

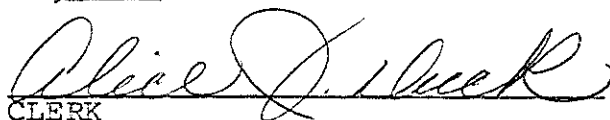
STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Cummins Diesel Sales Corp. to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the complaint of Willie C. Benbow.

Witness my hand, this the 1st day of October, 1969.


CLERK

WILLIE C. BENBOW)	IN THE CIRCUIT COURT OF
)	
PLAINTIFF)	BALDWIN COUNTY, ALABAMA
)	
VS)	AT LAW
)	
CUMMINS DIESEL SALES)	NUMBER: <u>8907</u>
CORPORATION, A CORPORATION)	
)	
DEFENDANT)	

I

Plaintiff claims of the Defendants the sum of NINE-THOUSAND and NO/100 (\$9,000.00) DOLLARS for that on to-wit the 8th day of January, 1969 Defendants negligently left or allowed an oil plug in the engine of a motor truck of Plaintiff to become loose so that the said plug dropped or fell from the said motor causing the engine oil to drain and that as a proximate consequence of such negligence that Plaintiff's engine was damaged and made inoperable, thereby causing Plaintiff to loose the use of the said truck for a long period of time and to loose earnings in his business of hauling cattle, hence this suit.

II

Plaintiff claims of the Defendant the sum of NINE-THOUSAND and NO/100 (\$9,000.00) DOLLARS for that on to-wit the 8th day of January, 1969 Defendant negligently left or allowed an oil plug in the engine of a motor truck of Plaintiff to become loose so that the said plug dropped or fell from the said motor at or near the Perdido, Alabama exit of U. S. Highway I-65 in Baldwin County, Alabama causing the engine oil to drain at the Perdido, Alabama exit of U. S. Highway I-65 in Baldwin County, Alabama and that as a proximate consequence of such negligence that Plaintiff's

engine was damaged and made inoperable, thereby causing Plaintiff to loose the use of the said truck for a long period of time and to loose earnings in his business of hauling cattle, hence this suit.

III

Plaintiff claims of the Defendants the sum of NINE-THOUSAND and NO/100 (\$9,000.00) DOLLARS for that on to-wit the 8th day of January, 1969 Defendant, acting by and through its agent, servants or employees who were then and there acting in the line and scope of their employment negligently left or allowed an oil plug in the engine of a motor truck of Plaintiff to become loose so that the said plug dropped or fell from the said motor causing the engine oil to drain and that as a proximate consequence of such negligence that Plaintiff's engine was damaged and made inoperable, thereby causing Plaintiff to loose the use of the said truck for a long period of time and to loose earnings in his business of hauling cattle, hence this suit.

IV

Plaintiff claims of the Defendants the sum of NINE-THOUSAND and NO/100 (\$9,000.00) DOLLARS for that on to-wit the 8th day of January, 1969 Defendant, acting by and through its agent, servants or employees who were then and there acting in the line and scope of their employment negligently left or allowed an oil plug in the engine of a motor truck of Plaintiff to become loose so that the said plug dropped or fell from the said motor at the Perdido, Alabama exit of U. S. Highway I-65 in Baldwin County, Alabama causing the engine oil to drain and that as a proximate consequence of such negligence that Plaintiff's engine was damaged and made inoperable, thereby causing Plaintiff to loose the use of the said truck for a long period of time and to loose earnings in his business of hauling cattle, hence this suit.

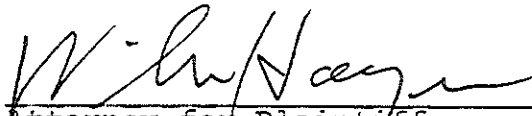
V

Plaintiff claims of the Defendant the sum of NINE-THOUSAND and NO/100 (\$9,000.00) DOLLARS for that Defendant negligently reversed the oil lines conducting the lubricating oil of the engine of Plaintiff's motor truck thereby restricting, modifying or diverting the flow of lubricating oil to said engine,

and that as a proximate consequence of such negligence Plaintiff's engine was damaged and made inoperable, thereby causing Plaintiff to loose the use of the said truck for a long period of time and to loose earnings in his business of hauling cattle, hence this suit.


VI

Plaintiff claims of the Defendant the sum of NINE-THOUSAND and NO/100 (\$9,000.00) DOLLARS for that Defendants acting by and through its agent, servants or employees who were then and there acting in the line and scope of their employment on to-wit the 8th day of January, 1969 negligently reversed the oil lines conducting the lubricating oil of the engine of Plaintiff's motor truck thereby restricting or directing the flow of lubricating oil in the engine of Plaintiff's motor truck that as a proximate consequence of such negligence that Plaintiff's engine was damaged and made inoperable, thereby causing Plaintiff to loose the use of the said truck for a long period of time and to loose earnings in his business of hauling cattle, hence this suit.


Attorney for Plaintiff

Plaintiff demands trial
by jury.

This 1st day of October, 1969.


Attorney for Plaintiff

Defendant may be served:

Cummins Diesel Sales
Corporation
Blakeley Island
Mobile, Alabama

FILED
OCT 1 1969
ALICE J. DUCK CLERK
REGISTER

RECEIVED

OCT 1 1969

WILSON
CLERK

Received 2 Days of Oct 69
and on 6 Days of Oct 69
I served a Copy of the writ on
on Cummins Diesel Sales Corp.
a corporation
at service on W. F. Middel
Michigan
MAY D. L. JONES, Sheriff
W. F. Middel

OCT 2 9 43 AM '69
RECORDS DEPT.
MOBILE COUNTY, ALA.

8907 6498
Willie C. Benbow
Plt.

vs.
Cummins Diesel
Sales Corp. & Corp.
W. F. Middel & Corp.

FILED

OCT 1 1969

ALICE J. DUCK
CLERK
REGISTER

W. Hayes

WILLIE C. BENBOW,)	IN THE CIRCUIT COURT OF
)	
Plaintiff,)	BALDWIN COUNTY, ALABAMA
)	
vs.)	AT LAW
)	
CUMMINS DIESEL SALES)	
CORPORATION, a corporation,)	
)	
Defendant.)	CASE NO. 8907

DEMURRER

Comes now the Defendant in the above styled cause, and demurs to the complaint heretofore filed against it in said cause, and to each count thereof, separately and severally, 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 when said alleged negligent acts occurred.

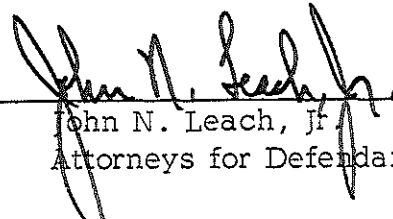
10. It is not alleged that the negligence complained of proximately caused the injuries and damages complained of.

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.

INGE, TWITTY, DUFFY & PRINCE

BY:


John N. Leach, Jr.
Attorneys 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 20th day of Oct, 1969.


Attorney for

FILED

OCT 21 1969

ALICE J. DUCK CLERK
REGISTER

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