IN THE SUPREME COURT OF MISSISSIPPI

2006-CA-01220

GAILA TATE MCCASKILL OLIVER — **PLAINTIFF -APPELLANT**

VS.

THE GOODYEAR TIRE & RUBBER COMPANY — **DEFENDANT-APPELLEE**

Appeal from Circuit Court of Washington County

BRIEF OF APPELLEE

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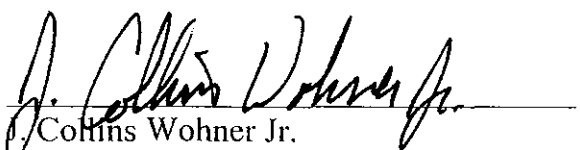
CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Gaila Tate McCaskill Oliver, in her representative capacity as Executrix of the Estate of Jeffrey L. McCaskill and as mother and next friend of Matthew McCaskill, Josh McCaskill and Hunter McCaskill;
2. The Goodyear Tire & Rubber Company;
3. St. Paul Fire and Marine Insurance Company;
4. Joel J. Henderson, Frank J. Dantone, Edward D. Lamar and Lee B. Hazlewood of Henderson Dantone, P.A.;
5. David L. Ayers, J. Collins Wohner Jr., and Jimmy B. Wilkins of Watkins & Eager, PLLC.

Respectfully submitted,



J. Collins Wohner Jr.

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STATEMENT OF THE ISSUES

The plaintiff's three issues are more reasonably viewed as a single issue – one more accurately stated as follows:

1. Whether the circuit judge abused her discretion by declining to grant a new trial, where the only issue asserted is a purported insufficiency in the form of the verdict based, not on any incoherence or lack of clarity in the jury's findings, but rather on the jury's disagreement about plaintiff's manufacturing defect theory – a point mooted by the jury's unanimous finding of no proximate cause?

STATEMENT REGARDING ORAL ARGUMENT

Oral argument should not be required to affirm the circuit judge's just refusal to grant a new trial. The record and the law are clear. There are no grounds for requiring a new trial.

STATEMENT OF THE CASE

Plaintiff's decedent, Jeffrey McCaskill, lost his life speeding on a farm road without a seat belt. McCaskill lost control, ran off the road and was thrown from his truck when it rolled. Plaintiff attempted to blame her loss on Goodyear by claiming that a defective tire caused the wreck. But the tire she blamed was one that McCaskill selected and maintained himself and seriously misused. McCaskill selected and installed tires that were the wrong size for the rims on his truck and that lacked sufficient load capacity for the truck. He later repaired the tire in question improperly at least four times, by patching punctures without plugging them. Three

of the improperly patched punctures were too large to be safely repaired by any method; under industry standards, any one of those three large punctures should have caused the tire to be discarded. The tire failure occurred through the largest of the improperly patched punctures.

In light of the evidence, the jury reasonably found for Goodyear on the issue of proximate cause. After marking a finding of "No" proximate cause, the jury announced that it had reached a verdict. The verdict that it returned fully resolved the case. No legal or rational basis existed for requiring any further deliberation. The judge's refusal to require anything further of the jury was eminently reasonable. The judgment must be affirmed.

I. Course of Proceedings and Disposition Below.

After a lengthy trial, the case was submitted to the jury on Rule 49(b) special interrogatories. MRCP 49(b).

Taking up the issues in the order presented by the interrogatories, the jury first considered whether plaintiff had proved the existence of a defect. With respect to this issue, the jury found unanimously for Goodyear on plaintiff's design and warning theories and so indicated in response to questions 1(a) and (c). R 414 (RE 18). The jury disagreed, however, about plaintiff's manufacturing defect theory. It marked question 1(b) accordingly, noting that there were 5 votes "Yes" and 7 votes "No" with respect to finding a manufacturing defect. *Id.*

The verdict form instructed the jury to "proceed to the next question" if "you answered 'Yes' to one or more" of the parts of question 1. *Id.* In keeping with that instruction, the jury moved on to question 2 and took up the issue of proximate cause.

On the question of proximate cause, the jury was again unanimous – it agreed that the alleged manufacturing defect, if any, did *not* cause plaintiff's loss. R 415 (RE 19). The jury recorded this finding by marking "No" in response to the question: "Do you find the defective and unreasonable condition . . . to be the proximate cause of the death of Jeffrey McCaskill?" *Id.* Recognizing that this finding completed a verdict for Goodyear, the jury left blank the remaining questions (regarding fault allocation and damages) and announced that it had reached a verdict.

Upon being brought back into the courtroom, the jury was asked on the record if it had reached a verdict. T 168 (RE 148). It responded that it had. *Id.* The verdict was then handed up and read. In response to a poll taken on the court's own motion, the jurors unanimously agreed that the findings of "No" design defect, "No" warning defect, and "No" proximate cause with respect to any possible manufacturing defect constituted their verdict. T 168-69 (RE 148-49).

Plaintiff objected and urged the Court to require the jury to resume deliberations. T 170 (RE 150). The plaintiff's objection did not state any doubt about the jury's intention to find "No" design defect, "No" warning defect, and "No" proximate cause with respect to any possible manufacturing defect, or about the jury's intention to return a verdict for Goodyear on that basis. *Id.* Plaintiff's only

ground of objection was that the jury had not first agreed about whether any manufacturing defect existed – a point mooted by the finding of no proximate cause. *Id.* Plaintiff believed that requiring the jury to reach agreement on that point might result in a different verdict. In effect, plaintiff wanted the jury compelled to reconsider its verdict for Goodyear.

The court rejected plaintiff's request for a compelled reconsideration of a clear verdict that fully resolved the case. T 171 (RE 151). She offered to poll the jury with respect to the manufacturing defect question if plaintiff desired, but plaintiff declined the offer, and the jury was released. T 171-72 (RE 151-52).

Plaintiff's repeated references to the verdict being "reformed" misstate the record.[1] There was no reform of the verdict. The verdict was clear. No "reform" was needed and none was made. The judgment incorporates the verdict as returned. R 408, 414 (RE 10, 18).

Plaintiff's motion for new trial was based on the same purported insufficiency in the form of the verdict that plaintiff argued at trial, i.e., the lack of agreement regarding the existence of a manufacturing defect, which was mooted by the finding of no proximate cause. R 411. No other issue was raised.

Plaintiff designated only a part of the trial record for inclusion in the record on appeal (R 444) and listed the same alleged insufficiency of the verdict as the only issue for appeal. R 450 (RE 121).

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[1] Brief at 1, 4, 7, 8, 24.

The only issue on appeal is whether the jury's lack of agreement about the existence of a manufacturing defect – one that the jury agreed could not have been a proximate cause – requires a new trial. The narrow focus of the appeal effectively concedes, as it must, that the trial was otherwise fair, and that the evidence supported the verdict, including the finding of "No" proximate cause.

II. Statement of Facts.

The narrow question presented for appeal is procedural rather than factual. Goodyear summarizes the facts it relied upon in closing (T 123-160) for the limited purpose of explaining the nature of the case the jury had to decide.

Jeffrey McCaskill was a farm operator who maintained equipment himself, including tires, in a large, well-equipped shop with a tire changing machine. *See* T 100. Without relying on any information provided by Goodyear, McCaskill selected and installed tires that did not fit the rims of, or have a sufficient load capacity for, his truck. T 134-39. He put 14,000 miles on those tires in five and a half months. T 135.

By the time of the accident, the tire in question had suffered damage from being driven "overdeflected" (underinflated, overloaded, or both). T 155. Accelerated wear resulting from improper maintenance had caused the tread to be prematurely worn through in several places. T 152. The tire had been punctured repeatedly and improperly repaired with patches only, without being plugged or filled. T 153-57. At least three of the improperly repaired punctures were too large

to be safely repaired by any method – any one of the three was damaging enough to have required the tire to be discarded. T 154-55. The tire failed through the largest of the oversized, improper repairs. T 158-59.

McCaskill was driving about 80 mph in a 45 mph zone on a two-lane farm road at dusk when he lost control. T 127. The truck was still traveling as fast as 75 mph when it hit an embankment. It flew a distance through the air, hit ground, and rolled four times. T 126-28. McCaskill was thrown from the truck between the first and second roll. T 128. He was not wearing a seat belt. *Id.*

STANDARD OF REVIEW

Plaintiff's appeal is meritless under any standard of review, but the appropriate standard is abuse of discretion, not *de novo* as incorrectly asserted by plaintiff.[2]

The question for this Court is whether to overrule the circuit judge to order a new trial. Orders denying a new trial are reviewed for abuse of discretion. *White v. Stewman*, 932 So.2d 27, 33 (¶ 16) (Miss. 2006) ("Since the determination of whether to grant or deny a new trial . . . is within the sound discretion of the trial court, this Court reviews such orders for abuse of discretion"); *Sentinel Indus. Contracting Corp. v. Kimmins Indus. Serv. Corp.*, 743 So.2d 954, 960 (¶ 15) (Miss. 1999) ("This Court will reverse a trial judge's denial of a request for new trial only when such denial amounts to an abuse of that judge's discretion") (citations omitted).

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[2] Brief at 9, citing *UHS-Qualicare, Inc., v. Gulf Coast Community Hospital, Inc.*, 525 So.2d 746, 754 (Miss. 1987). *UHS-Qualicare* was a review of a declaratory judgment entered after a bench trial on a matter of contract interpretation. The case has nothing to do with the standard for granting a new jury trial based on alleged insufficiency in the form of a verdict.

Reversal "for mere want of form" is prohibited "where there has been a *substantial compliance* with the requirements of the law in rendering a verdict." MISS. CODE ANN. § 11-7-157 (1972) (emphasis added). *See also White*, 932 So.2d at 37 (¶ 28) (quoting same). Plaintiff has not raised an issue that qualifies for *de novo* review.

SUMMARY OF ARGUMENT

The circuit judge correctly rejected plaintiff's request to compel continued deliberations after a clear verdict that fully resolved the case, and she correctly rejected plaintiff's subsequent request for a new trial. A clear verdict that resolves the case is a sufficient verdict. Lack of clarity or coherence is the only lawful basis for requiring additional deliberations after a verdict is returned. Plaintiff had no such grounds. Her request for additional deliberations on a question that the verdict rendered moot violated the law. There was no lawful basis on which deliberations could have been compelled to continue after the jury returned this verdict, and there is no basis now for granting a new trial.

ARGUMENT

I. The Circuit Judge Correctly Refused to Require the Jury to Debate a Moot Hypothetical Question After its Unanimous Finding for Goodyear on Proximate Cause.

The circuit judge acted well within her discretion when she refused to grant a new trial. R 518 (RE 13). The jury's verdict in this case was fully sufficient and perfectly clear. There was no lawful basis for requiring further deliberations, and there are no grounds for requiring a new trial.

"This Court has held that the test of whether a verdict is sufficient as to form 'is whether or not it is an intelligent answer to the issues submitted to the jury and expressed so that the intent of the jury can be understood by the court.'" *White*, 932 So.2d at 37 (¶ 28) (quoting *Sentinel Indus. Contracting Corp.*, 743 So.2d at 969 (¶ 40), and other cases).

In addition, "[n]o special form of verdict is required, and where there has been a *substantial compliance* with the requirements of the law in rendering a verdict, *a judgment shall not be . . . reversed* for mere want of form." MISS. CODE ANN. § 11-7-157 (1972) (emphasis added); *see also White*, 932 So.2d at 37 (¶ 28) (quoting statute); *Sentinel Indus. Contracting Corp.*, 743 So.2d at 968 (¶ 40) (same).

The jury's finding of "No" design defect, "No" warning defect, and "No" proximate cause provided "an intelligent answer" to the issues the jury was given to decide. *White*, 932 So.2d at 37 (¶ 28). The answer was "expressed so that the intent of the jury [could] be understood by the court.'" *Id.* It was perfectly clear that by

marking the findings of "No" design defect, "No" warning defect, and "No" proximate cause the jury intended to return a verdict for Goodyear, disposing of plaintiff's claim. That the evidence supported such findings is not disputed.

The jury demonstrated its accurate understanding of the effect of its findings by leaving the remainder of the verdict form blank (the questions dealing with fault allocation and damages) and by announcing that it had reached a verdict. When polled by the court on the record, the jurors unanimously embraced the findings of "No" design defect, "No" warning defect, and "No" proximate cause as their verdict. The jury's intent to return a verdict for Goodyear based on these findings was absolutely clear. The verdict fully resolved the case. Nothing more could reasonably have been demanded of this jury.

Rule 49 authorizes continued deliberations after a verdict is returned only where answers to special interrogatories are in conflict with one another or with a general verdict. MRCP 49(c). Rule 3.10 allows continued deliberations where "a verdict is so defective that the court cannot determine from it the intent of the jury." URCCC 3.10. Plaintiff's request for continued deliberation violated these rules.

Plaintiff's request to throw out the judgment and require a new trial violates the provision of § 11-7-157 that prohibits reversal for "want of form" where "there has been a *substantial compliance* with the requirements of the law in rendering a verdict." MISS. CODE ANN. § 11-7-157 (emphasis added). There is no defect in this

verdict, much less a defect sufficient to justify reversal under this "substantial compliance" standard. *Id.*

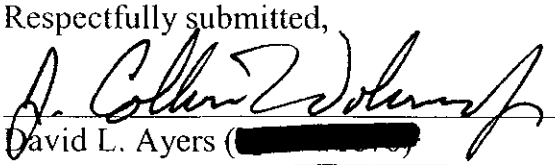
Plaintiff's lengthy discussion of various cases does not come close to providing support for her position. There is no authority that supports requiring a jury to debate a moot liability issue after returning a clear, dispositive verdict on proximate cause.

CONCLUSION

The judgment should be affirmed.

Dated: September 12, 2008.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a photocopy of the above and foregoing to be mailed, by postage paid United States mail, to the following recipients:

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The Honorable Margaret Carey-McCray
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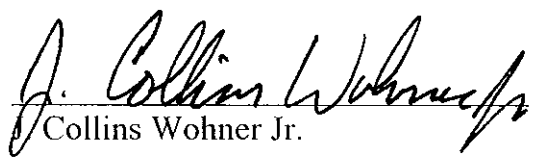
THIS, the 12th day of September, 2008.



Collins Wohner Jr.