IN THE SUPREME COURT OF MISSISSIPPI
CAUSE NO. 2007-CA-01756

CITY OF JACKSON **APPELLANT**

V.

SHARON TRIGG-SPANN **APPELLEE**

BRIEF OF APPELLEE

(ORAL ARGUMENT REQUESTED)

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CAUSE NO. 2007-CA-01756

CITY OF JACKSON **APPELLANT**

VS.

SHARON TRIGG-SPANN **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 Court Judge
2. Sharon Trigg-Spann, Appellee
3. City of Jackson, Appellant
4. Joe N. Tatum, Esquire, Tatum & Wade, Attorney for Appellee
5. Pieter Teeuwissen, City of Jackson, Attorneys for Appellant

JOE N. TATUM
ATTORNEY FOR APPELLEE SHARON SPANN

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STATEMENT REGARDING ORAL ARGUMENT

Appellee requests oral argument as she believes that it could be helpful to this Court in fully understanding the issues before it. Though the issues before this Court on this Appeal are not novel, they may potentially affect the rights of each and every Mississippi citizen. Therefore, oral argument is requested.

STATEMENT OF THE ISSUES

1. Whether the Defendant City of Jackson has shown that the Trial Court's finding that the City of Jackson was 100% liable for the subject collision and damages is not supported by substantial, credible and reasonable evidence.
2. Whether the Defendant City of Jackson has shown that the Trial Court's assessment of damages is not supported by substantial, credible and reasonable evidence.

STATEMENT OF THE CASE

A. Course of Proceedings Below

Plaintiff originally filed a Complaint for recklessness and gross negligence against Defendant City of Jackson on June 24, 2004 (R.6), in relationship to a high speed pursuit of a fleeing suspect by the Jackson Police Department on October 21, 2003. Plaintiff also sued Mary Jenkins in the same suit alleging ordinary negligence in the operation of her vehicle. Extensive discovery was taken by all the parties in this case and the Defendant Mary Jenkins was dismissed from the case prior to trial. (R.151).

The trial of this matter was held in the Circuit Court of the First Judicial District of Hinds County, in the form of a bench trial before the Honorable Winston Kidd, on December 12 , 2005. Upon conclusion of all testimony, the trial court rendered its Findings of Facts and Conclusions of Law and returned a verdict in the amount of Two Hundred Eighty Five Thousand Five Hundred Ninety Five Dollars and Fifty-Three Cents ($285,595.53), apportioning 100% of fault for the subject collision to the City of Jackson. (R.185 and R.200).

Defendant City of Jackson then filed a post-trial Motion to Amend and/or Vacate Judgment or, in the Alternative, for New Trial. (R.196). Plaintiff filed her response thereto on December 22, 2006 (R.201) and conceded that the City of Jackson was entitled to a set-off of $25,000.00 in the amount of the Judgement to reflect a settlement with Defendant Mary Jenkins . On May 23, 2007, the trial court, having heard argument and being fully briefed on the issue, denied the Defendants' post-trial motion, with the exception of the request for a $25,00000 set-off. (R.219). The Defendant City of Jackson then perfected its appeal.

B. Statement of the Facts

On October 21, 2003, around 3:00 p.m. the Plaintiff Sharon Spann was driving her Federal Express work truck north on Ellis Avenue in Jackson, Mississippi. Mrs. Spann stopped her truck at the intersection of Lynch Street and Ellis Avenue in observance of a red traffic light. (T.22). About the same time on October 21, 2003, a Jackson Police Department patrol vehicle was pursuing a fleeing silver colored Nissan Altima traveling at speeds between 60 to 70 miles per hour south on Ellis Avenue. (T.105-114). The two Jackson Police Officers, Reginald Liggins and Reuben Curry first noticed the silver Nissan Altima as it traveled north on Valley Street, and the officers traveled south on Valley Street. (T. 105). Officer Reuben Currie testified that he never saw the Nissan Altima run any stop sign initially. (T.106, lines 4-6). Officer Liggins testified that he saw the Nissan Altima run a stop sign as it entered Valley Street, but Officer Liggins could not identify the name of the side street from which the Nissan Altima allegedly ran a stop sign. (T.147). Officer Liggins, the driver of the Jackson Police Department patrol vehicle, turned the vehicle around to follow and stop the Nissan Altima. However, after Officer Liggins put his blue lights on, the driver of the Nissan Altima sped away at a high rate of speed north on Valley Street and turned left onto Capitol Street driving west. Officer Liggins and Officer Curry turned onto Capitol Street in an attempt to pursue and stop the fleeing Nissan Altima. However, the vehicle sped away too fast for the officers to catch up with it. (T.147-150).

As Officers Liggins and Currie drove west on Capitol Street, they were stopped by Jackson Police Officer Thomas Catching and informed that he had mechanically measured the speed of the fleeing Nissan Altima on Capitol Street to be between 70 and 80 miles per hours as the Nissan drove west on Capitol Street.

(T.153). Officers Liggins and Currie then drove west on Capitol Street all the way to the I-220 overpass bridge looking for the Nissan Altima but could not find it. (T.110). The officers then drove back east on Capitol Street looking for the Nissan Altima but could not find it. Eventually the officers abandoned their search and went back to patrolling the area. (T.155).

About twenty minutes later, the officers were traveling west on St. Charles Street and approached the red traffic light at the intersection of Ellis Avenue and St. Charles Avenue. (T.112 and 155). As the traffic light turned green for the police patrol car to proceed across the intersection, Officers Liggins and Currie spotted the Nissan Altima traveling south on Ellis Avenue, stopped at the red traffic light. (T.112). When the driver of the Nissan Altima spotted the officers' patrol car, he ran the red light at the intersection of Ellis Avenue and St. Charles Avenue. (T.113, lines 6-9 and T.156). The suspect then quickly drove past Hardy Middle School at a speed between 50 to 60 miles per hour at about the time Hardy Middle School would have been recessing for the day. (T.113). Officers Liggins and Currie then turned south onto Ellis Avenue to pursue the Nissan Altima.

At the time they began to pursue the Nissan Altima for the second time, Officers Currie and Liggins admittedly had no knowledge or probable cause to believe that the driver of the Nissan Altima had committed a felony. (T.111, lines 6-12 and T.150, lines 13-21). In fact, the only known offenses committed by the driver of the Nissan Altima were minor traffic offenses, such as no license plate, possibly running a stop sign and a red traffic light. As Officers Liggins and Currie drove past Hardy Middle School in pursuit of the fleeing Nissan Altima, Officer Liggins noted the "Slow School Zone" signs placed in the middle of Ellis Avenue in front of Hardy Middle School. (T.157, lines 15-17). Officer Currie testified that their patrol car's

blue lights and sirens were engaged immediately as they turned onto Ellis Avenue from St. Charles. (T.114, lines 4-12).

As Officers Liggins and Currie pursued the fleeing Nissan Altima south on Ellis Avenue at speeds between 60 and 70 miles per hour, the Nissan Altima ran the red traffic light at Oakmont Street and Ellis Avenue going about 60 miles per hour. (T.114, lines 24-29). The Nissan Altima then drove past the Jackson Public School's Career Development Center and Westland Plaza Mall going about 60 miles per hour. (T.115). Officers Liggins and Curry were pursuing the Nissan Altima by driving their police patrol vehicle at speeds between 55 and 60 miles per hour. (T.160). The Nissan Altima then ran the red traffic light at the intersection of Ellis Avenue and Robinson Road at a speed of about 60 miles per hour at or about the time Provine High School, Hardy Middle School and the Career Development Center classes were recessing for the day. (T.115, lines 15-23 and T.162). Officer Reuben Currie testified that after the fleeing Nissan Altima ran the red light at Ellis Avenue and Robinson street at a high rate of speed, he knew that the driver would not stop for anything, but yet he continued his pursuit for nearly another one mile up Ellis Avenue. (T.116, lines 3-15). The pursuing officers violated the Jackson Police Department's pursuit policy, General Order 600-20, by pursuing the fleeing Nissan Altima through the red light at Ellis Avenue and Robinson Road at about 30 miles per hour. (T.118-119).

The pursuing officers continued to pursue the fleeing Nissan Altima south on Ellis Avenue towards the intersection of Lynch Street and Ellis Avenue. As the pursuing officers approached Hemingway Circle which is about 440 yards from the intersection of Lynch Street and Ellis Avenue, the pursuing officers were instructed by their commanding officer, Sgt. David Woodfield, to terminate the pursuit. (T.120,

lines 13-23) . Instead of terminating the pursuit, as ordered, Officer Liggins, proceeded through the intersection of Lynch Street and Ellis Avenue by maneuvering around cars which were stopped in both south bounds lanes of Ellis Avenue in observance of the red traffic light at the Lynch Street intersection. (T.121-122). The pursing officers maneuvered around the stopped vehicles by driving through the left turn lane of Ellis Avenue and Lynch Street, but instead of turning left, the officers preceded further south into the intersection of Lynch Street and Ellis Avenue, colliding with the vehicle of Mary Jenkins, which was traveling east on Lynch Street pursuant to a green traffic light. (T.95 and T.121).

At the time the pursuing City of Jackson police officers preceded into the intersection of Lynch Street and Ellis Avenue, their patrol vehicle's blue lights and sirens were not engaged according to Sharon Spann and Mary Jenkins. (T.24, T.56 and T.96-97), in direct violation of the Jackson Police Department's General Order 600-20 section (f)(2). (See General Order 600-20 at Appellee's R.E.).

The Jackson Police Department at the time of the subject accident had in effect a pursuit policy, General Order 600-20, which sets the standard of care to be used by Jackson Police Officers in pursuit of a fleeing suspect who is resisting apprehension by eluding or failing to stop in a motor vehicle. General Order 600-20 states "that a pursuit of a fleeing suspect may be initiated when the officers know that a felony has been committed and the suspect's escape is more dangerous to the community than the risks posed by the pursuit." (See General Order 600-20(d)(1) at Appellee's R.E.). General Order 600-20 is a standing Jackson Police Department order which must be followed by all of its patrol officers when initiating a high speed pursuit. (T.134, lines 24-29 and 135). Under General Order 600-20, first and most important, before initiating a pursuit, the officer must determine that

safety of the public and officer himself, is at greater risk from the fleeing suspect, than the risk posed by pursuing the fleeing suspect. (See General Order 600-20(d)(2)(a) at Appellee's R.E.). Pursuant to General Order 600-20, the officers and supervisors must constantly reassess the pursuit to determine if it should be terminated. (See General Order 600-20(d)(3) at Appellee's R.E.). Once commenced, a pursuit may be terminated by officers in the primary pursuing police vehicle or their field supervisor. (See General Order 600-20(e)(1)(a) at Appellee's R.E.). Pursuant to General Order 600-20(f)(2) and (g)(1)(a), during a high speed pursuit, blue lights and sirens must be utilized on the police patrol unit and when a pursuing police unit enters a signaled intersection against the right of way, the officers must insure that all traffic has yielded before proceeding through an intersection. (See General Order 600-20 at Appellee's R.E.).

Both Jackson Police Department pursuing Officers Reginald Liggins and Reuben Currie admitted that they were not familiar with the high speed pursuit procedures outlined in General Order 600-20 for high speed pursuit driving and did not take into consideration its dictates. (T.132-133 and T.173). In fact, Officer Reuben Currie, testified that he never considered not initiating the pursuit or he never considered stopping the pursuit regardless of the dictates of General Order 600-20, because he and Officer Liggins made up their minds early on that they were going to pursue and catch the fleeing driver. (T.134, lines 16-23).

The Jackson Police Department patrol vehicle involved in the subject collision was equipped with collision airbags which safely deployed during the collision. (T.181). Mary Jenkins' vehicle involved in the subject collision was equipped with collision airbags which safely deployed during the collision. (T.103). The Federal Express truck occupied by the Plaintiff at the time of the collision was not equipped

with airbags. (T.29). The Federal Express truck was knocked almost completely out of the roadway and onto the parking lot of an adjacent gas station upon being impacted. (T.27-28). The Federal Express truck was a total loss from the impact as testified to by Federal Express's chief mechanic, Steve Stevens. (T.82).

Jackson Police Department General Order 600-20 specifically states as to pursuits that:

d. Initiating Pursuits:

1. Pursuits may be initiated when the officer knows that a felony has been committed and the officer has probable cause to believe that the individual committed the felony and the suspect's escape is more dangerous to the community than the risks posed by the pursuit and the suspect clearly exhibits an intent to avoid arrest by using a vehicle to flee.

2. The major factors for consideration of initiating a pursuit and/or the termination of a pursuit include the following:

a) safety of the public and officers,
b) seriousness of the offense/violation and the danger the suspect poses to the community if not immediately apprehended, ...
d) traffic density and conditions ...
l) speed and duration of the pursuit ....

3. Officers and supervisors must be constantly reassessing the pursuit to determine if it should be terminated.

e. Terminating a Pursuit

1. A pursuit may be terminated by:

a) Officers in the primary unit,
b) A field supervisor,
c) A watch commander,
d) A commanding officer....

3. **A pursuit shall be terminated if the pursuit exposes the public or the officer to more danger than the violation or conditions justify.**

f. High-Speed Pursuit

1. Before initiating a high-speed pursuit, officers must weigh the advantages of capturing the suspect against the hazards created to public safety. The responsibility for initiating a high-speed pursuit rests with the individual officers, but may be terminated at any time by a supervisor.

2. During a high-speed pursuit all emergency primary equipment will be utilized.

3. If at any time the high-speed pursuit exposes the public or officer to more risk than the offense and conditions justify, the pursuit shall be terminated.

g. Emergency Operation of Police Vehicles

1. Officers operating a city owned vehicle equipped with emergency primary equipment and responding to an emergency or engaged in pursuit: . . .

a) shall not enter a signed or signaled intersection against the right of way at a speed greater than 15 miles per hour and will **insure that all traffic has yielded before proceeding through an intersection.**

(See General Order 600-20 at Appellee's R.E.).

Dennis Waller, Plaintiff's pursuit expert, is a certified law enforcement officer, with more than 30 years experience as a patrol officer, police detective, director of law enforcement training, including pursuit driving and chief of police.

(T.197-198). Mr. Waller has authored pursuit policies and protocols for several large police departments around the country and he has served as a consultant to many more police departments regarding pursuit protocol. (T. 198-199). Mr. Waller testified that it was his opinion that Officers Reginald Liggins and Reuben Currie, recklessly breached the applicable standard of care and Jackson Police Department General Order 600-20 and that their pursuit of the Nissan Altima was the proximate cause of the collisions at the intersection of Lynch Street and Ellis Avenue. (T.209, lines 23-26). More specifically, Dennis Waller testified that Officers Liggins and Currie should not have initiated the pursuit for the second time at the intersection of St. Charles Avenue and Ellis Avenue, because the driver of the Nissan Altima had clearly shown by that time that he did not intend to stop or be apprehended by the officers, and he was only noted to drive reckless when the officers attempted to pursue and apprehend him. (T.210-211).

Mr. Waller testified that General Order 600-20 is similar to the national standard of care for police pursuit driving and that its provisions were applicable to the pursuit of the Nissan Altima on October 21, 2003. (T.201, lines 5-10). Mr. Waller further testified that Officer Liggins and Officer Currie actions of failing to follow the procedures of General Order 600-20 amounted to reckless disregard for the safety of the driving public, and that the officers conduct was the sole proximate cause of the collision between their police patrol car and Mary Jenkins' vehicle and Sharon Spann's vehicle. (T.207, lines 7-16).

Mr. Waller further testified that the pursuing officers should have terminated the pursuit after being instructed to do so by their supervisor, Sgt. David Woofield, before the officers entered the intersection of Ellis Avenue and Lynch Street. (T.210) Officer Reginald Liggins testified that it was his intentions

to continue the pursuit of the Nissan Altima when the driver entered the intersection of Ellis Avenue and Lynch Street, (T.174, lines 25-29). This is so despite the fact that the pursuing officer's Commander, Sgt. Woodfield, had given a direct order over the radio to terminate the pursuit. (T.120, lines 13-29).

Mr. Waller further testified that Officer Liggins and Officer Currie were reckless in direct contravention of Section 5(d) of General Order 600-20, by initiating the pursuit for a second time at St. Charles Avenue, when the officers had no knowledge that the fleeing driver had committed a felony and the officers had no probable cause to believe that the driver had committed a felony and the driver's escape was not more dangerous to the community than the risks posed by the pursuit. (T.211, lines 1-26). The suspect's and the pursuing officer's fast driving were clearly more dangerous to the public than the offenses/violations committed by the suspect, of having no license plate on the Nissan Altima and allegedly running a stop sign on Valley Street. (T.211).

Mr. Waller further testified that the officers did not properly consider the major factors for consideration for initiating a pursuit as required by General Order 600-20. Specifically, the officers did not consider the safety of the public, did not consider the seriousness of the suspect's offenses versus the great danger posed to the public by the suspect's reckless driving when being pursued by the officers, and the officers did not consider the fact the suspect's speed had earlier been mechanically measured to exceed 70 miles per hour when being pursued by law enforcement, all in direct contravention of Sections 5(d)(2) & (3) of General Order 600-20. (T. 210). Mr. Waller testified that it was reckless conduct for Officer Reuben Curry to have made up his mind early on to pursue the suspect without regard to the dangers posed by the high speed pursuit, and

failing to constantly reassess the pursuit to determine if it should be terminated in view of the fact that the officers observed the suspect driver run through three (3) red traffic signals during the pursuit, which extended for a little more than one mile in length. (T.212, lines 1-16).

Mr. Waller further testified that the officers failed to follow Section 5(g)(1)(a) which requires a pursuing police vehicle to insure that all traffic has yielded before proceeding though the intersection of Lynch Street and Ellis Avenue against the red traffic signal. (T. 217-218). The officers failed to insure that Mary Jenkins' vehicle had yielded. (T.217-218). The officers failed to follow Section 5(f)(2) of General Order 600-20, which requires that all emergency primary equipment should be utilized during a high speed pursuit. The officers entered the intersection of Lynch Street and Ellis Avenue without their patrol vehicle's sirens engaged according to Mary Jenkins and Sharon Spann. (T.24, T.56 and T.96-97).

In Dennis Waller's opinion, all of the foregoing conduct by Officers Reginald Liggins and Reuben Curry were reckless, and were the sole proximate cause of Plaintiff's Federal Express vehicle being struck at the intersection of Lynch Street and Ellis Avenue on October 21, 2003. (T.228, lines 25-28).

The Plaintiff Sharon Spann testified that immediately after the accident she felt a sharp pain in her left knee and pain in her back, neck and shoulders. She was treated at the Baptist Hospital and released. Ms. Spann was told to consult her family doctor if her symptoms worsen. Ms. Spann went to bed the evening of the accident, but woke up the next morning with severe pain in her back, neck, shoulders, left knee, headaches and dizziness. (T.30).

As result of the subject accident Sharon Spann suffered several injuries

including, (1) a torn medial meniscus in her left knee which will require surgical repair at a cost of $20,000.00 and which has rendered her 5% whole body disabled due to a loss of function in the left knee, (2) Ms. Spann suffered a lumbar disc bulge at L4-5 and L5-S1, with nerve root compression, with associated chronic pain, (3) chronic post traumatic headaches and dizziness, (4) disc bulges at C5-6 and C6-7, with chronic cervical pain and (5) depression. (See Deposition of Dr. Dinesh Goel at Appellee's R.E.). Additionally, Dr. Goel is of the opinion that Ms. Spann has current total temporary disability and been so since March 7, 2005 when he first examined her. (See Deposition of Dr. Dinesh Goel, p. 66, lines 4-6 at Appellee's R.E.). Ms. Spann's job duties at Federal Express required her to consistently climb in and out of her work truck to pick up packages ranging in weight from a few pounds to more than 50 pounds. (T.20). Ms. Spann attempted to return to work in January of 2004 but she was dismissed by Federal Express for having medical restrictions. (T.21, lines 9-19). Sharon Spann testified that she was making $13.92 per hour, working 40 hours per week. (T.34, line 9-10). Therefore, Ms. Spann's past loss wages equal $18,720.00. Loss wages are calculated as follows: There are 36 weeks between March 7, 2005 and the trial date of December 12, 2005. Thirty-Six (36) weeks, working 40 hours per week at $13.00 per hour equals $18,720.00.

Plaintiff's reasonable and necessary medical treatment and bills as result of the subject accident by agreement of the parties are as follows:

1.	AMR	10/21/03	$ 428.00
2.	Baptist Hospital	10/21/03	$ 85.00
3.	Baptist Hospital-ER Physician	10/21/03	$ 150.00
4.	Dr. Crenshaw-Reservoir Clinic	10/22/03-12/6/04	$ 2,240.08
5.	Baptist Hospital-PT	11/18/03-12/1/03	$ 775.00
6.	Baptist Medical Clinic Northtown	11/14 -12/02/03	$ 434.00
7.	Southern Physical-Dr. Williams	12/8/03;1/7/04;	$ 1,542.00

		1/20/04;2/3/04	
8.	Flowood Medical	2/17/04-6/1/04	$ 3,776.00
9.	McCandless Physical	3/18/04-5/21/04	$ 4,063.00
10.	Ridgeland Diagnostic (MRI)	3/11/05;4/21/05	$ 6,650.00
11.	Dr. George Wilkerson		$ 296.00
12.	Medical Clinic of MS-Dr. Goel	3/7/05-5/2/05	$ 3,882.53
13.	Strength Center	12/10/03-1/5/04	$ 2,554.00
14.	Veterans Administration	6/21/05-9/15/05	(no charges)
TOTAL			**$26,875.53**

Dr. Crenshaw first examined Plaintiff Sharon Spann on October 22, 2003 at the Reservoir Family Medical Clinic, one day after the subject collision. Dr. Crenshaw noted right posterior neck muscle and left anterior neck muscle strain and spasms , lumbrosacral strain and spasms and a tension headache. (See Deposition of Dr. Charles Crenshaw, p. 6, lines 23-24 at Appellee's R.E). Dr. Crenshaw treated Ms. Spasms from October 22, 2003 to May 25, 2005. He was able to consistently and objectively reproduce pain in Ms. Spann's affected body areas for that entire time and he noted muscle spasms for that entire time in Ms. Spann's back at L4-L5, which to a reasonable degree of medical certainty is an objective sign of actual injury to the affected body area. (See Deposition of Dr. Charles Crenshaw, p. 11-12 at Appellee's R.E.). Ms. Spann also experienced left side sciatic notch tenderness, radiation on the left lateral leg, which in Dr. Crenshaw's opinion, is indicative of an L4-5 nerve root compression. Dr. Crenshaw's opinion of nerve root compression was verified by an MRI taken March 3, 2004 which indicated L4-5, mild concentric disc bulge with mild facet hypertrophy, which to a reasonable degree of medical certainty, in Dr. Crenshaw's opinion, was caused by the subject accident of October 21, 2003. (See Deposition of Dr. Charles Crenshaw, p. 15-16 and 28-29 at Appellee's R.E.). By March 25, 2004, Dr. Crenshaw was still finding objective signs of physical injury to Ms. Spann's back and neck, which led him to prescribe the

drug Neurontin for what was now in Dr. Crenshaw's opinion, chronic pain in Ms. Spann's neck and lower back. (See Deposition of Dr. Charles Crenshaw, p. 23 at Appellee's R.E.).

Dr. Dinesh Goel is board certified in general surgery. Dr. Goel first examined Sharon Spann on March 7, 2005 and noted pain in her neck, lower back, left knee, headaches and dizziness, with associated muscle spasms in her neck. (See Deposition of Dr. Dinesh Goel, p.11 at Appellee's R.E.). Dr. Goel testified that it is normal for patients such as Sharon Spann to experience very little symptoms upon impact in a motor vehicle accident, but to have lots of symptoms of injury the next morning. (See Deposition of Dr. Dinesh Goel, p.11, lines 12-21 at Appellee's R.E.). Dr. Goel diagnosed Ms. Spann to "have posttraumatic headache, chronic neck and back pain and symptoms of depression." He prescribed her Amitriptyline. (See Deposition of Dr. Dinesh Goel, p.12, lines 12-24 at Appellee's R.E.).

In Dr. Goel's opinion, Ms. Spann's bulging cervical disc at C5-6 and C6-7 and her L4-5 mild concentric disc bulge, with mild facet hypertrophy, was to a reasonable degree of medical certainty, caused by the subject accident of October 21, 2003. (See Deposition of Dr. Dinesh Goel, p. 16-17 and p.18, lines 1-7 at Appellee's R.E.).

It is Dr. Goel's opinion that Ms. Spann's torn meniscus tear in her left knee has been very painful for the entire two year period she has had to endure the tear and the left knee meniscus tear needs to be surgically repaired at a cost of $20,000.00. (See Deposition of Dr. Dinesh Goel, p. 19-20 at Appellee's R.E.). Dr. Goel assigned Ms. Spann a 5 percent whole body disability base on a loss of function to her left knee as a result of the meniscus tear. (See Deposition of

Dr. Dinesh Goel, p.21, lines 1-8 at Appellee's R.E.).

SUMMARY OF THE ARGUMENT

It is important to note that the City of Jackson has conceded that the trial court was correct in finding that its patrol officers acted with reckless disregard for the safety of Sharon Spann during the high speed pursuit at issue. (See page 10, second paragraph of the City of Jackson's Appellate brief). Therefore, a finding of liability against the City of Jackson was appropriate by the trial court herein.

The City of Jackson police vehicle entered the intersection of Ellis Avenue and Lynch Street where the subject collisions occurred, against a red traffic light with no sirens or blue lights on. The police officers did so by maneuvering around several other vehicles on Ellis Avenue which had stopped in observance of the red light facing the City of Jackson police vehicle's direction of travel. The officers conduct violated The City of Jackson's own General Order 600-20 which states that emergency vehicles for the City of Jackson "shall not enter a signed or signaled intersection against the right of way at a speed greater than 15 miles per hour and will insure that all traffic has yielded before proceeding through an intersection. Mary Jenkins had the green light in her favor when she entered the intersection of Ellis Avenue and Lynch street and was struck by the City of Jackson police vehicle. By their own General Order, pursuing Officers Liggins and Currie should have yielded the right of way to Mary Jenkins because she had the green light and the officers had been ordered to cease the pursuit 440 yards from where the collision occurred.

Additionally, Plaintiff Sharon Spann's high speed pursuit expert, Dennis Waller, testified unopposed that the City of Jackson's police officers' conduct

was reckless and was the sole proximate cause of the subject accident.

Finally, under Mississippi Rule Evidence 408, the fact that Mary Jenkins settled the claims against her for $25,000.00, is not evidence of fault on her part. Settlements are reached based on a many factors in addition to fault and no inference of fault can be made by the fact that Mary Jenkins settled with the plaintiff Sharon Spann for $25,000.00 prior to the trial of this case.

Therefore, based on Mary Jenkins clearly having the right of way under General Order 600-20 and Plaintiff Sharon Spann's unopposed expert testimony that the City of Jackson's police officers actions were the sole proximate cause of the subject collision, the trial court's ruling that the City of Jackson was 100% at fault for the subject accident is supported by substantial and credible evidence and should be affirmed by this Court.

Finally, Ms. Spann's bulging cervical disc at C5-6 and C6-7 and her L4-5 mild concentric disc bulge, with mild facet hypertrophy, was to a reasonable degree of medical certainty, caused by the subject accident of October 21, 2003. According to Dr. Goel Ms. Spann's torn meniscus tear in her left knee has been very painful for the entire two year period she has had to endure the tear and the left knee meniscus tear needs to be surgically repaired at a cost of $20,000.00. Dr. Goel assigned Ms. Spann a 5 percent whole body disability base on a loss of function to her left knee as a result of the meniscus tear.

Based on the testimony of Sharon Spann's treating physicians, Dr. Goel and Crenshaw, the trial court relied on substantial evidence in reaching it damages assessment.

STANDARD OF REVIEW

"When a trial judge sits without a jury, the [Appellate Court] will not disturb

the trial courts' factual determinations where there is substantial evidence in the record to support those findings. The [Appellate] Court must accept that evidence which supports or reasonably tends to support the findings of fact made below, together with all reasonable inferences which may be drawn therefrom and which favor the lower court's findings of fact. *Jackson Public School District v. Tasha Smith*, 875 So.2d 1100, 1102 (Miss. Ct. App. 2004).

ARGUMENT

A.

Substantial and Credible Evidence Supports the Trial Court's Finding that the City of Jackson Acted with Reckless Disregard and Was 100% At Fault for the Subject Collision.

The Mississippi Tort Claims Act, § 11-46-9(1)(c), provides in pertinent part as follows:

> 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 the injury**....

Miss. Code Ann § 11-46-9(1)(c)(emphasis added).

"Reckless disregard is more than ordinary negligence, but less than an intentional act." *City of Jackson vs. Brister*, 838 So.2d 274, 280 (Miss. 2003). In considering whether a police chase constitutes reckless disregard, the trial court should consider: (1) length of the chase, (2) type of neighborhood; (3) characteristics of the streets, (4) the presence of vehicular or pedestrian traffic,

(5) weather conditions and visibility, and (6) the seriousness of the offense for which the police are pursuing the vehicle. *Id.* at 280.

The trial court's conclusion that The Jackson Police Department pursuing officers acted with reckless disregard for the safety and well being of the public is aptly demonstrated by the following testimony from pursuing officer Reuben Currie:

Q. You've already stated that come hell or high water you were going to get this guy correct?

A. Correct.

Q. And in fact as you pursued him up Ellis Avenue at 60 to 70 miles per hour, you never reassessed, hey, maybe this is dangerous; maybe we ought to pull back and stop. It never crossed your mind , did it?

A. It did, but we still was going to continue.

Q. No, you didn't say that, or, no, it didn't cross your mind to stop pursuing him?

A. No, I never thought about stopping....

Q. You didn't consider the safety of the public and officers, did you?

A. No.

Q. You definitely didn't consider the seriousness of the offense and the danger the suspect posed to the community. You definitely didn't consider that, did you?

A. No.

Q. And you didn't consider the speed of the vehicle. You didn't consider the speed that in your estimation he was going 60 to 70 miles per hour. You didn't take that into consideration, did you?

A. No.

(T.138-140 and T.144).

The trial court's conclusion that the City of Jackson Police Department was 100% responsible for the subject collisions and resulting damage is aptly demonstrated by the following testimony from pursuing officer Reginald Liggins:

Q. Now, you had no probable cause or actual knowledge that a felony had been committed, right?

A. Correct?

Q. So you should have never even initiated the pursuit at St. Charles and Ellis per this general order [600-20], correct?

A. Correct

(T.175, lines 1-7).

Q. And in fact the only time it seemed to drive away fast was when you were chasing it correct?

A. Well, when he noticed us, yes?

(T.173, lines 20-22).

Q. What danger other than fleeing and speeding through Ellis Avenue, what danger did that Altima pose to anybody in the community other than itself?

A. Really and truly the only danger that I kind of thought about is he probably could have wrecked and flipped the car onto another car or something like that, or going through the intersection and hitting another vehicle.

Q. But that danger was created because he was running from you correct?

A. Correct.

(T.179, lines 14-25)

Thus the very danger which the pursuing officer says he recognized, appreciated, but ultimately ignored, actually occurred, which gives rise to the foreseeability aspect of proximate cause. *Id.* The trial court's finding that the pursuing officers acted with reckless disregard for the safety of the public is also supported by the direct testimony of Sharon Spann's pursuit expert Dennis Waller when he testified that the pursuing officers "conduct was reckless and violated the specific policy." (T.216, lines 10-11).

In affirming a liability finding and award of damages against the City of Jackson in a similar case, the Mississippi Supreme Court stated that :

> [T]he fact here that the officers did not intend that a . . . accident would result as a direct consequence of their high speed chase in violation of Jackson Police Department existing written policy is of no concern. [Plaintiff] need only show that the officer's actions rose to the level of recklessness . . . . [I]t is sufficient that [Plaintiff] has shown, . . . that the officers initiated a high speed chase with "conscious indifference" knowing they had not complied with Order 600-20 which was the existing governing policy of the [Jackson] Police Department at the time.

City of Jackson vs. Brister, 838 So.2d 274, 280-81 (Miss. 2003). The conduct of the pursuing police officers in this case are more reckless than the conduct of the police officers in the *Brister* case. For example, the officers in this case admittedly already knew that the fleeing Nissan Altima's driver was not going stop for blue lights or sirens when they commenced to chase him for a second time at St. Charles Avenue and Ellis Avenue. (T.131-132). The officers herein personally observed the fleeing suspect run through three (3) red traffic lights before the collision at Lynch Street and Ellis Avenue, but chose to continue to chase the suspect at speeds of 60 to 70 miles per hour. (T.134, lines 16-23). Moreover, the high speed pursuit continued even though the officers: (1) had no

reason to believe that the fleeing suspect had committed a felony (T.111, T.126, and T.150); (2) the only known violations by the fleeing driver were minor traffic violations such as no license plate on a vehicle which looked very new (T.142 and T.147-148); (3) the pursuit continued for more than one mile down one of the heaviest traveled streets in Jackson, Ellis Avenue, (4) the pursuit went directly pass three public schools at the time the schools would have been recessing for the day and the "School Zone" sign was in the middle of Ellis Avenue in front of Hardy Middle School (T.162, T.157 and T.177, lines 17-19); (5) the pursuit area is heavily residential along Ellis Avenue (T.178, lines 12-29); (6) Officer Liggins never reassessed the dangers of the pursuit to the public as required by General Order 600-20 section (d)(3) (T.175, lines 16-26) and (7) several cars were stopped at the red traffic light at Ellis Avenue and Lynch Street, but the pursuing Jackson Police officers maneuvered their vehicle around other stopped vehicles into the intersection where the collision occurred after being told by their commanding officer to terminate the pursuit. (T.121, lines 1-12).

Based on the authority of *City of Jackson vs. Brister*, 838 So.2d 274 (Miss. 2003) and *Mississippi Department of Public Safety vs. Durn*, 861 So.2d 990 (Miss. 2003), the officers conduct in this case rose to the required level of "reckless disregard" for the public and were the sole proximate cause of the subject accident according to the unopposed testimony of Plaintiff's high speed pursuit expert Dennis Waller.

B.

Mary Jenkins Clearly Had the Right of Way to Enter the Intersection Pursuant to the Rules of the Road and Pursuant to the City of Jackson's Own High Speed Pursuit General Order 600-20

A close examination of the record and its brief will clearly show that the City of Jackson has not credibly established one single rule of the road, statute or law violated by Mary Jenkins which was the proximate cause of the subject collision. It is undisputed that Mary Jenkins entered the intersection of Ellis Avenue and Lynch Street pursuant to a green light facing her direction of travel. (T.26 and T.95). The pursuing Jackson Police Officer Reuben Currie admitted that he and Officer Reginald Liggins maneuvered around several stopped vehicles on Ellis Avenue which were stopped pursuant to the same red traffic light facing Officers Liggins and Currie. (T.121). Both Sharon Spann and Mary Jenkins testified that the Jackson Police Department police vehicle which was involved in the subject collision did not have its blue lights or sirens engaged immediately before the subject collision. (T.24, T.56 and T.96-97).

Therefore under the ordinary rule of the road (Miss. Code Ann. § 63-3-309(1)(a), Mary Jenkins had the right of way because: (1) the police patrol car which was involved in the subject collision had no sirens or blue lights engaged immediately prior the collision (T.24, T.56 and T.96-97) and (2) by the plain wording of General Order 600-20, no high speed pursuit should have occurred in this case because the pursing officers both admit that they had no knowledge or probable cause that a felony had been committed by the fleeing Nissan Altima's driver. (T.111 and T.150). Therefore, as Ms. Spann's pursuit expert Dennis Waller testified, "police cars have to obey the same general traffic laws that everybody else does." (T.212-213).

Also, when the pursuing officers entered the intersection of Ellis Avenue and Lynch Street where the collision occurred, Officer Reuben Currie testified

that the pursuing officers vision was obstructed from seeing vehicles traveling Mary Jenkins' direction because of stopped cars on Ellis Avenue. (T.130).

Additionally, the City of Jackson's Police Department's own General Order 600-20 states in part that:

> g. Emergency Operation of Police Vehicles
>
> 1. Officers operating a city owned vehicle equipped with emergency primary equipment and responding to an emergency or engaged in pursuit: . . .
>
> a) shall not enter a signed or signaled intersection against the right of way at a speed greater than 15 miles per hour and will **insure that all traffic has yielded before proceeding through an intersection.**

By the Jackson Police Department's own pursuit general order, the duty to ensure that an the intersection was safe and clear to enter into against the red light facing Officers Liggins and Currie, was upon the pursuing officers and not Ms. Jenkins who had the green light. (T.171). The pursuing officers could not have insured that the intersection was safe to precede into because their vision was blocked by vehicles. (T.130).

Proximate cause consists of: (1) cause in fact; and (2) foreseeability. *Morin v. Moore* 309 F.3d 316, 326 (5th Cir. 2002). "Cause in fact" means that the act or omission was a factor in bringing about the injury, and without it the harm would not have occurred. Clearly, "but for" the City of Jackson police vehicle entering the intersection against a red light with no siren or blue lights, the subject collision would not have occurred because all other vehicles traveling in the same direction as the police officers had stopped pursuant to the red traffic light and Mary Jenkins entered the intersection of Ellis Avenue and Lynch on a

green light and at a reasonable speed. (T.95 and T.121).

Furthermore, the subject pursuit should have not been initiated by the officers under the Jackson Police Department's own pursuit General Order and the Officer Currie's own admission that he violated the General Order 600-20. (T.135-136). General Order 600-20 states the following as to when a pursuit may be initiated:

> d. Initiating Pursuits:
>
> > 1. Pursuits may be initiated when **the officer knows that a felony has been committed and the officer has probable cause to believe that the individual committed the felony** and the suspect's escape is more dangerous to the community than the risks posed by the pursuit and the suspect clearly exhibits an intent to avoid arrest by using a vehicle to flee.

Both Officers Liggins and Currie admitted that they were not familiar General Order 600-20 and they both admitted that they had no probable cause to believe that the fleeing suspect had committed a felony. (T.111, T.126, T.133 and T.150). Therefore, the subject pursuit of the fleeing Nissan Altima through four (4) red traffic lights on one of the busiest thoroughfare in Jackson, Ellis Avenue, should never have been initiated under General Order 600-20, and thus but for violation of the General Order 600-20, the subject collision would not have occurred. (T.219, lines 1-13). Additionally as testified to by pursuit expert Dennis Waller, the fleeing suspect only drove recklessly when being pursued by the two Jackson Police Department officers. Mary Jenkins had the green light and would have gone through the intersection safely had it not been for the actions of the

officers who disobeyed General Order 600-20 and they disobeyed a direct order from the commanding officer to cease the pursuit before they got the Lynch Street, but instead the pursuing officers maneuvered around stopped cars at the red light on Ellis Avenue at Lynch Street and went on into the intersection. (T.121).

The City of Jackson is basically attempting to place fault on Ms. Jenkins through generic duties and conditions such as the duty to keep a proper lookout and "your eyes were tired at the time of the accident." These generic and non-specific conditions cannot support fault on Ms. Jenkins. In fact at to her duty to keep a proper lookout, Ms. Jenkins clearly met the duty as shown by the following trial testimony:

Q. And as you came into the intersection were you observing the traffic around you or were you focused on going straight ahead?

A. I observed the traffic around me while I was stopped at the red light.

Q. But as you continued approaching the intersection did you continue to observe the traffic or were you focused on going straight ahead?

A. I was observing and I was focusing on going straight ahead.

Q. You were doing both?

A. Right?

(T.101-102).

This testimony by Ms. Jenkins clearly satisfies her duty to keep a proper lookout. The fact that the accident occurred does not negate the undisputed testimony by Ms. Jenkins that she was observing the traffic around her. Additionally, at the high speeds traveled by both the fleeing Nissan Altima and the pursuing Jackson Police officers, it is reasonable that she did not see the

police car and did not have time to react to avoid the collision. In fact, Officer Reuben Currie himself did not see Ms. Jenkins' vehicle until the impact as well. (T.123). Officer Currie further testified that he did not take into consideration in his decision to initiate the high speed pursuit that the pursuit route had three Jackson Public Schools recessing for the school day at the time the pursuit was taking place, because he made up in his mind early on that come "hell or highwater", he was going to catch the fleeing driver. (T.126-127 and T.138-139).

Finally, as to fault for the subject collision, Sharon Spann's pursuit expert testified as follows:

Q. Did Ms. Jenkins bear any responsibilities for this accident in your opinion?

A. Absolutely none.

(T.228, lines 25-28).

The trial court was well within its right to accept this unopposed expert testimony and find the City of Jackson 100% at fault for the subject collision and injuries to Sharon Spann.

C.

Substantial Evidence Supports the Trial Court's Award of Damages

The Plaintiff Sharon Spann testified that immediately after the accident she felt a sharp pain in her left knee and pain in her back, neck and shoulders. She was treated at the Baptist Hospital and released. Ms. Spann was told to consult her family doctor if her symptoms worsen. (T.33). Ms. Spann went to bed the evening of the accident, but woke up the next morning with severe pain in her back, neck, shoulders, left knee, headaches and dizziness. (T.32-33).

As result of the subject accident Sharon Spann suffered several injuries

including: (1) a torn medial meniscus in her left knee which will require surgical repair at a cost of $20,000.00 and which has rendered her 5% whole body disabled due to a loss of function in the left knee, (T.32 and R.E.), (2) Ms. Spann suffered a lumbar disc bulge at L4-5 and L5-S1, with nerve root compression, with associated chronic pain, (3) chronic post traumatic headaches and dizziness, (T.33), (4) disc bulges at C5-6 and C6-7, with chronic cervical pain, (5) muscle spasms and numbness in her hands and feet (T.35) and (5) depression. Additionally, Dr. Goel is of the opinion that Ms. Spann has current total temporary disability and been so since March 7, 2005 when he first examined her. (See Deposition of Dr. Dinesh Goel, p.66, lines 4-6). Ms. Spann's job duties at Federal Express required her to consistently climb in and out of her work truck to pick up packages ranging in weight from a few pounds to more than 50 pounds. Ms. Spann attempted to return to work in January of 2004 but she was dismissed by Federal Express for having medical restrictions. (T.21 and T.38). Sharon Spann testified that she was making $13.92 per hour, working 40 hours per week. (T.34) Therefore, Ms. Spann's past loss wages equal $18,720.00. Loss wages are calculated as follows: There are 36 weeks between March 7, 2005 and the trial date of December 12, 2005. Thirty-Six (36) weeks, working 40 hours per week at $13.00 per hour equals $18,720.00.

Plaintiff's reasonable and necessary medical treatment and bills as result of the subject accident by agreement of the parties are as follows:

1.	AMR	10/21/03	$ 428.00
2.	Baptist Hospital	10/21/03	$ 85.00
3.	Baptist Hospital-ER Physician	10/21/03	$ 150.00
4.	Dr. Crenshaw-Reservoir Clinic	10/22/03-12/6/04	$ 2,240.08
5.	Baptist Hospital-PT	11/18/03-12/1/03	$ 775.00
6.	Baptist Medical Clinic Northtown	11/14 -12/02/03	$ 434.00
7.	Southern Physical-Dr. Williams	12/8/03;1/7/04;	$ 1,542.00

		1/20/04;2/3/04	
8.	Flowood Medical	2/17/04-6/1/04	$ 3,776.00
9.	McCandless Physical	3/18/04-5/21/04	$ 4,063.00
10.	Ridgeland Diagnostic (MRI)	3/11/05;4/21/05	$ 6,650.00
11.	Dr. George Wilkerson		$ 296.00
12.	Medical Clinic of MS-Dr. Goel	3/7/05-5/2/05	$ 3,882.53
13.	Strength Center	12/10/03-1/5/04	$ 2,554.00
14.	Veterans Administration	6/21/05-9/15/05	(no charges)
TOTAL			**$26,875.53**

Dr. Crenshaw first examined Plaintiff Sharon Spann on October 22, 2003 at the Reservoir Family Medical Clinic, one day after the subject collision. Dr. Crenshaw noted right posterior neck muscle and left anterior neck muscle strain and spasms , lumbrosacral strain and spasms and a tension headache. (See Deposition of Dr. Charles Crenshaw, p. 6, lines 23-24 at Appellee's R.E).[1] Dr. Crenshaw treated Ms. Spann from October 22, 2003 to May 25, 2005. He was able to consistently and objectively reproduce pain in Ms. Spann's affected body areas for that entire time and he noted muscle spasms for that entire time in Ms. Spann's back at L4-L5, which to a reasonable degree of medical certainty is an objective sign of actual injury to the affected body area. (See Deposition of Dr. Charles Crenshaw, p.11-12 at Appellee's R.E.). Ms. Spann also experienced left side sciatic notch tenderness, radiation on the left lateral leg, which in Dr. Crenshaw's opinion, is indicative of an L4-5 nerve root compression. Dr. Crenshaw's opinion of nerve root compression was verified by an MRI taken March 3, 2004 which indicated L4-5, mild concentric disc bulge with mild facet hypertrophy, which to a reasonable degree of medical certainty, in Dr.

[1] The trial court entered an order on January 11, 2008 supplementing the record with Dr. Dinesh Goel and Dr. Charles Crenshaw medical deposition. The record was officially supplemented with the depositions on or about April 21, 2008 by the Circuit of Hinds County, Mississippi. The deposition are also included with Appellee Sharon Spann's Record Excerpts.

Crenshaw's opinion, was caused by the subject accident of October 21, 2003. (See Deposition of Dr. Charles Crenshaw, p. 15-16 and 28-29 at Appellee's R.E). By March 25, 2004, Dr. Crenshaw was still finding objective signs of physical injury to Ms. Spann's back and neck, which led him to prescribe the drug Neurontin for what was now in Dr. Crenshaw's opinion, chronic pain in Ms. Spann's neck and lower back. (See Deposition of Dr. Charles Crenshaw, p.23 at Appellee's R.E.).

Dr. Dinesh Goel is board certified in general surgery. Dr. Goel first examined Sharon Spann on March 7, 2005 and noted pain in her neck, lower back, left knee, headaches and dizziness, with associated muscle spasms in her neck. (See Deposition of Dr. Dinesh Goel, p.11 at Appellee's R.E.). Dr. Goel testified that it is normal for patients such as Sharon Spann to experience very little symptoms upon impact in a motor vehicle accident, but to have lots of symptoms of injury the next morning. (See Deposition of Dr. Dinesh Goel, p.11, lines 12-21 at Appellee's R.E.). Dr. Goel diagnosed Ms. Spann to "have posttraumatic headache, chronic neck and back pain and symptoms of depression." He prescribed her Amitriptyline. (See Deposition of Dr. Dinesh Goel, p.12, lines 12-24 at Appellee's R.E.).

In Dr. Goel's opinion, Ms. Spann's bulging cervical disc at C5-6 and C6-7 and her L4-5 mild concentric disc bulge, with mild facet hypertrophy, was to a reasonable degree of medical certainty, caused by the subject accident of October 21, 2003. (See Deposition of Dr. Dinesh Goel, p. 16-17 and p.18, lines 1-7 at Appellee's R.E.).

It is Dr. Goel's opinion that Ms. Spann's torn meniscus tear in her left knee has been very painful for the entire two year period she has had to endure the

tear and the left knee meniscus tear needs to be surgically repaired at a cost of $20,000.00. (See Deposition of Dr. Dinesh Goel, p. 19-20 at Appellee's R.E.). Dr. Goel assigned Ms. Spann a 5 percent whole body disability base on a loss of function to her left knee as a result of the meniscus tear. (See Deposition of Dr. Dinesh Goel, p. 21, lines 1-8 at Appellee's R.E.).

Sharon Spann continued to have radiating sharp pain in her left leg down through the foot, as well as hand numbness, from the week of the accident in October of 2003 even up until the day of trial on December 12, 2005. (T.35). Ms. Spann's dizziness and headaches have been present from the day of the accident on October 21, 2003 even up until the day of trial on December 12, 2005. (T.35).

Sharon Spann also testifed vividly how the subject accident affected her mentally and emotionally. Ms. Spann testified that she suffered mental and emotional anguish from the loss of medical insurance from her being told not to return to her employer Federal Express. (T.46). Ms. Spann also testified that she and her husband's sexual relations had virtually ceased due to her pain from the subject collision. (T.46). Ms. Spann also testified how she no longer could play basketball, soccer, kickball and softball with her children due to pain from the collision. (T.46-47).

Defense expert, Dr. George Wilkerson's medical opinions should be given little or no credence based on the following reasons: (1) he interviewed Sharon Spann only on one short occasion for about a 30 minute time span, (2) he performed no medically recognized pain surveys or indexes, (3) he performed no diagnostic tests on Sharon Spann, and (4) he did not actually review any diagnostic film such as x-rays or MRIs. (T.78-79). (See Deposition of Dr. George

Wilkerson at City of Jackson's R.E.).

Defense expert Dr. James Williams' medical opinions should be given little or no credence based principally on the fact that he conducted nerve studies which bore no relationship to the type of symptoms Ms. Spann was suffering from according to Dr. Goel. (See Deposition of Dr. Dinesh Goel, p.53, lines 1-12 at Appellee's R.E.). Dr. Williams then used the results of the irrelevant test to opine that Ms. Spann did not suffer any nerve compression and very little other injury, even though he was unaware that Ms. Spann had suffered a torn left knee meniscus in the collision which will require surgical repair. (See Deposition of Dr. James Williams, p.39, lines 1-9 at Appellee's R.E.). Additionally, Dr. James Williams was hired by Ms. Spann's worker's compensation carrier to examine her regarding a disputed worker's compensation claim. Dr. Williams' independence is at best questionable.

CONCLUSION

For the foregoing reasons, this Court should affirm the Trial Court's judgments and rulings.

Respectfully submitted, this the 21st day of April, 2008.

SHARON SPANN - APPELLEE

By: _____
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CERTIFICATE OF SERVICE

I, Joe N. Tatum, do hereby certify that I have this date served via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing to:

Pieter Teeuwissen, Esquire
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Honorable Winston Kidd
Hinds County Circuit Court
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Jackson, Mississippi 39205

This the 21st day of April, 2008.

JOE N. TATUM