

LEO WATERS,  
Plaintiff,

-VS-

THE LEWIS BEAR COMPANY,  
A Corporation,  
Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW

NUMBER

584

COUNT I

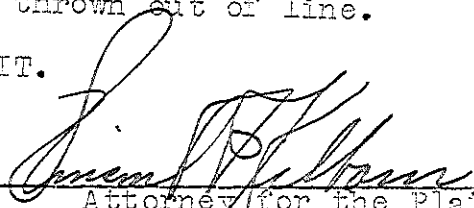
The Plaintiff claims of the Defendant the sum of \$25,000.00 as damages for that heretofore and on, to-wit, December 1, 1939, the Plaintiff was operating an automobile in a northerly direction on Temporary U. S. Highway No. 90, a public highway of the State of Alabama, between Loxley, Alabama, and Stapleton, Alabama, in Baldwin County, and an agent or servant of the Defendant, while acting within the line and scope of his authority and duty as such agent or servant, negligently drove a truck into, upon or against the Plaintiff's automobile and as a direct and proximate consequence of the negligence aforesaid the Plaintiff was injured in that he was struck a severe blow in the back and hips, the cartilage at the top of the Plaintiff's right ear was almost completely severed causing a permanent disfiguration of the Plaintiff's right ear, he suffered a severe cut on the chin causing permanent disfiguration thereof, he was struck on the side of his head above the left ear causing great pain and mental anguish and several of his teeth were loosened. Prior to the time of said injuries the Plaintiff had been suffering from chronic fibrinous pulmonary tuberculosis and in said collision aforementioned the Plaintiff was struck a severe blow on his chest which he avers has caused an acute exacerbation of said tubercular condition. In addition to all of said injuries above mentioned the Plaintiff's automobile was damaged in that it was almost completely demolished, the top was crushed in, the left side was torn almost off and the car was thrown out of line.

WHEREFORE THIS SUIT.

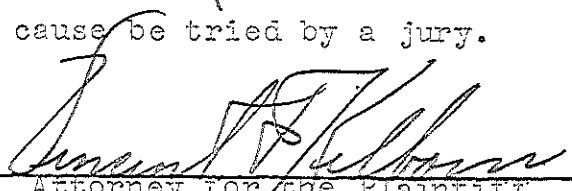
COUNT II

The Plaintiff claims of the Defendant the sum of \$25,000.00 as damages for that heretofore and on, to-wit, the 1st day of December, 1939, the Plaintiff was operating an automobile in a northerly direction on Temporary U. S. Highway No. 90, a public highway of the State of Alabama, between Loxley, Alabama, and Stapleton, Alabama, in Baldwin County, and an agent or servant of the Defendant, while acting within the line and scope of his authority and duty as such agent or servant willfully or wantonly injured the Plaintiff by willfully or wantonly driving a truck upon and against the Plaintiff's automobile at said time and place. And Plaintiff avers that said willful or wanton injuries consist in this that he was struck a severe blow in the back and hips, the cartilage at the top of the Plaintiff's right ear was almost completely severed causing a permanent disfiguration of the Plaintiff's right ear, he suffered a severe cut on the chin causing permanent disfiguration thereof, he was struck on the side of his head above the left ear causing great pain and mental anguish and several of his teeth were loosened. Prior to the time of said injuries the Plaintiff had been suffering from chronic fibrinous pulmonary tuberculosis and in said collision aforementioned the Plaintiff was struck a severe blow on his chest which he avers has caused an acute exacerbation of said tubercular condition. In addition to all of said injuries above mentioned the Plaintiff's automobile was damaged in that it was almost completely demolished, the top was crushed in, the left side was torn almost off and the car was thrown out of line.

WHEREFORE THIS SUIT.

  
Attorney for the Plaintiff

Plaintiff demands that this cause be tried by a jury.

  
Attorney for the Plaintiff

LEO WATERS,  
Plaintiff,

-VS-

THE LEWIS BEAR COMPANY,  
A Corporation,  
Defendant.

COMPLAINT AND SUMMONS

Filed this 7<sup>th</sup> day May 1940  
R. S. Duck  
Clerk-Circuit Court

Now comes The Lewis Bear Company, a Corporation, the Defendant named in this suit, by its attorneys, and accepts service in said cause and waives further notice of same.

Dated this 13th day of May, 1940.

The Lewis Bear Company, a Corporation,

By Richard H. Merritt

J. T. S. Blackmun  
As its Attorneys.

LEO WATERS,

Plaintiff,

VS.

THE LEWIS BEAR COMPANY,  
a Corporation,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW. NUMBER \_\_\_\_.

DEMURRER.

Comes the Defendant in the above entitled cause and demurs to each count of the complaint filed herein, separately and severally, and for grounds of demurrer sets down and assigns, separately and severally, the following:

1. That it does not state facts sufficient to constitute a cause of action against Defendant.

2. For that negligence is therein alleged merely as a conclusion of the pleader.

3. For that it is vague, indefinite and uncertain, in that it does not apprise this Defendant with sufficient certainty against what act or acts of negligence Defendant is called on to defend.

4. For that it does not appear with sufficient certainty what duty, if any, defendant may have owed to the Plaintiff.

5. For that it does not appear with sufficient certainty wherein defendant violated any duty it may have owed to the Plaintiff.

6. For that it does not sufficiently appear that the Defendant owed any duty to the Plaintiff which Defendant negligently failed to perform.

7. For that the averments set up, if true, do not show any liability on the part of the Defendant herein.

8. For that the pleader sets out in what said negligence consisted, and the facts so set out do not show negligence.

9. For that there does not appear sufficient casual connection between Defendant's said breach of duty and Plaintiff's injuries and damages.

10. It affirmatively appears that the alleged negligence on the part of the Defendant was not the proximate cause of the injury.

11. Because, for aught that appears the Plaintiff, by the exercise of reasonable care, could have avoided his injury.

12. No facts are alleged to show that the alleged negligence of the defendant proximately contributed to the alleged injury.

13. The words "willful" and "wanton", as used in the complaint, characterize the act and not the injury as willful and wanton.

14. It does not appear therefrom that the defendant willfully and wantonly injured the plaintiff.

15. It alleges a willful and wanton act but does not allege a willful and wanton injury.

Richard H. Merritt

J. T. Blackburn

Attorneys for Defendant.

DEMURRER.

LEO WATERS,

Plaintiff,

VS.

THE LEWIS BEAR COMPANY, a  
Corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.      NUMBER \_\_\_\_.

*Filed June 12, 1940*  
*R.S. Dush, Clerk*

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW.

NUMBER \_\_\_\_\_

PLEAS.

Now comes the Defendant in the above entitled cause and pleads in short by consent to each count of the Complaint, as follows:

The general issue, with leave to make any defense that might be well and specially pleaded with like leave to reply.

Richard H. Merritt

J. T. S. T. Blackman  
Attorneys for Defendant.

PLEAS.

LMO WATERS,

Plaintiff,

VS.

THE LEWIS BEAR COMPANY, A  
CORPORATION.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW.      NUMBER \_\_\_\_.

*Filed Aug 22 1940*  
*R. M. Smith*  
*Clk*



LEO WATERS,

Plaintiff,

-VS-

THE LEWIS BEAR COMPANY,  
A Corporation,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW.

NUMBER \_\_\_\_\_

Comes the Plaintiff in the above styled cause  
and propounds the following interrogatories to the  
Defendant under the authority of Section 7764 of the  
Code of Alabama:

ONE: What is the correct corporate name of  
the Defendant?

TWO: Please state: (a) whether or not the  
Defendant is authorized to do business in the State of  
Alabama. (b) If so, is it doing business in Alabama?  
(c) If your answer to question TWO (a) or TWO (b) is  
yes, state whether the Defendant has complied with the  
provisions of Sections 7209, 7210, 7214, 7215, 7216,  
7218, 7219 and 7220(as amended by the Acts of 1927 and 1931)  
of the Code of Alabama of 1923.

THREE: If your answer to question TWO (a) or  
TWO (b) is in the negative please state whether or not  
the Defendant is in fact doing business in the State  
of Alabama, by agent or otherwise, and how long has the  
Defendant been doing business in such manner by agent or  
otherwise? If the Defendant has been doing business in  
Alabama without being authorized and licensed to do  
business in this State give the name, address and post  
office address of such agent.

FOUR: Please state the name, age, race and  
address of the driver who was operating the Defendant's  
truck at the time of the accident concerning which this  
suit is filed, which is alleged to have occurred on  
December 1, 1939, between Loxley and Stapleton in Baldwin  
County, Alabama.

FIVE: How long has the man inquired about in question number four been working for the Defendant?

SIX: Please state whether or not the man who was driving the Defendant's truck at the time of the accident complained of, had a license to operate a motor vehicle on the highways of Alabama.

SEVEN: Please state whether or not the driver of said truck at such time and place had ever been convicted of any offense involving moral turpitude.

EIGHT: Please state whether or not the driver of the truck of the Defendant involved in this accident had ever been convicted of violating any provision of the Alabama Highway Code.

NINE: Please state whether, at the time this accident occurred, there was anyone in the Defendant's truck other than the driver thereof. If so, please give the name, age, race and residence of the party or parties other than the driver who were in the truck of the Defendant at the time said accident occurred.

TEN: Please describe the truck belonging to the Defendant which was involved in this accident. In answering this question please give the tonnage of the truck proper and a full description of any trailer attached to the truck.

ELEVEN: Please state specifically the exact number of lights on said truck and the trailer attached, if any, and the places thereon where said lights were situated.

TWELVE: Please state whether said truck carried an Alabama license tag, if so, give the year and number of said tag.

THIRTEEN: Please state whether said truck, or trailer attached thereto, or both, were empty or loaded at the time of the accident.

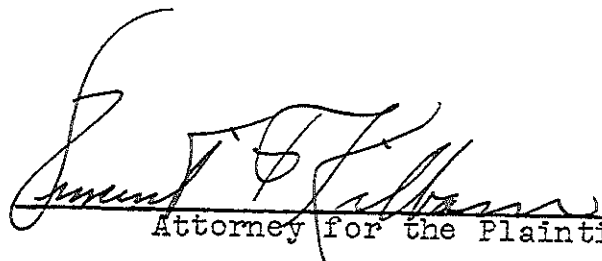
FOURTEEN: If your answer to question thirteen

is that the truck or trailer or both were loaded at the time, please state the cargo of said truck or trailer or both and the approximate weight of said cargo.

FIFTEEN: Please attach to the answers of these interrogatories a photograph, if available, of the truck and trailer involved in this accident. If no photograph of said truck and trailer are available please furnish, if possible, a photograph of a truck and trailer belonging to Defendant with approximately the same appearance.

SIXTEEN: Please state whether or not said truck, at the time of the accident, was equipped with a governor. If so, please state the maximum speed at which the governor would permit the truck to be operated.

SEVENTEEN: Please state whether or not the truck and trailer, or either of them showed any signs of any blow or blows thereon or any injury thereto after this accident. If your answer to this question is in the affirmative please describe the marks, dents, injuries or blows on said truck or trailer or both of them, describing each with certainty as to location, apparent direction of the blow and the depth, length or damage caused by said blow or blows, injuries and dents.

  
Attorney for the Plaintiff

STATE OF ALABAMA  
COUNTY OF MOBILE

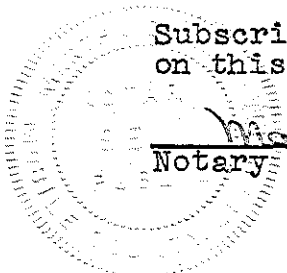
Before me, Maudie Dumas, a Notary Public in and for said State and County, personally appeared Vincent F. Kilborn, known to me, who, being by me first duly sworn deposes and says that he is the attorney for the Plaintiff in the above styled cause and that the answers to the above interrogatories propounded by the Plaintiff to the Defendant if well and truly made are material testimony for the Plaintiff in the prosecution

of said suit.

James P. Kilham

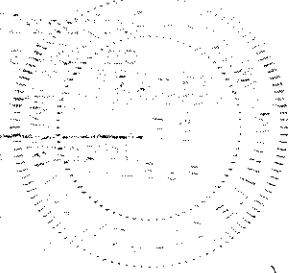
Subscribed and sworn to before me  
on this 6<sup>th</sup> day of May, 1940.

Marion D. Dumas  
Notary Public, Mobile County, Alabama.



directed to

on record of your own books  
and records, and you are to



*Interrogatory*

Filed this *13th* day *May* 19 *40*  
*W. S. Clark*  
Clerk of Court

Now comes The Lewis Bear Company, a Corporation, the Defendant named in this suit, by its attorneys, and accepts service of the within interrogatories, and waives further notice of same.  
Dated this 13th day of May, 1940.

The Lewis Bear Company, a Corporation,  
By Richard H. Merritt  
J. B. Tashkum  
As its Attorneys.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW.  
NUMBER \_\_\_\_\_

LEO WATERS, )  
Plaintiff, )  
VS. )  
THE LEWIS BEAR COMPANY, )  
A Corporation, )  
Defendant. )  
-----

Now comes the defendant in the above styled cause  
and for answer to the interrogatories propounded to it in  
this case says:

ONE: The Lewis Bear Company, Inc.

TWO: No. That is, only as a citizen corporation of  
Florida but not by any qualification under Alabama statute.

THREE: The defendant does business in the State of  
Alabama by sending its trucks and drivers to specific points  
to deliver previous orders but has no agents residing in Alabama.

FOUR: Robert Williams; 39 years of age; 908 N. Hayne  
Street, Pensacola; colored.

FIVE: A number of years.

SIX: Driver had Florida State driver's license only.

SEVEN: No.

EIGHT: No.

NINE: Herman Skanes; 30 years of age; 1317 N. 7th  
Avenue, Pensacola; colored.

TEN: 1940 Chevrolet Truck, 1½ ton dual tractor with  
trailer, 133 Chasis and cab--not over 25 ft. and not over 7 tons.

ELEVEN: Two regular Chevrolet head lights, two run-  
ning lights on front fenders, three running lights on top of  
cab, one regular tail light above license on truck and same on  
trailer. Two running lights on extreme outer edges of rear

of trailer.

TWELVE: No.

THIRTEEN: A little over half loaded.

FOURTEEN: 3 boxes 60-70 prunes, 2 boxes 40-50 prunes,  
15 sacks large brazil nuts, 100 cases 48-ls tall mackerel.  
Approximate weight of cargo: 8580 lbs.

FIFTEEN: Photograph of truck and trailer involved  
is attached.

SIXTEEN: Yes, 45 miles per hour.

SEVENTEEN: Yes. The rear-view mirror extending out  
from the left extremity of the wind shield or cowl was struck,  
then the blow started at the side of the trailer and proceeded  
back with increasing intensity to the end of the trailer.

THE LEWIS BEAR COMPANY, INC.

By

Ben Goodman  
Secretary

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

Before me the undersigned authority within and for  
said County and State personally appeared Ben Goodman, who  
after being by me first duly and legally sworn deposes and  
says that he is Secretary of The Lewis Bear Company, Inc.,  
that he has knowledge of the answers to the foregoing inter-  
rogatories and that the same are true.

Ben Goodman

Sworn to and subscribed before  
me this 11 day of July, A. D. 1940.

Burt Stolzer NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES FEBRUARY 6, 1942  
Notary Public  
My commission expires \_\_\_\_\_

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW  
NUMBER \_\_\_\_\_

LEO WATERS,  
Plaintiff,

VS.

THE LEWIS BEAR COMPANY,  
A corporation,  
Defendant.

\* \* \* \* \*

ANSWERS TO INTERROGATORIES

\* \* \* \* \*

*Filed July 12 1940*  
*Richard*  
*Clark*

LAW OFFICES  
RICHARD H. MERRITT  
PENSACOLA, FLORIDA



STATE OF ALABAMA

BALDWIN COUNTY

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TO ANY SHERIFF OF THE STATE OF ALABAMA-Greetings:

You are hereby commanded to summon the  
Lewis Bear Company, 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 Leo Waters.

Witness my hand this 7<sup>th</sup> day of May, 1940.

*R. S. Duck*

Clerk of the Circuit Court of  
Baldwin County, Alabama.

*By: Nellie Thompson, Deputy Clerk*

Sept Term, 194-0

No. 584 VS. Lewis Blair Co -

584

CLERK'S FEES:		SUMMARY OF FEES, COSTS, AND JUDGMENT	
	AMOUNT	Fees and Costs in Circuit Court:	AMOUNT
<b>Fees in Circuit Court—</b>		Clerk's Fees .....	6 45
Docketing Cause, One Fee only of..... .25	35	Ex-Clerk's Fees .....	
Issuing Summ. and Complt., each.....1.25	25	Sheriff's Fees .....	
Issuing Alias or Branch Summons & Complaint, each 1.25	30	Ex-Sheriff's Fees .....	
Making Copies Thereof, Minimum, each ..... .30		Witness Fees .....	
Making Copies Thereof, over 200 Words, per 100 words .15		Commissioner's Fees .....	
Entering Sheriff's Returns, each ..... .20	20	Garnishee's Fees .....	
Entering Appearances, each ..... .20		Publisher's Fees .....	
Certifying Affidavits, each ..... .25		Court Reporter's Fees, Per Day or fraction thereof .50	
Issuing Attachments with Bond, each .....1.00		Trial Tax .....3.00	3 00
Orders of Publication, each ..... .50			
Copy of Same, each ..... .50			
Issuing Summ. to Garnishee, each ..... .50			
Copy of Same, Per 100 Words ..... .15			
Swearing Garnishee, Etc., Per 100 words, .15, Minimum ..... .50			
Release of Garnishee, each ..... .25			
Issuing Scire Facias or Similar Notice, each ..... .75			
Copies of Same, Per 100 Words..... .15			
Making Copy of Interrogatories, Per 100 Words, .15; Minimum ..... .50			
Commission to Take Depositions, each ..... .75			
Filing Depositions, Each Pkg., ..... .10			
Endorsing Each Package of Depositions Opened .... .10			
Issuing Subpoenas, Each ..... .30			
Issuing Witness Certificates, each..... .25			
Entering Continuances, each ..... .10	40		
Filing Papers, each ..... .10	75		
Other Orders of Court, each ..... .30	300		
Trial and Incidents ..... .75	3 80		
Entering Judgment, each ..... .30			
Complete Record, Per 100 Words ..... .15			
Taking Bonds, each ..... .75			
Certificate of Appeal ..... .25			
Transcript to Supreme Court, Per 100 Words ..... .15			
Additional Copies of Same, Per 100 Words ..... .05			
Issuing Executions or Copy Thereof, each ..... .50			
Entering Sheriff's Return, Per 100 Words, .15; Minimum ..... .20			
Total Clerk's Fees .....	6 45		
<b>SHERIFF'S FEES:</b>			
Serving and Returning Summons or Writ, each .....1.50			
Levying Attachment, each .....3.00			
Entering and Returning Same, each ..... .25			
Seizing Personal Property Under Writ of Detinue ..3.00			
Taking and Approving Bonds, each.....1.09			
Summoning Garnishee and Return, each .....1.50			
Serving and Returning Sci. Fa. or Notice, Each ...1.50			
Serving and Returning Subpoenas, each ..... .65			
Serving Contempt Attachment, each .....1.50			
Inpaneling Jury..... .75			
Collecting Execution for Costs Only, each.....1.50			
Coms. for Collecting Money on Executions .....			
Executing Writs of Possession, each.....5.00			
Making Deed to Real Estate Sold, each. ....2.50			
Total Sheriff's Fees .....			

10235  
9.45  
1834 415

1025  
945  
83445



Answer #15