

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

LAWYERS

30TH FLOOR FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

November 6, 1968

MAILING ADDRESS:  
P. O. DRAWER C  
OR P. O. BOX 123

CABLE ADDRESS:  
HAB  
TELEPHONE  
432-5511  
AREA CODE 205

CHAS. C. HAND  
C. B. ARENDALL, JR.  
T. MASSEY BEDSOLE  
THOMAS G. GREAVES, JR.  
WM. GREVARD HAND  
VIVIAN G. JOHNSTON, JR.  
PAUL W. BROCK  
ALEX F. LANKFORD, III  
EDMUND R. CANNON  
LYMAN F. HOLLAND, JR.  
J. THOMAS HINES, JR.  
DONALD F. PIERCE  
LOUIS E. BRASWELL  
HAROLD D. PARKMAN  
G. PORTER BROCK, JR.  
HARWELL E. COALE, JR.  
STEPHEN G. CRAWFORD  
JERRY A. MCDOWELL  
W. RAMSEY MCKINNEY, JR.  
LARRY U. SIMS  
C. WAYNE LOUDERMILCH  
A. CLAY RANKIN, III  
EDWARD A. HYNDMAN, JR.

Honorable Telfair J. Mashburn  
Judge of the Circuit Court  
Baldwin County  
Bay Minette, Alabama

*Ret Nov 21, 1968*

Re: Walter Crooks vs. The Baldwin  
County Eastern Shore Hospital  
Board, a corporation, and The  
Thomas Hospital, a corporation  
Circuit Court of Baldwin County, Alabama

Dear Judge Mashburn:

We have recently filed on behalf of each of the defendants in the above-referenced case a plea in abatement, setting up as a defense to the plaintiff's action the exemption of the Thomas Hospital from suit under the doctrine of governmental immunity. The same question has been before the Circuit Court of Baldwin County, Alabama in the case of Patricia A. Sibley, plaintiff, vs. Thomas Hospital, also known as Baldwin County Eastern Shore Hospital Board, defendant, Case No. 5,696, in which an order sustaining the plea in abatement abating the action was entered by the Court on or about July 28, 1967. The order was signed by Judge Dan T. McCall, Jr., whom I believe was holding court for you and heard the plea in abatement and granted it.

There are a number of authorities in Alabama which hold that the hospital, such as the one which is defendant in the case at bar, cannot be sued in tort because of its "public" nature.

Honorable Telfair J. Mashburn  
November 6, 1968  
Page -2-

As you know, the Thomas Hospital was established by Act No. 46, of the Regular Session of the Legislature of the State of Alabama of 1949, Page 68.

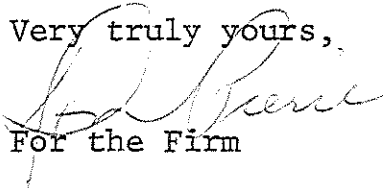
A petition, resolution granting authority to incorporate a public corporation for hospital purposes, a resolution approving the form and contents of the Certificate of Incorporation of the Baldwin County Eastern Shore Hospital Board and a Certificate of Incorporation of such hospital are all recorded in the Probate Records of Baldwin County in Book 008, Pages 61 through 68. Certified copies of these instruments were offered in evidence and were attested by the Probate Judge of Baldwin County, Alabama, in the hearing on our plea in abatement in the Sibley case, previously mentioned. In addition, I believe we offered in evidence a letter from the Department of Revenue, State of Alabama, Legal Division, in which the opinion of the Attorney General is set forth to the effect that Thomas Hospital is a legally constituted public agency of Baldwin County and is an instrumentality of the State of Alabama. If not, I am confident we can furnish you with a copy of such letter, if the Court wishes to have it.

I am including herewith a portion of a letter brief that we have previously done in support of our plea in abatement. I have not checked to see if there is additional authority, but I am confident that these cases are a fair indication of the body of law in the State of Alabama which supports the immunity from suit of hospitals such as the one which is a defendant in this action.

If Mr. Hayes feels that it is necessary for us to go forward and put on proof on our plea in abatement, I would appreciate the Court setting the matter specially at a time convenient to the Court so that we can plan to be present and introduce testimony in support of the plea in abatement.

With best personal regards,

Very truly yours,

  
For the Firm

DFP/dm  
Encl.

cc: Wilson Hayes, Esquire  
Bay Minette, Alabama  
Mr. Claud Clark - Thomas Hospital

PATRICIA A. SIBLEY, : IN THE CIRCUIT COURT OF  
Plaintiff : BALDWIN COUNTY, ALABAMA  
vs. :  
THOMAS HOSPITAL, : AT LAW  
Defendant. : CASE NO. 5696

O R D E R

This cause coming on to be heard on this day on the plea in abatement filed by the Defendant to the complaint, and the parties being present and appearing in open court by and through their attorneys, the Court having heard the evidence and having heard argument by counsel for both sides and having fully considered and understood the matter, the Court is of the opinion that the Defendant's plea in abatement filed in this cause to the complaint should be sustained, and it is hereby Ordered, Adjudged and Decreed that the plea in abatement be and hereby is sustained, and judgment is hereby rendered on the plea in abatement in favor of the Defendant and against the Plaintiff. All costs herein should be and the same hereby are taxed against the Plaintiff, for which let execution issue.

Dated at Mobile, Alabama, this 28<sup>th</sup> day of July, 1967.

s/s Dan T. McCall, Jr .  
Circuit Judge

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON  
LAWYERS

30TH FLOOR FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

CHAS. C. HAND  
C. B. ARENDALL, JR.  
T. MASSEY BEDSOLE  
THOMAS G. GREAVES, JR.  
WM. BREVARD HAND  
VIVIAN G. JOHNSTON, JR.  
PAUL W. BROCK  
ALEX F. LANKFORD, III  
EDMUND R. CANNON  
LYMAN F. HOLLAND, JR.  
J. THOMAS HINES, JR.  
DONALD F. PIERCE  
LOUIS E. BRASWELL  
HAROLD D. PARKMAN  
G. PORTER BROCK, JR.  
HARWELL E. COALE, JR.  
STEPHEN G. CRAWFORD  
JERRY A. MCDOWELL  
W. RAMSEY MCKINNEY, JR.  
LARRY U. SIMS  
C. WAYNE LOUDERMILCH  
A. CLAY RANKIN, III  
EDWARD A. HYNDMAN, JR.

MAILING ADDRESS:  
P. O. DRAWER C  
OR P. O. BOX 123

CABLE ADDRESS:  
HAB  
TELEPHONE  
432-5511  
AREA CODE 205

November 5, 1968

Miss Alice Duck  
Clerk of the Circuit Court  
Baldwin County  
Bay Minette, Alabama


Re: Walter Crooks, Plaintiff, vs.  
The Baldwin County Eastern Shore  
Hospital Board, a corporation, and  
the Thomas Hospital, a corporation,  
Defendants, Circuit Court of Baldwin  
County, Alabama

Dear Miss Duck:

Please file the enclosed Plea in Abatement on behalf of the defendants The Baldwin County Eastern Shore Hospital Board and the Thomas Hospital. I am requesting that the Court set this Plea in Abatement specially at a time convenient to the Court and to plaintiff's counsel, rather than have it heard on a regular motion day, if that is possible. I am going to supply the Judge with a brief supporting the correctness of our position, sending, of course, a copy of same to Mr. Hayes.

Thank you for your continued service. With best personal regards,

Very truly yours,

  
For the Firm

DFP/dm  
Encl.

WALTER CROOKS,	§	
Plaintiff,	§	IN THE CIRCUIT COURT OF
		BALDWIN COUNTY, ALABAMA
VS.	§	
THE BALDWIN COUNTY EASTERN	§	AT LAW
SHORE HOSPITAL BOARD, a		
Corporation, and the THOMAS	§	
HOSPITAL, a Corporation,		CASE NO. _____
	§	
Defendant.	§	

PLEA IN ABATEMENT

Comes now, separately and severally, each of the defendants designated herein as the Baldwin County Eastern Shore Hospital Board, a corporation, and the Thomas Hospital, a corporation, and each appears solely and specially for the purpose of pleading in abatement, and for no other purpose, and each, separately and severally, pleading in abatement, sets down and assigns to each separate and several count of the complaint filed herein, the following separate and several pleas in abatement, separately and severally:

1. That the true name of the "Thomas Hospital, a Corporation" is not as is set forth in said complaint but that its true name is now, was at the time of the commencement of this action, and has been at all times material to this litigation the "Baldwin County Eastern Shore Hospital Board", a corporation.

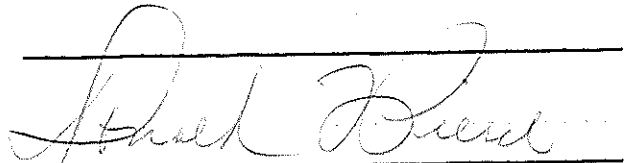
2. That there is not now, was not at the time of the commencement of this suit, and has not been at any time

material to this litigation any such entity as "Thomas Hospital, a Corporation".

3. That the true and correct name of the defendant sought to be sued herein is "Baldwin County Eastern Shore Hospital Board", a corporation, and that said corporation is immune from suit under the doctrine of governmental immunity.

4. That the true and correct name of the defendant, the Baldwin County Eastern Shore Hospital Board, a corporation, is as is stated in the caption of the complaint, and that said corporation is immune from suit under the doctrine of governmental immunity in that said corporation was organized and is operated under the provisions of Act 46, Acts of the Legislature of Alabama of 1949, Regular Session, Page 68, approved June 2, 1949.

Therefore, each of said defendants, separately and severally, prays that this action shall be abated as to each of them, and each count thereof, and that each such defendants shall be allowed its cost for the filing of this plea in abatement.

  
Attorneys for the Defendants

OF COUNSEL

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

STATE OF ALABAMA  
COUNTY OF BALDWIN

Before me, Alicia V. Warren, a Notary Public  
in and for said County in said State, personally came and  
appeared CLAUD~~E~~ CLARK, JR., who, being duly sworn, deposes  
and says that he is the administrator of that institution  
known as the Thomas Hospital, which is a hospital operated  
by the Baldwin County Eastern Shore Hospital Board, a  
corporation, and that the facts set forth in the foregoing  
Plea in Abatement are true and correct.

Claud Clark Jr.  
CLAUD~~E~~ CLARK, JR.

Subscribed and sworn to before me,  
on this 4<sup>th</sup> day of November, 1968.

Alicia V. Warren  
NOTARY PUBLIC, Baldwin County, Alabama  
State of Alabama at Large

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct  
copy of the foregoing Plea in Abatement to Wilson Hayes,  
Esquire, Attorney for the Plaintiff, by depositing a copy of  
same in the United States mail, postage prepaid, addressed  
to said attorney at his office in Bay Minette, Alabama, on  
this the 5<sup>th</sup> day of November, 1968.

Donald Hayes

FILED

NOV 6 1968

ALICE G. BOCK CLERK  
REGISTER

Plaintiff claims of the Defendant the sum of TWENTY-FIVE THOUSAND and NO/100 (\$25,000.00) DOLLARS for that on to-wit the 8th day of October, 1967 while Plaintiff was a paying patient in the hospital operated by Defendant, Defendant so negligently operated a wheelchair in which Plaintiff was being transported in and about Defendant's hospital as to allow Plaintiff's leg then encased in a heavy plaster cast as treatment for a broken leg as to cause or allow Plaintiff's leg to fall and strike the floor and that as a proximate cause of such negligence Plaintiff's

II

Plaintiff claims of the Defendant the sum of TWENTY-FIVE THOUSAND and NO/100 (\$25,000.00) DOLLARS for that on to-wit the 8th day of October, 1967 while Plaintiff was a paying patient being treated for a broken leg in the hospital operated by Defendant, Defendant so negligently fastened a leg support of a wheelchair in which Plaintiff was being transported about the hospital operated by Defendant, which leg support was then and there supporting the leg of Plaintiff in a heavy plaster cast, as to cause or allow the leg support to suddenly fall, causing Plaintiff's leg and cast to fall and strike the masonry floor, and that as a proximate result of such negligence Plaintiff's leg was severely injured in that it was impeded in its healing, causing Plaintiff great pain and suffering, that the said leg became aggravated in the break theretofore existing and that the break failed to heal, thereby causing Plaintiff great pain and suffering, medical expense and loss of earnings from his employment, hence this suit.

I

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW  
NUMBER: 835-11  
VS  
THE BALDWIN COUNTY EASTERN  
SHORE HOSPITAL BOARD, a  
Corporation and the THOMAS  
HOSPITAL, a Corporation  
DEFENDANT  
WALTER CROOKS  
PLAINTIFF

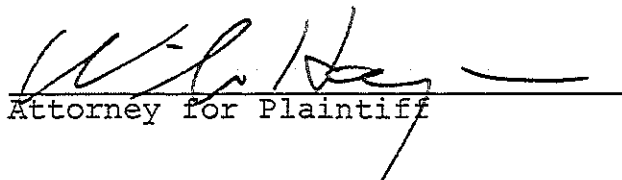


leg was re-broken, that the treatment of Plaintiff's leg was caused to fail, its healing was impeded and his injury theretofore existing was aggravated and caused to heal more slowly, thereby causing Plaintiff great pain and suffering, loss of earnings and great medical and hospital expense, hence this suit.

  
Attorney for Plaintiff

Plaintiff demands trial by jury.

This 4<sup>th</sup> day of October, 1968.

  
Attorney for Plaintiff

FILED

OCT 4 1968

ALICE J. DUCK CLERK  
REGISTER

SUMMONS AND COMPLAINT

MOORE PRINTING CO., BAY MINETTE, ALA.

STATE OF ALABAMA

Baldwin County

Circuit Court, Baldwin County

No. ....

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon THE BALDWIN COUNTY EASTERN SHORE  
HOSPITAL BOARD, a Corporation and the THOMAS HOSPITAL, a  
Corporation

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint  
filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against.....

THE BALDWIN COUNTY EASTERN SHORE HOSPITAL BOARD, a....., Defendant.....  
Corporation and the THOMAS HOSPITAL, a Corporation, Defendant  
by .....

Walter Crooks....., Plaintiff.....

Witness my hand this.....day of October..... 1968.....

..... Clerk  
Alice J. Duck

24:10-21-68

2 VOL

62 PAGE 674

No. 8354

Page.....

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

Walter Crooks

Plaintiffs

vs.

The Baldwin County  
Eastern Shore Hospital  
Board, a corp. Defendants

SUMMONS AND COMPLAINT

Filed FILED 19.....

OCT 4 1968

Clerk

ALICE J. DUCK

CLERK  
REGISTER

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Seve - John Brasley  
1st Nat'l Bk of Hope

Received In Office

**RECEIVED**

19.....

**OCT 4 1968**

Sheriff

I have executed this summons

this ..... 19.....

by leaving a copy with

Received 4 day of Oct 19 68

and on 21 day of Oct 19 68

I served a copy of the within 29 C

on The Baldwin County

Eastern Shore Hospital Board

a corp

By service on John Brasley

Seve

TAYLOR WILKINS, Sheriff

By Roy Randal

Received 4 day of Oct 19 68

and on 21 day of Oct 19 68

I served a copy of the within 29 C

on Thomas Hospital

Mar. Park Allen

Hope

By service on John Brasley

Seve

TAYLOR WILKINS, Sheriff

By Roy Randal D. S.

Deputy Sheriff