

THOMAS FLOYD LONG,

Plaintiff,

VS.

ED MIDDLETON and W. M.  
HINOTE,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW. NO. 5195

MOTION FOR JUDGMENT BY DEFAULT

Now comes the Plaintiff in the above styled cause and shows unto the Court that interrogatories were propounded to the Defendant Ed Middleton on June 5, 1963, and that more than sixty days has passed and the said Defendant has failed to answer the said interrogatories as required by Section 483, Title 7 of the 1940 Code of Alabama, wherefore, Plaintiff moves the Court to enter a default judgment against the said Defendant after giving him ten days notice of the filing of this motion.

Dated this 19<sup>th</sup> day of August, 1963.


  
Attorney for Plaintiff

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ORDER SETTING MOTION FOR HEARING

The above motion having been presented to me on this date, it is hereby ordered that the said motion be set for hearing on the 3<sup>rd</sup> day of September, 1963, at 10:00 o'clock A.M. and it is further ordered that the Clerk of the Circuit Court of Baldwin County, Alabama, give notice hereof by mailing a copy of the said motion and this order to the Defendant's attorneys.

ORDERED on this the 19<sup>th</sup> day of August, 1963.

  
Judge

FILED  
AUG 19 1963  
ALICE J. DUCK, CLERK  
REGISTER

ALICE I. DUCK, CLERK  
REGISTER

CASE NO. 5795

8. Said count wholly fails to set forth sufficient facts as to how Defendants were negligent.

9. For aught appearing from the allegations of said count, there was no proximate cause between the alleged negligence of the Defendants and the alleged injuries and damages of the Plaintiff.

10. It affirmatively appears that there was no causal connection between the alleged negligence of the Defendants and the alleged injuries and damages of the Plaintiff.

11. For that there is no allegation of physical causation in said count.

12. Because it affirmatively appears from the allegations of said count that there was an intervening cause between the alleged negligent operation of the motor vehicle referred to in said count and the alleged injuries and damages of the Plaintiff.

13. For aught appearing from the allegations of said count, Plaintiff was not at a place where he had a right to be at the time and place of said accident.

14. For aught appearing from the allegations of said count, Plaintiff was a trespasser at the time and place of said accident.

15. For that said count is duplicitous.

16. For that the allegation of the agency of W. M. Hinote is insufficient.

17. For aught that appears the alleged negligence is not actionable under the law of Illinois.

18. For aught that appears the acts and matters alleged do not constitute negligent or wrongful acts under the statutory or case law of Illinois.

19. For that the Illinois law governing the matters complained of is not pleaded.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 16th day  
May, 1963, served a copy of the  
going pleading on counsel for all parties to this  
proceeding, by mailing the same by United States mail,  
properly addressed, and first class postage prepaid.

ARMBRECHT, JACKSON, McCONNELL  
& DEMOUY

By Brook G. Holmes

148

BROOK G. HOLMES

THOMAS FLOYD LONG,

Plaintiff,

VS.

ED MIDDLETON and W. M.  
HINOTE,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

5195

AMENDED COMPLAINT

Now comes the plaintiff in the above styled cause, and amends the complaint heretofore filed in said cause so that, as amended, the said complaint will read as follows:

"COMPLAINT

COUNT ONE


The plaintiff claims of the defendants the sum of Twenty-five Thousand Dollars (\$25,000.00) for that heretofore on, to-wit, June 12, 1960, at or near Cairo, Illinois, on a public road right of way, the defendant, W. M. Hinote, who was at said time and place an agent, servant or employee of the defendant, Ed Middleton, acting within the line and scope of his authority as such agent, servant or employee, did so negligently operate a motor vehicle as to cause the gasoline in the carburetor of said motor vehicle to ignite, explode and burn, and as a proximate result of the negligence of the said W. M. Hinote the plaintiff was seriously and permanently injured in this: his face was burned and disfigured; both arms and his back were burned and he was caused to spend much time and money in and about medical treatment for his said injuries. Plaintiff alleges that he suffered extreme mental anguish and great pain and continues to suffer mental anguish and pain as a result of the said injuries. Plaintiff avers that all of his injuries were caused as a proximate result of the negligence of the defendant, W. M. Hinote, who was at said time and place the agent, servant or employee of the defendant, Ed Middleton, acting within the line and scope of his authority as such agent, servant or employee.

Plaintiff further alleges that he became twenty-one years of age on February 13, 1962.

/S/ JAMES R. OWEN  
Attorney for Plaintiff

Plaintiff demands a trial of said cause by jury.

/S/ JAMES R. OWEN  
Attorney for Plaintiff"

  
Attorney for Plaintiff

FILED

MAY 10 1963

ALICE J. DICK, CLERK  
REGISTER

AMENDED COMPLAINT

THOMAS FLOYD LONG,

Plaintiff,

VS.

ED MIDDLETON and W. M. HINOTE,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

NO. 5195

FILED

MAY 30 1968

ALICE J. DUCK, CLERK  
REGISTER

THOMAS FLOYD LONG,	§	IN THE CIRCUIT COURT OF
Plaintiff,	§	
vs.	§	BALDWIN COUNTY, ALABAMA.
ED MIDDLETON and	§	AT LAW
W. M. HINOTE,	§	
Defendants.	§	CASE NO. <u>5195</u>

Comes now the Defendants in the above styled cause and demur to Plaintiff's complaint as a whole, and each and every count thereof, separately and severally, upon the following separate and several grounds:

1. Said count fails to allege a cause of action.
2. Said count fails to allege the existence of any legal duty owing from the Defendants to the Plaintiff therein.
3. Said count fails to allege the breach of any duty owing from the Defendants to the Plaintiff therein.
4. Said count is vague, indefinite and uncertain in that it does not apprise the Defendants of what they will be called upon to defend.
5. Said count is vague, indefinite and uncertain in that the allegations thereof do not apprise the Defendants as to where the Plaintiff was located at the time he was allegedly injured.
6. Said count seeks to set out the quo modo constituting the negligence without alleging sufficient facts in support thereof.

7. Said count is vague, indefinite and uncertain in that it does not allege in any particular whatever how the motor vehicle belonging to the Defendant Ed Middleton was negligently ignited.

8. Said count wholly fails to set forth sufficient facts as to how Defendants were negligent.

9. For aught appearing from the allegations of said count, there was no proximate cause between the alleged negligence of the Defendants and the alleged injuries and damages of the Plaintiff.

10. It affirmatively appears that there was no casual connection between the alleged negligence of the Defendants and the alleged injuries and damages of the Plaintiff.

11. Because it affirmatively appears from the allegations of said count that there was an intervening cause between the alleged negligent ignition of the engine referred to in said count and the alleged injuries and damages of the Plaintiff.

12. For aught appearing from the allegations of said count, Plaintiff was not at a place where he had a right to be at the time and place of said accident.

13. For aught appearing from the allegations of said count, Plaintiff was a trespasser at the time and place of said accident.

14. For that said count is duplicitous.

15. For that the allegation of the agency of W. M. Hinote is insufficient.



16. For aught that appears the alleged negligence is not actionable under the law of Illinois.

17. For aught that appears the acts and matters alleged do not constitute negligent or wrongful acts under the statutory or case law of Illinois.

18. For that the Illinois law governing the matters complained of is not pleaded.

ARMBRECHT, JACKSON, McCONNELL  
& DeMOUY

BY

*Marshall J. DeMouy*  
MARSHALL J. DeMOUY

BY

*Brook G. Holmes*  
BROOK G. HOLMES

FILED

AUG 3 1962

ALICE J. DUCK, CLERK  
REGISTER

STATE OF ALABAMA )  
\*  
BALDWIN COUNTY )

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Ed Middleton and W. M. Hinote to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the complaint of Thomas Floyd Long.

WITNESS my hand this 9 day of July, 1962.

  
Clerk

The Defendants reside in Loxley, Alabama.

\* \* \* \* \*

THOMAS FLOYD LONG,	)	
	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
	)	
VS.	)	BALDWIN COUNTY, ALABAMA
	)	
ED MIDDLETON and W. M. HINOTE,	)	AT LAW
	)	
Defendants.	)	

C O M P L A I N T

COUNT ONE

The Plaintiff claims of the Defendants the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) for that heretofore on to-wit, June 12, 1960, at or near Cairo, Illinois, the Defendant, W. M. Hinote, who was at said time and place an agent, servant or employee of the Defendant, Ed Middleton, acting within the line and scope of his authority as such agent, servant or employee, requested the Plaintiff to pour gasoline into the carburetor of a truck belonging to the Defendant, Ed Middleton, to assist the Defendant, W. M. Hinote, in and about starting the engine of said truck and in compliance with said request the Plaintiff poured gasoline into the carburetor of said truck and after he had finished pouring the

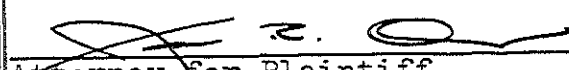
gasoline into the said carburetor and was placing the gas can on a fender of the truck and in the act of removing himself from the said truck, the said W. M. Hinote, who was at said time and place an agent, servant or employee of the Defendant, Ed Middleton, acting within the line and scope of his authority as such agent, servant or employee, negligently turned the ignition switch of the said truck on and negligently attempted to start the engine of said truck and as a proximate result of said negligence, the gasoline which Plaintiff had poured in the carburetor of said truck ignited, and the Plaintiff was seriously and permanently injured; his face was burned and disfigured; both arms and his back were burned and he was caused to spend much time and money in and about medical treatment for his said injuries. Plaintiff alleges that all of his injuries were caused as a proximate result of the negligence of the Defendant, W. M. Hinote, who was at said time and place, the agent, servant or employee of the Defendant, Ed Middleton, while acting within the line and scope of his authority as such agent, servant or employee.

Plaintiff further avers that at the time and place complained of, the Defendant, W. M. Hinote, knew, or should have known, that gasoline was a highly combustible fuel and that if he attempted to start the said engine at said time and place before the Plaintiff removed himself to a place of safety, that the said gasoline would probably ignite and injure the Plaintiff and notwithstanding said knowledge on the part of the said Defendant, W. M. Hinote, he negligently attempted to start said engine and as a proximate result of said negligence, the Plaintiff was injured as aforesaid.

Plaintiff further alleges that he is twenty-one years of age, having arrived at said age on February 13, 1962.

  
Attorney for Plaintiff

Plaintiff demands a trial of said cause by jury.

  
Attorney for Plaintiff

FILED

JUL 9 1962

ALICE J. DUCK, CLERK  
REGISTER

COMPLAINT

5195

THOMAS FLOYD LONG,

Plaintiff,

VS.

ED MIDDLETON and W. M. HINOTE,

Defendants.

Sopley, Ala.

Received 9 day of July 1962  
and on 10th day of July 1962

I served a copy of the within S+C  
on Ed Middleton & W.  
M. Hinote

By service on Ed Middleton &  
W. M. Hinote

TAYLOR, WILKINS, Sheriff

By Richard D. S.

Sopley

Sheriff claims 50 miles at

Ten Cents per mile Total \$ 8.00

TAYLOR, WILKINS, Sheriff

BY Richard  
DEPUTY SHERIFF

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

JAMES R. OWEN

ATTORNEY AT LAW

BAY MINETTE, ALABAMA

THOMAS FLOYD LONG,

Plaintiff,

VS.

ED MIDDLETON and W. M.  
HINOTE,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4722

INTERROGATORIES PROPOUNDED TO THE  
DEFENDANT, ED MIDDLETON

Now comes the Plaintiff in the above styled cause and propounds the following interrogatories to the Defendant in this cause:

1. On June 12, 1960, did you own a motor vehicle which was being operated by W. M. Hinote near Cairo, Illinois?

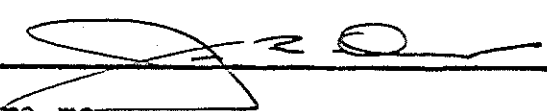
2. On June 12, 1960, was W. M. Hinote an agent, servant or employee of yours and at that time was he acting within the line and scope of his authority as such agent, servant or employee in operating a motor vehicle near Cairo, Illinois, when the Plaintiff, Thomas Floyd Long, was injured?

3. Give the name and model number of the motor vehicle being operated by W. M. Hinote at or near Cairo, Illinois, on June 12, 1960.

  
Attorney for Plaintiff

STATE OF ALABAMA )  
\*  
BALDWIN COUNTY )

Before me, the undersigned authority, personally appeared James R. Owen, who first being duly and legally sworn, deposes and says: That he is the attorney for the Plaintiff in the above styled cause; that the answers to the foregoing interrogatories will be material testimony for the Plaintiff in the trial of the said cause.

  
Sworn to and subscribed before me  
on this the 1<sup>st</sup> day of June, 1963.

  
Notary Public, Baldwin County, Alabama.

FILED

JUN 5 1963

ALICE L. DUCK, CLERK  
REGISTER

The undersigned, one of the attorneys for the Defendant in this cause, does hereby accept service of a copy of the foregoing interrogatories and waives any further service thereof.

Dated this 3<sup>d</sup> day of June, 1963.

Armbrecht, Jackson, McConnell & DeMouy

By Bruce G. Holmes

FILED

JUN 5 1963

ALICE J. DUCK, CLERK  
REGISTER

ARMBRECHT, JACKSON, McCONNELL & DeMOUY  
LAWYERS

MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 290

MOBILE, ALABAMA

WM. H. ARMBRECHT  
THEODORE K. JACKSON  
JOHN W. McCONNELL, JR.  
MARSHALL J. DeMOUY  
WM. H. ARMBRECHT, III  
RAE M. CROWE  
BROOK G. HOLMES  
W. BOYD REEVES

HEMLOCK 3-1891

CABLE ADDRESS  
SEALAW

May 16, 1963

Mrs. Alice Duck  
Circuit Court  
Baldwin County Court House  
Bay Minette, Alabama

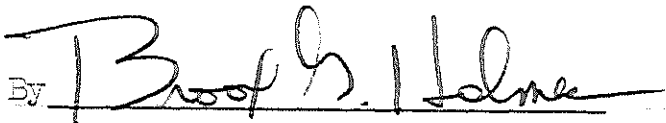
Re: Thomas Floyd Long vs  
Ed Middleton, et al  
Case No. \_\_\_\_\_

Dear Mrs. Duck:

Enclosed herewith please find a demurrer which we wish to  
file on behalf of the Defendants in the above captioned case.

Very truly yours,

ARMBRECHT, JACKSON, McCONNELL  
& DeMOUY

By 

BROOK G. HOLMES

BGH/gg

Enclosure