

**IN THE CIRCUIT COURT THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

DALE ARCHEY ET AL.

PLAINTIFFS

VS.

CIVIL ACTION NO. 251-08-312-CIV

**THE CITY OF JACKSON, MISSISSIPPI;
CP JACKSON, LLC, ET. AL.**

DEFENDANTS

**THE CITY OF JACKSON'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to this Court's February 16, 2011 *ore tenus* order that any trial briefs by the parties regarding the Plaintiffs' claims against the Defendant, City of Jackson, Mississippi ("City") be submitted within ten (10) days from February 16, 2011, the City submits its Proposed Findings of Fact and Conclusions of Law that reflect the evidence admitted at trial. The facts established at trial and applicable law mandate that the Court dismiss all of the claims made by the Plaintiffs against the City of Jackson pursuant to §17-25-11(3) and §11-46-9(1)(c) of the Miss. Code Ann., as amended.

INTRODUCTION

The Plaintiffs filed suit against CP Jackson, LLC ("Marriott"), owners of the Marriott Hotel and the City of Jackson for injuries suffered by Dale Archey during the early morning hours of April 13, 2007. Plaintiffs alleged at trial that Dale Archey was shot, without legally sufficient provocation, by an off-duty police officer who was acting in the course and scope of his employment as a security guard for Marriott. They asserted a vicarious liability claim against Marriott.

Trial began on February 7, 2011, and was completed on February 16, 2011. Plaintiffs' claims against the Marriott were to be decided by a jury which delivered a verdict against Marriott in the amount of (\$16,100,000.00)¹. The Plaintiffs' claims against the City of Jackson are to be decided by the Court pursuant to §11-46- 13(1) of the Mississippi Torts Claim Act ("MTCA").

PROPOSED FINDINGS OF FACT ESTABLISHED AT TRIAL

Dale Archey was shot in a parking lot on Lamar Street, in Jackson, Mississippi by DeWayne West during the early morning hours of April 13, 2011. DeWayne West, an off-duty police officer for the City, was acting in the course and scope of his employment with Marriott at the time of any acts and/or omissions that resulted in the shooting of Dale Archey. The shooting incident occurred while West was in the discharge of his private security guard duties. As a result, by law, West was not in the course and scope of his employment as a police officer for the City of Jackson. There was insufficient evidence presented at trial that West had acted with reckless disregard for the safety of Archey or others.

¹ The jury's verdict set Plaintiffs' damages at 23 million dollars (\$23,000,000.00) with the Marriott being held liable for 70% of that amount. The jury's assessed 30% of the liability to the City; however, pursuant to §11-46- 13(1), the jury's verdict is not effective against the City.

CONCLUSIONS OF LAW

A. Pursuant to §17-25-11(3) the City may not be held liable for acts and omissions of Off-Duty Police Officers acting as Private Security Guards.

Pursuant to §17-25-11(3) of the Miss. Code Ann., acts and omissions of an off-duty police, such as DeWayne West, in the discharge of private security employment is deemed by statute to be the acts and omissions of the person or entity employing the officer, in this case the Marriott Hotel.² §17-25-11(3) specifically states:

“Acts and omissions of an officer in discharge of private security employment shall be deemed to be the acts and omissions of the person or entity employing the officer for such private security services, and ***not the acts and omissions of the jurisdiction...***” §17-25-11(3) of the Miss. Code Ann. (emphasis added).

The statute further states:

“...Neither the state ***nor any subdivision thereof shall be liable for acts or omissions of an officer in the discharge of the private security duties.***” §17-25-11(3) of the Miss. Code Ann. (emphasis added).

The jury in this cause of action has determined by a preponderance of the evidence that any acts or omissions by West occurred within the course and scope of his employment with Marriott. A copy of their verdict is attached hereto as Exhibit 1. In summarily denying Marriott’s motion for a judgment notwithstanding the verdict, the Court has itself accepted, in part, the jury’s findings as to Marriott’s vicarious liability. In order for the jury to deliver a verdict against Marriott they were required by Jury Instruction No. 15 (attached hereto as Exhibit 2) to find that West was acting in the course and scope of employment with the Marriott. As a result of the jury’s findings

² Inasmuch as §17-25-11(3) excludes the possibility of an off-duty police officer being in the course and scope of his employment as a policeman and a security guard, it may well have been judicial error for the jury too be allowed to apportion any fault to the City of Jackson. Once the jury determined that West was acting in whole or in part within the scope and course of his employment with Marriott, they were required by law to assess Marriott the entire responsibility for West acts and omissions.

which have already been accepted by the Court, any acts or omissions by West are deemed to be the acts and omissions of Marriott, not the City. Therefore, the Court is obligated by law to dismiss Plaintiffs' claims against the City.

B. Dale Archey was engaged in criminal activity at the time of his injury; therefore, the City is immune under §11-46-9(1)(c) of the MTCA.

In the alternative, the City is immune from liability under §11-46-9(1)(c) because Archey was contemporaneously engaged in criminal activity. See *Estate of Williams v. City of Jackson*, 844 So.2d 1161 (Miss.2003), and *Bridges v. Pearl River Valley Water Supply Dist*, 793 So.2d 584 (Miss. 2001). §11-46-9 (1)(c) states:

“(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

(c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity **at the time of injury.**”(Emphasis added).

The MTCA is the exclusive remedy for filing a lawsuit against governmental entities. Miss.Code Ann. § 11-46-7(1); *City of Jackson v. Brister*, 838 So.2d at 278. "Although the MTCA waives sovereign immunity for tort actions, it also prescribes exemptions from this statutory waiver under which a governmental entity retains its sovereign immunity." *Miss. Dep't of Pub. Safety v. Durn*, 861 So.2d 990, 994 (Miss.2003).

In this case there is a causal nexus between Archey's criminal activity and the West's actions. But for Archey's refusal to submit to West's order to stop, Archey fled and refused West's attempt to take him in custody. The case *sub judice* is analogous to

Bridges where the plaintiff sued the Pearl River Valley Water Supply District, alleging that a security officer employed by the District used excessive force in arresting Bridges. *Bridges*, 793 So.2d at 586. Bridges was convicted of resisting arrest in the incident. *Id.* As in this case, Bridges's injuries occurred while he was actively resisting arrest. It was Bridges's active resistance which exacerbated the amount of force that the officer applied in making the arrest, and that extra force is what caused the injury. *Pearl River Valley Water Supply Dist. v. Bridges*, 878 So.2d 1013, 1015 (Miss.Ct. App. 2004). As a result, this Court held that "where an officer has probable cause to arrest and proceeds to do so, there is the requisite nexus between criminal activity and the action causing injury." *Bridges*, 793 So.2d at 588. Accordingly, this Court held that the Pearl River Valley Water Supply District was immune. It was conclusively established at trial that there was probable cause for West to arrest Archey for trespassing, a charge for which Archey was tried and convicted. Further, Archey was also tried and convicted for resisting arrest. Hence, if the Court were to adopt the jury's apportionment, it must still find for the City through proper application of the MTCA.

C. The Plaintiff failed to prove DeWayne West acted with a reckless disregard, thus the City is immune under §11-46-9(1)(c) of the MTCA.

Further, the Plaintiffs must prove not only that West was acting purely in the course and scope of his employment with the City of Jackson, *supra.*, but must also prove that the West "acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury." Miss.Code Ann. § 11-46-9(1)(c); see *Powell v. City of Jackson*, 917 So.2d 59, 71 (Miss. 2005); *City of Ellisville v. Richardson*, 913 So.2d 973, 977-79 (Miss.2005). "Reckless disregard" has been

described by this Court as "a higher standard than gross negligence and 'embraces willful or wanton conduct which requires knowingly and intentionally doing a thing or wrongful act.'" *Collins v. Tallahatchie County*, 876 So.2d 284, 287 (Miss. 2004) (quoting *Turner v. City of Ruleville*, 735 So.2d 226, 230 (Miss.1999)). West was the sole witness to the event that occurred on April 13, 2011. Assuming, arguendo, the evidence put forth by the Plaintiff was credible, it did not indicate that West actions were rose to a level beyond simple negligence. It must be noted that the Plaintiffs', realizing the evidence simply did not support punitive damages, withdrew their claim for punitive damages. It is automatic that if the evidence does not support punitive damages, neither does it give rise to reckless disregard.

CONCLUSION AND REQUEST FOR RELIEF

The Plaintiff has already established that DeWayne West was acting within the course and scope of employment as a security guard for Marriott. The jury has made findings to that effect by way of its verdict against Marriott. The Court has accepted those findings of facts by denying Marriott's motion for a J.N.O.V. Therefore, the Court is obligated by §17-25-11(3) of the Miss. Code Ann. to dismiss the Plaintiffs' claims against the City for any acts or omissions by West.

Further, the facts in the trial conclusively established that Dale Archey was engaged in criminal activity at the time of his injuries. The evidence presented at trial established causal nexus between Archey's criminal activity, resisting arrest, and the actions of West, using deadly force. As a result, The City is immune from liability under § 11-46-9(1)(c) because Archey was resisting arrest *at the time of the shooting*.

In addition, the Plaintiff failed to prove that West acted with "acted in reckless

disregard of the safety and well-being” of Archey or anyone else. As a result, The City is immune from liability under § 11-46-9(1)(c).

RESPECTFULLY SUBMITTED, THIS, the 22nd day of February, 2011.

/s/ James Anderson, Jr.

JAMES ANDERSON, JR., ESQ., MSB #8425
COUNSEL FOR THIRD-PARTY DEFENDANT,
THE CITY OF JACKSON

CERTIFICATE OF SERVICE

I, James Anderson, Jr., do hereby certify that I have this date mailed, via United States mail, a true and correct copy of the above and foregoing the *City of Jackson's Proposed Findings of Fact and Conclusions of Law* to the following:

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Respectfully submitted this the 22nd day of February 2011.

/s/ James Anderson, Jr.

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