

JOHN T. CUMBIE,	)	
	)	
PLAINTIFF,	)	
	)	
-vs-	)	IN THE CIRCUIT COURT OF
	)	
SOUTHLAND MOWER CO., INC.,	)	
a corporation, SOUTHERN	)	
PINE ELECTRIC COOPERATIVE,	)	BALDWIN COUNTY, ALABAMA
INC., a corporation, and	)	
A B C, a person, firm or	)	
corporation who was the	)	
manufacturer of the	)	AT LAW
Vulcan 22 inch lawnmower,	)	
Model Number 92502, Type	)	
Number 0188-01, Code	)	
Number 6803155, described	)	CASE NO. <u>95-99</u>
in the body of the com-	)	
plaint in this cause of	)	
action whose true name	)	
and legal identification	)	
is otherwise unknown to	)	
the Plaintiff at this	)	
time but will be added	)	
by amendment when ascer-	)	
tained, individually	)	
and jointly,	)	
	)	
DEFENDANTS.	)	

COUNT ONE

Plaintiff claims of the Defendants the sum of THIRTY-FIVE THOUSAND (\$35,000.00) DOLLARS, damages, for that heretofore and prior to July 22, 1970, the Defendants, at all times material to this cause of action, were corporations organized and existing under and by virtue of the laws of the State of Alabama.

That prior to the occurrence of the accident in which the Plaintiff was injured as hereinafter described, the Defendant, Southland Mower Co., Inc., manufactured a lawnmower described as a Vulcan 22 inch lawnmower, Model Number 92502, Type Number 0188-01, and Code Number 6803155, which lawnmower said Defendant in turn sold or delivered to a

retail outlet in Mobile, Alabama, which retailer then sold to the Plaintiff for a valuable consideration shortly prior to July 22, 1970.

Plaintiff avers that the Defendant, Southland Mower Co., Inc., was negligent in the manufacture of said power mower and failed to use reasonable care in its manufacture; that said power mower was manufactured for the purposes of its being used to mow lawns and for that purpose, it was necessary that good and adequate guards be placed on said mower so that rocks, pieces of metal and other hard substances including wire, commonly found on lawns, would not be thrown by the blades of said power mower, thereby endangering the life and health of the operator thereof, that said Defendant, nevertheless, negligently manufactured said power mower without an adequate guard thereon to prevent said rotating blades from casting rocks, wire, pieces of metal, and other hard substances and objects through the air so as to injure its operator and by reason thereof, said power lawnmower was imminently and inherently dangerous to such operator, all of which said Defendant knew or in the exercise of reasonable care should have known.

That on, to-wit, July 22, 1970, while said power mower was being operated by the Plaintiff in the manner and for the purpose for which it was intended, in mowing a lawn at the home of one, James Hadley, located in the community of Rabon, Baldwin County, Alabama, the Plaintiff was struck in the leg by a piece of wire which was cast from said lawn by the rotating blades of said power mower, thereby proximately inflicting upon the Plaintiff the injuries hereinafter set out.

Plaintiff avers that the wire which was on the ground and the wire which was thrown by said lawnmower into the Plaintiff's leg was caused to be on the ground on the private property of the said James Hadley by the Defendant, Southern Pine Electric Cooperative, Inc., in connection with the business of said Defendant and that the Defendant, Southern Pine Electric Cooperative, Inc., negligently caused or allowed said wire to remain on said lawn for a period of approximately one week prior to July 22, 1970.

Plaintiff avers that as a proximate result of the combined and concurring negligence of the Defendant as aforesaid, he was injured and damaged as follows: he was made sick, sore and lame; he suffered severe mental and physical pain and anguish and will so suffer in the future; he was permanently injured; he was scarred and disfigured; he lost time from his employment and was caused to expend money for doctors' bills and other medical expenses for the care and treatment of his injuries.

CUNNINGHAM, BOUNDS & BYRD  
ATTORNEYS FOR PLAINTIFF

BY: Richard Bounds  
RICHARD BOUNDS

JAMES R. OWEN  
ATTORNEY FOR PLAINTIFF

Plaintiff demands a trial by jury.

  
RICHARD BOUNDS

Trial Attorney: Richard Bounds

Address of Defendants:

Southland Mower Co., Inc.  
Old Montgomery Highway  
Selma, Alabama

Southern Pine Electric Cooperative, Inc.  
Highway 31 South  
Brewton, Alabama

FILED

DEC 14 1970

ALICE J. DUCK CLERK  
REGISTER

We the jury find in favor  
of the defendant.

Walter E. DeMunn

FOREMAN

Received in Office

Date 12/23/70  
WILSON BAKER

Sheriff, Dallas County, Ala.

By Champion

Executed this the 23 day of Dec, 1970,  
by leaving a copy of the within summons and complaint with

Mr Joe Grimes  
Mrs Southland Mawer

Defendant.

Wilson Baker  
Sheriff of Dallas County, Ala.  
A. Atchison  
Deputy Sheriff, Dallas County, Ala.

EXECUTED

This the 23 day of Dec, 1970

Wilson Baker  
WILSON BAKER, Sheriff  
A. Atchison  
Deputy Sheriff

Mileage 12

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA  
BALDWIN COUNTY

Circuit Court, Baldwin County

No. 9599

.....TERM, 19.....

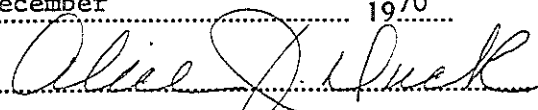
TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Southland Mower Co., Inc., a corporation,  
Southern Pine Electric Cooperative, Inc.,  
.....  
.....

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 Southland Mower  
Co., Inc., a corp., Southern Pine Electric Cooperative, Inc., Defendant.

by John T. Cumbie  
....., Plaintiff.

Witness my hand this 14th day of December 1970

 Clerk

24 12-16-70

71 783

No. 9599.....

Page.....

**THE STATE OF ALABAMA**

**BALDWIN COUNTY**

**CIRCUIT COURT**

JOHN T. CUMBIE

Plaintiffs

vs.

SOUTHLAND MOWER CO., INC., A CORP.

SOUTHERN PINE ELECTRIC

COOPERATIVE, INC., A CORP.

Defendants

**SUMMONS AND COMPLAINT**

Filed December 14, 1970

Alice J. Duck Clerk

Cunningham, Bounds & Byrd

James R. Owen

Plaintiff's Attorney

Defendant's Attorney

RECEIVED

Defendant lives at

DEC 14 1970

Received In Office

Dec 16 1970

W. Byrd Sheriff

I have executed this summons

this 16th Dec 1970

by leaving a copy with

John Perry Jr  
mgr.  
Southern Pine Electric  
Cooperative

W. Byrd Sheriff

Deputy Sheriff

JOHN T. CUMBIE,

Plaintiff,

VS.

SOUTHLAND MOWER CO., INC.,  
a corporation, SOUTHERN PINE  
ELECTRIC COOPERATIVE, INC.,  
a corporation, and A B C, a person,  
firm or corporation who was the  
manufacturer of the Vulcan 22 inch  
lawnmower, Model No. 92502, Type  
Number 0188-01, Code Number  
6803155, described in the body of the  
complaint in this cause of action  
whose true name and legal identification  
is otherwise unknown to the Plaintiff  
at this time but will be added by amend-  
ment when ascertained, individually and  
jointly,

Defendants.

IN THE CIRCUIT COURT  
OF BALDWIN COUNTY,  
ALABAMA, AT LAW.  
CASE NO. 9599

#### DEMURRERS

Comes the Defendant, Southland Mower Co., Inc., a  
corporation, and demurs to the Complaint in the above styled  
cause, and each count thereof, separately and severally and  
assigns the following separate and several grounds of demurrer,  
viz:

1. For that the Complaint fails to state a cause  
of action.
2. For that the Complaint fails to state a cause of  
action against this Defendant.
3. From ought that appears, this Defendant owed  
no duty to Plaintiff at the time and place complained of in the  
Complaint.
4. From ought that appears, this Defendant has breached  
no duty which it owed to Plaintiff at the time and place complained  
of in the Complaint.



5. For that it affirmatively appears that the injuries of Plaintiff were not the proximate result of any negligence on the part of this Defendant.

6. From ought that appears, the injuries of Plaintiff were not the proximate result of any negligence on the part of this Defendant.

7. From ought that appears, there was no privity between Plaintiff and this Defendant.

8. For that the allegations of negligent manufacture are but conclusions of the pleader.

9. From ought that appears, the imminently and inherently dangerous condition alleged to exist was not the cause of the injuries of the Plaintiff.

10. From ought that appears, the alleged negligence of this Defendant did not cause an imminently and inherently dangerous condition to exist in the power lawnmower referred to in the Complaint.

11. For ought that appears, this Defendant has breached no duty owed to the Plaintiff at the time and place complained of in the Complaint.

12. For that it affirmatively appears that the injuries to the Plaintiff were not the proximate result of any negligence on the part of this Defendant.

13. For that the alleged injuries to the Plaintiff were not the proximate result of any negligence on the part of this Defendant.

14. For ought that appears, there was no privity between Plaintiff and this Defendant.

15. For that the allegations of negligent manufacturing are mere conclusions of the pleader.

16. For ought that appears, the imminently and inherently dangerous condition alleged to exist was not the cause of injuries to the Plaintiff.

17. For ought that appears, the alleged negligence of this Defendant did not cause an imminently and inherently dangerous condition to exist in the lawnmower referred to in the Complaint.

18. Said Complaint fails to set forth how and in what manner said lawnmower was not reasonably safe for the use and purpose for which it was intended.

19. For that the allegations in the Complaint that said lawnmower "was imminently and inherently dangerous to such operator" is a mere conclusion of the Pleader.

20. For that no facts are set forth which discloses that said lawnmower was imminently and inherently dangerous to the operator.

21. Said Complaint fails to allege with sufficient certainty any duty owed by this Defendant to the Plaintiff.

22. Said Complaint fails to aver any facts out of which a duty arose from this Defendant to the Plaintiff.

23. Said Complaint fails to aver any facts out of which a duty arose from this Defendant to the Plaintiff and a breach of said duty.

24. For that no facts are set forth in said Complaint which would disclose that said lawnmower was in a defective condition and unsafe for its intended use.

25. For that said Complaint attempts to separate a cause of action.

26. Said Complaint attempts to charge each Defendant with negligent acts which are unrelated and not connected.

27. For that said Complaint charges one Defendant with negligence in the selling of said lawnmower and the other Defendant with the negligence in the manufacturing of said lawnmower which are unrelated acts.

28. For ought that appears from said Complaint, said lawnmower was not in the same condition at the time of the accident complained of in the Complaint as it was at the time it left this Defendant's factory.

29. For that the alleged negligence of this Defendant is too remote to the alleged accident complained of in the Complaint.

30. For that there is no causal connection between the accident complained of in the Complaint and the alleged negligence of this Defendant.



Of Counsel for the Defendant  
Southland Mower Co., Inc.

PITTS, PITTS & THOMPSON  
Attorneys at Law  
Selma, Alabama

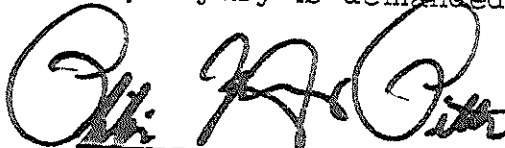
ATTORNEY TAYLOR WILKINS, JR.  
Attorney at Law  
Bay Minette, Alabama

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Of Counsel for the Defendant  
Southland Mower Co., Inc.

JURY DEMAND

For the trial of this case, a jury is demanded.



Of Counsel for the Defendant

**FILED**

JAN 11 1970

ALICE J. DUCK CLERK  
REGISTER

**FILED**

JAN 12 1970

ALICE J. DUCK CLERK  
REGISTER

DEMURRERS

JOHN T. CUMBIE,  
Plaintiff,  
VS.

SOUTHLAND MOWER CO.  
INC., a Corporation, et al.,  
Defendants.

IN THE CIRCUIT COURT  
OF BALDWIN COUNTY,  
ALABAMA, AT LAW.  
CASE NO. 9599

PITTS, PITTS & THOMPSON  
ATTORNEYS AT LAW  
SELMA, ALABAMA

FILED

SEP. 9 1971

JOHN T. CUMBIE,

Plaintiff,

VS.

SOUTHLAND MOWER CO., INC.,  
a corporation, SOUTHERN PINE  
ELECTRIC COOPERATIVE, INC.,  
a corporation, et al.,

Defendants.

EUNICE B. BLACKMON  
CIRCUIT  
CLERK

IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA,

AT LAW.

CASE NO. 9599

NOTICE TO TAKE DEPOSITION

TO: James R. Owen

Attorney at Law

Bay Minette, Alabama 36507

You are hereby notified that the Defendant  
Southland Mower Co., Inc.,  
will take the deposition of the following named persons:

Dr. Russell Sherman

TIME: September 16, 1971, 4:30 P. M.,

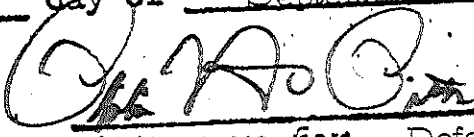
O'Clock until completed.

PLACE: Baldwin County Courthouse, Bay Minette, Alabama

PERSON BEFORE WHOM TAKEN: ~~XXXXXXXXXXXXXXXXXXXX~~ LOUIS M. HUBBARD, JR.

or some other qualified person.

DATED this 8th day of September, 1971.

  
Attorneys for Defendant  
Southland Mower Co., Inc.

I hereby certify that the foregoing notice has been  
served upon the attorneys of record for the Plaintiff on the  
8th day of September, 1971, by U. S. Mail, postage prepaid,  
at their post office address in Bay Minette, Alabama.

  
Attorneys for Defendant  
Southland Mower Co., Inc.

TO THE CLERK OF THE CIRCUIT COURT:

Please issue subpoena to Dr. Russell Sherman,  
address Bay Minette, Alabama,  
the above-named person whose deposition will be taken, summoning  
said person to be and appear at the time and place appearing above,  
then and there to give testimony upon oral examination, as provided  
by law.

This the 8th day of September, 1971.



Of Counsel for Defendant  
Southland Mower Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the  
foregoing notice to James R. Owen  
Attorney of record for the Plaintiff at the address shown  
above on this the 8th day of September, 1971.



Of Counsel for Defendant  
Southland Mower Co., Inc.

JOHN T. CUMBIE,	)	IN THE CIRCUIT COURT OF
Plaintiff,	(	
VS.	)	BALDWIN COUNTY, ALABAMA
SOUTHLAND MOWER CO., INC.,	(	
a corporation, SOUTHERN	)	AT LAW
PINE ELECTRIC COOPERATIVE,	(	
INC., a corporation, and	)	
A B C, a person, firm or	(	
corporation who was the	)	
manufacturer of the	(	
Vulcan 22 inch lawnmower,	)	
Model Number 92502, Type	(	
Number 0188-01, Code	)	
Number 6803155, described	(	
in the body of the com-	)	
plaint in this cause of	(	
action whose true name	)	
and legal identification	(	
is otherwise unknown to	)	
the Plaintiff at this	(	
time but will be added	)	
by amendment when ascer-	(	
tained, individually	)	
and jointly,	(	
Defendants.	)	CASE NO. <u>9599</u>

D E M U R R E R

Comes now a Defendant in the above styled cause, Southern Pine Electric Cooperative, Inc., a corporation, and demurs to the Plaintiff's Complaint as a whole, and to each and every Count thereof, separately and severally, and for grounds of said Demurrer, sets down and assigns the following, separately and severally, to-wit:

1. For that said Count fails to aver any duty which this Defendant owed to the Plaintiff.
2. For that said Count fails to aver any duty which this Defendant owed to the Plaintiff which this Defendant breached.
3. For that said Count fails to aver that any breach by this Defendant of any duty which it owed to the Plaintiff was the proximate cause of the injuries and damages described in said Count.
4. For that duty is alleged therein merely as a conclusion.
5. For that breach of duty is alleged therein merely as a conclusion.

6. For that proximate causation is alleged therein merely as a conclusion.

7. For that negligence is alleged therein merely as a conclusion.

8. For that said Count fails to aver the circumstances which constitute negligence.

9. For that said Count attempts to aver the circumstances constituting negligence, but the facts as set forth do not as a matter of law constitute negligence.

10. For that said Count attempts to aver the quo modo of negligence, but the facts set forth in said Count do not constitute negligence.

11. For that the averments in said Count affirmatively show that the Plaintiff was not injured and damaged as a proximate consequence of the negligence of this Defendant.

12. For aught that appears from said Count, the Plaintiff had no right to be where the Plaintiff was at the time and place described in said Count.

13. For that said Count fails to allege a causal connection between Plaintiff's alleged injuries and damages and the alleged negligence of this Defendant.

14. For aught that appears from said Count, there was some intervening efficient cause other than the negligence of this Defendant which proximately resulted in Plaintiff's alleged injuries and damages.

15. For aught that appears from said Count, the negligence complained of against this Defendant was not the direct and immediate efficient cause of the Plaintiff's alleged injuries and damages.

16. For that said Count fails to allege any physical causation between the Plaintiff's alleged injuries and damages and the negligence of this Defendant.



17. For that it affirmatively appears from said Count that the alleged negligence of this Defendant was too remote to have been the proximate cause of the Plaintiff's alleged injuries and damages.

18. For that it affirmatively appears from said Count that Plaintiff was guilty of negligence which proximately contributed to his own injuries and damages.

19. For aught that appears from said Count, the alleged negligence of this Defendant did not proximately cause the injuries and damages complained of by Plaintiff.

20. For that it affirmatively appears from said Count that the conduct of this Defendant did not proximately cause the Plaintiff's harm.

21. For that it affirmatively appears from said Count that the alleged negligence of this Defendant is not actionable in that said alleged negligence was not so closely connected with the injuries and damages of the Plaintiff so as to be the proximate cause of the Plaintiff's injuries and damages.

22. For that it affirmatively appears from said Count that the Defendant merely created a passive, static condition which made the Plaintiff's injuries and damages possible, but it does not appear from said Count that the alleged negligence of the Defendant proximately caused Plaintiff's injuries and damages.

23. For that it affirmatively appears from said Count that this Defendant was under no duty to protect the Plaintiff against injury when Plaintiff was operating the lawn mower at the time and place complained of.

24. For aught that appears from said Count, the Plaintiff was outside the zone of any obvious danger from the Defendant's alleged negligence.

25. For aught that appears from said Count, the Plaintiff was outside of the zone of any obvious danger from the Defendant's

alleged negligence and the negligence of the Defendant was not the proximate cause of Plaintiff's injuries and damages.

26. For aught that appears from said Count, the Defendant was not required by law to recognize the risk to Plaintiff, or to take precautions against it.

27. For that said Count attempts to impose a higher standard of care on this Defendant than the law requires.

28. For aught that appears from said Count, the Defendant could not reasonably foresee any injury as the result of its alleged negligent act.

29. For that it affirmatively appears from said Count that the Plaintiff attempts to hold this Defendant liable for consequences which do not lie within the original risk which this Defendant allegedly negligently created.

30. For that it affirmatively appears from said Count that the alleged injuries and damages suffered by the Plaintiff were not the natural and probable consequence of the alleged negligence of this Defendant.

31. For that it affirmatively appears from said Count that no harm to the Plaintiff could have been reasonably foreseen from the alleged negligence of this Defendant.

32. For that it affirmatively appears from said Count that the alleged negligence of this Defendant was outside the sphere of reasonable foreseeable injury to the Plaintiff.

33. For that said Count does not apprise this Defendant how or in what manner the Plaintiff was injured.

34. For that said Count fails to allege the injuries suffered by the Plaintiff with definiteness to a common intent.

35. For that there is a misjoinder of parties Defendant.

36. For that said Count attempts to joint trespass and trespass on the case in the same Count.

37. For aught that appears from said Count, the Plaintiff was a trespasser.

LYONS, PIPES AND COCK  
Attorneys for the Defendant,  
Southern Pine Electric Cooperative,  
Inc., a corporation.

BY: 

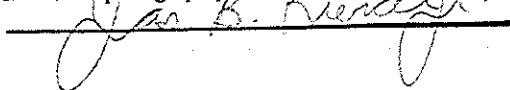
WALTER M. COOK

BY: 

JAMES B. KIERCE, JR.

CERTIFICATE OF SERVICE *82*

I do hereby certify that I have on this *82*  
day of *Jan*, 19 *71*, served a  
copy of the foregoing pleading on counsel for all  
parties to this proceeding by mailing the same  
by United States mail, properly addressed, and  
first class postage prepaid.



FILED

JAN 8 1971

ALICE J. DUCK

CLERK  
REGISTER

FILED

SEP 9 1971

JOHN T. CUMBIE,

Plaintiff,

VS.

SOUTHLAND MOWER CO., INC.,  
a corporation, SOUTHERN PINE  
ELECTRIC COOPERATIVE, INC.,  
a corporation, et al.,

Defendants.

IN THE UNITED STATES DISTRICT COURT  
OF BALDWIN COUNTY,

ALABAMA,

AT LAW.

CASE NO. 9599

NOTICE TO TAKE DEPOSITION

TO: Richard Bounds  
Cunningham, Bounds and Byrd  
P. O. Box 4486  
Mobile, Alabama 36604

You are hereby notified that the Defendant  
Southland Mower Co., Inc.,  
will take the deposition of the following named persons:

Dr. Russell Sherman

TIME: September 16, 1971, 4:30 P. M.,  
O'clock until completed.

PLACE: Baldwin County Courthouse, Bay Minette, Alabama

PERSON BEFORE WHOM TAKEN: ~~XXXXXXXXXXXX~~ LOUIS M. HUBBARD, JR.  
or some other qualified person.

DATED this 8th day of September, 1971.

[Signature]  
Attorneys for Defendant  
Southland Mower Co., Inc.

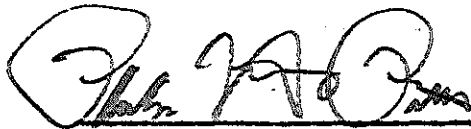
I hereby certify that the foregoing notice has been  
served upon the attorneys of record for the Plaintiff on the  
8th day of September, 1971, by U. S. Mail, postage prepaid,  
at their post office address in Mobile, Alabama.

[Signature]  
Attorneys for Defendant  
Southland Mower Co., Inc.

TO THE CLERK OF THE CIRCUIT COURT:

Please issue subpoena to Dr. Russell Sherman,  
address Bay Minette, Alabama,  
the above-named person whose deposition will be taken, summoning  
said person to be and appear at the time and place appearing above,  
then and there to give testimony upon oral examination, as provided  
by law.

This the 8th day of September, 1971.



Of Counsel for Defendant  
Southland Mower Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the  
foregoing notice to Richard Bounds  
Attorney of record for the Plaintiff at the address shown  
above on this the 8th day of September, 1971.



Of Counsel for Defendant  
Southland Mower Co., Inc.

FILED

SEP 9 1971

JOHN T. CUMBIE,

Plaintiff,

VS.

SOUTHLAND MOWER CO.,

INC., a corporation, SOUTHERN  
PINE ELECTRIC COOPERATIVE,  
INC., a corporation, et al.,

Defendants.

ELINICE B. BLACKMON, CIRCUIT  
CLERK  
IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA,

AT LAW.

CASE NO. 9599

NOTICE TO TAKE DEPOSITION

TO: Richard Bounds  
Cunningham, Bounds and Byrd  
P. O. Box 4486  
Mobile, Alabama 36604

You are hereby notified that the Defendant  
Southland Mower Co., Inc.,  
will take the deposition of the following named persons:

John T. Cumbie

TIME: September 16, 1971, 10x, 3:30 P. M.,  
O'Clock until completed.

PLACE: Baldwin County Courthouse

PERSON BEFORE WHOM TAKEN: XXXXXXXXXXXXXXXXXXXX LOUIS M. HUBBARD, JR.  
or some other qualified person.

DATED this 8th day of September, 1971.

[Signature]  
Attorneys for Defendant  
Southland Mower Co., Inc.

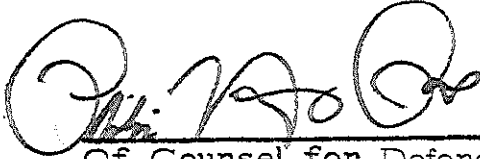
I hereby certify that the foregoing notice has been  
served upon the attorneys of record for the Plaintiff on the  
8th day of September, 1971, by U. S. Mail, postage prepaid,  
at their post office address in Mobile, Alabama.

[Signature]  
Attorneys for Defendant  
Southland Mower Co., Inc.

TO THE CLERK OF THE CIRCUIT COURT:

Please issue subpoena to John T. Cumbie,  
address \_\_\_\_\_,  
the above-named person whose deposition will be taken, summoning  
said person to be and appear at the time and place appearing above,  
then and there to give testimony upon oral examination, as provided  
by law.

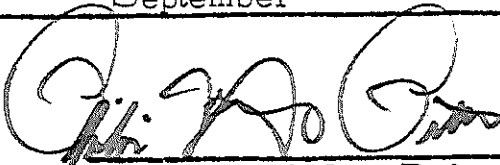
This the 8th day of September, 1971.



Of Counsel for Defendant  
Southland Mower Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the  
foregoing notice to Mr. Richard Bounds  
Attorney of record for the Plaintiff at the address shown  
above on this the 8th day of September, 1971.



Of Counsel for Defendant  
Southland Mower Co., Inc.

FILED

SEP 9 1971

JOHN T. CUMBIE,

Plaintiff,

VS.

SOUTHLAND MOWER CO., INC.,

a corporation, SOUTHERN PINE

ELECTRIC COOPERATIVE, INC.,

a corporation, et al.,

Defendants.

EUNICE B. BLACKMON CIRCUIT CLERK

IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA,

AT LAW.

CASE NO. 9599

NOTICE TO TAKE DEPOSITION

TO: James R. Owen

Attorney at Law

Bay Minette, Alabama 36507

You are hereby notified that the Defendant  
Southland Mower Co., Inc.  
will take the deposition of the following named persons:

John T. Cumbie

TIME: September 16, 1971, 3:30 P. M.,

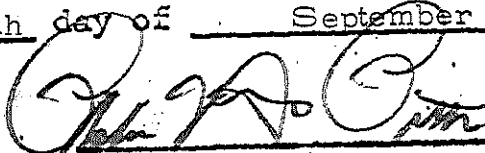
0'Clock until completed.

PLACE: Baldwin County Courthouse, Bay Minette, Alabama

PERSON BEFORE WHOM TAKEN: ~~XXXXXXXXXXXXXXXXXXXX~~ LOUIS M. HUBBARD, JR.

or some other qualified person.

DATED this 8th day of September, 1971.



Attorneys for Defendant  
Southland Mower Co., Inc.

I hereby certify that the foregoing notice has been  
served upon the attorneys of record for the Plaintiff on the  
8th day of September, 1971, by U. S. Mail, postage prepaid,  
at their post office address in Bay Minette, Alabama.



Attorneys for Defendant  
Southland Mower Co., Inc.



TO THE CLERK OF THE CIRCUIT COURT:

Please issue subpoena to John T. Cumbie,  
address \_\_\_\_\_,  
the above-named person whose deposition will be taken, summoning  
said person to be and appear at the time and place appearing above,  
then and there to give testimony upon oral examination, as provided  
by law.

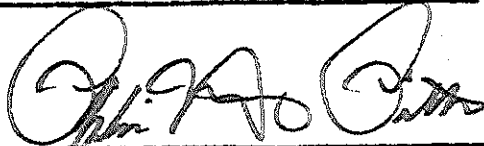
This the 8th day of September, 1971.



Of Counsel for Defendant  
Southland Mower Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the  
foregoing notice to James R. Owen  
Attorney of record for the Plaintiff at the address shown  
above on this the 8th day of September, 1971.



Of Counsel for Defendant  
Southland Mower Co., Inc.

JOHN T. CUMBIE,	(	IN THE CIRCUIT COURT
	)	
Plaintiff,	(	
	)	
VS.	(	OF BALDWIN COUNTY,
	)	
SOUTHLAND MOWER CO., INC.,	(	
a corporation, SOUTHERN	)	
PINE ELECTRIC COOPERATIVE,	(	ALABAMA
INC., a corporation, and	)	
A B C, a person, firm or	)	
corporation who was the	(	
manufacturer of the	)	
Vulcan 22 inch lawnmower,	(	AT LAW
Model Number 92502, Type	)	
Number 0188-01, Code	(	
Number 6803155, described	)	
in the body of the complaint	(	
in this cause of action whose true	)	
true name and legal identification	(	
is otherwise unknown to the	)	
Plaintiff at this time but will	(	
be added by amendment when ascer-	)	
tained, individually and	(	
jointly,	)	
	(	
Defendants.	)	CASE NO. 9599

M O T I O N     T O     P R O D U C E

COMES NOW Southern Pine Electric Cooperative, Inc., a corporation, a Defendant in the above styled cause and moves this Honorable Court to require Plaintiff to produce for inspection and study on a day sufficiently in advance of the trial of this cause so that the Defendant may examine and study the following objects in the possession, custody, control or power of Plaintiff to-wit:

1. The piece of wire which struck Plaintiff at the time of the accident made the basis of this suit.
  
2. The wire to which Plaintiff refers in his allegation that this Defendant "negligently caused or allowed said wire to remain on said lawn for a period of approximately one week prior

to July 22, 1970."

The aforesaid objects are necessary and material to this Defendant's case.

Augustine Meaher III  
AUGUSTINE MEAHER, III.

STATE OF ALABAMA

COUNTY OF MOBILE

Personally appeared before me, the undersigned authority, Augustine Meaher, III., who is known to me and being by me first duly sworn, deposes and says that he is an attorney for Defendant, Southern Pine Electric Cooperative, Inc. in the above styled cause and that the production of the above and foregoing objects as requested in the foregoing motion are necessary and material to this Defendant's case.

Augustine Meaher III  
AUGUSTINE MEAHER, III.

Sworn to and subscribed before me on this 9th day of September, 1971.

Barbara Nicholson  
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

OF COUNSEL:

LYONS, PIPES AND COOK

Attorneys for Defendant Southern Pine Electric Cooperative, Inc.

FILED

BY: Augustine Meaher III  
AUGUSTINE MEAHER, III.

SEP 10 1971

UNICE B. BLACKMON CIRCUIT CLERK

VOL 71 PAGE 799

- 2 -

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 9th day of September, 1971, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.

Augustine Meaher III

JOHN T. CUMBIE,	)	
	)	IN THE CIRCUIT COURT OF
PLAINTIFF,	)	
	)	BALDWIN COUNTY, ALABAMA
-vs-	)	
	)	AT LAW
SOUTHLAND MOWER CO., INC.,	)	
a corporation, SOUTHERN	)	CASE NO. 9599
PINE ELECTRIC COOPERATIVE,	)	
INC., a corporation, etal,	)	
	)	
DEFENDANTS.	)	

MOTION TO QUASH SERVICE OF NOTICE OF DEPOSITION

Comes the Plaintiff in the above cause and moves the Court for an order quashing the service of the notice of the deposition of Dr. Russell Sherman in the above cause for September 16, 1971 on the following separate and several grounds:

1. Said notice is inadequate and insufficient.
2. Said notice was received by the Plaintiff's attorney, Richard Bounds, on Thursday, September 9, 1971, less than ten days prior to the date set for said deposition and is therefore insufficient.
3. Both attorneys for the Plaintiff have other matters scheduled on September 16, 1971 which conflict with said deposition and which would prevent attendance at said deposition by said attorneys.

CUNNINGHAM, BOUNDS & BYRD  
ATTORNEYS FOR PLAINTIFF

BY: Richard Bounds  
RICHARD BOUNDS

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 9th day of September 1971, served a copy of the foregoing petition for quash on the defendant by proceeding to mailing the same by United States mail, properly addressed, with first class postage paid.

Richard Bounds

**FILED**

SEP 10 1971

EUNICE B. BLACKMON CIRCUIT CLERK

JOHN T. CUMBIE,	)	
	)	IN THE CIRCUIT COURT OF
PLAINTIFF,	)	BALDWIN COUNTY, ALABAMA
-vs-	)	
	)	AT LAW
SOUTHLAND MOWER CO., INC.,	)	
a corporation, SOUTHERN	)	CASE NO. 9599
PINE ELECTRIC COOPERATIVE,	)	
INC., a corporation, et al,	)	
	)	
DEFENDANTS.	)	

MOTION TO QUASH SERVICE OF NOTICE OF DEPOSITION

Comes the Plaintiff in the above cause and moves the Court for an order quashing the service of the notice of the deposition of John T. Cumbie in the above cause for September 16, 1971 on the following separate and several grounds:

1. Said notice is inadequate and insufficient.
2. Said notice was received by the Plaintiff's attorney, Richard Bounds, on Thursday, September 9, 1971, less than ten days prior to the date set for said deposition and is therefore insufficient.
3. Both attorneys for the Plaintiff have other matters scheduled on September 16, 1971 which conflict with said deposition and which would prevent attendance at said deposition by said attorneys.

CUNNINGHAM, BOUNDS & BYRD  
ATTORNEYS FOR PLAINTIFF

BY: Richard Bounds  
RICHARD BOUNDS

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 9th day of September, 1971, a copy of the foregoing pleading or counsel for all parties to the cause being by mailing the same by United States mail, properly addressed, and first class postage prepaid.

Richard Bounds

FILED

SEP 10 1971

EUNICE B. BLACKMON  
CIRCUIT CLERK

JOHN T. CUMBIE,	)	
	)	IN THE CIRCUIT COURT OF
PLAINTIFF,	)	
	)	BALDWIN COUNTY, ALABAMA
-vs-	)	
	)	AT LAW
SOUTHLAND MOWER CO., INC.,	)	
a corporation, SOUTHERN	)	CASE NO. 9599
PINE ELECTRIC COOPERATIVE,	)	
INC., a corporation, et al,	)	
	)	
DEFENDANTS.	)	

Comes the Plaintiff in the above cause and moves the Court on order dismissing Plaintiff's cause of action against the Defendant, Southland Mower Co., Inc. only, reserving all rights, claims or causes of action against the Defendant, Southern Pine Electric Cooperative, Inc.,

CUNNINGHAM, BOUNDS & BYRD  
ATTORNEYS FOR PLAINTIFF

BY:   
RICHARD BOUNDS

  
JAMES R. OWEN  
ATTORNEY FOR PLAINTIFF

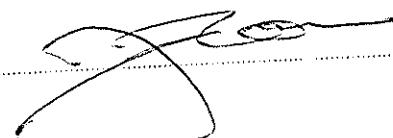
**FILED**

DEC 20 1971

**CERTIFICATE OF SERVICE**

EUNICE B. BLACKMON CIRCUIT CLERK

I do hereby certify that I have on this 20<sup>th</sup> day of Dec, 1971, served a copy of the foregoing pleading and counsel for all parties in this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.



JOHN T. CUMBIE,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW
SOUTHLAND MOWER CO., INC.,	)	
a corporation, et al,	)	
Defendants.	)	CASE NO: 9,599

COMES NOW, defendant Southern Pine Electric Cooperative, Inc., a corporation, and its demurrers to the original complaint having been over-ruled, for answer to the complaint heretofore filed and each count thereof, separately and severally, sets down and assigns the following pleas, separately and jointly:

1. That the material allegations are untrue.
2. That it is not guilty.

3. For that in the course of this litigation and on to-wit, December 13, 1971, plaintiff did receive a payment of FIVE HUNDRED AND NO/100 (\$500.00) DOLLARS from Southland Mower Co., Inc. in compensation of his injuries made the basis of this suit; defendant further shows that plaintiff's original complaint in this cause avers that Southland Mower Co., Inc. was negligent in the manufacture of a lawn mower, which mower allegedly threw a piece of wire into plaintiff's leg; WHEREFORE this defendant says that said FIVE HUNDRED AND NO/100 (\$500.00) DOLLARS paid to plaintiff herein by said Southland Mower Co., Inc. should be applied as a pro tanto reduction upon damages recoverable from this defendant.

FILED  
 JAN 12 1972  
 EUNICE B. BLACKMON  
 CIRCUIT CLERK

LYONS, PIPES AND COOK  
 Attorneys for Defendant  
 Southern Pine Electric Cooperative,  
 Inc., A Corporation.

CERTIFICATE OF SERVICE  
 I do hereby certify that I have on this \_\_\_\_\_ day of Jan, 19 72, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.  
Augustine Meaher III

By: Augustine Meaher III  
 AUGUSTINE MEAHER, III

JOHN T. CUMBIE,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW
SOUTHLAND MOWER CO., INC.,	)	
a corporation, et al,	)	
Defendants.	)	CASE NO: 9,599

AMENDED ANSWER

COMES NOW defendant Southern Pine Electric Cooperative, Inc., a corporation and amends its Answer heretofore filed to add the following plea, separately and jointly:

4. This defendant says that at the time and place complained of plaintiff was himself guilty of negligence which proximately contributed to his alleged injuries and damages in that at said time and said place the plaintiff so negligently operated a lawn mower without giving his care and attention to the area in which he operated the lawn mower so as to determine if foreign objects, debris or wire lay in the path of the lawn mower operated by plaintiff, WHEREFORE, this defendant says that the plaintiff ought not to have and recover of it.

LYONS, PIPES AND COOK  
Attorneys for Defendant  
Southern Pine Electric Cooperative, Inc.  
A corporation.

By: Augustine Meaher III  
AUGUSTINE MEAHER, III

**CERTIFICATE OF SERVICE**  
I do hereby certify that I have on this 18  
day of Jan, 1972, served a  
copy of this Amended Answer for all  
parties to this cause by mailing the same  
by United States Mail, properly addressed, and  
first class postage paid.  
Augustine Meaher III

**FILED**

JAN 19 1972

EUNICE B. BLACKMON CIRCUIT CLERK



LYONS, PIPES & COOK  
ATTORNEYS AT LAW  
2510 FIRST NATIONAL BANK BUILDING  
MOBILE, ALABAMA

JOSEPH H. LYONS (1900-1957)  
SAM W. PIPES  
WALTER M. COOK  
GORDON B. KAHN  
G. SAGE LYONS  
AUGUSTINE MEAHER, III  
JAMES B. KIERCE, JR.  
WESLEY PIPES  
NORTON W. BROOKER, JR.  
COOPER C. THURBER

36601

AREA CODE 205  
TEL. 432-4463  
P.O. DRAWER 2727

September 9, 1971

Mrs. Eunice B. Blackmon  
Clerk, Circuit Court, Law Side  
Baldwin County Courthouse  
Bay Minette, Alabama 36507

Re: John T. Cumbie vs. Southland Mower Co., Inc., et al  
Circuit Court, Baldwin County  
Case No: 9,599

Dear Mrs. Blackmon:

We enclose a Motion to Produce in the above cause  
and ask that it be noted so that it can be heard  
on the Motion Docket of September 16.

Very truly yours,

LYONS, PIPES AND COOK



Augustine Meaher, III  
AM/bn

Enclosure

1. De Gant, Elizabeth M., Housewife, 167 White Av. Fairhope, Ala. D12-D13
2. Roberts, Willie Mae, Housewife, 202 Boulder Av., Bay Minette D1
3. Vorel, Frank, Fairhope Photo Shop, Rt. Silverhill, Fairhope P1
4. Vick, Rigell, Frmn. REA 600 W. 7th St. Bay Minette, Robertsdale P2
5. Hall, Carol R., Mr., Asst Analyst PNAS, 203 Gaston Av. Fairhop, Pensacola, Fla. P2
6. Hall, David E., Elect Scott Paper Co., 12 Fels Av. Fairhope, Mobile P2
7. Hall, Rita M., Housewife, 12 Fels Av. Fairhope P2
8. Houseman, Katherine C., Housewife, 301 Cedar St., Bay Minette D6
9. Jeffery, Wm., A., Asst Cashier Merch. Natl Bk. 607 Spanish Main Sy. Spanish Fort, Mobile P9
10. Joyner, Bunk, Ala. Dry Dock, 306 George St., Fairhope, Mobile D7
11. Joyner, J. E., Retired, 306 Equity St. Fairhope D9
12. Strickland, D. Marvin, Supv. St. Hwy Dept. 1364 Collier Av. Bay Minette P2
13. Long, Robert Supvr. City Utilities, 483 Dogwood Av. Fairhope P3
14. Lowell, Quina O., Housewife, 166 Pier St. Fairhope P3
15. Haradik, Paul Rudolph, Custdn VFW, 102 N. Bancroft St. Fairhope D11
16. McGallagher, Joseph H., ofc. Worker, Sea Cliff Br., Fairhope, Mobile D11
17. Moore, Otto W., Farmer, Marlow Rd. RFD., Fairhope P12
18. Neal, K. L., Retired, 848 N. Greeno Rd. Fairhope P12
19. Presley, Faye C., Bkpr Bald Co. Bank, 100 W. 8th St. Bay Minette P12
20. Petty, John, Eng. Shell Chem., 512 Spanish Main, Spanish Fort P12
21. Coleman, John D., City Employee, 108 N. Section St., Fairhope P12
22. Corley, Alex B., Ofc. NAS, 601 Elaine Av., Bay Minette, Pensacola, Fla. D3
23. Corley, Casteva, Ofc. NAS., 1601 Elaine Av., Bay Minette, Pensacola D3
24. Del Homme, Selwyn A., Expditer Int. Paper Co. 161 Fig St. Fairhope D7
25. De Miller, Walter E., Chem, Eng. Scott Paper Co. 931 Sea Cliff Dr. Fairhope, Mobile D7
26. Martha M. Earle, Blacksher P8
27. Flowers, W. D., Logger, 1907 McMillan Av. Bay Minette D10
28. Ganey, Silas, Jr., Mech. Monsanto, 301 Vine St. Bay Minette, Pensacola, Fla. D10
29. Adkins, Ira C., Linesman City of F'hope 4 Laraway La. Fairhope P4
30. Ailen, Harrington, Grand Hotel (Waiter), PO. Box 387, Battles Wharf, Point Clear D2
31. Antinorella, Mike, Mtr. Co. 509 Fairhope, Av. Fairhope P10
32. Barr, Ruth, Housewife, Stuart St., Daphne, Ala. P8
33. Biggs, Harold S., Agt. Farm Bureau Ins., 252 N. Ingleside Av. Fairhope P5
34. Brill, Jimmy Electrician Town of R'dale, Robertsdale, Robertsdale P6
35. Brown, Cordell W., Purch. Agt. Standard Furn. Rt. 1 Box 261 Daphna, Bay Minette P6
36. Richardson, La Velle J., Controller Int. Paper Co. 125 Fairway Dr. Daphne, Mobile P13
37. Wrenn, Winona, Housewife, Bay Minette P13
38. McGill, Harold B., Merchant, Perdido, Perdido D1
39. Lowett, Clyde, Painter, Fairhope D5
40. Roberts, Mortimer, Kaiser, Bay Minette P11

P XXXXX XXXXX XX1 -

D XXXXX XXXXX XX1

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120  
226 13  
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LAW OFFICES

Cunningham, Bounds and Byrd

1350 DAUPHIN STREET

P. O. BOX 4486

MOBILE, ALABAMA 36604

ROBERT T. CUNNINGHAM  
RICHARD BOUNDS  
ROBERT L. BYRD, JR.  
WARREN L. HAMMOND, JR.

AREA CODE 205  
TELEPHONE 438-6188

September 9, 1971

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

Re: Cumbie vs. Soutland Mower Co., Inc.  
et al - Case No. 9599

Dear Mrs. Duck:

Will you please file the enclosed motions? Jim Owen will bring the matters to the Court's attention prior to September 16.

Very truly yours,

CUNNINGHAM, BOUNDS & BYRD

*Richard Bounds*  
RICHARD BOUNDS

RB/ac

cc: Mr. James R. Owen