

MCCORVEY, TURNER, JOHNSTONE, ADAMS & MAY  
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.  
ALEX T. HOWARD, JR.  
CHAUNCEY MOORE  
J. JEPHTA HILL  
CHARLES B. BAILEY, JR.

April 22nd, 1958

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

Re: Howard M. Mickelsen, VS. National  
Butane Company of Alabama, Inc.  
Cir. Ct. of Baldwin County, Case # 3491

Dear Mrs. Duck:

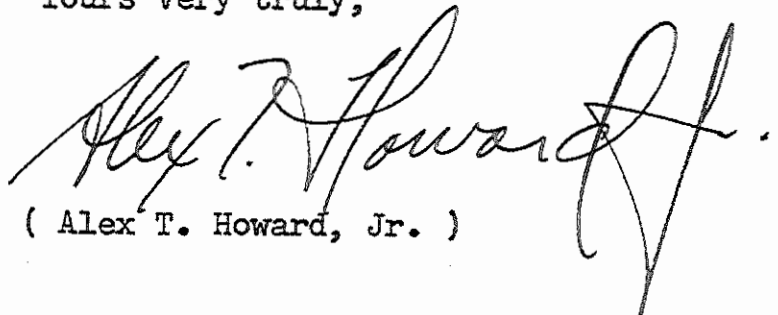
Enclosed are the original and one copy of a demurrer  
to the complaint in the above case.

Please file such demurrer in this case and enter our  
appearance for the defendant.

By carbon copy of this letter I am sending a copy of  
my demurrer to Mr. J. B. Blackburn, attorney for the plaintiff,  
and am advising him that it is agreeable with me that this  
demurrer be submitted to the Court without argument, but if he  
desires to argue same, I would greatly appreciate it if you  
would advise me of the date this demurrer will be set down for  
argument.

Highest regards to both you and Mr. Blackburn.

Yours very truly,



( Alex T. Howard, Jr. )

ATH,jr/le.  
Enclosures.

c.c. Mr. J. B. Blackburn  
Attorney at Law  
Bay Minette, Alabama

HOWARD M. MICKELSEN,	*	IN THE CIRCUIT COURT OF
Plaintiff,	*	
VS.	*	
NATIONAL BUTANE COMPANY	*	BALDWIN COUNTY, ALABAMA,
OF ALABAMA, INC., a	*	
corporation,	*	
Defendant.	*	AT LAW, NO. 3491

Now comes the Defendant in the above-styled cause and demurs to the complaint in said cause, and as grounds therefor assigns the following separate and several grounds:

1. There is no allegation that both the Plaintiff and the Defendant were subject to Article 2 of the Alabama Workmen's Compensation Law at the time of the accident complained of in the complaint.

2. There is no allegation that the Defendant had any notice of the accident complained of in the complaint.

3. There is no allegation that the Plaintiff has suffered any permanent, partial disability as a result of the accident complained of in the complaint.

4. The complaint is vague, uncertain and indefinite.

MCCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By:

*W. H. Howard*  
Attorneys for Defendant

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HOWARD M. MICKELSEN,	)		
	)	Plaintiff,	
VS.	)		IN THE CIRCUIT COURT OF
	)		BALDWIN COUNTY, ALABAMA
NATIONAL BUTANE COMPANY	)	AT LAW	NO. 3491
OF ALABAMA, INC., a	)		
corporation,	)		
	)	Defendant.	

# FINDINGS OF FACT AND OF LAW AND CONCLUSIONS

From the testimony in this case the Court finds as follows:

That on or about the 10th day of April, 1957, the Plaintiff, Howard M. Mickelsen, suffered injuries as the direct and proximate result of an accident which occurred while he was in the employ of the Defendant, National Butane Company of Alabama, Inc., a corporation; that said accident occurred at the Defendant's place of business in Robertsedale, Baldwin County, Alabama; that at the time and place of said accident the Plaintiff was acting within the line and scope of and in the course of his said employment with the Defendant; that at said time both the Plaintiff and the Defendant were subject to Article Two of the Alabama Workmen's Compensation Law; that said accident arose out of and in the course of said employment; that the Plaintiff's average weekly wage for the fifty-two (52) weeks immediately preceding the occurrence of said accident was the sum of \$52.50; that at the time of the occurrence of said accident Plaintiff was married and had three dependent children under the age of eighteen years; that said accident occurred while the Plaintiff was assisting in the loading of a heavy stove into a truck of the Defendant, at which time the Plaintiff injured his back; that the Defendant had notice of the occurrence of said accident; that as a direct and proximate result of said accident the Plaintiff suffered a herniated intervertebral disc between the fourth and fifth lumbar vertebrae of his spine; that as a direct and proximate result of said accident the Plaintiff was temporarily, totally disabled from performing any type of work for an indefinite period of time and has suffered a permanent,

partial loss of the earning capacity of his body as a whole to an undetermined extent; that a dispute exists between the Plaintiff and the Defendant as to the length of Plaintiff's temporary, total disability, if any, as a result of said accident and also as to the degree of the permanent, partial loss of the earning capacity of Plaintiff's body as a whole, but the Defendant is willing to pay and the Plaintiff is willing to accept compensation based upon a 15% permanent, partial loss of the earning capacity of Plaintiff's body as a whole, the sum of \$1,535.63 as all compensation due the Plaintiff by the Defendant for all injuries received by the Plaintiff as a result of said accident; that the Court is of the opinion that a settlement of all compensation to which the Plaintiff is entitled as a result of said accident for said sum of \$1,535.63 is for the best interests of the Plaintiff, and the Court is further of the opinion that it is to the best interests of the Plaintiff that said compensation be paid to him in one lump sum; that the Plaintiff has incurred and paid medical expenses in and about the treatment of his said injuries in the total amount of \$1,110.50, but that as the statutory limit of the liability of the Defendant for such medical expenses was \$1,000.00 as of the date of said accident, the Plaintiff is entitled to have the Defendant pay to him the sum of \$1,000.00 for all of said medical expenses.

#### JUDGMENT

THE PREMISES CONSIDERED, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT that the plaintiff shall have and recover of the Defendant said sum of \$1,535.63 as all compensation due the Plaintiff by the Defendant for all injuries received by the Plaintiff as a result of said accident and that the Plaintiff is entitled to have all of the expenses incurred by him in and about the care and treatment of his said injuries to the extent of the sum of \$1,000.00 paid by the Defendant for the account of the Plaintiff.

It is further CONSIDERED, ORDERED, ADJUDGED AND DECREED

by the Court that the Plaintiff shall have and recover of the Defendant said sum of \$1,535.63 as all compensation due the Plaintiff as a result of said accident; that the Honorable J. B. Blackburn, attorney of record for the Plaintiff, is entitled to receive out of said sum of \$1,535.63 the sum of \$230.34 as his attorney's fee for representing the Plaintiff in this cause; that the Defendant pay to the Plaintiff for all of the expenses incurred by the Plaintiff in and about the care and treatment of his said injuries to the extent of \$1,000.00, and that the Plaintiff have and recover the costs of this cause, for all of which let execution issue.

Dated this 16 day of March, 1961.

Hubert M. Hall  
Judge

3-16-1961

Recd. payment of  
the within judgment  
for \$1535.63 which  
judgment is hereby  
released and discharged.

J. B. Blackburn  
Atty. for Pl.

HOWARD M. MICKELSEN,	)		
	)	IN THE CIRCUIT COURT OF	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA	
VS.	)		
	)	AT LAW	NO. 3491
NATIONAL BUTANE COMPANY	)		
OF ALABAMA, INC., a	)		
corporation,	)		
	)		
Defendant.	)		

Now comes the Plaintiff in the above styled cause and amends the Complaint heretofore filed by him in said cause as follows:

Plaintiff amends paragraph 2 of the Complaint by adding thereto the following: That at the time and place of said accident both the Plaintiff and the Defendant were subject to Article Two of the Alabama Workmen's Compensation Law.

Plaintiff adds to the original Complaint the following paragraph:

5. Plaintiff further alleges that a dispute exists between the Plaintiff and the Defendant as to the occurrence of the accident complained of, as to whether the Defendant was given due notice of said accident, as to the amount of Plaintiff's average weekly wages for the 52 weeks immediately preceding said accident, and as to the degree of Plaintiff's loss of the earning capacity of his body as a whole, but that the Defendant is willing to pay and the Plaintiff is willing to accept compensation based upon a 15% permanent, partial loss of the earning capacity of his body as a whole and based upon an average weekly wage of \$52.50, the total sum of \$1,535.63 and with the further understanding and agreement between the Plaintiff and the Defendant that as the Plaintiff has incurred medical expenses in and about the care and treatment of his said injuries in the amount of \$1,110.50, whereas, the maximum liability of the Defendant for such medical expenses at the time of said accident was \$1,000.00, the Defendant has agreed to reimburse the plaintiff for the medical expenses so paid up to the sum of \$1,000.00.

Plaintiff also amends the prayer of his Complaint so as to read as follows:

WHEREFORE, Plaintiff prays that the Court will approve a settlement of all compensation due him as a result of said accident, on the basis of the payment by the Defendant to him of said sum of \$1,535.63 in one lump sum and on the additional condition that the Defendant pay to the plaintiff for the medical expenses incurred by the Plaintiff as a result of said accident the sum of \$1,000.00.

*J. T. Blackburn*  
Attorney for Plaintiff

FILED

MAR 16 1961

ALICE J. DUCK, CLERK  
REGISTER

STATE OF ALABAMA )  
\*  
BALDWIN COUNTY )

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA:

Now comes Howard M. Mickelsen and shows unto the court and your Honor that he is an employee, as defined by the Workmen's Compensation Laws of Alabama; that his employer is National Butane Company of Alabama, Inc., a corporation; that he has suffered an injury while acting within the line and scope of his employment; that he has been unable to reach settlement with his employer, and he prays for permission to secure the services of an attorney to represent him in the said matter. He requests permission to secure the services of J. B. Blackburn, an Attorney at Law, practicing at Bay Minette in Baldwin County, Alabama.

Dated this 28<sup>th</sup> day of March, 1958.

Howard M. Mickelsen

STATE OF ALABAMA )  
\*  
BALDWIN COUNTY )

The foregoing having been submitted and the court being of the opinion that the said permission should be granted, the said Howard M. Mickelsen is hereby permitted and authorized to employ J. B. Blackburn, an Attorney at Law, practicing in Baldwin County, Alabama, to represent him in his claim for injuries arising out of the accident sustained in the line and scope of his employment while employed by the National Butane Company of Alabama, Inc., a corporation.

Done on this the 31 day of March, 1958.

Hubert M. Hall  
Judge



HOWARD M. MICKELSEN,	*	IN THE CIRCUIT COURT OF
Plaintiff,	*	
VS.	*	
NATIONAL BUTANE COMPANY	*	BALDWIN COUNTY, ALABAMA,
OF ALABAMA, INC., a	*	
corporation,	*	
Defendant.	*	AT LAW, NO. 3491

Now comes the Defendant in the above-styled cause and demurs to the complaint in said cause, and as grounds therefor assigns the following separate and several grounds:

1. There is no allegation that both the Plaintiff and the Defendant were subject to Article 2 of the Alabama Workmen's Compensation Law at the time of the accident complained of in the complaint.
2. There is no allegation that the Defendant had any notice of the accident complained of in the complaint.
3. There is no allegation that the Plaintiff has suffered any permanent, partial disability as a result of the accident complained of in the complaint.
4. The complaint is vague, uncertain and indefinite.

McCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By:

*W. T. Howard*  
Attorneys for Defendant

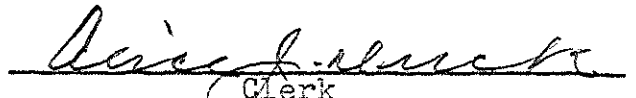
*Filed*  
*4/23/58*

STATE OF ALABAMA )  
                                  \*  
BALDWIN COUNTY     )

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon NATIONAL BUTANE COMPANY OF ALABAMA, INC., a corporation, 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 HOWARD M. MICKELSEN.

WITNESS my hand this 1st day of April, 1958.

  
Clerk

This summons may be served on the manager of the defendant's business at Robertsdale in Baldwin County, Alabama.

HOWARD M. MICKELSEN,	)	
	)	
Plaintiff,	)	
VS.	)	IN THE CIRCUIT COURT OF
	)	
NATIONAL BUTANE COMPANY OF	)	BALDWIN COUNTY, ALABAMA
ALABAMA, INC., a corporation,	)	
	)	AT LAW NO. _____
Defendant.	)	

# COMPLAINT

The plaintiff, Howard M. Mickelsen, who is over twenty-one years of age and a resident of Baldwin County, Alabama, respectfully shows unto the court and your Honor as follows:

1. That on, to-wit, April 10, 1957, he was a citizen and resident of Baldwin County, Alabama, and a workman employed by the National Butane Company of Alabama, Inc., a corporation, which corporation was on the said date doing business in Baldwin County, Alabama.

2. That on, to-wit, April 10, 1957, while working as a truck driver and gas delivery salesman for the said defendant at Robertsdale in Baldwin County, Alabama, plaintiff was hurt while lifting a stove, which inflicted serious injuries to his back, and he was first totally disabled for a period of, to-wit, eleven (11) weeks and since the said time has been partially disabled because of the injuries so sustained by him. Plaintiff avers that his said injuries arose out of and on account of his employment by the said defendant, the National Butane Company of Alabama, Inc., a corporation, which was subject to the Workmen's Compensation Law of Alabama at the time of the said accident and the plaintiff's said injuries.

3. At the time of plaintiff's said injuries on, to-wit, April 10, 1957, he had a wife, who is wholly dependent on him, and three children under the age of eighteen years, also wholly dependent on him, which said parties are at the time of this suit still dependent on him.

4. Plaintiff's average wage was at the time of the accident, and for the period preceding the said accident, not less than Fifty-two and 50/100 Dollars (\$52.50) per week, together with commissions on sales, amounting to, to-wit, Seven and 23/100 Dollars (\$7.23) per week.

WHEREFORE, plaintiff prays that the court will take jurisdiction of his petition for workman's compensation, will set the same for hearing, give due and proper notice thereof to defendant, and upon the hearing will determine that he is entitled to such benefits as he is entitled to under the provisions of the Workmen's Compensation Law of Alabama. Plaintiff further prays that such other orders be made and decrees rendered as may be requisite and proper in the premises.

Howard M. Mickelsen  
Plaintiff

J. B. Blackburn  
Attorney for plaintiff

STATE OF ALABAMA )  
                          \*  
BALDWIN COUNTY    )

Before me, the undersigned authority within and for said County in said State, personally appeared Howard M. Mickelsen, who, after being by me first duly and legally sworn, deposes and says: That he has read over the foregoing instrument and that the facts contained therein are true.

Howard M. Mickelsen

Sworn to and subscribed before me on  
this the 28 day of March, 1958.

Glenn L. Miller  
Notary Public, Baldwin County, Alabama

Filed 4/1/58

Received 5 day of April 1958  
and on 5 day of April 1958  
I served a copy of the within Spec  
on Natl. Butane Co. of Ala.  
By service on T. W. Ching mgr.

TAYLOR WILKINS, Sheriff

By Edleigh A. Steadham, Jr.

Robertsdale, Ala.

Sheriff claims 50 miles at

Ten Cents per mile Total \$ 5.00

TAYLOR WILKINS, Sheriff

BY

Edleigh A. Steadham  
DEPUTY SHERIFF

HOWARD M. MICKELSEN,

Plaintiff,

VS.

NATIONAL BUTANE COMPANY OF ALA-  
BAMA, INC., a corporation,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

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

Filed 4-15-58  
George J. Blackburn  
clerk

J. B. BLACKBURN

ATTORNEY AT LAW

BAY MINETTE, ALABAMA

Robertsdale

HOWARD M. MICKELSEN,	)	
	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	
	)	
vs.	)	
	)	BALDWIN COUNTY, ALABAMA,
NATIONAL BUTANE COMPANY	)	
OF ALABAMA, INC., a	)	
corporation,	)	
	)	AT LAW - NO. 3491
Defendant.	)	

Now comes the Defendant in the above styled cause and for answer to the Complaint in said cause, as amended, says as follows:

1. The Defendant admits the allegations of paragraph 1 of the Complaint.

2. The Defendant admits all the allegations of paragraph 2 of the Complaint with the exception of the allegations pertaining to the occurrence of the accident complained of and the injuries alleged to have resulted therefrom, which allegations the Defendant denies.

3. The Defendant admits the allegations of paragraph 3 of the Complaint.

4. The Defendant denies the allegations of paragraph 4 of the Complaint.

5. The Defendant admits the allegations of paragraph 5 of the Complaint.

WHEREFORE, the Defendant also prays that the Court will approve a settlement of all compensation due to the Plaintiff by the Defendant as a result of said accident on the basis of the payment by the Defendant to the Plaintiff of the sum of \$1,535.63 as compensation and upon the additional condition that the Defendant reimburse Plaintiff to the extent of \$1,000.00 for the medical expenses incurred by the Plaintiff as a result of said accident, which medical expenses have been paid in full by the Plaintiff, and the Defendant also requests that

said payment of compensation be made to the Plaintiff in one lump sum.

McCORVEY, TURNER, JOHNSTONE, ADAMS  
& MAY

BY

Alex T. Howard  
Attorneys for Defendant

STATE OF ALABAMA)  
COUNTY OF MOBILE)

Before me, Myrtle A. Sullivan,  
personally appeared Alex T. Howard, Jr., who is known to me and  
who, being by me first duly sworn, deposes and says that he  
is one of the attorneys for the Defendant in the above styled  
cause, that he has information of the facts stated in the above  
and foregoing Answer, that he believes said facts to be true  
and that based upon his best information and belief, all of  
the facts contained in said Answer are true and correct.

Alex T. Howard, Jr.  
(ALEX T. HOWARD, JR.)

Subscribed and sworn to  
before me on this the  
15th day of March,  
1961.

Myrtle A. Sullivan  
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA.

FILED

MAR 16 1961

ALICE J. DUCK, CLERK  
REGISTER