IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2010-CA-02103

ZACHARY CLEIN, a minor, individually
and by and through Debra Clein,
Natural Mother and Next Friend — APPELLANT

V.

RANKIN COUNTY SCHOOL DISTRICT — APPELLEE

APPEAL FROM THE
CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI
CASE NO. 2009-293-C

ORAL ARGUMENT NOT REQUESTED

BRIEF OF APPELLEE RANKIN COUNTY SCHOOL DISTRICT

BENJAMIN E. GRIFFITH
MICHAEL S. CARR
GRIFFITH & GRIFFITH
123 SOUTH COURT STREET
P. O. DRAWER 1680
CLEVELAND, MISSISSIPPI 38732
PHONE: (662) 843-6100
FACSIMILE: (662) 843-8153
ATTORNEYS FOR APPELLEE

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2010-CA-02103

ZACHARY CLEIN, a minor, individually and by and through Debra Clein, Natural Mother and Next Friend — **APPELLANT**

V.

RANKIN COUNTY SCHOOL DISTRICT — **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

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

1. Reeves Jones, Esq. Attorney for Appellant
   Reeves Jones, P.A.
   P. O. Box 742
   Jackson, MS 39205

2. Debra Clein, mother of Zachary Clein–Appellant
   Zachary Clein, a minor

3. Rankin County School District–Appellee
   Brandon, Mississippi

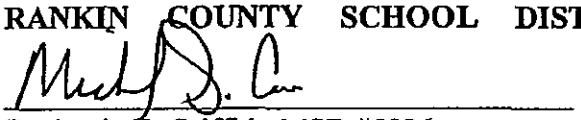
4. Benjamin E. Griffith, Esq., Attorney for Appellee
   Griffith & Griffith
   P. O. Drawer 1680
   Cleveland, MS 38732-1680

5. Fred M. Harrell, Jr., Esq.–Attorney for RCSD

Harrell & Rester
306 E. Government Street
Brandon, MS 39042

Respectfully submitted,

RANKIN COUNTY SCHOOL DISTRICT



Benjamin E. Griffith, MSB #5026
Michael S. Carr, MSB #102138
Attorneys for Appellee
P. O. Drawer 1680
Cleveland, MS 38732
662-843-6100

STATEMENT REGARDING ORAL ARGUMENT

This is an appeal wherein established legal precedent and a well developed record supports the ruling below. Oral argument is not necessary.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2010-CA-02103

ZACHARY CLEIN, a minor, individually and by and through Debra Clein, Natural Mother and Next Friend — **APPELLANT**

V.

RANKIN COUNTY SCHOOL DISTRICT — **APPELLEE**

BRIEF OF APPELLEE

I. COUNTER STATEMENT OF ISSUES ON APPEAL

I. The trial court did not err in ruling that Rankin County School District was entitled to Summary Judgment as a matter of law in accordance with Rule 56, Mississippi Rules of Civil Procedure.

II. The trial court did not err in ruling that Rankin County School District was entitled to discretionary function immunity from liability under Miss. Code Ann. §11-46-9(1)(d).

III. The trial court did not err in ruling that Rankin County School District was immune from any premises liability claims pursuant to Miss. Code Ann. §11-46-9(1)(v).

II. STATEMENT OF THE CASE

This is a case where the Circuit Court of Rankin County applied established law to facts which were admitted under oath by the Appellant. The grant of summary judgment and final judgment should be affirmed on appeal as explained below:

A. Procedural History:

On November 12, 2009, Appellant Debra Clein acting as mother and "next friend" of Zachary Clein (Clien), a minor, filed her Complaint in Rankin County Circuit Court against Appellee Rankin County School District (RCSD) for injuries Clien sustained at Brandon Middle School on November 20, 2008 (R-7). This suit was brought under Mississippi's Tort Claims Act, Miss. Code Ann. §11-46-1 (Supp. 2007) *et seq.*, since RCSD was a governmental entity as defined by Miss. Code Ann. §11-46-1(g) of the Act. (R-7)

On December 9, 2009, RCSD filed its Answer and Affirmative Defenses, including all defenses available under Miss. Code Ann. §11-46-1 (Supp. 2007) *et seq.* (R-18)

The parties participated in pre-trial discovery, which included written discovery and oral depositions (R-5), and on July 2, 2010, RCSD filed its Motion for Summary Judgment. (R-24) On July 22, 2010, Clein filed his Response to Motion for Summary Judgment. (R-32) On September 23, 2010, RCSD filed its Rebuttal in Support of Motion for Summary Judgment. (R-100) The parties also served upon the trial judge their respective supporting briefs. (R-113-140).

RCSD's Motion for Summary Judgment was heard before the Hon. William Chapman, Circuit Court Judge, on December 6, 2010[1]. At the hearing, the Court asked the attorneys to approach the bench; the Court then informed the attorneys that it had read their memorandum briefs and exhibits and needed no further oral argument. (R-113) The Court then ruled from the bench that RCSD was immune from liability under the discretionary functions exclusion of the Mississippi Tort Claims Act. The Court also found no premises liability on the part of RCSD. (R-111-112).

---

[1]Plaintiff's statement of evidence erroneously gives the hearing date as October 6, 2010; the hearing actually took place *December* 6, 2010. (R-113)

On December 10, 2010, the Court entered its written Order Granting Motion for Summary Judgment. (R-3, R-111).

On December 21, 2010, Clein filed his Notice of Appeal to the Supreme Court of Mississippi. (R-3, R-143).

B. Statement of the Facts:

The facts are presented in a light favorable to Appellant.

The Rankin County School District operates a middle school in Brandon, Mississippi. The School District is governed by the Rankin County Board of Education who is the Board of Trustees. The Board of Trustees of the Rankin County School District adopted an official policy, embodied in a school handbook that governed physical education class instruction. On November 20, 2008, Zachary Clein was an 8th grade student at Brandon Middle School. Coach Marney Walker was in charge of the physical education class, which engaged in outdoor exercises, including running up and walking down the bleachers facing the football field.

As Clien was going down the bleachers, he fell and injured himself (R 41-42). He had his hands in his pockets at the time (R-41). Clien remembers it happened very fast. (R 46). He slipped on the stairs. There was nothing else that tripped him. (R 49). In one portion of his deposition, Clien states he was walking down the stairs at the time he fell (R 72). In another portion of his deposition, he states he was running down the stairs (R 42). Either way, he lost his balance, became airborne, and fell.(R 49, 72). He had run these bleachers before. (R 70). Eighth grade student and classmate Matthew Parris, stated that Clein "stumbled at the last step and hit the pole." (R 28) Another classmate, Tyler Krecht, stated, "We were all running stadium steps and Clein tried to jump over two stairs at once and he slipped and hit his face/teeth on the fence and all you saw was white squares

coming out of his mouth...and he was bleeding." (R 28). Clein's theory of liability is that the bleachers and/or conditions under which Zachary Clein participated in this outdoor physical education exercise were dangerous, Coach Walker did not adequately supervise the exercise, and Coach Walker violated school policy and was not properly trained. The undisputed material facts, however, reveal this physical exercise was not dangerous, so long as students followed Coach Walker's instructions to run to the top of the bleachers, stop, and then walk down. (R 28). The accident was promptly investigated, and the actions of Coach Marney Walker were found to be proper and consistent with school policy. Neither Coach Walker nor Coach Patterson were found at fault for what they did. They were performing their assigned duties as teachers at Brandon Middle School. (R 28).

III. SUMMARY OF THE ARGUMENT

After the parties conducted pre-trial discovery, Rankin County School District filed a Motion for Summary Judgment arguing it had no liability due to the immunity provisions of the Mississippi Tort Claims Act, specifically Miss. Code Ann. §11-46-9(1)(d) and (v). The trial court granted RCSD's Motion for Summary Judgment. On December 10, 2011, the trial court subsequently entered an Order finding as a matter of law (1) RCSD was at all material times a governmental entity subject to the Mississippi Tort Claims Act, (2) the employees of RCSD were at all material times acting within the course and scope of their employment, (3) RCSD is entitled to immunity liability since the actions of RCSD and its employees were at all material times discretionary functions subject to the immunity provisions of the Miss. Code Ann. §11-46-9(1)(d), and (4) RCSD is immune from any premises liability claims pursuant to Miss. Code Ann. §11-46-9(1)(v).

IV. ARGUMENT

A. The trial court did not err in ruling that Rankin County School District was entitled to Summary Judgment as a matter of law in accordance with Rule 56, Mississippi Rules of Civil Procedure.

"This Court's well-established standard of review for a trial court's grant or denial of summary judgment is de novo." Covington County Sch. Dist. v. Magee, 29 So.3d 1, 3–4 (Miss.2010) (citations omitted). According to this Court:

> [s]ummary judgment is appropriate where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Miss. R. Civ. P. 56(c). "The moving party has the burden of demonstrating that no genuine issue of material fact(s) exists, and the non-moving party must be given the benefit of the doubt concerning the existence of a material fact." Waggoner v. Williamson, 8 So.3d 147, 152–53 (Miss.2009).

However, "[t]he party opposing the motion must be diligent and may not rest upon allegations or denials in the pleadings but must set forth specific facts showing there are indeed genuine issues for trial." Williams v. Bennett, 921 So.2d 1269, 1272 (Miss.2006) (citations omitted).

There is no genuine issue for trial in this case in that the Mississippi Legislature, while creating only a limited waiver of immunity under the Mississippi Tort Claims Act[2], provides immunity for discretionary functions of government.

The existence of a legal duty is an issue of law.[3] Both the immunity provided for discretionary functions and the immunity for dangerous conditions on governmental property apply

---

[2]*Miss. Code Ann.* §11-46-1, *et seq.*, (1993), as amended.

[3]Foster v. Bass, 575 So.2d 967, 972-73 (Miss. 1990).

to the facts of this case. The MTCA provides a limited waiver of immunity for claims for monetary damages that arise out of the torts of government entities and employees while acting within the course and scope of their employment to the extent set forth in the MTCA.[4] This waiver of immunity is subject to exemptions, two of which are at issue in this case. *Miss. Code Ann.* §11-46-9 (Rev. 2002), provides in part:

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

> (d) Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused; or,
>
> (v) Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care.

The trial court applied the immunity provisions of both sections of the Mississippi Tort Claims Act, and properly found no liability on the part of RCSD.

B. The trial court did not err in ruling that Rankin County School District was entitled to discretionary function immunity from liability under Miss. Code Ann. §11-46-9(1)(d).

RCSD is a political subdivision of the State of Mississippi and is subject to the Mississippi Tort Claims Act, *Miss. Code Ann.* §11-46-1 through §11-46-23 (Rev.2002). Under the MTCA, the State and its political subdivisions are "immune from suit at law or in equity on account of any wrongful or tortious act or omission or breach of implied term or condition of any warranty or

---

[4] *Miss. Code Ann.* § 11-46-3(1), §11-46-5(1) (Rev. 2002).

contract ..." except as waived by statute. *Miss. Code Ann.* §§ 11-46-3 to 11-46-5. The MTCA also preserves sovereign immunity in specific circumstances. The relevant portion of the statute states as follows:

> "(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim: ... (d) [b]ased upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused;...." Miss. Code Ann. § 11-46-9(1)(d).

To determine whether an act or a failure to act is a discretionary function, the Mississippi Supreme Court uses a two-part test: "(1) whether the activity involved an element of choice or judgment, and if so; (2) whether the choice or judgement in supervision involves social, economic or political policy alternatives." Jones v. Miss. Dep't of Transp., 744 So.2d 256, 260 (¶¶ 9-10) (Miss.1999). "Conversely, conduct will be considered ministerial, and, therefore, immunity will not apply, if the obligation is imposed by law leaving no room for judgment." Doe v. State ex rel. Miss. Dep't of Corr., 859 So.2d 350, 356(¶ 23)(Miss.2003) (citing Leflore County v. Givens, 754 So.2d 1223, 1226(¶ 6) (Miss.2000)).

1. Under the first prong of the public function test, the RCSD's decision as to how to run its physical education program involved an element of judgment as provided by Mississippi Code §37-7-301.

Miss. Code Ann. §37-7-301 (General powers and duties), provides in part that:

> The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to wit:
>
> (q) To provide athletic programs and other school activities and to regulate the establishment and operation of such programs and activities;

In this case, §37-7-301 clearly allows RCSD to operate its physical education programs according to its discretion, which alone would satisfy the first prong. It does not impose any specific directives "as to the time, manner, and conditions for carrying out" the School District's duty in operating P.E. class; thus, the above duties are not ministerial in nature. Knight v Miss. Trans Comm'n, 10 So.3d 962, 970 (2009).

The Mississippi Supreme Court previously has acknowledged that having a statute, such as §37-7-301, actually bolsters the discretionary distinction.[5] Moreover, the law is clearly settled that there is no "ordinary care" requirement Miss. Code Ann. §11-46-9(1)(d). Liability in this case turns on whether Coach Walker's actions were discretionary functions or whether they constituted a ministerial violation. As the trial court found in the case at hand, no ministerial duty was violated by Coach Walker making this civil action subject to discretionary immunity.

2. Under the second prong of the public function test, RCSD's exercise of its judgment through its employee, Coach Marney Walker, as to how to conduct its physical education class, provided by Mississippi Code §37-7-301, involved social, economic, and political policy objectives.

(a) Political Policy Objectives

RCSD's decision incorporates political policy, because the Legislature clearly has provided that School Districts can, in their discretion, decide to how to "regulate the establishment and operation" athletic programs. See *Miss. Code Ann.* §37-7-301 (Rev.2010). The Legislature is the best interpreter of public policy. See City of Starkville v. 4-County Elec. Power Ass'n, 909 So.2d 1094, 1106 (Miss.2005). Obviously, the Legislature believed that school districts are better suited

---

[5]See State for Use and Benefit of Brazeale v. Lewis, 498 So.2d 321 (Miss.1986); see also Coplin v. Francis, 631 So.2d 752, 754 (Miss.1994).

to make decisions with regard to its programs aimed at improving the health and welfare of its students. Therefore, regulating the establishment and operation of athletic programs and other school activities, including physical education class, is an exercise of political policy. Fortenberry v. City of Jackson, --- So.3d ----, 2011 WL 448354 at ¶17 (Miss. 2011) (see Coplin v. Francis, 631 So.2d 752, 754-55 (Miss.1994)).

(b) Social Policy Objectives

Regulating the establishment and operation of athletic programs and other school activities affects social policy, because RCSD wants to encourage the health and well being of its students. This is every school district's objective in having physical education classes and athletic programs. Exercise improves the quality of student life both inside and outside the classroom as well as benefits the community as a whole. Thus, it is clear that RCSD put forth an effort to promote human welfare (social policy) by providing physical education classes and by regulating the establishment and operation of such programs and activities. Fortenberry v. City of Jackson, --- So.3d ----, 2011 WL 448354 at ¶18 (Miss. 2011)(see Coplin v. Francis, 631 So.2d 752, 755 (Miss.1994)).

(c) Economic Policy Objectives

RCSD's decision to allow students to wear their own clothing while participating in physical education relates to economic policy in that school districts are regularly faced with the tough decisions as to how to allocate limited taxpayer funds. School Districts regularly are faced with tough economic decisions as to maintenance and repair of buildings, fields, equipment for sporting events and athletic competition, and all other aspects of regulating the establishment and operation of physical education programs and activities. Fortenberry v. City of Jackson, --- So.3d ----, 2011 WL 448354 at ¶18 (Miss. 2011) (see Coplin v. Francis, 631 So.2d 752, 754-55 (Miss.1994)). The

School District's decision is discretionary because second requirement of the public-policy function test is also established.

In Harris v. McCray, 867 So. 2d 188, 189, 193-96 (Miss. 2003), the school was found immune from liability where a football player tragically succumbed to heatstroke during practice. The Court differentiated Sections 11-46-9(1)(b) and (d), holding that ordinary care was not required in the latter, only the former, and the coach's actions and duties in coaching his football team were a discretionary act. In his dissenting opinion, then Justice McRae, P.J. asserted the proposition that there is a "third step" in the determination of whether an act is discretionary, specifically, whether the act was conducted using ordinary care; however, the Mississippi Supreme Court did not adopt this position in its majority, nor is current case law in this area consistent with the McRae dissent's propositions.

Case law in other jurisdictions reveal that as a general rule, recovery is ordinarily not permitted for outdoor game injuries where the activity is not inherently hazardous, notwithstanding the fact that the activity was mandatory or required. Generally, a school agency is not liable for the injuries sustained by a student solely as a result of his or her own negligence. *See*, e.g., Siau v. Rapides Parish School Bd., 264 So.2d 372 (La. Ct. App. 3d Cir. 1972), writ denied 262 La. 1148, 266 So. 2d 440 (1972). Similarly, a school agency cannot be held liable where the school was otherwise free from negligence. *See*, e.g., Dobbins v. Board of Ed. Of Henry Hudson Regional High School, 133 N.J. Super. 13, 335 A.2d 58 (App. Div. 1974), judgment aff'd 67 N.J. 69, 335 A.2d23 (1975).

The case of Strange v. Itawamba County Sch. Dist., 9 So.3d 1187 (Miss. Ct. App. 2009), involved a minor who was seriously injured when he fell from the bed of a pickup truck while being

transported by another student to football practice. The incident occurred on school grounds and during school hours. The Circuit Court of Itawamba County found that the district was entitled to discretionary function immunity. On appeal, the Mississippi Court of Appeals agreed, finding that because there was no statutory duty for the district or its personnel to regulate or disallow the conduct, there was an element of choice by the district. *Id.* Furthermore, the district, through its employees, in either allowing students to ride in the back of a pickup truck on school grounds, or ignoring the fact that the students were riding on school grounds in such a manner, impacted public policy.

In Moffett v. Jones County, 2009 U.S. Dist. LEXIS 45560 (S. D. Miss. 2009), state and federal claims were filed by a parent on behalf of a special needs child. In that case teachers attempted to calm the child down by engaging him in a treasure map project. The project involved burning the edges off poster paper. The parent claimed her child was traumatized by the activity, specifically the burning matches. On motion for summary judgment, state law claims were dismissed based upon discretionary function immunity because the method by which the defendants chose to run their classroom on the day in question necessarily required discretion. In short, the actions of the school required judgment in the implementation of policy.

In the recent case of Covington County School District v. Magee, 29 So. 3d 1 (Miss. 2010), the Mississippi Supreme Court held the school district was entitled to judgment as a matter of law in a MTCA action brought against it by the wrongful death beneficiaries of a seventeen-year old football player who collapsed and died from heat stroke during football practice on a hot August day. There, the plaintiff argued that the Covington County School District failed to perform its statutory duty to provide a safe environment and that it was a factual issue as to whether the School District

exercised ordinary care. In response, the Covington County School District argued that its alleged acts were subject to discretionary immunity pursuant to Miss. Code Ann. §11-46-9(1)(d). The plaintiff relied on Miss. Code Ann. §37-9-69 (Rev. 2007), to support its argument that the School District had a ministerial duty to use ordinary care to provide a safe school environment. Importantly, the Mississippi Supreme Court disagreed, reasoning that it has applied §37-9-69 "only in a limited context, mainly in cases concerning the disorderly conduct of students, or intentional acts on the part of individuals, and has never applied it to the timing or oversight of football practice." The Court concluded that "[c]onsistent with our case law interpreting this statute, and based on the facts and circumstances before us as revealed in the record, Miss. Code Ann. §37-9-69 does not impose a statutory duty on the District in today's case."

Like the Covington County Case, the civil action before the Court in this case involves neither disorderly conduct of students or intentional acts. Thus, the Plaintiff's ordinary care theory is clearly distinguishable under this precedent.

In summary, the policymaking and implementation of policy at issue here involved Coach Walker's exercise of judgment. He was required and expected to rely upon his own judgment in performing his responsibilities as a physical education instructor, and those responsibilities were discretionary. Coach Walker was vested with discretion to develop and carry out a physical education curriculum and a physical exercise regimen for students based on his judgment, experience, education and training. Social, political and economic policy concerns are clearly at issue in any policy-making decision. Practically speaking, the constraints of budget (economic), the art of an elected official being responsive to the needs of his or her constituents (political) and the well-being of teachers and children (social) all pose policymaking alternatives for RCSD which

clearly qualify for discretionary immunity. Under the two-part public policy function test used to determine whether governmental conduct is discretionary so as to afford RCSD immunity, both required elements for discretionary immunity are present here.

C. The trial court did not err in ruling that Rankin County School District was immune from any premises liability claims pursuant to Miss. Code Ann. §11-46-9(1)(v).

Miss. Code Ann. §11-46-9(1)(v) (Rev.2004) provides that a governmental entity cannot be held liable from a claim:

> Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care. *Miss. Code Ann.* § 11-46-9(1)(v)

"A property owner cannot be found liable for the plaintiff's injury where no dangerous condition exists." Stanley v. Boyd Tunica, Inc., 29 So.3d 95 (Miss. Ct. App. 2010). "In a suit against a governmental entity for injuries caused by a dangerous condition on its premises, a plaintiff must make a showing of the entity's failure to warn. However, '[t]he open and obvious defense is an absolute bar to recovery in a case brought under the [MTCA] for the failure to warn of a dangerous condition." Howard v. City of Biloxi, 943 So. 2d 751, 756 (Miss. App. 2006). Coach Walker had never seen an accident similar to this one in his experience at RCSD. (R 30).

In Delmont v. Harrison County School District, 944 So.2d 131 (Miss. App. 2006), the school district was immune from liability in a personal injury action brought by a student

who, while participating in an aerobics class, tripped on a cheerleading mat left on a raised platform in a high school gymnasium. There was no evidence that the cheerleading mat was a dangerous condition, as required to support the student's negligence action against the School District following injuries she sustained in tripping on the mat. Her injuries resulted from tripping on the mat because she did not look where she was going and the student's instructor testified that the student told him she injured herself while "jumping over the mat." Here, Clein was injured when he attempted to jump over a step coming down the bleachers. It is equally clear that the established precedent of the Delmont decision warrants a finding of premises immunity under these facts.

CONCLUSION

RCSD prays that upon consideration hereof, this Court uphold the finding of the Circuit Court of Rankin County, affirming that no genuine issue of fact exists material to summary judgment and that RCSD is entitled to summary judgment and dismissal with prejudice.

RESPECTFULLY SUBMITTED this the 9th day of May, 2011.

RANKIN COUNTY SCHOOL DISTRICT - APPELLEE

By: _____

Benjamin E. Griffith, MS Bar No. [redacted]
Michael S. Carr, MS Bar No. [redacted]
Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Michael S. Carr, one of the attorneys for Appellee, hereby certify that I have sent via U.S. Mail, postage prepaid, a true copy of the above and foregoing Brief of Appellee to:

Hon. Judge william E. Chapman, III
Circuit Judge, District 20
P. O. Box 1626
Canton, MS 39046-1626

Reeves Jones, Esq
Reeves Jones Law Firm
P. O. Box 742
Jackson, MS 39205-0742

Fred M. Harrell, Jr., Esq. – Attorney for RCSD
Harrell & Rester
306 E. Government Street
Brandon, MS 39042

DATED this 9th day of May, 2011.

Michael S. Carr, MSB [redacted]

Benjamin E. Griffith, MSB [redacted]
Michael S. Carr, MSB [redacted]
Attorneys for Defendant/Appellee
P. O. Drawer 1680
Cleveland, MS 38732
662-843-6100
Fax: 662-843-8153
Email: bgriff@griffithlaw.net
Email: mcarr@griffithlaw.net