

2236

AFFIDAVIT

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

Before me, the undersigned Notary Public in and for said county in said state, personally appeared John D. Watson, who, being duly sworn on oath, states and deposes as follows:

My name is John Watson and I am an attorney representing Portec, Inc. I am over the age of nineteen (19) years of age, have personal knowledge of, and am otherwise competent to testify as to the matters contained herein.

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On or about May 23, 1986, a default judgment was entered against an entity named as Portec, Alabama Forge by the Circuit Court of Talladega County, Alabama, Civil Action No. 86-102. Portec, Inc. was never properly named or served with process in this lawsuit. Upon discovering that judgment, a copy of which judgment is recorded in Judgment Real 89 at Page 444 in the Office of the Judge of Probate of Shelby County, Alabama, Portec, Inc. filed a motion in the Circuit Court of Talladega County on February 25, 1987 seeking to have the Court order and declare that its May 23, 1986 judgment was null and void insofar as it purported to constitute a judgment against Portec, Inc., and declare that Portec, Inc. was never properly named as defendant or served with process in that action. On June 8, 1988 the Circuit Court of Talladega

Bradley, Arant

County granted this motion. A copy of the Case Action Summary for Civil Action No. 86-102, Circuit Court of Talladega County, Alabama, is attached hereto as Exhibit A, and reflects the Court's order.

Further affiant saith not.

John D. Watson
John D. Watson

Sworn to and subscribed before me on this the 24th day of June, 1988.

Teresa L. Orr
Notary Public

My Commission Expires: March 4, 1989

[SEAL]

OF COUNSEL:

BRADLEY, ARANT, ROSE & WHITE
1400 Park Place Tower
Birmingham, Alabama 35203
(205) 252-4500

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Reid 6-9-88
JOW

State of Alabama Unified Judicial System Form C-5 Rev. 2/79	CASE ACTION SUMMARY - CIVIL -	Case Number CV 86 102 <small>ID YR Number</small>
IN THE <u>CIRCUIT</u> COURT OF <u>TALLADEGA</u> COUNTY		
<input type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-Jury	Name ID	Case Number CV 86 102 <small>ID YR Number</small>
Plaintiff(s) Metal Samples, a Corporation	Defendant(s) Portec, Alabama Forge, BMI Industries, et al	Serv. Date
Plaintiff(s) Attorney(s) Will Lawrence	Defendant(s) Attorney(s) John D. Watson	
Third Party/Garnishes	Attorney	
Amount \$	Case Type	Date Filed 4/9/86
Disposition	Disposition Date	

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DATE	ACTIONS, JUDGMENTS, CASE NOTES
4/9/86	Summons and Complaint filed
4/10/86	Summons and Complaint issued - Ex. Portec, Ala. Forge 4-16-86
5-23/86	Bmi Industries 4-21-86 Default is entered on behalf of Plaintiff for failure of the defendants to appear and plea and on proof by affidavit, judgment is entered in favor of the plaintiff and against both defendants in the sum of \$29,138.79 and costs. J. L. Reid Circuit Judge
7-7-86	Execution issued to Talladega Co. Sheriff's office - returned marked "in Shelby Co."
7-10-86	Execution issued to Shelby Co.
8-8-86	Discovery of Assets issued to Portec, Ala. Forge - Returned 8-15-86 "out of Business"

EXHIBIT - A

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6/8/88 After hearing motion to set aside
default judgment of independent parties
is granted. July 6 1987
Circuit Judge

STATE OF ALABAMA
I CERTIFY THIS
INSTRUMENT WAS FILED

88 JUN 28 AM 10:16

Thomas A. [Signature]
JUDGE OF PROBATE

RECORDING FEES

Recording Fee	\$ 10.00
Index Fee	1.00
TOTAL	11.00

Case set for hearing on Motion to Set Aside Judgment 4/12/88
at 9:00 A.M. Attorneys notified by copy of this case action
summary sheet. /89

Motion to Set Aside Judgment

25-88 /29/88