

WM. DEW WHITE
ERNEST L. ALL
LEE C. BRADLEY, JR.
DOUGLAS ARANT
WM. ALFRED ROSE
WM. DEW WHITE, JR.
JAMES C. BLAIR
JOHN J. COLEMAN, JR.
JOSEPH H. JOHNSON, JR.
J. REESE MURRAY
ROMAINE S. SCOTT, JR.
EDWARD M. SCLEF
HARRY R. TEEL
ELLEN WINN

WHITE, BRADLEY, ARANT, ALL & ROSE

2100 COMER BUILDING
BIRMINGHAM 3, ALABAMA

FAIRFAX 3-1551

June 15, 1961

LEE C. BRADLEY (1871-1942)
M. M. DALWIN (1873-1955)
SAMUEL M. BRONAUH (1900-1954)

ROBERT B. DONWORTH, JR.
DAVID J. VANN
ROBERT R. REID, JR.
JOHN H. WRINKLE
THOMAS N. CARRUTHERS, JR.
J. ROBERT FLEENOR
FRANK H. McFADDEN
JOHN C. GRENIER
JOHN H. MORROW
HOBART A. McWHORTER, JR.
CHARLOTTE BAILEY KIEFFER
J. VERNON PATRICK, JR.
MAGNETH WAGNON, JR.
ROBERT H. WALSTON

Clerk, Circuit Court of Baldwin County
Bay Minette, Alabama

Re: Elder E. Frazier v. Bear Ice Cream Co., et al
Mattie Frazier v. Bear Ice Cream Co., et al

Dear Sir:

We enclose herewith the original and five copies of a summons and complaint to be filed by you in the matter of Elder E. Frazier v. Bear Ice Cream Co., et al, and the original and four copies of interrogatories to the defendants in that case. You will notice that there is a fictitious defendant in the Elder E. Frazier case and we ask that you withhold service upon that fictitious defendant. No interrogatories are furnished for the fictitious defendant.

We enclose herewith also the original and five copies of a summons and complaint in the matter of Mattie Frazier v. Bear Ice Cream Co., et al. No interrogatories are provided in that case.

We ask that you file Elder E. Frazier's case first. Kindly use the enclosed blue slips to indicate the filing of these papers.

If for some reason these papers, as prepared, do not conform to the practice in your county and are not acceptable for filing with you, I would appreciate your so advising me at your early convenience with an eye to the fact that the statute will run on these cases on July 14.

Sincerely yours,

John H. Morrow
dd

JHM:dd
Encls.

LEE C. BRADLEY (1871-1942)
M. M. BALDWIN (1873-1955)
SAMUEL M. BRONAUGH (1900-1958)

WHITE, BRADLEY, ARANT, ALL & ROSE

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CHARLOTTE RAILEY KIEFFER
J. VERNON PATRICK, JR.
MACBETH WAGNON, JR.
ROBERT H. WALSTON
THOMAS W. THAGARD, JR.

January 15, 1962

Hon. Hubert M. Hall, Judge
Circuit Court of Baldwin County
Bay Minette, Alabama

Re: Mattie Frazier v. Bear Ice Cream
Company, et al - Case No. 4734

Elder Frazier v. Bear Ice Cream
Company, et al - Case No. 4733

Dear Judge Hall:

We represent the plaintiff in each of the foregoing causes. We have agreed upon a settlement with Mr. Tom Twitty, Jr., attorney for the corporate defendant, Bear's, Inc.

We ask that an order be entered in each of the cases as follows:

"Plaintiff strikes the defendant Linwood Coleman Armstrong. Case dismissed with prejudice and all costs taxed against the plaintiff."

We are sending a copy of this letter to your clerk with a request that the cost bill be sent direct to Mr. Tom Twitty, Jr., P. O. Box 1109, Mobile, Alabama, who will see that the costs are duly paid.

We appreciate your kind patience in connection with these cases.

Very respectfully yours,



JHM:dd

cc: Clerk, Circuit Court of Baldwin County
Mr. Thomas Twitty, Jr.

INGE, TWITTY & DUFFY
LAWYERS

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

July 15, 1961

THOS. E. TWITTY
FRANCIS H. INGE (1902-1959)
RICHARD H. INGE
THOS. E. TWITTY, JR.
JAMES J. DUFFY, JR.
SYDNEY R. PRINCE, III

MAILING ADDRESS:

P. O. BOX 1109
MOBILE, ALA.

CABLE ADDRESS:

TWINING
TELEPHONE:
HEMLOCK 3-5441

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

Re: Elder E. Frazier vs. Bear Ice Cream Co., et al.
Mattie Frazier vs. Bear Ice Cream Co., et al.

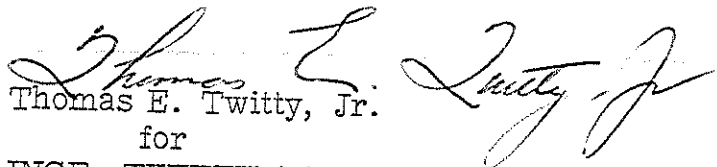
Dear Mrs. Duck:

I am enclosing herewith for filing triplicate copies of a demurrer of Joseph Bear and James Isom Gavin in each of the above referenced cases and also triplicate copies of a plea in abatement of Bear's, Inc. in each of said cases.

I would appreciate it if you would acknowledge the filing of each of these pleadings for me on the space provided on the copy of this letter enclosed and return such copy to me as soon as you can in view of the fact that my time in which to appear as to some of these defendants expires shortly.

With kindest regards,

Cordially,


Thomas E. Twitty, Jr.
for
INGE, TWITTY & DUFFY

TETjr/bjm
Enclosures

STATE OF ALABAMA)

IN THE CIRCUIT COURT

BALDWIN COUNTY)

OF BALDWIN COUNTY, ALABAMA

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETINGS:

You are hereby commanded to summon Bear Ice Cream Co., a corporation; Joseph Bear doing business as Bear Ice Cream Co.; Linwood Coleman Armstrong; James Isom Gavin; and XYZ, the person, firm, partnership, or corporation who operated a truck involved in a collision with Elder E. Frazier on July 14, 1960, at or near a point 300 feet west of the intersection of Highway U. S. 90 and County Road No. 66 in Baldwin County, Alabama, to appear before the Circuit Court, to be held for said County, at the place of holding the same, within thirty days from service of this process, then and there to answer the complaint of Elder E. Frazier.

WITNESS my hand this 19 day of June, 1961.

Alfred H. Duck
Clerk

COMPLAINT

ELDER E. FRAZIER,)

VS.)

Plaintiff,)

(BEAR ICE CREAM CO., a corporation;
(JOSEPH BEAR, doing business as
(Bear Ice Cream Co.; LINWOOD COLEMAN
(ARMSTRONG; JAMES ISOM GAVIN; and
(XYZ, the person, firm, partnership,
(or corporation who operated a truck
(involved in a collision with Elder
(E. Frazier on July 14, 1960, at or
(near a point 300 feet west of the
(intersection of Highway U.S. 90 and
(County Road No. 66 in Baldwin County,
(Alabama, whose true and correct
(name is otherwise unknown but will
(be added by amendment when ascertained,

Defendants.

COUNT ONE

Plaintiff claims of the defendants the sum of Fifty Thousand Dollars (\$50,000.00), as damages, for that on, to-wit, the 14th day of July, 1960 while plaintiff was operating his

automobile on a public highway, to-wit, U. S. Highway 90, at a point, to-wit, one and nine-tenths miles west of the city limits of Loxley, Baldwin County, Alabama, near the intersection of U. S. 90 and County Road Number 66, the defendant, Linwood Coleman Armstrong, was operating a motor vehicle on U. S. Highway 90 near the said intersection, and the defendant, James Isom Gavin, who was the servant, agent or employee of the defendants Joseph Bear doing business as Bear Ice Cream Co., Bear Ice Cream Co., and XYZ, and was acting within the line and scope of his employment as such, was operating another motor vehicle on U. S. Highway 90 near the said intersection. And plaintiff avers that at said time and place, as aforesaid, said defendants so operated their respective vehicles as to cause their vehicles to collide with the plaintiff's automobile, and as a proximate consequence thereof plaintiff was injured and damages as follows:

His head, neck, chest, arms, hands, hip, and other parts of his body were bruised and contused; his left hip was broken; his ribs were broken; and his left hand was broken; the muscles and ligaments of his head, neck, chest, arms, hands and other parts of his body were sprained, strained, torn, twisted, wrenched and otherwise injured; he was internally injured; his nervous system was shocked and impaired; he was permanently injured; he was confined to the hospital; he was put to great trouble, annoyance, inconvenience, great loss of time and great expense in and about procuring doctors, medicines and hospital and medical care, aid and attention, in and about an effort to heal and cure his said wounds and injuries; and the motor, frame, chassis, fenders and other parts of plaintiff's said automobile were bent, twisted, dented,

smashed and otherwise damaged; and plaintiff's said automobile was rendered greatly less valuable.

And plaintiff avers that all of his said injuries and damages were caused as a proximate result of the combined and concurring negligence of the defendants, in and about the operation of their respective motor vehicles at said time and place.

COUNT TWO

For this count of his complaint plaintiff adopts all of the words and figures of Count One, from its beginning down to and including the words, "and plaintiff's said automobile was rendered greatly less valuable", where said words first appear together in said Count One, and adds thereto for this count of his complaint the following:

And plaintiff avers that the defendants wantonly injured and damaged plaintiff on said date and occasion by wantonly causing their respective motor vehicles to collide with plaintiff's automobile, which plaintiff was operating, as aforesaid, at said time and place; and plaintiff avers that as a proximate result of such wanton conduct he was caused to sustain and did sustain the injuries and damages complained of and set out in Count One of his complaint.

COUNT THREE

Plaintiff claims of the defendants the further and additional sum of Five Thousand Dollars (\$5,000.00), as damages, for that on, to-wit, the 14th day of July, 1960 while plaintiff's wife, Mrs. Mattie Frazier, was riding as a passenger in an automobile, over which she had no charge, direction or control, on a public highway, to-wit, U. S. Highway 90, at a point, to-wit, one and nine-tenths miles west of the city limits of Loxley, Baldwin County, Alabama, near the intersection of U. S. Highway 90 and County Road

Number 66, the defendant, Linwood Coleman Armstrong, was operating a motor vehicle on U. S. Highway 90 near the said intersection, and the defendant, James Isom Gavin, who was the servant, agent or employee of the defendants Joseph Bear doing business as Bear Ice Cream Co., Bear Ice Cream Co., and XYZ, and was acting within the line and scope of his employment as such, was operating another motor vehicle on U. S. Highway 90 near the said intersection. And plaintiff avers that at said time and place, as aforesaid, said defendants so operated their respective vehicles as to cause their vehicles to collide with the automobile in which plaintiff's said wife was riding as a passenger, as aforesaid, and as a proximate consequence thereof plaintiff's said wife was injured and damaged as follows, with resultant damage to plaintiff:

Her brain, head, neck, left foot, ankles, knees, hips, left shoulder, abdomen and other parts of her body were bruised and contused; the muscles and ligaments of her head, neck, left foot, ankles, knees, hips, left shoulder, abdomen and other parts of her body were sprained, strained, torn, twisted, wrenched and otherwise injured; she was injured internally; her nervous system was shocked and impaired; she was caused to be confined to the hospital, to the bed and to the home for a long period of time; she was made sick, sore and ill for a long period of time; the nerves of her body were injured and damaged; her heart was weakened and damaged; she was prevented from engaging in her customary pursuits for a long period of time; and plaintiff was caused to lose the services and society of his said wife for a long period of time; and plaintiff was put to great trouble, annoyance, inconvenience, great loss of time and great expense in and about procuring doctors, medicines and hospital and medical care, aid and attention, in and about his efforts to heal and cure the said wounds and injuries of his said wife.

And plaintiff avers that all of the said injuries and damages to his said wife, with resultant damage to plaintiff, were caused as a proximate result of the combined and concurring negligence of the defendants, in and about the operation of their respective motor vehicles at said time and place.

Wm Bow White Jr

John H Morrow
Attorneys for Plaintiff

Wm. Bow White, Jr.
John H. Morrow
2100 Comer Building
Birmingham 3, Alabama

Plaintiff demands a jury for the trial of this cause.

John H Morrow
Attorney for Plaintiff

Plaintiff's Address:
Elder Frazier
Route 1, Box 19-1/2
Sterrett, Alabama

Defendants' Addresses:
Linwood Coleman Armstrong
Robertsdale, Alabama

James Isom Gavin
1253 Gorgas Street
Mobile, Alabama

Joseph Bear
1117 Spring Hill Avenue
Mobile, Alabama

Bear Ice Cream Company
1117 Spring Hill Avenue
Mobile, Alabama

FILED
JUN 13 1961
FBI - MOBILE

STATE OF ALABAMA)
BALDWIN COUNTY)

IN THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETINGS:

You are hereby commanded to summon Bear Ice Cream Co., a corporation; Joseph Bear doing business as Bear Ice Cream Co.; Linwood Coleman Armstrong; James Isom Gavin; and XYZ, the person, firm, partnership, or corporation who operated a truck involved in a collision with Elder E. Frazier on July 14, 1960, at or near a point 300 feet west of the intersection of Highway U. S. 90 and County Road No. 66 in Baldwin County, Alabama, to appear before the Circuit Court, to be held for said County, at the place of holding the same, within thirty days from service of this process, then and there to answer the complaint of Elder E. Frazier.

WITNESS my hand this 19 day of June, 1961.

Reuben Duck
Clerk

Exp 6-22-61

COMPLAINT

4233

ELDER E. FRAZIER,

VS.

(BEAR ICE CREAM CO., a corporation;
(JOSEPH BEAR, doing business as
(Bear Ice Cream Co.; LINWOOD COLEMAN
(ARMSTRONG; JAMES ISOM GAVIN; and
(XYZ, the person, firm, partnership,
(or corporation who operated a truck
(involved in a collision with Elder
(E. Frazier on July 14, 1960, at or
(near a point 300 feet west of the
(intersection of Highway U.S. 90 and
(County Road No. 66 in Baldwin County,
(Alabama, whose true and correct
(name is otherwise unknown but will
(be added by amendment when ascertained,

Plaintiff,

Defendants.

COUNT ONE

Plaintiff claims of the defendants the sum of Fifty Thousand Dollars (\$50,000.00), as damages, for that on, to-wit, the 14th day of July, 1960 while plaintiff was operating his

automobile on a public highway, to-wit, U. S. Highway 90, at a point, to-wit, one and nine-tenths miles west of the city limits of Loxley, Baldwin County, Alabama, near the intersection of U. S. 90 and County Road Number 66, the defendant, Linwood Coleman Armstrong, was operating a motor vehicle on U. S. Highway 90 near the said intersection, and the defendant, James Isom Gavin, who was the servant, agent or employee of the defendants Joseph Bear doing business as Bear Ice Cream Co., Bear Ice Cream Co., and XYZ, and was acting within the line and scope of his employment as such, was operating another motor vehicle on U. S. Highway 90 near the said intersection. And plaintiff avers that at said time and place, as aforesaid, said defendants so operated their respective vehicles as to cause their vehicles to collide with the plaintiff's automobile, and as a proximate consequence thereof plaintiff was injured and damages as follows:

His head, neck, chest, arms, hands, hip, and other parts of his body were bruised and contused; his left hip was broken; his ribs were broken; and his left hand was broken; the muscles and ligaments of his head, neck, chest, arms, hands and other parts of his body were sprained, strained, torn, twisted, wrenched and otherwise injured; he was internally injured; his nervous system was shocked and impaired; he was permanently injured; he was confined to the hospital; he was put to great trouble, annoyance, inconvenience, great loss of time and great expense in and about procuring doctors, medicines and hospital and medical care, aid and attention, in and about an effort to heal and cure his said wounds and injuries; and the motor, frame, chassis, fenders and other parts of plaintiff's said automobile were bent, twisted, dented,

smashed and otherwise damaged; and plaintiff's said automobile was rendered greatly less valuable.

And plaintiff avers that all of his said injuries and damages were caused as a proximate result of the combined and concurring negligence of the defendants, in and about the operation of their respective motor vehicles at said time and place.

COUNT TWO

For this count of his complaint plaintiff adopts all of the words and figures of Count One, from its beginning down to and including the words, "and plaintiff's said automobile was rendered greatly less valuable", where said words first appear together in said Count One, and adds thereto for this count of his complaint the following:

And plaintiff avers that the defendants wantonly injured and damaged plaintiff on said date and occasion by wantonly causing their respective motor vehicles to collide with plaintiff's automobile, which plaintiff was operating, as aforesaid, at said time and place; and plaintiff avers that as a proximate result of such wanton conduct he was caused to sustain and did sustain the injuries and damages complained of and set out in Count One of his complaint.

COUNT THREE

Plaintiff claims of the defendants the further and additional sum of Five Thousand Dollars (\$5,000.00), as damages, for that on, to-wit, the 14th day of July, 1960 while plaintiff's wife, Mrs. Mattie Frazier, was riding as a passenger in an automobile, over which she had no charge, direction or control, on a public highway, to-wit, U. S. Highway 90, at a point, to-wit, one and nine-tenths miles west of the city limits of Loxley, Baldwin County, Alabama, near the intersection of U. S. Highway 90 and County Road

Number 66, the defendant, Linwood Coleman Armstrong, was operating a motor vehicle on U. S. Highway 90 near the said intersection, and the defendant, James Isom Gavin, who was the servant, agent or employee of the defendants Joseph Bear doing business as Bear Ice Cream Co., Bear Ice Cream Co., and XYZ, and was acting within the line and scope of his employment as such, was operating another motor vehicle on U. S. Highway 90 near the said intersection. And plaintiff avers that at said time and place, as aforesaid, said defendants so operated their respective vehicles as to cause their vehicles to collide with the automobile in which plaintiff's said wife was riding as a passenger, as aforesaid, and as a proximate consequence thereof plaintiff's said wife was injured and damaged as follows, with resultant damage to plaintiff:

Her brain, head, neck, left foot, ankles, knees, hips, left shoulder, abdomen and other parts of her body were bruised and contused; the muscles and ligaments of her head, neck, left foot, ankles, knees, hips, left shoulder, abdomen and other parts of her body were sprained, strained, torn, twisted, wrenched and otherwise injured; she was injured internally; her nervous system was shocked and impaired; she was caused to be confined to the hospital, to the bed and to the home for a long period of time; she was made sick, sore and ill for a long period of time; the nerves of her body were injured and damaged; her heart was weakened and damaged; she was prevented from engaging in her customary pursuits for a long period of time; and plaintiff was caused to lose the services and society of his said wife for a long period of time; and plaintiff was put to great trouble, annoyance, inconvenience, great loss of time and great expense in and about procuring doctors, medicines and hospital and medical care, aid and attention, in and about his efforts to heal and cure the said wounds and injuries of his said wife.

And plaintiff avers that all of the said injuries and damages to his said wife, with resultant damage to plaintiff, were caused as a proximate result of the combined and concurring negligence of the defendants, in and about the operation of their respective motor vehicles at said time and place.

Wm. Bew White, Jr.

John H. Morrow
Attorneys for Plaintiff

Wm. Bew White, Jr.
John H. Morrow
2100 Comer Building
Birmingham 3, Alabama

Plaintiff demands a jury for the trial of this cause.

John H. Morrow
Attorney for Plaintiff

Plaintiff's Address:
Elder Frazier
Route 1, Box 19-1/2
Sterrett, Alabama

Defendants' Addresses:
Linwood Coleman Armstrong
Robertsdale, Alabama

James Isom Gavin
1253 Gorgas Street
Mobile, Alabama

Joseph Bear
1117 Spring Hill Avenue
Mobile, Alabama

Bear Ice Cream Company
1117 Spring Hill Avenue
Mobile, Alabama

FILED

JUN 19 1961

ALICE J. DUCK, Clerk

NO. _____

IN THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA

ELDER E. FRAZIER,
Plaintiff,

vs.

BEAR ICE CREAM CO.; a corporation;
JOSEPH BEAR, doing business as
Bear Ice Cream Co.; LINWOOD
COLEMAN ARMSTRONG; JAMES ISOM
GAVIN; and XYZ, the person, firm,
partnership, or corporation who
operated a truck involved in a
collision with Elder E. Frazier on
July 14, 1960, at or near a point
300 feet west of the intersection
of Highway U.S. 90 and County Road
No. 66 in Baldwin County, Alabama,
whose true and correct name is
otherwise unknown but will be
added by amendment when
ascertained,

Defendants.

COMPLAINT

Wm. Bew White, Jr.
John H. Morrow
2100 Comer Building
Birmingham 3, Alabama

FILED

JUN 19 1961

ALICE J. DUCK, Clerk

ELDER E. FRAZIER,)	IN THE CIRCUIT COURT OF
)	
Plaintiff,)	BALDWIN COUNTY, ALABAMA
)	
vs.)	AT LAW
)	
BEAR ICE CREAM CO., a)	
corporation; JOSEPH BEAR,)	
doing business as Bear Ice Cream)	
Co.; LINWOOD COLEMAN)	
ARMSTRONG; JAMES ISOM GAVIN;)	
and XYZ, the person, firm, partner-)	
ship, or corporation who operated a)	
truck involved in a collision with)	
Elder E. Frazier on July 14, 1960,)	
at or near a point 300 feet west of the)	
intersection of Highway U.S. 90 and)	
County Road No. 66 in Baldwin)	
County, Alabama, whose true and)	
correct name is otherwise unknown)	
but will be added by amendment when)	
ascertained,)	
)	
Defendants.)	NO. <u>4733</u>

DEMURRER TO COMPLAINT

Comes now Defendants, JOSEPH BEAR, doing business as Bear Ice Cream Co., and JAMES ISOM GAVIN, separately and severally, and demurs to the Plaintiff's complaint and to each count thereof, separately and severally, and for grounds of demurrer thereto sets down and assigns the following, separately and severally, to-wit:

1. Said count fails to state a cause of action.
2. Sufficient facts are not alleged in said count to show the existence of any legal duty owing by said Defendant to the Plaintiff at the time and place complained of therein.
3. Sufficient facts are not alleged in said count to show the breach of any legal duty by said Defendant at the time and place complained of therein owing by said Defendant to the Plaintiff at said time and place.
4. Sufficient facts are not alleged therein to show that Plaintiff's injuries and damages complained of were directly and proximately caused by the breach of any legal duty by said Defendant at the time and place complained of therein owing by said Defendant to the Plaintiff at said time and place.

5. The allegations in said count are vague, uncertain and indefinite.
6. The allegations in said count are so vague, uncertain and indefinite that said Defendant is not sufficiently apprised of what he is called upon to defend.
7. The allegation therein that all of Plaintiff's injuries and damages complained of "were caused as a proximate result of the combined and concurring negligence of the defendants, in and about the operation of their respective motor vehicles at said time and place" is a mere conclusion of the pleader unsupported by sufficient averments of fact.
8. Said count does not charge said Defendant with negligence except by conclusion of the pleader unsupported by sufficient allegations of fact.
9. Said count does not charge said Defendant with the breach of any legal duty owing by said Defendant to the Plaintiff at the time and place complained of in the complaint except by conclusion of the pleader unsupported by sufficient averments of fact.
10. The allegation therein contained that "the defendants wantonly injured and damaged plaintiff on said date and occasion by wantonly causing their respective motor vehicles to collide with plaintiff's automobile, which plaintiff was operating, as aforesaid, at said time and place" is a mere conclusion of the pleader unsupported by sufficient averments of fact.
11. Said count does not charge said Defendant with wantonly injuring or damaging the Plaintiff except by conclusion of the pleader unsupported by sufficient averments of fact.
12. The allegation contained in said count that "all of the said injuries and damages to his said wife, with resultant damage to plaintiff, were caused as a proximate result of the combined and concurring negligence of the defendants, in and about the operation of their respective motor vehicles at said time and place" is a mere conclusion of the pleader unsupported by sufficient averments of fact.
13. Said count does not charge said Defendant with negligently injuring

Plaintiff's said wife except by conclusion of the pleader unsupported by sufficient averments of fact.

14. For aught appearing therein the Plaintiff's said wife was not injured and damaged as the direct and proximate result of any negligence on the part of said Defendant.

15. For aught appearing therein Plaintiff's said wife was not injured and damaged as the direct and proximate result of the breach of any legal duty by said Defendant owing by said Defendant to Plaintiff's said wife at the time and place complained of in the complaint.

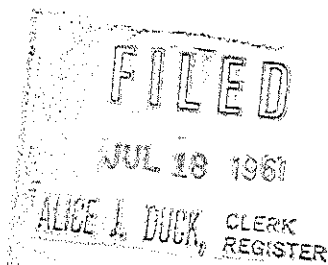
16. There is a splitting of causes of action in said complaint in that the matters and things alleged and claimed in counts one and three of said complaint are but one cause of action and must be pleaded and stated in one and the same count.

17. There is a misjoinder of causes of action in said complaint in that the Plaintiff seeks to recover for personal injuries allegedly received by his said wife in the same complaint and action in which he seeks to recover for his own alleged personal injuries and damages.

INGE, TWITTY & DUFFY

By: Thomas E. Twitty, Jr.
Thomas E. Twitty, Jr.
Attorneys for Defendants, Joseph
Bear, doing business as Bear Ice
Cream Company, and James Isom
Gavin, separately and severally.

Address of Counsel:
1309 Merchants National Bank Building
Mobile, Alabama



ELDER E. FRAZIER,)	IN THE CIRCUIT COURT OF
)	
Plaintiff,)	BALDWIN COUNTY, ALABAMA
)	
vs.)	AT LAW
)	
BEAR ICE CREAM CO., a)	
corporation; JOSEPH BEAR, doing)	
business as Bear Ice Cream Co.;)	
LINWOOD COLEMAN ARMSTRONG;)	
JAMES ISOM GAVIN; and XYZ, the)	
person, firm, partnership, or)	
corporation who operated a truck)	
involved in a collision with Elder E.)	
Frazier on July 14, 1960, at or near)	
a point 300 feet west of the intersec-)	
tion of Highway U. S. 90 and County)	
Road No. 66 in Baldwin County,)	
Alabama, whose true and correct)	
name is otherwise unknown but will)	
be added by amendment when)	
ascertained,)	
)	
Defendants.)	NO. <u>4733</u>

PLEA IN ABATEMENT

Comes now Bear's, Inc., a corporation, appearing herein by and through Inge, Twitty & Duffy, its attorneys, solely and specially for the purpose of filing this Plea in Abatement and for the hearing of the same, and for no other purpose or purposes, and without submitting to the jurisdiction of the Court, and pleading in abatement says as follows:

That it is now, and has been at all times continuously since and including June 1, 1960, a corporation organized and existing under the laws of the State of Alabama with its principal place of business in Mobile, Alabama; that its true and correct corporate name is now and at all times during its corporate existence has been "Bear's, Inc.," and that its corporate name has never been "Bear Ice Cream Co.;" that the Defendant, James Isom Gavin, was at the time complained of in the Plaintiff's complaint on file in this cause employed by the undersigned Bear's, Inc., a corporation, and was not at said time and has never been an official, agent or employee of or in any manner connected with Bear Ice

Cream Co., a corporation, if in fact such a corporation exists or has existed; that if there was at the time complained of in the complaint, or at any time subsequent thereto, a corporation whose true and correct corporate name was or is "Bear Ice Cream Co.," such corporation was and is and has always been during its corporate existence a separate and distinct legal entity from the undersigned, Bear's, Inc., a corporation, and said corporation, if any exists or has existed, does not now and has never heretofore had any stockholders, directors or officers in common with the undersigned, Bear's, Inc., a corporation.

WHEREFORE, the undersigned, Bear's, Inc., a corporation, says that this suit should be abated, and should not be allowed to proceed against the undersigned or Bear Ice Cream Co., a corporation.

BEAR'S, INC., a corporation

BY INGE, TWITTY & DUFFY

By Thomas E. Twitty Jr.
Attorneys for Bear's, Inc., a corporation

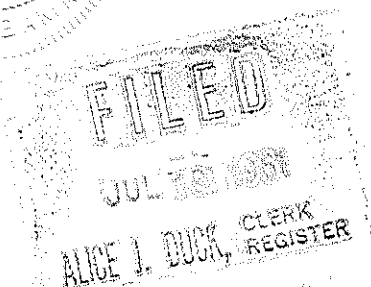
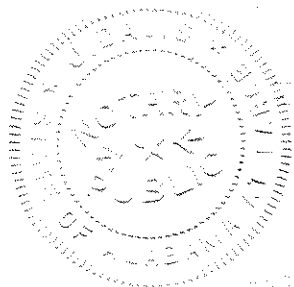
State of Alabama)
County of Mobile)

Before me, the undersigned Notary Public in and for said County in said State, personally appeared Gladie A. Bear, who being duly sworn, deposes and says that she is Sec. Treas. of Bear's, Inc., a corporation, and authorized to make this affidavit; that she is cognizant of the facts set forth in the above and foregoing plea in abatement, and that said facts are true and correct.

Gladie A. Bear

Subscribed and sworn to before me this 17 day of July, 1961.

Davis
Notary Public, Mobile County, Alabama.



OF BALDWIN COUNTY, ALABAMA
IN THE CIRCUIT COURT ~~AT THE EXTREME NORTH CORNER OF THE COURTHOUSE IN THE CITY OF ALABAMA~~

ELDER E. FRAZIER,

PLAINTIFF,

VS.

No.

BEAR ICE CREAM Co., a corporation;
JOSEPH BEAR, doing business as Bear
Ice Cream Co.; WOODWARD ARM-
STRONG; JAMES B. BARTON, et al

DEFENDANTS

INTERROGATORIES TO DEFENDANTS

Comes the plaintiff in the above styled cause, and desiring the testimony of the defendants, propounds the following interrogatories to be answered separately and severally in the manner and form provided by law, viz:

1. (a) State your correct name, age, residence address and business address.
(b) Is your name correctly stated in the complaint on file in this cause?
(c) If you state that your name is not correctly stated, then state the correct way that you could be designated as a party plaintiff or a party defendant in an action at law:
(1) At the time that the accident which is made the basis of this suit occurred;
(2) At the time that you answer these interrogatories.
2. (a) State whether you are a person, firm, or corporation.
(b) If you state that you are a partnership, then state the name of each and every partner composing said partnership, and the name under which the partnership does business.
(c) If you state that you are a corporation, state on what date you were incorporated and at what place.
3. (a) Describe completely and in detail the vehicle occupied or owned by you on the occasion of the accident made the basis of this suit, stating in your answer the make, model, year, and body style of same.
(b) State the name and address of the owner of said motor vehicle on the date of said accident.
(c) State the name and address of the driver of said vehicle on said occasion.
(d) Describe completely and in detail every item of damage sustained by said vehicle.
(e) Give the amount of each repair estimate obtained on said damage and give the name and address of the person making said repair estimate.
(f) 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.
(g) 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.
(h) 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?
4. (a) If you have stated that the owner of the vehicle which collided with the vehicle in which plaintiff was riding was not the driver on the occasion of said accident, explain fully and in detail the presence of the driver in said vehicle.
(b) State who was the employer of the driver of the vehicle which collided with the vehicle in which plaintiff was riding at the time that said accident occurred.

- (c) State on whose business or behalf said driver was acting at the time that said accident occurred.
- (d) State the hours of work which said driver had at the time of said accident.
5. (a) State the number of persons occupying the motor vehicle which collided with the vehicle in which plaintiff was riding and state specifically how and in what manner each of said occupants were located in said vehicle on said occasion.
- (b) State fully the purpose of the trip you were making at the time of the accident made the basis of this suit.
- (c) From what point had you departed?
- (d) What was your destination?
- (e) 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.
- (f) Give the name and address of each and every person or firm who had any interest whatsoever in the trip that was being made by the driver of the vehicle which collided with the plaintiff on the occasion of said accident, and state the nature of said interest and the connection of said person or firm with the trip.
6. Prepare and attach to your answers to these interrogatories a map portraying the scene of the accident and the physical objects involved 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 vehicles after the accident;
- (c) Where you were located when you first saw the plaintiff's vehicle;
- (d) Where the plaintiff'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.
7. State whether or not the accident made the basis of this suit occurred at an intersection of streets or avenues, and if so, then state:
- (a) At what intersection of streets or avenues said accident occurred;
- (b) Whether any buildings or objects were located within any of the four corners of the intersection which would obscure the vision of any person approaching the intersection;
- (c) State how far you, in your judgment, could see to the left and right on each of the streets entering the intersection and down each of the intersecting streets when you approached from a point fifty feet from said intersection.
- (d) Describe the locus of said accident with reference to the contour of the land, the grade or curve of the road, highway or intersection, and any physical structures located within two hundred feet of the place of the accident;
- (e) 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.
8. (a) State where the motor vehicle in which plaintiff was riding 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.
- (b) Did you see the motor vehicle in which plaintiff was riding before the actual collision?
- (c) How many feet was the motor vehicle in which plaintiff was riding from the place of the impact when you first observed same?
- (d) How many feet were you from the point of impact when you first observed the vehicle in which plaintiff was riding?
- (e) Where did the impact occur with reference to the center line of the street on which the vehicle in which plaintiff was traveling?

- (f) Where did the impact occur with reference to the right edge of the street on which your vehicle was traveling?
9. (a) 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.
- (b) Describe each and everything which the driver of the vehicle in which plaintiff was riding failed to do to avoid said accident.
- (c) Describe each and everything done by the driver of the vehicle in which plaintiff was riding which contributed to the cause of 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 driver of the vehicle in which plaintiff was riding on said occasion.
10. (a) 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.
- (b) Give the name and address of each of said persons who was drinking or who was intoxicated.
- (c) State what each of said persons was drinking, where he or she had obtained same, the quantity or amount consumed, and the time and place where same was drunk.
11. State, according to your best judgment the speed of the vehicle in which plaintiff was riding 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.
12. (a) State in what direction and along what street or avenue each of the motor vehicles involved in the accident made the basis of this suit was traveling on the occasion of said accident.
- (b) State in your best judgment, in number of feet, the width of each of said streets or avenues or highways.
- (c) 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, describe 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 street, avenue or highway on which said motor vehicle had been traveling prior to said turn.
13. (a) State fully, specifically and in detail each and every act or thing done by the operator of the vehicle owned or 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.
- (b) Describe each change in the course of travel made by the vehicle in which plaintiff was riding immediately prior to said accident.
- (c) 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.
14. (a) State whether or not the brakes on the vehicle occupied by you or owned by you at the time of the accident sued on were applied prior to the collision.

- (b) If so, state in your best judgment the speed in miles per hour said vehicle was traveling at the moment the brakes were applied.
 - (c) State in your best judgment the distance in number of feet said vehicle traveled from the moment the brakes were applied until said collision occurred
 - (d) 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.
15. (a) State specifically what portion of the vehicles involved in the accident made the basis of this suit first came in contact with each other.
- (b) Describe the portions which next came in contact after the initial impact.
16. (a) 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.
- (b) In what direction did each of said motor vehicles move from the point of said collision until they came to a complete stop?
- (c) Describe each and every skid mark which led up to the point of collision.
- (d) Describe each and every skid mark which extended from the point of collision toward the place where either of the motor vehicles involved in the accident came to rest.
- (e) Locate the point where each motor vehicle came to rest with reference to the point of impact, the center of the intersection, the four corners of same and the right edge of the street on which it had been traveling.
17. State the speed of the motor vehicle which you owned or occupied, according to your best judgment, at the following points:
- (a) When you were within a distance of 300 feet from the point of impact in the accident made the basis of this suit;
 - (b) When you were 200 feet from the point of impact;
 - (c) When you were 100 feet from the point of impact;
 - (d) When you were 50 feet from the point of impact;
 - (e) When you were 25 feet from the point of impact;
 - (f) When you were 10 feet from the point of impact;
 - (g) At the time of said impact;
 - (h) When you first observed the other vehicle involved in said accident.
18. (a) State whether any horn or other signal was given as a warning by the operator of the vehicles involved in the accident made the basis of this suit prior to the time of the collision.
- (b) If so, describe each of said signals given by each respective driver specifically and in detail.
- (c) State how far distant from the point of collision each vehicle was located at the time said signal was given.
- (d) 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 of impact said signal was given by each driver respectively.
19. (a) 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
- (b) 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.
- (c) 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 manner, to cause the collision made the basis of this suit.

- (d) Give the name and address of each driver or owner of each of said vehicles.
20. (a) 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?
- (b) If so, state when, where and what was said by you.
- (c) Did the operator of the vehicle in which plaintiff was riding make any statement in your presence following the occurrence of the accident, and if so, state when, where and what was said by said driver.
- (d) Give the name and address of each and every person who was present when the accident made the basis of this suit occurred.
- (e) 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 vehicle in which plaintiff was riding following the occurrence of the accident made the basis of this suit.

WM. BEW WHITE, JR.
JOHN H. MORROW
Attorneys for Plaintiff

By John H. Morrow

STATE OF ALABAMA)

JEFFERSON COUNTY)

Personally appeared before me, a Notary Public, in and for the State and County aforesaid, the undersigned, who having been by me first duly sworn, deposes and says that he is of counsel for plaintiff and as such has authority to make this affidavit and that answers to the foregoing interrogatories, in well and truly made, will be material testimony for the plaintiff upon the trial of this cause.

Sworn to and subscribed before me
on this the 14th day of June, 1931.

Jessie K. Preston
Notary Public

STATE OF ALABAMA) IN THE CIRCUIT COURT
BALDWIN COUNTY) OF BALDWIN COUNTY, ALABAMA
TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETINGS:

You are hereby commanded to summon Bear Ice Cream Co., a corporation; Joseph Bear doing business as Bear Ice Cream Co.; Linwood Coleman Armstrong; James Isom Gavin; and XYZ, the person, firm, partnership, or corporation who operated a truck involved in a collision with Elder E. Frazier on July 14, 1960, at or near a point 300 feet west of the intersection of Highway U. S. 90 and County Road No. 66 in Baldwin County, Alabama, to appear before the Circuit Court, to be held for said County, at the place of holding the same, within thirty days from service of this process, then and there to answer the complaint of Elder E. Frazier.

WITNESS my hand this 19 day of June, 1961.

Deepest-Whisk
Clerk

COMPLAINT

ELDER E. FRAZIER,)

VS.)

Plaintiff,)

(BEAR ICE CREAM CO., a corporation;
(JOSEPH BEAR, doing business as
(Bear Ice Cream Co.; LINWOOD COLEMAN
(ARMSTRONG; JAMES ISOM GAVIN; and
(XYZ, the person, firm, partnership,
(or corporation who operated a truck
(involved in a collision with Elder
(E. Frazier on July 14, 1960, at or
(near a point 300 feet west of the
(intersection of Highway U.S. 90 and
(County Road No. 66 in Baldwin County,
(Alabama, whose true and correct
(name is otherwise unknown but will
(be added by amendment when ascertained,
(
(
Defendants.)

COUNT ONE

Plaintiff claims of the defendants the sum of Fifty Thousand Dollars (\$50,000.00), as damages, for that on, to-wit, the 14th day of July, 1960 while plaintiff was operating his

automobile on a public highway, to-wit, U. S. Highway 90, at a point, to-wit, one and nine-tenths miles west of the city limits of Loxley, Baldwin County, Alabama, near the intersection of U. S. 90 and County Road Number 66, the defendant, Linwood Coleman Armstrong, was operating a motor vehicle on U. S. Highway 90 near the said intersection, and the defendant, James Isom Gavin, who was the servant, agent or employee of the defendants Joseph Bear doing business as Bear Ice Cream Co., Bear Ice Cream Co., and XYZ, and was acting within the line and scope of his employment as such, was operating another motor vehicle on U. S. Highway 90 near the said intersection. And plaintiff avers that at said time and place, as aforesaid, said defendants so operated their respective vehicles as to cause their vehicles to collide with the plaintiff's automobile, and as a proximate consequence thereof plaintiff was injured and damages as follows:

His head, neck, chest, arms, hands, hip, and other parts of his body were bruised and contused; his left hip was broken; his ribs were broken; and his left hand was broken; the muscles and ligaments of his head, neck, chest, arms, hands and other parts of his body were sprained, strained, torn, twisted, wrenched and otherwise injured; he was internally injured; his nervous system was shocked and impaired; he was permanently injured; he was confined to the hospital; he was put to great trouble, annoyance, inconvenience, great loss of time and great expense in and about procuring doctors, medicines and hospital and medical care, aid and attention, in and about an effort to heal and cure his said wounds and injuries; and the motor, frame, chassis, fenders and other parts of plaintiff's said automobile were bent, twisted, dented,

smashed and otherwise damaged; and plaintiff's said automobile was rendered greatly less valuable.

And plaintiff avers that all of his said injuries and damages were caused as a proximate result of the combined and concurring negligence of the defendants, in and about the operation of their respective motor vehicles at said time and place.

COUNT TWO

For this count of his complaint plaintiff adopts all of the words and figures of Count One, from its beginning down to and including the words, "and plaintiff's said automobile was rendered greatly less valuable", where said words first appear together in said Count One, and adds thereto for this count of his complaint the following:

And plaintiff avers that the defendants wantonly injured and damaged plaintiff on said date and occasion by wantonly causing their respective motor vehicles to collide with plaintiff's automobile, which plaintiff was operating, as aforesaid, at said time and place; and plaintiff avers that as a proximate result of such wanton conduct he was caused to sustain and did sustain the injuries and damages complained of and set out in Count One of his complaint.

COUNT THREE

Plaintiff claims of the defendants the further and additional sum of Five Thousand Dollars (\$5,000.00), as damages, for that on, to-wit, the 14th day of July, 1960 while plaintiff's wife, Mrs. Mattie Frazier, was riding as a passenger in an automobile, over which she had no charge, direction or control, on a public highway, to-wit, U. S. Highway 90, at a point, to-wit, one and nine-tenths miles west of the city limits of Loxley, Baldwin County, Alabama, near the intersection of U. S. Highway 90 and County Road

Number 66, the defendant, Linwood Coleman Armstrong, was operating a motor vehicle on U. S. Highway 90 near the said intersection, and the defendant, James Isom Gavin, who was the servant, agent or employee of the defendants Joseph Bear doing business as Bear Ice Cream Co., Bear Ice Cream Co., and XYZ, and was acting within the line and scope of his employment as such, was operating another motor vehicle on U. S. Highway 90 near the said intersection. And plaintiff avers that at said time and place, as aforesaid, said defendants so operated their respective vehicles as to cause their vehicles to collide with the automobile in which plaintiff's said wife was riding as a passenger, as aforesaid, and as a proximate consequence thereof plaintiff's said wife was injured and damaged as follows, with resultant damage to plaintiff:

Her brain, head, neck, left foot, ankles, knees, hips, left shoulder, abdomen and other parts of her body were bruised and contused; the muscles and ligaments of her head, neck, left foot, ankles, knees, hips, left shoulder, abdomen and other parts of her body were sprained, strained, torn, twisted, wrenched and otherwise injured; she was injured internally; her nervous system was shocked and impaired; she was caused to be confined to the hospital, to the bed and to the home for a long period of time; she was made sick, sore and ill for a long period of time; the nerves of her body were injured and damaged; her heart was weakened and damaged; she was prevented from engaging in her customary pursuits for a long period of time; and plaintiff was caused to lose the services and society of his said wife for a long period of time; and plaintiff was put to great trouble, annoyance, inconvenience, great loss of time and great expense in and about procuring doctors, medicines and hospital and medical care, aid and attention, in and about his efforts to heal and cure the said wounds and injuries of his said wife.

And plaintiff avers that all of the said injuries and damages to his said wife, with resultant damage to plaintiff, were caused as a proximate result of the combined and concurring negligence of the defendants, in and about the operation of their respective motor vehicles at said time and place.

Wm Baw White Jr.
John H. Morrow
Attorneys for Plaintiff

Wm. Baw White, Jr.
John H. Morrow
2100 Comer Building
Birmingham 3, Alabama

Plaintiff demands a jury for the trial of this cause.

John H. Morrow
Attorney for Plaintiff

Plaintiff's Address:
Elder Frazier
Route 1, Box 19-1/2
Sterrett, Alabama

Defendants' Addresses:
Linwood Coleman Armstrong
Robertsdale, Alabama

James Isom Gavin
1253 Gorgas Street
Mobile, Alabama

Joseph Bear
1117 Spring Hill Avenue
Mobile, Alabama

Bear Ice Cream Company
1117 Spring Hill Avenue
Mobile, Alabama

FILED
JUN 13 1961
OFFICE OF THE CLERK

OF BALDWIN COUNTY, ALABAMA
~~IN THE CIRCUIT COURT FOR THE JUDICIAL CIRCUIT OF ALABAMA~~

ELDER E. FRAZIER,

PLAINTIFF,

VS.

No.....

BEAR ICE CREAM CO., a corporation;
JOSEPH BEAR, doing business as Bear
Ice Cream Co.; LINWOOD COLEMAN ARM-
STRONG; JAMES ISOM GAVIN; et al

DEFENDANTS

INTERROGATORIES TO DEFENDANTS

Comes the plaintiff in the above styled cause, and desiring the testimony of the defendants, propounds the following interrogatories to be answered separately and severally in the manner and form provided by law, viz:

1. (a) State your correct name, age, residence address and business address.
(b) Is your name correctly stated in the complaint on file in this cause?
(c) If you state that your name is not correctly stated, then state the correct way that you could be designated as a party plaintiff or a party defendant in an action at law:
 (1) At the time that the accident which is made the basis of this suit occurred;
 (2) At the time that you answer these interrogatories.
2. (a) State whether you are a person, firm, or corporation.
(b) If you state that you are a partnership, then state the name of each and every partner composing said partnership, and the name under which the partnership does business.
(c) If you state that you are a corporation, state on what date you were incorporated and at what place.
3. (a) Describe completely and in detail the vehicle occupied or owned by you on the occasion of the accident made the basis of this suit, stating in your answer the make, model, year, and body style of same.
(b) State the name and address of the owner of said motor vehicle on the date of said accident.
(c) State the name and address of the driver of said vehicle on said occasion.
(d) Describe completely and in detail every item of damage sustained by said vehicle.
(e) Give the amount of each repair estimate obtained on said damage and give the name and address of the person making said repair estimate.
(f) 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.
(g) 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.
(h) 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?
4. (a) If you have stated that the owner of the vehicle which collided with the vehicle in which plaintiff was riding was not the driver on the occasion of said accident, explain fully and in detail the presence of the driver in said vehicle.
(b) State who was the employer of the driver of the vehicle which collided with the vehicle in which plaintiff was riding at the time that said accident occurred.

- (c) State on whose business or behalf said driver was acting at the time that said accident occurred.
 - (d) State the hours of work which said driver had at the time of said accident.
5. (a) State the number of persons occupying the motor vehicle which collided with the vehicle in which plaintiff was riding and state specifically how and in what manner each of said occupants were located in said vehicle on said occasion.
- (b) State fully the purpose of the trip you were making at the time of the accident made the basis of this suit.
- (c) From what point had you departed?
- (d) What was your destination?
- (e) 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.
- (f) Give the name and address of each and every person or firm who had any interest whatsoever in the trip that was being made by the driver of the vehicle which collided with the plaintiff on the occasion of said accident, and state the nature of said interest and the connection of said person or firm with the trip.
6. Prepare and attach to your answers to these interrogatories a map portraying the scene of the accident and the physical objects involved 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 vehicles after the accident;
 - (c) Where you were located when you first saw the plaintiff's vehicle;
 - (d) Where the plaintiff'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.
7. State whether or not the accident made the basis of this suit occurred at an intersection of streets or avenues, and if so, then state:
- (a) At what intersection of streets or avenues said accident occurred;
 - (b) Whether any buildings or objects were located within any of the four corners of the intersection which would obscure the vision of any person approaching the intersection;
 - (c) State how far you, in your judgment, could see to the left and right on each of the streets entering the intersection and down each of the intersecting streets when you approached from a point fifty feet from said intersection.
 - (d) Describe the locus of said accident with reference to the contour of the land, the grade or curve of the road, highway or intersection, and any physical structures located within two hundred feet of the place of the accident;
 - (e) 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.
8. (a) State where the motor vehicle in which plaintiff was riding 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.
- (b) Did you see the motor vehicle in which plaintiff was riding before the actual collision?
- (c) How many feet was the motor vehicle in which plaintiff was riding from the place of the impact when you first observed same?
- (d) How many feet were you from the point of impact when you first observed the vehicle in which plaintiff was riding?
- (e) Where did the impact occur with reference to the center line of the street on which the vehicle in which plaintiff was traveling?

- (f) Where did the impact occur with reference to the right edge of the street on which your vehicle was traveling?
9. (a) 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.
- (b) Describe each and everything which the driver of the vehicle in which plaintiff was riding failed to do to avoid said accident.
- (c) Describe each and everything done by the driver of the vehicle in which plaintiff was riding which contributed to the cause of 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 driver of the vehicle in which plaintiff was riding on said occasion.
10. (a) 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.
- (b) Give the name and address of each of said persons who was drinking or who was intoxicated.
- (c) State what each of said persons was drinking, where he or she had obtained same, the quantity or amount consumed, and the time and place where same was drunk.
11. State, according to your best judgment the speed of the vehicle in which plaintiff was riding 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.
12. (a) State in what direction and along what street or avenue each of the motor vehicles involved in the accident made the basis of this suit was traveling on the occasion of said accident.
- (b) State in your best judgment, in number of feet, the width of each of said streets or avenues or highways.
- (c) 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, describe 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 street, avenue or highway on which said motor vehicle had been traveling prior to said turn.
13. (a) State fully, specifically and in detail each and every act or thing done by the operator of the vehicle owned or 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.
- (b) Describe each change in the course of travel made by the vehicle in which plaintiff was riding immediately prior to said accident.
- (c) 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.
14. (a) State whether or not the brakes on the vehicle occupied by you or owned by you at the time of the accident sued on were applied prior to the collision.

- (b) If so, state in your best judgment the speed in miles per hour said vehicle was traveling at the moment the brakes were applied.
 - (c) State in your best judgment the distance in number of feet said vehicle traveled from the moment the brakes were applied until said collision occurred
 - (d) 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.
15. (a) State specifically what portion of the vehicles involved in the accident made the basis of this suit first came in contact with each other.
- (b) Describe the portions which next came in contact after the initial impact.
16. (a) 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.
- (b) In what direction did each of said motor vehicles move from the point of said collision until they came to a complete stop?
- (c) Describe each and every skid mark which led up to the point of collision.
- (d) Describe each and every skid mark which extended from the point of collision toward the place where either of the motor vehicles involved in the accident came to rest.
- (e) Locate the point where each motor vehicle came to rest with reference to the point of impact, the center of the intersection, the four corners of same and the right edge of the street on which it had been traveling.
17. State the speed of the motor vehicle which you owned or occupied, according to your best judgment, at the following points:
- (a) When you were within a distance of 300 feet from the point of impact in the accident made the basis of this suit;
 - (b) When you were 200 feet from the point of impact;
 - (c) When you were 100 feet from the point of impact;
 - (d) When you were 50 feet from the point of impact;
 - (e) When you were 25 feet from the point of impact;
 - (f) When you were 10 feet from the point of impact;
 - (g) At the time of said impact;
 - (h) When you first observed the other vehicle involved in said accident.
18. (a) State whether any horn or other signal was given as a warning by the operator of the vehicles involved in the accident made the basis of this suit prior to the time of the collision.
- (b) If so, describe each of said signals given by each respective driver specifically and in detail.
- (c) State how far distant from the point of collision each vehicle was located at the time said signal was given.
- (d) 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 of impact said signal was given by each driver respectively.
19. (a) 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
- (b) 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.
- (c) 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 manner, to cause the collision made the basis of this suit.

- (d) Give the name and address of each driver or owner of each of said vehicles.
20. (a) 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?
- (b) If so, state when, where and what was said by you.
- (c) Did the operator of the vehicle in which plaintiff was riding make any statement in your presence following the occurrence of the accident, and if so, state when, where and what was said by said driver.
- (d) Give the name and address of each and every person who was present when the accident made the basis of this suit occurred.
- (e) 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 vehicle in which plaintiff was riding following the occurrence of the accident made the basis of this suit.

WM. BEN WHITE, JR.
JOHN H. MORROW
Attorneys for Plaintiff

By John H. Morrow

STATE OF ALABAMA)

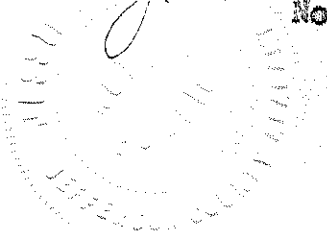
JEFFERSON COUNTY)

Personally appeared before me, a Notary Public, in and for the State and County aforesaid, the undersigned, who having been by me first duly sworn, deposes and says that he is of counsel for plaintiff and as such has authority to make this affidavit and that answers to the foregoing interrogatories, if well and truly made, will be material testimony for the plaintiff upon the trial of this cause.

John H. Morrow

Sworn to and subscribed before me
on this the 14th day of June, 1961.

Jessie K. Preston
Notary Public



OF BALDWIN COUNTY, ALABAMA
IN THE CIRCUIT COURT ~~NORTHEASTERN DISTRICT OF ALABAMA~~

ELDER E. FRAZIER,

PLAINTIFF,

VS.

No.....

BEAR ICE CREAM CO., a corporation;
JOSEPH BEAR, doing business as Bear
Ice Cream Co.; LINWOOD COLEMAN ARM-
STRONG; JAMES ISOM GAVIN; et al

DEFENDANTS

INTERROGATORIES TO DEFENDANTS

Comes the plaintiff in the above styled cause, and desiring the testimony of the defendants, propounds the following interrogatories to be answered separately and severally in the manner and form provided by law, viz:

1. (a) State your correct name, age, residence address and business address.
(b) Is your name correctly stated in the complaint on file in this cause?
(c) If you state that your name is not correctly stated, then state the correct way that you could be designated as a party plaintiff or a party defendant in an action at law:
 - (1) At the time that the accident which is made the basis of this suit occurred;
 - (2) At the time that you answer these interrogatories.
2. (a) State whether you are a person, firm, or corporation.
(b) If you state that you are a partnership, then state the name of each and every partner composing said partnership, and the name under which the partnership does business.
(c) If you state that you are a corporation, state on what date you were incorporated and at what place.
3. (a) Describe completely and in detail the vehicle occupied or owned by you on the occasion of the accident made the basis of this suit, stating in your answer the make, model, year, and body style of same.
(b) State the name and address of the owner of said motor vehicle on the date of said accident.
(c) State the name and address of the driver of said vehicle on said occasion.
(d) Describe completely and in detail every item of damage sustained by said vehicle.
(e) Give the amount of each repair estimate obtained on said damage and give the name and address of the person making said repair estimate.
(f) 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.
(g) 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.
(h) 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?
4. (a) If you have stated that the owner of the vehicle which collided with the vehicle in which plaintiff was riding was not the driver on the occasion of said accident, explain fully and in detail the presence of the driver in said vehicle.
(b) State who was the employer of the driver of the vehicle which collided with the vehicle in which plaintiff was riding at the time that said accident occurred.

- (c) State on whose business or behalf said driver was acting at the time that said accident occurred.
 - (d) State the hours of work which said driver had at the time of said accident.
5. (a) State the number of persons occupying the motor vehicle which collided with the vehicle in which plaintiff was riding and state specifically how and in what manner each of said occupants were located in said vehicle on said occasion.
- (b) State fully the purpose of the trip you were making at the time of the accident made the basis of this suit.
- (c) From what point had you departed?
- (d) What was your destination?
- (e) 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.
- (f) Give the name and address of each and every person or firm who had any interest whatsoever in the trip that was being made by the driver of the vehicle which collided with the plaintiff on the occasion of said accident, and state the nature of said interest and the connection of said person or firm with the trip.
6. Prepare and attach to your answers to these interrogatories a map portraying the scene of the accident and the physical objects involved 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 vehicles after the accident;
 - (c) Where you were located when you first saw the plaintiff's vehicle;
 - (d) Where the plaintiff'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.
7. State whether or not the accident made the basis of this suit occurred at an intersection of streets or avenues, and if so, then state:
- (a) At what intersection of streets or avenues said accident occurred;
 - (b) Whether any buildings or objects were located within any of the four corners of the intersection which would obscure the vision of any person approaching the intersection;
 - (c) State how far you, in your judgment, could see to the left and right on each of the streets entering the intersection and down each of the intersecting streets when you approached from a point fifty feet from said intersection.
 - (d) Describe the locus of said accident with reference to the contour of the land, the grade or curve of the road, highway or intersection, and any physical structures located within two hundred feet of the place of the accident;
 - (e) 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.
8. (a) State where the motor vehicle in which plaintiff was riding 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.
- (b) Did you see the motor vehicle in which plaintiff was riding before the actual collision?
- (c) How many feet was the motor vehicle in which plaintiff was riding from the place of the impact when you first observed same?
- (d) How many feet were you from the point of impact when you first observed the vehicle in which plaintiff was riding?
- (e) Where did the impact occur with reference to the center line of the street on which the vehicle in which plaintiff was traveling?

- (f) Where did the impact occur with reference to the right edge of the street on which your vehicle was traveling?
9. (a) 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.
- (b) Describe each and everything which the driver of the vehicle in which plaintiff was riding failed to do to avoid said accident.
- (c) Describe each and everything done by the driver of the vehicle in which plaintiff was riding which contributed to the cause of 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 driver of the vehicle in which plaintiff was riding on said occasion.
10. (a) 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.
- (b) Give the name and address of each of said persons who was drinking or who was intoxicated.
- (c) State what each of said persons was drinking, where he or she had obtained same, the quantity or amount consumed, and the time and place where same was drunk.
11. State, according to your best judgment the speed of the vehicle in which plaintiff was riding 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.
12. (a) State in what direction and along what street or avenue each of the motor vehicles involved in the accident made the basis of this suit was traveling on the occasion of said accident.
- (b) State in your best judgment, in number of feet, the width of each of said streets or avenues or highways.
- (c) 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, describe 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 street, avenue or highway on which said motor vehicle had been traveling prior to said turn.
13. (a) State fully, specifically and in detail each and every act or thing done by the operator of the vehicle owned or 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.
- (b) Describe each change in the course of travel made by the vehicle in which plaintiff was riding immediately prior to said accident.
- (c) 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.
14. (a) State whether or not the brakes on the vehicle occupied by you or owned by you at the time of the accident sued on were applied prior to the collision.

- (b) If so, state in your best judgment the speed in miles per hour said vehicle was traveling at the moment the brakes were applied.
 - (c) State in your best judgment the distance in number of feet said vehicle traveled from the moment the brakes were applied until said collision occurred
 - (d) 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.
15. (a) State specifically what portion of the vehicles involved in the accident made the basis of this suit first came in contact with each other.
- (b) Describe the portions which next came in contact after the initial impact.
16. (a) 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.
- (b) In what direction did each of said motor vehicles move from the point of said collision until they came to a complete stop?
- (c) Describe each and every skid mark which led up to the point of collision.
- (d) Describe each and every skid mark which extended from the point of collision toward the place where either of the motor vehicles involved in the accident came to rest.
- (e) Locate the point where each motor vehicle came to rest with reference to the point of impact, the center of the intersection, the four corners of same and the right edge of the street on which it had been traveling.
17. State the speed of the motor vehicle which you owned or occupied, according to your best judgment, at the following points:
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 - (b) When you were 200 feet from the point of impact;
 - (c) When you were 100 feet from the point of impact;
 - (d) When you were 50 feet from the point of impact;
 - (e) When you were 25 feet from the point of impact;
 - (f) When you were 10 feet from the point of impact;
 - (g) At the time of said impact;
 - (h) When you first observed the other vehicle involved in said accident.
18. (a) State whether any horn or other signal was given as a warning by the operator of the vehicles involved in the accident made the basis of this suit prior to the time of the collision.
- (b) If so, describe each of said signals given by each respective driver specifically and in detail.
- (c) State how far distant from the point of collision each vehicle was located at the time said signal was given.
- (d) 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 of impact said signal was given by each driver respectively.
19. (a) 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
- (b) 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.
- (c) 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 manner, to cause the collision made the basis of this suit.

- (d) Give the name and address of each driver or owner of each of said vehicles.
20. (a) 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?
- (b) If so, state when, where and what was said by you.
- (c) Did the operator of the vehicle in which plaintiff was riding make any statement in your presence following the occurrence of the accident, and if so, state when, where and what was said by said driver.
- (d) Give the name and address of each and every person who was present when the accident made the basis of this suit occurred.
- (e) 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 vehicle in which plaintiff was riding following the occurrence of the accident made the basis of this suit.

WM. BEW WHITE, JR.
JOHN H. MORROW
Attorneys for Plaintiff

By

John H. Morrow

STATE OF ALABAMA)

JEFFERSON COUNTY)

Personally appeared before me, a Notary Public, in and for the State and County aforesaid, the undersigned, who having been by me first duly sworn, deposes and says that he is of counsel for plaintiff and as such has authority to make this affidavit and that answers to the foregoing interrogatories, if well and truly made, will be material testimony for the plaintiff upon the trial of this cause.

John H. Morrow

Sworn to and subscribed before me
on this the 14th day of June, 1961.

Jessie K. Preston
Notary Public

✓ NO. 4722

IN THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA

ELDER E. FRAZIER,

Plaintiff,

29th vs.

BEAR ICE CREAM CO., a corporation;
JOSEPH BEAR, doing business as
Bear Ice Cream Co.; LINWOOD
COLEMAN ARMSTRONG; JAMES ISOM
GAVIN; et al,

Defendants.

1. Summons & Complaint

2. INTERROGATORIES
TO DEFENDANT

WM. BEW WHITE, JR.
JOHN H. MORROW
2100 COMER BUILDING
BIRMINGHAM 3, ALABAMA

FILED

JUN 19 1961

ALICE J. DUCK, Clerk

Received 10 day of July 1962

and on _____ day of _____ 20____

I served a copy of the within to C. Entero

on James Earl Ray's Remorse

By service on _____

TAYLOR WILKINS, Sheriff

By _____ D. S.

Returned 10 day of February 1902
Not found in my county after diligent search and in-
quiry.

Quiry:

Taylor Wilkins, Sheriff

By: [Signature] Deputy Sheriff

Deputy Sheriff