IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GERALDINE CREWS — APPELLANT

VS. — CASE NO. 2006-CP856

LISA MAHAFFEY — APPELLEE

APPEAL FROM THE FIRST JUDICIAL DISTRICT OF
CIRCUIT COURT OF HINDS COUNTY,
MISSISSIPPI

BRIEF OF APPELLANT

GERALDINE A. CREWS
PRO SE
107 SOUTH PARK DRIVE
JACKSON, MISSISSIPPI 39211

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GERALDINE A. CREWS — APPELLANT

VS. — NO.2006-CP856

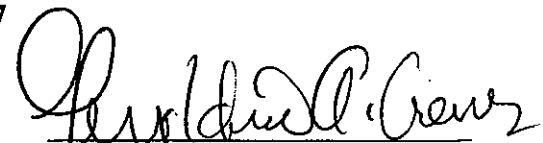
LISA MAHAFFEY — APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. **Honorable Winston Kidd, Hinds County Circuit Judge**
2. **Honorable Bob Waller, Trial Attorney**
3. **Honorable Glenn Swartzfager, Associate Trial Attorney**
4. **Geraldine A. Crews, Appellant-Pro Se**
5. **Honorable Patrick Tatum, Attorney for Appellee**
6. **Lisa Mahaffey, Defendant**

SO CERTIFIED, this 11th day May, 2007



Geraldine A. Crews, PRO SE

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II. COURT ERRED IN FAILING TO GRANT NEW TRIAL ON ISSUE OF DAMAGES ALONG WITH FAILURE TO GIVE TO JURY FOR CONSIDERATION PLAINTIFF'S JURY INSTRUCTION ALLOWING DEFENDANT'S NEGLIGENCE INSTRUCTIONS NOT WARRANTED BY EVIDENCE

III. THE COURT ERRED IN NOT ALLOWING NEW TRIAL FOR ISSUE CONFLICTING JURY INSTRUCTIONS WHICH WAS NOT WARRANTED BY CONTRIBUTORY NEGLIGENCE OR EVIDENCE

STATEMENT OF THE CASE

On March 3, 2000, Geraldine Crews (hereinafter referred to as "Crews") was driving home about 5p.m. going northbound on Ridgewood Rd., then turning East Old Canton Rd. At Yield sign, Crews stopped for oncoming traffic, also Eastbound onto Old Canton. As Crews looked over left shoulder she felt a huge jolt, feeling as heavy force upon her body. Lisa Mahaffey (hereinafter referred to Mahaffey) drove her Suburban into the back of Crews' car. Crews was wearing seatbelt.

The impact caused a blow to left side of head, above eyebrow. "The impact was strong enough to break blood vessels."Dr. Larry Parker, Neurologist expert (Transcript /videotape,Ex, P-21 and P-22 hereinafter referred to as T.) The bump went mid- forehead, discoloring. Pained, fearful decided to look in mirror feeling sick, wondered if may begin bleeding . Pain was radiating left back Lanes across, someone saw and came around to help,and called husband.(T-31-32)

David Crews (Crews' Husband) saw a man taking pictures around the car, asking him what he was doing appearing "Inhumane" (T.-181). Shaking /nauseated I stayed still. An ambulance took Crews to St. Dominic's., x-rays,of head, neck and back were taken, and treated hematoma of head/CT scan,.Discharge instructions to ER/RX'S , given for cervical and back sprain/strain, hematoma/laceration across head. (T or diagram per ambulance) Pain, and muscle injury medications, a follow-up with Dr. or E.R. was advised in a few days. (T-35 -,St. Dominic's hospital Records) hereinafter as R

Home bed rest, ice on back, head and prescriptions taken,side effects and not sleeping became hard to perform regular activities.

Defendant's non- expert witness, Danny Petty accuses Crews self-inflicting injuries, head injury…..(see T203-208).Petty accused Crews' husband, David of being unconcerned, onlooker. Crews motioned/waved for help, staying still: "gyrating" Petty (incredible witness) passed collision, came back, passed, came back,.Petty seeing lady come up to Crews ca.r.(T.203—215)After Mahaffey late walked toward Crews stating…I was stopped",(T-31) Crews hurt, pleaded for help. Crews growing panic waved across lanes traffic Old Canton.afterMahaffey response..

Mahaffey's photographer/friend, non-expert(Bryan Cotton) came to capture any/all body damage, etc..to Crews vehicle. Random pics were taken of entire car, (see pics) (T-166) insert .Along with him an officer O'Riley apparently spent time viewing, as well. O'Riley(officer) came to my window he then questioned what happened. (T-92)

Herrin/Gear's expert estimated damages to be around $1500.00 or so (insert T-)along with telling(T-72) Crews that he noticed safety frame/ bar in trunk cracked. The frame Crews felt saved her- feeling"Lucky "..(T-109)

CREWS bumper Mahaffey's admitted Suburban rear-ended, bent, and pushed against the solid frame, Mahaffey's photographer missed. See expert (See T- record Herrin Gear)

A week passed after accident, and David Crews advised Crews follow-up seeing a Dr. since Chiropractor .After seeing Dr. Addison (T38) Diagnosis was closed head injury trauma, cervical injury, and transient parethesia of lower left extremity back, March 10. The headaches getting frequent, with neck, leg, and back pain, and, "whole lotta shaken going on" .Dr. Addison prescribed RX's for head, muscle spasm, anti-anxiety. (T 40,45) A visit on March 21, to Dr. Addison, ordered MRI of neck, and back. Report indication

was disc protrusion C5-6 left cervical(T-44) & lower back disc excursion ligamental L-5-S-1 (T45) Dr. Leis (expert neurologist specialist) diagnosis post-concussion syndrome(T-47)tachycardia, weight loss, sweating metal taste in mouth(T-48) The recovery was slow, with feelings of anxiety, helpless moving from room to room with heaviness in head, (T-50) Crews was not able to stay up long.(T-189-190)

Dr. Addison sent Crews to Dr. Woods after MRI results. Physical therapy and Celebrex was prescribed. Dr. Wood felt surgery would be ater resort. For that purpose and per request of Crews medical insurance another opinion was rendered, and that of Dr. McGuire back surgeon agreed with Wood's opinion. (T-Exhibit 18/video-depo)

The head injury, increasing pain, caused daily migraine headaches, sensitivity to touch or brushing hair, prevented progress with recovery through inability to keep appointments, for physical therapy and driving. Daily activities including this, unable to work ,take son to school, or go to church and not limited to along with working became physically challenging. Ice packs and medications were most helpful at this time. Driving was limited due side effects of the medication, nervousness, and difficulty with mobility neck/back pain. Head injury left indention and scarring as seen today, but slighter. (T53-54)Dr. Parker, neurologist, appointment made over month out, for May.

One month later, after Mahaffey rear-end collision, limiting activities, including driving, neck was improving slightly, still difficult mobility, painful. Prescriptions for muscle spasms were taken. Migraine medication taken for chronic head pain. Anti-anxiety medication was also prescribed,taken..

April 20, 2000, a car topped hill behind The Rogue, past Highland Village,Old Canton, and wet roads caused hydroplane into lane and hit Crews.Her son riding along

Appointment was made a month before, for neurosurgeon Larry Parker. Steroid block injections for neck, back injuries, trigger point injections, into muscle strain/spasms .and to Dr. Carroll MCLeod for that treatment. Continued treatment, physical therapy, anti-siezure medications,and others for head aches from injury, Parker 6 years. Dr. McCleod's steroid injections for lower back/cervical injuries found evidential in Mahaffey's rear-end collision, and physical therapy seven years, present.

Honorable Winston L. Kidd, trial judge , denied Plainfiff, Crews, Motion for Additur or New Trial April, 18th2006. Bob Waller, Crews' trial attorney had filed with Court February 9, 2006. Waller's letter to Crews, May 8,2006,stated insufficient award $5000.00 will be his expenses. He also stated "WE" had 30 days to appeal , did not feel it to be appealable. (Confusing) May 12th Waller sent Crews Notice of Appeal form for Crews to enter pro se and filed by Friday, May 19,2006 to comply with 30 (thirty day requirement.). May 22, 2006. week after Crews' surgery, one month after Crews mother's death in Colorado during 8 (month) illness, Crews help care for there. Defendant's attorney, Patrick Tatum, sent check in amount of $5000.00 to Waller, with Satisfaction of Judgement , letter, which was never signed.

As pro se, with much obvious limited legal knowledge,and the making of this please find in heart to forgive for what may seem as it is. Volumes of medical records, and too many Crews' Drs'sbills/testimony, Mahaffey desperately attempted to discredit medical experts eye-witness,as well as husband and child, bias jurors, confusing with personal misfortunes. I am forgiving all the nonsense, untruths and moving forward as it is Crews' prayer to obtain help from this Honorable Court. Thank-you for attention to this lengthy brief. This is what is has been to Crews as well, with unnecessary things.

SUMMARY OF THE ARGUMENT

In the Court below, no evidence was presented or evidential to the liability of Defendant Mahaffey's rear-end collision whereas driving Suburban into Plaintiff, Geraldine Crews. Defendant admitted liability.

Damages were presented, and Dr's , medical bills, and expert testimony was presented by Plaintiff. Award was insufficient, not amount of bills, throughout Ever presented as to $5000.00 The amounts exceed that amount

The jury found Defendant guilty. The Court allowed conflicting, and confusing instructions regarding negligence, and allowing Defendant's negligence instructions Refusal of instruction erred. Put in as Exhibit "B"

Because the jury failed the follow the Instruction of the Court, and testimony undisputed liability, and award an element of damages supported by record and recoverable where Defendant proximately caused Plaintiff;s injury, this Court should award a new trial on damages or, in the alternative, an Additur.

ARGUMENT

MOTION FOR ADDITUR OR FOR NEW TRIAL

COMES NOW, the Plaintiff(Appellant) Geraldine Crews, pro se respectfully moves the Court to enter an Additur or for a new trial for Plaintiff, assigning in support of this Motion the following grounds, to-wit:

1. **The trial of this cause was held on January 17, 2006. The Jury Verdict of $5000.00 for Geraldine Crews was confirmed by a Final Judgment filed on February 2, 2006. Mississippi Code Annotated Sections 11-1-55(Rev. 1991), grants the trial judge the authority to grant an Additur and provides: "the Supreme Court or any other court of record in a case in which money damages were awarded any overrule a motion for new trial or affirm on direct or cross appeal, upon condition of an additur or remittitur, if the court finds that the damages are excessive or inadequate for the reason that the jury or trier of the fact was influenced by bias, prejudice, or passion, or that the damages awarded were contrary to the overwhelming weight of the credible evidence." MCA 11-1-55. The Plaintiff moves the Court to enter an Additur increasing the amount of the Judgment by a reasonable sum to cover the damages proven by undisputed evidence at the trial of this cause.**

2. **Plaintiff's vehicle was struck from behind by Defendant in an automobile accident occurring on March 3, 2000. Liability in this accident is undisputed and Defendant produced no witnesses or evidence at trial to the contrary. In addition to the standard criteria used Additur cases, we point out that the error in limiting Plaintiff's jury instructions labeled P1 and allowing negligence instructions, as will be mentioned later, is such that the Jury was forced to ignore the law regarding the assessment of damages.**

ADDITUR AS TO GERALDING CREWS

3. **The standard for overwhelming weight of credible evidence is objective. It requires trial courts to apply this standard by reference to applicable law on recoverable damages in relation to the evidence before them. "Each case involving the issue of an Additur must "necessarily be decided on its own facts." Green v. Grant ,641 So.2d 1203, 1208 (Miss. 1994). (quoting Leach v. Leach, 597 So.2d 1295, 1297 (Miss.1992) McClatchy Planting Co. v. Harris, 2001 WL 1106020 Miss. App., 2001.**
4. **The $5000.00 verdict awarded to the Plaintiff, Geraldine Crews, is not only contrary to the overwhelming weight of the evidence, but is so inadequate as to strike mankind at first blush as being unreasonable and outrageous as well as shocking the conscious.**
5. **In the case of Pham v. Welter, 542 So.2d 884(Miss 1989), the Plaintiff had $28,000 in special damages and the court entered an Additur of $30,000**

to the $30,000 verdict thereby increasing the judgment by $30,000. In the case of James v Jackson,514 So. 2d 1224 z9Miss. 1987), the jury verdict of $1000.00 was increased to $ 2000.00 with the Supreme Court ruling that it was a proper exercise of discretion considering testimony that the Plaintiff had pre-existing degenerative vertebrae condition, or osteoarthritis condition.

6. **The question is whether or not the verdict was a reasonably adequate award and one of the criteria used by the court is whether or not the amount of the verdict evinces bias, prejudice, or passion or was contrary to the overwhelming weight of credible evidence.**
7. **Dealing further with the concept of "against the overwhelming weight of the evidence" we remind the Court that there were no witnesses offered by the Defendant whatsoever, to discredit any of the testimony, presented by the Plaintiff, regarding the occurrence of a rear-end collision on May 3, 2000, wherein Plaintiff's automobile was struck by Defendant. Therefore where there is no question of liability, leaving only the question of damages. Plaintiff provided the Court with composite exhibits including voluminous medical bills and records incurred by the Plaintiff which totaled $41,941.27. Ms. Crews was involved in two subsequent automobile accidents on April 20, 2006, and September 28, 2001. She incurred $8,511.67 in medical bills after the first automobile accident on May 3, 2000 and before the second accident on April 20, 2001. She incurred $20,542.11 in medical bills after the second accident and before**

the third accident on September 28,2001. she incurred $12,837.49 in medical bills after the third accident. The monetary judgment of $5000.00 awarded to the Plaintiff, Geraldine Crews, does not come close to compensating her for her medical bills incurred to date as well as future treatment and pain and suffering. This award does not even compensate Ms. Crews for her medical bills incurred after the first accident and before the second accident, which were incurred solely and irrefutably as a result of the accident of this case. Another case that is on point is Jack Gray Transp., Inc. v Taylor 725 So.2d 898 (Miss. 1998). In this case, the truck rear-ended the plaintiff's vehicle and the court awarded an additur of $140,000 to the jury verdict of $67,000 because ofthe overwhelming weight of the evidence which showed over $42,000 in medical bills, loss of wages of more than $82,000, which coupled with a life expectancy of 22.9 years would result in a future loss of income of$297.000. In a day when litigation has become unaffordable for the average citizens, such as the Plaintiff herein, the Court should exercise its discretion and increase the Judgment to an amount which the Court feels would fairly and reasonably compensate the Plaintiff.

MOTION FOR NEW TRIAL

8. **In the event the Court fails to give an Additur as to the Plaintiff, the Court should grant a new trial for damages based n the fact that the small amount of the verdict resulted in a miscarriage of justice. Looking to the criteria for granting a new trial, when all of the testimony has been**

considered along with all arguments delivered, if, upon a completed view of the entire case, the trial judge is of the opinion that the verdict is against the overwhelming weight of the evidence, or clearly against the great preponderance, of the evidence, his duty is, upon a motion for a new trial to set aside the verdict and grant a new trial. Allstate Ins. V. McGory, 697 So.2d 1171, 1172 (Miss.1997). In light of the undisputed, overwhelming weight of the evidence that there was a rear-end collision March 3, 2000, Mahaffey's, Suburban struck the Plaintiff, Crews we feel that there was error in failing to give to the jury for consideration, Plaintiff's jury instruction, labeled P-1 and allowing the Defendant's negligence instructions.

ERRONEOUS JURY INSTRUCITONS

9. The Plaintiff assigns as error the failure of the Court to give to the jury for consideration, the instruction attached hereto as Exhibit "A" and identified on the bottom of the page as "P-1" which is in the nature of a preemptory instruction for the Plaintiff using the language "..The Court instructs you to find for the Plaintiff, Geraldine Crews, and to assess her damages if any, in accordance with the law." Plainly and convincingly, this is an Instruction telling the Jury that they are instructed to find for the Plaintiff. As we feel that the evidence presented by both Plaintiff and Defendant would not allow the jury to find any other way than for the Plaintiff, we believe that the refusal of this instruction resulted in an

error by the Court. Had said instruction been given to the jury, a more favorable decision for the Plaintiff may have been awarded.

10. **The Plaintiff also assigns as error allowing the jury to consider Defendant's negligence instruction labeled D-5 and attached hereto as Exhibit "B" Allowing said instruction was only successful in confusing the jury. As the Defendant put on no substantial evidence that the Plaintiff was negligent in her actions on March 3, 2000, this instruction is improper and served no valuable purpose.**
11. **Because the jury failed to follow the instructions of the Court and award an element of damages supported by the record and recoverable where Defendant proximately caused Plaintifff's injury, this Court should award a new trial on damages or, in the alternative, an Additur.**

WHEREFORE, PLAINTIFF, GERALDINE CREWS respectfully move the Court to enter Additurs as to Plaintiff, Crews. In the alternative, Plaintiff, move the Court for a new trial on damages alone with pretrial rulings as to the procedural matters set forth herein.

Respectfully submitted this 11th day of May, 2007.

GERALDINE CREWS, PRO SE

Geraldine Crews

CONCLUSION

THE DEFENDANT, LISA MAHAFFEY, told the Court, and was found guilty of Liability and damages, negligence according to law for collision of which rear-ended Crews, March 3, 2000. There has been an injustice found due not allowing said medical bills related, with damages, and credible evidence related to March 3, 2000, unpaid by Defendant.

Trying to confuse, misconstrue, and default everything, the responsibility and liability was biased, and prejudiced Plaintiff. Defendant tried hard missing evidential facts, undisputed that incurred related to March 3, 2000. Even preyed on inevitable life's misfortunes.

The years the Defendant spent with continuance and avoidance only aids to show the extent of medical injuries, and damages as of today still.

After all is read and done, I pray the Honorable Court will see the facts, and to provide necessary justice for relief. It has been financially straining, along with obvious pain for all the injuries incurring of March 3, 2000.

Moving forward . respectfully thankful for attention in this matter. of importance.

CERTIFICATE OF MAIL SERVICE

The undersigned of record for appellant, pro se hereby certifies that she has this Date mailed, postage prepaid, by United States mail, or by hand delivery, a true And correct copy of the above and foregoing Brief of appellant to :

PATRICK TATUM, ESQ.
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SO CERTIFIED, this the 11th day of May, 2007

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