDGE JAMES: Well, first announce who the  
23 people are that are here so we know.  
24 MR. STEIGER: Okay. Mr. Lambert we have  
25 certain individuals associated with our trial. First, of

1 A I don't remember on that deal but it -- look,  
2 if a deal -- there's always ways to structure because for  
3 10 million is one thing, of course, 500,000 it's another.  
4 It all has to make sense.  
5 Q I understand. I'm just wondering if you  
6 remember how much money was -- how much that deal might  
7 have been worth.  
8 A I don't recall that deal. How much it was  
9 worth.  
10 MR. LUCHANSKY: With that, if I could just show  
11 --  
12 THE WITNESS: I don't know what you mean worth,  
13 either. I don't know what you mean worth.  
14 MR. LUCHANSKY: May I approach the witness to  
15 show him this document?  
16 JUDGE JAMES: You may.  
17 BY MR. LUCHANSKY:  
18 Q If you will just take a look at that.  
19 A Okay.  
20 Q Money wise, dollar times, how big a deal was  
21 that in 1992?  
22 A Well, it says part of the letter referred to  
23 the availability of 20 million dollars to be used for the  
24 venture.  
25 Q Okay.

1 course, is Judge James, we have counsel for Respondent,  
2 Kathleen Hallam, we have the court reporter. We have  
3 counsel for the Appellant, Freedom, which is myself, Mr.  
4 Bruce Luchansky, and we have the Appellant, Mr. Henry  
5 Thomas of Freedom.  
6 THE WITNESS: Okay. I got that.  
7 JUDGE JAMES: All right this is Judge James  
8 speaking, Mr. Lambert.  
9 THE WITNESS: Yes. Judge James.  
10 Whereupon,  
11 DAVID LAMBERT,  
12 having been first duly sworn, was examined and testified  
13 as follows:  
14 JUDGE JAMES: Go ahead, Mr. Steiger.  
15 DIRECT EXAMINATION  
16 BY MR. STEIGER:  
17 Q Mr. Lambert, would you please tell us what your  
18 current occupation is.  
19 A I'm presently a partner in the firm of Hughes,  
20 Galband, Lambert and Dan, a Washington, D.C. law firm.  
21 Q And how long have you been practicing law, Mr.  
22 Lambert?  
23 A I've been practicing law for -- actively  
24 practicing law since 1977. Prior to that I was counsel  
25 for several government agencies.

Page 830

1 Q And do you specialize in any particular area of  
2 law?

3 A Yes. I specialize in government procurement  
4 and specifically with relating to small business matters.

5 Q Mr. Lambert, do you recall becoming involved  
6 with, in a professional manner, with Mr. Henry Thomas of  
7 Freedom, the Appellant in this case?

8 A Yes. I do.

9 Q Do you recall approximately or when that time  
10 frame was?

11 A I think it started in February of 1986, if I'm  
12 not -- in January, February time frame of 1986.

13 Q Do you recall, Mr. Lambert, what you were hired  
14 to do or what your mission was, sort of speak?

15 A Yes. Freedom was having some problems with the  
16 Defense Logistic Agency in connection with a contract,  
17 several contracts as a matter of fact, and they asked me  
18 if I could assist them in resolving some of the problems  
19 with DLA.

20 Q Mr. Lambert, do you recall working on a  
21 contract that had become to be known as the MRE-5  
22 contract?

23 A Yes. I think that was -- had been awarded  
24 probably in late 1985 and they were in the process of  
25 performing it at the time I came on board.

Page 831

1 Q And when, again, did you come on board?

2 A I think it was in February time frame of '96 of  
3 '86, excuse me, '86.

4 Q Mr. Lambert, at the time you came a board or  
5 began to work with them or for them on MRE-5, did you  
6 have an understanding of their financial position with  
7 respect to this contract?

8 A I didn't have a precise understanding of it. I  
9 had a general understanding of it and became more  
10 familiar with it as we progressed. But I knew that they  
11 were having some serious difficulties as a result of a  
12 misunderstanding that occurred after the signing of the  
13 contract.

14 Q Mr. Lambert, are you aware if this contract,  
15 this MRE-5, that we have been talking about was in an  
16 overrun position?

17 A It was in an overrun position and it looked as  
18 though it was going get -- increase as time went on.

19 Q You recall the amount that, at the time you  
20 were working with them, do you recall approximately what  
21 that amount was?

22 A I'm not exactly sure. My general recollections  
23 is it was the price was going to increase substantially  
24 above the initial. I think it was 13 million up to about  
25 17 million plus, at that time.

Page 832

1 Q Were you familiar with a claim that had been  
2 filed by Freedom?

3 A I was somewhat familiar with it, yes.

4 Q And was that claim filed on the MRE-5 contract?

5 A I believe it was in April of '86.

6 Q Do you recall having read that claim?

7 A I undoubtedly saw it but I probably saw it  
8 after the fact.

9 Q Do you remember in your seeing it, why they  
10 were asking -- why Freedom was asking for relief?

11 A Yes. I do. I don't understand -- remember the  
12 specifics of it necessarily but it was a result of the  
13 failure of the Government to meet some of the commitments  
14 that they made at the time the contract was signed.

15 Q Mr. Lambert, did you know if at the time you  
16 were working for Freedom as attorney they were actively  
17 seeking an award for a follow-on contract?

18 A Yes. I think they were counting on it. They  
19 were part of the defense base and they wanted to remain  
20 in the base and it was important that they maintain their  
21 viability to be eligible for MRE-7, I believe it was.  
22 There was an MRE-6 and I don't know if there was an MRE-7  
23 to follow that.

24 Q Thank you. Let me ask you this. In connection  
25 with your assisting them where there suggestions made of

Page 833

1 how you should proceed to help them?

2 A I think the task was to try to identify, with  
3 the senior people at DLA, the problems that Freedom was  
4 having and to work out a viable solution to those  
5 problems so they could continue the performance of the  
6 contract and maintain their eligibility for follow-on  
7 work.

8 Q Did you, in fact, meet with people at DLA  
9 headquarters?

10 A Yes. I did.

11 Q And do you recall who those people were?

12 A One was Carl Kabazman, in the General Counsel  
13 and the other was Kiasa, who was the executive director  
14 as I recall.

15 Q Did you -- were discussions conducted by you  
16 with these individuals?

17 A Yes.

18 Q Where were they conducted?

19 A They were conducted in the offices at the  
20 Defense Logistic Agency on Alexandria.

21 Q Was Mr. Thomas with you at the time?

22 A No.

23 Q Why did it -- why had you decided that Mr.

24 Thomas should not be part of the discussions? Do you  
25 recall?

1 A I don't think there -- I don't recall there's  
2 any reason why he shouldn't be there. He had a  
3 representative there, Colonel Francois. And that was --  
4 he thought that was sufficient. And I had -- saw no  
5 reason why he should be there.

6 Q Now your discussions. Would you focus in a  
7 little closer if you can about the time of when your  
8 discussions took place? Do you recall with any  
9 specificity the time that this took place?

10 A No. I don't. But I think they would have  
11 occurred probably in early March and trying to understand  
12 the problem and soon as we got that in hand we arranged  
13 for discussions with Kiasa and Kabazman. So that would  
14 of been early, middle March, something like that.

15 Q Were you aware that at the time you were  
16 conducting these discussions, these high level  
17 discussions at the LA, there was in fact on the table for  
18 consideration a particular contract modification?

19 A I think there were discussions about a --  
20 modifying the contract to ease the pressure on Freedom.  
21 And to make it possible for them to meet schedule and,  
22 you know, preform the contract.

23 Q Was it your understanding with respect to this  
24 modification that if signed it would grant them the  
25 relief they needed to do what you just said?

1 modification document itself?

2 A No. I don't recall that as we speak.

3 Q Okay. Now, getting back to your own  
4 discussions at DLA. Did you get some kind of a closure  
5 or some kind of agreement or completion of discussions  
6 with them?

7 A It was generally understood that there were  
8 certain things the government could do to assist them  
9 because it was very clear from the beginning of the  
10 discussions. It was the basic premise with Kiasa and  
11 Kabazman that they wanted, clearly wanted Freedom to  
12 succeed and wanted Freedom to survive any of the  
13 difficulties that had and they were prepared to take  
14 certain actions to make that possible. And these were  
15 basically administrative actions outside the contract.

16 Q Now let me ask you this. I, Mr. Lambert, I  
17 sent you some pertinent documents to review. One of  
18 those documents was a letter addressed to Mr. Kiasa  
19 signed by Mr. Thomas, dated May 13, 1986, and what I am  
20 referring to for the record is FT 280. If you hold it  
21 one second, Mr. Lambert. Do you have that letter near  
22 you?

23 A I'm looking for it. I have -- let me just  
24 check here. I have a letter of May 2, to Frank Bankoff.

25 Q Okay. Perhaps you're holding an earlier draft.

1 A That was the understanding, yes.

2 Q The modification itself?

3 A Yes.

4 Q The modification document?

5 A Yes.

6 Q You recall something concerning the claim that  
7 had been filed in that modification?

8 A Yes.

9 Q How was that claim treated in the modification?  
10 Do you remember?

11 A It was to be waved.

12 Q It was to be waved.

13 A Withdrawn.

14 Q And you still believe that the modification as  
15 written would have allowed them with it's waved claim to  
16 complete the contract?

17 A Yes. That was my understanding. Although  
18 there, were some additional problems there. There was a  
19 lot of government furnished equipment, product that was  
20 essential to the performance of the contract. So there  
21 were a lot of variables in the contract that required  
22 everything to work right for them and we had every reason  
23 to believe they would.

24 Q Did you know how the overrun that you mentioned  
25 a few minutes ago was to be taken care of in the

1 A Yes.

2 Q The letter that I'm holding. But do you recall  
3 that a later draft of that letter had been submitted or  
4 had been submitted to Mr. Kiasa?

5 A Yes. This says essentially the same thing. If  
6 not specifically the same thing.

7 Q Okay. Well, I don't want you to quote things  
8 from the letter but just to get an understanding of what  
9 you accomplished and what closure you had at the meeting.  
10 So I'm going to ask you, was there a discussion with  
11 respect to a guaranteed loan?

12 A Yes. There was.

13 Q And do you recall what agreement or closure or  
14 discussion you had with respect with that item?

15 A Well, it's obvious that the loan -- there was  
16 additional funds required to complete the contract and  
17 the use of a guaranteed loan was a logical solution to  
18 that problem. And it was discussed at some length with  
19 Kabazman and Kiasa and Kabazman being fully familiar with  
20 the loan operation over the years; I felt we had a common  
21 bases for discussion.

22 Q And did they tell you they would do something?

23 A Yes. The suggestion was that they -- the  
24 V-loan be applied for in a timely fashion and, they  
25 called it a V-loan in those days, but the guaranteed loan



Page 838

1 be applied for in a timely fashion to get additional  
2 funds into the contract.

3 Q Did they say what role they would do? What  
4 would they do? Did they say?

5 A Well, they agreed that they would process it in  
6 a timely fashion.

7 Q And what did you take that to mean?

8 A Well, I understanding the process, the V-loan  
9 process it had to be initiated by the Contracting Officer  
10 in one end and, of course, the bank on the other with the  
11 Federal Reserve people in that locality. But in, you  
12 know, implicit in that timely processing was the fact  
13 that everyone was certainly familiar with the general  
14 operation of Freedom. And as a government contractor and  
15 part of the national industrial base and so everything  
16 was known about Freedom's eligibility so the question of  
17 eligibility never really came up.

18 Q Did you have any reason --

19 A It was assumed that they were eligible in the  
20 discussions.

21 Q Did you have any reason to believe, based upon  
22 what they were telling you, that a guaranteed loan would  
23 not be issued?

24 A I had no reason to believe that they would take  
25 any actions that were not consistent with applying for

Page 839

1 the application. You know.

2 Q Were you aware that based upon what they had  
3 told you that the bank, the bank of Freedom, Freedom's  
4 bank had taken some action with respect to the guaranteed  
5 loan?

6 A I learned as we got into the discussions that  
7 they had taken some action which appeared at one point to  
8 be a little precipitous but if it was all right if  
9 something needed, you know, certainly they were entitled  
10 to do it.

11 Q Were you keeping Mr. Thomas abreast of what was  
12 going on during the course of your discussions?

13 A Absolutely. Minutely, minute by minute.

14 Q Would you explain -- Well, let me ask you this.  
15 Is it your belief that their statement that they would  
16 process the loan as you testified, do you believe that  
17 they did, in fact, process the loan?

18 A Well, I inceptively had some concern about that  
19 because the -- as it unfolded the Federal Reserve Bank  
20 was having problems with it and were getting signals from  
21 Washington. And I think I eventually was told that there  
22 had been a change at some point earlier on in the DOD  
23 policy with respect to a guaranteed loans. In which they  
24 were not only discouraged but were basically shut down.

25 Q Did Mr. Kabazman at the time you had your

Page 840

1 discussions with him point out to you that such a change  
2 in policy had taken place?

3 A Absolutely not. I was -- I think we discussed  
4 and had reference to some prior V-loan situation down in  
5 the South in which he was directly involved and we were  
6 talking about it in present tense so I had no reason to  
7 believe that there been any change in policy. And this  
8 certainly -- we were using the regulations, statutes and  
9 regulations, current statutes and regulations with  
10 respect to the discussions and the processing of the  
11 V-loan.

12 Q As general counsel of that destined agency, do  
13 you believe that Mr. Kabazman should of known that there  
14 was in fact a policy change?

15 A Well, in the context of the conversation, I  
16 could of -- I had to assume that he knew there would be  
17 -- there was no objection or no obstacle in getting the  
18 V-loan to his knowledge.

19 Q Let me ask you one more thing now. Going back  
20 to something else that might have been part of these  
21 discussions. Did you talk at all about this contract --  
22 this follow-on contract that you mentioned MRE-7? Do you  
23 remember having any discussions with him about that?

24 A Yes. I think that was a part of our  
25 discussions. An intrinsical part of the discussions

Page 841

1 because it was very clear that we had to maintain -- that  
2 Freedom had to maintain its eligibility as a contractor  
3 through the process of completing this contract. I think  
4 there was a MRE-6 that dropped in there but which we  
5 didn't participate in or were not able to participate in.  
6 But they had to be eligible to meet all the pre-award  
7 survey requirements of MRE-7. There's quite a bit of  
8 discussion about that.

9 Q Do you recall that during the portion of your  
10 discussions an action took place that made them eligible?

11 A An action that took place that made them  
12 eligible? I'm not sure I understand that.

13 Q Okay. Well, initially when you got involved  
14 what -- do you recall what there was about MRE-7 that  
15 made them vulnerable or not eligible for that contract?  
16 Do you recall?

17 A Not at this time. No. I do not.

18 Q Okay. Now let me ask you this.

19 A Other than the fact that they had to be, you  
20 know, meet the requirement -- eligibility requirements as  
21 a going concern.

22 Q Right. Do you believe in your discussions with  
23 Mr. Thomas of Freedom that he relied on the good faith of  
24 the discussions that were conducted by you at DLA  
25 headquarters?

1 A I don't think there was any question about  
2 that. I think we were all relying on the good faith of  
3 the government. And I think they were relying on our  
4 good faith at the same time. That we wanted this thing  
5 to work. And we all agreed in general principal that if  
6 we could do these things it would work.  
7 Q Now, do you recall if you had any discussions  
8 with him concerning the relationship between the  
9 modification we talked about and your discussions at DLA?  
10 And what I'm asking specifically -- did he ever tell you  
11 that he would not have signed the modification in the  
12 absence of what you had accomplished at DLA headquarters?  
13 A I think he would not have signed, he would not  
14 have given up his claim and that would have meant signing  
15 that modification if he had thought that the government  
16 was going to do anything other than what was the general  
17 understanding that each party agreed that they would do.  
18 Q Okay. Mr. Lambert, I believe that I am  
19 finished. Would you just hold for just one second?  
20 A Certainly.  
21 MR. STEIGER: Your Honor.  
22 THE WITNESS: Certainly. I'll hold.  
23 JUDGE JAMES: Does the government wish to cross  
24 examine the witness?  
25 MS. HALLAM: Yes.

1 package?  
2 A No.  
3 Q Do you know if they had sent out a timely  
4 package for that year's appropriation or for the next  
5 year, whatever year appropriation was coming up?  
6 A You talking about Bankers? Bankers would not  
7 have been applying for an appropriation.  
8 Q Isn't there a timing issue for the  
9 applications?  
10 A Not necessarily. Not to my knowledge.  
11 Q Yes. Do you know when they finally got it or  
12 if they even got an acceptable application in?  
13 A No. I do not.  
14 Q Are you aware of any times that the application  
15 was rejected because of errors?  
16 A No.  
17 Q Are you aware of the application being  
18 ultimately withdrawn?  
19 A No.  
20 Q During your discussion with headquarters or  
21 when you were reporting back to Henry Thomas, did you  
22 ever lead him to believe that the follow-on contract was  
23 guaranteed?  
24 A No. I don't -- No. I never led him to believe  
25 it was guaranteed. He was in the industrial base. This

1 JUDGE JAMES: You'll have to tell him your  
2 name.  
3 MS. HALLAM: It's Kathleen Hallam.  
4 THE WITNESS: Yes, Kathleen.  
5 CROSS EXAMINATION  
6 BY MS. HALLAM:  
7 Q You had been speaking about May 1, letter that  
8 -- a draft letter that had gone to Frank Bankoff.  
9 A I think it was May 2.  
10 Q May 2. Yes. You said there was essentially  
11 the same letter when to Kiasa?  
12 A That's correct. The commitments in there were  
13 essentially the same.  
14 Q And it was that essentially the same draft?  
15 A I can't -- I think it was. I don't think the  
16 variations were significant.  
17 Q With regard to the discussions that you had  
18 with headquarters. Prior to having those discussion,  
19 what knowledge did you have of V-loan processing?  
20 A I had some knowledge of it. I don't know --  
21 it's a hard question to answer. But I knew the process  
22 and I reviewed cases that had been involved in that  
23 process.  
24 Q Were you involved in preparing the package that  
25 Bankers Leasing prepared to send out for the application

1 was a restricted competition. There's only a limited  
2 number of companies that could participate in this -- the  
3 MRE program. And to that extent he was, I think, one of  
4 the two and then one of three. He was one of three. And  
5 that extent he was assured of an opportunity to bid and  
6 if his bid was competitive or however they want to  
7 describe that, he would get an award of a part of some of  
8 a designated part of the requirement which was essential  
9 for the -- it had been determined to be essential for the  
10 National Defense program.  
11 Q Did you at anytime lead Bankers Leasing to  
12 believe that headquarters -- that DLA headquarters had  
13 promised or guaranteed a follow-on contract to Freedom  
14 NY?  
15 A No. There was no way you could guarantee the  
16 award of a contract. And I think everybody understood  
17 it. They also understood the situation. Where in order  
18 to meet their commitment, the DLA had to award at least  
19 three contracts to cover the requirement and maintain a  
20 base, an industrial base, in the event there was an  
21 emergency and they had to surge production. To mean  
22 additional requirements for the MRE product.  
23 Q Could you tell me at what level -- could you  
24 tell me what the ultimate decision with regard to the  
25 V-loan was?

1 A What I was told, the initial word I got was  
2 that there had been a change in DOD policy with respect  
3 to V-loans. And which was a -- I'll tell you. It was a  
4 surprise to me because I had no indication of it.

5 Q Do you know who helped -- if anyone helped  
6 Bankers Leasing prepare the application for the V-loan?

7 A No. I have no idea.

8 Q Do you know if they had the assistance of an  
9 attorney preparing it?

10 A I have no idea.

11 Q You worked for Bankers Leasing throughout this  
12 period. Didn't you?

13 A No. I wasn't working for Bankers Leasing.

14 Q No.

15 A I was employed by -- I was counsel to Freedom.

16 Q With regard to the -- what we've been calling  
17 the side agreements provision for SBA section 8a  
18 contracts.

19 A Yes.

20 Q Do you know what steps, if any, DLA  
21 headquarters took with regard to that provision?

22 A Well, they -- I knew that -- I'm very familiar  
23 with that program and those are sole source contracts and  
24 DLA had the authority to make sole source contract awards  
25 to anybody they wanted to that was qualified. And in

1 mutually. I think it was a mutual parting of the ways.

2 Q What is your -- you said that you understood  
3 that the V-loan was unsuccessful, where did you -- you  
4 understood that the DOD changed its policy? Where did  
5 that understanding come from?

6 A I think it was probably a verbal understanding  
7 and I don't recall who told me about it but I think it  
8 may have come from Kabazman or maybe come from someone in  
9 DOD, as a matter of fact. I think I did call DOD and the  
10 people in DOD who were -- who would of been handling it  
11 -- were saying what's holding this up? And they said we  
12 -- there's been a change in policy. A prior change in  
13 policy. And I -- that surprised me.

14 Q What actions were taken to remedy that  
15 situation or to complain about that situation?

16 A There wasn't anything you could do about it.  
17 What should you do about?

18 Q I don't know. Henry's not somebody that takes  
19 things laying down.

20 A Well, I don't know whether you can make  
21 somebody -- the government do something they don't want  
22 to do unless you go through a rather elaborate process.  
23 And even then its chances of success -- there's no way  
24 they could have forced them to make a V-loan if they  
25 didn't wish to approve it.

1 this respect there was -- Freedom was fully qualified as  
2 an 8a contractor.

3 Q Do you know what contacts they made with SBA  
4 with regard to that?

5 A I am -- my recollection is very fuzzy on it but  
6 I know it was unsuccessful. It didn't seem to workout as  
7 I recall. It was not really part of the main thrust of  
8 what we were trying to do. But there was certainly a  
9 commitment to try to get some 8a work in there. And that  
10 was a very simple, under the circumstance, relatively  
11 simple thing for DLA to have done. They could have taken  
12 a lot of the MRE contracts themselves, the requirement  
13 and awarded them to Freedom under a 8a contract through  
14 the 8a process.

15 Q When did you cease working for Mr. or Freedom  
16 NY?

17 A I think it was in early part of -- early part  
18 of '87.

19 Q And what was the circumstances under which you  
20 left Freedom or left representing Freedom?

21 A I think the situation had gotten pretty chaotic  
22 for them and there were certain things they wanted done  
23 and we started doing them and then, you know, file  
24 additional claims and what have you. And it just -- the  
25 thing was not working out. We didn't feel -- we

1 Q Do you recall the time frame of when you found  
2 out about this?

3 A Not exactly but I would of said it would of  
4 been in the mid June or something, June, July process.  
5 I'm not sure. But when the Federal Reserve rejected or  
6 the application and became apparent that the Contracting  
7 Officer and DOA weren't processing their part of the  
8 application for the required basic approval, initial  
9 approval of the Contracting Officer and if I recall  
10 correctly, Bankoff, I believe, was the Contracting  
11 Officer, said that it was out of his hands it was being  
12 handled at the DLA level. And, you know, you can't make  
13 a Contracting Officer do something he doesn't want to do.

14 Q So at that point, was it your decision not to  
15 follow-up on that and see what could be done to correct  
16 that situation?

17 A Oh, yes. I think we had discussions with DLA  
18 and, you know, but by that time -- time was going and the  
19 various actions that the government was committed  
20 themselves to were not necessarily materializing as we  
21 originally planned. And it really -- the whole thing  
22 came unglued.

23 Q This is in June of '86, that you found out that  
24 the policy had changed?

25 A I didn't say that. I said it was in that June,

1 July time frame that we -- that it became apparent that  
2 the V-loan was not going to come through. Maybe a little  
3 later. Maybe even August.

4 Q Do you recall what meetings you had with regard  
5 to it? The V-loan not coming through?

6 A Oh, I think we discussed it at the -- some of  
7 the meetings. Yes. At the end, I don't know whether we  
8 had any meetings after July, maybe early August, or  
9 something like that. Maybe in September. I'm not sure.  
10 But the fact that the V-loan was not being processed was  
11 certainly a subject of discussion.

12 Q Discussion with whom?

13 A Kabazman and Kiasa.

14 Q Was there anyone else that it was discussed  
15 with?

16 A I think there may have been a deputy when  
17 Kabazman was on vacation. I don't recall the details of  
18 it but it was essentially -- they maintained a consist  
19 position with respect to the V-loan that it was not going  
20 to be made.

21 Q Okay. Thank you.

22 REDIRECT EXAMINATION

23 BY MR. STEIGER:

24 Q Yes. I'd like to ask a couple redirect  
25 questions, Mr. Lambert. Is it -- are you aware or is it

1 remember the date but I think that was, you know, must  
2 have been August, September time frame. I would think.

3 Q And do you recall talking about this at the  
4 meeting with Dr. Wade?

5 A I didn't -- I was not permitted to say very  
6 much but I remember it was certainly discussed. And it  
7 was -- the questions were being asked and there were  
8 questions I would of asked.

9 Q Did -- what did Doctor -- do you recall what  
10 Dr. Wade said about a guaranteed loan for Freedom?

11 A Well, he just said it wasn't going to happen.  
12 I mean, it's about as clear as that. It wasn't -- it  
13 wasn't \*\*\* as a matter of fact.

14 Q Did he ever -- did he indicate that there was  
15 -- that he believed there was ever a possibility that I  
16 could happen?

17 A It was pretty plain to me. I think that meant  
18 forever. He was very precise about it.

19 Q Okay. Thank you. Ms. Hallam.

20 MS. HALLAM: No.

21 MR. STEIGER: Your Honor. No. I believe that  
22 we are finished so on behalf of the Appellant, I  
23 certainly want to thank you very much, Sir.

24 THE WITNESS: Thank you. And thank you, Judge  
25 James.

1 your belief that the failure to obtain that V-loan and  
2 whatever action DLA did not take to help get it were a  
3 result of the quality of the application submitted? You  
4 recall the -- did you understand my question?

5 A Your question was centered on whether the  
6 application had been correctly aired. And I was not  
7 aware of that -- it had not been correctly done, but I  
8 had nothing to do with it. In that sense but certainly  
9 an application is an application and it can be --  
10 obviously there -- you know, we make changes in them as  
11 you go through their process. And I --

12 Q Okay. You mentioned that you found out about a  
13 change in policy. Was it your understanding that this  
14 change in policy had taken place before your discussions  
15 with DLA?

16 A Yes. It was my understanding. Maybe six  
17 months before. May it was same as -- it had been  
18 established sometime before I talked to them.

19 Q Thank you. One more. Counsel for the  
20 government asked you about discussions concerning this  
21 matter later on. Do you recall attending a meeting that  
22 had been set up by Mr. Thomas with the eminent Dr. Wade  
23 of OSD, of the Office of Secretary of Defense, on this  
24 very loan issue?

25 A Yes. I do. Now that -- Yes, I do. I don't

1 JUDGE JAMES: Thank you, Mr. Lambert.

2 MS. HALLAM: Want to go off the record.

3 JUDGE JAMES: Let's go off the record.

4 (Off the record.)

5 JUDGE JAMES: The Board is aware that at the  
6 outset of the proceedings we had Government objections to  
7 several of the Appellant's FT exhibits. Specifically, FT  
8 397, 399 to 403, 405, and 419. I've reviewed those  
9 exhibits and the Government's objection to them and I'm  
10 now going to overrule those objections and I'm going to  
11 allow those exhibits to be received in evidence.

12 (Appellant's Exhibits Numbers  
13 397, 399 to 403, 405, 419 were  
14 received into evidence.)

15 JUDGE JAMES: Let's go off the record.

16 (Off the record.)

17 JUDGE JAMES: Let's go back on the record.

18 Whereupon,

19 WILLIAM ROBBINS,

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

22 JUDGE JAMES: What I'd like you to do, Sir, is  
23 state for the record your full name, spell your last  
24 name, and give us your address.

25 THE WITNESS: Okay. My name is William

Page 854

1 Robbins, R-o-b--b-I-n-s. I live at 18 West Parkway,  
 2 Clifton, New Jersey, 07014.  
 3 DIRECT EXAMINATION  
 4 BY MR. LUCHANSKY:  
 5 Q Mr. Robbins, is there another first name that  
 6 you're generally known by?  
 7 A Billy or Bill or Zeb.  
 8 Q Is there a Hebrew name you go by?  
 9 A Zeb.  
 10 Q The name Zeb Robbins has come up a number of  
 11 times in the trial. Just want to make sure that was you.  
 12 Mr. Robbins, can you tell the Judge what line of work  
 13 you're currently engaged in?  
 14 A Currently engaged mainly in real estate  
 15 management and ownership.  
 16 Q Okay. Do you do any kind of entrepreneurial  
 17 work as well?  
 18 A I sometimes look at businesses for potentially  
 19 buying businesses that are -- have potential to make a  
 20 profit. And invest in them.  
 21 Q Okay. How long have you been engaged in this  
 22 line of work?  
 23 A Since 1976.  
 24 Q Do you have any other business experience?  
 25 A From 1970 to 1984 I was in the record business.

Page 855

1 I was a retailer in two states. I had six stores and  
 2 also distributed to college campuses -- on non profit  
 3 college stores. And during the time I was running that  
 4 business, well, I guess, we're doing about seven million  
 5 dollars a year in revenue. And then in 1976, I started  
 6 getting involved in real estate and have been doing that  
 7 ever since.  
 8 Q Okay. So you're doing both. Both overlapped  
 9 for a period of time?  
 10 A Right. Eventually I sold my record business in  
 11 1984 to a larger company.  
 12 Q And was that a profitable transaction for you?  
 13 A Very. Yes.  
 14 Q Mr. Robbins, can you tell us how you came to  
 15 meet Henry Thomas?  
 16 A In 1982, a good friend of mine, Mr. Albond,  
 17 told me that there was a potential business opportunity  
 18 and he wanted me to meet someone and we met at a  
 19 Hungarian restaurant on 46th Street, I think, in  
 20 Manhattan in the afternoon.  
 21 Q Okay. What did he tell you about Henry Thomas  
 22 at that point? Or about the person you were supposed to  
 23 meet?  
 24 A That he potentially had some Government  
 25 contracts and that it was potentially very profitable.

Page 856

1 Q Okay. And you met with Mr. Thomas?  
 2 A Yes. I did.  
 3 Q And I'm sorry if you mentioned the time, I  
 4 missed it. Do you remember approximately when that was?  
 5 A It would be sometime in the summer or early  
 6 fall of 1982.  
 7 Q Okay. When you met with Mr. Thomas, what did  
 8 he explain to you about this opportunity?  
 9 A He said that there was the Government needed to  
 10 provide food for the military. Some sort of new type of  
 11 technology. Not like c-rations -- believe cans -- but  
 12 MRE something, meals are ready to eat, I think, and that  
 13 basically he had a lot of access to assistance that he  
 14 could get in the Bronx for helping getting the building  
 15 and other things together and that he was confident that  
 16 he would be one of the main contractors. I think there  
 17 were supposed to be three of them for the country.  
 18 Q Okay. And at the time that he spoke to you,  
 19 did he indicate -- did he indicate whether he anticipated  
 20 -- in addition to the contracts that he was talking to  
 21 you about at the time, did he indicate to you whether he  
 22 expected to have contracts into the future as well?  
 23 A If he was successful with the ones that he did,  
 24 if he did his work correctly, yes.  
 25 Q Were you interested in -- Well, what assistance

Page 857

1 did he ask from you at the time?  
 2 A He wanted to know whether I had financial  
 3 capability to invest if I found it a viable entity. And  
 4 I said I'd be interested if, you know, if the numbers  
 5 held out. I'd certainly review it.  
 6 Q Okay. Did you do anything to check into Mr.  
 7 Thomas' background or the viability of his proposal?  
 8 A Yes. Mr. Thomas told me that he had been in  
 9 serving lunches for children for a number of years. So I  
 10 had my attorney go to all the locations and make phone  
 11 calls to all the places that he had worked and all the  
 12 contacts that he had supposedly with the military and all  
 13 of the contacts he had with the city of Mt. Vernon. His  
 14 contracts in Philadelphia. To verify whether he was who  
 15 he said he was because, you know, people talk, you know.  
 16 Q Did your attorney satisfy -- did he satisfy you  
 17 that Mr. Thomas was who he said he was?  
 18 A Yes. He confirmed that whatever he had  
 19 represented was reality as far as him being in food  
 20 programs and having potential to get military contracts.  
 21 Q So at that point, did you try to negotiate a  
 22 business deal with Mr. Thomas?  
 23 A Yes. I wanted to --  
 24 Q Regarding your involvement.  
 25 A I wanted to have a 50/50 partnership with him.

Page 858

1 We couldn't reach an agreement on the percentage for some  
2 reason I couldn't have equal shares for whatever reason  
3 but -- so I said no.

4 Q Okay. Now after you weren't able to reach an  
5 agreement on being an equal investor with him, did you  
6 still remain interested in investing in some way if the  
7 opportunity arose?

8 A Yes.

9 Q Did the opportunity arise?

10 A I think the next time he called me he said that  
11 he had come upon an opportunity to purchase some  
12 equipment that was going to be auctioned off very  
13 quickly. And it was in Washington state. I think  
14 Tacoma.

15 Q Where were you living at the time?

16 A I was living in California. And would I be  
17 willing to go up there and buy this equipment and then  
18 lease it to him. Which he told me the value of it was  
19 approximately a quarter of a million dollars and that it  
20 could be bought for significantly less. And so that  
21 definitely made sense to me. So I took a flight to  
22 Tacoma and I bid and successfully won at an auction for  
23 these little items that looked like submarines.

24 Q Do you remember what these items did? What  
25 type of equipment it was?

Page 859

1 A They're called rotor mats. They were something  
2 that supposedly made hygienically clean at high  
3 temperatures, of high pressure whatever went into it.  
4 Food, I guess in this case. And since they were at  
5 Nally's, I guess they were being used by them or somebody  
6 else in the food business.

7 Q And did you understand that Mr. Thomas needed  
8 this in connection with those government contracts that  
9 you were talking about?

10 A Yes. They were essential because the whole  
11 nature of these pouches was that they had to have a shelf  
12 life of, like, seven years and be able to just be dropped  
13 in water or something to make them function. Otherwise,  
14 they would be bad.

15 Q So you went up to Washington. Did you  
16 successfully buy the rotor mats?

17 A Yes.

18 Q And how did you make them available to Mr.  
19 Thomas? What agreement did you reach with Mr. Thomas  
20 about the rotor mats?

21 A We leased them to my corporation, No Name  
22 Record Corporation, leased them to Mr. Thomas.

23 Q Okay. Did Mr. Thomas ever contact you again  
24 about asking whether you would be interested in financing  
25 his efforts with these Government contracts?

Page 860

1 A Well, I think he did. He asked me -- after we  
2 had set up the lease and he was working in his plant was  
3 up in Hunt's Point which I had seen which was quite an  
4 expansive facility. He said was I willing to provide an  
5 extra financing for additional equipment. I think mainly  
6 he wasn't allowed to buy equipment only to lease it.  
7 And/or to provide an investment and I was in the process  
8 of getting ready to get out of the record business and  
9 had prospective buyers. So I was looking for other  
10 opportunities. So I said yes I was interested if the  
11 numbers, you know, were substantiated.

12 Q Okay. Do you remember the time frame for this?  
13 Was it immediately after the -- after you bought the  
14 rotor mats? Or was it while --

15 A No. It was about a year later.

16 Q I'm sorry. I didn't hear.

17 A I think it was a year later.

18 Q Okay.  
19 JUDGE JAMES: Do you recall what year you're  
20 even talking about?

21 THE WITNESS: 1982 is the year that I bought  
22 the rotor mats and so this would be in like the summer or  
23 fall of 1983.

24 BY MR. LUCHANSKY:

25 Q Now at -- and I'm sorry you -- your answer was

Page 861

1 that you would be interested if the terms were right?

2 A He sent me some numbers supporting what the,  
3 you know, the flow would be of production and the nature  
4 of how the contracts work if he's awarded them. Which  
5 were, I believe, essentially that the government pays a  
6 good percentage of the costs as soon as you get through  
7 producing the product.

8 Q Okay. Now the -- in 1983, the contract that  
9 Mr. Thomas was bidding on at that time which was  
10 technically the MRE-4 contract. He didn't get it.

11 A Yes.

12 Q And so I'm assuming that you didn't provide any  
13 investment dollars at that point?

14 A No.

15 Q Okay. The following year Mr. Thomas got, at  
16 what is technically the MRE-5 contract.

17 A Yes.

18 Q And so in 1984, did Mr. Thomas come back to you  
19 again and inquire whether you were still interested in  
20 providing some financing?

21 A Yes. Again, if the numbers were supported and  
22 there was a way I could verify it.

23 Q At that point, and now talking 1984 --

24 A Right. By this time I had sold my business.  
25 So I was -- I'd just gotten married. I had sold my

Page 862

1 business and I was looking for, you know, other  
 2 opportunities.  
 3 Q Okay. Could you -- are you able to approximate  
 4 about how much money you had available to invest at the  
 5 time?  
 6 A Let's see. I had an unsecured line of credit  
 7 from Imperial Bank of two million dollars. And the sell  
 8 of my business netted 2.9 million dollars, plus, I owned  
 9 a fair amount of real estate. So I was fairly  
 10 comfortable.  
 11 Q So would you be willing at that time again  
 12 assuming the deal was right and you had -- you were able  
 13 to reach a deal, would you have been willing to invest in  
 14 that range of several million dollars?  
 15 A Up to a few million dollars, yes.  
 16 Q Did there come a time that Mr. Thomas  
 17 approached you and asked more than theoretical questions  
 18 about your willingness to invest and asked you more  
 19 specifically and directly, "Will you loan me some money  
 20 for this MRE contract?"  
 21 A Yes. He sent me some papers that showed  
 22 performance of what potentially is a flow of a contract  
 23 and that the government covers 95 percent of paying for  
 24 when it's completed and so on the surface it looked like  
 25 I didn't have tremendous amount of risk. So I was quite

Page 863

1 interested.  
 2 Q Were these cash flow statements?  
 3 A Yes.  
 4 Q Do you remember approximately when this was?  
 5 A It would be in sometime in 1984.  
 6 Q Okay. Now did you review the cash flow  
 7 statements?  
 8 A Yes.  
 9 Q And did they appear to pan out for you? What  
 10 Mr. Thomas had represented in terms of the government  
 11 paying 95 percent of costs incurred and him being  
 12 responsible for 5 percent?  
 13 A Yes. On paper but again my, you know, I'm some  
 14 what respect but suspect. I wanted, you know, someone to  
 15 confirm from the Government someone to confirm that  
 16 whatever someone represents is reality not just the word  
 17 of, you know, someone who's looking for money.  
 18 Q Okay. Had you ever actually -- have you ever  
 19 been involved in business deals with the Government  
 20 before?  
 21 A No.  
 22 Q So your experience is based on your experience  
 23 in the private business world?  
 24 A Right.  
 25 Q Do you remember how much financing Mr. Thomas

Page 864

1 asked you for?  
 2 A He wanted about two or two and half million  
 3 dollars.  
 4 Q Now did that cover financing for equipment as  
 5 well as for operating capital?  
 6 A Yes.  
 7 Q After you reviewed the cash flows, you said  
 8 that wasn't -- you know, they looked good on paper but it  
 9 didn't --  
 10 A Right.  
 11 Q You weren't quite ready to put the dollars in  
 12 yet. Did you take any of the steps at that point to try  
 13 and verify that what Mr. Thomas told you about Government  
 14 payments was indeed accurate?  
 15 A I asked him if he was seriously interested that  
 16 I would need some verification from the Government.  
 17 Whoever was going to be the people who actually  
 18 distributed the money. Whether there was reality to  
 19 this. Whether the contracts would really exist. And  
 20 whether whatever's being represented would be a reality.  
 21 Q Do you remember whom you spoke to? Did you  
 22 call -- did you call somebody in the Government?  
 23 A One morning I -- a phone call was arranged  
 24 where Mr. Thomas put me in touch with someone from the  
 25 Government who would be able to answer my questions. Who

Page 865

1 is, I believe, in charge of that part of the MRE program.  
 2 Q Okay. Do you remember whether we're now still  
 3 in 1984 or whether we're now into early 1985? If you  
 4 remember.  
 5 A I don't remember.  
 6 Q So Mr. Thomas set up a phone call with you. He  
 7 was with you at the time?  
 8 A No. I was in California. He called from back  
 9 east.  
 10 Q Okay.  
 11 A And the person was also back east.  
 12 Q Okay. Do you remember the name of the person  
 13 he set up the phone call with?  
 14 A A Mr. Liebman.  
 15 Q Tell me about that phone call. What happened?  
 16 A It was a very brief phone call. Henry Thomas  
 17 introduced me as a -- my name and Mr. Liebman asked me  
 18 whether I was a bank and I said no, but I'm an investor  
 19 and I have a fairly sizeable amount of money and I'm  
 20 interested in investing. That was about sum total of the  
 21 conversation.  
 22 Q Conversation ended at that point?  
 23 A Yes. He said he was not interested in -- if I  
 24 wasn't a bank. I mean, that was it. He did not want to  
 25 speak to me as an individual.

1 Q He didn't ask you how much money you were  
2 willing to invest?  
3 A No.  
4 Q Didn't ask you what your financial credit was?  
5 A No.  
6 Q Background?  
7 A No.  
8 Q You and Mr. Thomas did make it clear to him  
9 that you were calling for purposes of potentially  
10 investing in this contract?  
11 A Yes.  
12 Q After this conversation, after you hung up the  
13 phone were you willing to lend any money to Mr. Thomas?  
14 A No.  
15 Q All right. Did Mr. Thomas let it drop at that  
16 point? Did he continue to try to encourage you to lend  
17 him some money?  
18 A He did but I told him that there was no way  
19 unless I had some way to confirm that I'd be interested  
20 in going further. I mean, it's just as simple as that.  
21 You work hard for your money. You don't want to, you  
22 know, just give it away.  
23 Q Did Mr. Thomas suggest another way of trying to  
24 get the confirmation from Mr. Liebman that you were  
25 seeking?

1 A He suggested that it might be an alternative is  
2 if I was willing to put my funds into the bank he was  
3 dealing with, I think Citi Bank, then his bank, I'd still  
4 control my funds but his bank could then make the  
5 representation and approach the Government as a bank. If  
6 that's essentially what the Government was looking for  
7 was a bank to speak to.  
8 Q And were you willing to place your funds into  
9 Citi Bank in order to allow them to be the  
10 representatives for your money sort to speak?  
11 A Yes.  
12 Q Do you know if Mr. Thomas then went and spoke  
13 with anyone from Citi Bank?  
14 A Yes. He spoke to Mr. Samuels or I forget  
15 exactly.  
16 Q Would that have been Mr. Clarence Stanley?  
17 A Stanley.  
18 Q To the best of your knowledge, did they try to  
19 make efforts to get this confirmation from Mr. Liebman  
20 that progress payments would be made on the contract?  
21 A They tried. I mean, I wasn't involved in the  
22 phone calls but they tried. But not -- they weren't  
23 successful.  
24 Q Okay. And after, Mr. Thomas reported back to  
25 you that they weren't successful, what happened at that

1 point?  
2 A I wished him well but I said I just could not  
3 put money at risk unless there was, you know, a way that  
4 I was highly secured. And that there was nothing forth  
5 coming from the Government to suggest and verify, you  
6 know, even if it sounded very good to go ahead and do it.  
7 MR. LUCHANSKY: Don't have anymore.  
8 JUDGE JAMES: Government wish to cross examine?  
9 MS. HALLAM: Yes. Just one question.  
10 CROSS EXAMINATION  
11 BY MS. HALLAM:  
12 Q You said you willing to invest if the terms  
13 were right. What type of terms were you looking for?  
14 A The terms I was looking for was that the -- the  
15 main term was that the Government was willing to make the  
16 payments of 95 percent upon the production of the  
17 product. I was comfortable that if my exposure is only 5  
18 percent then it was a safe bet for me to be involved in  
19 something if the Government's covering 95 percent of it  
20 and my exposure will be at max 5 percent.  
21 Q What were you looking for in the way of  
22 security or is there any security, liens that you were --  
23 A The security things would of been taken care of  
24 by my attorney but he would have done due diligence to  
25 make sure that the proceeds would, in some form, make

1 sure that they get my share of it gets to me.  
2 Q Something in the nature of an assignment?  
3 A That would be left up to my attorney.  
4 Whatever, you know, he felt was in my best interest. I'm  
5 not an attorney.  
6 Q What representations did Mr. Thomas make to you  
7 with regard to the amount of money that was expended  
8 under the contract for production equipment?  
9 A I don't know what -- could you be more specific  
10 in your question?  
11 Q Did he represent to you that the two or two and  
12 a half million dollars you were willing to invest in  
13 production equipment was all part of the consideration of  
14 the contract price?  
15 A He only told me that some of it went for  
16 needing to lease equipment and some of it for production  
17 costs.  
18 Q His -- What exact were his representation that  
19 the Government would be forth coming with 95 percent of  
20 any costs he submitted for the production?  
21 A No. Only whatever a contract that he would be  
22 awarded upon the completion of the production that is  
23 from raw materials to finished product. At that point,  
24 the Government would make 95 percent advances on product  
25 that had been produced and completed.



1 Q And once again, with regard to the payments you  
2 wanted some mechanism in place so that the payments  
3 flowed from the Government to you or --

4 A I just wanted to make sure that whatever I do  
5 in anything in business that I'm protected that if I'm  
6 invested in something that I'm secured but I usually  
7 leave that up to my attorneys because I am not an  
8 attorney.

9 MS. HALLAM: That's all the questions I have,  
10 your Honor.

11 MR. LUCHANSKY: There's a few follow-ups, your  
12 Honor.

13 REDIRECT EXAMINATION

14 BY MR. LUCHANSKY:

15 Q Mr. Robbins, was it your understanding that the  
16 payments from the Government were going to be made right  
17 away or that there was going to be a delay in payments?

18 A No. They -- the payments from the Government  
19 would come upon the completion of the product being  
20 produced as it went through the rotor mats and as it was  
21 processed those payments would be forth coming from the  
22 Government.

23 Q So as the work was being done?

24 A Right.

25 Q Okay. So even under those terms you were

1 completed theoretically are worth 95 percent of whatever  
2 their value is and the equipment is secured by UCC's. So  
3 you don't really have tremendous -- the equipment can  
4 always be sold. And the equipment was bought at a  
5 discount in the first transaction; and in the second  
6 case, the Government would be forth coming with its  
7 money. So it didn't seem to be a tremendous amount of  
8 financial exposure.

9 JUDGE JAMES: Any further questions by the  
10 Government?

11 MS. HALLAM: Yes. Just one.

12 RECROSS EXAMINATION

13 BY MS. HALLAM:

14 Q Sorry. Maybe I was a little confused. It was  
15 your understanding that when the items were completed  
16 that Freedom would be getting 95 percent of the costs on  
17 delivery of the items?

18 A My understanding was that they would be  
19 receiving 95 percent of the cost of the -- of the -- for  
20 what the cost of the item, whatever they negotiated with  
21 the Government, yes.

22 MS. HALLAM: No further questions.

23 MR. LUCHANSKY: Mr. Robbins -- I'm sorry.

24 JUDGE JAMES: That's it. I didn't ask for any  
25 more questions. I think we've exhausted the subject.

1 willing to put up the money -- you would of been willing  
2 to put up the money as long the Government guaranteed --  
3 confirmed that they were in for 95 percent and you were  
4 in for 5 percent risk?

5 A Right. Because that means my exposure is about  
6 100 or 150,000 depending on how much I put in at 5  
7 percent and based upon the possibility that he would be  
8 getting -- be one of the three main contracts in a  
9 continuing program it made a lot of sense to me to want  
10 to be involved in this.

11 Q Mr. Robbins, you were already leasing equipment  
12 to Mr. Thomas.

13 A Right.

14 Q When you lease equipment, what serves as  
15 security on an equipment lease?

16 A UCCs.

17 Q Okay. And what affect is there -- does the  
18 equipment itself then serve as collateral for your  
19 investment?

20 A Yes. For sure.

21 Q Okay. Is that financially then are the  
22 potential risks of providing investment money considered  
23 separately with respect to equipment financing and  
24 operation financing?

25 A Yes. You can -- well, the goods when they're

1 Thank you ever so much Mr. Robbins for your testimony.  
2 You may step down.

3 Does the Appellant have another witness you  
4 want to call?

5 MR. LUCHANSKY: Yes. Again, your Honor. Mr.  
6 Stanley is scheduled to be here at four o'clock. He  
7 should be here in just a couple minutes.

8 JUDGE JAMES: Okay. Let's go off the record.  
9 (Off the record.)

10 JUDGE JAMES: Please raise your right hand.  
11 Whereupon,

12 CLARENCE STANLEY,  
13 having been first duly sworn, was examined and testified  
14 as follows:

15 JUDGE JAMES: What I'd like for you to do, Mr.  
16 Stanley, is simply tell for the record your full name,  
17 spell your last name, and give us you address.

18 THE WITNESS: Okay. First name is Clarence  
19 Stanley, S--the-a-n-l-e-you. Address is, 129 Surrey,  
20 S-u-r-r-e-you Drive, and that's in New World Shell, New  
21 York, 10804.

22 DIRECT EXAMINATION

23 BY MR. LUCHANSKY:

24 Q Mr. Stanley, how are you currently employed?

25 A Right now I'm retired from Citi Bank. I'm

1 currently the director of the Small Business Development  
2 Center at Beaman College.  
3 Q And you were employed at Citi Bank for a while?  
4 A Yes. I just retired three months ago.  
5 Q Okay. Congratulations. Could you describe for  
6 the Judge your work history at Citi Bank? When you  
7 started there, what you did?  
8 A Okay. I started at Citi Bank in 1973. And I  
9 was a branch manager for most of my career. A branch  
10 manager and a loan officer in the business development  
11 office. I retired in the year 2000, twenty-seven years  
12 at Citi Bank.  
13 Q When you were at Citi Bank was Henry Thomas and  
14 Freedom -- where they some of your commercial customers?  
15 A Yes. They were.  
16 Q Do you remember when they first became  
17 customers of Citi Bank?  
18 A I remember that I was manager of the branch in  
19 Mt. Vernon and I guess that would of been about 1977,  
20 1976. I was a branch manager and we were looking for  
21 balances and H.T. Food, I think was the name at that  
22 time, they had a school lunch program and we helped -- it  
23 was one of my biggest loans I'd done at Mt. Vernon. We  
24 loaned the H.T. a 100,000 dollars which for my branch  
25 that was pretty significant.

1 Q Okay. Now you mentioned H.T. Foods, my  
2 information suggests that it was Freedom foods --  
3 A Freedom, that's right. I'm sorry. It was  
4 Freedom foods.  
5 Q H.T. Foods is a company that has become  
6 significant since then --  
7 A Okay.  
8 Q -- But I don't think they were doing school  
9 lunches. So over the course of -- how long did you  
10 remain banker for Freedom and for Henry Thomas?  
11 A For Freedom, Henry -- he had a relationship  
12 with me until I actually transferred to Hunt's Point. I  
13 think maybe four or five years during that period. I  
14 think Freedom, the lunch program, they didn't continue.  
15 I think Henry went unto another venture. I'm not sure  
16 what he went into at this time.  
17 Q So Freedom, Freedom established -- it went into  
18 the MRE business. The providing food for the Government  
19 for the military.  
20 A Right.  
21 Q I think it somewhere around 1982 or '83, that  
22 they established their Hunt's Point plant. Was Citi Bank  
23 still servicing Freedom, providing banking services for  
24 Freedom while it was doing these MRE's?  
25 A What happened in that period, as a branch

1 manager I was looking for new relationships so I  
2 transferred from Mt. Vernon and there was assigned to  
3 manage the Hunt's Point branch. At which time I called  
4 Henry to see if I could get his relationship because it  
5 was a good relationship and I wanted to maintain it.  
6 Q Great. Were you providing services like  
7 payroll services or cash checking services an things like  
8 that for Freedom?  
9 A Yes. Payroll services, check cashing, anything  
10 to do with general banking needs.  
11 Q Now in 1984, Freedom's operations moved to  
12 Bronx Dale. Do you remember that?  
13 A Yes. They moved into I think it was a plant --  
14 the Grastidies plant, I'm not sure what the name of the  
15 plant was but --  
16 Q The Grastidies plant, that's right. Did you  
17 arrange for -- for Freedom to still be in touch with or  
18 for Freedom to still use Citi Bank in Bronx Dale?  
19 A Yes. Well, that was significant because, you  
20 know, the Bronx, we needed businesses and we needed  
21 employment in the Bronx and at that time, I remember,  
22 when Freedom was about to roll out, they were going to be  
23 like the -- one of the largest employers in the Bronx.  
24 And I was trying to get the relationship, but not just  
25 him, but I wanted to get all the employees' accounts. So

1 we arranged sort of a check cashing arrangement and I  
2 wanted to get his balances.  
3 Q Okay. So what did you do?  
4 A I called on him and I opened up -- I arranged a  
5 check cashing at another branch closer to Bronx Dale  
6 which was at the Casa Hill branch.  
7 Q Who was the loan officer there?  
8 A Well, the loan officer -- I'm not sure who -- I  
9 don't know if it was Charlie Kohler --  
10 Q And I don't -- maybe loan officer is the wrong  
11 term. Who was the person in charged of that branch?  
12 A Well, the branch manager was Thomas Sirico.  
13 Thomas Sirico he managed Casa Hill. And I managed Hunt's  
14 Point.  
15 Q I see. And so Mr. Sirico took over the  
16 relationship for you when they moved.  
17 A The day-to-day operations of Freedom foods. At  
18 that point it wasn't -- it was H.T., I guess at that  
19 time.  
20 Q Okay. At that point you'd known Mr. Thomas for  
21 about --  
22 A Just about --  
23 Q -- Eight years.  
24 A Oh, yes, more.  
25 Q Even more.

1 A Yes.

2 Q Was he a good customer?

3 A That was one of my highest balance accounts,  
4 actually.

5 Q Did there come a time when Mr. Thomas contacted  
6 you to talk to you about having a private investor for  
7 his MRE program and needing your assistance?

8 A Yes. He mentioned that we were looking -- I  
9 knew he was going to get some Government contracts and we  
10 were looking to see if we could get the Government  
11 contracts and I was looking at my balances being high  
12 because if you got the balanced -- got the contracts I'd  
13 get more money. And I was also looking at to see if I  
14 could possibly get a loan but -- I had to remember he did  
15 mention that it was a private investor and I was just saw  
16 dollar signs -- so I'm going to get a large relationship.

17 Q Okay. Now did he tell you that he had a  
18 private investor?

19 A Yes. He did.

20 Q Did he tell you the problems that the private  
21 investor was having? What did Mr. Thomas ask you to do?

22 A Well, at that time we were looking at finance  
23 -- Henry, we had some cash flow needs at the Bronx Dale  
24 and I was trying to see if I could arrange the loan or  
25 maybe get some financing for him but he had indicated he

1 had a private investor. Okay. And I was looking at two  
2 angles. One, if we had the Government contracts and he's  
3 got a private investor, I was kind of hoping that the  
4 private investor would put some deposits with me and I  
5 would use that to secure a fully secured loan for the  
6 company. Or if the private investor just wanted to lend  
7 him the money, I would say just leave it on deposit. He  
8 did say he had private investor lined up though. And I  
9 was kind of looking forward to it.

10 Q That would of been a feather in your cap.

11 A Absolutely.

12 Q Did Mr. Thomas ask you to do anything in behalf  
13 of the private investor?

14 A Just to let him know that we wanted to stand by  
15 Henry. We wanted him to grow. As far as the private  
16 investor, I think he just wanted to know if Citi Bank,  
17 you know, provide any financing.

18 Q Okay. Now at that point, once you expressed  
19 your willingness to be available, did Mr. Thomas ask you  
20 to participate in a meeting with him -- with any  
21 Government officials?

22 A Yes. He did.

23 Q Tell me about that.

24 A Well, if I remember which one -- we were trying  
25 to nail down the contract and I recall we had to go down

1 to, I think, the Defense Department or some place down in  
2 the -- near the World Trade Center to meet with the  
3 Defense Department or whoever was responsible for the  
4 contract and he was trying just to get a release of some  
5 funds. We needed something signed or get the contract  
6 finalized so he could start drawing on some vouchers.  
7 And he needed to finalize some things so he could get  
8 some money to come into his account. Well, I call it his  
9 account. Into his company.

10 Q Okay. When you say vouchers, you mean payments  
11 by the Government?

12 A Yes.

13 Q And that was the information you were looking  
14 to confirm from whoever it was you were meeting with?

15 A Looking to confirm that information because we  
16 were, again, I'm still looking at the possibility of a  
17 loan. We had not done Government contract lending  
18 before, against Government vouchers. And this would have  
19 been a first for us and I was hoping that if you got a  
20 contract -- if I had that contract -- because see the  
21 contract, I would take to my credit officers and say,  
22 look based on the contract let's give this guy provider  
23 financing.

24 Q Okay. Did you actually go down to that area?

25 A Yes. I took him --

1 Q Tell me what happened.

2 A I took a day off and we went down, I think for  
3 our call is in the morning, I think -- I believe we had a  
4 morning appointment and I threw some calls advance, we  
5 had to hang around for sometime, I think Henry and I went  
6 to have some lunch together. We had a morning  
7 appointment. It was put off. We wound up seeing them in  
8 the afternoon. I forget the gentleman's -- it was  
9 Liebman, I think was his name.

10 Q Marvin Liebman?

11 A Right. Marvin Liebman. And --

12 Q That's the person you were supposed to be  
13 meeting with?

14 A Was probably meeting with him? We eventually  
15 did meet with them but --

16 Q So tell me about that. You're hanging around  
17 --

18 A I remember when he finally got to see us he  
19 took us into a room, I think, Henry by now -- it was  
20 pretty late in the day and, I think we was just looking  
21 to sit down and talk about the contract or negotiation.  
22 And Henry just wanted to introduce me to Liebman as his  
23 banker. Okay. So we did meet with Liebman eventually  
24 during that day.

25 Q What happened?

1 A They -- it got kind of heated, I think. I  
2 think Liebman somehow there were some words exchanged and  
3 Liebman got a little frightened or and just jumped up and  
4 kind of ran out the room. And I don't know why. I kind  
5 of -- well, this is like a long time ago so --

6 Q I know it's a long time ago. Do you remember  
7 more specifically --

8 A I think Henry just wanted Liebman to get --  
9 make a decision or have him sign a document whatever they  
10 were looking to finalize. And Liebman just kind of just,  
11 you know, just jumped up and kind of ran out the room.

12 Q Well, let me ask you this. Whatever  
13 information it was that Mr. Thomas was asking Mr. Liebman  
14 to confirm, would Mr. Liebman confirm it?

15 A No. Not at that time. We didn't come to -- it  
16 wasn't finalized. He didn't --

17 Q Did you leave that meeting with any positive  
18 response from Mr. Liebman to what Mr. Thomas was asking  
19 him? Whatever it was?

20 A Oh, no I felt -- I didn't think we had  
21 accomplished -- well, we accomplished something but we  
22 didn't come out with a positive thing that it was a done  
23 deal. Okay.

24 MR. LUCHANSKY: That's all I have, your Honor.

25 JUDGE JAMES: Any cross by the government?

1 MS. HALLAM: No, your Honor.  
2 JUDGE JAMES: All right. Thank you ever so  
3 much, Mr. Stanley, for your testimony. You may step  
4 down. Appellant have another witness you want to call?

5 MR. LUCHANSKY: No, your Honor. That's it for  
6 today. Thank you, Sir.

7 JUDGE JAMES: Let's go off the record.

8 (Whereupon, at 4:40 p.m., the hearing was  
9 recessed.)  
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1 CERTIFICATION OF TRANSCRIPT

2  
3 This is to certify that the attached  
4 proceedings before Administrative Judge DAVID W. JAMES,  
5 Department of Defense, Armed Services Board of Contract  
6 Appeals, in the matter of FREEDOM NY, INC., at Brooklyn,  
7 New York, on Thursday, May 18, 2000 were had as therein  
8 appears, and that this is the original transcript thereof  
9 for the files of the Department of Defense.

10 We, the undersigned, do hereby certify that  
11 this is a true, accurate and complete transcript prepared  
12 from the tape made by electronic recording by Donna  
13 Hughes, Official Reporter, on the aforementioned date,  
14 and have verified the accuracy of the transcript by  
15 comparing the typewritten transcript against the verbal  
16 recording.

17 Date: 7/10/00

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Transcriber

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21 Proofreader  
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