

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

---

**NO.2008-TS-01089**

---

**RUTH BEASLEY LATTING  
PREMIER TRANSPORTATION SERVICES, INC.**

**APPELLEE**

**VS.**

**2008-TS-01089**

**BOYD TUNICA, INC.**

**APPELLANT**

**BRIEF OF APPELLEE**

**APPEALED FROM THE CIRCUIT COURT OF TUNICA COUNTY, MISSISSIPPI  
CAUSE NO. CV-2005-0264**

Daniel M. Czamanske, Jr.  
CHAPMAN, LEWIS & SWAN  
Post Office Box 428  
Clarksdale, MS 38614  
662/627-4105

Attorneys for Plaintiff/Appellee

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO.2008-TS-01089

RUTH BEASLEY LATTING  
PREMIER TRANSPORTATION SERVICES, INC.

APPELLEE

VS.

2008-TS-01089

BOYD TUNICA, INC.

APPELLANT

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 this Court may evaluate potential disqualifications or refusal.

1. Ruth Beasley Latting, Plaintiff/Appellee;
2. Premier Transportation Services, Inc., Defendant/Appellee;
3. Boyd Tunica, Inc., d/b/a Sam's Town Hotel and Gambling Hall, Defendant/Appellant;
4. Richard C. Williams, Jr., Trial Counsel for Defendant/Appellant Boyd Tunica, Inc.;
5. Lonnie D. Bailey, Trial Counsel for Defendant/Appellant Boyd Tunica, Inc.;
6. Otha E. Williams, Trial Counsel for Defendant/Appellant Boyd Tunica, Inc.;
7. Upshaw, Williams, Biggers, Beckham & Riddick, LLP, Trial Counsel for Defendant/Appellant Boyd Tunica Inc.;
8. Robert A. Miller, Counsel for Defendant/Appellant Boyd Tunica, Inc.;
9. Kyle v. Miller, Counsel for Defendant/Appellant Boyd Tunica, Inc.;
10. Butler, Snow, O'Mara, Stevens & Cannada, Counsel;
11. Richard B. Lewis, Jr, Counsel for Plaintiff/Appellee Ruth Beasley Latting;
12. Daniel M. Czamanske, Jr., Counsel for Plaintiff/Appellee Ruth Beasley Latting;
13. Dana J. Swan, Counsel for Plaintiff/Appellee Ruth Beasley Latting;
14. John D. Richardson, Counsel for Defendant/Appellee Premier Transportation Services, Inc.;
15. Teresa Boyd, Counsel for Defendant/Appellee Premier Transportation Services, Inc.; and
16. The Richardson Law Firm, Counsel for Defendant/Appellee Premier Transportation Services, Inc.

  
Daniel M. Czamanske, Jr.

## TABLE OF CONTENTS

	<u>Page</u>
CERTIFICATE OF INTERESTED PERSONS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	1
STATEMENT OF THE ARGUMENT	1
LAW AND ARGUMENT	1
I.    THE CIRCUIT COURT WAS CORRECT IN INSTRUCTING THE JURY THAT IT COULD NOT CONSIDER THE NON-USE OF SEATBELT OF APPELLEE BEASLEY	1
II.   THE CIRCUIT COURT WAS CORRECT IN INSTRUCTING THE JURY THAT PREMIER OWED A DUTY TO USE ORDINARY AND REASONABLE CARE FOR THE SAFETY OF BEASLEY	3
III.  THE TRIAL COURT WAS CORRECT IN DENYING THE MOTION FOR NEW TRIAL FILED BY APPELLANT BOYD	4
IV.   CONCLUSION	5
V.    CERTIFICATE OF SERVICE	5

## TABLE OF AUTHORITIES

Description:	<u>Page</u>
MISS CODE ANN § 63-2-3 .....	1,2
<i>Jones v. Panola County</i> , 725 So.2d 774 (Miss. 1998) .....	1,2, 4
<i>Erwin Mills v. Williams</i> , 118 So.2d 339, 341 (Miss. 1960) .....	1, 3
<i>Teche Lines, Inc. V. Pittman</i> , 4 So.2d 293, 294 (Miss. 1941) .....	3
<i>Ohio Oil Company v. Fowler</i> , 100 So.2d 128, 130 (Miss. 1958) .....	3
MISS CODE ANN § 77-7-7 (f) .....	4
<i>The Home Insurance Company v. Riddell</i> , 252 F.2d 1, 5 (5 <sup>th</sup> Cir. 1958) .....	4
<i>Anderson v. R.H. Acquisition, Inc.</i> , 771 So.2d914, 920 (Miss. 2000) .....	4
<i>Entergy Mississippi, Inc. V. Hayes</i> , 874 So.2d 952, 956 (Miss. 2004) .....	5
<i>Read v. Southern Pine Electric Power Association</i> , 515 So.2d 916, 919 (Miss. 1987) .....	5
<i>Tentoni v. Slayden</i> , 968 So.2d 431, 441(27) (Miss.2007) .....	5

# **IN THE SUPREME COURT OF MISSISSIPPI**

## **BRIEF OF APPELLANT**

### **STATEMENT OF THE CASE**

The Plaintiff/Appellee Beasley joins in the Statement of the Case of Appellee Premier Transportation Services, Inc., ("Premier") and adopts herein, the Statement of the Case presented in the Brief of Appellee Premier.

### **STATEMENT OF THE FACTS**

The Plaintiff/Appellee joins in the Statement of the Case of Appellee Premier Transportation Services, Inc., ("Premier") and adopts herein, the Statement of the Facts presented in the Brief of Appellee Premier.

### **SUMMARY OF THE ARGUMENT**

The Circuit Court was correct in instructing the jury that it could not consider the non-use of seatbelts by the Appellee Beasley as evidence of negligence on the part of Beasley or Premier. Both the Mississippi Legislature and this Honorable Court have determined that the lack of seatbelt use is inadmissible to prove negligence. MISS CODE ANN § 63-2-3. *Jones v. Panola County*, 725 So.2d 774 (Miss. 1998).

The Circuit Court was correct in instructing the jury that Premier did not owe the highest degree of care that a common carrier owes, but rather owed a reasonable standard of care of a contract carrier. Because Premier only served the passengers between ten casinos pursuant to a contract entered into between Premier and the casinos, Premier was operating as a contract carrier. *Erwin Mills v. Williams*, 118 So.2d 339, 341 (Miss. 1960).

The trial court was correct in denying the motion for a new trial of Appellant Boyd.

### **LAW AND ARGUMENT**

#### **I.**

**THE CIRCUIT COURT WAS CORRECT IN INSTRUCTING THE JURY THAT IT COULD NOT CONSIDER THE NON-USE OF SEATBELT OF APPELLEE BEASLEY**

The Appellee Beasley joins in and adopts Paragraph I of Appellee Premier, pages 10 to 16 of Brief of Premier. In addition, Beasley would further point out that both the Mississippi Legislature and this Court have determined that the lack of use of seatbelts is inadmissible to prove negligence. See MISS CODE ANN § 63-2-3 and *Jones v. Panola County*, 725 So.2d 774 (Miss. 1998). MISS CODE ANN § 63-2-3 provides as follows:

This chapter shall not be construed to create a duty, standard of care, right or liability between the operator and passenger of any passenger motor vehicle which is not recognized under the laws of the State of Mississippi as such laws exist on the date of passage of this chapter or as such laws may at any time thereafter be constituted by statute or court decision. Failure to provide and use a seat belt restraint device or system shall not be considered contributory or comparative negligence, nor shall the violation be entered on the driving record of any individual.

The statute makes it clear that neither the failure to use seatbelts nor providing seatbelts is admissible. The case of *Jones v. Panola County* makes it clear that this Court agrees. There is no merit to the suggestion of Appellant Boyd that MISS CODE ANN § 63-2-3 is not applicable to the case *sub judice* because the subject shuttle bus had a capacity of twenty-five passengers. According to their argument, the statute would only if the shuttle bus held fewer than sixteen passengers but would not apply if it held more than sixteen passengers. The fallacy of this argument is made clear by the fact that seatbelt use is required for vehicles who hold **fifteen passengers or less**, but are **not** required for vehicles holding **more** than fifteen passengers. If Appellant Boyd's logic is applied, then seatbelt use is **not** admissible where **required**, but admissible where **not** required! This argument is obviously specious and is certainly inconsistent with the determinations of both the Legislature and of this Court.

Likewise, since the issue of seatbelt use is not admissible, then the Internal Regulations of Premier discussing seatbelt use would be unduly prejudicial and was properly excluded. The regulation was also incorrect in its pronouncement that seatbelt use "Is the Law," as there is no law that a shuttle bus with a passenger capacity of twenty-five require the mandatory use of seatbelts.

Further, there is no liability on the part of the Premier driver when an injury to a passenger occurs as a result of a driver suddenly applying his brakes to avoid an emergency. A carrier is not liable for injuries to a passenger resulting from the application of the emergency brakes in order to avoid or prevent an imminent danger not otherwise avoidable, and reasonably believed to be attended with more serious consequences than the sudden application of the brakes. *Teche Lines, Inc. V. Pittman*, 4 So.2d 293, 294 (Miss. 1941). This is true even if the passenger is walking in the aisle. *Id.* at 295. The duty is owed for the safety of all passengers, and not just one. *Id.* Because the driver of the Premier shuttle bus was forced to apply his brakes to avoid the vehicle operated by the Boyd driver, the Boyd driver was 100% at fault in causing the injury to Beasley. The jury was correct in so finding.

## II.

### **THE CIRCUIT COURT WAS CORRECT IN INSTRUCTING THE JURY THAT PREMIER OWED A DUTY TO USE ORDINARY AND REASONABLE CARE FOR THE SAFETY OF BEASLEY**

The Appellee Beasley joins in and adopts Paragraph II of Appellee Premier, pages 16 to 20 of Brief of Premier. In addition, Beasley would point out that the argument of Appellant Boyd that Premier owed the highest standard of care to Beasley is misplaced.

The crux of Appellant Boyd's argument is that Premier was a common carrier, and as such, owed the highest duty of care. However, this argument fails because Premier was not a common carrier, but rather was a contract carrier. The distinctive characteristic of a common carrier is that it undertakes to hire for the general public. *Ohio Oil Company v. Fowler*, 100 So.2d 128, 130 (Miss. 1958).

In contrast, Premier operated a shuttle bus only between ten casinos pursuant to a contract entered into between the casinos and Premier with an effective date of March 26, 2002. (R. 437-440) The shuttle buses did not offer service to the general public. Instead, the agreement provided: **"The buses will be used exclusively for the casino. They will not go to the outlet mall."** (R. 441). This made Premier a contract carrier. A private carrier is one who undertakes

by special agreement in a particular instance to transport property without being bound to serve every person who may apply. *Erwin Mills v. Williams*, 118 So.2d 339, 341 (Miss. 1960). To constitute a common carrier, he must hold himself out as engaged in public service for all persons indifferently. *Id.* A private carrier incurs the responsibility of the exercise of ordinary diligence. *Id.* at 340. The fundamental distinction between a common carrier and a private carrier is that a private carrier enters into a contract with each of his customers and assumes no obligation to carry for any others. *Id.* at 341.

An examination of the MISSISSIPPI CODE also makes it clear that Premier is a contract carrier. According to MISS CODE ANN. § 77-7-7 (e), [t]he term “common carrier by motor vehicle” means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or household goods. In contrast, MISS CODE ANN. § 77-7-7 (f) provides, [t]he term “contract carrier by motor vehicle” means any person, not included under subsection (e) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or other arrangement, transports passengers or household goods. Therefore by statute, Premier as a contract carrier owed Beasley a duty to use ordinary and reasonable care. One who is a contract carrier in fact is not a common carrier under Mississippi Law. *The Home Insurance Company v. Riddell*, 252 F.2d 1, 5 (5<sup>th</sup> Cir. 1958). One who does not hold himself out as serving the public indiscriminately is not a common carrier. *Id.* at 4.

Contrary to Appellant Boyd’s argument, in the case of *Anderson v. R.H. Acquisition, Inc.*, 771 So.2d 914, 920 (Miss. 2000), the Supreme Court did not reach the issue of whether or not a hotel shuttle bus was a “common carrier” since this Court held that a passenger-carrier relationship did not exist. Any discussion of the shuttle bus’ duty was dicta, since no duty to the plaintiff existed on the part of the shuttle bus in *Anderson*. Further, assuming arguendo that Premier owed the highest duty of care, that duty of care was discharged by using reasonable care to remove the danger, in this case, the danger of colliding with the vehicle being operated by the Boyd driver. Even though a company owes the highest duty of care, “when a cause of danger is reasonably foreseeable . . . the

company must exercise reasonable care to correct or remove the cause of danger. *Entergy Mississippi, Inc. V. Hayes*, 874 So.2d 952, 956 (Miss. 2004); *Read v. Southern Pine Electric Power Association*, 515 So.2d 916, 919 (Miss. 1987).

### III.

#### **THE TRIAL COURT WAS CORRECT IN DENYING THE MOTION FOR NEW TRIAL FILED BY APPELLANT BOYD**

The Appellee Beasley joins in and adopts Paragraph III of Appellee Premier, page 21 of Brief of Premier. When the applicable standard is applied to the denial of a motion for a new trial, the circuit court was correct in its ruling and this Honorable Court should not disturb his ruling. The standard of review when a trial judge denies a motion for a new trial is abuse of discretion. *Tentoni v. Slayden*, 968 So.2d 431, 441(27) (Miss.2007). There is no merit to the suggestion that the trial court abused its discretion in its rulings.

It should be noted that there is no suggestion by any Defendant that Beasley was guilty of any negligence. Nor has any Defendant appealed the amount of the verdict for Beasley's injuries. Should this Court reverse for a new trial, such new trial should be limited to apportioning damages between Boyd and Premier.

### **CONCLUSION**

In conclusion, the trial court committed no error complained of and this Honorable Court should affirm. The cause was properly submitted to the jury and the jury was properly instructed.

THIS, the 8<sup>th</sup> day of May, 2009.

Respectfully submitted,

CHAPMAN, LEWIS & SWAN  
Attorneys for Claimant  
Post Office Box 428  
Clarksdale, Mississippi 38614  
(662) 627-4105

By: \_\_\_\_\_

  
Daniel M. Czamanske, Jr.  


**CERTIFICATE OF SERVICE**

I, Daniel M. Czamanske, Jr., do hereby certify that I have this day faxed a true and correct copy of the foregoing Appellant's Brief to:

Honorable Albert B. Smith, III  
Circuit Court Judge  
Tunica County, Mississippi  
P.O. Drawer 478  
Cleveland, Mississippi 38802-1100

Robert A. Miller, Esq.  
Kyle V. Miller, Esq.  
P.O. Box 22567  
Jackson, Mississippi 39225-2567

John D. Richardson, Esq.  
Teresa Boyd, Esq.  
Peabody Place - Pembroke Square  
119 South Main Street, Suite 725  
Memphis, Tennessee 38103

This the 8<sup>th</sup> day of May, 2009.

  
\_\_\_\_\_  
Daniel M. Czamanske, Jr.