

MISSISSIPPI TORT CLAIMS BOARD
MINUTES
March 9, 2023

The Mississippi Tort Claims Board (Board) meeting was held in Room 138, Woolfolk State Office Building; 501 North West Street, Jackson, Mississippi at 1:30 p.m.

The following members were present, constituting a quorum:

Phillip Buffington, Chairman
Kim Turner, Representing MS Attorney General Lynn Fitch
Christina Kelsey, Representing MS Insurance Department Commissioner Mike Chaney
Denita Smith Griffith, Representing MS Department of Public Safety Commissioner Sean Tindell
David McRae, MS State Treasurer
Aubrey Leigh Goodwin, Representing Executive Director Liz Welch, MS Department of Finance and Administration
Ted Lampton, Representing Chris Wells, MS Department of Environmental Quality

Also present were:

Bruce Donaldson, Tort Claims Board Administrator
Jim Logan, Tort Claims Board Staff
Karen McKlemurry, Office of Insurance/Tort Claims Board Staff
Steve Milner, Tort Claims Board Staff
Amanda Rayburn, Tort Claims Board Staff
Dan Smith, Attorney General's Office
Liz Bolin, MS Department of Finance and Administration
Cindy Bradshaw, Department of Finance and Administration, Office of Insurance
Chris Shaman, Office of Insurance
Lisa Wells, Cannon Cochran Management Services Inc.
Jeff Wilson, Trinity Capital
Suzanne Hudson, Attorney General's Office
Rustin Gaines, Mississippi Insurance Department

The Chairman called the meeting to order.

Motion was made by Mr. David McRae to approve the minutes of the January 12, 2023 meeting. Ms. Christina Kelsey seconded the motion, which passed unanimously.

Mr. Bruce Donaldson provided an overview of any potential legislation relative to the Tort Claims Board introduced to date.

Mr. Donaldson then provided the Board with an update on the City of Jackson tort fund shortage, stating that the Jackson City Council has agreed to deposit the remaining \$700,000.00 after the start of the city's new fiscal year beginning October 1, 2023.

Mr. Donaldson provided an update on the Claim Performance Audit contract. After reviewing quotes from three qualified vendors, it was determined that Farley Consulting Services had the lowest responsive and reasonable quote. The Office of Insurance is requesting approval of the new Tort Claims Performance Audit Services contract. A motion was made to approve by Ms. Kim Turner, and seconded by Mr. David McRae. The motion passed unanimously.

Mr. Donaldson then presented a list of 29 political subdivisions with the recommendation of Board approval for renewal of Certificates of Coverage. Ms. Kelsey made a motion to approve and Ms. Turner seconded. The motion passed unanimously.

Mr. Jim Logan presented the financial report.

Mr. Jeff Wilson provided an overview of the current investment reports.

Mr. Steve Milner provided an overview of the recent risk management services provided.

Mr. Donaldson presented three attorneys for inclusion on the Defense Attorney List and requested Board approval. Mr. McRae made a motion to approve and Ms. Kelsey seconded. The motion passed unanimously.

Ms. Amanda Rayburn requested Board approval for settlement of Trent Allan McDowell v. Mississippi Department of Transportation, et al. Ms. Turner made a motion to approve and Ms. Aubrey Leigh Goodwin seconded. The motion passed unanimously.

There being no further business to come before the Board, Ms. Kelsey made the motion to adjourn. Ms. Turner seconded the motion, which passed by unanimous vote. The meeting was adjourned.



PHILLIP BUFFINGTON, CHAIRMAN

Mississippi Tort Claims Board
March 9, 2023 - 1:30pm
Conference Center North, Room 138
First Floor, Woolfolk Building
Jackson, Mississippi

ATTENDANCE LIST

| <u>NAME</u> | <u>DEPARTMENT/COMPANY</u> |
|----------------------|---------------------------|
| Phil Blythe | |
| Jeff Wilson | Trinity |
| Don Wells | CCMSI |
| Steven M. Iner | Tort Claims Board |
| Dan Smith | AG |
| Cindy Bradshaw | OOT |
| Chris [unclear] | OOI |
| [unclear] | TCB |
| [unclear] | TCB |
| [unclear] | Treasurer |
| [unclear] | AGO |
| Dig Bolin | DFA |
| Suzanne Hudson | AGO |
| [unclear] | TCB |
| Ted Lampton | MDEQ |
| Rustin Gaines | MID |
| [unclear] | MIR |
| Audrey Leigh Goodwin | DFA |
| Karen McKlemurey | OOI / Tort |



Tort Claims Board

AGENDA

March 9, 2023

Mississippi Tort Claims Board Meeting

March 9, 2023

1. Approval of January 12, 2023 Minutes – Mr. Phil Buffington, Chairman
2. 2023 Legislative Update – Mr. Bruce Donaldson, Tort Claims Board Administrator
3. City of Jackson Update – Mr. Bruce Donaldson, Tort Claims Board Administrator
4. Claims Performance Audit Contract Update – Mr. Bruce Donaldson, Tort Claims Board Administrator
5. Certificates of Coverage – Mr. Bruce Donaldson, Tort Claims Board Administrator
6. Financial Report – Mr. Jim Logan, Accounting Director
7. Investment Report – Mr. Jeff Wilson, Trinity Capital Investors
8. Loss Control – Mr. Steve Milner, Risk Manager
9. Defense Attorney Approval – Mr. Bruce Donaldson, Tort Claims Board Administrator
10. Claims: McDowell vs. MDOT – Ms. Amanda Rayburn, Claims Manager
11. Old Business
12. New Business

Next Meeting: May 11, 2023

Agenda Item 1

Minutes of January 12, 2023 Board Meeting

Mr. Phil Buffington, Chairman

Description:

The minutes of the standing board meeting held on January 12, 2023.

Action Requested:

Approval of minutes is requested.

MISSISSIPPI TORT CLAIMS BOARD
MINUTES
January 12, 2023

The Mississippi Tort Claims Board (Board) meeting was held in Room 138, Woolfolk State Office Building; 501 North West Street, Jackson, Mississippi at 1:30 p.m.

The following members were present, constituting a quorum:

Phillip Buffington, Chairman
Kim Turner, Representing MS Attorney General Lynn Fitch
Christina Kelsey, Representing MS Insurance Department Commissioner Mike Chaney
Denita Smith Griffith, Representing MS Department of Public Safety Commissioner Sean Tindell
David McRae, MS State Treasurer
Liz Welch, Executive Director, MS Department of Finance and Administration
Ted Lampton, Representing Chris Wells, MS Department of Environmental Quality

Also present were:

Bruce Donaldson, Tort Claims Board Administrator
Jim Logan, Tort Claims Board
Karen McKlemurry, Tort Claims Board
Steve Milner, Tort Claims Board
Amanda Rayburn, Tort Claims Board
Dan Smith, Attorney General's Office
Liz Bolin, MS Department of Finance and Administration
Cindy Bradshaw, MS Department of Finance and Administration, Office of Insurance
Lisa Wells, Cannon Cochran Management Services Inc.
Jeff Wilson, Trinity Capital
Payton Acy, MS Attorney General's Office

The Chairman called the meeting to order.

Motion was made by Ms. Liz Welch to approve the minutes of the November 10, 2022 meeting. Mr. David McRae seconded the motion, which passed unanimously.

Mr. Bruce Donaldson provided an overview of any potential legislation relative to the Tort Claims Board introduced to date.

Ms. Cindy Bradshaw requested the Board's approval to issue a Request for Proposals to procure a Third-Party Administrator for claims administration and litigation management. Ms. Welch made the motion to approve the request. Ms. Kim Turner seconded the motion, which passed unanimously.

Mr. Donaldson advised the TCB that the City of Jackson's tort fund was under-funded in the sum of \$1 Million according to the current TCB rules. Following discussions with city officials the city deposited \$400K into their fund in a good faith effort to bring their fund closer to compliance requirements with the TCB rules. The remaining \$700K will be deposited after the start of the city's new fiscal year starting October 1, 2023. The city will approve this plan and record it in their minutes at their upcoming meeting set for Tuesday January 17, 2023. The TCB voted to approve with a motion made by Mr. David McRae and seconded by Ms. Liz Welch.

Mr. Donaldson presented a list of 29 political subdivisions with the recommendation of Board approval for renewal of Certificates of Coverage. Ms. Turner made a motion to approve and Ms. Welch seconded. The motion passed unanimously.

Ms. Bradshaw asked the board to approve the procurement of an independent financial auditor to perform annual audits. Motion was made by Ms. Kelsey and seconded by Mr. McRae, then was passed by unanimous vote.

Mr. Logan presented the financial report.

Mr. Jeff Wilson provided an overview of the current investments reports.

Mr. Milner provided an overview of the recent risk management services provided.

Mr. Donaldson announced that he will be retiring Mach 31, 2023. Chairman Buffington congratulated him on his years of service.

There being no further business to come before the Board, Mrs. Welch made the motion to adjourn. Ms. Christina Kelsey seconded the motion, which passed by unanimous vote. The meeting was adjourned.

PHILLIP BUFFINGTON, CHAIRMAN

Agenda Item 2

2023 Legislative Update

Mr. Bruce Donaldson, Tort Claims Board Administrator

Description:

Mr. Donaldson will provide an overview of any potential legislation relative to the Tort Claims Board introduced to date.

Action Requested:

Information only.

Tort Claims Act Legislation Summary
2023 Legislative Session

| Bill No. | Introduced By | Last Action | MTCA Reference | Description | Notes |
|----------|----------------|--|----------------|---|------------------|
| HB1125 | Newman | 1/16 (H) Referred to Public Health and Human Services 1/19 (H) Title Suff Do Pass 1/19 (H) Point of Order Raised 1/19 (H) Point of Order – Well Taken 1/19 (H) Passed 1/20 (H) Transmitted to Senate 1/27 (S) Referred to Judiciary, Division B 1/31 (S) Title Suff Do Pass 2/21 (S) Amendment Failed 2/21 (S) Passed 2/22 (S) Returned for Enrolling 2/23 (H) Enrolled Bill Signed 2/23 (S) Enrolled Bill Signed 2/28 Approved by Governor | 11-46-5 | An act to create the “Regulate Experimental Adolescent Procedures (REAP)” to exclude the performance gender transition procedures from the “practice of medicine” meaning; to amend section 11-46-5 | To amend 11-46-5 |
| HB34 | Ladner | Introduced and referred to JudB 1/31 Died in Committee | 11-46-9 | To amend Section 11-46-9 MS Code of 1972 to provide an exception for tort immunity when a governmental entity fails to provide proper law enforcement protection during a violent and disorderly assembly | |
| HB300 | Rushing | Introduced and referred to JudB 1/31 Died in Committee | 11-46-9 | An act to amend Section 11-46-9 MS Code of 1972 to provide immunity for law enforcement officers when the person filing the claim against the officer was convicted for resisting arrest and the incident was clearly recorded by the officer; and for related purposes | |
| HB576 | Hobgood-Wilkes | Introduced and referred to JudB 1/31 Died in Committee | 11-46-5 | An act to be known as the Mississippi Help Not Harm Act. To amend Section 11-46-5 Mississippi Code of 1972 to provide that under the Tort Claims Act an employee | |

| | | | |
|--------|--|--------------------|---|
| | shall not be considered as acting within the course and scope of his or her employment and a governmental entity may be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct violated the provisions of this act. | | |
| HB616 | An act to create the review board for officer-involved deaths. Any law enforcement agency that fails to adopt the written policy required by this sub-section (2) shall not be eligible to claim any immunity protections provided by the Mississippi Tort Claims Act. | 11-46-1 et seq. | Introduced and referred to JubB 1/31 Died in Committee |
| SB2678 | An act to provide that the Department of Child Protection Services shall be a state agency separate and apart from the Department of Human Services from and after July 1, 2023 | 11-46-1 11-46-8 | 1/16 (S) Referred to Accountability, Efficiency, Transparency 1/26 (S) Title Suff Do Pass 2/2 (S) Passed 2/3 (S) Transmitted to House 2/7 (H) Referred to Public Health and Human Services 2/8 (H) Died in Committee |
| HB989 | An act to provide that the Department of Child Protection Services shall be a state agency separate and apart from the Department of Human Services from and after July 1, 2023 | 11-46-1 11-46-8 | 1/16 (H) Referred to Public Health and Human Services 1/26 (H) Title Suff Do Pass Comm Sub 2/1 (H) Committee Substitute Adopted 2/1 (H) Passed 2/2 (H) Transmitted to Senate 2/15 (S) Referred to Accountability, Efficiency, Transparency 2/28 (S) Died in Committee |

Companion to HB989

To amend 11-46-1 and 11-46-8

By: Representatives Newman, Gunn, Eubanks,
Allos, Brown (20th), Williamson, Hopkins,
Arnold, Kinkade, Ford (73rd), Bain, Patterson

To: Public Health and Human
Services

HOUSE BILL NO. 1125

1 AN ACT TO CREATE THE "REGULATE EXPERIMENTAL ADOLESCENT
2 PROCEDURES (REAP)" ACT FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE;
3 TO PROVIDE DEFINITIONS FOR THE ACT; TO PROHIBIT THE DIRECT OR
4 INDIRECT USE, GRANT, PAYMENT OR DISTRIBUTION OF PUBLIC FUNDS TO
5 ANY ENTITY, ORGANIZATION OR INDIVIDUAL THAT PROVIDES GENDER
6 TRANSITION PROCEDURES TO A PERSON UNDER EIGHTEEN YEARS OF AGE; TO
7 PROVIDE THAT HEALTH CARE SERVICES FURNISHED IN A STATE OR
8 LOCALLY-OWNED HEALTH CARE FACILITY OR BY A PHYSICIAN OR OTHER
9 HEALTH CARE PROFESSIONAL EMPLOYED BY THE STATE OR LOCAL GOVERNMENT
10 SHALL NOT INCLUDE GENDER TRANSITION PROCEDURES FOR A PERSON UNDER
11 EIGHTEEN YEARS OF AGE; TO PROVIDE THAT AMOUNTS PAID DURING A
12 TAXABLE YEAR FOR PROVISION OF GENDER TRANSITION PROCEDURES OR AS
13 PREMIUMS FOR HEALTH CARE COVERAGE THAT INCLUDES COVERAGE FOR
14 GENDER TRANSITION PROCEDURES ARE NOT DEDUCTIBLE UNDER THE STATE
15 INCOME TAX LAWS; TO AUTHORIZE THE ATTORNEY GENERAL TO BRING AN
16 ACTION TO ENFORCE COMPLIANCE WITH THIS ACT; TO CREATE NEW SECTION
17 43-13-117.7, MISSISSIPPI CODE OF 1972, TO PROHIBIT THE DIVISION OF
18 MEDICAID FROM REIMBURSING OR PROVIDING COVERAGE FOR GENDER
19 TRANSITION PROCEDURES FOR A PERSON UNDER EIGHTEEN YEARS OF AGE; TO
20 AMEND SECTION 83-9-22, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
21 HEALTH COVERAGE PLANS ARE NOT REQUIRED TO INCLUDE GENDER
22 TRANSITION PROCEDURES; TO CREATE NEW SECTION 83-9-37, MISSISSIPPI
23 CODE OF 1972, TO PROVIDE THAT A HEALTH BENEFIT PLAN UNDER AN
24 INSURANCE POLICY OR OTHER PLAN PROVIDING HEALTH CARE COVERAGE
25 SHALL NOT INCLUDE REIMBURSEMENT FOR GENDER TRANSITION PROCEDURES
26 FOR A PERSON UNDER EIGHTEEN YEARS OF AGE; TO AMEND SECTIONS
27 27-7-17, 73-15-29 AND 73-25-29, MISSISSIPPI CODE OF 1972, TO
28 CONFORM TO THE PROVISIONS OF THIS ACT; TO AMEND SECTION 73-25-33,
29 MISSISSIPPI CODE OF 1972, TO EXCLUDE THE PERFORMANCE GENDER
30 TRANSITION PROCEDURES FROM THE "PRACTICE OF MEDICINE" MEANING; TO
31 AMEND SECTION 11-46-5, MISSISSIPPI CODE OF 1972, TO EXCLUDE FROM
32 TORT IMMUNITY VIOLATIONS OF THIS ACT; TO AMEND SECTION 41-41-219,
33 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; TO



920 term "gender transition procedures" means the same as defined in
921 Section 2 of this act.

922 **SECTION 12.** The following shall be codified as Section
923 83-9-37, Mississippi Code of 1972:

924 83-9-37. (1) As used in this section, the term "gender
925 transition procedures" means the same as defined in Section 2 of
926 this act.

927 (2) A health benefit plan under an insurance policy or other
928 plan providing health care coverage in this state shall not
929 include reimbursement for gender transition procedures for a
930 person under eighteen (18) years of age.

931 (3) A health benefit plan under an insurance policy or other
932 plan providing health care coverage in this state is not required
933 to provide coverage for gender transition procedures for a person
934 under eighteen (18) years of age.

935 **SECTION 13.** Section 11-46-5, Mississippi Code of 1972, is
936 amended as follows:

937 11-46-5. (1) Notwithstanding the immunity granted in
938 Section 11-46-3, or the provisions of any other law to the
939 contrary, the immunity of the state and its political subdivisions
940 from claims for money damages arising out of the torts of such
941 governmental entities and the torts of their employees while
942 acting within the course and scope of their employment is hereby
943 waived from and after July 1, 1993, as to the state, and from and
944 after October 1, 1993, as to political subdivisions; provided,



945 however, immunity of a governmental entity in any such case shall
946 be waived only to the extent of the maximum amount of liability
947 provided for in Section 11-46-15.

948 (2) For the purposes of this chapter an employee shall not
949 be considered as acting within the course and scope of his
950 employment and a governmental entity shall not be liable or be
951 considered to have waived immunity for any conduct of its employee
952 if the employee's conduct constituted fraud, malice, libel,
953 slander, defamation or any criminal offense other than traffic
954 violations.

955 (3) For the purposes of this chapter and not otherwise, it
956 shall be a rebuttable presumption that any act or omission of an
957 employee within the time and at the place of his employment is
958 within the course and scope of his employment, except for actions
959 described in subsection (2) of Section 73-25-33 and subsection (5)
960 of this section.

961 (4) Nothing contained in this chapter shall be construed to
962 waive the immunity of the state from suit in federal courts
963 guaranteed by the Eleventh Amendment to the Constitution of the
964 United States.

965 (5) For purposes of this chapter, an employee shall not be
966 considered as acting within the course and scope of his or her
967 employment and a governmental entity shall be liable or be
968 considered to have waived immunity for any conduct of its employee
969 if the employee's conduct constituted a violation of this act.



Agenda Item 3

City of Jackson Update

Mr. Bruce Donaldson, Tort Claims Board Administrator

Description:

Update City of Jackson's tort fund shortage. See attachment.

Action Requested:

For information only

ORDER MODIFYING THE ORDER AMENDING THE FISCAL YEAR 2022-2023 BUDGET OF THE CITY OF JACKSON TO PROVIDE FOR THE TRANSFER OF FUNDS TO THE TORT CLAIMS FUND

WHEREAS, pursuant to Miss. Code Ann. § 11-46-17(2) each governmental entity other than political subdivisions shall participate in a comprehensive plan of self-insurance or one or more policies of liability insurance or combination of the two (2), all to be administered by the Department of Finance and Administration; and

WHEREAS, pursuant to Miss. Code Ann. § 11-46-17(2), each governmental entity participating in the plan shall make payments to the board in such amounts, times and manner determined by the board as the board deems necessary to provide sufficient funds to be available for payment by the board of the costs it incurs in providing coverage for the governmental entity; and

WHEREAS, pursuant to Miss. Code Ann. § 11-46-17(2) each governmental entity of the state other than the political subdivisions thereof participating in the plan procured by the board shall be issued by the board a certificate of coverage whose form and content shall be determined by the board but which shall have the effect of certifying that, in the opinion of the board, each of such governmental entities is adequately insured; and

WHEREAS, on or about December 12, 2022, the Tort Claims Board confirmed the City of Jackson Tort Fund was underfunded in the amount of \$1,140,929.00 for Fiscal Year 2022-2023; and

WHEREAS, the City of Jackson Budget needs to be amended to provide funding for these unbudgeted needs by moving funds from fund balance where they are needed to fund additional, unfunded needs of the Tort Fund; and

WHEREAS, the City of Jackson has worked with the Tort Claims Board to develop a payment plan to pay the underfunded balance in installments; and

WHEREAS, on January 17, 2023, the Jackson City Council approved an Order amending the budget of the City of Jackson to transfer funds in the amount of \$400,000.00 from the General Fund; and

WHEREAS, the City of Jackson and the Tort Claims Board have agreed that after transfer of the first installment, the remaining balance will be budgeted for payment in Fiscal Year 2023-2024 beginning October 1, 2023; and

WHEREAS, it is in the best interest of the City of Jackson to modify the prior Order transferring funds to cover the first installment to the Tort Claims Board; and

IT IS THEREFORE ORDERED that the Fiscal Year 2022-2023 Budget of the City of Jackson be amended as follows:

| <u>To/From</u> | <u>Fund/Account Number</u> | <u>Amount</u> |
|----------------|----------------------------|---------------|
| From: | 001-5899 General Fund 1 | \$400,000.00 |

| | | |
|-------|----------------|--------------|
| To: | 001-40792-6765 | \$400,000.00 |
| From: | 018-5911 | \$400,000.00 |
| To: | 018-51820-6722 | \$400,000.00 |

Council Member Lindsay moved adoption; **Council Member Hartley** seconded.

Yeas – Banks, Foote, Grizzell, Hartley, Lee and Lindsay.

Nays – None.

Absent – Stokes.

STATEMENT OF VOTES

The foregoing is a true and exact copy of an Order stating the action taken by the City Council at its Regular Council Meeting on January 31, 2023. However, upon the completion of the minutes, signed by the Mayor and attested by the City Clerk, a certified attested copy can be provided upon request.

Agenda Item 4

Claim Performance Audit Contract Update

Mr. Bruce Donaldson, Tort Claims Board Administrator

Description:

Approval of Tort Claims Performance Audit Service Contract

Action Requested:

Requesting board approval

Agenda Item 5

Certificates of Coverage

Mr. Bruce Donaldson, Tort Claims Board Administrator

Description:

Review of political subdivisions requesting Certificate of Coverage.

Action Requested:

Staff request approval to issue Certificates of Coverage.



STATE OF MISSISSIPPI
GOVERNOR TATE REEVES

MISSISSIPPI TORT CLAIMS BOARD
C. PHILLIP BUFFINGTON, CHAIRMAN

MIKE CHANEY, Commissioner
Insurance Department
LYNN FITCH, Attorney General
Office of Attorney General
DAVID McRAE, Treasurer
Department of Treasury

SEAN TINDELL, Commissioner
Department of Public Safety
LIZ WELCH, Executive Director
Department of Finance and Administration
CHRIS WELLS, Executive Director
Department of Environmental Quality

MEMORANDUM

TO: Mississippi Tort Claims Board
FROM: Bruce Donaldson
DATE: March 9, 2023
RE: Political Subdivisions – Certificates of Coverage

RECOMMENDATION: Staff recommends approval of 29 political subdivisions shown on attached list.

MISSISSIPPI TORT CLAIMS BOARD

Thursday, March 9, 2023

Political Subdivisions Recommended for Renewal of Certificate of Coverage

Belden Volunteer Fire Department, Inc.
Benton County Soil and Water Conservation District
Clay County Soil & Water Conservation District
District 1 Volunteer Fire Department, Inc.
Field Health System
Fulton City Clerk
Gulfport School District
Jasper General Hospital
Kemper County Economic Development Authority
Leake County Soil & Water Conservation District
LSR Volunteer Fire Department
Magnolia Regional Health Center
Mars Hill Volunteer Fire Department
Mississippi Gulf Coast Regional Convention & Visitors Bureau
Mississippi Municipal Liability Plan (Municipalities)
Monroe County Soil & Water Conservation District
Neshoba County General Hospital and Nursing Home
Noxubee County Soil and Water Conservation District
Rankin County Fire Services
Singing River Health System
Southeast Mississippi Air Ambulance
Southwest Mississippi Regional Medical Center
Sunny Hill Volunteer Rural Fire Department
Tupelo City Clerk
Valley View Volunteer Fire Department
Walthall County Soil & Water Conservation District
West Covington Volunteer Fire Department
West Hancock Fire Protection District
Yalobusha County Soil & Water Conservation District

TOTAL 29

Agenda Item 6

Financial Report

Mr. Jim Logan, Accounting Director

Description:

Mr. Logan will provide an overview of the current financial reports.

Action Requested:

Informational – no action required.

MISSISSIPPI TORT CLAIMS BOARD
Combined Financial Report - Fiscal Year 2023
Fund 3308100000

-----CASH FLOW ANALYSIS-----

| | January | February | FY 2023 Total | FY 2022 Total |
|------------------------------------|-------------------------|-------------------------|------------------------|------------------------|
| REVENUE: | | | | |
| Assessments Received | \$ 536,353.00 | \$ 374,436.00 | \$ 4,489,161.00 | \$ 4,283,318.80 |
| Interest | 11,800.39 | 14,088.77 | \$ 61,801.95 | 15,326.97 |
| Investment Interest | 18,108.35 | 21,634.54 | \$ 147,837.21 | 43,251.20 |
| Sale of Scrap | 0.00 | 0.00 | \$ 1,300.00 | 1,508.00 |
| Refund of Prior Year Disbursement | 0.00 | 0.00 | \$ - | 132.80 |
| Transfer In Funds | 0.00 | 0.00 | \$ 750,000.00 | 750,000.00 |
| Total Revenue | \$ 566,261.74 | \$ 410,159.31 | \$ 5,450,100.16 | \$ 5,093,537.77 |
| EXPENSES: | | | | |
| Claim Losses - TPA and TCB | 126,126.72 | 64,333.89 | \$ 786,557.87 | 688,463.29 |
| Legal Expenses - TPA and TCB | 38,685.15 | 39,782.08 | \$ 328,061.60 | 323,731.26 |
| Other Expenses - TPA and TCB | 345.00 | 620.00 | \$ 4,479.00 | 5,297.55 |
| Administrative Expenses Paid | 112,899.77 | 38,041.89 | \$ 613,381.86 | 628,660.77 |
| Transfer of Funds - Out | 0.00 | 0.00 | \$ 750,000.00 | 750,000.00 |
| Total Expenses | \$ 278,056.64 | \$ 142,777.86 | \$ 2,482,480.33 | \$ 2,396,152.87 |
| CASH ON HAND: | | | | |
| Beginning Balance | \$ 21,370,488.73 | \$ 21,658,693.83 | | |
| Revenue | 566,261.74 | 410,159.31 | | |
| Expenses | (278,056.64) | (142,777.86) | | |
| Adjustments | 0.00 | 0.00 | | |
| Total Cash | \$ 21,658,693.83 | \$ 21,926,075.28 | | |
| Cash in Treasury | \$ 8,327,208.07 | \$ 8,636,930.23 | | |
| Investments in Treasury | \$ 13,038,514.38 | \$ 13,060,148.92 | | |
| TPA Trustmark Bank Balance | 292,971.38 | 228,996.13 | | |
| Sub-Total Cash By Accounts | \$ 21,658,693.83 | \$ 21,926,075.28 | | |
| Less Reserves | 7,430,886.74 | 7,777,902.31 | | |
| Unencumbered Cash Available | \$ 14,227,807.09 | \$ 14,148,172.97 | | |

-----CLAIMS/RESERVES DETAIL (Year-To-Date)-----

| | Tort Board | CCMSI | TOTAL | FY 2022 TOTAL |
|------------------------------------|------------------------|------------------------|------------------------|------------------------|
| Claims - Payments | \$ 129,782.16 | \$ 656,775.71 | \$ 786,557.87 | \$ 688,463.29 |
| Claims - Legal Expenses | 324,360.68 | 3,700.92 | \$ 328,061.60 | \$ 323,731.26 |
| Claims - Other Expenses | - | 4,479.00 | \$ 4,479.00 | \$ 5,297.55 |
| Total Paid Out to Date | \$ 454,142.84 | \$ 664,955.63 | \$ 1,119,098.47 | \$ 1,017,492.10 |
| OUTSTANDING RESERVES | 594,937.24 | 7,182,965.07 | \$ 7,777,902.31 | \$ 7,693,088.25 |
| Total Claims & Reserves | \$ 1,049,080.08 | \$ 7,847,920.70 | \$ 8,897,000.78 | \$ 8,710,580.35 |
| Number of Claims Reported | 349 | 237 | 586 | 698 |
| Number of Claims Paid | 188 | 76 | 264 | 273 |
| Total Open Claims | 2,680 | 322 | 3,002 | 1,267 |
| AVERAGE CLAIM PAID | \$690.33 | \$8,641.79 | \$ 2,979.39 | \$ 2,521.84 |
| AVERAGE RESERVE/OPEN CLAIM | \$221.99 | \$22,307.34 | \$ 2,590.91 | \$ 6,071.89 |

NOTE: Information represents combined operations for Treasury Fund 3081 and the Trustmark account (utilized by CCMSI).

MISSISSIPPI TORT CLAIMS BOARD
Budget Comparison Report - Fiscal Year 2023
Treasury Fund 3308100000

| Expenses: | Total Budget | January 2023 | February 2023 | Year To Date Expenditures | Ending Balance | Percent Expended |
|-----------------------|-------------------------------|-----------------------------|-----------------------------|--------------------------------------|-------------------------------|-----------------------------|
| A1-Salaries | \$ 604,964.00 | \$ 46,089.40 | \$ 37,147.79 | \$ 370,904.80 | \$ 234,059.20 | 61.31% |
| A2-Travel | 5,000.00 | 0.00 | 0.00 | 4,477.84 | 522.16 | 89.56% |
| B-Contractual | 1,628,910.00 | 104,864.69 | 36,473.63 | 557,315.03 | 1,071,594.97 | 34.21% |
| C-Commodities | 9,000.00 | 615.08 | 497.13 | 4,986.07 | 4,013.93 | 55.40% |
| D2-Capital Outlay | 2,000.00 | 0.00 | 0.00 | 0.00 | 2,000.00 | 0.00% |
| E-Subsidies | 4,300,000.00 | 6,153.89 | 4,676.25 | 879,782.16 | 3,420,217.84 | 20.46% |
| SUBTOTAL | <u>\$ 6,549,874.00</u> | <u>\$ 157,723.06</u> | <u>\$ 78,794.80</u> | <u>\$ 1,817,465.90</u> | <u>\$ 4,732,408.10</u> | <u>27.75%</u> |
| TPA Expended | | <u>120,333.58</u> | <u>63,983.06</u> | <u>665,014.43</u> | | |
| TOTAL Expended | | <u>\$ 278,056.64</u> | <u>\$ 142,777.86</u> | <u>\$ 2,482,480.33</u> | | |

Agenda Item 7

Investment Report

Mr. Jeff Wilson, Trinity Capital Investors

Description:

Mr. Wilson will provide an overview of the current investment reports.

Action Requested:

Informational – no action required.

TRINITY

TRINITY CAPITAL INVESTORS

March 1, 2023

Mr. Bruce Donaldson
Mississippi Tort Claims Board
P O Box 267
Jackson, MS 39205-0267

Re: February 2023 Portfolio Highlights

| | | |
|---------------------------------|------------|-----------------------|
| Total Portfolio | Book Value | \$13,089,954 |
| | | |
| FY 2023 Internal Rate of Return | | 1.33% |
| Current Portfolio Book Yield | | 2.62% |
| Market Yield | | 3.81% |
| | | |
| Weighted Average Life | | Approximately 3 years |
| | | |
| FY 2023 Earnings | | 147,838 |
| Accrued Interest | | 49,300 |

1675 Lakeland Drive Suite 400 Jackson, MS 39216
Telephone 601-956-3511
Fax 601-956-3513

Security Inventory
 Booking Report
 February 2023
MISSISSIPPI TORT CLAIMS FUND

| Security Group | Type | Par Value | Book Value/ Cost |
|----------------|------|-----------|---------------------|
| AGEN | FFCB | 3,000,000 | 3,001,078.15 |
| | FHLB | 4,699,616 | 4,698,352.38 |
| CMO | GNMA | | 1,313,825.29 |
| | FHR | | 1,047,003.56 |
| | FNR | | 588,533.84 |
| US TREAS | | | 2,229,804.69 |
| INTEREST | | | 21,634.54 |
| CASH | | | 211,356.41 |
| | | | 13,089,954.32 |

Agenda Item 8

Loss Control

Mr. Steve Milner, Risk Manager

Description:

Mr. Milner will provide an overview of the recent risk management services provided.

Action Requested:

Informational – no action required.



STATE OF MISSISSIPPI
GOVERNOR TATE REEVES

MISSISSIPPI TORT CLAIMS BOARD
C. PHILLIP BUFFINGTON, CHAIRMAN

MIKE CHANEY, Commissioner
Insurance Department
LYNN FITCH, Attorney General
Office of Attorney General
DAVID McRAE, Treasurer
Department of Treasury

SEAN TINDELL, Commissioner
Department of Public Safety
LIZ WELCH, Executive Director
Department of Finance and Administration
CHRIS WELLS, Executive Director
Department of Environmental Quality

MEMORANDUM

TO: Mississippi Tort Claims Board
FROM: Steve Milner
DATE: March 9, 2023

- 4 Ride A Longs
- 62 Site Visits - State Property/Leased Property Inspections
- 15 State Trooper Accident Investigations/Reviews
- 1 State Trooper Injury Investigation
- 4 Risk Management Consultations
- 1 MEMA Activation
- 1 Risk Management Presentation - MHP Cadet Class 66
- 1 State Vehicle Accident Investigation

LOSS CONTROL REPORT

STEVE MILNER

4 RIDE A LONGS

These were new state trooper ride alongs from Class 66. Two were in Troop H (Meridian) and two were in Troop J (Hattiesburg). All four troopers had prior law enforcement experience. Safe driving techniques are observed with particular attention given to emergency response. I observed nothing that concerned me relative to risk management.

62 Site Visits - State Property/Leased Property Inspections

Agencies included were WIN Job Centers, Department of Health, welcome centers (Greenville and Woodville), Medicaid Regional Offices, Child Protection Services and Human Services. Most of the aforementioned offices are owned and maintained by county municipalities (Board of Supervisors) with the exception of the Medicaid regional offices which are privately owned. The Greenville Welcome Center is owned and maintained by the City of Greenville and the Woodville Welcome Center is maintained by MDOT. Any area that affects the general public such as parking lots, walkways and interior flooring are inspected. Any issue requiring corrective action is documented in a confirmation of risk management services report. Pictures are taken and attached to the report.

15 STATE TROOPER ACCIDENT INVESTIGATIONS

These are vehicular accidents. NOT ALL INVOLVE PROPERTY DAMAGE OR LIABILITY. Some involve wildlife (deer) and some involve the trooper being hit by a vehicle. The following are the number of accidents with respective Troops:

- 1 Troop E
- 3 Troop D
- 3 Troop F
- 3 Troop H
- 2 Troop C
- 2 Troop J
- 1 Troop M

If I identify any trends that are developing, I will present them at district meetings. Any accident involving liability is forwarded to the claims manager.

1 STATE TROOPER INJURY INVESTIGATION

This involved a rollover crash in Troop D. The trooper was responding to a vehicle accident.

4 RISK MANAGEMENT CONSULTATIONS

These reflect discussions relative to specific risk management issues. The first consultation was with a regional manager for the Department of Rehab Services in relation to accident reporting procedures for their respective field offices. Another consultation involved a discussion with a Regional Director with the Department of Human Services regarding specific risk management issues at a satellite office in Bolivar County (Rosedale). Another consultation was with a Regional Director for the Department of Human Services regarding corrective action specific risk management issues in Lowndes County. The last discussion was with a Director of Administrative Services for the Department of Human Services regarding that agency hiring a dedicated individual to address risk management issues and subsequent corrective action at statewide county offices.

1 MEMA ACTIVATION

The State EOC was activated in February to support a weather event. As Safety Officer it is my responsibility to promote safe work practices and manage risks associated with response procedures.

1 RISK MANAGEMENT PRESENTATION

A presentation was made at to the MHP Cadet Class 66 on February 23, 2023. There were 56 cadets in attendance. I explained my duties as the dedicated risk manager for MHP and informed them that after completion of their field training program I would be conducting a ride along with each of them.

1 STATE VEHICLE ACCIDENT INVESTIGATION

This involved a Department of Rehab services van which rear ended another vehicle. The state employee driving the van was distracted by a passenger.

Agenda Item 9

Defense Attorney Approval

Mr. Bruce Donaldson, Tort Claims Administrator

Description:

Recommendation to approve three attorneys for inclusion on the Defense Attorney List

Action Requested:

Approval of these attorneys is requested.



STATE OF MISSISSIPPI
GOVERNOR TATE REEVES

MISSISSIPPI TORT CLAIMS BOARD
C. PHILLIP BUFFINGTON, CHAIRMAN

MIKE CHANEY, Commissioner
Insurance Department
LYNN FITCH, Attorney General
Office of Attorney General
DAVID McRAE, Treasurer
Department of Treasury

SEAN TINDELL, Commissioner
Department of Public Safety
LIZ WELCH, Executive Director
Department of Finance and Administration
CHRIS WELLS, Executive Director
Department of Environmental Quality

MEMORANDUM

TO: Mississippi Tort Claims Board
FROM: Bruce Donaldson
DATE: March 9, 2023
RE: Additions to Defense Attorney List

RECOMMENDATION: Staff recommends approval of (3) attorneys for inclusion on Defense Attorney List

Honorable Quentin Daniels
Quintairos, Prieto, Wood & Boyer, P.A.
Flowood, Mississippi 39232

Honorable Michael R. Moore
Bryan, Nelson, Schroeder, Castigliola & Banahan
Pascagoula, Mississippi 39568

Honorable Dellwyn Smith
Quintairos, Prieto, Wood & Boyer, P.A.
Flowood, Mississippi 39232



QUINTAIROS, PRIETO, WOOD & BOYER, P.A.
2506 LAKELAND DRIVE, SUITE 500
FLOWOOD, MS 39232
P: (601) 968-8571 • F: (601) 968-8574

March 1, 2023

VIA ELECTRONIC MAIL:

Ms. Amanda Rayburn, Director
Mississippi Tort Claims Board
Post Office Box 267
Jackson, Mississippi 39215
Email: Amanda.Rayburn@dfa.ms.gov

RE: Professional Services

Dear Ms. Rayburn:

This correspondence is forwarded to request the inclusion of Quentin Daniels of my firm, on the list of attorneys who are willing to provide legal defense for governmental entities in litigated cases. He is a 1996 graduate of Mississippi College School of Law and a member of the Mississippi Bar since 1996.

Quentin is a Senior Associate with the Mississippi office of Quintairos, Prieto, Wood and Boyer, P.A. (QPWB), the largest minority firm in the United States. Our firm's primary focus is in the areas of worker's compensation defense, employment law, federal and state civil litigation. Currently, our firm provides legal representation on behalf of individuals, businesses, state agencies, and quasi-governmental entities including, but not limited to, the Mississippi Department of Transportation, Mississippi Department of Corrections and Mississippi Public Entity Workers' Compensation Trust in the areas of employment, worker's compensation claims, and other liabilities claims.

Prior to joining QPWB, Mr. Daniels worked as an attorney with a Jackson, Mississippi law office handling insurance defense and civil litigation matters. Previously, and for over 25 years, he has worked with other Jackson, Mississippi law firms as a trial attorney and in the capacity of partner, in the areas of insurance defense, personal injury, and product and mass tort claims. His experience includes serving as a visiting professor at the Mississippi College School of Law, where he taught Torts I and II, Legal Drafting, and a seminar on Expert Witnesses.

Our firm recognizes the need for governmental entities to have representation from qualified individuals with diverse backgrounds and experiences. Therefore, we welcome the opportunity to continue to serve our state in such capacity.

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MICHIGAN • MISSISSIPPI • NEVADA • NEW JERSEY • NEW YORK • OKLAHOMA • TENNESSEE • TEXAS • USVI

Page 2
March 1, 2023

I thank you in advance for your consideration in this matter. Please find enclosed a copy of Mr. Daniels' resume for your review. If I may be of assistance, please do not hesitate to contact me.

Sincerely yours,
QUINTAIROS, PRIETO, WOOD & BOYER, P.A.

A handwritten signature in black ink, appearing to read "Amanda", with a large, stylized flourish extending to the right.

Amanda Green Alexander

Enclosure

Quentin A. Daniels
3309 North State Street #C, Jackson, Mississippi 39216
Email: Quentin.daniels@qpwblaw.com PH: (601) 842-8444

Professional Experience:

- Areas:** All aspects of civil litigation, auto accidents, general negligence, premises liability, employer liability, civil rights defense, governmental entity defense, insurance coverage disputes, contractual liability
- 2022-2023 Quintarios Prieto Wood & Boyer, P.A. (Defense / Civil litigation) Senior Associate; civil litigation defense firm, maintain complete file responsibility for assigned matters including initial assessment of client risk exposure, proposed discovery and/or resolution plan, and steer all aspects of client defense including expert witness selection and deposition/cross-examination, mediation, and trial preparation.
- 2019-2022 Alexander Law, P.A. (Defense / Civil litigation) Senior Associate; Practice devoted entirely to employment, insurance defense and Governmental Tort Liability Act claims. Practice areas include negligence, premises liability, insurance coverage, employer liability, professional liability and general liability claims.
- 2016 Don Evans, PLLC, Jackson, Mississippi (Trial Attorney, Personal Injury); *Attend trials and hearings, draft pleadings, appellate briefs, attend depositions*
- 2015-2016 United Medical Recovery, LLC, Jackson, Mississippi (Debt Collection Agency); *General Counsel*
- 2010-2015 Don Evans, PLLC, Jackson, Mississippi (Trial Attorney, Personal Injury); *Attend trials and hearings, draft pleadings, appellate briefs, attend depositions*
- 2009-2010 Mississippi College School of Law, Jackson, Mississippi (Visiting Professor); *Torts I & II, Legal Drafting, Expert Witness Seminar*
- 2002-2010 Daniels & Gentry, PLLC, Jackson, Mississippi (Partner, Mass Tort litigation); *Attend trials and hearings, draft pleadings and briefs, attend depositions.*
- 2001-2002 Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., Jackson, Mississippi (Associate, Mass Tort and Insurance Defense litigation); *Attend depositions and hearings, draft pleadings.*
- 1996-2002 Daniel Coker Horton & Bell, P.A., Jackson, Mississippi

(Associate, Mass Tort and Insurance Defense litigation); *Attend trials, depositions, and hearings, draft pleadings.*

Admitted:

Mississippi, 1996

U.S. District Court, Southern District of Mississippi, 1996

U.S. District Court, Northern District of Mississippi, 1996

Education:

Juris Doctor Degree (Special Distinction), Mississippi College School of Law, Jackson, Mississippi (1996). Class Rank: 6 of 112; Member, Law Journal

Master of Arts Degree (English), Southern Illinois University, Carbondale, Illinois (1989);

Bachelor of Science Degree (English), Delta State University, Cleveland, Mississippi (1986)



**BRYAN, NELSON,
SCHROEDER,
CASTIGLIOLA &
BANAHAN**
Attorneys at Law

Vincent J. Castigliola, Jr.
John A. Banahan
H. Benjamin Mullen*
Jessica B. McNeel
Calen J. Wills*
Michael R. Moore*

E.S. Ned Nelson
1928 - 1985
John F. Bryan, III
1915 - 1994
Ernest R. Schroeder
1938 - 2018

**Admitted in Alabama*

February 27, 2023

Mississippi Tort Claims Board
c/o Amanda Rayburn
Post Office Box 267
Jackson, Mississippi 39205

Sent Via U.S. Mail & Email
amanda.rayburn@dfa.ms.gov

RE: Approved Attorney Register

Honorable Members of the Mississippi Tort Claims Board:

Please accept the instant request for consideration for addition to the Approved Attorney Register for the Tort Claims Board. I am a partner at Bryan, Nelson, Schroeder, Castigliola & Banahan, PLLC, where I have practiced law since 2014. Throughout that time, my practice has been largely devoted to insurance defense and the defense of professional liability claims, including medical and dental negligence claims. Our firm has also provided representation to various law enforcement agencies, including the Jackson County Sheriff's Office. And, for approximately the past three years, I have served as the City Attorney for the City of Pascagoula.

Enclosed for your consideration is my Curriculum Vitae. Please note that I am in good standing with the Mississippi Bar Association. Should you desire any additional information in relation to this request, please do not hesitate to let me know. With kindest regards, I remain

Sincerely yours,

Michael R. Moore

Enclosure

MICHAEL RILEY MOORE

1103 Jackson Avenue | Pascagoula, Mississippi 39567 | (228) 762-6631 | michael@bnsccb.com

Legal Experience:

Bryan, Nelson, Schroeder, Castigliola & Banahan, PLLC, Pascagoula, Mississippi

Partner, January 2019 – present

Associate, June 2014 – December 2018

- Assists governmental entities with contract procurement, open meeting compliance, civil service commission proceedings, and litigation; counsels various insurance companies in coverage and defense litigation, including first and third party claims; defends professionals in professional liability lawsuits, including medical and dental malpractice lawsuits

Hickman, Goza & Spragins, PLLC, Oxford, Mississippi

Law Clerk, October 2012 – June 2013

- Researched issues pertaining to bad faith insurance defense, medical malpractice defense, commercial landlord-tenant law, personal injury defense and common carriers, and others; drafted pleadings, motions, memoranda, deposition summaries, and other documents

Dogan & Wilkinson, PLLC, Pascagoula, Mississippi

Law Clerk, May 2012 – June 2012

- Researched issues pertaining to insurance defense, medical malpractice defense, mass torts, premises liability, employment law, and others; drafted memoranda, met with clients, and attended hearings

U.S. District Court, Southern District of Mississippi, Gulfport, Mississippi

Extern, June 2011 – July 2011; May 2010 – June 2010

- Researched wide range of civil and criminal issues and drafted orders and memoranda; attended hearings, trials, settlement conferences, and other proceedings

Education:

Tulane University Law School, New Orleans, Louisiana

Master of Laws in Admiralty, Graduated with Distinction, May 2014

- **Harry F. Stiles Jr. Scholarship**, *Recipient*, Spring 2013
- **CALI Excellence for the Future Award – Law of the Sea**, *Recipient*, Fall 2013
- **Maritime Law Society**, *Member*, Fall 2013 – Spring 2014

The University of Mississippi School of Law, Oxford, Mississippi

Juris Doctor, cum laude, May 2013

- **Outstanding Student Award**, *Legal Research and Writing – Section 1*, Spring 2011
- **ABA Admiralty & Maritime Law Committee**, *TIPS Survey Co-Author*, Fall 2012
- **Phi Delta Phi**, *Member*, 2011 – 2013

The University of Mississippi, Croft Institute for International Studies, Oxford, Mississippi

Bachelor of Liberal Arts in International Studies, Minors in Spanish and Economics, May 2010

Admissions:

Mississippi (2013); U.S. District Courts for the Southern and Northern Districts of Mississippi (2013); U.S. Court of Appeals for the Fifth Circuit (2013); Alabama (2014)

Professional and Community Involvement:

Mississippi Enterprise for Technology, Board Member; Mississippi Bar 2019 Leadership Forum; Jackson County 2022 Leadership Class; First Presbyterian Church of Pascagoula, Elder; Jackson County Bar Association, former President; Rotary Club of Pascagoula; Mississippi Bar Association; Jackson County Young Lawyers; Maritime Law Association of the United States; SEALI; DRI; MDLA; Alabama Bar Association; Fifth Circuit Bar Association; ABA Business Law Section, Banking Law Committee; Mississippi Maritime Museum, Former Board Member

Reported Decisions:

- *Lee v. State Farm Mut. Auto. Ins. Co.*, 2021-CA-882-SCT (Miss. Feb. 2, 2023)
- *Span v. Nichols*, 2018-CA-01332 (Miss. Ct. App. May 12, 2020)
- *Rudd v. State Farm Fire & Cas. Co.*, 2018-CA-01390 (Miss. Ct. App. May 5, 2020)
- *West v. State Farm Mut. Auto. Ins. Co., et al.*, 2018-CA-557 (Miss. Ct. App. Oct. 8, 2019)
- *Greenwich Ins. Co. v. Capsco Industries, Inc.*, 934 F.3d 419 (5th Cir. 2019)
- *McGlothlin v. State Farm Mut. Auto. Ins. Co.*, 925 F.3d 741 (5th Cir. 2019)
- *Mears v. Jones*, 756 Fed. Appx. 404 (5th Cir. 2018)
- *Singing River Health System v. Vermilyea*, 242 So. 3d 74 (Miss. 2018)
- *Forrest General Hosp. v. Upton*, 240 So. 3d 410 (Miss. 2018)
- *Isom v. Valley Forge Ins. Co.*, 716 Fed. Appx. 280 (5th Cir. 2017)
- *Continental Cas. Co. v. Allstate Prop. & Cas. Co.*, 235 So. 3d 40 (Miss. 2017)
- *Seibert v. Jackson County, Miss.*, 851 F.3d 430 (5th Cir. 2017)
- *Briggs v. State Farm Fire & Cas. Co.*, 673 Fed. Appx. 389 (5th Cir. 2016)
- *Ross v. Wallack*, 188 So. 3d 597 (Miss. Ct. App. 2015)
- *Castigliola v. Mississippi Dept. of Rev.*, 162 So. 3d 795 (Miss. 2015)



QUINTAIROS, PRIETO, WOOD & BOYER, P.A.
2506 LAKELAND DRIVE, SUITE 500
FLOWOOD, MS 39232
P: (601) 968-8571 • F: (601) 968-8574

March 1, 2023

VIA ELECTRONIC MAIL:

Ms. Amanda Rayburn, Director
Mississippi Tort Claims Board
Post Office Box 267
Jackson, Mississippi 39215
Email: Amanda.Rayburn@dfa.ms.gov

RE: Professional Services: Dellwyn Smith

Dear Ms. Rayburn:

This correspondence is forwarded to request the inclusion of Dellwyn of my firm, on the list of attorneys who are willing to provide legal defense for governmental entities in litigated cases. She is a 2009 graduate of Mississippi College School of Law and a member of the Mississippi Bar since 2009.

Dellwyn joins our firm as an Associate with the Mississippi office of Quintairos, Prieto, Wood and Boyer, P.A. (QPWB), the largest minority firm in the United States. Our firm's primary focus is in the areas of worker's compensation defense, employment law, federal and state civil litigation. Currently, our firm provides legal representation on behalf of individuals, businesses, state agencies, and quasi-governmental entities including, but not limited to, the Mississippi Department of Transportation, Mississippi Public Safety, Mississippi Department of Corrections and Mississippi Public Entity Workers' Compensation Trust in the areas of employment, worker's compensation claims, and other liabilities claims.

Prior to joining QPWB, Ms. Smith worked as an attorney with multiple Jackson, Mississippi law office handling insurance defense, workers' compensation, civil litigation matters and intellectual property matters. Previously, and for over 13 years, she has worked with other Jackson, Mississippi law firms as a trial attorney, in the areas of insurance defense, employment discrimination, commercial law, and criminal defense.

Our firm recognizes the need for governmental entities to have representation from qualified individuals with diverse backgrounds and experiences. Therefore, we welcome the opportunity to continue to serve our state in such capacity.

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Page 2
March 1, 2023

I thank you in advance for your consideration in this matter. Please find enclosed a copy of Ms. Smith's resume for your review. If I may be of assistance, please do not hesitate to contact me.

Sincerely yours,
QUINTAIROS, PRIETO, WOOD & BOYER, P.A.

A handwritten signature in black ink, appearing to read "Amanda", with a long horizontal flourish extending to the right.

Amanda Green Alexander

Enclosure

DELLWYN K. SMITH, ESQ.
Post Office Box 1904
Ridgeland, Mississippi 39158-1904
dellwyn.smithesq@gmail.com
601-316-4769

BAR ADMISSION

State of Mississippi, 2009; Northern District of Mississippi, 2009; Southern District of Mississippi, 2009
Fifth Circuit Court of Appeals, 2009; United States Supreme Court, 2014

EDUCATION

Doctor of Jurisprudence, Mississippi College School of Law May 2009

- American Jurisprudence Award – Criminal Law

Master of Business Administration, Mississippi College School of Business July 2005

Bachelor of Arts in Economics/Accounting, cum laude, Tougaloo College May 2003

EXPERIENCE

Associate Attorney, Quintairos, Prieto, Wood & Boyer, P.A., March 2023- Present

Represent individuals, businesses and public entities in the areas of commercial litigation, insurance defense coverage matters, motor vehicle liability, labor and employment law, and representation of employers, self-insured employers and their insurance carriers. Counsel clients on forming a business entity and the proper procedures in conducting their business entity. Counsel clients and draft legal documents for business plans, estate plans, living wills, and living trusts. Represent individuals and business owners through filing the required documents with federal agencies and registering their brands with the United States Patent and Trademark Office.

Managing Attorney, D.K. Smith Law, PLLC, August 2021 – March 2023

Represented individuals and entrepreneurs in protecting their business and brands. Advised clients on forming a business entity and the proper procedures in conducting their business entity. Advised clients and draft legal documents for estate plans, living wills, and living trusts. Drafted, reviewed, and revised business contracts. Represented individuals and small business owners through filing the required documents with federal agencies and registering their brands with the United States Patent and Trademark Office.

Assistant General Counsel, The Mississippi Bar, January 2019 – August 2021

Provided ethics guidance to Mississippi attorneys on matters of professional conduct and disciplinary procedures through presentations and other means. Conducted investigations and prosecution of grievances against attorneys. Developed strategy and deliver oral arguments in discipline matters before a Court Tribunal. Provided recommendations to the Committee on Professional Responsibility regarding disciplinary actions. Prepared discovery and conducted investigations to obtain relevant facts about the cases against attorneys. Examined and analyzed legal documents in preparation for trials, hearings, and post-hearing developments.

Assistant District Counsel, Jackson Public School District, November 2017 – January 2019

Represented the District as legal counsel in judicial and governmental proceedings, and advocating and defending its interests in those proceedings. Coordinated the handling of legal matters for the school district. Developed strategies, arguments, and motions in preparation for hearings and trials in defending suits filed against the school district. Prepare and participate in hearings before state trial courts. Prepared

DELLWYN K. SMITH, ESQ.
Post Office Box 1904
Ridgeland, Mississippi 39158-1904
dellwyn.smithesq@gmail.com
601-316-4769

and conducted administrative hearings regarding termination matters. Prepared witnesses for depositions and hearings regarding legal matters for the school district. Conducted extensive research to obtain case law related to legal issues presented in the case. Prepared discovery and conducted investigations to obtain relevant facts to resolve the school district's case. Coordinated and provided in-service training programs for employees of the school district about discrimination prevention, sexual harassment, workplace harassment and compliance. Educated District personnel about legal requirements and risks to prevent or reduce liabilities and legal disputes. Provided legal advice and assistance to the administrative staff with matters relating to the interpretation of statutes, contracts, board policies, and federal and state laws. Provided legal advice to ensure compliance with legal requirements, and reduce exposure to legal risks.

Staff Attorney, MS Office of Capital Post-Conviction Counsel, December 2013 – August 2017

Provided direct representation and advice to indigent death row inmates. Advised clients on complex legal questions involving the interpretation of case law, procedures, and legal documents. Authored substantial pleadings and litigated issues in circuit court and Mississippi Supreme Court. Analyzed the clients' trial and appellate records to identify critical issues for post-conviction relief. Conducted aggressive investigations of all aspects of the case which included interviewing clients, trial attorneys, family members and fact witnesses. Coordinated investigations to obtain relevant facts and evidence which may be mitigating. Identified, retained, and worked closely with expert witnesses. Conducted extensive legal research concerning applicable laws, procedures and requirements. Observed the clients' mental, physical and emotional condition for effects on the clients' legal position. Evaluated the desirability of modifying prior counsel's theory of the case in light of subsequent developments.

Associate Attorney, Gibbs Whitwell PLLC, October 2011 – November 2013

Represented state agencies, public companies, and individuals in state and federal courts, and successfully argued motions before the circuit court. Authored motions, memoranda of law and supporting affidavits, and successfully briefed issues before the Mississippi Supreme Court. Conducted extensive research to obtain case law related to legal issues presented in the case. Prepared discovery and conducted investigations to obtain relevant facts to resolve the client's case. Examined and analyzed legal documents in preparation for trials, hearings, and post-hearing developments to provide competent legal advice and services. Advised clients on legal issues related to executing and negotiating contracts and legal documents.

Attorney, Alexander and Watson, P.A., June 2010 – October 2011

Conducted extensive legal research regarding commercial law, workers' compensation, employment law and domestic relations. Conducted extensive investigations to obtain facts in cases regarding workers' compensation and employment discrimination. Represented families in domestic relations' matters and obtained favorable judgments. Developed case summaries for clients which identified recommendations to effectively resolve their cases. Investigated accidents and problem areas to adequately represent the clients' interests before the Workers' Compensation Commission. Reviewed medical records and submitted summary reports to mitigate the employer/insurer's liability. Prepared discovery requests and responses, court orders, memoranda of law, motion briefs and supporting affidavits in preparation for court hearings and post-hearing matters.

DELLWYN K. SMITH, ESQ.
Post Office Box 1904
Ridgeland, Mississippi 39158-1904
dellwyn.smithesq@gmail.com
601-316-4769

Judicial Clerk, Honorable Winston L. Kidd, August 2009 – May 2010

Researched and analyzed legal issues to provide advice and assistance in court proceedings and post motion hearing developments. Researched and interpreted rules, regulations and statutes to devise comprehensive decisions. Drafted proposed orders, opinions and memoranda of law to assist the judge in post-hearing developments. Maintained summaries in hearings and trials to assist the judge with formulating judgments. Provided support to the court by drafting memoranda of law concerning cases on appeal.

COMMUNITY AND PROFESSIONAL INVOLVEMENT

Mississippi Bar Association, 2009 – Present
Magnolia Bar Association, 2009 – Present
Rotary Club of West Jackson, 2018 – Present
Junior League of Jackson, Active Member, 2018 – Present
Mississippi Volunteer Lawyers Project Pro Bono Service Award, 2010
Mississippi Bar's Leadership Forum, 2013
Leadership Greater Jackson, Class of 2013-2014
Charles Clark Chapter of the American Inns of Court, Associate 2013 – 2015

References available upon request.

Agenda Item 10

Claims

Ms. Amanda Rayburn, Claims Manager

Description:

Ms. Rayburn will present McDowell vs. MDOT for settlement authority.

Action Requested:

Request approval to authorize settlement



STATE OF MISSISSIPPI
GOVERNOR TATE REEVES

MISSISSIPPI TORT CLAIMS BOARD
C. PHILLIP BUFFINGTON, CHAIRMAN

MIKE CHANEY, Commissioner
Insurance Department
LYNN FITCH, Attorney General
Office of Attorney General
DAVID McRAE, Treasurer
Department of Treasury

SEAN TINDELL, Commissioner
Department of Public Safety
LIZ WELCH, Executive Director
Department of Finance and Administration
CHRIS WELLS, Executive Director
Department of Environmental Quality

MEMORANDUM

TO: Mississippi Tort Claims Board

FROM: Amanda Rayburn

DATE: March 9, 2023

Trent McDowell vs. Mississippi Department of Transportation

LAW OFFICES OF
GWIN, PUNCHES & KELLEY, LLP
319 MARKET STREET
NATCHEZ, MISSISSIPPI 39120
POST OFFICE BOX 1344
NATCHEZ, MISSISSIPPI 39121

ROBERT R. PUNCHES*
LUCIEN C. GWIN III
CHRISTOPHER E. KELLEY

TELEPHONE: (601) 446-6621
FAX NO. (601) 442-6175
Writer's Email: sam@gwinlawfirm.com

* ALSO LICENSED IN LOUISIANA

February 24, 2023

Ms. Amanda Rayburn
Mississippi Tort Claim Board
P.O. Box 267
Jackson, Mississippi 39205

RE: McDowell vs MDOT

Dear Amanda:

Pursuant to your request I am submitting this report regarding the issues surrounding Trent McDowell's accident and injuries as well as the basis for settlement.

In this case, it is alleged by the Plaintiff that our client and driver for MDOT, while acting in the course and scope of his employment as a truck driver for MDOT caused a collision between Plaintiff and Defendant's vehicles. The accident occurred at the intersection of highway I-55 and Highway 24 in Pike County, Mississippi. Both parties agree that the Plaintiff and the MDOT driver Jerome Coleman exited I-55 at approximately the same time taking the off ramp and going down to the intersection of Highway 24 where they both encountered a red light. Coleman was in the left lane and the Plaintiff Trent McDowell was in the right lane. McDowell was driving a rented Dodge Charger; Coleman was driving an MDOT commercial vehicle that was headed to a repair shop to get some minor repair done to his vehicle. Both parties agree that when they came to a complete stop and when the light turned green, the Plaintiff testifies that he pulled off while staying in his lane the entire time and the MDOT employee, Coleman, also pulled off but veered into his lane and hit the Plaintiff pushing his car forward and then the Plaintiff states that Coleman hit his vehicle a second time, causing his vehicle to do a 180 into the middle of the road. Coleman's testimony is that the Plaintiff came over in his lane, the left lane, however he does admit that at that point he turned to the right and hit the Plaintiff a second time. There is no dispute that the Dodge Charger came to rest in the middle of the highway facing in the opposite direction when it came to rest.

Mr. Coleman's truck came to rest on the right side of the highway in the right lane.

As I have explained to you Mr. Coleman is not really sure as to how the accident occurred and why he hit the Plaintiff a second time. He testifies that he was traveling at a low rate of speed. As I have previously reported, Mr. Coleman's hesitation in his version of facts is problematic.

Based on the above stated facts and the testimony of Trent McDowell as well as the statement to me from Mr. Coleman I have advised you that I saw that we had exposure in this case.

We did have a witness who was a co-employee of MDOT named David Harper who was traveling behind Mr. Coleman, however, unfortunately, Mr. Harper was not watching ahead of him at the time the impact and says he did not see the initial impact, but he did however say that he saw Mr. Coleman "pushing" Mr. McDowell's vehicle down the highway and then saw Mr. Coleman veer to the right. He also stated that Mr. Coleman did not hit his brakes as near as he could tell.

Also, at the time of the accident, Mr. McDowell had his uncle Mike McDowell in the passenger side of the vehicle who was also hurt. We were unable to settle that claim.

THE INJURIES

Mr. McDowell has seen multiple doctors at various times since the accident. He has had multiple imaging as well as injections and now ablation of his nerves. The first doctor that he saw three to four days after the accident was a Dr. Jolly who is a pain specialist in New Orleans. Dr. Jolly after interview and examination rated the pain of Mr. McDowell as 8/10. He documents that Mr. McDowell had difficulty walking, standing, bending and lifting and going upstairs. He also documented that Mr. McDowell had tingling and numbness in his foot. Dr. Jolly prescribed Ultram and Tramadol which are both pain medications. Dr. Jolly also prescribed rehabilitation with North Star Health Care. However, at this time it was during COVID-19 and all rehab was via tele-conference. Dr. Jolly diagnosed that the therapy did not work, thereafter the Plaintiff went to see Dr. Cenac who is an orthopedic surgeon in Homa, Louisiana. Dr. Cenac is related with Gulf Coast Orthopedics. Dr. Cenac treated the Plaintiff between May 20, 2020 until April 7, 2021. Dr. Cenac ordered an MRI on May 11, 2020. The MRI test found "interior osteophytes and desiccation particularly from the broad-based central disc protrusions effacing the sac with mild decrease and foramina.... changes to the MM bulge at L-4-5 with mild decrease in fat nutria foramina. One MM bulge at L5 S1. Disc desecration and interior osteophytes and infused disc bulge and facet changes at L3-L4- to L5- S1 also narrowing of neural foramina and significant level 3-4 with a central annular tear."

An annular tear is where the disc which lies between the vertebrae is actually injured or torn. If you have an annular tear to the disc, it can allow fluid to leak out and bone to hit bone. You can have different levels of an annular tear. If an annular tear gets worse you have to have surgery to repair it.

Dr. Cenac is of the opinion that the accident obviously is the cause of the problem, because there were no prior symptoms pre-accident. Again, an annular tear is an objective finding and not just the opinion of the doctor. Dr. Cenac tried conservative therapy. He prescribed physical therapy but the Plaintiff testified that this didn't work and was thereafter discontinued. Thereafter Dr. Cenac ordered a nerve conduction study done by a Dr. Donald Gervais. The report on the nerve study was that the ENG nerve studies point to a chronic left S-1 radiculopathy. Dr. Cenac saw him again on December 21, 2020 and wanted to refer him to a Dr. Haddell for an epidural. Plaintiff has testified he has now had five epidurals by Dr. Haddell. Plaintiff testified that the epidurals did no good and Mr. McDowell described them as being very painful.

Thereafter Dr. Cenac ordered updated MRIs on March 31, 2021 and the findings of the MRIs were:

"(1) T12-L1, L1-2 and L2-3 show no compression disc abnormality; (2) L3-4 shows mixed disc protrusion centrally (annular tear) with no nerve root effacement (no change); (3) L4-5 shows mixed disc protrusion (annular tear) nerve root effacement (no change); (4) L5-S1 shows mixed disc protrusion (third annular tear). No nerve root effacement"

As I indicated in prior reports, it now appears that there are not one, but three annular tears diagnosed in the Plaintiff. This procedure was done in Open MRI of Louisiana in Homa, Louisiana. The last visit documented by Dr. Cenac is as follows:

"At the present I do feel that the Plaintiff's option from a physical standpoint is to have 3-level lumbar anterior posterior spinal fusions with the procedure to remove the discs and restore his foramina height and sagittal balance.... He is upset at his situation."

Dr. Cenac then went on to state that if the surgery is performed, he will have very limited capacity

to be employed in the future. It is Dr. Cenac's opinion that all three annular tears are related to the accident.

As I further explained in the prior reports, the reason McDowell does not want to have the spinal fusion is that it will preclude him from completely going back to work as a seaman. However, Dr. Cenac is of the opinion that his situation will not get better, but will only worsen.

On August the 20th 2021 Mr. McDowell went back to Dr. Jolly who is the pain specialist. Dr. Jolly referred him to a Dr. Brennan who is an orthopedic surgeon in Lafayette, Louisiana. Mr. McDowell testified that he was looking for other doctors who would hopefully give him a better prognosis than the surgery that Dr. Cenac wanted to conduct. The following is a quote from Dr. Brennan report:

"He has been through physical therapy with no improvement, he had lumbar injections with no improvement and ultimately had a lumbar disc o gram showing concorded pain in the L3, L4, and L5 -S1 regions with equivocal findings in L4-5. His lumbar MRI scan showed lumbar degenerative disc disease and annular tearing of the lower three lumbar segments.... I told him that the positive fabere testing on the left indicated a joint-mediated pain possibly and I thought before embarking on a multi-level lumbar stabilization procedure that a left S side joint injection block would be helpful in determining the contribution of any S side joint to his pain syndrome. He understands that. I will order the left sacroiliac joint block and I will create a "for the L3 -S1 laminectomy infusion based on the results of the discogram".

At the time of the mediation the Plaintiff had still not had the laminectomy infusion. However, once this is done, he will no longer be able to work as a seaman.

UPDATED MEDICAL

Since the mediation in November, the Plaintiff has undergone a Radio Frequency Ablation, which is in essence the burning of nerves in his back. This was performed in December 2022. The report from Dr. Susan Bryant is that the procedure gave Plaintiff some relief in his numbness of his foot (which she also adds is "unusual") it virtually did no good for his back.

His latest visit in January 2023 he complained of constant pain that was "sharp", "shooting", "stabbing" and "constant pressure". He is on a regiment of opioids. His next procedure will be lumbar fusion, which as stated, will cause the end of his career as a seaman. The Plaintiff is in his late 30's by the way.

JOB HISTORY

At the time of the accident Plaintiff was working for Brossard Oil Transportation out of New York. He was classified as a seaman thus making about 550.00 per day and over 100,000.00 per year. As a classified merchant- marine this allowed him to work on ships and he was considered a seaman who engaged in "heavy lifting" chipping and painting. He was also in loading and unloading cargo. He was also licensed and qualified to deal with all facets of liquid cargo as it relates to the oil industry. He has not worked since the accident and thus claiming lost wages and current medical to date exceeded \$250,000.00.

Based upon the severity of the injuries and based upon the fact that two doctors have confirmed that he needs a fusion of his lumbar spine, and based upon the fact that such an operation would thereafter cause him to be unemployable as a mariner seaman. I feel the settlement of \$275,000.00 was very favorable to MDOT. The Plaintiff's medical expenses are at present over \$60,000.00 and expected to go well over \$100,000.00.

Therefore, in view of the liability, coupled with the severity of the injuries a pinion of \$275,000.00 was a very good settlement under all the circumstances.

CONCLUSION

This young African American man makes a very good witness and comes across as very genuine. He has lost substantial wages to date and will lose substantial more in the future. The settlement is warranted under all the facts.


LUCIEN C. GWIN, III

SCG,III
JEJ