

CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI

ALVIN BROOKS, et al., )  
 )  
 Plaintiffs, ) Cause No. 034-02425  
 )  
 v. )  
 )  
 STATE OF MISSOURI, a state )  
 government, et al., ) Division 2  
 )  
 Defendants, )  
 )  
 and )  
 BULL'S EYE, LLC., GERI )  
 STEPHENS, President of Bull's Eye, )  
 LLC and JIM STEPHENS, )  
 )  
 Defendants/Intervenors. )

**KIRKTON, NEWMAN AND KREWSON'S SUPPLEMENTAL  
MEMORANDUM IN OPPOSITION TO BULL'S EYE'S  
MOTION FOR ASSESSMENT OF DAMAGES**

Background

In October 2003, plaintiffs filed an amended petition against defendants for declaratory and injunctive relief concerning the conceal and carry weapons law. Over plaintiffs' objections, this Court allowed Bull's Eye to intervene in the case. The Court issued a preliminary injunction and required that plaintiffs post a \$250,000 cash bond. Kirkton, Newman and Krewson filed a cash bond on behalf of the plaintiffs. The Court heard oral arguments and found that the conceal and carry law violated Article 1, Section 23 of Missouri Constitution and was therefore void. The Court denied all of the other arguments made against the conceal and carry law. It issued a permanent

injunction enjoining the enforcement of §§50.535, 571.030 and 571.094. Over plaintiffs' objection, the Court maintained the \$250,000 bond in place pending appellate review.

The Missouri Supreme Court reviewed the Court's judgment and found that the conceal and carry law did not violate Article 1, Section 23 of the Missouri Constitution. It did, however, find that the conceal and carry law violated the Hancock Amendment to the extent that the law constituted an unfunded mandate in those counties (Jackson, Cape Girardeau, Greene and Camden) on which the parties presented evidence in the trial court. For all other counties, the Supreme Court found that the issue was not ripe as no evidence had been presented on any other county. The dissent would have found a state-wide violation of the Hancock Amendment.

To date, the St. Louis City and St. Louis County Sheriff's Departments have refused to accept applications for concealed weapons because they believe that, as applied to them, the conceal and carry law violates the Hancock Amendment. Nevertheless, Bull's Eye has filed a motion for assessment of damages and execution on the bond. Primarily, Bull's Eye seeks damages for lost business opportunities in training people who apply for concealed weapons in St. Louis City and St. Louis County and for legal fees. They seek those damages even though the City of St. Louis and St. Louis County, independent of the injunction, decided not to accept concealed weapon applications because of the Hancock Amendment violation.

I. Bull's Eye is not entitled to any damages because this Court's injunction did not cause it any damages.

A party (including an intervenor) may recover on a trial bond only if an injunction was the “actual, natural and proximate cause” of the loss. *Buttress v. Taylor*, 62 S.W.3d 672 (Mo.App. W.D. 2001). Absent a statutory definition, the Missouri Supreme Court has held that proximate cause means “that cause that, in a natural and continuous sequence, unbroken by any efficient intervening cause, produced the result complained of, and without which the result would not have occurred.” *Kilmer v. Mun*, 17 S.W.3d 545, 552 (Mo. banc 2000). Damages resulting from the underlying suit or factors other than from the injunction are not recoverable. *Newcourt Financial v. Lafayette Investments*, 983 S.W.2d 214, 217 (Mo.App. W.D. 1999); *Lipp v. Lipp*, 75 S.W.3d 736, 739 (Mo.App. E.D. 2002).

In its motion to intervene, Bull's Eye claimed that it had “exclusive contracts with the City of St. Louis and St. Louis County, through the respective police departments, to train and certify” security officers and that it is the “only organization in the St. Louis metropolitan area offering qualified training courses for private citizens.” (Intervention motion at ¶¶ 6, 8). Bull's Eye does not claim a lost economic opportunity outside of the St. Louis metropolitan area.

As a threshold matter, this Court must determine whether its dissolved injunction was the proximate cause, unbroken by any intervening cause, that produced the damages complained of and without which the result would not have occurred. If there were an intervening cause, it does not matter if Bull's Eye can prove its claim of

