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IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CASE NUMBER 2006-^{CA}~~TS~~-01585

LESLIE GARY CHAPMAN
Plaintiff - Appellant

VERSUS

BRIAN ANTHONY CHAPMAN
Defendant - Appellee

FILED

FEB 06 2007

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SUPREME COURT
COURT OF APPEALS

APPEAL FROM THE CHANCERY COURT OF
PIKE COUNTY, MISSISSIPPI

APPELLANT'S BRIEF ON BEHALF OF LESLIE GARY CHAPMAN

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**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

NO. 2006-TS-01585

**IN THE MATTER OF THE ESTATE
OF LESLIE W. CHAPMAN, DECEASED;
LESLIE GARY CHAPMAN, ET AL**

PLAINTIFF/APPELLANT

V.

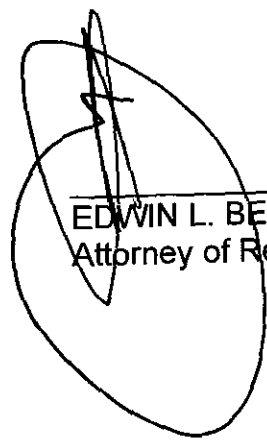
**BRIAN ANTHONY CHAPMAN,
BRUCE WILLIAM CHAPMAN,
LESLEY DARLENE REEVES,
AND BETTY CHAPMAN**

DEFENDANTS/APPELLEES

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 and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Hon. Debra Halford, Chancery Court Judge of the Fourth Chancery Court District
2. Leslie Gary Chapman, Plaintiff
3. Brian Anthony Chapman, Bruce William Chapman, Lesley Darlene Reeves, and Betty Ruth Chapman, Defendants
4. John H. White, Esq., P. O. Box 672, McComb, MS 39649, and Rachel L. Wilson, Esq., P.O. Box 94, McComb, MS 39649
Attorneys for the Defendants
5. Edwin L. Bean, Jr., Esq., P. O. Box 1322, McComb, MS 39649
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TABLE OF CONTENTS

	PAGE
Certificate of Interested Persons	i
Table of Contents	iii
Table of Authorities	iv
Statement of Issues	1
I. Confidential Relationship	
II. Overcoming Presumption of Undue Influence	
Statement of Case	1-6
Summary of the Argument	6-7
I. Confidential Relationship	
II. Presumption of Undue Influence	
Argument	7-13
I. The trial court erred in finding that there was no confidential relationship between Leslie W. Chapman and Betty Chapman.	
II. The trial court erred in finding that the appellees overcame the presumption of undue influence by clear and convincing evidence.	
Conclusion	13-14
Certificate of Service	15

TABLE OF AUTHORITIES

JURISPRUDENCE	PAGE
<i>Murray v. Laird</i> , 446 So. 2d 575, 578 (Miss. 1984)	7
<i>Dean v. Kavanaugh</i> , 920 So. 2d 528, 533 (Miss. COA 2006)	7
<i>In re Estate of Dabney</i> , 740 So. 2d 915, 919 (Miss. 1999)	7
<i>Smith v. Irving</i> , 827 So. 2d 673, 677, 678 (Miss. 2002)	9, 10

STATEMENT OF ISSUES

I. CONFIDENTIAL RELATIONSHIP

- A. There existed a confidential relationship between Betty Chapman, the decedent's wife, and the decedent, Leslie W. Chapman, which created a presumption of undue influence surrounding the execution of the June 18, 1997 will.

II. UNDUE INFLUENCE

- B. The decedent's last will and testament dated June 18, 1997, was the product of the undue influence exerted upon the decedent, Leslie W. Chapman, by Betty Chapman and her daughter, Leslie Darlene Reeves, and is therefore void *ab initio*, as they failed to overcome the presumption by clear and convincing evidence.

STATEMENT OF CASE

This case involves the Last Will and Testament of Leslie W. Chapman (hereinafter referred to as "Leslie") which was executed on June 18, 1997, in the law office of John Price, Esq., in McComb, Mississippi, which willed, devised, and bequeathed his entire estate unto his wife, Betty Chapman (hereinafter referred to as "Betty"). Additionally, at the same time Leslie executed his Last Will and Testament, he deeded approximately five (5) acres of real property to his daughter, Leslie Darlene Reeves.

Gary Leslie Chapman, the decedent's son by his first marriage, filed suit in the Chancery Court of Pike County, Mississippi, alleging that the Last Will and Testament of his father, Leslie, executed on June 18, 1997, was void *ab initio*, as it was the product of the undue influence of his stepmother, Betty. After a trial on the merits, the chancellor found that there was no confidential relationship existing between Betty and the decedent,

Leslie, at the time of execution of the Last Will and Testament, and that if one did exist, Betty had overcome the presumption of undue influence.

The decedent, Leslie, married his wife, Betty on February 27, 1965. (T 53, L 2) It was Leslie's second marriage and Betty's first marriage (T 53, L 6) The plaintiff, Leslie Gary Chapman, was born of the first marriage of Leslie. (T 53, L 14) Unto the marriage of Betty and the deceased, Leslie, were born three (3) children, Bruce Chapman, Brian Chapman, and Lesley Reeves. (T 52, L 5-29; T 54, L 1-29)

In 1985, Leslie and Betty bought the Summit Pool Hall in both names. (T 56, L 22-26) Leslie drank alcohol on a day-to-day basis and would get inebriated two to three times a week. (T 57, L 18-29) Betty testified that she and her husband shared equal time and responsibility for running the pool hall because her husband trusted her. (T 59, L 10-29; T 60, L 1-6)

Prior to June 1997, Leslie learned that he had a serious illness affecting his throat. (T 62, L 2-17) On June 16, 1997, Lesley Reeves, Leslie's daughter, drove her father to Jackson Mississippi, to the V. A. Hospital, where he learned that he had a short time to live due to cancer (T 64, L 16-23) When Leslie and his daughter, Lesley Reeves returned home on June 16, 1997, Leslie refused to tell his wife, Betty, what he learned in his visit to the V. A. Hospital, and instructed his daughter as well, not to tell her mother. (T 65, L 18-28). On June 18, 1997, Betty alleges that Leslie for the first time disclosed to her that he had only six (6) months to live. (T 97, L 25) After Leslie's revelation to his wife, Betty, on June 18, 1997, that he had only six (6) months to live, Betty alleges that her husband, Leslie, told her that they had to go to a lawyer's office, Social Security office, and funeral home. (T 65, L 27-29; T 66, L 1-2)

John Price was a private practice attorney in McComb, Mississippi, in June of 1997. He employed Sue Moak as a secretary. Sue Moak testified that she remembers seeing Leslie in Mr. Price's office on June 18, 1997. (T 9, L 6-8). Her testimony was that Mr. Price had done Leslie's will before that date and they came in to complete the execution of Leslie's will and the deed to Lesley Reeves. (T 9, L 10-14) Mrs. Moak further testified that Betty, Leslie, and Lesley Reeves all came into John Price's office, and all went into John Price's private office where they stayed approximately ten (10) minutes before the execution of Leslie's will. (T 17, L 23-29; T 18, L 15)

John Price testified that every time Leslie came to see him that Betty was with him prior to the execution of the will on June 18, 1997, (T 22, L 8) Mr. Price further testified that on one or two occasions Leslie had come to his office after having consumed alcohol. (T 22, L 27-29; T 23, L 1-14) Mr. Price disputes Betty's and Lesley's recollection of events as he recalled, having had his first discussion with Leslie about his will approximately one (1) week before its execution when Leslie was accompanied by his daughter Lesley Reeves and wife, Betty, when they came into his office and Lesley Reeves stated, "that she wanted to make sure that they had an understanding about what she was getting." (T 26, L 5) Mr. Price further testified that Betty and her daughter, Lesley Reeves, were privy to the conversation about what Leslie wanted to do with his estate in the meeting which took place approximately one (1) week prior to June 18, 1997. (T 26, L 15) Mr. Price testified that there was interplay among the three (3) of them, "We discussed it between the three (3) of them." (T 26, L 28) In the conversation that took place one (1) week prior to the execution, John Price testified that he was not aware of Leslie's heirs, that they discussed assets in a general fashion, he did not discuss with him his natural inheritors and did not

discuss whether or not not-relative beneficiaries should be excluded or included in his will. (T 27, L 20-29; T 28, L 4-27) Price also testified that after talking to Leslie that it was, "his impression that his wife had a great deal of influence in you know, helping him manage the situation and maybe even to the extent of handling the money. That she had a great deal of influence in that situation." (T 29, L 6) Price did not ask Leslie during the meeting that occurred one (1) week prior to the execution of the will who managed his checking account. (T 29, L 28) When the Chapmans and Reeves left his office in the meeting that occurred one (1) week prior to June 18, 1997, Mr. Price did not tell Leslie to return alone for the execution of his will and the deed to his daughter, Lesley Reeves. (T 32, L 15) He testified that he expected Leslie, his wife, and daughter to return for the execution because the daughter, Lesley Reeves, wanted to make sure that the deed was done right. (T 32, L 25) Leslie, Betty, and Lesley Reeves returned to John Price's office on June 18, 1997, for the execution of the will and deed. (T 33, L 14) All three (3) entered John Price's office on that date. (T 35, L 6) Mr. Price testified that Betty and Mrs. Reeves knew before they arrived what was supposed to be in the will. "So that was what they were expecting to be there and that's what was there." (T 36, L 17) John Price testified that he never had a discussion with Leslie about his estate outside of his wife, Betty's presence. (T 39, L 24; T 40, L 5; T 50, L 4)

John Price tape-recorded the execution of the will. During the execution of the will, Leslie signed the wrong line on the copy of the will. (T 37, L 18) Not only did John Price not discuss with Leslie his estate outside Betty's presence, he also did not discuss the deed to the land to his daughter, Lesley Reeves, outside of her presence. (T 40, L 5)

After the will was executed, Betty paid Mr. Price's fee as, "she had the checkbook."

(T 42, L 14)

Betty, and Lesley Reeves testified that they did not come into John Price's office the week prior to week June 18, 1997, as alleged by Mr. Price and his secretary, but rather they appeared in his office on the morning of June 18, 1997. John Price disputes that as he stated that he had to go to the courthouse to retrieve information on the land in order to properly prepare a deed. He testified, "But I got the info first and also they told me they wanted the deed. (Emphasis ours) (T 49, L 3)

Betty and her daughter both testified that after leaving John Price's office on June 18, 1997, that they accompanied Leslie to the funeral home to make his funeral arrangements. Betty testified that she was instrumental in getting Leslie to change his mind about his funeral arrangements. (T 60, L 15-29; T 61, L 1-29; T 62, L 1) Betty testified that they had discussed with Leslie what to do with his estate and the real estate conveyance to his daughter, Lesley Reeves prior to their arrival at John Price's office on June 18, 1997. (T 70, L 6-21) Betty further testified that, "I knew what he wanted. They read it to me when I got in there." (T 75, L 13)

After the execution of the will on June 18, 1997, Betty took the will and put it in a safety deposit box which was in her name only. (T 75, L 24-29; T 76, L 4) There is no evidence in the record that Betty or Lesley Reeves told any of the family members that Leslie had executed a will or a deed on June 18, 1997.

On September 10, 1997, approximately three (3) months later, Leslie passed away

due to cancer. (T 78, L 23) Betty testified that at sometime after her husband had passed away that she told her sons that Leslie had a will. (T 79, L 12) After several requests to Betty by the plaintiff, Gary Chapman, and being refused any opportunities to review the will, Gary Chapman employed a local attorney, Dwayne Deer, to write letters to Betty to get a copy of the will from her. (T 79, L 21-29) When asked why she did not tell the children about Leslie's will, Betty's response was, "When I tell my children something, that's how it is." (T 79, L 29) Betty testified that she was an independent strong-willed woman. (T 80, L 12) When asked during trial why she would not show Gary his daddy's last Will and Testament, she refused to answer the question. (T 80, L 22) The plaintiff, Gary Leslie Chapman, did not see his father's Last Will and Testament until he filed a petition to open his father's intestate estate. (T 80, L 25)

Gary Chapman testified that his father always told him, "Everybody would be taken care of." (T 111, L 11-15) He further testified that his sister, Lesley Reeves, never told anyone that she had been deeded the land. (T 112, L 27-29; T 113, L 1)

SUMMARY OF THE ARGUMENT

I. Confidential Relationship.

The trial court erroneously concluded that a confidential relationship did not exist between the decedent, Leslie and the sole beneficiary of his Last Will and Testament, his wife, Betty. The appellant, clearly established by ample evidence that the decedent, Leslie and Betty were in a fiduciary and/or confidential relationship.

II. Presumption on Undue Influence.

The trial court erroneously found that Leslie and Betty stood in a close relationship typical of a traditional husband and wife relationship, and that there was no need for her to overcome the presumption of undue influence with regard to the execution of the will by Leslie on June 18, 1997. The appellant respectfully submits that the appellee did not overcome the presumption of undue influence by clear and convincing evidence, and therefore the will of June 18, 1997, should be declared void.

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING THAT THERE WAS NO CONFIDENTIAL RELATIONSHIP BETWEEN LESLIE W. CHAPMAN AND BETTY CHAPMAN.

The trial court erroneously found that Betty and Leslie had the traditional husband and wife relationship which did not rise to the level of a confidential relationship. In *Murray v. Laird*, 446 So. 2d 575, 578 (Miss. 1984) this Court stated:

A confidential relationship did not have to be a legal one, but that the relationship may be moral, domestic, or personal. The confidential relationship arises when a dominant overmastering influence controls over a dependant person or trust, justifiably reposed. In *Dean v. Kavanaugh*, 920 So. 2d 528, 533 (Miss. COA 2006) the Court of Appeals cited with authority the Mississippi Supreme Court decision of *In re Estate of Dabney*, 740 So. 2d 915, 919 (Miss. 1999) where the Mississippi Supreme Court articulated factors to be considered in determining if and when a confidential relationship exists. These factors include:

- (1) Whether one person has to be taken care of by another;
- (2) Whether one person maintains a close relationship with another;
- (3) Whether one person is provided transportation and has their medical care provided for by another;
- (4) Whether one person maintains a joint account with another;

- (5) Whether one is physically or mentally weak;
- (6) Whether one is of advanced age or poor health; and
- (7) Whether there exists a Power of Attorney between the one and the another.

In the case *sub judice* the appellant respectfully submits to the court that a number of these factors are present evidencing a confidential relationship between Betty and the decedent, Leslie. Leslie and Betty both bought the Summit Pool Hall in both names in 1985. (T 56, L 22-26) Leslie drank alcohol on a day-to-day basis and would get inebriated two to three times per week. (T 57, L 18-29) Betty testified that she and her husband shared equal time and responsibility for running the pool hall as she testified, "her husband trusted her" (T 59, L 10-29; T 60, L 1-6) On June 16, 1997, Leslie learned that he had approximately six months to live due to cancer and did not disclose the same to Betty Leslie obviously was in poor health as he died on September 10, 1997, only three (3) months later. For some unknown reason, still unexplained, Leslie refused to tell his wife, and instructed his daughter, Lesley Reeves, not to tell his wife of the startling news of June 16, 1997. When he did tell Betty the news, immediately that day, June 18, 1997, Betty began a mad rush to make sure Leslie's business affairs were in order.

John Price, the scribe who prepared Leslie's Last Will and Testament, testified that there was interplay between Betty, Leslie, and Lesley Reeves as to the fact that they had discussed Leslie's Last Will and Testament among the three of them before they entered his office.

He further testified that after talking to Leslie it was, "his impression that his wife had a great deal of influence in you know, helping him manage the situation and maybe even

to the extent of handling the money. That she had a great deal of influence in that situation.” (T 29,L 6) (T 29, L 6-18)

On September 10, 1997, Leslie passed away due to cancer. (T 78, L 23) Betty testified that at sometime after her husband had passed away that she told her sons that Leslie had a will. (T 79, L 12) After several requests to Betty by the plaintiff, Gary Leslie Chapman, and being refused any opportunities to review the will, Gary Chapman employed a local attorney, Dwayne Deer to write letters to Betty requesting the will. (T 79, L 21-29)

When asked why she did not tell the children about the will, Betty’s response was, “When I tell my children something; that’s how it is.” (T 79, L 29) She further testified that she was an independent, strong-willed woman, (T 80, L 12) even so much to the extent that on June 18, 1997, after leaving the attorney’s office, Betty was instrumental in getting Leslie to change his mind about his funeral arrangements.

Additionally, after the execution of the will by the decedent, Leslie, on June 18, 1997, Betty paid Mr. Price’s fee, as Mr. Price stated, “she had the checkbook.” Therefore, it is abundantly clear that Betty and the decedent, Leslie, were in a confidential relationship with each other as five (5) of the seven (7) elements articulated in *Dabney, supra* were present.

II. THE TRIAL COURT ERRED IN FINDING THAT THE APPELLEES OVERCAME THE PRESUMPTION OF UNDUE INFLUENCE BY CLEAR AND CONVINCING EVIDENCE.

When confidential relationships exist, the presumption of undue influence arises in a conveyance or bequest benefitting the other party in the relationship. That presumption can only be rebutted by clear and convincing evidence. In *Smith v. Irving*, 827 So. 2d 673, 677 (Miss. 2002) this court stated that, “there is a presumption of undue influence where

there is a bequest by a testator to one in a fiduciary relationship with him if the fiduciary has any involvement in the preparation of the will." The court further stated, "...the law requires the beneficiary to prove other than from himself that the gift was in fact in truth what the giver wished and not the result of any influence or improper action by the beneficiary." *Id.* at 678

In *Smith v. Irving*, *supra* this court outlined the three-prong test to be used to determine whether the presumption of undue influence had been rebutted, as follows:

- (1) **The beneficiaries must have acted in good faith.**
 - a. Who initiated the procurement of the will?
 - b. Where was the will executed and in whose presence?
 - c. What consideration was paid?
 - d. Who paid the consideration?
 - e. Was there any secrecy or openness in the execution?
- (2) **The testatrix must have had full knowledge and deliberation in the execution.**
 - a. Was the testatrix aware of her total assets and their general value?
 - b. Did the testatrix understand who her natural inheritors were?
 - c. Did the testatrix understand how the change would legally affect prior wills?
 - d. Did the testatrix know that non-relative beneficiaries would be included?
 - e. Did the testatrix know who controlled her finances and by what method?
- (3) **Is there evidence of independent consent and action by the testatrix?**

In the case *sub judice*, the appellant respectfully submits that the appellee did not meet the three-prong test to overcome the presumption of undue influence. In discussing each prong the appellant submits the following:

1. **The beneficiary must have acted in good faith.** Although there is no direct

testimony as to who procured the will on June 18, 1997, the facts are that Leslie learned on June 16, 1997, that he had six (6) months to live and withheld that information from his wife, Betty, until June 18, 1997. After prodding from his wife, he finally disclosed to her that he only had six (6) months to live, and then on that very day, according to Betty, he was at a lawyer's office executing his Last Will and Testament, going to the Social Security Office, and going to the funeral home to make funeral arrangements, although, John Price, the scribe who prepared the Last Will and Testament and his secretary testified that Leslie, accompanied by Betty and their daughter, arrived in his office one (1) week prior to June 18, 1997. In any event, John Price testified that it was obvious to him that Leslie, Betty, and their daughter Mrs. Reeves, had discussed Leslie's estate prior to their arrival at his office as Mrs. Reeves stated that she, "wanted to make sure that they had an understanding about what she was getting." Mr. Price further testified that, "there was interplay between the three (3) of them, we discussed it between the three (3) of them." He further testified that after talking to Leslie that it was, "...his impression that his wife had a great deal of influence in you know, helping him manage the situation and maybe even to the extent of handling the money. That she had a great deal of influence in that situation." Price further testified that Betty and Mrs. Reeves knew before they arrived what was supposed to be in the Will, "so that was what they were expecting to be there and that's what was there." Although there was considerable testimony as to the amount Mr. Price charged, as he could not remember, Mr. Price was adamant that Betty paid his fee that day as he testified, "she had the checkbook." There was clearly secrecy surrounding the execution of Leslie's Last Will and Testament on June 18, 1997. The only parties who were aware of the execution were the beneficiaries, Betty and Lesley Reeves. Betty testified she took the will

and put it in a safety deposit box which was in her name only. She further testified that it was not until some time after her husband had passed away that she told her sons that Leslie had a will. Furthermore, with respect to the secrecy surrounding the execution, for some strange reason, which Betty refused to answer at trial, she refused to provide the appellant with a copy of his father's will. Even after several letters by an attorney he retained to secure the will, Betty never produced Leslie's will until the appellant filed a petition to open his father's intestate estate.

2. The testator must have had full knowledge and deliberation in the execution.

The record in this case is basically void of any evidence that the testator, Leslie W. Chapman had full knowledge and deliberation in the execution of his Last Will and Testament on June 18, 1997. Mr. Price, the scribe, who prepared Leslie's Last Will and Testament, testified that he was not aware of Leslie's heirs, that they had discussed his assets in a general fashion, he did not discuss with Leslie his natural inheritors, and did not discuss whether or not non-relative beneficiaries should be excluded or included in his will. The record is completely void of evidence as to whether or not Mr. Price discussed with Leslie whether or not he had any other wills and how the June 18, 1997, will would affect the same. Again, the record is void of evidence as to whether or not Mr. Price discussed with Leslie who controlled his finances and by what method. Apparently, Mr. Price already knew that Betty managed Leslie's money when he testified, "That his wife had a great deal of influence in you know, helping him manage the situation and maybe even to the extent of handling the money. That she had a great deal of influence in that situation." Additionally, Mr. Price testified that Betty was the one who paid the fee for services

rendered on June 18, 1997.

3. **Was there evidence of independent consent and action by the testator, Mr. Chapman?**

It is very evident from the record of this case that on every occasion when John Price discussed Leslie's estate with him it was never outside of Betty, the sole beneficiary's presence. When they arrived at Mr. Price's office, if you believe Mr. Price's version, a week prior to the execution on June 18, 1997, they all had discussed what they wanted done with Leslie's estate, and discussed it with Mr. Price together. If Mr. Price's version is to be believed, when he told Leslie to return for the execution of the will a week later, on June 18, 1997, he did not tell him to come alone. He testified that he expected Leslie, Betty, and their daughter to return for the execution because the daughter, Lesley Reeves, wanted to make sure that the deed was done right. Mr. Price further testified that Betty and Mrs. Reeves knew before they arrived on June 18, 1997, what was supposed to be in the will, "so that was what they were expecting to be there and that's what was there." (Emphasis ours) Therefore, the record is completely void of any evidence that would indicate that the testator, Leslie, exhibited independent consent and action in the case *sub judice*.

CONCLUSION

The evidence presented at trial clearly supports a finding that there existed a confidential relationship between the decedent, Leslie W. Chapman and his wife, Betty Chapman, the sole beneficiary of his Last Will and Testament of June 18, 1997. Due to the fact that Betty Chapman was the sole beneficiary of the decedent's estate, and due to the


confidential relationship existing between her and the decedent there arose a presumption of undue influence which was not rebutted by the beneficiary, Betty Chapman. Not only did Betty Chapman not rebut the presumption by clear and convincing evidence, but she failed to rebut the presumption by even a lessened standard, by a preponderance of the evidence.

Therefore, the appellant respectfully submits that this court should find that there existed a confidential relationship between Betty Chapman and the decedent, Leslie W. Chapman, and she failed to rebut the presumption of undue influence resulting in the Last Will and Testament of Leslie W. Chapman dated June 18, 1997, to be held void *ab initio*.

Respectfully submitted,

GARY CHAPMAN

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CERTIFICATE OF SERVICE

I, Edwin L. Bean, Jr., do hereby certify that I have this day mailed postage prepaid by U.S. Mail, a true and correct copy of the above and foregoing document to the following:

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This the 9 day of February, 2007



EDWIN L. BEAN, JR.