

4613

COLLINS, GALLOWAY & MURPHY

ATTORNEYS AT LAW
817 FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA 36602
432-0568

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1924-1956)
H. GERRARD CLAY

August 28, 1964

Hon. Alice Duck
Clerk
Circuit Court of Baldwin County
Baldwin County Courthouse
Bay Minette, Alabama

Re: Walter E. Petersen vs.
Cornelius Matheny, Jr.
Case No. 4613

Dear Mrs. Duck:

The above styled matter is set for trial on Monday, September 14, 1964. This case is now settled and we are just awaiting the completion of negotiations.

Would you please figure the court cost bill and send the same to me and when settlement negotiations are completed, which will be before Monday, September 14, I am sure Mr. Rickarby or Mr. Christian will advise you to request that the case be dismissed.

Thank you very much.

Very truly yours,


COLLINS, GALLOWAY & MURPHY

BY: 

Thomas M. Galloway

TMG/sh

cc. Mr. E. G. Rickarby



WALTER E. PETERSEN, JR., also
known as WALTER E. PETERSON,

Plaintiff,

-vs-

CORNELIUS MATHENY, JR., also
known as C. HOWARD MATHENY, JR.,

Defendant.

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

AMENDED COMPLAINT

Comes the plaintiff in the above mentioned cause and with leave of Court first had and obtained amends his Complaint by substituting Counts IV, V and VI:

COUNT IV

The Plaintiff claims of the defendant the sum of FORTY THOUSAND DOLLARS (\$40,000.00) damages for that, on to-wit, the 1st day of May, 1960, at about 7:00 o'clock P.M. at a point on U. S. Highway #90, one and one tenth (1.1) miles Northwest of Loxley in Baldwin County, Alabama, the defendant negligently drove an automobile into and upon the rear of the automobile containing the plaintiff at said time and place where the plaintiff had a right to be and as a proximate consequence thereof the plaintiff's head and neck were whiplashed directly resulting in injury to the ligaments and muscular attachments. His head and right shoulder were thrown forward and severely bruised. His right knee was injured. His spine was injured and his middle-ear was injured and he was abraised and bruised and contused and he was made sick, sore and lame and suffered great pain and will continue to suffer pain in the future.

The plaintiff has expended large sums of money for medical treatments, nursing and hospital treatments, medicines and other apparatus and will be obligated in the future to expend further sums for such purposes, and during all of which time the plaintiff was prevented from transacting and attending to his business and he sustained thereby certain lasting and permanent injury which rendered him permanently disabled so that he cannot pursue his fertilizer business or any other business and the plaintiff is a man in the prime of life and at the height of his efficient earning power and he has lost and been deprived of the gains and

profits which he might otherwise have made and acquired, all as a direct consequence of defendant's wrongfull conduct heretofore set out.

COUNT V

The plaintiff claims of the defendant the sum of SIX HUNDRED DOLLARS (\$600.00) damages for that on, to-wit, the 1st day of May, 1960, at about 7:00 o'clock P.M. at a point on U. S. Highway #90, one and one tenth (1.1) miles Northwest of Loxley in Baldwin County, Alabama, the defendant negligently drove an automobile into and upon the rear of the plaintiff's automobile at said time and place where the plaintiff had a right to have his automobile and as a proximate consequence thereof the plaintiff's car was wrecked and demolished.

COUNT VI

The plaintiff claims of the defendant the sum of FORTY THOUSAND DOLLARS (\$40,000.00) damages for that on, to-wit, the 1st day of May, 1960, at about 7:00 o'clock P.M. at a point on U. S. Highway #90, one and one tenth (1.1) miles Northwest of Loxley in Baldwin County, Alabama, the defendant willfully or wantonly drove an automobile into and upon the rear of the automobile containing the plaintiff at said time and place where the plaintiff had a right to be and as a proximate consequence thereof the plaintiff's head and neck were whiplashed directly resulting in injury to the ligaments and muscular attachments. His head and right shoulder were thrown forward and severly bruised. His right knee was injured. His spine was injured and his middle-ear was injured and he was abraised and bruised and contused and he was made sick, sore and lame and suffered great pain and will continue to suffer pain in the future.


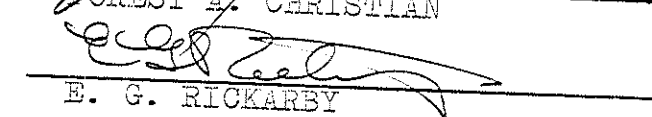
The plaintiff has expended large sums of money for medical treatments, nursing and hospital treatments, medicines and other apparatus and will be obligated in the future to expend further sums for such purposes, and during all of which time the plaintiff was prevented from transacting and attending to his business and he sustained thereby certain lasting and permanent injury which rendered him permanently disabled so that he cannot pursue his fertilizer business or any other business and the plaintiff is a man in the prime of life and at the height of his efficient earning power and he has lost and been deprived of the gains and profits which he might otherwise have made and acquired, all as a direct

consequence of defendant's wrongfull conduct heretofore set out.

That in colliding with the car which contained the plaintiff the defendant was guilty of wanton disregard for the safety of the plaintiff and by reason thereof the plaintiff demands exemplary and punitive damages.


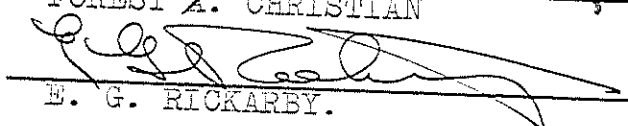
The defendant's wanton conduct consisted in driving at a high rate of speed without looking ahead and seeing that the highway was clear when he knew or should have known that there were other persons on the road.

ATTORNEYS FOR THE PLAINTIFF


FOREST A. CHRISTIAN

E. G. RICKARBY

Plaintiff demands a trial by jury.

ATTORNEYS FOR THE PLAINTIFF


FOREST A. CHRISTIAN

E. G. RICKARBY.

FILED
AUG 24 1961
ALICE I. DUCK, CLERK
REGISTER

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
MAT LAW

WALTER E. PETERSEN, JR., also
known as WALTER E. PETERSON,

PLAINTIFF

-VS-

CORNELIUS MATHENY, JR., also
known as C. HOWARD MATHENY, JR.

DEFENDANT

AMENDED COMPLAINT

FILED

AUG 24 1961

ALICE J. DUCK, CLERK
REGISTER

LAW OFFICE OF
FOREST A. CHRISTIAN
FOLEY, ALABAMA

LAW OFFICE OF
FOREST A. CHRISTIAN
FOLEY, ALABAMA

WALTER E. PETERSEN, JR., also	:	
known as WALTER E. PETERSON,	:	IN THE CIRCUIT COURT OF
	:	
Plaintiff	:	BALDWIN COUNTY,
	:	
VS:	:	ALABAMA,
	:	
CORNELIUS MATHENY, JR., also	:	AT LAW
known as C. HOWARD MATHENY, JR.	:	
	:	No. 4613
Defendant	:	

D E M U R R E R

Comes now the Defendant in the above styled cause and demurs to the amended Complaint, and to each and every Count there of, separately and severally, and as grounds therefor, sets down and assigns, separately and severally the following separate and several grounds:

1. The said Count fails to state a cause of action.
2. It does not appear from the allegations of said Count that the accident described therein occurred on a public road or highway in the State of Alabama.
3. The allegation that the car containing the Plaintiff was at a place where the Plaintiff had a right to be is a conclusion of the Pleader, not supported by any allegations of fact.
4. It does not appear from the allegations of said Count that the alleged injuries of the Plaintiff were sustained as a proximate result and consequence of any alleged negligence on the part of this Defendant.
5. For aught that appears from the allegations of said Count the automobile containing the Plaintiff was being operated upon private property.
6. The allegation that the Plaintiff had a right to be in the automobile at the time and place described in said Count is not sufficient to show any duty owed by this

Defendant to the Plaintiff.

7. The allegation that the Plaintiff had a right to have his automobile at the place and at the time described in said Count is not sufficient to create any duty from this Defendant to the Plaintiff which was breached to the Plaintiffs injury.

8. Said Count is vague, indefinite and uncertain in that the status of the Plaintiff in the other automobile is not set forth sufficiently so that the Defendant can tell whether the Plaintiff was the driver or a passenger in the automobile at the time and place described.

9. It does not appear from the allegations of said Count that the Defendant wantonly or wilfully injured the Plaintiff.

10. Said Count merely alleges that the Defendant wilfully or wantonly did an act and not that the Defendant wilfully or wantonly injured the Plaintiff.

11. Said Count seeks to set forth the Quo Modo of the alleged wantonness conduct on the part of the Defendant, and the acts alleged therein in support of said allegation are not sufficient as a matter of law to constitute a charge of wanton misconduct on the part of this Defendant.

12. For that the allegations of fact contained in said Count do not support the conclusions of the Pleader as to the alleged wanton or wilful injury to the Plaintiff.

13. For that it is not made to appear therefrom that Defendant in the acts of his that are complained of

was conscious of the probable peril of Plaintiff and that Defendants said acts could and probably would result in injury to Plaintiff.

COLLINS, GALLOWAY & MURPHY

BY: 

Thomas M. Galloway
Attorneys for Defendant

FILED

AUG 31 1968

ALICE J. DUCK, CLERK
REGISTER

WALTER E. PETERSEN, JR., also)
known as WALTER E. PETERSON,)

Plaintiff,)

-vs-

CORNELIUS MATHENY, JR., also)
known as C. HOWARD MATHENY, JR.,)

Defendant.)

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

AMENDED COMPLAINT

Comes the plaintiff in the above mentioned cause and with leave of Court first had and obtained amends his Complaint by substituting Counts VII, VIII and IX:

COUNT VII

The Plaintiff claims of the defendant the sum of FORTY THOUSAND DOLLARS (\$40,000.00) damages for that, on to wit, the 1st day of May, 1960, at about 7:00 o'clock P.M. at a point on U. S. Highway #90, a public highway, one and one tenth (1.1) miles Northwest of Loxley in Baldwin County, Alabama, the defendant negligently drove an automobile into and upon the rear of the automobile, on said public highway, containing the plaintiff as a passenger at said time and place where the plaintiff had a right to be and as a proximate consequence of the defendant's negligence above stated the plaintiff's head and neck were whiplashed directly resulting in injury to the ligaments and muscular attachments. His head and right shoulder were thrown forward and severely bruised. His right knee was injured. His spine was injured and his middle-ear was injured and he was abraised and bruised and contused and he was made sick, sore and lame and suffered great pain and will continue to suffer pain in the future.

The plaintiff has expended large sums of money for medical treatments, nursing and hospital treatments, medicines and other apparatus and will be obligated in the future to expend further

sums for such purposes, and during all of which time the plaintiff was prevented from transacting and attending to his business and he sustained thereby certain lasting and permanent injury which rendered him permanently disabled so that he cannot pursue his fertilizer business or any other business and the plaintiff is a man in the prime of life and at the height of his efficient earning power and he has lost and been deprived of the gains and profits which he might otherwise have made and acquired, all as a direct consequence of defendant's wrongfull conduct heretofore set out. Said accident occured on said U. S. Highway #90, a public highway in Baldwin County, Alabama.

COUNT VIII

The plaintiff claims of the defendant the sum of SIX HUNDRED DOLLARS (\$600.00) damages for that on, to-wit, the 1st day of May, 1960, at about 7:00 o'clock P.M. at a point on U. S. Highway #90, a public highway, one and one tenth (1.1) miles Northwest of Loxley in Baldwin County, Alabama, the defendant negligently drove an automobile into and upon the rear of the plaintiff's automobile, which was on U. S. Highway #90, a public highway in Baldwin County, Alabama, at said time and place where the plaintiff had a right to have his automobile and as a proximate consequence of defendant's negligence above stated the plaintiff's car was wrecked and demolished. Said accident occured on said U. S. Highway #90, a public highway in Baldwin County, Alabama.

COUNT IX

The plaintiff claims of the defendant the sum of FORTY THOUSAND DOLLARS (\$40,000.00) damages for that on, to-wit, the 1st day of May, 1960, at about 7:00 o'clock P.M. at a point on U. S. Highway #90, a public highway in the State of Alabama, one and one tenth (1.1) miles Northwest of Loxley in Baldwin County, Alabama, the defendant willfully or wantonly injured plaintiff by driving an


automobile into and upon the rear of the automobile containing the plaintiff as a passenger at said time and place where the plaintiff had a right to be. The defendant's wanton conduct consisted in driving at a high rate of speed without looking ahead and seeing that the highway was clear when he knew or should have known that there were other persons on the road. And as a proximate consequence of said willful and wanton conduct of defendant the plaintiff's head and neck were whiplashed directly resulting in injury to the ligaments and muscular attachments. His head and right shoulder were thrown forward and severely bruised. His right knee was injured. His spine was injured and his middle-ear was injured and he was abraded and bruised and contused and he was made sick, sore and lame and suffered great pain and will continue to suffer pain in the future.

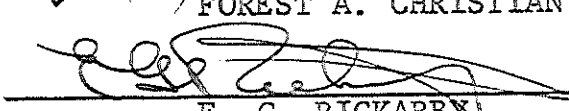
The plaintiff has expended large sums of money for medical treatments, nursing and hospital treatments, medicines and other apparatus and will be obligated in the future to expend further sums for such purposes, and during all of which time the plaintiff was prevented from transacting and attending to his business and he sustained thereby certain lasting and permanent injury which rendered him permanently disabled so that he cannot pursue his fertilizer business or any other business and the plaintiff is a man in the prime of life and at the height of his efficient earning power and he has lost and been deprived of the gains and profits which he might otherwise have made and acquired, all as a direct consequence of defendant's wrongful conduct heretofore set out. Said accident occurred on a public highway in Baldwin County, Alabama.

That in colliding with the car which contained the plaintiff the defendant was guilty of wanton disregard for the safety of

the plaintiff and by reason thereof the plaintiff demands exemplary and punitive damages.

ATTORNEYS FOR THE PLAINTIFFS


FOREST A. CHRISTIAN


E. G. RICKABY

FILED
SEP 5 1961
ALICE J. DUCK, CLERK
REGISTER

We the jury find the verdict for the
plaintiff and render him the sum of
\$7500.00 for damages incurred.

Wilson Beasley
Foreman

(See Plaintiff's charge no. 6)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

WALTER E. PETERSEN, JR., also known
as WALTER E. PETERSON,

PLAINTIFF

-VS-

CORNELIUS MATHENY, JR., also known
as C. HOWARD MATHENY, JR.,

DEFENDANT

AMENDED COMPLAINT

WALTER E. PETERSEN, JR., also : IN THE CIRCUIT COURT OF
known as WALTER E. PETERSON,
Plaintiff, :
VS: BALDWIN COUNTY, ALABAMA
CORNELIUS MATHENY, JR., also : AT LAW
known as C. HOWARD MATHENY, JR.,
Defendants. : NO. 4 6 1 3

Comes the Defendant in the above styled matter and amends the answer to the complaint as amended as heretofore filed, and to each and every Count thereof separately and severally by adding thereto the following separate and several Plea.

3. The Plaintiff cannot recover of the Defendant in this matter for at the time and place complained of in the complaint and on, to-wit, the 1st day of May, 1960, the Plaintiff was a passenger in an automobile being operated by his agent, servant or employee within the line and scope of her employment, which automobile was stopped in the east bound lane of traffic on U. S. Highway 90, a public highway in Baldwin County, Alabama, at a point about one and one-tenths (1.10) miles northwest of Loxley, Alabama, and while said Plaintiff was a passenger in said car being operated by his agent, servant or employee while acting within the line and scope of her employment, said agent, servant or employee while so acting was herself guilty of negligence which proximately contributed to the injuries complained of in the complaint hence the Plaintiff cannot recover.

COLLINS, GALLOWAY & MURPHY

By: *W. M. Galloway*
ATTORNEYS FOR DEFENDANT

Filed
3-17-64
Deirdre French
clerk

SUMMONS

THE STATE OF ALABAMA,)

BALDWIN COUNTY.)

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to summon CORNELIUS MATHENY, JR., also known as C. HOWARD MATHENY, JR., 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, Alabama, at the place of holding same by WALTER E. PETERSEN, JR., also known as WALTER E. PETERSON.

Witness my hand this the 24th day of February, 1961.

Blaise J. Newkirk
Clerk

24-3-8-61

* * * * *

COMPLAINT

WALTER E. PETERSEN, JR., also)
known as WALTER E. PETERSON,)

PLAINTIFF)

VS:)

CORNELIUS MATHENY, JR., also)
known as C. Howard Matheny, Jr.,)

DEFENDANT)

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

COUNT I:

The plaintiff claims of the defendant the sum of TWENTY THOUSAND & 00/100 DOLLARS (\$20,000) as damages from on, to wit, the 1st day of May, 1960 at about to wit, 7:00 P.M., at a point on U. S. Highway 90, one and one tenth miles (1.1 mi.) northwest of Loxley, in Baldwin County, Alabama, the defendant, in a grossly negligent manner and by willful and wanton conduct drove his automobile into and upon the automobile in which the plaintiff was riding at said time and place and where he had a right to be and as a direct proximate consequence thereof and as a result of said gross, willful and wanton negligence of said defendant, the said plaintiff was injured in this: His head and neck received a whipped lash; his head and right shoulder were caused to be thrown forward and severely bruised; his right knee was injured;

his spine was injured and caused a hemorrhage in his middle ear; he was caused to suffer abrasions and contusions, all of which caused him to suffer much pain and anguish; and as a direct proximate consequence of said gross, willful and wanton negligence plaintiff was caused to incur large hospital and medical bills; at the time the plaintiff became injured as a direct and proximate result of said gross, willful and wanton negligence of defendant and as a direct and proximate result of said gross, willful and wanton negligence of defendant, plaintiff was incapacitated and prevented from following his occupation or be otherwise gainfully employed for a period of time from, to wit, May 1, 1960 to the present time and continues to be incapacitated; and as a direct and proximate result of said gross, willful and wanton negligence of defendant thereof, the plaintiff suffered substantial loss of earnings, to his further damage.

COUNT II:

The plaintiff claims of the defendant the sum of TWENTY THOUSAND & 00/100 DOLLARS (\$20,000) as damages from on, to wit, the 1st day of May, 1960 at about to wit, 7:00 P.M., at a point on U. S. Highway 90, one and one tenth miles (1.1 mi.) northwest of Loxley, in Baldwin County, Alabama, the defendant negligently drove his automobile into and upon the automobile in which the plaintiff was riding at said time and place and where he had a right to be and as a direct proximate consequence thereof and as a result of said negligence of said defendant, the said plaintiff was injured in this: His head and neck received a whipped lash; his head and right shoulder were caused to be thrown forward and severely bruised; his right knee was injured; his spine was injured and caused a hemorrhage in his middle ear; he was caused to suffer abrasions and contusions, all of which caused him to suffer much pain and anguish; and as a direct proximate consequence of said negligence plaintiff was caused to incur large hospital and medical bills; at the time the plaintiff became injured

as a direct and proximate result of said negligence of defendant and as a direct result of injuries so received, plaintiff was incapacitated and prevented him from following his occupation or be otherwise gainfully employed for a period of time from, to wit, May 1, 1960 to the present time and continues to be incapacitated; and as a direct and proximate result of defendant's negligence, the plaintiff suffered substantial loss of earnings, to his further damage.

COUNT III:

That as a direct and proximate result of the negligence of said defendant, plaintiff's automobile was damaged in the sum of SIX HUNDRED & 00/100 DOLLARS (\$600.00).

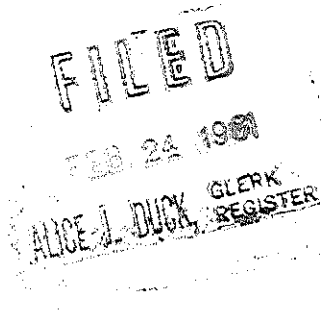

Forest A. Christian, Foley, Alabama
Attorney for Plaintiff

The plaintiff demands a trial by jury.


Forest A. Christian, Foley, Alabama
Attorney for Plaintiff

The defendant's address is:

762 E. Barker Drive
Mobile, Alabama



IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

WALTER E. PETERSEN, JR., also
known as WALTER E. PETERSON,

PLAINTIFF

VS:

CORNELIUS MATHENY, JR., also
known as C. HOWARD MATHENY, JR.,

DEFENDANT

EXECUTED

This 8 day of March 1961
by serving a copy of the summons on
Cornelius Matheny Jr
RAY D. BRIDGES, Sheriff
BY [Signature] D.S.
FEB 24 1961

SHERIFF'S OFFICE

FILED

FEB 24 1961

ALICE J. DUCK, CLERK
REGISTER

LAW OFFICE OF
FOREST A. CHRISTIAN
FOLEY, ALABAMA

LAW OFFICE OF
FOREST A. CHRISTIAN
FOLEY, ALABAMA

WALTER E. PETERSEN, JR., a/k/a)
WALTER E. PETERSON (

Plaintiff (

VS: (

CORNELIUS MATHENY, JR., a/k/a ()
C. HOWARD MATHENY, JR. ()

Defendant ()

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

CASE NO. 4613

D E M U R R E R

Comes the Defendant in the above styled matter and Demurs to the Complaint heretofore filed and to each and every Count thereof, separately and severally upon the following separate and several grounds:

O N E

The same fails to state a cause of action against the Defendant.

T W O

The same fails to state a cause of action upon which relief can be granted to the Plaintiff.

T H R E E

The same fails to state whether the Plaintiff was a passenger or the operator of the automobile in which he was riding as alleged in the Complaint.

F O U R

The same fails to apprise the Defendant of the status of the Plaintiff in the automobile in which he was riding so that the Complaint can be properly answered.

F I V E

The same fails to set out on what date the accident alleged in the Complaint occurred.

S I X

The same fails to allege that the injuries complained

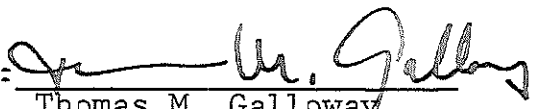
in the Complaint were the direct and proximate result of the alleged negligence of the Defendant. Elements of damage as alleged in the Complaint are not alleged to be a direct and proximate result of any negligence of the Defendant.

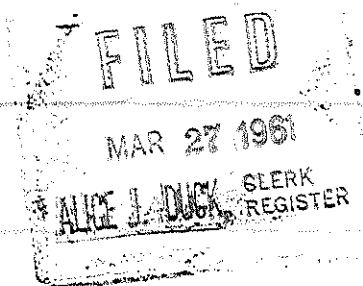
S E V E N

No facts are alleged as to any negligence of the Defendant at any time or place whereupon the element of damage alleged to have been caused to the Plaintiffs automobile is based.

COLLINS, GALLOWAY & MURPHY

BY:


Thomas M. Galloway
Attorneys for Defendant



WALTER E. PETERSEN, JR., also : IN THE CIRCUIT COURT OF
known as WALTER E. PETERSON,

Plaintiff,

: BALDWIN COUNTY, ALABAMA

VS:

CORNELIUS MATHENY, JR., also
known as C. HOWARD MATHENY, JR.,:

AT LAW

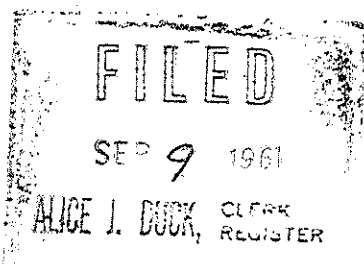
Defendants.

: CASE NO. 4 6 1 3

Comes the Defendant in the above styled matter and
for answer to the complaint as amended and to each and
every count thereof separately and severally, files the
following separate and several pleas.

1. Not guilty.

2. The Plaintiff cannot recover of the Defendant
in this matter for at the time and place complained of
and on, to-wit, the 1st day of May, 1960, the Plaintiff
was a passenger in an automobile stopped in the east
bound lane of traffic of U. S. Highway 90, a public
highway about one and one-tenth miles northwest of Loxley,
Alabama, and while said Plaintiff was such passenger in
said automobile he observed the Defendant's automobile
approaching from the rear and the Plaintiff knew, or by
reasonable diligence should have known that the Defendant
did not know that the automobile in which the Plaintiff
was riding was stopped in the direct path ahead of him,
and even though the Plaintiff saw the Defendant's vehicle
approaching he failed or refused to notify the driver of
the automobile in which he was riding and which was then
and there parked in the east bound lane of traffic of
U. S. Highway 90 to remove said automobile from the east
bound lane of traffic on U. S. Highway 90 at the time and
place aforesaid, and as a direct and proximate result of
the aforesaid negligence of the Plaintiff the injuries
complained of in the complaint were proximately contributed
to, hence he cannot recover.



COLLINS, GALLOWAY & MURPHY

By:

M. Galloway
ATTORNEYS FOR DEFENDANT

WALTER E. PETERSEN, JR., also known as WALTER E. PETERSON,

ANSWERS TO INTERROGATORIES TO THE PLAINTIFF

able to tell whether this will be permanent. This is caused by injury to nerves and blood vessels to the ear causes me to lose my sense of balance. I am still suffering from the injury to my shoulder and back.

(e) Doctors are unable to agree on whether this is permanent or not, and I don't know. The nerve controlling my right hand is damaged. Some days I will have a good grip in my right hand and at other time, no grip or control over it at all, and is so bad I am unable to drive my car for more than a mile or so at a time. Because of the said injuries I am disabled to the extent that I am not able to lie flat and have to use a hospital bed to try to sleep, and cannot rest well. Further more, because of these conditions, I am unable to work for any long period of time without exhausting myself so that I am confined for the next day. I am suffering constant pain from the injury to my head, back and shoulder. When I am up any length of time, it is much worse.

4. <u>Doctors' names and addresses</u>	<u>(a) Dates of treatment</u>	<u>(e) Amount bill</u>
Dr. H. S. Crowley 1720 Spring Hill Avenue Mobile, Alabama	May 20, 1960 Aug. 4, 1961	\$ 40.00 (Aprox)
Dr. Alfred Earl 1659 Government Street Mobile, Alabama	Nov. 29, 1960	85.00
Dr. Claude Brown 176 Louiselle Street Mobile, Alabama	Feb. 1, 1961	20.00
Dr. Keith Cooper, D.C. Robertsdale, Alabama	Jan. or Feb., 1961	100.00 (Aprox)
Dr. O.L. McFadden, D.C. Foley, Alabama	Feb. 28 Mar. 2, 14, 21, 23 & 27 April 29 All 1961	21.00

<u>Doctors'</u> <u>names and addresses</u>	<u>(a) Dates of treatment</u>	<u>(e) Amount bill</u>
Dr. Lamar Rencher Daphne, Alabama	June 19, July 17, and several other times Aug. 3, all 1961	\$ 15.00
Dr. James H. Erwin 1407 Spring Hill Avenue Mobile, Alabama	May 2, 10, 17, 1961	25.00
Dr. William Tucker 1407 Spring Hill Avenue Mobile, Alabama	May 1; June 20; July 5, 20, 22, 29; August 5, 19, 26; Sept. 3, 11; Dec. 29, 1960 Jan. 19, 1961	140.00
Dr. J. C. O'Gwynn 1565 Dauphn Street Mobile, Alabama	July 20, 1960	6.00
Dr. Alpha C. Solley, R.P.T. 126 Nichols Street Fairhope, Alabama	June 21, 23, 27, 29; July 1, 8, 11, 14, 18, 21, 25, 28; Aug. 1, 4, 8, 11; Sept. 21, 23, 26; Oct. 3, 10, 17, 24, 31; Nov. 11 1960	125.00

(b) I was still suffering badly when I went to see each and everyone of the doctors.

(c) I was referred from one doctor to another seeking to get relief from my suffering and most of them just examined me and sent reports back to my regular physician, Dr. William Tucker.

(d) See 4a, 4b, and 4c above.

(f) All doctors have been paid by me, except Dr. Alfred Earl who was paid by defendant's insurance company, and Dr. Keith Cooper whose bill I question.

(g) None.

5. Yes.

(a) Mobile Infirmary, Mobile, Alabama.

(b) From the night of May 1, 1960, after the accident, until May 4, 1960.

(c) My total hospital bill was \$121.05.

(d) None was taken care of by hospital insurance.

(e) I paid this bill.

6. I had four X-rays, three on May 3rd and one on May 4th taken by Mobile Infirmary, Mobile, Alabama, for \$85.00 and they were paid by me. Dr. Alfred Earl and Dr. H. S. Crowley also took some and we have no definite reports. See attached copy of X-ray reports dated 5-2-60 and 5-3-60.

7. There were no special nurses, only the nurses on duty at the hospital, whose names I do not know, but my wife attended me there at the hospital

8. There was no ambulance bill. I am enclosing a photostatic copy of the hospital bill showing the drugs charged while there. Since I have been at home, my drug bill for 1960 was \$175.00, according to my Income Tax Return. This year my drug bills have been less, because I found I was not getting relief which I had hoped for the year before.

(b) The drug bills were paid by me.

9. For the first three months I was almost completely in bed all the time, but was able to get up a little bit after that first three months, and am now able to stay up about half of the day. I am still unable to assume my normal activities or any other gainful employment.

10. (a) I broke my hip in 1941 training a horse and in 1942 I had a heart condition that got worse in 1947, so I was sick the year before this accident.

(b) Since the accident I have received no injury.

(d) While serving in the National Guard in 1933 I broke my left wrist and received \$2.00 a day for about three months.

(e) This money was paid by National Guard authorities.

(f) Before this wreck, Dr. Van Wezel of Foley, Alabama, treated me for my heart condition; Dr. Michaelson of Foley, for my

heart condition; Dr. Tucker of Mobile, Alabama, for my heart condition.

11. At the time of the accident, I was in a 1951 hardtop Buick

(a) This vehicle was owned by me.

(b) This vehicle was driven by my wife, Mrs. Ivon Petersen, of Loxley, Alabama.

(c) I purchased this car from Warren Petersen, my brother, in Lillian, Alabama, in or about 1959.

(d) I gave my brother my car, and \$250.00 for this car.

(e) This car belonged to me and nobody else had any interest in it.

12. I don't remember exactly what was the damage to the car, but the estimated expense of fixing it up was \$595.11 made by Epp's Body Shop and Dennis Insurance Agency of Mobile, Alabama, has every detail statement of the damages to the car. This damage has not been repaired. There was no collision insurance on my car. The only statement I made about the amount of damages to this vehicle was made to the Highway Department, but I estimated the damages at \$600.00. Since the accident the motor vehicle has not been sold and is still in my yard where it was brought after the accident and has not been moved. The mileage reading was about 76,000 miles and this is the same mileage that I had at the time of the collision. My car was in good working order at the time of this accident. About two months prior to this accident I had my car repaired and checked and the signal device, steering apparatus, breaks and lighting equipment were inspected at that time.

13. My wife was driving the car and I was sitting on the right front seat and my son was in the rear of the car.

(a) The purpose of the trip was to visit friends.

(b) I left from my friend's home at Loxley and was on my way home. I was doing this for myself and family. This trip

was a joint enterprize of myself, my wife and son.

14. I am attaching a photostatic copy of the highway report.

(c) When I first saw the defendant's vehicle, I was located at the point of collision. I saw the defendant's car when it was over a thousand feet away from me to my rear. (see Highway Report).

15. This accident did not happen at an intersection.

(a) This man hit us from behind on a straight, level road and he had a clear view well over 1000 feet.

(b) There was no traffic controls at this spot.

16. (a), (b), (c) When I first saw the defendant's vehicle he was over a thousand feet to the rear of me coming towards me and I saw him at the point of impact and we first observed defendant's vehicle.

(d) The impact occurred to my right of the center line.

(e) The impact occurred to the left of right edge of road.

(f) I was a long way from an intersection.

17. My wife, the driver of my car, stopped as we got in front of my home to let oncoming traffic pass and defendant came up and hit us.

(a) Driver gave hand and blinker signal for turn, looked behind and saw no vehicle was close and slowed normally to a stop. When she saw vehicle was going to hit us, she turned wheels to right and was starting to drive off road to right when he hit us.

(b) I don't know what the defendant failed to do, except to fail to stop before he hit us.

(c) The defendant drove his car into the rear of my car on the highway.

(d) I know nothing that the driver of my car did which contributed to the accident.

(e) The negligent act or omission of the defendant was failing to stop or avoid hitting our car that was in front of him.

(f) None.

18.(a) Nobody in my car was drinking and I had no evidence that the defendant was drinking, or anybody in his car was.

(b) No driver was convicted of reckless driving as a result of this accident.

19. I can only estimate that the defendant was driving 60 miles an hour about 300 feet before the point of impact and was unable to make definite other estimate, but he skidded 66 feet after the accident.

20. At the time of the accident, both vehicles were headed west on Highway 90.

(a) The road where the accident happened was 24 feet wide.

(b) Neither vehicle was engaged in making a turn. We were waiting to make a turn.

21. The driver of my vehicle came up to a point just before my driveway and gave proper signals and stopped the car waiting for oncoming traffic to pass.

(a) There was no change in course of defendant's vehicle or there was no change in the course of my vehicle.

(b) No change in course.

22. My vehicle came to a stop, but brakes were released when we saw he was going to hit us.

(a) About twenty miles per hour.

(b) We came to an easy stop

(c) We were stopped at the time of the collision.

23. The front of his car hit the rear end of my car.

(a) The right front of his car glanced off our left rear and his car was scraped on the right side and fender, which to my best judgment, is correct.

24. See Highway Patrol Report attached.

25. (a) Stopped.

26. We had a blinker signal and a hand signal given prior to and at the time of collision and we saw or heard no signals given by him.

(a) We gave a hand signal for a left turn.

(b) We gave a signal about six hundred feet before we came to the stop and we did not know how far defendant's vehicle was to rear of us.

27. (a) At the time of the accident and immediately prior thereto, we were stopped waiting for oncoming traffic which consisted of three cars, which did not stop.

(b) No other vehicles directly contributed to accident.

(c) We don't know the drivers of these vehicles, because they did not stop.

(d) The only witnesses we now know of are myself, my wife, my son, who was a passenger, and my two daughters who were in the front yard who saw the accident. Their names are Shirley Petersen and Patricia Petersen, and the persons in defendant's car.

28. (a) I made no statement.

(b) The defendant came up to my car just after accident and first said, "Don't say a thing it's all my fault. I was playing with my windshield washer and wiper and didn't even see you".

(c) The witnesses named above and the defendant, and the occupants of his car were the only persons present, whom we know of.

(d) These statements were made in my presence and in the presence of my wife, and C. B. McNeil, Loxley Police, and James Henderson, Sherill Mosley, Patricia Petersen, and Shirley Petersen. Later, in my house, the defendant came in, used

the phone in the presence of myself, my wife, two daughters, and Mrs. T. H. Henderson, made the same statement to the party he phoned.

29. I do not know of any expenses made that have not been already mentioned.

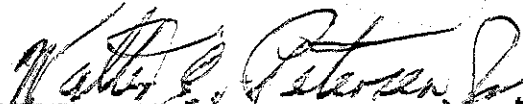
30. The doctors who treated me within the last five years were also the ones who treated me for the last ten years. In addition, there was Dr. Shaw of Loxley, Alabama, and another doctor in Robertsedale, Alabama, whose name I do not remember, who is now deceased. These doctors told me that I had a heart condition described above. I had no additional hospitalization.



Walter E. Petersen, Jr.

THE STATE OF ALABAMA,)
BALDWIN COUNTY.)

WALTER E. PETERSEN, JR., first being duly sworn, deposes and says that the above Answers To Interrogatories To the Plaintiff are true and correct to his best knowledge and belief.



Walter E. Petersen, Jr.

Sworn to and subscribed to before
me this the 11th day of August, 1961.

Notary Public
Baldwin County, Alabama

WILLIAM H. TUCKER, M. D.

1507 SPRINGHILL AVENUE

MOBILE, ALABAMA

January 17, 1961

INTERNAL MEDICINE

HEMLOCK 8.3555

TO WHOM IT MAY CONCERN:

Re: Walter E. Petersen

The patient was in an automobile accident on May 1, 1960 at about 7:00 P.M. He was a passenger in an automobile driven by his wife. He was taken to the Emergency Room of Mobile Infirmary and admitted to the hospital for observation. There he was examined by Dr. James Irwin, of 1507 Springhill Avenue, Mobile, Alabama.

At that time he complained of pain in the neck and chest. Physical examination and X-ray examination of the chest, skull and spine (copies of which are attached) were performed. No specific therapy was given in view of the fact that no broken bones or displacements were found.

Since the accident, Mr. Petersen has continued to complain of vague weakness, dizziness. He has been seen in this office on June 22, July 1, July 20, July 22, July 29, August 5, August 19, August 26, September 3, September 11, December 29 and January 19. He states he has not regained his health since the accident although he has no objective evidence to support this claim.

The present complaint is dizziness and pain in the back of the neck and in the right trapezius and right shoulder region.

If any additional information is needed in this matter, I will be glad to supply it if it is available to me.

William H. Tucker
William H. Tucker, M. D.

WHT/eog

NAME **PETERSEN, MR WALTER EARL** ROOM **461**
 ADDRESS **Box 233, Lowley, Ala**

RATE
 PHONE **1-2129**

MEMO	DATE	EXPLANATION	CHARGES	CREDITS	BAL DUE
1	MAY-2-60	CASH		*100.00	**100.00
2	MAY-2-60	LAB — ROUTIN	* 5.00		
3	MAY-2-60	LAB — ROUTIN	* 3.00		
4	MAY-2-60	DRUGS — ROUTIN	* 0.15		
5	MAY-2-60	DRUGS — SPEC'L	* 0.50		** 91.35
6	MAY-2-60	ROOM 0000	* 13.00		** 78.35
7	MAY-3-60	— X-RAY	* 15.00		
8	MAY-3-60	— X-RAY	* 20.00		
9	MAY-3-60	— X-RAY	* 50.00		** 6.65
10	MAY-3-60	ROOM 0000	* 13.00		** 19.65
11	MAY-4-60	DRUGS SPEC'L	* 1.25		
12	MAY-4-60	DRUGS ROUTIN	* 0.15		
13	MAY-4-60	— X-RAY	* 0.00		* 21.05
14	MAY-4-60	— CASH		* 21.05	* 0.00
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MOBILE INFIRMARY
 MOBILE, ALABAMA

LAST BALANCE IS AWARD
 UNLESS OTHERWISE INDICATED

EMERGENCY
 WARD
 ADMISSION

Film No. 3028

JOHN DAY PEAKE, M.D.
MARSHALL ESKRIDGE, M.D.
NEAL S. FLOWERS, M.D.
HAROLD G. DAVIS, M.D.
RADIOLOGISTS

Radiological
Consultation

NAME PETERSON, Mr. Walter E.

Age 41

ADDRESS

461

Mobile, Ala.

Date

5/2/60

Sex

Tucker and Edwin
Doctor

Part Examined CHEST, SKULL, AND ENTIRE SPINE

ROENTGENOLOGICAL FINDINGS:

SKULL:

The calcified pineal is not displaced and the sella turcica is within normal limits. There is no evidence of skull fracture or other pathology.

CHEST:

The heart is normal in size, and the diaphragms are smooth. There is prominence of the β bronchovascular markings with evidence of interstitial fibrosis, but this finding is unchanged since 10/20/58.

CERVICAL SPINE:

C-6 is incompletely included on the lateral view and C7 is not seen. No fractures are demonstrated in the upper cervical spine and the interspaces are preserved. We will obtain additional views so that we may demonstrate the lower cervical spine.

DORSAL SPINE:

There are hypertrophic changes throughout the mid and upper dorsal spine with no evidence of fracture. There is no bone destruction.

LUMBOSACRAL SPINE:

There is no fracture or dislocation and the interspaces are preserved.

CONCLUSION:

No lesion is demonstrated in the skull. There are pulmonary interstitial fibrotic changes in the lungs. Minimal hypertrophic arthritis is demonstrated in the dorsal spine. No lesion is seen in the cervical or lumbar spine, but we will obtain additional views of the lower cervical spine in order to better visualize C6 and C7.

WFE

John Day Peake, M.D.
Marshall Eskridge, M.D.

Neal S. Flowers, M.D.
Harold G. Davis, M.D.

Radiologists

DEPARTMENT OF RADIOLOGY

Film No. 2500

JOHN DAY PEAKE, M.D.
MARSHALL ECKRIDGE, M.D.
NEAL S. FLOWERS, M.D.
HAROLD G. DAVIS, M.D.
RADIOLOGISTS
Jr.

Radiologist
Consultation

Age 42
Date 2/3/60

Sex

NAME PERKINS, Mr. Walter L.

ADDRESS

562

Mobile, Ala.

Peake & Eckridge

Doctors

Part Examined RIGHT LATERAL CERVICAL SPINE

ROENTGENOLOGICAL FINDINGS:

LATERAL VIEW OF THE CERVICAL SPINE IN BENT POSITION AND WITH THE HEAD BLANK.

There are no definite fractures, dislocations or gross bone or joint lesions noted.

WLP

John Day Peake, M.D.
Marshall Eckridge, M.D.

Neal S. Flowers, M.D.
Harold G. Davis, M.D.

Radiologists

DEPARTMENT OF RADIOLOGY

BALDWIN COUNTY, ALABAMA
AT LAW

4613

WALTER E. PETERSEN, JR., also
known as WALTER E. PETERSON,
PLAINTIFF

-VS-

CORNELIUS MATHENY, JR., also
known as C. HOWARD MATHENY, JR.,
DEFENDANT

ANSWERS TO INTERROGATORIES
TO THE PLAINTIFF

FILED

AUG 15 1961

ALICE J. DUCK, CLERK
REGISTERED

LAW OFFICE OF
FOREST A. CHRISTIAN
FOLEY, ALABAMA

LAW OFFICE OF
FOREST A. CHRISTIAN
FOLEY, ALABAMA

COLLINS, GALLOWAY & MURPHY
ATTORNEYS AT LAW
817 FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA
HEMLOCK 2-0568

FRED C. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1925-1956)

April 12, 1961

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

Re: Walter E. Petersen, Jr. a/k/a
Walter E. Peterson
vs: Cornelius Matheny, Jr., a/k/a
C. Howard Matheny, Jr.
Case No. 4613

Dear Mrs. Duck:

I enclose herewith interrogatories to be filed in the above styled case. Would you please file the original of these in the file and forward a copy of same to the attorney for the plaintiff.

Thanking you for your many courtesies, we are,

Very truly yours,

COLLINS, GALLOWAY & MURPHY

BY: 
Thomas M. Galloway

TMG:jl

Enclosure: Interrogatories

P. S. Please advise the date that these are filed in your office.

FILED

APR 14 1961

ALICE I. DUCK, CLERK
REGISTER

WALTER E. PETERSEN, JR., also
known as WALTER E. PETERSON,

Plaintiff

VS:

CORNELIUS MATHENY, JR., also
known as C. HOWARD MATHENY, JR.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

INTERROGATORIES TO THE PLAINTIFF

Comes the defendant in the above entitled cause, and desiring the testimony of the Plaintiff propounds to the Plaintiff the following interrogatories as provided under Section 477, Et seq., of Title 7 of the Code of Alabama, to-wit:

1. State your correct:

- (a) Name
- (b) Age
- (c) Residence address
- (d) Business address

2. State the name and address of your employer at the time of the occurrence made the basis of this suit and type of work you were doing.

(a) State your average weekly earnings at the time of said occurrence.

(b) State the number of days you actually lost from work as a result of the injuries you allege you received.

(c) State whether or not you continued to receive wages from your said employer during the period of your disability as a result of the occurrence made the basis of this suit.

(d) State the amount lost in wages by you as a result of said occurrence.

(e) Give the name and address of your present employer and the type of work you are doing.

(f) State the amount of your present weekly earnings.

(g) Give the name and address of each and every other person by whom you have been employed since the date of the occurrence made the basis of this suit, and your weekly average wage in each employment.

(h) How much gross income did you report to the Collector of Internal Revenue for income tax purposes during the year immediately prior to said occurrence?

(i) How much gross income did you report to the Collector of Internal Revenue for income tax purposes during the year next subsequent to said occurrence.

3. Describe each and every injury received by you in the occurrence made the basis of this suit.

(a) Describe and locate each and every laceration or cut you sustained in said occurrence.

(b) Describe and locate each and every bruise, sprain, strain or contusion you sustained in said occurrence.

(c) Describe and locate each and every fracture or dislocation suffered by you in said occurrence.

(d) Specify which, if any, of said injuries are permanent in nature, and state the manner and degree in which said injury disables you.

(e) Specify and describe in detail any and all other ailments resulting from said occurrence which have not already been enumerated by you, and state how and to what degree said condition manifests itself.

4. Give the name and address of each and every doctor who has attended you for the injuries you allege to have received in the occurrence made the basis of this suit.

(a) Give the dates of treatment or examination of you, by each and every said doctor, respectively.

(b) What was your condition when first attended by each of said doctors, separately and severally?

(c) What was your condition when you were last attended by each of said doctors, separately and severally?

(d) State the date on which you were last treated, examined, or prescribed for by each of said doctors, separately and severally, and relate in substance what transpired at said time between you and said doctors, and include the substance of said Doctor's statements to you regarding your prognosis for the future, and his instructions to you with reference to further treatment.

(e) State the amount of the bill, separately and severally, of each respective doctor for the treatment rendered you, or services performed for you, resulting from the occurrence made the basis of this suit.

(f) State if said doctors have been paid, and, if so, by whom.

(g) State whether or not you had any form of medical insurance or other protection which took care of said doctor's bills.

5. State whether or not you were hospitalized as a result of the occurrence made the basis of this suit.

(a) If so, give the name and address of said hospital where you were confined.

(b) Give the dates of your confinement.

(c) State the amount of the hospital bill incurred for your confinement.

(d) State whether or not any portion of said bill was taken care of by hospitalization insurance or by any other form of protection.

(e) State who paid or became obligated to pay said hospital bill.

6. State whether or not any X-rays were taken of you as a result of the occurrence made the basis of this suit.

(a) Give the name and address of the person who took said X-rays.

(b) State the X-ray reading or your understanding of what the X-ray revealed.

(c) Give the amount of said X-ray bills, and state by whom same were paid.

7. State whether or not special nurses, registered nurses or practical nurses attended you in the treatment of the injuries you allege you received in the occurrence made the basis of this suit.

(a) Give the names and addresses of each.

(b) Give the dates you were attended by each of said nurses, separately and severally, and state whether they were special nurses, registered nurses, or practical nurses.

(c) Give the amount of each of said nurse's bill, separately and severally.

(d) State who paid said bills, and also whether your expenses were taken care of by any form of medical insurance or protection.

8. State whether or not you incurred any ambulance bills, drug bills or expenses, or miscellaneous expense of any nature whatsoever not already enumerated as a result of the occurrence made the basis of this suit.

(a) Describe each of said expenses, separately and severally, stating the amount of same.

(b) By whom were expenses paid?

9. State how long you were confined, other than in a hospital, following the occurrence made the basis of this suit.

(a) State how long you were confined to bed as a result of said occurrence.

(b) State how many days elapsed from the date of the occurrence until you were able to be out of bed and up and about your home.

(c) State how many days elapsed from the date of the occurrence until you were able to leave your home and come to town or go other places.

(d) State the number of days which elapsed from the date of the occurrence before you were able to resume your normal activities.

10. State whether or not, prior to the occurrence made the basis of this suit, you were ever at any time injured in any manner whatsoever to any extent.

(a) If you were injured prior to the occurrence made the basis of this suit in any manner, please describe in detail how you were injured giving the date of each such injury, and the extent of your said injury.

(b) Have you sustained any injuries of any nature whatsoever subsequent to the occurrence made the basis of this suit?

(c) If so, describe the same fully and in detail.

(d) Have you ever made claim or filed suit for any injury or damage arising out of any occurrence prior to the accident made the basis of this suit??

(e) If so, state where each such occurrence happened, against whom each such claim was made, and the outcome of each.

(f) Give the name and address of each and every doctor who has treated or examined you during the five years preceding the date of the occurrence made the basis of this suit, and describe the condition for which you were treated or examined.

11. Describe completely and in detail the vehicle occupied by you on the occasion of the accident made the basis of this suit, stating in your answer the make, year, model, and body style of the same.

(a) State the name and address of the owner of said motor vehicle on the date of said accident.

(b) State the name and address of the driver of said vehicle on said occasion.

(c) State by whom said motor vehicle had been purchased prior to said accident and give the date of the purchase.

(d) How much was paid for said motor vehicle at the time of said purchase?

(e) Give the name and address of any other person who had any interest of any nature whatsoever in said motor vehicle at the time of said accident.

12. Describe completely and in detail every item of damage sustained by the vehicle occupied or driven by you on the occasion of said accident.

(a) Give the amount of each repair estimate obtained on said damage, and give the name and address of each person making said repair estimate.

(b) State whether or not any of said damage was repaired, and, if so, give the amount of the repair bill, and the name and address of the person, firm or corporation who made said repairs.

(c) State who paid for said repairs.

(d) State how long the motor vehicle was in the repair shop.

(e) State whether or not there was any form of collision insurance on said motor vehicle.

(f) If so, give the name and address of the insurer, and the name and address of the adjuster who handled the claim.

(g) State whether or not you have made any sworn statement as to the amount of the damage to said motor vehicle.

(h) If so, give the name and address of the person or company to whom said sworn statement was made and the amount that was stated in same.

(i) State whether or not said motor vehicle has been sold subsequent to the date of the accident made the basis of this suit, and, if so, for what amount, and the name and address of the person, firm or corporation to whom said vehicle was sold.

(j) Give the milage reading on said motor vehicle at the time of the accident made the basis of this suit.

(k) Give the mileage reading on said motor vehicle at the time of answering these interrogatories.

(l) Describe the condition of the brakes, signal device, steering apparatus, tires and lighting equipment on said motor vehicle at the time of the accident made the basis of this suit.

(m) When had the brakes, signal device, steering apparatus lights and tires on said motor vehicle last been inspected prior to said accident, and by whom.

13. State the number of persons occupying the motor vehicle in which you also were riding at the time of the accident made the basis of this suit, and state specifically how and in what manner said occupants were located in said vehicle on said occasion.

(a) State fully the purpose of the trip you were making at the time of the accident made the basis of this suit.

(b) From what point had you departed?

(c) What was your destination?

(d) Were you performing a mission, errand or duty for anybody whatsoever? If so, state the nature of same, and the name and address of the person for whom you were performing it.

(e) Give the name and address of each and every person who had any interest whatsoever in the trip you were making at said time, the nature of said interest, and the connection of said person with the trip.

14. Prepare and attach to your answers to these interrogatories a map portraying the scene of the accident and the physical objects invovled in the accident made the basis of this suit, and designate on said map the following:

(a) The point of impact and skid marks leading up to and from same.

(b) The resting place of the vehicle or pedestrian after the accident.

(c) Where you were located when you first saw the defendant's vehicle.

(d) Where the defendant's vehicle was located when first seen by you.

(e) The placement of any other vehicles or physical objects which had anything to do with said accident.

15. State whether or not the accident made the basis of this suit occurred at an intersection of streets, or roads.

(a) Describe the locus of said accident with reference to the countour of the land, the grade or curve of the road, highway or intersection and any physical structures located within 200 feet of the place of the accident.

(b) Describe any traffic controls located at the scene of the accident and the operation of same, stating the directions in which said traffic signals or controls faced.

16. State where the defendant's motor vehicle was located with reference to the point of the impact in the accident made the basis of this suit when you first observed same immediately prior to said accident.

(a) Did you see the Defendant's motor vehicle before the actual collision?

(b) How many feet was the defendant's motor vehicle from the place of the impact when you first observed same?

(c) How many feet were you from the point of impact when you first observed the defendant's vehicle?

(d) Where did the impact occur with reference to the center line of the road on which defendant's vehicle was traveling

(e) Where did the impact occur with reference to the right edge of the road on which defendant's vehicle was traveling?

(f) How far distant were you from the nearest intersection when the impact occurred?

17. State specifically and in detail exactly how the accident made the basis of this suit occurred and describe chronologically the events that occurred leading up to same as seen by you.

(a) If you were a passenger in the vehicle involved in this accident, describe each and every thing done by the operator of the said vehicle in which you were riding to avoid said accident.

(b) Describe each and everything which the driver of the defendant's vehicle failed to do to avoid said accident.

(c) Describe each and everything done by the defendant's driver which contributed to cause said accident.

(d) State each and everything done by you, or which you omitted to do, which contributed proximately to cause the accident.

(e) Describe each negligent act or omission of the defendant's driver on said occasion.

(f) If you were a passenger, describe each negligent act or omission of the driver of the vehicle in which you were riding on said occasion.

18. State whether or not any of the occupants in any of the vehicles involved in the accident made the basis of this suit were intoxicated or drinking intoxicating beverages at the time of the said accident.

(a) Give the name and address of each of said persons who was drinking, where he or she had obtained same, the quantity or amount consumed, and the time when and place where same was drunk.

(b) If you were an occupant of a vehicle involved

in the accident made the basis of this suit, state whether either you or the driver of the vehicle in which you were riding was found guilty to a charge of reckless driving, or driving while intoxicated arising from said accident.

19. State, according to your best judgment, the speed of the defendant's vehicle at the following points:

- (a) When you first observed same prior to the accident made the basis of this suit.
- (b) At a point 300 feet from the place where the impact occurred.
- (c) At a point 200 feet from the place where the impact occurred.
- (d) At a point 100 feet from the place where the impact occurred.
- (e) At a point 50 feet from the place where the impact occurred.
- (f) At a point 25 feet from the place where the impact occurred.
- (g) At a point 10 feet from the place where the impact occurred.
- (h) At the time of the impact.
- (i) Immediately after the impact.

20. State in what direction and along what road each of the motor vehicles involved in the accident made the basis of this suit was traveling on the occasion of said accident.

(a) State in your best judgment, in number of feet, the width of said road.

(b) If either of the vehicles involved in the accident made the basis of this suit was engaged in making a turn from a direct line of travel, described same, and the course followed with reference to the center of the intersection and also the four corners of same, and with reference to the center line of the road on which said motor vehicle had been traveling prior to said turn.

21. State fully, specifically and in detail each and every act or thing done by the operator of the vehicle occupied by you at the time of the accident made the basis of this suit during the last 100 feet of said vehicle's approach to the point of said collision, stating in your answer the chronological order in which said operator did each of said acts or things.

(a) Describe each change in the course of travel made by the defendant's vehicle immediately prior to said accident.

(b) Describe each change in the course of travel made by the vehicle in which you were riding immediately prior to the accident herein sued on.

22. State whether or not the brakes on the vehicle occupied by you at the time of the accident sued on were applied prior to the collision.

(a) If so, state in your best judgment the speed in miles per hour said vehicle was traveling at the moment the brakes were applied.

in the accident made the basis of this suit, state whether either you or the driver of the vehicle in which you were riding was found guilty to a charge of reckless driving, or driving while intoxicated arising from said accident.

19. State, according to your best judgment, the speed of the defendant's vehicle at the following points:

- (a) When you first observed same prior to the accident made the basis of this suit.
- (b) At a point 300 feet from the place where the impact occurred.
- (c) At a point 200 feet from the place where the impact occurred.
- (d) At a point 100 feet from the place where the impact occurred.
- (e) At a point 50 feet from the place where the impact occurred.
- (f) At a point 25 feet from the place where the impact occurred.
- (g) At a point 10 feet from the place where the impact occurred.
- (h) At the time of the impact.
- (i) Immediately after the impact.

20. State in what direction and along what road each of the motor vehicles involved in the accident made the basis of this suit was traveling on the occasion of said accident.

(a) State in your best judgment, in number of feet, the width of said road.

(b) If either of the vehicles involved in the accident made the basis of this suit was engaged in making a turn from a direct line of travel, described same, and the course followed with reference to the center of the intersection and also the four corners of same, and with reference to the center line of the road on which said motor vehicle had been traveling prior to said turn.

21. State fully, specifically and in detail each and every act or thing done by the operator of the vehicle occupied by you at the time of the accident made the basis of this suit during the last 100 feet of said vehicle's approach to the point of said collision, stating in your answer the chronological order in which said operator did each of said acts or things.

(a) Describe each change in the course of travel made by the defendant's vehicle immediately prior to said accident.

(b) Describe each change in the course of travel made by the vehicle in which you were riding immediately prior to the accident herein sued on.

22. State whether or not the brakes on the vehicle occupied by you at the time of the accident sued on were applied prior to the collision.

(a) If so, state in your best judgment the speed in miles per hour said vehicle was traveling at the moment the brakes were applied.

(b) State in your best judgement the distance in number of feet said vehicle traveled from the moment the brakes were applied until said collision occurred.

(c) State in your best judgment the distance in number of feet said vehicle traveled from the moment the brakes were applied until it came to a stop after the occurrence of the accident made the basis of this suit.

23. State specifically what portion of the vehicles involved in the accident made the basis of this suit first came in contact with each other.

(a) Describe the portions which next came in contact after the initial impact.

24. State in your best judgment the distance each of the vehicles involved in the accident made the basis of this suit traveled on said occasion from the moment of the collision to the point where each of said vehicles first came to a stop immediately thereafter.

(a) In what direction did each of said motor vehicle move from the point of said collision until they came to a complete stop?

(b) Describe each and every skid mark which led up to the point of collision.

(c) Describe each and every skid mark which extended from the point of the collision toward the place where either of the motor vehicles involved in the accident came to rest.

25. State the speed of the motor vehicle in which you were riding, according to your best judgment, at the following points:

(a) When you first observed the other vehicle involved in said accident.

26. State whether any horn or other signal was given as a warning by the operator of any of the vehicles involved in the accident made the basis of this suit prior to the time of the collision.

(a) If so, describe each of said signals given by each respective driver specifically and in detail.

(b) State how far distant from the point of collision each vehicle was located at the time said signal was given.

(c) If any signals for stopping or turning were given by each driver immediately prior to said collision, describe same, and state how far distant from the point said signal was given by each driver respectively.

27. State whether or not there were any other vehicles at or near the scene of the accident at the time of and immediately prior to the occurrence of same.

(a) If so, state the number of such other vehicles and where they were located with reference to the point of the accident at the moment same occurred.

(b) State whether or not any of the other vehicles located at or near the scene of the accident played any part, or contributed in any way, to cause the collision made the basis of this suit.

(c) Give the name and address of each driver or owner of each of said vehicles.

(d) Give the names and addresses of each and every witness to the accident.

28. Did you make any statements in the presence of the operator of any of the vehicles involved in the collision made the basis of this suit following the occurrence of same?

(a) If so, state, when, where and what was said by you.

(b) Did the operator of the defendant's vehicle make any statement in your presence, following the occurrence of the accident, if so, state when, where and what was said by said driver.

(c) Give the name and address of each and every person who was present when the accident made the basis of this suit occurred.

(d) Give the name and address of each and every person who was present when any statements were made either by you or the driver of the defendant's vehicle following the occurrence of the accident made the basis of this suit.

29. State whether or not you incurred any ambulance bills, drug expense, or miscellaneous expense of any nature whatsoever not already enumerated as a result of the occurrence made the basis of this suit.

(a) Describe each of said expenses, separately and severally, stating the amount of same.

(b) By whom were said expenses paid.

30. State whether within the 10 years prior to this accident you have ever been treated by a doctor or been in a hospital for any illness, disease, injury or impairment whatsoever, if so:

(a) State name and address of each doctor who has treated you and for what you were treated.

(b) What did the doctor explain to you was the nature and cause of your infirmability?

(c) Were you hospitalized?

(d) If you were hospitalized give name and address of each hospital, extent of confinement and cause of confinement.

STATE OF ALABAMA:

COUNTY OF MOBILE:

Before me the undersigned authority in and for said County, in said State, this day personally appeared Thomas M. Galloway, who is known to me, and who being by me first duly sworn, upon oath deposes and says that he is one of the attorneys for the Defendant in the above entitled cause, and as such is authorized to make this

affidavit; that the answers of the Plaintiffs to the foregoing Interrogatories when well and truly made and filed will be material testimony for the Defendant on the trial of this cause.

Mr. Gallen

Sworn to and subscribed before me on this the 12th day of

April, 1961.

Notary Public

M. 4613

Walter E. Peterson

vs.

Cornelius Matheny

Sheriff claims 72 miles at
Ten Cents per mile Total \$ 7.20
TAYLOR WILKINS, Sheriff
BY Charles
DEPUTY SHERIFF

Interrogatories

FILED
APR 14 1961
ALICE J. DUCK, CLERK
REGISTER

Received 14 day of April 1961
and on 17 day of April 1961
I served a copy of the within Interrogatories
on Jones & A. Matheny

By service on

TAYLOR WILKINS, Sheriff
Charles Wilkins
D.S.

WALTER E. PETERSEN, JR., also
known as WALTER E. PETERSON,

Plaintiff,

-vs-

CORNELIUS MATHENY, JR., also
known as C. HOWARD MATHENY, JR.,

Defendant.

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Ø
Ø
Ø
Ø
Ø

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

CASE #4613

D E M U R R E R S

Comes the Plaintiff in the above styled cause and offers the following demurrers to Plea #2:

As applying to Count IX:

1. Said plea is no defense to a plea charging willful or wanton conduct.

As applying to each and every other Count; separately and severally:

2. Because there is no duty on the part of a passenger in an automobile to warn the driver of the automobile of the approach of another vehicle.

3. Because said plea does not show that the Plaintiff had any reason to believe that the Defendant was driving said car without being able to see ahead of him.

4. Said plea does not show that the Plaintiff had knowledge of the danger.

5. Said plea does not show that the Plaintiff had sufficient time after seeing the Defendant's automobile to avoid injury.

6. Said plea does not show that the Plaintiff had had sufficient time to take action to avoid the danger after knowledge of the danger.

7. Because the plea does not show that the Plaintiff was conscious of the impending danger.

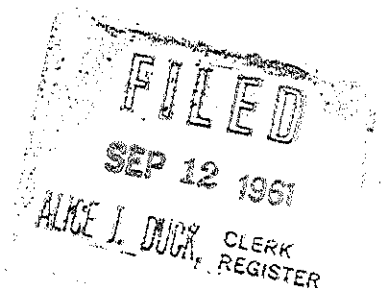
ATTORNEYS FOR THE PLAINTIFF



FOREST A. CHRISTIAN



E. G. RICKARBY



Walter E. Sullivan
05
Counsell
JURY LIST - SPRING SESSION - MARCH 12, 1962

1. Christnacht, Leroy, Civil Service, Lillian
2. Cabaniss, Ray, Newport, Bay Minette
3. Byrd, Carl, Civil Service, Stapleton
4. Bryars, Rudolph M., Brookley Field, Bay Minette
5. Bryhn, Vernon A., Farmer, Elberta
6. Beasley, Wilson C., Merchant, Bay Minette
7. Bishop, Clarence, Farmer, Fairhope
8. Bloxham, Walter, Farmer, Fairhope
9. Brock, L.B., Farmer, Robertsedale
10. Gilbert, B.B., Mechanic, Bay Minette
11. Good, Joe, Farmer, Elberta
12. Crook, Prince, Laborer, Bay Minette
13. Guenther, Paul O., Civil Service, Foley
14. Gullledge, Carl, REA, Robertsedale
15. Akers, Redus M., Insurance, Bay Minette
16. Martin, Albert D., Newspaper, Bay Minette
17. Coleman, John E., Farmer, Bay Minette
18. Corley, Harace, W., Brookley Field, Bay Minette
19. Epperson, Edwin, Civil Service, Foley
20. Erdmann, Rudolph C., Plumber, Mag. Spgs.
21. Fell, Russell, Civil Service, Lillian
22. Hill, Robert, Merchant, Loxley
23. Jaye, James J., Farmer, Rabon
24. Jordan, Green, Merchant, Bay Minette
25. Kane, James, Farmer, Loxley
26. Keenan, Ruben A., Oil Dealer, Robertsedale
27. Keuler, Albert, Salesman, Loxley
28. King, Horace, E., Farmer, Mag. Spgs.
29. King, Vernon, Farmer, Robertsedale
30. Stucki, Alfred, Locker Plant Mgr., Elberta
31. Styron, Irby L., Plant Forman, Robertsedale
32. Moorer, Douglas, Clerk, Bay Minette
33. Moyer, Roy, Druggist, Fairhope
34. Nelson, J.L., Jr., Laborer, Fairhope
35. Nelson, Harry, Post Office, Bay Minette
36. Milton, Ovdrecka, Farmer, Robertsedale
37. Palmer, James J., Farmer, Robertsedale
38. Rhodes, Elbert M., Farmer, Summerdale
39. Roberts, Raymond C., Farmer, Foley
40. Roley, Charlie N., Farmer, Perdido
41. Schrieber, Bill, Carpenter, Foley
42. Stephens, Ray, Banker, Bay Minette
43. Seibert, Fred, Jr., Farmer, Elberta
44. Stewart, Frank, State Emp., Gulf Shores
45. Stuart, Derrill, Contractor, Bay Minette
46. Lamberth, Jack Ogal, Farmer, Bay Minette
47. Strickland, Marvin, Laborer, Bay Minette
48. McDaniel, Schuler, Farmer, Robertsedale
49. Corte, Albert, Farmer, Belforest

XXXXXX XXXXXX XX
XXXXXX XXXXXX XX

COLLINS, GALLOWAY & MURPHY
ATTORNEYS AT LAW
817 FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA
HEMLOCK 2-0568

FRED G. COLLINS
THOMAS M. GALLOWAY
M. THOMAS MURPHY (1925-1956)

September 8, 1961

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

In re: Walter E. Petersen, Jr.
vs: Cornelius Matheny, Jr.
Case Number - 4 6 1 3

Dear Mrs. Duck:

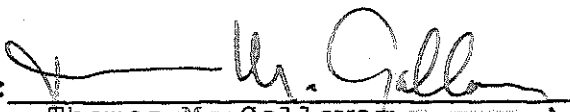
Would you please file the enclosed Plea of the
Defendant in this matter.

I am this date sending a copy of this Plea to
Mr. E. G. Rickarby at Fairhope, Alabama and Mr. Forest
A. Christian at Foley, Alabama, both gentlemen being
the Attorneys for the Plaintiff.

Thank you very much.

Very truly yours,

COLLINS, GALLOWAY & MURPHY

By: 
Thomas M. Galloway

TMG/fs

Encl: 1

cc: Mr. E. G. Rickarby
Attorney at Law
Fairhope, Alabama

Mr. Forest A. Christian
Attorney at Law
Foley, Alabama

WALTER E. PETERSEN, JR., also : IN THE CIRCUIT COURT OF
known as WALTER E. PETERSON,

Plaintiff,

: BALDWIN COUNTY, ALABAMA

VS:

CORNELIUS MATHENY, JR., also
known as C. HOWARD MATHENY, JR., : AT LAW

Defendants.

: CASE NO. 4 6 1 3

Comes the Defendant in the above styled matter and
for answer to the complaint as amended and to each and
every count thereof separately and severally, files the
following separate and several pleas.

1. Not guilty.
2. The Plaintiff cannot recover of the Defendant
in this matter for at the time and place complained of
and on, to-wit, the 1st day of May, 1960, the Plaintiff
was a passenger in an automobile stopped in the east
bound lane of traffic of U. S. Highway 90, at public
highway about one and one-tenth miles northwest of Loxley,
Alabama, and while said Plaintiff was such passenger in
said automobile he observed the Defendant's automobile
approaching from the rear and the Plaintiff knew, or by
reasonable diligence should have known that the Defendant
did not know that the automobile in which the Plaintiff
was riding was stopped in the direct path ahead of him,
and even though the Plaintiff saw the Defendant's vehicle
approaching he failed or refused to notify the driver of
the automobile in which he was riding and which was then
and there parked in the east bound lane of traffic of
U. S. Highway 90 to remove said automobile from the east
bound lane of traffic on U. S. Highway 90 at the time and
place aforesaid, and as a direct and proximate result of
the aforesaid negligence of the Plaintiff the injuries
complained of in the complaint were proximately contributed
to, hence he cannot recover.

COLLINS, GALLOWAY & MURPHY

By: 

ATTORNEYS FOR DEFENDANT

COPY

FOREST A. CHRISTIAN
ATTORNEY AT LAW
FOLEY, ALABAMA

September 11, 1961

Mr. Thomas M. Galloway
Attorney at Law
817 First National Bank Building
Mobile, Alabama

Re: Walter E. Petersen, Jr.
vs: Cornelius Matheny, Jr.
Case Number 4613

Dear Tom:

Enclosed you will find demurrer to your recent answers.

We will see you in Court on Wednesday.

Yours very truly,
ORIGINAL SIGNED
FOREST A. CHRISTIAN

FOREST A. CHRISTIAN

cc: Mrs. Alice J. Duck
Clerk of Circuit Court
Bay Minette, Alabama

Mr. E. G. Rickarby
Attorney at Law
Fairhope, Alabama

Dear Mrs. Duck:
Please file original of this demurrer.

F.A.C.

COPY

FOREST A. CHRISTIAN
ATTORNEY AT LAW
FOLEY, ALABAMA

September 2, 1961

Messrs. Collins, Galloway & Murphy
Attorneys at Law
817 First National Bank Building
Mobile, Alabama

Re: Walter E. Petersen, Jr.
vs: Cornelius Matheny, Jr.

Gentlemen:

Enclosed find Amended Complaint which I think covers every question raised by your demurrer. If you find it so, request that you file your pleas so we can have witnesses subpoenaed. If not, please phone E. G. Rickarby.

Sincerely yours,

FOREST A. CHRISTIAN

cc: Mrs. Alice J. Duck
Clerk of Court
Bay Minette, Alabama

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 13th day of March, 1962, Monday, 1962, in a certain cause in said Court wherein Walter E. Petersen, Jr., also known as WALTER E. PETERSON, Plaintiff, and CORNELIUS MATHENY, JR., also known as C. Howard Matheny, Jr. Defendant, a judgement was rendered against said Defendant to reverse which Judgment, the said Defendant

applied for and obtained from this office an APPEAL, returnable to the Supreme next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the day of , 1962 next, and the necessary bond having been given by the said Defendant Cornelius Matheny, Jr. with General Mutual Insurance Company, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Walter E. Petersen, Jr. also known as Walter E. Peterson or Forest A. Christian, attorney, to appear at the next Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 28th day of June, A. D., 1962.

Attest:

Alice J. Duck, Clerk.

4613

CIRCUIT COURT
Baldwin County, Alabama

Received 2 day of July 1962
and on 6 day of July 1962
served a copy of the within Citation
on Charles A. Christian

by service on _____

TAYLOR WILKINS, Sheriff
BY Charles A. Christian, S.

Doley

Sheriff claims 72 miles at
Ten Cents per mile Total \$ 7.20
TAYLOR WILKINS, Sheriff
BY [Signature]
DEPUTY SHERIFF

Walter Peterson

Vs. { Citation in Appeal

Cornelius Matheny Jr.

Issued _____ day of _____, 1962

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19⁶³⁻⁶⁴

To the Clerk of the Circuit Court of
Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court
of said county, in a certain cause lately pending in said Court between
Cornelius Matheny, Jr., alias Appellant,
and
Walter E. Petersen, Jr., alias Appellee,
wherein by said Court it was considered adversely to said appellant, were brought before our
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

Now, it is hereby certified, That it was thereupon considered, ordered, and adjudged by our Su-
preme Court on the 16th day of April, 19⁶⁴, that said judgment
of said Circuit Court be reversed and annulled, and the cause remanded to said court
for further proceedings therein; and that it was further considered, ordered, and adjudged that the
appellee ~~xxx~~, Walter E. Petersen, Jr., alias, pay

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution
issue.

Witness, J. Render Thomas, Clerk of the Supreme
Court of Alabama, at the Judicial Department
Building, this the 16th day of
April, 19⁶⁴
J. Render Thomas
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 63-64

1 Div., No. 80

Cornelius Matheny, Jr., alias

Appellant,

vs.

Walter E. Petersen, Jr., alias

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF
REVERSAL

The State of Alabama

FILED
A. R. 17-1934 County.

} Filed

this

11th of May, 1964

CLERK
REGISTER

19

APR 16 1964

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1963-64

1 Div. 80

Cornelius Matheny, Jr., alias

v.

Walter E. Petersen, Jr., alias

Appeal from Baldwin Circuit Court

COLEMAN, JUSTICE.

This is an appeal by defendant from judgment for plaintiff, on verdict of jury, in an action for personal injury and property damage suffered in automobile collision.

The case was tried on three counts, one for negligence causing personal injury, one for negligence causing damage to plaintiff's automobile, and one for wanton injury

2.

to plaintiff's person. Defendant filed pleas of general issue and contributory negligence.

Plaintiff's Charge 4.

Defendant asserts that the court erred in giving plaintiff's requested Charge 4 which recites:

"The Court charges the Jury that if the injury sustained by the Plaintiff in this case was such as to aggravate a previously existing condition which resulted in the loss of function in his hand and arm then you may award damages for said loss of function."

Defendant correctly points out that Charge 4 wholly omits to require that plaintiff's injury be the proximate result of defendant's negligence. More specifically, the charge is an incorrect statement of law because the charge fails to require that, before plaintiff can recover for his injury, defendant's negligence or wrongful act must be the proximate cause of plaintiff's injury. The charge states: ". . . . if the injury (to) plaintiff (aggravated) a previously existing condition which resulted in loss of function in his hand and arm you may award damages for said loss of function"; without more. We do not think the law permits a jury to award damages to a plaintiff, and against a defendant, merely because plaintiff receives an injury which aggravates a previously existing condition. To be entitled to recover damages

3.

for an injury in an action founded on defendant's negligence or wrongful conduct, as this action is, plaintiff must show that his injury was proximately caused by the negligence or wrongful act of the defendant.

" . . . it may be said that, however negligent a person may have been in some particular respect, he is liable only to those who may have been injured by reason of such negligence, as the proximate cause.

. . . ." Smith v. Alabama Water Service Co.,
225 Ala. 510, 512, 513, 143 So. 893.

See also: Western Ry. of Alabama v. Mutch, 97 Ala. 194, 11 So. 894; Mobile City Lines, Inc. v. Proctor, 272 Ala. 217, 130 So. 2d 388.

Plaintiff replies that Charge 4 "was taken from Montgomery & Eufaula Railway Co. v. Mallette, 92 Ala. 209, 9 So. 363." Careful examination of the report of the Mallette case has not revealed the charge in that case from which plaintiff's Charge 4 in the instant case was taken. It appears that plaintiff may be referring to parts 7, 8, and 9 of the general charge, given in the Mallette case, which was held to be "unexceptionable" in this connection. Part 7 states, in effect, that if the injury by the railroad aggravated the prior wound, the result is the same as if there had been no prior wound. Part 8 is to like effect. Part 9 is to effect that if the stiffening of plaintiff's arm was caused by the prior injury and not by defendant, this would not defeat

4.

plaintiff's right to recover ". . . . any other damages, if any are proven, if the injury was the result of negligence on the part of defendant."" (Emphasis Supplied.)

Part 9 would be more nearly accurate if it were made to read:

"proximate result of negligence on the part of defendant."

In any event, it does not appear to us that plaintiff's Charge 4 was approved by this court in the Malletts case, and we are of opinion that giving Charge 4 in the case at bar constituted reversible error.

Plaintiff's Charge 8.

Defendant asserts that the court erred in giving plaintiff's requested Charge 8 which recites:

"Gentlemen of the Jury, if, from the evidence in this case, you find that plaintiff has been permanently injured through the fault of the defendant, as is averred in the complaint, or some one count thereof, and that defendant has failed to prove any of its pleas, then you should give plaintiff substantial damages, and in assessing these damages you should treat the plaintiff with fairness."

Defendant insists that Charge 8 is bad and should have been refused because:

First, it is misleading because it allows the jury to base its finding on "the complaint, or some one count thereof," when there were nine counts filed by plaintiff, but trial was

5.

had on three counts only. Certainly the jury should not consider counts to which demurrer has been sustained, but the court's oral charge to the jury commences:

"GENTLEMEN OF THE JURY: This case comes to you on a complaint filed by Mr. Petersen against Mr. Matheny, which consists of three Counts - Counts SEVEN, EIGHT and NINE. You will consider only those Counts. You may wonder why Counts SEVEN, EIGHT and NINE. The original complaint consisted of six counts, and that has been amended by filing Counts SEVEN, EIGHT and NINE."

The jury were thus instructed to consider only the three counts on which the case was tried. We are of opinion that defendant's first criticism of Charge 3 is not well taken.

Second, defendant says that Charge 3 uses the word, "find," instead of the words, "reasonably satisfied." The charge might well have been refused because of failure to use the words, "reasonably satisfied," Alabama City, Gadsden & A. Ry. Co. v. Bessiere, 190 Ala. 59, 66 So. 805, but this court has held that neither the giving nor the refusal of such a charge will, as a rule, work a reversal. Calvert v. Bynum, 255 Ala. 172, 50 So. 2d 731; Mobile City Lines, Inc. v. Proctor, supra. Defendant's second criticism of Charge 3 does not require reversal.

Third, defendant says:

"This charge further requires that Defendant prove all of his pleas. Again the correct degree of conviction necessary for the Jury is for them to be 'reasonably satisfied' and then it is basic law that only after the Jury has been 'reasonably satisfied' from the evidence that the Plaintiff is entitled to recover does it become incumbent upon the Defendant to prove his plea of not guilty which plea was in issue in this case. This charge is most misleading and confusing in this manner in that it appears that the Defendant must prove his plea of not guilty or the general issue while the Jury only 'finds' that the Plaintiff was injured through the fault of the Defendant which is not necessarily the proximate cause of the injury."

We agree that the charge is misleading. The charge states that "if, from the evidence you find that plaintiff has been injured through the fault of the defendant and that defendant has failed to prove any of its pleas" you should give plaintiff substantial damages. Certainly, defendant is not primarily, if ever, bound to prove the general issue, which was one of his pleas in the instant case, yet the charge may be understood to mean that if defendant has failed to prove any one of his pleas, plaintiff should recover.

7.

The charge is subject to the criticism that it fails to state correctly the burden on defendant as to affirmative pleas. As to those pleas, the charge should state that defendant is required to prove them to the reasonable satisfaction of the jury.

Because Charge 8 is misleading it may be refused without error. Sullivan v. Sullivan, 117 Ala. 214, 23 So. 678; Reiston v. Langdon, 26 Ala. 660.

Fourth, defendant argues:

"Charge 8 also requires that if the other elements thereof are met that the Jury 'give Plaintiff substantial damages' the word 'substantial' as used in this charge can have only one logical meaning among the various meanings as given in Webster's Dictionary and that one meaning as here appropriate is 'large'. In requesting the Jury to give substantial damages the Court has invaded the province of the Jury and determined that the damages were large. . . ."

In Black's Law Dictionary, Fourth Edition, West Publishing Company, 1951, page 469, the term, "Substantial damages," is defined as follows:

"Substantial damages

"A sum, assessed by way of damages, which is worth having; opposed to nominal

damages, which are assessed to satisfy a bare legal right. Wharton. Considerable in amount and intended as a real compensation for a real injury."

"Compensatory damages," by necessary implication, intends a reimbursement for loss suffered by reason of injury to person or property. Pullman Company v. Lutz, 154 Ala. 517, 45 So. 675. In the instant case, plaintiff, on proof of the negligence counts, was entitled to compensatory damages.

Under the wanton count, plaintiff would be entitled to punitive damages. This court has said:

"Punitive damages, being apart from compensation, are not recoverable as a matter of right. Their imposition is discretionary with the jury.--Louisville & Nashville Railroad Co. v. Bizzell, 131 Ala. 429, 30 South. 777; 12 Am. & Eng. Ency. p. 51, and cases cited in notes to the text. And this discretion is not an unbridled or arbitrary one, but a legal, sound, and honest discretion; and, after instructing the jury in respect to the elements which must be found to exist to warrant the assessment of such damages, in submitting to the jury the question of imposing punitive damages, the court should always safeguard the submission

9.

with such instructions as that the jury will not be misguided, but will be held mindful, in fixing such damages, that they should act with due regard to the enormity or not of the wrong, and to the necessity of preventing similar wrongs, and that, if such damages are imposed, they should be in such an amount (much or little) as, under all the circumstances attending the commission of the wrong, the exigencies of the case, in the sound judgment and discretion of the jury, may demand, in no event to exceed the amount claimed in the complaint."

Coleman v. Pepper, 159 Ala. 310, 313, 314, 49 So. 310.

In the instant case, the amount to be awarded for punitive damages, "(much or little)," was discretionary with the jury, under the applicable rule. For the court to say that the jury "should give plaintiff substantial damages" appears to us to invade the province of the jury.

Plaintiff replies, and correctly so, that Charge 10, given for plaintiff, in Louisville & Nashville R. R. Company v. Lile, 154 Ala. 556, 45 So. 698, is substantially the same as plaintiff's given Charge 8 in the case at bar. In the Lile case, this court said:

10.

"The criticism indulged against charge 9 is wholly inapplicable to it. Counsel must have had in mind written charge 10. But the criticism, if applied to the latter charge, can avail nothing. The most that can be said against it is that it is argumentative. The giving of it was not reversible error.--Bray v. Ely, 105 Ala. 553, 17 South. 180; Karr v. State, 106 Ala. 1, 17 South. 328; Baldwin v. State, 111 Ala. 11, 20 South. 528." (154 Ala., at page 564)

We have not been able to ascertain what was the nature of the criticism directed against charge 10 in the Life case. The cases cited by the court appear to state, as here pertinent, merely that, in our practice, the giving or refusal of argumentative instructions rests largely in the discretion of the trial court, which is not revisable on error. Bray v. Ely, supra. It does not appear that the objections in the Life case are the same objections made in the instant case. We are of opinion that the defendant's fourth criticism of the instant Charge 8 is well taken and that, on another trial, the charge should not be given using the word, "substantial," to describe damages.

Plaintiff's Charge 5.

If plaintiff's given Charge 5 be misleading, defendant could and should have requested explanatory charges. Whaley v.

11.

Sloss-Sheffield Steel & Iron Co., 164 Ala. 216, 51 So. 419.

This charge is the same as charge 1 which was given for the plaintiff and approved in Mobile Light & R. Co. v. Thomas, 16 Ala. App. 629, 80 So. 693.

Plaintiff's Charge 7.

Plaintiff's given Charge 7 is the same as plaintiff's given Charge 1, which was approved in Alabama Great Southern R. Company v. Burgess, 114 Ala. 587, 22 So. 169. Defendant argues that giving the charge in the instant case was error because the charge ignores the plea of contributory negligence. We are of opinion that defendant's criticism is not well founded and that the court did not err in giving Charge 7.

Plaintiff's Charge 10.

Plaintiff's given Charge 10 recites:

"The Court charges the Jury that if they find for the plaintiff and find that he is permanently disabled that they should determine to what extent this disability will affect his earning capacity and may award damages as will compensate him for his loss of earning during the remainder of his natural life."

Defendant says that this charge is an incorrect statement of the law because, among other things, the charge states that if plaintiff is permanently disabled, the jury should determine to what extent the disability affects his earning capacity and award damages for the future loss of earnings, without

12.

requiring the jury to find that defendant's negligence or wrongful act was the proximate cause of the disability. The charge does not limit the damages which the jury may award to damages resulting from a permanent disability proximately caused by defendant's negligence or wrongful act. As already stated with respect to plaintiff's given Charge 4, plaintiff must show that his injury was proximately caused by defendant's negligence or wrongful act as alleged in the complaint. Charge 10 fails to require this.

This failure is of significance in the instant case. Dr. Tucker, referring to the plaintiff, testified:

"A. Well, he has been a puzzling problem.

He had a stab wound of the heart in 1942. The wound was directly into the heart muscle and he was hospitalized for one year for this condition. And he has an abnormal electrocardiogram dur to the scar. He has had poor health since I have known him. There is a whole lot wrong with him that medical science hasn't been able to figure out and which I am absolutely convinced that it is organic. In other words, this is not just something he dreams up, this man is a sick man and has been for a long time. He says that since this stab wound in the heart which he had he has

had a terrible time, he hasn't been too well but he has been able to - let's see now, he has had multiple fractures of the cervical spine, dorsal spine, wrists, hips and toes.

"Q. Now hold it just a second, please, sir, on that. Now are you referring to there when he has had those fractures, is that before the time of this accident?

"A. Yes, that was before September the 15th, 1959, he gave this history to Dr. Paddison. And he had --

"

"Q. Were you able to determine anything that had worsened his condition as a result of the accident as distinguished directly from something that - as his condition was such as it was to say that that was definitely caused by the accident?

"A. I don't know. That is a complicated question. I don't - It is very difficult for me to decide just the significance of this accident. He was a sick man with a tremor and many illnesses before the accident and he seemed to be considerably worsened after the accident. I don't know whether or not it was due to the natural course of his

14.

illness or the accident, I couldn't say."

This evidence presented a question for the jury whether plaintiff's injury, or a part of it, was proximately caused by the collision or by some previously existing cause.

The jury could find, on the evidence of this case, that plaintiff was entitled to recover for some injury proximately caused by defendant, and could further find that plaintiff was permanently disabled but that his permanent disability was not proximately caused by defendant but proximately resulted from other causes.

We are of opinion that giving Charge 10 was reversible error.

Plaintiff says that his Charge 10 was approved in Louisville & Nashville R. Company v. Elliott, 166 Ala. 419, 52 So. 28. We assume that plaintiff is referring to charge 1 given for plaintiff in that case, but charge 1, in that case, does not mention permanent disability, and it does not appear that plaintiff, in that case, had suffered previous injury as he had in the instant case. "That which is law as applied to the facts of one case may not be the law as applied to the facts of some other case"; Sheffield Company v. Harris, 183 Ala. 357, 371, 61 So. 88; which appears to be another way of saying: "Out of the facts, the law arises."

Plaintiff's Charge 2.

We are of opinion that plaintiff's Charge 2 is not bad for ignoring the issue of contributory negligence or for

referring to the injuries and damages claimed in the complaint. It is the same as plaintiff's given Charge 3, which was approved in Louisville & Nashville R. Company v. Wilson, 162 Ala. 568, 50 So. 183.

It is true that charges should hypothesize facts relied upon as a defense, (elements of damage), and not require the jury to examine and consider the plea (complaint) in order to determine what is meant by such charges; but, the giving of such a charge does not constitute reversible error. Nelson v. Lee, 249 Ala. 549, 560, 561, 32 So. 2d 22.

Plaintiff's Charge 3.

We are of opinion that plaintiff's given Charge 3 is not bad for failure to refer to proximate cause. If the jury find for the defendant on the ninth count, they must have already decided that defendant had willfully or wantonly injured the plaintiff. Giving of this charge as part of the oral charge was held not to be reversible error in Sheffield Company v. Harris, supra, subdivision (d) of section 3 of the opinion. Giving plaintiff's Charge 3 was not error in the instant case.

Oral Charge.

No exception was reserved to the oral charge. Without an exception calling the court's attention to erroneous statements of law in the oral charge, no reversal can be had on that ground. Tucker v. State, 202 Ala. 5, 79 So. 303.

Other questions argued will probably not arise on another trial.

16.

For error in giving plaintiff's requested Charges 4 and 10, the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Livingston, C. J., and Goodwyn and Harwood, JJ.,
concur.

STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 80

Cornelius Matheny, Jr., alias

, Appellant.,

v.

Walter E. Petersen, Jr., alias

, Appellee.,

From

Baldwin Circuit

Court.

The State of Alabama.

City and County of Montgomery. }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from one to sixteen inclusive, contain a full, true, and correct copy of the opinion of

said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme

Court of Alabama, this the 16th day of

April 19 64

J. Render Thomas

Clerk of the Supreme Court of Alabama

72.4613

THE SUPREME COURT OF ALABAMA

1st Div., No. 80

Cornelius Matheny, Jr., alias

Appellant,

v.

Walter E. Petersen, Jr., alias

Appellee.

From Baldwin Circuit Court.

Certified Copy of

Opinion

BROWN PRINTING CO., MONROGHEAT

WALTER E. PETERSEN, JR., also : IN THE CIRCUIT COURT OF
known as WALTER E. PETERSON, :
Plaintiff, : BALDWIN COUNTY, ALABAMA
VS: : AT LAW
CORNELIUS MATHENY, JR., also :
known as C. HOWARD MATHENY, JR., :
Defendant. : NO. 4 6 1 3

STATE OF ALABAMA:

COUNTY OF BALDWIN:

KNOW ALL MEN BY THESE PRESENTS, that we, CORNELIUS
MATHENY, JR. and GENERAL MUTUAL INSURANCE COMPANY,
BIRMINGHAM, ALABAMA, are held
and firmly bound unto WALTER E. PETERSEN, JR. in the sum
of FIFTEEN THOUSAND and 00/100 (\$15,000.00) DOLLARS for
the payment of which, well and truly to be made, we bind
ourselves and each of us, and each of our heirs, executors,
and administrators, jointly and severally, and we each of
us waive our rights of exemption under the Constitution and
Laws of Alabama, as against this bond.

The condition of the above obligation is such, that if
the above bound Cornelius Matheny, Jr. should prosecute to
effect an appeal by him taken this day to the Supreme Court
of Alabama from a judgement rendered against him in favor
of said Walter E. Petersen, Jr., by the Circuit Court of
Baldwin County, Alabama for the sum of SEVENTY-FIVE HUNDRED
and 00/100 (\$7500.00) DOLLARS debt, and costs; or, if he fails
in said appeal, shall pay such judgement, both as to debt and
costs, as may be rendered against him by the said Supreme
Court of Alabama, then in either of said events, this obligation
to be void, otherwise to remain in full force and effect.

Given under our hands and seals, this the 20th day of
June, 1962.

Cornelius Matheny, Jr. (SEAL)
Cornelius Matheny, Jr.

GENERAL MUTUAL INSURANCE COMPANY
By: _____ (SEAL)

Attorney-in-fact

APPROVED:

CLERK, CIRCUIT COURT
BALDWIN COUNTY, ALABAMA


WALTER E. PETERSEN, JR., also : IN THE CIRCUIT COURT OF
known as WALTER E. PETERSON, :
Plaintiff, :
VS: : BALDWIN COUNTY, ALABAMA
:
CORNELIUS MATHENY, JR., also : AT LAW
known as C. HOWARD MATHENY, JR., :
Defendant. : NO. 4 6 1 3

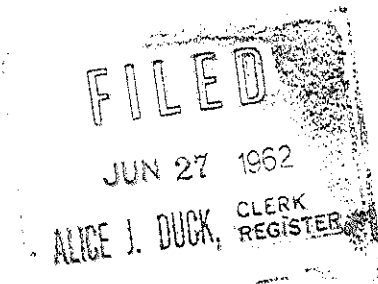
NOTICE OF APPEAL

Comes the Defendant, Cornelius Matheny, Jr., also known as C. Howard Matheny, jr., and gives notice of appeal from the judgement of the Circuit Court of Baldwin County, Alabama, rendered on the 13th day of March, 1962, and also from the judgement of said court overruling said Defendant's motion for new trial entered on the 9th day of May, 1962, to the Supreme Court of Alabama.

COLLINS, GALLOWAY & MURPHY

BY:


Thomas M. Galloway
Attorneys for Defendant




WALTER E. PETERSEN, JR., also : IN THE CIRCUIT COURT OF
known as WALTER E. PETERSON, :
Plaintiff, :
VS: : BALDWIN COUNTY, ALABAMA
CORNELIUS MATHENY, JR., also : AT LAW
known as C. HOWARD MATHENY, JR., :
Defendant. : NO. 4 6 1 3

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COLLINS, GALLOWAY & MURPHY

BY:


Thomas M. Galloway
Attorneys for Defendant


WALTER E. PETERSEN, JR., also : IN THE CIRCUIT COURT OF
known as WALTER E. PETERSON, :
Plaintiff, :
VS: : BALDWIN COUNTY, ALABAMA
:
CORNELIUS MATHENY, JR., also : AT LAW
known as C. HOWARD MATHENY, JR., :
Defendant. : NO. 4 6 1 3

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COLLINS, GALLOWAY & MURPHY

BY:


Thomas M. Galloway
Attorneys for Defendant

WALTER E. PETERSEN, JR., also : IN THE CIRCUIT COURT OF
known as WALTER E. PETERSON, :
Plaintiff, : BALDWIN COUNTY, ALABAMA
VS: : AT LAW
CORNELIUS MATHENY, JR., also :
known as C. HOWARD MATHENY, JR., :
Defendant. : NO. 4 6 1 3

STATE OF ALABAMA:

COUNTY OF BALDWIN:

KNOW ALL MEN BY THESE PRESENTS, that we, CORNELIUS
GENERAL MUTUAL INSURANCE COMPANY,
MATHENY, JR. and BIRMINGHAM, ALABAMA, are held
and firmly bound unto WALTER E. PETERSEN, JR. in the sum
of FIFTEEN THOUSAND and 00/100 (\$15,000.00) DOLLARS for
the payment of which, well and truly to be made, we bind
ourselves and each of us, and each of our heirs, executors,
and administrators, jointly and severally, and we each of
us waive our rights of exemption under the Constitution and
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The condition of the above obligation is such, that if
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of said Walter E. Petersen, Jr., (by the Circuit Court of
Baldwin County, Alabama for the sum of SEVENTY-FIVE HUNDRED
and 00/100 (\$7500.00) DOLLARS debt, and costs; or, if he fails
in said appeal, shall pay such judgement, both as to debt and
costs, as may be rendered against him by the said Supreme
Court of Alabama, then in either of said events, this obligation
to be void, otherwise to remain in full force and effect.

Given under our hands and seals, this the 20th day of
June, 1962.

Cornelius Matheny Jr. (SEAL)
Cornelius Matheny, Jr.

GENERAL MUTUAL INSURANCE COMPANY
By: Wayne Villadon (SEAL)
Attorney-in-fact

APPROVED: 6-27-62

CLERK, CIRCUIT COURT
BALDWIN COUNTY, ALABAMA

Glenn J. Huch

POWER OF ATTORNEY
(IRREVOCABLE)

GENERAL MUTUAL INSURANCE COMPANY
BIRMINGHAM, ALABAMA

Know All Men by These Presents: That the General Mutual Insurance Company, in pursuance of authority granted by a resolution adopted on the Nineteenth day of March, 1958, at a regular meeting of the Board of Directors of said Company, reading as follows:

"RESOLVED, that the President, Vice President or Secretary, shall have power and authority to appoint such Resident Managers, Assistant Secretaries, Resident Assistant Secretaries, and attorneys-in-fact, and to assign the duties to be performed by such appointees and to give to such appointees, and each of them, power and authority to sign and where required to seal with the seal of the Corporation any and all policies of insurance, endorsements, renewals or cancellation thereof, certificates of insurance, bonds, recognizances, agreements of indemnity, stipulations and all other underwriting undertakings and agreements in connection with any of the foregoing."

does hereby nominate, constitute and appoint:

Wayne Villadsen

of

Birmingham, Alabama

its true and lawful agent and attorney-in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed **any bond**

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Birmingham, Alabama, in their own proper persons.

IN WITNESS WHEREOF W. J. Perryman, Secretary of the said General Mutual Insurance Company has hereunto subscribed his name and affixed the Corporate Seal of the said General Mutual Insurance Company this Nineteenth day of March, 1958.

STATE OF ALABAMA }
COUNTY OF JEFFERSON } SS.


Secretary

On this Nineteenth day of March, 1958, before the subscriber, a Notary Public of the State of Alabama, in and for the County of Jefferson, duly commissioned and qualified, came W. J. Perryman, Secretary of GENERAL MUTUAL INSURANCE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn deposeeth and saith, that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of the said Company, and the said Corporate Seal and his signature as officer was duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at the City of Birmingham, State of Alabama, the day and year first above written.

Joe Gosa

Notary Public

STATE OF ALABAMA }
COUNTY OF JEFFERSON } SS.

I, K.L. Williams of the GENERAL MUTUAL INSURANCE COMPANY, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney given by said company to

Wayne Villadsen

of

Birmingham, Alabama

for the execution of bonds as herein set forth, and so hereby further certify that the said power of attorney is still in force and effect.

GIVEN under my hand and the seal of said Company, at Birmingham, Alabama, this 20th day of June A.D., 19 62

Seal

Subscribed and sworn to before me this 20th day of June 19 62


Notary Public in and for County of Jefferson, State of Alabama

Div. No. _____

CERTIFICATE OF APPEAL. (Civil Cases,)

No. 4613

Baldwin County, Circuit Court.

WALTER E. PETERSEN, JR., also known as WALTER E. PETERSON,
Plaintiff.
vs.

CORNELIUS MATHENY, JR., also known as C. HOWARD MATHENY, JR.
Defendant.

I, Alice J. Duck Clerk of Circuit Court,
of Baldwin County, Alabama, hereby certify that in the
cause of Walter E. Petersen, Jr., also known as Walter E. Peterson plaintiff
vs.

Cornelius Matheny, Jr., also known as C. Howard Matheny, Jr. defendant
which was tried and determined in this Court on the 13th day of
March 19 62, in which there was a judgment for Seven Thousand
Five Hundred and no/100 - Dollars, in favor of the plaintiff, (~~and judgment~~
~~for the defendant~~) the Defendant on the 27th day of
June 19 62, took an appeal to the Supreme Court
of Alabama to be holden of and for said State.

I further certify that Cornelius Matheny, Jr.
filed security for cost of appeal, to the Supreme Court, on
the 27th day of June 19 62, and that Cornelius Matheny, Jr.,
and General Mutual Insurance Company,
are sureties on the appeal bond.

I further certify that notice of the said appeal was on the
day of _____ 19____, served on Forest A. Christian
as attorney of record for said appellee, and that the amount sued for
was Twenty Thousand and no/100 - - - - - Dollars. (~~and judgment~~
~~for the defendant~~)

x
Witness my hand and the seal of this Court, this the 29th
day of June 19 62.

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