

ROBERT LEE PHILYAW
the father of Jesse
Philyaw, an infant

Plaintiff

VS

FRED NEUMILLER

Defendant

IN THE CIRCUIT COURT

BALDWIN COUNTY, ALABAMA

AT LAW

NUMBER: 3952

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Comes now the Defendant and for further answer to the
Plaintiff's complaint says as follows:

I

That the injury to Plaintiff's son is the direct and
proximate result of Plaintiff's attempting to treat his son's
injury.

W. C. Hay

Attorney for Defendant

Filed
3.12.62
Deigfuerck

STATE OF ALABAMA
COUNTY OF BALDWIN

TO ANY SHERIFF OF THE STATE OF ALABAMA:

30 days You are hereby commanded to summon Fred Neumiller to ^{within} appear and plead, answer or demur to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama by Robert Lee Philyaw as Plaintiff and against Fred Neumiller as Defendant.

Witness my hand this 26 day Of August 1959.

Alice J. Clark
Clerk

Robert Lee Philyaw,	¶	In the Circuit Court of
Individually, as the next	¶	Baldwin County, Alabama
friend and also the parent	¶	At Law. No. <u>3952</u>
of Jesse Philyaw, an infant.	¶	
Plaintiff	¶	
Vs	¶	
Fred Neumiller	¶	
Defendant	¶	

1.

The Plaintiff claims of the Defendant Fifty Thousand Dollars for loss of service of his infant son, Jesse Philyaw, a boy fifteen years of age, who was injured while in the line and scope of his employment with the Defendant. On to-wit, June 22, 1959 the said Jesse Philyaw was employed by the Defendant to work on a Potato Grading Machine belonging to or in the service of the Defendant at Loxley, Alabama, in Baldwin County. On said date, one of the agents, servants or employees of the Defendant working on said grader while in the line and scope of his employment with the Defendant and whom Jesse Philyaw, a youth of tender years had reason to believe had the authority, told young Philyaw to get down and pull some trash out from under said potato grader, Jesse Philyaw did so and while so employed, some agent, servant or employee of the Defendant, while in the line and scope of his employment with the Defendant, started said potato grader operating, catching the hand of Jesse Philyaw in the machine, tearing, bruising and lacerating it, so that the flesh on the hand was pulled back, leaving the bare bone showing and causing permanent damage to said hand and body of the boy, Jesse Philyaw and the permanent loss of his services to a great degree for the period of his minority, to his father, the Plaintiff. Said hand will never be normal, causing Plaintiff damage in the amount aforesaid, as a proximate result caused while in the line and scope of his employment with the Defendant, by the agent, servant or

employee of Defendant, starting said grading machine and catching, tearing and mangling the hand of his son, Jesse Philyaw.

2 .

The Plaintiff, as next friend of Jesse Philyaw, an infant claims of the Defendant Fifty Thousand Dollars as damages for the said Jesse Philyaw for injured received by the said Jesse Philyaw while in the line and scope of his employment by the Defendant. On-to-wit June 22, 1959, the said Jesse Philyaw was employed by the Defendant to work on a potato grading machine belonging to or in the service of the Defendant at Loxley, Alabama in Baldwin County. One said date, one of the agents, servants or employees of the Defendant while in the line and scope of his employment with the Defendant working on said grader and whom Jesse Philyaw, a youth of tender years had reason to believe had the authority, told young Philyaw to get down and pull some trash from under the said potato grader. Jesse Philyaw did so and while so employed, some agent, servant or employee of the Defendant, while in the line and scope of his employment with the Defendant, started said grader operating, catching the hand of Jesse Philyaw in the machine, tearing, bruising, and lacerating it, so that the flesh on the hand was pulled back leaving the bare bone showing, permanently injuring the hand and body of the said Jesse Philyaw. Said hand will never be normal again, causing the said Jesse Philyaw damages in the amount aforesaid, as a proximate result caused by the agent, servant or employee of the Defendant, while in the line and scope of his employment with the Defendant, starting said grading machine and catching, tearing and mangling the hand of the said Jesse Philyaw.


Attorney for the Plaintiff.

Plaintiff demands a trial by Jury.


Attorney for the Plaintiff.

FILED
AUG 26 1959

ALICE J. DUCK, Clerk

3952

Robert Lee Philyaw,
Individually, as the next
friend and also the parent
of Jesse Philyaw, an infant.

Plaintiff

Vs

Fred Neumiller

Defendant

SUMMONS AND COMPLAINT

FILED

AUG 26 1959

ALICE J. DUCK, Clerk

Service by
Reg. mail

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY LAWFUL OFFICER OF SAID COUNTY:

Summon ROBERT LEE PHILYAW and JESSE PHILYAW to be and appear before Louise J. Dusenbury, Court Reporter, at the Courthouse in Bay Minette, Alabama, at 10:30 A.M. on the 23rd day of August, 1960, in the case of Robert Lee Philyaw the father of Jesse Philyaw, an Infant, Plaintiff, vs Fred Neumiller, Defendant, as a witness for the Defendant, and there make return of this writ.

WITNESS my hand on this the 12th day of August, 1960.

Oliver J. Duck
Clerk of the Circuit Court of Baldwin
County, Alabama

FILED
AUG 12 1960
OLIVER J. DUCK, Clerk

AFFIDAVIT

STATE OF ALABAMA
COUNTY OF BALDWIN

TO WHOM IT MAY CONCERN:

This is to certify that I, Reuben F. McKinley am the Attorney for Robert Lee Philyaw, Individually, as the next friend and also the parent of Jesse Philyaw, an infant, Plaintiff in the Civil Case No. 3952, Vs Fred Neumiller, Defendant. It is my belief that Fred Neumiller is a Non Resident of the State of Alabama, that he is over the age of twenty-one years and that his last known address is Route 4, Box 382, Kenosha, Wisconsin or North 22nd Avenue, Kenosha, Wisconsin.

In witness whereof, I hereby set my hand and seal on this the 26 day of August 1959.

Reuben F. McKinley I.S.

Subscribed and sworn to ^{before me} on this the 26th day of Aug 1959.

[Signature]
Notary Public, Baldwin County, Ala.

FILED

AUG 26 1959

ALICE J. DUCK, CLERK
REGISTER

208A

ROBERT LEE PHILYAW
the father of Jesse
Philyaw, an infant

Plaintiff

vs

FRED NEUMILLER

Defendant

IN THE CIRCUIT COURT
BALDWIN COUNTY, ALABAMA

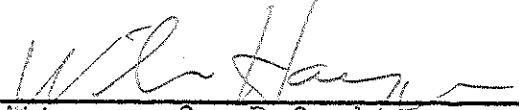
AT LAW

NUMBER: 3952

..-.-.-..

Comes now the Defendant in the above styled cause and demurs to the ammended complaint filed on October 26, 1959 and assigns the following grounds separately and severally:

1. The complaint fails to state a cause of action.
2. For that the complaint contains conclusions of the pleader.
3. For that the allegation that potatoes were packed and shipped to other states does not sufficiently set out by whom potatoes were packed and shipped to other states.
4. For that it does not appear by whom potatoes were packed and shipped to other states.
5. For that it affirmatively appears from the complaint that the cause is governed by the workmans compensation law of Alabama.
6. For that the allegation that said employer be inter-state commerce is a conclusion of the pleader.
7. For that it affirmatively appears that Plaintiff was not employed by the Defendant.
8. The complaint is vague, indefinite and uncertain.
9. For that the complaint is prolix.
10. It does not appear who was allegedly employed by Defendant.
11. It does not appear with sufficient certainty that the injured person was employed by Defendant.


Attorney for Defendant

Filed
9-13-60

NUMBER: 3952

ROBERT LEE PHILYAW
the father of Jesse
Philyaw, an infant

Plaintiff

VS

FRED NEUMILLER

Defendant

IN THE CIRCUIT COURT
BALDWIN COUNTY, ALABAMA
AT LAW

FILED

JAN 13 1960

ALICE L. DUCK, CLERK
REGISTER

ROBERT LEE PHILYAW,
Individually, as the next
friend and also the parent
of Jesse Philyaw, an infant,

Plaintiff

VS

FRED NEUMILLER

Defendant

IN THE CIRCUIT COURT

BALDWIN COUNTY, ALABAMA

AT LAW

NUMBER: 3952

.....

Comes the Defendant, Fred Neumiller, in the above styled cause and demurs to the Plaintiff's complaint, and to each count thereof separately and severally, and assigns the following grounds:

1. Plaintiff fails to state a cause of action.
2. It affirmatively appears that Plaintiff has no right of action.
3. It affirmatively appears from Plaintiff's complaint that Plaintiff's alleged damages fall under Workmens Compensation Laws of Alabama.
4. It affirmatively appears Plaintiff's rights and remedies have been included in Workmens Compensation Laws of Alabama.
5. For aught that appears Plaintiff's remedy falls within the Alabama Workmens Compensation Law.
6. For that the complaint contains conclusions of the pleader.
7. For that the allegation "said hand will never be normal," is a conclusion of the pleader.
8. For that the complaint is vague and indefinite.
9. For that the allegation "said hand will never be normal " is vague and indefinite.

W. L. Hay

Attorney for Defendant

Filed
9-23-59

NUMBER: 3952

ROBERT LEE PHILYAW,
Individually, as the next
friend and also the parent
of Jesse Philyaw, an infant,

Plaintiff

VS

FRED NEUMILLER

Defendant

IN THE CIRCUIT COURT

BALDWIN COUNTY, ALABAMA

AT LAW

FILED

SEP 23 1959

ALICE J. DUCK, CLERK
REGISTER

Amended Complaint

Robert Lee Philyaw
the father of Jesse
Philyaw, an infant

Plaintiff

Vs

Fred Neumiller

Defendant

In the Circuit Court of
Baldwin County, Alabama
At Law. No. 295-2

The Plaintiff claims of the Defendant One Hundred Thousand Dollars for loss of service of his infant son, Jesse Philyaw, a boy fifteen years of age, who was injured while in the line and scope of his employment with the Defendant, said employment being in Interstate Commerce. On to wit June 22, 1959, the said Jesse Philyaw was employed by the Defendant to work on a potato grading machine belonging to or in the service of the Defendant at Loxley, Alabama, at which point potatoes were packed and shipped to other states. On said date, one of the agents, servants or employees of the Defendant working on said grader, while in the line and scope of his employment with the Defendant, told young Philyaw to get down and pull some trash out from under said grader. Jesse Philyaw did so and while so employed, some agent, servant or employee of the Defendant, while in the line and scope of his employment with the Defendant started said potato grader operating, catching the hand of Jesse Philyaw in the machine, tearing, bruising and lacerating it, so that the flesh on the hand was pulled back, leaving the bare bone showing and causing permanent damage to said hand and body of the boy, Jesse Philyaw and the permanent loss of his services to a great degree, for the period of his minority to his father, the Plaintiff. The fingers on said hand are permanently drawn down into the palm of the hand and cannot be straightened by the boy, Jesse Philyaw, as a direct proximate result of said injury. Said hand will never be normal, causing Plaintiff damage in the amount aforesaid, as a proximate result caused while in the line and scope of the employment of Jesse Philyaw by the Defendant, by the agent, servant or employee of the Defendant starting said grading machine operating and catching, tearing and mangling the hand of his son, Jesse Philyaw, through no fault of the Plaintiff or his son.

Robert F. McMiller
Attorney for the Plaintiff

Plaintiff demands a trial by jury.

FILED

06-24-59

ALICE L. DUCK, CLERK
REGISTER

Robert F. McMiller
Attorney for the Plaintiff

3957

Robert Lee Philyaw, the
Father of Jesse Philyaw,
an Infant

Plaintiff

Vs

Fred Neumiller

Defendant

Amended Complaint

FILED

OCT 26 1950

ALICE J. DUCK, CLERK
REGISTER

ROBERT LEE PHILYAW
the father of Jesse
Philyaw, an Infant

Plaintiff

VS

FRED NEUMILLER

DEFENDANT

IN THE CIRCUIT COURT
BALDWIN COUNTY, ALABAMA

AT LAW

NUMBER: 3952

.....

Comes now Defendant in the above styled cause and demurs to Plaintiff's amended complaint number two and assigns the following grounds separately and severally.

1. The complaint does not state a cause of action.
2. It affirmatively appears that the injury complained of is subject to the Workmens Compensation Laws of Alabama.
3. For ought that appears in the complaint the injury alleged is subject to the Workmens Compensation Laws of Alabama.
4. The complaint is vague, indefinite and uncertain.
5. The complaint contains conclusive of the pleader.

FILED

AUG 12 1963

ALICE L. DUCK, CLERK
REGISTER

W. L. Hay
Attorney for Defendant

7113952

Phelan
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JURY LIST - SPRING SESSION - MARCH 12, 1962

1. Christnecht, Leroy, Civil Service, Lillian
2. Sabaniss, Ray, Newport, Bay Minette
3. Byrd, Carl, Civil Service, Stapleton
4. Bryars, Rudolph M., Brookley Field, Bay Minette
5. Bryan, Vernon A., Farmer, Elberta
6. Beasley, Wilson C., Merchant, Bay Minette
7. Bishop, Clarence, Farmer, Fairhope
8. Blonham, Walter, Farmer, Fairhope
9. Brock, L.B., Farmer, Robertsdale
10. Gilbert, B.B., Mechanic, Bay Minette
11. Good, Joe, Farmer, Elberta
12. Crook, Prince, Laborer, Bay Minette
13. Guenther, Paul O., Civil Service, Foley
14. Gullledge, Carl, REA, Robertsdale
15. Akers, Rodus M., Insurance, Bay Minette
16. Martin, Albert D., Newspaper, Bay Minette
17. Coleman, John B., Farmer, Bay Minette
18. Corley, Morace, W., Brookley Field, Bay Minette
19. Epperson, Edwin, Civil Service, Foley
20. Erdmann, Rudolph G., Plumber, Mag. Spgs.
21. Fell, Russell, Civil Service, Lillian
22. Hill, Robert, Merchant, Loxley
23. Jaye, James J., Farmer, Rabon
24. Jordan, Green, Merchant, Bay Minette
25. Kane, James, Farmer, Loxley
26. Keenan, Ruben A., Oil Dealer, Robertsdale
27. Kauler, Albert, Salesman, Loxley
28. King, Morace, E., Farmer, Mag. Spgs.
29. King, Vernon, Farmer, Robertsdale
30. Stucki, Alfred, Locks Plant Agr., Elberta
31. Styron, Isby L., Plant Foreman, Robertsdale
32. Mowser, Douglas, Clerk, Bay Minette
33. Meyer, Roy, Druggist, Fairhope
34. Nelson, J.L., Jr., Laborer, Fairhope
35. Nelson, Harry, Post Office, Bay Minette
36. Milton, Ovideoka, Farmer, Robertsdale
37. Palmer, James J., Farmer, Robertsdale
38. Rhodes, Elbert M., Farmer, Sumnerdale
39. Roberts, Raymond C., Farmer, Foley
40. Reley, Charlie H., Farmer, Perdido
41. Schriber, Bill, Carpenter, Foley
42. Stephens, Ray, Banker, Bay Minette
43. Seibert, Fred, Jr., Farmer, Elberta
44. Stewart, Frank, State Emp., Gulf Shores
45. Stuart, Darrill, Contractor, Bay Minette
46. Lamborch, Jack Ogal, Farmer, Bay Minette
47. Strickland, Marvin, Laborer, Bay Minette
48. McDaniel, Schuler, Farmer, Robertsdale
49. Gorte, Albert, Farmer, Belforest

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ROBERT LEE PHILYAW, Father of
JESSE PHILYAW, an Infant.

PLAINTIFF.

vs.

FRED NEUMILLER

DEFENDANT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

NUMBER: 395-2

Now comes the Plaintiff and files the following Interrogatories to the Defendant, Fred Neumiller.

1. What is your full name, age, residence, business address, and occupation?
2. Were you engaged in business in Baldwin County, Alabama, on the 22nd day of June, 1959?
3. Are you the owner of the Neumiller Produce Company?
4. Is the Neumiller Produce Company a partnership? If your answer is yes, please state the name and address of the partners who were engaged as partners in the business on the 22nd day of June, 1959.
5. Is the Neumiller Produce Company a Corporation? If so, under the law of what state was it Incorporated? Where is its home office and who were the officers of said corporation on June 22nd, 1959? Who are the officers of said Corporation at this time?
6. Was Billy Kramer or Billy Creamer or Billy Kreamer employed by you on the 22nd day of June, 1959?
7. Was Billy Creamer your Strawboss or Foreman at that time?
8. Who was your Strawboss or Foreman on that occasion?
9. Did you see Jesse Philyaw on that date and occasion?
10. Was he injured in one of your potato graders?
11. Please state the facts and circumstances concerning his injuries?
12. Did you send him to a hospital?
13. Do you know who carried Jesse Philyaw from your grader to the Doctor?
14. Did you send one of your employees or did you personally take him or someother person?

15. Did you pay the Doctor bill?

16. Did you furnish an automobile for the purpose of this trip to the doctor?

17. Please attach to your answers a list of your employees upon the 29th day of June, 1959?

Frank G. Horne
ATTORNEY FOR PLAINTIFF.

STATE OF ALABAMA X

ESCAMBIA COUNTY X

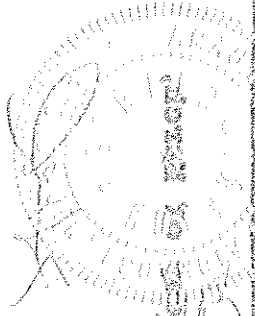
Before me Sheldon E. Hall a Notary Public in and for said County in said State, personally appeared Frank G. Horne, known to me, who being first duly sworn, deposes and says that he is of counsel for the plaintiff in the above styled cause; that the answers to the foregoing interrogatories truthfully made will be material evidence for the plaintiff in the trial of said cause.

Sworn to and subscribed before me on this the 1 day of March, 1961.

Sheldon E. Hall
NOTARY PUBLIC.

1961

STANDARD FORM NO. 64



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Robert Lee Philpaw
the father of Jesse
Philpaw, an Infant
Plaintiff

vs

Fred Neumiller
Defendant

In The Circuit Court of
Baldwin County, Ala
At Law. No 5952

Now Comes the Plaintiff and Moves this Honorable
Court to strike Pleas Numbered 5, 6 and 7
filed in the Above styled Cause and for
grounds for said Motion says;

1. That the Matter Contained in said pleas
was raised by demurrers filed by the
Defendant to the Complaint of the Plaintiff
and this Honorable Court ruled against
the Defendant in said Matter by
overruling said demurrers. Hence this
Matter has already been determined
by this Court.

Reuben T. McFarley
Attorney for the Plaintiff

FILED

9-9 1900

ALICE J. DUCK, CLERK-
REGISTER