

01-543-CD
D. C. GUELICH EXPLOSIVE COMPANY -vs- R. N. CARBAUGH REPAIR, INC.
etal

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

D. C. GUELICH EXPLOSIVE COMPANY, *
a Pennsylvania corporation, *
Plaintiff *

vs. *

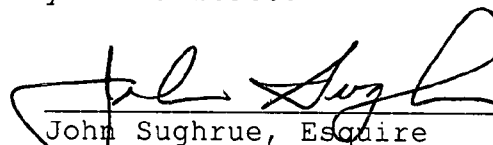
R. N. CARBAUGH REPAIR, INC., *
a corporation and Rob N. Carbaugh, *
individually and t/a *
R.N. Carbaugh Repair, Inc., *
Defendants *

NO. 01- -CD

PRAECIPE FOR WRITS OF SUMMONS

TO: WILLIAM A. SHAW, PROTHONOTARY,

Kindly issue Writs of Summons in a civil action in the above-captioned matter directed to R.N. Carbaugh, Inc., corporate defendant and Rob N. Carbaugh, individual defendant. The amount in controversy is in excess of \$20,000.00. Certify the Writs of Summons to the Sheriff of Clearfield County with directions to deputize the Sheriff of Venango County and to serve the same on corporate defendant at its place of business, Box 12AAA, Johnstone Dr., Seneca, Pennsylvania 16346 and on the individual defendant at his place of business, Box 12AAA, Johnstone Dr., Seneca, Pennsylvania 16346.



John Sughrue, Esquire
Attorney for Plaintiff
Attorney I.D. No. 01037
23 North Second Street
Clearfield, PA 16830
Phone: (814) 765-1704
Fax: (814) 765-6959

cc: Chester A. Hawkins, Sheriff

FILED

APR 16 2001
3:11 PM
William A. Shaw
Prothonotary

pd \$80.00

1cc Shery D
Writ to Shery D

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION**

COPY

SUMMONS

**D.C. Guelich Explosive Company,
a Pennsylvania Corporation,**

Vs.

NO.: 2001-00543-CD

**R.N. Carbaugh Repair, Inc., a
Corporation, and Rob N. Carbaugh,
individually and t/a R.N. Carbaugh Repair, Inc.**

TO: R.N. CARBAUGH REPAIR, INC.
ROB N. CARBAUGH

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 04/16/2001

William A. Shaw
Prothonotary

Issuing Attorney:

John Sughrue
23 North Second Street
Clearfield, PA 16830

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

D. C. GUELICH EXPLOSIVE COMPANY,	*	
a Pennsylvania corporation,	*	
Plaintiff	*	
	*	
vs.	*	NO. 01- 543 -CD
	*	
R. N. CARBAUGH REPAIR, INC.,	*	
a corporation and Rob N. Carbaugh,	*	
individually and t/a	*	
R.N. Carbaugh Repair, Inc.,	*	
Defendants	*	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET HELP.

David S. Meholick, Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830
(814) 765-2641, Extension 32

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

D. C. GUELICH EXPLOSIVE COMPANY,	*	
a Pennsylvania corporation,	*	
Plaintiff	*	
	*	
vs.	*	NO. 01- 543 -CD
	*	
R. N. CARBAUGH REPAIR, INC.,	*	
a corporation and Rob N. Carbaugh,	*	
individually and t/a	*	
R.N. Carbaugh Repair, Inc.,	*	
Defendants	*	

COMPLAINT

AND NOW, comes D. C. Guelich Explosive Company, by its attorney, John Sughrue, and files this Complaint against the above named Defendant upon causes of action, whereof the following are statements:

1. The Plaintiff, D. C. Guelich Explosive Company, is a Pennsylvania corporation, having its principal office at R. D. 3, Box 125-A, Erie Pike, Clearfield, Clearfield County, Pennsylvania 16830.

2. The individual Defendant, Rob N. Carbaugh, individually and t/a R.N. Carbaugh Repair, Inc., is an adult individual maintaining his principle place of business at Box 12AAA, Johnstone Drive, Seneca, Venango County, Pennsylvania 16343.

3. The corporate Defendant, R.N. Carbaugh Repair, Inc., is alleged to be a corporation having its principle place of business at Box 12AAA, Johnstone Drive, Seneca, Venango County, Pennsylvania 16346.

4. At all times pertinent hereto, Plaintiff was engaged in the business of selling throughout Pennsylvania explosive products for application in the quarry mining and construction business together with incidental services related to the use of those products. The incidental services included the providing of drills, equipment, and labor necessary to drill vertical cylindrical holes into and through the surface and substrata of the ground. The vertical holes were then loaded with explosive products and detonated in the extraction and mining process.

5. On or about February 1997, Plaintiff purchased from Gill Rock, Inc. of Lebanon, Pennsylvania for use in its business a mobile, down the hole, hammer drill unit to be used for the purpose of drilling vertical holes into the earth. Said drill is referred to hereafter as "Beetle Drill No. 3."

6. The Beetle Drill No. 3 was mounted on tracks and its movement was powered by an engine mounted on Beetle Drill No. 3.

7. The hammer drill mounted on Beetle Drill No. 3 was air powered and was required by its specifications to be powered by a separate HiAir pressure compressor unit generating 900 cfm and 350 psi. The HiAir pressure compressor is powered by a separate engine mounted on the compressor unit. Said compressor unit and the engine together with equipment incidental to its operation such as cooling units are referred to herein collectively as the "Air Power Unit." In application, the Air Power Unit is mounted on a separate truck to provide it mobility.

8. The Beetle Drill No. 3 and the Air Power Unit are operated at various job locations together by virtue of a flexible air hose that connects the Air Power Unit to the hammer drill mounted on Beetle Drill No. 3.

9. Beetle Drill No. 3 was designed to penetrate substrata including hard rock and for efficiency required that the hammer drill be powered by an Air Power Unit that generated 900cfm-350psi.

10. On or about February 1997, Plaintiff decided to purchase an Air Power Unit to operate Beetle Drill No. 3.

11. At such time and place, Defendant contacted Plaintiff at its office in Clearfield County, Pennsylvania.

12. At all times pertinent hereto, the individual Defendant (hereafter Defendant) was engaged in the business of selling new and rebuilt and reconditioned used equipment, including industrial engines, air compressors, and fabricated products.

13. At all times pertinent hereto, Defendant represented to Plaintiff that Defendant specialized in equipment utilized in the ground drilling industry and had specialized knowledge with respect to the same.

14. At all times pertinent hereto, Defendant knew the purpose and use for which the Air Power Unit was being purchased, including particularly, rock drilling in the quarry industry.

15. At said time and place, Defendant proposed to Plaintiff that it purchase a used, totally rebuilt, reconditioned, and refitted Air Power Unit from the Defendant that would be built by Defendant to the specifications required. Defendant represented

that as a part of the process, all parts of the Air Power Unit would be inspected and broken or worn parts removed and replaced with new original or equivalent parts.

16. At said time and place, Defendant represented and warranted to Plaintiff the following:

A. That he was qualified to and would provide an Air Power Unit capable of generating the required 900 cfm-350 psi's;

B. That the Air Power Unit would include a newly rebuilt and refitted Caterpillar industrial engine, 3406B, 425 hp. and a newly rebuilt and retooled compressor unit, 204-128 GHH, used receiver tank, reconditioned and refitted cooling systems, and new hosing controls, air cleaners, and steel related to the building and fabricating of the unit;

C. That his Air Power Unit would be equal to or superior to a newly manufactured Air Power Unit available on the market.

D. That Defendant specialized in such Air Power Units, knew what was required, necessary, and desirable to operate Beetle Drill No. 3 in accordance with its manufacturer's specifications and to the standard customary and ordinary within the industry;

E. That his Air Power Unit comprised of the foregoing major parts met the specifications required to power the Beetle Drill No. 3 and that the unit as built and operational would meet the specifications set forth above. A true and correct copy of a description of the Air Power Unit and represented

specifications of the Air Power Unit delivered by Defendant to Plaintiff, as prepared by Defendant, is attached hereto as Exhibit A and incorporated herein by reference.

17. At all times pertinent hereto, Plaintiff relied upon the judgment, representations and warranties of the Defendant.

18. At said time and place, Defendant represented to Plaintiff that Defendant's Air Power Unit would be built, assembled, and placed on Plaintiff's truck at Defendant's shop for a total contract price of \$58,950.

19. In reliance upon Defendant's representations and warranties, as set forth above, all of which are incorporated herein by reference, Plaintiff accepted Defendant's proposal and paid Defendant \$40,000 on or about April 3, 1997 and the balance of \$18,950.00 on or about April 9, 1997.

20. On or about April 8, 1997, Defendant delivered the Air Power Unit to the Plaintiff.

21. On or about Wednesday, April 9, 1997, the Air Power Unit was operated by Plaintiff at its operation at Bellefonte Lime Company, Bellefonte, Pennsylvania.

22. On or about April 12, 1997, the Air Power Unit was returned to Defendant for adjustments and/or repair.

23. On or about April 17, 1997 Defendant returned the Air Power Unit to Plaintiff and it was placed in service.

24. Plaintiff attempted to utilize Defendant's Air Power Unit to power the hammer drill on Beetle Drill No. 3 for an extended

period from April 17, 1997 through July 7, 1997, when the Air Power Unit was removed from service.

25. During said period, the Air Power Unit failed to meet the specifications required by Plaintiff and represented and warranted by Defendant as set forth above, failed to properly, efficiently, and economically power Beetle Drill No. 3, and/or was defectively assembled, designed, and/or built generally, and in the following particulars:

A. A start-up mode of the Air Power Unit's diesel engine was missing causing the engine to ignite and operate continuously at full speed, all of which causes damage to the engine;

B. There was no required inspection tag on the pressurized air receiver tank in the Air Power Unit, which receives an air and oil mixture, separates it, sending the air to the drill and the oil to the compressor;

C. The Air Power Unit did not generate 900 cfm, and/or sufficient psi, generating 290 psi rather than the 350 psi specified and desirable in a properly functioning unit;

D. On April 25, 1997, the engine was operating at 190 degrees with an outside temperature of 48 degrees and compressor was operating at a temperature of 170 to 180 degrees;

E. On April 29, 1997, the housing of the compressor developed a crack resulting in oil and air leaking around the crack;

F. On April 30, 1997, a coupler on a steel line blew apart and was repaired by Plaintiff on May 1, 1997. Upon inspection, it was determined that there was unsatisfactory flexing in the steel line causing it to break couplers. This excessive flexing was repaired by Plaintiff on or about April 30, 1997;

G. From April 14 to May 29, 1997, Dextron oil continued to leak from an unknown source in the second stage of the compressor;

H. Beginning in early May 1997, through May 29, 1997, as the outside, or ambient, temperatures increased, the engine of the unit repeatedly and consistently overheated to approximately 220 degrees, which caused it to shut-off automatically, thereby shutting down the Air Power Unit. After cooling, the unit could be restarted and operated for a short period of time until it again overheated and shut down. As a result, in order to use the unit, Plaintiff was required to allow it to cool down for long periods of time after shut off and/or to operate the engine and compressor at reduced speeds (substantially less than the 900cfm and 350psi of air pressure that the Air Power Unit was rated and warranted to produce), all of which caused significantly reduced levels of performance, reduced or lost production and increased consumption of fuel and fluids. In addition, unnecessary labor was expended to monitor the unit closely at all times and to

service it. By way of example, at 82 degrees outside temperature, the engine would overheat and shut down;

I. The Air Power Unit, despite being properly operated and serviced by Plaintiff, would not cool sufficiently to keep the engine from overheating;

J. On May 29, 1997, the unit was taken out of service and transported to Defendant's shop for determination and repair of the oil leak in the second stage of the compressor and Plaintiff advised Defendant of the overheating problem being encountered in warmer weather;

K. On June 4, 1997, the engine operated at 220 degrees and the compressor operated at 220 degrees with an outside temperature of 76 degrees resulting in the unit shutting itself down or requiring the operator to lower the speed of the unit;

L. On June 11, 1997, the engine overheated to 215 degrees with an outside temperature of 87 degrees causing the operator to slow it down, resulting in the Air Power Unit consuming approximately 20 gallons of fuel per hour;

M. On June 12, 1997, the engine again overheated to 227 degrees resulting in a cut-back of speed with an outside temperature of 84 degrees; in addition, 2 1/2 hours production was lost to oil leaks;

N. Severe overheating continued from June 4, 1997 through July 7, 1997, resulting in the Air Power Unit shutting down or having to be cut back to a reduced speed and power;

O. As a result of the aforesaid overheating, the Air Power Unit was consistently operated at a reduced speed substantially less than 900 cfm's and was substantially less effective in production than a 900 cfm 350 psi air compressor would produce;

P. On about June 16, 1997, Plaintiff again contacted Defendant about the engine and compressor overheating and the fluid leaks. Defendant agreed to inspect and repair the unit on June 21, 1997, but failed to appear as scheduled to repair the Air Power Unit and did not do so at any time thereafter.

Q. On June 27, 1997, the compressor component was leaking Dextron continuously resulting in a fire and injury hazard. On June 30, 1997, Plaintiff replaced air regulators on the compressor at a cost of about \$330;

R. On July 3, 1997, a weld on a steel line to the compressor failed causing Dextron to leak in the unit;

S. Throughout the period May 19, 1997 through July 7, 1997, the unit could not be operated under full power because of the overheating.

26. At all times pertinent hereto, Plaintiff negotiated and conducted business as aforesaid with the Defendant individually and not in any capacity as a representative of a corporation; further, the individual Defendant in oral communications indicated that he was entering into the contract and performing the negotiated work specified above.

27. Plaintiff did not at any time relevant hereto, negotiate with or agree to do business with R. N. Carbaugh Repair, Inc., an alleged corporation.

28. Plaintiff believes and therefore avers that R. N. Carbaugh Repair, Inc. is a name under which the individual Defendant may have traded from time to time and was not a duly organized, operated and maintained corporate entity under the Law of Pennsylvania;

29. At all times pertinent hereto, the individual Defendant conducted his affairs individually to such an extent that the Plaintiff is entitled under the facts and law of this case to pierce any corporate entity and to hold the individual Defendant personally liable hereunder.

Count I
D.C. Guelich Explosive Co., Plaintiff v. Rob N. Carbaugh, Defendant

Breach of Contract

30. The averments of paragraphs 1 through 29, as set forth above, are incorporated herein by reference as though the same were set forth herein at length verbatim.

31. As a result of the foregoing, Defendant substantially breached his express contract with the Plaintiff generally and in the following specifics:

A. The Air Power Unit did not meet the specifications, which Defendant was required to deliver under the contract.

B. The Air Power Unit failed to operate at 900 cfm's and/or to generate 350 psi as required under the contract and as reasonably required and desirable to operate Beetle Drill

No. 3 in accordance with its manufacturers recommendations and requirements;

C. The Air Power Unit failed to function in accordance with the specifications of the contract, at the level or standard of a 900 cfm, 350 psi unit;

D. The Air Power Unit was defective with respect to parts, materials, components and workmanship as more fully set forth above.

32. During the period set forth above, Plaintiff advised Defendant of the defects in its Air Power Unit and gave Defendant a reasonable opportunity to repair the same.

33. During the period April 17, 1997 through July 7, 1997, the Defendant failed, refused, and/or was unable to repair the substantive defects in its Air Power Unit, redesign it, or otherwise cause it to operate in accordance with the specifications required.

34. On or about June 25, 1997, Plaintiff determined that Defendant was unable to repair the Air Power Unit to cause it to comply with the contract; that Defendant's failure was a material breach of the contract; and removed the Air Power Unit from its operation and stored it on its premises for the benefit of Defendant.

35. By letter dated June 25, 1997, Plaintiff advised Defendant of the material breach of the contract and that the Air Power Unit was being returned to Defendant in exchange for a refund. A copy of said letter is attached hereto as Exhibit B.

36. As a result of the foregoing, Plaintiff lost substantial production from the Beetle No. 3 Drill that resulted in additional expenses and loss of profit.

37. Despite the demand for the return of the purchase price of \$58,950 on June 25, 1997, the Defendant has through the filing of this Complaint failed and/or refused to refund the purchase price.

38. As a result of the foregoing, Defendant is indebted to Plaintiff as of June 25, 1997 in the amount of \$58,950 and continues to be indebted in that amount as of the filing of this Complaint.

39. The Plaintiff is entitled by statute to be compensated for interest at the legal rate of six(6%) percent from the date said indebtedness arose until the time of payment.

WHEREFORE, Plaintiff, D. C. Guelich Explosive Company, moves your Honorable Court to enter judgment in its favor and against Rob N. Carbaugh, individually, for an amount in excess of \$20,000.00, including compensation for loss of production, profit and the purchase price of \$58,950.00, together with interest at the legal rate from June 25, 1997 to the date of payment with costs of this action taxed to the Defendant.

Count II

D.C. Guelich Explosive Co., Plaintiff v. Rob N. Carbaugh, Defendant

Breach of Implied Warranties

40. The averments of paragraphs 1 through 39, as set forth above, are incorporated herein by reference as though the same were set forth herein at length verbatim.

41. In purchasing the Air Power Unit, Plaintiff reasonably relied on the judgment and representations of the Defendant.

42. At all times pertinent hereto, Plaintiff believed that the Air Power Unit was reasonably fit for the particular purpose for which Plaintiff was buying it.

43. At all times pertinent hereto, Plaintiff believed and relied upon the belief that Defendant's Air Power Unit was reasonably fit for the ordinary and/or general purposes for which it was being sold and for which Plaintiff intended to use it.

44. There was an implied understanding between the parties that the machine being manufactured, including all of its materials, parts and components would be genuine, that sound materials and parts would be used and that good workmanship would be furnished and, in particular, that components would be rebuilt with genuine parts and that accessories such as hosing, controls, air cleaners, connectors, fasteners and the like would be new.

45. As a result of the foregoing, there arises as a matter of law, implied warranties of fitness for a particular purpose, merchantability, genuineness and good workmanship.

46. As a result of the foregoing, Defendant substantially breached said implied warranties.

47. As a result of the foregoing, Plaintiff concluded on or about June 25, 1997 that Defendant's breach was material and that Defendant was unable or unwilling to cure the breach.

48. As a result of the foregoing, Defendant is indebted to Plaintiff for the purchase price of the Air Power Unit, loss of

production, excess costs and loss of profit resulting from said breach.

WHEREFORE, Plaintiff, D. C. Guelich Explosive Company, moves your Honorable Court to enter judgment in its favor and against Rob N. Carbaugh, individually, for an amount in excess of \$20,000.00, including compensation for loss of production, profit and the purchase price of \$58,950.00, together with interest at the legal rate from June 25, 1997 to the date of payment with costs of this action taxed to the Defendant.

As an alternative to the above counts, Plaintiff pleads, in the alternative as follows:

Count III
D.C. Guelich Explosive Co., v. R.N. Carbaugh Repair, Inc.,
Plaintiff Defendant

Breach of Contract

49. The word "Defendant" as used in this count shall at all times be construed to refer to the corporate Defendant, R.N. Carbaugh Repair, Inc., and the words him or he in the context of referring to the Defendant shall be construed to refer to the said corporate Defendant.

50. The averments of paragraphs 1 through 11 and 13 through 25, as set forth above, are incorporated herein by reference as though the same were set forth herein at length verbatim.

51. At all times pertinent hereto, the Defendant was engaged in the business of selling new and rebuilt and reconditioned used

equipment, including industrial engines, air compressors, and fabricated products.

52. At all times pertinent hereto, the Defendant was represented by and acted through duly authorized employees, agents, and/or servants acting at all times on behalf of the Defendant and within the scope of their authority and employment.

53. As a result of the foregoing, Defendant substantially breached its express contract with the Plaintiff generally and in the following specifics:

A. The Air Power Unit did not meet the specifications, which Defendant was required to deliver under the contract.

B. The Air Power Unit failed to operate at 900 cfm's and/or to generate 350 psi as required under the contract and as reasonably required and desirable to operate Beetle Drill No. 3 in accordance with its manufacturers recommendations and requirements;

C. The Air Power Unit failed to function in accordance with the specifications of the contract, at the level or standard of a 900 cfm, 350 psi unit;

D. The Air Power Unit was defective with respect to parts, materials, components and workmanship as more fully set forth above.

54. During the period set forth above, Plaintiff advised Defendant of the defects in its Air Power Unit and gave Defendant a reasonable opportunity to repair the same.

55. During the period April 17, 1997 through July 7, 1997, the Defendant failed, refused, and/or was unable to repair the substantive defects in its Air Power Unit, redesign it, or otherwise cause it to operate in accordance with the specifications required.

56. On or about June 25, 1997, Plaintiff concluded that Defendant was unable to repair the Air Power Unit to cause it to comply with the contract; that Defendant's failure was a material breach of the contract; and removed the Air Power Unit from its operation and stored it on its premises for the benefit of Defendant.

57. By letter dated June 25, 1997, Plaintiff advised Defendant of the material breach of the contract and that the Air Power Unit was being returned to Defendant in exchange for a refund. A copy of said letter is attached hereto as Exhibit B.

58. As a result of the foregoing, Plaintiff lost substantial production from the Beetle No. 3 Drill that resulted in additional expenses and loss of profit.

59. Despite the demand for the return of the purchase price of \$58,950 on June 25, 1997, the Defendant has through the filing of this Complaint failed and/or refused to refund the purchase price.

60. As a result of the foregoing, Defendant is indebted to Plaintiff as of June 25, 1997 in the amount of \$58,950 and continues to be indebted in that amount as of the filing of this Complaint.

61. The Plaintiff is entitled by statute to be compensated for interest at the legal rate of six(6%) percent from the date said indebtedness arose until the time of payment.

WHEREFORE, Plaintiff, D. C. Guelich Explosive Company, moves your Honorable Court to enter judgment in its favor and against R. N. Carbaugh Repair, Inc., for an amount in excess of \$20,000.00, including compensation for loss of production, profit and the purchase price of \$58,950.00, together with interest at the legal rate from June 25, 1997 to the date of payment with costs of this action taxed to the Defendant.

County IV
D.C. Guelich Explosive Co., v. R.N. Carbaugh Repair, Inc.,
Plaintiff Defendant

Breach of Implied Warranties

62. The word "Defendant" as used in this count shall at all times be construed to refer to the corporate Defendant, R.N. Carbaugh Repair, Inc., and the words him or he in the context of referring to the Defendant shall be construed to refer to the said corporate Defendant.

63. The averments of paragraphs 1 through 11, 13 through 25 and 49 through 61, as set forth above, are incorporated herein by reference as though the same were set forth herein at length verbatim.

64. In purchasing the Air Power Unit, Plaintiff reasonably relied on the judgment and representations of the Defendant.

65. At all times pertinent hereto, Plaintiff believed that the Air Power Unit was reasonably fit for the particular purpose for which Plaintiff was buying it.

66. At all times pertinent hereto, Plaintiff believed and relied upon the belief that Defendant's Air Power Unit was reasonably fit for the ordinary and/or general purposes for which it was being sold and for which Plaintiff intended to use it.

67. There was an implied understanding between the parties that the machine being manufactured, including all of its materials, parts and components would be genuine, that sound materials and parts would be used and that good workmanship would be furnished and, in particular, that components would be rebuilt with genuine parts and that accessories such as hosing, controls, air cleaners, connectors, fasteners and the like would be new.

68. As a result of the foregoing, there arises as a matter of law, implied warranties of fitness for a particular purpose, merchantability, genuineness and good workmanship.

69. As a result of the foregoing, Defendant substantially breached said implied warranties.

70. As a result of the foregoing, Plaintiff concluded on or about June 25, 1997 that Defendant's breach was material and that Defendant was unable or unwilling to cure the breach.

71. As a result of the foregoing, Defendant is indebted to Plaintiff for the purchase price of the Air Power Unit, loss of production, excess costs and loss of profit resulting from said breach.

WHEREFORE, Plaintiff, D. C. Guelich Explosive Company, moves your Honorable Court to enter judgment in its favor and against R. N. Carbaugh Repair, Inc., for an amount in excess of \$20,000.00,

including compensation for loss of production, profit and the purchase price of \$58,950.00, together with interest at the legal rate from June 25, 1997 to the date of payment with costs of this action taxed to the Defendant.

Respectfully submitted by:

A handwritten signature in cursive script, appearing to read "John Sughrue", is written over a horizontal line.

John Sughrue, Esquire
Attorney for Plaintiff

R.N. CARBAUGH REPAIR, INC.

BOX 12AAA • SENECA, PENNSYLVANIA 16346

WORK (814) 677-7811
HOME (814) 676-0741

ROB CARBAUGH
CALL ANYTIME

TOLL FREE (800) 233-7455
FAX (814) 677-6652

R.N. Carbaugh, Inc.
Box 12AAA Johnstone Dr.
Seneca, PA 16346

February 25, 1997

D.C. Guelich Explosive Co.
RD #3 - Box 125A
Clearfield, PA 16830
(814) 765-1558
(814) 765-2962 FAX

3/3 Attached Project

DuWayne C. Guelich:

The #3 figure, are items that I have in my shop. This will include a Rebuilt Engine 3406B 425 HP CAT / the Compressor would be 204-128 GHH Rebuilt, used Receiver Tank, resealed and flushed Cooler & Radiator, new Hosing, Controls, Air Cleaners and Steel related to Skid & Cabinet.

[REDACTED]

[REDACTED]

[REDACTED]

#3: Engine & GHH Compressor Rebuilt by RNC, Inc. (\$58,950.00)

[REDACTED]

All above prices for 850 to 900 CFM 350 PSI whispered units

	Rebuilt	Rebuilt
#3 - \$58,950.00 --	3406B CAT Engine	204-128 GHH Compressor

[REDACTED]

My choice is #3 and I would extend a 1 year warranty on all workmanship on all items rebuilt by RNC, Inc.

Thank you,
RNC

R.N. Carbaugh, Inc.
Rob N. Carbaugh

EXHIBIT A 1 OF 2

R.N. CARBAUGH REPAIR, INC.

BOX 12AAA • SENECA, PENNSYLVANIA 16346

WORK (814) 677-7811

HOME (814) 676-0741

ROB CARBAUGH
CALL ANYTIME

TOLL FREE (800) 231-1111
FAX (814) 676-0741

Built for D.C. Guelich Explosive Service Book

1 - 900-350 Air Unit 4/97

Powered by 3406B CAT Engine	2000 RPM
204-128 GHH Air Compressor	2000 RPM
Defogger Element	1000 Hours
Engine Oil & Filter Change (Check Daily)	250 Hours
Compressor Oil (Check Daily)	600 Hours
Compressor Filters	250 Hours
Anti-freeze (Check Daily)	24 Months
Receiver Tank Dry Side (Drain Daily)	Daily
Air Cleaners	Environment
Start & Stop Low Air	
Override Button	Hold 10 Seconds After Start
Control System	Dual Pressure Control

Specifications and Part Numbers

3406 CAT 418 HP
1 - Fuel Filter FF998
1 - Oil Filter LF282/FF998
2 - Compressor Filters K-25
28 - Gallon Dextron II Compressor Oil
18 - Radiator Anti-freeze
10 - Gallon Engine Oil Super Duty
1 - AH Belt DAA-24540
3 - Fan Belts A58
2 - Air Filters AF726
2 - Air Filters AF725

S	1 - Deffogger	1PS4801	
U	1 - 406929 High Pressure Regulator $\frac{1}{4}$ "		(Repair Kit # 041742)
L	1 - 408929 Low Pressure Regulator $\frac{1}{4}$ "		(Repair Kit # 041742)
L	1 - 45116 Running Blow Down $\frac{1}{2}$ "		
A	1 - 1 - 048354 75PSI Regulator $\frac{1}{4}$ "		
I	1 - Sullicon Control Assembly		
R			

D. C. GUELICH EXPLOSIVE CO.

High Explosives - Ammonium Nitrate Fertilizer

R. D. 3 BOX 125A CLEARFIELD, PA. 16830

June 25, 1997

Certified/Return Receipt Requested

Mr. Rob Carbaugh
R. N. Carbaugh Repair, Inc.
Box 12AAA
Seneca, PA 16346

COPY

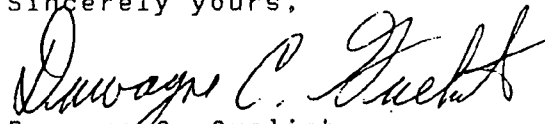
Dear Rob:

Due to the many problems we have had with the compressor unit which we purchased from you, we have made a decision on what we are going to do. This decision was made based on several facts.

1. Due to the various problems we have lost a lot of drill footage. With the heating problem we now have, the operator has to back off to keep the temperature down.
2. Due to the heating problems, I am sure life on the CAT engine and compressor has been reduced. This would probably not show up until after the warranty has expired.
3. The oil leaks we have had not only leave our rig a mess, but, could have contributed to a fire. I realize you have fixed some of these, but I understand there is still a regulator leaking.

Rob, what this all boils down to is this, entirely too many problems! We are going to order a new compressor of a name brand and return your compressor to you and we will expect a full refund. This decision was not made without a lot of consideration by several people. I am available if you would like to discuss the subject.

Sincerely yours,


Duwayne C. Guelich
President

DCG/mjt

cc: Robert Adams
John Sughrue Esq.

EXHIBIT B

JUN 27 1997

VERIFICATION

I, DUWAYNE C. GUELICH, verify that I am the PRESIDENT of D. C. Guelich Explosive Company, a Pennsylvania corporation, and as such am authorized and empowered to make this verification and that the statements made in this Complaint are true and correct. I further understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Date: April 25, 2001


Duwayne C. Guelich

FILED

APR 27 2001

03:25/5cc
William A. Shaw
Prothonotary

for Signature

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW

D. C. GUELICH EXPLOSIVE
COMPANY, a Pennsylvania
corporation,
Plaintiff

v.

R. N. CARBAUGH REPAIR, INC.,
a corporation, and
Rob N. Carbaugh, individually and t/a
R.N. Carbaugh Repair, Inc.,
Defendants

* NO. 01- 543 –C.D.
*
* Type of Case: Civil
*
* Type of Pleading: **Praecipe to Transmit Writ of**
* **Summons & Certified Complaint to Sheriff**
*
*
* Filed on Behalf of: Plaintiff
*
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*
*
* Counsel of record for this party:
*
* John Sughrue
* Attorney at Law
* I. D. No. 01037
* 23 North Second Street
* Clearfield, PA 16830
* Phone: (814) 765-1704
* Fax: (814) 765-6959
*
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* Other counsel of record:
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FILED

MAY 02 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW

D. C. GUELICH EXPLOSIVE COMPANY,
a Pennsylvania corporation,

Plaintiff

vs.

R. N. CARBAUGH REPAIR, INC.,
a corporation and Rob N. Carbaugh,
individually and t/a
R.N. Carbaugh Repair, Inc.,

Defendants

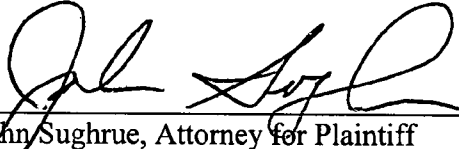
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NO. 01- 543 -CD

**PRAECIPE TO TRANSMIT WRIT OF SUMMONS &
CERTIFIED COMPLAINT TO SHERIFF**

To William A. Shaw, Prothonotary,

Kindly forward Writ of Summons previously issued together with a certified copy of the Complaint to the Sheriff of Clearfield County with directions to deputize the Sheriff of Venango County and to direct the Venango County Sheriff to serve the Writ of Summons and certified Complaint on Rob N. Carbaugh, individually at his place of business, Box 12AAA, Johnstone Drive, Seneca, PA 16346 or at his residence or wherever else he may be found. Further, since this is original process, direct the Venango County Sheriff to file a specific return of service for Rob N. Carbaugh. This repeat of instructions previously given is necessary because the Venango County Sheriff indicates that he originally served the Corporate Defendant, above-named, but did not serve the Individual Defendant as previously requested.


John Sughrue, Attorney for Plaintiff

cc: Chester A. Hawkins, Sheriff

FILED

MAY 02 2001
0134712cc
William A. Shaw
Prothonotary

J. Squires, Esq

cc 1 writ Summons to Rob ConDaugh
to Sherry

cc copy Complaint to Sherry
cc copy Precept writ Summons
to Sherry

AFFIDAVIT OF SERVICE
VENANGO COUNTY SHERIFF'S OFFICE

D.C. Guelich Explosive Co.

Docket No. 2001-00543-CD

Plaintiff

VS

R.N. Carbaugh Repair Inc.

Defendant

Before me the undersigned authority, personally appeared Kurt Gindhart, Deputy Sheriff who being duly sworn according to law, deposes and says that on the 24th day of April 2001 at 13.51 hrs P.M. he served the within Summons filed at Docket No. 2001-00543-CD Term 2001, Venango County, Pennsylvania, upon R.N. Carbaugh Repair Inc.. at Def.'s place of employment located @ Box 12AAA Johnstown Drive Seneca PA 16346 and by making known the contents thereof to R. Carbaugh, Owner, and handing to and leaving with him the certified copy of the said Writ received from Clearfield, PA

Venango County Costs: \$ 26.80

Paid: \$75.00

26APR01

Deputy Kurt R. Gindhart #6

Kurt R. Gindhart, Deputy Sheriff

Gene Price

Gene Price, Sheriff of Venango County

Sworn to and subscribed before
me this 27th day of

April, 2001

Peggy L. Miller, pp

Prothonotary

MY COMMISSION EXPIRES
THE FIRST MONDAY OF JAN. 2004

APR 30 2001

COPY

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION**

SUMMONS

**D.C. Guelich Explosive Company,
a Pennsylvania Corporation,**

Vs.

NO.: 2001-00543-CD

**R.N. Carbaugh Repair, Inc., a
Corporation, and Rob N. Carbaugh,
individually and t/a R.N. Carbaugh Repair, Inc.**

**TO: R.N. CARBAUGH REPAIR, INC.
ROB N. CARBAUGH**

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 04/16/2001

William A. Shaw
Prothonotary

Issuing Attorney:

John Sughrue
23 North Second Street
Clearfield, PA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10900

D.C. GUELICH EXPLOSIVE COMPANY

01-543-CD

VS.

R.N. CARBAUGH REPAIR, INC. AI

SUMMONS

SHERIFF RETURNS

NOW APRIL 20, 2001 E. EUGENE PRICE, SHERIFF OF VENANGO COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN SUMMONS ON R.N. CARBAUGH REPAIR, INC. and ROB N. CARBAUGH, ind. & t/a R.N. CARBAUGH REPAIR, INC., DEFENDANTS.

NOW APRIL 24, 2001 SERVED THE WITHIN SUMMONS ON R.N. CARBAUGH REPAIR INC., DEFENDANT BY DEPUTIZING THE SHERIFF OF VENANGO COUNTY. THE RETURN OF SHERIFF PRICE IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED R. CARBAUGH, OWNER.

Return Costs

Cost	Description
33.89	SHFF. HAWKINS PAID BY: ATTY.
26.80	SHFF. PRICE PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

FILED

MAY 03 2001
0110:31/10 CC
William A. Shaw
Prothonotary
EBA

Sworn to Before Me This

3rd Day Of May 2001
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,

Chester A. Hawkins
by Marilyn Harris
Chester A. Hawkins
Sheriff

AFFIDAVIT OF SERVICE
VENANGO COUNTY SHERIFF'S OFFICE

D.C. Guelich Explosive Co.

Docket No. 2001-00543-CD

Plaintiff

VS

R.N. Carbaugh Repair Inc.

Defendant

Before me the undersigned authority, personally appeared Kurt Gindhart, Deputy Sheriff, who being duly sworn according to law, deposes and says that on the 24th day of April 2001 at 13.51 hrs P.M. he served the within Summons filed at Docket No. 2001-00543-CD Term 2001, Venango County, Pennsylvania, upon R.N. Carbaugh Repair Inc. at Def.'s place of employment located @ Box 12AAA Johnstown Drive Seneca PA 16346 and by making known the contents thereof to R. Carbaugh, Owner, and handing to and leaving with him the certified copy of the said Writ received from Clearfield, PA

Venango County Costs: \$ 26.80

Paid: \$75.00

26APR01

Deputy Kurt R. Gindhart #6

Kurt R. Gindhart, Deputy Sheriff

Gene Price

Gene Price, Sheriff of Venango County

Sworn to and subscribed before
me this 27th day of

April, 2001

Peggy L. Miller, pp

Prothonotary

MY COMMISSION EXPIRES
THE FIRST MONDAY OF JAN. 2004

APR 30 2001

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10900

D.C. GUELICH EXPLOSIVE COMPANY

01-543-CD

VS.

R.N. CARBAUGH REPAIR, INC. AI

SUMMONS

SHERIFF RETURNS

NOW MAY 3, 2001, GENE PRICE, SHERIFF OF VENANGO COUNTY WAS
DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
TO SERVE THE WITHIN SUMMONS & COMPLAINT ON ROB N. CARBAUGH, IND.
DEFENDANT.

NOW MAY 7, 2001 SERVED THE WITHIN SUMMONS & COMPLAINT ON ROB N.
CARBAUGH, IND., DEFENDANT BY DEPUTIZING THE SHERIFF OF VENANGO
COUNTY. THE RETURN OF SHERIFF PRICE IS HERETO ATTACHED AND MADE
A PART OF THIS RETURN STATING THAT HE SERVED DEBRA M. CARBAUGH,
WIFE.

Return Costs

Cost	Description
28.00	SHFF. HAWKINS PAID BY: ATTY.
30.80	SHFF. PRICE PAID BY: ATTY.

FILED

SEP 07 2001

013:17noc
William A. Shaw
Prothonotary

Sworn to Before Me This

7th Day Of September 2001

WILLIAM A. SHAW
Prothonotary

My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,

Chester A. Hawkins
by *Marilyn Harris*
Chester A. Hawkins
Sheriff

AFFIDAVIT OF SERVICE
VENANGO COUNTY SHERIFF'S OFFICE

D.C. Guelich Explosive Company

Docket No. 01-543-CD

Plaintiff

VS

R.N. Carbaugh Repair Inc. ET AL

Defendant

Before me the undersigned authority, personally appeared Kevin Tarr, Deputy Sheriff, who being duly sworn according to law, deposes and says that on the 07th day of May 2001 at 11:35 HRS A .M. he served the within Summons & Complaint at Docket No. 01-543-CD Term 2001, Venango County, Pennsylvania, upon R.N. Carbaugh, at Def.'s _____ place of Employment located @ Box 12AAA Johnstone Rd. Seneca PA 16346 and by making known the contents thereof to Debra M. Carbaugh, and handing to and leaving with her the certified copy of the said Writ received from Clearfield.

Venango County Costs: \$ 30.80

Paid: \$ 75.00

15JUN01

Kevin Tarr

Kevin Tarr, Deputy Sheriff

Gene Price

Gene Price, Sheriff of Venango County

Sworn to and subscribed before

me this 18th day of

June, 2001

Peggy L. Mullenbda

Prothonotary

PROTHONOTARY

MY COMMISSION EXPIRES
THE FIRST MONDAY OF JAN. 2004

DIRECTIONS TO SHERIFF OF VENANGO COUNTY

No. 01-543-CD

RE: D.C. Guelich Explosive Company

VS

Plaintiff

R.N. Carbaugh, Repair, Inc. ET AL

Defendant

SUMMONS

Serve: Rob N. Carbaugh

Serve at: Box 12AAA Johnstone Drive Seneca PA 16346

Serve by: 15MAY01

04MAY01.

Staff# 3 KLF

Debra Carbaugh

REPORT OF DEPUTY SHERIFF

Signature: Debra M. Conbaugh HOW SERVED
Relationship of Party Served-If other than Defendant: Person/Charg
WIFE

Relationship of Party Served-If other than Defendant:

WIFE

Date and Time of Service: 07 May 01 1135 Hrs

Place of Service: Box 12, ADA Johnstone Drive, Seneca.

Residence X Employment Visitation

her: 07MAY01

ate of Report: ~~07 May 2001~~

Deputy Sheriff: Kelly Turner #5

Deputy Sheriff: John Ratz #4

[illegible]

Notice of Proposed Termination of Court Case

October 5, 2007

RE: 2001-00543-CD
D. C. Guelich Explosive Company

Vs.

R. N. Carbaugh Repair, Inc.
Rob N. Carbaugh

FILED

OCT 05 2007

WAS
William A. Shaw
Prothonotary/Clerk of Courts

Dear John Sughrue, Esq:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **December 4, 2007**.

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,

Daniel J. Nelson
Daniel J. Nelson
Court Administrator

Notice of Proposed Termination of Court Case

October 5, 2007

RE: 2001-00543-CD
D. C. Guelich Explosive Company

Vs.

R. N. Carbaugh Repair, Inc.
Rob N. Carbaugh

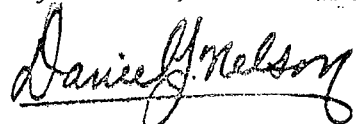
Dear Rob N. Carbaugh t/a R. N. Carbaugh Repair, Inc:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **December 4, 2007**.

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,

A handwritten signature in cursive script, appearing to read "Daniel J. Nelson", written over a horizontal line.

Daniel J. Nelson
Court Administrator

FILED 3cc
@19:51/BA Amy Sughrue
DEC 03 2007
William A. Shaw
Notary Public
Notary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW

D. C. GUELICH EXPLOSIVE COMPANY,
a Pennsylvania corporation,
Plaintiff

vs.

R. N. CARBAUGH REPAIR, INC.,
a corporation and Rob N. Carbaugh,
individually and t/a
R.N. Carbaugh Repair, Inc.,
Defendants

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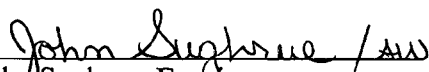
NO. 01- 543 -CD

STATEMENT OF INTENTION TO PROCEED

To William A. Shaw, Prothonotary and the Judges of said Court:

Plaintiff, D.C. Guelich Explosive Company, intends to proceed with the above captioned
matter.

Date: December 3, 2007


John Sughrue, Esquire
Attorney for Plaintiff

FILED Nucc
03/25/13
APR 04 2013
68

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW

D.C. GUELICH EXPLOSIVE,
Plaintiff

Vs.

R. N. CARBAUGH REPAIR,
Defendant

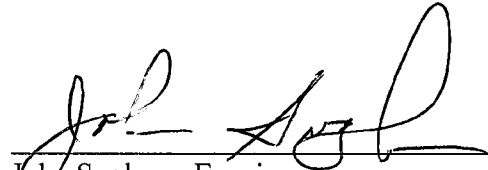
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: No. 2001-543-CD
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PRAECIPE TO DISCONTINUE

TO WILLIAM A. SHAW, PROTHONOTARY.

Kindly mark the above-captioned matter discontinued and ended. Plaintiff to pay costs.

Date: April 2, 2013



John Sughrue, Esquire
Attorney for Plaintiff