

199

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.

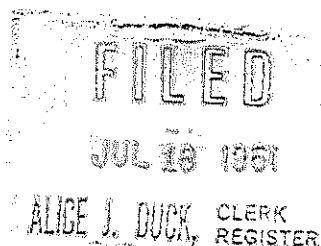
10. The allegation therein contained that "the defendants wantonly injured and damaged plaintiff on said date and occasion by wantonly causing their respective motor vehicles to collide with plaintiff's automobile, which plaintiff was operating, as aforesaid, at said time and place" is a mere conclusion 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.

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



MATTIE 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 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.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4744

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

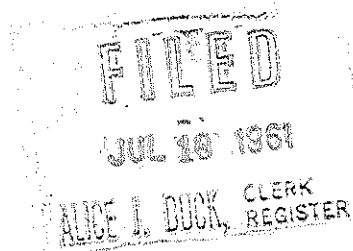
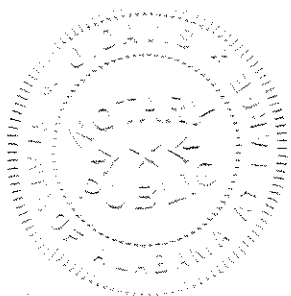
State of Alabama)
County of Mobile)

Before me, the undersigned Notary Public in and for said County in said State, personally appeared Adelle 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.

Adelle A. Bear

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

Davis
Notary Public, Mobile County, Alabama.



STATE OF ALABAMA)

IN THE CIRCUIT COURT

BALDWIN COUNTY) J. 1960 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 Mattie Frazier.

WITNESS my hand this 19 day of June, 1961.

and place, as aforesaid, said defendants do operate their respective vehicles as to cause

Clerk

And as a proximate consequence thereof plaintiff was injured and damaged as follows:

COMPLAINT

MATTIE FRAZIER,	)	(BEAR ICE CREAM CO., a corporation;
head,	)	(JOSEPH BEAR, doing business as Bear
hips, left shoulder,	)	(Ice Cream Co.; LINWOOD COLEMAN
bruised and contused,	)	(ARMSTRONG; JAMES ISOM GAVIN; and XYZ,
neck, left foot, and	)	(the person, firm, partnership, or
and other parts of her body	)	(corporation who operated a truck
twisted, writhed and	)	(involved in a collision with Elder E.
internally; her nervous system	)	(Frazier on July 14, 1960, at or near
was	)	(a point 300 feet west of the inter-
Plaintiff,	)	(section 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,
	)	(the hospital, to the Defendants.

COUNT ONE

Plaintiff claims of the defendants the sum of Twenty Thousand Dollars (\$20,000.00), as damages, for that on, to-wit, long period of time.

And plaintiff avers that all of her 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 her complaint plaintiff adopts all of the words and figures of Count One, from its beginning down to and including the words, "her customary pursuits for a long period of time", where said words first appear together in said Count One, and adds thereto for this count of her 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 the automobile in which plaintiff was riding as aforesaid, at said time and place; and plaintiff avers that as a proximate result of such wanton conduct she was caused to sustain and did sustain the injuries and damages complained of and set out in Count One of her complaint.

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:
Mattie Frazier
Route 1, Box 19-1/2
Sterrett, Alabama

Defendants' Addresses:
Linwood Coleman Armstrong
Robertsdale, Alabama

James Ison Gavin
1253 Gorgas Street
Mobile, Alabama

Joseph Bear
1117 Spring Hill Avenue
Mobile, Alabama

Bear Ice Cream Company
1117 Spring Hill Avenue
Mobile, Alabama

the 14th day of July, 1960 while plaintiff 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. 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 was riding as aforesaid, and as a proximate consequence thereof plaintiff was injured and damaged as follows:

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.

WHITE, BRADLEY, ARANT, ALL & ROSE
BIRMINGHAM, ALABAMA

August 25, 1961

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

Re: Mattie Frazier v. Bear Ice Cream Co.,
et al - Case No. 4734
Elder Frazier v. Bear Ice Cream Co.,
et al - Case No. 4733

Dear Judge Hall:

We represent the plaintiffs in each of the foregoing causes which are set before you for settlement of pleadings on August 31, 1961. Tom Twitty, Jr., who is an attorney of record for all defendants except Linwood C. Armstrong, telephoned me today in connection with this setting. He has filed pleas in abatement on behalf of all corporate defendants on the theory, I believe, that these defendants are not properly named. In conjunction with the commencement of Elder E. Frazier's suit we propounded interrogatories to the defendants. Mr. Twitty indicated that he would give consideration to his answers in the near future, although the time for filing his answers has not yet expired. We will need his answers before we are able to file the amendments that his pleas in abatement will require.


Mr. Twitty suggested, and we concurred, that his demurrers be taken under submission by you without counsel for either side actually appearing. We hope that thereby we do not work any undue imposition upon the court.

It was my last information that Linwood C. Armstrong, who is one of the defendants in this cause, had not been served with process. This fact may create some difficulty in connection with the September 15 setting of this cause and may require us to call upon the court for a continuance of the trial setting.

Honorable Hubert M. Hall, Judge
August 25, 1961
Page Two

I am sending a copy of this letter to Mr. Blackburn, whom we plan to associate on the occasion of trial, with the request that he give this matter any additional attention that it may require in connection with the August 31 date for settling of pleadings.

Very respectfully yours,



JHM:dd

cc: Mrs. Alice J. Duck
Clerk, Circuit Court of Baldwin County

Mr. J. B. Blackburn

Mr. Thomas Twitty, Jr.

1574

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 Mattie Frazier.

WITNESS my hand this 19 day of June, 1961.

Alice A. Wink
Clerk

COMPLAINT 4734

MATTIE FRAZIER,	)	(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.
	)	VS. (Frazier on July 14, 1960, at or near
	)	(a point 300 feet west of the inter-
	)	(section 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 Twenty Thousand Dollars (\$20,000.00), as damages, for that on, to-wit,

the 14th day of July, 1960 while plaintiff 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. 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 was riding as aforesaid, and as a proximate consequence thereof plaintiff was injured and damaged as follows:

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 avers that all of her 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 her complaint plaintiff adopts all of the words and figures of Count One, from its beginning down to and including the words, "her customary pursuits for a long period of time", where said words first appear together in said Count One, and adds thereto for this count of her 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 the automobile in which plaintiff was riding as aforesaid, at said time and place; and plaintiff avers that as a proximate result of such wanton conduct she was caused to sustain and did sustain the injuries and damages complained of and set out in Count One of her complaint.

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

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

Plaintiff demands a jury for the trial of this cause.

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

John H. Morrow
Attorney for Plaintiff

Defendants' Addresses:
Linwood Coleman Armstrong
Robertsdale, Alabama

Joseph Bear
1117 Spring Hill Avenue
Mobile, Alabama

James Isom Gavin
1253 Gorgas Street
Mobile, Alabama

Bear Ice Cream Company
1117 Spring Hill Avenue
Mobile, Alabama

JUN 19 1961

ALICE J. DUCK, Clerk

Received 1961 day of June 1961
and on 28 day of June 1961
I served a copy of the within James O. Brown
on James O. Brown
by service on James O. Brown
RAY D. BRIDGES, Sheriff
By Ad. Chatter

Received 19 day of June 1961
and on 2 day of June 1961
I served a copy of the within Joseph Bear
on Joseph Bear
by service on Joseph Bear
TAYLOR WILKINS, Sheriff
By T. B. Smith D. S.

NO. 4734 2746
IN THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA

MATTIE FRAZIER,
Plaintiff,

vs.

21st BEAR ICE CREAM CO., a corporation;
28th JOSEPH BEAR, doing business as
Bear Ice Cream Co.; LINWOOD
COLEMAN ARMSTRONG; JAMES ISOM
GAVIN; et al
Defendants.

COMPLAINT

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

JUN 19 1961
ALICE J. DUCK, Clerk

Received 10 day of July 1961
and on 19 day of July 1961
served a copy of the within B. C.
on Linwood Coleman
Armstrong
by service on Taylor Wilkins, Sheriff
By T. B. Smith D. S.

Returned 10 day of July 1961
Not found in my county after diligent search and in-
quity.
Taylor Wilkins, Sheriff
By Ray D. Bridges
Deputy Sheriff

WHITE, BRADLEY, ARANT, ALL & ROSE
2100 COMER BUILDING
BIRMINGHAM 3, ALABAMA

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,

John H. Morrison

JHM:dd

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

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 Mattie Frazier.

WITNESS my hand this 19 day of June, 1961.

[Signature]
Clerk

COMPLAINT

MATTIE 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 inter-
section 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.

Plaintiff,

COUNT ONE

Plaintiff claims of the defendants the sum of Twenty
Thousand Dollars (\$20,000.00), as damages, for that on, to-wit,

the 14th day of July, 1960 while plaintiff 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. 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 was riding as aforesaid, and as a proximate consequence thereof plaintiff was injured and damaged as follows:

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And plaintiff avers that all of her 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 her complaint plaintiff adopts all of the words and figures of Count One, from its beginning down to and including the words, "her customary pursuits for a long period of time", where said words first appear together in said Count One, and adds thereto for this count of her 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 the automobile in which plaintiff was riding as aforesaid, at said time and place; and plaintiff avers that as a proximate result of such wanton conduct she was caused to sustain and did sustain the injuries and damages complained of and set out in Count One of her complaint.

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:
Mattie 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

NO. _____

IN THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA

MATTIE FRAZIER,

Plaintiff,

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.

COMPLAINT

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

FILED
JUN 19 1961
ALICE L. DUCK, Clerk