

THE STATE OF ALABAMA {
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

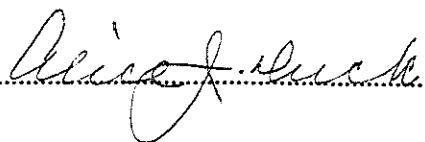
Whereas, at a Term of the Circuit Court of Baldwin County, held on the
 29th day of August, 1969..... Monday in, 19....., in a cer-
 tain cause in said Court wherein SHIRLEY THIEM LIPSCOMB, as Administratrix of the Estate
 of Gerard Lipscomb, Deceased, Plaintiff, and Garnett L. Chisenhall, etc.....
 Defendant, a judgement was rendered against said
 granting the motion for the Defendant for a new trial.....
 to reverse which Judgment..... the said Shirley Thiem Lipscomb, as Administratrix
 of the Estate of Gerald Lipscomb, Deceased, 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, 19..... next, and the necessary bond
 having been given by the said Norborne C. Stone, Jr.,
 with and John Earle Chason....., sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Garnet L. Chisenhall, etc.
 or Wilters & Brantley
, attorneys 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 5th
 day of September A. D., 19..... 69.

Attest:

..... , Clerk.

7497

CIRCUIT COURT
Baldwin County, Alabama

SHIRLEY THIEM LIPSCOMB, a s Administratrix
of the Estate of Gerard Lipscomb,
Deceased

Vs. } Citation in Appeal

GARNET L. CHISENHALL, etc.

Issued 5th day of Sept., 19 69

Harry Witters

Received 5 day of Sept 1969
and on 12 day of Sept 1969
I served a copy of the within Citation
on Shirley & Bentley
By service on Harry Witters
TAYLOR WALKINS, Sheriff
By W. L. Jenkins D.S.

SHIRLEY LIPSCOMB EDMUNDSON,	X		
formerly SHIRLEY THIEM LIPSCOMB,			
as Administratrix of the Estate	X		
of Gerard Lipscomb, Deceased,			IN THE CIRCUIT COURT OF
	X		
Plaintiff,			
	X		
vs.			BALDWIN COUNTY, ALABAMA
	X		
GARNET L. CHISENHALL,		AT LAW	NO. 7497
individually and doing	X		
business as CHISENHALL			
AGRICULTURAL SERVICE,	X		
Defendant.	X		

AMENDED COMPLAINT

Comes now the Plaintiff in the above styled cause, by her attorney, and amends the Complaint heretofore filed in this cause so that the same shall read as follows:

COUNT ONE

The Plaintiff claims of the Defendant, Garnet L. Chisenhall, Individually and doing business as Chisenhall Agricultural Service, Two Hundred Thousand Dollars (\$200,000.00) as damages for that on heretofore, to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport, near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant, Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant as a proximate consequence and result of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him over said airplane and the Plaintiff's intestate and who was then and there exercising such superintendence; all to the damage to the

vol - 57. Pg - 862 1-a

damage of the Plaintiff aforesaid, wherefore she brings this suit and asks judgment in the above amount.

COUNT TWO

The Plaintiff claims of the Defendant, Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore, in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant as a proximate consequence and result of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him over said airplane and the Plaintiff's intestate and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid which proximately caused the death of the Plaintiff's intestate consisted in this: The said John Henry Francis negligently piloted a Piper PA-18 aircraft, Registration Mark N-1119C while the Plaintiff's intestate was riding therein by allowing the fuel selector valve to remain in the left tank position prior to and during take-off when he knew, or should have known, that the left fuel tank was empty or almost empty so that immediately subsequent to take-off fuel starvation resulted which induced power failure

during the take-off climb causing the aircraft to crash. Wherefore the Plaintiff brings this suit and asks judgment in the above amount.

COUNT THREE

The Plaintiff claims of the Defendant, Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him over said airplane and the Plaintiff's intestate and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid consisted in this: That the said John Henry Francis so negligently operated a Piper PA-18 aircraft, Registration Mark N-1119C at said time and place as the pilot thereof, and which said aircraft had been intrusted to the said John Henry Francis by the Defendant, as to cause or allow the same to crash to the ground killing Plaintiff's intestate. e

COUNT FOUR

The Plaintiff claims of the Defendant Garnet L. Chisenhall, individually and doing business as Chisenhall Agri-

cultural Service, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on heretofore, to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence; all to the damage of the Plaintiff aforesaid, wherefore she brings this suit and asks judgment in the above amount.

COUNT FIVE

The Plaintiff claims of the Defendant, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of said Defendant, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid which proximately caused the death of the Plaintiff's intestate

consisted in this: The said John Henry Francis negligently operated a Piper PA-18 aircraft, Registration Mark N-1119C while the Plaintiff's intestate was riding therein by allowing the fuel selector valve to remain in the left tank position prior to and during take-off when he knew, or should have known, that the left fuel tank was empty or almost empty so that immediately subsequent to take-off fuel starvation resulted which induced power failure during the take-off climb causing said aircraft to crash. Wherefore the Plaintiff brings this suit and asks judgment in the above amount.

COUNT SIX

The Plaintiff claims of the Defendant, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of said Defendant, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid consisted in this: That the said John Henry Francis so negligently operated a Piper PA-18 aircraft, Registration Mark N-1119C at said time and place as the pilot thereof, and which said airplane had been intrusted to the said John Henry Francis by said Defendant, as to cause or allow the same to crash to the ground killing Plaintiff's intestate.

COUNT SEVEN

The Plaintiff claims of the Defendant, Two Hundred Thousand Dollars (\$200,000.00) as damages for that the Defendant owned one (1) Piper PA-18 aircraft, (Registration Mark N-1119C0 on to-wit, the 3rd day of May, 1966, and did authorize one John Henry Francis to operate the aircraft in question on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport, near Atmore in Escambia County, Alabama, and that John Henry Francis did negligently operate the aircraft in question causing the said aircraft to crash to the ground. The Plaintiff further contends that the negligence of John Henry Francis was the proximate cause of the death of Gerard Lipscomb who was in the airplane as a passenger at the time of the crash.

COUNT EIGHT

The Plaintiff claims of the Defendant, Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, Two Hundred Thousand Dollars (\$200,000.00) as damages, on, to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport, near Atmore, in Escambia County, Alabama, the Plaintiff's intestate, Gerard Lipscomb, was fatally injured in the crash of an airplane owned by the said Defendant. Plaintiff further alleges that the negligence of said John Henry Francis at the time and place aforesaid proximately caused the death of Plaintiff's intestate. Plaintiff alleges that the Defendant, owner of the aircraft, authorized said John Henry Francis to operate the aircraft in question and that John Henry Francis did negligently operate the said aircraft as follows: The said John Henry Francis negligently piloted the Piper PA-18 aircraft (Registration Mark N-1119C) with the Plaintiff's intestate riding therein by allowing the fuel selector valve to remain in the left

tank position prior to and during take-off when he knew, or should have known, that the left fuel tank was empty or almost empty so that immediately subsequent to take-off fuel starvation resulted which induced power failure during the take-off climb causing the aircraft to crash. The Plaintiff avers that the aforesaid negligence of John Henry Francis was the proximate cause of the death of Plaintiff's intestate. Wherefore, the Plaintiff brings suit and asks judgment in the above amount.

COUNT NINE

Plaintiff claims of the Defendant the sum of Two Hundred Thousand Dollars (\$200,000.00) as damages for that heretofore on, to-wit, the 3rd day of May, 1966, the Plaintiff's intestate was killed at or near Rocky Creek Airport near Atmore, in Escambia County, Alabama, when the aircraft in which he was a passenger, one (1) Piper PA-18 aircraft (Registration Mark N-1119C) owned by the Defendant, Garnet L. Chisenhall, crashed. Plaintiff further avers that the Defendant, Garnet L. Chisenhall authorized John Henry Francis to operate the aircraft in question and that John Henry Francis did negligently operate said aircraft causing it to crash to the ground. The Plaintiff further avers that the negligent operation of the aircraft in question was the proximate cause of the death of the Plaintiff's intestate.

COUNT TEN

The Plaintiff claims of the Defendant the sum of Two Hundred Thousand Dollars (\$200,000.00) as damages for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore, in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, was fatally injured in the crash of an airplane belonging to said Defendant. The Plaintiff further avers that Defendant caused or authorized the operation of the aircraft in capacity of owner, that John Henry Francis was the party whom

Defendant caused or authorized to operate the aircraft in question, that John Henry Francis negligently operated the Piper PA-18 aircraft (Registration Mark N-1119C) which was owned by Defendant as follows: The said John Henry Francis negligently allowed the fuel selector valve to remain in the left tank position prior to and during take-off when he knew, or should have known, that the left fuel tank was empty or almost empty so that immediately subsequent to take-off fuel starvation resulted which induced power failure during the take-off climb causing said aircraft to crash. Plaintiff further avers that under Title 4, Section 20 (25) that the Defendant is therefore deemed to be engaged in the operation of aircraft. Plaintiff further avers that the negligence of John Henry Francis in the operation of Defendant's aircraft was the proximate cause of the death of Plaintiff's intestate. Hence, the Plaintiff brings this suit and asks judgment in the above amount.

ENGEL, SMITH & TOLER

and

CHASON, STONE & CHASON

By Elmerhard E Ball
Attorneys for Plaintiff

The Plaintiff demands the trial of this cause by a jury.

CHASON, STONE & CHASON

By Elmerhard E Ball
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I 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 11th day of Sept., 1970

Elmerhard E Ball

FILED

SEP 11 1970

ALICE J. DUCK CLERK
REGISTER

862 1-2

8

SHIRLEY LIPSCOMB EDMUNDSON,)	
formerly SHIRLEY THIEM LIPSCOMB,)	
as Administratrix of the Estate)	
of Gerard Lipscomb, Deceased,)	IN THE CIRCUIT COURT OF
)	BALDWIN COUNTY, ALABAMA
Plaintiff,)	AT LAW
VS.)	CASE NO. 7497
GARNET L. CHISENHALL, individ-)	
ually and doing business as)	
CHISENHALL AGRICULTURAL SERVICE,)	
)	
Defendant.)	

DEMURRERS

Comes now the Defendant in the above styled cause and files the following Demurrers to the Plaintiff's Amended Bill of Complaint, and, as grounds of demurrer, says as follows:

The following Demurrers are directed to Counts Seven, Eight, Nine and Ten, separately and severally.

1.

Said counts fail to state a cause of action in that they sue the master for the negligence of his servant without including the servant as a party Defendant.

2.

John Henry Francis, the party named as the doer of the negligent act complained of, was not made a party Defendant.

3.

Said counts fail to allege that John Henry Francis was authorized to operate the aircraft at the time and at the place the negligent act was committed.

4.

The Plaintiff fails to state a cause of action in that the Complaint is drawn under the doctrine of strict liability on the part of the owner of an aircraft and this doctrine is not a part of the law of the State of Alabama.

5.

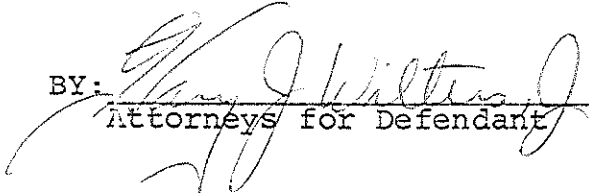
Said counts fail to allege that John Henry Francis was authorized to operate the aircraft in question at the time and place

complained of.

6.

For aught appearing, John Henry Francis was authorized to operate the aircraft at a date far removed in time from the date of the injury complained of.

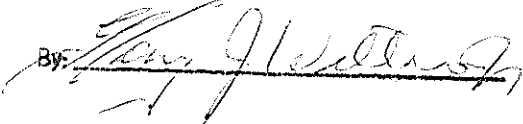
WILTERS & BRANTLEY

BY: 
Attorneys for Defendant

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 22 day of Oct 1970 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.

WILTERS & BRANTLEY

BY: 

FILED

OCT 22 1970

ALICE J. DUCK CLERK
REGISTER

SHIRLEY LIPSCOMB EDMUNDSON,	X	
formerly SHIRLEY THIEM		
LIPSCOMB, as Administratrix	X	IN THE CIRCUIT COURT OF
of the Estate of Gerard		
Lipscomb, Deceased,	X	
Plaintiff,	X	BALDWIN COUNTY, ALABAMA
vs.	X	
GARNET L. CHISENHALL, indivi-	X	
dually and doing business as		
Chisenhall Agricultural	X	AT LAW CASE NO. 7497
Service,		
	X	
Defendant.		

SUGGESTION OF DEATH OF DEFENDANT
AND MOTION TO REVIVE

Comes now the Plaintiff in the above styled cause, by and through her attorneys of record, and suggests upon the record the fact that the Defendant in the above styled cause, Garnet L. Chisenhall, departed this life on, to-wit, April 4, 1971, and that his widow, Marie Chisenhall, was duly appointed as Executrix of the said Defendant's estate, Letters Testamentary having been issued to her on, to-wit, June 15, 1971.

Wherefore, the Plaintiff moves this Honorable Court to revive this suit against the said Marie Chisenhall as Executrix of the estate of Garnet L. Chisenhall, deceased, and to order that citation be served upon her, all in accordance with the statutes in such cases made and provided.

CHASON, STONE & CHASON

BY



Attorneys for Plaintiff

FILED

AUG 26 1971

EUNICE B. BLACKMON CIRCUIT CLERK

862 - 1k

SHIRLEY LIPSCOMB EDMUNDSON,	X	
formerly SHIRLEY THIEM		
LIPSCOMB, as Administratrix	X	IN THE CIRCUIT COURT OF
of the Estate of Gerard		
Lipscomb, Deceased,	X	
Plaintiff,	X	BALDWIN COUNTY, ALABAMA
vs.	X	
GARNET L. CHISENHALL, indivi-	X	
dually and doing business as		
Chisenhall Agricultural	X	AT LAW CASE NO. 7497
Service,		
	X	
Defendant.		

ORDER

This day, the Plaintiff in the above styled cause, by and through her attorneys of record, having suggested on the record that the Defendant in said suit departed this life on, to-wit, April 4, 1971, and moving that the said cause of action be revived against Marie Chisenhall, who was duly appointed as Executrix of the said decedent's estate on, to-wit, June 15, 1971, and the Court having considered all of the above is of the opinion that the said suit should be revived, it is, therefore,

ORDERED, ADJUDGED and DECREED that the aforementioned cause of action be and the same is hereby revived against Marie Chisenhall as the Executrix of the estate of Garnet L. Chisenhall and that the said Marie Chisenhall be served with a copy of the said Motion and this Order and that she be required to appear in said cause of action within thirty days from the date of service upon her.

Done this the 27th day of August, 1971.

William A. Markberry
Circuit Judge

7497

Shirley Mier
Edmundson etc.

vs.

Garnet L. Chisenhall
ind. + d/t/a

Serve: Marie Chisenhall

Foley

AUG 27 1971

TAYLOR WILKINS

Chason, Stone, & Chason

Received 27 day of Aug 19 71
and on Sept 1 day of 3 19 71
I served a copy of the within Marion Under
on Marie Chisenhall
By service on Marie Chisenhall
TAYLOR WILKINS, Sheriff
By Roger Wilkins S.

Sheriff claims 72 miles at
Ten Cents per mile Total \$ 7.20
TAYLOR WILKINS, Sheriff
By Roger Wilkins
Deputy Sheriff

SUMMONS

STATE OF ALABAMA

IN THE CIRCUIT COURT - LAW SIDE

BALDWIN COUNTY

TO: ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service; and "A" the person, firm or corporation owning the aircraft on the occasion described herein and employing the Plaintiff's intestate, whose name is unknown by the Plaintiff but will be added by amendment when ascertained, to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of Shirley Thiem Lipscomb, as Administratrix of the Estate of Gerard Lipscomb, Deceased.

Witness my hand this the 1st day of May,
1967.

Alice J. Luck
Clerk

COMPLAINT

SHIRLEY THIEM LIPSCOMB, as X
Administratrix of the Estate
of Gerard Lipscomb, Deceased, X

Plaintiff, X

vs. X

IN THE CIRCUIT COURT OF

GARNET L. CHISENHALL, individ- X
ually and doing business as
Chisenhall Agricultural Ser- X
vice; and "A" the person, firm
or corporation owning the air- X
craft on the occasion de-
scribed herein and employing X
the Plaintiff's intestate,
whose name is unknown by the X
Plaintiff but will be added by
amendment when ascertained, X

BALDWIN COUNTY, ALABAMA

AT LAW

7497

Defendants. X

COUNT ONE:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant, Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on heretofore, to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport, near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service of business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence; all to the damage of the Plaintiff aforesaid, wherefore she brings this suit and asks judgment in the above amount.

COUNT TWO:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant, Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid which proximately caused the death of the Plaintiff's intestate consisted in this: the said John Henry Francis negligently piloted a Piper PA-18 aircraft, Registration Mark N-1119C while the Plaintiff's intestate was riding therein by allowing the fuel selector valve to remain in the left tank position prior to and during take-off when he knew, or should have known, that the left fuel tank was empty or almost empty so that immediately subsequent to take-off fuel starvation resulted which induced power failure during the take-off climb causing the aircraft to crash. Wherefore the Plaintiff brings this suit and asks judgment in the above amount.

COUNT THREE:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant, Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966 at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid consisted in this: that the said John Henry Francis so negligently operated a Piper PA-18 aircraft, Registration Mark N-1119C at said time and place as the pilot thereof, and which said aircraft had been intrusted to the said John Henry Francis by the Defendant, as to cause or allow the same to crash to the ground killing Plaintiff's intestate.

COUNT FOUR:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant "A" the person, firm or corporation owning the aircraft on the occasion described herein and employing the Plaintiff's intestate.

whose name is unknown by the Plaintiff but will be added by amendment when ascertained, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on heretofore, to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant "A" the person, firm or corporation owning the aircraft on the occasion described herein and employing the Plaintiff's intestate, whose name is unknown by the Plaintiff but will be added by amendment when ascertained, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence; all to the damage of the Plaintiff aforesaid, wherefore she brings this suit and asks judgment in the above amount.

COUNT FIVE:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant "A" the person, firm or corporation owning the aircraft on the occasion described herein and employing the Plaintiff's intestate, whose name is unknown by the Plaintiff but will be added by amendment when ascertained, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of said Defendant, not subject to Alabama Work-

men's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid which proximately caused the death of the Plaintiff's intestate consisted in this: the said John Henry Francis negligently operated a Piper PA-18 aircraft, Registration Mark N-1119C while the Plaintiff's intestate was riding therein by allowing the fuel selector valve to remain in the left tank position prior to and during take-off when he knew, or should have known, that the left fuel tank was empty or almost empty so that immediately subsequent to take-off fuel starvation resulted which induced power failure during the take-off climb causing said aircraft to crash. Wherefore the Plaintiff brings this suit and asks judgment in the above amount.

COUNT SIX:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant "A" the person, firm or corporation owning the aircraft on the occasion described herein and employing the Plaintiff's intestate, whose name is unknown by the Plaintiff but will be added by amendment when ascertained, the sum of Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of said Defendant, not subject to Alabama Workmen's Compensation Act, and who was at said


time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid consisted in this: that the said John Henry Francis so negligently operated a Piper PA-18 aircraft, Registration Mark N-1119C at said time and place as the pilot thereof, and which said airplane had been intrusted to the said John Henry Francis by said Defendant, as to cause or allow the same to crash to the ground killing Plaintiff's intestate.

ENGEL & SMITH

and

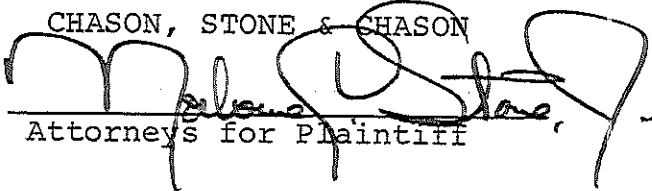
CHASON, STONE & CHASON

By:


Attorneys for Plaintiff

The Plaintiff demands the trial
of this cause by a jury.

By:

CHASON, STONE & CHASON

Attorneys for Plaintiff

The Defendant may be served at
Foley, Alabama.

FILED

MAY 1 1967

ALICE L. DICK, CLERK
REGISTER

7497

SHIRLEY THIEB LIPSCOMB, as
Administratrix of the Estate
of Gerard Lipscomb, Deceased,

Plaintiff,

Versus

GARNET L. CHISENHALL, individ-
ually, etc., Et Al.

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO: 7497

SUMMONS AND COMPLAINT

MAY 1 1927

CHASON, STONE & CHASON
ATTORNEYS AT LAW
P. O. BOX 120
BAY MINETTE, ALABAMA

Received 1 day of May 1927
and on 5 day of May 1927
I served a copy of the within
on Garnet L. Chisenhall
By service on Alice

TAYLOR WILKINS, Sheriff
By J. M. Zerk
J. M. Zerk, etc.

Shirley Thieb Lipscomb
72 miles
Jan Gents per mile Total \$ 7.20
TAYLOR WILKINS, Sheriff
J. M. Zerk, etc.

SHIRLEY THIEM LIPSCOMB, As X
Administratrix of the Estate
of Gerard Lipscomb, Deceased, X

Plaintiff, X

vs. X

GARNET L. CHISENHALL, X
individually and doing
business as Chisenhall X
Agricultural Service, X
Et Al., X

Defendants. X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

7497

INTERROGATORIES PROPOUNDED BY
PLAINTIFF TO DEFENDANT

Comes now the Plaintiff in the above styled cause, and affidavit having been made by one of her attorneys as provided by law, and propounds the following interrogatories to the Defendant, Garnet L. Chisenhall:

1. Please state your correct name, address and residence.
2. Were you, on May 3, 1966, doing business as Chisenhall Agricultural Service?
3. Please state whether Chisenhall Agricultural Service was, on May 3, 1966, an individual proprietorship owned by you, a partnership or a corporation.
4. If you state that Chisenhall Agricultural Service was, on May 3, 1966, a partnership; please state the names of the partners and give their separate addresses.
5. If you state that Chisenhall Agricultural Service was, on May 3, 1966, a corporation, please state the correct corporate name, the place where incorporated, the principal place of business and the name of the President and any other officer or agent residing in Baldwin County, Alabama.
6. Did you, on May 3, 1966, own an airplane described as a Piper PA-18, Registration Mark or Number N-1119C?

7. If you state that you did not own such an aircraft, did you, on May 3, 1966, have such an aircraft in your custody or under your control?

8. If you state that you were the owner of said aircraft, please attach to your answers to these interrogatories a copy of the Registration of said aircraft.

9. Were you, on May 3, 1966, in the business of crop dusting or agricultural spraying in Escambia County, Alabama, and in Baldwin County, Alabama?

10. Did you, on May 3, 1966, use in your business an airplane described as a Piper A-18, Registration Mark or Number N-1119C?

11. If so, was that airplane ferried on May 3, 1966, from Foley, Alabama, to Rocky Creek Airport near Atmore, Alabama?

12. If you state that such aircraft was ferried from Foley, Alabama to Rocky Creek Airport near Atmore, Alabama, on May 3, 1966, did Gerard Lipscomb ferry said aircraft for you as your agent, servant or employee?

13. Was Gerard Lipscomb your employee on May 3, 1966?

14. Did you also employ, on May 3, 1966, as a pilot, John Henry Francis?

15. If so, please state:

a. His address.

b. His duties.

c. Was he required or asked to be in Atmore on May 3, 1966?

d. Was he to meet such aircraft in Atmore?

e. Was he to use the aircraft the next day to spray or dust a crop?

f. Did he have your permission or authority to pilot said aircraft?

16. How many employees did you have in your business on May 3, 1966?

17. If your answer to the last interrogatory is less than eight, had you elected to accept the provisions of the Alabama Workmen's Compensation Law on or before May 3, 1966?

a. If not, have you made such an election subsequent thereto?

b. When?

18. Did you intrust the superintendence of aircraft to John Henry Francis in the course of his employment by you as a pilot?

19. Was the aircraft owned by you and described as a Piper PA-18, Registration Mark or Number N-1119C involved in an accident or crash on May 3, 1966, at or near Rocky Creek Airport near Atmore, Alabama?

20. If so, please state:

a. Who was in the aircraft at the time of the accident?

b. Who was the pilot of the aircraft?

c. Were both the pilot and the passenger working for you at the time of the accident?

d. Was Gerard Lipscomb killed in the accident?

e. Was John Henry Francis killed in the accident?

21. For the purpose of qualifying the jury, please state the name of any insurance company or companies which are, or might be, liable to you, or with which you had an insurance contract, to pay any judgment which might be rendered against you on account of the death of an employee while in your employment caused by the negligence of a fellow servant or employee; or which might otherwise be required to pay any amount on account of the death of any

person in said aircraft.

ENGEL & SMITH

and

CHASON, STONE & CHASON

By:

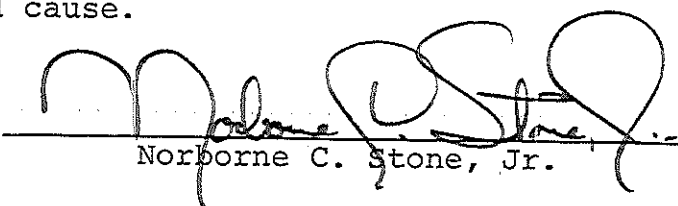

Attorneys for Plaintiff

STATE OF ALABAMA

BALDWIN COUNTY

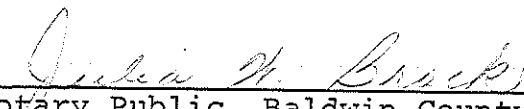
Before me, the undersigned authority, personally appeared Norborne C. Stone, Jr., who is known to me and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

That he is one of the attorneys for Shirley Thiem Lipscomb as Administratrix of the Estate of Gerard Lipscomb, Deceased, Plaintiff in the above styled cause, and the answers to the foregoing interrogatories propounded to the Defendant, Garnet L. Chisenhall, if well and truly made, will be material evidence for the Plaintiff in the above styled cause.


Norborne C. Stone, Jr.

Sworn to and subscribed before me on

this the 3rd day of May, 1967.


Notary Public, Baldwin County, Alabama

FILED

MAY 4 1967

ALICE J. DUCK, CLERK
REGISTRAR

SHIRLEY THIEB LIPSCOMB, As Ad-
ministratrix of the Estate of
Gerard Lipscomb, Deceased,

Plaintiff,

vs.

GARNETT L. CHISENHALL, Individually
and doing business as Chisenhall
Agricultural Service, Et Al.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

INTERROGATORIES PROPOUNDED BY

PLAINTIFF TO DEFENDANT

CHASON, STONE & CHASON
ATTORNEYS AT LAW
P. O. BOX 120
BAY MINETTE, ALABAMA

Received 4 day of May 1967
and on 5 day of May 1967
I served a copy of the within
on Garnett L. Chisenhall

By service on Alice

TAYLOR WILKINS, Sheriff
By *[Signature]*
D. 91

Sheriff claims 72 miles at
Ten Cents per mile Total \$ 7.20
TAYLOR WILKINS, Sheriff
BY *[Signature]* DEPUTY SHERIFF

2497

SHIRLEY THIEM LIPSCOMB, as X
Administratrix of the Estate
of Gerard Lipscomb, Deceased X

Plaintiff, X

vs. X

GARNET L. CHISENHALL, etc. X

Defendant. X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW No. 7497

NOTICE OF APPEAL

Comes now the Plaintiff in the above styled cause, by her attorneys and gives notice of appeal to the Supreme Court of Alabama from the judgment of the Circuit Court of Baldwin County, Alabama entered on the 29th day of August, 1969 granting the motion of the Defendant for a new trial.

ENGEL & SMITH

and

CHASON, STONE & CHASON

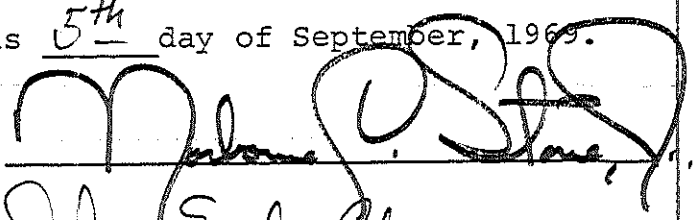
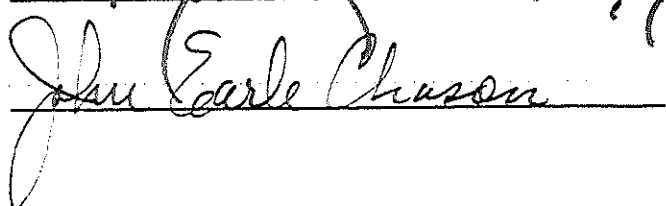
By: 

Attorneys for Plaintiff

SECURITY FOR COSTS

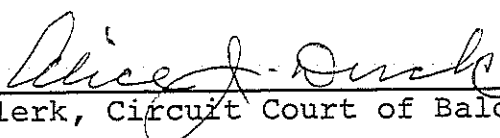
We, Norborne C. Stone, Jr. and John Earle Chason, do hereby acknowledge ourselves, separately and severally, as security for the costs of said appeal.

Witness our hands this 5th day of September, 1969.

Taken and approved this 5

day of September, 1969,


Clerk, Circuit Court of Baldwin County, Alabama

FILED

SEP 5 1969

ALICE J. DUCK

CLERK
REGISTER

SHIRLEY THIEM LIPSCOMB, as
Administratrix of the Estate
of Gerard Lipscomb, deceased,

Plaintiff,
VS.

GARNET L. CHISENHALL, individ-
ually and doing business as
Chisenhall Agricultural Service,
et al.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 7497

DEMURRER

Now comes the defendant, Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, by his attorneys, and demurs to the original complaint heretofore filed in this cause, and as grounds of such demurrer assigns, separately and severally, the following:

1. It does not state a cause of action.
2. The facts alleged do not state a cause of action under Title 26, Section 326 of the Code of Alabama.
3. No facts are alleged to show that the death of plaintiff's intestate was caused by the reason of the negligence of any person in the service or employment of the said defendant who had any superintendence entrusted to him while in the exercise of such superintendence.
4. It affirmatively appears that plaintiff's intestate assumed the risk of injury caused by his fellow servant, John Henry Francis.

FILED

JUN 2 1967

ALB 1 307 CLERK
REGISTER

Cecil G. Chason
Cecil G. Chason

J. B. Blackburn
J. B. Blackburn
Attorneys for said defendant

STATE OF ALABAMA Ø
 *
BALDWIN COUNTY Ø

I hereby certify that I mailed two copies of the foregoing demurrer to Norborne C. Stone, Esquire, Bay Minette, Alabama, by first class mail, properly addressed and postage prepaid, on this the 2nd day of June, 1967.

J. B. Blackburn
Of Counsel for said Defendant

FILED

JUN 2 1967

ALICE J. WICK, CLERK
REGISTER

SHIRLEY THIEM LIPSCOMB, as
Administratrix of the Estate
of Gerard Lipscomb, Deceased,

Plaintiff,

vs.

GARNET L. CHISENHALL, individ-
ually and doing business as
Chisenhall Agricultural Ser-
vice; and "A" the person, firm
or corporation owning the air-
craft on the occasion de-
scribed herein and employing
the Plaintiff's intestate,
whose name is unknown by the
Plaintiff but will be added
by amendment when ascertained,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

AMENDED COMPLAINT

Comes now the Plaintiff in the above styled cause, by
her attorneys, and amends the Complaint heretofore filed in this
cause so that the same shall read as follows:

COUNT ONE:

The Plaintiff as the personal representative of the
Estate of Gerard Lipscomb, Deceased, claims of the Defendant,
Garnet L. Chisenhall, individually and doing business as Chisen-
hall Agricultural Service, Two Hundred Thousand Dollars
(\$200,000.00) as damages, for that on heretofore, to-wit, the 3rd
day of May, 1966, at or near Rocky Creek Airport, near Atmore in
Escambia County, Alabama, the Plaintiff's intestate Gerard Lips-
comb, who was at said time and place an employee of the Defendant
Garnet L. Chisenhall, individually and doing business as Chisen-
hall Agricultural Service, not subject to Alabama Workmen's Compen-
sation Act, and who was at said time and place in the service of
business of said Defendant, was fatally injured in the crash of

an airplane belonging to said Defendant as a proximate consequence and result of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him over said airplane and the Plaintiff's intestate and who was then and there exercising such superintendence; all to the damage of the Plaintiff aforesaid, wherefore she brings this suit and asks judgment in the above amount.

COUNT TWO:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant, Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore, in Excambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant as a proximate consequence and result of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him over said airplane and the Plaintiff's intestate and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid which proximately caused the death of the Plaintiff's intestate consisted in this: The said John Henry Francis

negligently piloted a Piper PA-18 aircraft, Registration Mark N-1119C while the Plaintiff's intestate was riding therein by allowing the fuel selector valve to remain in the left tank position prior to and during take-off when he knew, or should have known, that the left fuel tank was empty or almost empty so that immediately subsequent to take-off fuel starvation resulted which induced power failure during the take-off climb causing the aircraft to crash. Wherefore the Plaintiff brings this suit and asks judgment in the above amount.

COUNT THREE:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant, Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966 at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant Garnet L. Chisenhall, individually and doing business as Chisenhall Agricultural Service, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him over said airplane and the Plaintiff's intestate and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid consisted in this: That the said John Henry Francis

so negligently operated a Piper PA-18 aircraft, Registration Mark N-1119C at said time and place as the pilot thereof, and which said aircraft had been intrusted to the said John Henry Francis by the Defendant, as to cause or allow the same to crash to the ground killing Plaintiff's intestate.

COUNT FOUR:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant "A" the person, firm or corporation owning the aircraft on the occasion described herein and employing the Plaintiff's intestate, whose name is unknown by the Plaintiff but will be added by amendment when ascertained, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on heretofore, to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of the Defendant "A" the person, firm or corporation owning the aircraft on the occasion described herein and employing the Plaintiff's intestate, whose name is unknown by the Plaintiff but will be added by amendment when ascertained, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence; all to the damage of the Plaintiff aforesaid, wherefore she brings this suit and asks judgment in the above amount.

COUNT FIVE:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant "A" the person, firm or corporation owning the aircraft on the occasion described herein and employing the Plaintiff's intestate, whose name is unknown by the Plaintiff but will be added by amendment when ascertained, Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of said Defendant, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid which proximately caused the death of the Plaintiff's intestate consisted in this: The said John Henry Francis negligently operated a Piper PA-18 aircraft, Registration Mark N-1119C while the Plaintiff's intestate was riding therein by allowing the fuel selector valve to remain in the left tank position prior to and during take-off when he knew, or should have known, that the left fuel tank was empty or almost empty so that immediately subsequent to take-off fuel starvation resulted which induced power failure during the take-off climb causing said aircraft to crash. Wherefore the Plaintiff brings this suit and asks judgment in the above amount.

COUNT SIX:

The Plaintiff as the personal representative of the Estate of Gerard Lipscomb, Deceased, claims of the Defendant "A" the person, firm or corporation owning the aircraft on the occasion described herein and employing the Plaintiff's intestate, whose name is unknown by the Plaintiff but will be added by amendment when ascertained, the sum of Two Hundred Thousand Dollars (\$200,000.00) as damages, for that on to-wit, the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, the Plaintiff's intestate Gerard Lipscomb, who was at said time and place an employee of said Defendant, not subject to Alabama Workmen's Compensation Act, and who was at said time and place in the service or business of said Defendant, was fatally injured in the crash of an airplane belonging to said Defendant by reason of the negligence of John Henry Francis, who was at said time and place also in the service or employment of said Defendant and who had superintendence intrusted to him and who was then and there exercising such superintendence. And the Plaintiff further alleges that the negligence of the said John Henry Francis at the time and place aforesaid consisted in this: That the said John Henry Francis so negligently operated a Piper PA-18 aircraft, Registration Mark N-1119C at said time and place as the pilot thereof, and which said airplane had been intrusted to the said John Henry Francis by said Defendant, as to cause or allow the same to crash to the ground killing Plaintiff's intestate.

ENGEL & SMITH

and

CHASON, STONE & CHASON

By:


Attorneys for Plaintiff

The Plaintiff demands the trial
of this cause by a jury.

CHASON, STONE & CHASON

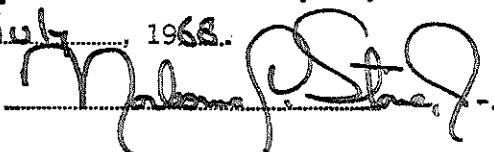
By:


Attorneys for Plaintiff

The Defendant may be served at
Foley, Alabama

CERTIFICATE OF SERVICE

I 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 9 day
of July, 1968.



FILED

JUL 10 1968

ALICE J. DUCK CLERK
REGISTER

We the jury find for the Plaintiff
and assess the damage at \$77000.00

[Signature]

[Signature]

NO. 7497

[Signature]

SHIRLEY THIEM LIPSCOMB, as X
Administratrix of the Est-
ate of Gerard Lipscomb, X
Deceased,

Plaintiff,

vs.

GARNET L. CHISENHALL,
individually and doing
business as Chisenhall
Agricultural Service,
et al.

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 7497

Comes now the Defendant, Garnet L. Chisenhall, ind-
ividually and d/b/a Chisenhall Agricultural Service, and for
answer to the Plaintiff's Amended Complaint, and to each count
thereof separately and severally, says:

1.

That he is not guilty of the matters alleged therein.

2.

That the decedant, Gerard Lipscomb, knew or should
have known that he was prohibited from being a passanger in the
aircraft, which accident resulted in his death, because of the
Civil Aeronautical Administration Regulation #8.33 prohibited
passangers in restricted aircraft.

3.

That the decedant, John Henry Francis, had no super-
intendent authority to exercise over the decedant, Gerard
Lipscomb, the Complainant.

4.

That the Plaintiffs intestate was guilty of negligence
which contributed proximately to the injuries complained of in
the Complaint in that on said day and date he knew or should
have known that the left fuel tank of the aircraft, which he was
fatally injured in, was low on fuel and that the aircraft was
unsafe to be flown on that tank.

FILED

FEB 28 1969

WILTERS & BRANTLEY

BY: 

CLERK
REGISTER

862-6

ALICE G. DICK

SHIRLEY THIEM LIPSCOMB,	X		
as Administratrix of the	X		
Estate of Gerard Lipscomb,	X		
Deceased,	X	IN THE CIRCUIT COURT OF	
	X		
Plaintiff,	X		
	X		
vs.	X	BALDWIN COUNTY, ALABAMA	
	X		
GARNET L. CHISENHALL,	X	AT LAW	NO: 7497
individually and doing	X		
business as Chisenhall	X		
Agricultural Service,	X		
et al.,	X		
	X		
Defendants.	X		

DEMURRER TO PLEAS "2", "3" AND "4"

Comes now the Plaintiff in the above styled cause, by her attorneys, and demurs to Pleas "2", "3" and "4" and assigns, separately and severally, the following separate and several grounds in support thereof:

1. That said Pleas are immaterial.
2. That Plea "2" fails to allege that the Plaintiff's intestate was guilty of any negligence which proximately contributed to his injuries and death.
3. The allegations of Plea "2" are conclusions of the pleader.
4. The allegations of Plea "2" do not constitute a defense to the Complaint.
5. The allegations of Plea "3" fail to allege that John Henry Francis was not exercising superintendence over Plaintiff's intestate.
6. Plea "3" fails to allege that John Henry Francis had no superintendence entrusted to him at the time and place complained of in the Complaint.
7. Plea "4" fails to allege that the Plaintiff's

intestate had any control over the aircraft in which he was riding at the time and place complained of.

8. The allegations of Plea "4" do not constitute a defense to the cause of action sued on.

9. The allegations of Plea "4" are conclusions of the pleader.

10. Plea "4" fails to allege a duty on the part of Plaintiff's intestate and a breach of that duty proximately contributing to his injuries or death.

Respectfully submitted,

ENGEL & SMITH

and

CHASON, STONE & CHASON,

By: 

FILED
MAR 6 1969
ALICE J. DUCK
CLERK
REGISTER

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1969-70

1 Div. No. 603

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

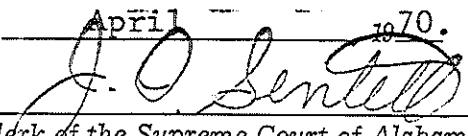
Whereas, the Record and Proceedings of the Circuit Court
of said county, in a certain cause lately pending in said Court between
Shirley T. Lipscomb, as Administratrix of the Estate of, Appellant,
Gerard Lipscomb, deceased and Garnet L. Chisenhall,
individually and d/b/a Chinsenhall Agricultural Service, 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 upon consideration thereof the Supreme Court, on the
9th day of April, 1970, affirmed said cause, in all respects, and
ordered that appellant, Shirley Thiem Lipscomb, as Administratrix of the
Estate of Gerard Lipscomb, deceased,

and Norborne C. Stone, Jr. and John Earl Chason,

sureties for the costs of appeal, pay the costs of appeal in this Court and in the Court below,
for which costs let execution issue.

~~It is further certified that, it appearing that said parties have waived their rights of exemption
under the laws of Alabama, it was ordered that execution issue accordingly.~~

Witness, J. O. Sentell, Clerk of the Supreme
Court of Alabama, this the 9th day
of April, 1970.

Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 1969-70

1 Div., No. 603

Shirley T. Lipscomb, as
Administratrix of the Estate
of Gerard Lipscomb, deceased
Appellant,

vs.

Garnet L. Chisenhall,
individually and d/b/a
Chisenhall Agricultural
Service Appellee.

From Baldwin Circuit Court.

No. 7497

CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

County.

APR 10 1970

this day of 19

ALICE J. DUCK

CLERK
REGISTER

APR 9 - 1970

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1969-70

Shirley T. Lipscomb, as Administratrix of the

Estate of Gerard Lipscomb, deceased

1 Div. 603

v.

Garnet L. Chisenhall, individually and d/b/a

Chinsenhall Agricultural Service

Appeal from Baldwin Circuit Court

BLOODWORTH, JUSTICE.

Plaintiff (appellant) is appealing from a judgment
granting defendant (appellee) a new trial after a jury verdict

862 - 2B

Lipscomb v. Chisenhall

2.

in favor of the plaintiff awarding damages of \$77,000.

The only assignment of error is that the trial court erred in granting defendant's motion for a new trial. After a careful consideration of the case, we are convinced that the trial court did not err, and conclude that the case ought to be affirmed.

The complaint was filed pursuant to the Employer's Liability Act, Title 26, § 326, Code of Alabama 1940, as recompiled 1958,¹ and contains six counts. Counts One, Two, and

-
1. Section 326, Title 26, Code of Alabama 1940 (as recompiled 1958) reads in part as follows:

" * * * when a personal injury is received by a servant or employee in the service or business of the master or employer, the master or employer is liable to answer in damages to such servant or employee, as if he were a stranger, and not engaged in such service or employment * * * in the cases following:

* * * * *

(2) When the injury is caused by reason of the negligence of any person in the service or employment of the master or employer who has any superintendence intrusted to him, while in the exercise of such superintendence."

Lipscomb v. Chisenhall

3.

Three allege substantially that the plaintiff's intestate was fatally injured while in the service or employment of defendant in the crash of an airplane belonging to the defendant as a proximate result of the negligence of the pilot, John Henry Francis, who was at the time and place also in the service or employment of the defendant, and who had superintendence intrusted to him over the airplane and the plaintiff's intestate, and who was at the time and place exercising such superintendence. Counts Four, Five and Six, claim of that fictitious person, firm or corporation which owned the aircraft on the occasion and allege that the death of the plaintiff's intestate was caused as a proximate result of the negligence of the pilot, John Henry Francis, who at the time and place was in the service and employment of the defendant, as was the plaintiff's intestate, and who had superintendence intrusted to him and was then and there exercising such superintendence. Count Five also alleges negligence in allowing the fuel selector valve to remain in the left tank position prior to and during take-off when the pilot Francis knew or should have known that the left fuel tank was almost empty so that immediately subsequent to take-off fuel starvation resulted producing power failure, causing the aircraft to crash. To these counts of the complaint defendant filed pleas of contributory negligence and the general issue.

On the trial of the case, plaintiff introduced the Civil Aeronautics Board Aircraft Accident Report of the

Lipscomb v. Chisenhall

4.

fatal crash, which caused the death of the pilot Francis, as well as plaintiff's intestate, the testimony of the wife of the intestate, interrogatories propounded by the plaintiff to the defendant, the defendant's answers thereto, and mortality tables. The defendant offered no evidence but requested the affirmative charge. This was refused. The jury returned a verdict for the plaintiff for \$77,000.

According to the evidence, plaintiff's intestate, an airplane pilot and employee of defendant, departed from Foley, Alabama, on May 3, 1966 at approximately 3:00 p.m. Defendant instructed him to ferry the aircraft to Rocky Creek Airstrip at Atmore where he was to turn it over to pilot John Henry Francis. Pilot Francis was instructed to meet the plane and use it the next day to spray pecan trees near Atmore, Alabama. He also was an employee of defendant and had defendant's permission and authority to fly the aircraft for spraying and dusting crops only. The aircraft was turned over to him for such purpose. Prior to plaintiff's intestate's departure from Foley, the aircraft was test flown by plaintiff's intestate and defendant, and no discrepancies were indicated. At take-off from Foley the right fuel tank was full and the left fuel tank was approximately one-half full.

At the time plaintiff's intestate left his home at 1:00 p.m., on May 3, he told his wife he would be a little late coming in because he had to ferry a plane to Atmore. When her husband did not return that evening, the wife, Mrs. Lipscomb, (having no telephone) borrowed a car

Lipscomb v. Chisenhall

5.

at 2:30 a.m., early the next morning, went to a telephone and called the defendant. She told him her husband had not returned. That night defendant went to Atmore and was unable to locate the plane or pilot Francis. An automobile belonging to Francis was parked at the airstrip and defendant observed that no fuel or insecticide had been used from the airport facilities. A search was instituted, and next day the wreckage of the plane was found 900 feet southeast of the take-off end of the runway at the airstrip. Bodies of both pilot Francis and plaintiff's intestate were found at the accident scene. Pilot Francis occupied the front seat. No witnesses were found who saw the arrival or departure of the aircraft, nor the crash.

Investigation disclosed that the plane struck trees and then pitched nose down to strike the ground in a slightly inverted attitude. Though impact damage was extensive, no fire occurred and evidence indicated the engine was developing little or no power at impact. Examination of the wreckage disclosed the right fuel tank was full and the left fuel tank empty. The fuel selector valve was found in the left fuel tank position. There was no evidence of fuel system malfunction, nor pre-impact mechanical failure, nor malfunction of the engine. The engine tachometer reading showing the elapsed hours of engine use would indicate that the fuel in the left fuel tank would have been used after take-off from the Rocky Creek Airstrip. A postmortem toxicologist's report failed to disclose any

Lipscomb v. Chisenhall

6.

human factor in examination of the pilot that could be considered a cause of the accident. Although there were dual controls installed in the airplane, there was no control stick installed in the rear cockpit occupied by plaintiff's intestate.

After the jury verdict in favor of the plaintiff, defendant filed motion for a new trial, alleging that the verdict of the jury was contrary to the law and the evidence, excessive, represented a quotient verdict, and that the court erred in refusing to give certain written charges for defendant including the general affirmative charge.

In its order granting a new trial, the court stated the motion was being granted because of an insufficiency of evidence to establish that plaintiff's intestate and the pilot or fellow employee were about the employer's business at the time of the fatal accident, and that no evidence was introduced to the effect that the pilot was acting as superintendent at the time of the fatal accident.

On this appeal, plaintiff is contending that the trial court erred in granting the motion for new trial. First, plaintiff argues that, notwithstanding her complaint alleged that the pilot had superintendence intrusted to him over both the airplane and the plaintiff's intestate, since the statute states simply "any superintendence," the allegations concerning the superintendence over the plaintiff's intestate are mere surplusage and unnecessary to sustain the cause of action. Also, plaintiff contends that even though

1-2

Lipscomb v. Chisenhall

7.

she was not required to prove such superintendence over the person of the intestate, such superintendence was proved because a pilot of a plane is like the "captain of a ship," and by virtue of his being "at the helm," he has superintendence over all of the occupants thereof. Since defendant admits the aircraft was "turned over" to the pilot, this, plaintiff contends, carries the same connotation as being "intrusted with superintendence."

Plaintiff's other contention is that the trial court erred in granting the new trial on the ground that there was no evidence that the pilot and plaintiff's intestate were about the employer's business at the time of the fatal accident. Plaintiff says a rebuttable presumption arises on the ownership of an automobile that a driver is the owner's agent, servant or employee at the time, and acting within the line and scope of his authority. She argues the same presumption arose in this case and was not rebutted to the satisfaction of the jury. She concludes that the jury obviously inferred and concluded that the two men were aloft on the fateful flight for the purpose of "checking out" the acreage that pilot Francis would spray the next day. She argues this is reasonable in view of the fact that plaintiff's intestate was to return home after delivering the airplane, and would not be present the following day to assist Francis, who, as a nonresident of Alabama, was probably unfamiliar with the area he was to spray.

Lipscomb v. Chisenhall

8.

In answer to these contentions, defendant says that the trial court was correct in granting the motion for new trial. In fact, he contends the court should have directed a verdict for the defendant because there was not a scintilla of evidence showing that pilot Francis and plaintiff's intestate were acting within the line and scope of their employment at the time of the accident. Defendant also contends that there was neither evidence, nor inferences therefrom, that pilot Francis had any superintendence over plaintiff's intestate or his work at the time, and since this conjunctive allegation appeared in the complaint it was necessary for plaintiff to prove it.

After reading the transcript, we have concluded there was no evidence, nor any legitimate inferences therefrom, that plaintiff's intestate and pilot Francis were both acting within the line and scope of their employment by the defendant at the time of the fatal accident. In an interrogatory propounded to the defendant by plaintiff, viz:

"Q. Were both the pilot and passenger working for you at the time of the accident?"

The defendant answered:

"A. No."

Since this is the sole evidence on this point, this answer must be accepted as true, if the jury believed the evidence. It is obvious that unless both pilot and passenger were working for the defendant at the time of the accident, there can be no recovery under § 326, Title 26,

Lipscomb v. Chisenhall

9.

Subsec. (2), Code of Alabama 1940 (as recompiled 1958), supra.

As defendant aptly remarks in brief:

"If the pilot was working and the passenger was not, the passenger cannot recover because he was not employed at that time. If the pilot was not working but the passenger was, there could still be no recovery because the pilot could have no superintendence over the passenger unless he was working for the defendant at that time. On this question and answer alone, the court was correct in granting his motion for new trial."

It would appear to be clear from the evidence that plaintiff's intestate's duty started in Foley and ended when he arrived at Atmore and turned the plane over to pilot Francis. According to the interrogatories (the sole evidence on this point) pilot Francis' duties started the next day when he was to spray the pecan trees near Atmore. What the two men were doing on the occasion of the accident is certainly left open to conjecture.²

2. It is also puzzling as to how plaintiff's intestate was to return to Foley after delivering the plane to Atmore.

Lipscomb v. Chisenhall

9.

Subsec. (2), Code of Alabama 1940 (as recompiled 1958), supra.

As defendant aptly remarks in brief:

"If the pilot was working and the passenger was not, the passenger cannot recover because he was not employed at that time. If the pilot was not working but the passenger was, there could still be no recovery because the pilot could have no superintendence over the passenger unless he was working for the defendant at that time. On this question and answer alone, the court was correct in granting his motion for new trial."

It would appear to be clear from the evidence that plaintiff's intestate's duty started in Foley and ended when he arrived at Atmore and turned the plane over to pilot Francis. According to the interrogatories (the sole evidence on this point) pilot Francis' duties started the next day when he was to spray the pecan trees near Atmore. What the two men were doing on the occasion of the accident is certainly left open to conjecture.²

2. It is also puzzling as to how plaintiff's intestate was to return to Foley after delivering the plane to Atmore.

1-K

Lipscomb v. Chisenhall

10.

Although we have read the record carefully, we have found no evidence, nor any inference therefrom, that pilot Francis had any superintendence over plaintiff's intestate or his work in any manner at the time and on occasion of the fatal accident. In fact, neither was shown to have any superintendence over the other. However, we need not decide (and we do not decide) whether pilot Francis had superintendence over plaintiff's intestate by virtue of being in charge of the airplane as pilot, since we have already stated that there was a failure of proof that both men were acting within the line and scope of their employment on the occasion of the accident.

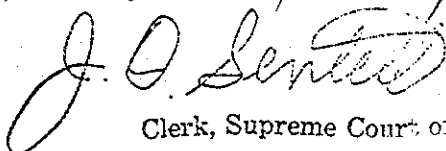
In view of our conclusion it is unnecessary that we comment on other grounds of the motion for new trial, or on the issue raised at oral argument that there was a total failure of proof as to Counts Four, Five and Six, against the fictitious defendant. Undoubtedly, plaintiff inadvertently overlooked dismissing or amending these counts. We hold the trial court was correct in granting the motion for new trial, and this cause is affirmed.

AFFIRMED.

Livingston, C. J., Coleman, Maddox and McCall, 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 9 day of April 1976



Clerk, Supreme Court of Alabama

SHIRLEY THIEM LIPSCOMB,	X	
as Administratrix of the		
Estate of Gerard Lipscomb,	X	
Deceased,		
	X	IN THE CIRCUIT COURT OF
Plaintiff,		
	X	
vs.	X	BALDWIN COUNTY, ALABAMA
	X	
GARNET L. CHISENHALL,		
individually and doing	X	IN EQUITY NO: 7497
business as Chisenhall		
Agricultural Service,	X	
et al.,		
	X	
Defendants.		
	X	

DEMURRER TO PLEAS

Comes now the Plaintiff in the above styled cause, by her attorneys, and demurs to Pleas "1" and "2" heretofore filed by the Defendants to the Plaintiff's Amended Complaint and assigns the following separate and several grounds in support thereof:

1. That said Pleas do not constitute a defense to this cause of action.
2. That said Pleas are immaterial.
3. That said Pleas fail to allege a duty on the part of the Plaintiff's intestate and a breach of that duty proximately contributing to his injuries or death.
4. The allegations of said Pleas are conclusions of the pleader.
5. That said Pleas fail to allege that the Plaintiff's intestate had any superintendence or control over the aircraft in which he was riding at the time and place complained of.
6. That Plea "2" fails to allege that the Plaintiff's intestate had superintendence or control over the aircraft at the time and place complained of.

Filed: June 11, 1969.

Jeffrey J. Maddux
862 R

7. That Pleas "2" fails to allege any duty on the party of Plaintiff's intestate to turn the gasoline selector lever in the aircraft in which he was flying as a passenger at the time he entered the same.

Respectfully submitted,

ENGEL & SMITH

and

CHASON, STONE & CHASON

By: 

Attorneys for Plaintiff

- 1 Taylor, Frank, Printer, Stapleton
- 2 ~~Finckel, Horace A., Farmer, Gulf Shores~~
- 3 Day, Warren W., Civil Service, Elberta
- 4 ~~Drew, Norman Lee, Mechanic, Bay Minette~~
- 5 Lazzari, Anglo, Farmer, Belforest
- 6 ~~Allen, Norman W., Farmer, Gateswood~~
- 7 ~~Yelding, Bailey, Sr., Carpenter & Bricklayer, Daphne~~
- 8 ~~Graham, James R., Laborer, Bay Minette~~
- 9 Andrews, Herbert E., Farmer, Foley
- 10 ~~Williams, Samuel D., Govt. Employee, Fairhope~~
- 11 ~~Fletcher, Charles T., Govt. Employee, Bay Minette~~
- 12 ~~Gamble, F. Jack, Salesman, Bay Minette~~
- 13 ~~Garrett, Malcolm, Farmer, Belforest~~
- 14 ~~Underwood, W.D., Mechanic, Foley~~
- 15 ~~Weatherford, Arthur C., Newport, Bay Minette~~
- 16 ~~Harrison, Bibb, Farmer, Fairhope~~
- 17 Henry, J. W., Salesman, Fairhope
- 18 ~~Winterlighter, Daniel C., Clerk, Bay Minette~~
- 19 Cain, Hurman L., Mechanic, Bay Minette
- 20 ~~Grantham, Donald R., Farmer, Mag. Spgs.~~
- 21 ~~Cabiness, Marvin, Laborer, Bay Minette~~
- 22 Larson, Henry L., Brick Layer, Elberta
- 23 ~~Matthews, Reid, Furniture Store Oper., Robertsdale~~
- 24 ~~McKenzie, Robert E., Meat Packer, Fairhope~~
- 25 ~~Mitchell, Fred, Jr., Service Station, Stapleton~~
- 26 Mund, Andrew, Fisherman, Gulf Shores
- 27 ~~Osborne, W. A., Civil Service, Foley~~
- 28 ~~Pierce, Arthur, Insurance, Fairhope~~
- 29 ~~Rayborn, Cecil, Farm Laborer, Robertsdale~~
- 30 ~~Clemmons, Frank, Grand Hotel, Fairhope~~
- 31 Boros, Anthony J., Farmer, Elberta
- 32 Burkhardt, John M., Farmer, Elberta
- 33 ~~Allen, Leslie Sr., Clerk, Fairhope~~
- 34 Allen, James B., Jr., Farmer, Lillian
- 35 ~~Jones, George, Business Operator, Daphne~~
- 36 Wenzel, Emmett O., Merchant, Gulf Shores
- 37 ~~Clemmons, W. Z., Carpenter, Fairhope~~

37
 36
 1
 24

P XXXXX XXXXX XX

D XXXX XXXXX XX

SHIRLEY THIEM LIPSCOMB, as X
Administratrix of the Estate
of Gerald Lipscomb, Deceased, X

Plaintiff, X

vs. X

GARNET L. CHISENHALL, X
individually and doing
business as Chisenhall X
Agricultural Service,
Et Al., X

Defendants. X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 7497

Comes now Garnett L. Chisenhall, and for answer to
the Interrogatories heretofore propounded to him says:

1. Garnett Levis Chisenhall, Box 561, Foley,
Alabama.

2. Yes.

3. Individual proprietorship.

4. See answer to 3.

5. See answer to 3.

6. Yes.

7. See answer to 6.

8. Attached.

9. Yes.

10. Yes.

11. Yes.

12. Yes.

13. Yes.

14. Yes.

15. (a) Pensacola, Florida

(b) Pilot.

(c) Yes.

(d) Yes.

(e) Yes.

(f) He had permission and authority to fly said
aircraft for the purpose of spraying and

FILED

JUL 3 1968

ALICE J. DICK CLERK
REGISTER

dusting crops only.

16. Two (2).

17. No.

(a) No.

(b) See answer to 17 (a).

18. The aircraft was turned over to John Henry Francis for the sole purpose of spraying and dusting crops, and for no other purpose.

19. To the best of my knowledge, yes.

20. (a) John Henry Francis and Gerald Lipscomb were found in the aircraft following an accident.

(b) John Henry Francis.

(c) No.

(d) Yes.

(e) Yes.

21. None.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 8th day of July, 1968, 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.

WILTERS & BRANTLEY

By: Larry J. Wilters

Garnett L. Chisenhall
Garnett L. Chisenhall

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority, personally appeared Garnett L. Chisenhall, who after being by me first duly sworn, deposes and says: That he has read the foregoing answers to the interrogatories propounded to him in the said cause, and that the answers are true to the best of his knowledge, information and belief, and that he does believe them to be true.

Garnett L. Chisenhall
Garnett L. Chisenhall

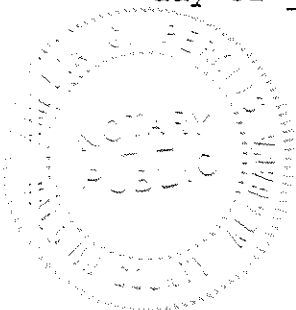
Sworn to and subscribed before me on this the 8th day of July, 1968.

Amelia G. Perkins
Notary Public,



FILED

JUL 3 1968

CLERK
REGISTER
ALB. J. BUCK



UNITED STATES OF AMERICA—FEDERAL AVIATION AGENCY
CERTIFICATE OF AIRCRAFT REGISTRATION

NATIONALITY AND REGISTRATION MARKS		AIRCRAFT MAKE AND MODEL	AIRCRAFT SERIAL NO.
N 1119C		Piper PA-18	18-2208
O W N E R	G. L. Chisenhall d/b/a Chisenhall Agricultural Service Box 561 Foley, Alabama		THIS CERTIFICATE MUST BE CARRIED IN THE AIRCRAFT
<p>It is certified that the above described aircraft has been entered on the register of the Federal Aviation Agency, United States of America, in accordance with the Convention on International Civil Aviation dated December 7, 1944, and with the Federal Aviation Act of 1958, and regulations issued thereunder.</p>			
DATE OF ISSUE		FOR THE ADMINISTRATOR	
MARCH 14 1966		 Chief, Aircraft Registration Branch	
			

FAA Form 500

(4-64) OBSOLETE PREVIOUS EDITION

(6030)

SHIRLEY THIEM LIPSCOMB, X
as Administratrix of the X
Estate of Gerard Lipscomb, X
Deceased,

Plaintiff, X

vs. X

GARNET L. CHISENHALL, X
individually and doing X
business as Chisenhall X
Agricultural Service, X
et al.

Defendants. X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 7497

Comes now the Defendant, Garnet L. Chisenhall, individually and d/b/a Chisenhall Agricultural Service, and amends his answer to the Plaintiff's amended Complaint to read as follows, and to each count thereof separately and severally:

1.

That he is not guilty of the matters alleged therein.

2.

That on the 3rd day of May, 1966, at or near Rocky Creek Airport, near Atmore in Escambia County, Alabama, the Plaintiffs intestate, Gerard Lipscomb, was guilty of negligence which contributed to the accident resulting in his death in that he was a passenger in the said aircraft and knew he was prohibited from riding as a passenger because of Civil Aeronautical Administration Regulation #8.33.

3.

The Defendant avers that John Henry Francis, at the time and place complained of had no superintendent authority over the Plaintiffs intestate.

4.

The Defendant avers that the Plaintiffs intestate was guilty of negligence on the date and at the time complained of

in the Plaintiff's Bill of Complaint, viz: That is to say that on the 3rd day of May, 1966, at or near Rocky Creek Airport near Atmore in Escambia County, Alabama, which said negligence contributed proximately to his injuries in this, the Plaintiffs intestate was a pilot and had just flown the aircraft in which he was riding from Foley to Rocky Creek Airport and he knew that ^{or should have known} the left fuel tank was almost empty. Knowing this he flew in the aforesaid plane as a passenger and ~~in violation of the Civil Aeronautical Administration Regulation~~, which acts were negligence which proximately contributed to his death.

WILTERS & BRANTLEY

BY: *W. J. Wilters*

Attorneys for the Defendant

FILED

MAR 10 1969

ALICE J. DICK CLERK
REGISTER

SHIRLEY THIEM LIPSCOMB, as)
Administratrix of the Estate
of Gerard Lipscomb, deceased,)

Plaintiff,)

VS.)

GARNET L. CHISENHALL, individ-) IN THE CIRCUIT COURT OF
ually and doing business as)
Chisenhall Agricultural Ser-) BALDWIN COUNTY, ALABAMA
vice; and "A" the person, firm)
or corporation owning the air-) AT LAW CASE NO. 7497
craft on the occasion de-)
scribed herein and employing)
the Plaintiff's intestate,)
whose name is unknown by the)
Plaintiff but will be added by)
amendment when ascertained,)

Defendants.)

PLEAS

Comes now the Defendant, Garnet L. Chisenhall, and
files the following Pleas to the Plaintiff's Amended Complaint
and to each and every count thereof separately and severally:

1.

The Plaintiff avers that, at the time and place complained
of, viz: the 3rd day of May, 1966, at or near Rocky Creek Air-
port, near Atmore, in Escambia County, Alabama, the Plaintiff's
intestate, Gerard Lipscomb, was himself guilty of negligence
which proximately contributed to his death; said negligence con-
sisting of this:

The Plaintiff's intestate knew that the airplane he
was flying in had been converted and that it was not equipped
for the flying of passengers; that he knew that it was dangerous
to fly in this plane as a passenger. In spite of this, he neg-
ligently entered said plane and flew as a passenger.

2.

Defendant
The Plaintiff avers that, at the time and place com-
plained of, viz: the 3rd day of May, 1966, at or near Rocky

Creek Airport, near Atmore, in Escambia County, Alabama, the Plaintiff's intestate, Gerard Lipscomb, was himself guilty of negligence which proximately contributed to his death; said negligence consisting of this:

Just prior to the time of the accident, the Plaintiff's intestate had flown this airplane from Foley to Atmore, Alabama, *or should have known left* and knew that the ~~right~~ gasoline tank of said plane was almost empty. He negligently failed to turn the gasoline selector lever at the time he entered the plane as a passenger ^{time} *and negligently failed to within a reasonable time to notify his superior of this.*

3
Not guilty, WILTERS & BRANTLEY

BY: *Garnet M Brantley*
Attorneys for Defendant, Garnet
L. Chisenhall

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 10 day of June, 1969, 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.

WILTERS & BRANTLEY

Garnet M Brantley

FILED

JUN 10 1969

ALICE J. DUCK CLERK
REGISTER

SHIRLEY THIEM LIPSCOMB, as X
Administratrix of the Estate
of Garard Lipscomb, Deceased, X

Plaintiff, X IN THE CIRCUIT COURT OF
vs. X BALDWIN COUNTY, ALABAMA

GARNET L. CHISENHALL, X AT LAW
Individually and doing
business as Chisenhall X CASE NO. 7497
Agricultural Service,
Et Al., X

Defendants. X

Now comes the Defendant, Garnet L. Chisenhall, ind-
ividually, and doing business as Chisenhall Agricultural Service,
by his Attorney, and amends his demurrer to the original Bill of
Complaint by adding the following grounds thereto, to each
count thereof separately and severally:

5. Count One fails to allege with particularity,
the negligence alleged.

6. Count One does not allege whether John Henry
Francis had any superintendent control over the Plaintiff.

7. Count Two does not allege whether John Henry
Francis had any superintendent control over the Plaintiff.

8. Count Two does not allege what superintendent
control John Henry Francis exercised over the Plaintiff.

9. Count Two does not allege that the Plaintiff was
bound to conform to the orders of John Henry Francis.

10. Count Three does not allege whether John Henry
Francis had any superintendent control over the Plaintiff.

11. Count Three does not allege what superintendent
control John Henry Francis exercised over the Plaintiff.

12. Count Three does not allege that the Plaintiff was
bound to conform to the orders of John Henry Francis.

FILED

OCT 24 1967

ALICE J. DUCK

CLERK
REGISTER

WILTERS & BRANTLEY

BY:

[Signature]
Attorneys for the Defendant

862 e

DIV. NO. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 7497

THE STATE OF ALABAMA

BALDWIN County.

I, Alice J. Duck, Clerk of the Circuit Court of 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 SHIRLEY THELM LIPSCOMB, as Administratrix of the Estate of Gerard Lipscomb, Deceased,

was plaintiff, and Garnett L. Chisenhall, etc.

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said Plaintiff did on the 5th day of September, 1969 pray for and obtain an appeal from the judgment/of said Court to the Supreme Court ^{Granting Motion for New Trial,} of Alabama to reverse said judgment of said Court upon entering into bond with Norborne C. Stone, Jr. & John Earle Chason, as surety 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 5th day of September, 1969

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

6/11/69; Jury & Verdict for Plaintiff for \$77,000.00

(Code 1940, Title 7, Sec. 767)

Lipscomb Chisenhall

JURY LIST - JUNE TERM - JUNE 9, 1969

- ~~1. Blunt, Hugh Paul, Brookley Field, Bay Minette~~
- ~~2. Bradley, J. T., Jr., Bay Minette~~
- ~~3. Clifton, Gifford, Brookley Field, Sumnerdale~~
- ~~4. Cox, Percy B., Farmer, Stockton~~
5. Cowles, Robert, Printing, Fairhope
- ~~6. Edlin, Rachel, Hurricane~~
- ~~7. Heidelberg, Jerry, Farmer, Robertsdale~~
- ~~8. Howard, Oscar, Merchant, Bay Minette~~
- ~~9. Lett, Leroy, Brookley Field, Dayne~~
- ~~10. Mathews, Charles H., Furniture, Bay Minette~~
- ~~11. McKillen, Minnie Lou, Stockton~~
12. Nassar, Emile, J., Merchant, Bay Minette
- ~~13. Overstreet, Earl A., Newport, Bay Minette~~
14. Quinley, David, Farmer, Bay Minette
- ~~15. Robinson, Odele, Contractor, Bay Minette~~
16. Ryder, Raymond D., Fairhope
- ~~17. Sadlock, Fred J., Farmer, Robertsdale~~
- ~~18. Still, E. Douglas, Saleman, Bay Minette~~
- ~~19. Wiggins, James, Merchant, Stapleton~~
20. Weeks, Ellis, Laborer, Magnolia Springs
- ~~21. Wessler, Monroe Sanford, Blacksher~~
- ~~22. Boone, Kathryn, Blacksher~~
- ~~23. Boone, Opal, Blacksher~~
24. Bryant, Marvin Earl, Jr., Stockton
25. DeLoach, Percy, Farmer, Bay Minette
- ~~26. Duck, Monroe Harold, Laborer, Bay Minette~~
- ~~27. Hall, Asaphern, Laborer, Stockton~~
28. Langham, Lloyd, Merchant, Bay Minette
- ~~29. Beggart, Cornelia, Bay Minette~~
- ~~30. Lamberth, Wilma, Rabun~~
- ~~31. Deane, William A., Jr., Bay Minette~~
32. Allen, Clyde, Newport, Bay Minette
- ~~33. Lamberth, Nathan C., Rabun~~
- ~~34. Thompson, B., Stockton~~
35. Jones, Willie, Farmer, Bay Minette
- ~~36. Conway, William, Brookley Field, Bay Minette~~
- ~~37. Milford, Ann B., Bay Minette~~
- ~~38. McGowan, Randolph, Jr., Store Keeper, Bay Minette~~
- ~~39. Glick, France, Warehouseman, Bay Minette~~
40. Homan, Nathan, Timber Cruiser, Bay Minette
- ~~41. Murphy, Gus, Farmer, Bay Minette~~
42. Bryars, Rudolph Hoyt, Bay Minette
43. Cushion, Leland D., Stockton

43
17
42
12
99

P. XXXXX XXXXX XXXXX

D XXXXX XXXXX XXXXX