

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA, AT IAW

COMPANION CASE #24706

CASE NO. 24706 - ERVIN

CUNNINGHAM, BOUNDS & BYRD
BY: ROBERT T. CUNNINGHAM

GLADYS HARRISON

JURY

VS. Suit for \$150,000.00 damages, personal injuries.
(TORT)

COLLINS, GALLOWAY & MURPHY
BY: THOMAS M. GALLOWAY

CLINTON ELBERT SMITH

N.J.

PLEADINGS, PROCESS, ETC, * FILING DATE *

1. Complaint & Summons * 1-25-68 *

C & S served on Defendant on January 31, 1968.

2. Plea in Abatement * 2-16-68 *

March 8, 1968 - Plea in Abatement Sustained, and Case ordered
Transferred to Baldwin County, Alabama.

/s/ Robert T. Ervin, Jr. - - - - 36-834

I, JOHN E. MANDEVILLE, in my capacity as Clerk of the Circuit Court of Mobile County, Alabama, hereby certify that the above is a true and correct transcript of all the minutes, orders and other proceedings in the above styled case in this Court.

In Witness whereof I have hereunto set my hand and attached my Official Seal as such Clerk of said Court at Mobile, Mobile County, Alabama, on this the 11th day of March 1968.

John E. Mandeville Clerk

GLADYS HARRISON,	)	IN THE CIRCUIT COURT
Plaintiff.	)	OF MOBILE COUNTY,
-vs-	)	ALABAMA.
CLINTON ELBERT SMITH,	)	AT LAW.
Defendant.	)	CASE NO. <u>24706</u>

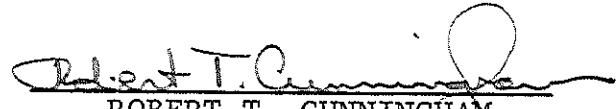
COUNT ONE

Plaintiff claims of the Defendant the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS, damages, for that heretofore and on, to-wit, December 24, 1967, the Defendant so negligently operated a motor vehicle on U. S. Highway 90 at a point, to-wit, 3.2 miles West of the center of Spanish Fort, at which point said U. S. Highway 90 is a public road in Baldwin County, Alabama, as to cause the same to collide with a motor vehicle then and there occupied by Plaintiff on said U. S. Highway 90, and as a direct and proximate result of the negligence of the Defendant as aforesaid, Plaintiff suffered the following injuries and damages: she was made sick, sore and lame; her body was bruised and broken; she suffered a severe injury to her back; she sustained internal injuries; she was caused to suffer severe mental and physical pain and anguish, still so suffers and will so suffer in the future; she was permanently injured; she was caused to incur hospital bills, doctors' bills and other medical expenses in and about the care and treatment of her injuries and will incur further such expenses in the future; she was caused to lose time from her employment and her ability to work and earn money in the future has been permanently impaired.

CUNNINGHAM, BOUNDS & BYRD
ATTORNEYS FOR PLAINTIFF

BY: 
ROBERT T. CUNNINGHAM

Plaintiff demands a trial by jury.


ROBERT T. CUNNINGHAM

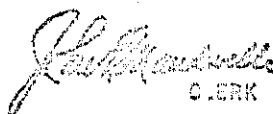
TRIAL ATTORNEY: Robert T. Cunningham

Address of Defendant:

Clinton Elbert Smith
P. O. Box 314
Stapleton, Alabama

STATE OF ALA. MOBILE CO.
I CERTIFY THIS PLEADING
WAS FILED ON

JAN 25 10 37 AM '68


CLERK

THE STATE OF ALABAMA
MOBILE COUNTY

CIRCUIT COURT

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon

CLINTON ELBERT SMITH

to appear within thirty days from service of this process, in the Circuit Court of Mobile County, Alabama,

at the place of holding the same, then and there to answer the complaint of

GLADYS HARRISON

WITNESS: John E. Mandeville, Clerk of said Court, this 25th day of JANUARY, 19 68

Attest:

John E. Mandeville
Clerk

SHERIFF'S RETURN

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

by service on _____

RAY D. BRIDGES, SHERIFF

By _____ D.S.

REC'D. SHERIFF DEPT.
MOBILE COUNTY, ALA.

JAN 23 4 23 PM '68

BY _____

Sheriff claims 24 miles at

Ten Cents per mile Total \$ 2.40

TAYLOR WILKINS, Sheriff

BY W. A. Elbert
DEPUTY SHERIFF

Received 31 day of Jan 1968

on 31 day of Jan 1968

served a copy of the within 84C

Clinton Elbert Smith

y service on _____

TAYLOR WILKINS, Sheriff

By W. A. Elbert

Stapleton

mail
JUDGE _____ DOCKET _____

CIVIL DIVISION

CIRCUIT COURT

MOBILE COUNTY

GLADYS HARRISON

VS. } Complaint and Summons

CLINTON ELBERT SMITH

Issued 25th day of JANUARY, 1968

Defendant's Address

P.O. Box 314

Stapleton, Alabama

ROBERT T. CUNNINGHAM

Plaintiff's Attorney

GLADYS HARRISON, : IN THE CIRCUIT COURT OF
Plaintiff, : MOBILE COUNTY, ALABAMA
VS: :
CLINTON ELBERT SMITH, : ~~IN EQUITY~~
Defendant. : AT LAW
CASE NO. 24706 *E*

PLEA IN ABATEMENT

Comes now the Defendant in the above styled matter and moves this Court to abate this action now pending upon the following separate and several grounds:

1. It affirmatively appears from the complaint as filed in this matter that this accident occurred in Baldwin County, Alabama and that the Defendant is a resident of said Baldwin County.

WHEREFORE, this matter should be abated in Mobile County, Alabama, and the same transferred to the Circuit Court of Baldwin County, Alabama.

COLLINS, GALLOWAY & MURPHY

By: *Thomas M. Galloway*
THOMAS M. GALLOWAY
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I do hereby certify that I have on this *15th*
day of *Feb.*, 19*68* served a copy of
the foregoing pleading on counsel for all
parties to this proceeding by mailing the
same by United States Mail, properly ad-
dressed, and first class postage prepaid.

Thomas M. Galloway

STATE OF ALA. MOBILE CO.
I CERTIFY THIS PLEADING
WAS FILED ON

FEB 16 10 23 AM '68

Robert M. Smith
CLERK

FRIDAY, MARCH 8, 1968

GLADYS HARRISON	)	PLEA IN ABATEMENT SUSTAINED,
ERVIN -vs- 24706	)	AND CASE ORDERED TRANSFERRED TO
CLINTON ELBERT SMITH	)	BALDWIN COUNTY, ALABAMA
)	

This day in open Court came the parties by their attorneys, and defendant's Plea in Abatement filed February 16, 1968, in this cause, coming on to be heard and being argued by counsel and understood by the Court;

It is ordered and adjudged by the Court that defendant's said Plea in Abatement filed February 16, 1968, in this cause be, and the same is hereby sustained, and case ordered transferred to the Circuit Court of Baldwin County, Alabama.

Minute Book 36

Page 834

STATE OF ALABAMA, }
COUNTY OF MOBILE }

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

I, JOHN E. MANDEVILLE, Clerk of the Circuit Court of Mobile County, Alabama, do hereby
certify that the foregoing is a full, true and correct copy of ORDER OF COURT

as rendered by the said Circuit Court on the 8th day of March, 1968, in the cause
entitled No. 24706- GLADYS HARRISON

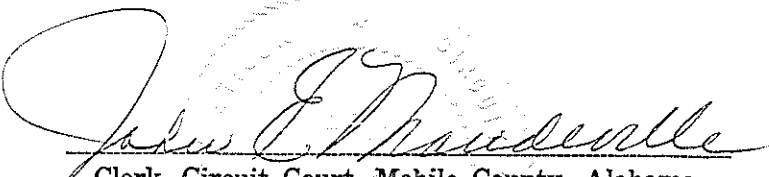
_____, Plaintiff,

— versus — CLINTON ELBERT SMITH

Defendant, (~~Together with the cancellation thereon~~), as the same remains of record in this office in
Minute Book No. 36, Page No. 834

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at office
in the City of Mobile, Alabama, on this the 11th day of March, 1968

ATTEST:


Clerk, Circuit Court, Mobile County, Alabama.

CIVIL DIVISION, CIRCUIT COURT, MOBILE COUNTY

No. 24706

GLADYS HARRISON

Plaintiff

VS.

CLINTON ELBERT SMITH

Defendant

BILL OF COST

(Act No. 740, Reg. Session Ala. Legislature 1957
Appvd. Sept. 20, 1957)
(Amend Sec. 21, Title 11, Code Ala. 1940)

(Act No. 571, Reg. Ses. Leg. 1955)
(Amend Sec. 34 and 100, Title 11, Code Ala. 1940)

[illegible]

I respectfully beg to advise that if this bill for costs is not paid before _____ 19_____, it will be my unpleasant duty to issue execution for same.

JOHN E. MANDEVILLE, Clerk

GLADYS HARRISON,	)	IN THE CIRCUIT COURT
Plaintiff.	)	OF BALDWIN COUNTY,
-vs-	)	ALABAMA.
CLINTON ELBERT SMITH,	)	AT LAW.
Defendant.	)	CASE NO. 8436

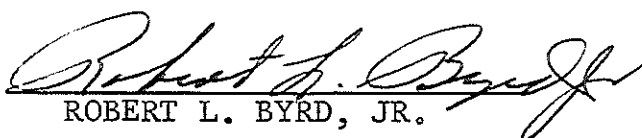
NOTICE OF TAKING OF ORAL DEPOSITION

TO: Mr. Thomas M. Galloway
 Attorney at Law
 P. O. Box 4492
 Mobile, Alabama 36604

Please take notice that on the 6th day of November, 1969, at 2:00 P.M., the Plaintiff in the above styled cause will take the deposition of Dr. Curtis A. Smith at his office at 1729 Springhill Avenue, Mobile, Alabama, upon oral examination, before a Notary Public or some other officer authorized by law to administer oaths, at such time and place and thereafter from day to day as the taking of the deposition may be adjourned. You are notified to appear and take such part in the examination as you may deem advisable and as shall be fit and proper.

Dated this the 30th day of October, 1969.

CUNNINGHAM, BOUNDS & BYRD
 ATTORNEYS FOR PLAINTIFF

BY: 
 ROBERT L. BYRD, JR.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 30th day of October, 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.

FILED

OCT 31 1969

ALICE J. DUCK CLERK
 REGISTER

Law OFFICES
Cunningham, Bounds and Byrd

1350 DAUPHIN STREET

P. O. BOX 4486

MOBILE, ALABAMA 36604

ROBERT T. CUNNINGHAM
RICHARD BOUNDS
ROBERT L. BYRD, JR.
WARREN L. HAMMOND, JR.

AREA CODE 205
TELEPHONE 438-6188

October 30, 1969

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

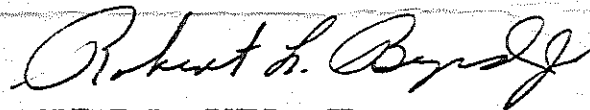
Re: Harrison v. Smith
Case No. 8436

Dear Mrs. Duck:

Will you please file the enclosed notice of deposition in the above cause? It is not necessary to issue a subpoena for Dr. Smith to appear to give this testimony.

Very truly yours,

CUNNINGHAM, BOUNDS & BYRD



ROBERT L. BYRD, JR.

RLBjr/mbs

Gladys Harrison
vs. Clinton Elbert Smith 8436

JURY LIST - NOVEMBER 17, 1969

1. Alexander, W. S., Jr., Refrigeration Mechanic, Bay Minette
2. Ankum, Albert, Tensaw
3. Ankum, Beatrice, Tensaw
4. Ankum, George, Tensaw
5. Averitt, Chester C., Appliance Repair, Foley
6. Bornholt, Roy H., Farmer, Elberta
7. Brown, Arthur L., Store Owner, Bay Minette
8. Campbell, Dorothy M., Secretary, Foley
9. Edwards, Willie, Jr., Teacher, Bay Minette
10. Ellis, T. Howard, Montrose
11. Hall, Howard H., Clerk, Bay Minette
12. Harville, Arthur, Rabun
13. Hermecz, Mary Frances, Fairhope
14. Johnson, Doratha B., Fairhope
15. King, Jessie, Clerk, Mag. Spgs.
16. Kutack, Jean Ann, Fairhope
17. Mannich, Arthur, Merchant, Fairhope
18. McCreary, Roosevelt, Fairhope
19. Moore, Ack W., Fairhope
20. Nall, Wilber C., Farmer, Bon Secour
21. Niemeyer, C. B., Fairhope
22. Niemeyer, Lenora, Fairhope
23. Owen, L. D., Jr., Merchant, Bay Minette
24. Peters, Billy C., Fairhope
25. Phillippi, Talmage, Rabun
26. Reynolds, Robert Roy, Fairhope
27. Rogers, Claude M., Trucker, Bay Minette
28. Stewart, Khola, Rabun
29. Thompson, William Am., Insurance, Bay Minette
30. Weeks, Elliot, Mechanic, Mag. Spgs.
31. Sweat, C. D., Real Estate, Robertsdale
32. Maury, Louise P., Fairhope
33. Berglin, Ouida, Fairhope
34. Patton, William L., Jr., Fairhope
35. Hauge, Ralph O., Clerk, Silverhill
36. Overstreet, Layton, J., Fairhope
37. McDade, Adelaide Dodd, Fairhope
38. Perkins, Sherman T., Fairhope
39. Reznor Rudolph - Shrimp Fairhope
40. Parks, R. T. Jr. Banker

P XXXXX XXXXX XX
D XXXXX XXXXX X

GLADYS HARRISON,	)	IN THE CIRCUIT COURT
Plaintiff.	)	OF BALDWIN COUNTY,
-vs-	)	ALABAMA.
CLINTON ELBERT SMITH,	)	AT LAW.
Defendant.	)	CASE NO. <u>84310</u>

COUNT ONE

Plaintiff claims of the Defendant the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS, damages, for that heretofore and on, to-wit, December 24, 1967, the Defendant so negligently operated a motor vehicle on U. S. Highway 90 at a point, to-wit, 3.2 miles West of the center of Spanish Fort, at which point said U. S. Highway 90 is a public road in Baldwin County, Alabama, as to cause the same to collide with a motor vehicle then and there occupied by Plaintiff on said U. S. Highway 90, and as a direct and proximate result of the negligence of the Defendant as aforesaid, Plaintiff suffered the following injuries and damages: she was made sick, sore and lame; her body was bruised and broken; she suffered a severe injury to her back; she sustained internal injuries; she was caused to suffer severe mental and physical pain and anguish, still so suffers and will so suffer in the future; she was permanently injured; she was caused to incur hospital bills, doctors' bills and other medical expenses in and about the care and treatment of her injuries and will incur further such expenses in the future; she was caused to lose time from her employment and her ability to work and earn money in the future has been permanently impaired.

COUNT TWO

Plaintiff claims of the Defendant the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS, damages, for that heretofore and on,

to-wit, December 24, 1967, the Defendant wantonly injured the Plaintiff by so wantonly operating a motor vehicle on U. S. Highway 90 at a point, to-wit, 3.2 miles West of the center of Spanish Fort, at which point said U. S. Highway 90 is a public road in Baldwin County, Alabama, as to cause the same to collide with a motor vehicle then and there occupied by Plaintiff on said U. S. Highway 90, and as a direct and proximate result of the wanton conduct of the Defendant as aforesaid, Plaintiff suffered the following injuries and damages: she was made sick, sore and lame; her body was bruised and broken; she suffered a severe injury to her back; she sustained internal injuries; she was caused to suffer severe mental and physical pain and anguish, still so suffers and will so suffer in the future; she was permanently injured; she was caused to incur hospital bills, doctors' bills and other medical expenses in and about the care and treatment of her injuries and will incur further such expenses in the future; she was caused to lose time from her employment and her ability to work and earn money in the future has been permanently impaired.

CUNNINGHAM, BOUNDS & BYRD
ATTORNEYS FOR PLAINTIFF

BY: Robert T. Cunningham
ROBERT T. CUNNINGHAM

Plaintiff demands a trial by jury.

Robert T. Cunningham
ROBERT T. CUNNINGHAM

FILED

NOV 16 1968

ALICE J. DUCK CLERK
REGISTER

COLLINS, GALLOWAY & MURPHY
ATTORNEYS AT LAW
958 DAUPHIN STREET
MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
JAMES H. LACKEY

November 18, 1968

P. O. BOX 4492
TELEPHONE
432-0568
AREA CODE 205

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

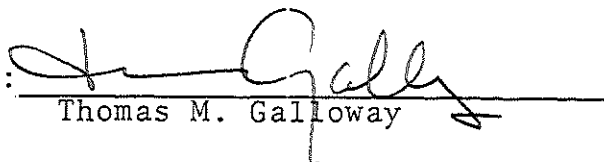
Re: Gladys Harrison
vs: Clinton Elbert Smith

Dear Mrs. Duck:

Mr. Cunningham has filed a complaint in this matter
and I enclose herewith a copy of our answer.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY: 
Thomas M. Galloway

TMG/brm

Encl.

CUNNINGHAM, BOUNDS AND BYRD

ATTORNEYS AT LAW
1350 DAUPHIN STREET
P. O. BOX 4486

MOBILE, ALABAMA 36604

ROBERT T. CUNNINGHAM
RICHARD BOUNDS
ROBERT L. BYRD, JR.
WARREN L. HAMMOND, JR.

AREA CODE 205
TELEPHONE 438-6188

November 15, 1968

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

Re: Gladys Harrison vs.
Clinton Elbert Smith

Dear Mrs. Duck:

On January 25, 1968, I filed suit in Mobile County on behalf of Gladys Harrison against Clinton Elbert Smith. A plea in abatement was filed by the defendant and it was subsequently sustained by the Mobile court. I am informed that the clerk of the court then sent the file to your office.

On September 18, 1968, I sent you an amended complaint in this case and asked that it be filed. The defendant filed a plea of not guilty in your court. Ever since the filing of the suit, I have been waiting for a trial date. Mr. Tom Galloway informs me that he has just talked with your office and that you do not have this case pending in Baldwin County. Under the circumstances, I don't know how in the world this could have happened but I am not, at the present time, concerned about that. All I want to do is get the matter straightened out and get on with the trial.

I am enclosing herewith a bill of complaint and I would like to ask that you file this bill of complaint and let me know when you have done so. It is not necessary that the defendant be served with process. Once this new bill of complaint has been filed, Mr. Galloway will file and answer and I assume we will then be in line for an early trial.

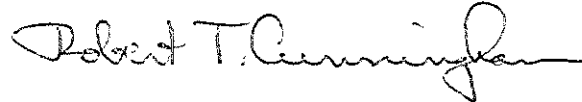
Mrs. Alice J. Duck
November 15, 1968
Page -2

If there is anything further I need to do in this matter, I would appreciate hearing from you. All I want to do now is actually get the case on your docket and get to trial as soon as I can.

Best wishes.

Sincerely yours,

CUNNINGHAM, BOUNDS & BYRD

A handwritten signature in cursive script, appearing to read "Robert T. Cunningham".

ROBERT T. CUNNINGHAM

RTC/mb

cc: Mr. Thomas M. Galloway
Mrs. Gladys Harrison
Mrs. Betsy L. Lacey

GLADYS HARRISON,	:	IN THE CIRCUIT COURT OF
Plaintiff,	:	BALDWIN COUNTY, ALABAMA
VS:	:	AT LAW
CLINTON ELBERT SMITH,	:	
Defendant.	:	CASE NO.

Comes now the defendant in the above styled matter and for answer to the complaint heretofore filed and each and every count thereof separately and severally says as follows:

1. Not guilty.

COLLINS, GALLOWAY & MURPHY

BY: *Thomas M. Galloway*
 Thomas M. Galloway
 ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE
 I do hereby certify that I have on this 19th day of Nov, 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.

Thomas M. Galloway

FILED

NOV 19 1968

ALICE J. DUCK CLERK REGISTER

GLADYS HARRISON,	)	IN THE CIRCUIT COURT
Plaintiff.	)	OF BALDWIN COUNTY,
-vs-	)	ALABAMA.
CLINTON ELBERT SMITH,	)	AT LAW.
Defendant.	)	CASE NO. <u>8436</u>

Comes the Plaintiff in the above cause and amends her bill of complaint on file herein by adding thereto the following additional count:

COUNT TWO

Plaintiff claims of the Defendant the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS, damages, for that heretofore and on, to-wit, December 24, 1967, the Defendant wantonly injured the Plaintiff by so wantonly operating a motor vehicle on U. S. Highway 90 at a point, to-wit, 3.2 miles West of the center of Spanish Fort, at which point said U. S. Highway 90 is a public road in Baldwin County, Alabama, as to cause the same to collide with a motor vehicle then and there occupied by Plaintiff on said U. S. Highway 90, and as a direct and proximate result of the wanton conduct of the Defendant as aforesaid, Plaintiff suffered the following injuries and damages: she was made sick, sore and lame; her body was bruised and broken; she suffered a severe injury to her back; she sustained internal injuries; she was caused to suffer severe mental and physical pain and anguish, still so suffers and will so suffer in the future; she was permanently injured; she was caused to incur hospital bills, doctors' bills and other medical expenses in and about the care and treatment of her injuries and will incur further such

expenses in the future; she was caused to lose time from her employment and her ability to work and earn money in the future has been permanently impaired.

CUNNINGHAM, BOUNDS & BYRD
ATTORNEYS FOR PLAINTIFF

BY: Robert T. Cunningham
ROBERT T. CUNNINGHAM

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 18
day of September, 1962, 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.

Robert T. Cunningham

GLADYS HARRISON, : IN THE CIRCUIT COURT OF
Plaintiff, : BALDWIN COUNTY, ALABAMA
VS: :
CLINTON ELBERT SMITH, : AT LAW
Defendant. : CASE NO. _____

Comes the Defendant in the above styled matter and
for answer to the complaint heretofore filed says as follows:

1. Not guilty.

COLLINS, GALLOWAY & MURPHY

By: Thomas M. Galloway
THOMAS M. GALLOWAY
ATTORNEYS FOR DEFENDANT

FILED

APR 8 1968

ALICE J. DUCK CLERK
REGISTER

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 4th
day of April, 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 ad-
dressed, and first class postage prepaid.

Thomas M. Galloway

GLADYS HARRISON,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
-vs-	)	AT LAW
CLINTON ELBERT SMITH,)	
Defendant.	)	CASE NO. 8436

TRIAL MEMORANDUM

ANY PERSON DRIVING A VEHICLE ON A HIGHWAY SHALL DRIVE THE SAME AT A CAREFUL AND PRUDENT SPEED NOT GREATER THAN IS REASONABLE AND PROPER, HAVING DUE REGARD TO THE TRAFFIC, SURFACE AND WIDTH OF THE HIGHWAY AND OF ANY OTHER CONDITIONS THEN EXISTING, AND NO PERSON SHALL DRIVE ANY VEHICLE UPON A HIGHWAY AT SUCH SPEED AS TO ENDANGER THE LIFE, LIMB, OR PROPERTY OF ANY PERSON.

Code of Alabama, Title 36, Section 5.

II

SPEED COUPLED WITH OTHER CIRCUMSTANCES MAY CONSTITUTE WANTON CONDUCT.

In Smith v. Cullen, 116 So.2d 582, 270 Ala. 92, the court, in considering speed relative to entering an intersection, held:

"It is true that circumstances may exist so that merely driving a car at an unlawful and excessive speed would not constitute wanton misconduct. As we understand the evidence, however, the circumstances of the case coupled with speed of defendant's car were such as would reasonably justify the inference that defendant, with knowledge of the probable consequence of injury to plaintiff, recklessly drove at excessive speed and thereby caused the collision."

III

IN ORDER THAT A DEFENDANT BE GUILTY OF WANTON CONDUCT, IT IS

NOT NECESSARY THAT THE DEFENDANT BE SHOWN TO HAVE ENTERTAINED A SPECIFIC DESIGN OR INTENT TO INJURE THE PLAINTIFF.

In Helton v. Easter, 148 So.2d 486, 41 Ala. App. 648, it was held (in affirming the holding in Dean v. Adams, 249 Ala. 319, 30 So.2d 903) that:

"The concept is, of course, universal that to constitute wantonness it is not essential that the defendant should have entertained a specific design or intent to injure the plaintiff. A willful or intentional act may not necessarily be involved in wantonness. It may consist of an inadvertent failure to act by a person with knowledge that someone is probably imperiled and the act or failure to act is in reckless disregard of the consequences. McNickle v. Stripling, 259 Ala. 578, 67 So.2d 832."

Justice Bouldin wrote as follows on this question:

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

IV

THE KNOWLEDGE NECESSARY TO PROVE A WANTON COUNT AGAINST A DEFENDANT MAY BE SHOWN BY CIRCUMSTANCES AND DIRECT PROOF OF KNOWLEDGE IS NOT NECESSARY.

In Smith v. Cullen, 116 So.2d 582, 270 Ala. 92, it was held:

"* * * There of course must be evidence to show or create a reasonable inference that the appellant had knowledge of appellee's peril and of the probable consequences of her conduct and with reckless disregard of such consequences she pursued that conduct.

Knowledge, however, need not be shown by direct proof. It may be made to appear like any other fact by showing circumstances from which the fact of actual knowledge is a legitimate inference. (Citations omitted)

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

If, therefore, the defendant, conscious of the plaintiff's position but ignoring the consequences, heedlessly or recklessly disregarded the peril in which the plaintiff was situated and proceeded at a rapid rate of speed and should have anticipated such a condition, that conduct would amount to wantonness. We hold, therefore, that the evidence adduced made a jury question on this issue. (Citations omitted) Smith v. Lawson, supra, 264 Ala. at pages 392 and 393, 88 So.2d at page 325."

Lewis v. Zell, 181 So.2d 101, 279 Ala. 33, in holding that the jury could have found the defendant guilty of wanton conduct in entering an intersection against a red light and the court stated:

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

Cornelison v. Logan, 46 So.2d 216. The defendant knew of the dangerous circumstances under which he was driving: Namely, a narrow, winding road, a steep downgrade, a dark night without any visibility, and defective condition of his lights. With full knowledge of these conditions, he consciously and intentionally continued to drive his truck at a speed of approximately thirty-five miles per hour or more after his lights went out, for a distance of at least 100 or 150 feet (or a half-block or more), without applying brakes or attempting to slow down, even though he was aware of such dangerous situation and was unfamiliar with the road ahead, and even though the plaintiff had cautioned him about the turn-off to the right. Such facts were sufficient to constitute wantonness.

V

PUNITIVE DAMAGES ARE ASSESSABLE AT THE JURY'S DISCRETION BY WAY OF PUNISHMENT TO THE DEFENDANT FOR THE WRONG HE HAS DONE.

In Avery Freight Lines v. Stewart, 63 So.2d 895, 258 Ala. 524, the purpose of punishment was discussed as being two-fold: (1) to punish the defendants for the wrong committed, if you find they did commit a wrong, of course. If you are reasonably satisfied that they did commit a wrong as charged there in the complaint. And also to deter other people from committing the like wrong. Punishment and the deterring effect.

It was also recognized in Southern Railway Co. v. Sherrill, 232 Ala. 184, 167 So. 731, that punitive damages stimulate diligence and tend to check violence and thereby give greater security to human life.

VI

THE DISTANCE THE CAR SKIDDED, ITS PHYSICAL CONDITION, AND ITS ESTIMATED SPEED ARE ADMISSIBLE FOR THE JURY TO DETERMINE WHETHER OR NOT THE DRIVER OF THE CAR WAS GUILTY OF WANTONNESS IN ITS OPERATION.

Stanley v. Hayes, 276 Ala. 532; 165 So.2d 84.

VII

THE DRIVER OF A MOTOR VEHICLE SHALL NOT FOLLOW ANOTHER VEHICLE MORE CLOSELY THAN IS REASONABLE AND PRUDENT, HAVING DUE REGARD TO THE SPEED OF SUCH VEHICLE AND THE TRAFFIC UPON AND CONDITION OF THE HIGHWAY.

Code of Alabama, Title 36, Section 15.

VIII

A MOTORIST MUST EXERCISE DUE CARE TO ANTICIPATE THE PRESENCE OF OTHERS ON THE HIGHWAY AND NOT TO INJURE HIM AFTER HE IS AWARE OF THEIR PRESENCE.

Holley, et al v. Josey, 82 So.2d 328, Ala.

Respectfully submitted,

CUNNINGHAM, BOUNDS & BYRD

BY:

Robert L. Byrd, Jr.

ROBERT L. BYRD, JR.