2148

AMENDED SUMMONS AND COMPLAINT

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons the INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA, by serving a copy of this writ on H. A. Longshore, the Superintendent of Insurance for the State of Alabama, 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 CHARLIE HATHINGTON.

WITNESS my hand, this 27th day of April, 1954.

Alice Jenkins
Clerk

CHARLIE HATHINGTON PLAINTIFF VS THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA, DEFENDANT	)))))))	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, AT LAW

1.

The Plaintiff claims of the Defendant ONE THOUSAND ($1000.00) DOLLARS with interest due on a policy whereby the Defendant on to-wit, September 6, 1952, insured the life of the Plaintiff for accidental death for the sum of Two Thousand ($2000.00) Dollars, and in said policy agreed to pay the Plaintiff the sum of One Thousand ($1000.00) Dollars, if Plaintiff suffered the loss of one eye resulting from an accident, provided such loss occurred within ninety days from such accident. The Plaintiff avers that while said policy was in force and effect the Plaintiff suffered the loss of one eye which was the result of an accident and within ninety days from the accident; of which the Defendant had written notice, and the Plaintiff has failed and refused to pay, as it promised to do, the sum of ONE THOUSAND ($1000.00) DOLLARS and said policy is the property of the Plaintiff; Wherefore he sues.

WILTERS & BRANTLEY
BY: Albert M Brantley
Attorney for the Plaintiff

The Plaintiff demands a trial by jury.

WILTERS & BRANTLEY
BY: Albert M Brantley
Attorney for the Plaintiff

644

Serve: H.A. Longshore
Montgomery, Ala.
no 2148

RECEIVED IN OFFICE

MAY 7 1954

G. A. MOSLEY, Sheriff

EXECUTED BY SERVING 2
COPIES OF THE WITHIN
H.A. Longshore
Com. of Ins. of
State of Ala.
5-7-54

G. A. Mosley
Sheriff Montgomery County
By Mathis & Stearns.
Deputy Sheriff

FILED
APR 27 1954
ALICE J. DUCK, Clerk

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA, 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 CHARLIE HATHINGTON.

WITNESS my hand, this 14 day of December, 1953.

Bessie J. Bennett
Clerk

CHARLIE HATHINGTON	)	
PLAINTIFF	)	IN THE CIRCUIT COURT OF
VS	)	BALDWIN COUNTY, ALABAMA,
THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA	)	AT LAW
DEFENDANT	)	

1.

The Plaintiff claims of the Defendant ONE THOUSAND ($1000.00) DOLLARS with interest due on a policy whereby the Defendant on to-wit, September 6, 1952, insured the life of the Plaintiff for accidental death for the sum of Two Thousand ($2000.00) Dollars, and in said policy agreed to pay the Plaintiff the sum of One Thousand ($1000.00) Dollars, if Plaintiff suffered the loss of one eye resulting from an accident, provided such loss occurred within ninety days from such accident. The Plaintiff avers that while said policy was in force and effect the Plaintiff suffered the loss of one eye which was the result of an accident and within ninety days from the accident; of which the Defendant had written notice, and the Plaintiff has failed and refused to pay, as it promised to do, the sum of ONE THOUSAND ($1000.00) DOLLARS and said policy is the property of the Plaintiff; Wherefore he sues.

WILTERS & BRANTLEY
By: Albert M Brantley
Attorney for the Plaintiff

The Plaintiff demands a trial by jury.

WILTERS & BRANTLEY
By: Albert M Brantley
Attorney for the Plaintiff

No. 2148

618

RECEIVED IN OFFICE

APR 28 1954

G. A. MOSLEY, Sheriff

EXECUTED BY SERVING A COPY OF THE WITHIN

W. A. Longshore

Com. of Ins. of

State of Ala.

4-28-54.

G A Mosley

Sheriff Montgomery County.

By Mathis Stearns

Deputy Sheriff.

Filed

12-14-54

Ausfrence

Clerk

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA, 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 CHARLIE HATHINGTON.

WITNESS my hand, this 14th day of December, 1953.

Clerk

CHARLIE HATHINGTON	)	
		IN THE CIRCUIT COURT OF
PLAINTIFF	)	
		BALDWIN COUNTY, ALABAMA,
VS	)	
		AT LAW
THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA	)	
DEFENDANT	)	

1.

The Plaintiff claims of the Defendant ONE THOUSAND ($1000.00) DOLLARS with interest due on a policy whereby the Defendant on to-wit, September 6, 1952, insured the life of the Plaintiff for accidental death for the sum of Two Thousand ($2000.00) Dollars, and in said policy agreed topay the Plaintiff the sum of One Thousand ($1000.00) Dollars, if Plaintiff suffered the loss of one eye resulting from an accident, provided such loss occurred within ninetydays from such accident. The Plaintiff avers that while said policy was in force and effect the Plaintiff suffered the loss of one eye which was the result of an accident and within ninety days from the accident; of which the Defendant had written notice, and the Plaintiff has failed and refused to pay, as it promised to do, the sum of ONE THOUSAND ($1000.00) DOLLARS and said policy is the property of the Plaintiff; Wherefore he sues.

WINTERS & BRANTLEY
BY: Allen M Brantley
Attorney for the Plaintiff

The Plaintiff demands a trial by jury.

WINTERS & BRANTLEY
BY: Allen M Brantley
Attorney for the Plaintiff

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA, 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 CHARLIE HATHINGTON.

WITNESS my hand, this 14th day of December, 1953.

Clerk

CHARLIE HATHINGTON	)	
		IN THE CIRCUIT COURT OF
PLAINTIFF	)	
		BALDWIN COUNTY, ALABAMA,
VS	)	
		AT LAW
THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA	)	
DEFENDANT	)	

1.

The Plaintiff claims of the Defendant ONE THOUSAND ($1000.00) DOLLARS with interest due on a policy whereby the Defendant on to-wit, September 6, 1952, insured the life of the Plaintiff for accidental death for the sum of Two Thousand ($2000.00) Dollars, and in said policy agreed topay the Plaintiff the sum of One Thousand ($1000.00) Dollars, if Plaintiff suffered the loss of one eye resulting from an accident, provided such loss occurred within ninetydays from such accident. The Plaintiff avers that while said policy was in force and effect the Plaintiff suffered the loss of one eye which was the result of an accident and within ninety days from the accident; of which the Defendant had written notice, and the Plaintiff has failed and refused to pay, as it promised to do, the sum of ONE THOUSAND ($1000.00) DOLLARS and said policy is the property of the Plaintiff; Wherefore he sues.

WINTERS & BRANTLEY
BY: Attorney for the Plaintiff

The Plaintiff demands a trial by jury.

WINTERS & BRANTLEY
BY: Attorney for the Plaintiff

Received in Sheriff's Office
this 14 day of Dec, 1953
TAYLOR WILKINS, Sheriff

Returned 1 day of July 1954
not found in my county after diligent search and inquiry.

Taylor Wilkins, Sheriff
Taylor Wilkins
Deputy Sheriff

No 2148

CHARLIE HATHINGTON

PLAINTIFF

VS

THE INDEPENDENT LIFE AND
ACCIDENT INSURANCE COMPANY
OF JACKSONVILLE, FLORIDA

DEFENDANT

BILL OF COMPLAINT

FILED
DEC 14 1953
DAVID L. DUCK, Clerk

CHARLIE HATHINGTON,	
Plaintiff,	
vs.	IN THE CIRCUIT COURT OF
THE INDEPENDENT LIFE & ACCIDENT INSURANCE COMPANY,	BALDWIN COUNTY, ALABAMA
	AT LAW NO. 2148
Defendant.	

Comes now the Defendant in the above styled cause, by its Attorneys, and respectfully moves this Honorable Court to enter an order of continuance in the above styled cause which has been set for trial on September 15, 1954, and as grounds for this motion respectfully represents and shows unto this Honorable Court as follows:

1. That the Defendant had a subpoena issued for one Robert Washington on September 3, 1954, by the Clerk of the Circuit Court of Baldwin County, Alabama, and said subpoena was returned to the said Clerk of the Circuit Court of Baldwin County, Alabama, marked "not found in my County", and signed by Taylor Wilkins, Sheriff of Baldwin County, Alabama. That the said Robert Washington is a material and competent witness for the Defendant in this cause and the evidence which he is expected to give in the same will be material and competent and there is a probability that the testimony can be obtained at a future date to which the cause may be continued or postponed through the service upon him of interrogatories propounded by the Defendant to him on the ground that he resides out of the State of Alabama, which the said Defendant is informed and believes is true, and that he presently resides in Chicago, Illinois, according to the information available to the counsel for the Defendant. That this cause was placed on the docket of this Honorable Court and set for trial on the above date approximately thirty (30) days ago, to-wit; August 14, 1954, and due diligence has been exercised by the counsel for the Defendant to secure the absent witness and the evidence to be presented by his testimony in that the counsel for the

Defendant did not learn that the said Robert Washington had left the State of Alabama until such time has would have made it impossible to have propounded interrogatories to him and to have secured the issuance of a commission to take such testimony after due notice to the Plaintiff or his attorneys before the date set for the trial of this case. The evidence expected to be illicited from this witness would not and is not merely cumulative or impeaching and this motion is not made for the purpose of delaying the trial of this cause. That said witness is expected to testify to facts which will bring this case within an exception in the accident policy sued on and this Defendant cannot properly defend this litigation nor can its counsel adequately represent said Defendant without the benefit of said testimony.

Respectfully submitted,

H. T. FITZPATRICK, JR.

and

CHASON & STONE

By: Malcolm P. Stone

Filed 9/15/19
Murray
Judge

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA, 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 CHARLIE HATHINGTON.

WITNESS my hand, this _____ day of December, 1953.

_____
Clerk

CHARLIE HATHINGTON PLAINTIFF VS THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA DEFENDANT	)))))))	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, AT LAW

1.

The Plaintiff claims of the Defendant ONE THOUSAND ($1000.00) DOLLARS with interest due on a policy whereby the Defendant on to-wit, September 6, 1952, insured the life of the Plaintiff for accidental death for the sum of Two Thousand ($2000.00) Dollars, and in said policy agreed topay the Plaintiff the sum of One Thousand ($1000.00) Dollars, if Plaintiff suffered the loss of one eye resulting from an accident, provided such loss occurred within ninetydays from such accident. The Plaintiff avers that while said policy was in force and effect the Plaintiff suffered the loss of one eye which was the result of an accident and within ninety days from the accident; of which the Defendant had written notice, and the Plaintiff has failed and refused to pay, as it promised to do, the sum of ONE THOUSAND ($1000.00) DOLLARS and said policy is the property of the Plaintiff; Wherefore he sues.

WILTERS & BRANTLEY
BY: Gilbert M Brantley
Attorney for the Plaintiff

The Plaintiff demands a trial by jury.

WILTERS & BRANTLEY
BY: Gilbert M Brantley
Attorney for the Plaintiff

No 2148

CHARLIE HATHINGTON

PLAINTIFF

VS

THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDAN

DEFENDANT

BILL OF COMPLAINT

FILED
DEC 14 1953
ALICE L. BUCK, Clerk

Clerk

STATE OF ALABAMA
MONTGOMERY COUNTY

COMES NOW, CHARLIE HATHINGTON
HOCHSTETLER & SPEARS
ATTORNEYS AT LAW
MONTGOMERY, ALABAMA

Filed this day, the 14th day of December, 1953.

Clerk

Now comes the plaintiff, CHARLIE HATHINGTON, and sues the defendant, THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY OF JACKSONVILLE, FLORIDA, a corporation, and shows unto the Court as follows:

1. Plaintiff is a citizen and resident of the State of Alabama, and the defendant is a foreign corporation doing business in the State of Alabama.

2. On the 1st day of December, 1952, the Plaintiff was an employee of the defendant company and was employed with the defendant company as a policy writer on a weekly basis, and was so employed on the date of the accident hereinafter set forth.

3. On the 1st day of December, 1952, the Plaintiff was in the course and scope of his employment with the defendant company when he was struck in the eye by a piece of glass while he was in the performance of his duties as a policy writer for the defendant company.

4. As a proximate consequence of said injury, the Plaintiff was caused to lose the sight of his left eye and was caused to undergo great mental and physical pain and suffering, and will continue to suffer in the future.

5. The Plaintiff's claim of the Defendant on a policy whereby the Defendant company insured the life of the Plaintiff for a period of two years in the amount of $1,000.00 (Dollars), and the Plaintiff's wife was the beneficiary of said policy, and the Plaintiff has paid the premiums on said policy for a period of two years and more, and the Plaintiff's wife died on the 6th day of December, 1952, and the Plaintiff has made demand on the defendant company for the payment of said policy, and the defendant company has refused to pay said policy, and said policy is due and owing to the Plaintiff, and the Plaintiff has been damaged in the amount of $1,000.00 (Dollars) and asks judgment against the defendant company in the amount of $1,000.00 (Dollars).

HOCHSTETLER & SPEARS
ATTORNEYS AT LAW
MONTGOMERY, ALABAMA

BY: Hochstetler & Spears
Attorneys for Plaintiff

The Plaintiff demands a trial by jury.

HOCHSTETLER & SPEARS
ATTORNEYS AT LAW
MONTGOMERY, ALABAMA

BY: Hochstetler & Spears
Attorneys for Plaintiff

The Plaintiff's claim of the Defendant on a policy whereby the Defendant company insured the life of the Plaintiff for a period of two years in the amount of $1,000.00 (Dollars), and the Plaintiff's wife was the beneficiary of said policy, and the Plaintiff has paid the premiums on said policy for a period of two years and more, and the Plaintiff's wife died on the 6th day of December, 1952, and the Plaintiff has made demand on the defendant company for the payment of said policy, and the defendant company has refused to pay said policy, and said policy is due and owing to the Plaintiff, and the Plaintiff has been damaged in the amount of $1,000.00 (Dollars).

Wednesday, December 9, 1953

The Plaintiff's claim of the Defendant on a policy whereby the Defendant company insured the life of the Plaintiff for a period of two years in the amount of $1,000.00 (Dollars), and the Plaintiff's wife was the beneficiary of said policy, and the Plaintiff has paid the premiums on said policy for a period of two years and more, and the Plaintiff's wife died on the 6th day of December, 1952, and the Plaintiff has made demand on the defendant company for the payment of said policy, and the defendant company has refused to pay said policy, and said policy is due and owing to the Plaintiff, and the Plaintiff has been damaged in the amount of $1,000.00 (Dollars).

DONEGAN and said policy is the property of the Plaintiff. Expenses in cause.

CHARLIE HATHINGTON	)	
PLAINTIFF	)	IN THE CIRCUIT COURT
VS.	)	OF BALDWIN COUNTY
THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY, a Corp., of Jacksonville, Fla.	)	AT LAW
DEFENDANT	)	

Now comes the defendant in the above styled cause and demurs to the complaint, and to the complaint as last amended, filed in this cause, and as grounds there for, assigns the following:

1. The complaint consists of conclusions of the pleader.

2. The complaint does not state a cause of action.

3. The allegation that "Plaintiff suffered the loss of one eye which was the result of an accident" is a conclusion of the pleader and no facts are alleged in support thereof.

4. The allegation regarding Plaintiff's accidental loss of an eye is made by indirection and without positive averments.

H. T. Fitzpatrick, Jr.

Attorney for Defendant

H. T. FITZPATRICK, JR.
Attorney at Law
1019-21 Bell Building
Montgomery 4, Ala.

No 2148

CHARLIE HATHINGTON	)	IN THE CIRCUIT COURT
PLAINTIFF	)	OF BALDWIN COUNTY
VS.	)	AT LAW
THE INDEPENDENT LIFE AND ACCIDENT INSURANCE COMPANY, a Corp., of Jacksonville, Fla.	)	NO. 2148
DEFENDANT	)	

Comes the defendant and for answer to the complaint in this cause, and to each and every count thereof, seperately and severally, pleads in short by consent, the general issue, with leave to give in evidence matters which if well pleaded would be admissible in defense of the action, to have effect as if so pleaded, and with leave to the plaintiff to give in evidence any matter which if well pleaded would be admissible in replying to such defensive matter; and to have effect as if so pleaded.

Attorney for Defendant

2148

H. T. FITZPATRICK, JR.
ATTORNEY AT LAW
1019-1021 BELL BUILDING
MONTGOMERY, ALABAMA
TELEPHONE 3-5649

May 20, 1954

Clerk of the Circuit Court
Courthouse
Bay Minette, Alabama

Re: Hathington vs Independent Life & Accident Ins. Co. #2148

Dear Sir:

We enclose demurrer to be filed in your office on behalf of defendant in the above styled cause.

We would appreciate your acknowledging that same has been received and filed.

We would also appreciate your giving us some idea as to when the next call of the Civil Jury Docket will be, and if pleadings are settled in this circuit before that time.

Very truly yours,

H. T. Fitzpatrick Jr.

HTFjr/fj

Enc.

cc/Wilters & Brantley

H. T. FITZPATRICK, JR.
ATTORNEY AT LAW
1019-1021 BELL BUILDING
MONTGOMERY, ALABAMA
TELEPHONE 3-5649

June 22, 1954

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

Re: Hathington Vs.
Independent Life & Accident Ins. Co.
No. 2148

Dear Mrs. Duck:

We enclose defendant's plea of the general issue in short by consent in the above-styled cause, which we would appreciate your filing. We are sending a copy of the plea to Mr. Brantley.

Very truly yours,

H. T. Fitzpatrick Jr.

HTFjr/fj

Enc.

cc: Mr. Tolbert M. Brantley
Wilters & Brantley
Attorneys at Law
Bay Minette, Alabama

2148