

SETTLEMENT AGREEMENT

This Agreement is made as of this 1st day of December, 1993, by the State of New York and Accent Stripe, Inc. and Gerald Buchheit:

W I T N E S S E T H:

WHEREAS, Accent Stripe, Inc. ("Accent"), is at all relevant times a vendor of epoxy line striping and its application in the State of New York; and

WHEREAS, Gerald Buchheit ("Buchheit") was and is at all relevant times hereto President and sole shareholder of Accent; and

WHEREAS, Accent has pleaded guilty to a one count information filed on November 19, 1992 in the Western District of New York, Criminal No. 92-CR-286, charging Accent with a violation of Section 1 of the Sherman Act, involving certain highway line striping contracts in the State of New York between March 1990 and at least March 1991; and

WHEREAS, the State of New York seeks compensation for damages allegedly suffered as a result of this violation; and

WHEREAS, Accent and Buchheit deny that the State of New York has been damaged; and

WHEREAS, the parties hereto wish to settle the State of New York's claims arising out of this conspiracy, without trial;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter contained, and for other good and valuable consideration, the sufficiency and adequacy of which is

hereby acknowledged, the parties mutually agree as follows:

1. Accent and Buchheit jointly and severally agree to pay to the State of New York a total of Six Hundred Thousand Dollars (\$600,000.00) as and for restitution for any and all damages which may have been incurred by New York State. After the signing of this settlement, Accent Stripe will make initial payments of Two hundred and Fifty Thousand Dollars (\$250,000.00). These initial payments shall be made as follows:

(A) On January 1, 1994, Accent and Buchheit will deliver to the State of New York a check in the amount of Seventy Five Thousand dollars (\$75,000.00).

(B) After the signing of this settlement agreement, the State of New York will begin to release to Accent Stripe moneys being held in escrow by the New York State Department of Transportation on New York State Department of Transportation Projects numbered D254427 (\$23,654.44); D254409 (\$23,197.89); D254362 (\$42,152.15); and D254401 (\$33,264.04); D254667 (\$62,671.74). Within ten (10) days of receipt by Accent of any escrowed funds from each project, Accent and Buchheit will issue a check to the State of New York for an amount equal to the returned escrowed funds. Accent and Buchheit will continue to make payments from returned escrowed funds until a total of One Hundred Eighty Five Thousand Dollars (\$185,000.00) is paid from escrowed funds to the State of New York.

Thereafter, the remaining Three Hundred Fifty Thousand Dollars (\$350,000) will be paid in two installments. On January 1, 1995 and January 1, 1996 Accent and Buchheit will deliver to the State of New York checks each in the amount of One Seventy Five Thousand Dollars (\$175,000). No interest shall accrue on these two remaining payment so long as they are paid on a timely basis. Should any payment be made in an untimely fashion, interest on such untimely payment shall accrue at the federal statutory rate for judgments in the Eastern District of New York.

2. No later than ten (10) days after the execution of this agreement, Accent and Buchheit will deliver to the State of New York a confession of judgment in the form attached as Exhibit A. Should Accent and/or Buchheit fail to make any of the payments listed in paragraph one above, the State of New York may file in court and enforce the confession of judgment.

3. Simultaneously with the delivery of the last check due under this agreement, the State of New York shall provide the defendants with a release in the form attached hereto as Exhibit B, releasing defendants from any liability from any claims arising under the antitrust laws of the United States, or the antitrust laws of the State of New York, including claims under Section 4 of the Clayton Act, Section 1 of the Sherman Antitrust Act, and/or Sections 340, 342 and 342-a of the New York State General Business Law, including the matters alleged in the information filed on November 19, 1992 in the Western District of New York, Case No. 92-CR-286.

4. No later than twenty days after the delivery of the first check specified in Paragraph 1 to the State of New York, the State of New York will file with the United States District Court for the Eastern District of New York a Consent Decree and Final Judgement in the form attached hereto as Exhibit C. Each of the parties hereto consents that such Consent Decree and Final Judgement may be entered by the Court, upon motion of any party or the Court's own motion, at any time after filing, without further notice to any party or other proceedings.

5. Accent and Buchheit agree to maintain and preserve, pending the final conclusion of any action filed by the State of New York arising out of the conspiracy alleged in the information filed on November 19, 1992 in the Western District of New York, Case No. 92-CR-286, including appeals, with respect to all non-settling parties, all documents (1) produced pursuant to grand jury subpoena in the investigation which resulted in the issuance of the above stated criminal information (the "grand jury documents") and/or (2) requested by the State of New York in its subpoena issued pursuant to NY General Business Law § 343 and returnable on July 12, 1993, and to make all such grand jury documents and other documents available to the State of New York for inspection and copying upon reasonable notice.

6. This Agreement, including exhibits A (Confession of Judgment), B (Release), and C (Consent Decree), constitutes the entire understanding between the State of New York and defendants Accent and Buchheit, and any other agreements or statements at any

time made which are inconsistent with this Agreement are hereby declared null and void.

7. This Agreement may not be amended, changed, modified, altered, or terminated except by written instrument executed by all of the parties to this Agreement.

8. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York.

9. This Agreement may be executed in one or more counterparts, which, taken together, shall constitute the whole Agreement, and there may be duplicate originals of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date above written.

ROBERT ABRAMS
Attorney General of the
State of New York

By: 

Robert F. Roach, Esq.
Assistant Attorney General
Attorney for Plaintiff State of New York
Room 2601, 120 Broadway
New York, New York 10271
(212) 416-8282

WALSH & FLEMMING

By: 

Robert Walsh, Esq.
Attorney for Defendants Accent Stripe, Inc
and Gerald Buchheit

Exhibit A, Confession of Judgment

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

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STATE OF NEW YORK

Plaintiff, :

v. : Index No. _____

GERALD A. BUCHHEIT, and :
ACCENT STRIPE, INC. :

Defendants, :

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AFFIDAVIT OF CONFESSION
OF JUDGMENT

STATE OF NEW YORK } ss.:
COUNTY OF ERIE }

GERALD A. BUCHHEIT, being duly sworn, deposes and says:

1. I am the President of Accent Stripe, Inc., a corporation. I am duly authorized to make this affidavit on behalf of the corporation, a defendant herein. I also make this affidavit on behalf of myself in my individual capacity, also a defendant herein.

2. Accent Stripe, Inc. and Gerald A. Buchheit hereby confess judgment herein, and authorize entry thereof against Accent Stripe, Inc. and Gerald Buchheit, jointly and severally, in the sum of Six Hundred Thousand Dollars (\$600,000.00).

3. The defendant Accent Stripe, Inc. has its principal place of business at 3275 N. Benzing Road, Orchard Park, Erie County, NY 14127. Defendant Gerald A. Buchheit resides at 6210 Old Lakeshore Road, Lakeview, NY 14028.

4. The confession of judgment is for a debt justly due to the State of New York arising from a written settlement agreement executed by and on behalf of the parties on December 1, 1993. That settlement provides for periodic payments by Accent Stripe, Inc. and Gerald A. Buchheit to the State of New York as follows:

"Accent and Buchheit jointly and severally agree to pay to the State of New York a total of Six Hundred Thousand Dollars (\$600,000.00) as and for restitution for any and all damages which may have been incurred by New York State. After the signing of this settlement, Accent Stripe will make initial payments of Two hundred and Fifty Thousand Dollars (\$250,000). These initial payments shall be made as follows:

(A) On January 1, 1994, Accent and Buchheit will deliver to the State of New York a check in the amount of Seventy Five Thousand dollars (\$75,000.00).

(B) After the signing of this settlement agreement, the State of New York will begin to release to Accent Stripe moneys being held in escrow by the New York State Department of Transportation on New York State Department of Transportation Projects numbered D254427 (\$23,654.44); D254409 (\$23,197.89); D254362 (\$42,152.15); and D254401 (\$33,264.04); D254667 (\$62,671.74). Within ten (10) days of receipt by Accent of any escrowed funds from each project, Accent and Buchheit will issue a check to the State of New York for an amount equal to the returned escrowed funds. Accent and Buchheit will continue to make payments from returned escrowed funds until a total of One Hundred Eighty Five Thousand Dollars (\$185,000.00) is paid from escrowed funds to the State of New York.

Thereafter, the remaining Three Hundred Fifty Thousand Dollars (\$350,000) will be paid in two installments. On January 1, 1995 and January 1, 1996 Accent and Buchheit will deliver to the State of New York checks each in the amount of One Seventy Five Thousand Dollars (\$175,000). No interest shall accrue on these two remaining payment so long as they are paid on a timely basis. Should any payment be made in an untimely fashion, interest on such untimely payment shall accrue at the federal statutory rate for judgments in the Eastern District of New York."

5. The settlement agreement referenced in paragraph 4 was entered into by the State of New York, Accent Stripe, Inc. and Gerald A. Buchheit in full settlement of a contingent liability justly to become due to the State of New York by Accent Stripe, Inc. and Gerald Buchheit arising from the following facts:

(A) Accent Stripe, Inc. was and is at all relevant times a vendor of epoxy line striping and its application in the State of New York; and

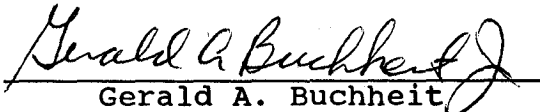
(B) Gerald A. Buchheit was and is at all relevant times hereto President and Owner of Accent, and was responsible for all bidding by Accent STripe, Inc. on New York line striping projects, and

(C) Accent Stripe, Inc. has pleaded guilty to a one count information filed on November 19, 1992 in the Western District of New York, Criminal No. 92-CR-286, charging Accent Stripe, Inc. with a violation of Section 1 of the Sherman Act, involving certain highway line striping contracts in the State of New York between March 1990 and at least March 1991; and

(D) The State of New York sought compensation for damages suffered as a result of this violation; and

(E) The State of New York alleges that the joint and several contingent liability of Accent Stripe, Inc. and Gerald A. Buchheit exceeded six million dollars (\$6,000,000);

(F) Execution of this judgment shall be governed by New York Civil Procedure Law 3218(c), which provides in pertinent part that where the debt for which judgment is entered is not all due, execution may be issued only for the sum which has become due.


Gerald A. Buchheit
President, Accent Stripe, Inc.

Sworn to before me this
3RD day of December, 1993

Dawn M Clark
Notary Public

DAWN M CLARK
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 7-23-94

TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, know that The State of New York, through its Attorney General Robert Abrams, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and in conjunction with a Settlement Agreement dated December 1, 1993, a Confession of Judgement dated _____, and a Consent Decree and Final Judgement to be entered in the action entitled State of New York v. Accent Stripe, et. al., Civ. Action No. _____ filed in the United States District Court in the Eastern District of New York, hereby releases and forever discharges Accent Stripe, Inc., its officers, directors, employees, predecessors, successors, parent corporations, subsidiaries and affiliates from all actions, causes of action, suits, debts, contracts, controversies, claims and demands whatsoever arising under federal or state antitrust laws, including Section 4 of the Clayton Act, Section 1 of the Sherman Act and/or Sections 340, 342 and 342-a of the New York State General Business Law, which Releasor ever had, now has, or may have as of the date of this release, including the matters arising out of, based upon, relating to or existing by reason of the transactions, events occurrences, acts, omissions, or failures to act, of whatever kind or character whatsoever, alleged in the information filed on November 19, 1992 in the United States District Court for the Western District of New York, Case No. 92-CR-286.

Dated: January _____, 1996
New York, New York

Robert Abrams
Attorney General of the State
of New York

by: _____
Robert F. Roach
Assistant Attorney General

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 94 0544

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STATE OF NEW YORK,

Plaintiff,

-against-

ACCENT STRIPE, INC., and
GERALD BUCHHEIT

Defendants.

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CONSENT DECREE AND FINAL JUDGMENT

Plaintiff, the State of New York, through its Attorney General, G. Oliver Koppell, having filed its Complaint herein on February 7, 1994, and the defendants Accent Stripe, Inc. ("Accent") and Gerald Buchheit ("Buchheit"), by their respective attorneys, having consented to the entry of this Consent Decree and Final Judgment without trial or adjudication of any issue of fact or law herein and without this Consent Decree and Final Judgment constituting any admission of liability or evidence against or an admission by any party with respect to any such issue, or any

PLATE 01.1

CIVIL JUSTICE M.

7 3 06 11 14

judgment or finding of a civil offense, or creating any civil liability for any wrongful act complained of herein;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, and the Court having determined, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

1. Jurisdictional Clause

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the Defendants Accent and Buchheit under Section 1 of the Sherman Act (15 U.S.C. §1) and a pendant claim upon which relief may be granted under Section 340 of the Donnelly Act (NY General Business Law § 340).

2. Applicability Clause

This Consent Decree and Final Judgment applies to the Defendant Accent and to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to Buchheit and to all other persons in active concert or participation with any of them who shall have received actual notice of this Consent Decree and

Final Judgment by personal service or otherwise.

3. Future Conduct

With respect to all bids submitted to the New York Department of Transportation, Defendants Accent and Buchheit are enjoined from violating the provisions of the Sherman Act, 15 U.S.C. § 1, et. seq. and the Donnelly Act, NY General Business Law § 340, et. seq. In particular, Defendants Accent and Buchheit are enjoined from:

(a) entering into or participating in any contract, combination, or conspiracy to rig bids or allocate territories for any New York State Department of Transportation contracts or projects;

(b) discussing the particulars of its prospective bids with competing bidders. The term "competing bidders" as used in this Consent Decree and Final Judgment shall not include any legitimate supplier, joint venture, partnership or subcontractor relationship or wholly-owned subsidiary;

(c) soliciting or obtaining from actual or potential competing bidders intentionally high or complimentary bids which are set above an agreed figure or set by any other method in order that a particular entity will receive the award of any Department of Transportation contract or project in the State of New York.

Defendants Accent and Buchheit agree that any violation of the terms of this injunction shall be prima facie evidence of a violation of New York General Business Law § 340, et. seq. and 15 U.S.C. § 1 in any proceeding brought by the Attorney General to enforce this injunction.

4. Compliance Program

With respect to any bid submitted to the New York State Department of Transportation, Defendants Accent and Buchheit shall institute procedures to prevent any potential violation of this injunction, including a policy that two people employed by Accent must review highway line striping bids on prime contracts; a policy that the estimator does not attend the bid letting unless there are legitimate business reasons necessitating the estimator's attendance; adoption of an antitrust compliance policy which consists of both written materials and of periodic meetings with counsel to review antitrust laws; a requirement that all new employees with any responsibility for bidding or purchasing of materials be briefed on their legal obligations.

5. Visitorial Clause

For the purpose of determining or securing compliance with this Consent Decree and Final Judgment, and subject to any legally recognized privilege, from time to time:

(a) Duly authorized representatives of the Attorney General shall, upon written request of the Attorney General or of the Chief of the Antitrust Bureau of the New York State Attorney General's Office, and on reasonable notice to Defendants Accent and Buchheit made to its principal office, be permitted:

(1) Access during office hours of Defendant Accent to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Defendant, who may have counsel present, relating to any bids submitted to the New York State Department of Transportation and to matters contained in this Consent Decree and Final Judgment; and

(2) Subject to the reasonable convenience of such Defendant Accent and without restraint or interference from it, to interview officers, including Buchheit, employees and agents of Defendants, who may have counsel present, regarding any such matters.

(b) Upon the written request of the Attorney General or of the Chief of the Antitrust Bureau of the New York Attorney General's Office, made to Defendant Accent's principal office, Defendants shall submit such written information, under oath if requested, with respect to any of the matters contained in this

Consent Decree and Final Judgment as may be requested.

No information or documents obtained by the means provided herein shall be divulged by any representative of the State of New York, including the Attorney General or any representative of the New York State Department of Law, to any other person except as permitted by Section 343 of the New York General Business Law, or for the purpose of securing compliance with this Consent Decree and Final Judgment, or as otherwise required by law.

6. Expiration of Judgment

This Consent Decree and Final Judgment will expire on the fifth anniversary of its date of entry.

7. Retention of Jurisdiction

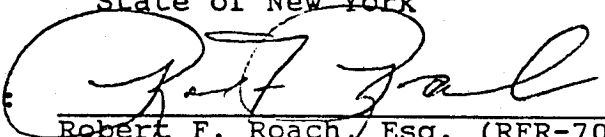
Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree and Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Consent Decree and Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

8. Direction for Entry

Pursuant to Rule 54(b), this Court directs the entry of this Consent Decree and Final Judgment forthwith.

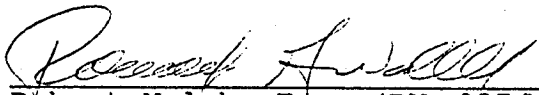
G. OLIVER KOPPELL
Attorney General of the
State of New York

By:


Robert F. Roach, Esq. (RFR-7001)
Assistant Attorney General
Attorney for Plaintiff
Room 2601
120 Broadway
New York, New York 10271
(212) 416-8282

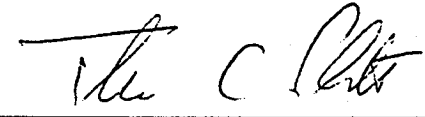
WALSH & FLEMMING

By:


Robert Walsh, Esq. (RW-8874)
Attorney for Accent STRipe, Inc. and
Gerald Buchheit

Dated: Brooklyn, New York

July 15, 1994


duf
United States District Judge

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