

STATE OF ALABAMA

IN THE CIRCUIT COURT - LAW SIDE

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Orkin Exterminating Company, Inc., a Delaware corporation, and Orkin Exterminating Company, Inc., a Delaware corporation doing business as Orkin Exterminating Company of South Alabama to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of Schermer Pecan Company, Inc., a corporation.

Witness my hand this 7 day of September, 1971.

Eunice B. Blackman
Clerk

SCHERMER PECAN COMPANY, INC., a corporation,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	
	X	BALDWIN COUNTY, ALABAMA
ORKIN EXTERMINATING COMPANY, INC., a Delaware corporation, and	X	
ORKIN EXTERMINATING COMPANY, INC., a Delaware corporation doing business as ORKIN EXTERMINATING COMPANY OF SOUTH ALABAMA,	X	AT LAW CASE NO. <u>10019</u>
Defendants.	X	

COUNT ONE:

The Plaintiff claims of the Defendants the sum of Two Hundred Thousand Dollars (\$200,000.00) as damages for the breach of an agreement entered into by and between the Plaintiff

and the Defendants on, to-wit, the 30th day of September, 1963, which agreement was in full force and effect at all times pertinent hereto, in and by the terms of which agreement the Defendants, in consideration of an initial payment to them by the Plaintiff and in further consideration of a monthly payment to them by the Plaintiff (all of which payments have been duly made by the Plaintiff), the Defendants contracted and agreed that they would control rats, roaches, ants and water bugs in and around the buildings used by the Plaintiff in its business. And the Plaintiff says that, although it has complied with all of the provisions of the said agreement on its part, the Defendants have failed to comply with the provisions thereof and breached the same in that they did not control rats in and around the buildings used by the Plaintiff in its business as agreed and as a result of their breach of the said agreement in this respect, the premises described in the agreement became rat infested during the months of November and December, 1970.

COUNT TWO:

The Plaintiff claims of the Defendants the sum of Two Hundred Thousand Dollars (\$200,000.00) as damages for that in, heretofore, to-wit, the months of November and December, 1970, at the buildings or facilities used by the Plaintiff in conducting its business as a dealer in pecans, brazil nuts, almonds and other nuts, the Defendants so negligently provided pest control services, which they had contracted with the Plaintiff to provide, as to cause or allow the said buildings or facilities to become rat infested and as a proximate consequence or result of the negligence of the Defendants, the Plaintiff was damaged in that the United States Government seized Five Hundred Sixty-nine

Thousand Seven Hundred (569,700) pounds of brazil nuts and Seventeen Thousand Five Hundred (17,500) pounds of almonds due to the fact that they were rodent contaminated and required the Plaintiff to reprocess the same; the Plaintiff was made to suffer legal expenses and court costs in connection with the seizure; it has incurred a substantial loss of business and customers due to the unfavorable reaction engendered by the publicity of the rodent contamination and as a result, its sales in these two types of nuts have dropped to a mere fraction of what it was prior to the said negligently caused rodent infestation, all to the damage of the Plaintiff aforesaid, hence this suit.

CHASON, STONE & CHASON

BY Richard E. Ball

Defendants may be served
by service upon Fred S. Ball, Jr.
and Richard A. Ball, 200 South
Lawrence Street, Montgomery,
Alabama 36104.

FILED

SEP 7 1971

Plaintiff respectfully demands
trial of this cause by jury.

EUNICE B. BLACKMON CIRCUIT
CLERK

CHASON, STONE & CHASON

BY Richard E. Ball
Attorneys for Plaintiff

1924

SCHERMER PECAN COMPANY

VS:

ORKIN EXTERMINATING COMPANY, INC. A
DELAWARE CORP., AND ORKIN EXTERMINATING
COMPANY, INC. A DELAWARE corporation
business as ORKIN EXTERMINATING COMPANY
OF SOUTH ALABAMA

EXECUTED BY SERVING
A COPY CASE NO. 10019N

Paul S. Ball, Jr.
As Agent for services
on Orkin Exterminating
Co., Inc.

This the 14 day of Sept 1971
M. S. BUTLER
Sheriff Montgomery County

By *Asst. Sheriff*
Deputy Sheriff

SEP 8 1971

JAMES W. CHASON
SHERIFF

CHASON, STONE & CHASON
E. E. BALL

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Sheriff claims _____ miles at
Ten Cents per mile Total \$
TAYLOR WILKINS, Sheriff
DEPUTY SHERIFF
S. Butler, Sheriff of Montgome
County, Alabama, Claim \$1.50 each
serving 1 process(es) and \$1
travel expense on each of 1
process(es) of a total of 2.00

Deputy S

RECEIVED IN OFFICE
SEP 13 1971
M. S. BUTLER, Sheriff
TAYLOR WILKINS, Sheriff
By *d/B*
On Orkin Exterminating Co.
I served a copy of the within SLC
on Sept 8 1971
and on Sept 8 1971
received 0 day of Sept 1971

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF ALABAMA, SOUTHERN DIVISION

SCHERMER PECAN COMPANY, INC., a corporation,)	TO THE HONORABLE
	(EUNICE B. BLACKMON,
Plaintiff,)	
	(CLERK OF THE CIRCUIT
VS.)	
	(COURT OF BALDWIN COUNTY,
ORKIN EXTERMINATING COMPANY, INC., a Delaware corporation, and)	ALABAMA.
ORKIN EXTERMINATING COMPANY, INC., a Delaware corporation doing business as ORKIN EXTERMINATING COMPANY OF SOUTH ALABAMA,)	
	(
Defendants.)	

Please take notice that the undersigned, as attorney for Orkin Exterminating Company, Inc., in the above-styled cause, has this 23 day of September, 1971, filed petition and bond in the United States District Court For The Southern District of Alabama, Southern Division, petitioning that Court to remove from the Circuit Court of Baldwin County, Alabama, to the United States District Court For The Southern District of Alabama, Southern Division, that certain cause wherein Schermer Pecan Company, Inc., is the Plaintiff and Orkin Exterminating Company, Inc., is the Defendant, and that the petition in bond constitutes a removal of said cause of action from the Circuit Court of Baldwin County, Alabama, to the United States District Court For The Southern District of Alabama, Southern Division.


WESLEY PIPES
ATTORNEY FOR ORKIN EXTERMINATING COMPANY,
INC.

FILED

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EUNICE B. BLACKMON, CLERK

OF COUNSEL:

LYONS, PIPES AND COOK
Attorneys At Law
2510 First National Bank Building
Mobile, Alabama 36602

KALER, KARESH & FRANKEL
Attorneys At Law
1820 Fulton National Bank Building
Atlanta, Georgia 30303

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF ALABAMA, SOUTHERN DIVISION

SCHERMER PECAN COMPANY,
INC., a corporation,

Plaintiff,

VS.

ORKIN EXTERMINATING
COMPANY, INC., a Delaware
corporation, and
ORKIN EXTERMINATING
COMPANY, INC., a Delaware
corporation doing business
as ORKIN EXTERMINATING
COMPANY OF SOUTH ALABAMA,

Defendants.

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CIVIL ACTION

NO. _____

PETITION FOR REMOVAL

COMES NOW Orkin Exterminating Company, Inc., Defendant
in the above styled cause, and presents this Petition For
Removal of said action from the Circuit Court of Baldwin
County, Alabama, to the United States District Court For The
Southern District of Alabama, Southern Division, and shows
and represents unto the Court as follows:

1. That the above-styled suit was begun against this
Defendant in the Circuit Court of Baldwin County, Alabama, on
the 7th day of September, 1971.

2. That at the time said suit was begun, and at the
present time, the Defendant was and still is a citizen of the
State of Delaware having its principal place of business at
Atlanta, Georgia, and the Plaintiff in said suit was and still
is a citizen of the State of Alabama, having its principal
place of business at Fairhope, Alabama. The matter in dispute
in said suit and for which suit is brought, exceeds the sum of

TEN THOUSAND AND NO/100 (\$10,000.00) DOLLARS, excluding all interest and costs.

3. That the Defendant herewith files a Bond with good and sufficient surety, conditioned that the Defendant will pay all costs and disbursements incurred by reason of the removal proceedings, should it be determined that this cause of action was not removable or was improperly removed.

4. That Orkin Exterminating Company, Inc., has not yet appeared or pleaded in said action, and that less than thirty (30) days have expired since service of process was attempted on it.

5. That a copy of all pleadings and orders that have been served upon the Defendant in the above-styled cause are attached to this petition.

6. That the Defendant will promptly upon the filing of this petition and bond, give written notice thereof to the Plaintiff and will file a copy of said petition with the Clerk of the Circuit Court of Baldwin County, Alabama.

WHEREFORE, Orkin Exterminating Company, Inc., prays this Honorable Court that this petition and bond may be accepted and approved, and that said suit be removed to the United States District Court For The Southern District of Alabama, Southern Division, and that the Circuit Court of Baldwin County, Alabama, proceed no further in the premises.


SAM W. PIPES


WESLEY PIPES
ATTORNEYS FOR ORKIN EXTERMINATING
COMPANY, INC.


OF COUNSEL:

LYONS, PIPES AND COOK
Attorneys At Law
2510 First National Bank Building
Mobile, Alabama 36602

KALER, KARESH & FRANKEL
Attorneys At Law
1820 Fulton National Bank Bldg.
Atlanta, Georgia 30303

STATE OF ALABAMA

COUNTY OF MOBILE

Personally appeared before me, ,
Wesley Pipes, who being by me first duly sworn, deposes and says
that he is one of the attorneys for Orkin Exterminating Company,
Inc., and as such is duly authorized to remove that certain suit
wherein Schermer Pecan Company, Inc. is Plaintiff and Orkin
Exterminating Company, Inc. is Defendant from the Circuit Court
of Baldwin County, Alabama, to the United States District Court
For The Southern District of Alabama, Southern Division; that he
has read the above and foregoing petition and that the facts
stated therein are true.


WESLEY PIPES

Subscribed and sworn to before me on this the 23RD day
of September, 1971.


NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

STATE OF ALABAMA

IN THE CIRCUIT COURT - LAW SIDE

BALDWIN COUNTY

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Eunice B. Blackman
Clerk

SCHERMER PECAN COMPANY,
INC., a corporation,

Plaintiff,

vs.

ORKIN EXTERMINATING
COMPANY, INC., a Delaware
corporation, and
ORKIN EXTERMINATING
COMPANY, INC., a Delaware
corporation doing business
as ORKIN EXTERMINATING
COMPANY OF SOUTH ALABAMA,

Defendants.

X

X

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW CASE NO. 10019

COUNT ONE:

The Plaintiff claims of the Defendants the sum of
Two Hundred Thousand Dollars (\$200,000.00) as damages for the
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CHASON, STONE & CHASON

BY: Richard E. Ball

Defendants may be served
by service upon Fred S. Ball, Jr.
and Richard A. Ball, 200 South
Lawrence Street, Montgomery,
Alabama 36104.

Plaintiff respectfully demands
trial of this cause by jury.

FILED

SEP 7 1971

CHASON, STONE & CHASON

BY: Richard E. Ball
Attorneys for Plaintiff

EUNICE B. BLACKMON CIRCUIT
CLERK

STATE OF ALABAMA

COUNTY OF MOBILE

~~KNOW ALL MEN BY THESE PRESENTS~~, that Orkin Exterminating Company, Inc. as principal and Fidelity and Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland, as surety are held and firmly bound unto Schermer Pecan Company, Inc., in the penal sum of FIVE HUNDRED AND NO/100 (\$500.00) DOLLARS, payment wherein truly to be made unto the said Schermer Pecan Company, Inc., its successors and assigns, we bind ourselves, or successors and assigns, jointly and severally, firmly by these presents, yet upon these conditions: that the said Orkin Exterminating Company, Inc., is a petitioner in the United States District Court For The Southern District of Alabama, Southern Division, for the removal of that certain cause pending in the Circuit Court of Baldwin County, Alabama, wherein Schermer Pecan Company, Inc., is the Plaintiff and Orkin Exterminating Company, Inc., is the Defendant. Now if the said Orkin Exterminating Company, Inc. will pay all costs and disbursements incurred by reason of the removal of this said cause should it be determined that the case was not removable or was improperly removed, then this obligation to be void, otherwise in full force and effect.

IN WITNESS WHEREOF, Orkin Exterminating Company, Inc., has hereunto caused its name to be signed by Wesley Pipes, its attorney, and Fidelity and Deposit Company of Maryland, a corporation, has hereunto caused its corporate name to be signed by SCHLEY RUTHERFORD, its attorney-in-fact,

this the 23 day of September, 1971.

ORKIN EXTERMINATING COMPANY, INC.

BY: Wesley Pipers

WESLEY PIPERS, Attorney for
Orkin Exterminating Company, Inc.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, A Corporation

BY: Atty. Robert J. ...

Its Attorney-in-Fact

FILED

(2) 2 / 37

LORICE B. BLACKMON CLERK

- 2 -

LYONS, PIPES & COOK

ATTORNEYS AT LAW

2510 FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

JOSEPH H. LYONS (1900-1957)

SAM W. PIPES

WALTER M. COOK

GORDON B. KAHN

G. SAGE LYONS

AUGUSTINE MEAHER, III

JAMES B. KIERCE, JR.

WESLEY PIPES

NORTON W. BROOKER, JR.

COOPER C. THURBER

AREA CODE 205
TEL. 432-4463
P.O. DRAWER 2727

September 23, 1971

Mrs. Eunice B. Blackmon
Circuit Clerk
Baldwin County Courthouse
Bay Minette, Alabama 36507

Re: Schermer Pecan Company, Inc.
vs.
Orkin Exterminating Company, Inc.

Dear Mrs. Blackmon:

Enclosed herewith is the original and two copies of a
Petition For Removal and a Note to you for the removal.
Please stamp a copy of the Notice of the date you filed
the original and return the same to me.

Very truly yours,

LYONS, PIPES AND COOK


Wesley Pipes

WP/see

Enclosures