

01-682-CD  
DOUGLAS EXPLOSIVES, INC. -vs- SULLIVAN-PALATEK, INC.



OFFICE OF COURT ADMINISTRATOR  
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE  
230 EAST MARKET STREET, SUITE 228  
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK  
COURT ADMINISTRATOR

PHONE: (814) 765-2641  
FAX: 1-814-765-~~8009~~ 7647

MARCY KELLEY  
DEPUTY COURT ADMINISTRATOR

July 30, 2001

George S. Test, Esquire  
Attorney at Law  
Post Office Box 706  
Philipsburg, PA 16866

Douglas E. Herman, Esquire  
Attorney at Law  
3631 North Front Street  
Harrisburg, PA 17110-1533

L. John Argento, Esquire  
Dickie, McCamey & Chilcote, P.C.  
Two PPG Place, Suite 400  
Pittsburgh, PA 15222-5402

RE: DOUGLAS EXPLOSIVES, INC.  
vs.  
SULLIVAN-PALATEK, INC.  
No. 01-682-CD

Dear Counsel:

In view of the fact that Attorney Herman filed a Praecept to Discontinue the Action Against Additional Defendants, Revathi CP Equipment Limited and Alliance Tool on July 24, 2001, no further action will be accepted from these Additional Defendants or Attorney Argento, per Judge Reilly's directive this date.

Very truly yours,  
*Marcy Kelley*  
Marcy Kelley  
Deputy Court Administrator

cc: Honorable John K. Reilly, Jr.  
William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

\*

No. 01-682-CD

vs.

\*

SULLIVAN-PALATEK, INC.,

Defendant

\*

Code: Complaint

\*

\*

Filed on behalf of:

Douglas Explosives, Inc., Plaintiff

Counsel of Record for this Party:

George S. Test, Esquire  
P. O. Box 706  
Philipsburg, PA 16866  
(814) 342-4640

PA I.D. #15915

FILED

MAY 10 2001

William A. Shaw  
Prothonotary

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

## NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator's Office  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641

George S. Test, Esquire

**GEORGE S. TEST**  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC., \*  
Plaintiff \* No. \_\_\_\_\_  
\*  
\*  
vs. \*  
\*  
SULLIVAN-PALATEK, INC., \*  
Defendant \*  
\*  
\*

COMPLAINT

1. The Plaintiff is Douglas Explosives, Inc., a Pennsylvania Corporation, whose mailing address is P. O. Box 77, Philipsburg, PA 16866, with offices at Graham Station, Decatur Township, Clearfield County, Pennsylvania.
2. The Defendant is Sullivan-Palatek, Inc., formerly Sullivan Industries, Inc., with offices and a place of business at River Road, Claremont, New Hampshire 03743.
3. On or about April 3, 1998, Douglas Explosives, Inc., through Douglas Drill Services, Inc., purchased from Sullivan Industries, Inc., a Viper C60HX Drill bearing Serial Number 97E1001 for \$220,000.00. Said unit is a track mounted rotary drill intended to be utilized to drill shot holes in mines and quarries.
4. The Defendant herein was familiar with Plaintiff's business and the intended use of the machine being purchased.
5. The Viper C60HX Drill purchased by the Plaintiff was improperly designed and was constructed from inferior materials.
6. In January 2001, Plaintiff had to stop attempting to use said drill due to total structural failure making it unsafe to operate.

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

7. Because of defective design and inferior materials, Plaintiff found it necessary to weld and support the frame jacks and mast. Each time one area was strengthened, an adjacent area of the structure would fail.
8. In addition to and as a result of said structural problems and inferior materials, the Plaintiff was required to make the following repairs to said machine during the approximately two (2) years in was in operation:
  - a. The cooler assembly was replaced three (3) times because of failure of the high pressure side. The entire cooler system was then replaced with an assembly from a different manufacturer.
  - b. The engine had to be rebuilt because faulty design resulted in a hole in the air inlet allowing dirt to be sucked into the motor.
  - c. Two (2) of four (4) leveling jacks failed and had to be replaced and the remaining leveling jacks need to be replaced.
  - d. The drill pipe cracked after one month's use because the steel was defective.
  - e. The mast raising cylinder had to be repacked three (3) times.
  - f. The fuel tank fell off the machine
  - g. The angle drilling package had to be plated and repaired.
  - h. The machine had to be repainted because the paint came off when the machine was washed.
  - i. The water injection system was never operable.

- j. The injector lines on the engine continually broke because of excessive flexing of the frame which binds the injection lines.
- k. Continual electrical problems because of faulty design of the electrical system and problems caused by excessive flexing of the frame.
- l. Defective construction of the head assembly necessitated a complete rebuild.
- m. The head motors had to be rebuilt and then replaced.

9. As a result of the improper design and inferior materials and resulting structural problems and failure, the Plaintiff has suffered substantial expenses and financial losses including the following:

- a. In July 1998, the compressor cooler, hydraulic cooler, and engine coolant cooler were replaced. Defendant supplied the parts at no cost but Plaintiff suffered ten (10) days of downtime resulting in a loss of \$16,100.00, transportation costs for the drill of \$768.00, and labor costs of \$1,000.00 for a total of \$17,868.00.
- b. In October 1998, the hydraulic cooler was removed and repaired resulting in two (2) days downtime at a cost of \$3,220.00, repair costs of \$350.00, labor costs of \$618.00, and transportation costs of \$768.00 for a total loss of \$4,956.00.
- c. In April 1999, the hydraulic cooler failed and was replaced at a cost of \$632.96, labor costs of \$927.00, and transportation costs of \$768.00 for a total cost of \$2,327.96.
- d. In May 1999, the diesel engine had to be rebuilt when excessive flex in the main frame resulted in a hole in the air intake piping resulting in dirt being sucked into the engine, destroying the engine, resulting in an engine rebuild cost of \$11,381.44, transportation costs of \$162.00, downtime loses of \$14,000.00, labor costs of \$926.88 for a total cost of \$26,470.32.

e. In July 1999, the compressor and water cooler had to be replaced at a cost off \$6,039.80 with \$7,000.00 in downtime loss, refabricating mounting brackets at a cost of \$200.00, labor costs of \$308.96, and transportation costs of \$162.00, equaling a total loss of \$13,710.76.

f. In August 1999, the compressor cooler failed and had to be replaced for \$742.00 resulting in a downtime loss of \$6,440.00, labor costs of \$463.44, and transportation costs of \$768.00 for a total loss of \$8,413.44.

g. In November 1999, the compressor cooler failed again and had to be replaced at a cost of \$3,763.00 with a downtime loss of \$5,600.00, labor costs of \$617.92, and transportation costs of \$768.00 or a total loss of \$10,748.92.

h. In February 2000, the unit had to be completely cleaned and repainted at a cost of \$5,250.00.

i. In addition, Plaintiff entered into a contract to provide drilling services over a period of three (3) years relying upon this machine. Because of the total loss of use of the machine, Plaintiff has been required to lease a replacement machine to fulfill its contractual obligations at a cost of \$12,000.00 per month.

10. To date, Plaintiff has incurred expenses and suffered losses in the amount of \$88,445.40 plus, rental expenses of \$12,000.00 per month.

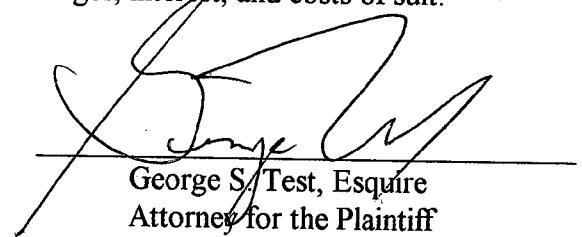
11. The drill that Defendant sold to Plaintiff is unsafe to operate and is no longer in use. Plaintiff believes that in order to make the unit safe to operate, it is necessary to mount the equipment on a new frame with a new mast. Plaintiff estimates the cost of labor and material to do this would be \$60,000.00.

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

12. All said losses and expenses are a direct and consequential result of the poor design and defective materials in the drill sold by Defendant.

13. The drill sold by Defendant was and is not merchantable as that term is utilized in 13 Pa. C.S.A. 2314.
14. The drill sold by Defendant was not fit for the purposes for which it was sold and for the purpose for which Defendant knew Plaintiff was purchasing it, in violation of 13 Pa. C.S.A. 2315.
15. As a result of the defective design of the aforesaid drill and the defective materials used in its construction, Plaintiff has suffered and will continue to suffer substantial financial loss.

WHEREFORE, Plaintiff demands judgment against Defendant in the amount of \$149,745.40 plus, \$12,000.00 per month in rental damages, interest, and costs of suit.



George S. Test, Esquire  
Attorney for the Plaintiff

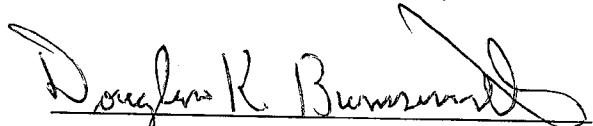
COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF Centre

}

}

**AFFIDAVIT**

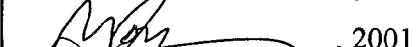
On this, the 3<sup>rd</sup> day of May, 2001, before me, a Notary Public, personally appeared DOUGLAS K. BURNSWORTH, President of Douglas Explosives, Inc., the Plaintiff herein and acknowledged that he has read the foregoing Complaint and that the statements made therein are true and correct to the best of his information and belief.



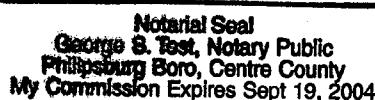
Douglas K. Burnsworth

SWORN to and SUBSCRIBED

before me this 3<sup>rd</sup> day of

 2001.

 N.P.



**FILED**

REC'D MAY 10 2001

2001-05-10 10:53:11 NOCC

William A. Shaw

Prothonotary

Atty Test

per. \$80.00

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

v.

SULLIVAN-PALATEK, INC.,

Defendant

: IN THE COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PENNSYLVANIA  
:  
:  
: NO. 2001-00682-CD  
:  
:  
: CIVIL ACTION - LAW

### **NOTICE TO PLEAD**

TO: Douglas Explosives, Inc.  
**c/o George S. Test, Esquire**  
P.O. Box 706  
Phillipsburg, PA 16866

**YOU ARE HEREBY NOTIFIED**, that the New Matter set forth herein contain averments against you to which you are required to respond within twenty (20) days after service thereof. Failure by you to do so may constitute an admission.

Respectfully submitted,

CALDWELL & KEARNS



Douglas E. Herman, Esquire  
Attorney ID# 86569  
3631 North Front Street  
Harrisburg, PA 17110-1533  
(717) 232-7661  
Attorney for Defendant, Sullivan-Palatek, Inc.

Dated: 6/11/01

01-319/25499

**FILED**

JUN 13 2001

William A. Shaw  
Prothonotary

DOUGLAS EXPLOSIVES, INC.,	:	IN THE COURT OF COMMON PLEAS
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
v.	:	NO. 2001-00682-CD
	:	
SULLIVAN-PALATEK, INC.,	:	
	:	
Defendant	:	CIVIL ACTION - LAW

**DEFENDANT, SULLIVAN-PALATEK, INC.'S**  
**ANSWER WITH NEW MATTER**

COMES NOW, the Defendant, Sullivan-Palatek, Inc., by and through its attorneys, CALDWELL & KEARNS, and files the within Answer with New Matter, and in support thereof avers the following:

1. Admitted.
2. Admitted.
3. Admitted. By way of further Answer, the use for the subject drill identified by Plaintiff's Complaint is an ordinary and common use for which the drill is manufactured, and does not constitute a "specific" or unique purpose. By way of further Answer, Defendant leased the subject drill to the Plaintiff prior to Plaintiff's purchase of the same.
4. Admitted in part and denied in part. It is admitted that Defendant's agents, servants and employees were generally familiar with the nature and character of Plaintiff's business endeavors. To the extent that the remainder of Plaintiff's averment is intended to suggest that Plaintiff wished to utilize the subject drill for a "special" or "unique" purpose (i.e., other than a use for which the drill is generally intended to be used), or that Defendant's

employees, agents and servants were aware of any purported "special" or "unique" purpose, the same is specifically denied.

5. Denied. After reasonable investigation, the Defendant is without knowledge to form an opinion as to the truth of veracity of Plaintiff's averment, and the same is accordingly denied, with strict proof thereof demanded at the time of trial. By way of further Answer, to the extent that Plaintiff's averment is supported by the evidence of record, any such construction and/or design defects resulted from the negligence, carelessness and/or recklessness of the employees, agents and servants of Revathi - CP Equipment, Ltd. (the manufacturer of said drill) and/or Plaintiff or its agents in modifying the structure of the existing drill as manufactured and tendered to Plaintiff.
6. Denied. After reasonable investigation, the Defendant is without sufficient knowledge to form an opinion as to the truth of veracity of Plaintiff's averment, and the same is accordingly denied, with strict proof thereof demanded at the time of trial.
7. Denied. After reasonable investigation, the Defendant is without sufficient knowledge to form an opinion as to the truth of veracity of Plaintiff's averment, and the same is accordingly denied, with strict proof thereof demanded at the time of trial. By way of further Answer, to the extent that Plaintiff's averment is supported by the evidence of record, any such construction and/or design defects resulted from the negligence, carelessness and/or recklessness of the employees, agents and servants of Revathi - CP

Equipment, Ltd. (the manufacturer of said drill) and/or Plaintiff or its agents in modifying the structure of the existing drill as manufactured and tendered to Plaintiff.

8. It is admitted that Plaintiff was required to make some repairs to the subject drill, for which Plaintiff filed claims with the Defendant, and said claims were paid. By way of further Answer, to the extent that Plaintiff's averments concerning inferior materials and faulty construction are supported by the evidence of record, any such construction and/or design defects resulted from the negligence, carelessness and/or recklessness of the employees, agents and servants of Revathi - CP Equipment, Ltd. (the manufacturer of said drill) and/or Plaintiff or its agents in modifying the structure of the existing drill as manufactured and tendered to Plaintiff.

By way of further Answer, many of the purported flaws about which Plaintiff complains were not communicated to Defendant in a timely fashion or within the warranty period provided by Defendant's exclusive warranty, a copy of which is attached hereto, and incorporated herein, as **Exhibit "A"**.

a. Admitted

b.- m. Denied. After reasonable investigation, Defendant is without sufficient information to form an opinion as to the truth or veracity of Plaintiff's averments, and the same are accordingly denied, with strict proof thereof demanded at time of trial.

9. Denied. After reasonable investigation, Defendant is without sufficient information to form an opinion as to the truth or veracity of Plaintiff's averments pertaining to the economic harm it has purportedly suffered, and the same are accordingly denied, with strict proof thereof demanded at time of trial.

By way of further Answer, to the extent that Plaintiff's averments concerning inferior materials and faulty construction are supported by the evidence of record, any such construction and/or design defects resulted from the negligence, carelessness and/or recklessness of the employees, agents and servants of Revathi - CP Equipment, Ltd. (the manufacturer of said drill) and/or Plaintiff or its agents in modifying the structure of the existing drill as manufactured and tendered to Plaintiff. By way of further Answer, the damage claimed by Plaintiff is not covered by the warranty provided by Defendant. It is also believed and therefore averred that Plaintiff has failed to mitigate any damages it may have suffered.

10. Denied. After reasonable investigation, Defendant is without sufficient information to form an opinion as to the truth or veracity of Plaintiff's averments pertaining to the economic harm it has purportedly suffered, and the same are accordingly denied, with strict proof thereof demanded at time of trial. By way of further Answer, the damage claimed by Plaintiff is not covered by the warranty provided by Defendant. It is also believed and therefore averred that Plaintiff has failed to mitigate any damages it may have suffered.

11. Denied. After reasonable investigation, Defendant is without sufficient information to form an opinion as to the truth or veracity of Plaintiff's averments pertaining to the economic harm it has purportedly suffered, and the same are accordingly denied, with strict proof thereof demanded at time of trial.

By way of further Answer, to the extent that Plaintiff's averments concerning inferior materials and faulty construction are supported by the evidence of record, any such construction and/or design defects resulted from the negligence, carelessness and/or recklessness of the employees, agents and servants of Revathi - CP Equipment, Ltd. (the manufacturer of said drill) and/or Plaintiff or its agents in modifying the structure of the existing drill as manufactured and tendered to Plaintiff. By way of further Answer, it is believed and therefore averred that Plaintiff has failed to mitigate any damages it may have suffered.

12. Denied as a conclusion of law to which no responsive pleading is required by the Pennsylvania Rules of Civil Procedure.
13. Denied as a conclusion of law to which no responsive pleading is required by the Pennsylvania Rules of Civil Procedure.
14. Denied as a conclusion of law to which no responsive pleading is required by the Pennsylvania Rules of Civil Procedure.
15. Denied as a conclusion of law to which no responsive pleading is required by the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendant, Sullivan-Palatek, Inc., respectfully requests that this Honorable Court rule in its favor and dismiss Plaintiff's claims with prejudice and issue an order providing for costs, attorneys' fees and any other remedy this Court finds just and appropriate.

### **NEW MATTER**

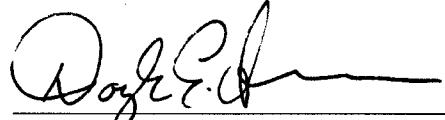
16. Defendant hereby incorporates paragraphs 1 through 15 herein as though they were set forth at length.
17. Plaintiff's claims are barred in whole or in part by the express terms of the limited warranty relative to the subject drill, which was provided to Plaintiff at the time of purchase and made part of the parties' bargain. See (Exhibit "A".)
18. Plaintiff's damages, if any, result proximately, in whole or in part, from the defective design, construction and or materials of the subject drill.
19. Defendant did not manufacture or design the subject drill, but merely acted as a "conduit" between the manufacturer and the Plaintiff.
20. Revathi - CP Equipment, Ltd. is the manufacturer of the subject drill.
21. Plaintiff's damages, if any, result proximately, in whole or in part, from the structural "modifications" made by Plaintiff or its agents and /or normal wear and tear on the product.
22. Plaintiff identified no "specific" or "unique" purpose for its use of the subject drill.
23. Plaintiff has failed to state a claim for breach of an implied warranty of fitness for a particular purpose.

24. Plaintiff's damages, if any, are offset in part by the value it received from use of the subject drill.
25. Plaintiff's claims are barred in whole or in part because of its failure to mitigate damages.
26. Plaintiff's claims are barred in whole or in part by its failure to provide effective and timely notice of the alleged defects in the drill.
27. Plaintiff's claims are barred by the applicable Statute of Limitations.

WHEREFORE, Defendant, Sullivan-Palatek, Inc., respectfully requests that this Honorable Court rule in its favor and dismiss Plaintiff's claims with prejudice and issue an order providing for costs, attorneys' fees and any other remedy this Court finds just and appropriate.

Respectfully submitted,

CALDWELL & KEARNS



---

Douglas E. Herman, Esquire  
Attorney ID# 86569  
James L. Goldsmith, Esquire  
Attorney ID# 27115  
3631 North Front Street  
Harrisburg, PA 17110-1533  
(717) 232-7661  
Attorney for Defendant, Sullivan-Palatek, Inc.

Dated: 6/11/01  
01-319/25499



**Sullivan Industries, Inc.**  
**WARRANTY**

**DRILL PRODUCTS**

**Sullivan Industries, Inc. warrants all new drill products to be free from defects in material or workmanship, and that they will be manufactured in conformance with applicable design drawings and specifications approved in writing by Sullivan Industries subject to the following provisions:**

**Warranty Period:** The warranty period for Sullivan Industries drill products is as follows:

- a) Track Drills and Drill Hammers - 6 months from the date of delivery to the first ultimate user or 9 months from date of shipment from the factory, whichever date first expires.
- b) Self-Contained Air Compressors: Air End - 24 months. Balance of Compressor unit - 12 months from delivery to first ultimate user.

**Sullivan Industries, Inc. Responsibilities:** If a warrantable failure in material or workmanship is found during the warranty period specified herein, Sullivan will provide through the authorized Sullivan distributor which sold the product, or directly to the buyer, its choice of new, repaired or remanufactured parts F.O.B. its factory, and labor to make the repair or replacement during normal business hours, all in accordance with the Product Support Handbook policies in effect at the time.

**User's Responsibilities:** If a warrantable failure occurs during the warranty period specified herein, the user is responsible for giving Sullivan Industries timely written notice and promptly making the product available for repair, for all costs of transporting the product to the designated service facility maintained by an authorized Sullivan distributor, for returning failed parts to Sullivan Industries, freight prepaid, for reasonable travel expenses if the product is repaired in the field at the user's request, for premium or overtime labor charges incurred to meet the user's work schedule, and for costs to investigate performance complaints unless the problem is caused by a defect in Sullivan Industries material or workmanship.

**Replacement Parts Warranty:** Replacement parts provided under this warranty are warranted for the remainder of the period applicable to the product in which installed as if such replacement parts were original components of the product.

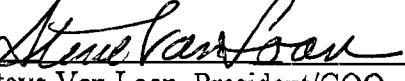
**Limitations:** Sullivan Industries, Inc. is not responsible for failures resulting from damages to or defects in the product caused by overloading, misuse, neglect or accident; for the failure of, or damages resulting from the use of, attachments, accessories or service parts not sold or recommended for use by Sullivan Industries; for damages occurring after user's unreasonable delay, after notice by Sullivan, in making products available for product improvements ordered by Sullivan. Sullivan Industries neither assumes nor authorizes any Sullivan Industries employee, or any other person, firm or corporation to assume or create for it any other warranty, obligation, or liability other than those expressly set forth herein.

**THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE TOTAL RESPONSIBILITY OF SULLIVAN INDUSTRIES, INC. FOR CLAIMS, LOSSES, LIABILITY OR DAMAGES, WHETHER IN CONTRACT OR TORT, ARISING OUT OF, OR RELATED TO, ITS PRODUCTS SHALL NOT EXCEED ITS PURCHASE PRICE. IN NO EVENT SHALL SULLIVAN BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, INCLUDING BUT NOT LIMITED TO, LOSS OF PRODUCTIVE FACILITIES OR EQUIPMENT, LOST PROFITS, LOST RENTAL INCOME, PROPERTY DAMAGE, EXPENSE INCURRED IN RELIANCE ON THE PERFORMANCE OF SULLIVAN, OR LOST PRODUCTION, WHETHER SUFFERED BY BUYER OR ANY THIRD PARTY.**

**VERIFICATION**

I, Steve Van Loan, President of SULLIVAN-PALATEK®, hereby verify that the averments in the foregoing Answer with New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

By:



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Steve Van Loan, President/COO  
SULLIVAN-PALATEK®

## **CERTIFICATE OF SERVICE**

**AND NOW**, this 11<sup>th</sup> day of June, 2001, I hereby certify that I have served a copy of the within document on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

George S. Test, Esquire  
P.O. Box 706  
Phillipsburg, PA 16866  
*Attorney for Douglas Explosives, Inc.*

CALDWELL & KEARNS

By: Melissa J. Remis

**FILED**

*REC'D  
JUN 13 2001  
MILLION 541 NO C*

William A. Shaw  
Prothonotary

**CALDWELL & KEARNS**  
A PROFESSIONAL CORPORATION  
**ATTORNEYS AT LAW**  
3631 NORTH FRONT STREET  
HARRISBURG, PENNSYLVANIA 17110

DOUGLAS EXPLOSIVES, INC., : IN THE COURT OF COMMON PLEAS  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
v. :  
: NO. 2001-00682-CD  
SULLIVAN-PALATEK, INC., :  
Defendant : CIVIL ACTION - LAW  
: JURY TRIAL DEMANDED

### ENTRY OF APPEARANCE

*To the Prothonotary of Said Court:*

Please enter my appearance on behalf of Defendant, Sullivan-Palatek, Inc., in reference to the above-captioned matter.

Respectfully submitted,

CALDWELL & KEARNS



Douglas E. Herman, Esquire  
Attorney ID# 86569  
3631 North Front Street  
Harrisburg, PA 17110-1533  
(717) 232-7661  
Attorney for Defendant, Sullivan-Palatek, Inc.

Dated: 6-18-01

01-319/26109

FILED

JUN 20 2001

William A. Shaw  
Prothonotary

## CERTIFICATE OF SERVICE

**AND NOW**, this 19<sup>th</sup> day of June, 2001, I hereby certify that I have served a copy of the within document on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

George S. Test, Esquire  
P.O. Box 706  
Phillipsburg, PA 16866  
*Attorney for Douglas Explosives, Inc.*

CALDWELL & KEARNS

By: Melissa J. Remond

CALDWELL & KEARNS  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
3631 NORTH FRONT STREET  
HARRISBURG, PENNSYLVANIA 17110

011-04581  
NO CC  
EGL

DOUGLAS EXPLOSIVES, INC.,	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	
SULLIVAN-PALATEK, INC.,	:	
Defendant	:	NO. 2001-00682-CD
	:	
v.	:	
REVATHI CP EQUIPMENT LIMITED,	:	
and ALLIANCE TOOL,	:	
Additional Defendants	:	CIVIL ACTION - LAW
	:	JURY TRIAL DEMANDED

## **NOTICE**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Joinder Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

David S. Meholic  
Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5982

**FILED**

JUN 20 2001

William A. Shaw  
Fiscal Notary

DOUGLAS EXPLOSIVES, INC.,	:	IN THE COURT OF COMMON PLEAS
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
v.	:	
	:	
SULLIVAN-PALATEK, INC.,	:	
	:	
Defendant	:	NO. 2001-00682-CD
	:	
v.	:	
	:	
REVATHI CP EQUIPMENT LIMITED,	:	
and ALLIANCE TOOL,	:	
	:	
Additional Defendants	:	CIVIL ACTION - LAW
	:	JURY TRIAL DEMANDED

## **NOTICIA**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene viente (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Usted Debe presentar una apariencia escrita o en persona o por abogado y archivar en la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede entrar una orden contra usted sin previo a viso o notificacion, y por cualquier queja o alivio que es pedido en la peticion de demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABODAGO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

David S. Meholick  
Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5982

DOUGLAS EXPLOSIVES, INC.,	:	IN THE COURT OF COMMON PLEAS
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
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SULLIVAN-PALATEK, INC.,	:	
	:	
Defendant	:	NO. 2001-00682-CD
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REVATHI CP EQUIPMENT LIMITED,	:	
and ALLIANCE TOOL,	:	
	:	
	:	
Additional Defendants	:	CIVIL ACTION - LAW
	:	JURY TRIAL DEMANDED

**THIRD PARTY COMPLAINT OF**  
**DEFENDANT, SULLIVAN-PALATEK, INC.**

**COMES NOW**, the Defendant, Sullivan-Palatek, Inc., by and through its attorneys, CALDWELL & KEARNS, and files the within Third Party Complaint against the named additional Defendants, and in support thereof avers the following:

1. The Plaintiff, Douglas Explosives, Inc., (hereinafter, "Douglas"), is a Pennsylvania corporation whose mailing address is P.O. Box 77, Philipsburg, Pennsylvania 16866, with offices at Graham Station, Decatur Township, Clearfield County, Pennsylvania.
2. The Defendant, Sullivan-Palatek, Inc., formerly Sullivan Industries, Inc., (hereinafter, "Sullivan"), is a foreign corporation with a place of business at River Road, Claremont, New Hampshire 03743.

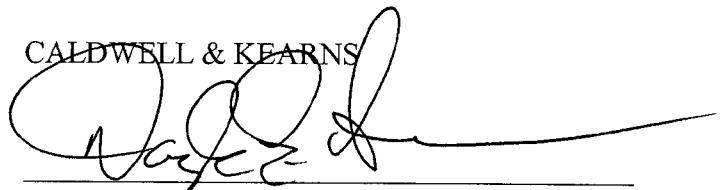
3. Additional Defendant, Revathi CP Equipment, Ltd., (hereinafter, "Revathi"), is a foreign corporation with a place of business at Pollachi Road, Malumachampatti Post, Coimbatore - 641 021, INDIA.
4. Additional Defendant, Alliance Tool, (hereinafter, "Alliance"), is a foreign corporation with a place of business at 1800 Overview Drive, Rock Hill, North Carolina 29730.
5. On May 10, 2001, Douglas filed a Complaint with the Prothonotary of the Court of Common Pleas of Clearfield County asserting claims for breach of warranty against Defendant Sullivan. A true and correct copy of Plaintiff's Complaint is attached hereto, and incorporated herein, and marked as Exhibit "A".
6. Said Complaint avers that the Viper C 60HX industrial drill which Plaintiff purchased from Defendant Sullivan was defectively designed and constructed of inferior materials. See (Exhibit "A", Plaintiff's Complaint ¶¶ 5, 7, 8, 9.)
7. Specifically, Plaintiff premises its theories of liability upon alleged breaches of the implied warranties of merchantability and fitness for a particular purpose. See (Exhibit "A", Plaintiff's Complaint ¶¶ 13-14.)
8. Defendant Sullivan provided a limited warranty to Plaintiff upon the sale of the subject grill which disclaimed both of those implied warranties. A true and correct copy of Sullivan' Industries, Inc.'s Warranty is attached hereto, and incorporated herein, and marked as Exhibit "B".
9. Defendant Sullivan did not design or manufacture the subject drill.

10. In point of fact, Additional Defendant Revathi designed and manufactured the subject drill.
11. Defendant Sullivan purchased the subject drill from Revathi in or about 1995. A true and correct copy of the Agreement of Sale is attached hereto, and incorporated herein, and marked as Exhibit "C".
12. Defendant Revathi's agents failed to disclaim any warranties otherwise available to Defendant Sullivan.
13. Defendant Revathi's agents expressly warranted the quality and integrity of the subject drill.
14. Defendant Sullivan thereafter sold the subject drill to the Plaintiff in or about April of 1998.
15. Upon information and belief, it is averred that Defendant Alliance is the "parent" company of Additional Defendant Revathi, the latter existing as a wholly owned subsidiary of Defendant Alliance.
16. To the extent that the subject drill is defectively designed or constructed of inferior materials, the Additional Defendants are solely liable to the Plaintiff for any damages the Plaintiff has suffered, or are liable over to Defendant Sullivan on the Plaintiff's cause of action, or are jointly and severely liable with Defendant Sullivan on the Plaintiff's cause of action, or are liable to Defendant Sullivan for breach of contract, breach of implied warranty of merchantability, breach of implied warranty for a particular purpose, and/or

breach of express warranties, as Defendant was deprived of the basis of its' bargain when it purchased the drill from Defendant Revathi.

WHEREFORE, Defendant Sullivan respectfully requests that this Court enter Judgment in its favor and against Additional Defendants for any harm which Plaintiffs' have suffered and/or for any damages suffered by Defendant, Sullivan-Palatek, Inc.

Respectfully submitted,

  
Caldwell & Kearns

Douglas E. Herman, Esquire  
Attorney ID# 86569  
James L. Goldsmith, Esquire  
Attorney ID# 27115  
3631 North Front Street  
Harrisburg, PA 17110-1533  
(717) 232-7661  
Attorney for Defendant, Sullivan-Palatek, Inc.

Dated: 6-19-01  
01-319/26033

**VERIFICATION**

I, Steve Van Loan, President of SULLIVAN-PALATEK®, hereby verify that the averments in the foregoing Third Party Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

By: Steve Van Loan

Steve Van Loan, President/COO  
SULLIVAN-PALATEK®



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

vs.

SULLIVAN-PALATEK, INC.,

Defendant

No. 2001-00682-CD

Code: Complaint

Filed on behalf of:

Douglas Explosives, Inc., Plaintiff

Counsel of Record for this Party:

George S. Test, Esquire  
P. O. Box 706  
Philipsburg, PA 16866  
(814) 342-4640

PA I.D. #15915

GEORGE S. TEST  
ATTORNEY AT LAW  
PHILIPSBURG, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

\* No. 2001-00682-CD

vs.

SULLIVAN-PALATEK, INC.,

Defendant

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC., \*  
Plaintiff \* No. 2001-00682-CD  
vs. \*  
\*  
SULLIVAN-PALATEK, INC., \*  
Defendant \*  
\*  
\*

COMPLAINT

1. The Plaintiff is Douglas Explosives, Inc., a Pennsylvania Corporation, whose mailing address is P. O. Box 77, Philipsburg, PA 16866, with offices at Graham Station, Decatur Township, Clearfield County, Pennsylvania.
2. The Defendant is Sullivan-Palatek, Inc., formerly Sullivan Industries, Inc., with offices and a place of business at River Road, Claremont, New Hampshire 03743.
3. On or about April 3, 1998, Douglas Explosives, Inc., through Douglas Drill Services, Inc., purchased from Sullivan Industries, Inc., a Viper C60HX Drill bearing Serial Number 97E1001 for \$220,000.00. Said unit is a track mounted rotary drill intended to be utilized to drill shot holes in mines and quarries.
4. The Defendant herein was familiar with Plaintiff's business and the intended use of the machine being purchased.
5. The Viper C60HX Drill purchased by the Plaintiff was improperly designed and was constructed from inferior materials.
6. In January 2001, Plaintiff had to stop attempting to use said drill due to total structural failure making it unsafe to operate.

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

7. Because of defective design and inferior materials, Plaintiff found it necessary to weld and support the frame jacks and mast. Each time one area was strengthened, an adjacent area of the structure would fail.

8. In addition to and as a result of said structural problems and inferior materials, the Plaintiff was required to make the following repairs to said machine during the approximately two (2) years in was in operation:

a. The cooler assembly was replaced three (3) times because of failure of the high pressure side. The entire cooler system was then replaced with an assembly from a different manufacturer.

b. The engine had to be rebuilt because faulty design resulted in a hole in the air inlet allowing dirt to be sucked into the motor.

c. Two (2) of four (4) leveling jacks failed and had to be replaced and the remaining leveling jacks need to be replaced.

d. The drill pipe cracked after one month's use because the steel was defective.

e. The mast raising cylinder had to be repacked three (3) times.

f. The fuel tank fell off the machine

g. The angle drilling package had to be plated and repaired.

h. The machine had to be repainted because the paint came off when the machine was washed.

i. The water injection system was never operable.

- j. The injector lines on the engine continually broke because of excessive flexing of the frame which binds the injection lines.
- k. Continual electrical problems because of faulty design of the electrical system and problems caused by excessive flexing of the frame.
- l. Defective construction of the head assembly necessitated a complete rebuild.
- m. The head motors had to be rebuilt and then replaced.

9. As a result of the improper design and inferior materials and resulting structural problems and failure, the Plaintiff has suffered substantial expenses and financial losses including the following:

- a. In July 1998, the compressor cooler, hydraulic cooler, and engine coolant cooler were replaced. Defendant supplied the parts at no cost but Plaintiff suffered ten (10) days of downtime resulting in a loss of \$16,100.00, transportation costs for the drill of \$768.00, and labor costs of \$1,000.00 for a total of \$17,868.00.
- b. In October 1998, the hydraulic cooler was removed and repaired resulting in two (2) days downtime at a cost of \$3,220.00, repair costs of \$350.00, labor costs of \$618.00, and transportation costs of \$768.00 for a total loss of \$4,956.00.
- c. In April 1999, the hydraulic cooler failed and was replaced at a cost of \$632.96, labor costs of \$927.00, and transportation costs of \$768.00 for a total cost of \$2,327.96.
- d. In May 1999, the diesel engine had to be rebuilt when excessive flex in the main frame resulted in a hole in the air intake piping resulting in dirt being sucked into the engine, destroying the engine, resulting in an engine rebuild cost of \$11,381.44, transportation costs of \$162.00, downtime loses of \$14,000.00, labor costs of \$926.88 for a total cost of \$26,470.32.

e. In July 1999, the compressor and water cooler had to be replaced at a cost of \$6,039.80 with \$7,000.00 in downtime loss, refabricating mounting brackets at a cost of \$200.00, labor costs of \$308.96, and transportation costs of \$162.00, equaling a total loss of \$13,710.76.

f. In August 1999, the compressor cooler failed and had to be replaced for \$742.00 resulting in a downtime loss of \$6,440.00, labor costs of \$463.44, and transportation costs of \$768.00 for a total loss of \$8,413.44.

g. In November 1999, the compressor cooler failed again and had to be replaced at a cost of \$3,763.00 with a downtime loss of \$5,600.00, labor costs of \$617.92, and transportation costs of \$768.00 or a total loss of \$10,748.92.

h. In February 2000, the unit had to be completely cleaned and repainted at a cost of \$5,250.00.

i. In addition, Plaintiff entered into a contract to provide drilling services over a period of three (3) years relying upon this machine. Because of the total loss of use of the machine, Plaintiff has been required to lease a replacement machine to fulfill its contractual obligations at a cost of \$12,000.00 per month.

10. To date, Plaintiff has incurred expenses and suffered losses in the amount of \$88,445.40 plus, rental expenses of \$12,000.00 per month.

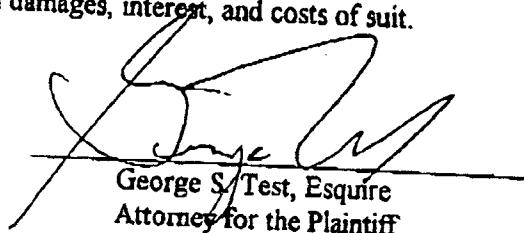
11. The drill that Defendant sold to Plaintiff is unsafe to operate and is no longer in use. Plaintiff believes that in order to make the unit safe to operate, it is necessary to mount the equipment on a new frame with a new mast. Plaintiff estimates the cost of labor and material to do this would be \$60,000.00.

12. All said losses and expenses are a direct and consequential result of the poor design and defective materials in the drill sold by Defendant.

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

13. The drill sold by Defendant was and is not merchantable as that term is utilized in 13 Pa. C.S.A. 2314.
14. The drill sold by Defendant was not fit for the purposes for which it was sold and for the purpose for which Defendant knew Plaintiff was purchasing it, in violation of 13 Pa. C.S.A. 2315.
15. As a result of the defective design of the aforesaid drill and the defective materials used in its construction, Plaintiff has suffered and will continue to suffer substantial financial loss.

WHEREFORE, Plaintiff demands judgment against Defendant in the amount of \$149,745.40 plus, \$12,000.00 per month in rental damages, interest, and costs of suit.



George S. Test, Esquire  
Attorney for the Plaintiff



**Sullivan Industries, Inc.**  
**WARRANTY**

**DRILL PRODUCTS**

**Sullivan Industries, Inc. warrants all new drill products to be free from defects in material or workmanship, and that they will be manufactured in conformance with applicable design drawings and specifications approved in writing by Sullivan Industries subject to the following provisions:**

**Warranty Period:** The warranty period for Sullivan Industries drill products is as follows:  
a) Track Drills and Drill Hammers - 6 months from the date of delivery to the first ultimate user or 9 months from date of shipment from the factory, whichever date first expires.  
b) Self-Contained Air Compressors: Air End - 24 months. Balance of Compressor unit - 12 months from delivery to first ultimate user.

**Sullivan Industries, Inc. Responsibilities:** If a warrantable failure in material or workmanship is found during the warranty period specified herein, Sullivan will provide through the authorized Sullivan distributor which sold the product, or directly to the buyer, its choice of new, repaired or remanufactured parts F.O.B. its factory, and labor to make the repair or replacement during normal business hours, all in accordance with the Product Support Handbook policies in effect at the time.

**User's Responsibilities:** If a warrantable failure occurs during the warranty period specified herein, the user is responsible for giving Sullivan Industries timely written notice and promptly making the product available for repair, for all costs of transporting the product to the designated service facility maintained by an authorized Sullivan distributor, for returning failed parts to Sullivan Industries, freight prepaid, for reasonable travel expenses if the product is repaired in the field at the user's request, for premium or overtime labor charges incurred to meet the user's work schedule, and for costs to investigate performance complaints unless the problem is caused by a defect in Sullivan Industries material or workmanship.

**Replacement Parts Warranty:** Replacement parts provided under this warranty are warranted for the remainder of the period applicable to the product in which installed as if such replacement parts were original components of the product.

**Limitations:** Sullivan Industries, Inc. is not responsible for failures resulting from damages to or defects in the product caused by overloading, misuse, neglect or accident; for the failure of, or damages resulting from the use of, attachments, accessories or service parts not sold or recommended for use by Sullivan Industries; for damages occurring after user's unreasonable delay, after notice by Sullivan, in making products available for product improvements ordered by Sullivan. Sullivan Industries neither assumes nor authorizes any Sullivan Industries employee, or any other person, firm or corporation to assume or create for it any other warranty, obligation, or liability other than those expressly set forth herein.

**THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE TOTAL RESPONSIBILITY OF SULLIVAN INDUSTRIES, INC. FOR CLAIMS, LOSSES, LIABILITY OR DAMAGES, WHETHER IN CONTRACT OR TORT, ARISING OUT OF, OR RELATED TO, ITS PRODUCTS SHALL NOT EXCEED ITS PURCHASE PRICE. IN NO EVENT SHALL SULLIVAN BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, INCLUDING BUT NOT LIMITED TO, LOSS OF PRODUCTIVE FACILITIES OR EQUIPMENT, LOST PROFITS, LOST RENTAL INCOME, PROPERTY DAMAGE, EXPENSE INCURRED IN RELIANCE ON THE PERFORMANCE OF SULLIVAN, OR LOST PRODUCTION, WHETHER SUFFERED BY BUYER OR ANY THIRD PARTY.**



## AGREEMENT FOR SALE AND PURCHASE OF VIPER (C 60HX) CRAWLER MOUNTED BLAST HOLE DRILL

This Letter of SULLIVAN INDUSTRIES INC., USA (hereinafter referred to as "SULLIVAN"), confirms their agreement with REVATHI-CP EQUIPMENT LIMITED (hereinafter referred to as "REVATHI-CP") in respect to the sale and purchase of VIPER (C 60HX) Crawler Mounted Blast Hole Drill, completely assembled, tested and painted, at mutually agreed prices.

1. The "Viper (C 60HX) drill is designed and manufactured by "Revathi-CP" confirming to the specifications supplied by SULLIVAN. Any exception, modification or changes shall be made only with mutual consent. REVATHI-CP will not sell the drill to any party in USA other than SULLIVAN without SULLIVAN'S prior written consent.
2. SULLIVAN shall be solely responsible to supply any and all literature relating to the product, including, but not limited to, instructions and maintenance manuals, for machines that are sold to SULLIVAN by REVATHI-CP under this Agreement.
3. **PRICE, DELIVERY AND TERMS OF PAYMENT**
  - a) The FOB Chennai, India price and scope of supply of each order inclusive of all taxes and governmental charges imposed by Governmental units in India shall be mutually discussed and agreed upon.
  - b) The delivery shall be mutually discussed and agreed upon for each order.
  - c) SULLIVAN shall open, one month before the scheduled date of delivery for each machine a Letter of Credit with terms as described substantially in the attached "Description of Letters of Credit".
4. The timely shipment of the machines will be subject to SULLIVAN providing, one month before the due date of delivery, a separate Letter of Credit with terms as described substantially in the attached "Description of Letters of Credit".

**CALDWELL & KEARNS**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

3631 NORTH FRONT STREET  
HARRISBURG, PENNSYLVANIA 17110

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DOUGLAS EXPLOSIVES, INC.,  
Plaintiff

v.

SULLIVAN-PALATEK, INC.,  
Defendant

v.

REVATHI CP EQUIPMENT LIMITED,  
and ALLIANCE TOOL,  
Additional Defendants

: IN THE COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PENNSYLVANIA

: NO. 2001-00682-CD

: CIVIL ACTION - LAW  
: JURY TRIAL DEMANDED

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### CERTIFICATE OF SERVICE

AND NOW, this 25<sup>th</sup> day of June, 2001, I hereby certify that I served a copy of the  
Third Party Complaint on the following by hand delivering a copy of the same to:

George S. Test, Esquire  
P.O. Box 706  
Phillipsburg, PA 16866  
*Attorney for Douglas Explosives, Inc.*

CALDWELL & KEARNS

By:



Douglas E. Herman, Esquire  
Attorney ID# 86569

**FILED**

*JUN 27 2001*

**William A. Shaw  
Prothonotary**

**FILED**

JUN 27 2001  
MO 10:24 AM C.C.  
William A. Shaw  
Prothonotary  
K2B

**CALDWELL & KEARNS**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

3631 NORTH FRONT STREET  
HARRISBURG, PENNSYLVANIA 17110

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

Sheriff Docket # 11131

DOUGLAS EXPLOSIVE INC.

01-682-CD

VS.

SULLIVAN-PALATEK, INC. AI

**THIRD PARTY COMPLAINT**

**SHERIFF RETURNS**

**NOW JUNE 25, 2001 AT 2:59 PM DST SERVED THE WITHIN THIRD PARTY COMPLAINT ON REVATHI CP EQUIPMENT LIMITED, DEFENDANT AT DOUGLAS DRILL SERVICES INC., RT. 322 W., PHILIPSBURG, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RAGU RAGHAVENDRA, PRESIDENT OF REVATHI CP EQUIPMENT LMT., A TRUE AND ATTESTED COPY OF THE ORIGINAL THIRD PARTY COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: DAVIS/MORGILLO**

**NOW JUNE 25, 2001 AT 2:59 PM DST SERVED THE WITHIN THIRD PARTY COMPLAINT ON ALLIANCE TOOL, DEFENDANT AT DOUGLAS DRILL SERVICES INC., RT. 322 W., PHILIPSBURG, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CHARLES ROBINSON, PRESIDENT OF ALLIANCE TOOL, A TRUE AND ATTESTED COPY OF THE ORIGINAL THIRD PARTY COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: DAVIS/MORGILLO**

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**Return Costs**

Cost	Description
40.98	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

**FILED**  
07-3-44-81  
JUL 03 2001  
E  
William A. Shaw *WAS*  
Prothonotary

**Sworn to Before Me This**

3<sup>rd</sup> Day Of July 2001

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co. Clearfield, PA.

**So Answers,**

*Chester Hawkins  
by Marley Hams*  
Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

\*

No. 2001-00682-CD

vs.

SULLIVAN-PALATEK, INC.,

Defendant

\*

Code: Answer to New Matter

\*

\*

\*

Filed on behalf of:

Douglas Explosives, Inc., Plaintiff

Counsel of Record for this Party:

George S. Test, Esquire  
P. O. Box 706  
Philipsburg, PA 16866  
(814) 342-4640

PA I.D. #15915

**FILED**

JUL 06 2001

William A. Shaw  
Prothonotary

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC.,  
Plaintiff

\*  
\* No. 2001-00682-CD  
\*  
\*

vs.

SULLIVAN-PALATEK, INC.,  
Defendant

\*  
\*  
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**ANSWER TO NEW MATTER**

16. Paragraph 16 contains no averment of fact and does not require responsive pleading.

17. Denied. After a diligent search of files and questioning of employees, Plaintiff can find no evidence that said document was delivered to Plaintiff.

18. Admitted.

19. Denied. Plaintiff is without knowledge concerning who designed the subject drill. Paragraph one of Exhibit C to Defendant's Third Party Complaint states that Defendant supplied the "specifications" for said drill and the only name appearing on said drill was the Defendant's.

20. Admitted.

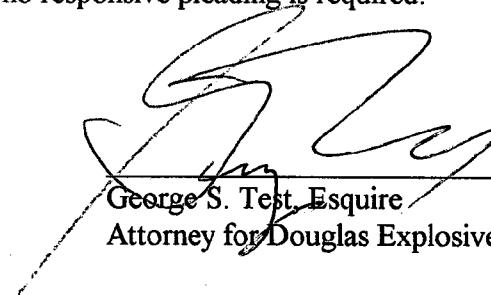
21. Denied. Plaintiff made no structural changes to the subject drill. Plaintiff did replace the oil cooling unit but Defendant requested the same change be made to other drills of this type.

22. Denied. Defendant was aware of the uses and conditions under which Plaintiff would utilize said machine.

23. Denied as a conclusion of law to which no responsive pleading is required.

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

23. Denied as a conclusion of law to which no responsive pleading is required.
24. Denied as a conclusion of law to which no responsive pleading is required.
25. Denied as a conclusion of law to which no responsive pleading is required.
26. Denied. Plaintiff at all times kept Defendant informed about the problems it was having with said machine.
27. Denied as a conclusion of law to which no responsive pleading is required.



George S. Test, Esquire  
Attorney for Douglas Explosives, Inc.

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF Clearfield

**AFFIDAVIT**

On this, the 2nd day of July, 2001, before me, a Notary Public, personally appeared **DOUGLAS K. BURNSWORTH**, President of Douglas Explosives, Inc., the Plaintiff herein and acknowledged that he has read the foregoing Answer to New Matter and that the statements made therein are true and correct to the best of his information and belief.

DOUGLAS EXPLOSIVES, INC.

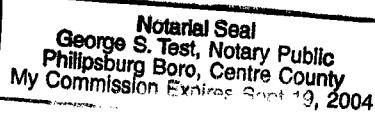
By Douglas K. Burnsworth

Douglas K. Burnsworth, President

SWORN to and SUBSCRIBED  
before me this 1st day of

July, 2001.

Douglas K. Burnsworth  
N. P.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

**CERTIFICATE OF SERVICE**

The undersigned, George S. Test, Esquire hereby certifies that he has served a true and correct copy of the Answer to New Matter in the above captioned matter via first class mail, postage prepaid in Philipsburg, Pennsylvania, on July 3, 2001 addressed to the following:

Douglas E. Herman, Esquire  
CALDWELL & KEARNS  
3631 North Front Street  
Harrisburg, PA 17110-1533

George S. Test, Esquire

**GEORGE S. TEST**  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

**FILED**

JUL 9 6 2001  
M 11.16/nc  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOUGLAS EXPLOSIVES, INC.,

CIVIL DIVISION

Plaintiff,

No. 2001-00682-CD

v.

Issue No.

SULLIVAN-PALATEK, INC.,

**PRAECIPE FOR APPEARANCE**

Defendant.

Code:

v.

Filed on behalf of Additional Defendants,  
Revathi CP Equipment Limited and Alliance  
Tool

REVATHI CP EQUIPMENT LIMITED and  
ALLIANCE TOOL,

Additional  
Defendants.

Counsel of record for this party:

L. John Argento, Esq.  
PA. I.D. #39342

DICKIE, McCAMEY & CHILCOTE, P.C.  
Firm #067

Two PPG Place, Suite 400  
Pittsburgh, PA 15222-5402

(412) 281-7272

**FILED**

**JURY TRIAL DEMANDED**

JUL 12 2001  
mjl:23 ncc  
William A. Shaw  
Prothonotary

**PRAECEIPE FOR APPEARANCE**

TO: PROTHONOTARY

Kindly enter our Appearance on behalf of the Additional Defendants, Revathi CP Equipment Limited and Alliance Tool, in the above-entitled action.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: L. John Argento  
L. John Argento, Esquire

Attorneys for Additional Defendant,  
Revathi CP Equipment Limited and  
Alliance Tool

**CERTIFICATE OF SERVICE**

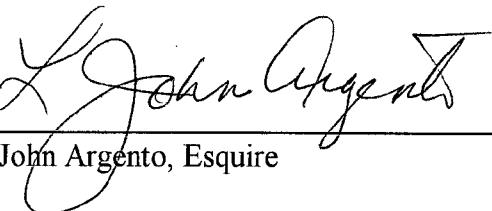
I, L. John Argento, Esquire, hereby certify that true and correct copies of the foregoing Praecipe for Appearance have been served this 9<sup>th</sup> day of July, 2001, by U.S. first-class mail, postage prepaid, to counsel of record listed below:

George S. Test, Esquire  
P.O. Box 706  
Phillipsburg, PA 16866

Douglas Herman, Esquire  
3631 North Front Street  
Harrisburg, PA 17110-1533

DICKIE, McCAMEY & CHILCOTE, P.C.

By

  
L. John Argento, Esquire

Attorneys for Additional Defendants, Revathi  
CP Equipment Limited and Alliance Tool

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

\*

No. 2001-00682-CD

vs.

\*

\*

SULLIVAN-PALATEK, INC.,

Defendant

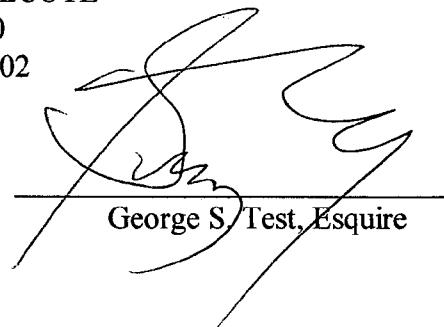
\*

\*

**CERTIFICATE OF SERVICE**

The undersigned, George S. Test, Esquire hereby certifies that he has served a true and correct copy of the Answer to New Matter in the above captioned matter via first class mail, postage prepaid in Philipsburg, Pennsylvania, on July 20, 2001 addressed to the following:

L. John Argento, Esquire  
DICKEY, MCCAMEY & CHILCOTE  
2 PPG Place - Suite 400  
Pittsburgh, PA 15222-5402



George S. Test, Esquire

**FILED**

111 23 2001  
M 18:42 1 NOCC  
William A. Shaw  
Prothonotary  
K24

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

DOUGLAS EXPLOSIVES, INC.,  
Plaintiff

: IN THE COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PENNSYLVANIA

V.

SULLIVAN-PALATEK, INC.,  
Defendant

; NO. 2001-00682-CD

V.

REVATHI CP EQUIPMENT LIMITED,  
and ALLIANCE TOOL,  
Additional Defendants

: CIVIL ACTION - LAW  
: JURY TRIAL DEMANDED

**DEFENDANT, SULLIVAN-PALATEK, INC.'S PRAECIPE TO  
DISCONTINUE THE ACTION AGAINST ADDITIONAL DEFENDANTS,  
REVATHI CP EQUIPMENT LIMITED AND ALLIANCE TOOL**

*To the Prothonotary of Said Court:*

On June 20, 2001, Defendant, Sullivan-Palatek, Inc. filed a Third Party Complaint joining Additional Defendants Revathi CP Equipment Limited and Alliance Tool in the above-captioned matter. Additional Defendants were served by Sheriff service on Tuesday, June 25, 2001 in Clearfield County.

Defendant, Sullivan-Palatek, Inc., now requests that its claims against Additional Defendants, Revathi CP Equipment Limited and Alliance Tool be discontinued and that the docket be marked accordingly.

Respectfully submitted,

CALDWELL & KEARNS

FILED

III 24 2001

William A. Shaw  
Prothonotary

Dated: 7/23/01

Douglas C. Herman, Esquire  
Attorney ID# 86569  
James L. Goldsmith, Esquire  
Attorney ID# 27115  
3631 North Front Street  
Harrisburg, PA 17110-1533  
(717) 232-7661  
Attorney for Defendant, Sulli

## **CERTIFICATE OF SERVICE**

**AND NOW**, this 23rd day of July, 2001, I hereby certify that I have served a copy of the within document on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

George S. Test, Esquire  
P.O. Box 706  
Phillipsburg, PA 16866  
*Attorney for Douglas Explosives, Inc.*

L. John Argento, Esquire  
Christopher T. Lee, Esquire  
DICKIE, McCAMEY & CHILCOTE  
Two PPG Place - Suite 400  
Pittsburgh, PA 15222-5402  
*Attorneys for Revathi CP Equipment Limited and Alliance Tool*

CALDWELL & KEARNS

By: Melissa Jeremiah

**FILED**

11/14/2001  
11113311cc atty Harman

William A. Shaw  
Prothonotary

*WKS*

Cert. Do. to  
atty Harman

CALDWELL & KEARNS  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
3631 NORTH FRONT STREET  
HARRISBURG, PENNSYLVANIA 17110

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

7  
CIVIL  
DIVISION

**Douglas Explosives, Inc.**  
**Plaintiff**

**Vs.**

**No. 2001-00682-CD**

**Sullivan-Palatek, Inc.**  
**Defendant**  
**Vs.**

**Revathi CP Equipment Limited and**  
**Alliance Tool**  
**Additional Defendants**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 24, 2001 marked:

Discontinued Against Additional Defendants, Revath CP Equipment Limited, and Alliance Tool only.

Record costs in the sum of \$80.00 have been paid in full by George Test, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 24th day of July A.D. 2001.

---

William A. Shaw, Prothonotary

## IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOUGLAS EXPLOSIVES, INC.,

CIVIL DIVISION

Plaintiff,

No. 2001-00682-CD

v.

Issue No.

SULLIVAN-PALATEK, INC.,

**NOTICE OF REMOVAL**

Defendant,

Code:

v.

Filed on behalf of Revathi CP Equipment Limited  
and Alliance Tool, Additional DefendantsREVATHI CP EQUIPMENT LIMITED and  
ALLIANCE TOOL,

Counsel of record for this party:

Additional Defendants.

L. John Argento, Esquire  
PA. I.D. #39342  
Christopher T. Lee, Esq.  
PA. I.D. #62422DICKIE, McCAMEY & CHILCOTE, P.C.  
Firm #067  
Two PPG Place, Suite 400  
Pittsburgh, PA 15222-5402

(412) 281-7272

**FILED****JURY TRIAL DEMANDED**

JUL 25 2001

William A. Shaw  
Prothonotary

## IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

## CIVIL DIVISION

DOUGLAS EXPLOSIVES, INC., )  
Plaintiff, )  
v. ) No. 2001-00682-CD  
SULLIVAN-PALATEK, INC., )  
Defendant. )  
v. )  
REVATHI CP EQUIPMENT LIMITED, )  
and ALLIANCE TOOL, )  
Additional Defendants. )

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that on this 24th day of July, 2001, the undersigned attorneys for Petitioners, Revathi CP Equipment Limited and Alliance Tool, filed a verified Notice of Removal of this action from the Court of Common Pleas of Clearfield County, Pennsylvania to the United States District Court for the Western District of Pennsylvania. A copy of said Notice of Removal is attached hereto and made a part hereof.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: L. John Argento  
L. John Argento, Esquire  
Pa. I.D. #39342  
Christopher T. Lee, Esquire  
Pa. I.D. #62422

Two PPG Place, Suite 400  
Pittsburgh, PA 15222  
(412) 392-5395

*Attorneys for Revathi CP Equipment Limited, and  
Alliance Tool, Additional Defendants*

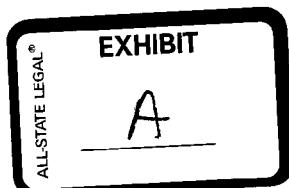
IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA

DOUGLAS EXPLOSIVES, INC., )  
Plaintiff, )  
v. ) C.A. No. 1  
SULLIVAN-PALATEK, INC., )  
Defendant. )  
v. )  
REVATHI CP EQUIPMENT LIMITED, )  
and ALLIANCE TOOL, )  
Additional Defendants. )

**NOTICE OF REMOVAL**

AND NOW come the Petitioners, REVATHI CP EQUIPMENT LIMITED, and ALLIANCE TOOL, by and through their counsel, Dickie, McCamey & Chilcote, P.C., and pursuant to 28 U.S.C., § 1441 and § 1446 and file this Notice of Removal of the foregoing case to the United States District Court for the Western District of Pennsylvania, the following of which is a statement:

1. A civil action was commenced and is currently pending in the Court of Common Pleas of Clearfield County, Pennsylvania, in which Douglas Explosives, Inc., is the Plaintiff; Sullivan-Palatek, Inc. is the Defendant; and Petitioners are the Third Party Defendants. The action is styled as follows:



**DOUGLAS EXPLOSIVES, INC. v.  
SULLIVAN-PALATEK, INC. v.  
REVATHI CP EQUIPMENT LIMITED and ALLIANCE TOOL  
No. 2001-00682-CD**

2. This action was commenced by the filing of a Complaint. Attached hereto as Exhibit A is a true and correct copy of the Complaint.

3. Thereafter, original Defendant, Sullivan-Palatek, Inc., filed a Third Party Complaint purporting to join Revathi CP Equipment Limited and Alliance Tool. See Exhibit "A".

4. In the original Complaint, Plaintiff asserts claims sounding in breach of implied warranties of merchantability and fitness for a particular purpose.

5. The Third Party Plaintiff, Sullivan-Palatek, Inc., asserts claims sounding in breach of contract, breach of implied warranty and merchantability, breach of implied warranty for a particular purpose, and/or breach of express warranties.

6. The action involves a controversy between citizens of different states:

- A. Plaintiff, Douglas Explosives, Inc., is a Pennsylvania corporation with a principal place of business in Clearfield County, Pennsylvania;
- B. Third Party Plaintiff, Sullivan-Palatek, Inc., is a New Hampshire corporation with a principal place of business located in Fairmont, New Hampshire;
- C. Petitioner Revathi is an Indian corporation with its principal place of business located in Coimbatore, Country of India; Alliance Tool, is not an entity, but has an office in Rock Hill, North Carolina;
- D. It is believed and therefore averred that the action concerns a matter in controversy exceeding the sum or value of \$75,000.00, exclusive of interest and costs;
- E. The action is one of which the District Courts of the United States possesses original jurisdiction under 28 U.S.C. § 1332; there exists complete diversity of citizenship among Plaintiff, Third Party Plaintiff, and Third Party Defendant,

and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

7. This Notice of Removal is filed within thirty (30) days after Petitioners' receipt of the Third Party Complaint.

8. Written notice of the filing of this Notice of Removal will be served upon Plaintiff and Third Party Plaintiff promptly after the filing of a Notice with the United States District Court for the Western District of Pennsylvania, as required by law.

9. A true and correct copy of this Notice of Removal will be filed with the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania promptly after the filing of this Notice with the United States District Court for the Western District of Pennsylvania, as required by law.

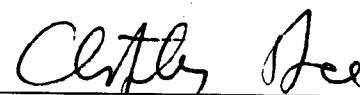
10. By filing of this Notice of Removal, Petitioners do not waive any defense which may be available to it under applicable law, including but not limited to defenses as to service, jurisdiction, subject matter jurisdiction, statutes of limitations, and any defenses available to it under any applicable contract.

WHEREFORE, Petitioners, Revathi CP Equipment Limited and Alliance Tool, respectfully request this Honorable Court grant the Petition for Removal set forth within this Notice of Removal.

**JURY TRIAL DEMANDED.**

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By:   
L. John Argento, Esquire  
Pa. I.D. #39342  
Christopher T. Lee, Esquire  
Pa. I.D. #62422

Two PPG Place, Suite 400  
Pittsburgh, PA 15222  
(412) 392-5395

*Attorneys for Revathi CP Equipment Limited, and  
Alliance Tool, Additional Defendants*

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

IN THE COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PENNSYLVANIA

v.

SULLIVAN-PALATEK, INC.,

Defendant

NO. 2001-00682-CD

v.

REVATHI CP EQUIPMENT LIMITED,  
and ALLIANCE TOOL,

Additional Defendants

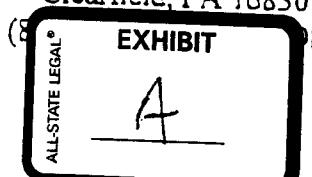
CIVIL ACTION - LAW  
JURY TRIAL DEMANDED

## NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Joinder Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

6-25-2  
6-30-2  
2-30-2  
Douglas 650 fm  
David S. Meholic  
Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 763-1822



I hereby certify this to be a true  
and attested copy of the original  
on this 28th day of June, 2001.

JUN 28 2001

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

: IN THE COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PENNSYLVANIA

v.

SULLIVAN-PAIATEK, INC.,

Defendant

: NO. 2001 00682-CD

v.

REVATHI CP EQUIPMENT LIMITED,  
and ALLIANCE TOOL,

Additional Defendants

: CIVIL ACTION LAW  
: JURY TRIAL DEMANDED

## NOTICIA

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene viente (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Usted Debe presentar una apariencia escrita o en persona o por abogado y archivar en la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Se a avisado que si usted no se defiende, la corte tomara medidas y puede entrar una orden contra usted sin previo aviso o notificacion, y por cualquier queja o alivio que es pedido en la peticion de demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABODAGO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

David S. Meholic  
Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765 2641, Ext. 5982

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

v.

SULLIVAN-PALATEK, INC.,

Defendant

v.

REVATHI CP EQUIPMENT LIMITED,  
and ALLIANCE TOOL.

Additional Defendants

IN THE COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PENNSYLVANIA

NO. 2001 00682-CD

CIVIL ACTION LAW  
JURY TRIAL DEMANDED

THIRD PARTY COMPLAINT OF  
DEFENDANT. SULLIVAN-PALATEK, INC.

COMES NOW, the Defendant, Sullivan-Palatek, Inc., by and through its attorneys, CALDWELL & KEARNS, and files the within Third Party Complaint against the named additional Defendants, and in support thereof avers the following:

1. The Plaintiff, Douglas Explosives, Inc., (hereinafter, "Douglas"), is a Pennsylvania corporation whose mailing address is P.O. Box 11, Philipsburg, Pennsylvania 16866, with offices at Graham Station, Decatur Township, Clearfield County, Pennsylvania.
2. The Defendant, Sullivan-Palatek, Inc., formerly Sullivan Industries, Inc., (hereinafter, "Sullivan"), is a foreign corporation with a place of business at River Road, Claremont, New Hampshire 03743.

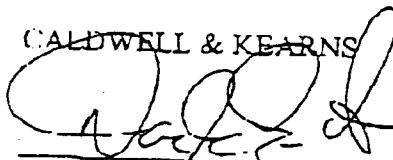
3. Additional Defendant, Revathi CP Equipment, Ltd., (hereinafter, "Revathi"), is a foreign corporation with a place of business at Pollachi Road, Malumachampatti Post, Coimbatore - 641 021, INDIA.
4. Additional Defendant, Alliance Tool, (hereinafter, "Alliance"), is a foreign corporation with a place of business at 1800 Overview Drive, Rock Hill, North Carolina 29730.
5. On May 10, 2001, Douglas filed a Complaint with the Prothonotary of the Court of Common Pleas of Clearfield County asserting claims for breach of warranty against Defendant Sullivan. A true and correct copy of Plaintiff's Complaint is attached hereto, and incorporated herein, and marked as Exhibit "A".
6. Said Complaint avers that the Viper C160HX industrial drill which Plaintiff purchased from Defendant Sullivan was defectively designed and constructed of inferior materials. See (Exhibit "A", Plaintiff's Complaint ¶¶ 5, 7, 8, 9.)
7. Specifically, Plaintiff premises its theories of liability upon alleged breaches of the implied warranties of merchantability and fitness for a particular purpose. See (Exhibit "A", Plaintiff's Complaint ¶¶ 13-14.)
8. Defendant Sullivan provided a limited warranty to Plaintiff upon the sale of the subject grill which disclaimed both of those implied warranties. A true and correct copy of Sullivan' Industries, Inc.'s Warranty is attached hereto, and incorporated herein, and marked as Exhibit "B".
9. Defendant Sullivan did not design or manufacture the subject drill.

10. In point of fact, Additional Defendant Revathi designed and manufactured the subject drill.
11. Defendant Sullivan purchased the subject drill from Revathi in or about 1995. A true and correct copy of the Agreement of Sale is attached hereto, and incorporated herein, and marked as Exhibit "C".
12. Defendant Revathi's agents failed to disclaim any warranties otherwise available to Defendant Sullivan.
13. Defendant Revathi's agents expressly warranted the quality and integrity of the subject drill.
14. Defendant Sullivan thereafter sold the subject drill to the Plaintiff in or about April of 1998.
15. Upon information and belief, it is averred that Defendant Alliance is the "parent" company of Additional Defendant Revathi, the latter existing as a wholly owned subsidiary of Defendant Alliance.
16. To the extent that the subject drill is defectively designed or constructed of inferior materials, the Additional Defendants are solely liable to the Plaintiff for any damages the Plaintiff has suffered, or are liable over to Defendant Sullivan on the Plaintiff's cause of action, or are jointly and severely liable with Defendant Sullivan on the Plaintiff's cause of action, or are liable to Defendant Sullivan for breach of contract, breach of implied warranty of merchantability, breach of implied warranty for a particular purpose, and/or

breach of express warranties, as Defendant was deprived of the basis of its' bargain when it purchased the drill from Defendant Revathi.

WHEREFORE, Defendant Sullivan respectfully requests that this Court enter Judgment in its favor and against Additional Defendants for any harm which Plaintiffs' have suffered and/or for any damages suffered by Defendant, Sullivan-Palatek, Inc.

Respectfully submitted,

  
Caldwell & Kearns

Douglas H. Herman, Esquire  
Attorney ID# 86569  
James L. Goldsmith, Esquire  
Attorney ID# 27115  
3631 North Front Street  
Harrisburg, PA 17110-1533  
(717) 232-7661  
Attorney for Defendant, Sullivan-Palatek, Inc.

Dated: 6-19-01  
01 31926033

Sent by: Atlas Copco North America Inc. 973 439 9188;  
FILE No. 283 08/18 '01 11:01 ID:SULLIVAN-PALATEK  
08/18/2001 11:18 FAX 717 232 2788

00/28/01 14:31; JefFax #940; Page 8/24  
FAX:2156725043  
PAGE 2  
4002

### VERIFICATION

I, Steve Van Loan, President of SULLIVAN-PALATEK®, hereby verify that the averments in the foregoing Third Party Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

By:

Steve Van Loan  
Steve Van Loan, President/COO  
SULLIVAN-PALATEK®

**Exhibit A**

MMY.21.2001 4:15PM SULLIVAN PALATEK  
TO: STEVE VAN LOAN IN

NO.81N P.1/8

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

No. 2001 00682-CD

vs.

SULLIVAN-PALATEK, INC.,

Defendant

Code: Complaint

Filed on behalf of:

Douglas Explosives, Inc., Plaintiff

Counsel of Record for this Party:

George S. Test, Esquire  
P. O. Box 706  
Philipsburg, PA 16866  
(814) 342-4640

PA I.D. #15915

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

MAY 21, 2001 4:15PM SULLIVAN PALATEK

NO. 810 P.2/8

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

VS.

SULLIVAN-PALATEK, INC.,

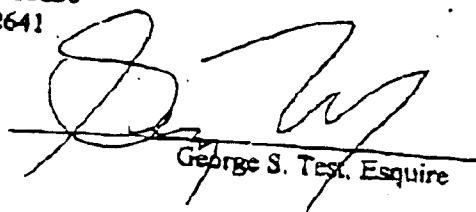
Defendant

No. 2001-00682-CDNOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator's Office  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641

  
George S. Test, Esquire

GEORGE S. TEST  
ATTORNEY AT LAW  
PHIPLSBURG, PA

MAY 21, 2001 4:15PM SULLIVAN-PALATEK

NO. 810 P. 3/8 ---

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC.,

Plaintiff

No. 2001-00682-CD

vs.

SULLIVAN-PALATEK, INC.,

Defendant

COMPLAINT

1. The Plaintiff is Douglas Explosives, Inc., a Pennsylvania Corporation, whose mailing address is P. O. Box 77, Philipsburg, PA 16866, with offices at Graham Station, Decatur Township, Clearfield County, Pennsylvania.
2. The Defendant is Sullivan-Palatek, Inc., formerly Sullivan Industries, Inc., with offices and a place of business at River Road, Claremont, New Hampshire 03743.
3. On or about April 3, 1998, Douglas Explosives, Inc., through Douglas Drill Services, Inc., purchased from Sullivan Industries, Inc., a Viper C60HX Drill bearing Serial Number 97E1001 for \$220,000.00. Said unit is a track mounted rotary drill intended to be utilized to drill shot holes in mines and quarries.
4. The Defendant herein was familiar with Plaintiff's business and the intended use of the machine being purchased.
5. The Viper C60HX Drill purchased by the Plaintiff was improperly designed and was constructed from inferior materials.
6. In January 2001, Plaintiff had to stop attempting to use said drill due to total structural failure making it unsafe to operate.

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

MAY 21 2001

4:14PM

SULLIVAN PLATEK

NO. 810 P.4/B

7. Because of defective design and inferior materials, Plaintiff found it necessary to weld and support the frame jacks and mast. Each time one area was strengthened, an adjacent area of the structure would fail.

8. In addition to and as a result of said structural problems and inferior materials, the Plaintiff was required to make the following repairs to said machine during the approximately two (2) years it was in operation:

a. The cooler assembly was replaced three (3) times because of failure of the high pressure side. The entire cooler system was then replaced with an assembly from a different manufacturer.

b. The engine had to be rebuilt because faulty design resulted in a hole in the air inlet allowing dirt to be sucked into the motor.

c. Two (2) of four (4) leveling jacks failed and had to be replaced and the remaining leveling jacks need to be replaced.

d. The drill pipe cracked after one month's use because the steel was defective.

e. The mast raising cylinder had to be repacked three (3) times.

f. The fuel tank fell off the machine.

g. The angle drilling package had to be plated and repaired.

h. The machine had to be repainted because the paint came off when the machine was washed.

i. The water injection system was never operable.

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

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NO.810 P.5/8 -

j. The injector lines on the engine continually broke because of excessive flexing of the frame which binds the injection lines.

k. Continual electrical problems because of faulty design of the electrical system and problems caused by excessive flexing of the frame.

l. Defective construction of the head assembly necessitated a complete rebuild.

m. The head motors had to be rebuilt and then replaced.

9. As a result of the improper design and inferior materials and resulting structural problems and failure, the Plaintiff has suffered substantial expenses and financial losses including the following:

a. In July 1998, the compressor cooler, hydraulic cooler, and engine coolant cooler were replaced. Defendant supplied the parts at no cost but Plaintiff suffered ten (10) days of downtime resulting in a loss of \$16,100.00, transportation costs for the drill of \$768.00, and labor costs of \$1,000.00 for a total of \$17,868.00.

b. In October 1998, the hydraulic cooler was removed and repaired resulting in two (2) days downtime at a cost of \$3,220.00, repair costs of \$350.00, labor costs of \$618.00, and transportation costs of \$768.00 for a total loss of \$4,956.00.

c. In April 1999, the hydraulic cooler failed and was replaced at a cost of \$632.96, labor costs of \$927.00, and transportation costs of \$768.00 for a total cost of \$2,327.96.

d. In May 1999, the diesel engine had to be rebuilt when excessive flex in the main frame resulted in a hole in the air intake piping resulting in dirt being sucked into the engine, destroying the engine, resulting in an engine rebuild cost of \$11,381.44, transportation costs of \$162.00, downtime losses of \$14,000.00, labor costs of \$926.88 for a total cost of \$26,470.32.

GEORGE S. TEST  
ATTORNEY AT LAW  
PHILIPSBURG, PA

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c. In July 1999, the compressor and water cooler had to be replaced at a cost of \$6,039.80 with \$7,000.00 in downtime loss, refabricating mounting brackets at a cost of \$200.00, labor costs of \$308.96, and transportation costs of \$162.00, equaling a total loss of \$13,710.76.

d. In August 1999, the compressor cooler failed and had to be replaced for \$742.00 resulting in a downtime loss of \$6,440.00, labor costs of \$463.44, and transportation costs of \$768.00 for a total loss of \$8,413.44.

e. In November 1999, the compressor cooler failed again and had to be replaced at a cost of \$3,763.00 with a downtime loss of \$5,600.00, labor costs of \$617.92, and transportation costs of \$768.00 or a total loss of \$10,748.92.

f. In February 2000, the unit had to be completely cleaned and repainted at a cost of \$5,250.00.

g. In addition, Plaintiff entered into a contract to provide drilling services over a period of three (3) years relying upon this machine. Because of the total loss of use of the machine, Plaintiff has been required to lease a replacement machine to fulfill its contractual obligations at a cost of \$12,000.00 per month.

10. To date, Plaintiff has incurred expenses and suffered losses in the amount of \$88,445.40 plus, rental expenses of \$12,000.00 per month.

11. The drill that Defendant sold to Plaintiff is unsafe to operate and is no longer in use. Plaintiff believes that in order to make the unit safe to operate, it is necessary to mount the equipment on a new frame with a new mast. Plaintiff estimates the cost of labor and material to do this would be \$60,000.00.

12. All said losses and expenses are a direct and consequential result of the poor design and defective materials in the drill sold by Defendant.

GEORGE S. TEST  
ATTORNEY AT LAW  
PHILIPSBURG, PA

MAY 21, 2001 4:15PM SULLIVAN PALATCK

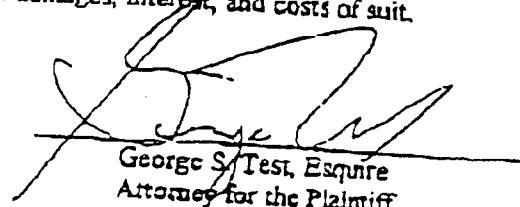
NO. 819 P. 7/8

13. The drill sold by Defendant was and is not merchantable as that term is utilized in 13 Pa. C.S.A. 2314.

14. The drill sold by Defendant was not fit for the purposes for which it was sold and for the purpose for which Defendant knew Plaintiff was purchasing it, in violation of 13 Pa. C.S.A. 2315.

15. As a result of the defective design of the aforesaid drill and the defective materials used in its construction, Plaintiff has suffered and will continue to suffer substantial financial loss.

WHEREFORE, Plaintiff demands judgment against Defendant in the amount of \$149,745.40 plus, \$12,000.00 per month in rental damages, interest, and costs of suit.



George S. Test, Esquire  
Attorneys for the Plaintiff

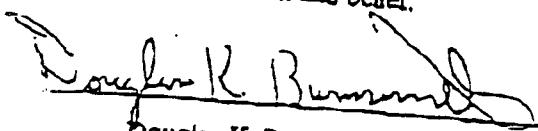
GEORGE S. TEST  
ATTORNEY AT LAW  
PHILIPSBURG, PA

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COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CentreAFFIDAVIT

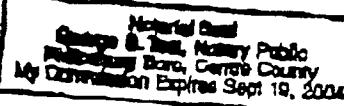
On this, the 3<sup>rd</sup> day of May, 2001, before me, a Notary Public, personally appeared DOUGLAS K. BURNSWORTH, President of Douglas Explosives, Inc., the Plaintiff herein and acknowledged that he has read the foregoing Complaint and that the statements made therein are true and correct to the best of his information and belief.



Douglas K. Burnsworth

SWORN to and SUBSCRIBED  
before me this 3<sup>rd</sup> day of

2001.

GEORGE S. TEST  
ATTORNEY AT LAW  
PHILIPSBURG, PA



**Sullivan Industries, Inc.**  
**WARRANTY**

**DRILL PRODUCTS**

Sullivan Industries, Inc. warrants all new drill products to be free from defects in material or workmanship and that they will be manufactured in conformance with applicable design drawings and specifications approved in writing by Sullivan Industries subject to the following provisions:

**Warranty Period:** The warranty period for Sullivan Industries drill products is as follows:  
a) Track Drills and Drill Hammers - 6 months from the date of delivery to the first ultimate user or 9 months from date of shipment from the factory, whichever date first expires.  
b) Self-Contained Air Compressor Air End - 24 months. Balance of Compressor Unit - 12 months from delivery to first ultimate user.

**Sullivan Industries, Inc. Responsibilities:** If a warrantable failure in material or workmanship is found during the warranty period specified herein, Sullivan will provide through the authorized Sullivan distributor which sold the product, or directly to the buyer, its choice of new, repaired or remanufactured parts F.O.B. its factory, and labor to make the repair or replacement during normal business hours, all in accordance with the Product Support Handbook policies in effect at the time.

**User's Responsibilities:** If a warrantable failure occurs during the warranty period specified herein, the user is responsible for giving Sullivan Industries timely written notice and promptly making the product available for repair, for all costs of transporting the product to the designated service facility maintained by an authorized Sullivan distributor, for returning failed parts to Sullivan Industries, freight prepaid, for reasonable travel expenses if the product is repaired in the field at the user's request, for premium or overtime labor charges incurred to meet the user's work schedule, and for costs to investigate performance complaints unless the problem is caused by a defect in Sullivan Industries material or workmanship.

**Replacement Parts Warranty:** Replacement parts provided under this warranty are warrantable for the remainder of the period applicable to the product in which installed as if such replacement parts were original components of the product.

**Limitations:** Sullivan Industries, Inc. is not responsible for failures resulting from damages to or defects in the product caused by overloading, misuse, neglect or accident; for the failure of, or damage resulting from the use of, attachments, accessories or service parts not sold or recommended for use by Sullivan Industries; for damages occurring after user's unreasonable delay, after notice by Sullivan, in making products available for product improvements ordered by Sullivan. Sullivan Industries neither assumes nor authorizes any Sullivan Industries employee, or any other person, firm or corporation to assume or create for it any other warranty, obligation, or liability other than those expressly set forth herein.

**THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE TOTAL RESPONSIBILITY OF SULLIVAN INDUSTRIES, INC. FOR CLAIMS, LOSSES, LIABILITY OR DAMAGES, WHETHER IN CONTRACT OR TORT, ARISING OUT OF, OR RELATED TO, ITS PRODUCTS SHALL NOT EXCEED ITS PURCHASE PRICE. IN NO EVENT SHALL SULLIVAN BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, INCLUDING BUT NOT LIMITED TO, LOSS OF PROACTIVE FACILITIES OR EQUIPMENT, LOST PROFITS, LOST RENTAL INCOME, PROPERTY DAMAGE, EXPENSE INCURRED IN RELIANCE ON THE PERFORMANCE OF SULLIVAN, OR LOST PRODUCTION, WHETHER SUFFERED BY BUYER OR ANY THIRD PARTY.**

**CERTIFICATE OF SERVICE**

I, Christopher T. Lee, Esquire, hereby certify that true and correct copies of the foregoing Notice of Removal have been served this 24<sup>th</sup> day of July, 2001, by U.S. first-class mail, postage prepaid, to counsel of record listed below:

George S. Test, Esquire  
P. O. Box 706  
Philipsburg, PA 16866  
*Attorneys for Plaintiff*

Douglas R. Herman, Esquire  
James L. Goldsmith, Esquire  
Caldwell & Kearns  
3631 North Front Street  
Harrisburg, PA 17110-1533  
*Attorneys for Defendant, Sullivan-Palatek, Inc.*

DICKIE, McCAMEY & CHILCOTE, P.C.

By Christopher T. Lee  
Christopher T. Lee, Esquire

*Attorneys for Revathi CP Equipment Limited and  
Alliance Tool, Additional Defendants*

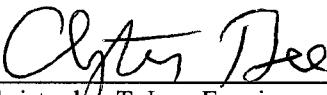
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George S. Test, Esquire  
P. O. Box 706  
Philipsburg, PA 16866  
*Attorneys for Plaintiff*

Douglas R. Herman, Esquire  
James L. Goldsmith, Esquire  
Caldwell & Kearns  
3631 North Front Street  
Harrisburg, PA 17110-1533  
*Attorneys for Defendant, Sullivan-Palatek, Inc.*

DICKIE, McCAMEY & CHILCOTE, P.C.

By   
Christopher T. Lee, Esquire

*Attorneys for Revathi CP Equipment Limited and  
Alliance Tool, Additional Defendants*

FILED

JUL 25 2001

ON 11/3/01  
William A. Shaw  
Prothonotary  
K28

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA

DOUGLAS EXPLOSIVES, INC.,  
Plaintiff

v.

SULLIVAN-PALATEK, INC.,  
Defendant

v.

REVATHI CP EQUIPMENT LIMITED,  
and ALLIANCE TOOL, INC.,  
Additional Defendants

01-682-CO

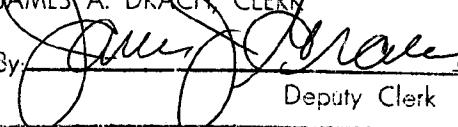
C.A. NO. 01-242J

**O R D E R**

AND NOW, this 17<sup>th</sup> day of August, 2001, upon consideration of the averments contained in the Stipulation to Remand the above-captioned action to the Court of Common Pleas, Clearfield County, Pennsylvania, executed by and between Plaintiff, Douglas Explosives, Inc. and Defendant, Sullivan-Palatek, Inc., it is hereby ORDERED and DECREED that this matter is remanded to the aforementioned Court and the federal docket, as captioned above, is to be marked discontinued ~~with prejudice~~.

BY THE COURT:

  
J.

CERTIFIED FROM THE RECORD	
20 AUG 2001	
Date:	
JAMES A. DRACH, CLERK	
By: 	
Deputy Clerk	

cc: All counsel  
tw

**FILED**

*bed*  
AUG 21 2001  
m 11/12/2001  
William A. Shaw  
Prothonotary

UNITED STATES DISTRICT COURT  
OFFICE OF THE CLERK  
WESTERN DISTRICT OF PENNSYLVANIA  
ROOM 208  
319 WASHINGTON STREET  
JOHNSTOWN, PA 15901  
WWW.PAWD.USCOURTS.GOV

JAMES A. DRACH  
CLERK  
814-533-4504

IN REPLYING, GIVE NUMBER  
OF CASE AND NAMES OF PARTIES

DATE: August 20, 2001

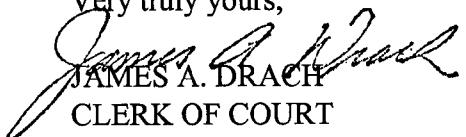
William A. Shaw, Prothonotary  
Clearfield County Courthouse  
P.O. Box 549  
Clearfield, PA 16830

IN RE: DOUGLAS EXPLOSIVES  
vs.  
SULLIVAN-PALATEK, INC., et al  
  
CIVIL ACTION NO. 01-242 J  
  
STATE COURT NO. 2001-00682-CD

Dear Mr. Shaw:

I am enclosing herewith a certified copy of the order entered by the Honorable D. Brooks Smith in the above entitled case on August 17, 2001, which remands the matter to your court.

Very truly yours,

  
JAMES A. DRACH  
CLERK OF COURT

By:   
Deputy Clerk

Enclosure

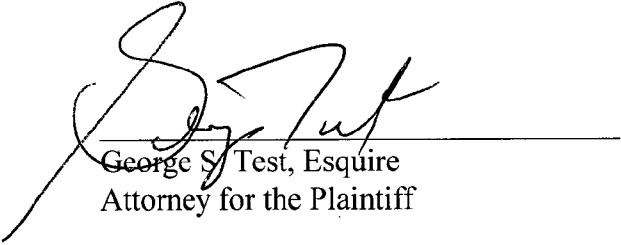
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

DOUGLAS EXPLOSIVES, INC., \*  
Plaintiff \* No. 2001-00682-CD  
\*  
vs. \*  
\*  
SULLIVAN-PALATEK, INC., \*  
Defendant \*  
\*

**PRAECIPE**

Please mark the above-captioned matter settled and discontinued with prejudice.

Date: 11-06-02



George S. Test, Esquire  
Attorney for the Plaintiff

**FILED**

NOV 06 2002

William A. Shaw  
Prothonotary

GEORGE S. TEST  
ATTORNEY-AT-LAW  
PHILIPSBURG, PA

FILED

Oct 25 2002  
NOV 08 2002

Rec'd Disc. to Atty  
Test (by ~~Joe~~ <sup>Joe</sup> Schindlering)

William A. Shaw  
Prothonotary  
SAC

Copy to CJA  
SAC

**COPY**

**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA**

**CIVIL DIVISION**

**Douglas Explosives, Inc.**

**Vs.**  
**Sullivan-Palatek, Inc.**

**No. 2001-00682-CD**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on November 6, 2002 marked:

Settled and Discontinued with Prejudice

Record costs in the sum of \$140.98 have been paid in full by George S. Test, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 6th day of November A.D. 2002.

---

William A. Shaw, Prothonotary