

AMENDED COMPLAINT

ANNIE LOUISE HAYLES, et al,)
)
 Plaintiffs,) IN THE CIRCUIT COURT OF
)
 VS.) BALDWIN COUNTY, ALABAMA
)
 RAY E. LOPER LUMBER COMPANY, INC.) AT LAW
)
 a corporation,) CASE NO. 7724
)
 Defendant.

Comes now the Plaintiffs in the above styled cause and amend their Complaint by adding James Lee Hayles as a party Plaintiff . Said Complaint is further amended as follows:

JAMES LEE HAYLES, individually,)	
ANNIE LOUISE HAYLES, individ-	
ually, CAROLYN LOUISE HAYLES,)	
a minor suing by her mother and	
next friend, Annie Louise Hayles,))	
AUBREY DEE HAYLES, suing by his	
mother and next friend, Annie)	
Louise Hayles, MARILAN HAYLES,)	IN THE CIRCUIT COURT OF
a minor, suing by her mother and)	
next friend, Annie Louise Hayles,)	BALDWIN COUNTY, ALABAMA
JANICE PAULINE HAYLES, a minor,)	
suing by her mother and next)	AT LAW
friend, Annie Louise Hayles,)	
RANDY LEE HAYLES, a minor, suing)	CASE NO. 7724
by his mother and next friend,)	
Annie Louise Hayles, and RICHARD)	
RAY HAYLES, a minor, suing by his)	
mother and next friend, Annie)	
Louise Hayles,)	
Plaintiffs,)	
VS.)	
RAY E. LOPER LUMBER COMPANY, INC.)	
a corporation,)	
Defendant.	

The Plaintiffs claim of the Defendant Workmen's Compensation benefits in the amount of, to-wit \$ 1266.88, arising out of the following facts, to-wit:

1.

That all of the Plaintiffs are resident citizens of Bay Minette, Baldwin County, Alabama; that the Plaintiff, James Lee Hayles, is the father of James Andrew Hayles, deceased; that the Plaintiff, Annie Louise Hayles, is the mother of James Andrew Hayles, deceased; that Carolyn Louise Hayles, Aubrey Dee Hayles, Marilan Hayles, Janice Pauline Hayles, Randy Lee Hayles and Richard Ray Hayles are the brothers and sisters of James Andrew Hayles, deceased. That your Plaintiffs were partially dependent upon the said James Andrew Hayles for their support and maintenance.

2.

That the Defendant, Ray E. Loper Lumber Company, Inc. a corporation, at all times material hereto, owned and operated a pole plant in the City of Bay Minette, Baldwin County, Alabama, and had in its regular employee more than seven persons and was operating under and according to the provisions of the Workmen's Compensation Laws of the State of Alabama.

3.

Your Plaintiffs show unto the Court that prior to May 3, 1967, James Andrew Hayles was an able bodied young man, 20 years of age, gainfully employed by the Defendant at a salary of approximately \$56.00 per week; that the said James Andrew Hayles suffered an injury resulting in his death while and during the course of his employee with the Ray E. Loper Lumber Company, Inc., a corporation.

4.

On May 3, 1967, James Andrew Hayles, together with other men, were moving timber with a tractor at a point about 9 miles Northeast of Elberta in Baldwin County, Alabama. While performing the aforesaid task, for some reason unknown to your Plaintiffs, the tractor being driven by James Andrew Hayles ran over James Andrew Hayles, and as a result thereof, James Andrew Hayles was injured, from which injury, James Andrew Hayles died a short time thereafter.

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5.

The Plaintiffs aver further that the agents, employees and officials of the Defendant, Ray E. Loper Lumber Company, Inc., a corporation, had actual notice of said accident soon after it happened.

6.

The Plaintiffs aver that James Andrew Hayles was earning an average wage of \$56.00 per week, and that he was 20 years of age; that James Andrew Hayles contributed 80 per cent of his wage for the support and maintenance of the Plaintiffs. Plaintiffs aver that under and by virtue of the Workmen's Compensation Laws of the State of Alabama, they are entitled to receive benefits of 45 per cent of the average weekly wage of James Andrew Hayles, subject to the maximum fixed by statute, for a period of 400 weeks, dating from said accident, for the use and benefit of the Plaintiffs. They further aver that Title 26, Section 285 provides that they are entitled to the expenses of burial not to exceed \$400.00. The Plaintiffs aver that this is a reasonable amount for funeral services and that they expended in excess of this amount for the burial of James Andrew Hayles.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 29 day of Feb. 1968, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United State Mail, properly addressed, and first class postage prepaid.

WILKINS & BRANTLEY

William B. Brantley

James Lee Hayles
James Lee Hayles, individually

Annie Louise Hayles
Annie Louise Hayles, individually and as mother and next friend of Carolyn Louise Hayles, Aubrey Dee Hayles, Marilan Hayles, Janice Hayles, Randy Lee Hayles and Richard Ray Hayles, minors.

Sworn to and subscribed before me on this the 28th day of February, 1968.

FILED

FEB 29 1968

Amelia B. Perkins
Notary Public

CS4

ALICE J. DUCK CLERK
REGISTER

ANNIE LOUISE HAYLES, et al,)
)
 Plaintiffs,) IN THE CIRCUIT COURT OF
)
 VS.) BALDWIN COUNTY, ALABAMA
)
 RAY E. LOPER LUMBER COMPANY, INC.,) AT LAW
 a corporation,)
) CASE NO. 7724
 Defendant.

Comes now the Plaintiffs in the above styled cause and amend their Complaint by striking Paragraph Six and substituting therefor:

6.

The Plaintiffs aver that James Andrew Hayles was earning an average wage of \$56.00 per week, and that he was 20 years of age; that James Andrew Hayles contributed 80 per cent of his wage for the support and maintenance of the Plaintiffs. Plaintiffs aver that under and by virtue of the Workmen's Compensation Laws of the State of Alabama, they are entitled to receive benefits of 35 per cent of the average weekly wage of James Andrew Hayles, subject to the maximum fixed by statute, for a period of 400 weeks, dating from said accident, for the use and benefit of the Plaintiffs. They further aver that Title 26, Section 285 provides that they are entitled to the expenses of burial not to exceed \$400.00. The Plaintiffs aver that this is a reasonable amount for funeral services and that they expended in excess of this amount for the burial of James Andrew Hayles.

Annie Louise Hayles
Plaintiff

Annie Louise Hayles, individually and as mother and next friend of Carolyn Louise Hayles, Aubrey Dee Hayles, Marilan Hayles, Janice Pauline Hayles, Randy Lee Hayles and Richard Ray Hayles, minors.

Sworn to and subscribed before me on this the 27th day of

February, 1968.

Notary Public

OFFICE OF
CLERK OF THE COURT OF CIVIL APPEALS
STATE OF ALABAMA
MONTGOMERY

Re: 1 Div. No. 5

Baldwin Circuit Court

Circuit Court

James Lee Hayles, et al.

vs.

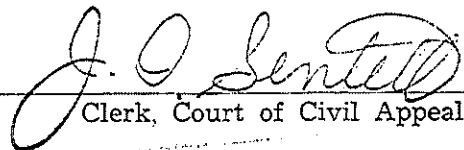
Ray E. Loper Lumber Co., Inc., a Corp.

Appellant

Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Court of Civil Appeals:

- ☐ 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, Court of Civil Appeals

March 4, 1970

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

Special
~~October~~ Term 1968

1 Div. No. 546

Ex Parte: James Lee Hayles, et al

Petitioner

PETITION FOR WRIT OF CERTIORARI TO BALDWIN COUNTY CIRCUIT COURT

(Re: James Lee Hayles, et al., Plaintiffs

vs.

Ray E. Loper Lumber Company, Inc., a Corporation,
Defendant

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

Whereas, in the above case IT WAS ORDERED by this Court, on motion of Petitioner that a writ of certiorari issue to the Clerk of the Circuit Court of said county commanding and requiring her to make and certify to this Court a true and correct copy of the record and proceedings in said Circuit Court in the cause of James Lee Hayles, et al., Plaintiffs vs.

Ray E. Loper Lumber Company, Inc., a Corporation, Defendant

pending in said Court and being Case No. 7724. IT WAS FURTHER ORDERED that the Petitioner duly file with the Clerk of the Circuit Court of Baldwin County their security for the costs of this proceeding to be approved by the Clerk of the Circuit Court of Baldwin County.

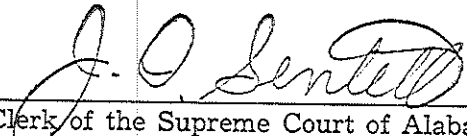
~~IT WAS FURTHER ORDERED by the Supreme Court of Alabama that the~~ _____ ~~of said Court be superseded upon Petitioner entering into a supersedeas bond in the sum of~~ _____, ~~with good and sufficient surety or sureties, payable to the~~ _____, ~~and conditioned to prosecute the appeal by certiorari to effect, or if~~ _____ ~~fail therein, to satisfy such~~ _____ ~~and costs as the Supreme Court may render in the premises; said bond to be approved by~~ _____ ~~the~~ _____ ~~of the Circuit Court of~~ _____

You are therefore commanded to make diligent search of the records and proceedings in your office in the above cause _____

(over)

and certify, together with this writ, a full and complete transcript of said records and proceedings to the Supreme Court of Alabama, returnable within 60 days from this date.

Witness, J. O. Sentell, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 3rd day of September, 19 68.


Clerk of the Supreme Court of Alabama

FILED

SEP 4 1968

ALICE J. DUCK CLERK
REGISTER

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

October Term, 1969-70

1 Div. No. 5

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

Whereas, in the matter of James Lee Hayles, et al, Appellant,
vs.

Ray E. Loper Lumber Company, Inc., a Corp., Appellee,
recently pending in the Court of Civil Appeals of Alabama, on appeal from the Circuit Court of
Baldwin County, the Court of Civil Appeals did on the 4th day of
February, 1970, render a Judgment, Order or Decree in said cause; and,

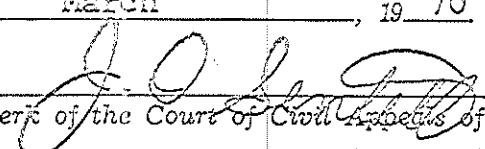
Whereas, a certificate of such action of the Court of Civil Appeals was duly issued to you, and
thereafter an application for a rehearing was filed in this Court:

Now, it is hereby certified, that the Court of Civil Appeals, or one of the Judges thereof, did
this day order that the said certificate be recalled. And you will accordingly return the same to
this office at once, together with copy of the opinion heretofore issued to you.

Witness, J. O. Sentell, Clerk of the Court of Civil
Appeals of Alabama, at the Judicial Department

Building, this the 18th day of

March, 19 70


Clerk of the Court of Civil Appeals of Alabama

August 27, 1968

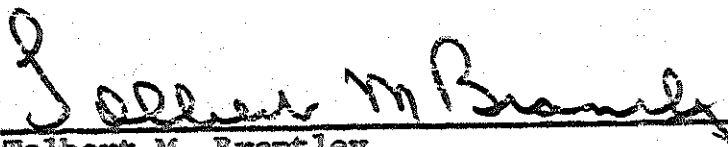
J. O. Sentell
Clerk of the Supreme Court
Montgomery
Alabama

Dear Sir:

Enclosed please find an original and three copies of a Petition for Writ of Certiorari in the case of Hayles vs. Ray E. Loper Lumber Company, which comes from the Circuit Court of Baldwin County, Alabama. If you will, please deliver these to the Chief Justice or appropriate justices for me.

No oral argument is desired unless demanded by the Attorney for the Defendant.

Sincerely yours,


Tolbert M. Brantley

TMB/jcw
encl. 4

FILED

AUG 28 1968

ALICE J. DUCK CLERK
REGISTER

JAMES LEE HAYLES, ET AL.,

Plaintiffs,

VS.

RAY E. LOPER LUMBER COMPANY, INC.,
a corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 7724

ANSWER TO AMENDED COMPLAINT

Now comes the defendant and for answer to the amended complaint says:

1. The defendant admits that the plaintiffs are resident citizens of Bay Minette, Alabama; that the plaintiff, James Lee Hayles, is the father of James Andrew Hayles, deceased; that the plaintiff, Annie Louise Hayles, is the mother of James Andrew Hayles, deceased; and that the other plaintiffs are brothers and sisters of the said James Andrew Hayles, deceased. The defendant denies that the plaintiffs and each of the plaintiffs were partially dependent upon the said James Andrew Hayles for their support and maintenance at the time of his death.

2. The defendant admits that it was subject to the Workmen's Compensation Act at the time of the death of James Andrew Hayles on, to-wit, May 3, 1967.

3. The defendant admits the allegations of paragraph numbered 3 of the amended complaint.

4. The defendant admits that James Andrew Hayles was its employee on, to-wit, May 3, 1967, and that he was killed while working for the defendant as its said employee. The defendant further admits that both the said James Andrew Hayles and the defendant were subject to the Workmen's Compensation Act of the State of Alabama at the time of the death of the said James Andrew Hayles. The defendant denies each and all of the other allegations of paragraph numbered 4 of the amended complaint.

5. The defendant admits that it had actual notice of the accident resulting in the death of James Andrew Hayles shortly after the said accident.

6. The defendant admits that it is liable under the provisions of Title 26, Section 285 of the Code of Alabama, for expenses of burial of the said James Andrew Hayles not to exceed \$400.00, and that it is liable to James Lee Hayles, one of the plaintiffs, for the said sum of \$400.00. The defendant denies each and all of the other allegations of paragraph numbered 6 of the amended complaint.

7. The defendant denies each and all of the other allegations of the amended complaint which have not been specifically answered above.

8. For further answer to the amended complaint, the defendant alleges that on, to-wit, May 3, 1967, James Lee Hayles, one of the plaintiffs, was employed by it and that prior to May 3, 1967, he filed with the defendant, which was then his employer, an Employee's Withholding Exemption Certificate, U. S. Treasury Department, Internal Revenue Service Form W-4, claiming nine (9) dependents (defendant's Exhibit 1), which said nine dependents include all of the plaintiffs, and that the deceased, James Andrew Hayles, also filed with the defendant prior to the accident which resulted in his death an Employee's Withholding Exemption Certificate, U. S. Treasury Department, Internal Revenue Service Form W-4, claiming one dependent, namely, himself (defendant's Exhibit 3). The Employee's Withholding Exemption Certificates of the said James Lee Hayles and James Andrew Hayles were in effect on May 3, 1967, and payroll deductions were then being made by the defendant from the wages due the said employees in accordance with the said Employee's Withholding Exemption Certificates.

For further answer to the amended complaint, defendant alleges that none of the plaintiffs were dependents of the said James Andrew Hayles at the time of his death on, to-wit, May 3, 1967, because of which it is not liable to the plaintiffs or any of them under the provisions of the Workmen's Compensation Act of Alabama for payment of compensation as such dependents of the said James Andrew Hayles.

J. B. Blackburn
Attorney for Defendant

I hereby certify that I delivered a copy of the above and foregoing answer to the office of Tolbert M. Brantley, attorney for the plaintiffs, on this the 15th day of August, 1968.

J. B. Blackburn
Attorney for Defendant

FILED

AUG 15 1968

ALICE J. DUCK CLERK
REGISTER

ANNIE LOUISE HAYLES, ET AL.,

Plaintiffs,

VS.

RAY E. LOPER LUMBER COMPANY,
INC., a corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

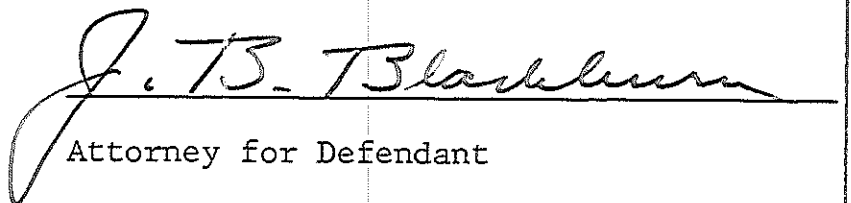
AT LAW

NO. 7724

DEMURRER TO COMPLAINT

Now comes the defendant, by its attorney, and demurs to the complaint or petition 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. No facts are alleged to show that the plaintiffs or any of them paid the funeral expenses of James Andrew Hayles.
3. The allegations of the complaint or petition are conclusions of the pleader.
4. No facts are alleged to show that the plaintiffs or any of them were dependent or partially dependent on James Andrew Hayles at the time of his death.


Attorney for Defendant

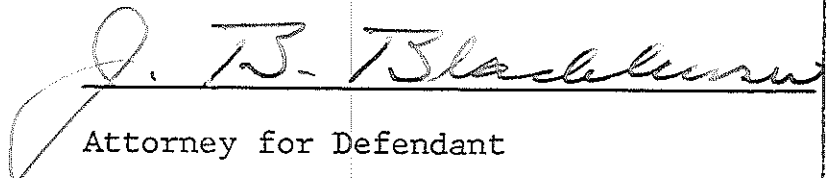
I hereby certify that I mailed a copy of the foregoing demurrer to Tolbert M. Brantley, of the firm of Wilters & Brantley, Bay Minette, Alabama, by first class mail, properly addressed and postage prepaid, on this the 10 day of October, 1967.

FILED

OCT 10 1967

ALICE J. DUCK

CLERK
REGISTER


Attorney for Defendant

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FEB - 4 1970

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS

OCTOBER TERM 1969-70

1 Div. 5

James Lee Hayles, et al.

v.

Ray E. Loper Lumber Company, Inc., A Corporation

Appeal by Certiorari from Baldwin Circuit Court

BRADLEY, JUDGE

The plaintiffs in the court below, petitioners
here, filed a complaint seeking benefits under Alabama's

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Workmen's Compensation Act. The defendant demurred to the complaint, plaintiffs amended their complaint, and defendant answered the amended complaint.

Trial was had before the court, sitting without a jury. There were findings of fact made by the court and a final judgment entered thereon holding that the plaintiffs were not dependent on James Andrew Hayles on the date of his death.

The plaintiffs thereupon petitioned the Supreme Court to review this judgment by Writ of Certiorari.

The case was subsequently transferred to this court.

There were six assignments of error, but only one argued in brief; therefore the unargued assignments are waived. Rule 9, Rules of the Supreme Court.

The petitioners here contend that the findings of fact made by the trial court were not supported by the evidence.

It is undisputed that at the time of his death, James Andrew Hayles was employed by the defendant, Ray E. Loper Lumber Co., Inc. of Bay Minette, Alabama, earning an average of \$56 per week. That the said James Andrew Hayles' death was the result of injuries received while working within the line and scope of his employment with the defendant. That both deceased and defendant were subject

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to the Alabama Workmen's Compensation Act. And that defendant had notice of the accident.

The evidence also showed without dispute that on the date of deceased's death, there were six brothers and sisters living at home with his mother and father. That all but one were in school. That his father was employed by defendant at an average weekly wage of \$85.00. That his mother had suffered from cancer, been under a doctor's care for many months, and incurred large doctor and hospital bills, which were unpaid. That his brothers and sisters were younger than he was. That he had been working since he was sixteen and was twenty at the time of his death. That at the time he started to work there were eight brothers and sisters. That he started to work to help support the family. That he had purchased a washing machine and deep freeze for his mother and was paying for them himself, and that the deceased son often paid the premiums on the insurance policies held by the family.

There was evidence from the mother, two sisters and a brother that the deceased gave his mother all of his paycheck each week except \$10-\$15 which he would keep out for himself. The father testified that the deceased gave his mother all but a few dollars of his

4.

weekly salary, but he could not say how much was given. He also stated that it took all he and the deceased made to make ends meet.

The defendant testified that the mother and father told him shortly after their son's death that they were not dependent upon the deceased for support. This was denied by the mother and father.

The defendant also introduced into evidence a letter from an attorney, allegedly representing the plaintiffs, saying that the deceased had been contributing \$30 weekly to their support.

There was also introduced on behalf of defendant, an income tax withholding certificate signed by the father claiming nine exemptions and one signed by the deceased claiming one exemption, himself.

In its findings of fact, the trial court found, among other facts, that the plaintiffs were not dependent on deceased for partial support because the father had claimed nine exemptions on his income tax withholding certificate and the deceased had claimed one exemption, himself.

The issue before this court is whether or not the plaintiffs--father, mother, brothers and sisters--were partially dependent on the deceased for their support at the time of his death and for a reasonable period prior thereto.

5.

The plaintiffs, in their complaint, claimed that they were partially dependent upon deceased at his death for their support.

Title 26, Section 282, Code of Alabama 1940, as Recompiled 1958, as amended, provides as follows:

"Any member of a class named in the preceeding section who regularly derived part of his support from the earnings of the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto, shall be considered his partial dependents and payment of compensation shall be made to such partial dependents in the order named."

The Supreme Court of Alabama in the case of Hamilton Motor Co. v. Cooner, 254 Ala. 422, 47 So. 2d 270, had the following to say:

"This court has often pointed out that the Workmen's Compensation Act, being remedial in nature, should be given a liberal construction to accomplish its beneficent purposes. Sloss-Sheffield Steel & Iron Co. v. Nations, 236 Ala. 571, 183 So. 871, 119 A.L.R. 1403; Swift & Co. v. Rolling, 252 Ala. 536, 42 So. 2d 6; Ex parte Terry, 211 Ala. 418, 100 So. 768. And we have further held that the act must be liberally construed and all reasonable doubt resolved in favor of the employee. National Cast Iron Pipe Co. v. Higginbotham, 216 Ala. 129, 112 So. 734; Mobile Liners v. McConnell, 220 Ala. 562, 126 So. 626. * * * "

6.

It would appear therefore that in ascertaining whether the plaintiffs were partially dependent on the deceased son and brother, as provided in Section 282, supra, the trier of fact should give a liberal interpretation to the terms of said statute and resolve all reasonable doubts in favor of the deceased employee.

In Ex parte Sloss-Sheffield Steel & Iron Co., 212 Ala. 3, 101 So. 608, the Supreme Court of Alabama said:

"The test therefore of partial dependency is, not whether the members of the classes named could support life without the contributions of the deceased, but whether they regularly received from his wages part of their support * * *, meaning, as we do not doubt, income used as a means of living."

The evidence introduced in the trial of the case at bar clearly showed that the deceased contributed most of his earnings to the support of his mother, father, brothers and sisters. It also appeared from the evidence without dispute that he oftentimes paid the premiums on the insurance covering the family, and that he had bought a washing machine and deep freeze for the family's use.

7.

There was also considerable testimony that if it had not been for the deceased's support, the family could not have paid its bills.

The Supreme Court of North Dakota, in Weisgerber v. Workmen's Compensation Bureau, 292 N.W. 627, 70 N.D. 165, 128 A.L.R. 1482, held that the parents, brothers and sisters of a deceased son-brother were partially dependent upon him at his death within the provisions of the North Dakota Workmen's Compensation law, and based its decision mainly on the following facts ascertained at the trial:

"* * * The deceased son was twenty-nine years of age at the time of his death. He was unmarried. He had been working approximately two years at the plant where he was killed, for a wage of about \$80 per month. He gave most of his earnings to the family for their support, after keeping about \$10 per month for spending money, and paying \$30 per month to his mother for room and board. * * * It appears, however, that the son spent very little of his wages on himself, and that the greater portion of his wages went to the support of the Weisgerber family and was used for that purpose along with the money earned by the father.

"The Weisgerbers lived in their own home. It was mortgaged. The loan was payable monthly. The deceased son paid the monthly installment of \$10.40. He also provided money to buy a gas stove and kept up the payments on it. The gas bill and the payments on the stove amounted to about \$4 per month. He

8.

also bought clothes for various members of the family, including the plaintiff. The deceased son and the father constituted the only wage earners in the family. The family living expenses amounted to \$107 per month."

"Dependency is, in most instances, a question of fact. Naturally, the facts in the various cases differ, with the result that each case must be, to a large extent, determined by its own facts. However, the courts have generally adopted a liberal construction in determining questions of dependency under Workmen's Compensation statutes. * * * In determining questions of dependency arising under Workmen's Compensation acts and applying a liberal construction thereto, it is generally held that the phrase under consideration does not mean absolute dependency for mere necessities of life. The family circumstances and customary mode of living are taken into consideration and it is generally sufficient if it appears that contributions of the deceased employee were looked to for support in the maintenance of the dependent's accustomed mode of living. * * *"

Applying the test laid down in the case of Ex parte Sloss-Sheffield Steel & Iron Co., supra, to the evidence presented to the trial court in the case at bar, and then analogizing it to the factual situation presented by the Weisgerber case, supra, it appears to this court that the evidence overwhelmingly supported the allegation of the complaint that the plaintiffs were partial dependents of the deceased son at the time of his death.

9.

However, the trial court, in its findings of fact, found that the plaintiffs were not partially dependent upon the deceased son-brother at the time of his death and for a reasonable time prior thereto, because the father and son had filed with their employer, the defendant, income tax withholding exemption certificates claiming nine and one dependents, respectively. These two pieces of evidence were the sole basis for the conclusion that the plaintiffs were not partially dependent upon the deceased son-brother.

As stated in Thomas v. Gulf States Paper Corp.,

276 Ala. 660, 166 So. 2d 104:

"The rule has long been settled that on certiorari to review judgments in compensation cases, this court does not look to the weight of the evidence as to facts found by the trier of fact, and will only determine if there is any evidence, or reasonable inference therefrom, to support the finding, and this rule applies whether the award or compensation is granted or denied. Queen City Furniture Company v. Hinds, 274 Ala. 584, 150 So. 2d 756; Simmons v. F. W. Dodge Corporation, 270 Ala. 616, 120 So. 2d 921; United States Steel Corporation v. Martin, 267 Ala. 634, 104 So. 2d 475."

The question naturally arises as to whether the two withholding exemption certificates relied on by the

10.

trial court constitute evidence of partial dependency within the meaning of the Alabama Workmen's Compensation Act so as to justify the finding of fact of non-dependency.

In the case of Johnson v. Cole and New Amsterdam Casualty Co., 226 Atl. 2d 268, the Supreme Court of Maryland, in a Workmen's Compensation case, wherein it was trying to determine if minor children were partially dependent on their father at the time of his death, had the following to say:

"While appellants made no proffer of proof, we presume they intended to show that Mr. Johnson claimed the infant appellants as dependents for income tax purposes. In our opinion, the number of dependents claimed by Mr. Johnson on the business records of his employer was neither relevant nor material to the issues presented by this case. The question of dependency, under the workmen's compensation law, turns on the presence of actual support and essentially whether, as here, the infant appellants have in fact subsisted entirely upon the earnings of the deceased workman. Even if the evidence sought to be introduced was admissible under any theory of law, we do not believe its exclusion could possibly have been prejudicial to appellants since there was no dispute as to the amount of Mr. Johnson's weekly wage and contribution for the support of the infant appellants; and, further, such evidence would not have revealed the names of Johnson's dependents, but only the number claimed by him. We, therefore,

11.

perceive no error in the exclusion of this evidence."

Also see Traders & General Ins. Co. v. Stanaland, et al., 202 S.W. 2d 702.

It is our opinion that the income tax withholding exemption certificates relied on by defendant to show non-dependency and accepted by the trial court for that purpose, as stated in Johnson v. Cole, supra, were neither "relevant nor material to the issues" presented in the case at bar, nor did they have any "probative value," as stated in Traders & General Ins. Co. v. Stanaland, supra, on the issues raised in the case at bar.

The question of partial dependency is determined by the actual support rendered to a family on a fairly consistent basis so that they not only can enjoy the necessities of life, but reasonably maintain their standard of living.

The withholding exemption certificates had the one purpose of assuring the government that the correct amount was being withheld from deceased's wages for income tax purposes.

We do not perceive any evidentiary value these certificates could have on the question of partial de-

12.

pendency of plaintiffs on their deceased son-brother for support.

Therefore, it is the opinion of this court that the finding of fact by the trial court that the plaintiffs were not partially dependent upon the deceased son-brother because the income tax withholding exemption certificates revealed that deceased claimed only one exemption for income tax purposes, was insufficient to support a judgment for the defendant.

Consequently, this case is reversed and remanded.

REVERSED AND REMANDED.

I, J. O. Sentell, Clerk of the Court of Civil Appeals of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) as set out as same appears of record in said Court.

Witness my hand this 4 day of July 1970



Clerk, Court of Civil Appeals of Alabama

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

October Term, 1969-70

1 Div. No. 5

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

Whereas, in the matter of James Lee Hayles, et al, Appellant,
vs.

Ray E. Loper Lumber Company, Inc., a Corp., Appellee,
recently pending in the Court of Civil Appeals of Alabama, on appeal from the Circuit Court of
Baldwin County, the Court of Civil Appeals did on the 4th day of
February, 1970, render a Judgment, Order or Decree in said cause; and,

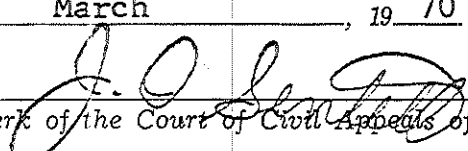
Whereas, a certificate of such action of the Court of Civil Appeals was duly issued to you, and
thereafter an application for a rehearing was filed in this Court:

Now, it is hereby certified, that the Court of Civil Appeals, or one of the Judges thereof, did
this day order that the said certificate be recalled. And you will accordingly return the same to
this office at once, together with copy of the opinion heretofore issued to you.

Witness, J. O. Sentell, Clerk of the Court of Civil
Appeals of Alabama, at the Judicial Department

Building, this the 18th day of

March, 19 70


Clerk of the Court of Civil Appeals of Alabama

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS OF ALABAMA

October Term, 19 69-70

1 Div. No. 5

To the Clerk ~~xxxxxx~~ 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
James Lee Hayles, et al, Appellant,

_____ and _____
Ray E. Loper Lumber Company, Inc., a Corporation, Appellee,

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

Now, it is hereby certified:

That the Court of Civil Appeals on the 4th day of February, 1970, 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 appellee, Ray E. Loper Lumber Company,
Inc., a Corporation,

_____ of review by certiorari
pay the costs ~~xxxxxx~~ in this Court and in the Court below, for which costs let
execution issue.

JULY 10, 1970

Petition for Writ of Certiorari
denied by Supreme Court. This
certificate is re-issued as of
this day.

J. O. Sentell
Clerk of the Court of Civil
Appeals of Alabama

*replied July 13, 1970
Patricia Duck*

Witness, J. O. Sentell, Clerk of the Court of Civil
Appeals of Alabama, at the Judicial Department

Building, this the 4th day of _____
February, 1970.

J. O. Sentell
Clerk of the Court of Civil Appeals of Alabama.

THE COURT OF CIVIL APPEALS
OF ALABAMA

October Term, 19 69-70

1 Div., No. 5

James Lee Hayles, et al

Appellant,

vs.

Ray E. Loper Lumber Company,

Inc., a Corporation

Appellee.

From Baldwin Circuit Court.

No. 7724

**CERTIFICATE OF
REVERSAL**

The State of Alabama,

County.

} Filed

this 6 day of Feb 19 70

ALICE J. DUCK

CLERK
REGISTER

BROWN PRINTING CO., MONTGOMERY

*Refiled 7-13-70
Alice J. Duck.*

NOTE OF TESTIMONY

JAMES LEE HAYLES, et al.,)
) Plaintiffs,)
VS.) BALDWIN COUNTY, ALABAMA
RAY E. LOPER LUMBER COMPANY,) AT LAW
INC., a corporation,)
) CASE NO. 7724
Defendant.)

This case is submitted in behalf of the Plaintiffs upon their Complaint and amendments thereto, and upon the testimony of Annie Louise Hayles, James Lee Hayles, Lucille Davidson, J. C. Hogan, Mrs. James Milstid and Mary Ann Sheppard.

This case is submitted in behalf of the Defendant upon Answer to the Plaintiffs' Bill of Complaint and Answer to the Plaintiffs' Amended Complaint, the testimony of Ray E. Loper and Dorothy L. Blair, and the Defendant's Exhibits 1-7.

Filed 6-15-68 *Reed J. Black*
 Register
Reed J. Black
William M. Brant,
Attorney for Plaintiff
J. B. Blackburn
Attorney for Defendant

JAMES LEE HAYLES, ET AL.,	Ø		
	Ø		
Plaintiffs,	Ø	IN THE CIRCUIT COURT OF	
VS.	Ø		
	Ø	BALDWIN COUNTY, ALABAMA	
	Ø		
RAY E. LOPER LUMBER COMPANY,	Ø	AT LAW	CASE NO. 7724
INC., a corporation,	Ø		
	Ø		
Defendant	Ø		

FINDING OF FACTS AND FINAL JUDGMENT

This matter comes before the court on the sworn amended complaint or petition of James Lee Hayles, individually; Annie Louise Hayles, individually; Carolyn Louise Hayles, a minor suing by her mother and next friend, Annie Louise Hayles; Aubrey Dee Hayles, suing by his mother and next friend, Annie Louise Hayles; Marilan Hayles, a minor suing by her mother and next friend, Annie Louise Hayles; Janice Pauline Hayles, a minor suing by her mother and next friend, Annie Louise Hayles; Randy Lee Hayles, a minor suing by his mother and next friend, Annie Louise Hayles; and Richard Ray Hayles, a minor suing by his mother and next friend, Annie Louise Hayles, seeking benefits under the Workmen's Compensation Act from Ray E. Loper Lumber Company, Inc., a corporation, and on the answer of the defendant to the amended complaint.

There are present in court the adult plaintiffs and their attorney, and the defendant appears by its attorney. The court has heard the testimony of all of the witnesses orally and, upon consideration of the competent testimony, the court finds as follows:

James Andrew Hayles was employed by the defendant on May 3, 1967. On May 3, 1967, the relation of employer and employee, or master and servant as defined by the Workmen's Compensation Act of Alabama, existed between the said defendant and the said James Andrew Hayles.

On May 3, 1967, the said James Andrew Hayles was injured

while engaged in the employer's business, which injury arose out of and in the course of his employment. The injury of the said James Andrew Hayles resulted in his death. There is no evidence in the record to show how the accident occurred, but the defendant has admitted that the said James Andrew Hayles was killed while working for it and that both parties were then subject to the provisions of the Workmen's Compensation Act. The employer (defendant) had immediate notice of the accident.

James Lee Hayles was the father of James Andrew Hayles and was on May 3, 1967, also an employee of the defendant. Prior to May 3, 1967, the said James Lee Hayles, one of the plaintiffs, had filed with the defendant an Employee's Withholding Exemption Certificate, U. S. Treasury Department, Internal Revenue Service Form W-4, claiming nine (9) dependents, which nine dependents included James Lee Hayles, one of the plaintiffs and the father of James Andrew Hayles, Annie Louise Hayles, one of the plaintiffs and the mother of James Andrew Hayles, and the six (6) minor plaintiffs who sue by next friend.

Prior to May 3, 1967, James Andrew Hayles filed with the defendant an Employee's Withholding Exemption Certificate, U. S. Treasury Department, Internal Revenue Service Form W-4, claiming one dependent, namely, himself. The Employee's Withholding Exemption Certificates of the said James Lee Hayles and James Andrew Hayles were in effect on May 3, 1967, and payroll deductions were then being made by the defendant from the wages due the said employees in accordance with the said Employee's Withholding Exemption Certificates.

None of the plaintiffs were dependent upon the said James Andrew Hayles on May 3, 1967, at the time he received the injury

resulting in his death, because of which they are not entitled to receive compensation from the defendant because of the death of the said James Andrew Hayles.

James Lee Hayles, one of the plaintiffs, paid funeral expenses for James Andrew Hayles exceeding the amount of Four Hundred Dollars (\$400.00).

The plaintiffs made application for employment of an attorney, as provided by Title 26, Section 261 of the Code, at the time of the filing of this suit, which application was approved by the trial judge and the plaintiffs were authorized to employ Tolbert M. Brantley to represent them.

JUDGMENT

The court finds from the evidence, and it is the judgment of the court, that the defendant in this cause is subject to the Workmen's Compensation Laws of Alabama, that James Andrew Hayles was an employee of the defendant at the time of the injury resulting in his death, and that the injury which resulted in his death was caused by an accident arising out of and in the course of his employment. It is, therefore, CONSIDERED, ORDERED AND ADJUDGED by the court as follows:

1. None of the plaintiffs were dependent upon James Andrew Hayles at the time of the injury resulting in his death, because of which the plaintiffs and each of them are not entitled to recover compensation from the defendant because of the death of the said James Andrew Hayles.

2. The plaintiff, James Lee Hayles, having paid more than Four Hundred Dollars (\$400.00) for funeral expenses for the said James Andrew Hayles, is entitled to have and recover of the defendant

under the provisions of Title 26, Section 285 of the Code, the sum of \$400.00 to apply on the said funeral expenses, together with interest thereon at the rate of six percent (6%) from May 3, 1967.

3. That Tolbert M. Brantley, the attorney for the plaintiffs in this cause, be paid an attorney's fee for the services rendered by him in behalf of the plaintiffs or petitioners in this cause, and the said fee shall be and the same is hereby fixed at fifteen percent (15%) of the amount to be paid by the defendant as shown by the preceding paragraph of this judgment and shall be paid therefrom.

4. The costs of this proceeding are hereby taxed against the defendant, for which execution may issue.

ORDERED AND ADJUDGED on this the 15th day of August, 1968.

J. G. Mashburn
Circuit Judge

FILED

AUG 15 1968

ALLIE C. BEEK CLERK
REGISTER

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Ray E. Loper Lumber Company, Inc., a corporation, to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the complaint of Annie Louise Hayles, individually and as mother and next friend of Carolyn Louise Hayles, Aubrey Dee Hayles, Marilan Hayles, Janice Pauline Hayles, Randy Lee Hayles, and Richard Ray Hayles.

WITNESS my hand this 6 day of Sept, 1967.

Deane J. Duck
Clerk

ANNIE LOUISE HAYLES, CAROLYN LOUISE HAYLES, a minor suing by her mother and next friend,)	
Annie Louise Hayles, AUBREY DEE HAYLES, a minor, suing by his mother and next friend, Annie Louise Hayles, MARILAN HAYLES, a minor, suing by her mother and next friend, Annie Louise Hayles,)	IN THE CIRCUIT COURT OF
JANICE PAULINE HAYLES, a minor, suing by her mother and next friend, Annie Louise Hayles,)	BALDWIN COUNTY, ALABAMA
RANDY LEE HAYLES, a minor, suing by his mother and next friend, Annie Louise Hayles, and RICHARD RAY HAYLES, a minor, suing by his mother and next friend, Annie Louise Hayles,)	AT LAW.
)	CASE NO. <u>7714</u>
Plaintiffs,)	
VS.)	
RAY E. LOPER LUMBER COMPANY, INC., a corporation,)	
Defendant.)	

BILL OF COMPLAINT

The Plaintiffs claim of the Defendant Workmen's Compensation benefits in the amount of, to-wit, \$ 682 ²⁴/₁₀₀, arising out of the following facts, to-wit:

1.

That all of the Plaintiffs are resident citizens of Bay Minette, Baldwin County, Alabama; that the Plaintiff, Annie Louise Hayles, is the mother of James Andrew Hayles, deceased; that the other Plaintiffs are his brothers and sisters. That your Plaintiffs were partially dependent upon the said James Andrew Hayles for their support and maintenance.

2.

That the Defendant, Ray E. Loper Lumber Company, Inc., a corporation, at all times material hereto, owned and operated a pole plant in the City of Bay Minette, Baldwin County, Alabama, and had in its regular employee more than seven persons and was operating under and according to the provisions of the Workmen's Compensation Laws of the State of Alabama.

3.

Your Plaintiffs show unto the Court that prior to May 3, 1967, James Andrew Hayles was an able bodied young man, 20 years of age, gainfully employed by the Defendant at a salary of approximately \$56.00 per week; that the said James Andrew Hayles suffered an injury resulting in his death while and during the course of his employee with the Ray E. Loper Lumber Company, Inc., a corporation.

4.

On May 3, 1967, James Andrew Hayles, together with other men, were moving timber with a tractor at a point about 9 miles Northeast of Elberta in Baldwin County, Alabama. While performing the afore-said task, for some reason unknown to your Plaintiffs, the tractor being driven by James Andrew Hayles ran over James Andrew Hayles, and as a result thereof, James Andrew Hayles was injured, from which injury, James Andrew Hayles died a short time thereafter.

5.

The Plaintiffs aver further that the agents, employees and officials of the Defendant, Ray E. Loper Lumber Company, Inc., a corporation, had actual notice of said accident soon after it happened.

6.

The Plaintiffs aver that James Andrew Hayles was earning an average wage of \$56.00 per week, and that he was 20 years of age; that James Andrew Hayles contributed 80 per cent of his wage for the support and maintenance of the Plaintiffs. Plaintiffs aver that under and by virtue of the Workmen's Compensation Laws of the State of Alabama, they are entitled to receive benefits of 35 per cent of the average weekly wage of James Andrew Hayles, subject to the maximum fixed by statute, for a period of 300 weeks, dating from said accident, for the use and benefit of the Plaintiffs, and they further aver that they are entitled to \$400.00 to apply on funeral expenses to the internment of the deceased.

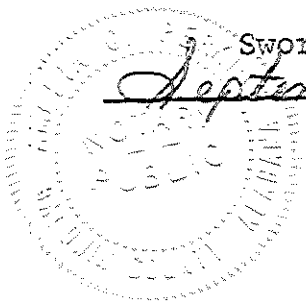
Annie Louise Hayles
Plaintiff
Annie Louise Hayles, individually and as mother and next friend of Carolyn Louise Hayles, Aubrey Dee Hayles, Marilan Hayles, Janice Pauline Hayles, Randy Lee Hayles and Richard Ray Hayles, minors.

STATE OF ALABAMA

BALDWIN COUNTY

Annie Louise Hayles, individually and as mother and next friend of Carolyn Louise Hayles, Aubrey Dee Hayles, Marilan Hayles, Janice Pauline Hayles, Randy Lee Hayles and Richard Ray Hayles, minors, hereby makes oath in due form of law, that she has read and understands her foregoing Complaint, and that she is familiar with the allegations therein contained, and that the same are true of her own knowledge and belief.

Annie Louise Hayles
Annie Louise Hayles, individually and as mother and next friend of Carolyn Louise Hayles, Aubrey Dee Hayles, Marilan Hayles, Janice Pauline Hayles, Randy Lee Hayles and Richard Ray Hayles.



Sworn to and subscribed before me on this the 6th day of September, 1967.

Pamela S. Perkins
Notary Public

WILTERS & BRANTLEY

BY: William M Brantley
Attorney for Plaintiffs

FILED

SEP 6 1967

ALICE J. DUCK CLERK
REGISTER

ANNIE LOUISE HAYLES, CAROLYN)	
LOUISE HAYLES, a minor, suing by)	
her mother and next friend,)	
Annie Louise Hayles, AUBREY DEE)	
HAYLES, a minor, suing by his)	
mother and next friend, Annie)	
Louise Hayles, MARILAN HAYLES,)	
a minor, suing by her mother and)	
next friend, Annie Louise Hayles,)	IN THE CIRCUIT COURT OF
JANICE PAULINE HAYLES, a minor,)	
suing by her mother and next)	BALDWIN COUNTY, ALABAMA
friend, Annie Louise Hayles,)	
RANDY LEE HAYLES, a minor, suing)	AT LAW
by his mother and next friend, Annie)	
Louise Hayles, and RICHARD RAY)	CASE NO. _____
HAYLES, a minor, suing by his)	
mother and next friend, Annie)	
Louise Hayles,)	
)	
Plaintiffs,)	
)	
VS.)	
)	
RAY E. LOPER LUMBER COMPANY, INC.,)	
a corporation,)	
)	
Defendant.)	

APPLICATION FOR EMPLOYMENT OF ATTORNEY

TO THE HONORABLE TELFAIR J. MASHBURN, JUDGE OF CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA:

Comes now, Annie Louise Hayles, individually and as mother and next friend of Carolyn Louise Hayles, Aubrey Dee Hayles, Marilan Hayles, Janice Pauline Hayles, Randy Lee Hayles, and Richard Ray Hayles, minors, and shows unto Your Honor that they were dependent upon James Andrew Hayles, deceased, for support and maintenance and that James Andrew Hayles, deceased, was an employee as defined by the Workmen's Compensation Law of Alabama; that his employer, as defined under the Workmen's Compensation Law of Alabama, was Ray E. Loper Lumber Company, Inc., a corporation. That the said James Andrew Hayles was injured and died from such injury while acting within the line and scope of his employment, and the Plaintiffs now pray for permission to secure the services of an attorney to represent them in said matter.

They requests permission to secure the services of Tolbert M. Brantley, an attorney at law of Bay Minette, Alabama.

Annie Louise Hayles
Annie Louise Hayles, individually and as mother and next friend of Carolyn Louise Hayles, Aubrey Dee Hayles, Marilan Hayles, Janice Pauline Hayles, Randy Lee Hayles and Richard Ray Hayles, minors.

ORDER

The foregoing having been submitted, and the Court being of the opinion that said permission should be granted, the said Plaintiffs in the above styled cause are hereby permitted and authorized to employ Tolbert M. Brantley, an attorney at law, to represent them in the claim arising out of an accident allegedly sustained in the line and scope of the employment of James Andrew Hayles while employed by Ray E. Loper Lumber Company, Inc., a corporation.

Done this the 16th day of September, 1967.

Telfair J. Mashburn
Telfair J. Mashburn
Circuit Judge

Ex 9/11/67

FILED

SEP 6 1967

ALICE J. BUCK

CLERK
REGISTER

720-7724

Received 6 day of Sept 1961

at on 11 day of Sept 1961

Received a copy of the within

Ray C. Lopez

Service on Ray C. Lopez

TAYLOR WILKINS, Sheriff

By W. A. Wilkins

Annie Louie Hayles et al

05.
Ray C. Lopez Lumber Co.
Inc - a corp

FILED

SEP 6 1961

ALICE J. BUCK

CLERK
REGISTER

Willet to the clerk

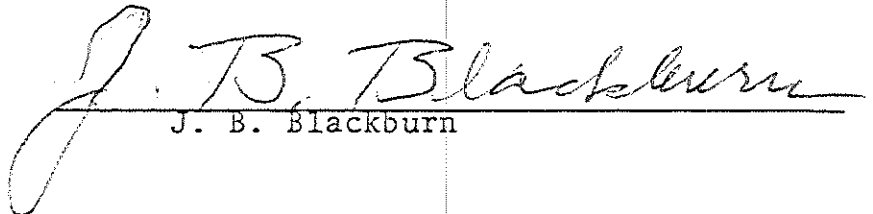
JAMES LEE HAYLES, ET AL.,	I	
Plaintiffs,	I	IN THE CIRCUIT COURT OF
Vs.	I	BALDWIN COUNTY, ALABAMA
RAY E. LOPER LUMBER COMPANY,	I	AT LAW
INC., a corporation,	I	CASE NO. 7724
Defendant	I	

AGREEMENT

Comes now the Plaintiffs and the Defendant in the above styled cause and agrees to and does now submit this case for final decree, to this Honorable Court, upon the Plaintiff's Complaint and amendments thereto, upon the Defendant's Answer to said Complaint and amendments thereto, and upon the testimony heretofore taken in this cause at the prior trial of the same.

Respectfully submitted:


Tolbert M. Brantley


J. B. Blackburn

FILED

MAR 23 1971

EUNICE B. BLACKMON CIRCUIT CLERK

694-A

JAMES LEE HAYLES, ET AL.,

Plaintiffs,

VS.

RAY E. LOPER LUMBER COMPANY,
INC., a corporation,

Defendant.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 7724

STIPULATION

It is stipulated and agreed by and between the parties to this cause as follows:

1. The defendant employer and the deceased employee, James Andrew Hayles, were subject to the Workmen's Compensation Law of Alabama at the time of the injury and death of the deceased employee.

2. James Lee Hayles and Annie Louise Hayles, the father and mother of the deceased employee, James Andrew Hayles, were partially dependent upon him at the time of his death and, based on his average weekly earnings, they are entitled to be paid compensation at the rate of \$15.00 per week for 300 weeks, or \$4500.00, and burial expenses amounting to \$400.00. *plus interest*

3. The sum of \$400.00 was paid by the defendant to the Clerk of the Circuit Court of Baldwin County, Alabama, at or about the time this litigation was instituted, and the defendant employer is willing to pay the unpaid court costs of this proceeding, amounting to \$33.00, and the sum of \$4500.00 compensation, which payment shall be made to the Clerk of the Circuit Court of Baldwin County, Alabama, at the time of the execution of this stipulation.

4. The Judge of the Circuit Court of Baldwin County, Alabama, on the filing of this stipulation, shall make and enter an order fully and finally approving the settlement provided for by this stipulation and relieving the defendant employer from all other and further liability in this cause.

694-B

Dated this 11th day of May, 1971.

WILTERS & BRANTLEY
Attorneys for Plaintiffs

By Tolbert M. Brantley

J. B. Blackburn
J. B. Blackburn
Attorney for Defendant

ORDER APPROVING SETTLEMENT

STATE OF ALABAMA Ø
*
BALDWIN COUNTY Ø

The foregoing stipulation having been presented to the court on this date, it appears that the settlement is in accordance with the provisions of the Workmen's Compensation Law of Alabama as last amended. When the payment of ~~\$4500.00~~ ^{# 4531.00} compensation and \$33.00 costs is made by the defendant employer to the Clerk of the Circuit Court of Baldwin County, Alabama, the defendant shall be and it is hereby released from all claims on account of the injury under the said act or otherwise. The settlement contains the whole agreement between the parties.

Tolbert M. Brantley, attorney for the plaintiffs, shall be paid an attorney's fee for services rendered by him on their behalf, which said fee shall be and it is hereby fixed at 15% of \$4900.00, or \$735.00.

Done on this the 11th day of May, 1971.

T. Blair J. Marshall
Judge

FILED

MAY 11 1971

EUNICE B. BLACKMON CIRCUIT CLERK

694 - e