

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW

956 DAUPHIN STREET

MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.

July 12, 1972

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

10.491

Mrs. Eunice B. Blackmon
Clerk, Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: Alabama Farm Bureau Mutual
Casualty Insurance Company
Vs: Joe R. Garris, Sr.

Dear Mrs. Blackmon:

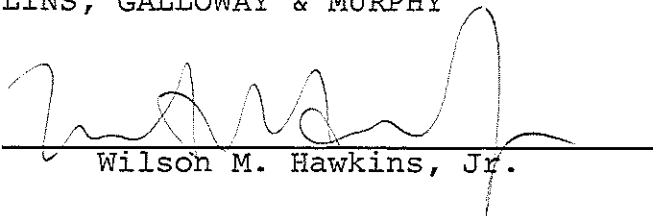
Please file the enclosed Complaint and indicate that you have done so by returning the carbon copy of this letter. Also, enclosed herewith is a self-addressed, stamped envelope for your convenience in this matter.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY:


Wilson M. Hawkins, Jr.

WMHJr/jkl
Enclosures

ALABAMA FARM BUREAU : IN THE CIRCUIT COURT OF
MUTUAL CASUALTY :
INSURANCE COMPANY, a : BALDWIN COUNTY, ALABAMA
corporation, :
Plaintiff, : AT LAW
VS: :
JOE R. GARRIS, SR., :
Defendant. : CASE NO. 10,491

COUNT ONE

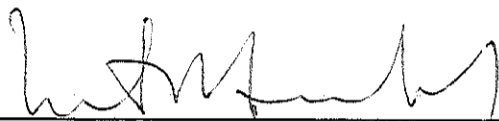
The Plaintiff claims of the Defendant the sum of ONE THOUSAND AND 00/100 (\$1,000.00) DOLLARS damages for the breach of an agreement entered into by him on the 5th day of May, 1970, a copy of that agreement is attached hereto and made a part hereof as if fully set out herein. The Plaintiff avers that pursuant to this agreement the Plaintiff become subrogated to the Defendant's right to recover from W.L. Medlin on account of Medlin's injuring the Defendant's wife on May 3, 1970. Plaintiff avers that the consideration for this agreement was the payment by the Plaintiff to the Defendant of ONE THOUSAND AND 00/100 (\$1,000.00) DOLLARS pursuant to a policy of insurance issued to the Defendant by the Plaintiff. Plaintiff avers that the Defendant has recovered from W.L. Medlin a sum in excess of ONE THOUSAND AND 00/100 (\$1,000.00) DOLLARS said recovery including the rights that the Plaintiff were subrogated too and that the Plaintiff has demanded reimbursement from the Defendant but the Defendant has breached his agreement in that he has not reimbursed the Plaintiff for the ONE THOUSAND AND 00/100 (\$1,000.00) DOLLARS advanced, hence this suit

COUNT TWO

The Plaintiff claims of the Defendant ONE THOUSAND SEVENTY-FIVE AND 56/100 (\$1,075.56) DOLLARS for money on the 20th day of April, 1971 received by the Defendant to the use of the Plaintiff, which sum of money with the interest thereon, is still unpaid.

COLLINS, GALLOWAY & MURPHY

BY:



Wilson M. Hawkins, Jr.
ATTORNEYS FOR PLAINTIFF

DEFENDANT'S ADDRESS:

Route 4
Gulf Shores, Alabama

FILED

JUL 14 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

TO THE PERSON SIGNING THIS AGREEMENT - Please take notice that this agreement is entered into without the consent of the party (ies) released hereby, who, therefore, will not be precluded hereby from the assertion of any claims against you.

RELEASE OF ALL CLAIMS

(Husband and Wife)

THIS INDENTURE WITNESSETH that I, DOROTHY E. GARRIS
the wife of JOE L. GARRIS RT 4 GULF SHORES
State of ALABAMA, and I, JOE R. GARRIS
her said husband, for and in consideration of the sum of NINE THOUSAND NINE HUNDRED ^{NO} ~~100~~ dollars
(\$ 9,900 ^{NO} ~~100~~), lawful money of the United States of America to said wife and the additional
sum of NINE THOUSAND NINE HUNDRED ^{NO} ~~100~~ dollars (\$ 9,900 ^{NO} ~~100~~), to said husband in hand paid by GULF COAST AUTO RENTALS, W. L. MEDLIN

the receipt whereof is hereby jointly and severally acknowledged, do hereby for ourselves and each of us and for our heirs, executors, administrators, personal representatives, and assigns, remise, release, and forever discharge

GULF COAST AUTO RENTALS, W. L. MEDLIN
and any other person, partnership, firm or corporation charged or chargeable with responsibility or liability, their heirs, executors, administrators, associates, representatives, successors, and assigns, from any and all claims, demands, damages, costs, expenses, loss of services, actions and causes of actions arising from any act or occurrence, up to the present time, and particularly on account of all personal injury, disability, property damage, loss of services and loss or damages of any kind sustained or that we or either of us hereafter may sustain in consequence of an accident that occurred on or about the 2ND day of MAY 19 70
at or near SPANISH FORT, ALABAMA

To procure payment of the said sum, we and each of us hereby declare: that we and each of us are more than 21 years of age; that no representations about the nature and extent of said injuries, disabilities or damages made by any physician, attorney or agent of any party hereby released, nor any representations regarding the nature and extent of legal liability or financial responsibility of any of the parties released, have induced us to make this settlement; that in determining said sum there has been taken into consideration not only the ascertained injuries, disabilities, and damages, but also the possibility that the injuries sustained may be permanent and progressive and recovery therefrom uncertain and indefinite, so that consequences not now anticipated may result from the said accident.

We and each of us agree, as a further consideration and inducement for this compromise settlement, that it shall apply to all unknown and unanticipated injuries and damages resulting from said accident, casualty, or event, as well as to those now disclosed.

We and each of us understand that the parties hereby released admit no liability of any sort by reason of said accident and that said payments and settlements in compromise are made to terminate further controversy respecting all claims for damages that we have heretofore asserted or that we or our personal representatives might hereafter assert because of said accident.

We, and each of us, further understand that such liability as we, and each of us, may or shall have incurred, directly or indirectly, in connection with or for damages arising out of the accident to each person or organization released and discharged of liability herein, and to any other person or organization, is expressly reserved to each of them, such liability not being waived, agreed upon, discharged nor settled by this release.

The undersigned hereby acknowledges receipt of a copy of this release before signing it.

Signed and sealed this 2 day of MAY, 19 70

(CAUTION-READ BEFORE SIGNING)

Witnessed by

DOROTHY E. GARRIS (SEAL)
(WIFE)
JOE R. GARRIS (SEAL)
(HUSBAND)

STATE OF ALABAMA
COUNTY OF MOBILE } SS

On this 2 day of MAY, 19 70 before me personally appeared

DOROTHY E. GARRIS and JOE R. GARRIS, who executed the foregoing instrument, and acknowledged that they executed the

SUMMONS AND COMPLAINT

MOORE PRINTING CO. BAY MINETTE ALA.

STATE OF ALABAMA

Baldwin County

Circuit Court, Baldwin County

No. 10,491

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Joe R. Garris, Sr.

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint

filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against.....

Joe R. Garris, Sr.

....., Defendant.....

by Alabama Farm Bureau Mutual Casualty Insurance Company, a corporation

....., Plaintiff.....

witness my hand this 14th day of July 1972

Eunice S. Blackman Clerk

No. 10,492

Page.....

STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

ALABAMA FARM BUREAU MUTUAL CASUALTY
INSURANCE COMPANY, A CORPORATION
Plaintiffs

VS.

JOE R. GARRIS, SR.
Defendants

SUMMONS AND COMPLAINT

Filed July 14, 1972

EUNICE B. BLACKMON Clerk

FILED

JUL 14 1972

EUNICE B. BLACKMON CIRCUIT CLERK

COLLINS, GALLOWAY & MURPHY
Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED
Received in Office

JUL 14 1972 19.....

TAYLOR WILKINS Sheriff

I have executed this summons

this July 14, 1972
by leaving a copy with

Joe R. Garrison, Jr.

County Clerk 101
Ten Cents per mile Total \$10.01

TAYLOR WILKINS, Sheriff

Deputy Sheriff

Sheriff

Deputy Sheriff

ALABAMA FARM BUREAU MUTUAL	X	
CASUALTY INSURANCE COMPANY,		
a corporation,	X	IN THE CIRCUIT COURT OF
Plaintiff,	X	BALDWIN COUNTY, ALABAMA
	X	
vs.		
	X	AT LAW CASE NO. 10,491
JOE R. GARRIS, SR.	X	
Defendant.	X	

DEMURRER

Comes now the Defendant, Joe R. Garriss, Sr., by and through his attorneys, and demurs to the Complaint in this cause filed and to each and every count thereof, separately and separately, and as grounds therefor sets down and assigns the following, separately and severally:

1. For that Count One does not set out with sufficient certainty the act or acts with which this Defendant is charged.

2. For that the facts alleged in Count One do not state a cause of action against this Defendant.

3. For aught that appears in Count One Plaintiff was not a party to the Agreement attached to Count One and made a part of Count One as if the Agreement had been set out in Count One.

4. For that the alleged breach of the Agreement referred to in and attached to Count One is alleged as a conclusion of the Pleader and no facts are alleged in support thereof.

5. For aught that appears from the face of the Agreement referred to in Count One and attached to Count One the Plaintiff was not subrogated to Defendant's right to recover from W. L. Medlin on account of Medlins injuring the Defendant's wife on May 3rd, 1970.

6. For that the allegation that Plaintiff has become subrogated to the Defendant's right to recover from W. L. Medlin

is alleged as a conclusion of the Pleader and no facts are alleged in support thereof.

7. For aught that appears in Count One the Agreement made a part of Count One was not entered into by the parties there-
to for the benefit of Plaintiff.

8. For that the allegation in Count One that the Plaintiff has issued the Defendant an insurance policy is a conclusion of the Pleader and no facts are alleged in support thereof.

9. For aught that appears in the allegations of Count One any policy of insurance issued by the Plaintiff to the Defendant is not in effect at the time this suit was instituted.

10. For that it is not alleged in Count One on what date the Plaintiff allegedly issued a policy of insurance to the Defendant.

11. For aught that appears in Count One the policy of insurance that the Plaintiff allegedly issued to the Defendant contained no subrogation clause or clauses.

12. For that the allegation in Count One that the Defendant's receipt of a sum in excess of One Thousand Dollars from W. L. Medlin included the rights the Plaintiff was subrogated to is alleged as a conclusion of the Pleader and no facts are alleged in support thereof.

13. For that it is not alleged in Count One on what date the Plaintiff demanded reimbursement from the Defendant.

14. For that the demand for reimbursement as alleged in Count One is a mere conclusion of the Pleader and no facts are alleged in support thereof.

15. For aught appearing from the allegations in Count One Plaintiff had no claim or right to reimbursement from the Defendant.

16. For aught appearing from the allegations of Count

One of the Complaint Defendant never agreed to reimburse Plaintiff for any reason or on any grounds.

17. For aught that appears from the allegations of Count One this Defendant transacted no business with this Plaintiff for that Count One does not set up sufficient facts to state a cause of action against this Defendant.

18. For that the averments of said Count One fail to show any liability on the part of this Defendant.

19. For aught that appears from the allegations of Count One this Defendant has not collected any monies for this Plaintiff.

20. For that Count Two fails to state a cause of action against this Defendant.

21. For aught that appears in the allegations of Count Two this Defendant transacted no business with this Plaintiff.

22. For that Count Two does not set up sufficient facts to state a cause of action against this Defendant.

23. For aught that appears in Count Two this Defendant had no contract with this Plaintiff.

24. For that it is not averred in Count Two that the Plaintiff performed any work for this Defendant.

25. For that it is not averred in Count Two that the Defendant has an account with the Plaintiff.

CHASON, STONE & CHASON

BY: Charles C. Partin
Attorneys for Defendant

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 23rd day of August, 1972.

Charles C. Partin

FILED

AUG 23 1972

EUNICE B. BLACKMON
CIRCUIT
CLERK

ALABAMA FARM BUREAU
MUTUAL CASUALTY
INSURANCE COMPANY, a
corporation,

Plaintiff

VS:

JOE R. GARRIS, SR.,

Defendant.

: IN THE CIRCUIT COURT OF
:
: BALDWIN
: ~~MOBILE~~ COUNTY, ALABAMA
:
:
: AT LAW
:
:
:
:
: CASE NO. 10,491

NOTICE OF DEPOSITION

TO: Hon. Charles C. Partin
Chason, Stone & Chason
Attorneys At Law
Post Office Box 120
Bay Minette, Alabama 36507

You are hereby notified that Robert H. Smith
will take the pretrial discovery
deposition of Bob Cooper,
, on December 26, 1972,
commencing at 9:00 a.m. in the offices of McDaniel, Hall & Parsons,
10th Floor City Federal Building, Birmingham, Alabama 35203,
before Paul Glass, or before some other
officer authorized by law to take depositions. The
deposition is to be taken in accordance with and pursuant to
Act No. 375 of the Alabama Legislature of 1955, as amended,
and will continue from day to day until the completion of
same. You are invited to attend and examine the deponent.

Dated this 5th day of November, 1972.

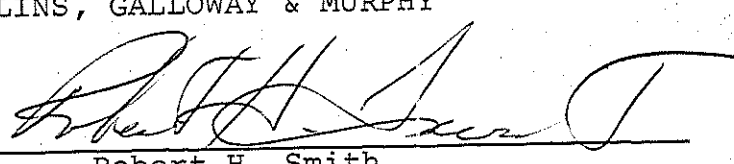
FILED

DEC 6 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

COLLINS, GALLOWAY & MURPHY

BY:


Robert H. Smith

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW
958 DAUPHIN STREET
MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.

November 17, 1972

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

Mrs. Eunice B. Blackmon
Clerk, Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: Alabama Farm Bureau
Vs: Joe R. Garris, Sr.
Case No. 10,491

Dear Mrs. Blackmon:

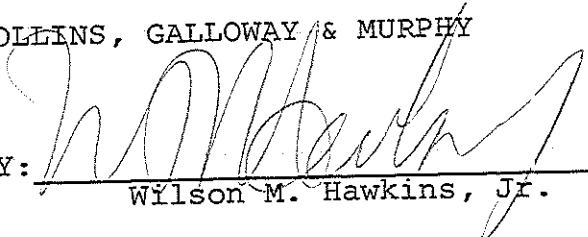
Enclosed herewith is motion requiring the defendant to plead in the above referenced matter. Please file the same and indicate that you have done so by returning the carbon copy of this letter in the self-addressed, stamped envelope.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY:


Wilson M. Hawkins, Jr.

WMHJr/jkl
Enclosures

ALABAMA FARM BUREAU
MUTUAL CASUALTY
INSURANCE COMPANY, a
corporation

Plaintiff,

vs.

JOE R. GARRIS, SR.,

Defendant.

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW CASE NO. 10,491

PLEA

Comes now the Defendant, Joe R. Garriss, Sr., by his attorneys, and for answer to the Complaint heretofore filed pleads separately and severally as follows:

1. The allegations of the Complaint are untrue.
2. The Defendant is not guilty of the matters and things alleged in said Complaint.
3. The Defendant is not indebted to the Plaintiff.

CHASON, STONE & CHASON

BY: Charles C. Parton
Attorneys for Defendant

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 30th day of November, 1972.

Charles C. Parton

FILED

NOV 20 1972

EUNICE B. BLACKMON CIRCUIT CLERK

ALABAMA FARM BUREAU MUTUAL
CASUALTY INSURANCE COMPANY,
a corporation,

Plaintiff,

VS:

JOE R. GARRIS, SR.

Defendant.

: IN THE CIRCUIT COURT OF
: BALDWIN COUNTY, ALABAMA

: AT LAW

:

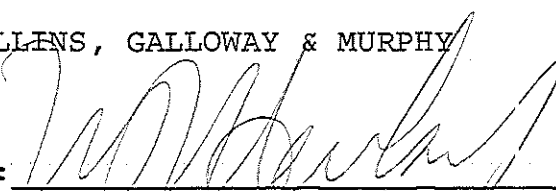
:

: CASE NO. 10,491

Comes now the plaintiff in the above styled cause and shows unto the Court that on September 6, 1972, the defendant's demurrers to the plaintiff's complaint were overruled, and that the defendant has failed to answer the complaint in the time prescribed by law. Wherefore the plaintiff moves the Honorable Court to require the defendant to plead within a time set by the Court or suffer a judgment by default.

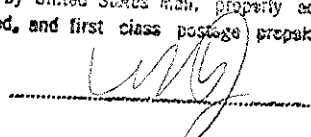
COLLINS, GALLOWAY & MURPHY

BY:


Wilson M. Hawkins, Jr.
ATTORNEYS FOR PLAINTIFF

DEFENDANT'S ATTORNEY:

Hon. Charles C. Partin

CERTIFICATE OF SERVICE
I do hereby certify that I have on this
day of NOV, 1972, 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.


FILED

NOV 21 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

ALABAMA FARM BUREAU MUTUAL	X	
CASUALTY INSURANCE COMPANY,		
a corporation,	X	IN THE CIRCUIT COURT OF
Plaintiff,	X	
	X	BALDWIN COUNTY, ALABAMA
vs.	X	
JOE R. GARRIS, SR.,	X	AT LAW NO: 10,491
Defendant.	X	

MOTION TO TRANSFER CASE TO EQUITY

Comes now Joe R. Garriss, Sr., by and through his attorneys of record, in the above styled cause and alleges that equitable defenses to said action exist in behalf of Joe R. Garriss, Sr., Defendant, which action cannot be disposed of in the law side of the Court, and which depend upon the assertion of equitable rights by the said Defendant. The said Defendant avers and shows unto this Honorable Court that the substance of his equitable defenses are as follows:

1. That prior to, to-wit: May 3, 1970, Joe R. Garriss had purchased a liability insurance policy from the said Plaintiff. In addition, the said Defendant had contracted with the said Plaintiff to be covered by an extended coverage for medical and hospital expenses incurred by the Defendant and his family in the event of an automobile collision for injuries arising as a proximate cause of an automobile accident. That the basic policy and the rider providing for medical payments coverage was in full force and effect on May 3, 1970, and said Defendant had paid all premiums then and there due to the said Plaintiff.

That on, to-wit: May 3, 1970, the Defendant's automobile was struck by an automobile driven by W. L. Medlin. That the automobile driven by the said W. L. Medlin was a rental car

and said automobile was insured by the Lessor's insurance carrier, Allstate Insurance Company. That as a proximate result of the said automobile collision, the said Defendant was forced to incur hospital and doctor bills to pay for services rendered to himself, his wife, and minor daughter.

That the said Defendant commenced an action against W. L. Medlin, and before the same was settled, the said Plaintiff, pursuant to the said medical payments rider, paid to the said Defendant One Thousand Dollars (\$1,000.00) to reimburse said Defendant for his wife's reasonable medical expenses, and Seventy-five Dollars and Fifty-six Cents (\$75.56) to reimburse said Defendant for his reasonable medical expenses. That the said Defendant actually incurred reasonable medical bills in the amount of Two Thousand Four Hundred Dollars and Twenty Cents (\$2,400.20) for medical services rendered to his wife as a proximate consequence of said accident; Eighty-eight Dollars (\$88.00) for medical services rendered to himself as a proximate consequence of said accident; and Thirty-six Dollars (\$36.00) for medical services rendered to his minor daughter as a proximate consequence of said accident. That the settlement reached between the said Defendant and W. L. Medlin did not segregate the settlement payment into the several and distinct claims of said Defendant's damages. That the settlement sum paid by W. L. Medlin did not fully indemnify the said Defendant for the above said reasonable medical expenses.

2. That as a prerequisite to the payment by the said Plaintiff to the said Defendant, the said Plaintiff made the said Defendant sign a subrogation agreement. That the medical payments coverage rider attached to said Defendant's insurance policy, issued by said Plaintiff, did not itself provide for subrogation rights in favor of said Plaintiff. That the said rider constitutes

a policy of accident and sickness insurance, and as such, did not set forth the exceptions and reductions of indemnity as required by Title 28, Section 419 (5) of the Code of Alabama of 1940. That in addition, the said medical payments coverage rider did not conform to Chapter 17 of Title 28, Code of Alabama, 1940. That a justiciable controversy exists between said Defendant and said Plaintiff on the question of whether said rider must conform to Chapter 17 of Title 28, Code of Alabama, 1940, and therefore, the Court must construe Chapter 17 of Title 28, Code of Alabama, 1940.

3. That said Defendant was induced to purchase said medical payments coverage by express statements made by said Plaintiff to said Defendant, on which statements said Defendant relied. Said Plaintiff falsely led the said Defendant to believe that, by the payment of the extra premium, the said Plaintiff was promising to reimburse said Defendant for medical expenses, up to the limit set by the policy, arising out of an automobile collision irrespective of the negligence of any party involved in such accident. That said Plaintiff conducts a statewide advertising campaign describing medical payments coverage as "no fault insurance".

4. That any subrogation claim that said Plaintiff may have against said Defendant is, under Alabama law, an equitable lien that must be enforced in a Court of Equity.

The said Defendant files this his written Motion and moves the Court to make and enter an appropriate order transferring this cause from the law side of the Court to the equity side of the Court.

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 6th day of December, 1972

Charles C. Pastor

CHASON, STONE & CHASON

BY:

Charles C. Pastor
Attorneys for Defendant

FILED
DEC 6 1972
EUNICE S. BLACKMON, CLERK

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW

958 DAUPHIN STREET

MOBILE, ALABAMA 36604

FRED G. COLLINS

THOMAS M. GALLOWAY

M. THOMAS MURPHY (1924-1956)

ROBERT H. SMITH

WILSON M. HAWKINS, JR.

December 5, 1972

P. O. Box 4492

TELEPHONE

432-0568

AREA CODE 205

Mrs. Eunice B. Blackmon
Clerk, Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: Alabama Farm Bureau
Vs: Joe R. Garris, Sr.
Case No. 10,491

Dear Mrs. Blackmon:

Enclosed herewith is a "Notice of Deposition" in the above referenced case for the taking of the deposition of Bob Cooper in Birmingham on December 26, 1972. Please file the same and indicate that you have done so by returning the carbon copy of this letter in the self-addressed, stamped envelope.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY: 

Wilson M. Hawkins, Jr.

WMHJr/jkl
Enclosures

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW
958 DAUPHIN STREET
MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.

December 19, 1972

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

Mrs. Eunice B. Blackmon
Clerk, Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: Alabama Farm Bureau
Vs: Joe R. Garris, Sr.
Case No. 10491

Dear Mrs. Blackmon:

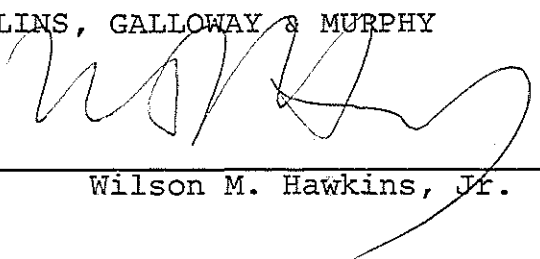
Please file the enclose "Demurrer to Motion to Transfer Case to Equity" in the above referenced matter. Also, please indicate that you have done so by returning the carbon copy of this letter to me in the self-addressed, stamped envelope.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY:



Wilson M. Hawkins, Jr.

WMHJr/jkl
Enclosures

FILED

DEC 21 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

ALABAMA FARM BUREAU MUTUAL	:	IN THE CIRCUIT COURT OF
CASUALTY INSURANCE COMPANY,	:	
a corporation,	:	BALDWIN COUNTY, ALABAMA
Plaintiff,	:	
VS:	:	
	:	AT LAW
JOE R. GARRIS, SR.,	:	
Defendant.	:	CASE NO. 1 0, 4 9 1

DEMURRER TO MOTION TO TRANSFER CASE TO EQUITY

Comes now the plaintiff in the above styled cause and demurs to the defendant's motion to transfer the case to equity on the following separate and several grounds, to-wit:

1. That said motion is not sworn to as required by law.
2. That there is no equity in the motion to transfer.
3. From aught that appears from said motion there are no equitable defenses raised in said motion.
4. From aught that appears from said motion the defendant has waived the matters set out in the motion when he answered the instant lawsuit.
5. The motion does not comply with the laws that require that type motion be sworn to.

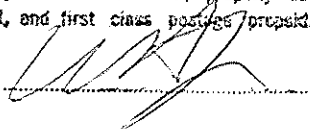
COLLINS, GALLOWAY & MURPHY

BY: 

Wilson M. Hawkins, Jr.
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 19th day of December, 1972 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

DEC 21 1972

EUNICE B. BLACKMON CIRCUIT CLERK

ALABAMA FARM BUREAU MUTUAL : IN THE CIRCUIT COURT OF
CASUALTY INSURANCE COMPANY,
A Corporation,

Plaintiff, : BALDWIN COUNTY, ALABAMA

VS:

: AT LAW

JOE R. GARRIS, SR.,

Defendant. : CASE NO. 1 0 4 9 1

MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff and moves the Court to enter, pursuant to Rule 56 of the Alabama Rules of Civil Procedure, a summary judgment in plaintiff's favor for the relief demanded in its complaint and for grounds of its motion says that there is no genuine issue as to any material fact and that the plaintiff is entitled to a judgment as a matter of law.

This motion is based upon the pleadings in this action, and deposition of William Robert Cooper, Jr. and the affidavit of Wilson M. Hawkins, Jr.

The plaintiff is entitled to summary judgment in this action because:

1. The agreement entered into between the plaintiff and defendant clearly states that plaintiff shall be subrogated to the proceeds of any settlement or judgment that may result from defendant's accident. The agreement states that plaintiff's subrogation is to the extent of any payment made by plaintiff to defendant.

2. In this action plaintiff claims of defendant only that amount which plaintiff paid defendant for medical expenses, only the amount provided in the subrogation provision of the agreement between plaintiff and defendant.

3. Defendant has received compensation far in excess of the reimbursement demanded by plaintiff.

WHEREFORE, the plaintiff respectfully moves this Court to enter judgment in its favor, with costs assessed against defendant.

COLLINS, GALEWAY & MURPHY

By: 

WILSON M. HAWKINS, JR.
ATTORNEYS FOR ABOVE NAMED PLAINTIFF

CERTIFICATE OF SERVICE

I do hereby certify that I have on this _____ day of _____, 1973, served a copy of the _____ and placing an account for all parties to this matter by the mailing the same by _____ class mail at _____ and that class postage prepaid.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this _____ day of _____, 1973, served a copy of the _____ and placing an account for all parties to this matter by the mailing the same by _____ class mail at _____ and that class postage prepaid.

FILED

SEP 19 1973

EUNICE B. BLACKMON CIRCUIT CLERK

ALABAMA FARM BUREAU
MUTUAL CASUALTY
INSURANCE COMPANY, a
corporation

Plaintiff,

vs.

JOE R. GARRIS, SR.,

Defendant.

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW CASE NO. 10,491

AMENDMENT TO MOTION TO TRANSFER CASE TO EQUITY

Comes now the Defendant, by and through his attorneys
of record, and amends the motion to transfer this case to Equity,
heretofore filed in this cause by attaching the following
affidavit:

STATE OF ALABAMA

BALDWIN COUNTY

I, Joe Garriss, Sr., being duly sworn do depose and say
that I am the Defendant in this cause; that I have read the fore-
going motion; that I have knowledge of the facts alleged therein;
and that the statements and allegations therein contained are
true to the best of my knowledge.

Joe Garriss, Sr.

Sworn to and subscribed

before me this 28th day

of December, 1972.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing BY:
reading 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 5th day

of January, 1973
Charles C. Pastori

FILED

JAN 5 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

CHASON, STONE & CHASON

ALABAMA FARM BUREAU MUTUAL	X	
CASUALTY INSURANCE COMPANY,		
A Corporation,	X	IN THE CIRCUIT COURT OF
Plaintiff,	X	
		BALDWIN COUNTY, ALABAMA
	X	
vs.		
	X	AT LAW CASE NO: 10,491
JOE R. GARRIS, SR.,	X	
Defendant.	X	

PLEA

Comes now the Defendant, Joe R. Garriss, Sr., by his attorneys, and amends his Answer to the Complaint heretofore filed in this cause and pleads separately and severally as follows:

1. The allegations of the Complaint are untrue.
2. The Defendant is not guilty of the matters and things alleged in said Complaint.
3. The Defendant is not indebted to the Plaintiff.
4. That prior to, to-wit: May 3, 1970, Joe R. Garriss, Sr. had purchased an automotive liability insurance policy from the Plaintiff. In addition, the Defendant had contracted with the Plaintiff for extended coverage for medical and hospital expenses incurred by the Defendant and his family in the event of an automobile collision for injuries arising as a proximate result of automobile accident. That said insurance was in full force and effect on May 3, 1970. That said contract for extended coverage for medical and hospital expenses as aforesaid constitutes a policy of accident and sickness insurance, and as such, did not set forth the exceptions and reductions of indemnity as required by Title 28, Section 419 (5), Code of Alabama. That in addition, the said contract does not conform to Chapter 17 of Title 28,

Code of Alabama.

CHASON, STONE & CHASON

BY: Charles C. Paster
Attorneys for Defendant

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 by First Class United States Mail, addressed and postage paid, this 9th day

of March, 1973.

Charles C. Paster

FILED

MAR 9 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

ALABAMA FARM BUREAU MUTUAL	:	IN THE CIRCUIT COURT OF
CASUALTY INSURANCE COMPANY,	:	
A Corporation,	:	BALDWIN COUNTY, ALABAMA
PLAINTIFF,	:	
VS:	:	AT LAW
JOE R. GARRIS, SR.,	:	
DEFENDANT	:	CASE NO. 1 0 4 9 1

Comes now the plaintiff in the above styled cause and demurs to the defendant's motion to transfer the case to equity on the following separate and several grounds, to-wit:

1. That said motion is not sworn to as required by law.
2. That there is no equity in the motion to transfer.
3. From aught that appears from said motion there are no equitable defenses raised in said motion.
4. From aught that appears from said motion the defendant has waived the matters set out in the motion when he answered the instant lawsuit.
5. The motion does not comply with the laws that require that type motion be sworn to.
6. From the face of said motion it appears that defendant seeks to defend the case by alleging fraud on the plaintiff's part but there are no facts plead in said motion that show a fraud was committed on the defendant by the plaintiff.
7. From aught that appears in said motion the defendant has no equitable defenses to the plaintiff's claim.
8. From aught that appears in said motion the defendant's alleged defenses can be adjudicated on the law side of the court.
9. The said motion is so vague, uncertain and indefinite that the plaintiff cannot determine what equitable

JAN 29 1973

EUNICE B. BLACKMON CIRCUIT CLERK

defenses the defendant is setting forth.

10. It does not appear from the face of said motion that the alleged equitable right set out in said motion would dispose of the case.

11. From aught that appears from said motion the matters set out therein can be disposed of on the law side of the court.

12. From all that appears in said motion, it is without equity.

COLLINS, GALLOWAY & MURPHY

BY: 

Wilson M. Hawkins, Jr.

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 26th day of January, 1973, 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

JAN 29 1973

EUNICE B. BLACKMON CIRCUIT CLERK

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW
958 DAUPHIN STREET
MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.

January 25, 1973

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

Mrs. Eunice B. Blackmon
Clerk, Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: Alabama Farm Bureau
vs: Joe R. Garris, Sr.
Case No. 10491

Dear MRs. Blackmon:

Please file the enclosed demurrer in the above referenced matter. Also, please indicate that you have done so by returning the carbon copy of this letter to me in the self-addressed, stamped envelope.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY:

Wilson M. Hawkins, Jr.

WMHJr/brm

Encls.

ALABAMA FARM BUREAU MUTUAL X
CASUALTY INSURANCE COMPANY, X
A Corporation, X IN THE CIRCUIT COURT OF

Plaintiff, X

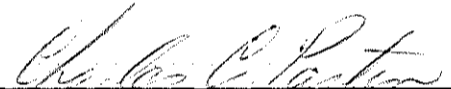
X BALDWIN COUNTY, ALABAMA
vs. X
X
JOE R. GARRIS, SR., X AT LAW NO. 10,491

Defendant. X

MOTION FOR SUMMARY JUDGMENT

Defendant moves the Court to enter, pursuant to Rule 56 of the Alabama Rules of Civil Procedure, a summary judgment in the Defendant's favor dismissing the action on the ground that there is no genuine issue as to any material fact and that the Defendant is entitled to a judgment as a matter of law.

This motion is based upon the pleadings and the deposition of William Robert Cooper, Jr.



Charles C. Partin
Attorney for Defendant
P. O. Box 120
Bay Minette, Alabama 36507

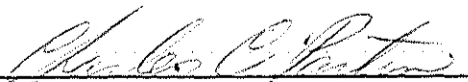
CERTIFICATE OF SERVICE

I, Charles C. Partin, attorney for the Defendant in the above styled action, hereby certify that on the 6th day of March, 1974, I served the attached Motion for Summary Judgment upon Wilson M. Hawkins, attorney for Plaintiff, by depositing a copy of the same in the United States Mails, postpaid, addressed to him at P.O. Box 4492, Mobile, Alabama, his last known address.

FILED

MAR 7 1974

EUNICE B. BLACKMON CIRCUIT
CLERK



Charles C. Partin
Attorney for Defendant
P. O. Box 120
Bay Minette, Alabama 36507

1 to pay, and then I had the property damage
2 subrogation claim of Farm Bureau.

3 Q Was the lawsuit you mentioned earlier
4 that was filed, was that dismissed?

5 A Right.

6 MR. SMITH: O. K. I don't believe I
7 have any further questions.

8
9 EXAMINATION BY MR. PARTIN:

10 Q Mr. Cooper, were the damages that were
11 divided between the husband and wife divided
12 on any basis besides a 50-50 split because of
13 the way the release was written?

14 A Well, of course, we owe the husband
15 for loss of services; we owe him for medical
16 expense incurred by him in behalf of his wife;
17 and we always split the money to show at least
18 that amount of money, or more, to the husband,
19 to be sure that his claim is completely satis-
20 fied.

21 The easiest way to do that, of course,
22 is just to split the money 50-50.

23 Q Do you recall if in this accident

1 Mrs. Garris' injuries were more serious than
2 Mr. Garris' injuries were, from the information
3 that you have in the file?

4 A Well, let me look through my file.

5 Well, the police report shows Mr. Garris
6 as the driver of the vehicle. And I honestly
7 can't recall if Mr. Garris received any medical
8 treatment from the accident.

9 He alleged a minor injury in his suit,
10 but the majority of his claim was for loss of
11 services, as I recall, and medical expense to
12 his wife.

13 Q During the period of time that the
14 settlement of the claim was being negotiated;
15 was there any specific discussion as to what
16 amount of the money that was ultimately awarded
17 to Mr. Garris was to cover the claim that he
18 had for medical expenses to his wife?

19 A Well, as I recall, it was my understanding
20 that our settlement was for complete release
21 of the claim.

22 At that time, we did not recognize
23 Farm Bureau's right to subrogate medical payments,

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW

958 DAUPHIN STREET

MOBILE, ALABAMA 36604

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924 - 1956)
ROBERT H. SMITH
WILSON M. HAWKINS, JR.
THOMAS M. GALLOWAY, JR.

June 24, 1974

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

Honorable Telfair J. Mashburn
Judge of Circuit Court
Baldwin County Court House
Bay Minette, Alabama 36507

Re: Alabama Farm Bureau Mutual
Casualty Insurance Company
Vs: Joe R. Garriss
Case No. 10,491

Dear Judge Mashburn:

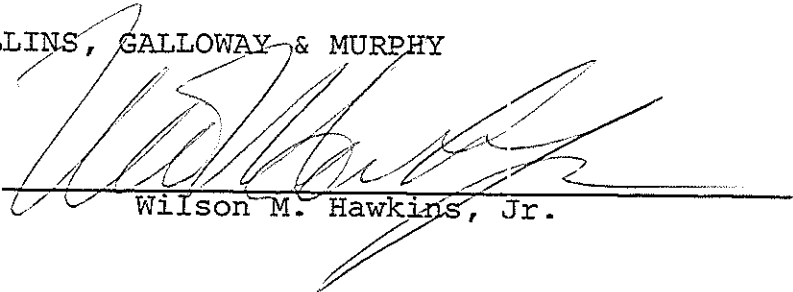
On June 10, 1974 I travelled to Bay Minette on the day this case was set for trial. If you will remember you indicated that you were going to find in favor of the plaintiff on its' motion for summary judgment. Enclosed you will find an original and three copies of our proposed order granting plaintiff's motion for summary judgment. After looking over this order if you can think of anything else that needs to be in it please let me know and we will amend it.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY:


Wilson M. Hawkins, Jr.

WMHJr/jkl
Enclosures

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

ALABAMA FARM BUREAU MUTUAL
CASUALTY INSURANCE COMPANY,
A Corporation,

Plaintiff,

vs.

JOE R. GARRIS, SR.,

Defendant.

:

:

:

:

:

:

AT LAW

CASE NO: 10, 491

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This cause came to be heard on the plaintiff's motion for summary judgment pursuant to Rule 56 of the Alabama Rules of Civil Procedure. Having carefully considered all aspects of this case the court makes the following:

FINDING OF FACTS

1. The plaintiff was issued a policy of insurance by the defendant, which policy provided that upon payment under the medical payment provisions of the policy, "the company shall be subrogated to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of any recovery which the insured person or anyone receiving such payment may have against any person or organization and such person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such persons shall do nothing after lost to prejudice such rights".

2. The defendant and his wife were injured in an automobile accident on May 3, 1970.

3. The plaintiff pursuant to said policy of insurance paid the defendant a total of ONE THOUSAND AND SEVENTY-FIVE AND 56/100 (\$1,075.56) DOLLARS under its medical payments provision, for medical care necessitated by the aforesaid accident.

4. The defendant received NINE THOUSAND NINE HUNDRED AND 00/100 (\$9,900.00) DOLLARS in settlement with the parties who injured the defendant in the aforesaid accident and the

defendant's wife settled for a said equal amount. The total settlement with Mr. and Mrs. Garri's was NINETEEN THOUSAND EIGHT HUNDRED AND 00/100 (\$19,800.00) DOLLARS.

5. The defendant subsequently signed releases with the parties who injured the defendant in the aforesaid accident.

6. The plaintiff has demanded that the defendant pay to the plaintiff the sum of ONE THOUSAND SEVENTY-FIVE AND 56/100 (\$1,075.56) DOLLARS in reimbursement for the monies paid by the plaintiff to the defendant and the defendant has refused to pay the same.

On the basis of the foregoing finding of facts the court makes the following:

CONCLUSIONS OF LAW

1. The subrogation provision of the policy of the aforesaid policy of insurance providing subrogation to payment made under the medical payments provision is valid.

2. The defendant by signing the release with the person who injured him in the automobile accident on May 3, 1970, prejudiced the rights of the plaintiff in violation and breach of the subrogation provisions of the aforesaid insurance policy.

3. The ONE THOUSAND SEVENTY-FIVE AND 56/100 (\$1,075.56) DOLLARS on the money received by the defendant in settlement with the person who injured him in the aforesaid automobile accident was money received by the defendant for the use of the plaintiff which sum of money should have been paid over to the plaintiff by the defendant.

IT IS THEREFORE ORDERED, that summary judgment by entered in this matter in favor of the plaintiff against the defendant in the amount of ONE THOUSAND SEVENTY-FIVE AND 56/100 (\$1,075.56) DOLLARS and it is further;

ORDERED, that the costs of this proceeding by taxed against the defendant, for which let execution issue.

Done this the 26th day of June, 1974.

Jeffery S. Middleberry
JUDGE

extra copy

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

ALABAMA FARM BUREAU MUTUAL	:	
CASUALTY INSURANCE COMPANY,	:	
A Corporation,	:	
Plaintiff,	:	
vs.	:	AT LAW
JOE R. GARRIS, SR.,	:	CASE NO: <u>10, 491</u>
Defendant.	:	

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This cause came to be heard on the plaintiff's motion for summary judgment pursuant to Rule 56 of the Alabama Rules of Civil Procedure. Having carefully considered all aspects of this case the court makes the following:

FINDING OF FACTS

1. The plaintiff was issued a policy of insurance by the defendant, which policy provided that upon payment under the medical payment provisions of the policy, "the company shall be subrogated to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of any recovery which the insured person or anyone receiving such payment may have against any person or organization and such person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such persons shall do nothing after lost to prejudice such rights".
2. The defendant and his wife were injured in an automobile accident on May 3, 1970.
3. The plaintiff pursuant to said policy of insurance paid the defendant a total of ONE THOUSAND AND SEVENTY-FIVE AND 56/100 (\$1,075.56) DOLLARS under its medical payments provision, for medical care necessitated by the aforesaid accident.
4. The defendant received NINE THOUSAND NINE HUNDRED AND 00/100 (\$9,900.00) DOLLARS in settlement with the parties who injured the defendant in the aforesaid accident and the

defendant's wife settled for a said equal amount. The total settlement with Mr. and Mrs. Garris was NINETEEN THOUSAND EIGHT HUNDRED AND 00/100 (\$19,800.00) DOLLARS.

5. The defendant subsequently signed releases with the parties who injured the defendant in the aforesaid accident.

6. The plaintiff has demanded that the defendant pay to the plaintiff the sum of ONE THOUSAND SEVENTY-FIVE AND 56/100 (\$1,075.56) DOLLARS in reimbursement for the monies paid by the plaintiff to the defendant and the defendant has refused to pay the same.

On the basis of the foregoing finding of facts the court makes the following:

CONCLUSIONS OF LAW

1. The subrogation provision of the policy of the aforesaid policy of insurance providing subrogation to payment made under the medical payments provision is valid.

2. The defendant by signing the release with the person who injured him in the automobile accident on May 3, 1970, prejudiced the rights of the plaintiff in violation and breach of the subrogation provisions of the aforesaid insurance policy.

3. The ONE THOUSAND SEVENTY-FIVE AND 56/100 (\$1,075.56) DOLLARS on the money received by the defendant in settlement with the person who injured him in the aforesaid automobile accident was money received by the defendant for the use of the plaintiff which sum of money should have been paid over to the plaintiff by the defendant.

IT IS THEREFORE ORDERED, that summary judgment by entered in this matter in favor of the plaintiff against the defendant in the amount of ONE THOUSAND SEVENTY-FIVE AND 56/100 (\$1,075.56) DOLLARS and it is further;

ORDERED, that the costs of this proceeding be taxed against the defendant, for which let execution issue.

Done this the _____ day of _____, 1974.

JUDGE