

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
ATTORNEYS AT LAW
NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING
HEMLOCK 3-6556 P. O. BOX 1070
MOBILE 6, ALABAMA

GESSNER T. MCCORVEY
BEN O. TURNER
C. M. A. ROGERS
C. A. L. JOHNSTONE, JR.
R. F. ADAMS
JAMES L. MAY, JR.
CHAUNCEY MOORE
ALEX T. HOWARD, JR.

February 1, 1957

Mrs. Alice J. Duck, Clerk
Bay Minette, Alabama

Re: Action No. 3116
Zyrick vs. Dr. Pepper

Dear Mrs. Duck:

Enclosed herewith is demurrer in this cause which I would appreciate your filing for me. I have mailed a copy of it to Judge Mashburn.

Very truly yours,

R. F. Adams
(en)

RFA/an
Encl.

ANNA DOROTHY ZYRIEK,	¶	
Plaintiff,	¶	
vs.	¶	IN THE CIRCUIT COURT OF
DR. PEPPER BOTTLING COMPANY,	¶	BALDWIN COUNTY, ALABAMA.
INC., A corporation, and	¶	AT LAW NO. 3116
ELVERT HALL,	¶	
Defendants.	¶	

Come the defendants in the above styled cause, separately and severally, and demur to plaintiff's complaint on the following separate and several grounds:

1. Because it is not alleged in or shown by the averments of said complaint that the defendant or its agent, servant or employee violated a duty owed to the plaintiff.

2. Because said complaint does not show that the defendant or its agent, servant or employee owed to the plaintiff a duty and that there was a breach of this duty proximately causing the injury of plaintiff.

3. Because said complaint does not allege or show that the injury to the plaintiff was proximately caused by the breach of a duty owed by the defendant or its agent, servant or employee to the plaintiff.

4. Because said complaint does not state a cause of action against the defendants, or against either of them.

5. Because the alleged act of the defendant, Hall, does not constitute an act of negligence on the part of the defendant, Dr. Pepper Bottling Company, Inc.

6. Because, construing the pleadings most strongly against the pleader, it affirmatively appears that the negligence, if any, causing said accident was that of the plaintiff.

7. Because said complaint does not sufficiently show the nature of the negligence charged against the defendants.

8. Because said complaint is vague, indefinite and uncertain.

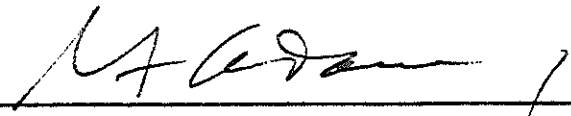
9. Because it does not appear from the averments of the complaint how negligence on the part of the defendant, Hall, could cause the automobile which plaintiff was then and there driving to come into contact with the truck Hall was driving.

10. Because no causal connection is shown between the negligent operation of the truck and the injury to plaintiff.

11. Because the complaint attempts to set forth the acts of negligence chargeable to defendants, but said acts do not constitute negligence as a matter of law.

12. Because it is not alleged that the defendant, Hall, was acting within the line and scope of his employment by the defendant, Dr. Pepper Bottling Company, Inc., at the time and place complained of in the complaint.

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By 
Attorneys for Defendants

3116

FILED
FEB 5 1957
ALICE A. DUCK, Clerk

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
ATTORNEYS AT LAW
NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

STATE OF ALABAMA, 0
 0 TO ANY SHERIFF OF THE STATE OF ALABAMA:
COUNTY OF BALDWIN. 0

You are hereby commanded to summon DR. PEPPER BOTTLING COMPANY, INC., A Corporation, 850 New Jersey Street, Mobile, Alabama, and ELVERT HALL, 850 New Jersey Street, Mobile, 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 ANNA DOROTHY ZYRIEK.

Witness my hand this 28 day of Dec, 1956.

Reice J. Duck
C L E R K.

C O M P L A I N T

ANNA DOROTHY ZYRIEK,	0	
	0	
Plaintiff,	0	IN THE CIRCUIT COURT OF
	0	
VS.	0	BALDWIN COUNTY, ALABAMA.
	0	
DR. PEPPER BOTTLING COMPANY,	0	AT LAW. NO. _____
INC., A Corporation, and	0	
ELVERT HALL,	0	
	0	
Defendants.	0	

C O U N T O N E

The plaintiff claims of the defendants the sum of FIFTEEN THOUSAND (\$15,000.00) DOLLARS, AS Damages for that, heretofore, on, to-wit: Friday, the 24th day of August, 1956, at about 8:15 o'clock, A. M., on U. S. Highway Number 90, at a point about 1.2 miles west of the center of Blakeley River Bridge, near Palmer's Cafe, the defendant, ELVERT HALL, whose name is to the plaintiff otherwise unknown, who was then and there an agent, servant, or employee of the defendant, DR. PEPPER BOTTLING COMPANY, INC., A Corporation, acting within the line and scope of his employment, so negligently operated an automobile truck, belonging to the defendant, DR. PEPPER BOTTLING COMPANY, INC., A Corporation, which he was then and there driving, as to cause the automobile which plaintiff was then and there driving to come into contact with said truck, and as a proximate result of said collision, plaintiff's body was bruised, muti-

lated and injured; she was bruised and injured in her face, head, arms, ankles and other parts of her body; her knees were seriously bruised and crippled; she was seriously bruised internally; her left arm was seriously bruised and permanently injured; her teeth were seriously injured; her back was seriously and permanently injured; she was made sick, sore, lame and disordered; she has suffered and is suffering excruciating mental pain and anguish, and will be disabled and incapacitated for the remainder of her life; she was forced to expend large sums of money in and about the treatment of her said injuries for Doctors, nurses, hospital and medicines; she was caused to lose much time from her work; and her health and physical stamina were permanently impaired and she has been permanently injured in the various parts of her body, hence this suit.

Plaintiff further avers that all of her injuries and damages set forth above were proximately caused by the negligence of of the servant, agent, or employee of the defendant, DR. PEPPER BOTTLING COMPANY, INC., A Coporation, then and there in charge of said truck for the said defendant and acting within the line andscope of his duty in the employment of said defendant Bottling Company, in this, that said ELVERT HALL, the said servant, agent or employee, negligently operated said automobile truck at the time and place of the said collision.

Julian J. Mashburn, Jr.
ATTORNEY FOR PLAINTIFF.

*Plaintiff requests that this cause be
tried by a jury*

Julian J. Mashburn, Jr.
Attorney for Plaintiff

CO 746

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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. NO. 3116

ANNA DOROTHY ZYRIEK,
Plaintiff,

VS.

2/20/56 *(3)* *C. A. Gundry, Sales Mgr.*
DR. PEPPER BOTTLING COMPANY,
INC., A Corporation, and
ELVERT HALL,

2/2/56 *(3)*

Defendants.

SUMMONS AND COMPLAINT.

FILED

DEC 28 1956

WELFAIR I. MASHBURN, JR.
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

Defendants may be served at
850 New Jersey Street,

The Sheriff claims 6 miles at 10¢ per mile for a total of \$ 6.00
Ray Bridges, Sheriff
Mobile County, Alabama
1956

Received 28th Day of Dec. 1956
and on 2nd Day of Jan. 1957
I served a copy of the within 1 C.F.S. This 2nd day of Jan. 1957
on Dr. Pepper Bottling Co. by serving a copy of the within on Elvert Hall
by service on C. A. Gundry, Sales Mgr. RAY D. BRIDGES, Sheriff
Dr. Pepper Bottling Co.
Elvert Hall
RAY D. BRIDGES, CLERK
[By Dr. Pepper Bottling Co. D.S.]

By TAYLOR WILKINS, Sheriff D.S.
By service on Dr. Pepper Bottling Co. and Elvert Hall
on Dr. Pepper Bottling Co.
I served a copy of the within 1 C.F.S. day of Jan. 1957