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MERRIEL S. ARD,

IN THE CIRCUIT COURT FOR

PLAINTIFF,

THE TENTH JUDICIAL CIRCUIT

VS.

OF ALABAMA

ETHEL B. MILES, et al,

DEFENDANTS.)

CASE NO. 26305

PLEA IN ABATEMENT

Come the Defendants, ETHEL B. MILES and CLEM HICKS, separately and severally, by and through their attorneys and appearing specially for the purpose of filing this plea in abatement and for no other purpose whatsoever and without submitting this defendant to the jurisdiction of this Court, aver that the motor vehicle collision made the basis of this suit occurred in Baldwin County, Alabama and that neither of the defendants are residents of Jefferson County, Alabama, the Defendant, ETHEL B. MILES residing in Baldwin County, Alabama, and the Defendant, CLEM HICKS, residing in the City of Milton, Florida, and that, therefore, this Honorable Court does not have jurisdiction of this cause and this cause was improperly filed in the Circuit Court for the Tenth Judicial Circuit of Alabama, and should be transferred to the Circuit Court of Baldwin County, Alabama.

WHEREFORE, PREMISES CONSIDERED, this defendant moves the Court to transfer this cause to the Circuit Court of Baldwin County, Alabama pursuant to the provisions of Title 7, Section 64(1) of the 1940 Code of Alabama.

RIVES, PETERSON, PETTUS, CONWAY & BURGE Seventeenth Floor

Twenty-one Twenty-one Building Birmingham, Alabama 35203

Telephone: 328-8141

FEB 25 1970 1970

Microfilmod

eys for Defendants,

ETHEL B. MILES and CLEM HICKS

STATE OF ALABAMA

JEFFERSON COUNTY

Personally appeared before me, the undersigned authority in and for said county in said state, Herbert W. Peterson, who is known to me and being by me first duly sworn deposes and says that he is attorney for the Defendants, Ethel B. Miles and Clem Hicks, in the above styled cause and that the averments of the above and foregoing plea in abatement are true and correct.

Herbert W. Peterson

SWORN to and subscribed before

me, this // day of February, 1970.

Johnne S. Balentine

NOTARY PUBLIC

CERTIFICATE AS TO SERVICE

Of Counsel

Microfilmod FEB 25 1970

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MERRIEL S. ARD,)	
	PLAINTIFF,)	TN EUR CIDOUTE COIDE OF
-vs-)	IN THE CIRCUIT COURT OF
	CT EM	,	BALDWIN COUNTY, ALABAMA
ETHEL B. MILES, HICKS, et al,	CLEM	,	AT LAW
	DEFENDANTS.)	CASE NO. 9243
)	

Comes now Cunningham, Bounds & Byrd and appear in the above cause as additional attorneys on behalf of the Plaintiff.

CUNNINGHAM, BOUNDS & BYRD

BY: CHARD BOUNDS

CERTIFICATE OF SERVICE

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APR 2 7 1970

ALCE J. DUCK CLOSTER

MERRIEL S. ARI),	χ			
Pla	aintiff,	X	IN THE CIRCUIT COURT OF		
vs.		X	BALDWIN COUNTY, ALABAMA		
		X	DAIDWIN COCKETY INCIDENT		
ETHEL B. MILES		X	AT LAW		
HICKS, et al.,		χ			
Defendants.		χ			

DEMURRER

Come now the Defendants in the above styled cause and demur to the Complaint filed in said cause and each and every count thereof, separately and severally, and assign the following separate and several grounds, viz:

- 1. That said complaint does not state a cause of action.
- 2. That said complaint does not allege any duty owing by the Defendants to the Plaintiff.
- 3. That said complaint does not sufficiently set out the place where the accident occurred.
- 4. That said complaint does not allege whether the Plaintiff was driving the vehicle in which he was riding.
- 5. That said Complaint does not allege which Defendant was driving the vehicle which collided with the car in which the Plaintiff was riding.
- 6. That said complaint does not allege which Defendant was the owner and which Defendant was the operator of the vehicle that collided with the car in which the Plaintiff was riding.
- 7. That there is a misjoinder of parties defendant in said cause.

APR 2 1970

ALCE J. DITA CLERK REGISTER

Defendants demand a trial of this cause by a jury.

CHASON, STONE & CHASON

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this day

of April, 1970

MERRIEL S. ARD,

Plaintiff,

vs.

ETHEL B. MILES, CLEM HICKS, et al.,

Defendants.

* * * * * * * * * * * * * * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

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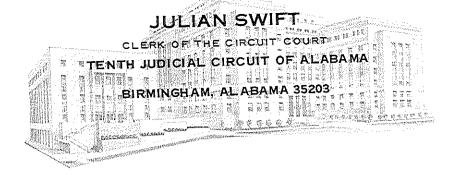
DEMURRER

* * * * * * * * * * * * * * * * * *

STATE OF ALABAMA Jefferson County	CIRCUIT COURT Tenth Judicial Circuit
Maniel	S. arl
VS.	
Ethel B. M	ilen
Clem His	ka

CLERK'S FEES	RATE	AMOUNT
Filing suit for not over \$100	\$ 6.00	
Filing suit over \$100 & not over\$1,000	10.00	
Filing suit for not less than \$1,000	20,00	20 00
Transfers and appeals from Probate	20.00	
Filing detinue or ejectment	10.00	
Appeals from Civil Court of Jeff, Co.	ŀ	
Appeals from courts of \$100 jurisdict,	6.00	
Appeals from Dept. of State	10.00	
Filing Mandamus, Cert., etc.	15.00	
Filing Workmen's Comp. Settlement	10.00	
Filing ancillary proceeding	6.00	
Filing motion to sell real property	6.00	
Execution issued by State	3.00	
Application Habeas Corpus	6.00	
Filing any proceeding not otherwise		
provided for	10.00	
Certified copies		
Making Transcript for appeals		
Filing Bond on appeal	.75	
Transcript of evidence	10.00	
Filing papers on appeal	.10	
Issuing notices of appeals	.75	
Copies	.75	
Certificate of appeal	<u> </u>	
THIS AMOUNT CARRIED FOR'D.	<u> </u>	
		20 00
		3000

SHERIFF'S FEES		
	RATE	AMOUNT
Serving any summons or other process	\$2.50	
Serving subpoenas	.75	
Levying Attachment	6.00	
Entering and returning same	.25	
Impaneling jwy	.75	
Collecting cost under execution	1,50	
Approving Bond	2.00	
Serving Attachment for contempt	1.50	
Making deed	2.50	
Writ of Restitution	5.00	
Seizing Personal Property	7.50	
1/2 Commission		
Recording Levy	.	
Notice of Levy	1.50	
Publication	<u> </u>	
Drayage and Storage		
Mileage (O.C.)		
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RECAPITULATION		AMOUNT
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10% Damages Interest from Clerk (County) Clerk's 1/4 Commission Sheriff (County) Witnesses Court of General Sessions Probate Court Civil Court of Jefferson County Pltff's, Secy. State Fee Commissioner Publisher		
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Interest from Clerk (County) Clerk's ½ Commission Sheriff (County) Witnesses Court of General Sessions Probate Court Civil Court of Jefferson County Pltff's. Secy. State Fee Commissioner Publisher Hospital Record Sheriff other Counties ''' ''' Garnishee State Trial Tax		3 00
10% Damages Interest from Clerk (County) Clerk's 1/2 Commission Sheriff (County) Witnesses Court of General Sessions Probate Court Civil Court of Jefferson County Pltff's. Secy. State Fee Commissioner Publisher Hospital Record Sheriff other Counties		3 00
Interest from Clerk (County) Clerk's ½ Commission Sheriff (County) Witnesses Court of General Sessions Probate Court Civil Court of Jefferson County Pltff's. Secy. State Fee Commissioner Publisher Hospital Record Sheriff other Counties ''' ''' Garnishee State Trial Tax		3 00



MRS. BEATRICE PORTER, CHIEF CLERK

April 30, 1970

Honorable Alice J. Duck, Clerk:

MINUTE DATES

26305 Merriel S. Ard

vs

Whit Windham,

Ethel B. Niles, et als

Judge of Circuit Court.

On this the 3rd day of April, 1990, came the parties by their attorneys, and the court having sustained the defendants' plea in abatement, whereupon,

It is ordered and adjudged by the court that this cause be and the same is hereby transferred to the Circuit Court of Baldwin County, holding at Bay Minette, Alabama, pursuant to Title 7, Section 64 (1&2).

I do hereby certify, that the above is a true and correct copy of the Minute Entry found in Minute Book 308, on Page 31.

Julian Swift, Clark

MAY 1 (670)

Law Ilffices

Eunningham, Emmods 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

April 24, 1970

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

Re: Lovetto and Ard vs. Miles and Hicks

Dear Mrs. Duck:

Enclosed is appearance for our firm in the above cases. They have been ordered transferred from the Circuit Court in Jefferson County to your Court. I am told that you will receive the file sometime around May 1.

Very truly yours,

CUNNINGHAM, BOUNDS & BYRD

RICHARD BOUNDS

RB/ac

cc: Chason, Stone & Chason

FILED IN OFFICE

STATE OF ALABAMA

IN THE TENTH JUDICIAL CIRCUIT COURT

JEFFERSON COUNTYSWIFT

OF JEFFERSON COUNTY, ALABAMA

TO ANY SHERIFF OF THE STATE OF ALABAMA - Greetings:

You are hereby commanded to summon Ethel B. Miles; Clem Hicks; Defendants A and B, the owner and operator, respectively, of the vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit; Defendant C, the person for whose benefit the trip was being made; Defendant D, the employer of the operator of the vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit; Defendants E, F and G, the person, firm or corporation respectively, responsible for the maintenance, inspection and repair of the motor vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit, all of whose true names are otherwise unknown to plaintiff but will be added by amendment when ascertained, to appear before the Circuit Court of said county, at the place of holding same, within thirty days from service of this process, then and there to answer the complaint of Merriel S. Ard.

Witness my hand th	nis <u>9</u> day of _	Janl	, 1970.
	Λ		
	Clerk	in Musy	

COMPLAINT

MERRIEL S. ARD,

Plaintiff

vs.

ETHEL B. MILES; CLEM HICKS; Defendants A and B, the owner and operator, respectively of the vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit; Defendant C, the person for whose benefit the trip was being made; Defendant D, the employer of the operator of the vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit; Defendants E, F and G, the person, firm or corporation respectively, responsible for the maintenance, inspection and repair of the motor vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit, all of whose true names are otherwise unknown to plaintiff but will be added by amendment when ascertained,

Defendants

COUNT ONE

Plaintiff claims of the defendants the sum of Twenty-five Thousand

Dollars (\$25,000.00) as damages for that heretofore on to-wit, October 10,

1969, plaintiff was riding in a motor vehicle on a public highway in Baldwin

County, Alabama on to-wit, Alabama Highway No. 59 at or near its intersection

with Baldwin County Highway No. 32, and at the same time and place, the

defendants caused or allowed a motor vehicle of which they were in charge

or control to collide with the vehicle in which plaintiff was riding, and as

a proximate consequence of said collision, the plaintiff was damaged and

injured as follows:

injured as follows:

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JAN 27 1970

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He was knocked, shocked, bruised and contused; his arms, head and legs were injured; he was made sick and sore; he was injured in the various and separate parts of his body; his head was injured and he was internally injured and permanently injured, all to his detriment for which he claims.

Plaintiff avers that the defendants negligently caused or negligently allowed the motor vehicle of which they were in charge or control to collide with the vehicle in which plaintiff was riding, and as a proximate consequence of said negligence, the plaintiff was damaged and injured as hereinabove set forth.

COUNT TWO

Plaintiff claims of the defendants the further and additional sum of Ten Thousand Dollars (\$10,000.00) as damages for that heretofore on to-wit, October 10, 1969, plaintiff's wife, Norma P. Ard, was riding in an automobile on a public highway in Baldwin County, Alabama on to-wit, Alabama Highway No. 59 at or near its intersection with Baldwin County Highway No. 32, and at the same time and place, the defendants negligently caused or negligently allowed a motor vehicle of which they had charge or control to collide with the vehicle in which plaintiff's said wife was riding, and as a proximate consequence of said negligence of said defendants, plaintiff's said wife was damaged and injured as follows:

She was knocked, shocked, bruised and contused; she was made sick and sore; her arms, head and legs were injured; she was injured in the various and separate parts of her body; her ribs were injured; and her legs were cut and bruised; and she was internally injured and permanently injured.

And plaintiff further avers that as a proximate consequence of his said wife's injuries, he was caused to incur great expense in and about his efforts to cure and heal his said wife, and plaintiff has lost the services and consortium of his said wife, all to his detriment for which he claims.

Plaintiff avers that all of his said damages were a proximate consequence of the aforesaid negligence of the defendants.

COUNT THREE

Plaintiff refers to and adopts all the words and figures of Count One of his complaint down to and including the words "all to his detriment for which he claims" and adds thereto the following:

Plaintiff avers that the defendants wantonly injured him by wantonly

causing or wantonly allowing the motor vehicle of which they were in charge or control to collide with the vehicle in which the plaintiff was riding, and as a proximate consequence of said wanton conduct, the plaintiff was damaged and injured as hereinabove set forth.

HARE, WYNN, NEWELL and NEWTON

Attorneys/for Plaintiff

Plaintiff demands a trial by a struck jury in the above styled cause.

HARE, WYNN, NEWELL and NEWTON

Attorneys, for Plaintiff

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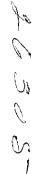
Plaintiff's address:

Post Office Box 315 Robertsdale, Alabama

Serve defendant Ethel B. Miles at: General Delivery, Robertsdale, Alabama Serve defendant Clem Hicks through Secretary of State at: VI-2, N.A.S., Whiting Field, Milton, Florida 32570

TRIAL COUNSEL: James J. Thompson, Jr. 700 City Federal Building Birmingham, Alabama 35203





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STATE OF ALABAMAN) IN THE TENTH JUDICIAL CIRCUIT COURT

JEFFERSON COUNTY, ALABAMA

TO ANY SHERIFF OF THE STATE OF ALABAMA - Greetings:

You are hereby commanded to summon Ethel B. Miles; Clem Hicks; Defendants A and B, the owner and operator, respectively, of the vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit; Defendant C, the person for whose benefit the trip was being made; Defendant D, the employer of the operator of the vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit; Defendants E, F and G, the person, firm or corporation respectively, responsible for the maintenance, inspection and repair of the motor vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit, all of whose true names are otherwise unknown to plaintiff but will be added by amendment when ascertained, to appear before the Circuit Court of said county, at the place of holding same, within thirty days from service of this process, then and there to answer the complaint of Merriel S. Ard.

Witness my hand this day of far, 1970.

COMPLAINT

MERRIEL S. ARD,

Plaintiff

vs.

ETHEL B. MILES; CLEM HICKS; Defendants A and B, the owner and operator, respectively of the vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit; Defendant C, the person for whose benefit the trip was being made; Defendant D, the employer of the operator of the vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit; Defendants E, F and G, the person, firm or corporation respectively, responsible for the maintenance, inspection and repair of the motor vehicle that collided with the vehicle in which plaintiff was riding on the occasion made the basis of this suit, all of whose true names are otherwise unknown to plaintiff but will be added by amendment when ascertained,

Defendants

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Dollars (\$25,000.00) as damages for that heretofore on to-wit, October 10,

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with Baldwin County Highway No. 32, and at the same time and place, the

defendants caused or allowed a motor vehicle of which they were in charge

or control to collide with the vehicle in which plaintiff was riding, and as

a proximate consequence of said collision, the plaintiff was damaged and

injured as follows:

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He was knocked, shocked, bruised and contused; his arms, head and legs were injured; he was made sick and sore; he was injured in the various and separate parts of his body; his head was injured and he was internally injured and permanently injured, all to his detriment for which he claims.

Plaintiff avers that the defendants negligently caused or negligently allowed the motor vehicle of which they were in charge or control to collide with the vehicle in which plaintiff was riding, and as a proximate consequence of said negligence, the plaintiff was damaged and injured as hereinabove set forth.

COUNT TWO

Plaintiff claims of the defendants the further and additional sum of Ten Thousand Dollars (\$10,000.00) as damages for that heretofore on to-wit, October 10, 1969, plaintiff's wife, Norma P. Ard, was riding in an automobile on a public highway in Baldwin County, Alabama on to-wit, Alabama Highway No. 59 at or near its intersection with Baldwin County Highway No. 32, and at the same time and place, the defendants negligently caused or negligently allowed a motor vehicle of which they had charge or control to collide with the vehicle in which plaintiff's said wife was riding, and as a proximate consequence of said negligence of said defendants, plaintiff's said wife was damaged and injured as follows:

She was knocked, shocked, bruised and contused; she was made sick and sore; her arms, head and legs were injured; she was injured in the various and separate parts of her body; her ribs were injured; and her legs were cut and bruised; and she was internally injured and permanently injured.

And plaintiff further avers that as a proximate consequence of his said wife's injuries, he was caused to incur great expense in and about his efforts to cure and heal his said wife, and plaintiff has lost the services and consortium of his said wife, all to his detriment for which he claims.

Plaintiff avers that all of his said damages were a proximate consequence of the aforesaid negligence of the defendants.

COUNT THREE

Plaintiff refers to and adopts all the words and figures of Count One of his complaint down to and including the words "all to his detriment for which he claims" and adds thereto the following:

Plaintiff avers that the defendants wantonly injured him by wantonly

JAN 27 1970

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HARE, WYNN, NEWELL and NEWTON Attorneys for Plaintiff

Plaintiff demands a trial by a struck jury in the above styled cause.

HARE, WYNN, NEWELL and NEWTON Attorneys, for Plaintiff

. \ 1/200

Plaintiff's address:

Post Office Box 315 Robertsdale, Alabama

Serve defendant Ethel B. Miles at: General Delivery, Robertsdale, Alabama Serve defendant Clem Hicks through Secretary of State at: VI-2, N.A.S., Whiting Field, Milton, Florida 32570

TRIAL COUNSEL: James J. Thompson, Jr. 700 City Federal Building Birmingham, Alabama 35203

No. 26305

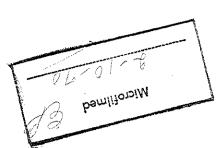
This is a Branch of the original suit and all the summons constitute one suit, and are for one and the same cause of action.

Witness my hand, this

dav of

gircuit Clerk

JAN 27 1970



50 Sheriff claims_ Ten Cents per mile Total \$ 500
TAYLOR WILKINS, Sheriff
BY
DEPUTY SHERIFF

'S 'G TAYLOR WILKINS, Sheriff Ey service on-I served a copy of the within -30 yeb OE baviacas

FILED IN OFFICE

FEB 9 1970

February 5, 1970

MERRIEL S. ARD, Plaintiff

Julian Swife

IN THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT OF ALABAMA

CLEM HICKS, et al, Defendants

CASE NO. 26305

TO THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT OF ALABAMA

I, Mabel Amos, Secretary of State, hereby certify that on January 30, 1970 I sent by certified mail in an envelope addressed as follows:

"Clem Hicks VI-2 N. A. S. Whiting Field, Milton, Florida 32570"

"Certified Mail— Return Receipt Requested Deliver to Addressee Only"

bearing sufficient and proper prepaid postage, a notice bearing my signature and the Great Seal of the State of Alabama in words and figures as follows:

Clem Hicks
VI-2 N.A.S.
Whiting Field, Milton, Florida 32570

You will take notice that on January 30, 1970 the Sheriff of Montgomery County, Alabama, served upon me, in my official capacity, summons and complaint in a case entitled: MERRIEL S. ARD, Plaintiff VS CLEM HICKS, et al, Defendants

in the CTRCUIT COURT, TENTH JUDICIAL CTRCUIT OF ALABAMA

Case No. 26305 a true copy of which summons and complaint is attached hereto and the said service upon me as Secretary of State of the State of Alabama has the force and effect of personal service upon you.

WITNESS MY HAND and the Great Seal of the State of Alabama this the day of January, 1970

Enclosure (1)

(Signed) MabeSAmos Secretary of State"

I further certify that the notice above set out which was so mailed in the envelope addressed as above set forth had attached to it a true copy of the summons and complaint in the above-styled cause.

I further certify that on February 4, 1970 I received the return card, showing receipt by the designated addressee of the aforementioned matter at Milton, Fl. on Feb. 3, 1970

WITNESS MY HAND and the Great Seal of the State of Alabama this the

5th

day

of February, 1970

MABEL S. AMOS Secretary of State

Enclosures: Return Receipt Card and copy of Summons and Complaint.

CC: Honorable James J. Thompson, Jr. Hare, Wynn, Newell and Newton 700 City Federal Building

Birmingham, Alabama 35203

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FEB 1 8 1970

MERRIEL S. ARD VS CLEM HICKS (26,305) PLEASE FURNISH SERVICE(NDICATED BY CHECKED BLOCK(S). Show to whom, date and address where delivered Deliver ONLY to addressee REGISTERED NO. SIGNATURE OF NAME OF ADDRESS SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) Õ CERTIFIED NO. SIGNATURE OF ADDRESSEE'S AGENT, IF ANY Deliver to addressee only INSURED NO. SHOW WHERE DELIVERED (only if requested) DATE DELIVERED FEB 8 GPO3 (ovv) c55—16—71548-11 347-198

