

FILED
SEP 23 2004
J. L. Adams
FORREST COUNTY CIRCUIT CLERK

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

F. CHARLES PHILLIPS

PLAINTIFF

VERSUS

CIVIL ACTION NUMBER: C104-0278

**THE MISSISSIPPI DEPARTMENT OF
PUBLIC SAFETY/MISSISSIPPI HIGHWAY
SAFETY PATROL, JOSEPH W. SEALS,
THOMAS E. LITTLE, AND JOHN DOES
1 AND 2**

DEFENDANTS

COMPLAINT

COMES NOW, the Plaintiff, F. Charles Phillips, and files this, his Complaint against the Defendants, The Mississippi Department of Public Safety/Mississippi Highway Safety Patrol, Joseph W. Seals, Thomas E. Little, and John Does 1 and 2, and would respectfully show unto the Court and allege the following, to-wit:

1.

That the Plaintiff, F. Charles Phillips, is an adult resident citizen of Forrest County, Mississippi, who resides at 2507 Sierra Circle, Hattiesburg, Mississippi 39402.

2.

That the Defendant, The Mississippi Department of Public Safety/Mississippi Highway Safety Patrol is a department, agency, and subdivision of the State of Mississippi. Said Defendant may be served with process of this Court pursuant

to the Mississippi Rules of Civil Procedure by service upon Honorable Jim Hood, the Attorney General for the State of Mississippi, at his regular office address of 450 High Street, Jackson, Mississippi 39205, by serving Mr. Mike Lanford, Special Assistant Attorney General, or any other Special Assistant Attorney General who has been designated to represent The Mississippi Department of Public Safety/ Mississippi Highway Safety Patrol. Further, the Defendant, The Mississippi Department of Public Safety/Mississippi Highway Safety Patrol may also be served with process by service upon Honorable Rusty Fortenberry, Commissioner of Public Safety. at his regular office address, 1900 East Woodrow Wilson Drive, Jackson, Mississippi 39216, by serving the designated employee in the Legal Division.

That the Defendant, Joseph W. Seals is an adult resident citizen of Pearl River County, Mississippi, who may be served with process of this Court pursuant to the Mississippi Rules of Civil Procedure at his residence located at 141 Ben Byrd Road, Lumberton, Mississippi 39455.

That the Defendant, Thomas E. Little is an adult resident citizen of Lamar County, Mississippi, who may be served with process of this Court pursuant to the Mississippi Rules of Civil Procedure at his residence located at 103 Crossland Road, Sumrall, Mississippi 39482.

That on the date of this incident, Defendants Joseph W. Seals and Thomas E. Little were employed by the Mississippi Department of Public Safety/Mississippi Highway Safety Patrol, and as state troopers, each were persons acting on behalf of the

State of Mississippi, in an official capacity.

That the true names of Defendants John Doe 1 and John Doe 2 are unknown to the Plaintiff, at this time, and the Plaintiff, therefore, sues said Defendants by such fictitious names. Upon discovery, the true names of these Defendants may be substituted in these proceedings, in accordance with Rule 9 of the Mississippi Rules of Civil Procedure.

3.

That this honorable Court has jurisdiction over the parties and the subject matter of this action. Causes of action exist against the Defendants pursuant to Sections 11-46-1 **et. seq.** of the Mississippi Code of 1972, as amended.

4.

That the Plaintiff has complied with the procedural notice and filing requirements of the Mississippi Tort Claims Act.

FACTS:

5.

That on October 15, 2003, the Plaintiff, Mr. F. Charles Phillips, a reserve Forrest County, Mississippi Deputy Sheriff, had joined in a “chase” pursuit on Highway 49 South, in Forrest County, Mississippi. Apparently, the “chase” pursuit had begun in Covington County, Mississippi. At one point, Mr. Phillips was advised to cease his pursuit, and in doing so, he pulled off the highway. Shortly thereafter a Mississippi Highway Safety Patrol vehicle pulled beside Mr. Phillips, and the officer in the patrol car motioned for Mr. Phillips to pull forward, which he did. The officer then, again, motioned for Mr. Phillips to pull forward, which he did. Just after this action, the

Mississippi Highway Safety Patrol Officer, exited his vehicle and instructed Mr. Phillips to open his car door. When Mr. Phillips or the trooper opened the door, the Mississippi Highway Patrol Officer did not ask for any identification and did not arrest Mr. Phillips----instead, he abruptly pulled Mr. Phillips from his car and forcefully and brutally threw him to the ground. At this point the trooper handcuffed Mr. Phillips left hand and ordered him to “roll over.” As the trooper was continuing to handcuff Mr. Phillips he hit Mr. Phillips head on the gravel (or roadway) several times, and knocked his glasses off. The trooper twisted Mr. Phillips’ body and rolled him over. Mr. Phillips was bleeding profusely, and the trooper choked him around the neck until he was unconscious. Obviously, Mr. Phillips was unable to speak, preventing him from identifying himself. Shortly thereafter, another Mississippi Highway Safety Patrol Officer pulled up, and Mr. Phillips was allowed to stand up, but still never allowed to identify himself. The officer that inflicted the injuries upon Mr. Phillips identified himself as trooper Joe Seals (one and the same person as the Defendant, Joseph W. Seals.) Mr. Phillips alleges that the second officer was the Defendant, trooper Thomas E. Little. Mr. Phillips was told by either one or both troopers that because of his injuries he needed to go to the hospital to seek medical attention. However, both troopers left the scene and never offered to help Mr. Phillips procure medical attention or call an ambulance for him.

NEGLIGENCE:

6.

That the Defendant, The Mississippi Department of Public Safety/Mississippi

Highway Safety Patrol waived immunity under Section 11-46-1 **et. seq.** of the Mississippi Code of 1972, as amended, when their state troopers, each of whom were acting on behalf of the State of Mississippi, in an official capacity, acted in reckless disregard of the safety and well being of Mr. F. Charles Phillips, who was not engaged in criminal activity at the time of the incident.

7.

That The Mississippi Department of Public Safety/Mississippi Highway Safety Patrol is liable for the following reasons:

- (1) Failure to have policies and procedures in effect regarding the appropriateness of pursuits on high traffic state highways;
- (2) Failure to adequately train state troopers concerning appropriate actions to be taken at the termination of a pursuit;
- (3) Failure to have adequate radio communication with other law enforcement officers;
- (4) Failure to adequately train state troopers to **immediately** ask for identification from a person who was not stopped by the troopers, but who had already voluntarily pulled off the highway;
- (5) Failure to adequately train state troopers to refrain from the use of physical force and violence on an individual that is not under arrest and that is not engaged in any criminal activity;
- (6) For other reasons to be shown at the trial of this case, all in reckless disregard of the safety and well being of Mr. F. Charles Phillips, who was not engaged in criminal activity at the time of the incident.

8.

That both the Defendant, Joseph W. Seals and/or the Defendant, Thomas E.

Little are liable for the following reasons:

- (1) Failure to follow policies and procedures in effect, if any, regarding pursuits in high traffic state highways;
- (2) Failure to follow policies and procedures of appropriate actions to be taken at the termination of a pursuit;
- (3) Failure to adequately communicate to the Mississippi Highway Safety Patrol dispatcher and other law enforcement officers that Mr. F. Charles Phillips was being detained;
- (4) Failure to **immediately** identify themselves as Mississippi Highway Safety Patrol troopers, and to advise Mr. F. Charles Phillips of the reason for demanding him to exit his vehicle;
- (5) Failure to **immediately** ask Mr. F. Charles Phillips for his identification upon initially approaching him or in asking him to produce his drivers license;
- (6) Use of excessive physical force in the unprovoked and unwarranted altercation inflicted upon Mr. F. Charles Phillips, who was not under arrest and who was not engaged in criminal activity at the time of the incident;
- (7) After the altercation, when Defendants Seals and Little indicated to Mr. F. Charles Phillips that he needed medical attention, the failure of the Defendant troopers to assist Mr. F. Charles Phillips in procuring medical treatment or calling an ambulance for him;
- (8) For other reasons to be shown at the trial of this case, all in reckless disregard of the safety and well being of Mr. F. Charles Phillips, who was not engaged in criminal activity at the time of the incident.

9.

That the injuries suffered by the Plaintiff were the direct and proximate cause of the negligence of the Defendants.

DAMAGES:

10.

That due to the injuries sustained by the Plaintiff and the intense pain and suffering resulting from the injuries, the Plaintiff had to obtain medical treatment, which will continue in the future. That as a result of the afore-said acts of negligence, the Plaintiff has (or will) suffer the following damages:

- (a.) past, present, and future pain and suffering;
- (b.) past, present, and future medical expenses;
- (c.) loss of wages;
- (d.) mental anguish and loss of enjoyment of life.

11.

That as a direct result of the above acts of negligence by the Defendants, the Plaintiff suffered serious and lasting injuries including, but not limited to lacerations to his face, nose, chin, and ears, contusions to and swelling of his eyes, and a broken tooth. Because of the trauma inflicted upon Mr. F.

Charles Phillips, he has, and is, experiencing mental and emotional stress. Also, as a result of the stress caused by this incident, Mr. F. Charles Phillips has suffered a heart attack. The Plaintiff has been caused to suffer mental anguish and loss of enjoyment of life as a direct result and proximate cause of the negligence of the Defendants. Prior to this choking and beating Mr. F. Charles Phillips was an extremely healthy and mentally stable person.

That the residual effects of the Plaintiff's injuries are of a lasting nature and have caused the Plaintiff to experience pain and suffering, and emotional, mental, and psychological distress and loss of enjoyment of life.

Mr. F. Charles Phillips has been employed by Hanson Pipe and Products (successor to Choctaw, Inc. and Faulkner Concrete Pipe Company) for almost forty-four (44) years, and it was only after this incident that he has, in all these years, had to miss a significant amount of work. Also, as a result of his injuries, for a limited time, he was unable to perform his duties as an Official with the Mississippi Collegiate Umpire Association, the Hattiesburg Officials Association, and the Laurel Officials Association. The Plaintiff has had to miss work as a Reserve Deputy with the Forrest County Sheriff's Office, and even though he has returned to some limited duty, he is not as effective as a law enforcement officer as he

was prior to this incident.

Because of the actions of the Defendants, The Mississippi Department Of Public Safety/Mississippi Highway Safety Patrol, Joseph W. Seals, and Thomas E. Little, all in reckless disregard of the safety and well being of Mr. F. Charles Phillips, the said F. Charles Phillips demands Five Hundred Thousand Dollars (\$ 500,000.00) in damages, being the maximum damages allowed under the Mississippi Tort Claims Act, or the maximum insurance coverage available for each Defendant.

ON THIS, the ^{23rd} day of September, 2004.

Respectfully submitted,


F. CHARLES PHILLIPS

Prepared by:

**Richard W. McKenzie, PLLC
Attorney at Law
Post Office Box 1403
Hattiesburg, Mississippi 39401
Office Phone: (601) 544-1008
Office Fax: (601) 584-8619
MSB # 2680**

COPY
(1 E. RA)

SUMMONS

(Process Server)

**IN THE CIRCUIT COURT OF FORREST COUNTY
STATE OF MISSISSIPPI**

F. CHARLES PHILLIPS

PLAINTIFF

Vs

CIVIL ACTION NO. CI04-0278

**THE MISSISSIPPI DEPARTMENT OF
PUBLIC SAFETY/MISSISSIPPI HIGHWAY
SAFETY PATROL, JOSEPH W. SEALS,
THOMAS E. LITTLE, AND JOHN DOES
1 AND 2**

DEFENDANTS

THE STATE OF MISSISSIPPI

**To: Thomas E. Little
103 Crossland Road
Sumrall, Mississippi 39482**



NOTICE TO DEFENDANT

**THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT
AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.**

You are required to mail or hand-deliver a copy of a written response to the **Complaint** to Richard W. McKenzie, the attorney for the Plaintiff(s), whose post office box address is: P.O. Box 1403, Hattiesburg, Mississippi 39403, and whose street address is: 1301 West Pine Street, Hattiesburg, MS. 39401. Your response must be mailed or delivered within thirty (30) days from the date of delivery of this summons and **Complaint** or a judgment by default will be entered against you for the money or other things demanded in the **Complaint**.

**YOU MUST ALSO FILE THE ORIGINAL OF YOUR RESPONSE WITH THE
CLERK OF THIS COURT WITHIN A REASONABLE TIME AFTERWARD.**

Issued under my hand and the seal of said Court, this the 23rd day of September, 2004.


Clerk of the Circuit Court of Forrest County,
Mississippi
by: 

COPY
(1 E.R.A)

SUMMONS

(Process Server)

**IN THE CIRCUIT COURT OF FORREST COUNTY
STATE OF MISSISSIPPI**

F. CHARLES PHILLIPS

PLAINTIFF

Vs

CIVIL ACTION NO. CT04-0278

**THE MISSISSIPPI DEPARTMENT OF
PUBLIC SAFETY/MISSISSIPPI HIGHWAY
SAFETY PATROL, JOSEPH W. SEALS,
THOMAS E. LITTLE, AND JOHN DOES
1 AND 2**

DEFENDANTS

THE STATE OF MISSISSIPPI

**To: Joseph W. Seals
141 Ben Byrd Road
Lumberton, Mississippi 39455 (Pearl River County, Mississippi)**

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Issued under my hand and the seal of said Court, this the 23rd. day of September, 2004.

Sheri Ellen Adams
Clerk of the Circuit Court of Forrest County,
Mississippi
By: *Sen Lewis D.C.*

COPY
(I.E.R.A)

SUMMONS

(Process Server)

**IN THE CIRCUIT COURT OF FORREST COUNTY
STATE OF MISSISSIPPI**

F. CHARLES PHILLIPS

PLAINTIFF

Vs

CIVIL ACTION NO. CI04-0278

**THE MISSISSIPPI DEPARTMENT OF
PUBLIC SAFETY/MISSISSIPPI HIGHWAY
SAFETY PATROL, JOSEPH W. SEALS,
THOMAS E. LITTLE, AND JOHN DOES
1 AND 2**

DEFENDANTS

THE STATE OF MISSISSIPPI

**To: Honorable Jim Hood, Attorney General for the State of Mississippi
c/o Mr. Mike Lanford (or any Special Assistant Attorney General Designated
to Represent the Mississippi Department of Public Safety/Mississippi
Highway Safety Patrol)
450 High Street
Jackson, Mississippi 39205**

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Lou Ellen Adams
Clerk of the Circuit Court of Forrest County,
Mississippi
by: *Sen Lewis, D.L.*

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(1 & RA)

SUMMONS

(Process Server)

**IN THE CIRCUIT COURT OF FORREST COUNTY
STATE OF MISSISSIPPI**

F. CHARLES PHILLIPS

PLAINTIFF

Vs

CIVIL ACTION NO. CT04-0078

**THE MISSISSIPPI DEPARTMENT OF
PUBLIC SAFETY/MISSISSIPPI HIGHWAY
SAFETY PATROL, JOSEPH W. SEALS,
THOMAS E. LITTLE, AND JOHN DOES
1 AND 2**

DEFENDANTS

THE STATE OF MISSISSIPPI

**To: Honorable Rusty Fortenberry, Commissioner of Public Safety for the
State of Mississippi
c/o Legal Division of the Mississippi Department of Public Safety/Mississippi
Highway Safety Patrol
1900 East Woodrow Wilson Drive
Jackson, Mississippi 39216**

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Lou Ellen Adams
Clerk of the Circuit Court of Forrest County,
Mississippi
By: Lou Lewis, D.C.