

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING

HEMLOCK 3-5561 P. O. BOX 1070

MOBILE 6, ALABAMA

GESSNER T. MCCORVEY
BEN D. TURNER
C. M. A. ROGERS (1891-1957)
C. A. L. JOHNSTONE, JR.
R. F. ADAMS
JAMES L. MAY, JR.
CHAUNCEY MOORE
ALEX T. HOWARD, JR.
J. JEPHTA HILL
CHARLES B. BAILEY, JR.

February 4, 1958

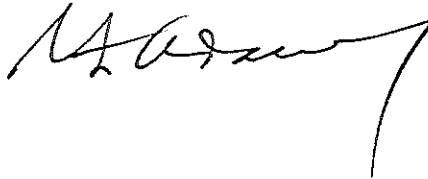
Mrs. Alice J. Duck, Clerk
Circuit Court of Baldwin County
Bay Minette, Alabama

Re: Law cases #3350 and #3356
Merchants National Bank, as Executor
vs. Taylor Wilkins, as Administrator
and Ferrill vs. Wilkins, as Administrator.

Dear Mrs. Duck:

Enclosed herewith is demurrer in each of these suits,
which we shall appreciate your filing. Mr. Gordon has
accepted service on behalf of plaintiff, and we are mailing
a copy to Mr. Brock and to Mr. Pipes.

Very truly yours,



RFA/an
Encls.

cc: Mr. Paul Brock
Mr. Sam Pipes, III

October 29, 1957

WILLIE L. FERRILL, as surviving dependent of Allen
W. Ferrill, deceased, Plaintiff

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA AT LAW

VS

XYZ CORPORATION, whose name is to the Plaintiff
otherwise unknown . . . et al, Defendants

CASE NO. 3356

TO THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, AT LAW:

I, Mary Texas Hurt, Secretary of State, hereby certify that on
I sent by registered mail in an envelope addressed as follows:

October 24, 1957

" XYZ Corporation
c/o Morrison Cafeteria Company, Inc.
Post Office Box 9214
New Orleans 20, Louisiana"

"Registered Mail—
Return Receipt Requested
~~DELIVERED TO ADDRESSEE~~

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:

"
XYZ Corporation
c/o Morrison Cafeteria Company, Inc.
Post Office Box 9214
New Orleans 20, Louisiana

You will take notice that on October 24, 1957 the Sheriff of Montgomery
County, Alabama, served upon me, in my official capacity, summons and complaint in a
case entitled: WILLIE L. FERRILL, as surviving dependent of Allen W. Ferrill,
deceased, Plaintiff VS XYZ CORPORATION, whose name is to the Plaintiff
otherwise unknown . . . et al, Defendants

in the CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, AT LAW
Case No. 3356 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 24
day of October 1957

Enclosure (1)

(Signed) Mary Texas Hurt
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 October 28, 1957 I received the return card, showing
receipt by the designated addressee of the aforementioned matter at Metairie, La.
on 10/26/57

WITNESS MY HAND and the Great Seal of the State of Alabama this the 29 day
of October 1957

Mary Texas Hurt Garner
Mary Texas Hurt
Secretary of State

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

cc: Messrs. Gordon & Jansen
Attorneys at Law
1607-1610 Merchants National Bank Bldg.
Mobile 11, Alabama

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

CIRCUIT COURT, BALDWIN COUNTY

BALDWIN COUNTY

No. 3356

TERM, 1957

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA, AS

Administrator of the Estate of Artie L. Smith, deceased; MORRISON CAFETERIA COMPANY, INC. a

corp.; MORRISON MERCHANDISING CORPORATION OF LOUISIANA, A corp; and XYZ CORPORATION, whose name
is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operat-
ing a truck on U.S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of
accident in which the Plaintiff's husband received injuries of which he died.

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 _____

TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA et als, Defendant

by WILLIE L. FERRILL, as surviving dependent of Allen W. Ferrill, deceased,

_____, Plaintiff.....

Witness my hand this 17th day of October 1957

Archie J. Spack, Clerk

WILLIE L. FERRILL, as surviving dependent of Allen W. Ferrill, deceased,
Plaintiff,

vs.

TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA, As Administrator of the Estate of Artie L. Smith, deceased; MORRISON CAFETERIA COMPANY, INC., a corporation; MORRISON MERCHANDISING CORPORATION OF LOUISIANA, a corporation; and XYZ CORPORATION, whose name is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's husband received injuries of which he died,

IN THE CIRCUIT COURT
OF BALDWIN COUNTY,
ALABAMA,
AT LAW

#

Defendants.

COUNT ONE

Plaintiff claims of the Defendants, the sum of One Hundred Thousand (\$100,000.00) Dollars as damages for that on to wit: the 19th day of October, 1955, the said Artie L. Smith so negligently operated an automobile in a westwardly direction on and along U. S. Highway 90, a public highway in Baldwin County, Alabama, at a point near Robertsdale in said State and County, as to cause or allow the same to run into, upon or against the automobile in which Plaintiff's husband, Allen W. Ferrill was travelling in an eastwardly direction on and along said public highway; and the Defendants, Morrison Cafeteria Company, Inc., a corporation, Morrison Merchandising Corporation of Louisiana, a corporation, and XYZ Corporation, whose name is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's said husband received injuries of which he died, at said time and place, each acting by and through its agent, servant or employee, Ely G. McMillan, who was then and there acting within the line and

scope of his employment as such agent, servant or employee, so negligently operated an automobile, truck or motor vehicle in a westwardly direction on and along said highway, as to cause or allow the said automobile then and there being operated by the said Artie L. Smith to run into, upon or against the automobile in which Plaintiff's said husband was then and there riding; and as a proximate result of the negligence of the Defendants as aforesaid, the Plaintiff's husband, Allen W. Ferrill, received personal injuries from which he died on, to wit: the 28th day of October, 1955; and Plaintiff avers that she is the sole dependent left surviving by the decedent, Allen W. Ferrill, who died of the injuries received by him on October 19, 1955, as aforesaid, arising out of and while he was acting in the course of his employment by Allied Mills, Inc., a corporation, and that at the time of receiving said injuries and at the time of his death, the said Allen W. Ferrill and his employer, Allied Mills, Inc. were subject to the Workmen's Compensation Laws of the State of Alabama; and Plaintiff further avers that the said Artie L. Smith is dead, and letters of administration upon said estate were issued by the Probate Court of Baldwin County, Alabama, to Taylor Wilkins, Sheriff of Baldwin County, Alabama, on October 10th, 1957, and the Plaintiff filed claim against the Estate of Artie L. Smith, deceased, in the Probate Court of Baldwin County, Alabama, for the damages sued for in this suit, said claim being filed on the 16th day of October, 1957.

COUNT TWO

Plaintiff claims of the Defendants the sum of One Hundred Thousand (\$100,000.00) Dollars as damages for that Artie L. Smith, intestate of the Defendant Taylor Wilkins, Sheriff of Baldwin County, Alabama, as Administrator of the Estate of Artie L. Smith, deceased, and the Defendant Morrison Cafeteria Company, Inc., a corporation, and the Defendant Morrison Merchandising Corporation of Louisiana, a corporation, and the Defendant XYZ Corporation, whose

name is to the Plaintiff otherwise unknown, but is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's husband received injuries of which he died, did on the 19th day of October, 1955, at a point on or along U. S. Highway 90 in Baldwin County, Alabama, near Robertsdale, then and there willfully or wantonly injure the Plaintiff's husband and Plaintiff avers that she is the sole dependent left surviving by the decedent, Allen W. Ferrill, who died of the injuries received by him on October 19, 1955, as aforesaid, arising out of and while he was acting in the course of his employment by Allied Mills, Inc., a corporation, and that at the time of receiving said injuries and at the time of his death, the said Allen W. Ferrill and his employer, Allied Mills, Inc. were subject to the Workmen's Compensation Laws of the State of Alabama; and Plaintiff further avers that the said Artie L. Smith is dead, and letters of administration upon said estate were issued by the Probate Court of Baldwin County, Alabama, to Taylor Wilkins, Sheriff of Baldwin County, Alabama, on October 10th, 1957, and the Plaintiff filed claim against the Estate of Artie L. Smith, deceased, in the Probate Court of Baldwin County, Alabama, for the damages due for in this suit, said claim being filed on the 16th day of October, 1957.

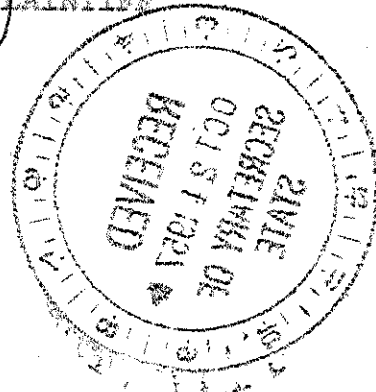
Sorden & Jansen
ATTORNEYS FOR PLAINTIFF

Plaintiff demands a trial by jury in said cause.

Addresses of Defendants:
Taylor Wilkins, Sheriff,
as Administrator
County Court House, Bay Minette, Alabama

Morrison Cafeteria Company, Inc.
Morrison Merchandising Corporation of Louisiana
XYZ Corporation
Post Office Box 9214
New Orleans 20, Louisiana

Sorden & Jansen
ATTORNEYS FOR PLAINTIFF



October 23, 1957

WILLIE L. FERRILL, as surviving dependent of Allen
W. Ferrill, deceased, Plaintiff

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA AT LAW

VS

MORRISON MERCHANDISING CORPORATION OF LOUISIANA,
a corporation, et al, Defendants

CASE NO. 3356

TO THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW:

I, Mary Texas Hurt, Secretary of State, hereby certify that on October 18, 1957
I sent by registered mail in an envelope addressed as follows:

" Morrison Merchandising Corporation of
Louisiana
Post Office Box 9214
New Orleans 20, Louisiana"

"Registered 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:

" Morrison Merchandising Corporation of
Louisiana
Post Office Box 9214
New Orleans 20, Louisiana

You will take notice that on October 18, 1957 the Sheriff of Montgomery
County, Alabama, served upon me, in my official capacity, summons and complaint in a
case entitled: WILLIE L. FERRILL, as surviving dependent of Allen W. Ferrill,
deceased, Plaintiff VS MORRISON MERCHANDISING CORPORATION OF LOUISIANA,
a corporation, et al, Defendants

in the CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW
Case No. 3356 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 18
day of October 1957

Enclosure (1)

(Signed) Mary Texas Hurt
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 October 22, 1957 I received the return card, showing
receipt by the designated addressee of the aforementioned matter at _____ La.
on 10/21/57

WITNESS MY HAND and the Great Seal of the State of Alabama this the 23 day
of October 1957

Mary Texas Hurt Garner
Mary Texas Hurt
Secretary of State

Enclosures: Return Receipt Card and copy
of Summons and Complaint. Law
cc: Messrs. Gordon & Jansen, Attorneys at /
Room 1607-1610
Merchants National Bank Building
Mobile, Alabama

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No.

TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA, as
Administrator of the Estate of Artie L. Smith, deceased; MORRISON CAFETERIA COMPANY, INC. a corp.

MORRISON MERCHANDISING CORPORATION OF LOUISIANA, a corporation; and XYZ CORPORATION, whose name
is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operat-
ing a truck on U.S. Highway 90 near Robertsedale, Alabama on October 19th, 1955, at the time of the
accident in which the Plaintiff's husband received injuries of which he died.
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 _____

TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA et al, Defendant

by WILLIE L. FERRILL as surviving dependant of Allen W. Ferrill, deceased.

Plaintiff.....

Witness my hand this 17th day of October 19.....57.

Clerk

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

CIRCUIT COURT, BALDWIN COUNTY

BALDWIN COUNTY

No. 3356

TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA, as

Administrator of the Estate of Artie L. Smith, deceased; MORRISON CAFETERIA COMPANY, INC. a corp.

MORRISON MERCHANDISING CORPORATION OF LOUISIANA, a corporation; and XYZ CORPORATION, whose name
is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operat-
ing a truck on U.S. Highway 90 near Robertsdale, Alabama on October 19th, 1955, at the time of the
accident in which the Plaintiff's husband received injuries of which he died.

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 _____

TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA et al Defendant

by WILLIE L. FERRILL as surviving dependent of Allen W. Ferrill, deceased.

_____, Plaintiff.....

Witness my hand this 17th day of October 19.....57

W. J. Shuck Clerk

WILLIE L. FERRILL, as surviving dependent of Allen W. Ferrill, deceased
Plaintiff,

vs.

TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA, As Administrator of the Estate of Artie L. Smith, deceased; MORRISON CAFETERIA COMPANY, INC., a corporation; MORRISON MERCHANDISING CORPORATION OF LOUISIANA, a corporation; and XYZ CORPORATION, whose name is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's husband received injuries of which he died,

Defendants.

IN THE CIRCUIT COURT
OF BALDWIN COUNTY,
ALABAMA, AT LAW

COUNT ONE

Plaintiff claims of the Defendants, the sum of One Hundred Thousand (\$100,000.00) Dollars as damages for that on to wit: the 19th day of October, 1955, the said Artie L. Smith so negligently operated an automobile in a westwardly direction on and along U. S. Highway 90, a public highway in Baldwin County, Alabama, at a point near Robertsdale in said State and County, as to cause or allow the same to run into, upon or against the automobile in which Plaintiff's husband, Allen W. Ferrill was travelling in a eastwardly direction on and along said public highway; and the Defendants, Morrison Cafeteria Company, Inc., a corporation, Morrison Merchandising Corporation of Louisiana, a corporation, and XYZ Corporation, whose name is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's said husband received injuries of which he died, at said time and place, each acting by and through its agent, servant or employee, Ely G. McMillan, who was then and there acting within the line and

scope of his employment as such agent, servant or employee, so negligently operated an automobile, truck or motor vehicle in a westwardly direction on and along said highway, as to cause or allow the said automobile then and there being operated by the said Artie L. Smith to run into, upon or against the automobile in which Plaintiff's said husband was then and there riding; and as a proximate result of the negligence of the Defendants as aforesaid, the Plaintiff's husband, Allen W. Ferrill, received personal injuries from which he died on, to wit: the 28th day of October, 1955; and Plaintiff avers that she is the sole dependent left surviving by the decedent, Allen W. Ferrill, who died of the injuries received by him on October 19, 1955, as aforesaid, arising out of and while he was acting in the course of his employment by Allied Mills, Inc., a corporation, and that at the time of receiving said injuries and at the time of his death, the said Allen W. Ferrill and his employer, Allied Mills, Inc. were subject to the Workmen's Compensation Laws of the State of Alabama; and Plaintiff further avers that the said Artie L. Smith is dead, and letters of administration upon said estate were issued by the Probate Court of Baldwin County, Alabama, to Taylor Wilkins, Sheriff of Baldwin County, Alabama, on October 10th, 1957, and the Plaintiff filed claim against the Estate of Artie L. Smith, deceased, in the Probate Court of Baldwin County, Alabama, for the damages sued for in this suit, said claim being filed on the 16th day of October, 1957.

COUNT TWO

Plaintiff claims of the Defendants the sum of One Hundred Thousand (\$100,000.00) Dollars as damages for that Artie L. Smith, intestate of the Defendant Taylor Wilkins, Sheriff of Baldwin County, Alabama, as Administrator of the Estate of Artie L. Smith, deceased, and the Defendant Morrison Cafeteria Company, Inc., a corporation, and the Defendant Morrison Merchandising Corporation of Louisiana, a corporation, and the Defendant XYZ Corporation, whose

name is to the Plaintiff otherwise unknown, but is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's husband received injuries of which he died, did on the 19th day of October, 1955, at a point on or along U. S. Highway 90 in Baldwin County, Alabama, near Robertsdale, then and there willfully or wantonly injure the Plaintiff's husband and Plaintiff avers that she is the sole dependent left surviving by the decedent, Allen W. Ferrill, who died of the injuries received by him on October 19, 1955, as aforesaid, arising out of and while he was acting in the course of his employment by Allied Mills, Inc., a corporation, and that at the time of receiving said injuries and at the time of his death, the said Allen W. Ferrill and his employer, Allied Mills, Inc. were subject to the Workmen's Compensation Laws of the State of Alabama; and Plaintiff further avers that the said Artie L. Smith is dead, and letters of administration upon said estate were issued by the Probate Court of Baldwin County, Alabama, to Taylor Wilkins, Sheriff of Baldwin County, Alabama, on October 10th, 1957, and the Plaintiff filed claim against the Estate of Artie L. Smith, deceased, in the Probate Court of Baldwin County, Alabama, for the damages sued for in this claim being filed on the 16th day of October, 1957.

Sorden & Jansen
ATTORNEYS FOR PLAINTIFF

Plaintiff demands a trial by jury in said cause.

Addresses of Defendants:

Taylor Wilkins, Sheriff,
as Administrator,
County Court House, Bay Minette, Ala.

Morrison Cafeteria Company, Inc.
Morrison Merchandising Corporation of Louisiana
XYZ Corporation
Post Office Box 9214
New Orleans 20, Louisiana

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING
HEMLOCK 3-5561 P. O. BOX 1070
MOBILE 6, ALABAMA

GESSNER T. MCCORVEY
DEN D. TURNER
C. M. A. ROGERS (1891-1957)
C. A. L. JOHNSTONE, JR.
R. F. ADAMS
JAMES L. MAY, JR.
CHAUNCEY MOORE
ALEX T. HOWARD, JR.
J. JEPHIA HILL
CHARLES B. BAILEY, JR.

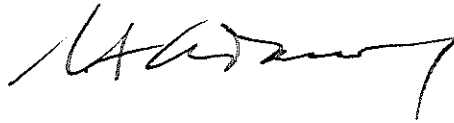
December 3, 1957

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

Dear Mrs. Duck:

I shall appreciate it if you will file the enclosed motion to strike in cause #3350, also similar motion in cause #3356, on your Civil Docket. I am today mailing a copy of it to Messrs. Gordon and Jansen and also Hand, Arendall & Bedsole.

Cordially yours,



RFA/an
Encls.

WILLIE L. FERRILL, as surviving dependent of Allen W. Ferrill, deceased,

Plaintiff,

vs.

TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA, As Administrator of the Estate of Artie L. Smith, deceased; MORRISON CAFETERIA COMPANY, INC., a corporation; MORRISON MERCHANDISING CORPORATION OF LOUISIANA, a corporation; and XYZ CORPORATION, whose name is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's husband received injuries of which he died,

Defendants.

IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA, AT LAW

No. 3556

Comes now Plaintiff in the above styled cause and leave of court having been first had and obtained, amends her complaint heretofore filed therein by correcting the name of the defendant, Morrison Merchandising Corporation of Louisiana, so as to make the same read as follows "Morrison Merchandising Corporation of Louisiana, Inc."

Sorden + Jensen
Ely G. McMillan

ATTORNEYS FOR PLAINTIFF

Service accepted on this 20th day of Feb., 1958.

Paul W. Brock

R. A. Adams

WILLIE L. FERRILL, as surviving dependent of Allen W. Ferrill, deceased,

Plaintiff,

vs.

TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA, as Administrator of the estate of Artie L. Smith, deceased; et al,

Defendants.

*
*
*
* IN THE CIRCUIT COURT OF
*
* BALDWIN COUNTY, ALABAMA
*
* AT LAW CASE NO. 3356
*
*
*
*
*

Comes the defendant, Taylor Wilkins, as the Administrator of the estate of Artie L. Smith, and demurs to plaintiff's complaint and to each Count thereof, separately and severally on the following separate and several grounds:

1. Because the complaint does not allege or show that Artie L. Smith violated a duty owed by him to plaintiff or to Allen W. Ferrill.

2. Because the complaint does not show that Artie L. Smith owed to plaintiff or Allen W. Ferrill a duty and that there was a breach of this duty proximately causing plaintiff's damage.

3. Because, for aught that appears, the act of allowing his automobile to run into, upon or against the automobile of Allen W. Ferrill was a lawful act.

4. Because the averment that "as a proximate result of the negligence of the defendants as aforesaid, the plaintiff's husband, Allen W. Ferrill, received personal injuries from which he died . . ." is a statement of a mere conclusion of the pleader.

5. Because, for aught that appears from the averments of the complaint, the collision between the automobile being operated by Artie L. Smith and the automobile being operated by Allen W. Ferrill resulted from causes beyond the control of Artie L. Smith.

6. Because it affirmatively appears from the allegations of the complaint that it was the negligent operation of the Morrison truck which caused or allowed the automobile being operated by Artie L. Smith to run into, upon or against the automobile of Allen W. Ferrill.

7. Because said complaint does not sufficiently show the nature of the negligence charged against Artie L. Smith.

8. Because it affirmatively appears that this is a suit for wrongful death, and under the laws of Alabama such suits must be filed by the personal representative of the decedent rather than by a surviving dependent.

9. For that it affirmatively appears from the allegations of the complaint that the complaint in this cause is based upon the Workmen's Compensation Laws of Alabama, and it further affirmatively appears from the allegations of the complaint that such action is barred by the Statute of Limitation of said laws.

This defendant demurs separately to Count Two of plaintiff's complaint upon the following additional separate and several grounds:

A. Because it does not appear from the averments of said Count that Artie L. Smith wantonly caused the injury to Allen W. Ferrill.

B. Because there is no averment in said Count of a wrongful act or omission on the part of Artie L. Smith whereby the injury to Allen W. Ferrill was caused.

C. Because it is not averred in said Count that the injury to Allen W. Ferrill was the proximate result of the alleged wantonness of Artie L. Smith.

D. Because no facts are set out in said Count which constitute wantonness on the part of Artie L. Smith.

E. Because the averment that Artie L. Smith willfully or wantonly injured Allen W. Ferrill is but the statement of a conclusion of the pleader.

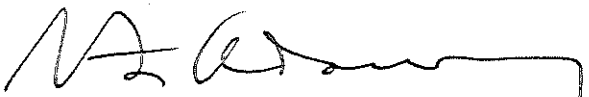
F. Because the averment that the defendant, Artie L. Smith, willfully or wantonly injured the said Allen W. Ferrill by willfully or wantonly causing or allowing his automobile to run into, over or against Allen W. Ferrill's automobile in which he was riding does not show willful or wanton misconduct as a matter of law.

G. For that it does not appear from the averments of the complaint with sufficient certainty that the death of Allen W. Ferrill was caused by willful or wanton misconduct of Artie L. Smith.


H. Because no facts are alleged which show the manner in which Allen W. Ferrill was injured.

I. For that it does not appear from the averments of the complaint that Artie L. Smith was conscious of his conduct and conscious from his knowledge of the existing conditions that injury to Allen W. Ferrill would likely or probably result from his conduct and yet with reckless indifference to consequences consciously and intentionally did some wrongful act or omitted some known duty which produced the injurious results.

McCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By 
Attorneys for Defendant, Taylor
Wilkins as Administrator

*Copy of foregoing petition served
on me this 4th of February 1958,*


Attorney for Plaintiff

RECORDED

FILED
FEB 5 1958
ALICE J. DUCK, Clerk

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

WILLIE L. FERRILL, as surviving
dependent of Allen W. Ferrill,
Deceased, PLAINTIFF.

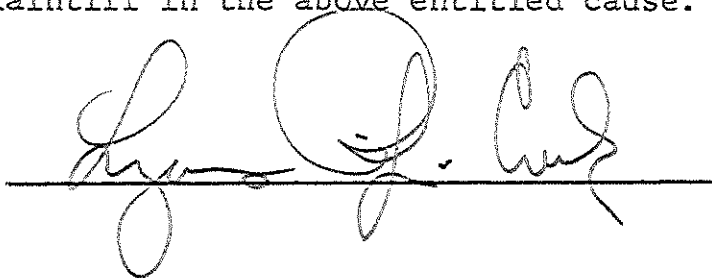
) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA.

-vs-

)
TAYLOR WILKINS, SHERIFF OF BALDWIN
COUNTY, ALABAMA, As Administrator of
the Estate of Artie L. Smith, de-
ceased; et al. DEFENDANTS.

) AT LAW NO. 3356.
)
)

Come now LYONS, PIPES & COCK, Attorneys, and appear as
additional attorneys for the plaintiff in the above entitled cause.

A handwritten signature in cursive script, appearing to read "Lyons, Pipes & Cock", is written over a horizontal line.

WILLIE L. FERRILL, as surviving dependent of Allen W. Ferrill, deceased,

Plaintiff,

vs.

TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA, As Administrator of the Estate of Artie L. Smith, deceased; MORRISON CAFETERIA COMPANY, INC., a corporation; MORRISON MERCHANDISING CORPORATION OF LOUISIANA, a corporation; and XYZ CORPORATION, whose name is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's husband received injuries of which he died,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3356

Comes the defendant, Taylor Wilkins, Sheriff of Baldwin County, Alabama, as Administrator of the estate of Artie L. Smith, deceased, and files the following motions:

FIRST MOTION:

This defendant moves to strike said complaint, and each count thereof, and as grounds for said motion assigns the following, separately and severally:

1. Because at the time said complaint was filed there was then pending on the Law Docket of this Honorable Court cause #3350 filed by the Merchants National Bank of Mobile as Executor under the last will and testament of Allen W. Ferrill, deceased, against the same defendants in this cause for the wrongful death of the same Allen W. Ferrill, whose alleged wrongful death is made the basis of both suits.

2. Because Title 7, Section 123 of the Alabama Code of 1940 places the right of action for wrongful death in a personal representative, whereas this suit is brought by the alleged surviving dependent of the deceased.

3. The plaintiff in this cause cannot maintain said action under the laws of Alabama.

4. For that said action creates a multiplicity of suits.

SECOND MOTION

This defendant moves to strike the complaint and each count thereof, separately, on the ground that it affirmatively appears from the allegations of the complaint that said suit is barred by the Statute of Limitations.

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By



Attorneys for Defendant, Taylor
Wilkins as Administrator

FILED
DEC 4 1957
MACE A. RICH, Clerk

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

WILLIE L. FERRILL, as surviving
dependant of Allen W. Ferrill,
Deceased,

Plaintiff,

vs.

TAYLOR WILKINS, SHERIFF OF BALDWIN
COUNTY, ALABAMA, As Administrator of
the Estate of Artie L. Smith, de-
ceased; MORRISON CAFETERIA COMPANY,
INC., a corporation; MORRISON MER-
CHANDISING CORPORATION OF LOUISIANA,
a corporation; and XYZ CORPORATION,
whose name is to the Plaintiff other-
wise unknown, but who is the party
for whom Ely G. McMillan was operat-
ing a truck on U.S. Highway 90 near
Robertsdale, Alabama, on October
19th, 1955, at the time of the acci-
dent in which the Plaintiff's
husband received injuries of which
he died,

Defendants.

IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA

AT LAW

CASE NO. 3356

PLEAS IN ABATEMENT

Comes now each of the defendants in the above cause, Morrison Merchandising Corporation of Louisiana, Morrison Cafeteria Company, Inc. and XYZ Corporation, separately and severally, and appears solely and specially for the purpose of filing the following separate and several pleas in abatement and for no other purpose, and, pleading in abatement, each of said defendants does separately and severally say the following:

1. That the true name of the named defendant "Morrison Merchandising Corporation of Louisiana" is not as set forth in said complaint, but that its true name is now, was at the time of the commencement of this suit and has been at all times since then, "Morrison Merchandising Corporation of Louisiana, Inc." and that it is now, was at the time of the commencement of this suit and has been at all times since then, a corporation, all of which is hereby verified.

2. That there is not now, was not at the time of the commencement of this suit and has not been at any time since then any such defendant corporation as "XYZ Corporation."

3. That plaintiff cannot maintain this action or, in the alternative, that plaintiff must elect whether to maintain this action inasmuch as suit has previously been filed against each of said defendants for the same cause by action No. 3350 in this court styled "Merchants National Bank of Mobile, as Executor under the Last Will and Testament of Allen W. Ferrill, Deceased, Plaintiff, versus Taylor Wilkins, et al."

HAND, ARENDALL & BEDSOLE

By: Paul W. Brock
Attorneys for said Defendants

STATE OF ALABAMA:

COUNTY OF MOBILE:

Before me, Mary Elizabeth Jones, a Notary Public in and for said County in said State, personally appeared G. L. Outlaw, who, being duly sworn, deposes and says that he is the Secretary - Treasurer of Morrison Merchandising Corporation of Louisiana, Inc. and of Morrison Cafeteria Company, Inc. and is authorized to make this affidavit; that he is cognizant of the facts set forth in the above and foregoing Pleas 1. and 2. in abatement and that said facts are true and correct; that he is informed and believes, and, based upon such information and belief, does say that the facts set forth in the above and foregoing Plea 3. in abatement are true and correct and are matters of record in said court.

G. L. Outlaw

Subscribed and sworn to before me on this, the 14th day of November, 1957.

Mary Elizabeth Jones
Notary Public, Mobile County, Alabama



2. That there is not now, was not at the time of the commencement of this suit and has not been at any time since then any such defendant corporation as "XYZ Corporation."

3. That plaintiff cannot maintain this action or, in the alternative, that plaintiff must elect whether to maintain this action inasmuch as suit has previously been filed against each of said defendants for the same cause by action No. 3350 in this court styled "Merchants National Bank of Mobile, as Executor under the Last Will and Testament of Allen W. Ferrill, Deceased, Plaintiff, versus Taylor Wilkins, et al."

HAND, ARENDALL & BEDSOLE

By: Paul W. Brock
Attorneys for said Defendants

STATE OF ALABAMA:

COUNTY OF MOBILE:

Before me, Mary Elizabeth Joomey, a Notary Public in and for said County in said State, personally appeared G. B. Outlaw, who, being duly sworn, deposes and says that he is the Secretary - Treasurer of Morrison Merchandising Corporation of Louisiana, Inc. and of Morrison Cafeteria Company, Inc. and is authorized to make this affidavit; that he is cognizant of the facts set forth in the above and foregoing Pleas 1. and 2. in abatement and that said facts are true and correct; that he is informed and believes, and, based upon such information and belief, does say that the facts set forth in the above and foregoing Plea 3. in abatement are true and correct and are matters of record in said court.

G. B. Outlaw

Subscribed and sworn to before me on this, the 14th day of November, 1957.

Mary Elizabeth Joomey
Notary Public, Mobile County, Alabama



WILLIE L. FERRILL, as surviving dependent of Allen W. Ferrill, deceased.
Plaintiff,

vs.

TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA, As Administrator of the Estate of Artie L. Smith, deceased; MORRISON CAFETERIA COMPANY, INC., a corporation; MORRISON MERCHANDISING CORPORATION OF LOUISIANA, a corporation; and XYZ CORPORATION, whose name is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's husband received injuries of which he died,

IN THE CIRCUIT COURT
OF BALDWIN COUNTY,
ALABAMA,
AT LAW

#

Defendants.

COUNT ONE

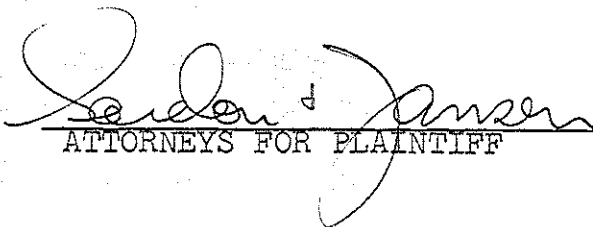
Plaintiff claims of the Defendants, the sum of One Hundred Thousand (\$100,000.00) Dollars as damages for that on to wit: the 19th day of October, 1955, the said Artie L. Smith so negligently operated an automobile in a westwardly direction on and along U. S. Highway 90, a public highway in Baldwin County, Alabama, at a point near Robertsdale in said State and County, as to cause or allow the same to run into, upon or against the automobile in which Plaintiff's husband, Allen W. Ferrill was travelling in an eastwardly direction on and along said public highway; and the Defendants, Morrison Cafeteria Company, Inc., a corporation, Morrison Merchandising Corporation of Louisiana, a corporation, and XYZ Corporation, whose name is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's said husband received injuries of which he died, at said time and place, each acting by and through its agent, servant or employee, Ely G. McMillan, who was then and there acting within the line and

scope of his employment as such agent, servant or employee, so negligently operated an automobile, truck or motor vehicle in a westwardly direction on and along said highway, as to cause or allow the said automobile then and there being operated by the said Artie L. Smith to run into, upon or against the automobile in which Plaintiff's said husband was then and there riding; and as a proximate result of the negligence of the Defendants as aforesaid, the Plaintiff's husband, Allen W. Ferrill, received personal injuries from which he died on, to wit: the 28th day of October, 1955; and Plaintiff avers that she is the sole dependent left surviving by the decedent, Allen W. Ferrill, who died of the injuries received by him on October 19, 1955, as aforesaid, arising out of and while he was acting in the course of his employment by Allied Mills, Inc., a corporation, and that at the time of receiving said injuries and at the time of his death, the said Allen W. Ferrill and his employer, Allied Mills, Inc. were subject to the Workmen's Compensation Laws of the State of Alabama; and Plaintiff further avers that the said Artie L. Smith is dead, and letters of administration upon said estate were issued by the Probate Court of Baldwin County, Alabama, to Taylor Wilkins, Sheriff of Baldwin County, Alabama, on October 10th, 1957, and the Plaintiff filed claim against the Estate of Artie L. Smith, deceased, in the Probate Court of Baldwin County, Alabama, for the damages sued for in this suit, said claim being filed on the 16th day of October, 1957.

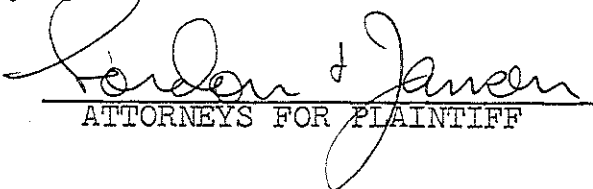
COUNT TWO

Plaintiff claims of the Defendants the sum of One Hundred Thousand (\$100,000.00) Dollars as damages for that Artie L. Smith, intestate of the Defendant Taylor Wilkins, Sheriff of Baldwin County, Alabama, as Administrator of the Estate of Artie L. Smith, deceased, and the Defendant Morrison Cafeteria Company, Inc., a corporation, and the Defendant Morrison Merchandising Corporation of Louisiana, a corporation, and the Defendant XYZ Corporation, whose

name is to the Plaintiff otherwise unknown, but is the party for whom Ely G. McMillan was operating a truck on U. S. Highway 90 near Robertsdale, Alabama, on October 19th, 1955, at the time of the accident in which the Plaintiff's husband received injuries of which he died, did on the 19th day of October, 1955, at a point on or along U. S. Highway 90 in Baldwin County, Alabama, near Robertsdale, then and there willfully or wantonly injure the Plaintiff's husband and Plaintiff avers that she is the sole dependent left surviving by the decedent, Allen W. Ferrill, who died of the injuries received by him on October 19, 1955, as aforesaid, arising out of and while he was acting in the course of his employment by Allied Mills, Inc., a corporation, and that at the time of receiving said injuries and at the time of his death, the said Allen W. Ferrill and his employer, Allied Mills, Inc. were subject to the Workmen's Compensation Laws of the State of Alabama; and Plaintiff further avers that the said Artie L. Smith is dead, and letters of administration upon said estate were issued by the Probate Court of Baldwin County, Alabama, to Taylor Wilkins, Sheriff of Baldwin County, Alabama, on October 10th, 1957, and the Plaintiff filed claim against the Estate of Artie L. Smith, deceased, in the Probate Court of Baldwin County, Alabama, for the damages sued for in this suit, said claim being filed on the 16th day of October, 1957.


ATTORNEYS FOR PLAINTIFF

Plaintiff demands a trial by jury in said cause.


ATTORNEYS FOR PLAINTIFF

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 3356

TERM, 1957

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA, AS
Administrator of the Estate of Artie L. Smith, deceased; MORRISON CAFETERIA COMPANY, INC. a

corp.; MORRISON MERCHANDISING CORPORATION OF LOUISIANA, A corp; and XYZ CORPORATION, whose name
is to the Plaintiff otherwise unknown, but who is the party for whom Ely G. McMillan was operat-
ing a truck on U.S. Highway 90 near Robertsedale, Alabama, on October 19th, 1955, at the time of
accident in which the Plaintiff's husband received injuries of which he died.

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 _____

TAYLOR WILKINS, SHERIFF OF BALDWIN COUNTY, ALABAMA et als, Defendant

by WILLIE L. FERRILL, as surviving dependent of Allen W. Ferrill, deceased.

_____, Plaintiff.....

Witness my hand this 17th day of October 1957

Arif Duck, Clerk