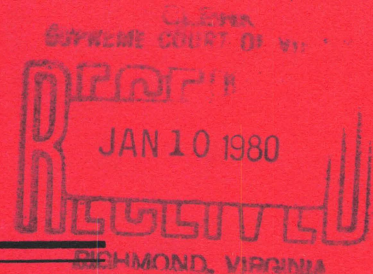
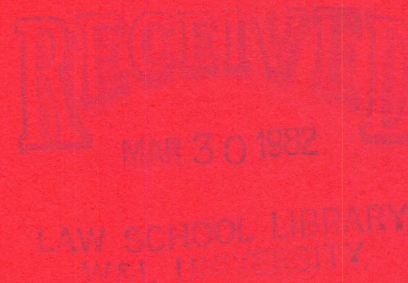


223 Va. 157



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 791081



COUNTY SCHOOL BOARD OF FAIRFAX COUNTY

Appellant

v.

M. L. WHITLOW AND RELIANCE INSURANCE COMPANY

Appellee

JOINT APPENDIX

Thomas J. Cawley, Esq.
Robert H. J. Loftus, Esq.
Grady K. Carlson, Esq.
MCCANDLISH, LILLARD, CHURCH
& BEST
4069 Chain Bridge Rd.
Fairfax, Va. 22030

Kenneth W. Bryan, Esq.
Robert C. Adams, Esq.
SWAYZE, TYDINGS,
BRYAN & ADAMS
10511 Jones St.
Fairfax, Va. 22030

Counsel for Appellant

Counsel for Appellee

TABLE OF CONTENTS

Appendix Page

Motion for Judgement filed 1-11-78 with attached exhibits	1
Grounds for Defense to Motion for Judgement - Reliance Insurance Company filed 2-7-78	7
Grounds of Defense to Motion for Judgement - M. L. Whitlow, Inc., filed 2-7-78	9
Judgement Order entered 4-23-79 with attached Memorandum Opinion	13
Assignments of Error	15
<u>Excerpts of Transcript of Testimony Heard 12-5-78</u>	
Testimony of John Krytusa	16
Testimony of Donald Dixon	20
Testimony of Samuel Maize	32
Testimony of M. L. Whitlow	34
<u>Exhibits</u>	
Plaintiff's Exh. 1A - Construction Contract between School Board and Whitlow	37
Plaintiff's Exh. 1B - Payment and Performance Bond between Whitlow and Reliance	42

FILED
IN CIRCUIT COURT
CLERK'S OFFICE

JAN 11 1978

JAMES E. HILL, JR.
CLERK FAIRFAX COUNTY, VA.
WHAT TAX PAID \$ 5.00
DEPOSIT.....30.00

MOTION FOR JUDGMENT

COMES NOW The County School Board of Fairfax County, Virginia and files this Motion for Judgment and moves the Circuit Court of Fairfax County for an award of judgment against the Defendants and each of them in the sum of \$100,000.00 with interest, by reason of the following:

1. The County School Board of Fairfax County is a corporate entity organized and existing under the laws of Virginia, with its principal place of business at 10700 Page Avenue, Fairfax, Virginia, and is engaged among other things in the business of constructing, owning and otherwise providing educational facilities for the residents of Fairfax County, Virginia.
2. Defendant, M. F. Whitlow, Inc. is a corporation organized and existing under the laws of the Commonwealth of Virginia.
3. Reliance Insurance Company is a corporation organized and existing under the laws of the State of Pennsylvania which transacts an insurance and bonding business in the Commonwealth of Virginia.

4. By contract bearing date of September 18, 1970 Plaintiff entered into an agreement with the Defendant M L Whitlow, Inc. whereby M L Whitlow, Inc. agreed to provide labor and materials for the construction of school facilities belonging to the Plaintiff and known as Oakton Elementary School located in Virginia.

5. M L Whitlow, Inc. expressly warranted that all work to be performed on said Oakton Elementary School would be of good quality, free from faults and defects, in conformance with the contract documents, of good workmanship and fit for intended use.

6. Defendant M L Whitlow, Inc. breached its contract with the Plaintiff by failing to install roofing material in conformity with the plans and specifications, by performing installation work on said roof that was unworkmanlike, not of good quality, and not fit for its intended use, and further Defendant M L Whitlow, Inc. failed to correct defects and faults after purportedly completing said roofing work.

7. As the direct and proximate result of the Defendant's breach of its contract with the Plaintiff, the Plaintiff has sustained damage in the sum of \$100,000.00.

8. To guarantee the faithful performance of said contract by Defendant M L Whitlow, Inc. a bond was executed by Defendant Reliance Insurance Company as surety with M L Whitlow, Inc. as principal. A true and correct copy of said bond, is attached hereto and made a part hereof as Exhibit "A".

9. The terms of said performance bond provide for payment of Plaintiff of all sums occasioned by Defendant M L Whitlow, Inc. breach of its obligations of performance, in an amount not to exceed \$713,000.00.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, in the amount of \$100,000.00 with interest and for its costs in its behalf expended.

THE COUNTY SCHOOL BOARD
OF FAIRFAX COUNTY

By: _____

Thomas J. Cawley
Counsel

Thomas J. Cawley
Steven David Stone
McCANDLISH, LILLARD, BUAKNIGHT,
CHURCH & BEST
A Professional Corporation
4069 Chain Bridge Road
Fairfax, Virginia 22030
Counsel for Plaintiff

SECTION DD: PAYMENT & PERFORMANCE
BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT H. L. Whitlow, Inc. as Principal, hereinafter called Principal, and Reliance Insurance Company, a corporation organized and existing under the laws of the State of Pennsylvania, and authorized to transact business in the State of Virginia, as Surety, hereinafter called Surety, are held and firmly bound unto the County School Board of Fairfax County, Virginia as Obligees, in the penal sum of \$ 713,000.00, good and lawful money of the United States of America, for the payment of which, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above named Principal has entered into a written agreement with the County School Board of Fairfax County, Virginia, dated September 18, 1970, in accordance with drawings and specifications prepared by Spector, Peake & Howell, Architect, for the construction of Addition and alterations to, which contract is by reference made a part hereof and hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if the above named Principal shall promptly and faithfully perform said Contract in strict conformity with the plans, specifications and conditions of the said Contract, and if the above named Principal further pays to all persons who have, and fulfill, contracts directly with the said Principal for performing labor and furnishing materials in the prosecution of such work as is required by the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

This obligation is governed by the provisions of Section 11-23, Code of Virginia (1950), as amended. In addition to The County School Board of Fairfax County, Virginia, this obligation inures to the benefit of all persons who have, and fulfill, contracts which are directly with the contractor for performing labor and furnishing materials in the prosecution of construction work defined herein, who shall have a direct right of action against the obligor and surety herein. No action on any bond required herein shall be brought unless one year after final completion of the contract provided, however, every action shall be brought in a Virginia court of competent jurisdiction in and for the County or other political subdivision of the Commonwealth in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated and not elsewhere.

DD-1

Section DD: Payment & Performance Bond Cont'd.

IN WITNESS WHEREOF, we have hereunto set our signatures and seals this 9th
day of October, 19 70, all pursuant to due authorization.

(SEAL)

K. L. Whitlow, Inc.

Contractor

By

Principal

Reliance Insurance Company

Surety

(SEAL)

By

Attorney in Fact

Countersigned for the State of Virginia

By:

Resident Agent

DD-2

RELIAN E INSURANCE COMPANY

HEAD OFFICE, PHILADELPHIA, PENNSYLVANIA

POWER OF ATTORNEY

Know all men by these Presents, That the RELIANCE INSURANCE COMPANY, a corporation duly organized under the laws of the State of Pennsylvania, does hereby make, constitute and appoint

Anne M. Kouis of Washington, District of Columbia,

its true and lawful agent and Attorney-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed any and all bonds and undertakings, (except bonds guaranteeing the payment of principal and interest of notes, mortgage bonds and mortgages) in its business of guaranteeing the fidelity of persons holding places of public or private trust, and in the performance of contracts other than insurance policies, and executing and guaranteeing bonds or other undertakings required or permitted in all actions or proceedings, or by law required or permitted.

and to bind the RELIANCE INSURANCE COMPANY thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of the RELIANCE INSURANCE COMPANY and sealed and attested by one other of such officers, and hereby ratifies and confirms all that its said Attorney(s)-in-fact may do in pursuance hereof.

This Power of Attorney is granted under and by authority of Article VII of the By-Laws of RELIANCE INSURANCE COMPANY which became effective May 11, 1962, reading as follows:

ARTICLE VII

Execution of Bonds and Undertakings

SECTION 1. The Board of Directors, the President, or any Vice-President or Assistant Vice-President shall have power and authority to: (a) appoint Attorneys-in-Fact and to authorize them to execute on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and (b) to remove any such Attorney-in-Fact at any time and revoke the power and authority given to him.

SECTION 2. Attorneys-in-Fact shall have power and authority, subject to the terms and limitations of the power of attorney issued to them, to execute and deliver on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof. The corporate seal is not necessary for the validity of any bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

In Witness Whereof, the RELIANCE INSURANCE COMPANY has caused these presents to be signed by its Vice-President, and its corporate seal to be hereto affixed.
This 20th day of May 1968

RELIANCE INSURANCE COMPANY

(SEAL)

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA,

ss.

J. H. McDermott
Vice-President

On this 20th day of May, A.D. 1968, before the subscriber, a Notary Public of the State of Pennsylvania, in and for the County of Philadelphia, duly commissioned and qualified, came J. H. McDermott, Vice-President of the RELIANCE INSURANCE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and, being by me duly sworn, deposeth and saith, that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said Company, and the said corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation, and that Article VII Section 1 and 2 of the By-Laws of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Philadelphia the day and year first above written.

(NOTARIAL SEAL)

Virginia L. Upshur
Notary Public

My Commission Expires September 29, 1969

I, E. Clyde Wilber, Assistant Secretary of the RELIANCE INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said RELIANCE INSURANCE COMPANY, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company this 9th day of October, A.D. 1970



E. Clyde Wilber
Assistant Secretary

FILED

FEB 7 1978

JAMES B. SINGLE
Clerk of the Circuit Court
of Fairfax County, Va.

GROUND OF DEFENSE TO MOTION FOR JUDGMENT

COMES NOW the Defendant, Reliance Insurance Company, by counsel, and files this its Grounds of Defense to the Motion for Judgment herein, and states as follows:

1. This Defendant admits the allegations contained in Paragraph 1 of the Motion for Judgment, with the exception that it denies that the Plaintiff is engaged in the business of constructing educational facilities for the residents of Fairfax County, Virginia.

2. This Defendant admits the allegations contained in Paragraphs 2, 3, 4 and 8 of the Motion for Judgment.


3. This Defendant admits the allegations contained in Paragraph 5 of the Motion for Judgment, with the exception that it denies that it expressly warranted that the work to be performed would be of good workmanship and fit for intended use.

4. This Defendant denies the allegations contained in Paragraphs 6, 7 and 9 of the Motion for Judgment.

5. As an affirmative defense, this Defendant alleges that this action is barred due to the fact it was not commenced within the limitation period prescribed by law.

WHEREFORE, having fully answered the Motion for Judgment herein, this Defendant prays that the same be dismissed, and that it recover its costs expended herein.

RELIANCE INSURANCE COMPANY
By Counsel


Kennon W. Bryan, Esquire
SWAYZE, TYDINGS, BRYAN & ADAMS
4084 University Drive
Suite 105
P.O. Box 250
Fairfax, Virginia 22030
Telephone 591-7100
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of February, 1978, mailed, postage prepaid, a true copy of the foregoing to Thomas J. Cawley, Esquire, and Steven David Stone, Esquire, McCANDLISH, LILLARD, BAUKNIGHT, CHURCH & BEST, 4069 Chain Bridge Road, Fairfax, Virginia 22030.

FILED ✓

FEB 7 1978

JAMES E. HALE
Clerk of the Circuit Court
of Fairfax County, Va.

GROUND OF DEFENSE TO MOTION FOR JUDGMENT

COMES NOW the Defendant, M. L. Whitlow, Inc., by counsel, and files this its Grounds of Defense to the Motion for Judgment herein, and states as follows:

1. This Defendant admits the allegations contained in Paragraph 1 of the Motion for Judgment, with the exception that it denies that the Plaintiff is engaged in the business of constructing educational facilities for the residents of Fairfax County, Virginia.

2. This Defendant admits the allegations contained in Paragraphs 2, 3, 4 and 8 of the Motion for Judgment.


3. This Defendant admits the allegations contained in Paragraph 5 of the Motion for Judgment, with the exception that it denies that it expressly warranted that the work to be performed would be of good workmanship and fit for intended use.

4. This Defendant denies the allegations contained in Paragraphs 6, 7 and 9 of the Motion for Judgment.

5. As an affirmative defense, this Defendant alleges that this action is barred due to the fact that it was not commenced within the limitation period prescribed by law.

WHEREFORE, having fully answered the Motion for Judgment herein, this Defendant prays that the same be dismissed, and that it recover its costs expended herein.

M. L. WHITLOW, INC.
By Counsel


Kennon W. Bryan, Esquire
SWAYZE, TYDINGS, BRYAN & ADAMS
4084 University Drive
Suite 105
P.O. Box 250
Fairfax, Virginia 22030
Telephone 591-7100
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of February, 1978, mailed, postage prepaid, a true copy of the foregoing to Thomas J. Cawley, Esquire, and Steven David Stone, Esquire, McCANDLISH, LILLARD, BAUKNIGHT, CHURCH & BEST, 4069 Chain Bridge Road, Fairfax, Virginia 22030.

JUDGMENT ORDER

THIS ACTION came to be heard on the 5th day of December, 1978, by the Court without the intervention of a jury. Whereupon the Plaintiff presented its proof, testimony of its witnesses, introduced various exhibits, and rested its case. The Defendants then moved to strike the evidence of the Plaintiff which motion was granted by the Court as to the Defendant, Reliance Insurance Company, but denied as to the Defendant, M. L. Whitlow, Inc.

Whereupon the Defendant Whitlow presented its proof, testimony of its witnesses, introduced its exhibits, rested its case, and renewed its motion to strike Plaintiff's evidence, which motion was then denied with the Defendant's objections and exceptions duly noted. Thereafter counsel for the parties delivered final arguments. After deliberation, the Court found that Plaintiff had successfully borne the burden of proof on the issue of liability and of damages, and would therefore be entitled to judgment against Defendant Whitlow in the amount of \$55,556.00, to which ruling the Defendant Whitlow excepts as to the amount of damages.

The Court requested, however, that the parties submit briefs on the issue of whether Plaintiff's action was barred by the statute of limitations. Upon receiving the briefs of the parties, the Court is of the opinion that, for the reasons set forth in the Memorandum Opinion dated December 26, 1978, a copy of which is attached, judgment should be rendered in favor of the Defendants.

Accordingly, it is by the Court

ORDERED and ADJUDGED that judgment be, and is hereby, granted in favor of the Defendants, M. L. Whitlow, Inc. and Reliance Insurance Company. Plaintiff objects and excepts to the action of the Court in granting the motion to strike as to Defendant Reliance Insurance Company, the ruling of the Court in its aforementioned Memorandum Opinion, and the entry of judgment in favor of the Defendants on the grounds stated at trial and as stated in its memorandum submitted to the Court, all of the same being expressly incorporated herein, such that Plaintiff duly notes and preserves its exceptions.

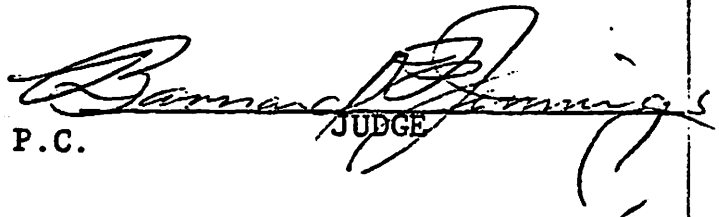
Pursuant to Rule 5:9, the transcript of the hearing of this case is hereby made a part of the record.

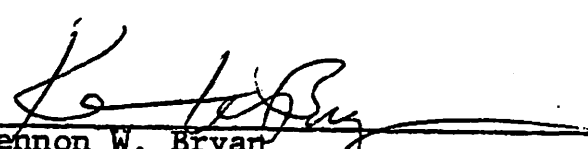
And this Order is final.

Entered on this 23rd day of April, 1979.

WE ASK FOR THIS:

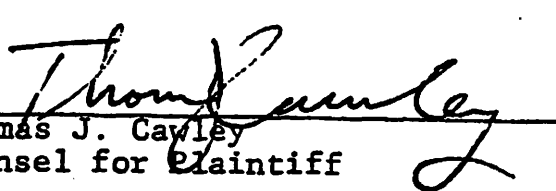
SWAYZE, TYDINGS, BRYAN & ADAMS, P.C.
10511 Jones Street, Suite 202
Fairfax, Virginia 22030


JUDGE

By: 
Kennon W. Bryan
Counsel for Defendants

SEEN AND OBJECTED TO:

McCANDLISH, LILLARD, BAUKNIGHT,
CHURCH & BEST
A Professional Corporation
4069 Chain Bridge Road
Fairfax, Virginia 22030

By: 
Thomas J. Cawley
Counsel for Plaintiff

012



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

COUNTY OF FAIRFAX

CITY OF FAIRFAX

CITY OF FALLS CHURCH

BARNARD F. JENNINGS
JAMES KEITH
WILLIAM G. PLUMMER
LEWIS D. MORRIS
BURCH MILLSAP
JAMES C. CACHERIS
THOMAS J. MIDDLETON
RICHARD J. JAMBORSKY
JUDGES

FAIRFAX COUNTY COURTHOUSE
4000 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

December 26, 1978

Thomas J. Cawley, Esq.
4069 Chain Bridge Road
Fairfax, Virginia 22030

Kennon W. Bryan, Esq.
4084 University Drive, Suite 105
Fairfax, Virginia 22030

Re: The County School Board of Fairfax County,
Virginia v. M. L. Whitlow, Inc., and
Reliance Insurance Company - Law No. 41510

Gentlemen:

I have considered the evidence presented, argument of counsel and memorandums submitted.

We are first concerned with whether or not the plaintiff School Board is a governmental agency within the purview of Title 8.01, Section 231, 1950 Code of Virginia, as amended, and thus not affected by a statute of limitations, and if so whether or not it is covered by the exclusion relating to agencies incorporated for educational purposes.

It was held in the case of Kellam v. The School Board of the City of Norfolk, 202 Va. 252 (1960) that a school board is an agent of the state as pointed out in plaintiff's memorandum.

Title 22, Section 63, of the Code, declares the County School Board to be a body corporate. Numerous powers and duties are set forth in the statutes for the school boards, most of which relate to educational purposes. In my opinion a school board is an agency of the Commonwealth incorporated by statute for educational purposes and as such would be bound by an appropriate statute of limitations.

Affixing a corporate seal to an instrument without more does not make it an instrument under seal. See Bradley Salt Co. v. Norfolk Importing & Exporting Co., 95 Va. 461; Grubbs v. National Life Maturity Insurance Company, 94 Va. 589. Even though the contract and bond are inter-related I do not feel that it is sufficient to make the ten year statute applicable.

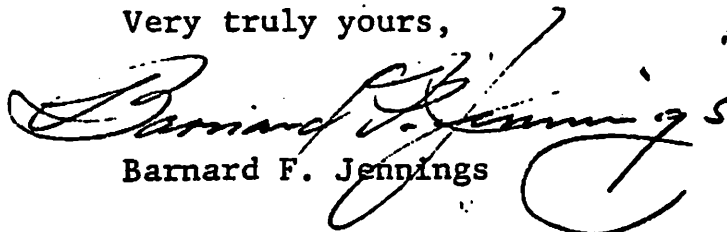
It thus appears that the five year statute of limitations is applicable to the factual situation with which we are concerned.

The evidence is that the roof was completed on July 27, 1971, and that the last work was done on the building in June of 1972. Suit was filed on January 11, 1978, thus in my opinion the plaintiff's claim is barred by the statute of limitations.

Counsel for the defendant should prepare an appropriate order noting any exceptions counsel for the plaintiff may desire and submit the same to opposing counsel for their approval as to form prior to presentment for entry.

With kindest regards to each of you, I am,

Very truly yours,


Barnard F. Jennings

BFJ:elc

ASSIGNMENTS OF ERROR

1. The trial court erred as a matter of law in finding that Petitioner's claim against Defendant-Appellee M. L. Whitlow, Inc., was barred by the statute of limitations because:

A. None of the statutes of limitation relied upon at trial are applicable to the School Board, and hence cannot bar its meritorious claim.

B. The construction contract between the parties is "under seal" and the School Board initiated its action within the prescribed ten year period.

C. The entire agreement of the parties is "under seal" and the School Board brought its claim within the ten year statute of limitations.

1 ~~A It would have been subsequent to the~~
2 September 18th date. I don't know the exact date.

3 ~~It would have been probably within less than 30 days.~~

4 Q Now, when did you have occasion to discover
5 the problem, or any problem in regard to the roof on
6 the Oakton School?

7 A I was made aware of it by reports from my
8 people about the middle of '73 or so, 1973.

9 ~~Q What action did you take when you heard~~
10 ~~from your personnel?~~

11 A My recollection is I initially wrote the
12 first letter. I think it was written by the architect
13 to the contractor.

14 I subsequently wrote a letter, I believe, to
15 the contractor asking for his proposed action to
16 resolve the problem.

17 Q Well, let me back up a little bit and tell
18 me when you first went on the roof in the summer of 1973.

19 What did you see? Could you describe that
20 for the Court?

21 A There were blisters there as described
22 earlier in the proceedings.

23 ~~Q But that's not evidence. So could you tell~~

016

Ronald E. Johnson & Associates

STENOTYPE REPORTERS

P.O. BOX 485 • FAIRFAX, VIRGINIA 22030

PHONE: (703) 273-9367

1 A Yes.

2 Q Would you explain to the Court more fully
3 what functions you performed specifically with regard
4 to the administration of this contract?

5 A I basically administered the construction
6 from the office level, and am aware of the job condi-
7 tions through reports verbal and written from the
8 director of construction and inspectors that are
9 assigned to the project and correspondence that is
10 originated by the architect and/or the contractor or
11 others.

12 Q Did you review and inspect requisitions for
13 payment, progress payments?

14 A I do, yes, sir.

15 Q And did you on this job?

16 A I probably did on occasion. It's the
17 director of construction who signed most of them at
18 that time, but I occasionally did sign requisitions.

19 Q Do you have any knowledge as to when this
20 building was occupied by the School Board?

21 A It was occupied in phases, from my recollec-
22 tion, from September through the middle of October.

23 Q Of?

017

Ronald E. Johnson & Associates

STENOTYPE REPORTERS

P.O. BOX 485 • FAIRFAX, VIRGINIA 22030

PHONE: (703) 273-9367

1 A Of '71, 1971.

2 Q ~~Do I understand your testimony then to be~~
3 that the School Board had occupied all phases of the
4 building by October 15, 1971?

5 A My recollection of the records is that by
6 October 15th, they had released the last section for
7 occupancy.

8 Q Mr. Krytusa, are you familiar with the
9 procedure of issuing certificates of substantial
10 completion?

11 A I am.

12 MR. CAWLEY: Your Honor, I would object to
13 this line of questioning. It seems to me that we are
14 talking here about a contract document which has very
15 precise methods of obtaining a certificate of substan-
16 tial completion, and I think the procedures that the
17 School Board may use or may have used then or may use
18 now is not at all relevant.

19 He is really trying to vary it from the
20 terms of the contract document.

21 MR. BRYAN: Your Honor, that the parties
22 mutually agreed to vary from the terms of the contract
23 documents and didn't follow them, I think, is more

018

Ronald E. Johnson & Associates

STENOTYPE REPORTERS

P.O. BOX 485 • FAIRFAX, VIRGINIA 22030

PHONE: (703) 273-9367

1 Q Mr. Krytusa, when was final payment made
2 on this job?

3 A In 1973.

4 Q Do you recall when it was in 1973?

5 A Early April, May, somewhere in that neighbor-
6 hood.

7 Q If I said May 18th, '73, would that refresh
8 your recollection?

9 A That would be what I recall.

10 ~~Q Now, when you have an architect who is~~
11 ~~considering whether to approve a submittal from a~~
12 ~~contractor for an approved equal, do you review that~~
13 ~~decision of the architect, monitor those discussions?~~

14 A Yes, we subsequently review it when a copy
15 comes to our office.

16 Q If you did not agree with that decision,
17 would you have the right to take that up with the
18 architect and try to change it?

19 A Yes, we'd engage the architect in further
20 discussion and possibly reconsider if we didn't
21 concur.

22 Q Now, directing your attention to the sub-
23 ~~mittal by the defendant contractor of the Certainteed~~

019

Ronald E. Johnson & Associates

STENOTYPE REPORTERS

P.O. BOX 485 • FAIRFAX, VIRGINIA 22030

PHONE: (703) 273-9387

1 ~~(Thereupon, the items referred to above~~
2 were marked Plaintiff's Exhibits Nos.
3 10, 11, 11-A, 11-B, 11-C, 11-D, 11-E,
4 12, 13, 14, 15, and 16, respectively,
5 in Evidence.)

6 BY MR. CAWLEY:

7 Q When you examined the roof this summer on
8 those two occasions, did you have occasion yourself
9 to take photographs?

10 A Yes, I did.

11 Q Do you have those photographs with you?

12 A Yes, I do.

13 MR. CAWLEY: Your Honor, I would ask these
14 be marked as 17-A through D.

15 (Thereupon, the photographs referred to
16 above were marked Plaintiff's Exhibits
17 Nos. 17-A, 17-B, 17-C, and 17-D,
18 respectively, for Identification.)

19 BY MR. CAWLEY:

20 Q Mr. Dixon, I am going to show you four
21 photographs which have been marked for identification
22 as 17-A through D.

23 I am going to ask if you can identify these

020

Ronald E. Johnson & Associates

STENOTYPE REPORTERS

P.O. BOX 485 • FAIRFAX, VIRGINIA 22030

PHONE: (703) 273-9387

1 photographs. (Handing documents to witness)

2 A Yes, I took these photographs. They are of
3 various sections of the built-up roof at Oakton.

4 Q All right. Can you show each one to the
5 Court and describe what is shown in each photograph
6 briefly, please?

7 A Seventeen A is a section over the gymnasium.
8 It's the central portion. It's showing the blistering
9 which was evident over the entire roof.

10 These are the blisters. (Indicating) This
11 is another portion of the -- this is seventeen B, the
12 gymnasium roof.

13 This was the central portion. This is this
14 edge showing that it's continuous over the entire
15 section of the roofing.

16 This shows an area which was actually over
17 the cafeteria where the blister had broken which is
18 now a leak, and this shows an area on the northerly
19 portion of, I think it's called, the learning center
20 area.

21 The other portion of the roof, again showing
22 the degree of blistering which was evident in the
23 membrane.

021

Ronald E. Johnson & Associates

STENOTYPE REPORTERS

P.O. BOX 485 • FAIRFAX, VIRGINIA 22030

PHONE: (703) 273-9387

1 Q Well, let me ask you this: did you receive
2 from Mr. Williams a report?

3 THE COURT: Any objection to these, Mr.
4 Bryan, the pictures?

5 MR. BRYAN: No objection to the pictures.

6 THE COURT: They will be received.

7 (Thereupon, the photographs referred
8 to above were marked Plaintiff's
9 Exhibits Nos. 17-A, 17-B, 17-C, and
10 17-D, respectively, in Evidence.)

11 BY MR. CAWLEY:

12 Q Mr. Dixon, I was asking you if you received
13 from Mr. Williams a report of some physical findings
14 regarding the three samples that you took to him.

15 A Yes, actually the physical and visual
16 observations of the roof cuts that I had taken.

17 Q Could you explain the significance of the
18 data that is shown under each sample on the front of
19 exhibit ten?

20 A Well, the important things to pull out of
21 these numbers involves the number of plies, the number
22 of felt plies, the interply bitumin, the top bitumin
23 and the bottom bitumin.

022

1 Q When you say bitumin, is that an expression
2 that is the same as asphalt?

3 A That's a general term for asphalt, yes.
4 And there is other numbers which go into creating or
5 calculating these numbers shown on these columns, but
6 the important ones, like I said, are the number of
7 felt plies.

8 And each of the samples shows that the
9 proper number of plies were there, the one base sheet
10 and the three top plies in all cases.

11 The interply bitumin is that which is
12 between the plies, and the base sheet also, as I
13 indicated, should have been about 25 pounds; in all
14 cases, was in excess of it.

15 In fact, sample two has twice as much inter-
16 ply as was called for.

17 Q Now, what is the significance of having
18 twice as much bitumin in that sample?

19 A It indicated to me that the bitumin was
20 probably too ~~fold~~ when they put it down, allowing it
21 to be in a thicker layer.

22 This causes problems as far as adhesion of
23 felts to felts, and also has some problem resulting

023

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1 in some voids being left in the felts or the interply
2 during the roofing operation.

3 Q So if the asphalt is too thick, it will
4 create somewhat different problems; one, a lack of
5 adhesion between the felts, and, two, some actual
6 voids where there is simply no contact.

7 A Yes.

8 Q Do you find evidence of excessive thickness
9 in these quantitative results on the front of page
10 ten?

11 A As I said, they are all in excess of.
12 Sample one is approximately 30 pounds average per
13 interply.

14 Q What should it be?

15 A Well, 25. Now, normal tolerance accepted
16 in this is about plus or minus 15 percent, which
17 would mean that the interply should have been 21, 29.

18 So this is right at the top of the allowable
19 normal tolerance that is expected. So that's close
20 to being right.

21 However, sample number two is a little over
22 52 pounds average, and sample three is about 33 pounds
23 average, both of these in excess of what is normally

024

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1 tolerable for the interply bitumin.

2 Q What line are you referring to when you
3 refer to that information?

4 A Line number 11. The next one is the bottom
5 bitumin or that between the bottom felt and the
6 insulation, and we again should have been close to
7 25, 21 to 29.

8 We have far in excess, too much in each of
9 these; 65, 79, 60 pounds per hundred square feet.

10 Q Are those significant excesses?

11 A Yes, for the same reason. I suspect that
12 the bitumin was too cold, and it just got spread too
13 thick.

14 And you have the adhesion problem of the
15 base coat then to the insulation, and so forth. And
16 the other significant figure is the top or the top
17 coat, flood coat as it's commonly called.

18 Specifications, Certainteed specifications,
19 require 60 pounds per hundred square feet. We have
20 an average.

21 Number one is about 42, which is well below
22 the tolerable amount from what 60 would be.

23 Q What is the significance if we have it too

025

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1 ~~The vapor from the water expands from heating.~~

2 In cold weather, it freezes. The water expands, and
3 freezing causes just deterioration of the membrane
4 that becomes rapidly or progressively worse.

5 Q Now, water and moisture is a unique element,
6 is it not, because it expands when it's heated and
7 when it's frozen?

8 A Well, yes. Well, the water vapor over the
9 moisture will expand when it's heated, and water when
10 ~~it freezes below a certain point will start expanding.~~

11 Q So when you find a situation that is found
12 here with bubbles all through, and I think that is an
13 accurate statement, that bubbles are all through all
14 of the samples, and you find also that there's large
15 gaps and failure to have adhesion?

16 A Yes.

17 Q What does that mean? In other words, how
18 does that come about?

19 A Well, as I've indicated, I think it came
20 about because the bitumin was too cold when it was
21 applied, and the brooming operation was not --

22 Q (Interposing) What is the brooming operation
23 that you are referring to?

026

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1 A Well, you have this hot bitumin, and you
2 are laying the felts over it. You have a gas over
3 the hot bitumin.

4 You want to broom that out. You want to get
5 good contact of the felt to the interply bitumin.
6 That's a brooming operation.

7 THE COURT: By brooming, you mean a pressing
8 sort of thing?

9 THE WITNESS: Yes, a stiff broom which will
10 be actually broomed in the direction of the layer of
11 the felt.

12 BY MR. CAWLEY:

13 Q So is it correct to say that there's two
14 different potential problems during that operation?
15 One, you have got to have the right temperature to
16 make sure that it's the proper adhesion and the proper
17 level.

18 A Yes, you can have the temperature of the
19 bitumin too hot or too cold. Both of these can cause
20 problems.

21 Q And the second problem is if you don't
22 squeegee out all of the bubbles, so to speak, then
23 you have got trapped air in there for that reason

027

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1 alone.

2 A That's correct.

3 Q Now, you examined physically the roof at
4 Oakton.

5 A Yes.

6 Q And you have had occasion to actually
7 examine the samples as they've been split apart.

8 A Yes.

9 Q And to read the data of the conclusions or
10 the visual observations that are reported on the
11 second, third, and fourth pages of exhibit ten.

12 A Yes.

13 Q And to also examine the photographs.

14 A Yes.

15 Q I am going to show you these photographs,
16 and ask you if they represent the condition of the
17 asphalt interplies. (Handing document to witness)

18 A Yes, these are the ones that I reviewed.

19 Q I am going to show you also photographs
20 11 and 12, ~~different~~ different packs. (Handing documents to
21 witness)

22 A Yes, these are all the conditions that I
23 have reviewed.

028

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1 Q Now, take into consideration all of that
2 review. Have you reached an opinion as to the cause
3 of the problem at the Oakton School?

4 A I believe the cause of the problem with
5 the membrane is blisters which have resulted from
6 improper temperature of the bitumin and improper
7 brooming operations.

8 Q In your view, is that improper workmanship?

9 A Yes, it is.

10 Q You inspected the condition of the Oakton
11 School roof. What's the solution to that problem?
12 Could that have been patched, or did it necessitate
13 an entirely new roof of some sort?

14 A Well, in my opinion, the degree of blisters
15 that are evident on this roof dictate to me that it's
16 too many on this roof.

17 You cannot repair each one and have a
18 satisfactory system left. You've got to remove it
19 and start over again.

20 Q Is it a permissible way of repairing it to
21 cut the blisters back, put in new insulation on top,
22 and then just build a new roof on top of it?

23 A That's permissible, and it's being done,

029

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1 provided there is a venting system used to vent out
2 the moisture which is in the system right now.

3 Q Would it be true to say, correct to say,
4 that there are two possible ways, two conceivable ways,
5 of solving the problem?

6 One, you could rip off the roof, put a new
7 roof down. The second way would be to split each
8 blister, peel them back, put new insulation on, and
9 just put a new roof on top of that, is that correct?

10 A Yes, they are both commonly used. I prefer
11 the reroofing, because the voids that are in the
12 membrane such as this, which are not yet full-fledged
13 blisters, are still there, and you can have some
14 possible future problems because of that.

15 Q That's why it's a good idea if you use the
16 second method to have vents to carry out that moisture?

17 A Well, any moisture that's in there, you
18 need to get out or have a way of getting out.

19 Q Should a roof that is properly installed
20 act like this roof did?

21 A No, sir.

22 Q Were the standards that were set out on the
23 Certainteed specifications met, in your opinion, on

030

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1 this roof?

2 A No, they were not.

3 Q In your view, was the damage irreversible?

4 A Yes, it was irreversible.

5 ~~Q Lastly, I'd just like you to take some of~~
6 these photographs and explain to the Judge what is
7 the significance of the various things that are
8 shown on the photographs if you would, please.

9 (Handing documents to witness)

10 A You want this on each of the photographs?

11 Q Yes, and please identify, if you will,
12 what stack of photographs you are referring to.

13 A This is sample number two.

14 Q That's exhibit 12?

15 A Twelve A.

16 THE COURT: They are 12-A, B, C, D, and E.

17 THE WITNESS: This is exhibit 12, yes,
18 these.

19 THE COURT: You don't need to go into any
20 great detail.

21 THE WITNESS: Well, the things that we are
22 talking about, the voids, are these items here.

23 ~~(Indicating) These are all voids in this area.~~

031

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1 ~~above was marked Defendants' Exhibit~~
2 F for Identification.)

3 BY MR. BRYAN:

4 Q Mr. Maize, I will show you what's been
5 marked as Defendants' exhibit F, and ask you if there
6 is anything on that document -- number one, first of
7 all, can you identify it?

8 A Yes.

9 Q What is that document?

10 A This is what we call an A paper, and it's a
11 separate paper used to finish up a job.

12 In other words, when the roofing operation
13 is almost complete, or as far as we can go with it,
14 because we might be held up by other trades, we make
15 a finishing-up paper to indicate that whenever we are
16 called back to the job or get back to it, we will
17 complete a hundred percent of that job.

18 Q Now, does that document also indicate when
19 you were finally complete on that job?

20 A Yes, it does.

21 Q When does that document indicate you were
22 finally complete?

23 A It indicates that on July 27th of 1971, we

032

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1 finished the job.

2 Q Does that mean that your contract was
3 completed at that time?

4 A That is correct.

5 ~~Q Was complete?~~

6 Was your company ever called back to the
7 job for any repair warranty work, Mr. Maize?

8 A Yes, I think on one or two occasions, we
9 were called back, because they had water entering the
10 building.

11 I believe on the first call-back it was
12 determined that the air-conditioning units sitting
13 on top of the roof allowed water to come down through
14 the duct work.

15 Q So it was not the roof that was leaking.

16 A That is correct.

17 Q Are you aware at this point of any time
18 since your company installed this roof that it leaked
19 water?

20 MR. CAWLEY: Your Honor, I am going to
21 object to that since there has to be a better founda-
22 tion for his ability to know.

23 ~~THE COURT. The question is whether he has~~

033

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1 BY MR. BRYAN.

2 Q Mr. Whitlow, bearing in mind that the School
3 Board occupied the job in October 15th, 1971, what
4 did your company do after October 15th, 1971?

5 A We had extra change orders and so forth,
6 and there was no paperwork processed on the job at all
7 pending the arbitration that was coming up.

8 Q Had the arbitration question already arisen
9 in October of '71?

10 A No. Well, they hadn't finished the road.

11 Q You what?

12 A It was the road that was in question in
13 reference to the arbitration.

14 Q Now, did you have punch-list work to perform
15 after October 15, '71?

16 A Yeah.

17 Q Do you know approximately when the last time
18 was your company performed any work on this job?

19 A Not right off. That would be hard to say.

20 Q Mr. Whitlow, I will ask you to look at this
21 defendants' exhibit in which you forwarded the as-built
22 drawings to the architect, and ask you if that
23 refreshes your memory as to when you would have

034

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1 BY MR. BRIAN:

2 Q Were they change orders for work that hadn't
3 been done, or were they change orders that just had
4 not been approved by the architect at that point,
5 and the work had already been done?

6 A We had to get the authorization to proceed
7 with them.

8 Q Mr. Whitlow, is it fair to say that you
9 completed your work by June 1, 1972?

10 A Oh, yeah.

11 Q You were not on the job after that as an
12 outside date?

13 A No.

14 MR. BRIAN: I have no further questions,
15 Your Honor.

16 CROSS EXAMINATION

17 BY MR. CAWLEY:

18 Q Mr. Whitlow, I just have a couple of
19 questions.

20 You said you had no one on the job after
21 June of '72. When was the arbitration over?

22 A Pardon?

23 Q Do you recall when the arbitration was

035

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1 ~~concluded?~~

2 A Well, I don't know what time we had the
3 ~~arbitration.~~

4 Q But you had an arbitration at some undetermined
5 time, and then you received final payment on the con-
6 tract in May of 1973, isn't that correct?

7 A I think it was, yeah.

8 ~~MR. CAWLEY: I have no further questions.~~

9 REDIRECT EXAMINATION

10 BY MR. BRYAN:

11 Q You didn't receive payment on the contract
12 until just after the arbitration was completed, did
13 you?

14 A I don't believe we did.

15 THE COURT: That was in May of '73, you said?

16 THE WITNESS: Yes.

17 MR. BRYAN: Nothing further.

18 THE COURT: All right. You may step down.

19 (Witness excused)

20

21 MR. BRYAN: That's the defendants' case,

22 Your Honor.

23 ~~I would renew my previous motion. I don't~~

036

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THE AMERICAN INSTITUTE OF ARCHITECTS



*Original retained
by Elmer Jacobs
10/30/76 JF*

AIA Document A101

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a
STIPULATED SUM

*Use only with the latest Edition of AIA Document A201, General Conditions of the Contract for Construction.
This document has important legal consequences; consultation with an attorney is encouraged with respect to its
completion or modification.*

AGREEMENT

made this 18th day of September in the year of Nineteen
Hundred and Seventy

BETWEEN

FAIRFAX COUNTY SCHOOL BOARD

the Owner, and

M. L. WHITLOW, INC.

the Contractor.

The Owner and the Contractor agree as set forth below.

037

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda issued prior to execution of this Agreement and all Modifications issued subsequent thereto. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 8.

ARTICLE 2

THE WORK

The Contractor shall perform all the Work required by the Contract Documents for

ADDITION & ALTERATIONS TO
OAKTON ELEMENTARY SCHOOL
FAIRFAX COUNTY, VIRGINIA

(Insert above the caption descriptive of the Work as used on other Contract Documents.)

ARTICLE 3

ARCHITECT

The Architect for this Project is

SPECTOR, PEAKE & HOWELL

ARTICLE 4

TIME OF COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall be commenced in accordance with the letter of authorization to proceed with construction dated September 18, 1970 and completed September 18, 1971.

(Here insert any special provisions for liquidated damages relating to failure to complete on time.)

Work shall be completed in accordance with the following schedule:

1. Complete new Kitchen, Cafeteria, Resource Room, Teacher's Lounge, Learning Center, Library, and Special Education not later than July 30, 1971.
2. Begin alterations in existing building and construction of new bus turnaround area about June 21, 1971.
3. Complete balance of new addition not later than August 31, 1971.
4. Complete alterations and balance of total project not later than September 18, 1971.

The work included in the Base Bid shall be completed in accordance with the aforementioned time schedule. Should the work in any of the schedule periods not be completed accordingly, then there shall be deducted from the final payment the sum of \$200.00 per consecutive calendar day as liquidated damages, but not as a penalty, for each day's delay after expiration of any of the periods and until the final completion of the work and its acceptance by the Owner.

ARTICLE 5
CONTRACT SUM

The Owner shall pay the Contractor for the performance of the Work, subject to additions and deductions by Change Order as provided in the Conditions of the Contract, in current funds, the Contract Sum of ~~SEVEN-HUNDRED~~ THIRTEEN-THOUSAND AND 00/100 DOLLARS (\$713,000.00)

(State here the lump sum amount, unit prices, or both, as desired.)

ARTICLE 6
PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Conditions of the Contract as follows:

On or about the Fifth day of each month Ninety per cent of the proportion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the Work and Ninety per cent of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing by the parties, up to the First day of that month, less the aggregate of previous payments in each case; and upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to Ninety per cent of the Contract Sum, less such retainages as the Architect shall determine for all incomplete Work and unsettled claims.

(Here insert any provisions made for limiting or reducing the amount retained after the Work reaches a certain stage of completion.)

ARTICLE 7

FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor ^{Thirty} days after Substantial Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion, provided the Work has then been completed, the Contract fully performed, and a final Certificate for Payment has been issued by the Architect.

ARTICLE 8

MISCELLANEOUS PROVISIONS

8.1 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

8.2 The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

(List below the Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda and accepted Alternates, showing page or sheet numbers in all cases and dates where applicable.)

Standard Form of Agreement Between Owner and Contractor AIA Document A101

General Conditions of the Contract for Construction AIA Document A201

Specifications: Sections AA, BB, CC, DD & EE.
Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15 & 16.

Drawings: Sheets 1, C-1 Through C-3, A-1 Through A-17,
S-1 Through S-4, P-1 Through P-4, M-1 Through M-3
& E-1 Through E-6.

Addenda: No. 1 dated 24 August 1970
No. 2 dated 9 September 1970
No. 3 dated 14 September 1970

Base Bid

040

This Agreement executed the day and year first written above.

OWNER FAIRFAX COUNTY SCHOOL BOARD CONTRACTOR M. L. WHITLOW, INC.

By

James C. Bennett
Chairman

By

M. L. Whitlow
President

Attest

H. Clement Jacobs
Clerk

By

Rosemary M. Whitlow
Corporate Secretary

041

SECTION DD: PAYMENT & PERFORMANCE
BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT H. L. Whitlow, Inc. as Principal, hereinafter called Principal, and Reliance Insurance Company, a corporation organized and existing under the laws of the State of Pennsylvania, and authorized to transact business in the State of Virginia, as Surety, hereinafter called Surety, are held and firmly bound unto the County School Board of Fairfax County, Virginia as Obligee, in the penal sum of \$ 215,000.00, good and lawful money of the United States of America, for the payment of which, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above named Principal has entered into a written agreement with the County School Board of Fairfax County, Virginia, dated September 10, 1970, in accordance with drawings and specifications prepared by Robert H. Howell, Architect, for the construction of Addition and alterations to, which contract is by reference made a part hereof and hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if the above named Principal shall promptly and faithfully perform said Contract in strict conformity with the plans, specifications and conditions of the said Contract, and if the above named Principal further pays to all persons who have, and fulfill, contracts directly with the said Principal for performing labor and furnishing materials in the prosecution of such work as is required by the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

This obligation is governed by the provisions of Section 11-23, Code of Virginia (1950), as amended. In addition to The County School Board of Fairfax County, Virginia, this obligation inures to the benefit of all persons who have, and fulfill, contracts which are directly with the contractor for performing labor and furnishing materials in the prosecution of construction work defined herein, who shall have a direct right of action against the obligor and surety herein. No action on any bond required herein shall be brought unless one year after final completion of the contract provided, however, every action shall be brought in a Virginia court of competent jurisdiction in and for the County or other political subdivision of the Commonwealth in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated and not elsewhere.

DD-1

Section DD: Payment & Performance Bond Cont'd.

IN WITNESS WHEREOF, we have hereunto set our signatures and seals this 9th
day of October, 19 70, all pursuant to due authorization.

(SEAL)

W. S. Whitlow, Inc.

Contractor

By [Signature]

Principal

Reliance Insurance Company

Surety

(SEAL)

By Allen M. Kerner

Attorney in Fact

Countersigned for the State of Virginia

By: [Signature]

Resident Agent

DD-2

043

RELIANCE INSURANCE COMPANY

HEAD OFFICE, PHILADELPHIA, PENNSYLVANIA

POWER OF ATTORNEY

Know all men by these Presents, That the RELIANCE INSURANCE COMPANY, a corporation duly organized under the laws of the State of Pennsylvania, does hereby make, constitute and appoint

Anne M. Kouis of Washington, District of Columbia,

its true and lawful agent and Attorney-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed any and all bonds and undertakings, (except bonds guaranteeing the payment of principal and interest of notes, mortgage bonds and mortgages) in its business of guaranteeing the fidelity of persons holding places of public or private trust, and in the performance of contracts other than insurance policies, and executing and guaranteeing bonds or other undertakings required or permitted in all actions or proceedings, or by law required or permitted.

and to bind the RELIANCE INSURANCE COMPANY thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of the RELIANCE INSURANCE COMPANY and sealed and attested by one other of such officers, and hereby ratifies and confirms all that its said Attorney(s)-in-fact may do in pursuance hereof.

This Power of Attorney is granted under and by authority of Article VII of the By-Laws of RELIANCE INSURANCE COMPANY which became effective May 11, 1962, reading as follows:

ARTICLE VII

Execution of Bonds and Undertakings

SECTION 1. The Board of Directors, the President, or any Vice-President or Assistant Vice-President shall have power and authority to: (a) appoint Attorneys-in-Fact and to authorize them to execute on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and (b) to remove any such Attorney-in-Fact at any time and revoke the power and authority given to him.

SECTION 2. Attorneys-in-Fact shall have power and authority, subject to the terms and limitations of the power of attorney issued to them, to execute and deliver on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof. The corporate seal is not necessary for the validity of any bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

In Witness Whereof, the RELIANCE INSURANCE COMPANY has caused these presents to be signed by its Vice-President, and its corporate seal to be hereto affixed.

This 20th day of May 1968

RELIANCE INSURANCE COMPANY

(SEAL)

J. H. McDermott
Vice-President

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA,

} ss.

On this 20th day of May, A.D. 1968, before the subscriber, a Notary Public of the State of Pennsylvania, in and for the County of Philadelphia, duly commissioned and qualified, came J. H. McDermott Vice-President of the RELIANCE INSURANCE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he

acknowledged the execution of the same, and, being by me duly sworn, depose and saith, that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said Company, and the said corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation, and that Article VII Section 1 and 2 of the By-Laws of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Philadelphia the day and year first above written.

(NOTARIAL SEAL)

..... Virginia L. Upshur

Notary Public.

My Commission Expires September 29, 1969

I, E. Clyde Wilber, Assistant Secretary of the RELIANCE INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said RELIANCE INSURANCE COMPANY, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company this

..... 9th day of October A.D. 19 70



E. Clyde Wilber
..... Assistant Secretary