

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA, AT LAW

10,514

CASE NO. 38819 - ROBERTSON

COLLINS, GALLOWAY & MURPHY
BY: Robert H. Smith

HIGHWAY PRODUCTS, INC., A GEORGIA CORPORATION

JURY

VS. Suit for \$5,000.00 damages for breach of warranty.

CHASON & UNDERWOOD
BY: C.G. Chason
P.O. Drawer 458
Foley, Alabama 36535

VULCAN SIGNS & STAMPINGS, INC., A CORPORATION

N.J.

PLEADINGS, PROCESS, ETC, * FILING DATE *

1. Complaint & Summons * 4-26-72 * C & S served on Cater Lee, President of Vulcan Signs & Stamping on May 3, 1972.

2. Plea in Abatement * 5-26-72 *

* July 27, 1972 - Plea in Abatement sustained; case ordered transferred to Baldwin County for further proceedings.

/s/ Hubert P. Robertson, Judge 45-805

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I, JOHN E. MANDEVILLE, in my capacity as Clerk of the Circuit Court of Mobile County, Alabama, hereby certify that the above is a true and correct transcript of all the minutes, orders and other proceedings in the above styled case in this Court.

In Witness whereof I have hereunto set my hand and attached my Official Seal as such Clerk of said Court at Mobile, Mobile County, Alabama, on this the 27th day of July 1972.

John E. Mandeville Clerk

Filed
7-31-72

HIGHWAY PRODUCTS, INC., : IN THE CIRCUIT COURT OF
A GEORGIA CORPORATION,

Plaintiff, : MOBILE COUNTY, ALABAMA

VS:

VULCAN SIGNS & STAMPINGS, : AT LAW
INC., A CORPORATION,

Defendant. : CASE NO. 38819

COUNT ONE

Plaintiff claims of the defendant the sum of FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS damages for a breach of warranty in the sale of fabricated metal sign discs, by defendant to the plaintiff on, to-wit, the 1ST day of October 1971, which defendant impliedly warranted were merchantible and also impliedly warranted that they were fit for the particular purpose for which they were ordered as provided in Title 3A, Section 2-314 and Section 2-315 Code of Alabama 1940 (recomp 1958) as amended. Plaintiff alleges that it relied on the skill and judgment of the defendant in the selection of the fabricated metal sign discs for the particular purpose of using said signs as highway signs in the State of Georgia on coastal areas, when in fact such signs were not fit for the purpose for which they were intended and ordered and were not of merchantible quality in that they did not meet specifications of the Georgia Highway Department, and were rejected for that reason and said defendant was allowed an opportunity to cure said improper delivery and upon furnishing fabricated metal signs meeting the specifications as to metal content, said signs were again rejected by the Georgia Highway Department due to the poor physical appearance and workmanship in that the Scotchlite faces were applied crooked on the metal resulting in crooked borders and some of the signs were screened with irregular borders thus resulting in the second shipment being completely rejected; and defendant was allowed an

opportunity to cure this second improper delivery and only after the third delivery was the order acceptable to the Georgia Highway Department and said improper deliveries resulted in a twenty-eight (28) day penalty being assessed by the Georgia Highway Department against the plaintiff and said penalty would not have occurred but for the defendant breaching the implied warranty set out above; and said defendant had reason to know of the penalties that plaintiff would be subjected to and said penalty being assessed against the prime contractor and the prime contractor looking to the plaintiff at the rate of \$150.00 per day; plaintiff alleges that it has given notice of the breach of warranty to the defendant by calls and letter by and through its attorney on, to-wit, February 29, 1972. Plaintiff claims as aforesaid consequential damages of FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS as provided under Title 3A, Section 2715, Code of Alabama 1940 (recomp 1958) as amended; hence this suit.

COUNT TWO

Plaintiff claims of the defendant the sum of FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS damages for a breach of warranty in the sale of fabricated metal sign discs, by defendant to the plaintiff, on, to-wit, the 1st day of October, 1971, which defendant impliedly warranted were merchantible as provided in Title 3A Section 2-314 Code of Alabama 1940 (recomp 1958) as amended. Said materials were not of merchantible quality in that they did not meet specifications of the Georgia Highway Department concerning composition of metal and were rejected for that reason by the Georgia Highway Department and defendant was given an opportunity to cure the improper delivery and upon furnishing a second delivery with properly specified metal they were again rejected by the Georgia Highway Department due to poor physical appearance in workmanship in that the Scotchlite faces were applied crooked on the metal, resulting in crooked borders and some of the signs were screened with irregular borders thus resulting in the

second shipment being completely rejected, and defendant was given an opportunity to cure this improper deliver and only after the third delivery was the order acceptable to the Georgia Highway Department resulting in a twenty-eight (28) day penalty being assessed by the Georgia Highway Department against the prime contractor and plaintiff a sub-contractor which would not have occurred but for the defendant breaching the implied warranty of merchantability set out above; and said defendant had reason to know of the penalty that plaintiff would be subjected to and said penalty was assessed at the rate of \$150.00 per day and plaintiff is responsible to its prime contractor and to the State of Georgia for that amount and plaintiff alleges that it has given notice of the breach of implied warranty of merchantability to the defendant by calls and letter by and through its attorney on, to-wit, February 29, 1972. Plaintiff claims as aforesaid consequential damages of FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS as provided under Title 3A Section 2-715 Code of Alabama 1940 (recomp 1958) as amended; hence this suit.

COUNT THREE

Plaintiff claims of the defendant the sum of FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS AS Damages for a breach of implied warranty of fitness in the sale of fabricated metal sign discs, by defendant to the plaintiff on, to-wit, the 1st day of October, 1971, which defendant impliedly warranted were fit for the particular purpose of using said signs as highway signs in the State of Georgia on coastal areas, when in fact said signs were not fit for the purpose for which they were intended and plaintiff alleges that it relied on the skill and judgment of the defendant in selection of the materials for the manufacture of metal sign discs for this particular purpose and plaintiff further alleges that the metal sign discs did not meet the specifications of the Georgia Highway Department as to composition of

metal and were rejected for that reason and defendant was given an opportunity to cure the improper delivery and defendant did deliver said fabricated metal sign discs on a second occasion and they were again rejected by the Georgia Highway Department due to poor physical appearance and workmanship in that the Scotchlite faces were applied crooked on the metal resulting in crooked borders and some of the signs were screened with irregular borders thus resulting in the second shipment being completely rejected and defendant was again given an opportunity to cure the improper delivery and only after the third delivery was the order acceptable to the Georgia Highway Department resulting in a twenty-eight (28) day penalty being assessed by the Georgia Highway Department against the prime contractor and the sub-contractor the plaintiff herein which would not have occurred but for the defendant breaching the implied warranty of fitness for a particular purpose as set out above; and said defendant had reason to know/^{of}the penalty that plaintiff would be subjected to because of improper delivery and said penalty has been assessed and plaintiff is responsible to the prime contractor and the State of Georgia at the rate of \$150.00 per day for twenty-eight (28) days; and plaintiff alleges that it has given notice of the breach of implied warranty for fitness for a particular purpose to the defendant by calls and letter by and through its attorney on, to-wit, February 29, 1972. Plaintiff claims as aforesaid consequential damages of FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS as provided under Title 3A, Section 2-715 Code of Alabama 1940 (recomp 1958) as amended; hence this suit.

COLLINS, GALLOWAY & MURPHY

By: Robert H. Smith
ROBERT H. SMITH
ATTORNEYS FOR PLAINTIFF

Defendant may be served
by serving Vulcan Signs & Stampings,
Inc., by serving its President
Cater Lee
400 E. Berry Avenue
Foley, Alabama

Plaintiff respectfully
demands trial by jury.

COLLINS, GALLOWAY & MURPHY
By: Robert H. Smith
Robert H. Smith

THE STATE OF ALABAMA
MOBILE COUNTY

CIRCUIT COURT

To Any Sheriff of the State of Alabama:
You are hereby commanded to summon

VULCAN SIGNS & STAMPINGS, INC., A CORPORATION

to appear within thirty days from service of this process, in the Circuit Court of Mobile County, Alabama,
at the place of holding the same, then and there to answer the complaint of

HIGHWAY PRODUCTS, INC., A GEORGIA CORPORATION,

WITNESS: John E. Mandeville, Clerk of said Court, this 26th day of APRIL, 1972

Attest: *John E. Mandeville* Clerk

SHERIFF'S RETURN

Received _____ day of _____, 19____ and on _____ day
of _____, 19____, I served a copy of
the within _____ on _____
by service on _____

RAY D. BRIDGES, SHERIFF

By _____ D.S.

TAYLOR WILKINS, SHERIFF OF BALDWIN
COUNTY, ALABAMA, CLAIM \$1.50 EACH
FOR SERVING _____ PROCESSES) AND
TRAVEL EXPENSE ON EACH OF \$ 22
PROCESSES) OR A TOTAL OF \$ 870

Mail

No. 38819 *R*

JUDGE _____ DOCKET

CIVIL DIVISION

CIRCUIT COURT
MOBILE COUNTY

Highway Products, Inc., etc.

VS. } Complaint and Summons

MAY 1 1972

Vulcan Signs & Stampings,
Inc., etc.

Issued 26th day of April, 19 72

Defendant's Address

SERVE: Cater Lee, President
Vulcan Signs & Stampings, Inc.
400 E. Berry Avenue
Foley, Alabama

31 ROBERT H. SMITH

Plaintiff's Attorney

Received 1 day of May 19 72
and on 3 day of May 19 72
I served a copy of the within
on Cater Lee, President of
Vulcan Signs & Stampings

By service on

TAYLOR WILKINS, Sheriff

(Signature) D. W.

CHASON & UNDERWOOD

Attorneys at Law

CECIL G. CHASON
THOMAS W. UNDERWOOD, JR.

P. O. DRAWER 458
216 W. LAUREL AVENUE
FOLEY, ALABAMA 36535
PHONE 205/943-3171

May 24, 1972

Clerk of the Circuit Court
Mobile County Courthouse
Mobile, Alabama

Re: Highway Products Inc., vs.
Vulcan Signs & Stampings,
Case No. 38819 *P*

Dear Sir:

I am enclosing a Plea in Abatement to be filed in the
above styled case.

Yours very truly,

C. G. Chason

C. G. Chason

By Thomas W. Underwood, Jr.

CGC/vd
Enc.

STATE OF ALA. MOBILE CO.
I CERTIFY THIS PLEADING
WAS FILED ON

MAY 26 7 54 AM '72

LaMontagne
CLERK

HIGHWAY PRODUCTS, INC.,
a Georgia corporation,

Plaintiff,

vs.

VULCAN SIGNS & STAMPINGS,
INC., a corporation,

Defendant.

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA

AT LAW

CASE NO. 38819

PLEA IN ABATEMENT

Comes Vulcan Signs & Stampings, Inc., a corporation, appearing solely and specially for the purpose of filing this plea and for no other purpose, and pleading in abatement, says as follows:

That as of this date and as of the date the alleged cause of action arose, and all intervening times, the Defendant, Vulcan Signs & Stampings, Inc., was doing business by agent in Baldwin County, Alabama, and Jefferson County, Alabama; that it is a domestic corporation organized and doing business under the laws of the State of Alabama, having been incorporated in Alabama; that its principal place of business is in Foley, Baldwin County, Alabama; that it does no business by agent in Mobile County, Alabama, and did no business by agent in Mobile County, Alabama, on the 1st day of October, 1971, which is the date Plaintiff alleges a cause of action arose, nor has it done business in Mobile County, Alabama, at any time intervening between October 1, 1971, and the present date. This defendant avers that venue is not proper in Mobile County, Alabama, but that proper venue is in Baldwin County, Alabama, or Jefferson County, Alabama.

THE PREMISES CONSIDERED, Vulcan Signs & Stampings, Inc., a corporation, says that suit should be abated and not allowed to proceed.

CHASON & UNDERWOOD,
Attorneys for Defendant

By 

STATE OF ALABAMA

BALDWIN COUNTY

Personally appeared before me, Janice b Childress

a Notary Public in and for said County in said State, CATER LEE, who being known to me and being duly sworn, deposes and says that he is President of Vulcan Signs & Stampings, Inc., a corporation; that he is cognizant of the matters set forth in the above and foregoing plea in abatement, and that the same are true and correct.

Cater Lee

Subscribed and sworn to before me this the 24th day of May, 1972, as witness my hand and official seal.

James L. Childress
Notary Public, Baldwin County
State of Alabama

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 24
day of May, 1972, served a
copy of the foregoing plead. on counsel for all
parties to this proceeding by mailing the same
by United States mail, properly addressed, and
first class postage prepaid.

[Signature]

THURSDAY, JULY 27, 1972

HIGHWAY PRODUCTS, INC., A)	
GEORGIA CORPORATION	)	PLEA IN ABATEMENT SUSTAINED;
	)	CASE ORDERED TRANSFERRED TO
ROBERTSON -vs- 38819	)	BALDWIN COUNTY FOR FURTHER
	)	PROCEEDINGS
VULCAN SIGNS & STAMPINGS, INC.,)	
A CORPORATION)	

This day in open Court came the parties by their attorneys, and this cause coming on to be heard on the defendant's Plea in Abatement filed May 26, 1972 in this cause, and said Plea in Abatement being argued by counsel and understood by the Court;

It is therefore ordered and adjudged by the Court that the defendant's said Plea in Abatement filed May 26, 1972 in this cause be, and the same is hereby sustained, and case ordered transferred to the Circuit Court of Baldwin County, Alabama.

Minute Book 45

Page 805

STATE OF ALABAMA, }
COUNTY OF MOBILE }

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

I, JOHN E. MANDEVILLE, Clerk of the Circuit Court of Mobile County, Alabama, do hereby
certify that the foregoing is a full, true and correct copy of _____
ORDER OF COURT

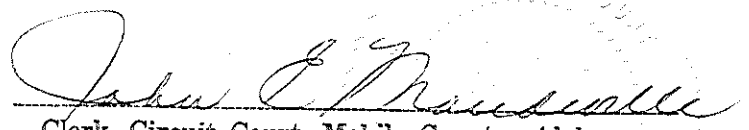
as rendered by the said Circuit Court on the 27th day of July, 1972, in the cause
entitled No. 38819 - HIGHWAY PRODUCTS, INC., A GEORGIA CORPORATION

_____, Plaintiff,
— versus — VULCAN SIGNS & STAMPINGS, INC., A CORPORATION

Defendant, (~~TOGETHER WITH THE COUNTERCLAIM THEREIN~~), as the same remains of record in this office in
Minute Book No. 45, Page No. 805

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at office
in the City of Mobile, Alabama, on this the 27th day of July, 1972.

ATTEST:


Clerk, Circuit Court, Mobile County, Alabama.

CIVIL DIVISION, CIRCUIT COURT, MOBILE COUNTY

HIGHWAY PRODUCTS, INC., A GEORGIA CORPORATION

Plaintiff

No. 38819

VS.

VULCAN SIGNS & STAMPINGS, INC., A CORPORATION

Defendant

(Act No. 740, Reg. Session Ala. Legislature 1957
Appvd. Sept. 20, 1957)
(Amend Sec. 21, Title 11, Code Ala. 1940)

BILL OF COST

(Act No. 571, Reg. Ses. Leg. 1955)
(Amend Sec. 34 and 100, Title 11, Code Ala. 1940)

CLERK'S FEES	Pltff.	Deft.	SHERIFF'S FEES	Pltff.	Deft.
			Mileage \$7.20	1.50	
Suits for \$100 or less \$ 6.00			Serving Summons & Complaints \$ 3.00	8 70	
Suits for over \$100 but less than \$1,000 10.00			Serving Writ of Garnishment 3.00		
Suits for \$1,000 and over 20.00	20 00		Serving Sci Fa-Notices 3.00		
Suits in detinue, ejectment, etc. 10.00			Serving Writ of Discovery 3.00		
Suits not otherwise provided 10.00			Levying Attachment & Return 12.00		
Writs, Mandamus, Prohibition, etc. 15.00			Executing Writ Possession 10.00		
Appeals from Court General Sessions 15.00			Seizing personal property under Writ of Detinue 12.00		
Appeals from Probate Court 20.00			Serving subpoenas, each 1.50		
Appeals from JP Courts 6.00			Impanelling Jury .75		
Appeals from State Dept of Pub. Safety, and other State Agencies 10.00			Taking & Approving Bond 4.00		
Workmen's Compensation Settle. 10.00			Collecting Costs Execution 3.00		
Garnishment on Judgment 6.00			Serving Contempt Writ 3.00		
Order of Sale, Motions to sell. 6.00			Making Deed for Property Sold 5.00		
Recording executions from State Agencies 3.00			Commission, collecting money on executions, 1st \$500-5% \$500-\$1000-4%, over \$1000-3%		
Cert. Copy of Record - per 100 words .15	80				
Taking Appeal Bond .75			Total \$	8 70	
Record for Supreme Court etc., per 100 words .15			RECAPITULATION		
Add'l Copies of Record for Supreme Court, per 100 words .05			Clerk	20 80	
Checking - including Reporters Transcript of Evidence 10.00			Sheriff Taylor Wilkins Baldwin County	8 70	
Certifying Abstract in lieu of Transcript on Appeal 5.00			Court		
Collecting Money on Judgments over 30 days old; ½ the percentage allowed Sheriffs \$			Witness Fees		
			Commissioner's Fees		
			Certificate of Judgment		
			Judgment		
			10% Damages		
			Interest		
			Stenographer's fees (\$10.00 day)		
			Hospital Records		
			Advertisement		
			Garnishee's fees		
			Library Fee 1.50	1 50	
			Trial Tax (County) 1.50	1 50	
			Trial Tax (State) 1.50	1 50	
			Fair Trial Tax (State) 2.00	2 00	
			Court Adm. Fund 2.00	2 00	
Total \$	20 80				

\$38.00

I respectfully beg to advise that if this bill for costs is not paid before 19____, it will be my unpleasant duty to issue execution for same.

JOHN E. MANDEVILLE, Clerk

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW

958 DAUPHIN STREET

MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.

December 18, 1972

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

Mrs. Eunice Blackmon
Clerk, Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: Highway Products
vs: Vulcan Sign & Stampings Co.
Case No. 10514

Dear Mrs. Blackmon:

I have talked with the attorney for Vulcan Sign and Stampings and he informs me that he has not received notice of this case being transferred and docketed in your Court. Title 7, Section 64 (2), Code of Alabama 1940 (recomp. 1958), as amended, provides as follows:

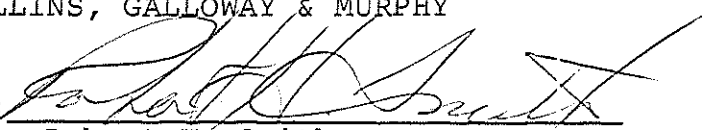
"The clerk of the court to which such case has been transferred shall cause notice of such transfer to be served on the plaintiff and on the defendant or on their respective attorneys of record, and the time for answer by the defendant shall be computed from the date of such notice on him or his attorney of record."

If notice has not already been served, please serve the attorney for the defendant as provided by the above section. If I may be of any help in this matter, please do not hesitate to call me.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY:


Robert H. Smith

RHS/brm

10,514

10,514

7. Admit that the reason Highway Products could not complete the project was inability to get the correct signs from Highway Products' supplier.

8. Admit that all other items were complete on the project except for the signs and for this reason Highway Products was responsible for the delay in completing the project.

COLLINS, GALLOWAY & MURPHY

BY: 

Robert H. Smith
ATTORNEYS FOR PLAINTIFF

Post Office Box 4492
Mobile, Alabama 36604

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 29th day of August, 1974, served a copy of the foregoing on counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.


Robert H. Smith

FILED

SEP 3 1974

EUNICE B. BLACKMON CIRCUIT
CLERK

J. A. HUDSON CONSTRUCTION CO.
GENERAL CONTRACTORS

2131 BOLTON ROAD, N. W.
ATLANTA, GEORGIA 30318

17

Nov. 22, 1971

Highway Products, Inc.
P.O.Box 164
Evans, Ga. 30809

Re: S-2542 (2) White Co.

Estimate #2 - Stripes.

652 - Solid Traffic Stripe			
4" - Yellow	3.702 Mi.	200.00	740.40
652 - Skip Traffic Stripe			
4" Yellow	4.840 Gr.M.	190.00	919.60

Less Bond Prem @ .75

Less 10% Retainage

Less Previous Payment = = = =

Amount Due This Estimate = = = \$ 820.74

1660.00
12.45
1647.55
166.00
1481.55
660.81

62

J. A. HUDSON CONSTRUCTION CO.
GENERAL CONTRACTORS

2131 BOLTON ROAD, N. W.

ATLANTA, GEORGIA 30318

Nov. 22, 1971

Highway Products, Inc.
P.O. Box 164
Evans, Ga. 30809

Re: S-2542 (2) White Co.
Estimate #3 - Guardrail & Signs.

641 - Guardrail	11738.5 L.F.	2.85	33454.72
641 - Guardrail Anchorage			
Type 3	47 Ea.	140.00	6580.00
636 - Highway Signs Type 1 Matl.	201.13 Sq.Ft.	4.75	955.36
636 - Galv. Steel Posts			
Type 1	26 L.F.	1.90	49.40
636 - Galv. Steel Posts			
Type 2	378 L.F.	2.00	756.00
			<u>41795.48</u>
	Less Bond Prem @.75		<u>313.47</u>
			41482.01
	Less 10% Retainage		<u>4179.55</u>
			37302.46
	Less Previous Payments:		
Less Est.#1 - 9-14-71 Ck.#3946 - - - - -	\$	7432.47	
Less Check to Highway Prod.&			
Syro Steel Co. 10-18-71 #4087 - - -		25794.53	
Less Check to Milam Prod. Conc. Co.			
12 Yds. Concrete Ck.#4039 - 10-8-71 -		241.02	
Less Check to Milam Conc. Prod. Co.			
3 1/2 Yds. Conc. Check #4154 - 11-10-71 -		65.87	\$ 33533.89

Amount Due This Estimate = = = \$ 3768.57

EXHIBIT B

(3)

J. A. HUDSON CONSTRUCTION CO.
GENERAL CONTRACTORS

2131 BOLTON ROAD, N. W.
ATLANTA, GEORGIA 30318

Nov. 22, 1971

Highway Products, Inc.
P.O.Box 164
Evans, Ga. 30809

Re: S-2542 (2) White Co.
Estimate #2. R/W Markers.

634 - Right of Way Marker			
Std. 9003	180 Ea.	8.00	1440.00
634 - Project Marker Comp.			
Std. 9003	2 Ea.	25.00	<u>50.00</u>
			1490.00
			<u>11.18</u>
			1478.82
Less Bond Prem @.75			<u>149.00</u>
Less 10% Retainage			1329.82
Less Previous Payment			<u>1149.54</u>
Amount Due This Estimate = = = = \$			180.28

HIGHWAY PRODUCTS, INC.,	)	IN THE CIRCUIT COURT OF
A Georgia Corporation,)	
	)	BALDWIN COUNTY, ALABAMA
Plaintiff,)	
)	
vs.	)	AT LAW
)	
VULCAN SIGNS & STAMPINGS,)	
INC., a corporation,)	
)	
Defendant.	)	CASE NO. 10,514

ANSWER


Comes the Defendant in the above styled cause and in answer to a Complaint heretofore filed herein and to each count thereof, separately and severally, shows separately and severally the following:

1. That the allegations of the Complaint are untrue.
2. That the Plaintiff itself was guilty of delay which proximately resulted in the penalties to which the Plaintiff was subjected.
3. At the time the order for the signs, which was for the total amount of \$769.93 was placed, the Plaintiff was notified that no delivery dates could be guaranteed, therefore, the risk of late delivery was assumed by the Plaintiff as a part of the Contract and Agreement of sale and purchase.
4. That it is the stated policy of the Defendant which is and was a condition of sale to replace any defective signs or material, but the liability of the Defendant company is limited to replacement, which said policy is known to the Plaintiff and was known to the Plaintiff at the time the order was placed for the signs referred to in the Complaint.
5. The possibilities of any penalties being charged for late delivery was not made known to the Defendant at the time the order was placed, nor was any delivery date of acceptable signs guaranteed, nor penalties for late delivery assumed.
6. That the specifications furnished to the Defendant company by the Plaintiff provided for an aluminum alloy designated by the Georgia State Highway Department as 6061-T6, which said material is not manufactured or prepared by the Defendant

company but is furnished to the Defendant company by a supplier and that the Defendant company has no management or control over the preparation of the material, therefore, if the material was not in fact up to specifications, it was not at the fault of the Defendant company.

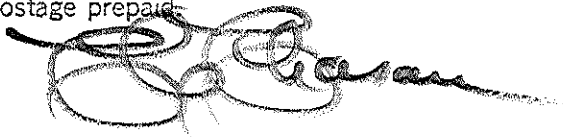
CHASON & UNDERWOOD

BY


Attorneys for Defendant

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 30
day of April, 1973, 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.



FILED

APR 23 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

HIGHWAY PRODUCTS, INC., : IN THE CIRCUIT COURT OF
A Georgia Corporation, :
Plaintiff, : BALDWIN COUNTY, ALABAMA
VS: :
VULCAN SIGNS & STAMPINGS, : AT LAW
INC., a corporation, :
Defendant : CASE NO. 1 0 5 1 4

DEMURRER

Comes now the plaintiff in the above styled cause and demurs to the defendant's answer and to each count thereof separately and severally on the following separate and several grounds:

1. For that said plea fails to state a legal defense.
2. For that said plea is vague, indefinite and uncertain.
3. For that the allegations of said plea are conflicting and repugnant.
4. For that said plea is irrelevant, immaterial and incompetent to the plaintiff's complaint.
5. For that said plea fails to set up matters which are cognizable at law as a legal defense.
6. For that the allegations of plea 2 are insufficient as a matter of law to create a defense and for aught appearing therein the plaintiff being guilty of delay is not a sufficient defense to the plaintiff's complaint.
7. For that the allegations of plea 3 fail to allege sufficient facts of the "contract and agreement of sale and purchase" whereby the defendant says the plaintiff assumed the risk of late delivery and for aught appearing therein there was no assumption of risk by the plaintiff.
8. For that the allegations of plea 3 fail to show as a matter of law that the defense of assumption of risk is a defense to a contract action.

9. For that the allegations of plea 4 are insufficient as a matter of law to state a legal defense to the plaintiff's complaint.

10. For that the allegations of plea 4 fail to allege that such stated policy or "condition of sale" was a part of the contract between the plaintiff and defendant and whether said policy was known to the plaintiff or not is of no effect as a legal defense to this cause.

11. For that the allegations of plea 5 are insufficient to state a legal defense to the plaintiff's complaint.

12. For that the allegations of plea 5 stating that the penalty for late charge was not known to the defendant is not a basis for legal defense so long as consequential damages were reasonably anticipated from the course of dealing.


13. For that the allegations of paragraph 6 fail to set up a legal defense.

14. For that the allegations of paragraph 6 that the defendant had no control over its supplier is of no effect as a legal defense for that the plaintiff was dealing with the defendant and not its supplier.

15. For that the allegations of paragraph 6 that the defendant had no control over its supplier is of no effect in this case and from aught appearing the defendant could bring a third party action or seek indemnity from its supplier if it were negligent in filling plaintiff's order as per specifications which the defendant negligently failed to provide.

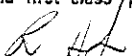
COLLINS, GALLOWAY & MURPHY

BY:


Robert H. Smith
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 23rd day of April, 1973, 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.



FILED

APR 26 1973

EUNICE B. BLACKMON
CIRCUIT CLERK

VOL 73 PAGE 43

HIGHWAY PRODUCTS, INC.,
a Georgia corporation,

Plaintiff,

VS.

VULCAN SIGNS & STAMPINGS,
INC., a corporation,

Defendant.


IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 10,514

MOTION FOR EXTENSION OF TIME
TO RESPOND TO REQUEST TO ADMIT

Defendant moves the Court for an order extending to a date 30 days after the Plaintiff has provided copies of the written documents requested in the Defendant's request for production of documents for the Defendant to reply to the request for admissions of fact served upon it by Plaintiff on the 18th day of September, 1973, on the grounds that the Defendant cannot admit or deny facts stated in the request for admission of fact until the Defendant has had the opportunity to examine certain written documents described in the Plaintiff's request for admissions of fact and the Defendant files its request for production of documents simultaneously with this motion for extension of time.


C. G. Chason
Chason & Underwood
Attorneys at Law
Post Office Drawer 458
Foley, Alabama 36535

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 16
day of Oct, 1973, 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.



FILED

OCT 16 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

HIGHWAY PRODUCTS, INC.,)	
a Georgia corporation,)	
	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
vs.)	
	)	AT LAW
VULCAN SIGNS & STAMPINGS,)	
INC., a corporation,	)	CASE NO. 10,514
Defendant.)	

REQUEST FOR PRODUCTION
UNDER RULE 34

Defendant, Vulcan Signs & Stampings, Inc., a corporation, requests Plaintiff, Highway Products, Inc., to respond within thirty days to the following request:

That the Plaintiff produce and permit the Defendant to inspect and to copy each of the following documents:

1. The construction contract by and between J. A. Hudson Construction Company and the State of Georgia Highway Department described in number 14 of the Plaintiff's request for admissions of fact.
2. Any contract or memorandum by and between the Plaintiff and J. A. Hudson Construction Company or J. A. Hudson Construction Company and the State of Georgia Highway Department, or by and between the Plaintiff and the State of Georgia Highway Department establishing that the Plaintiff was a sub-contractor on Project S-2542 (2).
3. Any written correspondence between the State Highway Department of Georgia and J. A. Hudson Construction Company tending to establish that a penalty was charged J. A. Hudson Construction Company by the State Highway Department of Georgia referred to in number 25 of Plaintiff's request for admissions of fact.
4. Any written correspondence or memorandum by and between J. A. Hudson Construction Company and the Plaintiff establishing that J. A. Hudson Construction Company was charging the Plaintiff a penalty as described in number 25 of the Plaintiff's request for admissions of fact.
5. Cancelled checks or any other written documentation

establishing that J. A. Hudson Construction Company paid the penalty described in number 25 of the Plaintiff's request for admissions of fact.


6. Cancelled checks or any other written documentation establishing that the Plaintiff paid J. A. Hudson Construction Company the penalty described in number 25 of the Plaintiff's request for admissions of fact.

7. Bid and acceptance of Plaintiff to J. A. Hudson Construction Company purported to be dated August 5, 1970, and accepted August 10, 1970, a copy of which was supposed to be attached to the Plaintiff's request for admissions of fact in number 25a thereof, but where in fact a copy of a bid and acceptance of Highway Products, Inc., to C. A. Rutledge Construction Company was attached and identified as Exhibit A.

8. Any written demand by J. A. Hudson Construction Company of the Plaintiff for payment of the penalty described in number 26 of Plaintiff's request for admissions of fact.

9. Proof of payment that the Plaintiff paid J. A. Hudson Construction Company for the penalty described in number 26 of Plaintiff's request for admissions of fact.

Defendant requests that either copies of the above documents be mailed to Chason & Underwood, Attorneys at Law, Post Office Drawer 458, Foley, Alabama, 36535, or that the original documents requested above be made available at the office of Chason & Underwood, 216 West Laurel Avenue, Foley, Alabama, to be examined and copied by the Defendant's attorneys.


C. G. Chason
Chason & Underwood
Attorneys at Law
Post Office Drawer 458
Foley, Alabama 36535

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 16
day of Oct, 1973, 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.

ATTORNEYS FOR DEFENDANT

FILED

OCT 16 1973

C & U

VOL

73 PAGE 67
JUNICE B. BLACKMON CIRCUIT CLERK

Defendant.

CASE NO. 10,514

HIGHWAY PRODUCTS, INC., : IN THE CIRCUIT COURT OF
A Georgia Corporation,

Plaintiff, : BALDWIN COUNTY, ALABAMA

VS:

VULCAN SIGNS & STAMPINGS, : AT LAW
INC., A Corporation,

Defendant. : CASE NO. 10,514

MOTION FOR JUDGMENT NIL DICIT

Comes now the plaintiff in the above styled cause and shows unto this Court that on February 21, 1973, the defendant's demurrer to the plaintiff's complaint was overruled and that since that time more than twenty (20) days has elapsed and the defendant has failed to answer the plaintiff's complaint.

WHEREFORE, the premises considered plaintiff moves the Court to require the defendant to answer within twenty (20) days or suffer judgment by default.

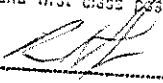
COLLINS, GALLOWAY & MURPHY

By: 

ROBERT H. SMITH
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 21st day of March, 1973, 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.



FILED

MAR 30 1973

EUNICE B. BLACKMON CIRCUIT CLERK

FILED

MAR 30 1973

EUNICE B. BLACKMON CIRCUIT CLERK

#VOL

73 PAGE 39

HIGHWAY PRODUCTS, INC.,	:	IN THE CIRCUIT COURT OF
A Georgia Corporation,	:	BALDWIN COUNTY, ALABAMA
Plaintiff,	:	
	:	AT LAW
VS:	:	
	:	
VULCAN SIGNS & STAMPINGS,	:	
INC., A Corporation,	:	
Defendant.	:	CASE NO. 10,514

ORDER

Plaintiff's motion for judgment nil dicit coming on to be heard before this Court, and it being shown to the Court that on February 21, 1973 the defendant's demurrer to the plaintiff's complaint was overruled and that since that time more than twenty (20) days has elapsed and the defendant has failed to answer the plaintiff's complaint, the plaintiff's motion for judgment nil dicit is granted and it is further

ORDERED, ADJUDGED AND DECREED that the defendant answer the plaintiff's complaint within twenty (20) days from the date of this order or suffer judgment by default.

April 11, 1973.

Delbert J. Washington
CIRCUIT JUDGE

HIGHWAY PRODUCTS, INC.,	:	IN THE CIRCUIT COURT OF
A Georgia Corporation,	:	
Plaintiff,	:	
VS:	:	BALDWIN COUNTY, ALABAMA
VULCAN SIGNS & STAMPINGS,	:	AT LAW
INC., A Corporation,	:	
Defendant	:	CASE NO. 1 0 5 1 4

REQUEST FOR ADMISSIONS OF FACT

Plaintiff, Highway Products, Inc., requests defendant, Vulcan Signs & Stampings, Inc, a corporation, to admit the truth and/or authenticity of the following facts and documents:

1. The plaintiff, Highway Products, Inc., is a Georgia corporation.
2. Vulcan Signs & Stampings, Inc., a corporation, is a corporation.
3. Vulcan Signs & Stampings, Inc., a corporation, is properly named in the above styled law suit as a party defendant.
4. On to-wit, the first day of October, 1971, the defendant sold to the plaintiff fabricated metal sign discs.
5. The fabricated metal sign discs were part of Vulcan Signs & Stampings, Inc., Job No. 937.
6. The metal fabricated sign discs were invoiced on Vulcan Signs & Stampings, Inc., Invoice No. 3,305.
7. The defendant was aware of the alloy specifications required by the Georgia Highway Department for the fabricated metal sign discs shipped to the plaintiff.
8. The fabricated metal sign discs, a part of Vulcan Signs & Stampings, Inc. Job No. 937, sold to the plaintiff, did not meet the alloy specifications required by the Georgia Highway Department.

9. That because the fabricated metal sign discs did not meet the alloy specifications required by the Georgia Highway Department, the entire shipment of fabricated metal sign discs was rejected.

10. In an attempt to correct the first improper delivery, the defendant shipped a second delivery with properly specified alloy metal content.

11. The second shipment shipped by the defendant of fabricated metal sign discs was rejected by the Georgia Highway Department due to poor physical appearance and workmanship.

12. The second shipment of metal fabricated sign discs rejected by the Georgia Highway Department due to poor physical appearance and workmanship was because the Scotchlite faces were applied crooked on the metal resulting in crooked borders and a portion of the metal fabricated sign discs were screened with irregular borders.

13. The defendant shipped a third delivery in an attempt to correct the first two improper deliveries which was acceptable to the Georgia Highway Department.

14. That J. A. Hudson Construction Company was the prime contractor for the State of Georgia Highway Department for the job in question.

15. That the State Highway Department of Georgia Project No. was S-2542 (2).

16. That the customer order number of the plaintiff placed with the defendant was S-2542 (2).

17. That the State Highway Department of Georgia project was also referred to as the White County Project.

18. That a contract existed between the State Highway Department of Georgia and J. A. Hudson Construction Company for Project S-2542 (2).

19. That the total bid and contract price in the

contract existing between the State of Georgia Highway Department and J. A. Hudson Construction Company was a total of \$564,762.60.

20. That the contract existing between the State of Georgia Highway Department and J. A. Hudson Construction Company contained a provision for liquidated damages on failure or delay in completing work on time.

21. That the schedule of deductions for each day of over run in contract time in the contract between the State of Georgia Highway Department and J. A. Hudson Construction Company provided that on an original contract amount of \$500,000.00 and less than \$1 Million the daily charge per calendar day for over run in contract time was \$150.00 per calendar day.

22. That there was a 28 day delay because of the improper shipment of metal fabricated sign discs by the defendant to the plaintiff.

23. That the plaintiff, Highway Products, Inc., a corporation, was a subcontractor on Project S-2542 (2) to J. A. Hudson Construction Company for supplying metal fabricated sign discs.

24. That because of the improper deliveries of metal fabricated sign discs made by the defendant a 28 day over run beyond the contract completion time in the contract between the State of Georgia Highway Department and J. A. Hudson Construction Company occurred.

25. That because of the improper deliveries of metal fabricated sign discs made by the defendant causing the 28 day over run, the State Highway Department of Georgia charged a 28 day penalty at \$150.00 per day to J. A. Hudson Construction Company.

25a. Admit the authenticity and correctness of the copy of the bid and acceptance of Highway Products, Inc. to J. A. Hudson Construction Company dated August 5, 1970 and accepted August 10, 1970, a copy of which is attached hereto and marked Exhibit A.

26. That J. A. Hudson Construction Company charged the 28 day delay time charge of \$150.00 per day to its sub-contractor, Highway Products, Inc., the plaintiff.

27. That prior to Project S-2542 (2), the defendant filled orders for the plaintiff on metal fabricated sign discs on a Project known as S-2186 (2).

28. That on Project No. S-2186 (2) the defendant made improper deliveries similar to the improper deliveries made on Project No. S-2542 (2).

29. That because of the improper delivers on Project No. S-2186 (2) the plaintiff was charged with time delay penalties by its prime contractor, C. A. Rutledge Construction Company, Inc.

30. That the defendant assumed four days of late charges charged to the plaintiff at the rate of \$140.00 per day on Project No. S-2186 (2).

31. That the defendant gave the plaintiff a credit in the amount of \$560.00 for the delay time charges on Project No. S-2186 (2) to be credited on Project No. S-2542 (2).

32. That prior to filling the order for Project No. S-2542 (2) the defendant was aware that the plaintiff would be subjected to a delay penalty for each day of delay caused by improper delivery by the defendant.

33. That defendant was aware of the specifications of the State of Georgia Highway Department for alloy in fabricating the metal sign discs prior to accepting the order for Project S-2542 (2).

34. Defendant did not attempt to limit its liability for consequential damages on the order in question which is made a basis of this law suit.

35. That the defendant did not attempt to limit its liability for consequential damages on orders made prior to the one in question which is made the basis of this law suit to this plaintiff.

36. That the order in question which is the basis of this law suit placed by the plaintiff was not made on a printed purchase order request form which included conditions of sale on the reverse side.

37. That prior orders placed by the plaintiff to the defendant were not made on printed purchase order forms with conditions of sale on the reverse side.

38. That defendant was notified of the breach of warranty by plaintiff's attorney in a letter signed by plaintiff's attorney dated February 29, 1972.

39. Defendant admits the authenticity and correctness of the copy of the letter attached hereto and marked Exhibit B signed by Gary Dennis, Product Manager of Vulcan Signs & Stampings, Inc. to Mr. J. T. Francis of Highway Products, Inc.

40. Defendant admits that the two shipments of metal fabricated sign discs for Projects S-2542 (2) which were rejected by the State Highway Department of Georgia were not of merchantable quality.

41. That the two shipments of signs for Project S-2542 (2) which were rejected by the State Highway Department of Georgia were not fit for the particular purpose requested by the plaintiff.

42. That when the defendant sold the metal fabricated sign discs to the plaintiff it impliedly warranted said signs were of merchantable quality.

43. That the plaintiff was damaged in the way of consequential damages as a result of the defendant shipping

improperly two shipments of metal fabricated sign discs which were rejected by the State of Georgia Highway Department in the amount of \$4,200.00.

44. Defendant admits the authenticity and correctness of the copy of page 7 of the contract existing between the State of Georgia Highway Department and J. A. Hudson Construction Company attached hereto and marked as Exhibit C showing the total bid of Project S-2542 (2) in the amount of \$564,762.60.

45. That defendant admit the authenticity and correctness of the copy of the supplemental specification of the State of Georgia Highway Department which shows the schedule of deductions for each day of over run in contract time attached hereto and marked as Exhibit D which was part of the contract existing between the State of Georgia Highway Department and J. A. Hudson Construction Company.

46. Defendant admit the authenticity and correctness of the copy of Invoice No. 3,305 issued by Vulcan Signs & Stampings, Inc. to Highway Products, Inc. attached hereto and marked as Exhibit E.

COLLINS, GALLOWAY & MURPHY

BY: 

Robert H. Smith

ATTORNEYS FOR HIGHWAY PRODUCTS, INC.

Post Office Box 4492
958 Dauphin Street
Mobile, Alabama 36604

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 18th day of September, 1973, 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.


Robert H. Smith

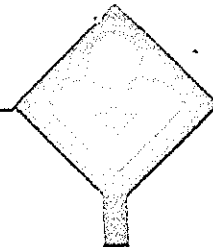
FILED

SEP 19 1973

EUNICE B. BLACKMON CIRCUIT CLERK

Vulcan Signs and Stampings, Inc.

400 EAST BERRY AVENUE / P. O. BOX 850 • FOLEY, ALABAMA 36535 • TELEPHONE 205-943-2062



October 14, 1971

Mr. J. T. Francis
Highway Products, Inc.
P.O. Box 164
Evans, Georgia 30809

Dear Joe:

I am writing with regard to project S-2542 (2) in White County. I would like to confirm our conversation by phone with regard to the alloy of this material. All of our records indicate we shipped 6061-T6 per the Georgia specifications. Our only thought is that perhaps the material was shipped from the supplier with the wrong alloy stamped on the skid. At this point we are checking with our supplier to see if this is actually the case.

As you know we are well aware of the specifications for the State of Georgia and would not knowingly ship material that did not meet these. The delay caused by this is most unfortunate and costly for both of us, especially in view of the penalty being assessed your contractor by the State.

We will expedite replacement of these signs all possible and as soon as they are ready we will ship them to you by Air Freight to Fulton County Airport to be held for your pick-up. Please check the airport on Saturday, October 16th because the signs should be in by that time.

I appreciate your patience on this order, Joe, and can assure you we will do everything possible to supply the quality signs that the State of Georgia expects.

Cordially,

VULCAN SIGNS & STAMPINGS, INC.

Gary Dennis
Gary Dennis
Product Manager

AGD:ws.

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Exhibit B

ITEMIZED PROPOSAL

LINE NUMBER	APPROXIMATE QUANTITY	ITEM AND UNIT BID PRICE IN WORDS	UNIT BID PRICE		AMOUNT BID
			DOLLARS	CENTS	
052	65.	700- AGRICULTURAL LIME <u>Ten Dollars</u>			
	TON	PER TON	10	00	650.00
053	33.	700- FERTILIZER GRADE 4-12-12 <u>Fifty Dollars</u>			
	TON	PER TON	50	00	1650.00
054	9100.	700- FERTILIZER NITROGEN CONTENT <u>Thirty Cents</u>			
	LB	PER LB		30	2730.00
055	46860.	700- MULCH <u>Three Cents</u>			
	SQ YD	PER SQ YD		03	1405.80
056	2300.	701- LOOSE SOD <u>Ninety Cents</u>			
	SQ YD	PER SQ YD		90	2070.00
057	5600.	708- PLANT TOPSOIL <u>Ninety Cents</u>			
	CU YD	PER CU YD		90	5040.00
		TOTAL BID			564762.60

YOUR ATTENTION IS CALLED TO THE SPECIAL PROVISIONS HERETO ATTACHED

Exhibit C

STATE HIGHWAY DEPARTMENT OF GEORGIA

SUPPLEMENTAL SPECIFICATION
MODIFICATION OF STANDARD SPECIFICATIONS DATED JANUARY 1, 1966

MODIFICATION OF SECTION 8 PROSECUTION AND PROGRESS
(ARTICLES 8.07 AND 8.08)

DELETE ARTICLE 8.07 DETERMINATION OF CONTRACT TIME, AND ARTICLE 8.08 FAILURE OR DELAY IN COMPLETING WORK ON TIME, AND SUBSTITUTE THE FOLLOWING:

8.07 DETERMINATION OF CONTRACT TIME. THE DEFINITION OF CONTRACT TIME AND WHEN CONTRACT TIME OFFICIALLY BEGINS IS STATED IN SECTION 1. AFTER THE CONTRACT HAS BEEN SIGNED BY ALL PARTIES, CONTRACT TIME BECOMES THE SPECIFIED PERIOD OF TIME, AGREED UPON BY THE CONTRACTOR, THE SURETY, AND THE DEPARTMENT, DURING WHICH ALL ITEMS AND QUANTITIES OF WORK SET FORTH IN THE PROPOSAL AND INCLUDED IN THE ORIGINAL CONTRACT WILL BE COMPLETED.

IF SATISFACTORY FULFILLMENT OF THE CONTRACT REQUIRES PERFORMANCE OF WORK IN GREATER QUANTITIES THAN THOSE SET FORTH IN THE PROPOSAL, THE CONTRACT TIME ALLOWED FOR PERFORMANCE SHALL BE EXTENDED ON A BASIS COMMENSURATE WITH THE AMOUNT AND DIFFICULTY OF THE ADDED WORK, AS DETERMINED BY THE ENGINEER WHOSE DECISION SHALL BE FINAL AND CONCLUSIVE.

IF THE NORMAL PROGRESS OF THE WORK IS DELAYED FOR REASONS BEYOND HIS CONTROL, THE CONTRACTOR SHALL WITHIN FIVE DAYS AFTER THE START OF SUCH A DELAY FILE A WRITTEN REQUEST TO THE ENGINEER FOR AN EXTENSION OF TIME SETTING FORTH THEREIN THE REASONS FOR THE DELAY WHICH HE BELIEVES WILL JUSTIFY THE GRANTING OF HIS REQUEST. THE CONTRACTOR'S PLEA THAT INSUFFICIENT TIME WAS SPECIFIED IS NOT A VALID REASON FOR EXTENSION OF TIME. IF THE ENGINEER FINDS THAT THE WORK WAS DELAYED BECAUSE OF CONDITIONS BEYOND THE CONTROL AND WITHOUT THE FAULT OF THE CONTRACTOR, HE MAY EXTEND THE TIME FOR COMPLETION IN SUCH AMOUNT AS THE CONDITIONS JUSTIFY.

THE FOLLOWING "WEATHER ZONE MAP" OF GEORGIA DELINEATES THE ESTIMATED "AVAILABLE DAYS EACH MONTH" IN ZONES 1, 2 AND 3 AND IS BASED ON AVERAGE NORMAL CONDITIONS THAT MAY BE EXPECTED FROM PAST CLIMATOLOGICAL RECORDS AND CONDITIONS ATTRIBUTABLE THERETO. SHOULD PREVAILING CONDITIONS ENCOUNTERED DURING CONSTRUCTION, EACH MONTH, RESULT IN A GREATER OR LESSER NUMBER OF "AVAILABLE DAYS EACH MONTH" AS INDICATED FOR THE ZONE IN WHICH THE CONTRACT IS LOCATED, THE CONTRACT TIME WILL BE REDUCED (IF ACTUAL AVAILABLE DAYS PREVAILING ARE GREATER THAN SHOWN) OR EXTENDED (IF ACTUAL AVAILABLE DAYS PREVAILING ARE LESS THAN SHOWN) TO AGREE WITH THE PREVAILING ACTUAL NUMBER OF AVAILABLE DAYS EACH MONTH.

A TABULATION OF THE ACTUAL AVAILABLE DAYS MONTHLY AS PREVAILING ON THE PROJECT COMPARED WITH THE TABULATED AVAILABLE DAYS MONTHLY ON THE APPLICABLE WEATHER ZONE MAP SHALL BE PREPARED MONTHLY BY THE ENGINEER. THIS TABULATION SHALL REFLECT NOT ONLY THE INCREASED OR REDUCED AVAILABLE DAYS PREVAILING MONTHLY, BUT ALSO THE ACCUMULATED INCREASED OR REDUCED AVAILABLE DAYS FROM THE PROJECT'S INCEPTION. THIS TABULATION SHALL BE MADE ON THE DEPARTMENT'S STANDARD FORM AND FURNISHED PROMPTLY TO THE CONTRACTOR AND TO THE DEPARTMENT. THE CONTRACT TIME WILL BE REDUCED OR INCREASED ON THE BASIS OF THE ACTUAL AVAILABLE DAYS FOR THE PERIOD INVOLVED RATHER THAN ON THE BASIS OF CALENDAR DAYS.

ANY AUTHORIZED EXTENSION OR REDUCTION OF THE CONTRACT TIME WILL BE IN FULL FORCE AND EFFECT THE SAME AS THOUGH IT WERE THE ORIGINAL CONTRACT TIME. FOR DEFINITION OF "AVAILABLE DAYS" SEE SECTION 1.

A. CONTRACT TIME CHARGES: IF THE ENGINEER SUSPENDS THE WORK BY REASON OF FAILURE OF THE CONTRACTOR TO CARRY OUT WRITTEN ORDERS GIVEN, OR TO COMPLY WITH ANY PROVISION OF THE CONTRACT, TIME CHARGES WILL CONTINUE THROUGH THE PERIOD OF SUCH SUSPENSION.

IF THE CONTRACTOR IS DECLARED IN DEFAULT, TIME CHARGES WILL CONTINUE. TIME CHARGES WILL NOT BE MADE AGAINST THE CONTRACTOR WHEN THE ONLY REMAINING ITEMS OF WORK ARE SHUT DOWN BY THE ENGINEER BECAUSE OF SEASONAL LIMITATIONS. TIME CHARGES WILL BE RESUMED ON THE FIRST DAY SEASONAL LIMITATIONS EXPIRE.

B. WHEN TIME CHARGES CEASE: TIME CHARGES WILL CEASE WHEN ALL WORK ON CONTRACT ITEMS, INCLUDING ALL WORK INCIDENTAL THERETO, HAS BEEN COMPLETED TO THE SATISFACTION OF THE ENGINEER.

8.08 FAILURE OR DELAY IN COMPLETING WORK ON TIME. TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT, AND ANY DELAY IN THE PROSECUTION OF THE WORK MAY INCONVENIENCE THE PUBLIC, OBSTRUCT TRAFFIC, OR INTERFERE WITH BUSINESS. IN ADDITION TO THE AFOREMENTIONED INCONVENIENCES, ANY DELAY IN COMPLETION OF THE WORK WILL ALWAYS INCREASE THE COST OF ENGINEERING. FOR THIS REASON, IT IS IMPORTANT THAT THE WORK BE PRESSED VIGOROUSLY TO COMPLETION. SHOULD THE CONTRACTOR, OR, IN CASE OF DEFAULT, THE SURETY FAIL TO COMPLETE THE WORK WITHIN THE TIME STIPULATED IN THE CONTRACT OR WITHIN SUCH EXTRA TIME THAT MAY BE ALLOWED, CHARGES SHALL BE ASSESSED AGAINST ANY MONEY DUE OR THAT MAY BECOME DUE THE CONTRACTOR IN ACCORDANCE WITH THE FOLLOWING TABLE:

SCHEDULE OF DEDUCTIONS FOR EACH DAY OF OVERRUN IN CONTRACT TIME

ORIGINAL CONTRACT AMOUNT		DAILY CHARGE PER CALENDAR DAY
FROM MORE THAN	TO AND INCLUDING	
\$ 0	\$ 25,000	\$ 30
25,000	50,000	50
50,000	100,000	75
100,000	500,000	100
500,000	1,000,000	150
1,000,000	2,000,000	200
2,000,000	-----	300

A. LIQUIDATED DAMAGES: THE AMOUNT OF SUCH CHARGES IS HEREBY AGREED UPON AS FIXED LIQUIDATED DAMAGES DUE THE DEPARTMENT AFTER THE EXPIRATION OF THE TIME FOR COMPLETION SPECIFIED IN THE CONTRACT. THE CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR LIQUIDATED DAMAGES IN EXCESS OF THE AMOUNT DUE THE CONTRACTOR FROM THE FINAL PAYMENT.

LIQUIDATED DAMAGES SHALL START IN ACCORDANCE WITH THE ABOVE SCHEDULE UPON NOTIFICATION TO THE CONTRACTOR IN WRITING THAT ALL THE ORIGINAL CONTRACT TIME AS STATED IN THE PROPOSAL HAS BEEN CONSUMED.

1. DEDUCTION FROM PARTIAL PAYMENTS: LIQUIDATED DAMAGES, AS THEY ACCRUE, WILL BE DEDUCTED FROM PERIODIC PARTIAL PAYMENTS, AND SUCH DEDUCTION SHALL BE IN ADDITION TO THE RETAINAGE PROVIDED FOR IN THE CONTRACT.

2. DEDUCTION FROM FINAL PAYMENT: THE FULL AMOUNT OF LIQUIDATED DAMAGES WILL BE DEDUCTED FROM FINAL PAYMENT TO THE CONTRACTOR AND / OR HIS SURETY.

3. LIQUIDATED DAMAGES DUE TO DEFAULT: IN CASE OF DEFAULT OF THE CONTRACT AND THE COMPLETION OF THE WORK BY THE DEPARTMENT AS HEREINAFTER PROVIDED, THE CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE LIQUIDATED DAMAGES UNDER THE CONTRACT.

IN ANY SUIT FOR THE COLLECTION OF OR INVOLVING THE ASSESSMENT OF LIQUIDATED DAMAGES, THE REASONABLENESS OF THE AMOUNT SHALL BE PRESUMED. THE LIQUIDATED DAMAGES REFERRED TO HEREIN ARE INTENDED TO BE AND ARE CUMULATIVE AND SHALL BE IN ADDITION TO EVERY OTHER REMEDY NOW OR HEREAFTER ENFORCEABLE AT LAW, IN EQUITY, BY STATUTE, OR UNDER THE CONTRACT.

B. NO WAIVER OF DEPARTMENT'S RIGHTS: PERMITTING THE CONTRACTOR TO CONTINUE AND FINISH THE WORK OR ANY PART OF IT AFTER THE EXPIRATION OF THE TIME ALLOWED FOR COMPLETION AFTER ANY EXTENSION OF TIME, SHALL NOT OPERATE AS A WAIVER OF THE RIGHTS OF THE DEPARTMENT UNDER THE CONTRACT.

No. 66-511



VULCAN SIGNS & STAMPINGS, INC.

400 East Berry Avenue / P. O. Box 850 / Phone 205-943-2062 / Foley, Alabama 36535

HIGHWAY PRODUCTS, INC.

P.O. BOX 164

EVANS, GA. 30809

Ship
To

SAME

Invoice No.	Date Shipped	Invoice Date	V.S.S. Job Number	Customer Order No.	Shipped Via	Col-lect	Pre-paid	Terms
505	9/30/71	OCT 1'71	937	S-2542(2)	BALDWIN		X	NET 30 CASH
ITEM NUMBER	PRODUCT CODE	QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT			
1	331	11	.080 X 30 SLA, STOP	12.58	138.38			
2	331	2	.080 X 48 X 24 SLA	27.50 -	55.00			
3	331	9	.080 X 30 X 30 SLA	12.58 -	113.22			
4	331	8	.080 X 30 X 30 SLA	12.58	100.64			
5	331	2	.080 X 21 X 15 SLA	7.00 -	14.00			
6	331	3	.080 X 24 X 24 SLA	12.00 -	36.00			
7	335	2	13' 2 1/2 LB. GALV. POSTS	6.44	12.88			
8	335	1	11 FT. 4# GALV. POSTS	8.72 -	8.72			
9	335	10	12 FT. 4# POSTS	9.52 -	95.20			
10	335	19	13 FT. 4# GALV. POSTS	10.31	195.89			
Less (Paid on Account)					769.93			
Total Due					560.00			
DISCOUNT ALLOWED IF PAID BY					\$209.93			

ORIGINAL INVOICE

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Exhibit E

GUARD RAILS
FENCE
CONSTRUCTION SIGNS
TRAFFIC STRIPING

HIGHWAY PRODUCTS INC.

P. O. BOX 16A
EVANS, GEORGIA
30209
AC 404 863-1332

Aug. 5, 1970

Q U O T A T I O N

C. A. RUTLEDGE CONSTRUCTION CO.
P. O. BOX 310
WINDER, GA. 30680

PROJECT NO. S-2186 (2)
WALTON COUNTY

72 Each Right-of-Way Marker, STD. 9003	\$9.00	\$648.00
2 Each Project Marker Complete, STD. 9003	25.00	50.00
230 Sq. Ft. Highway Signs, Type I Matl.	4.60	1058.00
70 Lin. Ft. Galv. Steel Posts, Type I	1.90	133.00
370 Lin. Ft. Galv. Steel Posts, Type 2	2.00	740.00
12 Each Delineator, Type I, STD. 9030B	7.50	90.00
36-4-3200-Lin. Ft. Guardrail	3.05	9760.00
8 Each Guardrail Anchorage, Type 3	149.00	1192.00
2.5 Mile Solid Traffic Stripe, 4", Yellow	190.00	475.00
2.8 Gr. Mile Skip Traffic Stripe, 4", White	175.00	490.00

\$14636.00

The above bid is made on an all or nothing basis.

HIGHWAY PRODUCTS, INC.

J. M. Bennett
J. M. BENNETT, Sales

We accept this quotation this the 10 day of Aug. 1970.

C. A. Rutledge Const. Co. Inc.

BY C. A. Rutledge V.P.

HIGHWAY PRODUCTS, INC.,	:	IN THE CIRCUIT COURT OF
A Georgia Corporation,	:	
Plaintiff,	:	BALDWIN COUNTY, ALABAMA
VS:	:	
	:	AT LAW
VULCAN SIGNS & STAMPINGS,	:	
INC., A Corporation,	:	
Defendant	:	CASE NO. 1 0 5 1 4

REQUEST FOR ADMISSIONS OF FACT

Plaintiff, Highway Products, Inc., requests Defendant, Vulcan Signs & Stampings, Inc. to admit the truth of the following facts:

1. The plaintiff, Highway Products, Inc., is a Georgia corporation.
2. Vulcan Signs & Stampings, Inc., is a corporation.
3. Vulcan Signs & Stampings, Inc., is a corporation and is properly named in the above styled law suit as a party defendant.
4. On to-wit, the 1st day of October, 1971 the defendant sold to the plaintiff fabricated metal sign discs.
5. The fabricated metal sign discs shipped by the defendant to the Georgia Highway Department for testing did not meet the alloy specifications required by the Georgia Highway Department.
6. The defendant was aware of the alloy specifications required by the Georgia Highway Department. The defendant shipped a second delivery with properly specified alloy metal.
7. The second shipment shipped by defendant was rejected by the Georgia Highway Department due to poor physical appearance and workmanship and that the Scotchlite faces were

applied crooked on the metal resulting in crooked borders and that some of the metal fabricated sign discs were screened with irregular borders and that the second shipment was completely rejected.

8. The defendant shipped a third delivery which was acceptable to the Georgia Highway Department.

9. The J. A. Hudson Construction Company was the prime contractor for the job in question.

10. That the project is referred to as S-2542 (2) White Co.

11. A contract existed between the Georgia Highway Department and J. A. Hudson Construction Company contained a provision for late time charges on project S-2542 (2) White Co. And because of shipping delays by defendant a twenty-eight (28) penalty was charged to J. A. Hudson Construction Company.

12. Highway Products, Inc., was a subcontractor to J. A. Hudson Construction Company for supplying metal fabricated sign discs. J. A. Hudson Construction Company charged the twenty-eight (28) day time charge delay penalty at One Hundred Fifty and 00/100 (\$150.00) Dollars per day to Highway Products, Inc.

13. The penalty assessed by the State of Georgia Highway Department to J. A. Hudson Construction Company was One Hundred Fifty and 00/100 (\$150.00) Dollars per day.

14. That the twenty-eight (28) day delay time charge of One Hundred Fifty and 00/100 (\$150.00) Dollars per day was charged by J. A. Construction Company to Highway Products, Inc., the plaintiff. The defendant had made improper deliveries on

15. The defendant absorbed the penalties assessed to plaintiff on a prior improper delivery.

16. Prior to accepting the order in question defendant

knew plaintiff would be subjected to a delay penalty of One Hundred Fifty and 00/100 (\$150.00) Dollars per day for each day of delay caused by improper delivery.

17. Defendant was well aware of the specifications of the State of Georgia on the proper alloy required by the State of Georgia Highway Department prior to accepting this order. Defendant did not attempt to limit its liability for consequential damages on the order in question.

18. The order in question placed by plaintiff was not made on a printed purchase order request with conditions of sale.

19. Orders made before the order in question were not made on printed purchase order forms with conditions of sale.

20. Defendant was notified of the breach of warranty by plaintiff's attorney in a letter signed by plaintiff's attorney dated February 29, 1972.

21. Defendants admit the authenticity and admit receiving the letter attached hereto and marked Exhibit A signed by the plaintiff's attorney. The defendants admit the authenticity of the letter attached hereto and marked Exhibit B signed by Gary Dennis, Product Manager of Vulcan Signs and Stampings, Inc. to Mr. J. T. Francis, Highway Products, Inc.

22. Defendants admit plaintiff relied on it and its skill and judgment in the selection of materials for the manufacture of the metal sign discs.

23. Defendant admits that the two shipments of signs which were rejected were not of merchantable quality.

24. Defendant admits that the two shipments of signs that were rejected were not fit for the particular purpose requested by plaintiff. Defendant admits that when it sold signs to the plaintiff it impliedly warranted said signs were of merchantable quality. Defendant admits that when it sold such signs to the plaintiff they were fit for the particular purpose for which they were intended. Defendant admits that the plaintiff was damaged as a result of its shipping two shipments of metal fabricated discs which were rejected in the amount of Four Thousand Two Hundred and 00/100 (\$4,200.00) Dollars.

25. Defendant admits the authenticity of the miscellaneous report attached hereto and marked as Exhibit C.

26. Defendant admits the authenticity of the miscellaneous report attached hereto and marked as Exhibit D.

COLLINS, GALLOWAY & MURPHY

BY:



Robert H. Smith

ATTORNEYS FOR HIGHWAY PRODUCTS, INC.

958 Dauphin Street
Post Office Box 4492
Mobile, Alabama 36604

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 26
day of July, 1973, 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.



FILED

JUL 27 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

February 29, 1972

Vulcan Signs & Stamping
Foley,
Alabama

ATTENTION: Mr. Lee

Dear Sirs:

I have been retained by Highway Products, Inc. in reference to a claim for defective products shipped by your company in connection with the job on a highway in Georgia under the prime contract of J.A. Hudson Construction Company with Highway Products, Inc. being a sub-contractor.

The claim involves material shipped by your company to the Georgia work site, said shipment consisting of fabricated metal signs. It was determined after the original shipment that the signs did not meet the specifications required by the Georgia Highway Department which required the signs to be of a 6061-T6 aluminum. The lab analysis performed on the sample showed that the signs did not meet the specifications of the Georgia Highway Department and said shipment was rejected. Second shipment sent by your company was rejected by the Georgia Highway Department due to poor physical appearance and workmanship. The Scotchlite faces were applied crooked on the metal resulting in irregular borders and some of the signs were screened with irregular borders thus resulting in the second shipment being completely rejected. The third shipment was finally accepted by the Georgia Highway Department but there was a resulting twenty-eight day delay had the initial shipment been accepted. As a result of this delay Highway Products, Inc. has received a penalty as provided in their construction contract of 28 days at \$150.00 a day totaling

Vulcan Signs & Stamping
February 29, 1972
Page Two

\$4,200.00 on this particular order.

It has been brought to our attention that on a prior order your company had shipped unacceptable goods which were refused and which subsequently were corrected and caused a 7 day penalty which your company agreed to absorb.

Please contact me at your earliest convenience so that we may discuss this matter and come to a reasonable solution of this problem. If we do not hear from you within a week of the writing of this letter then we will have to pursue all available legal remedies and bring this matter to a close.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

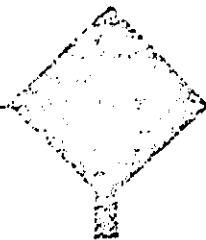
BY: _____
Robert H. Smith

RHS/jkl

cc: Mr. E.B. Francis, President
Highway Products, Inc.

Vulcan Signs and Stampings, Inc.

400 EAST BERRY AVENUE / P. O. BOX 850 • TOLEY, ALABAMA 36535 • TELEPHONE 205-943 2062



October 14, 1971

Mr. J. T. Francis
Highway Products, Inc.
P.O. Box 164
Evans, Georgia 30809

Dear Joe:

I am writing with regard to project S-2542 (2) in White County. I would like to confirm our conversation by phone with regard to the alloy of this material. All of our records indicate we shipped 6061-T6 per the Georgia specifications. Our only thought is that perhaps the material was shipped from the supplier with the wrong alloy stamped on the skid. At this point we are checking with our supplier to see if this is actually the case.

As you know we are well aware of the specifications for the State of Georgia and would not knowingly ship material that did not meet those. The delay caused by this is most unfortunate and costly for both of us, especially in view of the penalty being assessed your contractor by the State.

We will expedite replacement of these signs all possible and as soon as they are ready we will ship them to you by Air Freight to Fulton County Airport to be held for your pick-up. Please check the airport on Saturday, October 16th because the signs should be in by that time.

I appreciate your patience on this order, Joe, and can assure you we will do everything possible to supply the quality signs that the State of Georgia expects.

Cordially,

VULCAN SIGNS & STAMPINGS, INC.

Gary Dennis
Gary Dennis
Product Manager

AGD:rs

7 VOL

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EXHIBIT B

CC: Highway Prod. Co.

CC: Compton

CC: Inspection

Orig: Lab Files H-9-a

STA HIGHWAY DEPARTMENT OF G. RGIA

DIVISION OF MATERIALS AND TESTS

ATLANTA, GEORGIA

MISCELLANEOUS REPORT

DATE	10-14-71	COUNTY	PROJECT NO.
Lab. No.	37654		
Report on sample of	30x30 Signs Type I		24x48 M-32 2 Pcs.
Sample No.	11-530	Quantity represented	24x24 Shield 2 Pcs.
Sampled by	Wayne Compton	Date sampled	30x30 Curve Sign 19 Pcs.
Sample taken from	Stock		30x30 Stop " 11 Pcs.
Contractor	----		10-8-71
Location of Supply	Hwy Prod. Co.	Evans, Ga.	
Producer	Vulcan Sign Co.	Folley, Ala.	
Examined for article	912.01 Alloy 6061		

A. Curve:	B. Curve:	C. Stop:
Thickness	.081"	.081"
Yield Strength	35,282 PSI	34,526 PSI
Ultimate Strength	42,843 PSI	43,095 PSI
Elongation	9% In 2"	9% In 2"
Copper	Nil%	Nil%
Iron	0.20%	0.15%
Silicon	Nil%	Nil%
Manganese	<0.056%	<0.056%
Magnesium	2.25%	1.70%
Zinc	<0.25%	<0.25%
Chromium	0.135%	0.105%
Titanium	<0.15%	<0.15%

Remarks:

S-2542(2) White

These three samples were taken at the request of Vulcan Sign Co. from the same shipment sampled on 10-6-71.

☐ MEETS REQUIREMENTS☒ FAILS TO MEET REQUIREMENT Art. 912.01 Alloy 6061

ACCEPTED — REJECT

VOL

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ENGINEER OF MATERIALS AND TESTS

VARIATIONS FROM SPECIFICATIONS

INDICATED THUS: \Rightarrow SUFFICIENT FOR REJECTION.

★ IMMATERIAL

★★ SEE REMARKS ON THIS REPORT.

EXHIBIT C

CC: Highway Prod. Co.
 CC: Compton
 CC: Inspection
 Orig: Lab Files

STATE HIGHWAY DEPARTMENT OF GEORGIA
 DIVISION OF MATERIALS AND TESTS
 ATLANTA, GEORGIA

H-9-a

MISCELLANEOUS REPORT

DATE 10-14-71	COUNTY	PROJECT NO.
Lab. No.	36733	
Report on sample of	30x30 Curve Sign	
Sample No.	----	Quantity represented 2 24"x48", 2 21"x15" 2 24"x24", 30 30"x30"
Sampled by	Wayne Compton	Date sampled 10-6-71
Sample taken from	Stock	
Contractor	-----	
Location of Supply	Hwy Prod. Co.	Evans, Ga.
Producer	Vulcan Sign Co.	Foley, Ala.
Examined for article	912.01 Alloy 6061	
Thickness	.081"	Copper Nil%
Yield Strength	32,670 PSI	Iron 0.196%
Ultimate Strength	40,837 PSI	Silicon Nil%
Elongation	9% In 2"	Manganese <0.056%
		Magnesium 2.05%
Yield Strength	32,939 PSI	Zinc <0.25%
Ultimate Strength	40,659 PSI	Chromium 0.115%
Elongation	8% In 2"	Titanium <0.15%

Remarks:

S-2542(2) White

☐ MEETS REQUIREMENTS☒ FAILS TO MEET REQUIREMENT Art. 912.01 Alloy 6061

ACCEPTED — REJECTED

ENGINEER OF MATERIALS AND TESTS

VARIATIONS FROM SPECIFICATIONS

INDICATED THUS: \Rightarrow SUFFICIENT FOR REJECTION.

VOL

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PAGE

52

* IMMATERIAL

** SEE REMARKS ON THIS REPORT.

EXHIBIT D

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW

958 DAUPHIN STREET

MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.

July 25, 1973

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

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

Re: Highway Products, Inc.
vs: Vulcan Signs & Stampings, Inc.
Case No. 10514

Dear Mrs. Blackmon:

We enclose herewith original of our request for admissions of fact in the referenced case. Would you please file the same and notify us that this has been done on the copy of this letter and return in the enclosed self-addressed envelope. We have served a copy of this on the attorney for the defendant.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY: 

Robert H. Smith

RHS/brm

Enclosures

Collins, Galloway & Pelt

Byt

CHASON & UNDERWOOD

Attorneys at Law

CECIL G. CHASON
THOMAS W. UNDERWOOD, JR.

P. O. DRAWER 458
216 W. LAUREL AVENUE
FOLEY, ALABAMA 36535
PHONE 205 / 943-3171

January 31, 1973

Ms Eunice Blackmon
Clerk of the Circuit Court
Baldwin County Courthouse
Bay Minette, Alabama 36507

Re: Highway Products, Inc., vs.
Vulcan Signs & Stampings
Case Number 10,514

Dear Eunice:

I am enclosing a Demurrer to be filed in the above styled case.

Yours very truly,

C. G. Chason

C. G. Chason

CGC/vd
Enc.

cc: Mr. Robert H. Smith
Collins, Galloway & Murphy
Attorneys at Law
958 Dauphin Street
Mobile, Alabama 36604

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW
958 DAUPHIN STREET
MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.

April 9, 1973

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

Hon. Telfair Mashburn
Judge, Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: Highway Products, Inc.
Vs: Vulcan Signs & Stampings, Inc.
Case No. 10,514

Dear Judge Mashburn:

I enclose herewith the Order which should have accompanied the motion for judgment nil dict. I was uninformed about this procedure but will be happy to comply with it in the future.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY: 

Robert H. Smith

RHS/jkl
Enclosure

CHASON & UNDERWOOD

Attorneys at Law

CECIL G. CHASON
THOMAS W. UNDERWOOD, JR.

April 20, 1973

P. O. DRAWER 458
216 W. LAUREL AVENUE
FOLEY, ALABAMA 36535
PHONE 205 / 943-3171

Ms Eunice Blackmon
Clerk of the Circuit Court
Baldwin County Courthouse
Bay Minette, Alabama 36507

Re: Highway Products, Inc., vs.
Vulcan Signs & Stampings
Case Number 10,514

Dear Eunice:

I am enclosing a Answer to be filed in the above styled case.

Yours very truly,



C. G. Chason

CGC/vd
Enc.

cc: Mr. Robert H. Smith
Collins, Galloway & Murphy
Attorneys at Law
958 Dauphin Street
Mobile, Alabama 36604

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW
958 DAUPHIN STREET
MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.

April 25, 1973

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

Mrs. Eunice Blackmon
Clerk, Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re; Highway Products
vs: Vulcan Sign & Stampings Co.
Case No. 10514

Dear Mrs. Blackmon:

I enclose herewith original of demurrer to be
filed on behalf of the plaintiff in the referenced case.
I have served a copy of this demurrer on Mr. Chason.

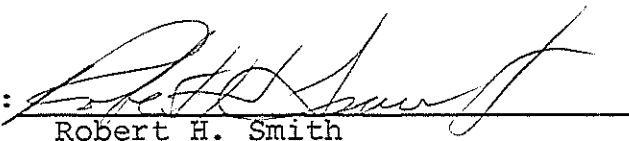
Would you please indicate that this demurrer
has been filed on the carbon copy of this letter and
return to me in the enclosed self-addressed envelope.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY:


Robert H. Smith

RHS/brm

Enclosures

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW

956 DAUPHIN STREET

MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.

September 18, 1973

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

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

Re: Highway Products, Inc.
vs: Vulcan Signs & Stampings, Inc.
Case No. 10514

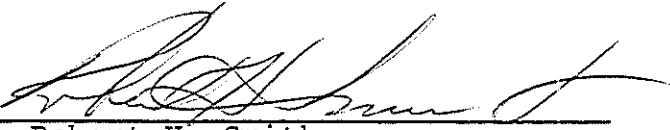
Dear Mrs. Blackmon:

We enclose herewith original of our request for admissions of fact in the referenced case. Would you please file the same and notify us that this has been done on the copy of this letter and return in the enclosed self-addressed envelope. We have served a copy of this on the attorney for the defendant.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY:


Robert H. Smith

RHS/brm

Enclosures

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW

956 DAUPHIN STREET

MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924 - 1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.
THOMAS M. GALLOWAY, JR.

August 29, 1974

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

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

Re: Highway Products, Inc.
vs: Vulcan Signs & Stampings, Inc.
Case No. 10514

Dear Mrs. Blackmon:

We enclose herewith original of our Request for Admissions of Genuineness of Documents - Request for Admission of Facts No. 3, in the referenced case. Would you please file the same and notify us that this has been done on the copy of this letter. We have served a copy of this on the attorney for the defendant.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY: 

Robert H. Smith

RHS/brm

Enclosures

J. A. HUDSON CONSTRUCTION CO.

GENERAL CONTRACTORS

2131 BOLTON ROAD, N. W.

ATLANTA, GEORGIA 30318

July 10, 1974

Mr. Robert H. Smith
958 Dauphin Street
Mobile, Alabama 36604

Dear Sir: Re: S-2542 (2) - White County

Mr. Francis called me and wanted me to try to clarify the matter concerning retainage that was due Highway Products, Inc. on the above listed project.

The retainage that was due Highway Projects was charged against Highway Projects to help pay the penalty the State Highway charged J. A. Hudson Construction Co. for failure to complete the project on time. The reason Highway Products could not complete project was the inability to get the correct signs from Highway Products' supplier. All other items were completed except for the signs and for this reason Highway Products was responsible for delay in completing the project.

Referring to other information you already have it in my letter dated 2-14-74. This letter will help explain the situation more clearly.

Yours truly,

J. A. Hudson Construction Co.

J. A. Hudson Jr.
J. A. Hudson, Jr.

JAH:jc

cc: Mr. J. T. Francis

EXHIBIT D

NOTICE OF TRANSFER

STATE OF ALABAMA

Baldwin County

HIGHWAY PRODUCTS, INC. a Georgia Corp.

Plaintiff

VS.

VULCAN SIGNS & STAMPINGS INC. A CORP.

Defendant

To Collins, Galloway & Murphy by Robert H. Smith & Chason & Underwood by
C. G. Chason, Attorneys

in said Cause:

You are hereby notified that re VULCAN SIGNS & STAMPINGS, INC. A CORPORATION

the DEFENDANT in the above entitled cause has prayed and
obtained a transfer to the Circuit Court of Baldwin County, Alabama, from
Judge of the MOBILE BALDWIN CIRCUIT COURT OF BALDWIN COUNTY, and having complied with the
requirements of the law in such cases made and provided, the same has been granted to the
next term of the CIRCUIT COURT of Baldwin being received this 31st day of July, 1972
to be held for said County, you are hereby notified accordingly.

Given under my hand this the 19th day of December 1972

Eunice B. Blackmon
Clerk, Circuit Court, Baldwin County

Case No. 10,514

HIGHWAY PRODUCTS, INC. A GEORGIA CORPORATION
Plaintiff

VS.

VULCAN SIGNS & STAMPINGS, INC. A CORPORATION
Defendant

NOTICE OF TRANSFER

Returnable To The Circuit Court Of

Issued: 12/19/72

Serve On: Robert H. Smith-958 Dauphin- Mobile, Alabama

C. G. Chason- Foley, Alabama

RECEIVED

DEC 19 1972

TAYLOR WILKINS
SHERIFF

Received 19 day of Dec 19 72
and on 13 day of Jan 19 73
I served a copy of the within Not: of Transfer
on C. G. Chason, Attorney

Sheriff claims 0 miles at 0
Ten Cents per mile Total \$ 0
TAYLOR WILKINS, Sheriff
DEPUTY SHERIFF

By service on

TAYLOR WILKINS Sheriff
By J. M. Byrd

EXECUTED
This 22 day of Dec, 19 72
by serving a copy of the within on
Robert H. Smith, Attorney
RAY D. BRIDGES, Sheriff
By T. Aspinwall D.S.

BY _____

DEC 21 9 13 AM '72
REC'D SHERIFF DEPT.
MOBILE COUNTY, ALA.