

SUMMONS

STATE OF ALABAMA     )  
BALDWIN COUNTY       )     TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon ORKIN EXTERMINATING COMPANY, INC., a foreign corporation, by its agents, BALL AND BALL at 200 South Lawrence Street, Montgomery, Alabama, to appear within thirty days after the service of this summons in the Circuit Court to be held for said County, then and there to demur or plead to the complaint of VIVIAN C. PEED.

Witness my hand this 29 day of Feb., 1972.

Emmie B. Blackburn  
Clerk

\* \* \* \* \*

VIVIAN C. PEED,	)	IN THE CIRCUIT COURT OF
Plaintiff	)	BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW
ORKIN EXTERMINATING COMPANY, INC., )		
a foreign corporation,	)	CASE NO. <u>10,265</u>
Defendant	)	

COMPLAINT

COUNT ONE

Plaintiff claims of the Defendant, as damages, the sum of THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00), as damages for the breach of a written contract, a copy of which is attached hereto as Plaintiff's Exhibit No. 1, which is in substance as follows, viz: That on or about July 15, 1968, the defendant and the plaintiff entered into a written contract with the annual right of extension thereof, whereby defendant agreed to use its Lifetime Control of subterranean termites procedure, inspect and treat the residence owned by plaintiff on First Avenue, Gulf Shores, Alabama, to insulate this residence from subterranean termites, and to apply treatment and inspect each year thereafter, and plaintiff agreed to

pay \$105.00 to the defendant as first payment, and an annual premium thereafter of \$17.00.

This contract continued in full force and effect from July 15, 1968, to the filing of this complaint, and plaintiff has paid all premiums due and has fully performed the contract on her own part.

And the plaintiff avers that defendant has breached or broken said contract as follows, viz: That during the period of July 15, 1968, to January 1, 1971, defendant failed to inspect or to chemically treat the residence of the plaintiff in accordance with the terms of the contract so as to insulate the same against the attack by subterranean termites.


And as a proximate result of defendant's breach of contract, plaintiff's residence was infested by subterranean termites, for which plaintiff was required to expend large sums of money for repair, and was injured in the amount of \$3,500.00).

COUNT TWO

Plaintiff claims of the defendant, as damages, the sum of THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00), as damages for the negligent failure to treat and inspect plaintiff's premises for subterranean termites, for that defendant and plaintiff on the 15th day of July, 1968, entered into a written contract, a copy of which is attached hereto as plaintiff's Exhibit No. 1, and which is, in substance, as follows, viz: That on or about July 15, 1968, plaintiff and defendant entered into a written contract, with annual right of extension, whereby defendant agreed to inspect and treat the residence owned by the plaintiff on First Avenue, Gulf Shores, Alabama, to insulate this residence from subterranean termites and to apply treatment and inspect each year thereafter, and plaintiff agreed to pay to defendant \$105.00 on that date, and annual premium thereafter of \$17.00.

This contract continued in full force and effect from July 15, 1968, to the filing of this complaint, and plaintiff has paid all premiums due and has fully performed the contract on her own part.

And defendant failed to perform from July 15, 1968, to January 1, 1971, negligently failed to inspect and treat the premises in such a way as to insulate it from attacks by subterranean termites, and as a proximate result of defendant's failure to inspect and treat, the residence has become infested with subterranean termites and all these damages are a proximate result of defendant's negligent failure to treat and inspect, and this damage caused the plaintiff to expend large sums of money for repair, and was injured in the amount of \$3,500.00.

  
DANIEL E. ROBISON  
Attorney for the Plaintiff  
Post Office Box 794  
Foley, Alabama 36535

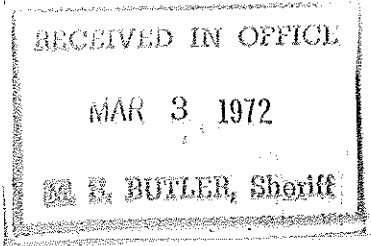
FILED

FEB 29 1972

EUNICE B. BLACKMON CIRCUIT  
CLERK

1477

# 10,263



Julian C. Peed

vs:

Orkin Exterminating  
Co. Inc. a foreign corp.

RETURN BY SERVING  
COUNTY WITHIN  
Fred Ball Jr.  
as agent for  
Orkin Exterminating  
Co. Inc.

6 March 2  
Montgomery County  
[Signature]

FILED  
FEB 29 1972  
EUNICE B. BLACKMON CIRCUIT  
CLERK

M. S. Butler, Sheriff of Montgomery  
County, Alabama, Claim \$1.50 each for  
serving 1 process(es) and \$1.00  
travel expense on each of 1  
process(es) or a total of 2.50

MAR 1 1972  
JAMES WALKER  
SHERIFF

Daniel E. Robinson

[Signature] Deputy Sheriff

VIVIAN C. PEED,

Plaintiff,

VS.

ORKIN EXTERMINATING  
COMPANY, INC., a  
foreign corporation,

Defendant.

\*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

\*

AT LAW

\*

\*

CASE NO. 10,265

\*

D E M U R R E R

Comes now the Defendant in the above entitled cause and demurs to the Plaintiff's Complaint as a whole and to each Count thereof, separately and severally, and as grounds therefor sets down and assigns the following, separately and severally:

1. Said Count does not incorporate the terms of the contract sued upon, nor does it allege the legal effect thereof.

2. For that said Count neither sets out the terms of the contract sued upon nor attaches a copy thereto.

3. For that the Complaint fails to state a cause of action.

4. For that the allegation of a promise by the Defendant is insufficient.

5. For that the allegations of performance by the Plaintiff are insufficient.

6. For that it does not appear that the Plaintiff performed all of the conditions precedent to the Defendant's duties under the contract.

7. For that it does not appear how the Plaintiff is excused from the performance of all conditions precedent on the Plaintiff's part.

8. For that it does not appear what breach of contract was committed by the Defendant such that the Plaintiff was excused from performing all of the conditions precedent to the Defendant's performance under the contract.

9. For aught that appears the breach of contract alleged refers to no promise made by the Defendant.

10. For that the allegations that the Defendant breached the contract are a conclusion of the pleader.

11. For that more than one breach of duty by the Defendant is alleged.

12. For that there is a misjoinder of causes of action.

13. For that said Count is duplicitous.

14. For that it affirmatively appears that the Plaintiff is suing in both tort and contract in the same Count.

15. For aught that appears the premises covered by the contract were structurally modified, altered or otherwise changed after the date of the initial treatment without the prior written agreement of the Defendant.

16. For that it affirmatively appears that the Defendant's liability to the Plaintiff is limited by the terms of the contract to the cost of retreating the premises.

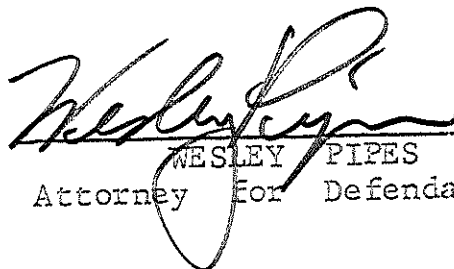
17. For that it affirmatively appears that the Defendant did not agree in its contract to insulate the Plaintiff's

property against the attack of subterranean termites.

18. For that it affirmatively appears that the protection purchased by the Plaintiff did not include any obligation on the part of the Defendant to repair any damage done by subterranean termites.

19. For that said Count does not allege the date on which Plaintiff's property became infested with subterranean termites.

20. For that said Count does not allege that Plaintiff's property was damaged by subterranean termites.

  
WESLEY PIPES  
Attorney For Defendant.

OF COUNSEL:

LYONS, PIPES AND COOK  
Attorneys At Law  
2510 First National Bank Bldg.  
Mobile, Alabama

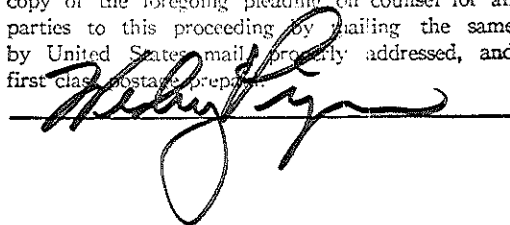
**FILED**

MAR 27 1972

EUNICE B. BLACKMON CIRCUIT CLERK

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 24  
day of Mar, 1972, 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.



VIVIAN C. PEED,  
Plaintiff,

\* IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
\*

VS.

\* AT LAW

ORKIN EXTERMINATING  
COMPANY, INC., a  
foreign corporation,

\*

Defendant.

\* CASE NO. 10,265

A N S W E R

Comes now the Defendant in the above styled cause and for Answer to the Plaintiff's Complaint as a whole, and each Count thereof, separately and severally, sets down and assigns the following Pleas, separately and severally:

1. Not guilty.
2. The material allegations of the Complaint are untrue.
3. The Defendant alleges that the contract sued upon contain the following provisions:

"This guaranty covers the premises as of the date of actual treatment and in the event the premises are structurally modified, altered, or otherwise changed after the date of the initial treatment, this guaranty shall terminate, unless a prior written agreement shall have been entered into by the Owner for the Company to reinspect the premises, provide additional treatment if necessary and/or adjust the annual renewal premium."

The Defendant alleges that the premises covered by the contract sued upon were structurally modified, altered or otherwise changed

**FILED**

AUG 24 1972

VOL 72 PAGE 10

EUNICE B. BLACKMON  
CIRCUIT CLERK



after the date of the initial treatment and that no prior written agreement was entered into between the Owner (Plaintiff) or the Company (Defendant), as required by said provision, and therefore the Defendant is released from performance of its obligations under the contract sued upon.

4. The Defendant alleges that the contract sued upon obligated the Defendant to inspect the premises described in the contract and to apply additional treatment if termites were found on the premises during the period of inspection. The Defendant alleges that it inspected the premises as required in the contract and that when termites were found it applied the additional treatment necessary to kill the termites, wherefore the Defendant says that it has fully and faithfully performed its contract and the Plaintiff ought have and recover nothing.

5. The Defendant alleges that the contract sued upon contained the following provisions:


"The Purchaser (Plaintiff) understands that ORKIN'S (Defendant) liability under this particular agreement is limited to retreatment only and in no way, implied or otherwise, is responsible for damages to the structure or contents."

WHEREFORE, the Defendant alleges that it is not responsible to the Plaintiff for the cost of repairs sued for in the Complaint and the Plaintiff ought have and recover nothing of the Defendant.

**FILED**  
AUG 24 1972

EUNICE B. BLACKMON CIRCUIT  
CLERK  
OF COUNSEL:

LYONS, PIPES AND COOK  
Attorneys At Law  
2510 First National Bank Bldg.  
Mobile, Alabama

  
WESLEY PIPES  
Attorney for Defendant

CERTIFICATE OF SERVICE

I do hereby certify that I have on the \_\_\_\_\_ day of \_\_\_\_\_, 1972, 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.

VIVIAN C. PEED,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
vs.	)	AT LAW
ORKIN EXTERMINATING COMPANY,	)	
INC., a foreign corporation,	)	
Defendant.		CASE NO. 10,265

DEMURRER TO ANSWER

Comes now the Plaintiff in the above styled cause and demurs to answers number three, four and five filed by Defendant for the following reasons:

1. That answer number three of the Defendant alleges there was a breach of the contract by the Plaintiff because of a structural modification or change of the building in question, said plea having no relevance to Count Two of the Plaintiff's complaint, as Count Two is based on the theory that the Defendant negligently failed to treat and inspect the Plaintiff's premises.

2. Answer of the Defendant alleges that it fully performed the terms of the contract, which said answer is irrelevant to Count Two of the complaint of the Plaintiff, said count being based on the Defendant's negligent failure to treat and inspect.

3. Answer number five of the Defendant alleges that the Defendant's liability for damages was limited under the contract, and that this answer has no relevance to Count Two of Plaintiff's complaint, as that count is based on a theory that the Defendant negligently failed to treat and inspect.

FEIBELMAN, SILVER  
Attorneys for Plaintiff

By *Daniel E. Robinson*  
OF COUNSEL

**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this 5<sup>th</sup> day of SEP, 19 72 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.

*Daniel E. Robinson*

**FILED**

SEP 7 1972

EUNICE B. BLACKMON CIRCUIT CLERK

VIVIAN C. REED,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	BALDWIN COUNTY, ALABAMA
	X	
ORKIN EXTERMINATING COMPANY,	X	AT LAW CASE NO: 10,265
INC., a foreign corporation,	X	
Defendant.		

APPEARANCE

Comes now the firm of Chason, Stone & Chason, Attorneys At Law, Bay Minette, Alabama and acknowledges withdrawal of Honorable Daniel Robison from the above styled cause, and enters an appearance as attorneys of record for the Plaintiff, Vivian C. Reed.

CHASON, STONE & CHASON

BY: John E. Chason

FILED

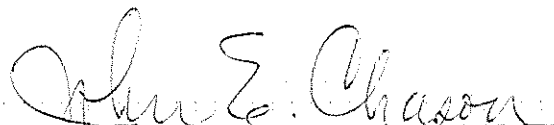
APR 23 1973

EUNICE B. BLACKMON CIRCUIT  
CLERK

VIVIAN C. PEED,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	BALDWIN COUNTY, ALABAMA
	X	
ORKIN EXTERMINATING	X	CIVIL ACTION NO: 10,265
COMPANY, INC., A		
Foreign Corporation,	X	
Defendant.	X	

AMENDMENT TO COMPLAINT

Comes now the Plaintiff in the above styled cause and amends the Complaint heretofore filed in said cause and each cause of action therein alleged by amending the amount of claim against the Defendant so that as amended, said Complaint and each cause of action alleged therein shall claim of the Defendant the sum of Seven Thousand Five Hundred Dollars (\$7,500.00).

  
 John Earle Chason  
 Attorney for Plaintiff  
 P. O. Box 120  
 Bay Minette, Alabama

OF COUNSEL:

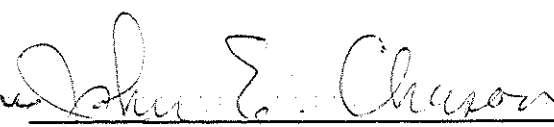
CHASON, STONE & CHASON  
 Attorneys At Law  
 Bay Minette, Alabama

CERTIFICATE OF SERVICE

I, John Earle Chason, attorney for the Plaintiff in the above styled action, hereby certify that on the 7th day of September, 1973, I served the attached Amendment to Complaint upon Wesley Pipes, Esquire, Attorney for the Defendant, by depositing a copy of same in the United States mails, postpaid, and addressed to him at Mobile, Alabama, his last known address.

*Filed March 18, 1974*

*Wesley J. Pipes*  
*judg*

  
 John Earle Chason  
 Attorney for Plaintiff

LUNIE B. BLACKMON CLERK

Mar 18, 1974

FILED

VIVIAN C. PEED,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	BALDWIN COUNTY, ALABAMA
	X	
ORKIN EXTERMINATING	X	CIVIL ACTION NO. 10,265
COMPANY, INC., A Foreign	X	
Corporation,	X	
Defendant.	X	

INTERROGATORIES TO DEFENDANT

Comes now the Plaintiff in the above styled cause and propounds the following Interrogatories to the Defendant, viz:

1. Please state the name of the agent, servant or employee answering these Interrogatories for the Defendant.
2. Please state the official capacity with the Defendant of the person named in the last preceding Interrogatory.
3. Please state the names and addresses of any agent, servant or employee of the Defendant who has been to the premises of the Plaintiff described in the contract which is the basis of this suit.
4. Please state the names and addresses of any agent, servant or employee of the Defendant who has had any conversation with the Plaintiff concerning the contract herein sued upon or the claim being made by the Plaintiff upon said contract.
5. Please state the substance of any conversations referred to in the last Interrogatory and the date of such conversation.
6. Please list the name and address of each witness expected to testify for the Defendant in the above styled cause.
7. Please state the substance of the testimony of each witness listed in the last Interrogatory.

8. Please state the name and address of the agent, servant or employee of the Defendant who prepared the contract which is the basis of this suit.

9. Did the agent, servant or employee described in the last Interrogatory prepare "the graph and specification sheets" referred to in service order #581323.

10. If the answer to the last Interrogatory is yes, please attach a copy of such sheets to these answers.

11. Was the subject property treated by the Defendant for subterranean termites upon the execution by the Plaintiff of the service order referred to above.

12. If the answer to the last Interrogatory is yes, please state the name and address of the person who so treated the property.

13. Was the subject property ever reinspected by the Defendant after the execution of the service order referred to above and if the answer to this Interrogatory is yes, please list the dates of every subsequent reinspection by the Defendant and by whom such inspection was conducted.

14. Was the subject property ever retreated for subterranean termites after the execution of the service order above referred to and if the answer to the above Interrogatory is yes the dates of such retreatment and by whom the same was accomplished.

15. Please state whether any agent, servant or employee of the Defendant ever observed active subterranean termites on the Plaintiff's property after the inception of the contract.

16. Please state whether any agent, servant or employee of the Defendant ever observed damage to the premises caused by active subterranean termites after the inception date of the contract.

17. If the answer to either of the last two Interrogatories is yes, please state the name and address of such agent, servant or employee.

18. Please state in what manner the premises which are the subject of this suit were "structurally modified, altered, or otherwise changed after the date of the initial treatment".

19. Please state the approximate date of such structural change, modification or alteration.

20. Please state in what manner the Defendant learned of such change, modification or alteration.

21. Please state whether subsequent to such alleged change, modification or alteration the Defendant reinspected such premises.

22. Please state whether subsequent to such alleged change, modification or alteration the Defendant retreated such premises.

23. Please state whether any agent, servant or employee of the Defendant ever advised the Plaintiff that a change, modification or alteration of the premises which would violate the terms of the existing contract between the parties had been made on the premises.

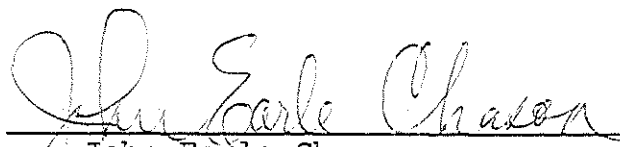
24. If the answer to the last Interrogatory is yes, please state the name and address of such agent, servant or employee and the date of such occurrence.

25. Please state whether the Defendant ever billed the Plaintiff for any additional amount subsequent to its discovery of the alleged change, modification or alteration of the premises of the Plaintiff.

26. Since the date of the original treatment of the premises which are the subject of this suit, have subterranean termites reinfested the property.

27. As of the date hereof, are there active subterranean termites present on the premises covered by this contract.

28. Since the date of inception of the contract sued upon in this case, have active subterranean termites damaged said premises in any degree.

  
John Earle Chason  
Attorney for Plaintiff  
P. O. Box 120  
Bay Minette, Alabama 36507

OF COUNSEL

CHASON, STONE & CHASON  
Attorneys at Law  
Bay Minette, Alabama 36507

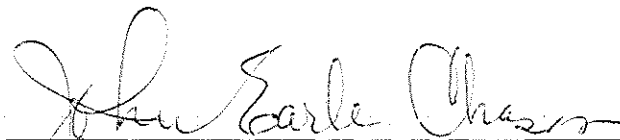
CERTIFICATE OF SERVICE

I, John Earle Chason, attorney for the Plaintiff in the above styled action, hereby certify that on the 10<sup>th</sup> day of September, 1973, I served the attached Interrogatories upon Honorable Wesley Pipes, attorney for Defendant by depositing a copy of same in the United States mails, postpaid, addressed to him at Lyons, Pipes and Cook, Attorneys At Law, First National Bank Building, Mobile, Alabama, his last known address.

FILED

SEP 10 1973

EUNICE B. BLACKMON CIRCUIT  
CLERK

  
John Earle Chason  
Attorney for Plaintiff  
P. O. Box 120  
Bay Minette, Alabama 36507



VIVIAN C. PEED,	*	
Plaintiff,	*	IN THE CIRCUIT COURT OF
-vs-	*	BALDWIN COUNTY, ALABAMA
ORKIN EXTERMINATING	*	CIVIL ACTION NO. 10,265
COMPANY, INC., A Foreign	*	
Corporation,	*	
Defendant.	*	

### INTERROGATORIES TO PLAINTIFF

Comes now Orkin Exterminating Company, Inc., the Defendant in the above styled cause, and pursuant to the Alabama Rules of Civil Procedure, propounds the following Interrogatories to Vivian C. Peed, to be answered separately in writing, and under oath by her within thirty days from date.

### DEFINITIONS

Unless otherwise indicated, the following definitions shall be applicable to these Interrogatories and the answers hereto:

"You" and "your" shall mean the Plaintiff, and each of her servants, employees, agents, or representatives, and all persons acting on her behalf.

"Person" shall mean any individual, partnership, limited partnership, firm, association, corporation, or other business, governmental, or legal entity.

"Document" shall mean a written, recorded, transcribed, punched tape, film or graphic matter of any kind or description, however produced or reproduced.

"Identify" or "identification", when used with reference to a person, shall mean to state the full name and the present or last known address of said person.

"Identify" or "identification" when used with reference to a document, shall mean to state its date, author, or signer, addressees, type of document and all other means of identifying and its present or last known custodian; if any document was, but is no longer, in

your possession, custody or control, state what disposition was made of it and the reason for its disposition.

"House" shall mean the house described in the Complaint.

"Contract" shall mean the entire contract between the Plaintiff and Defendant relating to the house.

#### INTERROGATORIES

1. State your full legal name and address.
2. Do you contend that the contract attached to the Complaint is the entire contract between the Plaintiff and Defendant?
3. If your answer to the foregoing Interrogatory is negative please identify the portions of the contract that are not attached.
4. Who was present when the contract was entered into?
5. Were you or any of your representatives ever present when any of the Defendants' agents, servants, or employees were present at the house? If so, please identify the persons and the date on which they were present.
6. When did you acquire the house?
7. Had the house ever had termites prior to the contract?
8. Do you contend that the Defendant failed to treat the house for termites after execution of the contract?
9. Do you contend that the Defendant failed to reinspect the house on an annual basis after execution of the contract? If your answer to the foregoing interrogatory is in the affirmative, identify the years in which you contend the reinspections were not made.
10. When do you contend the house became infested with termites following execution of the contract? Do you contend that the house was infested with termites on more than one occasion following the execution of the contract? If so, please identify each occasion.
11. For each occasion that you contend the house was infested with termites how did you determine that fact?
12. Please identify each person whom you expect to call as an expert witness at the trial.

13. For each person identified in your answer in the preceding Interrogatory, separately state the qualifications of the expert, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

14. Identify each person who has inspected the house at your request subsequent to the execution of the contract, and state the date of inspection and the occupation of the person.

15. Identify each person you intend to call as a witness at the trial of this case.

16. Identify each person who performed work or labor on or supplied materials for the house from the date of the contract to the last date upon which you contend the house was infested with termites.

17. State what work, or labor, was done or what materials were supplied by each person identified in your answer to the foregoing Interrogatory.

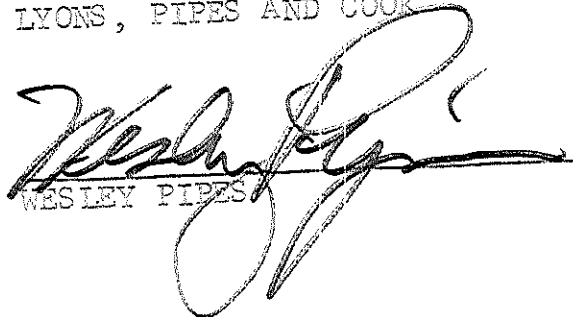
~~18.~~ Have you obtained any repair estimates for the damages you contend to be termite damage in the house? If so, please identify each person who prepared an estimate and state the amount of the estimate.

19. Will you attach a copy of the estimates to your answers to these Interrogatories?

20. Have any repairs been performed upon the house since you contend it was first infested with termites following execution of the contract? If so, please identify the persons who performed the repairs and state the nature, costs and date of the repairs.

21. On what periods has the house been occupied since the contract was entered into?

LYONS, PIPES AND COOK

  
WESLEY PIPES


OF COUNSEL

LYONS, PIPES & COOK  
2510 First National Bank Bldg.  
Mobile, Alabama

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the above and foregoing Interrogatories on John Earl Chason, counsel of record for the Plaintiff, by placing a copy of the same in the United States Mail, postage prepaid and addressed to his regular mailing address.

This 17 day of September, 1973.

  
WESLEY PIPES

**FILED**

SEP 19 1973

EUNICE B. BLACKMON CIRCUIT  
CLERK

G. A. LINDSEY  
DANIEL E. ROBISON

LAW OFFICES  
LINDSEY & ROBISON  
WEST PUTNAM  
ELBA, ALABAMA 36323

MAILING ADDRESS  
P. O. BOX 327  
TELEPHONE  
897-6129  
AREA CODE 205

February 28, 1973

Mrs. Eunice Blackmon  
Clerk, Circuit Court, at Law  
Circuit Court of Baldwin County  
Bay Minette, Alabama 36507

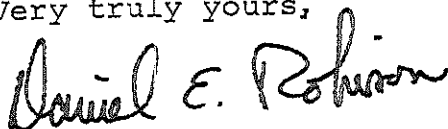
RE: Vivian C. Peed vs. Orkin Exterminating  
Company Case No. 10265

Dear Eunice:

I note that the above case is set for the March non-jury civil docket. During the last call of this case, I withdrew as counsel and notified my client to obtain another attorney. I am not sure if she has done so, or if she intends to proceed further.

In any event, this letter is to restate that I am no longer counsel for the Plaintiff. I am sending a carbon copy to Mrs. Peed to alert her that this case is coming up on March 12, 1973.

Very truly yours,



Daniel E. Robison

DER/ph

CC: Mrs. Vivian C. Peed ✓  
c/o Calloway Sea Food  
Gulf Shores, Alabama 36542

Daniel F. Robison

ATTORNEY AT LAW

P. O. BOX 794

117 SO. ALSTON ST.

FOLEY, ALABAMA 36535

(205) 943-4955

May 17, 1972

Clerk of the Court  
Baldwin County Circuit Court

RE: Vivian C. Peed  
vs: Orkin Exterminating  
# 10,265

The Defendant has filed a demurrer in this case  
and it has not yet been argued. Since we are not at  
issue, please continue the case.

*Dan Robison*

*Placed on motion  
Docket - 9-20-72*

DER/je

cc: Vivian Callaway

Lyons, Pipes, Cook  
Attorneys at Law

LYONS, PIPES & COOK

ATTORNEYS AT LAW  
2510 FIRST NATIONAL BANK BUILDING  
MOBILE, ALABAMA

JOSEPH H. LYONS (1900-1957)  
SAM W. PIPES  
WALTER M. COOK  
GORDON B. KAHN  
G. SAGE LYONS  
AUGUSTINE MEASER, III.  
WESLEY PIPES  
NORTON W. BROOKER, JR.  
COOPER C. THURBER

36601

AREA CODE 205  
TEL. 432-4483  
P. O. DRAWER 2727

March 24, 1972

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

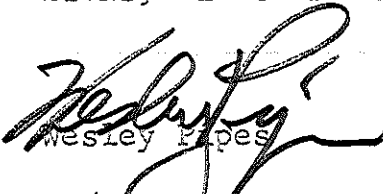
Re: Vivian C. Peed vs. Orkin Exterminating Company,  
Inc., a foreign corporation  
Case No. 10,265

Dear Mrs. Blackmon:

Enclosed herewith is an original and the file copy of our  
Demurrers in connection with the above captioned case.  
Please file the original and stamp the file copy returning  
the file copy to us in the enclosed self-addressed envelope.

Very truly yours,

LYONS, PIPES AND COOK

  
Wesley Pipes

WP/see

Enclosure

VIVIAN C. PEED,	*	IN THE CIRCUIT COURT OF
Plaintiff,	*	BALDWIN COUNTY, ALABAMA
VS.	*	
ORKIN EXTERMINATING COMPANY, INC., a Foreign Corporation,	*	
Defendant.	*	CIVIL ACTION NO. 10,265

ANSWERS TO INTERROGATORIES

Comes now Orkin Exterminating Company, Inc. and for Answers to the Interrogatories of the Plaintiff served on it on the 10th day of September, 1973 says:

1. James Smith.
2. Manager of the Mobile Office.
3. Frank Powe, 359 Simington Drive, Mobile, Alabama,  
Arthur <sup>H</sup>Arville, Bay Minette, Alabama, James O. Lorenzo,  
637 Euclid Street, Mobile, Alabama, A. W. Hurd, 1704  
Church Street, Mobile, Alabama, William Blackwell, 3169  
Baronne Street, Mobile, Alabama, Larry Spiller, unknown.
4. Messrs. <sup>H</sup>Arville, Lorenzo, Spiller and Blackwell.
5. Mr. Spiller spoke with the Plaintiff about her claim.  
Mr. <sup>H</sup>Arville spoke with the Plaintiff about purchasing  
the Termite Contract. Mr. Blackwell spoke with the  
Plaintiff during one of the re-inspections.
6. It is presently expected that Frank Powe, Arthur <sup>H</sup>Arville,  
James Lorenzo, A. W. Hurd and William Blackwell will  
testify at the trial. Other witnesses may be added.
7. The witnesses will testify as to their treatment and  
re-treatment and inspections of the house.



8. Mr. <sup>H</sup>arville.
9. Yes.
10. A copy is attached.
11. Yes.
12. The name and address of the person who first treated the property is presently unavailable. It will be supplied when it becomes available.
13. Yes. The property was re-inspected on 8-11-69 by Mr. Blackwell; on June 2, 1970 by Mr. Powe and Mr. Lorenzo. Mr. Powe and Mr. Lorenzo returned again in 1970 to re-inspect the property. The property has subsequently been inspected during the Summer every year since 1970.
14. Yes. The property was re-treated on the 2nd of June, 1970 by Mr. Powe and by Mr. Lorenzo and sometime later in the Summer of 1970 the property was re-treated again by Mr. Powe and Mr. Lorenzo.
15. Yes.
16. Some damage was observed, but it is not known whether the damage was caused after the inception date of the Contract.
17. Mr. Lorenzo and Mr. Powe.
18. It is our contention that certain repairs have been made placing new wood and materials in contact with the ground.
19. The Summer of 1970.
20. Part of the work was seen in progress.
21. Yes.
22. Yes.

23. It is part of the Contract between the parties.
24. Mr. <sup>H</sup>Arville.
25. No.
26. Yes. There was no evidence of active subterranean termites present on the premises at the last inspection during the Summer of 1973.
27. Yes.

ORKIN EXTERMINATING COMPANY, INC.

BY: \_\_\_\_\_

JAMES SMITH

Sworn to and subscribed before me this 5<sup>th</sup> day of

Dec., 1973.

Mrs. Viola H. Vaughn  
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

My Commission Expires 2-28-77

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the above and foregoing Answers To Interrogatories on John Earl Chason, Counsel of Record for the Plaintiff, by placing a copy of the same in the United States Mail, postage prepaid and addressed to his regular mailing address.

This 14 day of Dec, 1973.

FILED

DEC 17 1973

Wesley Pries  
WESLEY PRIES

EUNICE B. BLACKMON CIRCUIT CLERK



# WOOD INFESTING ORGANISMS INSPECTION REPORT

OCCUPANT William C. Reed OCCUPANT'S PHONE \_\_\_\_\_  
 OWNER-AGENT'S PHONE 962-5241 TYPE STRUCTURE 100  
 ORKIN OFFICE 1415 E. 14th GRADE 1

## TYPE OF CONSTRUCTION

Crawl ☒ Basement ☐ Slab ☐  
 Combination ☐ Remarks \_\_\_\_\_

## FOUNDATION WALLS & PIERS

Concrete ☐ Hollow Block ☐ Single Brick ☐ Double Brick ☐  
 Triple Brick ☐ Hollow Tile ☐ Stone ☐  
 Hollow Block with Brick Veneer ☐ Open Foundation (Piers only) ☒

## EXTERIOR WALLS

Brick or stone ☐ Wood ☒ Shingle ☐  
 Stucco ☐ Hollow Block ☐  
 Frame skirting in contact with soil Yes ☐ No ☐

## PORCHES & STOOPS

Dirt Filled ☐ Wood ☒  
 Hollow ☐ Wood Form Boards Yes ☐ No ☐  
 Type slab \_\_\_\_\_  
 Condition of slab \_\_\_\_\_

## GENERAL CONDITIONS

Driveways, carports against foundation wall ☐ Lineal feet \_\_\_\_\_  
 Planters against foundation wall ☐ Lineal feet \_\_\_\_\_  
 Chimney ☐ Type \_\_\_\_\_  
 Wood step on ground Yes ☐ No ☒  
 Wood supports on ground Yes ☐ No ☒  
 Wood form board to remove Yes ☐ No ☒  
 Proper clearance for treating Yes ☐ No ☒  
 Number of stumps to be removed \_\_\_\_\_ Treated \_\_\_\_\_  
 Access opening to make Yes ☐ No ☒  
 Rubbish: Light ☐ Average ☐ Heavy ☐  
 Roof: Height \_\_\_\_\_ Pitch \_\_\_\_\_ Type \_\_\_\_\_  
 Electricity available Yes ☐ No ☒ Shrubbery: Light ☐ Heavy ☐  
 Install \_\_\_\_\_ number \_\_\_\_\_ type \_\_\_\_\_ ventilators.

## SUBTERRANEAN TERMITES ☒

Visible Evidence of termite activity Yes ☒ No ☐  
 Termites swarming Yes ☐ No ☒ Ground Infestation Yes ☐ No ☒  
 Moisture condition of ground area: Dry ☐ Damp ☐ Wet ☐

## DRYWOOD TERMITES ☐

Distance to closest building \_\_\_\_\_  
 Infestation Heavy ☐ Light ☒  
 Locations: Sills ☐ Joists ☐ Sub-floor ☐ Top Floor ☐  
 Attic ☐ Doors & Windows ☐ Furniture ☐  
 Other \_\_\_\_\_

## POWDER POST BEETLES ☐ WOOD & BORERS ☒

Infestation: Heavy ☐ Light ☒  
 Locations: Sills ☐ Joists ☐ Sub-floor ☐  
 Top floor ☐ Furniture ☐ Other \_\_\_\_\_

## LOCATION OF INFESTATION

Key: Termites (TI) Sub ☒ Drywood ☐ PPB Infested (BI)  
 Badly damaged (BD) Repairs needed (R) Apparently good (G)  
 Not applicable (X)

## CRAWL SPACE

Sills: Front \_\_\_\_\_ Right \_\_\_\_\_ Left ✓  
 Rear \_\_\_\_\_ Center \_\_\_\_\_  
 Joists \_\_\_\_\_ Location \_\_\_\_\_  
 Sub-floor ✓ Location 1st Side in Garage  
 Wall or studs \_\_\_\_\_ Location \_\_\_\_\_  
 Finished Floor \_\_\_\_\_ Location \_\_\_\_\_  
 Interior Trim \_\_\_\_\_ Location \_\_\_\_\_  
 Door & Window Frames \_\_\_\_\_ Type Soil \_\_\_\_\_  
 Remarks \_\_\_\_\_

## BASEMENT

Ceiling open Yes ☐ No ☐  
 Plaster \_\_\_\_\_ Insulating Board \_\_\_\_\_  
 Walls Finished Yes ☐ No ☐  
 Paneled \_\_\_\_\_ Insulating Board \_\_\_\_\_  
 Plaster \_\_\_\_\_ Hollow Block ✓  
 Sills: Front \_\_\_\_\_ Right ✓ Left ✓  
 Rear \_\_\_\_\_ Center \_\_\_\_\_  
 Joists: \_\_\_\_\_ Sub-floor \_\_\_\_\_  
 Finished floor \_\_\_\_\_ Basement floor \_\_\_\_\_  
 Remarks \_\_\_\_\_

## SLAB CONSTRUCTION

Type Slab: Floating ☐ Supported ☐ Monolithic ☐  
 Sleepers Yes ☐ No ☐ Wood ☐  
 Floor covering: Composition Tile ☐ Linoleum ☐ Ceramic ☐  
 Wall-to-wall carpet ☐ Terrazo ☐ Combinations ☐  
 Describe \_\_\_\_\_  
 Wall, Studs, Plates & Trim: Front \_\_\_\_\_ Right \_\_\_\_\_  
 Left \_\_\_\_\_ Rear \_\_\_\_\_ Partitions \_\_\_\_\_  
 Heating \_\_\_\_\_  
 Plumbing access Yes ☐ No ☐  
 Remarks \_\_\_\_\_



VIVIAN C. PEED,	X	
	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	BALDWIN COUNTY, ALABAMA
	X	
	X	CIVIL ACTION NO. 10,265
ORKIN EXTERMINATING	X	
COMPANY, INC., A	X	
Foreign Corporation,	X	
	X	
Defendant.	X	

Comes now the Plaintiff in the above styled cause and files the following Answer to the Interrogatories heretofore propounded to her by the Defendant:

1. Vivian C. Peed, Gulf Shores, Alabama.
2. No.
3. The Contract consist of the Service Order No. 581323 and the Control Guarantee, 116897 and a Graph and Specification Sheet which is not attached and of which I have no copy.
4. I do not remember.
5. Yes. In February, 1971, the Manager of the Mobile Office came to my house with a service man and they were not able to find termites but the service man re-treated the property. I do not know the names of either man.
6. In 1968 shortly before this contract was executed.
7. Yes.
8. No.
9. No.
10. In the Fall of 1970. I don't know.
11. I saw termites and a workman advised me that there were termites in the house.
12. Fred A. Holk, Contractor, Magnolia Springs, Alabama. Philip Pelham, Department of Agriculture & Industries, Montgomery, Alabama. Robert Lee Kirkland, Jr., Department of Agriculture &

Industries, Foley, Alabama.

13. Fred Holk - Building Contractor in Foley-Gulf Shores area for many years. This witness has examined the subject property and will testify to the condition of the building, the damage suffered and repair estimates. Philip Pelham - employee of State of Alabama, Department of Agriculture & Industries. Particular qualifications for job unknown. This witness will testify to having found live termites on the premises in 1971. Roger Lee Kirkland, employee of State of Alabama, Department of Agriculture & Industries. Particular qualifications for job unknown. This witness will testify to having found live termites on the premises in 1971.

14. 1. Fred A. Holk, Contractor, April 15, 1973.

2. Ralph Rogers, Handyman, December of 1970.

3. Alfred Cook, contractor, September of 1973.

4. Philip Pelham, State employee, March of 1971 and September of 1973.

5. Roger Lee Kirkland, Jr., State Employee, March of 1971 and September of 1973.

6. John E. Chason, Attorney, September of 1973.

15. Other than those identified in Interrogatory 12, I expect to call Ralph Rogers.

16. In the Spring of 1969, Gilbert Callaway enclosed the screen porch on the rear of the house. Ralph Rogers removed a part of the garage under the house in 1970, to the best of my recollection. Alfred Cook removed the maid's quarters under the house and repaired the front porch in August of 1973.

17. Same as 16.


18. Yes. Fred A. Holk, \$4,870.00.

19. Yes.

20. As previously stated, in the Spring of 1969, Gilbert Callaway enclosed the screen porch on the rear of the house. In 1970, part of the garage was removed under the house. No repairs were made at that time. In August of 1973, the remainder of the

downstairs, which was the maid's quarters, was dismantled and no repairs to that part of the building were made at that time. In August of 1973, Mr. Cook then made repairs to the front porch which were unconnected to the termite damage to this house.

21. This is a beach cottage and it is rented during the months of May through September of each year.



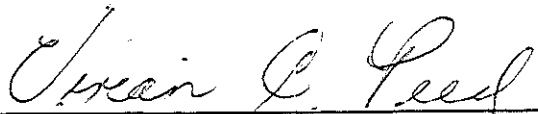
Vivian C. Peed

STATE OF ALABAMA

BALDWIN COUNTY

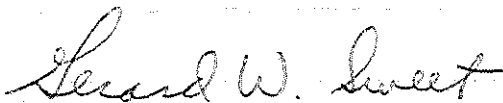
Before me, the undersigned authority, personally appeared Vivian C. Peed, who is known to me and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

That she has read the answers and the same are true and correct.



Vivian C. Peed

Sworn to and subscribed before me this 20<sup>th</sup> day of December, 1973.



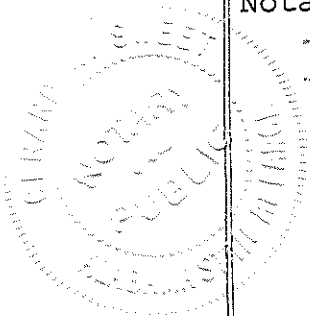
Notary Public, Baldwin County, Alabama

My Commission Expires Feb. 23, 1977

FILED

DEC 31 1973

EUNICE B. BLACKMON CIRCUIT CLERK



E. G. RICKARBY  
DANIEL A. BENTON  
TELEPHONE  
(205) 928-2508

LAW OFFICES  
**RICKARBY & BENTON**  
ATTORNEYS AT LAW  
316 MAGNOLIA AVENUE  
P. O. BOX 471  
FAIRHOPE, ALABAMA 36532

DAPHNE BRANCH  
EARLE REALTY BUILDING  
HIGHWAY 98  
TELEPHONE  
(205) 626-2608

February 28, 1972

10, 265

Mrs. Eunice Blackmon  
Clerk of the Circuit Court  
Bay Minette, Alabama 36507

Re: Vivian C. Peed v.  
Orkin Exterminating Company, Inc.

Dear Mrs. Blackmon:

Enclosed is summons, complaint and \$25.00 cost deposit in the above-styled matter. This case will have to be forwarded to the Sheriff of Montgomery, Alabama, for service.

Please have the return card in this case sent back to Daniel E. Robison in Foley, as he is the primary attorney.

Thank you.

Yours very truly,

  
Daniel A. Benton

DAB:w  
Enc.

cc-Daniel E. Robison, Esquire