CLARENCE FENTRESS, Complainant, VS. RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., a corporation, Defendants.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY NO. 3608

DECREE SUSTAINING DEMURRER TO ORIGINAL BILL OF COMPLAINT

This cause coming on to be heard on this date is submitted by agreement of parties on the demurrer of the respondent, Trans-America Insurance Company, Inc., a corporation, to the original Bill of Complaint, upon consideration of all of which, it is, therefore, ORDERED, ADJUDGED AND DECREED by the court as follows:

1. The demurrer of the said respondent to the original Bill of Complaint shall be and the same is hereby sustained.

2. The complainant is allowed twenty (20) days from the date of this decree to amend, in the event he shall elect to do so.

ORDERED, ADJUDGED AND DECREED on this the 16th day of January, 1956.

s/ Luther M. Hare
Judge

DECREE SUSTAINING DEMURRER TO
ORIGINAL BILL OF COMPLAINT.

CLARENCE FENTRESS,

Complainant,

VS.

RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., a corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 3608

Filed 1-18-56
[illegible]
[illegible]

CLARENCE FENTRES, Complainant, VS. RILEY H. THOMLINSON, ET AL Respondents,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. No. 3608

This cause coming on to be heard is submitted upon the demurrers to the bill of complaint as last amended, and the Court, after considering the matter, is of the opinion that the demurrers are not well taken and should be overruled -

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the demurrers to the amended complaint be and the same are hereby overruled.

IT IS FURTHER ORDERED that the Respondents be, and they are hereby given 20 days in which to file additional pleadings.

Dated this 31st day of May, 1956.

Hubert M Hare
Judge of the 28th Judicial Circuit

FILED
MAY 31 1956
ALEX J. BECK, REGISTER

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama,
Baldwin County.

Circuit Court, Baldwin County

No. 3608

Sept. TERM, 1955

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC. A Corporation

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

RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC. A CORP. Defendant

by

CLARENCE FENTRESS, Plaintiff

Witness my hand this 8th day of Sept. 1955

, Clerk

No. 3608 Page

The State of Alabama
Baldwin County

CIRCUIT COURT

CLARENCE FENTRESS

Plaintiffs

vs.

RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC. A CORP.

Defendants

Summons and Complaint

Filed SEPT. 8th 1955

Clerk

TELFAIR J. HASHBURN, JR.

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

19

, Sheriff

I have executed this summons

this 19

by leaving a copy with

Sheriff

Deputy Sheriff

CLARENCE FENTRESS,	)	IN THE CIRCUIT COURT OF
Complainants,	)	BALDWIN COUNTY, ALABAMA.
VS.	)	IN EQUITY. NO. _____
RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC., A Corporation,	)	
Respondents.	)	

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY SITTING:

Comes the Complainant, CLARENCE FENTREES, and presents this his bill of compalint against RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., A Corporation, and, thereupon complaining, represents and shows unto your Honor and this Honorable Court as follows:

1. That your complainant is over the age of twenty-one years and is a non-resident of the State of Alabama, residing in Tennessee; that the respondent, RILEY H. TOMLINSON, is over the age of twenty-one years and is resident citizen of Alabama, residing at Route 1, Daphne, Alabama; and that the respondent, TRANS-AMERICA INSURANCE COMPANY, INC., is a non-resident corporation, and that its address is Post Office Box 143, Montgomery, Alabama.

2. That, on, to-wit: the 9th day of April, 1955, your complainant recovered a judgment against the said RILEY H. TOMLINSON in the Circuit Court of Baldwin County, Alabama, at Law, in the amount of $461.80 and $11.95 Costs, for damages to the complainant's automobile when it was involved in a collision with a car driven by the said RILEY H. TOMLINSON; that more than thirty days have elapsed since said judgment was rendered and that the same has not been paid.

3. That the respondent, RILEY H. TOMLINSON, has an insurance policy with the respondent, TRANS-AMERICA INSURANCE COMPANY, INC., whereby the said insurance company has insured him against loss for accidents in which his automobile is involved.

THE PREMISES CONSIDERED, your Complainant makes the said RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., A Corporation, parties respondent to this bill of complaint, under and by virtue of the provisions of Paragraph 12 of Title 28 of the Code of Alabama, of 1940, and in order that complainant may have the relief hereinafter prayed for, may it please your Honor to

have the State's writ of subpoena to be issued, directed to the said RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC., A Corporation, requiring them to plead, answer or demur to this bill of complaint within the time and under the pains and penalties prescribed by law and the practice of this Honorable Court; and your complainant prays further that, on a final hearing of this cause, your Honor will make and enter a decree ordering the respondents to pay to your complainant the full amount of his judgment heretofore described in paragraph "2" hereof, with the costs thereon, and the costs of this action; and your complainant prays for such other, further, different or general relief as he may in equity ~~and~~ good conscience be entitled to receive; and, as in duty bound, he will ever pray, etc.

Delphin A. Maslibrey, Jr.
SOLICITOR FOR COMPLAINANT.

IN EQUITY. NO. _____

****

CLARENCE PENTRESS,

Complainant,

VS.

RILEY H. TOMLINSON AND
TRANS-AMERICA INSURANCE
COMPANY, INC., A Corporation,

Respondents.

****

BILL OF COMPLAINT.

FILED
SEP 8 1955
ALICE J. BACK, Register

CLARENCE FENTRESS,	)	IN THE CIRCUIT COURT OF
Complainants,	)	BALDWIN COUNTY, ALABAMA.
VS.	)	IN EQUITY. NO. _____
RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC., A Corporation,	)	
Respondents.	)	

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY SITTING:

Comes the Complainant, CLARENCE FENTREES, and presents this his bill of compalint against RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., A Corporation, and, thereupon complaining, represents and shows unto your Honor and this Honorable Court as follows:

1. That your complainant is over the age of twenty-one years and is a non-resident of the State of Alabama, residing in Tennessee; that the respondent, RILEY H. TOMLINSON, is over the age of twenty-one years and is resident citizen of Alabama, residing at Route 1, Daphne, Alabama; and that the respondent, TRANS-AMERICA INSURANCE COMPANY, INC., is a non-resident corporation, and that its address is Post Office Box 143, Montgomery, Alabama.

2. That, on, to-wit: the 9th day of April, 1955, your complainant recovered a judgment against the said RILEY H. TOMLINSON in the Circuit Court of Baldwin County, Alabama, at Law, in the amount of $461.80 and $11.95 Costs, for damages to the complainant's automobile when it was involved in a collision with a car driven by the said RILEY H. TOMLINSON; that more than thirty days have elapsed since said judgment was rendered and that the same has not been paid.

3. That the respondent, RILEY H. TOMLINSON, has an insurance policy with the respondent, TRANS-AMERICA INSURANCE COMPANY, INC., whereby the said insurance company has insured him against loss for accidents in which his automobile is involved.

THE PREMISES CONSIDERED, your Complainant makes the said RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., A Corporation, parties respondent to this bill of complaint, under and by virtue of the provisions of Paragraph 12 of Title 28 of the Code of Alabama, of 1940, and in order that complainant may have the relief hereinafter prayed for, may it please your Honor to-

have the State's writ of subpoena to be issued, directed to the said RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC., A Corporation, requiring them to plead, answer or demur to this bill of complaint within the time and under the pains and penalties prescribed by law and the practice of this Honorable Court; and your complainant prays further that, on a final hearing of this cause, your Honor will make and enter a decree ordering the respondents to pay to your complainant the full amount of his judgment heretofore described in paragraph "2" hereof, with the costs thereon, and the costs of this action; and your complainant prays for such other, further, different or general relief as he may in equity and good conscience be entitled to receive; and, as in duty bound, he will ever pray, etc.

Felix A. McDiarmid, Jr.
SOLICITOR FOR COMPLAINANT.

Daphne

1185-

No. 3608 Page

The State of Alabama
Baldwin County

CIRCUIT COURT

CLARENCE FENTRESS,

Plaintiffs

vs.

RILEY H. TOMLINSON AND TRANS-AMERICA INSURAN CE COMPANY, INC. A CORP.

Defendants

Summons and Complaint

Filed SEPT. 8th 19 55

Clerk

TELFAIR J. MASHBURN, JR.
Plaintiff's Attorney

Defendant's Attorney

RECEIVED IN OFFICE
SEP 15 1955
M. S. BUTLER, Sheriff
Received in Office

Defendant lives at

Sept. 8 1955

, Sheriff

I have executed this summons

this 9-15 19 55

by leaving a copy with

L. L. Gwaltney
Com. of Ins. of
State of Ala.

Received 8 day of Sept 1955
and on 19 day of Sept 19 55
I served a copy of the within S & C
on Riley H. Tomlinson

By service on

TAYLOR WILKINS, Sheriff

By Ellwyn Stoutheu D. S.

M. S. Butler Mobile Co. Sheriff

J. O. Mathis Deputy Sheriff

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama,
Baldwin County.

No. 3608

Circuit Court, Baldwin County

Sept. TERM, 1955

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC. A Corporation

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

RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC. A CORP. Defendant

by

CLARENCE FENTRESS, Plaintiff

Witness my hand this 8th day of Sept. 1955

[illegible], Clerk

ecuted 9/15/55;
service on L.L. Gwaltney - Com. of
s. of State of Ala.

M.S. Butler, Sheriff- Mont. Co.

CLARENCE FENTRESS, Complainant, VS. RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., a corporation, Respondents.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY NO. 3608

MOTION TO REQUIRE DEPOSIT OR SECURITY FOR COST

Now comes the respondent, Trans-America Insurance Company, Inc., a corporation, by its solicitor, and shows unto the court as follows:

1. It affirmatively appears from the Bill of Complaint that the complainant is a non-resident of the State of Alabama and that he is a resident of the State of Tennessee.

2. No court costs have been deposited in this case and no security for costs has been given.

WHEREFORE, this respondent moves the court to dismiss this cause unless court costs are deposited or security therefor given.

This respondent moves the court to grant unto it such other, further and general relief as it may be equitably entitled to, the premises considered.

J. B. Blackburn

Solicitor for Trans-America Insurance Company, Inc., a corporation.

Filed Oct. 11, 1955
Alice J. Hack, Register

SECURITY FOR COST

CLARENCE FENTRESS,

Complainant,

VS.

RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., a corporation,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 3608

FILED
OCT 11 1955
ALICE J. BECK, Register

CLARENCE FENTRESS, Complainant, VS. RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., a corporation, Respondents.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY NO. 3608

I

Now comes the respondent, Trans-America Insurance Company, Inc., a corporation, one of the respondents in this cause, and demurs to the Bill of Complaint filed in this cause and as grounds of said demurrer assigns, separately and severally, the following:

1. There is no equity in the Bill of Complaint.

2. The Bill of Complaint does not state a cause of action against this respondent.

3. No facts are alleged to show that this respondent is liable for or obligated to pay the judgment secured by the complainant against the respondent, Riley H. Tomlinson, which is described in the Bill of Complaint.

4. The policy of insurance, which is alleged in the Bill of Complaint to have been issued by this respondent to Riley H. Tomlinson, is not set out in the Bill of Complaint.

5. The legal effect of the policy of insurance issued by this respondent to Riley H. Tomlinson, together with facts showing the obligation of this respondent thereunder, is not set out in the Bill of Complaint.

6. The averments of the Bill of Complaint are conclusions of the pleader.

7. The averments of the Bill of Complaint are conclusions of the pleader and no facts are alleged to show that the policy of insurance issued by this respondent to the respondent, Tomlinson, was in force and effect at the time of the complainant's alleged damages.

8. No facts are alleged to show that the respondent,

Tomlinson, had an insurance policy with this respondent which insured the respondent, Tomlinson, against loss or damage at the time the complainant's automobile was damaged by the respondent, Tomlinson.

9. No facts are alleged to show that the motor vehicle, which was involved in the accident or wreck with the complainant, was insured by this respondent at the time complainant's automobile was damaged.

II

Now comes the respondent, Trans-America Insurance Company, Inc., a corporation, one of the respondents in this cause, and demurs to the allegations of Paragraph 3 of the said Bill of Complaint and assigns as separate and several grounds therefor each of the grounds of demurrer from 1 to 9, both inclusive, which are set out above, separately and severally, just as if each of the said grounds of demurrer were specifically rewritten here.

J. B. Blackburn

Solicitor for respondent, Trans-America Insurance Company, Inc., a corporation.

Filed - 1-16-56
H. M. Hall,
Judge

DEMURRER

CLARENCE FENTRESS,

Complainant,

VS.

RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., a corporation,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 3608

Filed 1/16/56
I Mitchell
Judge

CLARENCE FENTRESS,	)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA.
RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC., A Corporation,	)	IN EQUITY. NO. 3608
Respondent.	)	

AMENDED BILL OF COMPLAINT

Comes now the complainant in the above styled cause, CLARENCE FENTRESS, and amends his bill of complaint heretofore filed in said cause, so that, as amended, said bill of complaint reads as follows:

1. That your complainant is over the age of twenty-one years and is a non-resident of the State of Alabama, residing in Tennessee; that the respondent, RILEY H. TOMLINSON, is over the age of twenty-one years and is a resident citizen of Baldwin County, Alabama, residing at Route 1, Daphne, Alabama; and that the respondent, TRANS-AMERICA INSURANCE COMPANY, INC., is a non-resident Corporation, and that its address is Post office box 143, Montgomery, Alabama.

2. That, on, to-wit: the 17th day of May, 1954, an automobile belonging to your complainant was involved in a collision with an automobile truck owned and operated by the Respondent, Riley H. Tomlinson, in Sumner County, Tennessee; that on, to-wit, the 10th day of September, 1954, your complainant recovered a judgment in the Tennessee Courts against the respondent, RILEY H. TOMLINSON, in the amount of $446.20 plus the costs of court; that on, to-wit, the 9th day of April, 1955, your complainant recovered a judgment against the respondent, RILEY H. TOMLINSON, in the Circuit Court of Baldwin County, Alabama, in the amount of $461.80 plus $11.95 as costs of Court; that both of the judgments aforementioned were for damages done to complainant's automobile in the collision with the truck of the respondent, RILEY H. TOMLINSON, as aforesaid; and that more than thirty days have elapsed since said judgment was rendered and that the same has not been paid.

3. That your complainant is informed and believes, and, on such information and belief, avers that at the time of the collision between the automobile of your complainant and the truck of the respondent, RILEY H. TOMLINSON, the said RILEY H. TOMLINSON had an

insurance policy with the respondent, TRANS-AMERICA INSURANCE COMPANY, INC., whereby the said insurance company insured the said RILEY H. TOMLINSON against liability for loss caused by his truck being involved in a collision; that your complainant is informed and believes, and, on such information and belief, avers that said liability policy was in full force and effect on the date of the accident as aforesaid, that is, on, to-wit: the 17th day of May, 1954;

4. That, despite the insurance contract between the respondents, the respondent, TRANS-AMERICA INSURANCE COMPANY, INC., has refused to pay to your complainant his damages as aforesaid.

WHEREFORE, THE PREMISES CONSIDERED, your complainant makes the said RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., a Corporation, parties respondent to this his amended bill of complaint, under and by virtue of the provisions of Paragraph 12 of Title 28 of the Code of Alabama of 1940; and in order that complainant may have the relief hereinafter prayed for, may it please your Honor to have the State's Writ of Subpoena to be issued, directed to the said RILEY H. TOMLINSON AND TRANS-AMERICA INSURANCE COMPANY, INC., A Corporation, requiring them to plead, answer or demur to this Amended Bill of Complaint within the time required by law and the practice of this Honorable Court.

PRAYER FOR RELIEF

Your complainant prays, that on a final hearing of this cause, your Honor will make and enter a decree ordering the respondents to pay to your complainant the full amount of his judgment heretofore described in paragraph "2" hereof, with the costs thereon, and the costs of this action; and your complainant prays for such other, further, different or general relief as in equity and good conscience he may be entitled to receive; and, as in duty bound, he will ever pray, etc.

Filed - Feb 3, 1956
Alice J. Duck, Register

Delair A. Inzalbenzy
SOLICITOR FOR COMPLAINANT.

CLARENCE FENTRESS,	)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
RILEY H. TOMLINSON and TRANS-AMERICAN INSURANCE COMPANY, INC., a corporation,	)	IN EQUITY NO. 3608
Respondents.	)	

DEMURRER

I.

Now comes the respondent, Trans-America Insurance Company, Inc., a corporation, one of the respondents in this cause, and demurs to the amended Bill of Complaint filed in this cause and as grounds of said demurrer assigns, separately and severally, the following:

1. There is no equity in the amended Bill of Complaint.

2. The amended Bill of Complaint does not state a cause of action against this respondent.

3. No facts are alleged to show that this respondent is liable for or obligated to pay the judgment secured by the complainant against the respondent, Riley H. Tomlinson, which is described in the amended Bill of Complaint.

4. The policy of insurance, which is alleged in the amended Bill of Complaint to have been issued by this respondent to Riley H. Tomlinson, is not set out in the amended Bill of Complaint.

5. The legal effect of the policy of insurance issued by this respondent to Riley H. Tomlinson, together with facts showing the obligation of this respondent thereunder, is not set out in the amended Bill of Complaint.

6. The averments of the amended Bill of Complaint are conclusions of the pleader.

7. The averments of the amended Bill of Complaint are conclusions of the pleader and no facts are alleged to show that the policy of insurance issued by this respondent to the respondent, Tomlinson, was in force and effect at the time of the complainant's alleged damages.

8. No facts are alleged to show that the respondent,

Tomlinson, had an insurance policy with this respondent which insured the respondent, Tomlinson, against loss or damage at the time the complainant's automobile was damaged by the respondent, Tomlinson.

9. No facts are alleged to show that the motor vehicle, which was involved in the accident or wreck with the complainant, was insured by this respondent at the time complainant's automobile was damaged.

10. The allegations are vague, indefinite and uncertain in that there is no positive allegation that this respondent is liable for the payment of the alleged judgment against the respondent, Riley H. Tomlinson.

II.

Now comes the respondent, Trans-America Insurance Company, Inc., a corporation, one of the respondents in this cause, and demurs to the allegations of Paragraph Numbered 3 of the said amended Bill of Complaint and assigns as separate and several grounds thereof each of the grounds of demurrer from 1 to 10, both inclusive, which are set out above, separately and severally, just as if each of the said grounds was specifically rewritten here.

J. B. Blackburn

Solicitor for respondent, Trans-America Insurance Company, Inc., a corporation.

Filed. 5/31/56
H. M. Hall
Judge

DEMURRER

CLARENCE FENTRESS,

Complainant,

VS.

RILEY H. TOMLINSON and TRANS-AMERICA INSURANCE COMPANY, INC., a corporation,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 3608

Filed 5/31/56
[illegible]
Judge

3608