

INGE, TWITTY, DUFFY & PRINCE

LAWYERS

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

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

36602

November 26, 1968

MAILING ADDRESS:

P. O. BOX 1109
MOBILE, ALA.
36601

CABLE ADDRESS:

TWINING
TELEPHONE
433-5441

Honorable Alice J. Duck
Clerk of the Circuit Court
Baldwin County Courthouse
Bay Minette, Alabama 36507

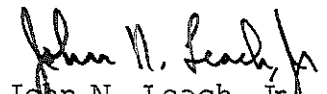
Re: R. W. Dodd vs. Kerr-McGee Chemical
Corporation. - Case No. 8406

Dear Mrs. Duck:

Enclosed are copies of our demurrers in the above styled cause, which we would appreciate your filing. Please note our appearance as attorneys for the defendant.

Thank you very much.

Cordially,


John N. Leach, Jr.
For the Firm

JNL, JR:bd

Enclosures

CC: James R. Owen, Esquire
Attorney at Law
Bay Minette, Alabama 36507

INGE, TWITTY, DUFFY & PRINCE

LAWYERS

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

MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA
36602

MAILING ADDRESS:
P. O. BOX 1109
MOBILE, ALA.
36601

CABLE ADDRESS:
TWINING
TELEPHONE
433-5441

June 4, 1970

Honorable Alice J. Duck
Clerk of the Circuit Court
Baldwin County Courthouse
Bay Minette, Alabama 36507

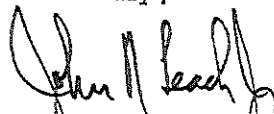
Re: R. W. Dodd vs. Kerr McGee Chemical
Corporation - Baldwin County Circuit
Court Case No. 8406

Dear Mrs. Duck:

Enclosed please find the original and one copy of our demurrer to the plaintiff's amended complaint in the above styled cause, which we would appreciate your filing.

Thank you very much.

Cordially,



John N. Leach, Jr.
For the Firm

JNL, JR:bd
Enclosures

TO ANY SHERIFF OF THE STATE OF ALABAMA:

WITNESS my hand this 29 day of October, 1968.

Eric J. Welch
Clerk


COMPLAINT

VOL 65 PAGE 148

deficiency of the said fertilizer, the plaintiff's bean crop did not yield the amount of beans which it would have yielded if the said fertilizer had been of the grade guaranteed by the defendant, all to the plaintiff's damages aforesaid, hence this suit.


Attorney for Plaintiff

Plaintiff demand a trial
by jury of said cause.


Attorney for Plaintiff

FILED

OCT 29 1966

FILED

1451

RECEIVED IN OFFICE

OCT 30 1968

W. S. BUTLER, Sheriff

Montgomery, Ala.

By *W. S. Butler*
Deputy Sheriff
County

Received *for*
Full Bill on
Chenical Corp
11/20/68
1968

Received *31* day of *Nov* 19 *68*
and on *1* day of *Nov* 19 *68*
I served a copy of the within *on*
Mr. (Baker + Baker) Montgomery
By service on _____
TAYLOR WILKINS, Sheriff
D. S.

Mr. 8466

R. W. Doda

vs

Henry - McGehee
Chemical Corporation

FILED

OCT 29 1968

NEW J. B. ...

M. S. Butler, Sheriff of Montgomery
County, Alabama, Claim \$1.50 each for
serving *1* process(es) and \$1.00
travel expense on each of *1*
process(es) or a total of *2.50*

W. S. Butler
Deputy Sheriff
James E. Butler

EX-108

R. W. DODD,	)	IN THE CIRCUIT COURT OF
)	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
)	
vs.)	
)	
KERR McGEE CHEMICAL	)	AT LAW
CORPORATION,)	
)	
Defendant.	)	CASE NO. 8406
)	

MOTION FOR PRODUCTION OF INCOME TAX RECORDS

Comes now the defendant in the above styled cause and represents and shows unto the Court that in said cause the plaintiff has alleged a loss of income as a result of the alleged negligence of this defendant; this defendant, therefore, moves the Court for an order requiring the plaintiff to produce for inspection and copying, at a time prior to the trial of this cause, copies of his income tax returns, both State and Federal, for the years 1966 and 1967, and this defendant avers that said income tax returns contain information which is competent, relevant, and pertinent to the issues in this cause and information which will be competent, material and relevant evidence at the trial of said cause.

INGE, TWITTY, DUFFY & PRINCE

BY: John N. Leach, Jr.
JOHN N. LEACH, JR.

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 28 day of Feb, 1969.

John N. Leach, Jr.
Attorney for

FILED

FEB 28 1969

ALICE J. DUFFY CLERK

R. W. DODD,) IN THE CIRCUIT COURT OF
 Plaintiff,) BALDWIN COUNTY, ALABAMA
 vs.) AT LAW
 KERR MCGEE CHEMICAL)
 CORPORATION,)
 Defendant.)

DEMURRER

Comes now the defendant in the above styled cause, and demurs to the complaint heretofore filed against it in said cause, and for grounds of demurrer sets down and assigns the following, separately and severally, to-wit:

1. That it does not state facts sufficient to constitute a cause of action.
2. For that negligence is therein alleged merely as a conclusion of the pleader.
3. For that it is vague, indefinite and uncertain, in that it does not apprise this defendant with sufficient certainty against what act or acts of negligence defendant is called on to defend.
4. For that it does not appear with sufficient certainty what duty, if any, defendant may have owed to the plaintiff.
5. For that it does not appear with sufficient certainty wherein defendant violated any duty it may have owed to the plaintiff.
6. For that it does not sufficiently appear that the defendant owed any duty to the plaintiff which defendant negligently failed to perform.
7. For that there does not appear sufficient causal connection between defendant's said breach of duty and plaintiff's injuries and damages
8. No facts are alleged to show that plaintiff sustained any damage or injury as the proximate result of any negligence or breach of duty on the part of the defendant.
9. It is not alleged with sufficient certainty where said damage occurred.

10. It is not alleged that the negligence complained of proximately caused the injuries and damages complained of.

11. The averments thereof are conflicting and repugnant.

12. For that no causal connection appears between the defendant's alleged negligence and the injuries and damages complained of by the plaintiff.

13. For aught that appears, Plaintiff did not properly use or apply the product of defendant.

14. For that the complaint is vague and indefinite.

15. For that the complaint states no cause of action against the defendant.

16. Sufficient facts are not alleged in the complaint to state a cause of action.

17. Sufficient facts are not alleged in the complaint to state a claim upon which relief can be granted.

18. The allegations of the complaint are so vague, uncertain, and indefinite, that defendant is not sufficiently apprised of what he is called upon to defend against in this cause.

19. For aught that appears damages alleged in the complaint are based upon pure speculation and conjecture without sufficient facts alleged in support thereof.

INGE, TWITTY, DUFFY & PRINCE

By:

John N. Leach, Jr.

Attorney for Defendant

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 26th day of Nov, 1968.

John N. Leach, Jr.
Attorney for Def.

FILED

NOV 27 1968

ALICE J. DUCK CLERK
REGISTER

1 VOL

65 PAGE 151

R. W. DODD,	)	IN THE CIRCUIT COURT OF
)	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
)	
vs.	)	AT LAW
)	
KERR-McGEE CHEMICAL)	
CORPORATION,)	
)	
Defendant.	)	CASE NO. 8406

DEMURRERS

Comes now the defendant in the above styled cause, and demurs to the complaint of the plaintiff as amended heretofore filed against it in said cause, and for grounds of demurrer sets down and assigns the following, separately and severally, to-wit:

1. That it does not state facts sufficient to constitute a cause of action.
2. For that negligence is therein alleged merely as a conclusion of the pleader.
3. For that it is vague, indefinite and uncertain, in that it does not apprise this defendant with sufficient certainty against what act or acts of negligence defendant is called on to defend.
4. For that it does not appear with sufficient certainty what duty, if any, defendant may have owed to the plaintiff.
5. For that it does not appear with sufficient certainty wherein defendant violated any duty it may have owed to the plaintiff.
6. For that it does not sufficiently appear that the defendant owed any duty to the plaintiff which defendant negligently failed to perform.
7. For that there does not appear sufficient causal connection between defendant's said breach of duty and plaintiff's injuries and damages.
8. No facts are alleged to show that plaintiff sustained any damage or injury as the proximate result of any negligence or breach of duty on the part of the defendant.
9. It is not alleged with sufficient certainty where said damage occurred.

10. It is not alleged that the negligence complained of proximately caused the injuries and damages complained of.

11. The averments thereof are conflicting and repugnant.

12. For that no causal connection appears between the defendant's alleged negligence and the injuries and damages complained of by the plaintiff.

13. For aught that appears, Plaintiff did not properly use or apply the product of defendant.

14. For that the complaint is vague and indefinite.

15. For that the complaint states no cause of action against the defendant.

16. Sufficient facts are not alleged in the complaint to state a cause of action.

17. Sufficient facts are not alleged in the complaint to state a claim upon which relief can be granted.

18. The allegations of the complaint are so vague, uncertain, and indefinite, that defendant is not sufficiently apprised of what it is called upon to defend against in this cause.

19. For aught that appears damages alleged in the complaint are based upon pure speculation and conjecture without sufficient facts alleged in support thereof.

20. For that there is a misjoinder of causes of action.

21. For that it is not averred how or in what manner the alleged deficiency of nitrogen in the fertilizer proximately caused the injuries and damages complained of.

22. For that it affirmatively appears that some intervening act and not the alleged negligence of this defendant caused the injuries and damages complained of.

23. For that it affirmatively appears that the proximate cause of plaintiff's said injuries and damages was an independent act for which this defendant is not responsible.

24. For that the alleged negligence of this defendant was not the direct and proximate cause of the injuries and damages complained of.

25. For that the allegation that the "said fertilizer contained a considerably less percentage of nitrogen" is but a conclusion of the pleader with no facts alleged in support thereof.

26. For that the averments thereof are unlawful conclusions of the pleader.

27. For that it does not sufficiently appear that the plaintiff sustained injuries and damages complained of as a proximate consequence of the breach of any legal duty owed by this defendant to the plaintiff on said occasion.

28. For that the averments of the complaint are ambiguous.

29. For that the basis of the cause of action as stated in the complaint is confusing and contradictory.

INGE, TWITTY, DUFFY & PRINCE

BY:

John N. Leach, Jr.
JOHN N. LEACH, JR.
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel and all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 4th day of June, 1970.

John N. Leach, Jr.
Attorney for Defendant

FILED

JUN 5 1970

ALICE J. BUCK CLERK
REGISTER

R. W. DODD,)	
)	
Plaintiff,)	
	)	IN THE CIRCUIT COURT OF
VS.)	
	)	BALDWIN COUNTY, ALABAMA
KERR-MCGEE CHEMICAL)	
CORPORATION,	)	AT LAW NO. 8406
)	
Defendant.)	

AMENDED COMPLAINT

Comes now the plaintiff in the above styled cause and amends the complaint heretofore filed in said cause so that, as amended, the said complaint will read as follows:


The plaintiff claims of the defendant Forty-five Hundred Dollars (\$4500.00) damages for that heretofore on or about to-wit, February 26, 1968, the plaintiff purchased from the defendant 5½ tons of fertilizer, which fertilizer is commonly known as 16-8-8, which fertilizer was represented by the defendant to contain 16% nitrogen, which said fertilizer was to be applied by the plaintiff on land in Baldwin County, Alabama, which said land was to be used for the planting, raising and harvesting of green beans during the Spring of 1968 and of which the defendant had knowledge. Plaintiff avers that he did apply the said fertilizer to the said land and after the application thereof and the planting by him of the green beans, the plaintiff ascertained and determined that the said fertilizer purchased from the defendant contained various amounts of nitrogen considerably less than 16% as represented by the defendant, and as a proximate result and consequence of the deficiency of nitrogen in the said fertilizer, the plaintiff's bean crop did not yield the amount of beans which it would have yielded if the said fertilizer had contained 16% nitrogen as represented by the said defendant, all to the plaintiff's damages, as aforesaid, hence this suit. Plaintiff avers that all of his damages were the proximate result of the negligence of the said defendant in representing to plaintiff that the aforesaid fertilizer contained 16% nitrogen, whereas, in fact, the said fertilizer contained a considerably less percentage of nitrogen.

MAY 26 1970

ALICE J. DUCK CLERK
REGISTER

VOL

65


James R. Owen
110 Courthouse Square
Bay Minette, Alabama
Attorney for Plaintiff

153

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 the 26th day of May, 1970.



Attorney for Plaintiff

FILED

MAY 26 1970

ALICE J. DUCK CLERK
REGISTER

R. W. DODD,

Plaintiff,

vs.

KERR MCGEE CHEMICAL
CORPORATION,

Defendant.

) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA
) AT LAW

)

)

)

CASE NO. 8406

FILED

MAR 14 1969

ALICE J. DUCK

CLERK
REGISTER

INTERROGATORIES TO PLAINTIFF

Comes now the defendant in the above styled cause and propounds the following separate and several interrogatories to the plaintiff, to be answered separately and severally, viz:

1. What is your name and address?
2. What is your occupation?
3. How long have you worked at this occupation?
4. Prior to such work, in what other business or employment were you engaged?
5. For each other business or employment, state:
 - a. The dates employed or in business.
 - b. Your duties in connection therewith.
 - c. Your job title or capacity.
 - d. The reason for termination of your employment or cessation of business.
 - e. The place of your employment or business.
6. On February 26, 1968, did you own the land on which the crops described in the complaint were planted?
7. If so, state:
 - a. The date ownership was acquired.
 - b. The name and address of the person from whom ownership was acquired.
 - c. The name in which ownership was acquired.