

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SHAPPLEY HARRIS, et al.

DEFENDANT/ APPELLANT

VS.

NO. 2006-CA-01106

HINDS COUNTY, MISSISSIPPI

PLAINTIFF/ APPELLEE

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On Appeal from the Circuit Court of the First  
Judicial District of Hinds County

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BRIEF OF PLAINTIFF-APPELLEE  
Oral Argument Not Requested

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Barry H. Powell, MSB # [REDACTED]  
OWENS MOSS, PLLC  
Post Office Box 808  
Jackson, Mississippi 39205-0808  
Telephone: (601) 352-8443  
Facsimile: (601) 352-8452

ATTORNEY FOR PLAINTIFF/APPELLEE

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## ORAL ARGUMENT

Plaintiff-Appellee Hinds County would be glad to participate in oral argument, but believes that the issues in this appeal are so clearly in Appellee's favor that oral argument would be a waste of the Court's time.

## STATEMENT OF ISSUES

Hinds County views the issues on this appeal as being the following:

1. Whether Shapple Harris had a contract with Hinds County to charge "commissions" on invoices for workers' compensation coverage.
2. Whether there was sufficient evidence for the Jury to find by clear and convincing evidence that Shapple Harris fraudulently concealed from Hinds County the markups he was making on workers' compensation invoices and pocketing the difference.
3. Whether the Hinds County Board of Supervisors waived its claims for fraud against Harris by voting to pay invoices that purported to come from the workers' compensation coverage provider, but had been secretly rewritten by Harris at higher amounts.
4. Whether Jury Instruction P-8 correctly states the law of fraudulently concealment and, if not, whether Harris waived any objection to this instruction by not objecting during the jury instruction conference at trial.
5. Whether the Trial Court abused its discretion in awarding Hinds County prejudgment interest on the damages awarded by the Jury and whether Harris has preserved this issue for appeal.

### STATEMENT OF PROCEEDINGS

Hinds County sued its long time insurance consultant for fraudulently obtaining invoices to Hinds County for workers' compensation coverage, secretly rewriting the invoices for increased amounts, obtaining payment of the increased amounts and then pocketing the difference. R.E.5; R.5. After a jury trial, the Jury returned a verdict against Harris for \$380,601, finding by clear and convincing evidence that Shappley Harris had committed fraud in obtaining this amount from Hinds County. The Trial Court found that the damages awarded by the jury were liquidated claims so as to entitle Plaintiff to prejudgment interest and added interest in the amount of \$77,389 to the judgment. The total amount of the final judgment in favor of Hinds County against Shappley Harris was \$457,990. R.E.14; R.227. Shappley Harris did not testify on his own behalf at trial nor present any evidence in his behalf. After final judgment was entered, Harris filed no motion for a new trial nor for judgment notwithstanding the verdict nor any other post trial motion.

### STATEMENT OF FACTS

In 1985 Defendant-Appellee Shappley Harris<sup>1</sup> entered into a contract with the Hinds County Board of Supervisors to serve as the Board's insurance consultant. Exhibit 19. The contract was duly approved by the Board of Supervisors in its minutes and recorded in its minute book. Tr. 78. The contract provided for payments of \$1800 a month, which were regularly paid by Hinds County. Exhibit 13. During the next 16 years, Harris advised Hinds County on insurance matters and helped the County to obtain various types of insurance coverage, including workers' compensation coverage. Tr. 73.

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<sup>1</sup>It was undisputed that Harris was also conducting business under the names of Fire & Casualty Benefits and The Shappley Company, Inc. Tr.59.

In late 2001, Hinds County was notified that its workers' compensation carrier would no longer provide coverage. Tr. 73-74. Harris then arranged for workers' compensation coverage through the Mississippi Municipal Workers' Compensation Group ("MMWCG"), an organization designed for governmental entities to self insure their workers' compensation coverage. Tr. 42, 74.

The MMWCG billed quarterly, with a year-end audit and premium readjustment. Tr. 45. The invoices were to Hinds County. Tr. 46-47; Exhibits 3, 5; A.R.E.<sup>2</sup> 1-5. Shappley Harris arranged for the MMWCG to send him Hinds County's quarterly billings. Tr. 45-46. Harris then contrived fake invoices that purported to be from the Mississippi Municipal Workers' Compensation Group to Hinds County and which instructed Hinds County to make its payments through Shappley Harris. Tr. 62-63, 65-66; Exhibits 14, 16; A.R.E. 6-10. The new invoices constructed by Harris were considerably higher than the premiums actually charged by the MMWCG. Harris cashed the warrants(checks) from Hinds County for the insurance coverage, (Exhibits 15, 17), remitted to the MMWCG the premiums it had invoiced, (Exhibits 6-7), and pocketed the difference.

Before Hinds County discovered what he was doing, Shappley Harris had received over a period of little more than a year premium billings to Hinds County from the MMWCG in the amount of \$974,729; marked those premiums up to \$1,545,610 in his fake bills to Hinds County; and received \$570,881 in excess of the premiums actually billed by the MMWCG, a markup of 58.6%.

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<sup>2</sup>Appellee's Record Extracts.

	<u>Premiums Billed By MMWCG</u>	<u>Premiums Billed County By Harris</u>	<u>Money Kept By Harris</u>	<u>Harris % Markup</u>
1-02	\$203,812.50	\$237,781.25	\$33,968.75	17%
3-02	\$154,383.30	\$237,781.25	\$83,397.95	54%
6-02	\$149,248.25	\$237,781.25	\$88,533.00	59%
9-02	\$89,548.95	\$237,781.25	\$148,232.30	165%
1-03	<u>\$377,736.00</u>	<u>\$594,485.00</u>	<u>\$216,749.00</u>	<u>57%</u>
<b>TOTAL</b>	<b>\$974,729.00</b>	<b>\$1,545,610.00</b>	<b>\$570,881.00</b>	<b>58.6%</b>

Exhibits 3, 5-7, 14-17; A.R.E. 1-10; Tr. 69-70. Hinds County subsequently received from Harris through the State Auditor's Office a principal amount a payment of \$190,280, Tr. 80), leaving a balance of \$380,601 for which Hinds County sued. Tr. 70.

At trial, Harris made no opening statement and did not testify in his own behalf or offer any other testimony or any evidence whatsoever on his behalf. The Jury found by clear and convincing evidence that Harris had committed fraud in obtaining the sums from Hinds County being awarded as damages and returned a verdict in the amount of \$380,601. The Trial Court awarded prejudgment interest. A Final Judgment in the total amount of \$457,990 was entered on behalf of Hinds County against Defendant Shapple Harris. R.E.14; R. 227.

#### HARRIS' STATEMENT OF FACTS

Shapple Harris did not testify at trial, nor did he present any evidence or witnesses in his own behalf. The statement of facts claimed to exist by Harris in his Brief is replete with factual assertions either unsupported by the Record or contradicted by the Record:

"Harris acted as any other broker for the County would do; he added the standard fee to the bill sent to the County for the 2002 claims period. (Vol. III Tr. 91)" P.B.2. The

testimony cited by Harris was that the insurance companies paid agents their commission; Hinds County did not pay agents any commissions directly, but that the agent's commission included as part of the premium from the insurance company. Hinds County's expert witness, Van Hedges, an expert in insurance affairs, including commissions and fees paid to agents, testified without contradiction that agents' commissions are built into the premium as part of the rate structure. Hinds County does not pay the commission to the agent, the insurance company pays the agent. Therefore, there is no disclosure to Hinds County as to the amount of the commission, because Hinds County is not paying the commission, the insurance company is. Tr. 149-150. When the commission is not part of the premium, but the agent is charging a fee to the insured, then the agent is required to disclose the amount of the fee to the insured because the insured is paying the fee directly to the agent. Tr. 151

"The State Auditor's Office investigated the matter and determined Hinds County paid Harris for the 2002 coverage period and then Hinds County paid Mississippi Municipal Group directly for the 2002 parol audit which Harris had already invoiced, resulting in a double payment of the audit by roughly \$190,000. (Vol. III Tr. 94) Harris returned this overpayment promptly... (Vol. III Tr. 95)" P.B.2 There is utterly nothing in the Record supporting what Harris claims the State Auditor's office determined. The only testimony is that Hinds County received back \$190,000 from Harris in a State Audit Department audit. Tr. 94

The Record is also devoid of any evidence that Harris returned this amount promptly. To the contrary, on June 11, 2003, the MMWCG sent a letter to the Hinds County Administrator concerning an overdue payment of \$156,727. The MMWCG sent a follow-up



letter requesting payment on August 25, 2003. On October 1, 2003, an attorney representing Shapple Harris wrote the MMWCG that Hinds County made the \$156,727 payment to Fire & Casualty and Benefit Consultants (Shapple Harris) "as Mississippi Municipal Workers' Compensation Group's agent" and that once Hinds County paid "the agent," Hinds County was absolved of liability and that it is the agent (Harris) not Hinds County that owed MMWCG the \$156,727 in question. Rather than promptly making this payment, Harris through his attorney stated that "Fire-Casualty and Benefit Consultant {Harris} acknowledges it owes the indebtedness and will earnestly strive to pay the sum due to you in the very near future." Tr. 53; Exhibit 12; A.R.E. 11.

"All insurance contracts for Hinds County under Harris's direction were procured through a licensed Mississippi insurance agent. (Vol. III Tr. 85)" P.B.3. There is nothing in the Record to support this assertion.

"Harris went to the Mississippi Association of Supervisors who had the other eighty-one Mississippi counties and a self-funded trust to get a quote. However, the Mississippi Public Entity Trust (Supervisor's Sponsored Trust) advised Harris that their actuary told them not to accept Hinds County for workers' compensation coverage. (Vol. III Tr. 74)" P.B.4. This is not in the Record cited by Harris, nor anywhere else in the Record.

"Harris advised the County Board of Supervisors of the problem and asked that they request the Legislature for a local and private Bill to self-fund, however the Bill would fall too late to renew in 2002. (Vol. III Tr. 74)" P.B.4. There is nothing in the Record cited by Mr. Harris to support this statement.

"This trust the [MMWCG] is not insurance... (Vol. 4 Tr. 160)" P.B.5. There is no evidence in the Record that workers' compensation coverage provided by the Mississippi

Municipal Workers' Compensation Group is not insurance. The testimony on the transcript cited by Harris in support of his assertion that it is not insurance is "It's an insurance mechanism. It is insurance." Tr. 160 (Testimony by Hinds County's insurance expert witness.) The MMWCG is not regulated by the Department of Insurance, but by the Mississippi Workers' Compensation Commission. Tr. 160.

"The MMSC [MMWCG] declined saying it did not [accept] counties for membership and Hinds County should go the Supervisors' Pool. When Harris told the MMSC the Supervisors' Pool turned Hinds County down the MMSC expressed a concern with providing coverage for something the Supervisors' Pool would not cover. Harris indicated that he thought he could fix the claims problems that made Hinds County a bad risk. Harris had developed a reputation in the workers' compensation coverage business due to his work with the Mississippi Restaurant Association and Electric Power Association of Mississippi self-funded workers' compensation trusts. The Municipal Association still refused so at this point the Assigned Risk Pool appeared to be the last option." P.B.5. There is nothing, utterly nothing, in the Record to support these assertions by Harris. Significantly, Harris in his Brief does not even provide any Record citations for these assertions.

"Harris then inquired from the MMSC if it would provide coverage if Hinds County agree to pay a large retention to attach to the excess coverage. After further negotiations the Municipal Association agreed to cover Hinds County. (Vol. III Tr. 75)" P.B.5. There is nothing in the Record citation provided by Harris, nor anywhere else in the Record to support this factual contention.

"This agreement was based on Harris' plan to correct Hinds County's claim problems and his reputation for controlling claim cost." P.B.5. There is no Record citation for this assertion. The testimony that is in the Record is from the representative for the Municipal Workers' Compensation Group that participation of Hinds County was not conditioned on Harris' being project manager or anything else. Tr. 43.

"[Harris] set out to fix the problems with workers' compensation with the help of the County Administrator. (Vol. III Tr. 75)" P.B. 5-6. There is nothing in the transcript cited by Harris to support this assertion, nor is there anything in the Record.

"Harris laid out the program with County Administrator, informed him in writing that he had placed the coverage... . (Vol. III Tr. 74)" P.B.6. There is nothing in the transcript cited or the Record as a whole substantiate this assertion.

Harris ..."brought an invoice for the first quarter and gave it to the Hinds County Chancery Clerk. (Vol. III Tr. 74) The Clerk's office sent the invoice to the Budget & Finance Director who approved it and sent it to County Administrator who approved it." P.B.6. Harris did personally deliver his fake invoices to the Chancery Clerk's office. There is no record evidence to support the assertion that the invoice was sent to the Budget and Finance Director or the County Administrator.

"The five supervisors voted to pay the invoice under advisement of the County Administrator." P.B.6. There is no record evidenced to support this assertion. Harris makes no record citation for this assertion.

#### SCOPE OF REVIEW

Harris did not file a motion for a new trial or a motion for judgment notwithstanding the verdict. He did file for a directed verdict at the close of the Plaintiff's case. After his

motion for directed verdict was denied, Harris rested without presenting any testimony or other evidence. The standard for review for this appeal is, therefore, the standard of review for denial of a motion for directed verdict. See *Nunnally v. R.J. Reynolds Tobacco Co.*, 869 So. 2d 373, 378-79 (Miss. 2004); *T.G. Blackwell Chevrolet Co. v. Eshee*, 261 So. 2d 481-485 (Miss. 1972).

In order to establish that he is entitled to reverse the Jury verdict below, Harris must demonstrate that the Jury verdict "is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Herrington v. Spell*, 692 So. 2d 93, 103-04 (Miss. 1997). In reviewing the Jury verdict, this Court must "show great deference to the jury verdict by resolving all conflicts and the evidence and every permissible inference from the evidence in the Appellee's favor." *Wal-Mart Stores, Inc. v. Johnson*, 807 So. 2d 382, 389 (Miss. 2001). In considering reversing a jury verdict, this Court has held:

[T]his Court will consider the evidence in the light most favorable to the appellee, giving that party the benefit of all favorable inference that may be reasonably drawn from the evidence. If the facts so considered point so overwhelmingly in favor of the appellant that reasonable men could not have arrived at a contrary verdict, we are required to reverse and render. On the other hand if there is substantial evidence in support of the verdict, that is, evidence of such quality and to weight that reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, affirmance is required.

*Alabama Great Southern Rwy Co. v. Lee*, 826 So. 2d 1232, 1235-36 (Miss. 2002).

#### SUMMARY OF ARGUMENT

The work that Harris did with respect to obtaining workers' compensation coverage for Hinds County through the Mississippi Municipal Workers' Compensation Group was

covered by his existing insurance consultant's contract with Hinds County for which he was being paid monthly. Even if Harris' work had not been covered by his consultant's contract with Hinds County, he had no contract for payment with Hinds County because the Board of Supervisors was unaware that Harris was charging for this work. Furthermore, Harris had no contract with Hinds County for these payments that had been approved by the Board of Supervisors and recorded in the Minutes of the Board. Harris' submission of fake invoices to the Board purportedly from the Mississippi Municipal Workers' Compensation Group that had been marked up to cover payments that would be retained by Harris without the knowledge of the Board constitutes classic fraud. Plaintiff's Jury Instruction No. 8, objected to by Harris in his Brief, constituted a correct statement of the law of fraudulent concealment. Also, the objection raised by Harris in his Brief on appeal was not presented to the Trial Court and has therefore been waived. Prejudgment interest was appropriately awarded in the Final Judgment by the Trial Court for liquidated damages and Harris waived any objection to the award of prejudgment interest by not presenting any objection to the Trial Court.

### ARGUMENT

#### 1.

#### SHAPPLEY HARRIS HAD NO CONTRACT WITH HINDS COUNTY FOR THE PAYMENT OF ANY "COMMISSION"

Shapple Harris had served some sixteen years as an insurance consultant for Hinds County. He had a written contract with Hinds County approved by the Board of Supervisors and recorded on the Minutes of the Board. Exhibit 19; Tr 78. His job duties included helping Hinds County obtain the necessary insurance needed by the County. Tr. 73. Hinds County's expert witness on insurance matters testified that in his opinion "all of

the functions and services that Shappley provided in placing the coverage [with the Mississippi Municipal Workers' Compensation Group] would fall within the scope of his duties under this contract." Tr. 149 "They had a problem and he helped to place their insurance just as he had done in years past in various similar circumstances." *Id.* Shappley Harris did not testify that believed his services helping Hinds County to obtain workers' compensation coverage with the MMWCG were not covered by his consultant contract. In fact, Shappley Harris did not testify at all.

Regardless, Shappley Harris never had a contract with the Board of Supervisors to be paid over \$570,000 or any other amount for his services in helping Hinds County to obtain workers' compensation coverage from the MMWCG. Harris never informed the Board of Supervisors that he was making these charges. The Board was unaware that he was making these charges. Tr. 75, 110, 130, 137. There can be no contract where one of the parties is totally unaware of the alleged agreement. A valid contract requires an offer and an acceptance. *Anderton v. Business Aircraft, Inc.*, 650 So. 2d 473 (Miss. 1995). Here Harris made no offer to contract with the County for commissions associated with workers' compensation coverage from MMWCG. Nor was there any acceptance by the Board of Supervisors because they were all unaware that Harris was charging such commissions.

In any event, under Mississippi law a county can contract only through a contract authorized by the Board of Supervisors and recorded in the minutes of the Board. *Thompson v. Jones County Community Hospital*, 352 So. 2d 795, 797 (Miss. 1977); *Richardson v. Canton Farm Equipment*, 608 So. 2d 1240, 1246 (Miss. 1992); *Board of Supervisors of Tishomingo County v. Dawson*, 208 Miss. 666, 45 So. 2d 253, 256 (Miss.

1950). There was no such contract between Hinds County and Shappley Harris nor any of Harris' other business entities.

Harris claims that he was acting as a broker for Hinds County to secure workers' compensation coverage and that since the MMWCG did not pay commissions, "adding the fee to the bill was the only matter to compensate the broker for services of acquiring and maintaining the coverage." P.B.12. This argument is legally irrelevant since Harris had no contract with Hinds County. Moreover, when Harris was called on to pay \$156,727 to the Mississippi Municipal Workers' Compensation Group that Hinds County had paid to Harris, but that was still owed to the MMWCG, Harris' attorney responded by claiming that Harris was the MMWCG's agent and not the agent of Hinds County. Therefore, asserted Harris' lawyer, payment by Hinds County to Harris constituted payment to MMWCG and Hinds County did not owe MMWCG for this premium, but that Harris did and "will earnestly strive to pay the sum due to you in the very near future." Tr. 53-54; Exhibit 12; A.R.E. 11.

The uncontradicted testimony of Hinds County's expert on insurance practice was that an agent's commission is built into the premium charged by the insurance company. Tr. 151. The situations where Hinds County had obtained insurance through an insurance agent, the agent was always the agent of the insurance company, not the agent of Hinds County. The insurance company paid its agent's commission. The commission was included in the premium invoiced to Hinds County for the insurance coverage. Hinds County did not know, nor care, what the agent's commission was because the commission was being paid by the insurance company. Tr. 91, 134, 142, 150-152.

Hinds County's insurance expert witness further testified that when an agent charged a fee to the insured, that fee then had to be disclosed by the agent to the insured.

In that case, the agent "is required to separate that fee and specifically state that it is a separate distinct fee that he is charging to the county on the invoice." Tr. 151; also see Tr. 157-159<sup>3</sup>.

2.

#### THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S FINDING OF FRAUD

Harris took the MMWCG invoices to Hinds County for workers' compensation coverage (Exhibits 3, 5; A.R.E. 1-5) and then secretly formulated fake invoices to Hinds County at much higher amounts that purported to be from the MMWCG and which directed that payments be remitted through him. Exhibits 14, 16; A.R.E. 6-10. He then submitted the fake invoices to the Chancery Clerk's office for approval and payment by the Board of Supervisors. Tr. 63. Harris never revealed to anyone that he was changing a purported "commission." Tr. 75, 110, 130, 137. Harris pocketed the differences. Exhibits 6, 7, 15, 17. There could be no clearer evidence of fraud. *Davidson v. Rogers*, 431 So. 2d 483 (Miss. 1985). The Jury returned a verdict finding fraud by clear and convincing evidence. R.E. 14; R. 227. There was obviously sufficient evidence of fraud to sustain this verdict.

3.

#### HINDS COUNTY'S PAYMENT OF HARRIS' FRAUDULENT INVOICES DID NOT CONSTITUTE WAIVER

In his Brief, Harris asserts that he "properly submitted the bills with his commission attached to the Hinds County Circuit Clerk's office and it was the duty of the Board of Supervisors to inspect whether his claims were legal or illegal." P.B.15. In the first place,

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<sup>3</sup>Parenthetically, the typical fee for a product such as the MMWCG workers' compensation coverage would be 3 to 5%. Tr. 152. Harris was charging a markup fee total of 58%.



Harris did not “properly submit the bills with his commission attached.” Harris disclosed no commissions whatsoever, but instead fraudulently created new bills appeared to come from the Mississippi Municipal Workers’ Compensation Group and which did not disclose any markup that Harris was adding for his own personal benefit. Exhibits 3, 5, 14, 16; A.R.E. 1-10. Harris’ claim that it was the duty of the Board to determine whether the bills were legal or illegal is a defense of ‘it is your responsibility to keep me from defrauding you and since you did not catch my fraud, I am not responsible, you are.’

The Board of Supervisors did not waive Harris’ fraudulent “commissions” by payment of his bogus invoices. The invoices prepared by Harris purported to be from the Mississippi Municipal Workers’ Compensation Group. The invoices did not disclose any “commissions” or markups. Exhibits 14, 16; A.R.E. 6-10. The Supervisors were unaware any “commissions” or markups were being charged. Tr. 75, 110, 130, 137. Under such circumstances, waiver was impossible.

“Ignorance of a material fact negates waiver, and waiver cannot be established by a consent given under a mistake or a misapprehension of fact. Waiver presupposes a full knowledge of an existing right or privilege and something done designedly or knowingly to relinquish it.” *Dixie Ins. Co. v. Mooneyham*, 684 So. 2d 574, 582 (Miss. 1996) (quoting from 28 Am. Jur. 2d, Estoppel and Waiver, § 158.) Harris’ reliance on *Ferrer v. Jackson County Board of Supervisors*, 741 So. 2d 216 (Miss. 1999), where a county board of supervisors paid a claim under the Mississippi Tort Claims Act and then later tried to renege on the ground that improper statutory notice had been given by the claimant under the MTCA, is inapposite. In the case *sub judice*, the Hinds County Board of Supervisors never had any notice or knowledge that they were approving payments to Harris in excess of the

premiums charged by the Mississippi Municipal Workers Compensation Group. Hinds County could not, therefore, either be estopped from seeking to recover this money from Harris nor have waived their claim against Harris since the Board had no knowledge at the time it approved these payments of the very material fact that Harris had rewritten the invoices at higher amounts.

4.

PLAINTIFF'S JURY INSTRUCTION ON FRAUD WAS  
PROPERLY GIVEN AND NOT OBJECTED TO

In part 4 of his argument, Harris argues that Jury Instruction P. 8<sup>4</sup> was insufficient because it did not include the element of fraud requiring that the hearer had a right to rely on the speaker's representation. In the first place, there was no issue of Hinds County's right to rely on Shapple Harris. Harris had been the Board of Supervisors' insurance consultant for some sixteen years. The Supervisors testified that they reposed the upmost trust and confidence in Harris as a result of this relationship. Tr. 73, 109, 129, 135.

Secondly, Jury instruction No. 8 involved not a misrepresentation, but a fraudulent concealment claim. The Instruction was that

If you find from clear and convincing evidence that Shapple Harris obtained commissions from Hinds County without the knowledge or consent of the Hinds County Board of Supervisors and that Shapple Harris took some action, affirmative in nature, which was designed or intended to prevent and which did prevent the discovery that he was obtaining commissions, and you further find that if the Hinds County Board of Supervisors had known about the commissions being charged by Shapple Harris, the Board of Supervisors would not have paid the Commissions, then

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<sup>4</sup>Harris brief at 17 refers to Jury Instruction No. 10. The Jury Instruction quoted by Harris and included in the Record Excerpts at 13 is Jury Instruction P-8.

Shappley Harris is guilty of fraud and it is your duty to return a verdict for Hinds County against the Defendants.

R. 200; R.E.13. "Right to rely" Is not an element of proof in a fraudulent concealment case under Mississippi law. *Davidson v. Rogers*, 431 So. 2d 483, 485 (Miss. 1983); *Phillips v. New England Mutual Life Insurance Co.*, 36 F. Supp. 2d 345, 348 (S.D. Miss. 1998).

Finally, it is well established that an objection to an instruction is waived unless it is made to the trial court. *Creel v. General Motors Corp.*, 233 So. 2d 105 (Miss. 1970). Harris never objected to Instruction P-8 during the Jury Instruction conference that it did not include the element of the County's right to rely on Harris. The only objection as to the form of Instruction P-8 made by Harris' counsel was:

Your Honor, there again, yes, we object. Because it intermingles fact conclusions with the law... .

Tr. 187. At no time during the Jury Instruction conference, did Harris' counsel ever object to Jury Instruction P-8 on the ground that it omitted the element of the County's "right to rely" on Harris.

5.

#### PREJUDGMENT INTEREST WAS APPROPRIATE

After the jury verdict was returned, the Trial Court added prejudgment interest to the Final Judgment finding that "the damages awarded by the Jury were liquidated claims so as to entitle the Plaintiff to prejudgment interest... ." R.227; R.E.14. Hinds County agrees that prejudgment interest arises only where the amount owed is liquidated, or denial of the amount owed is in bad faith. Based on the Jury's finding of fraud in its verdict, the denial by Harris that he owed these sums out of which he had defrauded Hinds County was clearly in bad faith.

Furthermore, although Harris through counsel denied owing any of the amount sued for by Hinds County in this litigation, the amount sued for was liquidated. It was the amount of fraudulent overcharges made by Harris by marking up the invoices from the Mississippi Municipal Workers' Compensation Group. There was no dispute about this amount. Harris never denied that the amount of the markup claimed by Hinds County was correct. He only claimed that he did not owe any amount whatsoever. In other words, he denied responsibility for the amount, but did not deny the accuracy of the amount. There was no *bona fide* dispute as to the amount of the markup claimed by Hinds County. Hinds County is therefore entitled to interest on these damages both as to liquidated damages and also as bad faith on the part of Harris. *Thompson Machinery Commerce Corp. v. Wallace*, 687 So. 2d 149, 152 (Miss. 1997).

Under Mississippi law, the award of prejudgment interest is in the discretion of the trial court. *Murphree v. Aberdeen-Monroe County Hospital*, 671 So. 2d 1300 (Miss. 1996); *Sunburst Bank v. Keith*, 648 So. 2d 1147 (Miss. 1995); *Warwick v. Matheney*, 603 So. 2d 330 (Miss. 1992); *Wirtz v. Switzer*, 586 So. 2d 775 (Miss. 1991). Clearly in this case the award of prejudgment interest by the Trial Court was amply within its discretion. Finally, Harris has waived any objection to the Trial Court's post-jury verdict award of prejudgment interest. After entry of the Final Judgment, Harris filed no motion to reconsider the award of prejudgment entrance or for a new trial or any other post trial motion. In *Purvis v. Barnes*, 791 So. 2d 199 (Miss. 2001) a Chancellor entered a final judgment awarding punitive damages, but which did not award any compensatory damages. The Mississippi Supreme Court held that the Appellant's failure to file a motion for a new trial challenging the award of punitive damages, deprived the Chancellor of an opportunity to correct any

possible error. Therefore, the issue was not preserved for appellate review. 791 So. 2d at 203. Similarly, here, by not objecting to the award of prejudgment interest, nor filing any post trial motion challenging the award of prejudgment interest, Harris did not afford the Trial Court an opportunity to reconsider its award of prejudgment interest and therefore has failed to preserve this issue for review by this Court.

### CONCLUSION

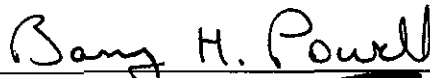
In summary, the undisputed evidence presented to the Jury was that Shappley Harris had a contract, duly recorded on the Minutes of the Board of Supervisors, with Hinds County as an insurance consultant. That as an insurance consultant Shappley Harris helped Hinds County to obtain various insurance coverages, including workers' compensation coverage. That Shappley Harris obtained workers' compensation coverage for Hinds County through the Mississippi Municipal Workers' Compensation Group. The MMWCG sent its invoices for the premiums for coverage for Hinds County to Shappley Harris, at Harris' direction. Harris then created new bogus invoices that appeared to be invoices from the Mississippi Municipal Workers' Compensation Group, but were in fact invoices from Harris, surreptitiously adding a markup that totaled 58% of the invoiced amounts from the MMWCG, which Harris secretly pocketed.

At no time, did Harris inform the Board of Supervisors that he was adding these charges on to the amounts actually invoiced by the MMWCG. At no point did Hinds County ever agree to these charges. Hinds County until the scheme was ultimately discovered was totally unaware that these charges were being made. There was ample evidence for the Jury to return a verdict for Hinds County against Harris for the amount of sued for. There

was ample evidence for the Jury to find by clear and convincing evidence that Shappley Harris was guilty of fraud.

Clearly the Jury verdict in favor of Hinds County is not against the overwhelming of the evidence and there was sufficient evidence for a reasonable jury to render a verdict for Hinds County.

Respectfully submitted:



Barry H. Powell, MSB # [REDACTED]  
OWENS MOSS, PLLC  
Post Office Box 808  
Jackson, Mississippi 39205-0808  
Telephone: (601) 352-8443  
Facsimile: (601) 352-8452

ATTORNEY FOR PLAINTIFF-APPELLEE

**CERTIFICATE OF SERVICE**

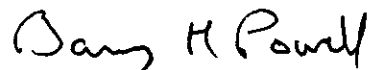
I certify that I have this date mailed, postage prepaid, a true and correct copy of the foregoing to:

George C. Nicols, Esq.  
Post Office Box 12282  
Jackson, Mississippi 39236

ATTORNEY FOR DEFENDANT-APPELLANT

Honorable Winston J. Kidd  
Circuit Judge  
Post Office Box 327  
Jackson, Mississippi 39205

This the 29<sup>th</sup> day of August, 2007.



Attorney for Plaintiff-Appellee