

August 3, 1961

DAVE TUBERVILLE, Plaintiff

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA AT LAW

VS

MICHAEL NICHOLAS BARBOUR, Defendant

CASE NO. 4778

TO THE

I, Bettye Frink, Secretary of State, hereby certify that on July 21, 1961
I sent by registered mail in an envelope addressed as follows:

"Michael Nicholas Barbour
4326 Yorkshore
Detroit, Michigan"

"Registered Mail—
Return Receipt Requested
Deliver to Addressee Only"

bearing sufficient and proper prepaid postage, a notice bearing my signature and the Great Seal of the State of Alabama in words and figures as follows:

"Michael Nicholas Barbour
4326 Yorkshore
Detroit, Michigan"

You will take notice that on July 21, 1961 the Sheriff of Montgomery County, Alabama, served upon me, in my official capacity, summons and complaint in a case entitled: DAVE TUBERVILLE, Plaintiff VS MICHAEL NICHOLAS BARBOUR, Defendant

in the CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW
Case No. 4778 a true copy of which summons and complaint is attached hereto and the said service upon me as Secretary of State of the State of Alabama has the force and effect of personal service upon you.

WITNESS MY HAND and the Great Seal of the State of Alabama this the 21
day of July 1961

Enclosure (1)

(Signed) Bettye Frink
Secretary of State"

I further certify that the notice above set out which was so mailed in the envelope addressed as above set forth had attached to it a true copy of the summons and complaint in the above-styled cause.

I further certify that on July 31, 1961 I received the return card, showing receipt by the designated addressee of the aforementioned matter at Miami, Fla.— Shenandoah Sta.
on 7/29/61

WITNESS MY HAND and the Great Seal of the State of Alabama this the 3 day
of August 1961

Bettye Frink
Bettye Frink
Secretary of State

Enclosures: Return Receipt Card and copy
of Summons and Complaint.

cc: Honorable Kenneth Cooper
Attorney at Law
109 E First St.
Bzy Minette, Alabama

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 4778

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Michael Nicholas Barbour

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

Michael Nicholas Barbour, Defendant.

by Dave Tubberville

Plaintiff

Witness my hand this 20th day of July 1961

Alfred [Signature], Clerk

DAVE TUBERVILLE,

Plaintiff,

Vs.

MICHAEL NICHOLAS BARBOUR,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

Case No. 4778

COUNT ONE:

The Plaintiff claims of the Defendant, Michael Nicholas Barbour, the sum of Five Thousand Dollars (\$5,000.00) as damages, for that, on, to-wit, August 24, 1960, the Defendant, while driving an automobile on United States Highway No. 90, a public highway, at a point on said highway about three miles south of Loxley, in Baldwin County, Alabama, negligently ran the said automobile into, upon or against a Baldwin County, Alabama, school bus loaded with school children, which said school bus was being driven by the Plaintiff's wife, Alice T. Tuberville, and as a proximate result of the said negligence of the Defendant the Plaintiff's said wife suffered a possible concussion, lumbosacral strain and cervical sprain, and as a proximate consequence of such injuries and sickness of Plaintiff's wife he lost the services and society of his said wife for a long time, and he was put to great trouble, inconvenience and expenses for medical attention, medicine, care and nursing in or about his efforts to heal and care for the said wife's said injuries and sickness, hence this suit.

COUNT TWO:

Plaintiff claims of the Defendant, Michael Nicholas Barbour, the sum of Five Thousand Dollars (\$5,000.00) as damages, for that, on, to-wit, August 24, 1960, the Plaintiff's wife, Alice T. Tuberville, while driving a Baldwin County, Alabama, school bus loaded with school children, on United States Highway No. 90, at a point approximately three miles south of Loxley, in Baldwin County, Alabama, was caused to suffer a possible concussion, lumbosacral strain and cervical sprain as a result of the Defendant negligently driving the automobile in which he was riding into, upon or against the said school bus being operated and driven by the said

Plaintiff's wife, and as a proximate result of said injuries and sickness of the Plaintiff's wife, he, the Plaintiff, lost the services and society of his said wife, Alice T. Tuberville, for a long period of time, and the Plaintiff was put to great trouble, inconvenience and expenses for medicine, medical attention, care and nursing in or about his efforts to heal and cure the said wife's said injuries and sickness, hence this suit.

Kenneth Coopers
Attorney for Plaintiff.

Plaintiff demands a trial by jury of this cause.

Kenneth Coopers
Attorney for Plaintiff

AFFIDAVIT OF NON-RESIDENCE

STATE OF ALABAMA

BALDWIN COUNTY

I, Kenneth Cooper, Attorney for the Plaintiff in the case of DAVE TUBERVILLE, Plaintiff, vs. MICHAEL NICHOLAS BARBOUR, Defendant, in the Circuit Court of Baldwin County, Alabama, swear that to the best of my knowledge, information and belief the said Defendant, Michael Nicholas Barbour, is over the age of twenty-one years, and is a non-resident of the State of Alabama; that the said Michael Nicholas Barbour now resides at 4326 Yorkshore, Detroit, Michigan.

Kenneth Cooper

Sworn to and subscribed before me this 20th day of July,

1961.

Clifford L. Smith
Clerk, Circuit Court, Baldwin
County, Alabama.

DAVE TUBERVILLE,

Plaintiff,

Vs

MICHAEL NICHOLAS BARBOUR,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Case No. 4778

~~ADDITION TO~~ AMENDED

BILL OF COMPLAINT

Comes now the Plaintiff, Dave Tuberville, by his Attorney, Kenneth Cooper, and respectfully request of this Honorable Court ~~permission to~~ amend his Bill of Complaint heretofore filed in the above styled cause as follows:

1. On line two of COUNT ONE delete the words, "the sum of Five Thousand Dollars (\$5,000.00) as damages", and substitute in lieu thereof the following words: "the sum of Twelve Thousand (\$12,000.00) Dollars as damages,".
2. On line two of COUNT TWO delete the words, "the sum of Five Thousand Dollars (\$5,000.00) as damages", and substitute in lieu thereof the following words: "the sum of Twelve Thousand (\$12,000.00) Dollars as damages,".

Kenneth Cooper
Attorney for Plaintiff

Attorney of Record for Defendant:

Hon Paul W. Brock
Attorney at Law
1st National Bank Bldg.,
Mobile, Alabama

FILED

SEP 5 1961

ALICE J. DUCK, CLERK
REGISTER

DAVE TUBERVILLE, : IN THE CIRCUIT COURT OF
Plaintiff, : BALDWIN COUNTY, ALABAMA
VS. : AT LAW
MICHAEL NICHOLAS BARBOUR, :
Defendant. : CASE NO. 4778

D E M U R R E R

Comes now the defendant and demurs to the complaint as a whole and to each count of the complaint filed herein and for separate and several grounds, sets down and assigns, separately and severally, the following:

1. That it does not state facts sufficient to constitute a cause of action against this defendant.

2. For that it does not appear with sufficient certainty wherein this defendant violated any duty owed by defendant to the plaintiff.

3. For that it does not sufficiently appear that this defendant owed any duty to the plaintiff which defendant negligently failed to perform.

4. For that there does not appear sufficient causal connection between this defendant's said breach of duty and plaintiff's injuries and damages.

5. 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 this defendant.

6. It is not alleged with sufficient certainty where said accident occurred.

7. For aught that appears, plaintiff had no right to be where plaintiff was at the time and place of said accident.

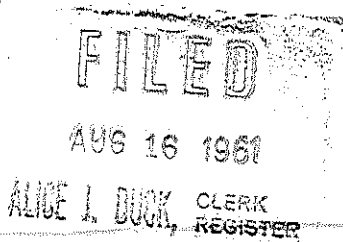
Paul W. Brock

Paul W. Brock, Attorney for Defendant

Defendant respectfully demands trial of this cause by jury.

Paul W. Brock

Paul W. Brock



DAVE TUBERVILLE, : IN THE CIRCUIT COURT OF
Plaintiff, : BALDWIN COUNTY, ALABAMA
VS. : AT LAW
MICHAEL NICHOLAS BARBOUR, :
Defendant. : CASE NO. 4778

MOTION TO STRIKE

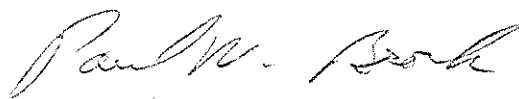
Comes now the defendant and, without waiving the demurrer filed herein by defendant, but expressly insisting upon the same, moves the court to strike from Counts 1 and 2 of the complaint, separately and severally, each of the following phrases, separately and severally:

"...loaded with school children..."

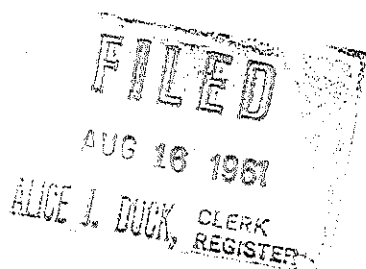
"...trouble, inconvenience and..."

As grounds for said motion, defendant assigns the following, separately and severally:

1. Said phrase is unnecessarily prolix, irrelevant or frivolous.
2. Said alleged items of damage are not properly recoverable in this suit.
3. The plaintiff has no right to recover for said items of alleged damage.



Paul W. Brock



IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

DAVE TUBERVILLE,

Plaintiff

Vs.

MICHAEL NICHOLAS BARBOUR,

Defendant

CIVIL ACTION NO. _____

PETITION OF DEFENDANT FOR REMOVAL TO UNITED STATES DISTRICT COURT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes your petitioner, Michael Nicholas Barbour, defendant in the above styled cause, and respectfully shows unto this Honorable Court as follows:

1. That the defendant, Michael Nicholas Barbour, is now and was at the time of the commencement of this suit a resident citizen of the State of Michigan, having his domicile in said state, and that the plaintiff, Dave Tuberville, is now and was at the time of the commencement of this suit a citizen of the State of Alabama; that this is an action brought by a citizen of the State of Alabama against a citizen of the State of Michigan, and is wholly between citizens of different states, and one which can be fully determined between them.

2. That this is a suit to recover damages for personal injuries allegedly received by the plaintiff's wife in an automobile accident and for other damages suffered by plaintiff as a result of the personal injuries plaintiff's wife allegedly received, all as a direct and proximate result of the negligence of the defendant.

3. That said suit was originally filed in the Circuit Court of Baldwin County, Alabama, claiming Five Thousand Dollars (\$5,000.00) damages; that on September 5, 1961, plaintiff filed an amended complaint in said Circuit Court increasing his claim for damages to Twelve Thousand Dollars (\$12,000.00); that the amount now sued for and involved in this action exceeds the sum of Ten Thousand Dollars (\$10,000.00), exclusive of interests and costs; that the defendant has filed no pleadings in said cause in the State Court to the amended complaint claiming Twelve Thousand Dollars (\$12,000.00) damages, and the time within which this defendant is allowed by law to file his said petition for removal has not expired; and that the defendant has a good defense to said cause. Defendant attaches hereto as Exhibit "A" and makes a part hereof, a copy of all process, pleadings and orders purported to have been served upon him in such action.

4. Petitioner desires to remove this action to this Court on the ground of diversity of citizenship existing therein between the plaintiff and the defendant, in pursuance to the Acts of Congress in that behalf provided. Petitioner, therefore, files and offers herewith bond with good and sufficient surety in the penal sum of Five Hundred Dollars (\$500.00) conditioned that the defendant will pay all costs and disbursements incurred by reason of this said removal proceedings should it be determined that this action was wrongfully or improperly removed to this said Court.

5. Petitioner represents that promptly upon the filing of this petition and the said bond filed herewith, petitioner shall give written notice thereof to the adverse party and shall file a copy of the petition with the Clerk of the Circuit Court of Baldwin County, Alabama, wherein said action is now pending.

WHEREFORE, your petitioner prays that the said bond filed herewith be accepted as good and sufficient and that this Court will enter an order for the removal of this action to this said Court.

DATED this 13th day of September, 1961.

Paul W. Brock
Donald F. Pierce
Attorneys for Defendant

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

STATE OF ALABAMA)

COUNTY OF MOBILE)

Personally appeared before me, the undersigned authority in and for said State, Donald F. Pierce, whose name is signed above, and who is known to me, and who, being by me first duly sworn on oath, deposes and says that he is one of the attorneys in the above entitled cause for the defendant therein; that he is familiar with the allegations of the foregoing Petition;

that he is informed and believes that the allegations of said Petition are true and correct; and that upon such information and belief he states the allegations of said Petition are true and correct.

Donald F. Pierce

DONALD F. PIERCE.

Subscribed and sworn to before me
on this 13th day of September, 1961.

Robert C. Baker

Notary Public, State of Alabama at Large

C E R T I F I C A T E

DONALD F. PIERCE, one of the attorneys of record for the defendant herein, being duly sworn on oath, says that heretofore upon the filing herewith of the petition for removal and requisite bond, he forthwith, on the 13th day of September, 1961, gave written notice thereof to the adverse party herein by depositing in the United States Post Office at Mobile, Alabama, this 13th day of September, 1961, a true and correct copy of the above and foregoing notice and of the petition for removal and of the removal bond, in an envelope securely sealed, and sufficiently stamped, and properly addressed to Kenneth Cooper, Esq., Attorney at Law, 109 E. First Street, Bay Minette, Alabama, the true and correct address of the attorney for the plaintiff;

and that on the said 13th day of September, 1961, a copy of said petition, together with notice thereof, copy of which is attached hereto, was deposited in the United States Post Office at Mobile, Alabama, in an envelope securely sealed, sufficiently stamped and properly addressed to the Honorable Alice J. Duck, Clerk, Circuit Court of Baldwin County, Bay Minette, Alabama, wherein said action was originally pending.

DATED this 13th day of September, 1961.

Donald F. Pierce
DONALD F. PIERCE

Subscribed and sworn to before me
this 13th day of September, 1961.

Patton C. Baker
Notary Public, State of Alabama at Large

DAVE TUBERVILLE,
Plaintiff,
Vs.
MICHAEL NICHOLAS BARBOUR,
Defendant.

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

Case No. 4778

COUNT ONE:

The Plaintiff claims of the Defendant, Michael Nicholas Barbour, the sum of Five Thousand Dollars (\$5,000.00) as damages, for that, on, to-wit, August 24, 1960, the Defendant, while driving an automobile on United States Highway No. 90, a public highway, at a point on said highway about three miles south of Loxley, in Baldwin County, Alabama, negligently ran the said automobile into, upon or against a Baldwin County, Alabama, school bus loaded with school children, which said school bus was being driven by the Plaintiff's wife, Alice T. Tuberville, and as a proximate result of the said negligence of the Defendant the Plaintiff's said wife suffered a possible concussion, lumbosacral strain and cervical sprain, and as a proximate consequence of such injuries and sickness of Plaintiff's wife he lost the services and society of his said wife for a long time, and he was put to great trouble, inconvenience and expenses for medical attention, medicine, care and nursing in or about his efforts to heal and care for the said wife's said injuries and sickness, hence this suit.

COUNT TWO:

Plaintiff claims of the Defendant, Michael Nicholas Barbour, the sum of Five Thousand Dollars (\$5,000.00) as damages, for that, on, to-wit, August 24, 1960, the Plaintiff's wife, Alice T. Tuberville, while driving a Baldwin County, Alabama, school bus loaded with school children, on United States Highway No. 90, at a point approximately three miles south of Loxley, in Baldwin County, Alabama, was caused to suffer a possible concussion, lumbosacral strain and cervical sprain as a result of the Defendant negligently driving the automobile in which he was riding into, upon or against the said school bus being operated and driven by the said

Plaintiff's wife, and as a proximate result of said injuries and sickness of the Plaintiff's wife, he, the Plaintiff, lost the services and society of his said wife, Alice T. Tuberville, for a long period of time, and the Plaintiff was put to great trouble, inconvenience and expenses for medicine, medical attention, care and nursing in or about his efforts to heal and cure the said wife's said injuries and sickness, hence this suit.

Kenneth Cooper
Attorney for Plaintiff.

Plaintiff demands a trial by jury of this cause.

Kenneth Cooper
Attorney for Plaintiff

AFFIDAVIT OF NON-RESIDENCE

STATE OF ALABAMA

BALDWIN COUNTY

I, Kenneth Cooper, Attorney for the Plaintiff in the case of DAVE TUBERVILLE, Plaintiff, vs. MICHAEL NICHOLAS BARBOUR, Defendant, in the Circuit Court of Baldwin County, Alabama, swear that to the best of my knowledge, information and belief the said Defendant, Michael Nicholas Barbour, is over the age of twenty-one years, and is a non-resident of the State of Alabama; that the said Michael Nicholas Barbour now resides at 4326 Yorkshore, Detroit, Michigan.

Kenneth Cooper

Sworn to and subscribed before me this 20th day of July, 1961.

David J. Smith
Clerk, Circuit Court, Baldwin
County, Alabama.

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 4778

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Michael Nicholas Barbour

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

Michael Nicholas Barbour

, Defendant

by

Dave Tubberville

, Plaintiff

Witness my hand this

20th

day of

July

19 61

Reid J. Luck, Clerk

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

DAVE TUBBERVILLE

vs. Plaintiffs

MICHAEL NICHOLAS BARBOUR

Defendants

SUMMONS and COMPLAINT

Filed 7-20- 61, 19

Alice J. Duck, Clerk

Plaintiff's Attorney

Defendant's Attorney

1336
Defendant lives at _____

RECEIVED IN OFFICE

RECEIVED IN OFFICE

JUL 21 1961

M. S. BUTLER, Sheriff

I have executed this summons

this _____, 19

by leaving a copy with

Executed by serving 3 copies of
the within on Betty Frank
Secretary of State of The State of
Alabama.

(This the 21 day of July, 1961)

Sheriff of Montgomery County

M. S. Butler,

By Ramond D.S.

The Sheriff claims 21
miles at 100 per mile for a total
1 20

M. S. Butler, Sheriff
Montgomery County, Ala.

Sheriff

Deputy Sheriff

In the Matter of the Removal
to the District Court of the
United States for the Southern
District of Alabama, Southern
Division, of the case of:

DAVE TUBERVILLE,

Plaintiff

Vs.

MICHAEL NICHOLAS BARBOUR,

Defendant

TO: Kenneth Cooper, Esq.
Attorney at Law
109 E. First Street
Bay Minette, Alabama

Please take notice that Michael Nicholas Barbour, defendant
in the above styled cause, has on this 13th day of September, 1961,
filed his petition to remove the above entitled action to the
United States District Court for the Southern Division of the
Southern District of Alabama; a copy of the said petition being
attached to this said notice, and that said defendant has on
this said date filed in the United States District Court a bond
with good and sufficient surety conditioned as is provided by
law with respect to said proceedings. You are hereby further
notified that a copy of the said petition was deposited in the
United States Post Office at Mobile, Alabama, in an envelope
securely sealed, sufficiently stamped and properly addressed to
the Honorable Alice J. Duck, Clerk, Circuit Court of Baldwin
County, Bay Minette, Alabama, wherein said cause is now pending,
which shall effect the removal of said cause from said Court.

This notice is given to you as attorney for the plaintiff
in compliance with the provisions of Title 28 U.S.C.A., Sec.
1446.

DATED this 13th day of September, 1961.

Paul M. Brock

Donald F. Peine

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

In the Matter of the Removal
to the District Court of the
United States for the Southern
District of Alabama, Southern
Division, of the case of:

DAVE TUBERVILLE,

Plaintiff

Vs.

MICHAEL NICHOLAS BARBOUR,

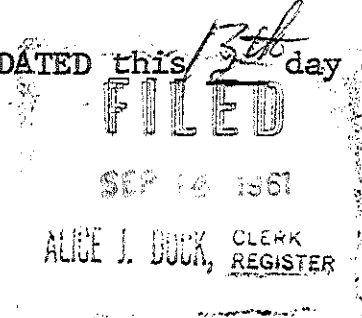
Defendant

TO: Hon. Alice J. Duck
Clerk, Circuit Court of
Baldwin County, Alabama

Pursuant to the provisions of law in such cases made and provided, there is hereby filed with you a copy of the petition of the defendant in the above entitled cause to remove said cause to the United States District Court for the Southern Division of the Southern District of Alabama. The said petition, accompanied by a bond with good and sufficient surety conditioned as is required by law, has been this day filed in the said United States District Court for the Southern Division of the Southern District of Alabama.

Written notice of the filing of the aforesaid petition and bond has been this day given to attorney for the plaintiff herein, and you are hereby notified that the filing of a copy of the aforesaid petition with you as Clerk of the Circuit Court of Baldwin County, Alabama, effects the removal of said cause to the aforesaid United States District Court.

DATED this 13th day of September, 1961.



Paul M. Brock
Donald F. Priebe
Attorneys for Defendant

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

LADY

EVERETT VS. MICHIGAN NATIONALS LEAF-OUT

INSTRUCTIONS TO DELIVERING EMPLOYEE

150

THE

every address where delivered

77

RETURN REGISTRATION

RETURN RECEIPT

Received the numbered article described on p. 111.

NAME OF ADDRESSER (must always be filled in)

1892

NATURE OF ADDRESSEE'S AGENT IF KNOWN

ATTIVES IN UNDERSTANDING

DATE DELIVERED

ADDRESS WHERE DELIVERED: _____

PERMITTED ONLY/Reques

19-2-2011

RECEIVED JUL 8 1962 U.S. DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL	RECEIVED JUL 8 1962 U.S. DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL	RECEIVED JUL 8 1962 U.S. DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL	RECEIVED JUL 8 1962 U.S. DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL
REGISTERED NO. 1034	REGISTERED NO. 1034	REGISTERED NO. 1034	REGISTERED NO. 1034
CERTIFIED NO. 1034	CERTIFIED NO. 1034	CERTIFIED NO. 1034	CERTIFIED NO. 1034
INSURED NO. 1034	INSURED NO. 1034	INSURED NO. 1034	INSURED NO. 1034