IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REVEREND MITCHELL HEDGEPETH
AND CATHERINE HEDGEPETH — **APPELLANTS / PLAINTIFFS**

VS. — **CASE # 2006-IA-01991**

MELODY JOHNSON, Individually and as an agent of State Farm; STATE FARM FIRE AND CASUALTY COMPANY; AND JOHN AND JANE DOE DEFENDANTS A; B; C; D; E; F; G; AND H — **APPELLEES / DEFENDANTS**

ON APPEAL FROM
THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI
PER THIS COURT'S ORDER GRANTING INTERLOCUTORY APPEAL

BRIEF OF THE APPELLANTS

ORAL ARGUMENT NOT REQUESTED

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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 may evaluate possible disqualification or recusal.

Special Judge, (Jackson County Circuit Court):	The Honorable Edward C. Prisock
Appellants:	Reverend Mitchell Hedgepeth and Catherine Hedgepeth
Appellees:	Melody Johnson and State Farm Fire and Casualty Company
Attorneys for Appellants:	Clyde H. Gunn, III., Esq.; Christopher C. Van Cleave, Esq.; W. Corban Gunn, Esq., and Corban, Gunn & Van Cleave, PLLC
Attorneys for Appellee, Melody Johnson:	Dan W. Webb, Esq., B. Wayne Williams, Esq., J. Douglas Foster, Esq., and Webb, Sanders & Williams, PLLC
Attorneys for Appellee State Farm:	Vincent J. Castigliola, Jr. Esq., John A. Banahan, Esq., and Bryan Nelson Schroeder Castigliola & Banahan

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2. Whether The Trial Court's Order Transferring Venue Of The Hedgepeth's Claims Against Both Johnson And State Farm To Madison County, The County Of Defendant Johnson's Residence, Is An Abuse Of Discretion; Where The Trial Court Based Its Ruling Upon An Improper And Erroneous Interpretation Of Mississippi Code Annotated § 11-11-3(1)(a)(i), And Where Jackson County Is The County Where Both A Substantial Alleged Act Or Omission, And A Substantial Event That Caused The Injury, Occurred?

A. STATEMENT OF THE CASE

1. Nature of Case and Course Of Proceedings Below

Plaintiffs (Appellants herein) filed a civil action against State Farm Fire and Casualty Company and its agent, Melody Johnson, in the Circuit Court of Jackson County, Mississippi, on February 13, 2006. Plaintiffs sought damages arising from the uncompensated loss of their property (which was contained within the St. Paul Methodist Church Parsonage, where Reverend Hedgepeth is the Pastor) during Hurricane Katrina, as a direct and proximate result of the negligence, gross negligence, malpractice, failure to procure, and bad faith breach of contract by State Farm and Melody Johnson. Plaintiffs also sought damages for emotional distress caused by the negligent, grossly negligent and/or intentional acts of the Defendants, and each of them. (RE, 16-30) (R, Vol. 1, 5-19)

In lieu of an Answer, Defendant Johnson filed a combined *Motion to Dismiss* (which is being held in abeyance pending resolution of the venue issue, per Johnson's request) *and Alternatively Motion for Change of Venue and Severance* on March 20, 2006. (R, Vol. 1, 20-54) State Farm Answered the Plaintiffs' Complaint, and included therein, as Affirmative Defenses, allegations of improper venue and failure to state a claim upon which relief can be granted. (R, Vol. 1, 102-111). Plaintiffs filed a response in opposition to State Farm's M.R.C.P. 12(b)(6) Motion to Dismiss and Motion to Transfer Venue. (R, Vol. 1, 112-115) After further briefing (R, Vol. 2, 116-157), the Trial Judge conducted a Hearing on Defendants' Motions to Transfer Venue on September 29, 2006. (R, Vol. 3, Transcript)

During the Hearing, Plaintiffs called Martha Mohler, an English Teacher with thirty-five (35) years of experience teaching high school and/or junior college level students, to provide testimony about the plain meaning and construction of the words and phrases in the sentence that comprises Miss. Code Ann. § 11-11-3(1)(a)(i), with regard to their grammatical arrangement in

the sentence. Counsel for State Farm and Johnson conducted a thorough voir dire and cross examination of Mrs. Mohler. (R, Vol. 3, 24-65)

After taking the matter under advisement, the Trial Court entered its *Finding of Fact and Conclusion of Law* on November 15, 2006 (RE, 8-15) (R, Vol. 2, 160-167), wherein the Trial Court, in a first impression interpretation of Mississippi Code Annotated § 11-11-3(1)(a)(i) (as Amended, Effective September 1, 2004), interpreted the amended venue statute to prohibit a resident Defendant from being sued outside her county of residence, regardless of where the alleged acts or omissions occurred, or where the substantial event that caused the injury occurred. In conclusion, the Trial Court held:

> It appears to this Court that the legislature did not intend, nor does the statute show that the legislature ever intended to create a situation where a resident defendant would be deprived of his right to be sued in the county of his residence . . . .

(RE, 15) (R, Vol. 2, 167) (emphasis added).

The Trial Court subsequently entered its *Order Transferring Venue, and Staying Execution of the Order, and Staying All Proceedings, Pending Resolution of the Petition for Interlocutory Appeal Filed by the Plaintiffs*, wherein the Trial Court acknowledged its Order transferring venue was based on its "finding venue against Defendant Johnson, a resident defendant, is **only** proper in her County of Residence," and wherein the Court stayed all proceedings, including execution of the Order Transferring Venue (to Madison County, Johnson's County of Residence), pending resolution of this appellate process. (RE, 5-7) (R, Vol. 2, 168-170) (emphasis added) This Court Granted Plaintiffs' Petition for Interlocutory Appeal (R, Vol. 2, 171-172), precipitating this Brief.

2. Statement of Relevant Facts

Reverend Mitchell Hedgepeth is the Senior Pastor of St. Paul United Methodist Church in Ocean Springs, Mississippi. He is under appointment by the Mississippi Annual Conference of

the United Methodist Church, and was assigned to St. Paul in June, 2004. At that time, the Hedgepeths (Plaintiffs herein) relocated from Vicksburg, to Ocean Springs, Mississippi; where they moved into the Parsonage of St. Paul United Methodist Church, located in Jackson County, Mississippi. The Hedgepeths had been State Farm insureds for many years, and had an existing relationship with a State Farm insurance agency in Hinds County, Mississippi. When the Hedgepeths were notified of Reverend Hedgepeth's appointment to St. Paul, they contacted their State Farm Agent, Johnson, and asked her to procure renter's insurance to provide insurance coverage for them at the St. Paul Parsonage in Jackson County, Mississippi. (RE, 18-20, 31-35) (R, Vol. 1, 7-8, 97-101)

When the Hedgepeths contacted Johnson to request insurance coverage for them in Jackson County, they specifically explained the Parsonage was near a bayou, and requested flood insurance, in addition to regular renter's insurance, to cover their belongings. Johnson falsely represented flood insurance was not available because the Hedgepeths did not "own the dwelling". Johnson sold the Hedgepeths "renter's insurance", but did not procure a separate flood policy. On or about September 13, 2004, Johnson called Mrs. Hedgepeth in Jackson County, and Mrs. Hedgepeth again asked Johnson about the possibility of acquiring flood insurance. Johnson again misrepresented that the Hedgepeths could not obtain flood insurance to cover their personal belongings, because they were renters and not homeowners. (RE, 19, 31-35) (R, Vol. 1, 8, 97-101)

The Hedgepeths evacuated the day before Hurricane Katrina made landfall. Following the storm, the Hedgepeths learned the Parsonage sustained water damage. En route back to Ocean Springs, Mrs. Hedgepeth called Johnson to place State Farm on notice of the damage to the Hedgepeth's home. Johnson explained that the Hedgepeths did not have, and maintained the Hedgepeths were not eligible for, flood insurance. Johnson instructed Mrs. Hedgepeth that she

and Reverend Hedgepeth should "**make sure some windows were blown out as a result of the hurricane**" if the Hedgepeths had water damage. Mrs. Hedgepeth explained to Johnson that the windows were "boarded-up" prior to evacuating, and that it had been reported to the Hedgepeths that the boards all appeared to be intact; thus, damage appeared to be due to storm surge. Johnson assured the Hedgepeths they would be "covered one way or another". (RE, 19-20, 31-35) (R, Vol. 1, 8-9, 97-101)

After returning home and surveying the damage, the Hedgepeths again contacted Johnson. The Hedgepeths explained they lost most of their personal property located on the first floor, due to storm surge. Johnson stated coverage issues regarding "wind versus water" were already arising, and advised Mrs. Hedgepeth to **make sure their home had "some blown out windows".** Mrs. Hedgepeth explained "we do not have any windows that are blown out", and "all of our windows are still boarded up and completely intact." Johnson replied **"Mrs. Hedgepeth, I don't want you to think bad of me, but you really need to make sure that the water entered your home through broken windows...if you know what I mean."** (RE, 20, 31-35) (R, Vol. 1, 9, 97-101)

A claim was made under the State Farm renter's policy; and, in approximately November, 2005, Johnson traveled to the Hedgepeth's home, in Jackson County, Mississippi, as part of the process of adjusting the State Farm claim. While there, Johnson admitted she did not make flood insurance available, even though Mrs. Hedgepeth requested it. While standing in the yard of the Parsonage, Johnson noted roof damage, and told Mrs. Hedgepeth that since the home had already been cleared of contents, there was no way to tell for certain which destroyed contents were on the first floor versus the second floor. Johnson encouraged Mrs. Hedgepeth to list some of the destroyed personal contents, which had already been removed, as having been located on the second floor when they were destroyed, even though Mrs. Hedgepeth told her the

destroyed contents had been located on the first floor. (RE, 31-35) (R, Vol. 1, 97-101)

As a result of substantial losses suffered in Hurricane Katrina; multiple efforts by Johnson to have them to commit insurance fraud and resulting infliction of emotional distress; State Farm's ultimate denial of their insurance claim on the assertion damages were caused by allegedly uncovered "flood"; and their lack of "flood" insurance due to Johnson's gross negligence and/or malpractice; Reverend and Mrs. Hedgepeth filed a Complaint against their insurance agent, Melody Johnson, and their insurance company, State Farm Fire and Casualty Company, on February 13, 2006, in the Circuit Court of Jackson County, Mississippi. (RE, 16-30) (R, Vol. 1, 5-19) The Hedgepeths made numerous allegations jointly against State Farm and Johnson, including but not limited to gross negligence; misrepresentation; and negligent and/or intentional infliction of emotional distress. The Hedgepeths also brought individual claims against Johnson for professional malpractice and failure to procure, and against State Farm for bad faith breach of the contract of insurance it did issue to the Hedgepeths, among other claims. *Id.*

Jackson County is (1) where substantial alleged acts and omissions of **both** Johnson and State Farm occurred; and (2) where a substantial event that caused the Hedgepeths' injury occurred. (Miss. Code Ann. §11-11-3-(1)(a)(i)). The Hedgepeths' Complaint, and affidavits of Reverend and Mrs. Hedgepeth considered by the Trial Court, demonstrate the following facts:

> (1) Johnson sold a policy of insurance to residents of, and to cover property in, Jackson County;
>
> (2) Johnson earned commissions for the sale of insurance to residents of Jackson County;
>
> (3) Johnson repeatedly misrepresented that flood insurance was not available to cover the Hedgepeth's personal property in the St. Paul Parsonage, because they were "renters" and not "homeowners", and failed to procure flood insurance to cover the property in Jackson County;
>
> (4) The Hedgepeth's property in Jackson County was destroyed by Hurricane

Katrina;

(5) The Hedgepeths suffered substantial losses and damages (injuries) when their property was destroyed by Hurricane Katrina in Jackson County, as a result of State Farm's improper denial the Hedgepeths' Katrina claims, based upon the assertion the Hedgepeths' loss was caused by allegedly excluded "flood damage";

(6) The Hedgepeth's suffered substantial losses and damages (injuries) when their property was destroyed by Hurricane Katrina in Jackson County, as a result of Johnson's misrepresentations and gross negligence in misrepresenting flood insurance was not available, and in failing to procure the flood insurance the Hedgepeth's requested;

(7) Johnson personally traveled to Jackson County, Mississippi, as part of the process of adjusting claims under the State Farm policy she sold to the Hedgepeths; and while on the property of the St. Paul United Methodist Church Parsonage in Jackson County, urged the Reverend and Mrs. Mitchell Hedgepeth to commit insurance fraud, causing them to suffer severe emotional distress; and

(8) The Hedgepeth's did not suffer any actionable injuries until their property was destroyed by Katrina, when the Hurricane struck the Parsonage in Jackson County, on August 29, 2005.

(RE, 16-30, 31-35) (R, Vol. 1, 5-19, 97-101)

In addition to being the county where substantial alleged acts and omissions occurred, and where substantial events that caused the Hedgepeth's injuries occurred; Jackson County is the most convenient forum for the subject litigation. Jackson County is where Reverend and Mrs. Hedgepeth reside; where one of the attorneys for the Hedgepeths resides; where Counsel for State Farm reside and work; and where the St. Paul United Methodist Church Parsonage, which may need to be viewed by the Jury in this cause, is located.

B. SUMMARY OF THE ARGUMENT

To the best of Counsel for the Plaintiffs' knowledge, this Court has not yet ruled on the proper interpretation of the recently amended venue statute, 11-11-3(1)(a)(i) (Rev. 2004), with regard to where suit may be brought against a resident defendant and a foreign insurance company who commit torts outside the resident defendant's county of residence. The Trial Court's interpretation of the statute is contrary to the express and unambiguous words of the

statute, Judicial precedent, and the Legislature's intent. Additionally, and in the alternative, the Trial Court's interpretation, that a resident defendant may not be sued outside her county of residence regardless of where she committed the acts or omissions that gave rise to her being a defendant, is contrary to good sense public policy. Allowing the Trial Judge's interpretation of the newly amended 11-11-3 to stand as the law of the land would eviscerate the long standing policy in this State that a person is subject to suit in the county where he commits a tort or causes an injury.

Consider the following scenario: A resident of Harrison County (or any other County) could drive to Madison County (or any other county), get drunk, and, while operating a motor vehicle, run over a child playing in his parents' yard, in Madison County. Under the Trial Court's interpretation of §11-11-3(1)(a)(i), the child's representatives (or heirs) would be forced to bring suit against the drunk driver in Harrison County, or wherever the drunk's county of residence may be, in order to seek compensation for the injuries to, or death of, the child. If the drunk were operating a vehicle owned by a foreign corporation while on the job (for the purposes of this example, assume the foreign corporation knew its employee was prone to drinking and driving, but continued to let him drive its vehicle); the Trial Court's interpretation of the recently amended venue statute would require the injured or killed child's representatives to sue both the drunk and his foreign employer in the county of the drunk's residence; or to file two suits – one against the drunk in his county of residence, and one against the drunk's employer in the county where the alleged act or omission, and/or the injury, occurred.

Mississippi Code Annotated § 11-11-3 (Eff. September 1, 2004) is attached, Without annotations, as "Appendix A"

C. ARGUMENT

1. Standard of Review

A Trial Judge's grant of a motion to transfer venue is reviewed under an abuse of

discretion standard. *Bayer Corporation vs. Reed*, 932 So.2d 786, ¶ 6 (Miss. 2006). The Trial Judge in this case, however, based his Order Transferring Venue (to Johnson's county of residence) on his interpretation of Miss. Code Ann. §11-11-3(1)(a)(i) (Rev. 2004) (RE, 5-7 [incorporating RE 8-15]) (R, Vol. 2, 168-170 [incorporating 160-167]). This Court holds "statutory interpretation is a matter of law which this Court reviews de novo." *Rose vs. Bologna*, 2006 WL 28884544, ¶ 6 (Miss. 2006) (quotations omitted). Considered on the facts, the Trial Court's interpretation of the recently amended venue statute was in error. The Trial Court's Order transferring Venue was based upon an erroneous interpretation of the statute, and constitutes an abuse of discretion.

2. Plain Reading Shows the Trial Court's Interpretation of 11-11-3(1)(a)(i) is Error

Mississippi Code Annotated § 11-11-3 (eff. Sept. 1, 2004), provides, in pertinent part:

> (1)(a)(i) Civil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides, or, if a corporation, in the county of its principle place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred.

For interpretation of a statute, this Court first "looks at the plain meaning of a statute". *Leuer vs. City of Greenwood*, 744 So.2d 266, ¶ 14 (Miss. 1999).

Guidance on interpreting the "plain words" of a statute is found in Karl N. Llewellyn's *Remarks on the Theory of Appellate Decision and the Rules or Canons About how Statutes are to be Construed*, 3 Vanderbilt Law Review 395 (1950), which was cited, and incorporated, by Johnson in some of the materials she submitted to the Trial Court. (R, Vol. 2, 116, 123, 130-142) In this scholarly treatise, Professor Llewellyn observed:

> 18. Words are to be interpreted according to the proper grammatical effect of their arrangement within the statute . . .

(R, Vol. 2, 140);

> 23. Qualifying or limiting words or clauses are to be referred to the next

preceding antecedent . . . [and]

(R, Vol. 2, 141);

> 25. It must be assumed that the language has been chosen with due regard to grammatical propriety and is not interchangeable on mere conjecture.

(R, Vol. 2, 142).

During the Hearing on Defendants' Motion to Transfer Venue, the Plaintiffs offered testimony from Mrs. Martha Mohler, an English teacher with over 35 years teaching experience, about "word and sentence interpretation, punctuation interpretation, and sentence structure according to the proper grammatical effect of the arrangements of words in a sentence", with regard to the language of Miss. Code Ann. § 11-11-3-(1)(a)(i). (RE, 37-38) (R, Vol. 3, 38-39) Mrs. Mohler testified she has an undergraduate degree in English, and a Masters Degree in Education; that she did post graduate work at two universities in writing and sentence composition; and that, since 1969, she has been teaching English, including grammar and sentence composition and interpretation, to 11th and 12th graders, and for a limited time junior college students, for all but a few years in the early Eighties. (R, Vol. 3, 24-31) The Trial Judge acknowledged Mrs. Mohler is qualified as an expert in the field of English grammar (RE, 38) (R, Vol. 3, 39). Mrs. Mohler testified the words in 11-11-3(1)(a)(i) (effective September 1, 2004), in consideration of their grammatical arrangement in the sentence, plainly mean [paraphrasing]:

> [The subject of the sentence is "civil actions". The subject is modified by the phrase "of which the Circuit Court has original jurisdiction". The verb of the sentence is "shall be commenced". After the verb "shall be commenced", the sentence, through the use of commas and the coordinator "or", gives four (4) separate and equal options of where "civil actions of which the Circuit Court has original jurisdiction" "shall be commenced": ((1) in the county where the defendant resides, or, (2) if a corporation, in the county of its principle place of business, or (3) in the county where a substantial alleged act or omission occurred or (4) where a substantial event that caused the injury occurred.)
>
> The words "if a corporation" are limiting words, but they **only limit** the next phrase, the "next preceding antecedent", specifically, the phrase "in the county of its principal place of business". The limiting words "if a corporation" do **not** act

to limit any of the other words or phrases in the sentence.]

(RE, 38-46) (R, Vol. 3, 39-47) (emphasis added) Mrs. Mohler further opined

> [If the drafter(s) of the sentence had intended for the limiting words "if a corporation" to limit the phrases "where a substantial alleged act or omission occurred" and "where a substantial event that caused the injury occurred"] . . . they wouldn't have used the coordinating word "or" . . . . They would have come up with some other kind of more direct ending punctuation. They would use a period or a semicolon . . . after [in the county where the] defendant resides.
>
> [By using commas, and the word "or", the drafters made all four options for where a civil action "shall be brought" equal.]

(RE, 46, lines 10-29) (R, Vol. 3, 47) Mrs. Mohler further noted that the phrases "where a substantial alleged act or omission occurred", and "where a substantial event that caused the injury occurred", are not limited to, nor solely applicable to, either "corporation" or "[resident] defendant" as used in the statute. (RE, 64, lines 4-12) (R, Vol. 3, 65) Mrs. Mohler opined that the correct interpretation of the plain words and grammar used in the sentence arrangement of Miss. Code Ann. 11-11-3(1)(a)(1) is that there are four different places where a civil action can, or shall, be brought. (RE, 64, lines 17-20) (R, Vol. 3, 65)

Mrs. Mohler's testimony clarified that, through the use of commas instead of semi-colons or periods, and the use of the disjunctive "or" to separate phrases, the Legislature unambiguously set out four (4) options for placing venue in all civil actions "of which the circuit court has original jurisdiction":

> **Civil actions of which the circuit court has original jurisdiction shall be commenced** **(1)** in the county where the defendant resides, **or**, **(2)** if a corporation, in the county of its principle place of business, **or** **(3)** in the county where a substantial alleged act or omission occurred **or** **(4)** where a substantial event that caused the injury occurred.

§11-11-3(1)(a)(i) (numbers and emphasis added).

Mrs. Mohler testified she tested her opinions through a "peer review" process that involved independent review of the sentence by a long time teacher at Ocean Springs High

School, with similar experience to Mrs. Mohler; a prior English teacher at Mercy Cross High School; a current teacher at Mercy Cross High School; and a retired Librarian from Delta State University, who is currently the Librarian for Mercy Cross and the Coastal Campus of the University of Southern Mississippi. (RE, 47-51) (R, Vol. 3, 48-52) Mrs. Mohler testified that, through this review process, she concluded her interpretation of § 11-11-3(1)(a)(i) was correct, "to the letter." (RE, 51) (R, Vol. 3, 52)

3. Judicial Precedent, Legislative Intent, and Public Policy Show the Trial Court's Interpretation of 11-11-3(1)(a)(i) is Error

The cases referenced by the Trial Court in its *Finding of Fact and Conclusions of Law* do not support the Trial Court's interpretation of the statute. This is not a case where the Plaintiffs are asking to bring suit against "a resident defendant in the plaintiffs' county of residence **simply because a nonresident [insurance company] is joined in the same suit**." *Capital City Ins. Co. v. G. B. "Boots" Smith Corp.*, 889 So.2d 505, ¶ 32 (Miss. 2004) (emphasis added). The Plaintiffs brought suit against Johnson and State Farm in Jackson County Circuit Court, because Johnson personally traveled to Jackson County, and committed a tort against Reverend and Mrs. Hedgepeth while standing in their yard, and because Jackson County is where substantial injuries the Plaintiffs suffered as a result of both Defendants' misconduct occurred.

In *Boots Smith*, this Court compared the mandatory word "shall" in a prior version of §11-11-3, with the permissive word "may" in the now repealed §11-11-7. This Court concluded the mandatory direction "shall", in §11-11-3, controlled over the permissive direction "may", in § 11-11-7; and held venue could not lie against a resident defendant under the "venue is good for one is good for all" rule premised solely upon a right of venue that was only "permissively" available in suits against foreign insurance companies. *Boots Smith*, at ¶¶ 31-36. This Court noted that, had the Legislature intended for venue options available for suit against foreign insurance companies to apply to resident defendants under the "good for one good for all rule";

the Legislature would have utilized the mandatory "shall" language in both § 11-11-3 and the former § 11-11-7. *Id.* at ¶¶ 30-31.

The Legislature did exactly that when it abolished § 11-11-7, and enacted the current §11-11-3, effective Sept. 1, 2004. As explained by Mrs. Mohler, the verb "shall be brought" in the amended §11-11-3(1)(a)(1) is not limited in application, but applies equally to four distinct venue options for all suits in which "the circuit court has original jurisdiction". Venue options against foreign insurance companies are no longer distinguishable from venue options against resident defendants through use of the permissive directive "may". The new venue statute simply does **not** read, as the Trial Court's interpretation suggests:

> Civil actions of which the circuit court has original jurisdiction **shall** be commenced in the county where the defendant resides**[.] [*If*]** a corporation, ***civil actions MAY be commenced***] in the county of its principle place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred.

(The Trial Court's implied period ["."] and ["may"] language have been added for illustrative purposes).

Snyder vs. Logan, 905 So.2d 531 (Miss. 2005), also cited by the Trial Court, actually demonstrates the error of the Trial Court's interpretation of the amended venue statute. In *Snyder*, this Court acknowledged, in a case against both a resident insurance agent and a foreign insurance company, that venue was appropriate **not solely in the county of residence of the resident agent, but in three other counties as well.** *Snyder v. Logan*, 905 So.2d 531, ¶¶ 1, 3, 15 and 16. After acknowledging venue was appropriate in multiple counties, this Court reiterated the longstanding rule of law in Mississippi that

> It is well established that the plaintiff is entitled to choose between any of the permissible venue options where credible evidence or factual basis supports the venue selected.

Snyder, at ¶ 16 (emphasis added).

Consistent with the Court's recognition of that precedent, all three recent versions of Miss. Code Ann. § 11-11-3 specifically and expressly allow **multiple options** for placing venue against a resident defendant. The version of §11-11-3(1) that was in existence prior to the 2002 amendment, which was the language at issue in *Boots Smith*, expressly stated

> . . . civil actions of which the circuit court has original jurisdiction shall be commenced in the county [where the defendant may be found] or in the county where the cause of action may occur or accrue.

(emphasis added). The 2002 amendment of §11-11-3(1) (Eff. January 1, 2003) expressly provided civil actions in circuit court

> . . . shall be commenced in the county where the defendant resides or in the county where the alleged act or omission occurred or where the event that caused the injury occurred.

(emphasis added). The current version of 11-11-3(1)(a)(1) likewise provides multiple options for where venue in causes against a resident defendant may lie, **including** "where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred."

The Legislature expressly acknowledged there are multiple options available for placing venue against resident defendants in the most recent venue statute, in the context of the newly drafted sub-section addressing suits against physicians:

> **Notwithstanding subsection (1) of this section**, any action against a licensed physician, osteopath, dentist, nurse, nurse-practitioner, physician assistant, psychologist, pharmacist, podiatrist, optometrist, chiropractor, institution for the aged or infirm, hospital or licensed pharmacy, including any legal entity which may be liable for their acts or omissions, for malpractice, negligence, error, omission, mistake, breach of standard of care or the unauthorized rendering of professional services **shall be brought only in the county** in which the alleged act or omission occurred.

Miss. Code Ann. § 11-11-3(3) (Eff. 2004) (emphasis added). Where the Legislature "intended" to limit venue against a resident physician to **"only"** one county, the Legislature expressly said so. Had the Legislature "intended" for suit against resident defendants to "only" be brought in the county of their residence, it could, and would, have said so.

Boots Smith, *Snyder*, and *Baptist Memorial Hospital vs. Bailey*, 919 So.2d 1 (Miss. 2005) (also cited by the Trial Judge) all stand for the proposition that

> . . . the Legislature never intended an interpretation of the venue statutes that allow a resident defendant to be sued in the plaintiff's county of residence **simply because** a non-resident defendant, be it an individual or a corporation is joined in the same suit.

(see, eg. *Bailey*, at ¶ 9) (emphasis added). This reasoning was based upon the fact venue could only be placed in the Plaintiff's county of residence through the "permissive" language of the former §11-11-7. That logic, though sound, is not applicable to the case at hand. The Plaintiffs are not trying to bootstrap venue for their claims against resident defendant Johnson into a county "permissibly" available only for suits against non-resident defendants. Rather, Plaintiffs brought suit against Johnson in the County where she personally committed actionable torts against the Plaintiffs, and where Plaintiffs suffered substantial injuries as a result of Johnson's acts and omissions.

Additionally, and in the alternative, there is no question before this Court about whether Jackson County is an appropriate venue for Plaintiffs' claims against State Farm. The Trial Judge expressly recognized venue is appropriate in Jackson County for the Plaintiffs' claims against State Farm, noting "the change of venue would not seem to be appropriate if the resident defendant, Melody Johnson, were not a party defendant . . . ." (R, Vol. 2, 167) This Court recently recognized that, excepting cases where a distinction between competing statutes, one utilizing permissive "may" language and the other utilizing the mandatory "shall", is necessary; the "venue is good for one is good for all rule" is alive and well. *Park on Lakeland Drive, Inc. vs. Spence*, 941 So.2d 203, ¶ 8 (Miss. Oct. 19, 2006). Since venue is proper against State Farm; and since the venue option through which venue is proper against State Farm, §11-11-3(1)(a)(1), utilizes the mandatory language "shall be commenced"; venue is proper in Jackson County against all parties, including Johnson. Miss. R. Civ. Proc. 82(c). "It is well established that the

plaintiff is entitled to choose between any of the permissible venue options where credible evidence or factual basis supports the venue selected." *Snyder*, at ¶ 16.

Finally, good sense public policy supports an interpretation of Miss. Code Ann. 11-11-3(1)(a)(i) that allows a resident defendant to be sued in the County where she commits a tort, or where an injury is suffered as a result her conduct. Even if this Court were inclined to read the literal words of the recent amendment to § 11-11-3(1)(a)(i) as directing a result contrary to that urged by the Plaintiffs, this Court has recognized, in a case where this Court concluded a Chancellor's decision based on his interpretation of a statute was "an abuse of discretion", that

> . . . statutes should be given a reasonable construction, and, if susceptible to more than one interpretation, they must be given the one that will best effectuate their purpose rather than one which would defeat it. . . . a statute must be read sensibly, even if doing so means correcting the statute's literal language.

Board on Law Enforcement Officer Training vs. Voyles, 732 So.2d 216, ¶¶10, 16-17 (Miss. 1999) (citations omitted). A fellow resident of this State should not be forced to leave his county of residence to seek civil redress, where he was injured as a result of a tortfeasor's conduct in his county of residence, merely because the tortfeasor is also a resident of the State; but chose to commit a tort in a county other than her county of residence. Such a result would be contrary to the general intent of our venue statutes to create an appropriate forum for a plaintiff to seek redress for a wrong that caused him injuries or damages; and, quite simply, would not make good sense.

D. CONCLUSION

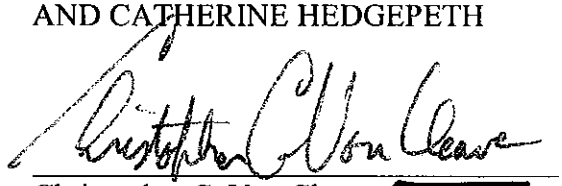
The Trial Court acknowledged Jackson County is a proper venue for Plaintiffs' claims against State Farm, and entered an Order transferring venue based solely on its conclusion that the recently amended venue statute does not permit a Mississippi resident to be sued outside her county of residence, regardless of where she commits a tort or causes injuries and damages. The Trial Court's interpretation of Miss. Code Ann. § 11-11-3(1)(a)(i) (Rev. 2004) is in error, thus its

Order Transferring Venue, which was based entirely on its erroneous interpretation of the statute, was an abuse of discretion.

WHEREFORE, the Plaintiffs respectfully request this Honorable Court Reverse the Trial Court's Order, and hold that venue is proper in Jackson County, where substantial alleged acts and/or omissions, and substantial injuries and damages to the Hedgepeths, occurred.

Respectfully submitted, this 11th day of May, 2007,

REVEREND MITCHELL HEDGEPETH
AND CATHERINE HEDGEPETH

By: 
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CERTIFICATE OF SERVICE

I certify that I have this day forwarded by U.S. mail, postage prepaid, a true and correct copy of the foregoing Brief of the Appellants, to the following:

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