

ARMBRECHT, JACKSON, McCONNELL & DeMOUY  
LAWYERS

MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 290

MOBILE, ALABAMA

36601

AREA CODE 205  
PHONE 433-1891

CABLE ADDRESS  
SEALAW

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

February 8, 1965

Mrs. Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Baldwin County Courthouse  
Bay Minette, Alabama

Re: Leola Hibbler, as Administratrix  
-vs- The Utilities Board of the  
City of Foley  
At Law - Case No. 6313

---

Dear Mrs. Duck:

Enclosed please find Plea which we wish to file on behalf of  
the Defendant in the captioned case. We have mailed copies of the Plea to  
Messrs. G. Sage Lyons and Norborne Stone, attorneys for the Plaintiff.

Very truly yours,

ARMBRECHT, JACKSON, McCONNELL &  
DeMOUY

By: 

BROOX G. HOLMES

BGH:bp  
Encl.

cc (w/encl.): G. Sage Lyons, Esq.  
cc (w/encl.): Norborne Stone, Esq.

LEOLA HIBBLER, as Adminis-	)	IN THE CIRCUIT COURT OF
tratrix of the Estate of ROOSEVELT (		
HIBBLER, DECEASED,	*	BALDWIN COUNTY, ALABAMA
	*	
Plaintiff,	)	
	(	
vs.	*	
	*	
THE UTILITIES BOARD OF THE	)	AT LAW
CITY OF FOLEY, a public	(	
corporation, individually and d/b/a	*	
RIVIERA UTILITIES,	*	
	)	
Defendant.	(	CASE NO. 6313

NOTICE TO TAKE DEPOSITION

TO: G. Sage Lyons, Esq.  
Attorney at Law  
517 First National Bank Building  
Mobile, Alabama

Louis E. Braswell, Esq.  
Attorney at Law  
622 First National Bank Building  
Mobile, Alabama

Please take notice that the Defendant in the above styled cause will, in accordance with the provisions of Act No. 375, Legislature of Alabama (1955), take the pre-trial deposition of JOEL WHARTON, Witness, of 119 Orange Street, Fairhope, Alabama, in the above styled cause, upon oral examination, Wednesday, February 17, 1965, at 1:00 P.M., in the offices of Messrs. Armbricht, Jackson, McConnell & DeMouy, located at 1101 Merchants National Bank Building, Mobile, Alabama, before Louis M. Hubbard, or before some other officer authorized by law to take depositions. The oral examination will continue from time to time until completed.

ARMBRECHT, JACKSON, McCONNELL &  
DeMOUY

By: Broox G. Holmes  
BROOX G. HOLMES

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 12<sup>th</sup> day  
of February, 1965, served a copy of the  
foregoing pleading on counsel for all parties to this  
proceeding, by mailing the same by United States mail,  
properly addressed, and first class postage prepaid.

Broox G. Holmes



FEB 18 1965

FILED

LEOLA HIBBLER, as Adminis-	)	IN THE CIRCUIT COURT OF
tratrix of the Estate of ROOSEVELT (	*	
HIBBLER, DECEASED,	*	BALDWIN COUNTY, ALABAMA
	)	
Plaintiff,	(	
	*	
VS.	*	
	)	
THE UTILITIES BOARD OF THE	)	AT LAW
CITY OF FOLEY, a public	(	
corporation, individually and d/b/a	*	
RIVIERA UTILITIES,	*	
	)	
Defendant.	(	CASE NO. 6313

NOTICE TO TAKE DEPOSITION

TO: G. Sage Lyons, Esq.  
Attorney at Law  
517 First National Bank Building  
Mobile, Alabama

Louis E. Braswell, Esq.  
Attorney at Law  
622 First National Bank Building  
Mobile, Alabama

Please take notice that the Defendant in the above styled cause will, in accordance with the provisions of Act No. 375, Legislature of Alabama (1955), take the pre-trial deposition of JIMMY WILLIAMS, Witness, of 25 Pecan Street, Fairhope, Alabama, in the above styled cause, upon oral examination, Wednesday, February 17, 1965, at 1:00 P.M., in the offices of Messrs. Armbrecht, Jackson, McConnell & DeMouy, located at 1101 Merchants National Bank Building, Mobile, Alabama, before Louis M. Hubbard, or before some other officer authorized by law to take depositions. The oral examination will continue from time to time until completed.

ARMBRECHT, JACKSON, McCONNELL &  
DeMOUY

By:

Broox G. Holmes  
BROOX G. HOLMES

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 12<sup>th</sup> day of February, 1965, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

Broox G. Holmes

LEOLA HIBBLER, as Adminis-	)	IN THE CIRCUIT COURT OF
tratrix of the Estate of ROOSEVELT (		
HIBBLER, DECEASED,	*	BALDWIN COUNTY, ALABAMA
	*	
Plaintiff,	)	
	(	
vs.	*	
	*	
THE UTILITIES BOARD OF THE	)	AT LAW
CITY OF FOLEY, a public	(	
corporation, individually and d/b/a	*	
RIVIERA UTILITIES,	*	
	)	
Defendant.	(	CASE NO. 6318

NOTICE TO TAKE DEPOSITION

TO: G. Sage Lyons, Esq.  
Attorney at Law  
517 First National Bank Building  
Mobile, Alabama

Louis E. Braswell, Esq.  
Attorney at Law  
622 First National Bank Building  
Mobile, Alabama

Please take notice that the Defendant in the above styled cause will, in accordance with the provisions of Act No. 375, Legislature of Alabama (1955), take the pre-trial deposition of ARNOLD RAY NEWMAN, Witness, of Route 1, Box 86-A, Daphne, Alabama, in the above styled cause, upon oral examination, Wednesday, February 17, 1965, at 1:00 P.M., in the offices of Messrs. Armbrrecht, Jackson, McConnell & DeMouy, located at 1101 Merchants National Bank Building, Mobile, Alabama, before Louis M. Hubbard, or before some other officer authorized by law to take depositions. The oral examination will continue from time to time until completed.

ARMBRECHT, JACKSON, McCONNELL &  
DeMOUY

By: Broox G. Holmes  
BROOX G. HOLMES

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 12<sup>th</sup> day of February, 1965, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

Broox G. Holmes

LEOLA HIBBLER, as Adminis-	)	IN THE CIRCUIT COURT OF
tratrix of the Estate of ROOSEVELT	(	
HIBBLER, DECEASED,	*	BALDWIN COUNTY, ALABAMA
	*	
Plaintiff,	)	
	(	
vs.	*	
	*	
THE UTILITIES BOARD OF THE	)	AT LAW
CITY OF FOLEY, a public	(	
corporation, individually and d/b/a	*	
RIVIERA UTILITIES,	*	
	)	
Defendant.	(	CASE NO. 6313

NOTICE TO TAKE DEPOSITION

TO: G. Sage Lyons, Esq.  
Attorney at Law  
517 First National Bank Building  
Mobile, Alabama

Louis E. Braswell, Esq.  
Attorney at Law  
622 First National Bank Building  
Mobile, Alabama

Please take notice that the Defendant in the above styled cause will, in accordance with the provisions of Act No. 375, Legislature of Alabama (1955), take the pre-trial deposition of SAMUEL DAVID, Witness, of 513 General Gibson Drive, Spanish Fort, Alabama, in the above styled cause, upon oral examination, Wednesday, February 17, 1965, at 1:00 P.M., in the offices of Messrs. Armbrrecht, Jackson, McConnell & DeMouy, located at 1101 Merchants National Bank Building, Mobile, Alabama, before Louis M. Hubbard, or before some other officer authorized by law to take depositions. The oral examination will continue from time to time until completed.

ARMBRECHT, JACKSON, McCONNELL &  
DeMOUY

By: \_\_\_\_\_

BROOX G. HOLMES

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 12<sup>th</sup> day of February, 1965, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

FILED

FEB 12 1965

JAMES L. HICKS, CLERK

ARMBRECHT, JACKSON, McCONNELL & DEMOUY  
LAWYERS

MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 290

MOBILE, ALABAMA

36601

AREA CODE 205  
PHONE 433-1891

CABLE ADDRESS  
SEALAW

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  
JOHN GROW

February 12, 1965

Mrs. Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Baldwin County Courthouse  
Bay Minette, Alabama 36507

Re: Leola Hibbler, as Administratrix, etc.  
v. The Utilities Board of the City of  
Foley d/b/a Riviera Utilities  
At Law - Case No. 6313

Dear Mrs. Duck:

Enclosed you will find four Notices to Take Deposition which we wish to file in the captioned case on behalf of the Defendant. Please have subpoenas issued to each witness, at the address given in each Notice, to appear at the time and place set forth in his Notice. The witnesses may be served at their place of employment, Springhill Broadcasting Transmitter Station, Daphne, Alabama.

Thanking you, we are

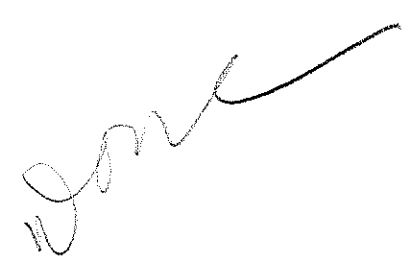
Very truly yours,

ARMBRECHT, JACKSON, McCONNELL &  
DeMOUY

By:   
BROOK G. HOLMES

BGH:bp  
Enclosures.

cc (w/encl.): G. Sage Lyons, Esq.  
cc (w/encl.): Louis E. Braswell, Esq.  
cc (w/encl.): Norborne Stone, Esq.



ARMBRECHT, JACKSON, McCONNELL & DeMOUY  
LAWYERS

MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 290

MOBILE, ALABAMA

36601

AREA CODE 205  
PHONE 433-1891

CABLE ADDRESS  
SEALAW

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  
JOHN GROW  
FRANK B. McRIGHT

September 2, 1965

Mrs. Alice Duck, Clerk  
Circuit Court of Baldwin County  
Baldwin County Courthouse  
Bay Minette, Alabama

Re: Leola Hibbler, as Administratrix of  
the Estate of Roosevelt Hibbler vs.  
The Utilities Board of the City of Foley  
At Law - Case No. 6313

Dear Mrs. Duck:

Enclosed please find Additional Plea which we wish to file  
on behalf of the Defendant in the above captioned case.

Very truly yours,

ARMBRECHT, JACKSON, McCONNELL &  
DeMOUY

By: 

BROOK G. HOLMES

BGH:bp  
Encl.

ARMBRECHT, JACKSON, McCONNELL & DEMOUY  
LAWYERS

MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 290

MOBILE, ALABAMA

36601

AREA CODE 205  
PHONE 433-1891

CABLE ADDRESS  
SEALAW

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  
JOHN GROW

January 11, 1965

Mrs. Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Baldwin County Courthouse  
Bay Minette, Alabama 36507

Re: Leola Hibbler, as Administratrix  
-vs- The Utilities Board of the  
City of Foley  
Case No. 6313

---

Dear Mrs. Duck:

Enclosed please find a Demurrer which we wish to file in  
the captioned case. We have mailed copies of the Demurrer to the attorneys  
for the Plaintiff.

Very truly yours,

ARMBRECHT, JACKSON, McCONNELL &  
DeMOUY

By: 

BROOK G. HOLMES

BGH:bp

cc (w/encl.): Norborne Stone, Esq.  
cc (w/encl.): G. Sage Lyons, Esq.



LYONS, PIPES & COOK

ATTORNEYS AT LAW

FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

JOSEPH H. LYONS (1900-1957)  
SAM W. PIPES, III  
WALTER M. COOK  
GORDON B. KAHN  
IRWIN W. COLEMAN, JR.  
G. SAGE LYONS  
WILLIAM F. HORSLEY  
AUGUSTINE MEAHER, III

AREA CODE 205  
TEL. 432-4483  
P. O. DRAWER 79

January 11, 1966

Mrs. Alice Duck  
Clerk, Circuit Court of  
Baldwin County, Alabama  
Baldwin County Courthouse  
Bay Minette, Alabama

Re: Hibbler vs. The Utilities Board of the City of Foley,  
Circuit Court, At Law, Case No. 6313

Dear Mrs. Duck:

The above case has been settled and, on behalf of the plaintiff, please enter an order dismissing the suit. According to our agreement with the defendant's attorney, Court costs will be paid by the defendant and we will appreciate your forwarding the cost bill to Mr. Broox Holmes.

With kindest regards,

Sincerely,

LYONS, PIPES AND COOK



G. SAGE LYONS

GSL/lak

cc: Hon. Broox G. Holmes

ARMBRECHT, JACKSON & DEMOUY  
LAWYERS

MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 290

MOBILE, ALABAMA

36601

AREA CODE 205  
PHONE 433-1891

CABLE ADDRESS  
SEALAW

WM. H. ARMBRECHT  
THEODORE K. JACKSON  
MARSHALL J. DEMOUY  
WM. H. ARMBRECHT, III  
RAE M. CROWE  
BROOX G. HOLMES  
W. BOYD REEVES  
JOHN GROW  
LOUIS H. ANDERS, JR.  
FRANK B. MCRIGHT

January 5, 1966

Mrs. Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Baldwin County Courthouse  
Bay Minette, Alabama 36507

Re: Leola Hibbler, etc. v. The Utilities  
Board of the City of Foley, et al  
At Law - Case No. 6313

Dear Mrs. Duck:

Enclosed please find our check made payable to you in the amount of \$35.95 in payment of the court costs in the above captioned case. Please sign the enclosed certificate and return the same to us as soon as possible. We enclose a self-addressed, stamped envelope for your convenience in replying.

Thanking you, we are

Very truly yours,

ARMBRECHT, JACKSON & DeMOUY

By:

*Broox G. Holmes*  
BROOX G. HOLMES

BGH:ba  
Encl.

*Call Chas. H. H. & H.*  
*Chas. H. H. & H.*  
*1-6-66*

LEOLA HIBBLER, as Adminis-	)	IN THE CIRCUIT COURT OF
tratrix of the Estate of	(	
ROOSEVELT HIBBLER, DECEASED,	*	BALDWIN COUNTY, ALABAMA.
	*	
Plaintiff,	)	
	(	
vs.	*	
	*	
THE UTILITIES BOARD OF THE	)	AT LAW
CITY OF FOLEY, a public	(	
corporation, individually and d/b/a	*	
RIVIERA UTILITIES,	*	
	)	
Defendant.	(	CASE NO. 6313

### DEMURRER

Comes now the Defendant, THE UTILITIES BOARD OF THE CITY OF FOLEY, and demurs to Plaintiff's Complaint as a whole, and to each and every count thereof, separately and severally, upon the following separate and several grounds:

1. Said count wholly fails to state a cause of action.
2. The allegations contained in said count are vague, uncertain and indefinite.
3. The allegations in said count are vague, misleading and confusing and do not apprise this Defendant of what it is called upon to defend.
4. From aught that appears from the allegations of said count, there was no legal duty owing from this Defendant to the Plaintiff's intestate.
5. For that it affirmatively appears from the allegations

of said count, that there was no legal duty owing from this Defendant to the Plaintiff's intestate.

6. For aught that appears from the allegations of said count, there was no breach of any legal duty owing from this Defendant to the Plaintiff's intestate.

7. For that it affirmatively appears that there was no breach of any legal duty owing from this Defendant to the Plaintiff's intestate.

8. Said count does not aver sufficient facts to state a cause of action.

9. Said count seeks to set out the quo modo constituting the negligence of this Defendant without alleging sufficient facts in support thereof.

10. Said count wholly fails to set forth sufficient facts as to how this Defendant was negligent.

11. There is no characterization of any alleged act of this Defendant as a negligent act.

12. For aught that appears, the death of the Plaintiff's intestate was not caused by this Defendant's alleged negligence.

13. For that it affirmatively appears that the death of the Plaintiff's intestate was not caused by this Defendant's alleged negligence.

14. For that negligence, as averred, is a mere conclusion of the pleader.

~~28~~

28

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

16. For aught appearing from the allegations of said count, there was no proximate cause between the alleged negligence of this Defendant and the death of the Plaintiff's intestate.

17. For that it affirmatively appears from the allegations of said count that there was no proximate cause between the alleged negligence of this Defendant and the death of the Plaintiff's intestate.

18. For aught that appears, there was no causal connection between the alleged negligence of this Defendant and the death of the Plaintiff's intestate.

19. For that it affirmatively appears that there was no causal connection between the alleged negligence of this Defendant and the death of the Plaintiff's intestate.

20. For aught that appears, there was no physical causation between the alleged negligence of this Defendant and the death of the Plaintiff's intestate.

21. Because it affirmatively appears from the allegations of said count that there was an intervening cause between the alleged negligence of this Defendant and the death of the Plaintiff's intestate.

22. From aught that appears from the allegations of said count, the legal liability, if any, for the death of the Plaintiff's intestate lies with the said SPRINGHILL BROADCASTING COMPANY.

23. For that said count exacts too high a degree of care from this Defendant.

24. For that there is an insufficient allegation of the place of the alleged accident in said count.

25. For that said count is duplicitous.

26. For that there is a misjoinder of causes of action.

27. For aught that appears, the said conduct of this Defendant was only a remote cause or a mere antecedent occasion or condition of the said injury and death of Plaintiff's intestate.

28. For that it affirmatively appears that the alleged negligence of this Defendant was only a remote cause or a mere antecedent occasion or condition of the injury and death of Plaintiff's intestate.

29. For aught that appears, the alleged negligence of this Defendant constituted a remote cause or a mere antecedent occasion or condition to the injury and death of the Plaintiff's intestate.

30. For that it affirmatively appears that the alleged negligence of this Defendant merely served to create a condition or status on which the conduct of SPRINGHILL BROADCASTING COMPANY operated in producing the said injury and death of Plaintiff's intestate.

31. For aught that appears, the alleged negligence of this Defendant served only to create a condition or status on which the negligence of the Plaintiff's intestate operated in producing his own injury and death.

32. For that it affirmatively appears that the Plaintiff's intestate was guilty of negligence which proximately contributed to his death.

~~33~~

33. For that Plaintiff fails to allege the whereabouts of said accident on said premises.

34. For that it is not averred how or in what manner the alleged negligence of this Defendant proximately caused the death of the Plaintiff's intestate.

35. For that the averments of said count are conflicting, repugnant and confusing.

36. For that the facts averred do not constitute negligence as a matter of law.

37. For that the facts averred do not constitute actionable negligence as a matter of law.

38. For that it does not sufficiently appear how or in what manner this Defendant was guilty of negligence.

39. For that the allegation that the death of the Plaintiff's intestate was caused as a proximate consequence of the act or acts of the agent, servant or employee of this Defendant in negligently grounding and causing or allowing said electric wire, wires, line or lines to remain or become in a dangerous or unsafe condition, does not sufficiently apprise this Defendant of the negligent conduct relied on by the Plaintiff.

40. For that the quo modo of this Defendant's alleged negligence as set forth in said count and the facts therein averred are insufficient to constitute negligence as a matter of law.

41. For that it does not sufficiently appear that the Plaintiff's intestate was killed as a proximate consequence of the breach of

any legal duty owed by this Defendant to the Plaintiff's intestate on said occasion.

42. For that said count shows no breach of duty or negligence on the part of this Defendant or its agents, servants or employees.

43. For that said count does not show the instrumentality causing the death of Plaintiff's intestate.

44. For that said count does not show that this Defendant or its agent, servant or employee, while acting within the line and scope of his employment, had actual manual control of the instrumentality causing the death of the Plaintiff's intestate or was present directing its movements on said occasion.

45. Said count does not show that this Defendant had actual manual control of the instrumentality causing the death, or was present directing its movements.

46. For aught that appears from the allegations of said count, this Defendant did not own or control the said electric wire, wires, line or lines or other appliances which allegedly caused said injuries and death.

47. For that it is not alleged that an agent, servant or employee of this Defendant had control over the premises of SPRINGHILL BROADCASTING COMPANY, or over the said electric wire, wires, line or lines on said occasion.

48. The averments of said count affirmatively show that the death complained of was proximately caused by an act for which this Defendant was in no way responsible or legally liable.



49. The averments of said count affirmatively show that the death complained of was proximately caused by the Plaintiff's intestate's own act.

50. For aught that appears, some intervening act and not the alleged negligence of this Defendant caused the death complained of.

51. Said count fails to show what relation, if any, this Defendant had to the alleged premises.

52. Said count does not allege actual knowledge on the part of this Defendant of the conditions and surroundings existing at the time and place complained of and the consciousness on its part that its conduct would likely or probably result in any injury or death to Plaintiff's intestate or to others in similar circumstances.

53. Said count does not allege actual knowledge on the part of this Defendant or any agent, servant or employee of this Defendant, while acting within the line and scope of his employment as such agent, servant or employee, of the condition and surroundings existing at the time and place complained of and the consciousness on the Defendant's part or on the part of any agent, servant or employee of the Defendant, while acting within the line and scope of his employment as such agent, servant or employee, that its or his conduct would likely or probably result in any injury or death to Plaintiff's intestate or to others in similar circumstances.

54. It does not appear from the averments of said count that any agent, servant or employee of this Defendant, in doing of the things complained of, was at the time acting as an agent, servant or employee of this Defendant, and acting within the line and scope of his authority as such agent, servant or employee.

55. Insufficient facts are set out to justify the conclusion that the said electric wire, wires, line or lines were in a dangerous or unsafe condition.

56. For that it affirmatively appears that the proximate cause of the death of Plaintiff's intestate was an independent act for which this Defendant was not responsible.

57. For aught that appears from said Complaint, said wire, wires, line or lines were maintained at a place where it was not probable or likely that persons in the class of the Plaintiff's intestate would come in contact therewith.

58. For that insufficient facts are averred to show that the probability of injury or death to someone who had a right to be in the vicinity of the said wire, wires, line or lines might have been reasonably anticipated.

59. For aught that appears, this Defendant had no actual or constructive control over the alleged wire, wires, line or lines at the time of said accident.

60. For that the probability of injury or death from contact with the said wire, wires, line or lines is not shown to have been reasonably foreseeable.

61. The location of said wire, wires, line or lines is not alleged with sufficient certainty to show a duty on the part of this Defendant to Plaintiff's intestate.

62. For aught appearing, this Defendant exercised that care commensurate with its conveyance of electricity of a dangerous voltage

along the said wire, wires, line or lines in question on the occasion complained of.

63. For that there are no facts alleged which would show that occurrences reasonably similar to the one causing the death of the Plaintiff's intestate were reasonably foreseeable.

64. For aught appearing, the said wire, wires, line or lines in question were so placed that no one could be reasonably expected to come in dangerous proximity thereto.

65. For that no duty is shown on the part of this Defendant to maintain or safeguard said electric wire, wires, line or lines in question.

66. For that it affirmatively appears that this Defendant had no legal duty to maintain or safeguard the said electric wire, wires, line or lines that the Plaintiff's intestate allegedly came in contact with.

67. For that no facts are averred showing a likelihood of peril to one situated as the Plaintiff's intestate was on the occasion complained of.

68. For that this Defendant is not an insurer.

69. For that no facts are alleged showing a standard of care owed the Plaintiff's intestate by this Defendant.

70. For that it affirmatively appears that the said wire, wires, line or lines were maintained and controlled solely by SPRINGHILL BROADCASTING COMPANY.

71. For aught that appears, the sole legal duty of maintaining, safeguarding and controlling the said wire, wires, line or lines that

Plaintiff's intestate came in contact with was upon SPRINGHILL BROADCASTING COMPANY or the Plaintiff's intestate.

72. For aught appearing, the place of said injury and death was at a remote or inaccessible place.

73. For that it cannot be determined from said count in what manner this Defendant negligently caused or allowed said electric wire, wires, line or lines to become or remain in a dangerous or unsafe condition.

74. For that it affirmatively appears that the alleged negligence of this Defendant was not the efficient cause of the injury and death of Plaintiff's intestate without which such injury and death would not have resulted.

75. For that it affirmatively appears that the alleged negligence of this Defendant in causing or allowing said electric wire, wires, line or lines to become or remain in a dangerous or unsafe condition was not the direct and proximate cause of the injuries and death complained of.

76. For that it affirmatively appears that the sole direct, efficient and proximate cause of the death of Plaintiff's intestate was the negligent failure of SPRINGHILL BROADCASTING COMPANY to provide or employ safeguards to prevent persons inside of its transmitter plant building from coming in contact with the said dangerous or unsafe electric wire, wires, line or lines.

77. For aught appearing, the said accident or a similar accident could not be reasonably foreseen by this Defendant and the alleged dangerous condition averted by ordinary, reasonable care.

78. For aught that appears, the alleged injury and death of Plaintiff's intestate was caused by the negligence of a fellow servant or employee of Plaintiff's intestate.

79. For aught that appears, the Plaintiff's sole legal remedy, if any, is under the Alabama Workmen's Compensation Law.

80. For that the alternative allegations of the count are repugnant and inconsistent.

81. For that the allegation "the said defendant The Utilities Board of the City of Foley then supplied energy to and maintained, uninsulated wire or wires or an uninsulated electric line or lines in and to the transmitter plant on the premises of the Springhill Broadcasting Company," is a mere conclusion of the pleader without sufficient facts alleged in support thereof.

82. For that the allegation "the said agent, servant or employee of the defendant The Utilities Board of the City of Foley d/b/a Riviera Utilities then had knowledge or notice, or in the exercise of ordinary reasonable care should have had knowledge or notice that the plaintiff's intestate and other employees of the said Springhill Broadcasting Company were working or would work in the transmitter building of Springhill Broadcasting Company and in close proximity to the said electric power wire or wires, line or lines" is a mere conclusion of the pleader without sufficient facts alleged in support thereof.

83. For that the allegation "the said agent, servant or employee of the Utilities Board of the City of Foley d/b/a Riviera Utilities while acting within the line and scope of his employment as such so negligently

caused or allowed said electric wire, wires, line or lines to become or remain in a dangerous or unsafe condition" is a mere conclusion of the pleader without sufficient facts alleged in support thereof.

84. For that the allegation "the injuries causing the death of her intestate were received as a proximate consequence of the act or acts of the agent, servant or employee of the defendant The Utilities Board of the City of Foley d/b/a Riviera Utilities in negligently grounding and causing or allowing said electric wire, wires, line or lines, to become or remain in a dangerous or unsafe condition" is a mere conclusion of the pleader without sufficient facts alleged in support thereof.

85. For that the allegation "plaintiff avers that the negligence of the agent, servant or employee of the defendant The Utilities Board of the City of Foley d/b/a Riviera Utilities, as aforesaid, proximately caused the death of the plaintiff's intestate;" is a mere conclusion of the pleader without sufficient facts alleged in support thereof.

ARMBRECHT, JACKSON, McCONNELL &  
DeMOUY

By: *Marshall J. DeMouy*

MARSHALL J. DeMOUY

By: *Broox G. Holmes*

BROOX G. HOLMES

*Cecil G. Chason*  
CECIL G. CHASON  
Attorney for Defendant

CERTIFICATE OF SERVICE

I, BROOX G. HOLMES, do hereby certify that I have served copies of the foregoing Demurrer on Messrs. G. Sage Lyons and Norborne Stone, attorneys for the Plaintiff, by mailing the same to them by United States mail, first class postage prepaid, at their respective office addresses, on this 11th day of January, 1965.

*Broox G. Holmes*  
BROOX G. HOLMES

FILED

JAN 12-64

FILED  
CLERK  
REGISTER

LEOLA HIBBLER, As Adminis-	)	IN THE CIRCUIT COURT OF
tratrix of the Estate of	)	
ROOSEVELT HIBBLER, Deceased,	)	BALDWIN COUNTY, ALABAMA
Plaintiff,	)	
-vs-	)	AT LAW
THE UTILITIES BOARD OF THE	)	
CITY OF FOLEY, a public	)	
corporation, individually	)	CASE NO. 63/3
and d/b/a RIVIERA UTILITIES,	)	
Defendant.	)	

C O M P L A I N T

COUNT ONE

Plaintiff claims of the defendant the sum of ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) DOLLARS, as damages, for the negligent killing of the plaintiff's intestate in Baldwin County, Alabama, on, to-wit, May 27, 1964; and plaintiff avers that at and prior to the time of said killing her intestate was in the employ of Springhill Broadcasting Company, a corporation, and was engaged in the performance of his duties as such employee of Springhill Broadcasting Company, at its transmitter plant located off of the Bell Forest Road near Daphne, Baldwin County, Alabama; and plaintiff avers that at said time and place the Springhill Broadcasting Company was the operator of Radio Station WMOE.

The plaintiff further avers that on, to-wit, said day and date and at said time and place the defendant The Utilities Board of the City of Foley was a public corporation and doing business as Riviera Utilities, in the operation of an electric system and was engaged in the business of distributing electric current in Baldwin County, Alabama, and in connection with said business an agent, servant or employee of the said Utilities

Board of the City of Foley while acting within the line and scope of his employment as such agent, servant or employee had negligently installed, energized and grounded, and the said defendant The Utilities Board of the City of Foley then supplied energy to and maintained, uninsulated wire or wires or an uninsulated electric line or lines in and to the transmitter plant on the premises of the Springhill Broadcasting Company, charged with currents of electricity dangerous or deadly to the life or limb of human beings coming into contact or close proximity therewith, and in close and dangerous proximity to the place where the plaintiff's intestate was then working in the transmitter plant building of the defendant Springhill Broadcasting Company.

The plaintiff further avers that the said agent, servant or employee of the defendant The Utilities Board of the City of Foley d/b/a Riviera Utilities then had knowledge or notice, or in the exercise of ordinary reasonable care should have had knowledge or notice that the plaintiff's intestate and other employees of the said Springhill Broadcasting Company were working or would work in the transmitter building of Springhill Broadcasting Company and in close proximity to the said electric power wire or wires, line or lines energized and grounded by the said agent, servant or employee of the defendant The Utilities Board of the City of Foley d/b/a Riviera Utilities, and on, to-wit, said day and date and at said time and place the said agent, servant or employee of the Utilities Board of the City of Foley d/b/a Riviera Utilities while acting within the line and scope of his employment as such so negligently caused or allowed said electric wire, wires, line or lines to become or remain in a dangerous or unsafe condition that when the plaintiff's intestate came in contact therewith, while working in the transmitter plant building of Springhill Broadcasting Company, a deadly current of electricity from said electric power wire, wires, line or lines, transmitter or conductor was caused to pass through and into the body of the



plaintiff's intestate thereby proximately inflicting injuries upon him causing his death;

Plaintiff further avers that the injuries causing the death of her intestate were received as approximate consequence of the act or acts of the agent, servant or employee of the defendant The Utilities Board of the City of Foley d/b/a Riviera Utilities in negligently grounding and causing or allowing said electric wire, wires, line or lines, to become or remain in a dangerous or unsafe condition and plaintiff avers that the negligence of the agent, servant or employee of the defendant The Utilities Board of the City of Foley d/b/a Riviera Utilities, as aforesaid, proximately caused the death of the plaintiff's intestate;

Plaintiff further avers that she is the duly appointed and acting administratrix of the estate of Roosevelt Hibbler, deceased, and that within six months from the time, day and date when her intestate was so injured she, as the administratrix of his estate, filed with The Utilities Board of the City of Foley, a sworn statement stating, substantially, the manner in which her intestate received the injuries from which he died, and the day, time and place where he was injured, the damages claimed and stating with substantial accuracy the nature and character of the injuries received, together with the plaintiff's residence and address, and the said claim has not been allowed; wherefore the plaintiff claims damages as aforesaid.

FILED

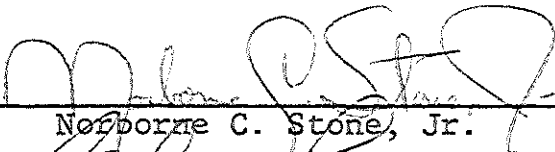
NOV 20 1984


4:05 p.m.

ALICE L. DUCK, CLERK  
REGISTER

CHASON, STONE & CHASON and  
LYONS, PIPES & COOK  
Attorneys for the Plaintiff

By:

  
Norborne C. Stone, Jr.

  
G. Sage Lyons

Plaintiff respectfully demand trial by jury.

  
G. Sage Lyons

Please serve the defendant The Utilities Board of the City of  
Foley at:

Foley, Alabama.

FILED

NOV 20 1964 4:05 P.M.

ALICE L. DUCK, CLERK  
REGISTER

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

STATE OF ALABAMA  
BALDWIN COUNTY

Circuit Court, Baldwin County

No. 6313

.....TERM. 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon X The Utilities Board of the City of Foley, a public corporation, Individually and d/b/a RIVIERA UTILITIES

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 The Utilities Board of the City of Foley, a public corporation, Ind. & d/b/a Riviera Utilities, Defendant.....  
by Leola Hibbler, As Administratrix of the Estate of Roosevelt Hibbler, Deceased,

....., Plaintiff.....  
Witness my hand this.....20th.....day of.....November.....19.....64

EX-11-28-64

Alice D. Luck Clerk

No. 6313.....

Page.....

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

LEOLA HIBBLER, As Administratrix of  
the Estate of ROOSEVELT HIBBLER,  
deceased,

Plaintiffs

vs.

THE UTILITIES BOARD OF THE CITY OF FOLEY  
a public corporation, Ind. & b/a  
RIVIERA UTILITIES

Defendants

SUMMONS AND COMPLAINT

Filed ..November 20,..... 19 64..

Alice J. Duck..... Clerk

Chason, Stone & Chason

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED  
Received In Office

NOV 20 1964 19.....

Sheriff

I have executed this summons

this Nov 28 1964

by leaving a copy with

G. L. Smith  
Member of Utilities Board  
City of Foley

72  
72  
CC

Sheriff

Deputy Sheriff

Deputy

LEOLA HIBBLER, as Administratrix	)	IN THE CIRCUIT COURT OF
of the Estate of ROOSEVELT HIBBLER,	(	
DECEASED,	*	BALDWIN COUNTY, ALABAMA
	*	
Plaintiff,	)	
	(	
vs.	*	
	*	
THE UTILITIES BOARD OF THE CITY	)	AT LAW
OF FOLEY, a public corporation,	(	
individually and d/b/a RIVIERA	*	
UTILITIES,	*	
	)	
Defendant.	(	CASE NO. 6313

MOTION TO SET ASIDE DEFAULT JUDGMENT

Comes now the Defendant, THE UTILITIES BOARD OF THE CITY OF FOLEY, and respectfully moves the Court to vacate, set aside and hold void the judgment heretofore entered by the Court against the Defendant. And for grounds for said Motion, the Defendant says as follows:

1. For that said judgment is contrary to law.
2. For that said judgment is contrary to law and evidence.
3. For that it affirmatively appears that the Summons and Complaint in this cause was served by a deputy sheriff of Baldwin County, Alabama upon a member of The Utilities Board of the City of Foley; and Defendant avers that the member served was, at the time of said attempted service and at all times relevant hereto, a member of the Board of Directors of The Utilities Board of the City of Foley and was not, at the time of said attempted service or at any time relevant hereto, the President, or other head, Secretary, Cashier, Station Agent, or any other agent of the Defendant

A

~~40~~

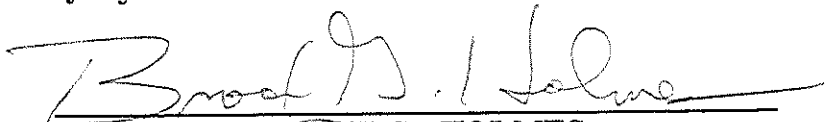

upon whom the Summons could be executed in an action at law against this Defendant. And Defendant avers that it has a good and meritorious defense to this cause.

4. For that service of the Summons and Complaint in this cause was not had on this Defendant and this Defendant has a good and meritorious defense to this cause.

5. For that the said judgment is void for lack of jurisdiction by this Court over the Defendant at the time the judgment was entered.

6. For that the attempted service of the Summons in this cause is contrary to Title 7, Section 188 (Code of Alabama 1940, Recompiled 1958).

WHEREFORE, the Defendant respectfully moves the Court to vacate, set aside and void said judgment.

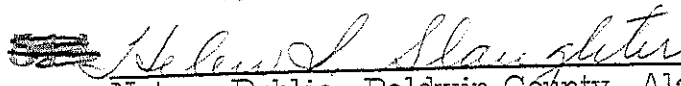
  
BROOK G. HOLMES  
  
CECIL G. CHASON  
Attorneys for Defendant

STATE OF ALABAMA    §  
COUNTY OF BALDWIN   §

Before me, the undersigned Notary Public, appeared CECIL G. CHASON, one of the attorneys for the Defendant, who by me being first duly sworn, deposes and says that he has read the above allegations in said Motion and that the allegations are true and correct.

  
CECIL G. CHASON

SUBSCRIBED and SWORN TO  
before me on this 6th day of  
January, 1965.

  
Notary Public, Baldwin County, Alabama

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 6th day of January, 1965, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by making the same by United States mail, properly addressed and first-class postage prepaid.

LEOLA HIBBLER, as Adminis-	)	IN THE CIRCUIT COURT OF
tratrix of the Estate of ROOSEVELT (		
HIBBLER, DECEASED,	*	BALDWIN COUNTY, ALABAMA
	*	
Plaintiff,	)	
	(	
vs.	*	
	*	
THE UTILITIES BOARD OF THE	)	AT LAW
CITY OF FOLEY, a public	(	
corporation, individually and d/b/a	*	
RIVIERA UTILITIES,	*	
	)	
Defendant.	(	CASE NO. 6313

P L E A

Comes now the Defendant in the above styled cause and for answer to the Complaint and to each and every count thereof, separately and severally, files the following separate and several pleas:

1. Not guilty.

ARMBRECHT, JACKSON, McCONNELL &  
DeMOUY

By: Brook G. Holmes

BROOX G. HOLMES

CERTIFICATE OF SERVICE

I, BROOX G. HOLMES, do hereby certify that I have served copies of the foregoing Plea on Messrs. G. Sage Lyons and Norborne Stone, attorneys for the Plaintiff, by mailing the same to them by United States mail, first class postage prepaid, at their respective office addresses, on this 9<sup>th</sup> day of February, 1965.

Brook G. Holmes  
BROOX G. HOLMES

FILED

FEB 10 1965

AUG. J. DICK, JR.

042

LEOLA HIBBLER, As Adminis-  
tratrix of the Estate of  
ROOSEVELT HIBBLER, deceased,

Plaintiff,

VS.

THE UTILITIES BOARD OF THE  
CITY OF FOLEY, a public  
Corporation, individually  
and d/b/a RIVIERA UTILITIES,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW.

CASE NO. 6313

MOTION FOR JUDGMENT BY DEFAULT

Comes now the Plaintiff in the above styled cause, by her Attorneys, and moves this Honorable Court to enter a judgment by default in favor of the Plaintiff and against the Defendant and as grounds therefor says as follows:

That this action was instituted on the 20th day of November, 1964 and a copy of the summons and complaint was served on the Defendant on the 28th day of November 1964, by the Sheriff of Baldwin County, Alabama. That more than 30 days have elapsed since the service of said summons and complaint and the defendant has failed to plead, answer or demur thereto.

WHEREFORE, Plaintiff respectfully moves that this Honorable Court grant this her motion for judgment by default.

Respectfully submitted,

FILES

DEC 30 1964

ALICE J. DUCH, CLERK  
REGISTER

LYONS, PIPES & COOK and

CHASON, STONE & CHASON  
Attorneys for the Plaintiff

BY:

Norborne C. Stone



LEOLA HIBBLER, as Adminis-	)	IN THE CIRCUIT COURT OF
tratrix of the Estate of ROOSEVELT	(	
HIBBLER, DECEASED,	*	BALDWIN COUNTY, ALABAMA
	*	
Plaintiff,	)	
	(	
vs.	*	
	*	
THE UTILITIES BOARD OF THE	)	AT LAW
CITY OF FOLEY, a public	(	
corporation, individually and d/b/a	*	
RIVIERA UTILITIES,	*	
	)	
Defendant.	(	CASE NO. 6313

### ADDITIONAL PLEA

Comes now the Defendant in the above styled cause and amends its Plea heretofore filed and for further answer to the Complaint and each and every count thereof, separately and severally, files the following separate and several pleas:

2. Defendant avers that at the time and place complained of in the Complaint, the Plaintiff's intestate, ROOSEVELT HIBBLER, so negligently went about his said work in said building as to cause or allow his own body to come in contact with said wire or terminal thereof, thereby proximately contributing to his own injuries and death. Wherefore, Plaintiff cannot recover.

ARMBRECHT, JACKSON & DeMOUY

By: Marshall J. DeMouy  
MARSHALL J. DeMOUY

By: Broox G. Holmes  
BROOX G. HOLMES

\_\_\_\_\_  
CECIL G. CHASON  
Attorneys for Defendant

#### CERTIFICATE OF SERVICE

I do hereby certify that I have on this 2nd day of Sept, 1965, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

Broox G. Holmes

FILED

SEP 3 1965

AIME L. DICK, CLERK  
REGISTER