

H. W. GRAHAM,

Plaintiff

versus

TOWN OF FAIRHOPE, ALABAMA,  
a municipal corporation,  
and LOUIS TIMNEY,

Defendants

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

LAW SIDE

NO. 1549

ANSWER

Come the defendants in the above styled cause and, for answer to the complaint, interpose the following separate and several pleas:

1. That they are not guilty.

2. That at the time and place alleged in the complaint the plaintiff himself negligently went and remained in the path of the said motor truck or motor vehicle, in dangerous proximity thereto, and thereby proximately contributed to the alleged accident and injuries.

Smith, Head, Arendall, & Bessie

Walker Mitchell

Chas. H. Stone  
Attorneys for Defendants

FILED  
OCT 4 1950  
ALICE J. DUCK, Clerk

RECORDED

H. W. GRAHAM,

Plaintiff,

vs.

TOWN OF FAIRHOPE, ALABAMA,  
A Municipal Corporation,  
and LOUIS TIMNEY,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

LAW SIDE.

NO. 1549.

Come the Defendants in the above styled cause, separately and severally and demur to Count One of the Complaint filed in said cause and assign the following separate and several grounds, viz:

1. That said Complaint fails to aver any facts constituting negligence on the part of the Defendants or either of them.

2. That said Complaint fails to state that the Plaintiff was where he had a right to be.

3. That said Complaint fails to allege any duty owing by the Defendants, or either of them, to the Plaintiff.

4. For aught appearing from the Complaint the Plaintiff was a trespasser at the time and place complained of.

5. That the allegation that "while the said Defendant Town's said motor truck or motor vehicle was being so used and while the said Louis or Chip Timney, the said agent or servant of the said Town, while acting within the line and scope of his employment, so negligently operated the said motor grader", is indefinite and uncertain.

6. That the allegation that "while the said Defendant Town's said motor truck or motor vehicle was being so used and while the said Louis or Chip Timney, the said agent or servant of the said Town, while acting within the line and scope of his employment, so negligently operated the said motor grader", is elliptical.

7. That said Complaint is vague and indefinite.

8. That said Complaint does not allege any duty owing by the Defendants, or either of them, to the Plaintiff or sufficient facts from which such duty would arise.

9. It is not alleged in the Complaint that the Plaintiff was injured on or near the public street.

10. It is not sufficiently alleged in the Complaint where the Plaintiff was injured.

11. It is not sufficiently alleged in the Complaint the time when the Plaintiff was injured or whether it was in the day-time or nighttime.

12. It is not alleged that the Defendant, Louis Timney, was acting within the line and scope of his employment at the time the Plaintiff was injured.

13. That said Complaint fails to state a cause of action.

14. For aught that appears from the Complaint the Defendant, Louis Timney, was not engaged in work for the Town of Fairhope, at the time of the injuries complained of.

Emile R. Gaudin & Robert

Walter M. Gaudin

James S. Gaudin  
Attorneys for Defendants.

RECORDED

RECORDED

DEMURRER

W. H. GRAHAM,

Plaintiff,

vs.

TOWN OF FAIRHOPE, ALABAMA,  
A Municipal Corporation, and  
LOUIS TIMNEY,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

LAW SIDE.

NO. 1549.

Filed September 13th, 1950.

Alice H. Smith  
Clerk.

LAW OFFICES  
HYBART, CHASON & STONE  
BAY MINETTE, ALABAMA

STATE OF ALABAMA )  
BALDWIN COUNTY )  
TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon the TOWN OF FAIRHOPE, ALABAMA, a Municipal Corporation, and LOUIS TIMNEY to appear within thirty (30) days from the service of this writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the complaint of H. W. GRAHAM.

WITNESS my hand this 17th day of August, 1950.

*Miss F. H. ...*  
Clerk of the Circuit Court.

H. W. GRAHAM, )  
Plaintiff, )  
VS. )  
TOWN OF FAIRHOPE, ALABAMA, )  
A Municipal Corporation, )  
and LOUIS TIMNEY, )  
Defendants. )

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

1. The Plaintiff claims of the Defendants Ten Thousand

Dollars (\$10,000.00) damages for that heretofore on, to-wit, the 22nd day of August, 1949, at the following place, namely, on Bel-  
langee Avenue between Bancroft and Section Streets in the Town of  
Fairhope, Baldwin County, Alabama, South of the building which was  
then being constructed for Greer's Store, which was a public road  
or street in the said town, the Defendant Town's agent or servant,  
Louis Timney, who is also known as and who is sometimes referred to

as Chip Timney, while acting within the line and scope of his em-  
ployment, was engaged in and about the operation of a motor grader  
for the said Town, which was being used at the said time for the  
said Town in building, repairing or maintaining a portion or part  
of the public streets of the said Defendant Town and the Plaintiff  
averts that while said Defendant Town's said motor truck or motor  
vehicle was being so used and while the said Louis or Chip Timney,

the said agent or servant of the said Town, while acting within the line and scope of his employment, so negligently operated the said motor grader that the same was caused to run over, upon or against the Plaintiff and as a proximate result of the said negligence, both leg bones and one ankle bone in one of the Plaintiff's legs were broken, he was permanently injured, he was confined to a hospital as a result of the said negligence for approximately eight (8) weeks, caused to incur expenses for doctor bills, hospital bills, medicine and to lose time from his work, all to his damage as aforesaid.

The Plaintiff further alleges and avers that on February 20, 1950 the Plaintiff filed with the Town Clerk of the Town of Fairhope, Alabama a sworn statement, stating substantially the manner in which the injuries complained of were received, and the day, time and place where the accident occurred, out of which the damages are claimed.

J. B. D. Dushum  
Attorney for Plaintiff.

Plaintiff demands a trial of the said cause by jury.

J. B. D. Dushum  
Attorney for Plaintiff.

Received in Sheriff's Office  
this 17 day of Aug, 1950  
TAYLOR WILKINS, Sheriff

8-18-1950  
Serving copy of within Summons and  
Complaint on

Louis Timney  
Mayor, Mobile City  
Clerk of the Town of  
Fairhope, a Municipal Corp.  
Taylor Wilkins Sheriff  
By J. F. Hall Deputy Sheriff

Make the jury find  
for the Plaintiff and  
assess his damages  
in the amount of \$500.00

John P. Gottle  
Foreman

Wm. Moore

1549  
Summons and Complaint

H. W. GRAHAM,

Plaintiff,

VS.

TOWN OF FAIRHOPE, ALABAMA, a  
Municipal Corporation, and  
LOUIS TIMNEY,

Defendants.

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

FILED

AUG 17 1950

ALICE J. DUCK, Clerk

J. B. BLACKBURN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

RECORDED

549



71549  
Braham vs. Town of Fairhope.

## JURY LIST — CIVIL JURY CASES

| No.            | Name                              | Occupation                                   | Residence Address       |
|----------------|-----------------------------------|--|-------------------------|
| <del>1.</del>  | <del>HEYDEN J. LEWIS,</del>       | <del>Clerk, Fairhope</del>                   | <del>1916</del>         |
| 2.             | ELBERT E. KILLION,                | Carpenter, Foley                             |                         |
| <del>3.</del>  | <del>JOE TRIGONE,</del>           | <del>Gas Station, Daphne</del>               | <del>1916</del>         |
| <del>4.</del>  | <del>JESSE BURKE,</del>           | <del>Merchant, Fairhope</del>                | <del>191</del>          |
| 5.             | OWEN EUBANKS,                     | Mechanic, Bay Minette                        |                         |
| <del>6.</del>  | <del>PAT BROCK,</del>             | <del>Livestock Dealer, Loxley</del>          | <del>194</del>          |
| <del>7.</del>  | <del>VIRGIL O. McMEHLAN,</del>    | <del>Farmer, Bay Minette</del>               | <del>1911</del>         |
| 8.             | JOHN GOTTLER,                     | Farmer, Elberta                              |                         |
| 9.             | RAYMOND ARD,                      | Farmer, Foley                                |                         |
| <del>10.</del> | <del>JIM HENDERSON,</del>         | <del>Carpenter, Fairhope</del>               | <del>1916</del>         |
| <del>11.</del> | <del>ORLANDO J. MANCI,</del>      | <del>Farmer, Bay Minette</del>               | <del>192</del>          |
| <del>12.</del> | <del>JAMES KANE,</del>            | <del>Farmer, Silverhill</del>                | <del>1915</del>         |
| <del>13.</del> | <del>RED B. BRYARS,</del>         | <del>Carpenter, Perdido</del>                | <del>1913</del>         |
| <del>14.</del> | <del>RALPH GREEN,</del>           | <del>Farmer, Loxley</del>                    | <del>1913</del>         |
| <del>15.</del> | <del>WILLIAM C. OSBORNE,</del>    | <del>Laborer, Foley</del>                    | <del>1912</del>         |
| 16.            | FRANK KNOWLES,                    | Electrician, Bay Minette                     |                         |
| 17.            | HURLEY ARD,                       | Farmer, Robertsdale                          |                         |
| <del>18.</del> | <del>JOHN ENGLISH,</del>          | <del>Farmer, Foley</del>                     |                         |
| <del>19.</del> | <del>TURPEN BANKESTER,</del>      | <del>Railroad Employee, Robertsdale</del>    | <del>1915</del>         |
| <del>20.</del> | <del>EMMETT DYAS,</del>           | <del>Farmer, Stapleton</del>                 | <del>1913</del>         |
| <del>21.</del> | <del>C. AGNEW THOMPSON,</del>     | <del>Turpentine, Bay Minette</del>           | <del>191</del>          |
| <del>22.</del> | <del>TOM HOBBS,</del>             | <del>Farmer, Robertsdale</del>               | <del>1915</del>         |
| <del>23.</del> | <del>BENJAMIN F. DUCKWORTH,</del> | <del>Pool Room Operator, Robertsdale</del>   | <del>1912</del>         |
| 24.            | NOLAN COOPER, JR.,                | Farmer, Robertsdale                          |                         |
| 25.            | PAUL HAUPT, JR.,                  | Farmer, Elberta                              |                         |
| <del>26.</del> | <del>LOUIS LYSEK,</del>           | <del>Carpenter, Magnolia Springs</del>       | <del>1911</del>         |
| <del>27.</del> | <del>OSCAR SKOAGLAND,</del>       | <del>Merchant, Robertsdale</del>             | <del>1915</del>         |
| <del>28.</del> | <del>ALEX T. STUCKEY,</del>       | <del>Saw Mill, Bay Minette</del>             | <del>1912</del>         |
| 29.            | BRAXTON PALMER,                   | Farmer, Robertsdale                          |                         |
| <del>30.</del> | <del>GEORGE HEIDELBERG,</del>     | <del>Farmer, Robertsdale</del>               | <del>1918</del>         |
| <del>31.</del> | <del>ARTHUR MANNICH,</del>        | <del>Merchant, Fairhope</del>                |                         |
| <del>32.</del> | <del>LOUIS E. CHILDRESS,</del>    | <del>Farmer, Fairhope</del>                  | <del>1916</del>         |
| <del>33.</del> | <del>AMBROSE HAMBERG,</del>       | <del>Clerk, Foley</del>                      | <del>1917</del>         |
| <del>34.</del> | <del>ARTHUR JOHN RICH,</del>      | <del>Lineman, Foley</del>                    | <del>1919</del>         |
| <del>35.</del> | <del>C. S. DUBOSE,</del>          | <del>Farmer, Robertsdale</del>               | <del>1914</del>         |
| 36.            | CHARLES WENZEL,                   | Merchant, Foley                              |                         |
| <del>37.</del> | <del>HENRY E. YENNE,</del>        | <del>Farmer, Point Clear</del>               | <del>1914</del>         |
| 38.            | LUTHER ARANT,                     | Postal Clerk, Foley                          |                         |
| <del>39.</del> | <del>MATT BROADUS,</del>          | <del>Daphne</del>                            | <del>1915</del>         |
| <del>40.</del> | <del>A. R. CROMARTIE,</del>       | <del>Clerk, Bay Minette</del>                | <del>1913</del>         |
| <del>41.</del> | <del>FRED McKENZIE,</del>         | <del>Bridge Tinder, Magnolia Springs</del>   | <del>1914 8 12 36</del> |
| <del>42.</del> | <del>AXEL RUNDQUIST,</del>        | <del>Ins. Salesman, Silverhill</del>         | <del>191</del>          |
| <del>43.</del> | <del>FRED DUCK,</del>             | <del>Ship Yard Worker, Crossroads</del>      | <del>1915</del>         |
| <del>44.</del> | <del>MCNEIL BUSH,</del>           | <del>Merchant, Stapleton</del>               | <del>1919</del>         |
| <del>45.</del> | <del>P. M. LEATHERWOOD,</del>     | <del>Clerk, Daphne</del>                     | <del>1922</del>         |
| 46.            | WILLIAM A. MILLER,                | Barber, Bay Minette                          |                         |
| <del>47.</del> | <del>B. B. KENNARD,</del>         | <del>Gulf Service Manager, Bay Minette</del> | <del>1913</del>         |
| <del>48.</del> | <del>J. BRUCE BEVERIDGE,</del>    | <del>Merchant, Bay Minette</del>             | <del>1914</del>         |
| <del>49.</del> | <del>CHARLES A. BODDEN,</del>     | <del>Mgt. Ala. Power Co., Bay Minette</del>  | <del>1916</del>         |
| <del>50.</del> | <del>Wm. H. Braham,</del>         | <del>Attorney, Fairhope</del>                | <del>1918</del>         |
| 51.            | XXXX XXXX XXXX XXXX               |  |                         |
| 52.            | XXXX XXXX XXXX XXXX               |  |                         |