

IN THE ARBITRATION OF

Jacksonville State University,)
)
 Claimant,) Circuit Court of Calhoun County
) Case Number: 11:CV-2023-900533
 v.)
)
 BWW, Inc., d/b/a ServPro of Birmingham, et al.)
)
 Respondents.)

BWW, Inc., d/b/a ServPro of Birmingham, et al.)
)
 Claimant,) Circuit Court of Calhoun County
) Case Number: 11-CV-2022-900084
 v.)
)
 Don Killingsworth, et al.)
)
 Respondents.)

AWARD

This arbitration arises from a dispute concerning invoices issued by BWW, Inc., d/b/a ServPro of Birmingham (“ServPro”) for mitigation and construction work performed by Jacksonville State University (“JSU”). ServPro initially filed suit against several JSU officials: President Don C. Killingsworth, Vice President Arlitha Williams-Harmon, Chairman Randall Jones, Former Director of Capital Planning David Thompson, and James Brigham (collectively, the “JSU Individual Respondents”). JSU filed suit against ServPro for breach of contract, fraud and RICO violations.

The issues, claims, defenses, evidentiary determinations, and matters of law stem from two lawsuits (1) *BWW, Inc. v. Killingsworth, et al.* (Case No.: 11-CV-2022-900084) (2) *JSU v. BWW, Inc., et al.* (Case No.: 1:24-CV-00262-CLM). After mediation with this arbitrator, the parties

agreed to submit both matters to arbitration, and the respective courts stayed proceedings pending the outcome of this arbitration. A final hearing to receive testimony, documentary evidence, and arguments of counsel was held from June 16, 2025, to June 20, 2025, in Birmingham, Alabama.

This Final Award resolves all pending claims and counterclaims by and against JSU and by and against ServePro.

Findings of Fact

1. On March 19, 2018, a catastrophic EF-3 tornado caused extensive damage to the campus of Jacksonville State University.

2. The day following the tornado, and with the express authorization of the University President, JSU retained ServPro to perform emergency remediation services aimed at preserving and protecting campus structures.

3. Due to the emergency nature of the situation, JSU was permitted to engage ServPro without adhering to the standard bidding requirements applicable to state-funded projects.

4. A binding contractual relationship was formed between JSU and ServPro, evidenced by a signed agreement and the conduct of the parties in the months following the tornado.

5. The parties reached a mutual understanding regarding the remediation work and pricing, including a daily overtime rate, which was clearly reflected in the initial invoice and all subsequent billing invoices.

6. These invoices submitted by ServPro were reviewed and approved by multiple individuals at JSU and by representatives of the relevant insurance carriers, and payments were made accordingly.

7. JSU was aware from the outset that the rates charged by ServPro would be elevated due to the emergency nature of the work and the agreed-upon labor and overtime rates.

8. JSU faced a critical deadline to reopen the campus within approximately five months to avoid severe financial consequences stemming from lost tuition revenue.

9. Given the urgency, JSU determined that it was not feasible to engage in the standard state bidding process for non-remediation construction work.

10. JSU made a deliberate decision to utilize ServPro's massive and extensive labor force to complete both remediation and non-remediation construction projects under the emergency exception to bid laws.

11. The state bidding process typically requires a posting period of 3–5 months, rendering it impractical under the circumstances.

12. JSU's decision to proceed with ServPro for non-remediation work was justified by the need to reopen the campus on time, despite these higher costs associated with emergency labor rates.

13. JSU actively sought to have the insurance carriers approve ServPro's involvement in these non-remediation projects to avoid the need for competitive bidding.

14. A May 2018 email from JSU personnel stated, "I feel like I have ServPro in my back pocket," reflecting the urgency and strategic approach taken to expedite these project approvals.

15. This approach proved successful, resulting in the completion of major roofing and structural repairs and enabling JSU to reopen on schedule.

16. JSU expressed extensive praise for ServPro's performance.

17. No evidence was presented during the arbitration hearing indicating defects or dissatisfaction with the quality of ServPro's work.

18. The scale and speed of ServPro's efforts in response to the disaster were extraordinary and instrumental in JSU's recovery.

Findings of Law

1. The contract between JSU and ServPro was not subject to Alabama's bid laws pursuant to Ala. Code §§ 39-2-1 and 39-2-2.

2. Although David Thompson lacked express authority to bind JSU, the contract is enforceable under the doctrines of apparent and implied authority, and he was given express permission to sign the contract on behalf of the President of JSU.

3. Defendants Jones, Killingsworth, and other JSU officials sued in their official capacities are not immune under Section 14 of the Alabama Constitution.

4. JSU waived its Eleventh Amendment immunity by initiating litigation in federal court and asserting a removable federal claim under RICO.

6. JSU breached its contract with ServPro by failing to pay for services rendered.

7. ServPro's daily overtime calculations did not violate the FLSA.

8. JSU committed an unconstitutional taking by withholding funds remitted by the insurance companies to the Alabama State Insurance Fund for invoices submitted and approved for ServPro's work on the JSU project.

Waiver of Immunity by JSU

JSU's conduct in this matter constitutes a waiver of sovereign immunity under both federal and evolving Alabama precedent. By initiating litigation against ServPro, JSU voluntarily subjected itself to the jurisdiction of the courts, thereby waiving any claim to immunity for related counterclaims and disputes arising from the same transaction. This principle is well-established in federal jurisprudence and increasingly recognized by Alabama courts.

Further, the JSU/SIF Settlement Agreement itself reflects and reinforces this waiver. The agreement expressly references JSU's lawsuit against ServPro and anticipates future litigation involving JSU (Sections 2.1–3.3). It was executed with the knowledge and participation of multiple state actors, including the Attorney General, the Director of Finance, and the Alabama Risk Manager, indicating institutional awareness of JSU's legal exposure. The agreement allocates liability and settles claims, actions which courts have consistently interpreted as waiving immunity when undertaken by state entities.

Interest Determination

The Arbitrator has considered the issue of awarding interest on the damages granted for breach of contract. Under Alabama law, prejudgment interest may be awarded where the amount owed is certain or can be made certain. In this case, the damages awarded were unliquidated and subject to dispute and therefore do not meet the statutory criteria for mandatory interest.

Exercising the discretion afforded to arbitrators under Alabama law and the applicable arbitration rules, and considering the equitable circumstances of the case, the arbitrator declines to award prejudgment interest.

Award

Based on the foregoing Findings of Fact and Findings of Law, and having considered the submissions of the parties including all applicable law, the Arbitrator hereby orders as follows:

1. President Don C. Killingsworth, Vice President Arlitha Williams-Harmon, Chairman Randall Jones, Former Director of Capital Planning David Thompson, and James Brigham (collectively, the “JSU Individual Respondents”) are dismissed, with prejudice.

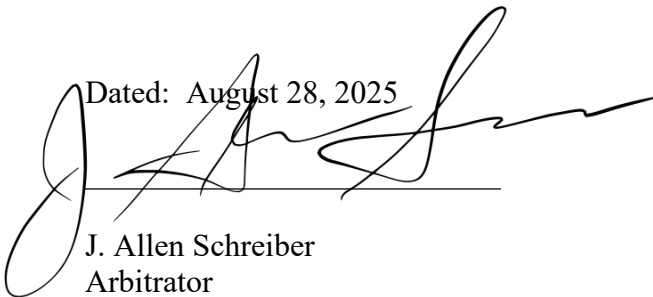
2. The Respondent JSU shall pay to the Claimant ServPro a total sum of \$11,219,308.02 representing damages for the claims as determined in this proceeding. Should the Respondent fail to initiate payment within ninety (90) calendar days from the date of this Award, interest shall accrue at the amount on the unpaid amount at the applicable post-judgment statutory rate from the thirty-first day onward until full payment is made.

3. No pre-judgment interest is awarded on the amounts granted herein, as the Arbitrator finds no contractual or statutory basis requiring such an award.

4. Each party shall bear its own legal fees and costs of arbitration.

This Award is final and binding on the parties and resolves all claims and counterclaims asserted herein.

Dated: August 28, 2025



J. Allen Schreiber
Arbitrator