

25576

LAW OFFICES OF  
D. R. COLEY, JR.

302-6 FIRST FEDERAL SAVINGS BUILDING

106 ST. JOSEPH STREET

MOBILE, ALABAMA

CHRIS C. DELANEY

April 10, 1955

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

Dear Mrs. Duck:

I am enclosing herewith demurrers on behalf  
of the Fireman's Insurance Company to the complaint  
filed by the Empire State Insurance Company against  
Homera P. Schnitzer and the Fireman's Insurance Company.

I will appreciate your filing this for me,  
and advising me when it is set down for hearing.

With kind regards, I am

Very truly yours,

  
D. R. Coley, Jr.

C/D  
Registered Mail  
Return Receipt Requested

EMPIRE STATE INSURANCE COMPANY,  
a corporation,

Plaintiff,

vs.

HOMERA P. SCHNITZER, et al.,

Defendants.

) IN THE CIRCUIT COURT OF  
)  
) BALDWIN COUNTY, ALABAMA.  
)  
) CIVIL NO. 2556  
)  
)  
)  
)  
)  
)

Comes now the Defendant, the Fireman's Insurance Company of Newark, New Jersey, and demurs to the complaint herein on the following separate and several grounds:

1: Because the allegations thereof fail to state a cause of action against the Defendant, the Fireman's Insurance Company of Newark, New Jersey.

2: Because it affirmatively appears from the allegations of said complaint, together with the exhibit thereto, that the Defendant, the Fireman's Insurance Company of Newark, New Jersey, was under no legal obligation, contractual or otherwise, to pay any sums of money to the Plaintiff.

3: Because it affirmatively appears from the allegations of said complaint, with the exhibit thereto, that any obligation to pay any sums to the Plaintiff was the obligation of Homera P. Schnitzer, and not that of the Defendant, the Fireman's Insurance Company of Newark, New Jersey.

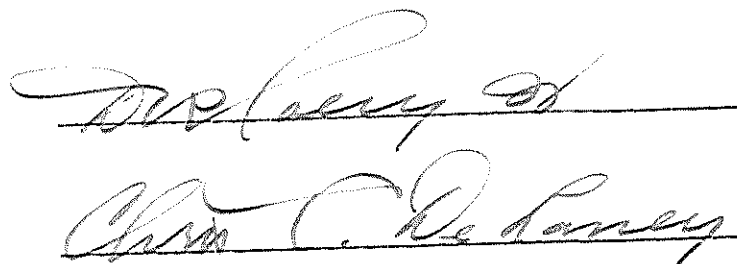
4: Because the allegation that Homera P. Schnitzer "assigned" to the Plaintiff all documents necessary to promptly present claim, etc., is a mere conclusion of the pleader and not supported by the instrument itself.

5: Because the pledge to the Empire State Insurance Company of whatever recovery Homera P. Schnitzer might make was not such an assignment of claim as to impose any obligation whatsoever upon the Fireman's Insurance Company of Newark, New Jersey.

6: Because the allegation "that on or about the 27th day of June, 1954, the plaintiff notified the defendant Fireman's Insurance Company of Newark, New Jersey, of its payment to the defendant Schnitzer of the sum of \$306.27" and that "such notification further stated that Homera P. Schnitzer had assigned all right, title and interest in her claim against the third party to the plaintiff" is a mere conclusion of the pleader.

7: Because it does not appear from the allegations of said complaint whether such alleged notification to the Fireman's Insurance Company of Newark, New Jersey, was written or oral, nor does it appear in what manner such notice was given.

8: Because no facts are alleged from which it can be said as a matter of law that the Fireman's Insurance Company of Newark, New Jersey, is obligated to pay any sum to the Empire State Insurance Company, a corporation.



ATTORNEYS FOR DEFENDANT,  
FIREMAN'S INSURANCE COMPANY  
OF NEWARK, NEW JERSEY

Plaintiff,

HOMERA P. SCHNITZER, and  
the FIREMAN'S INSURANCE  
COMPANY of Newark, New  
Jersey, jointly and severally,

Defendants. •

Now comes the Defendant, the Fireman's Insurance Company of Newark, New Jersey, and respectfully shows unto the Court that it believes that the demurrers heretofore filed herein on behalf of the Fireman's Insurance Company of Newark, New Jersey, are well taken, and that great injustice will be done if the order of the Court entered on August 16th, 1955, be not set aside.

It further shows unto the Court that on or about the 13th day of August, 1955, the Attorney for the said Defendant received from the Court notice in words as follows:

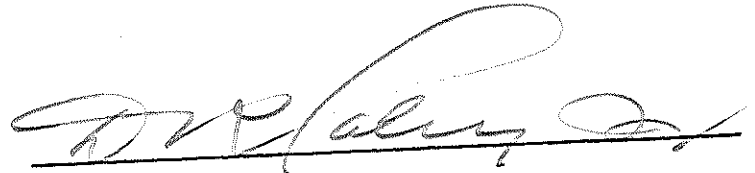
"You are hereby notified that the case of all cases at issue vs. \_\_\_\_\_ has been set down for trial in this Court on the 16th of August, 1955.

Yours truly,  
ALICE J. DUCK,  
Clerk."

but that he did not know that pleadings in other causes would be heard on said date; that failure to appear in Court and argue the demurrers or submit the same was not due to any willful neglect or negligence on the part of the said Attorney, but, as aforesaid, because he did not know that said demurrers were set for hearing on said date.

WHEREFORE, the Defendant, the Fireman's Insurance Company of Newark, New Jersey, moves that the order of the Court entered on August 16th, 1955, be vacated

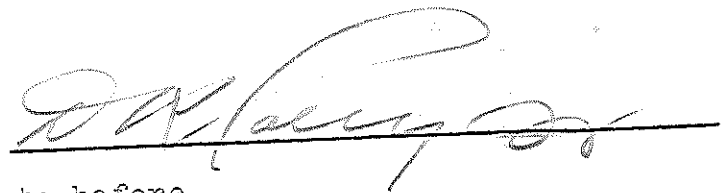
and set aside, and that the demurrers be set down for argument or, if agreeable to the Attorney for the Plaintiff, that the same be submitted either with or without argument or upon brief or in any manner which might be agreeable to the Court.



ATTORNEY FOR THE FIREMAN'S  
INSURANCE COMPANY OF NEWARK,  
NEW JERSEY.

STATE OF ALABAMA, )  
COUNTY OF MOBILE. )


~~Before me, the undersigned authority, per-~~  
sonally appeared this day D. R. Coley, Jr., who, being by me first duly sworn, deposes and says that he has read the foregoing motion, and that the statements contained therein are true and correct.



Subscribed and sworn to before  
me this 26th day of August, 1955.

NOTARY PUBLIC, MOBILE COUNTY, ALABAMA.

I hereby certify that a copy of the foregoing motion was served upon the Honorable J. Connor Owens Jr., by placing the same in the United States Mail, addressed to him at Bay Minette, Alabama, on this 26th day of August, 1955.



ATTORNEY FOR THE FIREMAN'S  
INSURANCE COMPANY OF NEWARK,  
NEW JERSEY.

STATE OF ALABAMA  
BALDWIN COUNTY

§  
§  
§

IN THE CIRCUIT COURT--CIVIL SIDE

TO ANY SHERIFF OF THE STATE OF ALABAMA

You are hereby commanded to summon Homera P. Schnitzer and the Fireman's Insurance Company of Newark, New Jersey to appear and plead, answer or demur within thirty days from the service hereof, to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama, on Civil Side, by Empire State Insurance Company, a corporation, as Plaintiff, against Homera P. Schnitzer and the Fireman's Insurance Company of Newark, New Jersey, as defendants.

Witness my hand this 4<sup>th</sup> day of March, 1955.

Archie L. Blount  
Register

EMPIRE STATE INSURANCE COMPANY, I  
a corporation, I

Plaintiff I

vs I

HOMERA P. SCHNITZER, and the I  
FIREMAN'S INSURANCE COMPANY I  
of Newark, New Jersey, I  
jointly and severally, I

Defendants I

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

CIVIL NO. \_\_\_\_\_.

The plaintiff claims of the defendants the sum of THREE HUNDRED SIX DOLLARS AND TWENTY-SEVEN CENTS (\$306.27) damages for a breach of a written agreement entered into by the defendant, Homera P. Schnitzer, on the 30th day of March, 1954, a copy of which is attached to the petition, and labeled "Exhibit A" and made a part of this complaint; and the plaintiff further alleges that in and by said agreement as amended; that the defendant, Homera P. Schnitzer, did on March 30, 1954, receive and accept from the plaintiff the sum of \$306.27 as a loan without interest on policy no. 2357, said loan being repayed only in event and to the extent that any net recovery made by Homera P. Schnitzer from any person or persons, corporation or corporations, or other parties on account of loss by automobile collision, which said collision damaged property belonging to the said Homera P. Schnitzer; said "Exhibit A" further provided and pledged to the plaintiff whatever recovery defendant Homera P. Schnitzer might make, and Homera P. Schnitzer assigned to the plaintiff all documents necessary to promptly present claim, or prosecute a suit against such person or persons, corporation or corporations, through whose negligence the aforesaid loss was caused or who may otherwise be responsible therefor, under the exclusive direction and control of the plaintiff;

The defendant, Fireman's Insurance Company of Newark, New Jersey, was the insurance carrier for the third party involved in the collision by which the defendant Schnitzer's property was damaged; that on or about the 27th day of June, 1954, the plaintiff notified the defendant Fireman's Insurance Company of Newark, New Jersey, of its payment to the defendant Schnitzer of the sum of \$306.27; such notification further stated that Homera P. Schnitzer had assigned all right, title and

interest in her claim against the third party to the plaintiff;

That on or about the 30th day of July, 1954, the Fireman's Insurance Company of Newark, New Jersey, with knowledge of the assignment of its claim to the plaintiff, did pay to defendant, Mrs. Homera P. Schnitzer the sum of \$4,000.00; that the plaintiff has demanded from the defendant, Homera P. Schnitzer and the defendant, Fireman's Insurance Company of Newark, New Jersey, the sum of \$306.27 but that the defendants in breach of the agreement labeled "Exhibit A" and refused to pay the plaintiff the said sum, all to the damage of the plaintiff.

  
Attorney for Plaintiff



LOAN RECEIPT

Dated: March 30 19 54

\$ 306.27

RECEIVED FROM - EMPIRE STATE  
INSURANCE COMPANY the sum of THREE HUNDRED SIX and 27/100 - - - - Dollar  
as a loan, without interest, under policy No. 2357, repayable only  
in the event and to the extent that any net recovery is made by me  
from any person or persons, corporations or corporations, or other  
parties, on account of loss by collision to my  
Property on or about 5th day of March, 19 54.

As security for such payment, we hereby pledge to said EMPIRE  
STATE Insurance Company whatever recovery I may make,  
and deliver to it herewith all documents necessary to show our interest  
in said property and we hereby agree to promptly present claim and,  
if necessary, to commence, enter into and prosecute suit against such  
person or persons, corporation or corporations, through whose negligence  
the aforesaid loss was caused, or who may otherwise be responsible  
therefor, with all due diligence, in our own name,  
but at the expense of/and under the exclusive direction and control  
of the said EMPIRE STATE Insurance Company.

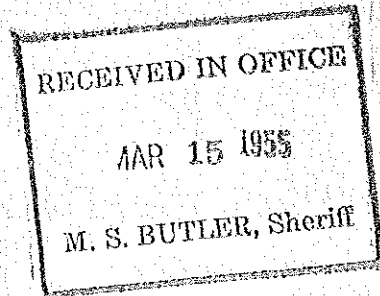
/s/ Homera P. Schnitzer

In presence of

\_\_\_\_\_

*Exhibit A*

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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
CIVIL NO. 2556.

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EMPIRE STATE INSURANCE CO.,  
a corporation,

Plaintiff

vs.

HOMER P. SCHNITZER, and the  
FIREMAN'S INSURANCE COMPANY  
of Newark, New Jersey,

Defendants

\*\*\*\*\*

SUMMONS AND COMPLAINT

\*\*\*\*\*

EXECUTED BY SERVING A  
COPY OF THE WITHIN

L. L. Swaltney

Att. Gen. of

State of Ala.

3-15-55

M. S. Butler  
Sheriff Montgomery County

By Mathis

FILED

MAR 4 1955

CLERK J. CONNOR OWENS, JR.

J. CONNOR OWENS, JR.

ATTORNEY AT LAW

101 Court House Square

BAY MINETTE, ALABAMA