

G. H. JACKSON,
Plaintiff,
VS.
COMPLETE AUTO TRANSIT
COMPANY, ET AL,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 6453

MOTION

Now comes the defendant, Armstrong Equipment Company, Inc., and shows unto the court and your Honor that it has meritorious defense to this action, which said defense consists of the fact that the driver of the vehicle alleged to be negligent at the time and place of the action complained of in this cause was not an agent, servant or employee of Armstrong Equipment Company, Inc., acting within the line and scope of his authority as such agent, servant or employee.

Wherefore, the defendant, Armstrong Equipment Company, Inc., moves the court to set aside the judgment by default heretofore entered on February 17, 1966. This motion is filed simultaneously with a motion to set aside judgment by default in this cause.

INGE, TWITTY, DUFFY & PRINCE and
JAMES R. OWEN

By [Signature]
Attorneys for Defendant,
Armstrong Equipment Company, Inc.

STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, personally appeared James R. Owen, who first being duly and legally sworn deposes and says: That he is one of the attorneys for Armstrong Equipment Company, Inc.; that he has read over the foregoing motion and that the facts stated therein are true.

Sworn to and subscribed before me
on this the 8th day of March, 1966.

[Signature]
Notary Public, Baldwin County, Alabama

FILED

MAR 8 1966

ALICE J. DICK, CLERK
REGISTER

G. H. JACKSON,)	
)	
Plaintiff,)	
	)	IN THE CIRCUIT COURT OF
VS.)	
	)	BALDWIN COUNTY, ALABAMA
COMPLETE AUTO TRANSIT)	
COMPANY, ET AL,	)	AT LAW NO. 6453
)	
Defendants.)	

MOTION TO SET ASIDE JUDGMENT BY DEFAULT

Now comes the defendant, Armstrong Equipment Company, Inc., and shows unto the court and your Honor as follows:

1. That heretofore on to-wit, October 28, 1965, this Honorable Court sustained a motion to strike as to clauses designated as B, C and E of the plaintiff's complaint and the demurrer of each defendant in this cause was sustained.

2. On November 24, 1965, the plaintiff filed an amended complaint in said cause.

3. On November 30, 1965, the docket sheet shows that in this cause a motion was filed, however, the original motion is not in the court file in this case and cannot be located by the attorneys representing the defendant, Armstrong Equipment Company, Inc. The said defendant alleges that Thomas E. Twitty, one of the attorneys representing the said defendant, mailed to Alice J. Duck on November 29, 1965, a motion of defendant, Armstrong Equipment Company, Inc., to strike certain portions of the complaint and demurrer to complaint as last amended and the said defendant alleges that this is the instrument which is shown on the docket sheet to be filed on November 30, 1965. A copy of the letter from the said T. E. Twitty to Mrs. Alice Duck, Clerk of the Circuit Court of Baldwin County dated November 29, 1965, is attached hereto marked Exhibit "A" and made a part of this motion as if set out fully herein. A copy of motion of defendant, Armstrong Equipment Company, Inc., to strike certain portions of the complaint and demurrer to complaint as last amended and which was mailed to the Clerk of the Circuit Court of Baldwin County, Alabama, on November 29, 1965, is attached hereto marked Exhibit "B" and made a part hereof as though fully incorporated herein.

4. That this court has never made any ruling on the motion of defendant, Armstrong Equipment Company, Inc., to strike certain portions of the complaint and neither has the court made any ruling on the said demurrer to the complaint as last amended, which said motion and demurrer was filed in this court on November 30, 1965.

5. That on to-wit, June 30, 1965, the plaintiff propounded certain interrogatories to the defendant, Armstrong Equipment Company, Inc.; that the said defendant answered the said interrogatories and the said plaintiff on to-wit, October 8, 1965, filed a motion with this court for a judgment by default on the grounds that the said defendant had failed and refused to answer interrogatories 6, 7, 8, 9, 10, 11, 12 and 13. The defendant, Armstrong Equipment Company, Inc., alleges that this Honorable Court has never made any ruling on whether or not the said defendant should answer the said interrogatories.

WHEREFORE, the defendant, Armstrong Equipment Company, Inc., moves the court to set aside the said judgment by default heretofore entered on February 17, 1966.

INGE, TWITTY, DUFFY & PRINCE and
JAMES R. OWEN

Thomas E. Twitty

By *J. R. Owen*
Attorneys for Defendant,
Armstrong Equipment Company, Inc.,

STATE OF ALABAMA)
*
MOBILE COUNTY)

Before me, the undersigned authority, personally appeared Thomas E. Twitty, who first being duly and legally sworn, deposes and says: That he is one of the attorney's for Armstrong Equipment Company, Inc.; that he has read over the foregoing motion and that the facts stated therein are true.

Thomas E. Twitty

Sworn to and subscribed before me
on this the 7 day of March, 1966.

Isabelle M. Hudson
Notary Public, Mobile County, Alabama

FILED

MAR 8 1966

ALICE L. DICK, CLERK
REGISTER

EXHIBIT "A"

November 29, 1965

Mrs. Alice Duck, Clerk
Circuit Court, Baldwin County
Bay Minette, Alabama

Dear Mrs. Duck:

Re: C. H. Jackson vs. Armstrong Equipment
Co. No. 6452

I am enclosing a motion to strike and a demurrer to the complaint as last amended, which I request that you please file in behalf of the defendant, Armstrong Equipment Company, Inc.

About a month ago, we argued a demurrer to the complaint and also argued a motion of the plaintiff to compel the defendant Armstrong Equipment Company to answer certain interrogatories.

We argued that this defendant should not be required to answer interrogatories Nos. 11, 12 and 13 because the cases hold that a defendant will not be compelled to disclose the names and addresses of his witnesses, and in support of this we cited Ex Parte Nolen, 223 Ala. 213, 136 So. 337, and Montgomery Light & Railroad Co. vs. Harris, 197 Ala. 358, 72 So. 619. We also cited Sibley vs. Hutchison, 218 Ala. 440, 113 So. 638, and Section 482 of Title 7 of the Code for the proposition that interrogatories calling for hearsay testimony need not be answered.

Judge Mashburn sustained our demurrer to the complaint and the plaintiff has recently amended the complaint.

Judge Mashburn at the recent hearing took under submission the question of whether or not this defendant should be required to answer any of the interrogatories referred to above, and we presume that he has not yet had an opportunity to study the matter further and rule on it as we have not received a copy of any order on the plaintiff's said motion.

With kindest regards,

Cordially,

T. D. TWIFTY.

P. S. While in court on the previous hearing, I inadvertently picked up and brought back with me our demurrer to the amended complaint which was filed with you on the 21st day of Sept., 1965. I am returning it to you herewith.

encl.

EXHIBIT "B"

C. E. JACKSON,)	
)	
Plaintiff	)	IN THE CIRCUIT COURT OF
)	
vs.	)	BALDWIN COUNTY, ALABAMA
)	
COMPLETE AUTO TRANSIT	)	AT LAW
COMPANY, ET AL,)	
	)	NO. 6458
Defendants.)	

**MOTION OF DEFENDANT ARMSTRONG
EQUIPMENT COMPANY, INC., TO STRIKE
CERTAIN PORTIONS OF THE COMPLAINT.**

Comes now the defendant Armstrong Equipment Company, Inc., separately and severally, leave of Court first had and obtained, and moves to strike from Count Four of the Complaint as last amended the following allegations pertaining to alleged damages to the plaintiff, i. e.: "and plaintiff's business suffered a loss", and for separate and several grounds of motion in support of the foregoing motion to strike, this defendant assigns the following:

1. The said item of damage is not a proper element of recoverable damages under said count.
2. The plaintiff cannot recover herein for alleged loss suffered by the plaintiff's business as alleged in said count.
3. The alleged loss of business suffered by the plaintiff is a mere conclusion of the pleader.
4. The alleged loss of business is remote and speculative and is not the natural result of the alleged breach of duty in said count.

DEMURRER TO COMPLAINT AS LAST AMENDED

Comes now the defendant Armstrong Equipment Company, Inc., a corporation, separately and severally, and without waiving its foregoing Motion to Strike Certain Portions of the Complaint as last amended (but expressly insisting thereon), and demurs to the complaint therein as

last amended, and to each count thereof separately and severally, and for grounds of demurrer re-files and re-assigns each of the separate and several grounds of demurrer heretofore filed and assigned to the complaint by this defendant, and assigns the following separate and several additional grounds of demurrer, i. e.:

8. The allegation therein that an "automobile truck, tractor and trailer bearing the name, Complete Auto Transit Company, Doraville, Georgia, and operated by its agent, servant or employee, Armstrong Equipment Company, Inc., an Alabama corporation whose address is 4001 First Avenue, North, Birmingham, Alabama, in his capacity as such, at the request of Complete Auto Transit Company, said corporation acting in the line and scope of its employment" are mere conclusions of the pleader and do not sufficiently allege that the said tractor and trailer at the time and place of the matters complained of was operated by an agent or servant or employee of this defendant while acting within the line and scope of his employment as such.

10. The words appearing therein "in his capacity as such" are mere conclusions of the pleader and are not sufficient to charge that any agent, servant or employee of this defendant, while acting within the line and scope of his employment was driving or operating the said truck, tractor and trailer at the time and place complained of.

11. It is not negligence as a matter of law to operate a vehicle without brakes.

12. For aught appearing therefrom, neither this defendant nor any agent, servant or employee of this defendant, while acting within the line and scope of his employment, was guilty of any breach of duty to the plaintiff with respect to operating said vehicle at the time and place complained of in said count.

13. The allegation in said count pertaining to causal connection between the alleged breach of duty and the alleged injuries and damages

do not sufficiently charge that the alleged injuries and damages were a proximate result or consequence of the alleged breach of duty therein.

14. For aught appearing therefrom, the said truck trailer was not being operated by an agent, servant or employee of this defendant at the time and place of the matters complained of.

15. The allegation therein that an agent, servant or employee of this defendant "willfully or wantonly damaged plaintiff's property, to-wit, said building, by running into said building with a truck, tractor and trailer" does not sufficiently allege that the said agent, servant or employee at said time and place was driving or operating the said truck, tractor and trailer.

/s/ THOMAS E. TWITTY

INGR, TWITTY, DUFFY & PRINCE

Attorneys for defendant Armstrong Equip-
ment Company, Inc.

G. H. JACKSON,)	
)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
)	
VS.	)	BALDWIN COUNTY, ALABAMA
)	
COMPLETE AUTO TRANSIT	)	AT LAW
COMPANY, ET AL,	)	NO. 6453
)	
Defendants.)	

DEMURRER TO AMENDED TO COMPLAINT

Now comes the defendant, Armstrong Equipment Company, Inc., a corporation, separately and severally, and demurs to the complaint therein, as amended, and to each count thereof, separately and severally, on the following separate and several grounds:

1. Sufficient facts are not alleged therein to constitute a cause of action against this defendant.
2. Sufficient facts are not alleged therein to show the existence of any legal duty owing by this defendant to the plaintiff with respect to the matters alleged therein.
3. Sufficient facts are not alleged therein to show any breach of any legal duty owing by this defendant to the plaintiff with respect to matters alleged therein.
4. Sufficient facts are not alleged therein to show a sufficient causal connection between the alleged breach of duty of this defendant and the alleged injuries and damages.
5. It does not sufficiently appear therefrom that the driver of the said automobile truck tractor and trailer which allegedly did the damage complained of therein was at the time and place of the matters referred to therein an agent, servant or employee of this defendant and was acting within the line and scope of his employment by this defendant as such.
6. There does not sufficiently appear therefrom that the alleged injuries and damages proximately resulted from the alleged breach of duty of this defendant or the alleged breach of duty of an agent, servant or employee of this defendant while acting within the line and scope of his employment as such.
7. There is a misjoinder of causes of action in this same count.

8. There is a misjoinder of parties defendant.

9. The allegations therein that an "automobile truck, tractor and trailer bearing the name, Complete Auto Transit Company, Doraville, Georgia, and operated by its agent, servant or employee, Armstrong Equipment Company, Inc., an Alabama corporation whose address is 4601 First Avenue, North, Birmingham, Alabama, in his capacity as such, at the request of Complete Auto Transit Company, said corporation acting in the line and scope of its employment" are mere conclusions of the pleader and do not sufficiently allege that the said tractor and trailer at the time and place of the matters complained of was operated by an agent or servant or employee of this defendant while acting within the line and scope of his employment as such.

10. The words appearing therein "in his capacity as such" are mere conclusions of the pleader and are not sufficient to charge that any agent, servant or employee of this defendant, while acting within the line and scope of his employment was driving or operating the said truck, tractor and trailer at the time and place complained of.

11. It is not negligence as a matter of law to operate a vehicle without brakes.

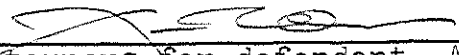
12. For aught appearing therefrom, neither this defendant nor any agent, servant or employee of this defendant, while acting within the line and scope of his employment, was guilty of any breach of duty to the plaintiff with respect to operating said vehicle at the time and place complained of in said count.

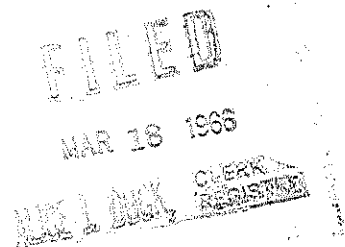
13. The allegation in said count pertaining to causal connection between the alleged breach of duty and the alleged injuries and damages do not sufficiently charge that the alleged injuries and damages were a proximate result or consequence of the alleged breach of duty therein.

14. For aught appearing therefrom, the said truck trailer was not being operated by an agent, servant or employee of this defendant at the time and place of the matters complained of.

15. The allegation therein that an agent, servant or employee of this defendant "wilfully or wantonly damaged plaintiff's property, to-wit, said building, by running into said building with a truck, tractor and trailer" does not sufficiently allege that the said agent, servant or employee at said time and place was driving or operating the said truck, tractor and trailer.

INGE, TWITTY, DUFFY & PRINCE and
JAMES R. OWEN

By 
Attorneys for defendant, Armstrong
Equipment Company, Inc.



AMENDED COMPLAINT

G. H. JACKSON

X

Plaintiff

X

IN THE CIRCUIT COURT OF

vs

X

BALDWIN COUNTY, ALABAMA

COMPLETE AUTO TRANSIT COMPANY, a
non-resident corporation also
known as COMPLETE AUTO TRANSPORT
COMPANY and ARMSTRONG EQUIPMENT
COMPANY, INC., Birmingham, Alabama,
and JOHN DOE, alias GENE PARAVICINI,
as agent, servant or employee of said
corporation

X

X

X

X

AT LAW

NO. 6453

Defendants

X

Comes your plaintiff and amends his complaint as last
amended in said cause to read as follows:

-1-

Plaintiff claims of defendants, Armstrong Equipment Company,
a corporation and John Doe, alias Gene Paravicini, its agent,
servant or employee, jointly and severally, Nine Thousand
(\$9,000.00) Dollars as damages for that heretofore on to-wit,
11:30 P.M. the 28th day of March, 1965, plaintiff was the owner
of an ice cream or dairy bar and sandwich drive-in business lo-
cated on plaintiff's property fifty feet from highway R/O/W on
the West side of U. S. Highway No. 31 near the intersection of
the Perdido road about 12 miles from Bay Minette in Baldwin
County, Alabama, at which time and place an automobile truck
tractor and trailer bearing the name, Complete Auto Transit
Company, Doraville, Georgia, and operated by John Doe, alias
Gene Paravicini, agent, servant or employee of Armstrong
Equipment Company, Inc., an Alabama corporation whose address is
4601 First Avenue, North, Birmingham, Alabama, in its capacity
as such, at the request of Complete Auto Transit Company, said
corporation acting in the line and scope of its employment, while
operating the said automobile truck tractor and trailer of
Complete Auto Transit Company, negligently operated said vehicle
without brakes and as a proximate consequence thereof, crashed
said truck tractor and trailer into the building structure of the
said plaintiff noted herein, which building was greatly damaged,
and as a proximate consequence thereof, said plaintiff was put to
great expense for removing the said truck tractor and trailer

from its collision position within and without the said building; damaging said building greatly in that the walls, roof and supporting structures were damaged, hence this suit.

-2-

Plaintiff claims of defendants, Armstrong Equipment Company, a corporation, and John Doe, alias Gene Paravicini, its agent, servant or employee, jointly and severally, the sum of Nine Thousand Dollars (\$9,000.00) for that plaintiff avers that, on to-wit, about 11:30 P.M. 28th day of March, 1965, plaintiff was the owner of a building housing a milk or dairy bar and sandwich shop drive-in, situate on his individually owned real property fifty feet from the highway R/O/W on the West side of Highway 31 near the intersection of the Perdido paved road turn-off, and about 12 miles from the City of Bay Minette in Baldwin County, Alabama, and on to-wit, 11:30 P.M. 28th day of March, 1965, at the request of Complete Auto Transit Company, defendant Armstrong Equipment Company through John Doe, alias Gene Paravicini, its agent, servant or employee, while acting within the line and scope of his employment, with reckless disregard to consequence, being conscious at that time that his conduct in so doing would probably result in disaster, wilfully or wantonly damaged plaintiff's property, to-wit, said building by wilfully and wantonly running a truck tractor and trailer into said building and as the proximate result and consequence of said wilful or wanton conduct, plaintiff's building was severely damaged and for all of which he claims damages in the sum aforesaid.

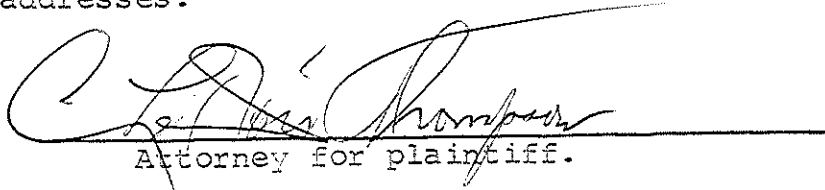

Attorney for plaintiff.

I hereby certify that I have this day forwarded U. S. Postage prepaid a copy of the foregoing complaint as last amended to Honorable John Chason, Attorney for Complete Auto Transit Company and to Honorable James R. Owen, attorney for Armstrong Equipment Company at their proper addresses.

FILED

MAY 2 1966

ALICE A. DUCK, CLERK
REGISTER


Attorney for plaintiff.

G. H. JACKSON,)	
)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
)	
VS.	)	BALDWIN COUNTY, ALABAMA
)	
COMPLETE AUTO TRANSIT	)	AT LAW
COMPANY, ET AL,	)	NO. 6453
)	
Defendants.)	

DEMURRER TO COMPLAINT AS LAST AMENDED

Now comes the defendant, Armstrong Equipment Company, Inc., a corporation, and demurs to the complaint as last amended and to each count thereof, separately and severally, on the following separate and several grounds:

1. Sufficient facts are not alleged therein to constitute a cause of action against this defendant.
2. Sufficient facts are not alleged therein to show the existence of any legal duty owing by this defendant to the plaintiff with respect to the matters alleged therein.
3. Sufficient facts are not alleged therein to show any breach of any legal duty owing by this defendant to the plaintiff with respect to matters alleged therein.
4. Sufficient facts are not alleged therein to show a sufficient causal connection between the alleged breach of duty of this defendant and the alleged injuries and damages.
5. It does not sufficiently appear therefrom that the driver of the said automobile truck tractor and trailer which allegedly did the damage complained of therein was at the time and place of the matters referred to therein an agent, servant or employee of this defendant and was acting within the line and scope of his employment by this defendant as such.
6. There does not sufficiently appear therefrom that the alleged injuries and damages proximately resulted from the alleged breach of duty of this defendant or the alleged breach of duty of an agent, servant or employee of this defendant while acting within the line and scope of his employment as such.
7. There is a misjoinder of causes of action in this same count.

8. There is a misjoinder of parties defendant.

9. The allegations therein that an "automobile truck, tractor and trailer bearing the name, Complete Auto Transit Company, Doraville, Georgia, and operated by John Doe, alias Gene Paravicini, agent, servant or employee of Armstrong Equipment Company, Inc., an Alabama corporation, whose address is 4601 First Avenue, North, Birmingham, Alabama, in its capacity as such, at the request of Complete Auto Transit Company, said corporation acting in the line and scope of its employment" are mere conclusions of the pleader and do not sufficiently allege that the said tractor and trailer at the time and place of the matters complained of was operated by an agent or servant or employee of this defendant while acting within the line and scope of his employment as such.

10. The words appearing therein "in his capacity as such" are mere conclusions of the pleader and are not sufficient to charge that any agent, servant or employee of this defendant, while acting within the line and scope of his employment was driving or operating the said truck, tractor and trailer at the time and place complained of.

11. It is not negligence as a matter of law to operate a vehicle without brakes.

12. For aught appearing therefrom, neither this defendant nor any agent, servant or employee of this defendant, while acting within the line and scope of his employment, was guilty of any breach of duty to the plaintiff with respect to operating said vehicle at the time and place complained of in said count.

13. The allegation in said count pertaining to causal connection between the alleged breach of duty and the alleged injuries and damages do not sufficiently charge that the alleged injuries and damages were a proximate result or consequence of the alleged breach of duty therein.

14. For aught appearing therefrom, the said truck trailer was not being operated by an agent, servant or employee of this defendant at the time and place of the matters complained of.

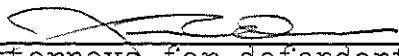
15. The allegation therein that an agent, servant or employee of this defendant "wilfully or wantonly damaged plaintiff's property, to-wit, said building, by wilfully and wantonly running a truck tractor and trailer into said building" does not sufficiently allege that the said agent, servant or employee of this defendant at said time and place was driving or operating the said truck tractor and trailer.

16. The said count does not allege how the plaintiff's said property was damaged.

17. The alleged damages suffered by the plaintiff is not set forth with sufficient certainty as to inform this defendant as to what it is to defend against.

INGE, TWITTY, DUFFY & PRINCE and
JAMES R. OWEN

By


Attorneys for defendant, Armstrong
Equipment Company, Inc., a corporation.

FILED

NOV 20 1966

ALICE L. DUCK, CLERK
REGISTER

AMENDED COMPLAINT

G. H. JACKSON

X

Plaintiff

X

IN THE CIRCUIT COURT OF

vs

X

BALDWIN COUNTY, ALABAMA

COMPLETE AUTO TRANSIT COMPANY, a
non-resident corporation also
known as COMPLETE AUTO TRANSPORT
COMPANY and ARMSTRONG EQUIPMENT
COMPANY, INC., Birmingham, Alabama,
and JOHN DOE, alias GENE
PARAVICINI, as agent, servant or
employee of said corporation

X

AT LAW NO. 6453

X

X

Defendants

X

X

Comes your plaintiff and amends his complaint as last
amended in said cause to read as follows:

-1-

Plaintiff claims of defendants, Armstrong Equipment Company,
a corporation and John Doe, alias Gene Paravicini, its agent,
servant or employee, jointly and severally, Nine Thousand
(\$9,000.00) Dollars as damages for that heretofore on to-wit,
11:30 P.M. the 28th day of March, 1965, plaintiff was the owner
of an ice cream or dairy bar and sandwich drive-in business lo-
cated on plaintiff's property fifty feet from highway R/O/W on
the West side of U. S. Highway No. 31 near the intersection of
the Perdido road about 12 miles from Bay Minette in Baldwin
County, Alabama, at which time and place an automobile truck
tractor and trailer bearing the name, Complete Auto Transit
Company, Doraville, Georgia, and operated by John Doe alias Gene
Paravicini, an agent, servant or employee of Armstrong Equipment
Company, Inc., an Alabama corporation, whose address is 4601
First Avenue, North, Birmingham, Alabama, which in its capacity
as such agent, servant or employee, at the request of Complete
Auto Transit Company, said Armstrong Equipment Company, Inc.,
acting in the line and scope of its employment under a garage
repair employment with Complete Auto Transit Company, through
the said agent, servant or employee of Armstrong Equipment
Company, Inc., while acting in the line and scope of his employ-
ment operating the said automobile truck tractor and trailer of

Complete Auto Transit Company, said Gene Paravicini alias John Doe, negligently operated said vehicle without brakes and as a proximate consequence of said negligence, crashed said truck tractor and trailer into the building structure of the said plaintiff noted herein, which building was greatly damaged as a proximate consequence thereof, said plaintiff was put to great expense for moving the said truck tractor and trailer from its collision position from within and without said building and said collision damaged said building greatly in that the masonry walls were broken and damaged; the roof was shaken and caused to leak and supporting timbers were broken and made useless and the building was generally damaged, hence this suit.

-2-

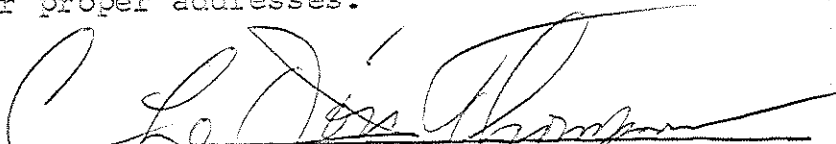
Plaintiff claims of defendants, Armstrong Equipment Company, a corporation, and John Doe, alias Gene Paravicini, its agent, servant or employee, jointly and severally, the sum of Nine Thousand Dollars (\$9,000.00) for that plaintiff avers that, on to-wit, about 11:30 P.M. 28th day of March, 1965, plaintiff was the owner of a building housing a milk or dairy bar and sandwich shop drive-in, situate on his individually owned real property fifty feet from the highway R/O/W on the West side of Highway 31 near the intersection of the Perdido paved road turn-off, and about 12 miles from the City of Bay Minette in Baldwin County, Alabama, and on to-wit, 11:30 P.M. 28th day of March, 1965, at the request of Complete Auto Transit Company and under a garage repair employment, defendant Armstrong Equipment Company, Inc., through John Doe, alias Gene Paravicini, its agent, servant or employee, while acting within the line and scope of his employment, with reckless disregard to consequence, being conscious at that time that his conduct in so doing would probably result in disaster, wilfully or wantonly damaged plaintiff's property, to-wit, said building by wilfully and wantonly running a truck tractor and trailer into said building and as the proximate result and consequence of said wilful or wanton conduct, plaintiff's building was greatly damaged in that the masonry walls were broken and damaged; the roof was shaken and caused to leak and supporting timbers were broken

and made useless and the building was generally damaged, and
for all of which he claims damages in the sum aforesaid.


Attorney for plaintiff

Aug 6, 1966
I hereby certify that I have this ~~per~~ forwarded U. S.

Postage prepaid a copy of the foregoing amended complaint
to Honorable John Chason, attorney for Complete Auto Transit
Company and to Honorable James R. Owen, attorney for Armstrong
Equipment Company at their proper addresses.


Attorney for plaintiff.

FILED

AUG 1 1966

ALICE A. BUCK, CLERK
REGISTERED

G. H. JACKSON,

Plaintiff

vs.

COMPLETE AUTO TRANSIT COMPANY,
a corporation, also known as COMPLETE
AUTO TRANSPORT COMPANY, and
ARMSTRONG EQUIPMENT COMPANY,
INC., a corporation,

Defendants

IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA.

AT LAW NO. 6453

MOTION BY DEFENDANT ARMSTRONG EQUIPMENT
COMPANY, INC. TO STRIKE CERTAIN PORTIONS OF
THE COMPLAINT.

Comes now Armstrong Equipment Company, Inc., a corporation,
separately and severally, and moves to strike certain portions of each
Count of the Complaint, said portions being stated separately and sever-
ally as follows:

(a) The allegation that "said plaintiff was put to great expense
for removing the said truck, tractor and trailer from its collision position
within and without the said building".

(b) "For wages to said plaintiff's employees who are unable to
perform their services due to the damaged condition of said building."

(c) "For loss of income to said business while said building is
being repaired. "

(d) "And to such additional expense as the said damage has incurred
upon your plaintiff. "

(e) "And plaintiff's business suffered a loss" occurring in Count Two.

And for separate and several grounds of motion in support of the
foregoing Motion to Strike each of the foregoing separate and several
portions of each of said Counts, this defendant assigns the following:

1. The said item of damage is not a proper element of recoverable

damage under said Count.

2. The plaintiff in said Count cannot recover for any expense or pecuniary loss of the type described in such language.

3. The plaintiff cannot recover for any expense for removing the said truck, tractor and trailer from its alleged collision position.

4. The plaintiff cannot recover for wages to plaintiff's employees who were allegedly unable to perform their services due to the damaged condition of said building.

5. The plaintiff cannot recover herein for alleged loss of income to said business while said building is being repaired.

6. The plaintiff cannot recover herein for alleged additional expenses as the said damage has incurred upon your plaintiff as alleged.

7. The plaintiff cannot recover herein for alleged loss suffered by the plaintiff's business as alleged in said Count.

Attorneys for defendant Armstrong
Equipment Company, Inc., a corporation.

INGE, TWITTY, DUFFY & PRINCE

LAWYERS

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

THOS. E. TWITTY
FRANCIS H. INGE (1902-1959)
RICHARD H. INGE
THOS. E. TWITTY, JR.
JAMES J. DUFFY, JR.
SYDNEY R. PRINCE, III

MAILING ADDRESS:

P.O. BOX 1109
MOBILE, ALA.
36601

CABLE ADDRESS:

TWINING
TELEPHONE
433-5441

September 28, 1965

Mrs. Alice Duck, Clerk
Baldwin County Circuit Court
Bay Minette
Alabama

Dear Mrs. Duck:

Re: C. H. Jackson vs. Complete Auto Transit
Company, et al. At Law No. 6453

I am enclosing Answers of defendant Armstrong Equipment Company, Inc., to Interrogatories, with two copies thereof, and request that you please file the same.

Cordially yours,


T. E. TWITTY.

TET:k
encls.

INGE, TWITTY, DUFFY & PRINCE

LAWYERS

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

THOS. E. TWITTY
FRANCIS H. INGE (1902-1959)
RICHARD H. INGE
THOS. E. TWITTY, JR.
JAMES J. DUFFY, JR.
SYDNEY R. PRINCE, III

MAILING ADDRESS:

P. O. BOX 1109
MOBILE, ALA.
36601

CABLE ADDRESS:

TWINING
TELEPHONE
433-5441

September 20, 1965

Mrs. Alice Duck, Clerk
Baldwin County Circuit Court
Bay Minette
Alabama

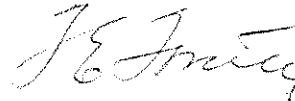
Dear Mrs. Duck:

Re: C. H. Jackson vs. Complete Auto Transit
Company, et al. At Law No. 6453.

I am enclosing the original and two copies of Motion to Strike and
Demurrer of the defendant Armstrong Equipment Company, Inc., addressed
to the Complaint, as amended, for filing and service upon opposing counsel.

With kindest regards,

Cordially,



T. E. TWITTY.

TET:k
encls.

W. H. Jackson
V2. ~~Armstrong Equipment Co.~~

JURY LIST - DECEMBER 12, 1966

1. Allen, Norman W., Farmer, Gateswood
2. Andress, Herbert E., Farmer, Foley
3. Boros, Anthony J., Farmer, Elberta
4. Cane, P. Gray, Oil Distributor, Bay Minette
5. Childress, Guy, Farmer, Robertsdale
6. Clark, Percy, Mill Worker, Stockton
7. Clay, Harris, Mechanic, Fairhope
8. Colgin, Ned, Farmer, Summerdale
9. Cooper, Grady, Farmer, Elsenor
10. Cooper, Nolan R., Merchant, Rosinton
11. Dubose, James W., Gov't Emp., Gulf Shores
12. Gable, L. Jack, Salesman, Bay Minette
13. Gipson, Leon Fisher, Mechanic, Bay Minette
14. Graham, James R., Laborer, Bay Minette
15. Grantham, Donald R., Farmer, Mag. Spgs.
16. Gwaltney, William H., Clerk, Robertsdale
17. Hottel, Thomas B., Gulf Gas Agent, Robertsdale
18. Jenkins, Marvin E., Civil Service, Stapleton
19. Jones, George, Business Operator, Daphne
20. Kane, James, Farmer, Loxley
21. Kriss, Frank, Farmer, Silverhill
22. Langer, Stanley, Machinst, Robertsdale
23. Lazzari, Joe, Jr., Farmer, Belforest
24. Lazzari, John, Farmer, Belforest
25. Mosley, Rufus, Farmer, Stapleton
26. Novoty, Milton J., Farmer, Robertsdale
27. Owen, L. D., Jr., Merchant, Bay Minette
28. Rhodes, Charles R., Farmer, Foley
29. Rhodes, Elbert M., Farmer, Summerdale
30. Rieben, Everett, Brookley, Bay Minette
31. Rieben, Ray, Paper Mill, Bay Minette
32. Roberson, Mutt, Laborer, Robertsdale
33. Robinson, Odell, Contractor, Bay Minette
34. Sedlock, Fred J., Farmer, Robertsdale
35. Sheppard, Lloyd, Farmer, Foley
36. Simon, Arthur, Farmer, Belforest
37. Smith, Columbus, Mill Worker, Stockton
38. Tread, Arthur, Attendant, Summerdale
39. Wilson, George, Airport Oper., Foley
40. Wisey, James, Clerk, Loxley
41. Wolding, Bailey, Sr., Carpenter & Bricklayer, Daphne
42. Mason, Jimmy, Salesman, Fairhope
43. Davidson, W.W., Turpentine Farmer, Bay Minette
44. Marino, Percy, Mobile Housing Board, Daphne
45. Neill, William, Farmer, Elberta
46. Bryers, Charles Henry, Jr., Farmer, Stockton
47. Childress, Wynett, Farmer, Foley
48. Cook, John D., Merchant, Monroze
49. Cooper, Charles, Farmer, Rosinton
50. Eslava, Clarence, Farmer, Mag. Spgs.
51. McLeod, George, State Emp., Gulf Shores
52. Hodgeson, William M., Jr., Manufacturer, Bay Minette
53. Lamar, Reuben, Laborer, Foley

P XXXXX XXX

D XXXXX XXV

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INGE, TWITTY, DUFFY & PRINCE

LAWYERS

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

THOS. E. TWITTY
FRANCIS H. INGE (1902-1959)
RICHARD H. INGE
THOS. E. TWITTY, JR.
JAMES J. DUFFY, JR.
SYDNEY R. PRINCE, III

MAILING ADDRESS:

P. O. BOX 1109
MOBILE, ALA.
36601

CABLE ADDRESS:

TWINING
TELEPHONE
433-5441

November 29, 1965

Mrs. Alice Duck, Clerk
Circuit Court, Baldwin County
Bay Minette, Alabama

Dear Mrs. Duck:

Re: C. H. Jackson vs. Armstrong Equipment
Co. No. 6453

I am enclosing a motion to strike and a demurrer to the complaint as last amended, which I request that you please file in behalf of the defendant, Armstrong Equipment Company, Inc.

About a month ago, we argued a demurrer to the complaint and also argued a motion of the plaintiff to compel the defendant Armstrong Equipment Company to answer certain interrogatories.

We argued that this defendant should not be required to answer interrogatories Nos. 11, 12 and 13 because the cases hold that a defendant will not be compelled to disclose the names and addresses of his witnesses, and in support of this we cited Ex Parte Nolen, 223 Ala. 213, 135 So. 337, and Montgomery Light & Railroad Co. vs. Harris, 197 Ala. 358, 72 So. 619. We also cited Sibley vs. Hutchison, 218 Ala. 440, 118 So. 638, and Section 482 of Title 7 of the Code for the proposition that interrogatories calling for hearsay testimony need not be answered.

Judge Mashburn sustained our demurrer to the complaint and the plaintiff has recently amended the complaint.

Judge Mashburn at the recent hearing took under submission the question of whether or not this defendant should be required to answer any of the interrogatories referred to above, and we presume that he has not yet had an opportunity to study the matter further and rule on it as we have not received a copy of any order on the plaintiff's said motion.

With kindest regards,

Cordially,

T. E. TWITTY.

P. S. While in court on the previous hearing, I inadvertently picked up and brought back with me our demurrer to the amended complaint which was filed with you on the 21st day of Sept., 1965. I am returning it to you herewith.

encl.

C. H. JACKSON,)	
)	
Plaintiff	)	IN THE CIRCUIT COURT OF
)	
vs.	)	BALDWIN COUNTY, ALABAMA
)	
COMPLETE AUTO TRANSIT	)	AT LAW
COMPANY, ET AL,)	
	)	NO. 6453
Defendants.)	

MOTION OF DEFENDANT ARMSTRONG
EQUIPMENT COMPANY, INC., TO STRIKE
CERTAIN PORTIONS OF THE COMPLAINT.

Comes now the defendant Armstrong Equipment Company, Inc., separately and severally, leave of Court first had and obtained, and moves to strike from Count Four of the Complaint as last amended the following allegations pertaining to alleged damages to the plaintiff, i. e.: "and plaintiff's business suffered a loss", and for separate and several grounds of motion in support of the foregoing motion to strike, this defendant assigns the following:

1. The said item of damage is not a proper element of recoverable damages under said count.
2. The plaintiff cannot recover herein for alleged loss suffered by the plaintiff's business as alleged in said count.
3. The alleged loss of business suffered by the plaintiff is a mere conclusion of the pleader.
4. The alleged loss of business is remote and speculative and is not the natural result of the alleged breach of duty in said count.

DEMURRER TO COMPLAINT AS LAST AMENDED

Comes now the defendant Armstrong Equipment Company, Inc., a corporation, separately and severally, and without waiving its foregoing Motion to Strike Certain Portions of the Complaint as last amended (but expressly insisting thereon), and demurs to the complaint therein as

last amended, and to each count thereof separately and severally, and for grounds of demurrer re-files and re-assigns each of the separate and several grounds of demurrer heretofore filed and assigned to the complaint by this defendant, and assigns the following separate and several additional grounds of demurrer, i.e.:

9. The allegation therein that an "automobile truck, tractor and trailer bearing the name, Complete Auto Transit Company, Doraville, Georgia, and operated by its agent, servant or employee, Armstrong Equipment Company, Inc., an Alabama corporation whose address is 4601 First Avenue, North, Birmingham, Alabama, in his capacity as such, at the request of Complete Auto Transit Company, said corporation acting in the line and scope of its employment" are mere conclusions of the pleader and do not sufficiently allege that the said tractor and trailer at the time and place of the matters complained of was operated by an agent or servant or employee of this defendant while acting within the line and scope of his employment as such.

10. The words appearing therein "in his capacity as such" are mere conclusions of the pleader and are not sufficient to charge that any agent, servant or employee of this defendant, while acting within the line and scope of his employment was driving or operating the said truck, tractor and trailer at the time and place complained of.

11. It is not negligence as a matter of law to operate a vehicle without brakes.

12. For aught appearing therefrom, neither this defendant nor any agent, servant or employee of this defendant, while acting within the line and scope of his employment, was guilty of any breach of duty to the plaintiff with respect to operating said vehicle at the time and place complained of in said count.

13. The allegation in said count pertaining to causal connection between the alleged breach of duty and the alleged injuries and damages

do not sufficiently charge that the alleged injuries and damages were a proximate result or consequence of the alleged breach of duty therein.

14. For aught appearing therefrom, the said truck trailer was not being operated by an agent, servant or employee of this defendant at the time and place of the matters complained of.

15. The allegation therein that an agent, servant or employee of this defendant "wilfully or wantonly damaged plaintiff's property, to-wit, said building, by running into said building with a truck, tractor and trailer" does not sufficiently allege that the said agent, servant or employee at said time and place was driving or operating the said truck, tractor and trailer.

Large Int'l. Bldg. & Equip. Co.
Attorneys for defendant Armstrong Equip-
ment Company, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this _____ day of *Nov*, 19*65*.

J.E. Martin
Attorney for *Plaintiff*
Armstrong Equipment
Company Inc.

FILED

NOV 30 1965

ALICE L. DUCK, CLERK
REGISTERED

G. H. JACKSON,	X	
Plaintiff,	X	
vs.	X	IN THE CIRCUIT COURT OF
COMPLETE AUTO TRANSIT COMPANY, a	X	
non-resident corporation, also		BALDWIN COUNTY, ALABAMA
known as COMPLETE AUTO TRANSPORT	X	
COMPANY and ARMSTRONG EQUIPMENT		
COMPANY, INC., Birmingham,	X	
Alabama, and JOHN DOE, as agent,		AT LAW NO. 6453
servant or employee of said corpora-	X	
tions or either of them,		
Defendants.	X	
	X	

DEMURRER

Comes the Defendant, Complete Auto Transit Company, and demurs to the Complaint filed in said cause as last amended and to each and every count thereof, separately and severally, and assigns the following separate and several grounds, viz:

1. That said Complaint does not state a cause of action.
2. That there is a misjoinder of parties defendant in counts 1 and 2 of said Complaint.
3. That there is a misjoinder of causes of action in counts 1 and 2 of said Complaint.
4. That count 1 of said Complaint claims damages against each named defendant and their agents, servants or employees without alleging what agent, servants or employees are being sued.
5. That count 1 of said Complaint claims damages against the agents, servants or employees of the defendants without stating the names of such agents, servants or employees.
6. That count 1 of said Complaint avers that the Armstrong Equipment Company in its corporate capacity was operating the tractor which caused the damages to the Plaintiff.

7. That count 2 of said Complaint claims damages of such defendant for the willful or wanton misconduct of another corporation without showing that this defendant corporation had properly authorized or ratified the conduct of Armstrong Equipment Company.

8. That each defendant in said Complaint is not being sued in each count of such Complaint.

9. That counts 3 and 4 of said Complaint do not claim damages of this defendant.

10. That counts 3 and 4 of said Complaint affirmatively show that this defendant is not a proper party in this suit.

FILED

DEC 2 1965

Alice J. Duck, CLERK,
REGISTER


Attorneys for Complete Auto Transit Company

6453

G. H. JACKSON,

Plaintiff,

vs.

COMPLETE AUTO TRANSIT COMPANY,
et al,

Defendants.

DEMURRER

FILED

DEC 1 1965

ALICE J. DUCK, CLERK
REGISTRAR

G. H. JACKSON

Plaintiff

vs

COMPLETE AUTO TRANSIT COMPANY, a
non-resident corporation, also
known as COMPLETE AUTO TRANSPORT
COMPANY and ARMSTRONG EQUIPMENT
COMPANY, INC., Birmingham,
Alabama, and JOHN DOE, as agent,
servant or employee of said cor-
porations or either of them

Defendants

X
X
X
X
X
X
X
X
X

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 6453

Comes your plaintiff and amends his complaint as last
amended in said cause to read as follows:

-1-

Plaintiff claims of defendants, Complete Auto Transit
Company, a non-resident corporation and Armstrong Equipment
Company, a corporation and John Doe, agent, servant or employee
of either or both, jointly and severally, Nine Thousand
(\$9,000.00) Dollars as damages for that heretofore on to-wit,
11:30 P.M. the 28th day of March, 1965, plaintiff was the owner
of an ice cream or dairy bar and sandwich drive-in business lo-
cated on plaintiff's property fifty feet from highway R/O/W on
the West side of U. S. Highway No. 31 near the intersection of
the Perdido road about 12 miles from Bay Minette in Baldwin
County, Alabama, at which time and place an automobile truck
tractor and trailer bearing the name, Complete Auto Transit
Company, Doraville, Georgia, and operated by its agent, servant
or employee, Armstrong Equipment Company, Inc., an Alabama
corporation whose address is 4601 First Avenue, North, Birmingham,
Alabama, in its capacity as such, at the request of Complete
Auto Transit Company, said corporation acting in the line and
scope of its employment, while operating the said automobile
truck tractor and trailer of Complete Auto Transit Company,
negligently operated said vehicle without brakes and as a
proximate consequence thereof, crashed said truck tractor
and trailer into the building structure of the said plaintiff
noted herein, which building was greatly damaged, and as a
proximate consequence thereof, said plaintiff was put to
great expense for removing the said truck tractor and trailer

from its collision position within and without the said building; damaging said building greatly in that the walls, roof and supporting structures were damaged, hence this suit.

-2-

Plaintiff claims of defendants, Complete Auto Transit Company, a non-resident corporation and Armstrong Equipment Company, a corporation, jointly and severally, the sum of Nine Thousand Dollars (\$9,000.00) for that plaintiff avers that, on to-wit: about 11:30 P.M. 28th day of March, 1965, plaintiff was the owner of a building housing a milk or dairy bar and sandwich shop drive-in, situate on his individually owned real property fifty feet from the highway R/O/W on the West side of Highway 31 near the intersection of the Perdido paved road turn-off, and about 12 miles from the City of Bay Minette in Baldwin County, Alabama, and on to-wit, 11:30 P.M. 28th day of March, 1965, at the request of defendant, Complete Auto Transit Company, defendant Armstrong Equipment Company as the agent, servant or employee of said corporation, while acting within the line or scope of its employment, with reckless disregard to consequence, being conscious at that time that its conduct in so doing would probably result in disaster, wilfully or wantonly damaged plaintiff's property, to-wit, said building by wilfully and wantonly running a truck tractor and trailer into said building and as the proximate result and consequence of said wilful or wanton conduct, plaintiff's building was severely damaged and for all of which he claims damages in the sum aforesaid.

-3-

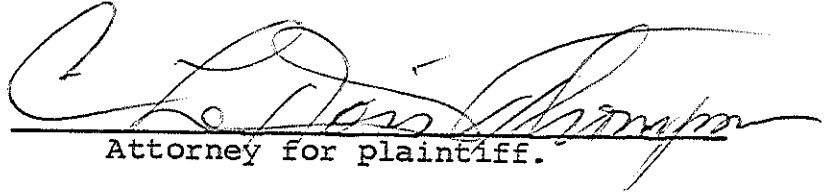
Plaintiff claims of the defendants Armstrong Equipment Company, Inc., its agents, servants or employees and John Doe, jointly and severally Nine Thousand (\$9,000.00) Dollars as damages for that heretofore on to-wit, 11:30 P.M. the 28th day of March, 1965, plaintiff was the owner of an ice cream or dairy bar and sandwich drive-in business located on plaintiff's property fifty feet from highway R/O/W on the West side of U. S. Highway No. 31 near the

intersection of the Perdido Road about 12 miles from Bay Minette in Baldwin County, Alabama, at which time and place an automobile truck tractor and trailer bearing the name, Complete Auto Transit Company, Doraville, Georgia, and operated by an agent, servant or employee of Armstrong Equipment Company, Inc., an Alabama corporation whose address is 4601 First Avenue, North, Birmingham, Alabama, in his capacity as such, while operating the said automobile truck tractor and trailer of Complete Transit Company, a non-resident corporation, negligently operated said vehicle without brakes and as a proximate consequence thereof, crashed said truck tractor and trailer into the building structure of the said plaintiff noted herein, which was greatly damaged and as a proximate consequence thereof, said plaintiff was put to great expense for removing said truck tractor and trailer from its collision position within and without the said building, and for damages to said building.

-4-

Plaintiff claims of the defendants Armstrong Equipment Company, Inc., and John Doe, jointly and severally, the sum of Nine Thousand Dollars (\$9,000.00) for that plaintiff avers that, on to-wit: about 11:30 P.M. 28th day of March, 1965, plaintiff was the owner of a building housing a milk or dairy bar and sandwich shop drive-in, situate on his individually owned real property fifty feet from the highway R/O/W on the West side of Highway 31 near the intersection of the Perdido paved road turn-off and about 12 miles from the City of Bay Minette in Baldwin County, Alabama, and on to-wit, 11:30 P.M. 28th day of March, 1965, defendant Armstrong Equipment Company's agent, servant or employee, while acting within the line or scope of his employment, with reckless disregard to the consequence, being conscious at that time that his conduct in so doing would probably result in disaster, wilfully or wantonly damaged plaintiff's property, to-wit, said building by running into said building with a truck tractor and trailer and as the proximate result and consequence of said wilful or wanton conduct, plaintiff's building was

severely damaged, for all of which he claims damages in the sum aforesaid.


Attorney for plaintiff.

I hereby certify that I have this day forwarded U. S. Postage prepaid a copy of the foregoing complaint as last amended to Honorable John Chason, attorney for Complete Auto Transit Company and to Honorable Thomas Twitty, attorney for Armstrong Equipment Company at their proper addresses.


Attorney for plaintiff

FILED
DEC 18 1965
ALICE I. DUCK, CLERK
REGISTER

G. H. JACKSON

PLAINTIFF

VS.

COMPLETE AUTO TRANSPORT
COMPANY, a non-resident
corporation of Dadeville,
Georgia,

DEFENDANT

I IN THE CIRCUIT COURT OF

I BALDWIN COUNTY, ALABAMA

I LAW SIDE

I

I

REPLEVY BOND

KNOW ALL MEN BY THESE PRESENTS that we, Complete Auto Transit, Inc., a non-resident corporation of Michigan, who is being sued in the above styled cause as Complete Auto Transport Company, a non-resident corporation of Dadeville, Georgia, as Principal, and the undersigned as Surety, are held and firmly bound unto G. H. Jackson in the sum of Eighteen Thousand Dollars (\$18,000.00) for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our successors and assigns.

Sealed with our seals and dated this 8th day of April, 1965.

THE CONDITIONS OF THE ABOVE OBLIGATION ARE SUCH that whereas a Writ of Attachment was issued by Alice J. Duck as Clerk of the Circuit Court of Baldwin County, Alabama, at the suit of the above named G. H. Jackson against the estate of the above named Complete Auto Transit, Inc., a non-resident corporation of Michigan, returnable before the next term of the Circuit Court of Baldwin County, Alabama, for the sum of Nine Thousand Dollars (\$9,000.00), which has been placed in the hands of Taylor Wilkins as Sheriff of Baldwin County, Alabama, and has been levied by him upon the following personal property, to-wit: A Transport Truck and Trailer, Equipment Truck No. 1437, Trailer No. 1607 with Truck Tag No. GA 8J 440; Trailer Tag No. GA 22 917.

And whereas the property has been delivered to the Complete Auto Transit, Inc., a non-resident corporation of Michigan, upon its entering into this bond.

NOW, THEREFORE, if the Defendant shall fail in said action, it or its surety shall return the specific property attached and above-mentioned, to the said Sheriff, within 10 days after judgment against said Defendant in this suit, then this obligation shall be void, otherwise to remain in full force and effect.

COMPLETE AUTO TRANSIT, INC.
a Corporation

BY: *E. G. Rieff* (SEAL)
As Its Vice-President

COUNTERSIGNED AT *Mobile, Ala.*
By *Thomas S. Haney*
Resident Agent

THE AMERICAN INSURANCE COMPANY
BY: *H. R. Aldred* (SEAL)
As Its Attorney in Fact

Taken and approved
this the *9th* day
of April, 1965.

L. O. Wilkins
Sheriff of Baldwin County, Alabama

THE AMERICAN INSURANCE COMPANY

NEWARK, NEW JERSEY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That THE AMERICAN INSURANCE COMPANY, a corporation of New Jersey, does hereby make, constitute and appoint

Cecil A. Pool, D. V. Wyckoff, George Whiting, H. R. Oldroyd and Jack Meagher,
all of Atlanta, Georgia, EACH

its true and lawful Attorney(s)-in-Fact, with full power and authority, for and on behalf of the Company as surety, to execute and affix the seal of the Company thereto, if a seal is required, and deliver

Any and all bonds, undertakings, recognizances or
other written obligations in the nature thereof

and the execution of such bonds or undertakings in pursuance of these presents shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Newark, New Jersey, in their own proper persons.

This appointment is made under and by authority of a certain Instrument of Authority and pursuant to Article VIII, Sections 30 and 31 of the By-Laws of the Company, shown on the reverse side hereof, which Instrument of Authority and by-laws are now in full force and effect.

IN WITNESS WHEREOF, THE AMERICAN INSURANCE COMPANY has caused these presents to be signed and its corporate seal to be hereunto affixed on September 16, 1964

THE AMERICAN INSURANCE COMPANY

BY

(CORPORATE SEAL)

ROBERT R. SCOTT
Secretary

State of New Jersey, }
County of Essex } ss:

On September 16, 1964, before me appeared the above-named officer of THE AMERICAN INSURANCE COMPANY, to me personally known, who, being by me duly sworn, did say that he is the individual and officer described in and who executed the preceding instrument, and that the seal affixed to said instrument is the corporate seal of said Company, and that said instrument was signed and sealed on behalf of said Company by authority and direction of said Company, and the said officer acknowledged said instrument to be the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

(SIGNED)
(SEAL)

My Commission Expires June 28, 1966

TERESA S. FARINA
Notary Public of New Jersey

CERTIFICATE

State of New Jersey, }
County of Essex } ss:

I, PHILIP B. SHEFFER, Resident Assistant Secretary of THE AMERICAN INSURANCE COMPANY, a corporation of New Jersey, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by a Secretary of the said 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 on April 8, 1965

Philip B. Sheffer
Resident Assistant Secretary

ARTICLE VIII

Appointment and Authority of Resident Assistant Secretaries, and Attorneys-in-Fact, and Agents to Accept Legal Process and Make Appearances.

Section 30. **Appointment.** The Chairman of the Board of Directors, the President, any Vice President or any other person authorized by the Board of Directors, the Chairman of the Board of Directors, the President or any Vice President, may, from time to time, appoint Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Corporation and Agents to accept legal process and make appearances for and on behalf of the Corporation.

Section 31. **Authority.** The authority of such Resident Assistant Secretaries, Attorneys-in-Fact, and Agents shall be as prescribed in the instrument evidencing their appointment, and any such appointment and all authority granted thereby may be revoked at any time by the Board of Directors or by any person empowered to make such appointment.

INSTRUMENT OF AUTHORITY

KNOW ALL MEN BY THESE PRESENTS: that ROBERT R. SCOTT, Secretary of THE AMERICAN INSURANCE COMPANY, is hereby vested with full power and authority to appoint and revoke Resident Assistant Secretaries and Attorneys-in-Fact of this Corporation and Agents to accept process and make appearances for and on behalf of this Corporation under and pursuant to Article VIII, Sections 30 and 31, of the By-laws of this Corporation.

THE AMERICAN INSURANCE COMPANY

By WILLIAM W. LAUBER
Vice President

6453

G. H. JACKSON,
Plaintiff,

-VS-

COMPLETE AUTO TRANSPORT CO.,
a non-resident corporation
of Dadeville, Georgia,
Defendant.

REPLEVY BOND

CHASON, STONE & CHASON
ATTORNEYS AT LAW
P. O. Box 120
BAY MINETTE, ALABAMA

THE STATE OF ALABAMA {
Baldwin County }

CIRCUIT COURT AT BAY MINETTE, ALA.

KNOW ALL MEN BY THESE PRESENTS, That We, _____

_____, of the County of Baldwin _____

are held and firmly bound unto _____

in the sum of _____ Dollars, to

be paid to the said _____

heirs, executors, administrators, or assigns, for which payment, well and truly to be made, we bind our-
selves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly
by these presents.

Sealed with our seals and dated the _____ day of _____, 19 ____

The Condition of this Obligation is such:

That whereas, the above bounden _____

_____ ha____, on the day of the date

hereof, prayed an Attachment at the suit of _____

_____ against the estate of above named

for the sum of _____ Dollars,
and hath obtained the same, returnable to the Circuit Court of Baldwin County:

Now, if the said _____

should prosecute said Attachment to effect, and pay the said Defendant all such damages as _____
may sustain by the wrongful or vexatious suing out said Attachment, then the above obligation to be
void; otherwise to remain in full force and effect.

And we and each of us hereby waive all rights of claims of exemption we or either of us have now,
or may hereafter have, under the Constitution and Laws of the State of Alabama.

Signed, Sealed, and delivered the date above written.

_____. (Seal)

_____. (Seal)

_____. (Seal)

_____. (Seal)

Approved, this _____ day of _____, 19 ____

_____, Clerk

THE STATE OF ALABAMA }
Baldwin County }

CIRCUIT COURT AT BAY MINETTE, ALABAMA

Before me, -----

in and for said County, personally appeared G. H. Jackson -----

who, being duly sworn, on oath saith that Complete Auto Transport Co., a non-resident
corporation of Dadeville, Georgia ----- justly indebted to

G. H. Jackson -----in the sum of Nine Thousand (\$9,000.00) ----- Dollars,

which said amount is justly due after allowing all just offsets and discounts, and that the said Complete
Auto Transport Co., a non-resident corporation of Dadeville, Ga., is
alleged to be the owner of an automobile transport truck and trailer
rig which crashed into the Dairy Bar of the complainant on to-wit,
28 day of March, 1965, doing great damage in the amount of \$9,000.00

and that this Attachment is not sued out for the purpose of vexing or harassing the Defendant, or other
improper motive.

Subscribed and sworn to before me this 29 day of March, 1965

No. 64573 Page -----

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

At Bay Minette, Ala.

TO

ATTACHMENT BOND AND AFFIDAVIT

Filed this the ----- day

of -----, 19 --

-----, Clerk

-----, Attorney

THE STATE OF ALABAMA,
Baldwin County.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

WHEREAS, G. H. Jackson

hath complained on oath to me, ALICE J. DUCK, Clerk of Circuit Court of Baldwin County, Ala., that
Complete Auto Transport Company, a non-resident corporation of
Dadeville, Georgia

is justly indebted to the Plaintiff G. H. Jackson

in the sum of Nine Thousand (\$9,000.00) ----- Dollars, and

G. H. Jackson having made affidavit and given bond
as required by law, in such cases, you are hereby commanded to attach so much of the estate of
Complete Auto Transport Company, a non-resident corporation of
Dadeville, Georgia, to-wit, automobile transport truck and trailer
equipment truck No. 1437, trailer No. 1607 with truck tag Ga. 8J440
trailer tag Ga. 22917

as will be of value sufficient to satisfy said debt and costs, according to the complaint; and such estate, so
attached unless replevied, so to secure, that the same may be liable to further proceedings thereon to be
had by the Circuit Court of Baldwin County, Ala., at a term thereof, to be held at the Court House of said
County, on ----- Monday of ----- 19 -----
next; when and where you must make known to said Court how you have executed this Writ.

WITNESS, my hand, this 29 day of March A. D., 1965.

Alice J. Duck Clerk.

Executed
Mar 29, 1965

RECEIVED

MAR 29 1965

TAYLOR WILKINS
SHERIFF

Paul L. Rutledge

Received _____ day of _____ 19____

on 29 day of March 1965

I received a copy of the within Attachment

Complete Auto Transport

to Paul L. Rutledge

by service on Driver of Truck

TAYLOR WILKINS, Sheriff

By W. A. Tolbert D. S.

Perdido
at Jackson Ser. Station

Sheriff claims 26 miles at Attaching 1 transport

Ten Cents per mile Total \$ 2.60

TAYLOR WILKINS, Sheriff

BY W. A. Tolbert
DEPUTY SHERIFF

Attachment

No. 6453

ATTACHMENT

H. J. Jackson

Vs. } ATTACHMENT

Complete Auto Transport

Issued 3-29, 1965

Moore Printing Co.

Truck and Trailer
Equipment truck #1437

Trailer #1607 with

Truck tag # Ga 85440

Trailer tag # Ga 22917

G. H. JACKSON,

Plaintiff,

vs.

COMPLETE AUTO TRANSPORT
COMPANY, a non-resident
corporation of Dadeville,
Georgia,

Defendant.

X

X

X

X

X

X

X

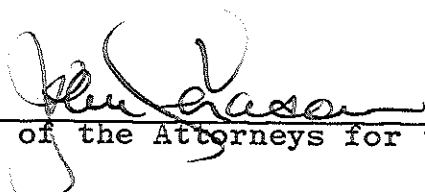
IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE

Comes the Defendant in the above styled cause, acting by
and through John Chason of the firm of Chason, Stone & Chason,
Bay Minette, Alabama, as its attorney, and makes this, its
unqualified appearance in the above styled cause and submits
itself to the jurisdiction of said court.

Dated this the 30th day of March, 1965.


As One of the Attorneys for the Defendant

6453

G. H. JACKSON,
Plaintiff,

-VS-

COMPLETE AUTO TRANSPORT COMPANY,
a non-resident corporation
of Dadeville, Georgia

Defendant.

UNQUALIFIED APPEARANCE

FILED
MAY 20 1965
JAMES E. DODD, CLERK
RECEIVED

G. H. JACKSON,

Plaintiff,

vs.

COMPLETE AUTO TRANSPORT
COMPANY, a non-resident
corporation of Dadeville,
Georgia,

Defendant.

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

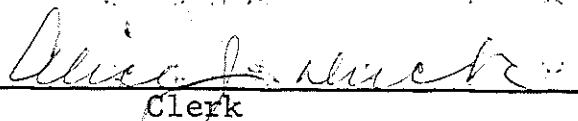
LAW SIDE

TO: G. H. JACKSON, PLAINTIFF IN SAID CAUSE.

You are hereby notified that Complete Auto Transport Company, a non-resident corporation of Dadeville, Georgia, has this day made an unqualified appearance in the above styled cause.

You are further notified that the attachment which you have had issued in said cause on the grounds that the Defendant is a non-resident of the State of Alabama, will be discharged unless, within 5 days after the service of this notice you make bond payable to the Defendant in double the amount sued for.

WITNESS my hand and seal as Clerk of the Circuit Court of Baldwin County, Alabama, on this the 30th day of March, 1965.


Clerk

I, LeNoir Thompson, as attorney for the Plaintiff in the above styled cause do hereby accept service of a copy of the above and foregoing notice and a copy of the unqualified appearance filed by the Defendant in said cause and I, as attorney for such Plaintiff, do hereby waive further service or notice of the same.

Dated this 30th day of March, 1965.


Attorney for Plaintiff

G. H. JACKSON,
Plaintiff,

-vs-

COMPLETE AUTO TRANSPORT COMPANY,
a non-resident corporation
of Dadeville, Georgia,
Defendant.

NOTICE

FILED

MAR 30 1985

Alice J. Duck, CLERK
REGISTER

THE STATE OF ALABAMA }
 Baldwin County }

CIRCUIT COURT AT BAY MINETTE, ALA.

KNOW ALL MEN BY THESE PRESENTS, That We, G. H. Jackson and

....., of the County of Baldwin State of Alabama

are held and firmly bound unto Complete Auto Transport Company

in the sum of Eighteen Thousand (\$18,000.00)

be paid to the said Complete Auto Transport Company

heirs, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the day of, 19

The Condition of this Obligation is such:

That whereas, the above bounden G. H. Jackson

..... has, on the day of the date

hereof, prayed an Attachment at the suit of G. H. Jackson

..... against the estate of above named

Complete Auto Transport Company

for the sum of Nine Thousand (\$9,000.00)

and hath obtained the same, returnable to the Circuit Court of Baldwin County:

Now, if the said G. H. Jackson

should prosecute said Attachment to effect, and pay the said Defendant all such damages as he may sustain by the wrongful or vexatious suing out said Attachment, then the above obligation to be void; otherwise to remain in full force and effect.

And we and each of us hereby waive all rights of claims of exemption we or either of us have now, or may hereafter have, under the Constitution and Laws of the State of Alabama.

Signed, Sealed, and delivered the date above written.

George H. Jackson (Seal)

Carlton H. Bryant (Seal)

London W. Matthews (Seal)

..... (Seal)

Approved, this 5 day of April, 19 45

Alice J. Smith Clerk

THE STATE OF ALABAMA }
Baldwin County

CIRCUIT COURT AT BAY MINETTE, ALABAMA

Before me, _____
in and for said County, personally appeared _____
who, being duly sworn, on oath saith that _____
_____ justly indebted to

_____ in the sum of _____ Dollars,
which said amount is justly due after allowing all just offsets and discounts, and that the said _____

_____ and that this Attachment is not sued out for the purpose of vexing or harassing the Defendant, or other improper motive.

Subscribed and sworn to before me this _____ day of _____, 19____

No. 6463	Page _____
STATE OF ALABAMA Baldwin County	
CIRCUIT COURT At Bay Minette, Ala.	
TO	
ATTACHMENT BOND AND AFFIDAVIT	
Filed this the _____ day	of _____, 19 ____
Clerk	Attorney

G. H. JACKSON

Plaintiff

vs

COMPLETE AUTO TRANSIT COMPANY, a
non-resident corporation, also
known as COMPLETE AUTO TRANSPORT
COMPANY and ARMSTRONG EQUIPMENT
COMPANY, INC., Birmingham, Alabama,
and JOHN DOE, as agent, servant or
employee of said corporations or
either of them.

Defendants

X

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. _____

-1-

Plaintiff claims of the defendants jointly and severally, their agents, servants or employees, Nine Thousand (\$9,000.00) Dollars as damages for that heretofore on to-wit, 11:30 P.M. the 28th day of March, 1965, plaintiff was the owner of an ice cream or dairy bar and sandwich drive-in business located on plaintiff's property fifty feet from highway R/O/W on the West side of U. S. Highway No. 31 near the intersection of the Perdido road about 12 miles from Bay Minette in Baldwin County, Alabama, at which time and place an automobile truck tractor and trailer bearing the name, Complete Auto Transit Company, Doraville, Georgia, and operated by an agent, servant or employee of Armstrong Equipment Company, Inc., an Alabama corporation whose address is 4601 First Avenue, North, Birmingham, Alabama, in his capacity as such, while operating the said automobile truck tractor and trailer of one of the defendants negligently operated said vehicle without brakes and as a proximate consequence thereof, crashed said truck tractor and trailer in to the building structure of the said plaintiff noted herein, which was greatly damaged and as a proximate consequence thereof, said plaintiff was put to great expense for removing the said truck tractor and trailer from its collision position within and without the said building, and for repairs to said building and for wages to said plaintiff's employees who were unable to perform their services due to the damaged condition of said building; and for loss of income to said business while said building is being repaired and to such additional expenses

as the said damage has incurred upon your plaintiff.

-2-

Plaintiff claims of the defendants jointly and severally, the sum of Nine Thousand Dollars (\$9,000.00) for that plaintiff avers that, on to-wit: about 11:30 P.M. 28th day of March, 1965, plaintiff was the owner of a building housing a milk or dairy bar and sandwich shop drive-in, situate on his individually owned real property fifty feet from the highway R/O/W on the West side of Highway 31 near the intersection of the Perdido paved road turn off and about 12 miles from the City of Bay Minette in Baldwin County, Alabama, and on to-wit, 11:30 P.M. 28th day of March, 1965, defendants' agent, servant or employee, while acting within the line or scope of his employment, with reckless disregard to consequence, being conscious at that time that his conduct in so doing would probably result in disaster, wilfully or wantonly damaged plaintiff's property, to-wit, said building by running into said building with a truck tractor and trailer and as the proximate result and consequence of said wilful or wanton conduct, plaintiff's building was severely damaged and plaintiff's business suffered a loss; for all of which he claims damages in the sum aforesaid.


Attorney for plaintiff.

As attorney for Complete Auto Transit Company, I hereby acknowledge service of the foregoing complaint for said defendant.



FILED
APR 18 1965
ALICE L. DUCK, CLERK
REGISTER

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court, Baldwin County

No. 6453

.....TERM. 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Complete Auto Transit Co., a non-resident corporation, also known as Complete Auto Transport Co., and Armstrong Equipment Co., Inc., Birmingham, Alabama, and John Doe, as agent, servant or employee of said corporations or either of them.

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed

in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against Complete Auto Transit Co., a non-resident corp., also known as Complete Auto Transport Co., and Armstrong Equipment Co., Inc., Birmingham, Ala, and John Doe, as agent, servant or employee of said corporations or either of them. Defendant.....

by G. H. JACKSON

Plaintiff.....

Witness my hand this 13 day of April 1965

Alvin Jackson Clerk

Executed
Apr. 15, 1965

No. 6453

Page.....

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

G. H. JACKSON

Plaintiffs

vs.

Complete Auto Transit Service

Defendants

SUMMONS AND COMPLAINT

Filed 4-13 1965

Clerk

Reice French
To: Armstrong Equipment Co.
4601-1st ave, no.
B'ham

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

April 13 1965

Executed this the 15 day of April 1965

I have executed this summons
on Armstrong Equipment
this 15 day of April 1965
by leaving a copy with

leaving a copy of with Harvey Mountfield agt.

of said co

MELVIN BAILEY, Sheriff
Jefferson County, Alabama

By G. F. Riddle, D.S.

Melvin Bailey, Sheriff of
Jefferson County, Alabama,
claims \$1.50 each for serving

1.50 process(es) and \$1.00
travel expense on each of

1.00 process(es) or a total of

\$ 2.50
G. F. Riddle
Deputy Sheriff.

Sheriff

Deputy Sheriff

4

G. H. JACKSON,	X	
Plaintiff,	X	
vs.	X	IN THE CIRCUIT COURT OF
		BALDWIN COUNTY, ALABAMA
COMPLETE AUTO TRANSIT COMPANY,	X	
a non-resident corporation,		AT LAW
also known as COMPLETE AUTO	X	NO. _____
TRANSPORT COMPANY and ARMSTRONG		
EQUIPMENT COMPANY, INC., Birm-	X	
ingham, Alabama, and JOHN DOE,		
as agent, servant or employee	X	
of said corporations or either		
of them.	X	
Defendants.	X	

DEMURRER

Comes the Defendant, Complete Auto Transit Company, a non-resident corporation, and demurs to the Complaint filed in the above styled cause and each and every count thereof, separately and severally, and assigns the following separate and several grounds, viz:

1. That said Complaint does not state a cause of action against such Defendant.
2. That said Complaint does not show any duty owing by such Defendant to the Plaintiff.
3. That said Complaint is vague and indefinite.
4. That Count 1 of said Complaint claims damages of such Defendant and its agents, servants or employees without stating which agents, servants or employees are being sued.
5. That Count 1 of said Complaint fails to give the names of the agents, servants or employees of whom the Plaintiff claims damages.
6. That Count 1 of said Complaint affirmatively shows that the vehicle which caused the damage which is the basis of this

suit was then and there being operated by an agent, servant or employee of the other Defendant and that such operator was not the agent, servant or employee of Complete Auto Transit Company.

7. For aught that appears in Count 1 of the Complaint the motor vehicle which was owned by Complete Auto Transit Company was, at the time of the accident, being operated by someone without the knowledge or consent of such Defendant.

8. That Count 1 of the Complaint claims speculative damages.


9. That Count 1 of the Complaint claims damages for additional expenses without stating what additional expenses were referred to.

10. That Count 2 of the Complaint does not give the name of the agent, servant or employee who it is alleged caused the accident and fails to state which of the Defendants herein sued employed such agent, servant or employee.


11. That Count 2 of the Complaint does not allege that such Defendant willfully or wantonly injured the Plaintiff.

12. That Count 2 of the Complaint does not allege which Defendant's motor vehicle was driven into Plaintiff's building.

13. That Count 2 of the Complaint does not allege how or in what manner the Plaintiff's business suffered a loss.


Attorney for Defendant, Complete
Auto Transit Company

Defendant, Complete Auto
Transit Company, demands
trial of this cause by jury.


Attorney for Complete Auto Transit
Company

FILED
APR 16 1935
HALL I. MARK

G. H. JACKSON,
Plaintiff,

-vs-

COMPLETE AUTO TRANSIT
COMPANY, et al.,
Defendants.

DEMURRER

FILED

APR 16 1965

WILLIAM L. DUCK, CLERK
REGISTER

G. H. JACKSON

Plaintiff

vs

COMPLETE AUTO TRANSIT COMPANY, a
non-resident corporation, also
known as COMPLETE AUTO TRANSPORT
COMPANY and ARMSTRONG EQUIPMENT
COMPANY, INC., Birmingham,
Alabama, and JOHN DOE, as agent,
servant or employee of said corpora-
tions or either of them

Defendants

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 6453

Comes your plaintiff and amends his complaint as last
amended in said cause to read as follows:

-1-

Plaintiff claims of the defendants jointly and severally,
their agents, servants or employees, Nine Thousand (\$9,000.00)
Dollars as damages for that heretofore on to-wit, 11:30 P.M.
the 28th day of March, 1965, plaintiff was the owner of an
ice cream or dairy bar and sandwich drive-in business located
on plaintiff's property fifty feet from highway R/O/W on the
West side of U. S. Highway No. 31 near the intersection of the
Perdido road about 12 miles from Bay Minette in Baldwin County,
Alabama, at which time and place an automobile truck tractor
and trailer bearing the name, Complete Auto Transit Company,
Doraville, Georgia, and operated by its agent, servant or
employee, Armstrong Equipment Company, Inc., an Alabama corpora-
tion whose address is 4601 First Avenue, North, Birmingham,
Alabama, in his capacity as such, at the request of Complete
Auto Transit Company, said corporation acting in the line and
scope of its employment, while operating the said automobile
truck tractor and trailer of Complete Auto Transit Company,
negligently operated said vehicle without brakes and as a
proximate consequence thereof, crashed said truck tractor
and trailer in to the building structure of the said plaintiff
noted herein, which building was greatly damaged, and as a

proximate consequence thereof, said plaintiff was put to great expense for removing the said truck tractor and trailer from its collision position within and without the said building; damaging said building greatly in that the walls, roof and supporting structures were damaged, hence this suit.

-2-

Plaintiff claims of the defendants jointly and severally, the sum of Nine Thousand Dollars (\$9,000.00) for that plaintiff avers that, on to-wit: about 11:30 P.M. 28th day of March, 1965, plaintiff was the owner of a building housing a milk or dairy bar and sandwich shop drive-in, situate on his individually owned real property fifty feet from the highway R/O/W on the West side of Highway 31 near the intersection of the Perdido paved road turn off and about 12 miles from the City of Bay Minette in Baldwin County, Alabama, and on to-wit, 11:30 P.M. 28th day of March, 1965, at the request of defendant, Complete Auto Transit Company or its agent, servant or employee, acting in the line and scope of his employment, defendant Armstrong Equipment Company, while acting within the line or scope of its employment, with reckless disregard to consequence, being conscious at that time that its conduct in so doing would probably result in disaster, wilfully or wantonly damaged plaintiff's property, to-wit, said building by wilfully and wantonly running a truck tractor and trailer into said building and as the proximate result and consequence of said wilful or wanton conduct, plaintiff's building was severely damaged and for all of which he claims damages in the sum aforesaid.

-3-

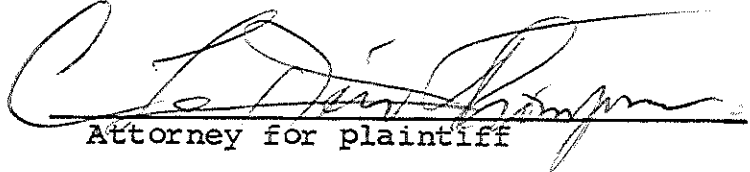
Plaintiff claims of the defendants Armstrong Equipment Company, Inc., its agents, servants or employees and John Doe, jointly and severally Nine Thousand (\$9,000.00) Dollars as damages for that heretofore on to-wit, 11:30 P.M. the 28th day of March, 1965, plaintiff was the owner of an ice cream or dairy bar and sandwich drive-in business located on plaintiff's property fifty feet from highway R/O/W on the West side of U. S. Highway No. 31 near the

intersection of the Perdido Road about 12 miles from Bay Minette in Baldwin County, Alabama, at which time and place an automobile truck tractor and trailer bearing the name, Complete Auto Transit Company, Doraville, Georgia, and operated by an agent, servant or employee of Armstrong Equipment Company, Inc., an Alabama corporation whose address is 4601 First Avenue, North, Birmingham, Alabama, in his capacity as such, while operating the said automobile truck tractor and trailer of one of the defendants negligently operated said vehicle without brakes and as a proximate consequence thereof, crashed said truck tractor and trailer in to the building structure of the said plaintiff noted herein, which was greatly damaged and as a proximate consequence thereof, said plaintiff was put to great expense for removing said truck tractor and trailer from its collision position within and without the said building, and for repairs to said building.

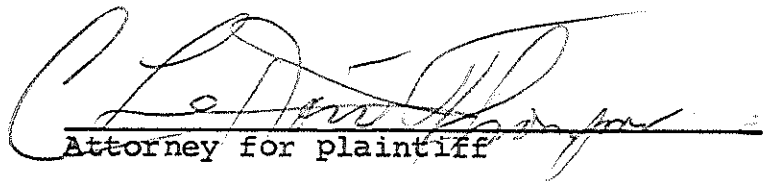
-4-

Plaintiff claims of the defendants Armstrong Equipment Company, Inc., and John Doe, jointly and severally, the sum of Nine Thousand Dollars (\$9,000.00) for that plaintiff avers that, on to-wit: about 11:30 P.M. 28th day of March, 1965, plaintiff was the owner of a building housing a milk or dairy bar and sandwich shop drive-in, situate on his individually owned real property fifty feet from the highway R/O/W on the West side of Highway 31 near the intersection of the Perdido paved road turn off and about 12 miles from the City of Bay Minette in Baldwin County, Alabama, and on to-wit, 11:30 P.M. 28th day of March, 1965, defendant Armstrong Equipment Company's agent, servant or employee, while acting within the line or scope of his employment, with reckless disregard to the consequence, being conscious at that time that his conduct in so doing would probably result in disaster, wilfully or wantonly damaged plaintiff's property, to-wit, said building by running into said building with a truck tractor and trailer and as the proximate result and consequence of said wilful or wanton conduct, plaintiff's building was

severely damaged and plaintiff's business suffered a loss;
for all of which he claims damages in the sum aforesaid.


Attorney for plaintiff

I hereby certify that I have this day forwarded U. S.
Postage prepaid a copy of the foregoing complaint as last
amended to Honorable John Chason, attorney for Complete
Auto Transit Company and to Honorable Thomas Twitty, attorney
for Armstrong Equipment Company at their proper addresses.


Attorney for plaintiff

FILED

NOV 24 1965

ALICE J. DUCK, CLERK
REGISTER

G. H. JACKSON,)	
Plaintiff	)	IN THE CIRCUIT COURT
vs.	)	OF BALDWIN COUNTY,
COMPLETE AUTO TRANSIT COMPANY,	)	ALABAMA.
a corporation, also known as COMPLETE)	
AUTO TRANSPORT COMPANY, and	)	AT LAW NO. 6453
ARMSTRONG EQUIPMENT COMPANY,)	
INC., a corporation,)	
Defendants)	

MOTION BY DEFENDANT ARMSTRONG EQUIPMENT
COMPANY, INC. TO STRIKE CERTAIN PORTIONS OF
THE COMPLAINT.

Comes now Armstrong Equipment Company, Inc., a corporation, separately and severally, and moves to strike certain portions of each Count of the Complaint, said portions being stated separately and severally as follows:

(a) The allegation that "said plaintiff was put to great expense for removing the said truck, tractor and trailer from its collision position within and without the said building".

(b) "For wages to said plaintiff's employees who are unable to perform their services due to the damaged condition of said building."

(c) "For loss of income to said business while said building is being repaired. "

(d) "And to such additional expense as the said damage has incurred upon your plaintiff. "

(e) "And plaintiff's business suffered a loss" occurring in Count Two.

And for separate and several grounds of motion in support of the foregoing Motion to Strike each of the foregoing separate and several portions of each of said Counts, this defendant assigns the following:

1. The said item of damage is not a proper element of recoverable

damage under said Count.

2. The plaintiff in said Count cannot recover for any expense or pecuniary loss of the type described in such language.

3. The plaintiff cannot recover for any expense for removing the said truck, tractor and trailer from its alleged collision position.

4. The plaintiff cannot recover for wages to plaintiff's employees who were allegedly unable to perform their services due to the damaged condition of said building.

5. The plaintiff cannot recover herein for alleged loss of income to said business while said building is being repaired.

6. The plaintiff cannot recover herein for alleged additional expenses as the said damage has incurred upon your plaintiff as alleged.

7. The plaintiff cannot recover herein for alleged loss suffered by the plaintiff's business as alleged in said Count.

Thomas E. McIntyre
George McIntyre, D. Hyatt Prince
Attorneys for defendant Armstrong
Equipment Company, Inc., a corporation.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 4 day of May, 1965.

J. E. McIntyre
Attorney for *Said defendant.*

FILED
MAY 5 1965
ALICE L. DUCK, CLERK
REGISTER

Amended

G. H. JACKSON	X	
Plaintiff	X	
VS	X	IN THE CIRCUIT COURT OF
		BALDWIN COUNTY, ALABAMA
COMPLETE AUTO TRANSIT COMPANY, a	X	
non-resident corporation, also	X	AT LAW NO. <u>6450</u>
known as COMPLETE AUTO TRANSPORT	X	
COMPANY and ARMSTRONG EQUIPMENT	X	
COMPANY, INC., Birmingham, Alabama,	X	
and JOHN DOE, as agent, servant or	X	
employee of said corporations or	X	
either of them	X	
Defendants	X	

Comes your plaintiff and amends his complaint heretofore
filed in said cause to read as follows:

-1-

Plaintiff claims of the defendants jointly and severally,
their agents, servants or employees, Nine Thousand (\$9,000.00)
Dollars as damages for that heretofore on to-wit, 11:30 P.M.
the 28th day of March, 1965, plaintiff was the owner of an
ice cream or dairy bar and sandwich drive-in business located
on plaintiff's property fifty feet from highway R/O/W on the
West side of U. S. Highway No. 31 near the intersection of the
Perdido road about 12 miles from Bay Minette in Baldwin County,
Alabama, at which time and place an automobile truck tractor
and trailer bearing the name, Complete Auto Transit Company,
Doraville, Georgia, and operated by an agent, servant or employee
of Armstrong Equipment Company, Inc., an Alabama corporation
whose address is 4601 First Avenue, North, Birmingham, Alabama,
in his capacity as such, at the request of Complete Auto Transit
Company, its agent, servant or employee acting in the line and
scope of his employment, while operating the said automobile
truck tractor and trailer of one of the defendants negligently
operated said vehicle without brakes and as a proximate con-
sequence thereof, crashed said truck tractor and trailer in to
the building structure of the said plaintiff noted herein, which
was greatly damaged and as a proximate consequence thereof, said
plaintiff was put to great expense for removing the said truck
tractor and trailer from its collision position within and
without the said building, and for repairs to said building
and for wages to said plaintiff's employees who were unable to
perform their services due to the damaged condition of said

building; and for loss of income to said business while said building is being repaired and to such additional expenses as the said damage has incurred upon your plaintiff.

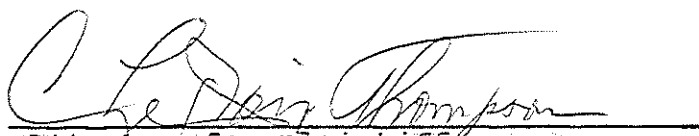
-2-

Plaintiff claims of the defendants jointly and severally, the sum of Nine Thousand Dollars (\$9,000.00) for that plaintiff avers that, on to-wit: about 11:30 P.M. 28th day of March, 1965, plaintiff was the owner of a building housing a milk or dairy bar and sandwich shop drive-in, situate on his individually owned real property fifty feet from the highway R/O/W on the West side of Highway 31 near the intersection of the Perdido paved road turn off and about 12 miles from the City of Bay Minette in Baldwin County, Alabama, and on to-wit, 11:30 P.M. 28th day of March, 1965, at the request of defendant Complete Auto Transit Company or its agent, servant or employee, acting in the line and scope of his employment, defendant, Armstrong Equipment Company's agent, servant or employee, while acting within the line or scope of his employment, with reckless disregard to consequence, being conscious at that time that his conduct in so doing would probably result in disaster, wilfully or wantonly damaged plaintiff's property, to-wit, said building by running into said building with a truck tractor and trailer and as the proximate result and consequence of said wilful or wanton conduct, plaintiff's building was severely damaged and plaintiff's business suffered a loss; for all of which he claims damages in the sum aforesaid.

FILED

SEP 1 1965

ALICE L. DUK, CLERK
REGISTER


Attorney for plaintiff.

G. H. JACKSON,

Plaintiff,

vs.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

COMPLETE AUTO TRANSIT COMPANY,
a non-resident corporation,
also known as COMPLETE AUTO
TRANSPORT COMPANY and ARMSTRONG
EQUIPMENT COMPANY, INC., Birm-
ingham, Alabama, and JOHN DOE,
as agent, servant or employee
of said corporations or either
of them,

AT LAW

NO. 6453

Defendants.

Comes the Defendant, Complete Auto Transit Company,
and demurs to the complaint as amended and each and every count
thereof, separately and severally, and assigns the following
separate and several grounds, viz:

1. That such complaint claims damages of each
Defendant and the agents, servants or employees without design-
ating the names of the agents, servants or employees from whom
the Plaintiff claims damages.
2. That there is a misjoinder of parties Defendant.
3. That the place where the accident occurred is not
sufficiently set out.
4. That said complaint claims speculative damages.
5. That said complaint claims damages for loss of
time to Plaintiff's employees who were unable to work because of
such damages without the complaint alleging that the Plaintiff
was required to pay for such services.
6. That said complaint fails to allege how long it
took the Plaintiff to repair his building.
7. That said complaint claims damages for additional
expenses without stating what such expenses consisted of.
8. That said complaint fails to allege that such
Defendant willfully or wantonly injured the Plaintiff.
9. That said complaint fails to allege any duty owing
by such Defendant to the Plaintiff.

10. That said complaint does not sufficiently set out in what manner the Plaintiff's building was damaged.

11. The allegation that Plaintiff's business suffered a loss is just a conclusion of the pleader.

CHASON, STONE & CHASON

By [Signature]
Attorneys for Complete Auto Transit Co.

FILED

SEP 7-65

U.S. DISTRICT COURT

6453

G. H. JACKSON,

Plaintiff,

vs.

COMPLETE AUTO TRANSIT COMPANY,
A non-resident corporation,
also known as COMPLETE AUTO
TRANSPORT COMPANY and ARMSTRONG
EQUIPMENT COMPANY, INC., Birm-
ingham, Alabama, and JOHN DOE,
as agent, servant or employee
of said corporations or either
of them,

Defendants.

* * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 6453

* * * * *

DEMURRER TO AMENDED COMPLAINT

* * * * *

C. H. JACKSON,)	
Plaintiff	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
COMPLETE AUTO	)	AT LAW
TRANSIT COMPANY,	)	NO. 6453
et al,)	
Defendants)	

MOTION OF DEFENDANT ARMSTRONG
EQUIPMENT COMPANY, INC. TO STRIKE
CERTAIN PORTIONS OF THE COMPLAINT.

Comes now the defendant Armstrong Equipment Company, Inc., separately and severally, leave of Court first had and obtained, and re-files to the complaint as amended, its motion to strike certain portions of the complaint heretofore filed to the original complaint in this cause.

DEMURRER TO AMENDED COMPLAINT

Comes now the defendant Armstrong Equipment Company, Inc., a corporation, separately and severally, and without waiving its foregoing motion to strike certain portions of the complaint (but expressly insisting thereon) and demurs to the complaint therein as amended, and to each count thereof, separately and severally, on the following separate and several grounds:

1. Sufficient facts are not alleged therein to constitute a cause of action against this defendant.
2. Sufficient facts are not alleged therein to show the existence of any legal duty owing by this defendant to the plaintiff with respect to the matters alleged therein.
3. Sufficient facts are not alleged therein to show any breach of any legal duty owing by this defendant to the plaintiff with respect to matters alleged therein.

4. Sufficient facts are not alleged therein to show a sufficient causal connection between the alleged breach of duty of this defendant and the alleged injuries and damages.

5. It does not sufficiently appear therefrom that the driver of the said automobile truck tractor and trailer which allegedly did the damage complained of therein was at the time and place of the matters referred to therein an agent, servant or employee of this defendant and was acting within the line and scope of his employment by this defendant as such.

6. There does not sufficiently appear therefrom that the alleged injuries and damages proximately resulted from the alleged breach of duty of this defendant or the alleged breach of duty of an agent, servant or employee of this defendant while acting within the line and scope of his employment as such.

7. There is a misjoinder of causes of action in the same count.

8. There is a misjoinder of parties defendant.

Jorge M. Price
Attorneys for defendant
Armstrong Equipment Company, Inc.

FILED
SEP 21 1965
ALICE J. DUCK, CLERK
REGISTER

C. H. JACKSON,

Plaintiff

vs.

COMPLETE AUTO TRANSIT COMPANY,
et al,

Defendants.

)
)
) IN THE CIRCUIT COURT OF
)
) BALDWIN COUNTY, ALABAMA
)
) AT LAW
)
) NO. 6453
)

SEP. 27 1965

ANSWER OF DEFENDANT ARMSTRONG
EQUIPMENT COMPANY, INC. TO
INTERROGATORIES.

Comes now the defendant Armstrong Equipment Company, Inc.,
and answers the interrogatories heretofore propounded to it by the plain-
tiff as follows:

1. R. H. Parsons.
2. Vice President.
3. Birmingham, Alabama.
4. We are dealers for Detroit Diesel Engines, a division of

General Motors. We sell such Diesels and we also service such equipment.

We have no contractual obligation, verbal or written, which would require
us to service any such equipment, but we are in the business of selling and
servicing the same, and when called upon to do so we endeavor to respond to
such calls as soon as we can, in the regular course of our business, sending
an authorized service man to the location of the customer's equipment.

5. See answer to 4, above.

6. There is no one among our personnel who knows whether or not
this is true. March 20, 1965, was a Saturday, and our establishment at
Montgomery was closed. However, calls can be received by that office
over the week-end, and when received, in order to receive attention, are
relayed to our Service Manager at his home or wherever he can be found.
The Service Manager was told by his wife that such a call had been received

at the office and had been relayed to him.

7. When the above mentioned call had been relayed to this defendant's Service Manager, as stated in answer to Interrogatory 6, the Service Manager had intended to send an authorized and competent repairman to answer that call the next business day. However, the accident occurred before any such employee could be sent, and no person was sent by this defendant or by its Service Manager or any other authorized agent or employee to answer said call. The accident happened before this could be done. If the call was answered by anyone who was then employed by this defendant, such employee was not authorized to answer such call and had no authority to do so, and in so doing was not acting within the line and scope of his employment by this defendant.

8. Not applicable.

9. No.

10, 11 and 12. This defendant, on the advice of counsel, declines to answer each one of said interrogatories on the ground that the defendant is not required to give the name and address of any witnesses or to produce any documents in response to answers to interrogatories, and that each of said questions separately and severally calls for evidence which is incompetent, irrelevant and immaterial.

13. Our records do not contain any such information and on the advice of counsel the defendant declines to answer the remainder of said interrogatory on the grounds stated above addressed to the next preceding three interrogatories.

ARMSTRONG EQUIPMENT COMPANY, INC.

By

R. H. Harrison

As its Vice-President.

Subscribed and sworn to before me

this 23 day of September, 1965.

Alice J. Duck
Notary Public, Jefferson County, Ala.

FILED

SEP 29 1965

ALICE J. DUCK, CLERK
REGISTER