

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

LAWYERS

30TH FLOOR FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

MAILING ADDRESS:
P. O. DRAWER C
OR P. O. BOX 123

CABLE ADDRESS:
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TELEPHONE
432-5511
AREA CODE 205

CHAS. C. HAND
C. B. ARENDALL, JR.
T. MASSEY BEDSOLE
THOMAS G. GREAVES, JR.
WM. BREVARD HAND
VIVIAN G. JOHNSTON, JR.
PAUL W. BROCK
ALEX F. LANKFORD, III
EDMUND R. CANNON
LYMAN F. HOLLAND, JR.
J. THOMAS KINES, JR.
DONALD F. PIERCE
LOUIS E. BRASWELL
HAROLD D. PARKMAN
G. PORTER BROCK, JR.
HARWELL E. COALE, JR.
STEPHEN G. CRAWFORD
JERRY A. MCDOWELL
W. RAMSEY MCKINNEY, JR.
LARRY U. SIMS
C. WAYNE LOUDERMILCH
A. CLAY RANKIN, III
EDWARD A. HYNDMAN, JR.

October 23, 1968

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

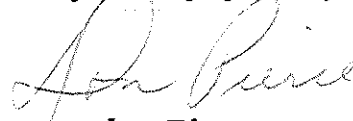
Re: Circuit Court of Baldwin County
Case No. 8174
Theresa Braswell, Plaintiff, vs.
Phyllis S. Nesbit, as Administratrix
of the Estate of Donald Earl Marks

Dear Mrs. Duck:

Enclosed please find the answer which we are asking
you to file on behalf of the defendant herein in the above-
referenced cause.

With best personal regards,

Very truly yours,


For the Firm

DFP/dm
Encl.

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LAWYERS

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MAILING ADDRESS:
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July 2, 1968

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

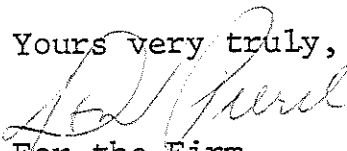
Re: Circuit Court of Baldwin County
Case No. 8174
Theresa Braswell, Plaintiff vs.
Phyllis S. Nesbit, as Administratrix
of the Estate of Donald Earl Marks

Dear Miss Duck:

Enclosed please find a Plea in Abatement which I request that you file on behalf of the Defendant, Phyllis S. Nesbit, in the above-referenced case. I have served a copy of the foregoing Plea in Abatement to Mr. Leyden, Plaintiff's attorney, and also sent a copy of same to Mrs. Nesbit, the Administratrix in the Estate.

With best personal regards,

Yours very truly,


For the Firm

DFP/dm
Encl.

THERESA BRASWELL, § IN THE CIRCUIT COURT OF
Plaintiff, § BALDWIN COUNTY, ALABAMA
VS. §
§ AT LAW
PHYLLIS S. NESBIT, as §
Administratrix of the §
Estate of Donald Earl Marks, § CASE NO. 8174
deceased, §
Defendant. §
§

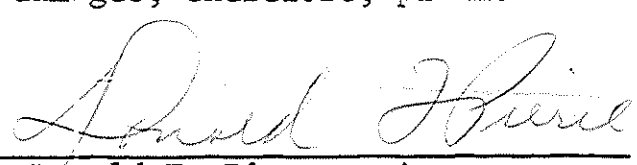
A N S W E R

Comes now the defendant in the above-styled cause,
Phyllis S. Nesbit, as Administratrix of the Estate of
Donald Earl Marks, deceased, and for separate and several
answer to each count of the complaint heretofore filed,
sets down and assigns the following, separately and severally:

1. Not guilty.

2. At the time and place alleged in the complaint,
to-wit, June 17, 1967, on a public highway in Baldwin County,
Alabama, to-wit, Highway 90, near the town of Robertsdale,
Alabama, plaintiff did so negligently operate the automobile
which she was driving then and there so as to proximately
contribute to the accident which is the basis of this suit,
and to her alleged injuries and damages; therefore, plaintiff
ought not recover.

OF COUNSEL


Donald F. Pierce - Attorney
for Defendant

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

Defendant demands a trial by jury.

FILED

OCT 24 1968

ALICE J. CROW CLERK

VOL

61 PAGE 227

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing Answer to Lionel L. Layden, Esquire, Attorney for the Plaintiff, by depositing a copy of same in the United States mail, postage prepaid, addressed to Mr. Layden at his office in Mobile, Alabama on this 23rd day of October, 1968.

Donald B. Brier

| | | |
|------------------------------|---|-------------------------|
| THERESA BRASWELL, |) | IN THE CIRCUIT COURT OF |
| |) | |
| Plaintiff, |) | BALDWIN COUNTY, ALABAMA |
| |) | |
| Vs. |) | AT LAW |
| |) | |
| PHYLLIS S. NESBIT, as |) | |
| Administratrix of the |) | |
| Estate of Donald Earl Marks, |) | |
| deceased, |) | |
| |) | |
| Defendant. |) | CASE NO. 8174 |

MOTION FOR DEFAULT JUDGMENT

Comes now the Plaintiff in the above styled cause and moves this Honorable Court to enter a Judgment by default in this case and as grounds therefor, alleges as follows:

1. That Defendant's Motion to dismiss this case on the grounds that another case was pending in the United States District Court is now moot because of the fact that that particular case has been dismissed and the only pending case is the one in this Honorable Court.

2. That the Defendant has failed to plead to the Complaint within the time required by law.

WHEREFORE, the premises considered, Plaintiff prays that this Honorable Court will enter a Judgment by default in favor of the Plaintiff against the Defendant or in the alternative, provide the Plaintiff with alternative relief.

MOORE, MOORE, DOWNING & LAYDEN

By: _____

Lionel L. Layden
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

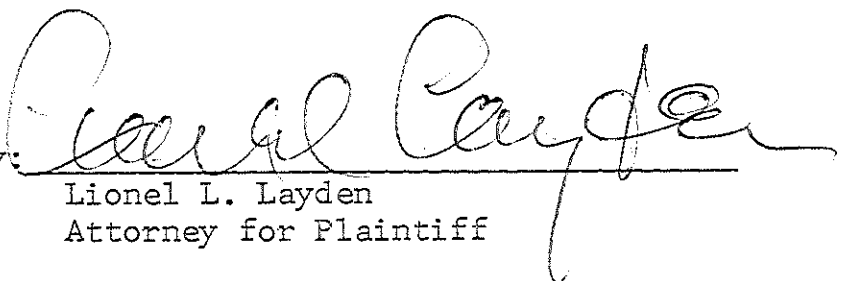
I do hereby certify that I have on this 27th day of Sept., 1981, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.

| | | |
|----------------------------------|---|--------------------------|
| THERESA BRASWELL, |) | IN THE CIRCUIT COURT OF |
| |) | |
| Plaintiff |) | BALDWIN COUNTY, ALABAMA, |
| |) | |
| V. |) | AT LAW. |
| |) | |
| PHYLLIS S. NESBIT, as |) | |
| Administratrix of the Estate |) | |
| of Donald Earl Marks, deceased, |) | |
| and "X", whose name is otherwise |) | |
| unknown but will be supplied by |) | |
| amendment when ascertained, |) | |
| |) | |
| Defendants |) | CASE NUMBER <u>8174</u> |

The Plaintiff claims of the Defendants the sum of Ten Thousand Dollars (\$10,000.00) for that heretofore, on to wit, June 17, 1967, on a public highway, namely Highway 90, near Robertsdale, Alabama in Baldwin County, Alabama, the Defendants' intestate did negligently cause, allow or permit the automobile he was driving to run into, upon or against the automobile which Plaintiff was driving in a westwardly direction on said Highway 90 at said place; Plaintiff alleges that the said Defendants' intestate was driving said automobile in an eastwardly direction on said Highway 90 at said place and that as a direct and proximate consequence of Defendants' negligence, the Plaintiff sustained the following injuries: the Plaintiff sustained a laceration above her eye and on her lip; the Plaintiff sustained various bruises and contusions about her body; the Plaintiff was required to spend sums of money for doctors and hospitals in an endeavor to cure herself of said injuries; the Plaintiff sustained severe pain and mental anguish as a result of said accident.

WHEREFORE, the Plaintiff demands judgment of the Defendants in the sum of Ten Thousand Dollars (\$10,000.00).

MOORE, MOORE, DOWNING AND LAYDEN

By: 
Lionel L. Layden
Attorney for Plaintiff

Plaintiff demands a trial by jury.

MOORE, MOORE, DOWNING & LAYDEN

By: 
Lionel L. Layden
Attorney for Plaintiff

Defendant may be served at:

P. O. Box 555
Robertsdale, Alabama 36567

FILED

JUN 17 1968

Filed: _____

Clerk: _____

ALICE J. DUCK CLERK
REGISTER

SUMMONS AND COMPLAINT

Moore Printing Co. - Bay Minette, Ala.

STATE OF ALABAMA
Baldwin County

Circuit Court, Baldwin County

No. 8174

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Phyllis S. Nesbit, as Administratrix of the Estate
of Donald Earl Marks, deceased, and "X" whose name is otherwise unknown but will be supplied
by amendment when ascertained

.....
to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint

filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against Phyllis S. Nesbit, as
administratrix of the Estate of Donald Earl Marks, deceased, and "X" whose name is other-
wise unknown but will be supplied by amendment when ascertained..... Defendant.....

by THERESA BRASWELL,

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

Witness my hand this..... 17th day of June 19. 68

Alice J. Clark Clerk

24-6-22-68

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

THERESA BRASWELL

Plaintiffs

vs.

PHYLLIS S. NESBIT, As Administratrix
of the Estate of Donald Earl Marks,
deceased; and "X" whose name is other-
wise unknown but will be Defendants
supplied by amendment when ascertained

SUMMONS AND COMPLAINT

Filed June 17, 1968.....

Alice J. Duck

Clerk

MOORE, MOORE, DOWNING & LAYDEN

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

JUN 18 1968 19.....

TAYLOR WILKINS Sheriff

I have executed this summons

this June 22, 1968.....

by leaving a copy with

Phyllis S. Nesbit
as adm. of Est. of
Donald Earl Marks
dec.
Daphne

54 miles at
5:40
TAYLOR WILKINS
DEPUTY SHERIFF
RR

Layton Wilkins Sheriff
Ray Randolph Deputy Sheriff

| | | |
|-----------------------|---|-------------------------|
| THERESA BRASWELL, | § | |
| Plaintiff | § | |
| | § | |
| v. | § | IN THE CIRCUIT COURT OF |
| | § | BALDWIN COUNTY, ALABAMA |
| PHYLLIS S. NESBIT, as | § | |
| Administratrix of the | § | |
| Estate of Donald Earl | § | AT LAW |
| Marks, deceased, | § | |
| Defendant. | § | CASE NO. 8174 |
| | § | |

PLEA IN ABATEMENT

Comes now the Defendant in the above-styled cause, Phyllis S. Nesbit, as Administratrix of the Estate of Donald Earl Marks, deceased, and appears specially and solely for the purpose of filing this Plea in Abatement, and for no other purpose, and appearing specially and solely, says as grounds for the abatement of this cause as follows:

1. For that there is presently pending in the United States District Court for the Southern District of Alabama, Southern Division, an action at law, styled, Theresa Braswell, Plaintiff, vs. Phyllis S. Nesbit, as Administratrix of the Estate of Donald Earl Marks, deceased, Defendant, Civil Action No. 4947-68 T, which action is between the same parties, as is the instant action, and arises out of the same automobile accident which is the basis of the instant suit; therefore, this action should be abated and cost allowed to this

Defendant for the making of this Plea in Abatement.

Donald F. Pierce

OF COUNSEL

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

AFFIDAVIT

STATE OF ALABAMA

COUNTY OF MOBILE

Personally appeared before me, the undersigned Notary Public in and for said county, Donald F. Pierce, who is known to me, and who after being first duly sworn, does under oath state that the facts alleged in the foregoing Plea in Abatement are true and correct.

Donald F. Pierce
Donald F. Pierce

Sworn to and Subscribed before me

on this 3rd day of July, 1968.

Connie D. Knight
Notary Public

Mobile County, Alabama

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing Plea in Abatement to Lionel L. Layden, Esquire, Attorney for the Plaintiff, by depositing a copy of same in the United States mail, postage prepaid, addressed to Mr. Layden at his office in Mobile, Alabama on this 3rd day of July, 1968.

Donald F. Pierce

-2-

FILED

JUL 5 1968

ALICE J. DUCK CLERK
REGISTER

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