IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE # 2006-CA-00255

TYRONE MORTON AND ANNIE MORTON — PLAINTIFFS

VS.

CITY OF SHELBY MISSISSIPPI AND
JAMES CARMICLE IN HIS INDIVIDUAL
AND OFFICIAL CAPACITY — DEFENDANTS

APPEAL FROM THE CIRCUIT COURT OF THE SECOND
JUDICIAL DISTRICT OF BOLIVAR COUNTY MISSISSIPPI

CIRCUIT CAUSE # 2004-0129

REPLY BRIEF OF THE PLAINTIFFS

ORAL ARGUMENT REQUESTED

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ARGUMENT

I. The Trial Court Committed Reversible Error Because It Incorrectly Applied the Standard for Granting the Motion for Summary Judgment and Shifted the Burden of Proof to Plaintiffs

In its Order Granting the Defendant's Motion for Summary Judgment, the judge reasoned that the Plaintiffs had failed to make a sufficient evidentiary showing that Defendant Carmicle was recklessly disregarding the safety of others when he attempted to pass a school bus during the nightime police escort. (R 113). The Court's reasoning is flawed. The Defendants moved for summary judgment in this matter and bore the burden of establishing that there were no genuine issues of material fact for trial and they were entitled to judgment as a matter of law. *See Miller v. Meeks,* 762 So.2d 302,304 (Miss. 2000).

Contrary to the trial court's belief that the Plaintiff was required to prove reckless disregard during the summary judgment proceedings, Plaintiff was only required to produce evidence indicating that there was a genuine issue of material fact for trial in responding to the Defendant's motion. *See Lyle v. Mladinich,* 584 So.2d 397,398 (1991) (stating that all that is required of a non-movant to survive a motion for summary judgment is to establish a genuine issue of material fact by the means available under the rule).

The depositions of Officer Myron Bedford and Plaintiff Morton indicate that there were genuine issues of material fact for trial including visibility, speed, and location of the Plaintiff upon being struck by Officer Carmicle. Rather than find that there were genuine issues of material fact for trial, the Court weighed the evidence before it and drew the conclusion that there was no reckless disregard. It is not the function of a trial judge when ruling on a motion for summary judgment to weigh the evidence *See Giles v. Brown,* 2006 _____ So.2d (2005-CA-

01734-COA). It is the trial judge's function to determine if there is a triable issue of fact, and the determination requires that the non-moving party be given the benefit of every reasonable doubt. *Tucker v. Hinds County,* 558 So.2d 869, 872 (Miss. 1990).

Not only did the trial judge improperly engage in weighing the evidence before him, he also refused to give the Plaintiffs, who did not move for summary judgment the benefit of every reasonable doubt when you consider the following excerpts from his opinion:

> **Although Plaintiff contends that a genuine issue of material fact exists as to whether Plaintiff was visible, his own testimony belies his assertion. Plaintiff admits in his deposition on page 77 that "I don't think he'd have hit me if he'd seen me." While this fact does not by itself determine whether Defendant Carmicle was acting with reckless disregard, it does begin to undermine an essential element of what Plaintiff must show regarding Defendant Carmicle's appreciation of danger (R. 107).**

The Plaintiff's statement on page 77 of the deposition was not stated in full by the trial judge. The Plaintiff stated, "Well, I don't think he'd have hit me if he'd seen me I don't think because I don't – we never had any problems". The statement was meant to convey that he had no reason to believe that the Defendant Carmicle would intentionally harm him because they never had any problems. The statement was made in response to questioning by Defendant's counsel "Do you believe him when he said I didn't see you". The statement should not have been construed to mean that Plaintiff was not visible.

In further discussion on the issue of visibility, the trial judge noted the order of the procession and Carmicle's distance saying:

> **The record shows that the lead driver Officer Bedford did see Plaintiff before the accident. On this basis, Plaintiff claims Defendant Carmicle should also have seen him. The record reflects, however, that Officer Bedford, who was driving the lead car, only saw Plaintiff when he crossed**

the road in front of the caravan. Plaintiff testifed on page 56 of his deposition that he crossed the road when the caravan was about one-quarter mile behind him. It follows that Officer Bedford was able to see Plaintiff because Plaintiff ran in front of the lead car's headlights. In contrast, Defendant Carmicle was driving behind the lead car and at least one school bus. It would be nearly impossible for Defendant Carmicle to have had actual knowledge of Plaintiff's presence one-quarter mile away at night behind a police car and at least one school bus. (R. 108).

In its ruling on the Plaintiff's Motion for Relief Pursuant to Rule 52, 59, and 60, the Court in discussing the visibility issue said, "The motion for relief again raises the issue of Plaintiff's visibility on the night in question. The overwhelming weight of evidence shows that the Plaintiff was wearing dark clothes on a dark night and that Defendant Carmicle did not and could not see Plaintiff jogging on the side of the road. The Court found in Defendant's favor on the issue in the Court's Order Granting Defendants' Motion for Summary Judgment and sees no reason to disturb its previous conclusion." (R. 199).

The trial judge totally ignored evidence in the record from the Plaintiff indicating that he disputed the testimony of Bedford. The Plaintiff stated that he crossed the road when he looked back and saw the lead patrol car and a school bus was turning onto the 16th Section road which was a quarter mile behind him. *See Deposition of Plaintiff Tyrone Morton Page 58-59.*[1] The Plaintiff testified that he was off the paved section of the road in the grassy area, and the lead patrol car and a bus had already passed him when Carmicle struck him. *See Plaintiff Morton's deposition page 60.* The Plaintiff also testified that he was struck at the Industrial Park entrance and there is lighting between or near the Industrial Park entrance and Highway 161. *See*

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[1]The deposition of the Plaintiff was produced by the Defendant in a supplemental record. A copy of the supplemental record was not forwarded to Plaintiff's counsel by Defendant's counsel. Plaintiff's counsel has the deposition and cites to the original pages in the deposition not the supplemental record.

Plaintiff Morton's deposition page 43. Thus, even though the Plaintiff wore dark clothing, he could and should have been seen by Carmicle because there was lighting near the entrance of the Industrial Park where he was struck. The record supports this conclusion - Bedford saw him.

On the issue of Defendant Carmicle's speed during a non-emergency situation, the trial judge's opinion indicates the trial judge said:

> **The only evidence before the Court regarding Defendant Carmicle's speed is in the accident report attached to Plaintiff's response to the Motion for Summary Judgment. On the accident report, Defendant Carmicle's speed is estimated at 35 miles per hour. The accident report does not appear to reflect the speed zone in which Defendant Carmicle was traveling. At a hearing on the Motion for Summary Judgment, the Court inquired as to the speed limit on the road in question. The best estimate that could be provided to the Court by either party was a range of 30-40 miles per hour. The record therefore reflects that Defendant Carmicle was exceeding the speed limit, if at all, by approximately 5 mph. Regardless, there is no evidence that Defendant Carmicle was exceeding the speed limit by such a wide margin that a reasonable finder of fact could conclude that his speed constituted reckless disregard. (R. 109-110).**

Contrary to the trial judge's assertion that the accident report was the only evidence of Carmicle's speed, there was additional evidence in the record, which raised a genuine issue of material fact concerning Carmicle's speed and the accuracy of the accident report. Officer Bedford testified that when providing an escort, they usually traveled the speed limit, which he believed was 45 mph; however, he did not look at his speedometer. *See page 4 and 36 of Bedford's deposition* (R. 165, 170). Even though Bedford testified that he did not look at his speedometer, a reasonable inference could be drawn that Bedford was traveling at 45 mph based upon custom, and Carmicle accelerated his speed of travel beyond 45 mph because he was attempted to pass the bus and Bedford so that he could arrive at the intersection of the 16 Section Road and Highway 161 before them. Instead of drawing the reasonable inference, the trial court

dismissed same as speculation stating that Defendant Carmicle's estimated speed according to the accident report was 35 mph. (R. 200). The accident report itself contains only an *estimate* of the speed. The officer who completed the report also engaged in speculation, yet the Court chose to rely on his speculations. The Court's curt dismissal of Bedford's deposition testimony that they usually traveled at 45 mph and the reasonable inference that Carmicle exceeded 45 mph hour when attempting to pass the school bus and patrol car as mere speculation did not give the Plaintiffs the benefit of every reasonable doubt.

It is clear from the trial judge's opinion on the Motion for Summary Judgement and the Motion for Relief Pursuant to Rule 52, 59, and 60 that the Court erroneously required the Plaintiffs to actually prove reckless disregard and not show that there were genuine issues of material fact probative of the reckless disregard standard. When an incorrect legal standard is applied and or if there is an incorrect shifting in the burden of proof, reversal by this Court is warranted. *See Whitehead v. Johnson,* 797 So.2d 317, 324 (Miss. 2001).

II. The Trial Court Erroneously Granted Summary Judgment to the Defendants Because Defendant Carmicle's Failure to Immediately Stop Following the Accident Constitutes Recklessness As a Matter of Law.

In its brief, the Defendants cited a number of appellate court decisions to support its position that the lower court's grant of summary judgment was proper. It is important to note that with the exception of *McGrath* and *Kelly*, the cases cited by the Defendant proceeded to bench trial and were not disposed of by summary judgment.

Even more noteworthy is that none of the cases involved the striking of a pedestrian by a police officer, who continued to drive with an eye injury and the knowledge that he had struck something. *See Bedford's Deposition, Page 31* (R. 169). Contrary to the Defendant's assertion,

the Plaintiff offered more than a conclusory allegation in its complaint that the Defendant Carmicle was reckless in hitting the pedestrian; however, the trial judge favored the Defendant and adopted the reasoning of his counsel saying:

> **The Court finds this argument to be without merit. The actions that Defendant Carmicle may have taken after the impact are not necessarily reflective of his driving demeanor just prior to and at the time of the accident. Defendant Carmicle was in the process of passing a school bus at the time of impact and also had a duty to avoid striking the school bus. The record reflects that Defendant Carmicle traveled approximately one-quarter mile after the impact unaware that he had struck a pedestrian and that he soon returned to the location of the impact. Having been injured while passing a school bus transporting students during a police escort, Defendant Carmicle's distance traveled and subsequent reaction does not constitute deliberate indifference or reckless disregard.**

The trial judge's reasoning is identical to that espoused by the Defendant's counsel at the hearing on the motion for summary judgment. At the hearing on the motion for summary judgment, Mr. Allen said:

> **Your honor, I think, as I noted at the outset of citing those cases, that the conduct in this, other than presumptions or, you know, saying, well, he kept going after the fact. I think Mr. Carmicle's conduct has to be judged up to the point that contact was made. What he did after that is speculation as to how and why. But I think the facts are pretty clear in supporting why he did what he did. As I noted, he was in the wrong lane, he had no idea what his car hit, his eyelid was torn with glass in his eyeball and he simply let his car come to a stop. No, he did not slam on his brakes and immediately back up. But you know, the fact that he was injured, that he radioed the other officer and said, "Listen, something has happened, something has hit my car, "then that provides some compelling reasons as to why he didn't stop. But again, I think the conduct has to show or be looked at up to the point he hit the driver. (Tr. 30).**

Contrary to Mr. Allen and the Court's assertion, Officer Carmicle's continued operation of his vehicle and travel for a quarter of mile after coming into contact with Plaintiff is a strong indicator of his driving demeanor immediately prior to the accident. If one's driving demeanor

immediately prior to impact was not reckless, why would it suddenly become reckless after one comes into contact with something and especially after one sustains an injury to the eye? Accepting the position of the trial court and defense counsel means that as a matter of law, a police officer in a non-emergency situation is entitled to immunity if he fails to comply with the provisions of Section 63-3-401 of the Mississippi Code and ignores the Court of Appeal's opinion in *Thomas v. Miss. Dept. Public Safety* requiring that the totality of the circumstances be considered in evaluating the officer's conduct for reckless disregard. *Thomas v. Miss. Dept. Public Safety,* 882 So.2d, 789,796 (Miss. Ct. App. 2004).

Accepting the position of the trial court and defense counsel concerning Carmicle's failure to immediately stop would also be contrary to the intent of Section 63-3-205. In Section 63-3-205, the Mississippi legislature mandated that the driver of an authorized emergency vehicle not assume any special privilege except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law. Because officers are basically immune from liability for accidents occurring in the course and scope of their employment, the legislature anticipated that a police officer might be inclined to ignore traffic regulations and therefore, mandated that officers obey traffic regulations like the ordinary citizen unless they were in immediate pursuit of a violator of the law or responding to a call. Carmicle was not responding to a call or in the immediate pursuit of an actual or suspected violator of the law, yet he exceeded the speed limit, drove off the paved section of the road and refused to immediately stop upon coming in contact with the Plaintiff. Under the circumstances, this Court should correct the error of the trial court and find that Carmicle's actions were reckless as a matter of law. If the Court is not inclined to hold that Carmicle's actions were reckless as a

matter of law, it should at least reverse the trial court and hold that Carmicle's continued operation of his vehicle and travel for a quarter of mile creates a presumption that he operated his vehicle recklessly. The finding would be consistent with the Supreme Court's holding in *Estate of Williams v. City of Jackson* which noted that the operation of a vehicle is not just limited to its movement but also stopping. *Estate of Williams,* 844 So.2d 1161, 1165 (Miss. 2003). The finding would also be consistent with the Court of Appeals holding in *Thomas v. Miss. Dept. Public Safety cited supra.*

III. The Trial Court Made No Findings Concerning the Discretionary Conduct Exemption.

The Defendants argue that they are immune from suit on a separate and distinct ground, and the Plaintiff's claim should be dismissed because the claims alleged in the complaint relate to the failure to perform a discretionary function and cite *Mosby v. Moore* as support for its position. In its brief supporting the motion for summary judgment, the Defendants raised the exemption contained with Section 11-46-9(1)(d) of the Mississippi Code; however, the trial court did not address the applicability of the exemption in the instant case, and the Defendants took no action to insure that the trial court ruled on the applicability of Sectio 11-46-9(1)(d).

The Defendant's reliance on *Mosby v. Moore* is misplaced. The Mississippi Tort Claims Act and its provisions had not been drafted and had not taken effect when the accident in *Mosby* occurred. *See Mosby v. Moore,* 716 So. 2d 551, 554 (Miss. 1998)(court noted that in a special session, the legislature granted sovereign immunity to the state and its political subdivisions with the exception of municipalities engaged in proprietary functions so that it would give them time to draft the Mississippi Tort Claims Act which became effective on April 1, 1993). The *Mosby*

Court's opinion was based upon the law as it existed in December 1992 - the time of the occurrence of Plaintiff Mosby's accident. The *Mosby* Court used the ministerial versus discretionary function criteria to evaluate the officer's conduct because the reckless disregard exemption did not exist.

In *Giles v. Brown,* the Court agreed with the Plaintiffs assertion that Mississippi Code Section 11-46-9(1)(c) applies specifically to the acts of a governmental employee performing law enforcement functions and cited *Collins v. Tallahatchie County,* 876 So.2d 284, 289 (Miss. 2004) for the proposition that the exercise by a governmental entity of conduct that is of a discretionary nature does not mean that the governmental entity is exercising or performing a discretionary function within the meaning of section 11–46-9(1)(d).

In a footnote, the Defendant asserted that the Court's holding in *Giles* contradicted the maxim known as "Fraiser's octopus" because a corollary to Frasier's octopus must be the contemplation that multiple immunities can be applicable and thus would be examined by the court to defeat one cause of action.

Plaintiffs do not agree. There is no indication in the *Giles* opinion that the trial court in *Giles* considered the discretionary function exemption when it granted summary judgment to the Defendant. Similarly, the trial court in the instant case did not determine the applicability of the discretionary function exemption.

In *Willing v. Benz*, 2006 So.2d (2005-CA-00470-COA), the trial court found that the officer's conduct involved the exercise of choice or judgment; however, it made no finding with respect to the second prong of the discretionary function test - the public policy function. *Id.* Because the trial court failed to making a finding under the second prong, the Court of Appeals

declined to affirm the trial court's judgment on the applicability of Section 11-46-9(1)(d). *Id.* Like the *Benz* Court, this Court lacks a sufficient basis for affirming the trial court's grant of summary judgment because neither prong of the discretionary function test was applied by the trial judge.

IV. The Trial Court Committed Reversible Error By Not Requiring the Defendant To Produce Medical Records Of His Hospital Stay and Treatment For Injuries Sustained During the Accident.

The trial Court was aware that the Plaintiffs desired to obtain records related to the Defendant's treatment for injuries sustained during the accident for the purpose of determining if the Defendant was operating the vehicle under an impairment. (Tr. 55-57, 71-76). Instead of requiring the Defendant to produce the records for an in camera inspection, which it knew was appropriate, the Court merely ordered the Defendant to answer under oath whether he was aware of the conducting of a chemical analysis of his blood. (Tr. 70, R. 185-186). The basis for the Court's decision is Rule 503(b) of the Mississippi Rules of Evidence commonly referred to as the physician-patient privilege. The trial judge opined that the Defendant had not placed his medical history in issue and had not waived the privilege; therefore, the Plaintiffs were not entitled to discover the information.

In *Baptist Memorial Hosp.-Union County vs Johnson,* the Mississippi Supreme Court cited Missouri as being a jurisdiction holding the patient-physician privilege was not absolute. *Baptist Memorial Hosp.-Union County vs Johnson,* 754 So.2d 1165, 1169 (Miss. 2000)(noting Missouri Supreme Court's holding that the search for truth may require the disclosure of redacted medical records of nonparty patients even though the unedited records are protected by the physician-patient privilege). The Missouri Supreme Court's approach was followed by the

Johnson Court when it determined that the medical records of a non-party fact witness should be turned over to the trial judge to determine if the health of minor was at risk. *Johnson,* 754 So.2d at 1171.

If the search for truth was sufficient to require the in camera inspection of redacted medical records of a non-party patient as it did in *Johnson,* then certainly the search for truth would require the full disclosure of medical records of Carmicle, a party to the lawsuit who may have been operating a vehicle with an impairment.

V. The Trial Court Committed Reversible Error By Prematurely Granting the Motion for Summary Judgment Prior to Completion of Discovery and Denying Plaintiff's Motion Request for Additional Discovery

In responding to the Motion for Summary Judgment, the Plaintiffs advised the Court that the Motion should be denied because the Defendants had refused to provide Plaintiffs with reasonable discovery which would allow it to determine if the Defendant Carmicle had the requisite physical and mental capacity to operate the vehicle (R 75). The Plaintiffs did not file a written motion pursuant to Rule 56(f) in its initial response; however, the Plaintiff's noticed for hearing its previously filed Motion to Compel on the same day that the Motion for Summary Judgment was heard. During the course of the hearing on the Motion for Summary Judgment, the Plaintiffs requested that the Court grant its Motion to Compel and further requested that it allow them to conduct the deposition of Defendant Carmicle. (Tr. 21).

The trial judge did not rule on the Plaintiffs Motion to Compel initially, but ruled on the Defendant's Motion for Summary Judgment. The Plaintiffs filed a Motion for Relief Pursuant to Rule 52, 59, and 60 and brought to the trial judge's attention that it had not ruled on the Motion to Compel. (R 114-21). In its Motion for Relief Pursuant to Rule 52, 59, and 60, the Plaintiff

asked the Court to allow discovery and compel the Defendants to produce the discovery sought. The Plaintiffs' request to allow discovery was tantamount to a Rule 56(f) motion for a continuance. The standard for reviewing a motion for continuance is abuse of discretion. *Robinson v. Southern Farm Bureau Casualty Co.*, 2005 So. 2d (2003-CA-02797-COA)(Nov. 29 2005).

The trial judge ruled on the Motion to Compel on March 3, 2006 by granting it in part and denying it in part but denied in total the Plaintiff's Motion for Relief Pursuant to Rule 52, 59, and 60 including its request for additional discovery on March 31, 2006 (R 183-186, 195-201). The trial judge abused its discretion in denying the Plaintiff's request for additional discovery and the opportunity to depose Defendant Carmicle when one considers the following: (1) the need for additional discovery was prompted by the Defendants wilful refusal to completely respond to discovery; (2) the Defendants were ordered to supplement discovery; and (3) the supplementation of discovery responses by the Defendants would necessitate the conducting of additional discovery by Plaintiffs including the deposing of Defendant Carmicle. Additional evidence indicating that the trial court abused its discretion can be gleaned from the Defendants supplementation of its discovery responses on March 24, 2006 - 21 days following the March 3, 2006 not fourteen (14) days as ordered, and the trial court's entry of an order denying the Plaintiff's Motion for Relief Pursuant to Rule 52, 59, and 60 one (1) week later on March 31, 2006. At a minimum, the Plaintiffs should have been afforded reasonable time and opportunity to depose the Defendant Carmicle following the Defendant's supplementation of the response.

VI. The Trial Court Committed Reversible Error in Denying Plaintiffs Motion to Strike the Deposition of Plaintiff Morton

The Defendant indicates that he does not know why the Plaintiffs would request that the deposition of Plaintiff Tyrone Morton be striken and pointed out that the Plaintiffs had not requested that the deposition of Plaintiff Annie Morton be striken. The answer is quite simple. Plaintiff Tyrone Morton's deposition had not been affirmed by him, yet mere excerpts of the deposition were used by the Defendant and the trial judge to support the granting of the summary judgment. The deposition of Plaintiff Annie Morton was not used to support the granting of the summary judgment motion.

Pursuant to Rule 30(e), if a transcription or recording is not affirmed as correct within thirty (30) days of its submission, the reason for the refusal shall be stated under penalty of perjury on the transcription or in a writing accompanying the recording by the party desiring to use such transcription or recording. MRCP Rule 30(e). Contrary to the Defendants assertion that he had no obligation or duty to submit the deposition to the Plaintiff for affirmation, the duty is implicit. Because he was the party desiring to use the transcription or recording, he was required to state under penalty of perjury on the transcription or in a writing accompanying the transcription the reason for the refusal. The rule specifically imposes the duty upon the party desiring to use the transcription. Court reporters do not usually seek to use deposition testimony in civil proceedings; therefore, one may logically infer that a party or his counsel, who seeks to use a transcription or recording has an obligation to secure its affirmation.

Defense counsel states that their was no conspiracy against the Plaintiffs, and Plaintiffs should not be allowed to benefit from their own attorneys' dilatory and negligent conduct. It is interesting that defense counsel would deny the existence of a conspiracy when Plaintiffs' counsel has not suggested that there was a conspiracy. Plaintiffs' counsel merely advised the

Court that the Defendants failed to submit the deposition to the Plaintiff for reading and signing as contemplated by Rule 30. Defendant's counsel admitted that he did not submit the deposition to Plaintiff because he was "trying to defend the right of court reporters to earn a living". (Tr. 103). The trial court did not find that the Defendant had an obligation to produce the deposition, and defense counsel apparently believes that he has an obligation to defend the rights of court reporter, and the obligation is paramount to the duty to comply with the Mississippi Rules of Professional Conduct concerning fairness to opposing counsel. Defense counsel has indicated that unless a court orders him to do so, he will "continue to try to provide that professional courtesy to court reporters".

Plaintiff's counsel was not negligent or dilatory, and the record is not void of reference to the COD package and the Plaintiff's admission concerning the COD package. Moreover, defense counsel is incorrect when he states that the COD package contained the depositions of the Plaintiff's Tyrone and Annie Morton. The record indicates that Plaintiffs' counsel advised the court that the court reporter sent COD a package containing the depositions of Myron Bedford and Danny Daniels. The package was not retrieved because Plaintiffs counsel was not expecting a COD delivery, and the card advising Plaintiff of the COD package did not indicate that the package was from Patricia Marinelli. (Tr. 83-84, 107-111).

Even so, the package did not contain the depositions of the Plaintiffs. If the package contained the depositions of the Plaintiffs, there would not have been a need for the court report to write the letter dated July 5, 2005 advising that the depositions of Annie and Tyrone Morton

were ready, and they should contact her to schedule an appointment. (R 159).[2]

Defense counsel's willingness to champion the interests of court reporters may be deemed noble; however, this interest is not paramount to the right of the Plaintiff to read and sign the transcription, especially if the transcription is being used by defense counsel to summarily dismiss his claim.

CONCLUSION

The trial court's grant of summary judgment to the Defendant should be reversed for multiple reasons including, but not limited to its erroneous application of the summary judgment standard and erroneous rulings concerning discovery. Notwithstanding the errors of the trial court raised by the Plaintiffs in their brief, Defendant Carmicle's conduct before, during, and after the accident was reckless as a matter of law and precluded summary judgment.

[2]The Plaintiffs did not receive this letter until defense counsel provided it in response to a request that he provide the deposition for reading and signing.

CERTIFICATE OF SERVICE

I Carrie Johnson do hereby certify that I have this day caused to be mailed to the following individuals a true and correct copy of the above and foregoing Reply Brief:

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This the 14th day of March 2007.

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