IN THE SUPREME COURT OF MISSISSIPPI

NO. 2006-CA-02006

CARSON FAMILY TRUST **APPELLANT**

VERSUS

HUBERT DOUGLAS CARSON **APPELLEE**

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 disqualifications or recusal.

1. Martha G. Carson, Trustee and Attorney for the Carson Family Trust — Plaintiff
2. Edwin Dale Carson — Plaintiff
3. Hubert Douglas Carson — Defendant
4. Mary Frances Carson — Co-Defendant
5. Jack Parsons — Attorney for Defendant
6. Tadd Parsons — Attorney for Co-Defendant
7. Honorable Larry Buffington — Trial Judge

SO CERTIFIED this the 11th day of July, 2007.

MARTHA G. CARSON

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2. Whether the trial court erred by appointing the Executor of the will without a bond, sans hearing on objections, when the Executor was personally profiting from rental and sale of estate assets without the consent of other heirs.
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STATEMENT OF THE CASE

A. NATURE OF THE CASE

This case arises out of probate proceedings of Hubert Earl Carson and his wife, Lela Irma Carson, lifelong residents of Harrison County, Mississippi. Hubert Carson died on July 1, 2002, and Lela Carson died on September 15, 2002; they were survived by three adult sons, Hubert Douglas Carson (the Defendant, hereinafter referred to as Douglas), Edwin Dale Carson and Gary Roger Carson. Both decedents died while living in separate personal care centers. Douglas and his wife, Mary Frances Carson, made their medical decisions and Mary Frances wrote and signed all checks from the checking account she shared with Hubert and Lela. While Lela Carson was already suffering extensively from Alzheimer's disorder [R. 00044], Mary Frances prepared and filed a general power of attorney from Hubert alone, so that Douglas could handle all his affairs, even in the event of his disability. [R. 00012] Douglas did not advise his brothers of these legal events, and he even decided if and when the brothers would be allowed to see their parents. Douglas testified that he had borrowed money from his parents, but he couldn't remember how much [R. 00075], that he held both his parents wills after their deaths without advising his brothers [R. 00064], and that he rented the parents' homestead, six months after the death of their incompetent mother, [R. 00045]

and placed the rental proceeds, along with proceeds from the sale of Hubert's truck, into three personal accounts he shared with Mary Frances [R. 00049]. At no point did Douglas or Mary Frances petition to establish conservatorships for the elderly Carson's, they simply assumed that fiduciary capacity without judicial review.

B. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

When Lela died in September following Hubert's death in July, 2002, the two brothers grew concerned with Douglas continuing to rent the old home, and they could not obtain answers regarding their parents' estates, including life insurance proceeds. Gary declined his share of his parents' estates in favor of other family members [R. 00007-11], so his wife, Martha, an attorney in Biloxi, petitioned the Chancery Court of Harrison County on November 15, 2002, to administer the estates as Trustee of the Carson Family Trust and Dale Carson joined in the petition. [R. 00032] The intestate estate was admitted to probate [R. 00021], a bond in the sum of the insurance proceeds ($10,000) was filed [R. 00026], the Administratrix's Oath was executed and filed [R. 0031], and the Letters of Administration were issued [R. 0032] on November 18, 2002. The Administratrix noticed Douglas. [R. 0055]

On December 2, 2002, Leonard Blackwell, attorney, wrote the

Administratrix that Douglas had produced Hubert's and Lela's original wills which Douglas and Mary Frances had been keeping in their safety deposit box in Wiggins, Mississippi. Mr. Blackwell opined that there should be no problem working out the estates, since the wills basically followed the intestacy pattern, although they did name Douglas as the Executor. After Douglas refused to cease renting the homestead or seeking leave of court to continue, and made other demands inconsistent with the fiduciary nature of an executor, Mr. Blackwell ceased efforts to resolve the matter.

Through Jeff White, new counsel representing both Douglas and Mary Frances, Douglas filed a petition to probate the wills, and the two cases were consolidated. Douglas continued to rent the decedents' home, continued to put the rental proceeds in his account with Mary Frances, and, along with expending funds in the decedents' checking account, began making demands that his brothers deed the entire real property to him. The Administratrix proceeded to determine creditors, beginning with Mary Frances [R. 00066] and, after publication under Rule 81, MRCP, established heirs at law. [R. 00174] Douglas' petition to probate the will was answered with objections and a counterclaim by the Appellant, who sought direction of the Court and filed various motions and discovery. [R.00100] Jack Parsons entered his appearance on Douglas' behalf [R. 00085], moved to remove

the Administratrix and to probate the wills [R. 00088], and he requested a Protective Order to prevent any discovery of the nominated Executor. [R.00146 and 00166] A special judge, Larry Buffington, was assigned to preside over the combined cases. [R. 00152] The Administratrix resigned her position but moved for appointment of an Executor de Bonis Non in lieu of Douglas, and adopted all prior actions as Trustee for the Carson Family Trust as well as attorney for Dale Carson. [R. 00156]

STATEMENT OF THE FACTS

A. FACTUAL BACKGROUND

Judge Buffington scheduled a status conference with the parties on May 16, 2003; no court reporter was present. On that occasion, the Court was presented with the pleadings and the documentary exhibits that, on their face, appeared to substantiate allegations of fiduciary breaches that the Trust and Dale Carson made against the nominated Executor. Judge Buffington held on that occasion that he would not consider a hearing on the Motions pending, including the Motion for an Executor de Bonis Non because of Douglas' conflicts, because the Wills nominated Douglas and he was legally required to appoint him. Mr. Jack Parsons had the documents prepared prior to the status conference, including the Oath, and the Court executed those documents on the spot [R. 00177-80], including the Letters

Testamentary, [R. 00181], waiving any bond because the Wills mandated so. The Court reserved ruling on all other Motions, and stayed discovery from Douglas and Mary Frances until after the inventory and accounting.

On June 16, 2003, Douglas filed his Inventory [R. 00183-209] and, on June 29, 2003, he filed the First Annual and Final Account. [R. 00210-216] On June 30, 2003, Plaintiffs responded with a Motion for a Perfect Accounting [R. 00218], a Motion to Set Aside Intervivos Transfers [R. 00221], and a Motion to Remove the Executor. [R. 00224] On July 23, 2003, Douglas and Mary Frances filed an Affidavit claiming funds, apparently the balance, at Lela's death, in the checking account Mary Frances shared with the decedents, as repayment for "sums which are due and owing." [R. 00228] Only the front of the checks were reproduced, although they were all signed by Mary Frances, payable to various individuals, including Hubert Carson, and cash. There are no notations as to the purpose of the various checks.

Plaintiff again sought to compel discovery from the Court [R. 00252 and R. 00257-60], and Objections to the inventory and final accounting, with exhibits. [R. 00261-299] New deposition notices were filed by the Plaintiff, and Mary Frances was served with process on these notices.

The cross motions came before the court on September 26, 2003, and the court's ruling was filed on October 8, 2003. [R. 00343-45] In that ruling, the Court held, as a matter of law, that written objections were required to be filed on Rule 81 matters such as approval of a final accounting, and since the Plaintiffs had not reduced their objections to writing, they should be required and given an opportunity to do so. The Court continued to stay discovery even for purposes of formulating objections, stating "... Discovery in any form, including depositions or subpoena, whether based upon any matter in this litigation, arising from transactions before the death of the decedents or after, *including related matters contained in the Inventory or Accounting,* is absolutely prohibited of both the Executor and the absent party [Mary Frances, who did not appear on her own motion for a protective order] in this matter." [italics added.]

The Court went on, in that October 2003 Order, to remind counsel for the Plaintiffs that it was formally dismissing the Motion to Set Aside the Intervivos Transfers, of its own motion, because "what occurred during the lifetime of the decedents between themselves and the Executor, *whether or not in a confidential relationship, and whatever the nature of the transfer, if any, may not be legally litigated in the estates*

proceeding." [Italics added.] The court was more expansive in giving its ruling, as a matter of law, in the transcript:

> THE COURT: . . . I think if you want to sue him [Douglas] for saying he had a whatever, a fiduciary relationship or whatever you want to call it, that developed because of his relationship with his (sic) momma and dad and that he used that relationship to his benefit, then that's a separate lawsuit to recover—to bring money back that you think—in other words, setting aside deeds. I don't know whether there were any deeds involved.
>
> MRS. CARSON: Your Honor, to be brought into the estate. Now my—
>
> THE COURT: . . . [T]hat's a separate lawsuit, separate from the estate. If, in fact, you're successful, then of course it comes into the estate, so I'll be honest with you, if you file that lawsuit, we may not be in the posture to close the estate. . .
>
> MRS. CARSON: Would the Court entertain review of any case law to the contrary of the Court's ruling?
>
> THE COURT: . . . [L]ike I said, that's just the way I've always done it.
>
> [R. 00024-26]

At the request of Mr. Parsons for an accounting for the period of time when the estates were being administered by the Trustee for the Carson Family Trust, Plaintiffs filed a Partially Corrected Accounting by Former Administratrix. [R. 00356] This document quantified the objections to the Executor's accounting and represents in numerical form the objections to the Executor's accounting.

Nonetheless, the Court approved the actions and accounting of the Executor, over the objections of the Plaintiffs, and granted attorney fees to Mr. Parsons which actually exceeded the liquid assets of the estate, after other costs and the probated claim. The balance that was in the decedent's accounts at the time of their death was held to pass to the surviving account holder, Mary Frances Carson. By the time Mary Frances was deposed after the Judgment was entered, she had incredible lapses of memory, so as to be totally useless without other forms of discovery, such as production of documents. This cause became ripe for appeal after the Court denied the Rule 52 Motion by the Plaintiffs.

SUMMARY OF THE ARGUMENT

ISSUE 1:

Whether the trial court erred by granting comprehensive protective orders to the co-defendants Hubert Douglas Carson and

Mary Frances Carson, or by declining jurisdiction of the intervivos matters arising from a confidential relationship between the co-defendants and the decedents, or to provide a forum for the protection of the estate interests for the majority of the beneficiaries.

The decision of the trial court, that a separate lawsuit–in another court, under another cause number--was required to establish that a confidential relationship arose during the decedents' lifetime, was a legal decision. Jurisdictional issues are matters of law, and on appeal, this Court reviews legal issues de novo, Tyson Breeders, Inc. v. Harrison, 940 So.2d 230 (¶5) (Miss. 2006). However, in reviewing a chancellor's finding of fact, this Court "will not disturb the factual findings of a chancellor unless such findings are manifestly wrong or clearly erroneous." Bardwell v. Bardwell (In re Bardwell), 849 So.2d 1240, 1245 (Miss. 2003) (citation omitted.) In the case at bar, the trial court's legal decision that the confidential relationship of the nominated executor and his wife was not relevant to the probate proceedings lacked support of any findings of fact, and it served as a mechanism to prohibit any discovery from the Defendant and his Co-Defendant, and that mechanism became particularly abusive when the protective orders granted by the trial court were extended to preclude discovery into the *accounting* itself.

Unfortunately, the practical result of these legal rulings by the trial court created a chicken-and-egg problem; the Plaintiff was required to file written objections to the accounting without asking any questions of the executor. This was in spite of the fact that the accounting and supporting documents, in particular, specifically related to events and transactions prior to the decedents' deaths and could have been used as evidence of a confidential relationship.

ISSUE 2:

Whether the trial court erred, by appointing the executor of the will without a bond, sans hearing on objections, at a time when the Executor was personally profiting from rental and sale of estate assets without the consent of the heirs.

In Douglas' own testimony, [R. 00046-49] as well as the accounting eventually filed, he clearly demonstrated that, at the time he took the Executor's Oath and Letters Testamentary issued, he was, in fact, in possession of estate funds in his personal account with Mary Frances. Douglas' fitness to act as Executor and the security of these estate funds warranting a bond was another legal question which the trial court determined in a described status conference, which it was without jurisdiction to hear because the will waived bond. A creditor who felt insecure would have such a right, but the trial court

refused to grant two of three equal will beneficiaries the same right. MCA § 91-7-45

ISSUE 3:

Whether the trial court erred in distributing the entire liquid assets of the estate, as attorney's fees, or closing the estate with the personalty of the decedents in the hands of the Executor with probate claims for attorney's fees and outstanding expenses.

In reviewing a chancellor's findings of fact, this Court "will not disturb the factual findings of a chancellor unless such findings are manifestly wrong or clearly erroneous." *Bardwell v. Bardwell (In re Bardwell)*, 849 So.2d 1240, 1245 (¶16) (Miss. 2003) (citation omitted). "Whenever there is substantial evidence in the record to support the chancellor's findings of fact, those findings must be affirmed." *Id.* (citations omitted). Accordingly, "[t]he standard of review employed by this Court for review of a chancellor's decision is abuse of discretion." Quoted from In Re: The Appointment of a Conservator For Woodrow W. Vinson and Kernith B. Vinson, 2006-CA-00342-COA, decided May 22, 2007.

In this cause, the trial court granted de mimimus fees to the probated claim of Douglas and Mary Frances' first attorney, as well as counsel for the Trust and Dale Carson, but grew

expansive in granting the fees of Mr. Parsons; indeed allowing the entire liquid funds of the estates, ten thousand ($10,000) dollars from the two insurance policies, one month's rental proceeds from the Executor, along with approximately Fourteen Hundred dollars from the Executor's account for the sale of Hubert's truck, to be entirely consumed - without any disbursement of the probated claim or the expenses for publications paid out of pocket by the resigned Administratrix.

ARGUMENT

Issue 1:

The first issue presented in this appeal focuses on one simple question: at what point, if any, are the majority of the heirs of an estate entitled to learn of actions that the other heir, their fiduciary, has taken regarding the decedents' assets--before the deaths, after the deaths of their decedents, before the appointment of the executor, or at anytime afterwards. In the case at bar, the overbearing executor and his wife refused, during the lifetimes of the decedents, to submit to the accountings that a conservatorship would have afforded Hubert and his incompetent wife Lela. Douglas and Mary Frances used the refusal of the two other brothers to submit money for their parents directly to him, without such accountings, as a wedge to alienate their elderly parents.

Hubert, competent until his death, expressed concern to Dale about the whereabouts of his truck and whether Douglas was paying interest on a loan advanced.

As indicated in the partially corrected inventory prepared by the Administratrix, the Appellant Trust and Dale Carson anticipated that Douglas and Mary Frances would claim intervivos investments of the decedent's funds as a gift, but Plaintiffs never anticipated that they would obtain no explanation whatsoever. As Hubert described the transaction to his son Dale, he had substantial savings that were not generating interest, and which everyone saw would be necessary; after Lela's diagnosis it was anticipated she would need specialized care more than Hubert could provide at home. Hubert and Lela never earned a great deal of money in their lifetimes, but neither did they live expensively. Their modest home was paid for, as was Hubert's truck, and they largely ate from their garden. They did not travel, and they did not use air conditioners given to them because they would not like the electric bill. Money from Hubert's retirement and their social security benefits went to the bank, largely untouched. At least this was the state that two of the sons imagined to be the case, since Douglas never revealed any details—contemporaneously or after their parents died.

Douglas had done well in business, particularly as a real estate agent, [R. 00045] but he had a history of borrowing money from his parents. Occasionally, as with a wildcat oil venture, Hubert lost a modest amount of money that he could ill afford. So when Douglas found an investment, and borrowed an undisclosed amount of money from Hubert, the details were kept secret. About the same time, when Mary Frances prepared the General Power of Attorney for Douglas to act as his father's attorney in fact, she purchased a commercial building in Wiggins, Mississippi, with Douglas' business associates. Mary Frances had never invested in commercial property before or since, but she was subsequently added to Hubert's and Lela's checking accounts, and she began making deposits from her and Douglas' account designated as interest, several hundred dollars per month. Corroboration of some of these matters do not appear in the record, although some were presented as documents in attachments incorporated into the pleadings, and they are only presented on appeal to demonstrate the good faith basis for the requested discovery and the objection to Douglas' action as the executor without checks or balances.

After both Douglas and Mary Frances found it necessary to remove Hubert and Lela from their home to personal care centers, a fairly large amount of money was spent by Douglas to remodel the home for rental. Douglas and Mary Frances rented the home

for the rest of Hubert's and Lela's lives, and from September 2002 through approximately November or January 2003. After Lela, the last to pass away, died in September, 2002, Douglas continued to withhold the wills. When two of the heirs inquired about whether they had personal liability in the premises, particularly in renting to third parties, Douglas did not give assurances that insurance was in place. Later, Douglas admitted that there was no insurance, and that he knew it. [R. 00044, l. 17] In short, the family, including the other heirs, suspected Douglas and Mary Frances of misdealing, and that misdealing was surrounded in a cloak of secrecy. Because the Court's Protective Order prevented discovery, the specific actions were never subjected to the light of day.

The trial court had no difficulty with the other heirs being exposed to liability without their knowledge or consent, sustaining the Defendant's objection to relevancy:

> MR. PARSONS: We object to it [rental of heirship property without insurance to demonstrate a fiduciary breach] as being immaterial. And Judge whether there was insurance on the house it survived. It didn't burn.
>
> THE COURT: I'm going to sustain it. That seems too - you know, if there was a fire and something happened I would go the other way. [R. 00044] What

the trial court did not consider was the issue of liability if anyone were hurt on the premises, which is still not clear, because the executor was immune from discovery and he apparently had no obligation to disclose anything.

The intervivos confidential relationship as a probate matter, to recoup estate assets (whether a loan or gift) is within the Chancery Court's original equity jurisdiction, just as properly as the probate proceedings. Even if the trial court perceived that the right to a jury in determining damages was involved, the trial court would have still had pendant jurisdiction. The chancery court may also exercise its equity jurisdiction to prevent a multiplicity of suits by joining all parties in one suit and determining the sole question upon which past, present, and future liability rests. Illinois Cent. R. Co. v. Garrison, 81 Miss. 257, 265, 32 So. 996, 997 (1902), citing Tribbette v. Illinois Cent. R. Co., 70 Miss. 182, 12 So. 32 (1892). Unless the case is one "historically tried by a jury," the chancery court may retain jurisdiction and make determinations typically made by a jury. Cossitt v. Nationwide Mut. Ins. Co., 551 So.2d 879, 883 (Miss.1989)

The fiduciary nature of the relationship between Douglas and Mary Frances and Hubert and the incompetent Lela, who survived as her husband's sole heir, as well as the fiduciary

relationship between Douglas as Executor and the heirs of the estate are closely intertwined and they are both subject to the original jurisdiction of chancery court. In Harper v. Harper, 491 So. 2d 189, at 193-194 (Miss. 1986), this Court reviewed the duties of an executor: "(1) to reduce to possession the personal assets of the testator; (2) to pay the testator's debts; (3) *to pay legacies*; and (4) to distribute the surplus to the parties entitled thereto."

As this Court stated in the decision of In Re Estate of Carter, 912 So.2d 138 (Miss. 2005) at 147:

> "Based on this [fiduciary] relationship, Mississippi law provides a chancellor with broad equitable powers and encourages the imposition of regulatory measures which insure that an estate and the will of its owner are protected from fraud. It is therefore the distinct duty of a chancellor to hold those serving in positions of trust accountable for their administrative actions and, in this way, hold a fiduciary fully accountable for the property with which the fiduciary has been entrusted."

Issue 2:

As an issue of law, again, this Court determines de novo whether a well-based allegation that the nominated executor is personally retaining funds of the estate, supported by bank records, entitled the Plaintiff to a hearing on the executor's fitness prior to his appointment.

The Appellant can see no reason, as a matter of law, why a creditor could be protected under MCA § 91-7-45, but an heir would have to wait several years, without discovery, being

required to make objections in the interim, without relief from his own fiduciary. When the legal ruling denying a hearing on the Executor's fitness by the trial court is taken in juxtaposition with the ruling that the Plaintiff Trust had to go through the formalities of filing a separate complaint, with separate service of process, [R. 00034] to place the issue of confidential relationship before the court, there is very little that the Plaintiffs could do other than appeal the legal basis for the decision.

Implicit in the Oath of Executor is the representation that the Executor will pursue no self interest that is contrary to the interests of any party to the estate. It is black letter law that an executor may not take inconsistent positions which would be detrimental to the heirs on one hand and beneficial to himself on the other. Ratliff v. Ratliff, 395 So.2d 956 (Miss. 1981) As Douglas was retaining assets of the estates at the time that he executed the Oath, the Court should not have dismissed objections without a hearing as to whether Douglas should have been required to resign. As Executor, it was Douglas' duty to recoup the assets that he and Mary Frances retained from his deceased parents. At the least, he had a duty to disclose the nature, purpose, and details of those transactions to the other beneficiaries of the estate, rather

than to seek the protection of the court to ward off his fiduciary responsibilities.

Issue 3:

Whether the trial court erred in distributing the entire liquid assets of the estate as attorney's fees for the Executor, and closing the estate with the personalty of the decedents in the hands of the Executor with probate claims for attorney's fees and expenses outstanding.

This Court will not disturb the findings of a chancellor when those findings are supported by substantial evidence, unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. Denson v. George, 642 So.2d 909, 913 (Miss. 1994). The trial court did not expend a great deal of time on the determination of attorney's fees that were awarded to Jack Parsons. Although the Plaintiffs directed the trial court to the factors in a proper determination of attorney's fees set out In the Estate of Johnson, 735 So.2d 231, 236 (¶25) (Miss. 1999), the court declined to set out a reasonable basis for awarding Mr. Parsons a fee in excess of the liquid assets of the estate. Given that only de minimus awards were made to the Administratrix for much of the work of publication and determination of heirs, including out of pocket costs, that the

actual fee bill of Mr. Jeff White was cut to what the court decided was usual and normal in uncontested proceedings, the fee bill of Mr. Parsons was cut only by some "windshield time." [R. 00142] The logical presumption is that there was some sort of punitive aspect to the fee determination, since there was not even an attempt to place the fee awarded to Mr. Parsons within the Uniform Rules on Chancery Practice. See In the Matter of the Estate of Woodfield v. Woodfield, 2006 So.2d (2004-CA-00238-COA), rehearing denied 4/11/06.

The awarding of attorney fees are governed by the Uniform Rules on Chancery Practice, particularly RULE 6.12, which reads, in pertinent part, as follows:

> **PETITIONS FOR ALLOWANCE OF ATTORNEY'S FEES:** Every petition by a fiduciary or attorney for the allowance of attorney's fees for services rendered shall set forth the same facts as required in Rule 6.11, touching his compensation, and if so, the nature and effect thereof.

On the record, Mr. Parsons expressed his own estimation of the nature and effect of his efforts in representing the estate: "I have about $11,500 worth of time, and 90% of that is wasted, and I didn't handle these things about 4 or 5 years, and you don't waste judiciary money that way. . . . We got about $11,500 or so in the bank. We just sent a check to the surveyor for $400.00. That's off of the amount that was in the final accounting." [R. 0039]

After Mr. Parsons cut his check for the entire amount

closing the estate account, there was nothing left; the accounting was not amended nor was the personalty sold or distributed. Neither the trial court nor Mr. Parsons considered the paucity of funds in the estate in determining Mr. Parsons' fees—it was precisely because the estate, or that portion that the Court would permit to probate, was so small, that the fee award was objectionable.

CONCLUSION

For all the reasons and arguments made above, the Appellant seeks this cause to be remanded for a new accounting and inventory, with complete and open disclosure by an Administratrix with the Will attached, as fiduciary to the decedent's financial matters that belong in the estate, and for the return of the liquid assets misspent in attorney's fees. In the event that the Respondent has no security for the funds he distributed without authority, or for the funds that he diverted into personal accounts, that the Respondent be held personally liable thereon, and for other general relief.

APPENDIX

1. Order, filed October 08, 2003

2. Judgment, filed January 28, 2005

3. Judgment, filed June 29, 2006

CERTIFICATE OF SERVICE

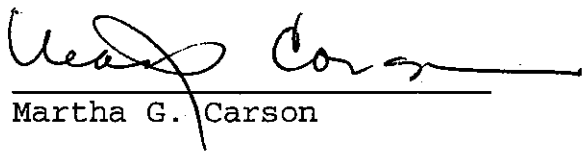
I, MARTHA G. CARSON, do hereby certify that I have this day served by United States mail, first class postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief on:

Honorable Larry Buffington, Special Trial Judge, Post Office Box 924, Collins, MS 39428;

Jack Parsons, Esquire, Parsons Law Firm, Post Office Drawer 6, Wiggins, Mississippi 39577;

Tadd Parsons, Esquire, Parsons Law Firm, Post Office Drawer 6, Wiggins, Mississippi 39577;

This the 11th day of July, 2007.



Martha G. Carson

CERTIFICATE OF FILING PURSUANT TO MISSISSIPPI RULES OF APPELLATE PROCEDURE RULE 25(a)

I, Martha G. Carson, do hereby certify that I have this day deposited into the United States Mail a package containing the original and three (3) copies of the above and foregoing Appellant's Brief, which was addressed to Betty Sephton, Clerk, Supreme Court of Mississippi, P. O. Box 249, Jackson, MS 39205-0249, and contained first class, prepaid postage.

SO CERTIFIED, on this the 11th day of July, 2007.

Martha G. Carson

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RESPECTFULLY SUBMITTED, on this the 11th day of July, 2007.

Martha G. Carson