

THE STATE OF ALABAMA

~~MOBILE~~ COUNTY
BALDWIN

CIRCUIT COURT

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon

JAMES RALPH DAVIS, and CLEDIS PETERSON, individually, and

CLEDIS PETERSON, doing business as PETERSON PRODUCE

COMPANY, jointly and severally

to appear within thirty days from service of this process, in the Circuit Court of ^{Baldwin} ~~Mobile~~ County, Alabama,
at the place of holding the same, then and there to answer the complaint of

MARIA CECILIA HORN

Alice J. Duck
WITNESS: ~~John F. Mankville~~, Clerk of said Court, this *6th* day of *July*, 19 *66*

Attest: *Alice J. Duck*
Clerk

SHERIFF'S RETURN

Received _____ day of _____, 19____ and on _____ day
of _____, 19____, I served a copy of
the within _____ on _____
by service on _____

RAY D. BRIDGES, SHERIFF

By _____ D.S.

original. Sum.
encl: sent sec state
No. 2047 11-17-66

JUDGE _____ DOCKET _____

CIVIL DIVISION

CIRCUIT COURT
MOBILE COUNTY

Marie Cecilia Horn

VS. } Complaint and Summons

James Ralph Davis +
Cledis Peterson ind.
etc.

Summedale
Peterson & Red.

Issued 6 day of July, 1966

Defendant's Address

J. J. Tracy Reynolds, Jr.
Plaintiff's Attorney
Suite 1401 - Waterman Bldg.
Mobile, Ala.

red 28 day of July 1966

James Ralph Davis
Cledis Peterson

TAYLOR WILKINS, Sheriff

By _____ 1966

red 14 day of July 1966
found in my county after diligent search and in-
quiry.

Taylor Wilkins, Sheriff

By Roy Randall Deputy Sheriff

3 day of Oct. 66
red 27 day of July 1966

red copy of the within I & C
Peterson Produce Co.

service on Cledis Peterson

TAYLOR WILKINS, Sheriff

By _____ 1966

red 17 day of Oct 1966
not found in my county after diligent search &
inquiry.

Taylor Wilkins, Sheriff

By Corlinda Chedden Deputy S

Defendants' addresses:

James Ralph Davis
Post Office Box 307
Seymour, Wisconsin

Cledis Peterson, individually
Post Office Box 307
Seymour, Wisconsin

Cledis Peterson,
doing business as Peterson Produce Company
Post Office Box 307
Seymour, Wisconsin

Please perfect service through the Secretary of the State of Alabama as provided in Title 7, Section 199 1/2 of the 1940 Code of Alabama as Amended October 1, 1963.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, a Notary Public, in and for said State and County, personally appeared John Chason as one of the attorneys of record for the Plaintiff in the above styled cause and after being by me first duly and legally sworn, did depose and say under oath as follows:

That his name is John Chason, that he is one of the attorneys of record for the Plaintiff in the above styled cause and according to the best of his knowledge, information and belief the Defendants, James Ralph Davis and Cledis Peterson, individually, and Cledis Peterson, doing business as Peterson Produce Company, are each over the age of twenty-one years and are resident citizens of the State of Alabama and they are the driver and owner of a motor vehicle involved in an accident or collision while being operated on a public highway in the State of Alabama on February 19, 1966, and that thereafter they did leave the State of Alabama and have remained away for a period of more than sixty days from the date of such accident, and that each of said Defendants now reside in Seymour, Wisconsin, their Post Office address being Box 307, Seymour, Wisconsin, and that service should be had upon the Secretary of State of the State of Alabama, as provided in Title 7, Section 199 (1/2) of the 1940 Code of Alabama, As Amended.

Sworn to and subscribed before me
this 17th day of November, 1966.

Marie B. Bryan
Notary Public, Baldwin County, Alabama

Law Offices
J. Terry Reynolds, Jr.
And
William R. Lauten
Suite 1401 Waterman Bldg.
Mobile, Alabama

FILED
JUL 6 1966
ALICE L. DUCK, CLERK
REGISTER

MARIE CECILIA HORN,

Plaintiff,

VS:

JAMES RALPH DAVIS, and
CLEDIS PETERSON,
individually, and CLEDIS
PETERSON, doing business
as PETERSON PRODUCE
COMPANY, jointly and
severally,

Defendants.

) IN THE CIRCUIT COURT OF
)
) BALDWIN COUNTY, ALABAMA
)

) AT LAW
)

) CASE NUMBER 4104
)

COUNT ONE

The Plaintiff claims of the Defendants the sum of ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) DOLLARS, as damages, for that, heretofore, on, to-wit, the 19th day of February, 1966, James Ralph Davis, while acting as the agent, servant or employee of Cledis Peterson, individually, and doing business as Peterson Produce Company, within the line and scope of his employment as such, so negligently operated a large truck or motor vehicle in a westerly direction on U. S. Highway 90, at a point approximately 7/10ths of a mile East of the Mobile City limits and at a point on said highway where the Club Oasis is located, said highway being then and there a public highway or road in the County of Baldwin, State of Alabama, as to cause or allow said truck to run into, upon or against the motor vehicle driven by the Plaintiff, which motor vehicle was also headed in a westerly direction on U. S. Highway 90, at said time and place, said highway being then and there a public highway or road in the County of Baldwin, State of Alabama, and as a proximate result of the negligence as aforesaid, the Plaintiff sustained the following personal injuries and damages: her head, neck and shoulders and back were thrown violently forward; the muscles in her neck, shoulders and back were severely stretched; she received a whiplash injury to her neck and shoulders; she received a lower and upper back injury and continues to suffer pain in said areas; she has been permanently injured about her neck, shoulders and back; she has suffered headaches, dizziness and nausea; she has suffered a loss of equilibrium and a loss of balance; she

Law Offices

J. Terry Reynolds, Jr.

And

William R. Laufen

Suite 1401 Waterman Bldg.

Mobile, Alabama

has suffered a brain concussion and has suffered a hematoma (blood clot in the back part of her skull in the brain), which condition still presently exists; she suffered internal injuries and a urinary infection; she was confined to the hospital for twenty-seven (27) days and could not walk or get up; she suffered a dislocated bone in her right upper jaw which strained the joint ligaments or tendons of the attaching muscles to the mandibular condyle and temporal bone, which injury has caused her to have an abnormal bite and will require extensive and expensive dental work to correct said injuries; she has suffered and continues to suffer with ear aches because of the dislocated bone in her upper jaw; she has suffered extreme physical pain and extreme mental anguish and anxiety; her nervous system was upset considerably and she is still under sedation for pain to keep her relaxed and to prevent her from trembling as a result of being under such pressure because of her injuries; she has suffered loss of time from her employment; she has been caused to incur extensive expenses for doctors, nurses, hospitals, medicines, drugs, sedation, x-rays, dentist bills, ambulance bill, examinations and expenses for transportation to and from her doctors; she was rendered unable to sleep for a long period of time; she was required to take sedatives, drugs and muscle relaxants in order to sleep and to disburse the pain from which she suffers; she will continue to be caused to incur expenses for doctors, medicines, drugs, x-rays, examinations, dentist bills, and expenses for transportation to and from her doctors, all of which the Plaintiff has paid and will be required to pay in the future and the Plaintiff avers that such expenses were incurred and will be incurred by her in an attempt to heal and cure her injuries and to alleviate the suffering and pain resulting from said injuries; the Plaintiff's automobile was broken, bent, damaged and destroyed in value and the Plaintiff avers that all of her injuries and damages were the proximate result of the negligence, as aforesaid, of the Defendant, James Ralph Davis, while acting as the agent, servant or employee of the Defendant, Cledis Peterson, individually, and doing business as Peterson Produce Company, within the line and scope of his

Law Offices

J. Terry Reynolds, Jr.

And

William R. Laufen

Suite 1401 Waterman Bldg.

Mobile, Alabama

employment as such agent, servant or employee at said time and place.

COUNT TWO

The Plaintiff claims of the Defendants the sum of ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) DOLLARS, as damages, for that, heretofore, on, to-wit, the 19th day of February, 1966, James Ralph Davis, while acting as the agent, servant or employee of Cledis Peterson, individually, and doing business as Peterson Produce Company, within the line and scope of his employment as such, wantonly injured the Plaintiff, Marie Cecilia Horn, by wantonly operating a large truck or motor vehicle in a westerly direction on U. S. Highway 90, at a point approximately 7/10ths of a mile East of the Mobile City limits and at a point on said highway where the Club Oasis is located, said highway being then and there a public highway or road in the County of Baldwin, State of Alabama, as to cause or allow said truck to run into, upon or against the motor vehicle driven by the Plaintiff, which motor vehicle was also headed in a westerly direction on U. S. Highway 90, at said time and place, said highway being then and there a public highway or road in the County of Mobile, State of Alabama, and as a direct and proximate result and consequence of the said wanton conduct of the Defendants as aforesaid, the Plaintiff, Marie Cecilia Horn, sustained the following personal injuries and damages: her head, neck and shoulders and back were thrown violently forward; the muscles in her neck, shoulders and back were severely stretched; she received a whiplash injury to her neck and shoulders; she received a lower and upper back injury and continues to suffer pain in said areas; she has been permanently injured about her neck, shoulders and back; she has suffered headaches, dizziness and nausea; she has suffered a loss of equilibrium and loss of balance; she has suffered a brain concussion and has suffered a hematoma (blood clot in the back part of her skull in the brain), which condition still presently exists; she suffered internal injuries and a urinary infection; she was confined to the hospital for twenty-seven (27) days and could not walk or get up; she suffered a dislocated bone in her right upper jaw which strained the joint ligaments or tendons of the attaching

Law Offices

J. Terry Reynolds, Jr.

And

William R. Lauten

Suite 1401 Waterman Bldg.

Mobile, Alabama

muscles to the mandibular condyle and temporal bone, which injury has caused her to have an abnormal bite and will require extensive and expensive dental work to correct said injuries; she has suffered and continues to suffer with ear aches because of the dislocated bone in her upper jaw; she has suffered extreme physical pain and extreme mental anguish and anxiety; her nervous system was upset considerably and she is still under sedation for pain to keep her relaxed and to prevent her from trembling as a result of being under such pressure because of her injuries; she has suffered loss of time from her employment; she has been caused to incur extensive expenses for doctors, nurses, hospitals, medicines, drugs, sedation, x-rays, dentist bills, ambulance bills, examinations and expenses for transportation to and from her doctors; she was rendered unable to sleep for a long period of time; she was required to take sedatives, drugs and muscle relaxants in order to sleep and to disburse the pain from which she suffers; she will continue to be caused to incur expenses for doctors, medicines, drugs, x-rays, examinations, dentist bills, and expenses for transportation to and from her doctors, all of which the Plaintiff has paid and will be required to pay in the future and the Plaintiff avers that such expenses were incurred and will be incurred by her in an attempt to heal and cure her injuries and to alleviate the suffering and pain resulting from such injuries; the Plaintiff's automobile was broken, bent, damaged and destroyed in value and the Plaintiff avers that all of her injuries and damages were the proximate result of the wanton negligence, as aforesaid, of the Defendant, James Ralph Davis, while acting as the agent, servant or employee of the Defendant, Cledis Peterson, individually, and doing business as Peterson Produce Company, within the line and scope of his employment as such agent, servant or employee at said time and place.

REYNOLDS & LAUTEN

BY: 

Attorney for Plaintiff

CHASON, STONE & CHASON

BY: 

Attorney for Plaintiff

The Plaintiff respectfully demands a trial by jury in this cause.


Attorney for Plaintiff

Law Offices

J. Terry Reynolds, Jr.

And

William R. Lauten

Suite 1401 Waterman Bldg.

Mobile, Alabama

J. TERRY REYNOLDS, JR.
AND
WILLIAM R. LAUTEN
ATTORNEYS AT LAW
SUITE 1401 WATERMAN BUILDING
MOBILE, ALABAMA

433-3661
AREA CODE 205

July 1, 1966

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

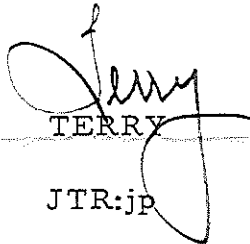
204?

Re: Marie Cecilia Horn-Plaintiff
Vs: James Ralph Davis and Cledis Peterson, et als-Defendants

Dear Mrs. Duck:

Enclosed is the original and three copies of a suit of the above caption for \$100,000.00. It will be appreciated if you will give this matter prompt attention by filing same for me and issuing the papers to the Sheriff for service. I will thank you most kindly to acknowledge receipt of this letter, please m'am.

Your friend,


TERRY

JTR:jp

CC: Honorable John Chason
Chason, Smith & Chason
Attorneys at Law
Post Office Box 120
Bay Minette, Alabama

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

STATE OF ALABAMA

Baldwin County

Circuit Court, Baldwin County

No. 7047

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon JAMES RALPH DAVIS, and CLEDIS PETERSON, individually
and CLEDIS PETERSON, doing business as PETERSON PRODUCE COMPANY jointly and severally

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.....

JAMES RALPH DAVIS, and CLEDIS PETERSON, individually and Cledis Peterson d/b/a Peterson
Produce Co
 Defendant.....

by MARIA CECILIA HORN

....., Plaintiff.....

Witness my hand this 6th day of July 1966

..... Clerk

No.....

Page.....

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

Plaintiffs

vs.

Defendants

SUMMONS AND COMPLAINT

Filed 19.....

Clerk

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

November 29, 1966

MARIE CECILIA HORN, Plaintiff
VS

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA AT LAW

CLEDIS PETERSON, doing business as PETERSON PRODUCE
COMPANY, et al, Defendants

CASE NO. 7047

TO THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW

I, Mrs. Agnes Baggett, Secretary of State, hereby certify that on November 18, 1966
I sent by certified mail in an envelope addressed as follows:

" Cledis Peterson d/b/a
Peterson Produce Company
Box 307
Seymour, Wisc."

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

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

" Cledis Peterson d/b/a
Peterson Produce Company
Box 307
Seymour, Wisc.

You will take notice that on November 18, 1966 the Sheriff of Montgomery
County, Alabama, served upon me, in my official capacity, summons and complaint in a
case entitled: MARIE CECILIA HORN, Plaintiff VS CLEDIS PETERSON, doing
business as PETERSON PRODUCE COMPANY, et al, Defendants

in the CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW
Case No. 7047 a true copy of which summons and complaint is attached hereto
and the said service upon me as Secretary of State of the State of Alabama has the force and
effect of personal service upon you.

WITNESS MY HAND and the Great Seal of the State of Alabama this the 18
day of November 1966

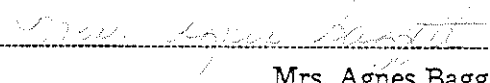
Enclosure (1)

(Signed) Mrs. Agnes Baggett
Secretary of State"

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

I further certify that on November 28 1966 I received the return card, showing
receipt by the designated addressee of the aforementioned matter at Seymour, Wis.
on November 22 1966

WITNESS MY HAND and the Great Seal of the State of Alabama this the 29 day
of November 1966


Mrs. Agnes Baggett
Secretary of State

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

cc: Hon. John Chason
P. O. Box 120
Bay Minette, Alabama

ARMBRECHT, JACKSON & DEMOUY
LAWYERS

MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 290

MOBILE, ALABAMA

36601

AREA CODE 205
PHONE 432-6751

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 S. MCRIGHT

December 6, 1966

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

Re: Marie Cecilia Horn v.
James Ralph Davis, et al
At Law - Case No. 7047

Dear Mrs. Duck:

Enclosed please find Demurrer which we wish to file on behalf of
Defendants James Ralph Davis and Cledis Peterson in the above captioned
case. We have mailed a copy to Plaintiff's attorneys.

Very truly yours,

ARMBRECHT, JACKSON & DeMOUY

By: Broox G. Holmes (ba)
BROOX G. HOLMES

BGH:ba
Encl.

MARIE CECILIA HORN,) IN THE CIRCUIT COURT OF
(
Plaintiff, * BALDWIN COUNTY, ALABAMA
(
vs. (AT LAW
(
JAMES RALPH DAVIS, et al,)
(
Defendants. * CASE NO. 7047

NOTICE TO TAKE DEPOSITION

TO: J. Terry Reynolds, Esquire John Chason, Esquire
Attorney at Law Attorney at Law
1401 Waterman Building Bay Minette, Alabama 36507
Mobile, Alabama 36602

Please take notice that the Defendants, JAMES RALPH DAVIS and CLEDIS PETERSON, individually and doing business as PETERSON PRODUCE COMPANY, 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 MISS ELISE CASEY, a witness, upon oral examination, on Friday, February 17, 1967, at 2:00 P.M., in the offices of Messrs. Armbrecht, Jackson & DeMouy, located at 1101 Merchants National Bank Building, Mobile, Alabama, before Walter W. Wise, or before some other officer authorized by law to take depositions. The oral examination will continue from time to time until completed.

ARMBRECHT, JACKSON & DeMOUY

By: Broox G. Holmes

BROOX G. HOLMES

CERTIFICATE OF SERVICE

I, BROOX G. HOLMES, Attorney for Defendants, hereby certify that I have served a copy of the foregoing Notice to Take Deposition on J. Terry Reynolds, Esquire and John Chason, Esquire, by mailing the same by United States mail, first class postage prepaid and properly addressed to their respective office addresses, on this 3rd day of February, 1967.

FILED

FEB 6 1967

ALICE L. DUCK, CLERK
REGISTERED

Broox G. Holmes
BROOX G. HOLMES

| | | |
|---------------------------|---|-------------------------|
| MARIE CECILIA HORN, |) | IN THE CIRCUIT COURT OF |
| | (| |
| Plaintiff, | * | BALDWIN COUNTY, ALABAMA |
| |) | |
| vs. | (| |
| | * | AT LAW |
| JAMES RALPH DAVIS, et al, |) | |
| | (| |
| Defendants. | * | CASE NO. 7047 |

NOTICE TO TAKE DEPOSITION

| | |
|--------------------------------|----------------------------|
| TO: J. Terry Reynolds, Esquire | John Chason, Esquire |
| Attorney at Law | Attorney at Law |
| 1401 Waterman Building | Bay Minette, Alabama 36507 |
| Mobile, Alabama 36602 | |

Please take notice that the Defendants, JAMES RALPH DAVIS and CLEDIS PETERSON, individually and doing business as PETERSON PRODUCE COMPANY, 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 D. DEBROW, a witness, upon oral examination, on Friday, February 17, 1967, at 3:00 P.M., in the offices of Messrs. Armbrrecht, Jackson & DeMouy, located at 1101 Merchants National Bank Building, Mobile, Alabama, before Walter W. Wise, or before some other officer authorized by law to take depositions. The oral examination will continue from time to time until completed.

ARMBRECHT, JACKSON & DeMOUY

By: Brook G. Holmes
BROOK G. HOLMES

CERTIFICATE OF SERVICE

I, BROOK G. HOLMES, Attorney for Defendants, hereby certify that I have served a copy of the foregoing Notice to Take Deposition on J. Terry Reynolds, Esquire and John Chason, Esquire, by mailing the same by United States mail, first class postage prepaid and properly addressed to their respective addresses, on this 3rd day of February, 1967.

FILED

FEB 6 1967

**ALICE J. HICK, CLERK
REGISTER**

Brook G. Holmes
BROOK G. HOLMES

ARMBRECHT, JACKSON & DEMOUY
LAWYERS

MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 290

MOBILE, ALABAMA

36601

AREA CODE 205
PHONE 432-6751

CABLE ADDRESS
SEALAW

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

February 3, 1967

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

Re: Marie Cecilia Horn v.
James Ralph Davis, et al
At Law - Case No. 7047

Dear Mrs. Duck:

Enclosed please find two notices to take depositions which we wish to file on behalf of the Defendants in the above matter. Please have a subpoena issued to each witness to appear for the taking of their depositions at the time and place set forth in the notices. Both witnesses may be served at the Mobile County Tax Assessor's Office, Mobile County Courthouse, Mobile, Alabama.

Thanking you, we are

Very truly yours,

ARMBRECHT, JACKSON & DEMOUY

By: 
BROOK G. HOLMES

BGH:ba
Encls.

*Done
2-6-67*

- ~~1. Agerton, J. W., Chemstrand, Bay Minette~~
- ~~2. Allen, Clyde, Newport, Bay Minette~~
- ~~3. Allen, Leslie, Jr., Insurance Salesman, Fairhope~~
- ~~4. Anderson, Anthony, Newport Industry, Bay Minette~~
- ~~5. Anderson, Eddie Lee, Standard Furniture, Bay Minette~~
- ~~6. Barton, John, Sr., Merchant, Bay Minette~~
- ~~7. Berglin, Lavine, Jr., Salesman, Fairhope~~
- ~~8. Bloch, Herman, Farmer, Elberta~~
- ~~9. Britt, Cecil, Carpenter, Bay Minette~~
- ~~10. Brooks, Horace D., Farmer, Summerdale~~
- ~~11. Bryars, Rudolph H., Brookley Field, Bay Minette~~
- ~~12. Conway, James, Mobile Construction, Daphne~~
- ~~13. Creamer, Henry, City Employee, Fairhope~~
- ~~14. Dawson, Roy S., Livestock Dealer, Robertsdale~~
- ~~15. Fell, Russell, Civil Service, Lillian~~
- ~~16. Fell, Walter, Mechanic, Bon Secour~~
- ~~17. Flowers, Edward, Farmer, Bay Minette~~
- ~~18. Gill, R. A., Oil Co., Robertsdale~~
- ~~19. Heidelberg, Jerry, Farmer, Robertsdale~~
- ~~20. Hill, Calvin, Farmer, Belforest~~
- ~~21. Hogan, C. J., Furniture Store, Bay Minette~~
- ~~22. Holmes, Roy, Teacher, Summerdale~~
- ~~23. Hunt, Frank C., GRAMCO, Spanish Fort, Daphne~~
- ~~24. Johnson, Coy L., Laborer, Bay Minette~~
- ~~25. Krischer, John, Farmer, Elberta~~
- ~~26. Krob, Joseph R., Farmer, Silverhill~~
- ~~27. Lamberth, Jack Ogal, Farmer, Bay Minette~~
- ~~28. Lazzari, Anglo, Farmer, Belforest~~
- ~~29. Leiterman, Nick, Civil Service, Elberta~~
- ~~30. Little, Frank Eugene, Mechanic, Foley~~
- ~~31. Lunsford, Albert A., Brookley Field, Foley~~
- ~~32. Lyrene, Edward, Farmer, Silverhill~~
- ~~33. Mahathy, Roy, Civil Service, Stapleton~~
- ~~34. Mancini, Arthur, Farmer, Daphne~~
- ~~35. Mims, John, Griffin Motor Co., Daphne~~
- ~~36. Moyer, Roy, Druggist, Fairhope~~
- ~~37. Neal, Harold, Ponder Co., Fairhope~~
- ~~38. Neimeyer, Lenora, (Mrs. Ed), Fairhope~~
- ~~39. Nix, C. Herbert, Reserve Fleet, Bay Minette~~
- ~~40. Peterson, Donald E., Brookley, Robertsdale~~
- ~~41. Oblak, John, Jr., Farmer, Silverhill~~
- ~~42. Quinley, Wilburn, Farmer, Bay Minette~~
- ~~43. Rhodes, Latham, Farmer, Foley~~
- ~~44. Roley, Leonard D., Farmer, Perdido~~
- ~~45. Ruple, J. L., Civil Service, Bay Minette~~
- ~~46. Stephens, Billie W., Brookley, Summerdale~~
- ~~47. Tullos, Abe, Brookley, Fairhope~~
- ~~48. Vines, Mack, Clerk, Bay Minette~~
- ~~49. Warley, Beverly (Mrs. Ed) Fairhope~~
- ~~50. Weeks, Ralph, Farmer, Magnolia Springs~~
- ~~51. Wilsey, Murry Emmett, Farmer, Robertsdale~~
- ~~52. Yeager, Dorothy (Mrs. Jerry), Fairhope~~
- ~~53. Mitchell, Thomas W., Contractor, Bay Minette~~

P XXXXX XXXXX XX
 I XXXXX XXXXX XI

57
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| | | |
|--------------------------|-----|-------------------------|
| MARIE CECILIA HORN | * | IN THE CIRCUIT COURT OF |
| | * | |
| Plaintiff | * | BALDWIN COUNTY, ALABAMA |
| | * | |
| VS | * | AT LAW |
| | * | |
| JAMES RALPH DAVIS, et al | * | |
| | * | |
| Defendants | * | CASE NO. 7047 |
| | *** | |

REPLICATION

Now comes the Plaintiff in the above styled cause and for replication to Plea Two says, as to said plea, as follows:

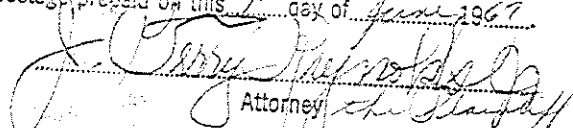
ONE

The Plaintiff joins issue of said plea.


 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 7th day of June 1967.


 Attorney

FILED

JUN 8 1967

AUG 1, 1967

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the _____
19th day of June, 1967 ~~Monday~~, ~~1967~~, in a cer-
tain cause in said Court wherein Marie Cecilia Horn,

Plaintiff, and James Ralph Davis and Cledis Peterson,
individually and Cledis Peterson, d/b/a PETERSON PRODUCT Company, Jointly &
Severally, Defendants a judgement was rendered against said

Marie Cecilia Horn, Plaintiff

to reverse which Judgment, the said Marie Cecilia Horn, Plaintiff,

applied for and obtained from this office an APPEAL, returnable to the next

Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on
the _____ day of _____, 1967 next, and the necessary bond

having been given by the said Marie Cecilia Horn,

with Fred H. Clarke, Mrs. Fred H. Clarke, Mrs. Johnnie D. Harbin & _____, sureties,
Frank M. Harbin, Jr.

Now, You Are Hereby Commanded, without delay, to cite the said James Ralph Davis, et al

or Armbrecht, Jackson & Demouy

_____, attorney, to appear at the next Term of our
said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 11th
day of September, A. D., 1967

Attest:

Alice J. Duck, Clerk.

I hereby accept service of the
foregoing on the 29th day of Sept. 1967

30 SHERIFF DEPT
IBILE COUNTY, ALA.
RECEIVED
P 13 10 03 AM '67 SEP 12 1967

TAYLOR WILKINS
SHERIFF

Wan
4379
7047

CIRCUIT COURT
Baldwin County, Alabama

MARIE CECILIA HORN,
Plaintiff,

Vs. } Citation in Appeal

148 Wan
JOHN RALPH DAVIS, & CLEDIS PETERSON,
Ind. & CLEDIS PETERSON, d/b/a
PETERSON PRODUCE CO., Jointly & Severally

Issued 11th day of September, 1967

Serve: Armbrecht, Jackson & Demouy
on Brody D. Holmes

Received 12
and on 14
I served a copy of this writ on John R. Davis & Cledis Peterson, d/b/a Peterson Produce Co., by service on Brody D. Holmes
12 67
10 03

RAY D. BRIDGES, Sheriff
By Brody D. Holmes

DIV. NO. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 7047

THE STATE OF ALABAMA

BALDWIN County.

I, Alice J. Duck, Clerk of the Circuit Court of ~~Circuit~~ Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein MARIE CECILIA HORN

was plaintiff, and JAMES RALPH DAVIS, & CLEDIS PETERSON, Ind. & ~~SALES~~
d/b/a PETERSON PRODUCE COMPANY, Jointly & Severally,
were ~~was~~ Defendants as fully and completely as the same appears of record in said Court.

And I further certify that the said Marie Cecilia Horn, Plaintiff did on the 11th day of September, 1967, pray for and obtain an appeal from the judgment of said Court to the Supreme Court of Alabama to reverse said judgment of said Court upon entering into bond with Marie Cecilia Horn, Fred H. Clarke, Mrs. Fred H. Clarke, Mrs. Johnnie D. Harbin & ^{Frank M. Harbin, Jr.,} as sureties thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 11th day of September, 1967

Alice J. Duck
Clerk of the Circuit Court of
Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

REYNOLDS & LAUTEN
ATTORNEYS AT LAW
SUITE 1401 WATERMAN BUILDING
MOBILE, ALABAMA 36602

J. TERRY REYNOLDS, JR.
WILLIAM R. LAUTEN

September 8, 1967

433-3661
AREA CODE 205

Mrs. Alice J. Duck, Clerk
Circuit Court of Baldwin County
County Court House
Bay Minette, Alabama 36707

Re: Marie Cecilia Horn
Vs: James Ralph Davis, and Cledis Peterson,
individually and Cledis Peterson, doing
business as Peterson Produce Company,
jointly and severally
Circuit Court of Baldwin County, Alabama
Civil Division, At Law, Case No. 7047

Dear Sweet Lady:

Enclosed is the original and two copies of the notice of appeal given by me on behalf of Marie Cecilia Horn in this case. Also you will note that a bond for security for costs has been made with the principal and four sureties on it. Our mutual good buddy and friend, Honorable John E. Mandeville, Clerk, Circuit Court of Mobile County, Alabama, has approved the bond.

Sweet Lady, would you please process the perfecting of the appeal for me on behalf of Miss Horn in this matter and advise.

To keep from writing two letters, I also enclose a check for \$150.00, payable to Louise Dusenbury, your very lovely court reporter. This check covers the cost of the transcript in this case. Would you please deliver the check to her and ask her to acknowledge receipt of it. I believe she has sixty days from the time of the notice of appeal to file the transcript. Therefore, ask her not to file the transcript, if this is true, for two or three weeks yet, as we want to check it out. If time is running on me, please ask Mrs. Dusenbury to call me long distance, collect, 433-3662.

Thank you.

Very truly yours,



J. TERRY REYNOLDS, JR.
JTR:mh
Enclosures

MARIE CECILIA HORN

Plaintiff

VS

JAMES RALPH DAVIS, and
CLEDIS PETERSON, individually
and CLEDIS PETERSON, doing
business as PETERSON PRODUCE
COMPANY, jointly and severally

Defendants

* IN THE CIRCUIT COURT OF
*
* BALDWIN COUNTY, ALABAMA
*
* CIVIL DIVISION
*
* AT LAW
*
*
* CASE NO. 7047

Now comes the Plaintiff, Marie Cecilia Horn, in the above styled
cause, and hereby gives notice and appeals to the Supreme Court of
Alabama from the judgment rendered in said cause on the 19th day of June,
1967.

REYNOLDS & LAUTEN
Solicitors for Plaintiff

By:

J. Terry Reynolds, Jr.
J. Terry Reynolds, Jr.

We, the undersigned, hereby acknowledge ourselves as principal and
sureties respectively for cost in the foregoing judgment and appeal taken to
the Supreme Court of Alabama from the decree on the 19th day of June, 1967,
rendered by the Circuit Court, Civil Division, At Law, Bay Minette,
Alabama.

Marie Cecilia Horn
Principal

David H. Clarke
Surety

Mrs David H. Clarke
Surety

Miss Johanne D. Harbin

Frank M. Harbin, Jr.

STATE OF ALABAMA)
COUNTY OF MOBILE)
)

I hereby certify that if this appeal bond or security for costs of appeal
were presented to me, I would approve the same.
Done this 30th day of August, 1967.

(Signed) John Mandeville
Clerk, Circuit Court
Mobile County, Alabama

MARIE CECILIA HORN

Plaintiff

VS

JAMES RALPH DAVIS, and
CLEDIS PETERSON, individually
and CLEDIS PETERSON, doing
business as PETERSON PRODUCE
COMPANY, jointly and severally

Defendants

* IN THE CIRCUIT COURT OF
*
* BALDWIN COUNTY, ALABAMA
*
* CIVIL DIVISION

* AT LAW

* CASE NO. 7047

Now comes the Plaintiff, Marie Cecilia Horn, in the above styled
cause, and hereby gives notice and appeals to the Supreme Court of
Alabama from the judgment rendered in said cause on the 19th day of June,
1967.

REYNOLDS & LAUTEN
Solicitors for Plaintiff

By:

J. Terry Reynolds, Jr.
J. Terry Reynolds, Jr.

We, the undersigned, hereby acknowledge ourselves as principal and
sureties respectively for cost in the foregoing judgment and appeal taken to
the Supreme Court of Alabama from the decree on the 19th day of June, 1967,
rendered by the Circuit Court, Civil Division, At Law, Bay Minette,
Alabama.

Marie Cecilia Horn
Principal

Fred H. Clarke
Surety

Mrs. Fred H. Clarke
Surety

Mrs. Johnnie D. Harbin

Frank M. Harbin, Jr.

STATE OF ALABAMA)
COUNTY OF MOBILE)

I hereby certify that if this appeal bond or security for costs of appeal
were presented to me, I would approve the same.
Done this 30th day of August, 1967.

(Signed) John Mandeville
Clerk, Circuit Court
Mobile County, Alabama

Law Offices

J. Terry Reynolds, Jr.
And
William R. Lauten
Suite 1401 Waterman Bldg.
Mobile, Alabama
36602

MARIE CECILIA HORN

Plaintiff

VS

JAMES RALPH DAVIS, and
CLEDIS PETERSON, individually
and CLEDIS PETERSON, doing
business as PETERSON PRODUCE
COMPANY, jointly and severally

Defendants

* IN THE CIRCUIT COURT OF
*
* BALDWIN COUNTY, ALABAMA
*
* CIVIL DIVISION
*
* AT LAW
*
*
* CASE NO. 7047

Now comes the Plaintiff, Marie Cecilia Horn, in the above styled
cause, and hereby gives notice and appeals to the Supreme Court of
Alabama from the judgment rendered in said cause on the 19th day of June,
1967.

REYNOLDS & LAUTEN
Solicitors for Plaintiff

By

J. Terry Reynolds, Jr.
J. Terry Reynolds, Jr.

We, the undersigned, hereby acknowledge ourselves as principal and
sureties respectively for cost in the foregoing judgment and appeal taken to
the Supreme Court of Alabama from the decree on the 19th day of June, 1967,
rendered by the Circuit Court, Civil Division, At Law, Bay Minette,
Alabama.

Marie Cecilia Horn
Principal

Frank H. Clarke
Surety

Mrs. Pearl H. Clarke
Surety

Mrs. Johanne L. Hardin

Frank M. Hardin, Jr.

State of Alabama,
County of Mobile.

I hereby certify that if this appeal bond or
security for costs of appeal were presented to me,
I would approve the same.

Done this 30th day of August 1967.

Approved
9-11-67
Deirdre
Court

J. M. Mandeville
Clerk, Circuit Court
Mobile County, Ala.

Law Offices

J. Terry Reynolds, Jr.

And

William R. Lauten

Suite 1401 Waterman Bldg.

Mobile, Alabama

REYNOLDS & LAUTEN
ATTORNEYS AT LAW
SUITE 1401 WATERMAN BUILDING
MOBILE, ALABAMA 36602

J. TERRY REYNOLDS, JR.
WILLIAM R. LAUTEN

October 23, 1967

433-3661
AREA CODE 205

Mrs. Alice J. Duck, Clerk
Circuit Court of Baldwin County
County Court House
Bay Minette, Alabama 36707

Re: Marie Cecilia Horn
Vs: James Ralph Davis, et al., etc.
Supreme Court of Alabama, 1 Div.
On appeal from Circuit Court of Baldwin County, Alabama,
at Law, Case No. 7047

Dear Mrs. Duck:

Thank you very much for sending us the copy of the transcript of the record in this case. We are in the process of preparing assignments of error.

I have looked over the transcript and there are some corrections which I think you will want to make. Some of them are insignificant, but some are quite important.

Please accept my suggestions, however, not as criticism, but so that the record will be in the condition that I know we will both want it.

It is respectfully requested that the following changes in the transcript of the record be made:

✓ On page 1; see the beginning of the complaint at the bottom of the page. On the 4th line of the complaint, Cledia should read Cledis. On the 3rd line from the bottom of the page, 7/10th should read 7/10ths.

✓ On page 2; the 12th line from the top, Blood should read blood. On the 20th line from the top, anziety should read anxiety. On the 13th line from the bottom, incure should read incur. On the 9th line from the bottom, disbuse should read disburse.

✓ On page 3; see Count Two, the 14th line of Count Two, consequence should read consequence. On the 4th line from the bottom, considerable should read considerably. On the last line, incure should read incur.

✓ On page 4; on the 9th line from the top, here should be her. On the 11th line from the top, damages should be damaged.

Mrs. Alice J. Duck, Clerk

Page 2

October 23, 1967

On page 143; the charges which were given have been labeled GIVEN CHARGES. Please add on that same line at the top of the page the following: (Requested by the Defendants.)

On page 144; charge No. 17. The first three lines of that charge does not seem to make sense. I am not sure the way the charge actually reads, but according to the record the first three lines read as follows: "The Court charges the Jury that it is the law of Alabama that no person shall drive a vehicle, 'without due caution and circumspection and at a speed or in a manner so as to endanger to be likely to endanger any person or property.'" There seems to be something left out of this portion of the charge, a word or two. Will you please check the original charge and correct the record to show exactly the way it was written and given?

On page 145; you have the charges there labeled REFUSED CHARGES. Please add immediately after that the following words: (REQUESTED BY DEFENDANTS).

On page 147; ground Two of the motion for a new trial, the word "that" should be inserted between the words "For" and "the".

On page 148; ground thirteen of the motion for a new trial, the 3rd line of that ground, the word be should read he, and on the 4th line of ground thirteen, the word contented should read contended.

On page 149; in the certificate of service, the 3rd line, the word postabe should read postage.

On page 151; your record shows as follows after the citation of appeal:
Served: September 14, 1967, on
Broox G. Holmes, attorney
I hereby accept service of the foregoing this
29th day of Sept. 1967.

/S/ James R. Owen

It is respectfully requested that since the citation was to Armbrrecht, Jackson & Demouy, that the record show that service was perfected on Broox G. Holmes, one of the members of the law firm of Armbrrecht, Jackson & Demouy, attorneys, and it is requested that the return of the sheriff be typed into the record to show this service, that it was perfected on him personally by the sheriff or one of his deputies. While the Supreme Court probably would hold this sufficient, as you know, it is absolutely essential and jurisdictional not only that there be service, but that it appear from the record that there was service perfected by the proper officer, and this must be personal service. I have talked with Mr. Broox Holmes and he says that he has received service, but your record should show affirmatively just how the service was perfected.

Add. RAY D. Bridges by: M. C. Wainwright, D.S.

Mrs. Alice J. Duck, Clerk

Page 3

October 23, 1967

Also on page 151, in your certificate of appeal, should not the blank page number be filled in on line 3 of your certificate of appeal? - *This will be done*

on original before mailing -

On page 152, on your certificate, again should not the blanks be filled in, including the date? *same as Above*

I am returning to you herewith my copy of the transcript so that these corrections can be made on my copy, also. Please return my copy of the transcript when these corrections have been made.

I thank you very much for this and for your many past courtesies.

Highest personal regards.

Yours very truly,

William R. Lauten

WILLIAM R. LAUTEN

WRL:mh

Enclosures

P.S.: In order to get these corrections to you as soon as possible, and since I have to use the transcript for a couple of days, I will send you my copy of the transcript of the record in the next few days. I would appreciate your going through the original and other copies as soon as convenient.

Thank you.

WRL

October 27, 1967

REYNOLDS & LAUTEN
Attorneys at Law
Suite 1401 Waterman Building
Mobile, Alabama 36602

Gentlemen:

Re: Marie Cecilia Horn
vs: James Ralph Davis, et al
Case No. 7047

The original transcript has been corrected as noted in your letter in the above styled cause.

Copies may be correct by the Attorneys to correspond.

Very truly yours,

Circuit Clerk

AJD/eb

Enclosure: Copy of Letter

cc: Hon. Brook Holmes

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

J. O. SENTELL
DEPUTY CLERK
LOUISE L. HOLT
ASSISTANT CLERK

November 16, 1967

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

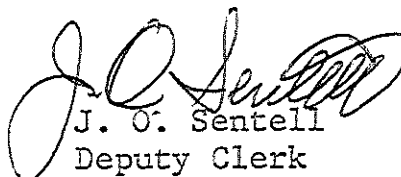
Re: 1 Div. 482
Marie Cecilia Horn v.
James Ralph Davis and Cledis
Peterson, et al

I have this day delivered to Mr. William R. Lauten the following exhibits in the above-styled cause, to be delivered to you for the purpose of making the proper certification:

Plaintiff's Exhibits 13,16,15,14,
17,20,19, and 18 (large photos) and
copy of hospital chart #22.

Mr. Lauten will advise you as to the proper procedure. These should be sent under the proper procedure to this office as soon as possible.

Very truly yours,


J. O. Sentell
Deputy Clerk

JOS:pjg

FILED
NOV 17 1967
CLERK
MONTGOMERY

NOVEMBER 22, 1967

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1967-68

1st Div. 482

Marie Cecilia Horn

v.

James Ralph Davis and Cledis Peterson,
Individually and Cledis Peterson d/b/a
Peterson Product Company, Jointly and
Severally

Baldwin Circuit Court

IT IS ORDERED by the Deputy Clerk of the Supreme Court of Alabama, pursuant to notice duly given by the attorneys for the appellants in accordance with Rule 51, Revised Rules of the Supreme Court of Alabama, that the Clerk of the Circuit Court of Baldwin County, Alabama, certify and forward forthwith the following exhibits to the Supreme Court of Alabama:

Plaintiff's Exhibits 13, 14, 15, 16, 17,
18, 19 and 20.

This the 22nd day of November 1967.


Deputy Clerk
Supreme Court of Alabama

FILED
NOV 25 1967
CLERK
RECORDED

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

Special

~~October~~ Term, 19 69

1st Div. No. 482

To the Clerk Register of the Circuit Court of Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said Court between Marie Cecilia Horn, Appellant,

and James Ralph Davis and Cledis Peterson, etc., Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before the Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant;

Now, it is hereby certified:

That the Supreme Court on the 7th day of August, 1969, reversed and annulled the Judgment of the Court below, and remanded the cause to said Court for further proceedings therein.

That the Court further ordered the appellees James Ralph Davis and Cledis Peterson, Individually and Cledis Peterson doing business as Peterson Produce Company,

pay the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

Witness, J. O. Sentell, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 7th day of August, 1969

J. O. Sentell
Clerk of the Supreme Court of Alabama.

FILED

AUG 8 1969

ALICE J. DUCK

CLERK
REGISTER

THE SUPREME COURT OF ALABAMA

Special

~~October~~ Term, 19 69

1st Div., No. 482

Marie Cecilia Horn

Appellant,

vs.

James Ralph Davis, et al.

Appellee.

From Baldwin Circuit *Court.*

**CERTIFICATE OF
REVERSAL**

The State of Alabama,

Baldwin County. } *Filed*

this 8 day of Aug 19 69

Wm. J. French

AUG 7 - 1969

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

SUPREME COURT OF ALABAMA

SPECIAL TERM 1969

Marie Cecilia Horn

1 Div. 482

v.

James Ralph Davis and Cledis Peterson, Etc.,

Appeal from Baldwin Circuit Court

LIVINGSTON, CHIEF JUSTICE.

This is a suit by Marie Cecilia Horn against James Ralph Davis and Cledis Peterson, individually, and doing business as Peterson Produce Company, for personal injuries received by her in a collision between the automobile she owned and was driving

2. 1 Div. 482 - Horn v. Davis

and a truck being operated at the time by Davis, who was admittedly acting within the line and scope of his authority for his employer, Cledis Peterson, individually, and doing business as Peterson Produce Company.

The case was submitted to the jury on Count One charging negligence and the defendants' pleas of the general issue and contributory negligence. Count Two, charging wanton conduct, was not submitted to the jury. The court, at the request of the defendants, gave in writing the affirmative charge in favor of the defendants as to the wanton count.

There was a verdict in favor of the defendants. Judgment was rendered and entered in accordance with the jury's verdict.

A motion for a new trial was timely filed and overruled. Thereafter, the plaintiff appealed to this Court from the original judgment.

We feel that the first assignment of error (#1), the giving of defendants' written Charge A, presents the decisive question and we will give this priority on consideration of the appeal.

The collision occurred on a part of U. S. Highway 31 and 90 running generally east and west, and not too far from the Mobile-Baldwin County Line. There is a curbed, raised median strip dividing the two west-bound lanes from the two east-bound lanes. The road was straight and level. The two west-bound lanes are each twelve (12) feet in width. It was about 1:15 A.M. on February 19, 1966. The weather was clear.

The plaintiff, who was the Executive Secretary in the office of the Tax Assessor of Mobile County, Arnold Debrow, was driving her 1965 Mercury four-door automobile. There were four passengers in the car, including Mr. Debrow, and a coemployee, Miss Alicia Casey. The group was returning from a late supper engagement at the Sea Ranch (located about one-quarter (1/4) of a mile east from the point of impact). Mr. Debrow, following a business conference relating to a campaign for reelection, had invited the group to join him for dinner. There were certain crossovers between the east-bound and west-bound lanes permitting traffic to change directions when desired. Some of these crossovers were "false" in that a full crossing could not be completed. The defendant Davis was the driver of the tractor-trailer unit and preceded the plaintiff's car going west. Plaintiff's car entered the highway on leaving the Sea Ranch, driving west until the collision occurred. After skidding for considerable distance, the passenger car struck the right rear portion of defendant's truck. There was no damage to the front of plaintiff's car, the point of impact being in the center of the car, almost directly opposite the driver's seat. The location of defendant's vehicle, and if it was in motion, was highly controversial. For the present, the above will suffice to permit a consideration of assignment of error No. 1.

Plaintiff and two of the passengers in her car testified regarding the collision. The defendant truck driver also was a witness and testified he was familiar with this location.

The evidence here is in hopeless conflict, but we are only concerned with the phase of it from which the jury might have found wantonness on the part of the defendant truck driver, and, of course, we do not indicate an opinion concerning it. Here, we state the evidence in its most favorable aspect for the plaintiff.

The evidence tended to prove the following:

Plaintiff's automobile was in the inner or left lane, some distance behind defendant's trailer truck, both going in a westerly direction. Plaintiff was overtaking the truck which had obviously slowed down, and which was then in or partly in the right lane; that when plaintiff's car was seventy-five (75) to one hundred (100) feet back, the truck without warning or signal turned suddenly from the right lane to the left across the projected path of the plaintiff's car. Confronted with this emergency, plaintiff applied her brakes and cut to the right and skidded into the rear of defendant's vehicle. Under these circumstances, we hold that a jury question under the wanton count was presented.

In McNickle v. Stripling, 259 Ala. 576, 67 So. 2d 832, the Court said:

"[2,3] The concept is, of course, universal that to constitute wantonness it is not essential that the defendant should have entertained a specific design or intent to injure the plaintiff.

A wilful or intentional act may not necessarily be involved in wantonness. It may consist of an

inadvertent failure to act by a person with knowledge that someone is probably imperiled and the act or failure to act is in reckless disregard of the consequences. Atlantic Coast Line R. Co. v. Brackin, 248 Ala. 459, 461, 28 So. 2d 193.

"[4] Or stated another way:

"'Wantonness may arise from knowledge that persons, though not seen, are likely to be in a position of danger, and with conscious disregard of known conditions of danger and in violation of law [defendant] brings on the disaster.

* * *' Godfrey v. Vinson, 215 Ala. 166, 169, 110 So. 13, 16.

"If, therefore, the defendant, conscious of plaintiff's position but ignoring the consequences, heedlessly or recklessly disregarded the danger and turned across the road immediately in front of plaintiff without looking to see if plaintiff was in a dangerous position at a time and place when defendant should have anticipated such a condition, such conduct would amount to wantonness. We think the evidence adduced made a jury question on this issue. Among our cases applying the applicable rule, with facts somewhat similar and lending support to this conclusion are: Wilhite v. Webb, supra; Alabama Power Co. v. Buck, 250 Ala. 618, 35 So. 2d 355; Godfrey v. Vinson, supra; Fortson v. Hester, 252 Ala. 143, 39 So. 2d 649; Daniel v. Motes, 228 Ala. 454, 153 So. 727.

"The rules of the road require, among other things, that:

""(b) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 16 of this chapter, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

""(c) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.' §17, Title 36, Code 1940, 1961 Pocket Part, Vol. Six.

"Defendant violated this rule of the road, which is designed to protect the traveling public from such accidents as occurred here. She saw the plaintiff as she entered Oxmoor Road. She knew he was traveling behind her automobile at a slightly greater rate than she and proceeding in the same direction, and knowing all this, and in obvious

disregard of the consequences, she made the left turn across this 40-foot highway without looking back -- a most necessary thing to do in this modern day of vehicular travel -- and without giving any warning signal. The testimony of defendant was in sharp conflict with this, but clearly the issue of wantonness was a matter to be determined by the jury." See also Wilhite v. Webb, 253 Ala. 606, 46 So. 2d 414.

In Thrasher v. Darnell, 275 Ala. 570, 156 So. 2d 922, we gave consideration to the question of wantonness as follows:

"We are not persuaded that the wanton count was not supported by any evidence. Considering the density of motor vehicular traffic that would justify the building of a highway consisting of four lanes (two each for traffic proceeding in opposite directions) within the corporate limits of Huntsville to facilitate the movement of traffic, as here, we cannot say as a matter of fact that defendant was not guilty of wantonness when he undertook, as the plaintiff's testimony tended to show, to move from his left lane to the right lane of traffic without first determining he could do so with reasonable safety. General Acts of 1949, Act No. 517, page 754. Also, see Title 36, § 17, Recompiled Code of Alabama 1958; Roberts v. McCall, 245 Ala. 359, 17 So. 2d 159(2). A jury question under plaintiff's evidence was presented."

8. 1 Div. 482 - Horn v. Davis

Assignments of Error 2-6 Inclusive.

These assignments of error relate to the giving of written charges Nos. 14, 15, 16, 17, 19 and 21, holding in effect that plaintiff could not recover if the jury was reasonably satisfied that plaintiff was guilty of contributory negligence.

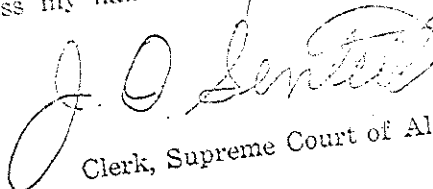
Had the wanton count been submitted all of these charges should have been refused, because as contended by appellant, they ignored the wanton count. To this extent, the giving of the charges constituted error. Of course, the court having charged out the wanton count, the general issue and plea of contributory negligence were the only defenses then available in answer to Count One. Crocker v. Lee, 261 Ala. 439, 74 So. 2d 429.

Because of our holding on the Court's failure to submit the wanton count to the jury, we forego consideration of any other questions. The plaintiff is entitled to a new trial.

REVERSED AND REMANDED.

Lawson, Merrill and Harwood, JJ., concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.
Witness my hand this 7 day of Aug 1969


Clerk, Supreme Court of Alabama

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

Re: 1 Div. No. 482 Baldwin Circuit Court

Marie Cecilia Horn

Appellant

vs.

James Ralph Davis, et al

Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

☐ Briefs filed

☐ Submitted on briefs

☐ Dismissed

☐ Application for rehearing and briefs filed

☒ Application for rehearing overruled

☐ Appell_____ granted 15 additional days to file briefs

☐ Transcript filed (Notice under Rule 12)

☐


Clerk, Supreme Court of Alabama

December 11, 1969

710.7047

JURY LIST - MARCH 9, 1970 - SPRING SESSION

Marie Cecilia Horn

for Ralph Davis

1. Stevens, Marie U., Merchant, Bay Minette
2. Ziglar, John, Farmer, Robertsdale
3. Allegri, Angelo, Carpenter, Fairhope
4. Bishop, George O., Merchant, Fairhope
5. Duck, Fred, Laborer, Bay Minette
6. Lee, Edward A., Stockton
7. Lewis, William, Salesman, Fairhope
8. Montgomery, Bessie, Bus Woman, Fairhope
9. Nonsworthy, John C., Clerk, Bay Minette
10. Ellis, Thomas, Paperwood Fleet, Loxley
11. Harrison, Joseph M., Farmer, Fairhope
12. Brock, L. B., Farmer, Robertsdale
13. Maynard, Harold A., Fairhope
14. Ebert, Charles J., Jr., Ins. Agt., Foley
15. Kendrick, Rivers, Farmer, Robertsdale
16. Price, Julian G., Insurance, Bay Minette
17. Ruegg, Jacob, Merchant, Foley
18. Russell, Cecil, Filling Station, Robertsdale
19. Hall, Origen, Club Operator, Bay Minette
20. Gaston, Louise (Mrs. Jim, Jr.) housewife, Fairhope
21. Stuart, Harold, Cleaners, Bay Minette
22. Survant, Ray H., Civil Service, Billian
23. Urbanek, Steve, Mail Clerk, Fairhope
24. Weston, Herbert R., Bookkeeper, Bay Minette
25. Boone, W.A., Farmer, Little River
26. Brantley, G. C., Contractor, Bay Minette
27. Herman, Vera W., Fairhope
28. Blackman, W. K., Farmer, Foley
29. Drodbeck, Arnold, Jr., Brookley Field, Fairhope
30. White, Rudolph P., Navy Yard, Robertsdale
31. Cox, Young Ausphera, Merchant, Stockton
32. Crook, Prince, Laborer, Bay Minette
33. Duck, Davis, Farmer, Bay Minette
34. Davis, Joe C., Self Employed, Bon Secour
35. Day, Fred D., Stockton
36. Sellers, James R., Chemstrand, Robertsdale
37. Slaughter, Dupree, Farmer, Tensaw
38. Smith, Orrie, Sr., Brookley Field, Daphne
39. Rhodes, Virgil V., Jr., Farmer, Bay Minette
40. Gapps, Curtis

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