

no. 8335

Floyd Sheldon vs W.S. Harvill

JURY LIST - NOVEMBER 17, 1969

- 1. Alexander, W. S., Jr., Refrigeration Mechanic, Bay Minette
- 2. Ankum, Albert, Tensaw
- 3. Ankum, Beatrice, Tensaw
- 4. Ankum, George, Tensaw
- 5. Averitt, Chester C., Appliance Repair, Foley
- 6. Bornholt, Roy H., Farmer, Elberta
- 7. Brown, Arthur L., Store Owner, Bay Minette
- 8. Campbell, Dorothy M., Secretary, Foley
- 9. Edwards, Willie, Jr., Teacher, Bay Minette
- 10. Ellis, T. Howard, Montrose
- 11. Hall, Howard H., Clerk, Bay Minette
- 12. Harville, Arthur, Rabun
- 13. Hermecz, Mary Frances, Fairhope
- 14. Johnson, Doretha B., Fairhope
- 15. King, Jessie, Clerk, Mag. Spgs.
- 16. Kutack, Jean Ann, Fairhope
- 17. Mannich, Arthur, Merchant, Fairhope
- 18. McCreary, Roosevelt, Fairhope
- 19. Moore, Ack W., Fairhope
- 20. Nall, Wilber C., Farmer, Bon Secour
- 21. Niemeyer, C. B., Fairhope
- 22. Niemeyer, Lenora, Fairhope
- 23. Owen, L. D., Jr., Merchant, Bay Minette
- 24. Peters, Billy C., Fairhope
- 25. Phillippi, Talmage, Rabun
- 26. Reynolds, Robert Roy, Fairhope
- 27. Rogers, Claude M., Trucker, Bay Minette
- 28. Stewart, Khola, Rabun
- 29. Thompson, William Am., Insurance, Bay Minette
- 30. Weeks, Elliot, Mechanic, Mag. Spgs.
- 31. Sweat, G. D., Real Estate, Robertsdale
- 32. Maury, Louise P., Fairhope
- 33. Berglin, Ouida, Fairhope
- 34. Patton, William L., Jr., Fairhope
- 35. Hauge, Ralph O., Clerk, Silverhill
- 36. Overstreet, Layton J., Fairhope
- 37. McDade, Adelaide Dodd, Fairhope
- 38. Perkins, Sherman, Fairhope

38
6
32
12
20

P XXXXX XXXXX
D XXXXX XXXXX

HAMILTON, DENNISTON, BUTLER & RIDDICK

ATTORNEYS AND COUNSELLORS AT LAW

AMERICAN NATIONAL BANK BUILDING

P. O. BOX 1743

MOBILE, ALABAMA

36601

January 9, 1969

THOMAS A. HAMILTON
ROBERT P. DENNISTON
CHARLES R. BUTLER
HARRY H. RIDDICK
OLIVER J. LATOUR, JR.
JAMES W. TARTON, III
CHARLES R. BUTLER, JR.
JANELLA J. WOOD

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1899-1956)

CABLE ADDRESS:
HAMILTONS

TELEPHONE: 432-7517
AREA CODE 205

Hon. Alice J. Duck, Clerk
Circuit Court of Baldwin County
Baldwin County Courthouse
Bay Minette, Alabama 36707

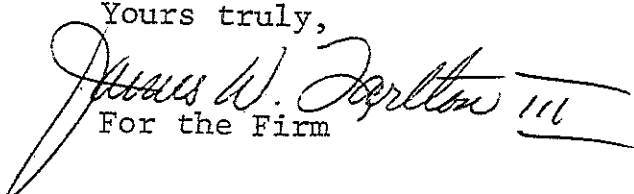
Re: Floyd Sheldon vs. W. S. Newell,
Inc.
Baldwin County Circuit Court
Case No. 8,335
Our File No. 21,254-HHR

Dear Mrs. Duck:

Please file the enclosed interrogatories in the above captioned case. We have mailed a copy of the interrogatories to the attorney for the defendants, Tom Galloway.

Thanking you for your attention to this matter, we are

Yours truly,


For the Firm

JWT:mgk
Enclosure

cc: Thomas M. Galloway

HAMILTON, DENNISTON, BUTLER & RIDDICK

ATTORNEYS AND COUNSELLORS AT LAW

AMERICAN NATIONAL BANK BUILDING

P. O. BOX 1743

MOBILE, ALABAMA

36601

January 10, 1969

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1899-1956)

CABLE ADDRESS:
HAMILTONS

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AREA CODE 205

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JAMES W. TARTON, III

CHARLES R. BUTLER, JR.
JANELLA J. WOOD

Hon. Alice J. Duck, Clerk
Circuit Court of Baldwin County
Baldwin County Courthouse
Bay Minette, Alabama 36707

Re: Floyd Sheldon vs. W. S. Newell,
Inc., et al
Baldwin County Circuit Court
Case No. 8335
Our File No. 21,254-JWT

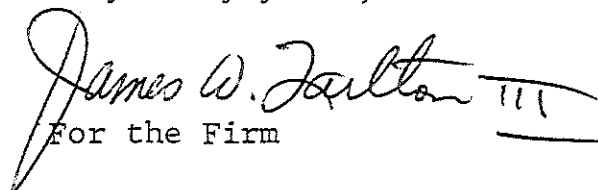
Dear Mrs. Duck:

We note that the above captioned case has been set for trial on Thursday, February 6, 1969, on the Non-Jury Civil Docket. We think that this case has been set on a non-jury docket in error as we requested a trial by jury on our complaint.

Please check your files and let us know whether or not this case should in fact be on the jury docket.

Thanking you for your attention to this matter, we are

Very truly yours,


For the Firm

JWT:mgk

HAMILTON, DENNISTON, BUTLER & RIDDICK

ATTORNEYS AND COUNSELLORS AT LAW

AMERICAN NATIONAL BANK BUILDING

P. O. BOX 1743

MOBILE, ALABAMA

36601

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1899-1956)

CABLE ADDRESS:
HAMILTONS

TELEPHONE: 432-7517
AREA CODE 205

THOMAS A. HAMILTON
ROBERT P. DENNISTON
CHARLES R. BUTLER
HARRY H. RIDDICK
OLIVER J. LATOUR, JR.
JAMES W. TARTON, III
CHARLES R. BUTLER, JR.
JANELLA J. WOOD

September 17, 1968

Hon. Alice J. Duck, Clerk,
Circuit Court of Baldwin County
Baldwin County Courthouse
Bay Minette, Alabama 36707

Mr. 8336-

Dear Mrs. Duck:

Enclosed please find the original and four copies of a suit to be filed by Floyd Sheldon against W. S. Newell, Inc. and The Travelers Indemnity Company. Please return one of the copies to us showing the date that the Complaint was filed in the Circuit Court of Baldwin County.

Yours truly,

James W. Tarton III
For the Firm

JWT:mgk
Enclosures
#21,254

COLLINS, GALLOWAY & MURPHY
ATTORNEYS AT LAW
958 DAUPHIN STREET
MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
JAMES H. LACKEY

October 24, 1968

P. O. BOX 4492
TELEPHONE
432-0568
AREA CODE 205

Mrs. Alice J. Duck, Clerk
Circuit Court
Baldwin County Court House
Bay Minette, ALABAMA

Re: Floyd Sheldon
Vs: W. S. Newell, Inc., et al

Dear Mrs. Duck:

I enclose herewith an answer to be filed in the above referred to matter. Would you please note on the bottom of this letter that the same is filed and return to me.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

By: 
Thomas M. Galloway

TMG/fs
Encl: 1

HAMILTON, BUTLER, RIDDICK & LATOUR

ATTORNEYS AND COUNSELLORS AT LAW

AMERICAN NATIONAL BANK BUILDING

P. O. BOX 1743

MOBILE, ALABAMA

36601

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1899-1958)

CABLE ADDRESS:
HAMILTONS

TELEPHONE: 432-7517
AREA CODE 205

THOMAS A. HAMILTON
CHARLES R. BUTLER
HARRY H. RIDDICK
OLIVER J. LATOUR, JR.
JAMES W. TARTLTON, III

CHARLES R. BUTLER, JR.
JOSEPH M. ALLEN, JR.
JANELLA J. WOOD

December 18, 1969

Hon. Alice J. Duck, Clerk
Circuit Court of Baldwin County,
Alabama
Baldwin County Courthouse
Bay Minette, Alabama 36507

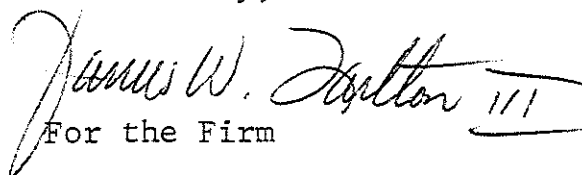
Re: Floyd Sheldon vs. W. S. Newell, Inc.
and The Travelers Indemnity Company
Circuit Court Case 8335
Our File: 21,254-HHR

Dear Mrs. Duck:

We hereby acknowledge receipt of the two checks from the Circuit Court of Baldwin County in the total amount of \$3,000.00 representing payment in full of the judgment Floyd Sheldon obtained in the above captioned matter. Please consider this letter your authority to mark this judgment "Paid In Full" on the records of the Circuit Court of Baldwin County, Alabama. If a member of our firm must personally cancel the judgment on your records, please advise and we shall attend to the cancellation of the same when one of our firm is next in Bay Minette.

Thanking you for your attention to the above, we are

Yours truly,


For the Firm

JWT:mgk

cc: Tom Galloway, Esq.

e/

HAMILTON, BUTLER, RIDDICK & LATOUR

ATTORNEYS AND COUNSELLORS AT LAW

AMERICAN NATIONAL BANK BUILDING

P. O. BOX 1743

MOBILE, ALABAMA

36601

THOMAS A. HAMILTON
CHARLES R. BUTLER
HARRY H. RIDDICK
OLIVER J. LATOUR, JR.
JAMES W. TARLTON, III

CHARLES R. BUTLER, JR.
JOSEPH M. ALLEN, JR.
JANELLA J. WOOD

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1899-1956)

CABLE ADDRESS:
HAMILTONS

TELEPHONE: 432-7617
AREA CODE 205

November 4, 1969

The Honorable Alice J. Duck, Clerk
Circuit Court of Baldwin County
Baldwin County Courthouse
Bay Minette, Alabama 36507

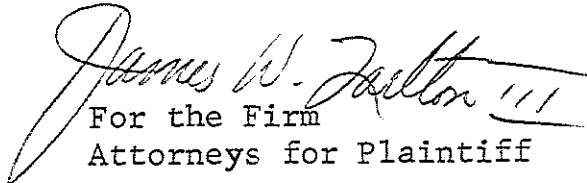
Re: Floyd Sheldon vs. W. S. Newell,
Inc. and The Travelers Indemnity
Company
Circuit Court Case 8335
Our File: 21,254-HHR

Dear Mrs. Duck:

We are enclosing herewith the original of a Motion to Produce and a Motion to Admit the Execution of Certain Documents to be filed in the above captioned case. We are this date mailing a copy of said Motions to Tom Galloway, attorney for the Defendants.

Thanking you for your attention to these matters,
we are

Yours truly,


For the Firm
Attorneys for Plaintiff

JWT:mgk
Enclosures

cc: Mr. Tom Galloway
(Motions Enclosed)

SUMMONS AND COMPLAINT

Moore Printing Co. - Bay Minette, Ala.

STATE OF ALABAMA
Baldwin County

Circuit Court, Baldwin County

No. 8335

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon W. S. Newell, Inc a corp., and The Travelers
Indemnity Company a corp., jointly and severally
.....
.....

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint

filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against W. S. Newell Inc.,
and The Travelers Indemnity Co., a corp. jointly and severally....., Defendant.....

by Floyd Sheldon
.....

....., Plaintiff.....

Witness my hand this 26..... day of Sept. 19 68

Rice J. Welch....., Clerk

FLOYD SHELDON,	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
Plaintiff,)	
	)	AT LAW
-VS-)	
W. S. NEWELL, INC., a corpora-)	
tion and THE TRAVELERS)	
INDEMNITY COMPANY, a corpora-)	
tion, jointly and severally,)	
Defendants.	)	CASE NO. _____

COUNT ONE

The Plaintiff claims of the Defendants, Five Thousand Fifty-four and 96/100 Dollars (\$5,054.96) plus interest and attorney's fees as damages for the breach of the condition of a bond made by the Defendants, W. S. Newell, Inc., as Principal and The Travelers Indemnity Company, as Surety, payable unto the State of Alabama in the sum of \$1,915,102.38, a copy of which said bond is attached hereto as Exhibit "A" and made a part hereof, which said bond was to guarantee prompt payment for those persons supplying W. S. Newell, Inc., Defendant herein with labor, materials, feed-stuffs or supplies for or in the prosecution of the work provided for in a contract dated August 3, 1964 by and between W. S. Newell, Inc., Defendant herein and The State of Alabama, a copy of which said contract is marked Exhibit "B", attached hereto and made a part hereof. Plaintiff avers that on the, to-wit, 14th day of October, 1964, he entered into a written contract with W. S. Newell, Inc. for work and labor to be performed by Plaintiff for the Defendant, W. S. Newell, Inc. on highway construction in Baldwin County, Alabama and more particularly described as Federal Aid Interstate Project No. 1-10-1(18)54, a copy of which contract is marked Exhibit "C" and attached hereto and made a part hereof. Plaintiff further avers that pursuant to his contract with the Defendant, W. S. Newell, Inc. and attached hereto as Exhibit "C", Plaintiff

removed and furnished to said Defendant a total of, to-wit, 235,540 yards of material which were removed by Plaintiff's drag line for which there is a balance due of \$5,054.96, said work and labor having been furnished by Plaintiff to said Defendant from and during the period of, to-wit, October 15, 1964 through January 9, 1965.

Plaintiff avers that the contract attached hereto as Exhibit "B" has been completed and that the State of Alabama made its final settlement with W. S. Newell, Inc. on the Federal Aid Interstate Project No. 1-10-1(18)54, Baldwin County on, to-wit, October 2, 1967.

Plaintiff avers that he did give notice as required by Code of Ala., Tit. 50, §16 to the Defendant, The Travelers Indemnity Company, said notice having been sent to said Defendant by registered mail, return receipt requested, on June 14, 1968.

Plaintiff avers that he had demanded payment from Defendants of said amounts due him which said demand was refused.

WHEREFORE, Plaintiff claims of the Defendants, the sum of Five Thousand Fifty-four and 96/100 Dollars (\$5,054.96) plus interest since February 1, 1965 and a reasonable attorney's fee all as provided for by Tit. 50, §16, Code of Ala. 1940 as amended.

HAMILTON, DENNISTON, BUTLER & RIDDICK

By James W. Hamilton III
Attorneys for Plaintiff

Plaintiff respectfully demands trial by jury.

HAMILTON, DENNISTON, BUTLER & RIDDICK

By James W. Hamilton III
Attorneys for Plaintiff

Defendants may be served
by serving:

H. R. Nelson, State Highway Director
Montgomery, Alabama

FILED

SEP 20 1968

ALICE J. DUCK CLERK
REGISTER

BOND FOR
PAYMENT OF
LABOR, MATERIALS, FEED-STUFFS OR SUPPLIES

STATE OF ALABAMA,
MONTGOMERY COUNTY.

KNOW ALL MEN BY THESE PRESENTS: That we
W. S. Newell Construction Co. &
W. S. Newell, Inc., Montgomery, Alabama, as Principal, and
THE TRAVELERS INDEMNITY COMPANY

a corporation under the laws of the State of Connecticut
and having its principal office in the City of Hartford,

Surety, are held and firmly bound unto the STATE OF ALABAMA, in the penal sum
One million nine hundred fifteen thousand
of one hundred two and 38/100 Dollars (\$ 1,915,102.38),

for the payment of which sum, well and truly to be made, we hereby bind ourselves, our
heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed our seals,
this 3rd day of August, 1964

PROVIDED, HOWEVER, that the condition of this obligation is such that whereas
W. S. Newell Construction Co. &
the above bound W. S. Newell, Inc.
have this day entered into a Contract with the said STATE OF ALABAMA, for the
building of 12.171 miles of road in Baldwin
County, known as Federal Aid Interstate Project No. I-10-1(18)54
Prop. "A"
Located from Wilcox Road east to the Florida State Line on I-10

_____, a copy of which
said Contract is hereto attached.

NOW, THEREFORE, in the event that said W. S. Newell, Inc.
as such Contractor shall promptly make payment to all persons supplying him or them
with labor, material, feed-stuffs, or supplies for or in the prosecution of the Work pro-
vided for in said Contract, then this obligation shall be null and void and of no effect, oth-
erwise to remain and be in full force and effect.

W. S. Newell Construction Co. &
PROVIDED, further, in the event that the said W. S. Newell, Inc.

_____, as such Contractor shall fail to make
prompt payment to all persons supplying him or them with labor, materials, feed-stuffs,
or supplies for or in the prosecution of the work provided for in such contract, the above
bound The Travelers Indemnity Company

as Surety shall be liable for the payment of such labor, materials, feed-stuffs or supplies
and for the payment of reasonable attorney's fees incurred by successful claimants or

Exhibit A

plaintiffs in suits on said bond as provided in Title 50, Section 16, Code of Alabama 1940, as amended, Recompiled 1958.

PROVIDED, further, that said Contractor and Surety hereby agree and bind themselves to the mode of service described in Title 50, Section 16, Code of Alabama 1940, as amended, Recompiled 1958, and consent that such service shall be the same as personal service on said Contractor or Surety.

Upon the completion of said contract pursuant to its terms, if any funds remain due on said Contract, the same shall be paid to said Principal or Surety.

The decision of said State Highway Director upon any question connected with the execution of said Contract, or any failure or delay in the prosecution of the Work by said Principal or Surety, shall be final and conclusive.

The proposal, Specifications and the Contract hereinbefore referred to, and the Bond For Performance Of The Work executed under the provisions of Title 50, Section 16, Code of Alabama 1940, Recompiled 1958, are made a part of this obligation and this instrument is to be construed in connection therewith.

WITNESS our hands and seals, this 3rd day of August, 19 64

(L. S.) W. S. NEWELL CONST. Co. (L. S.)

(Contractor) By J. H. J. Lewis

W. S. NEWELL, INC.

By J. H. J. Lewis

(Surety)

Countersigned by Alabama Resident
Agent for Surety;

J. D. J. G. G. G.
Name

Montgomery, Ala.
Address

The Travelers Indemnity Company

By: J. D. J. G. G.
ATTORNEY-IN-FACT

I hereby certify that I am the custodian of contract records of the State Highway Department and that this is a true and correct copy of the original bond now on file in office of Highway Department at Montgomery, Alabama.

BY: B. J. B.
Federal Aid Engineer

CONTRACT

THIS AGREEMENT made and entered into this 3rd day of August,
One Thousand Nine Hundred and Sixty-four, by and between the
STATE OF ALABAMA, party of the first part (hereinafter called the State) and
W. S. Newell Construction Co. &
W. S. Newell, Inc., Montgomery, Ala. party of the second part
(hereinafter called Contractor), WITNESSETH:

WHEREAS, the State desires the improvement and construction of a certain road hereinafter more particularly described, and the Contractor desires to furnish and deliver all the material and to do and perform all the work and labor for the said purpose;

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and the sum of one dollar (\$1.00) by each of the parties to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. The Contractor promises and agrees to furnish and deliver all the material and to do and perform all the work and labor required to be furnished and delivered, done and performed in and about the improvement and construction of a road in

Baldwin County, known as Federal Aid Interstate Project Number I-10-1(18)54
Prop. 1A, same to be a constructing the Grading and Drainage from Wilcox Road east to the Florida State Line on I-10. Length - 12.171 miles
in strict and entire conformity with the provisions of the Contract, and the Notice to Contractors and the Proposal, and the Plans and Specifications (including Special Provisions) prepared (or approved) by the State Highway Director (or an Assistant Engineer), the originals of which are on file in the office of the State Highway Department, and which said Plans and Specifications and the Notice to Contractors and the Proposal are hereby made a part of this Agreement as fully and to the same effect as if the same had been set forth at length in the body of this Agreement.

2. The State agrees and promises to pay to the Contractor for said Work, when completed in accordance with the Provisions of this Contract, the price as set forth in the Three million eight hundred thirty
said Proposal, amounting approximately to thousand two hundred four and 76/100
dollars (\$3,830,204.76), payments to be made as provided in said Specifications upon presentation of the proper certificates of the State Highway Director or his representatives and upon the terms set forth in the said Specifications and pursuant to the terms of this Contract.

3. The said work shall be done in accordance with the laws of the State of Alabama under the direct supervision, and to the entire satisfaction of the State Highway Director, subject at all times to the inspection and approval of the United States Secretary of Commerce, or his agents, and in accordance with the rules and regulations made pursuant to the Federal Highway Act and Acts of the Federal Congress, amendatory and/or supplementary thereto.

4. The decision of said State Highway Director upon any question connected with the execution of this Agreement or any failure or delay in the prosecution of the Work by the said Contractor shall be final and conclusive.

Exhibit B

IN WITNESS WHEREOF, THE STATE OF ALABAMA has caused these presents

to be executed by H. L. Nelson, State Highway Director

and W. S. Newell Construction Co. & W. S. Newell, Inc.

_____, the Contractor,
has hereto set his hand and seal this the day and year above written.

STATE OF ALABAMA,

By H. L. Nelson

State Highway Director.

Title

W. S. Newell Construction Co. &

(X) W. S. Newell, Inc.
Contractor

Signed, sealed and delivered in the presence of

(X) James L. Linton By (X) H. L. Nelson
Member of Firm

James L. Linton By H. L. Nelson

The within and foregoing contract is hereby approved on this the 5th day

of August 1964

George C. Wallace
Governor of Alabama

I hereby certify that I am the custodian of contract records of the State Highway Department and that this is a true and correct copy of the original contract now on file in office of Highway Department at Montgomery, Alabama.

BY B. L. Bracy
Federal Aid Engineer

W. S. NEWELL, INC.

RT. 6 - BOX 186

MONTGOMERY, ALABAMA

October 14, 1964

Floyd Shelton,
Birmingham, Mississippi

Dear Sir:

W. S. Newell, Inc., Montgomery, Alabama agrees to give Mr. Shelton's Drag Line to the job in Baldwin County Alabama, I-10-1(18)54, free of charge, for use on this project by W. S. Newell, Inc.

W. S. Newell, Inc., agrees to pay Mr. Shelton at the rate of \$0.00 per cu. yd. monthly for total yardage which his drag line removes from the portion of the job in which he operates. Determination of the yardage paid for to be the same as the State pays W. S. Newell, Inc., on sand.

W. S. Newell, Inc., will furnish oil and fuel for operation of drag line, and will pay drag line operator and the oiler on their regular payroll, same to be deducted from yardage paid Mr. Shelton monthly.

W. S. Newell
W. S. Newell, Inc.
W. S. Newell, President

Floyd Shelton
Floyd Shelton,
Owner - Drag Line

John H. Rogers
Witness

Exhibit C

SUMMONS AND COMPLAINT

Moore Printing Co. - Bay Minette, Ala.

STATE OF ALABAMA
Baldwin County

Circuit Court, Baldwin County

No. 8935

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon ~~W. S. Newell, Inc a corp., and The Travelers~~
~~Indemnity Company a corp., jointly and severally~~

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint

filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against ~~W. S. Newell Inc.,~~
~~and The Travelers Indemnity Co., a corp. jointly and severally~~ Defendant.....

by ~~Floyd Sheldon~~....., Plaintiff.....

Witness my hand this 20 day of Sept. 19 68

Blair J. French Clerk

FLOYD SHELDON,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
-vs-	)	AT LAW
W. S. NEWELL, INC., a corpora-)	
tion and THE TRAVELERS)	
INDEMNITY COMPANY, a corpora-)	
tion, jointly and severally,)	
Defendants.	)	CASE NO. _____

COURT ONE

The Plaintiff claims of the Defendants, Five Thousand Fifty-four and 96/100 Dollars (\$5,054.96) plus interest and attorney's fees as damages for the breach of the condition of a bond made by the Defendants, W. S. Newell, Inc., as Principal and The Travelers Indemnity Company, as Surety, payable unto the State of Alabama in the sum of \$1,915,102.38, a copy of which said bond is attached hereto as Exhibit "A" and made a part hereof, which said bond was to guarantee prompt payment for those persons supplying W. S. Newell, Inc., Defendant herein with labor, materials, feed-stuffs or supplies for or in the prosecution of the work provided for in a contract dated August 3, 1964 by and between W. S. Newell, Inc., Defendant herein and The State of Alabama, a copy of which said contract is marked Exhibit "B", attached hereto and made a part hereof. Plaintiff avers that on the, to-wit, 14th day of October, 1964, he entered into a written contract with W. S. Newell, Inc. for work and labor to be performed by Plaintiff for the Defendant, W. S. Newell, Inc. on highway construction in Baldwin County, Alabama and more particularly described as Federal Aid Interstate Project No. 1-10-1(18)54, a copy of which contract is marked Exhibit "C" and attached hereto and made a part hereof. Plaintiff further avers that pursuant to his contract with the Defendant, W. S. Newell, Inc. and attached hereto as Exhibit "C", Plaintiff

removed and furnished to said Defendant a total of, to-wit, 235,540 yards of material which were removed by Plaintiff's drag line for which there is a balance due of \$5,054.96, said work and labor having been furnished by Plaintiff to said Defendant from and during the period of, to-wit, October 15, 1964 through January 9, 1965.

Plaintiff avers that the contract attached hereto as Exhibit "B" has been completed and that the State of Alabama made its final settlement with W. S. Newell, Inc. on the Federal Aid Interstate Project No. 1-10-1(18)54, Baldwin County on, to-wit, October 2, 1967.

Plaintiff avers that he did give notice as required by Code of Ala., Tit. 50, §16 to the Defendant, The Travelers Indemnity Company, said notice having been sent to said Defendant by registered mail, return receipt requested, on June 14, 1968.

Plaintiff avers that he had demanded payment from Defendants of said amounts due him which said demand was refused.

WHEREFORE, Plaintiff claims of the Defendants, the sum of Five Thousand Fifty-four and 96/100 Dollars (\$5,054.96) plus interest since February 1, 1965 and a reasonable attorney's fee all as provided for by Tit. 50, §16, Code of Ala. 1940 as amended.

HAMILTON, DENNISTON, BUTLER & RIDDICK

By James W. Hamilton
Attorneys for Plaintiff

Plaintiff respectfully demands trial by jury.

HAMILTON, DENNISTON, BUTLER & RIDDICK

By James W. Hamilton
Attorneys for Plaintiff

Defendants may be served
by serving:

H. R. Nelson, State Highway Director
Montgomery, Alabama

FILED

SEP 20 1968

ALICE J. DUCK

CLERK
REGISTER

**BOND FOR
PAYMENT OF
LABOR, MATERIALS, FEED-STUFFS OR SUPPLIES**

STATE OF ALABAMA,
MONTGOMERY COUNTY.

KNOW ALL MEN BY THESE PRESENTS: That we
W. S. Newell Construction Co. &
W. S. Newell, Inc., Montgomery, Alabama, as Principal, and
THE TRAVELERS INDEMNITY COMPANY

a corporation under the laws of the State of Connecticut
and having its principal office in the City of Hartford,
Connecticut, as

Surety, are held and firmly bound unto the STATE OF ALABAMA, in the penal sum
One million nine hundred fifteen thousand
of one hundred two and 38/100 Dollars (\$ 1,915,102.38),

for the payment of which sum, well and truly to be made, we hereby bind ourselves, our
heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed our seals,
this 3rd day of August, 1964

PROVIDED, HOWEVER, that the condition of this obligation is such that whereas
W. S. Newell Construction Co. &
the above bound W. S. Newell, Inc.
have this day entered into a Contract with the said STATE OF ALABAMA, for the
building of 12.171 miles of road in Baldwin
County, known as Federal Aid Interstate I-10-1(18)54
Project No. Prop. "A"
Located from Wilcox Road east to the Florida State Line on I-10

said Contract is hereto attached. _____, a copy of which

W. S. Newell Construction Co. &
W. S. Newell, Inc.
NOW, THEREFORE, in the event that said _____
as such Contractor shall promptly make payment to all persons supplying him or them
with labor, material, feed-stuffs, or supplies for or in the prosecution of the Work pro-
vided for in said Contract, then this obligation shall be null and void and of no effect, oth-
erwise to remain and be in full force and effect.

W. S. Newell Construction Co. &
W. S. Newell, Inc.
PROVIDED, further, in the event that the said _____

_____, as such Contractor shall fail to make
prompt payment to all persons supplying him or them with labor, materials, feed-stuffs,
or supplies for or in the prosecution of the work provided for in such contract, the above

bound The Travelers Indemnity Company
as Surety shall be liable for the payment of such labor, materials, feed-stuffs or supplies
and for the payment of reasonable attorney's fees incurred by successful claimants or

Exhibit A

plaintiffs in suits on said bond as provided in Title 50, Section 16, Code of Alabama 1940, as amended, Recompiled 1958.

PROVIDED, further, that said Contractor and Surety hereby agree and bind themselves to the mode of service described in Title 50, Section 16, Code of Alabama 1940, as amended, Recompiled 1958, and consent that such service shall be the same as personal service on said Contractor or Surety.

Upon the completion of said contract pursuant to its terms, if any funds remain due on said Contract, the same shall be paid to said Principal or Surety.

The decision of said State Highway Director upon any question connected with the execution of said Contract, or any failure or delay in the prosecution of the Work by said Principal or Surety, shall be final and conclusive.

The proposal, Specifications and the Contract hereinbefore referred to, and the Bond For Performance Of The Work executed under the provisions of Title 50, Section 16, Code of Alabama 1940, Recompiled 1958, are made a part of this obligation and this instrument is to be construed in connection therewith.

WITNESS our hands and seals, this 3rd day of August, 1968

(L. S.) W. S. NEWELL CONST. Co. (L. S.)
(Contractor)

By J. H. A. J. Newell

W. S. NEWELL, INC.

By J. H. A. J. Newell

(Surety)

Countersigned by Alabama Resident
Agent for Surety;

J. Dickey J. Anderson
Name

Montgomery, Ala.
Address

The Travelers Indemnity Company

By: J. Dickey J. Anderson
ATTORNEY-IN-FACT

I hereby certify that I am the custodian of contract records of the State Highway Department and that this is a true and correct copy of the original bond now on file in office of Highway Department at Montgomery, Alabama.

BY: B. Z. Brown
Federal Aid Engineer

CONTRACT

THIS AGREEMENT made and entered into this 3rd day of August,
One Thousand Nine Hundred and Sixty-four, by and between the
STATE OF ALABAMA, party of the first part (hereinafter called the State) and
W. S. Newell Construction Co. &
W. S. Newell, Inc., Montgomery, Ala. party of the second part
(hereinafter called Contractor), WITNESSETH:

WHEREAS, the State desires the improvement and construction of a certain road hereinafter more particularly described, and the Contractor desires to furnish and deliver all the material and to do and perform all the work and labor for the said purpose;

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and the sum of one dollar (\$1.00) by each of the parties to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. The Contractor promises and agrees to furnish and deliver all the material and to do and perform all the work and labor required to be furnished and delivered, done and performed in and about the improvement and construction of a road in

Baldwin County, known as Federal Aid Interstate Project Number I-10-1(18)54

Prop. 1A, same to be a constructing the Grading and Drainage from Wilcox Road east to the Florida State Line on I-10. Length - 12.171 miles

in strict and entire conformity with the provisions of the Contract, and the Notice to Contractors and the Proposal, and the Plans and Specifications (including Special Provisions) prepared (or approved) by the State Highway Director (or an Assistant Engineer), the originals of which are on file in the office of the State Highway Department, and which said Plans and Specifications and the Notice to Contractors and the Proposal are hereby made a part of this Agreement as fully and to the same effect as if the same had been set forth at length in the body of this Agreement.

2. The State agrees and promises to pay to the Contractor for said Work, when completed in accordance with the Provisions of this Contract, the price as set forth in the Three million eight hundred thirty said Proposal, amounting approximately to thousand two hundred four and 76/100

dollars (\$3,830,204.76), payments to be made as provided in said Specifications upon presentation of the proper certificates of the State Highway Director or his representatives and upon the terms set forth in the said Specifications and pursuant to the terms of this Contract.

3. The said work shall be done in accordance with the laws of the State of Alabama under the direct supervision, and to the entire satisfaction of the State Highway Director, subject at all times to the inspection and approval of the United States Secretary of Commerce, or his agents, and in accordance with the rules and regulations made pursuant to the Federal Highway Act and Acts of the Federal Congress, amendatory and/or supplementary thereto.

4. The decision of said State Highway Director upon any question connected with the execution of this Agreement or any failure or delay in the prosecution of the Work by the said Contractor shall be final and conclusive.

Exhibit B

IN WITNESS WHEREOF, THE STATE OF ALABAMA has caused these presents
to be executed by H. L. Nelson, State Highway Director
and W. S. Newell Construction Co. & W. S. Newell, Inc.

_____, the Contractor,
has hereto set his hand and seal this the day and year above written.

STATE OF ALABAMA,

By H. L. Nelson

State Highway Director.

Title

W. S. Newell Construction Co. &
(X) W. S. Newell, Inc.
Contractor

Signed, sealed and delivered in the presence of

(X) James L. Nelson

By (X) W. S. Newell

Member of Firm

James L. Nelson

By W. S. Newell

The within and foregoing contract is hereby approved on this the 5th day

of August 1964

Genoa C. Wallace
Governor of Alabama

I hereby certify that I am the custodian of contract records of the State Highway Department and that this is a true and correct copy of the original contract now on file in office of Highway Department at Montgomery, Alabama.

BY B. Z. Bracy

Federal Aid Engineer

W. S. NEWELL, INC.

RT. 6 - BOX 186

MONTGOMERY, ALABAMA

October 14, 1964

Mr. Floyd Shelton,
Jacksonville, Mississippi

Dear Sir:

W. S. Newell, Inc., Montgomery, Alabama agrees to
give Mr. Shelton's Drag Line to the job in Baldwin
County Alabama, 1-10-1(18)54, free of charge, for
use on this project by W. S. Newell, Inc.

W. S. Newell, Inc., agrees to pay Mr. Shelton at the
rate of \$0.00 per cu. yd. monthly for total yardage
which his drag line removes from the portion of the
pits in which he operates. Determination of the
yardage paid for to be the same as the State pays
W. S. Newell, Inc., on sand.

W. S. Newell, Inc., will furnish oil and fuel for
operation of drag line, and will pay drag line
operator and the oiler on their regular payroll,
same to be deducted from yardage paid Mr. Shelton
monthly.

W. S. Newell
W. S. Newell, Inc.

W. S. Newell, President

Floyd Shelton
Floyd Shelton,
Owner - Drag Line

Owner - Drag Line

John H. Rogers
Witness

Exhibit C

FLOYD SHELDON,) IN THE CIRCUIT COURT OF
Plaintiff,) BALDWIN COUNTY, ALABAMA
-vs-) AT LAW
W. S. NEWELL, INC., a corpora-)
tion and THE TRAVELERS)
INDEMNITY COMPANY, a corpora-)
tion, jointly and severally,)
Defendants.) CASE NO. 8335

COUNT ONE

The Plaintiff claims of the Defendants, Five Thousand Fifty-four and 96/100 Dollars (\$5,054.96) plus interest and attorney's fees as damages for the breach of the condition of a bond made by the Defendants, W. S. Newell, Inc., as Principal and The Travelers Indemnity Company, as Surety, payable unto the State of Alabama in the sum of \$1,915,102.38, a copy of which said bond is attached hereto as Exhibit "A" and made a part hereof, which said bond was to guarantee prompt payment for those persons supplying W. S. Newell, Inc., Defendant herein with labor, materials, feed-stuffs or supplies for or in the prosecution of the work provided for in a contract dated August 3, 1964 by and between W. S. Newell, Inc., Defendant herein and The State of Alabama, a copy of which said contract is marked Exhibit "B", attached hereto and made a part hereof. Plaintiff avers that on the, to-wit, 14th day of October, 1964, he entered into a written contract with W. S. Newell, Inc. for work and labor to be performed by Plaintiff for the Defendant, W. S. Newell, Inc. on highway construction in Baldwin County, Alabama and more particularly described as Federal Aid Interstate Project No. 1-10-1(18)54, a copy of which contract is marked Exhibit "C" and attached hereto and made a part hereof. Plaintiff further avers that pursuant to his contract with the Defendant, W. S. Newell, Inc. and attached hereto as Exhibit "C", Plaintiff

removed and furnished to said Defendant a total of, to-wit, 235,540 yards of material which were removed by Plaintiff's drag line for which there is a balance due of \$5,034.96, said work and labor having been furnished by Plaintiff to said Defendant from and during the period of, to-wit, October 15, 1964 through January 9, 1965.

Plaintiff avers that the contract attached hereto as Exhibit "B" has been completed and that the State of Alabama made its final settlement with W. S. Newell, Inc. on the Federal Aid Interstate Project No. 1-10-1(18)54, Baldwin County on, to-wit, October 2, 1967.

Plaintiff avers that he did give notice as required by Code of Ala., Tit. 50, §16 to the Defendant, The Travelers Indemnity Company, said notice having been sent to said Defendant by registered mail, return receipt requested, on June 14, 1968.

Plaintiff avers that he had demanded payment from Defendants of said amounts due him which said demand was refused.

WHEREFORE, Plaintiff claims of the Defendants, the sum of Five Thousand Fifty-four and 96/100 Dollars (\$5,034.96) plus interest since February 1, 1965 and a reasonable attorney's fee all as provided for by Tit. 50, §16, Code of Ala. 1940 as amended.

HAMILTON, DENNISTON, BUTLER & RIDDICK

By

James W. Denton III
Attorneys for Plaintiff

Plaintiff respectfully demands trial by jury.

HAMILTON, DENNISTON, BUTLER & RIDDICK

By

James W. Denton III
Attorneys for Plaintiff

Defendants may be served
by serving:

H. R. Nelson, State Highway Director
Montgomery, Alabama

FILED

SEP 20 1968

ALICE J. DUCK

CLERK
REGISTER

**BOND FOR
PAYMENT OF
LABOR, MATERIALS, FEED-STUFFS OR SUPPLIES**

STATE OF ALABAMA,
MONTGOMERY COUNTY.

KNOW ALL MEN BY THESE PRESENTS: That we
W. S. Newell Construction Co. &
W. S. Newell, Inc., Montgomery, Alabama, as Principal, and
THE TRAVELERS INDEMNITY COMPANY

a corporation under the laws of the State of Connecticut
and having its principal office in the City of Hartford,
Connecticut, as

Surety, are held and firmly bound unto the STATE OF ALABAMA, in the penal sum
One million nine hundred fifteen thousand
of one hundred two and 38/100 Dollars (\$1,915,102.38),

for the payment of which sum, well and truly to be made, we hereby bind ourselves, our
heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed our seals,
this 3rd day of August, 1964

PROVIDED, HOWEVER, that the condition of this obligation is such that whereas
W. S. Newell Construction Co. &
the above bound W. S. Newell, Inc.
have this day entered into a Contract with the said STATE OF ALABAMA, for the
building of 12.171 miles of road in Baldwin
County, known as Federal Aid Interstate Project No. I-10-1(18)54
Prop. "A"
Located from Wilcox Road east to the Florida State Line on I-10

_____, a copy of which
said Contract is hereto attached.

W. S. Newell Construction Co. &
NOW, THEREFORE, in the event that said W. S. Newell, Inc.
as such Contractor shall promptly make payment to all persons supplying him or them
with labor, material, feed-stuffs, or supplies for or in the prosecution of the Work pro-
vided for in said Contract, then this obligation shall be null and void and of no effect, oth-
erwise to remain and be in full force and effect.

W. S. Newell Construction Co. &
PROVIDED, further, in the event that the said W. S. Newell, Inc.

_____, as such Contractor shall fail to make
prompt payment to all persons supplying him or them with labor, materials, feed-stuffs,
or supplies for or in the prosecution of the work provided for in such contract, the above

bound The Travelers Indemnity Company
as Surety shall be liable for the payment of such labor, materials, feed-stuffs or supplies
and for the payment of reasonable attorney's fees incurred by successful claimants or

Exhibit A

plaintiffs in suits on said bond as provided in Title 50, Section 16, Code of Alabama 1940, as amended, Recompiled 1958.

PROVIDED, further, that said Contractor and Surety hereby agree and bind themselves to the mode of service described in Title 50, Section 16, Code of Alabama 1940, as amended, Recompiled 1958, and consent that such service shall be the same as personal service on said Contractor or Surety.

Upon the completion of said contract pursuant to its terms, if any funds remain due on said Contract, the same shall be paid to said Principal or Surety.

The decision of said State Highway Director upon any question connected with the execution of said Contract, or any failure or delay in the prosecution of the Work by said Principal or Surety, shall be final and conclusive.

The proposal, Specifications and the Contract hereinbefore referred to, and the Bond For Performance Of The Work executed under the provisions of Title 50, Section 16, Code of Alabama 1940, Recompiled 1958, are made a part of this obligation and this instrument is to be construed in connection therewith.

WITNESS our hands and seals, this 3rd day of August, 19 60

(L. S.) W. S. NEWELL CONST. Co. (L. S.)

(Contractor)
By J. H. A. J. Newell

W. S. NEWELL, INC.

By J. H. A. J. Newell

(Surety)

Countersigned by Alabama Resident
Agent for Surety;

D. D. J. G. G. G. G.
Name

Montgomery, Ala.
Address

The Travelers Indemnity Company

By: D. D. J. G. G. G.
ATTORNEY-IN-FACT

I hereby certify that I am the custodian of contract records of the State Highway Department and that this is a true and correct copy of the original bond now on file in office of Highway Department at Montgomery, Alabama.

BY: B. J. B. B.
Federal Aid Engineer

CONTRACT

THIS AGREEMENT made and entered into this 3rd day of August,
One Thousand Nine Hundred and Sixty-four, by and between the
STATE OF ALABAMA, party of the first part (hereinafter called the State) and
W. S. Newell Construction Co. &
W. S. Newell, Inc., Montgomery, Ala. party of the second part
(hereinafter called Contractor), WITNESSETH:

WHEREAS, the State desires the improvement and construction of a certain road hereinafter more particularly described, and the Contractor desires to furnish and deliver all the material and to do and perform all the work and labor for the said purpose;

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and the sum of one dollar (\$1.00) by each of the parties to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. The Contractor promises and agrees to furnish and deliver all the material and to do and perform all the work and labor required to be furnished and delivered, done and performed in and about the improvement and construction of a road in

Baldwin County, known as Federal Aid Interstate Project Number I-10-1(18)54

Prop. 1111, same to be a constructing the Grading and Drainage from Wilcox Road
east to the Florida State Line on I-10. Length - 12.171 miles

in strict and entire conformity with the provisions of the Contract, and the Notice to Contractors and the Proposal, and the Plans and Specifications (including Special Provisions) prepared (or approved) by the State Highway Director (or an Assistant Engineer), the originals of which are on file in the office of the State Highway Department, and which said Plans and Specifications and the Notice to Contractors and the Proposal are hereby made a part of this Agreement as fully and to the same effect as if the same had been set forth at length in the body of this Agreement.

2. The State agrees and promises to pay to the Contractor for said Work, when completed in accordance with the Provisions of this Contract, the price as set forth in the Three million eight hundred thirty
said Proposal, amounting approximately to thousand two hundred four and 76/100

dollars (\$3,830,204.76), payments to be made as provided in said Specifications upon presentation of the proper certificates of the State Highway Director or his representatives and upon the terms set forth in the said Specifications and pursuant to the terms of this Contract.

3. The said work shall be done in accordance with the laws of the State of Alabama under the direct supervision, and to the entire satisfaction of the State Highway Director, subject at all times to the inspection and approval of the United States Secretary of Commerce, or his agents, and in accordance with the rules and regulations made pursuant to the Federal Highway Act and Acts of the Federal Congress, amendatory and/or supplementary thereto.

4. The decision of said State Highway Director upon any question connected with the execution of this Agreement or any failure or delay in the prosecution of the Work by the said Contractor shall be final and conclusive.

Exhibit B

IN WITNESS WHEREOF, THE STATE OF ALABAMA has caused these presents
to be executed by H. L. Nelson, State Highway Director

and W. S. Newell Construction Co. & W. S. Newell, Inc.

_____, the Contractor,
has hereto set his hand and seal this the day and year above written.

STATE OF ALABAMA,

By H. L. Nelson

State Highway Director.

Title

W. S. Newell Construction Co. &

(X) W. S. Newell, Inc.

Contractor

Signed, sealed and delivered in the presence of

(X) James L. Nelson

By

(X) H. L. Nelson
Member of Firm

✓ James L. Nelson

By

H. L. Nelson

The within and foregoing contract is hereby approved on this the 5th day

of August 1964

George C. Wallace
Governor of Alabama

I hereby certify that I am the custodian of contract records of the State Highway Department and that this is a true and correct copy of the original contract now on file in office of Highway Department at Montgomery, Alabama.

BY

B. L. Bracy
Federal Aid Engineer

W. S. NEWELL, INC.

RT. 6 - BOX 186
MONTGOMERY, ALABAMA

October 14, 1964

Floyd Shelton
Birmingham, Mississippi

Dear Sir:

W. S. Newell, Inc., Montgomery, Alabama agrees to lease Mr. Shelton's Drag Line to the job in Baldwin County, Alabama, I-10-1(18)54, free of charge, for use on this project by W. S. Newell, Inc.

W. S. Newell, Inc., agrees to pay Mr. Shelton at the rate of \$0.00 per cu. yd. monthly for total yardage which his drag line removes from the portion of the site in which he operates. Determination of the yardage paid for to be the same as the State pays W. S. Newell, Inc., on sand.

W. S. Newell, Inc., will furnish oil and fuel for operation of drag line, and will pay drag line operator and the oiler on their regular payroll, same to be deducted from yardage paid Mr. Shelton monthly.

W. S. Newell
W. S. Newell, Inc.
W. S. Newell, President

Floyd Shelton
Floyd Shelton,
Owner - DRAG Line

John H. Rogers
Witness

Exhibit C

FLOYD SHELDON, : IN THE CIRCUIT COURT OF
Plaintiff, :
VS: BALDWIN COUNTY, ALABAMA
W. S. NEWELL, INC., A :
Corporation, and THE TRAVELERS : AT LAW
INDEMNITY COMPANY, A Corpora-
tion, jointly and severally,
Defendants. : CASE NO. 8 3 3 5

Come now the defendants, jointly and severally, and
strike Pleas 4 and 5 as heretofore filed in this matter.

COLLINS, GALLOWAY & MURPHY

By: Thomas M. Galloway
THOMAS M. GALLOWAY
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 4th
day of June, 1969, served a copy of
the foregoing pleading on counsel for all
parties to this proceeding by mailing the
same by United States Mail, properly ad-
dressed, and first class postage prepaid.

Thomas M. Galloway

FILED

NOV 5 1969

ALICE J. DICK REC'D

FLOYD SHELDON,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
-vs-	)	AT LAW
W. S. NEWELL, INC., a corpora-)	
tion and THE TRAVELERS		
INDEMNITY COMPANY, a corporation,)	
jointly and severally,		
Defendants.	)	CASE NO. 8335

MOTION TO PRODUCE

Comes now FLOYD SHELDON, Plaintiff herein, and moves this Honorable Court to compel the Defendant to produce, in advance of the trial of the above cause, which is set for trial on November 17, 1969, the following papers or documents in their possession or under their control, which are necessary and material to the trial of said cause and contain evidence pertinent to the issues of said trial, to-wit:

1. Exhibit "A" - Bond for payment of labor, materials, feedstuffs or supplies between W. S. Newell Construction Co. and W. S. Newell, Inc., as principal, and The Travelers Indemnity Company, as surety, binding themselves unto the State of Alabama in the sum of \$1,915,102.38 dated August 3, 1964.

2. Exhibit "B" - Contract dated August 3, 1964 between State of Alabama and W. S. Newell Construction Co. and W. S. Newell, Inc. for certain material, work and labor in and about the improvement and construction of a road in Baldwin County known as Federal Aid Interstate Project No. 1-10-1(18)54 Prop. "A".

3. Exhibit "C" - Letter Contract dated October 14, 1964 between W. S. Newell, Inc. and Floyd Sheldon.

4. Letter from W. S. Newell to Mr. Kenneth E. Mathews dated October 20, 1964, including the statement in the footnote that "this agreement is necessary for presentation to Project Engineer and does not supersede Contract of October 14, 1964, @ \$0.09 per yard for material removed by Mr. Sheldon's drag line on 1-10-1-(18)54'A'", and signed by W. S. Newell, President of W. S. Newell, Inc.

If you do not have the original of said letter then produce your copy thereof.

HAMILTON, BUTLER, RIDDICK & LATOUR

BY James W. Tarlton III
Trial Attorney for Plaintiff

STATE OF ALABAMA)

COUNTY OF MOBILE)

Before me, the undersigned authority, in and for said County, in said State, personally appeared James W. Tarlton, III, who being by me first duly sworn, on oath, deposes and says that he is one of the attorneys for the Plaintiff in the above styled cause, and as such has knowledge of the facts set out in the foregoing Motion; that the papers or documents therein described contain evidence pertinent to the issues in this cause, and that they are necessary and material to a proper disposition of this cause.

James W. Tarlton III
JAMES W. TARLTON, III

Sworn to and subscribed before
me on this 4th day of November,
1969.

James J. Wood
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

FILED

NOV 5 1969

ALICE J. DUCK CLERK
REGISTER

CERTIFICATE OF SERVICE 4th

I do hereby certify that I have on this _____
day of November, 1969 served a copy of the
foregoing pleading on counsel for all parties to this
proceeding by mailing the same by United States mail,
properly addressed, with first class postage prepaid.

James W. Tarlton III
VOL 62 PAGE 388

FLOYD SHELDON,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
-vs-	)	AT LAW
W. S. NEWELL, INC., a corpora-)	
tion and THE TRAVELERS)	
INDEMNITY COMPANY, a corpora-)	
tion, jointly and severally,)	
Defendants.	)	CASE NO. 8335

MOTION TO ADMIT EXECUTION OF INSTRUMENTS

Comes now FLOYD SHELDON, Plaintiff herein, pursuant to Code of Ala., Tit. 8, §380, and requests W. S. NEWELL, INC. and THE TRAVELERS INDEMNITY COMPANY, Defendants herein, jointly and severally, to admit the execution of the instruments attached to the Complaint heretofore filed herein as Exhibits "A", "B" and "C", which said instruments are further identified below, viz:

1. Exhibit "A" - Bond for payment of labor, materials, feedstuffs or supplies between W. S. Newell Construction Co. and W. S. Newell, Inc. as principal and The Travelers Indemnity Company as surety binding themselves unto the State of Alabama in the sum of \$1,915,102.38 dated August 3, 1964.

2. Exhibit "B" - Contract dated August 3, 1964 between State of Alabama and W. S. Newell Construction Co. and W. S. Newell, Inc. for certain material, work and labor in and about the improvement and construction of a road in Baldwin County known as Federal Aid Interstate Project No. 1-10-1(18)54 Prop. "A".

3. Exhibit "C" - Letter Contract dated October 14, 1964 between W. S. Newell, Inc. and Floyd Sheldon.

4. Plaintiff further requests the Defendants, jointly and severally, to admit the execution of a letter from W. S.

Newell to Mr. Kenneth E. Mathews dated October 20, 1964, including the statement in the footnote that "this agreement is necessary for presentation to Project Engineer and does not supersede Contract of October 14, 1964, @ \$0.09 per yard for material removed by Mr. Sheldon's drag line on 1-10-1-(18)54'A'", and signed by W. S. Newell, President of W. S. Newell, Inc., a copy of which instrument is attached hereto in its entirety as Exhibit "D".

HAMILTON, BUTLER, RIDDICK & LATOUR

BY *James H. Hamilton III*
Attorneys for Plaintiff
P. O. Box 1743
Mobile, Alabama 36602

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 4
day of November, 1969, served a copy of the
foregoing pleading on counsel for all parties to this
proceeding by mailing the same by United States mail,
properly addressed, with first class postage prepaid.

James H. Hamilton III

W. S. NEWELL, INC.

RT. 6 - BOX 186
MONTGOMERY, ALABAMA

October 20, 1964

Mr. Kenneth E. Mathews,
Project Engineer
State Highway Department
Lowley, Alabama

Dear Sir:

This is to advise that W. S. Newell, Inc., Montgomery, Alabama, has rented Mr. Floyd Sheldon's "Lima" Drag-line, as of October 15, 1964, for use on Baldwin County Alabama project I-10-1(18)54"A" at the rate of \$3,000.00 per month, for removal of material from pits located on this project.

W. S. Newell, Inc., will furnish fuel and oil necessary to operate this machine and will carry his operators on W. S. Newell, Inc., regular payroll until such service is terminated by decision of W. S. Newell, Inc.

Yours very truly,

W. S. Newell

W. S. Newell, Pres.

Floyd Sheldon

Floyd Sheldon,
Owner - Drag Line

Mr. Floyd Sheldon - Owner of Drag Line

This agreement is necessary for presentation to the Project Engineer and does not supersede contract of October 14, 1964, @ \$0.09 per yard for material removed by Mr. Sheldon's drag-line on I-10-1(18)54"A".

W. S. Newell, Pres.
W. S. Newell, Inc.

W. S. Newell

EXHIBIT "D"

ORIGINAL

FLOYD SHELDON, : IN THE CIRCUIT COURT OF
Plaintiff,
VS: : BALDWIN COUNTY, ALABAMA
W. S. NEWELL, INC., A
Corporation and THE TRAVELERS : AT LAW
INDEMNITY COMPANY, A Corporation,
jointly and severally,
Defendants. : CASE NO. 8 3 3 5

Come the defendants, jointly and severally and amend
the answer as heretofore filed in this matter by adding thereto
the following:

4. And for further answer to the complaint in this
matter the defendant W. S. Newell, Inc., a Corporation, claims
of the plaintiff \$7,144.92 plus interest from the 18th day of
August 1967, which sum is due by the plaintiff to this defendant
as a result of a written agreement entered into between plaintiff
and this defendant on October 20, 1964, a copy of which is
attached hereto, marked Exhibit "A" and made a part hereof, in
which agreement the plaintiff agreed to rent his dragline to
this defendant for the sum of \$3000.00 per month for the work
as set out in said agreement. This defendant avers that it
rented the dragline for a period of three months but that it
paid to the plaintiff the sum of \$16,144.92 which payment re-
sulted in an overpayment to the plaintiff in the amount first
set out in this count all of which this defendant claims of the
plaintiff together with interest thereon.

5. The defendant W. S. Newell, Inc., a Corporation claims
of the plaintiff \$7,144.92 plus interest from the 18th day of
August 1967, as overpayment made by this defendant to the
plaintiff for rental of the plaintiff's dragline which dragline
this defendant rented from October 15, 1964 to January 9, 1965,
and for the rental of which this defendant agreed to pay the
plaintiff \$3000.00 per month all as set out by written agreement

of October 20, 1964 between the plaintiff and this defendant, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof. Plaintiff avers that it paid to the plaintiff the sum of \$16,144.92 which sum was in excess of the agreed rental and for which this defendant here claim the difference plus interest.

COLLINS, GALLOWAY & MURPHY

By: 

THOMAS M. GALLOWAY
ATTORNEYS FOR DEFENDANTS

Address of plaintiff:

Please have the Sheriff serve a copy of this upon Mr. James W. Tarlton, III, one of the attorneys for the plaintiff whose office is on the second floor of The American National Bank Building in Mobile, Alabama.

FILED

JAN 29 1969

ALICE J. DUEX CLERK
REGISTER

October 20, 1964

Mr. Kenneth E. Mathews,
Project Engineer
State Highway Department
Loxley, Alabama

Dear Sir:

This is to advise that W. S. Newell, Inc., Montgomery, Alabama, has rented Mr. Floyd Sheldon's "Lima" Drag-line, as of October 15, 1964, for use on Baldwin County Alabama project I-10-1(18)54"A" at the rate of \$3,000.00 per month, for removal of material from pits located on this project.

W. S. Newell, Inc., will furnish fuel and oil necessary to operate this machine and will carry his operators on W. S. Newell, Inc., regular payroll until such service is terminated by decision of W. S. Newell, Inc.

Yours very truly,

W. S. Newell
W. S. Newell, Pres.

Floyd Sheldon
Floyd Sheldon,
Owner - Drag Line

EXHIBIT A

1 VOL

62 PAGE 583

44-2-4-69

Wainwright no. 8335 6124

ORIGINAL

Floyd Sheldon

by

vs.

W.S. Newell, Inc.

Travelers Indemnity Co
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by service on the Plaintiff

RAY D. BOGGS

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1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a formal address, and it begins with the words "I have the honor to acknowledge the receipt of your letter of the 28th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration."

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I received a copy of the same of the command

To be served on
Hamilton, Denniston
Butler & Riddick, Attorneys
Mobile, Ala.

FLOYD SHELDON, : IN THE CIRCUIT COURT OF
± Plaintiff, :
VS: BALDWIN COUNTY, ALABAMA
W. S. NEWELL, INC., A Corpora- :
tion and THE TRAVELERS : AT LAW
INDEMNITY COMPANY, A Corpora-
tion, jointly and severally,
Defendants. : CASE NO. _____

Come the defendants, jointly and severally, and for answer to the complaint as heretofore filed in this matter say as follows:.

1. The defendants, jointly and severally, deny the allegations of the complaint.
2. The defendant W. S. Newell, Inc., a Corporation is not indebted to the plaintiff.
3. The defendant The Travelers Indemnity Company, a Corporation is not indebted to the plaintiff.

COLLINS, GALLOWAY & MURPHY

By: THOMAS M. GALLOWAY
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 24th day of Oct, 1968, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

THOMAS M. GALLOWAY

FILED

OCT 25 1968

ALICE J. DUCK CLERK
REGISTER

| | | |
|--------------------------------|---|-------------------------|
| FLOYD SHELDON, |) | IN THE CIRCUIT COURT OF |
| Plaintiff, |) | BALDWIN COUNTY, ALABAMA |
| -vs- |) | AT LAW |
| W. S. NEWELL, INC., a corpora- |) | |
| tion and THE TRAVELERS |) | |
| INDEMNITY COMPANY, a corpora- |) | |
| tion, jointly and severally, |) | |
| Defendants. |) | CASE NO. <u>8335</u> |

COUNT ONE

The Plaintiff claims of the Defendants, Five Thousand Fifty-four and 96/100 Dollars (\$5,054.96) plus interest and attorney's fees as damages for the breach of the condition of a bond made by the Defendants, W. S. Newell, Inc., as Principal and The Travelers Indemnity Company, as Surety, payable unto the State of Alabama in the sum of \$1,915,102.38, a copy of which said bond is attached hereto as Exhibit "A" and made a part hereof, which said bond was to guarantee prompt payment for those persons supplying W. S. Newell, Inc., Defendant herein with labor, materials, feed-stuffs or supplies for or in the prosecution of the work provided for in a contract dated August 3, 1964 by and between W. S. Newell, Inc., Defendant herein and The State of Alabama, a copy of which said contract is marked Exhibit "B", attached hereto and made a part hereof. Plaintiff avers that on the, to-wit, 14th day of October, 1964, he entered into a written contract with W. S. Newell, Inc. for work and labor to be performed by Plaintiff for the Defendant, W. S. Newell, Inc. on highway construction in Baldwin County, Alabama and more particularly described as Federal Aid Interstate Project No. 1-10-1(18)54, a copy of which contract is marked Exhibit "C" and attached hereto and made a part hereof. Plaintiff further avers that pursuant to his contract with the Defendant, W. S. Newell, Inc. and attached hereto as Exhibit "C", Plaintiff

removed and furnished to said Defendant a total of, to-wit, 235,540 yards of material which were removed by Plaintiff's drag line for which there is a balance due of \$5,054.96, said work and labor having been furnished by Plaintiff to said Defendant from and during the period of, to-wit, October 15, 1964 through January 9, 1965.

Plaintiff avers that the contract attached hereto as Exhibit "B" has been completed and that the State of Alabama made its final settlement with W. S. Newell, Inc. on the Federal Aid Interstate Project No. 1-10-1(18)54, Baldwin County on, to-wit, October 2, 1967.

Plaintiff avers that he did give notice as required by Code of Ala., Tit. 50, §16 to the Defendant, The Travelers Indemnity Company, said notice having been sent to said Defendant by registered mail, return receipt requested, on June 14, 1968.

Plaintiff avers that he had demanded payment from Defendants of said amounts due him which said demand was refused.

WHEREFORE, Plaintiff claims of the Defendants, the sum of Five Thousand Fifty-four and 96/100 Dollars (\$5,054.96) plus interest since February 1, 1965 and a reasonable attorney's fee all as provided for by Tit. 50, §16, Code of Ala. 1940 as amended.

HAMILTON, DENNISTON, BUTLER & RIDDICK

By James W. Hamilton III
Attorneys for Plaintiff

Plaintiff respectfully demands trial by jury.

HAMILTON, DENNISTON, BUTLER & RIDDICK

By James W. Hamilton III
Attorneys for Plaintiff

Defendants may be served
by serving:

H. R. Nelson, State Highway Director
Montgomery, Alabama

FILED

SEP 20 1968

**BOND FOR
PAYMENT OF
LABOR, MATERIALS, FEED-STUFFS OR SUPPLIES**

STATE OF ALABAMA,
MONTGOMERY COUNTY.

KNOW ALL MEN BY THESE PRESENTS: That we _____
W. S. Newell Construction Co. &
W. S. Newell, Inc., Montgomery, Alabama _____, as Principal, and

THE TRAVELERS INDEMNITY COMPANY

a corporation under the laws of the State of Connecticut
and having its principal office in the City of Hartford

as

Surety, are held and firmly bound unto the STATE OF ALABAMA, in the penal sum
One million nine hundred fifteen thousand
of one hundred two and 38/100 _____ Dollars (\$ 1,915,102.38),

for the payment of which sum, well and truly to be made, we hereby bind ourselves, our
heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed our seals,
this 3rd day of August, 1964

PROVIDED, HOWEVER, that the condition of this obligation is such that whereas
W. S. Newell Construction Co. &
the above bound W. S. Newell, Inc.
have this day entered into a Contract with the said STATE OF ALABAMA, for the

building of 12.171 miles of road in Baldwin
County, known as Federal Aid Interstate Project No. I-10-1(18)54
Prop. "A"
Located from Wilcox Road east to the Florida State Line on I-10

_____, a copy of which
said Contract is hereto attached. _____ W. S. Newell Construction Co. &

NOW, THEREFORE, in the event that said W. S. Newell, Inc.
as such Contractor shall promptly make payment to all persons supplying him or them
with labor, material, feed-stuffs, or supplies for or in the prosecution of the Work pro-
vided for in said Contract, then this obligation shall be null and void and of no effect, oth-
erwise to remain and be in full force and effect.

W. S. Newell Construction Co. &
W. S. Newell, Inc.

PROVIDED, further, in the event that the said _____

_____, as such Contractor shall fail to make
prompt payment to all persons supplying him or them with labor, materials, feed-stuffs,
or supplies for or in the prosecution of the work provided for in such contract, the above

bound The Travelers Indemnity Company
as Surety shall be liable for the payment of such labor, materials, feed-stuffs or supplies
and for the payment of reasonable attorney's fees incurred by successful claimants or

plaintiffs in suits on said bond as provided in Title 50, Section 16, Code of Alabama 1940, as amended, Recompiled 1958.

PROVIDED, further, that said Contractor and Surety hereby agree and bind themselves to the mode of service described in Title 50, Section 16, Code of Alabama 1940, as amended, Recompiled 1958, and consent that such service shall be the same as personal service on said Contractor or Surety.

Upon the completion of said contract pursuant to its terms, if any funds remain due on said Contract, the same shall be paid to said Principal or Surety.

The decision of said State Highway Director upon any question connected with the execution of said Contract, or any failure or delay in the prosecution of the Work by said Principal or Surety, shall be final and conclusive.

The proposal, Specifications and the Contract hereinbefore referred to, and the Bond For Performance Of The Work executed under the provisions of Title 50, Section 16, Code of Alabama 1940, Recompiled 1958, are made a part of this obligation and this instrument is to be construed in connection therewith.

WITNESS our hands and seals, this 3rd day of August, 19 60

(L. S.) W. S. NEWELL CONST. Co. (L. S.)

(Contractor) By J. H. J. Newell

W. S. NEWELL, INC.

By J. H. J. Newell

(Surety)

Countersigned by Alabama Resident
Agent for Surety;

J. Dickey J. Gorden
Name
Montgomery, Ala
Address

The Travelers Indemnity Company

By: J. Dickey J. Gorden
ATTORNEY-IN-FACT

I hereby certify that I am the custodian of contract records of the State Highway Department and that this is a true and correct copy of the original bond now on file in office of Highway Department at Montgomery, Alabama.

BY: B. L. Bray
Federal Aid Engineer

CONTRACT

THIS AGREEMENT made and entered into this 3rd day of August,
One Thousand Nine Hundred and Forty-four, by and between the
STATE OF ALABAMA, party of the first part (hereinafter called the State) and
W. S. Newell Construction Co. &
W. S. Newell, Inc., Montgomery, Ala. party of the second part
(hereinafter called Contractor), WITNESSETH:

WHEREAS, the State desires the improvement and construction of a certain road hereinafter more particularly described, and the Contractor desires to furnish and deliver all the material and to do and perform all the work and labor for the said purpose;

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and the sum of one dollar (\$1.00) by each of the parties to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. The Contractor promises and agrees to furnish and deliver all the material and to do and perform all the work and labor required to be furnished and delivered, done and performed in and about the improvement and construction of a road in _____

Baldwin County, known as Federal Aid Interstate Project Number I-10-1(18)54

Prop. "A", same to be a constructing the Grading and Drainage from Wilcox Road

east to the Florida State Line on I-10. Length - 12.171 miles
in strict and entire conformity with the provisions of the Contract, and the Notice to Contractors and the Proposal, and the Plans and Specifications (including Special Provisions) prepared (or approved) by the State Highway Director (or an Assistant Engineer), the originals of which are on file in the office of the State Highway Department, and which said Plans and Specifications and the Notice to Contractors and the Proposal are hereby made a part of this Agreement as fully and to the same effect as if the same had been set forth at length in the body of this Agreement.

2. The State agrees and promises to pay to the Contractor for said Work, when completed in accordance with the Provisions of this Contract, the price as set forth in the said Proposal, amounting approximately to Three million eight hundred thirty thousand two hundred four and 75/100

dollars (\$3,830,204.76), payments to be made as provided in said Specifications upon presentation of the proper certificates of the State Highway Director or his representatives and upon the terms set forth in the said Specifications and pursuant to the terms of this Contract.

3. The said work shall be done in accordance with the laws of the State of Alabama under the direct supervision, and to the entire satisfaction of the State Highway Director, subject at all times to the inspection and approval of the United States Secretary of Commerce, or his agents, and in accordance with the rules and regulations made pursuant to the Federal Highway Act and Acts of the Federal Congress, amendatory and/or supplementary thereto.

4. The decision of said State Highway Director upon any question connected with the execution of this Agreement or any failure or delay in the prosecution of the Work by the said Contractor shall be final and conclusive.

IN WITNESS WHEREOF, THE STATE OF ALABAMA has caused these presents
to be executed by H. L. Nelson, State Highway Director
and W. S. Newell Construction Co. & W. S. Newell, Inc.

_____, the Contractor,
has hereto set his hand and seal this the day and year above written.

STATE OF ALABAMA,

By H. L. Nelson

State Highway Director.

Title

W. S. Newell Construction Co. &
(X) W. S. Newell, Inc.
Contractor

Signed, sealed and delivered in the presence of

(X) James L. Nelson By (X) H. L. Nelson
Member of Firm

James L. Nelson By H. L. Nelson

The within and foregoing contract is hereby approved on this the 5th day
of August 1964

George C. Wallace
Governor of Alabama

I hereby certify that I am the custodian of contract records of the State
Highway Department and that this is a true and correct copy of the original
contract now on file in office of Highway Department at Montgomery, Alabama.

BY B. Z. Brice
Federal Aid Engineer

W. S. NEWELL, INC.

RT. 6 - BOX 186

MONTGOMERY, ALABAMA

October 14, 1964

Mr. Floyd Shelton,
Ocean Springs, Mississippi

W. S. Newell, Inc., Montgomery, Alabama agrees to
give Mr. Shelton's Drag Line to the job in Baldwin
County Alabama, I-10-1(18)54, free of charge, for
use on this project by W. S. Newell, Inc.

W. S. Newell, Inc., agrees to pay Mr. Shelton at the
rate of \$0.00 per cu. yd. monthly for total yardage
which his drag line removes from the portion of the
pits in which he operates. Determination of the
yardage paid for to be the same as the State pays
W. S. Newell, Inc., on sand.

W. S. Newell, Inc., will furnish oil and fuel for
operation of drag line, and will pay drag line
operator and the oiler on their regular payroll,
same to be deducted from yardage paid Mr. Shelton
monthly.

W. S. Newell
W. S. Newell, Inc.
W. S. Newell, President

Floyd Shelton
Floyd Shelton,
Owner - DRAG Line

John H. Rogers
Witness

SUMMONS AND COMPLAINT

Moore Printing Co. - Bay Minette, Ala.

STATE OF ALABAMA
Baldwin County

Circuit Court, Baldwin County

No. 8335

TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon W. S. Newell, Inc a corp., and The Travelers
Indemnity Company a corp., Jointly and severally

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint
filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against W. S. Newell Inc.,
and The Travelers Indemnity Co., a corp. jointly and severally, Defendant.

by Floyd Sheldon

Plaintiff.

Witness my hand this 20 day of Sept. 19 68

Alvin J. Clark, Clerk

No. 8335

Page.....

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

FLOYD SHELTON

Plaintiffs

vs.

W. S. NEWELL, INC a corp

and THE TRAVELERS ^{Defendants}
jointly and severally INDEMNITY CO.

SUMMONS AND COMPLAINT

Filed 9-20 19.68

M. S. Butler, J. Sheriff of Montgomery
County, Alabama, Claim \$1.50 each for

serving _____ process(es) and \$1.00

travel expense on each of _____

process(es) or a total of _____

Deputy Sheriff

Hamilton, Denniston, Butler & Riddick

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

Received in Office
SEP 23 1968

M. S. BUTLER, Sheriff

I have executed this summons

this 23, Sept. 19.68

by leaving a copy with

M. B. L. Bray as
Acting Dir. Highway
Dept.

M. S. Butler, Sheriff

W. L. Morris, Deputy Sheriff

COLLINS, GALLOWAY & MURPHY
ATTORNEYS AT LAW
958 DAUPHIN STREET
MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
JAMES H. LACKEY

January 28, 1969

P. O. Box 4492
TELEPHONE
432-0568
AREA CODE 205

Mrs. Alice Duck, Clerk
Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: Floyd Sheldon
Vs: W. S. Newell, Inc., et al
Case No. 8,335

Dear Mrs. Duck:

I enclose herewith an amended answer in this matter. This case is set for February 6, and although I am sending a copy of this answer to Mr. Tarlton, the attorney for the plaintiff, it is necessary that a copy of same be served upon him by the Sheriff.

Would you please file this answer and also ask the Sheriff to serve same.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

By:


Thomas M. Galloway

TMG/fs
Encls:

FLOYD SHELDON, : IN THE CIRCUIT COURT OF
Plaintiff, :
VS: : BALDWIN COUNTY, ALABAMA
W. S. NEWELL, INC., A :
Corporation and THE TRAVELERS : AT LAW
INDEMNITY COMPANY, A Corpora-
tion, jointly and severally,
Defendants. : CASE NO. 8 3 3 5

ANSWERS TO INTERROGATORIES

Comes now the defendant W. L. Newell, Inc., and for
answer to interrogatories heretofore propounded says as follows:

1. W. S. Newell, Inc., Route 6, Box 186, Montgomery,
Alabama.
 - (b) Yes.
 - (d) Corporation.
 - (f) August 1, 1961, Montgomery, Alabama.
 - (g) Road construction.
2. Yes.
3. Yes, but this was changed by contract of October
20, 1964.
 4. (a) Yes.
 - (b) Yes.
 - (c) Yes.
5. (a) No.
6. (a) Approximately 500 feet south of Station 1238+00.
 - (b) 417 ' x 417'.
 - (c) Sand.
 - (d) Dragline, Caterpillar 631 scrapers and Euclid
bottom dumps.
 - (e) October and November 1964.
 - (f) 56,120 cubic yards.
 - (g) Not known.
 - (h) Cross section measurement.

FILED

MAY 8 1969

ALICE J. DUCK

CLERK
REGISTER

- (i) No determination per day was made but was done on a monthly basis. Not done by just one person but several people involved each time. Kenneth Matthews in charge of job as Project Engineer.
 - (2) No.
 - (3) State Highway Department, Grove Hill, Alabama.
 - (4) No.
 - (5) No only monthly records.
 - (6) State Highway Department, Mobile, Alabama.
 - (7) Do not have these.
 - (8) Never given copy of records by the State only totals for pit.
- (j)
 - (1) No.
 - (2) No.
 - (4) Not known.
- (k)
 - (1) Yes.
 - (2) Yes.
 - (3) Yes.
 - (4) Destroyed.
 - (5) P. O. Box 33, Millers Ferry, Alabama.
 - (6) Do not have them.
 - (7) Destroyed after final settlement of job with the state.
- (l)
 - (1) E. S. Garrison. Not living died February 1969.
 - (2) No.
 - (3) No.
- (m)
 - (1) Euclid 17 yard Bottom Dumps. Caterpillar Model 631 scrapers also used but are not considered trucks.
 - (2) Purchased at auction.
 - (3) Struck measure 17 cubic yards, heaped 3:1 slope 20 cubic yards for Euclids.
 - (4) No.

- (n) (1) No.
- (o) (1) \$5,050.80.
 - (2) \$3,616.43.
 - (3) Wages - \$1,257.31, Fuel, etc. \$177.06.
 - (4) (a) E. E. Garrison.
 - (b) E. S. Garrison.
 - (5) Died February 1969.
 - (6) Yes.
 - (7) (a) State Highway Department.
 - (b) Not known.
 - (c) Not known.
 - (e) Not known if verified.
- (p) Yes.
- (q) (1) W. S. Newell, Inc.
 - (2) Caterpillar 631 scraper.
 - (3) October and November 1964.
 - (4) 41,666 cubic yards.
 - (5) Not kept on daily basis.
 - (6) Cross section measurements.
 - (7) No determination per day was made but was done on a monthly basis. Not done by just one person but several people involved each time. Kenneth Matthews in charge of job as project engineer.
 - (b) No.
 - (c) State Highway Department, Grove Hill, Alabama.
 - (d) No.
 - (e) No, only monthly records.
 - (f) State Highway Department, Mobile, Alabama.
 - (h) Never given copy of records by the State only total for pit.

- (8) (a) No.
- (b) No.
- (d) Not known.
- (9) (a) Yes.
- (b) Yes.
- (c) Yes.
- (d) Destroyed.
- (e) P.O. Box 33, Millers Ferry, Alabama.
- (g) Destroyed after final settlement of job with the state.
- (10) (a) E. S. Garrison. He died February 1969.
- (b) No.
- (c) No.
- (11) (a) Caterpillar 631 scrapers used are not considered trucks.
- (b) Burford Equipment Company, Montgomery, Ala.
- (c) Caterpillar 631 scraper - struck 21 cubic yards. Heaped 30 cubic yards.
- (d) Not built up.
- (12) (a) Yes.
- (b) Scraper has more capacity than bottom dump.

7. Due to the fact that a number of answers relative to this question are exactly the same as answers to question 6 the same have not again been set out unless different.

- (a) 200 feet right of station 1258+00.
- (b) 5.2 acres.
- (c) Sand.
- (d) Dragline and Euclid Bottom dumps.
- (e) No record of exact dates - month of November 1964 and December 1964.
- (f) 57,505 cubic yards.

(o) (1) \$5,175.45.

(2) Our records show deductions combined for pits #4 and #5 and we are unable to separate according to pits.

(p) No.

8. Due to the fact that a number of answers relative to this question are exactly the same as answers to question 6 the same have not again been set out unless different.

(a) 280 feet right of station 1277+50.

(b) 6.7 acres.

(c) Sand.

(d) Dragline, Caterpillar 631 scrapers and Euclid Bottom Dumps.

(e) Exact dates not known. December 1964 and January 1965.

(f) 65,763 cubic yards

(o) (1) \$5,918.67.

(2) Our records show deductions combined for pits #4 and #5 and we are unable to separate according to pits.

(p) Yes.

(q) (1) W. S. Newell, Inc.

(2) Caterpillar 631 scrapers.

(3) December 1964 and January 1965.

(4) 95,005 cubic yards.

(11) (a) Caterpillar 631 scrapers used are not considered trucks.

(b) Burford Equipment Co., Montgomery, Ala.

(c) Struck 21 cubic yards

Heaped 30 cubic yards

(d) Not built up.

(12) (a) Yes.

(b) Scraper has more capacity than a bottom dump.

9. E. S. Garrison, Died February 1969.

10. No.

11. # 4.

12. Records not kept on daily basis for cubic yards.

13. Pit #20 - 97,786

Pit # 4 - 57,505

Pit # 5 -160,768

14. Sheldon paid \$16,144.92.

15. (a) Pit #20 and Pit #5.

(b) Records not kept on a daily basis for cubic yards.

(c) Yes.

16. (a) State has these records.

(b) State has these records.

(c) Yes.

(2) (a) Made by a number of state employees.

(b) One is now an employee, David Najors.

(c) Total cubic yards removed by plaintiff and total cubic yards removed by defendant each month.

(d) We can't locate records showing cubic yards removed for periods ending 11-13-64; 12-13-64 and 1-9-65. We do have a letter showing total cubic yards removed and enclose copy.

(e) We have original letter stating the total cubic yards removed in our Montgomery office files.

(f) Copy attached.

(d) Pit #20 56,120

Pit # 5 65,763

(e) \$10,969.47.

(f) No.

17. (a) No.

(b) No.

18. No.

19. See attached however final contract was on monthly basis.

W. S. NEWELL, INC.

By: W. S. Newell

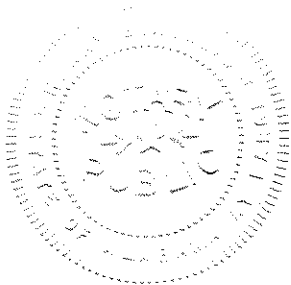
STATE OF ALABAMA:

COUNTY OF MONTGOMERY:

Before me the undersigned authority in and for said State and County, personally appeared W. S. Newell, who is known to me individually and as President of W. S. Newell, Inc., who upon oath deposes and says that the answers to the foregoing interrogatories are to his best knowledge, information and belief true and correct.

Sworn and subscribed to before me on this the 25th day of April, 1969.

Henry E. Willis
Notary Public, Montgomery County, Alabama.



CERTIFICATE OF SERVICE

I do hereby certify that I have on this 1st day of May, 1969, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

Sam H. Lachey

WILLIAM S. NEWELL
PRESIDENT

PHONE: 262-6553

W. S. NEWELL, INC.

RT. 6 - BOX 186
MONTGOMERY, ALABAMA

FLOYD SHELDON - DRAG LINE
PIT #5 - I-10-1(18)54
Dec. 14, 1964 thru Jan. 9, 1965

| | | | |
|--------|---|------------|------------|
| Jan 12 | Yardage excavated per X-Section - 40,714 @ \$0.09 | | \$3,664.26 |
| | LESS: | | |
| | Operator wages 12-14 thru 1-9 (1964) | \$ 666.00 | |
| | Oiler-Laborer 12-13 " 12-14 (18') | 32.85 | 698.85 |
| | Payroll - Dec 14 - Jan 9 | 698.85 | \$2,965.41 |
| | " Nov 14 - Dec 13 | 1,195.09 | |
| | " Oct 15 - Nov 13 | 1,257.31 | |
| | Total wages paid | \$3,151.25 | |
| | Payroll Tax on \$3,151.25 @ 12% | | 378.15 |
| | | | \$2,587.26 |
| | LESS: | | |
| Dec 18 | 5 Gal Antifreeze @ \$1.56 | 7.80 | |
| Jan 5 | 1 - 35 lb Torcia #150 | 7.70 | |
| 9 | 165 Ft VHS Cable 7/8" | 78.89 | |
| 15 | 242 Gal Gasoline @ .254 | 61.47 | 155.86 |
| | | | \$2,431.40 |
| | Move Line Drag Line from Job I-10-1(18)54 | | 300.00 |
| | BALANCE DUE FLOYD SHELDON - - - - - | | \$2,131.40 |

cc:
Floyd Sheldon

WILLIAM S. NEWELL
PRESIDENT

PHONE: 262-6858

W. S. NEWELL, INC.
RT. 6 - BOX 186
MONTGOMERY, ALABAMA

FLOYD SHELDON - DRAG LINE
PIES #4 & #5 - I-10-1(18)54
Nov. 14, thru Dec. 13, 1964

| | | | |
|--------|---|--------------|-----------------|
| Dec 13 | Yardage excavated per X-Section - 71,636 @ \$0.09 | \$6,447.24 | |
| | LESS: | | |
| | Operator wages 11-16 thru 12-12 (211') | \$ 719.25 | |
| | Oiler-Laborer " " " (235') | 475.84 | <u>1,195.09</u> |
| | LESS: | | \$5,252.15 |
| Nov 16 | 1 - Drum DA Lithium | 31.20 | |
| 27 | 5 Gal Anti-freeze @ \$1.56 | 7.80 | |
| Dec 7 | Telephone Call - W.S.N. Montgomery | 1.55 | |
| | 1 - 35 Lb SA #2 Grease | 7.35 | |
| | 1 - 35 Lb Torcia #150 | 7.70 | |
| 12 | 32 Qts R. P. M. Oil @ \$1.30 gal | 10.40 | |
| | 337 Gal Gasoline @ .254 | <u>85.60</u> | <u>151.60</u> |
| | BALANCE DUE FLOYD SHELDON - - - - - | | \$5,100.55 |

cc:
Floyd Sheldon

WILLIAM S. NEWELL
PRESIDENT

PHONE: 262-6858

W. S. NEWELL, INC.
RT. 6 - BOX 186
MONTGOMERY, ALABAMA

NEWELL PIT - T-10-1(18)54
FLOYD SHELTON - DRAG LINE
Oct. 15, thru Nov. 13, 1964

Nov 13 Yardage excavated per X-Section - 56,094 @ \$0.09 \$5,048.46

LESS:

Operator wages 10-15 thru 11-14 (245') \$ 831.00
Oiler-Laborer 10-19 " 11-14 (213') 426.31 1,257.31
\$3,791.15

LESS:

Oct 28 80 ft Drag Line Cable, 1-1/8" .95 \$ 76.00
21 2 Hrs Welders Service 3.00 6.00
Nov 7 10 lb Welding Rod, 5/32" .24 2.40
5 lb Welding Rod, 3/16" .24 1.20
20 lb Welding Rod, 5/32" IH .28 5.60
11 1 cyl Oxygen 7.38
1 cyl Acetylene 6.60
14 283 gal Gasoline (Pick-Up) .254 71.82 177.06
BALANCE DUE FLOYD SHELTON - - - - - \$3,614.09

cc:
Floyd Shelton

11/13/64
Paid - OK #1098
W. S. N. Const. Co.

W. S. Newell Const Co. &

W. S. Newell Inc.

Rt. 1, Box 186

Montgomery, Ala.

Re: Borrow Pits

#20, #4, #5

I-10-1(18)54 "A"

Pit #20 (Newell Pit)

Estimate ending 11-12-64 you moved approx.
97,786 cu. yds.

269 ^{97,786} Approx 41,666 yds were moved by ~~scrapers~~ ^{scrapers} and approx 56,094 yds was loaded by drag line.

The total quantity from the pit was 97,786 yds.

Pit #4

Est. ending 11-12-64 approx. 5,718 yds matl. was moved.

Est. ending 12-12-64 approx 37,686 yds was moved.

57,705
45,404

The final quantity of the pit was 11,101
57,505 cu. yds.

April 5, 1963

Sheet #2
of 2

Pit #5

Estimate ending 12-12-64 Approx 33,950 yds.
moved all loaded by dragline

Estimate ending 1-12-65 was approx. 75,714
yds. For a total of 109,664 cu. yds. *

Approx 43,901 cu. yds. was moved by ~~scrapers~~
and approx. 31,813 cu. yds. was loaded by dragline.
The bal. of the matl. that was moved
from this pit was (51,104) yds. for
a total of 160,768 cu. yds.

All above quantities were taken from
monthly estimate cross sections.

Hoping this is the information that
you wish.

Lenneth E. Mathews
Proj. Engr.

CASE

| | <u>Dragline</u> | <u>Scrapers</u> | <u>Total</u> |
|----------|-----------------|-----------------|--------------|
| 12-12-64 | 33,950 | | 33,950 |
| 1-12-65 | 31,813 | 43,901 | 75,714 |
| Bal. | | 51,104 | 51,104 |
| | 65,763 | 95,005 | 160,768 |

| | | |
|-------------------------------|---|-------------------------|
| FLOYD SHELDON, |) | IN THE CIRCUIT COURT OF |
| Plaintiff, |) | BALDWIN COUNTY, ALABAMA |
| -vs- |) | AT LAW |
| W. S. NEWELL, INC., a |) | |
| Corporation and THE TRAVELERS |) | |
| INDEMNITY COMPANY, a Corpora- |) | |
| tion, jointly and severally, | | |
| Defendants. |) | CASE NO. 8,335 |

INTERROGATORIES TO DEFENDANT

Comes now the Plaintiff in the above styled cause, and desiring the testimony of W. S. Newell, Inc., Defendant herein, propounds the following interrogatories to be answered separately and severally in the manner and form provided by law, viz:

1 (a) State your correct name and business address.

(b) Is your name correctly stated in the Complaint filed in this cause.

(c) If you state that your correct name is not correctly stated, then state the correct name that you could be designated as a party plaintiff or a party defendant in an action at law;

(1) At the time the matters and things made the basis of this suit occurred;

(2) At the time you answer these interrogatories.

(3) At the time the suit herein was filed.

(d) State whether you are a person, firm or corporation.

(e) If you state you are a partnership, then state the name of each and every partner composing said partnership, and the name under which the partnership does business.

(f) If you state that you are a corporation, state on what date you were incorporated and what place.

(g) State what business, or businesses you were engaged in, from, to-wit, August 3, 1964 to and including the 15th day of February, 1965.

2. Did you on or about August 3, 1964 execute a contract with the State of Alabama to perform certain work on Federal Aid Interstate Project No. 1-10-1(18) 54 in Baldwin County, Alabama, a copy of which said contract was attached as Exhibit B to the Complaint heretofore filed herein?

3. Did you on or about October 14, 1964 execute a written contract with Plaintiff, Floyd Sheldon, whereby Floyd Sheldon was to be paid the sum of \$.09 per cubic yard for the total yardage which his drag line removed from the portion of the pits in which he operated, a copy of which said contract was attached as Exhibit C to the Complaint heretofore filed herein?

4. Was the drag line of Plaintiff used in the following pits?

(a) Pit #20

(b) Pit #4

(c) Pit #5

5. (a) Was the drag line for Plaintiff used in any other pits than mentioned in the preceding question?

(b) If your answer to the foregoing interrogatory is in the affirmative, please state which additional pits said drag line operated.

6. In regard to pit #20, please state the following:

(a) Where said pit was located.

(b) The dimension of said pit.

(c) The nature or substance of material removed from this pit.

(d) How the material was removed from this pit.

(e) The inclusive dates on which Plaintiff's drag line operated on this pit.

(f) The total number of cubic yards removed by Plaintiff's drag line from this pit.

(g) The total number of cubic yards removed per day.

(h) How the number of cubic yards removed was determined.

(i) (1) Who made the determination of how many cubic yards were removed per day?

(2) Was this person an employee of yours at that time?

(3) What is the present address of said person?

(4) Is said person presently an employee of yours?

(5) Was a daily record of the number of cubic yards removed from said pit by said person maintained?

(6) Where are said records presently located?

(7) Please attach a copy of said records if you will do so without the necessity of Plaintiff filing a Motion to Produce said records.

(8) If you do not have a copy of said records, please explain what happened to them.

(j) (1) Was Carroll Carlton your superintendent at this pit?

(2) Did he maintain a daily count of the number of cubic yards removed from this pit?

(3) If your answer to the preceding interrogatory is in the affirmative, where are such records located at

this time.

(4) What is Carroll Carlton's present address?

(k) (1) Was John Rogers your superintendent on this job?

(2) Did he keep a load count on all jobs?

(3) Did he keep a daily load count on this job?

(4) Where are said records located at this time?

(5) What is the present address of John Rogers?

(6) Please attach a copy of said records maintained by John Rogers if you will do so without a Motion to Produce being filed by Plaintiff.

(7) If you do not have said records, please indicate what happened to them.

(1) (1) Please state the name of your office manager on said job and if he is still an employee of yours.

(2) Did he check the daily load count with Plaintiff herein on this pit?

(3) Did he maintain records of the load count on this pit?

(4) If your answer to the foregoing question is in the affirmative, please state where said records are located.

(5) Please attach a copy of said records to your answer if you will do so without a Motion to Produce being filed.

(6) If you do not have a copy of said records, please explain why not.

(m) (1) What type trucks were used to haul said sand or other material from this pit?

(2) From where were said trucks obtained?

(3) What was the load capacity of these trucks?

(4) Was the load capacity on the sand removed from this pit by these trucks modified by building up the sides of the trucks in any manner.

(n) (1) Was the cubic yardage per load of sand removed from this pit different from the cubic yardage per load removed from pit #4 and 5?

(2) If your answer to the foregoing is in the affirmative, please explain the reason for the difference.

(o) In connection with the amount of money paid to Plaintiff by you or earned by Plaintiff for sand or other material removed from this pit only, please state:

(1) The total amount of cash for which Plaintiff was credited by you for sand or other material removed from this pit before any deductions for expenses, etc.

(2) The total amount of cash paid by you to Plaintiff for sand or other material removed from this pit after any deductions for expenses, etc.

(3) Please itemize what deductions you made before making payment to Plaintiff for sand or other material removed from this pit by Plaintiff.

(4) Who made the determination of how much money Plaintiff was entitled to be paid for on sand or other material removed from this pit.

(a) Before deductions for expenses, etc.

(b) After deductions for expenses, etc.

(5) Please state the name and present address

of the person named in the preceding interrogatory.

(6) Was said person furnished a written record or report of the number of cubic yards of sand or other material removed from this pit by Plaintiff.

(7) If your answer to the foregoing interrogatory is in the affirmative, please state:

(a) From whom did said person acquire this report.

(b) Where said report is at the present time.

(c) If you did not retain a copy of said report, please explain what happened to it.

(d) Please attach a copy of said report or memorandum to your answer if you will do so without the necessity of Plaintiff filing a Motion to Produce.

(e) Was this written record verified with Plaintiff prior to payment? If so, please give the names and present addresses of each person who verified the records with Plaintiff.

(p) Was any material removed from this pit by any person other than Plaintiff's drag line?

(q) If your answer to the preceding interrogatory is in the affirmative, please state:

(1) Who else worked said pit?

(2) The method by which said material was removed.

(3) The inclusive dates on which said material was removed.

(4) The total number of cubic yards removed by said method.

(5) The total number of cubic yards removed

each day.

(6) How the number of cubic yards removed were determined.

(7) (a) Who made the determination of how many cubic yards were removed per day?

(b) Was this person an employee of yours at this time?

(c) What is the present address of said person?

(d) Is this person presently an employee of yours?

(e) Was a daily record of the number of cubic yards removed from said pit by said person maintained?

(f) Where are said records presently located?

(g) Please attach a copy of said records if you will do so without the necessity of Plaintiff filing a Motion to Produce said records.

(h) If you do not have a copy of said records, please explain what happened to them.

(8) (a) Was Carroll Carlton your superintendent at this pit?

(b) Did he maintain a count each day?

(c) If your answer to the preceding interrogatory is in the affirmative, where are such records located at this time.

(d) What is Carroll Carlton's present address?

(9) (a) Was John Rogers your superintendent on this job?

(b) Did he keep a load count on all jobs?

(c) Did he keep a daily load count on this job?

(d) Where are said records located at this time?

(e) What is the present address of John Rogers?

(f) Please attach a copy of said records maintained by John Rogers if you will do so without a Motion to Produce being filed by Plaintiff.

(g) If you do not have said records, please indicate what happened to them.

(10) (a) Please state the name of your office manager on said job and if he is still an employee of yours.

(b) Did he check the daily load count with Plaintiff herein on this pit?

(c) Did he maintain records of the load count on this pit?

(d) If your answer to the foregoing question is in the affirmative, please state where said records are located.

(e) Please attach a copy of said records to your answer if you will do so without a Motion to Produce being filed.

(f) If you do not have a copy of said records, please explain why not.

(11) (a) What type trucks were used to haul said sand or other material from this pit?

(b) From where were said trucks obtained?

(c) What was the load capacity of these trucks?

(d) Was the load capacity on the sand removed from this pit by these trucks modified by building up the sides of the trucks in any manner.

(12) (a) Was the cubic yardage per load of sand removed from this pit different from the cubic yardage per load removed by Plaintiff from this pit?

(b) If your answer to the foregoing is in the affirmative, please explain the reason for the difference.

7. In regard to pit #4, please state the following:

(a) Where said pit was located.

(b) The dimension of said pit.

(c) The nature or substance of material removed from this pit.

(d) How the material was removed from this pit.

(e) The inclusive dates on which Plaintiff's drag line operated on this pit.

(f) The total number of cubic yards removed by Plaintiff's drag line from this pit.

(g) The total number of cubic yards removed per day.

(h) How the number of cubic yards removed was determined.

(i) (1) Who made the determination of how many cubic yards were removed per day?

(2) Was this person an employee of yours at that time?

(3) What is the present address of said person?

(4) Is said person presently an employee of yours?

(5) Was a daily record of the number of cubic yards removed from said pit by said person maintained?

(6) Where are said records presently located?

(7) Please attach a copy of said records if you will do so without the necessity of Plaintiff filing a Motion to Produce said records.

(8) If you do not have a copy of said records, please explain what happened to them.

(j) (1) Was Carroll Carlton your superintendent at this pit?

(2) Did he maintain a daily count of the number of cubic yards removed from this pit?

(3) If your answer to the preceding interrogatory is in the affirmative, where are such records located at this time.

(4) What is Carroll Carlton's present address?

(k) (1) Was John Rogers your superintendent on this job?

(2) Did he keep a load count on all jobs?

(3) Did he keep a daily load count on this job?

(4) Where are said records located at this time?

(5) What is the present address of John Rogers?

(6) Please attach a copy of said records maintained by John Rogers if you will do so without a Motion to Produce being filed by Plaintiff.

(7) If you do not have said records, please indicate what happened to them.

(l) (1) Please state the name of your office manager on said job and if he is still an employee of yours.

(2) Did he check the daily load count with Plaintiff herein on this pit?

(3) Did he maintain records of the load count on this pit?

(4) If your answer to the foregoing question is in the affirmative, please state where said records are located.

(5) Please attach a copy of said records to your answer if you will do so without a Motion to Produce being filed.

(6) If you do not have a copy of said records, please explain why not.

(m) (1) What type trucks were used to haul said sand or other material from this pit?

(2) From where were said trucks obtained?

(3) What was the load capacity of these trucks?

(4) Was the load capacity on the sand removed from this pit by these trucks modified by building up the sides of the trucks in any manner.

(n) (1) Was the cubic yardage per load of sand removed from this pit different from the cubic yardage per load removed from pit #20 and 5?

(2) If your answer to the foregoing is in the affirmative, please explain the reason for the difference.

(o) In connection with the amount of money paid to Plaintiff by you or earned by Plaintiff for sand or other material removed from this pit only, please state:

(1) The total amount of cash for which Plaintiff was credited by you for sand or other material removed from this pit before any deductions for expenses, etc.

(2) The total amount of cash paid by you to Plaintiff for sand or other material removed from this pit after any deductions for expenses, etc.

(3) Please itemize what deductions you made before making payment to Plaintiff for sand or other material removed from this pit by Plaintiff.

(4) Who made the determination of how much money Plaintiff was entitled to be paid for on sand or other material removed from this pit.

(a) Before deductions for expenses, etc.

(b) After deductions for expenses, etc.

(5) Please state the name and present address of the person named in the preceding interrogatory.

(6) Was said person furnished a written record or report of the number of cubic yards of sand or other material removed from this pit by Plaintiff.

(7) If your answer to the foregoing interrogatory is in the affirmative, please state:

(a) From whom did said person acquire this report.

(b) Where said report is at the present time.

(c) If you did not retain a copy of said report, please explain what happened to it.

(d) Please attach a copy of said report or memorandum to your answer if you will do so without the necessity of Plaintiff filing a Motion to Produce.

(e) Was this written record verified with Plaintiff prior to payment? If so, please give the names

and present addresses of each person who verified the records with Plaintiff.

(p) Was any material removed from this pit by any person other than Plaintiff's drag line?

(q) If your answer to the preceding interrogatory is in the affirmative, please state:

(1) Who else worked said pit?

(2) The method by which said material was removed.

(3) The inclusive dates on which said material was removed.

(4) The total number of cubic yards removed by said method.

(5) The total number of cubic yards removed each day.

(6) How the number of cubic yards removed were determined.

(7) (a) Who made the determination of how many cubic yards were removed per day?

(b) Was this person an employee of yours at this time?

(c) What is the present address of said person?

(d) Is this person presently an employee of yours?

(e) Was a daily record of the number of cubic yards removed from said pit by said person maintained?

(f) Where are said records presently located?

(g) Please attach a copy of said records if you will do so without the necessity of Plaintiff filing a

Motion to Produce said records.

(h) If you do not have a copy of said records, please explain what happened to them.

(8) (a) Was Carroll Carlton your superintendent at this pit?

(b) Did he maintain a count each day?

(c) If your answer to the preceding interrogatory is in the affirmative, where are such records located at this time.

(d) What is Carroll Carlton's present address?

(9) (a) Was John Rogers your superintendent on this job?

(b) Did he keep a load count on all jobs?

(c) Did he keep a daily load count on this job?

(d) Where are said records located at this time?

(e) What is the present address of John Rogers?

(f) Please attach a copy of said records maintained by John Rogers if you will do so without a Motion to Produce being filed by Plaintiff.

(g) If you do not have said records, please indicate what happened to them.

(10) (a) Please state the name of your office manager on said job and if he is still an employee of yours.

(b) Did he check the daily load count with Plaintiff herein on this pit?

(c) Did he maintain records of the load

count on this pit?

(d) If your answer to the foregoing question is in the affirmative, please state where said records are located.

(e) Please attach a copy of said records to your answer if you will do so without a Motion to Produce being filed.

(f) If you do not have a copy of said records, please explain why not.

(11) (a) What type trucks were used to haul said sand or other material from this pit?

(b) From where were said trucks obtained?

(c) What was the load capacity of these trucks?

(d) Was the load capacity on the sand removed from this pit by these trucks modified by building up the sides of the trucks in any manner.

(12) (a) Was the cubic yardage per load of sand removed from this pit different from the cubic yardage per load removed by Plaintiff from this pit?

(b) If your answer to the foregoing is in the affirmative, please explain the reason for the difference.

8. In regard to pit #5, please state the following:

(a) Where said pit was located.

(b) The dimension of said pit.

(c) The nature or substance of material removed from this pit.

(d) How the material was removed from this pit.

(e) The inclusive dates on which Plaintiff's drag line operated on this pit.

(f) The total number of cubic yards removed by Plaintiff's drag line from this pit.

(g) The total number of cubic yards removed per day.

(h) How the number of cubic yards removed was determined.

(i) (1) Who made the determination of how many cubic yards were removed per day?

(2) Was this person an employee of yours at that time?

(3) What is the present address of said person?

(4) Is said person presently an employee of yours?

(5) Was a daily record of the number of cubic yards removed from said pit by said person maintained?

(6) Where are said records presently located?

(7) Please attach a copy of said records if you will do so without the necessity of Plaintiff filing a Motion to Produce said records.

(8) If you do not have a copy of said records, please explain what happened to them.

(j) (1) Was Carroll Carlton your superintendent at this pit?

(2) Did he maintain a daily count of the number of cubic yards removed from this pit?

(3) If your answer to the preceding interrogatory is in the affirmative, where are such records located at this time.

(4) What is Carroll Carlton's present address?

(k) (1) Was John Rogers your superintendent on this job?

(2) Did he keep a load count on all jobs?

(3) Did he keep a daily load count on this job?

(4) Where are said records located at this time?

(5) What is the present address of John Rogers?

(6) Please attach a copy of said records maintained by John Rogers if you will do so without a Motion to Produce being filed by Plaintiff.

(7) If you do not have said records, please indicate what happened to them.

(1) (1) Please state the name of your office manager on said job and if he is still an employee of yours.

(2) Did he check the daily load count with Plaintiff herein on this pit?

(3) Did he maintain records of the load count on this pit?

(4) If your answer to the foregoing question is in the affirmative, please state where said records are located.

(5) Please attach a copy of said records to your answer if you will do so without a Motion to Produce being filed.

(6) If you do not have a copy of said records, please explain why not.

(m) (1) What type trucks were used to haul said sand or other material from this pit?

(2) From where were said trucks obtained?

(3) What was the load capacity of these trucks?

(4) Was the load capacity on the sand removed from this pit by these trucks modified by building up the sides

of the trucks in any manner.

(n) (1) Was the cubic yardage per load of sand removed from this pit different from the cubic yardage per load removed from pit #20 and 4?

(2) If your answer to the foregoing is in the affirmative, please explain the reason for the difference.

(o) In connection with the amount of money paid to Plaintiff by you or earned by Plaintiff for sand or other material removed from this pit only, please state:

(1) The total amount of cash for which Plaintiff was credited by you for sand or other material removed from this pit before any deductions for expenses, etc.

(2) The total amount of cash paid by you to Plaintiff for sand or other material removed from this pit after any deductions for expenses, etc.

(3) Please itemize what deductions you made before making payment to Plaintiff for sand or other material removed from this pit by Plaintiff.

(4) Who made the determination of how much money Plaintiff was entitled to be paid for on sand or other material removed from this pit.

(a) Before deductions for expenses, etc.

(b) After deductions for expenses, etc.

(5) Please state the name and present address of the person named in the preceding interrogatory.

(6) Was said person furnished a written record or report of the number of cubic yards of sand or other material removed from this pit by Plaintiff.

(7) If your answer to the foregoing interrogatory is in the affirmative, please state:

(a) From whom did said person acquire this report.

(b) Where said report is at the present time.

(c) If you did not retain a copy of said report, please explain what happened to it.

(d) Please attach a copy of said report or memorandum to your answer if you will do so without the necessity of Plaintiff filing a Motion to Produce.

(e) Was this written record verified with Plaintiff prior to payment? If so, please give the names and present addresses of each person who verified the records with Plaintiff.

(p) Was any material removed from this pit by any person other than Plaintiff's drag line?

(q) If your answer to the preceding interrogatory is in the affirmative, please state:

(1) Who else worked said pit?

(2) The method by which said material was removed.

(3) The inclusive dates on which said material was removed.

(4) The total number of cubic yards removed by said method.

(5) The total number of cubic yards removed each day.

(6) How the number of cubic yards removed were determined.

(7) (a) Who made the determination of how many cubic yards were removed per day?

(b) Was this person an employee of yours at this time?

(c) What is the present address of said person?

(d) Is this person presently an employee of yours?

(e) Was a daily record of the number of cubic yards removed from said pit by said person maintained?

(f) Where are said records presently located?

(g) Please attach a copy of said records if you will do so without the necessity of Plaintiff filing a Motion to Produce said records.

(h) If you do not have a copy of said records, please explain what happened to them.

(8) (a) Was Carroll Carlton your superintendent at this pit?

(b) Did he maintain a count each day?

(c) If your answer to the preceding interrogatory is in the affirmative, where are such records located at this time.

(d) What is Carroll Carlton's present address?

(9) (a) Was John Rogers your superintendent on this job?

(b) Did he keep a load count on all jobs?

(c) Did he keep a daily load count on this job?

(d) Where are said records located at this time?

(e) What is the present address of John Rogers?

(f) Please attach a copy of said records maintained by John Rogers if you will do so without a Motion to

Produce being filed by Plaintiff.

(g) If you do not have said records, please indicate what happened to them.

(10) (a) Please state the name of your office manager on said job and if he is still an employee of yours.

(b) Did he check the daily load count with Plaintiff herein on this pit?

(c) Did he maintain records of the load count on this pit?

(d) If your answer to the foregoing question is in the affirmative, please state where said records are located.

(e) Please attach a copy of said records to your answer if you will do so without a Motion to Produce being filed.

(f) If you do not have a copy of said records, please explain why not.

(11) (a) What type trucks were used to haul said sand or other material from this pit?

(b) From where were said trucks obtained?

(c) What was the load capacity of these trucks?

(d) Was the load capacity on the sand removed from this pit by these trucks modified by building up the sides of the trucks in any manner.

(12) (a) Was the cubic yardage per load of sand removed from this pit different from the cubic yardage per load removed by Plaintiff from this pit?

(b) If your answer to the foregoing is in the affirmative, please explain the reason for the difference.

count on this pit?

(d) If your answer to the foregoing question is in the affirmative, please state where said records are located.

(e) Please attach a copy of said records to your answer if you will do so without a Motion to Produce being filed.

(f) If you do not have a copy of said records, please explain why not.

(11) (a) What type trucks were used to haul said sand or other material from this pit?

(b) From where were said trucks obtained?

(c) What was the load capacity of these trucks?

(d) Was the load capacity on the sand removed from this pit by these trucks modified by building up the sides of the trucks in any manner.

(12) (a) Was the cubic yardage per load of sand removed from this pit different from the cubic yardage per load removed by Plaintiff from this pit?

(b) If your answer to the foregoing is in the affirmative, please explain the reason for the difference.

9. What is the present address of the person who served as your office manager on the jobs made the basis of this suit?

10. Did you have an agreement with the Plaintiff that the cubic yards in each load removed from the pit where only Plaintiff's drag line operated would determine the cubic yard load count in those pits where additional material was removed by someone other than the Plaintiff?

11. List those pits in which Plaintiff's drag line only removed any material.

12. State the number of cubic yards removed each day from each of said pits.

13. State the total number of cubic yards removed from each pit.

14. State the total amount of money paid for sand or material removed from each of said pits.

15. (a) State the pit or pits in which someone else other than Plaintiff worked with Plaintiff or in the same pit with Plaintiff in removing material from said pit.

(b) State how the number of cubic yards per day removed from said portion of pit operated by the person other than Plaintiff was determined.

(c) Was the amount of material removed from said pit by person working with Plaintiff determined by cross-sectioning.

16. If you answer to the foregoing interrogatory is in the affirmative, please state:

(a) The days on which said cross-sectioning took place.

(b) The exact parts of said pit where said cross-sectioning was held.

(c) (1) Whether or not the area in which Plaintiff's drag line operated was cross-sectioned.

(2) If your answer to the foregoing interrogatory is in the affirmative, please state:

(a) The name and current address of the person who made this cross-section.

(b) If said person making the cross-section was an employee of yours at that time.

(c) What records or memoranda of said cross-sectioning were furnished to you.

(d) Where said records are presently located.

(e) The name and address of the person who has custody of said records.

(f) Attach a copy of said records if you will do so without a Motion to Produce being filed.

(g) If you do not have such records or a copy thereof at this time, please explain what happened to such records.

(d) The total number of cubic yards removed by Plaintiff from said pits in which he and someone else operated together.

(e) The total amount of money paid Plaintiff for cubic yards removed from said pit which he operated in addition to others.

(f) Was the load capacity in cubic yards per load different in this pit than from those pits in which Plaintiff's drag line only operated?

(g) If your answer to the foregoing interrogatory is in the affirmative, please explain the reason for said difference.

17. (a) Did the Alabama State Highway Department maintain a daily load count of daily cubic yard count of sand removed from pits where Plaintiff's drag line operated?

(b) Did the Alabama State Highway Department furnish you with any records indicating how many loads of sand were removed daily by Plaintiff's drag line?

(c) Where are such records located at this time?

(d) Who made such records?

18. Did the Alabama State Highway Department furnish you with any records as to how many cubic yards were removed daily from the pits in which Plaintiff was working his drag line?

(a) From each pit.

(b) Who made said reports?

(c) To whom said reports were made.

(d) How the amount removed each day was calculated.

(e) Where said records are presently located.

(f) The name and address of the person in custody of said records.

(g) If you did not retain these records or a copy thereof, please explain what happened to said records.

19. How many total cubic yards of sand was Plaintiff paid for by you?

HAMILTON, DENNISTON, BUTLER & RIDDICK

BY

James W. Tarlton III
Trial Attorney for Plaintiff

STATE OF ALABAMA)

COUNTY OF MOBILE)

Before me, the undersigned authority, personally appeared James W. Tarlton, III, who is known to me and who, being by me first duly sworn, on oath, deposes and says that he is one of the attorneys for plaintiff in the above-styled cause, and that if the foregoing interrogatories are truthfully answered, the answers will be material evidence of plaintiff on the trial of said cause.

James W. Tarlton III
JAMES W. TARLTON, III

Subscribed and sworn to before me on this 9th day of January, 1969.

CERTIFICATE OF SERVICE

[Signature]
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

I do hereby certify that I have on this 9 day of January, 1969, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, with first class postage prepaid.

FILED

JAN 10 1969

James W. Tarlton III
ALICE J. DUCK CLERK REGISTER