IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SOUTHEAST FOODS, INC., D/B/A SUPERVALU, and FRED HENRY, Individually and as Manager — APPELLANTS

V. — CIVIL ACTION NO. 2007-CA-00010

RHUDRO WINCE — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

BRIEF OF APPELLEE

HONORABLE ELLIS TURNAGE
Turnage Law Office
108 North Pearman Avenue
Post Office Box 216
Cleveland, MS 38732-0216
Tel: (662) 843-2811
Fax: (662) 843-6133

COUNSEL FOR APPELLEE

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SOUTHEAST FOODS, INC., D/B/A SUPERVALU, and FRED HENRY, Individually and as Manager — APPELLANTS

V. — CIVIL ACTION NO. 2007-CA-00010

RHUDRO WINCE — APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed person 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. Honorable LeAnne Nealey, Butler, Snow, O'Mara, Stevens, Cannada, PLLC - Counsel for Defendants - Appellants
2. Honorable Wilton V. Byars, III, Daniel, Coker, Horton and Bell - Counsel for Defendants - Appellants
3. Supervalu, Inc.- Defendant - Appellant
4. Mr. Fred Henry - Defendant - Appellant
5. Mr. Rhudro Wince - Plaintiff - Appellee
6. Honorable Ellis Turnage - Counsel for Plaintiff- Appellee
7. Honorable Albert Smith, III. - Circuit Court Judge

Respectfully Submitted,

Ellis Turnage

ELLIS TURNAGE, MSB [redacted]
Counsel for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATUTES

I. STATEMENT OF THE CASE

A. Nature Of The Case, Course Of Proceedings and Disposition Below

On April 15, 2002, Rhudro Wince filed his complaint in the Second Judicial District of Bolivar County seeking monetary damages for bodily injuries sustained on June 18, 2001 in the deli area of the Supervalu store located in Cleveland. Wince tripped and fell over a 30 inch high piece of angle iron that defendants caused to be bolted to the floor, at the end of the deli line.

After discovery and pre-trial proceedings, on July 31 to August 1, 2006, a jury trial was held before the Honorable Albert B. Smith, III, Circuit Judge. By special interrogatory verdict, the jury found defendants' negligence was the sole proximate cause of Wince's injuries and damages and awarded Wince $250,000. The jury answered the interrogatories propounded and made specific factual findings that Wince was not negligent and did not proximately cause or contribute to his injuries and damages. C.P. 835. Final judgment in the amount of $250,000 was entered on August 3, 2006. (C.P. 849-850)[1]. On August 4, 2006, defendants filed their post-trial motion for judgment notwithstanding the verdict, or in the alternative, for a new trial. (C.P.851-855). By order dated October 31, 2006, the trial court denied defendants' motion for judgment notwithstanding the verdict or in the alternative for new trial. (C.P. 944). Feeling aggrieved, defendants filed their

---

[1] The appeal record in this case consists of the clerk's papers (C.P. 1-965), the trial transcript (T. 1-302) and the exhibits received into evidence (E. 1-213).

notice of appeal on November 20, 2006. (C.P. 945-946).

B. STATEMENT OF FACTS

Rhudro Wince, age 58, lives in Cleveland; on June 18 2001, Wince went to the Supervalu store to eat lunch. The deli is located in the northeast corner of the Supervalu store. As customers approach the deli, the food offered for sale can be seen through the glass windows of the steam table. To keep the steam table in place, Supervalu bolted a 30 inch high piece of angle iron to the floor at the west end of the steam table. In late February or early March, 2001, Supervalu replaced the old steam table with a shorter steam table, but left the 30 inch high piece of angle iron bolted free standing. T. 121. The piece of angle served no purpose. Fred Henry (store manager) had called a maintenance man to come and remove the angle iron 2-3 times. T. 124. After the fall, Henry paid Maggie Cameron's (deli cook) husband to remove the exposed angle iron from the floor. T. 130.

The videotape reveals Wince got his lunch and walked past the piece of angle iron to get a cup of ice tea. As he began to get the tea, a lady approached him and started to talk; he made one step back and tripped over the angle iron. T. 116. The piece of metal tripped him. T. 117. Maggie Cameron and Dorothy Beasley (deli employees) witnessed the fall. T. 119. The incident report indicated the piece of angle iron grabbed his britches leg. T. 119; E. 162-63. After the fall, Maggie Cameron drove Wince to Bolivar Medical Center. T. 134; T. 168. Wince's medical bills caused by the fall at Supervalu exceeded $13,509. The fall limited Wince's ability to reach above his head and his lifting is now

limited. He can not lift over 25 pounds. T. 188-89. Prior to the fall, he was able to lift up to 50 pounds and was able to work and function everyday. T. 190. After the fall, his back pain is severe and he now has to take medication daily. He can not work as a carpenter himself, but now has to hire sub-contractors to perform work for him. T. 191. Dr. Rommel G. Childress, a board certified orthopedist, prescribed Wince demerol to relieve the pain associated with his injuries. Dr. Childress assigned Wince a 10-15 percent permanent partial impairment to the body as a whole as a result of the Supervalu fall. E.26.

II. SUMMARY OF THE ARGUMENT

The evidence before the jury in this trip and fall case was hotly disputed and conflicting. Wince convinced the jury that defendants were negligent in creating a dangerous condition and breached their duty to keep the premises in a reasonably safe condition; at trial, defendants claimed the condition was not dangerous, but was open and obvious and that Wince's negligence was the sole cause or a contributing cause of his injuries. Stated differently, both parties claimed the other was negligent. Vaughn v. Ambrosino, 883 So. 2d 1167 (Miss. 2004); Mayfield v. Hairbender, 903 So. 2d 733, 737 (Miss. 2005). Wince's evidence when considered in the most favorable light to him and the reasonable inferences drawn therefrom was sufficient to support the jury verdict in his favor; the trial court correctly submitted the case to the jury on the issues of sole and/or comparative negligence on Wince's and defendants' behalf as required by Miss. Code Ann. §§ 11-7-15 and 11-7-17 (1972). Under this Court's holding in Fulton v. Robinson,

664 So.2d 170, 175 (Miss. 1995), since defendants created and caused the piece of exposed angle iron to be bolted to the floor and Wince's injuries occurred in an area inside the store, jury questions existed. Mayfield, 903 So. 2d at 739. The evidence as to defendants' negligence, Wince's contributory negligence and the openness and obviousness of the angle iron were disputed. The jury reconciled the disputed issues in Wince's favor. The jury's verdict is a finding of fact and cannot be set aside unless no reasonable hypothetical juror could have found as the jury found. Classic jury issues were created by the conflicting testimony of the witnesses, and it became the responsibility of the properly instructed jury to determine what weight and credibility it wished to assigned. Fleming v. Floyd, 2007 WL 4200442 (Miss.) at Page 9. There was sufficient evidence before the jury to support the jury's finding that defendants' negligence was the sole proximate cause of Wince's injuries and damages. The jury verdict is beyond the authority of an appellate court to disturb. Patterson v. Liberty Assocs, LLP, 910 So. 2d 1014, 1022 (Miss. 2004). Therefore, the jury verdict should be affirmed.

III. ARGUMENTS

1. The Court Did Not Abuse Its Discretion In Denying A New Trial.

The denial of a motion for new trial is review for abuse of discretion. Miss. Transp. Comm'n v. Highland Dev. LLC., 836 So. 2d 731, 734 (Miss. 2002). Appellants assert that the jury verdict which allocated no fault to Wince must be reversed and remanded for a new trial. To demonstrate fault on behalf of Wince, appellants

cite an out of context statement made by Wince's attorney during a discussion of proposed jury instructions between the Court and counsel. T. 246. The cited statement was not made in the presence of the jury. The findings of the jury are to be based on the evidence presented at trial. The statements of counsel are not evidence. Haggerty v. Foster, 838 So. 2d 948, 954 (Miss. 2003). Appellants assert there was "overwhelming evidence" on the issue of Wince's contributory negligence. Appellants Brief 6-7. However, in the absence of uncontradicted evidence, there are questions for the jury to resolve. Rather than being uncontradicted, the evidence in this case was disputed and conflicting as whether the defendants were solely or comparatively negligent in creating a dangerous condition that was open and obvious and whether Wince was contributorily negligent. The Court submitted the case to the jury via a special interrogatory verdict, as follows:

JURY INSTRUCTION # P-9

VERDICT

The jury is instructed to answer the following questions with respect to the plaintiff's June 21, 2001 fall at the Super Valu Store and any damages resulting therefrom:

1. Do you find from a preponderance of the credible evidence that defendants created a dangerous condition by bolting a 30 inch high piece of angle iron to the floor close to the cashier and cash register in the deli area of the Super Valu store?

(Yes or No) YES

2. Was negligence on the part of the defendants a proximate or contributing cause of plaintiff's injuries and/or damages resulting therefrom?

(Yes or No) YES

3. Do you find from a preponderance of the credible evidence that Plaintiff was negligent and failed to exercise reasonable care for his own safety?

(Yes or No) NO

4. Was the negligence on the part of Plaintiff a proximate or contributing cause of his injuries and/or damages resulting therefrom?

(Yes or No) NO

5. What sum of money do you find would reasonably compensate Plaintiff for the total damages he sustained as a proximate result of the June 21, 2001 fall at the Super Valu?

$250,000

6. If you answered "YES" to both Questions (2)and(4), then what percent of that total negligence in causing plaintiff's injuries and damages, if any, do you attribute to the plaintiff:

Plaintiff.....%____

Defendants .....%____

Must total 100%

SIGNED 8/1/06

FOREPERSON DATE

C.P. 835-836. The interrogatories submitted the factual issues to the jury to decide. Defendants pled affirmative defenses set forth under Miss. Code Ann §§ 11-7-15 and 11-7-17 (1972) and Miss. Code Ann. § 85-5-7(7) (1999); under these statutes, as the trier of fact, the jury determined the percentage of fault for each party alleged to be at fault. The jury specifically found as fact that defendants' negligence was the sole proximate cause and that Wince was not contributorily negligent. Defendants had the burden to prove apportionment of fault. Pearl Public School District v. Groner, 784 So. 2d 911, 916 (Miss. 2001); Marshall Durbin v.

Warren, 633 So. 2d 1006, 1009 (Miss. 1994). Defendants were required to convince the jury that Wince solely caused or contributed to his injuries. Defendants failed to do so. In this case, it is undisputed that the steam table was removed in late February or early March; after that point, the exposed piece of angle iron served no purpose.

The jury considered the conflicting evidence and found in Wince's favor. Causation is determined by the jury. Donald v. Amoco Prod. Co., 735 So. 2d 161, 174 (Miss. 1999). According to the verdict, the jury specifically answered each question and believed the exposed piece of angle iron created a dangerous condition, that defendants' negligence was the sole proximate cause of Wince's injuries and damages and that Wince was not contributorily negligent in causing his injuries. C.P. 835-36. When facts are in dispute as they were in this case, the jury is given the power to resolve the factual disputes; this jury resolved the disputed factual issues in Wince's favor. The jury chose to believe Wince's evidence which indicated he acted in a reasonable manner. This jury was provided an opportunity to assess fault based on principles of comparative negligence, but chose not to find that Wince was contributorily negligent. Moreover, it was the province of the jury to weigh the credibility of the witnesses. Jackson v. Griffin, 390 So. 2d 287 (Miss. 1980). After careful review of the record, a reasonable, hypothetical juror could have returned a verdict as this one did. There is ample evidence supporting the jury's verdict. When the evidence is disputed and different conclusions argued, the Court "has refused to take an issue from the jury or to

interfere with a jury's decision." McKinzie v. Coon, 656 So. 2d 134, 140 (Miss. 1995).

In Breaux v. Grand Casinos of Mississippi, 854 So.2d 1093, 1098 (Miss. Ct. App. 2003), a trip and fall case, the Court instructed the jury on comparative negligence, but the jury found for the defendant casino. The plaintiff appealed the jury's verdict. On appeal, the court stated:

> The jury is the ultimate judge of the weight of the evidence and the credibility of the witnesses. Jackson v. Griffin, 390 So.2d 287, 289 (Miss. 1980). "Because of the jury verdict in favor of the appellee, this Court will resolve all evidentiary conflicts in the appellee's favor and will draw all reasonable inferences which flow from the testimony given in favor of the appellee." Southwest Miss. Reg'l Medical Ctr. v. Lawrence, 684 So.2d 1257, 1267 (Miss. 1996) (quoting Bobby Kitchens, Inc. v. Mississippi Ins. Guar. Assoc., 560 So.2d 129, 131 (Miss. 1989)). We will not set aside the jury's verdict unless the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. Herrington, 692 So. 2d at 104.

Id. at 1098. Just as in Breaux, the jury in this case was given both sole and comparative negligence instructions. The jury was entitled to weigh the evidence and credibility of the witnesses. Here, Wince presented credible proof that his fall was caused by to the defendants' sole negligence and not due to any contributory negligence on his behalf. There was sufficient evidence to support the jury's verdict finding that defendants' negligence was the sole

and proximate cause of his injuries and damages.

The recent decision in the Fleming case is on point. In Fleming, a collision resulted when plaintiff-Fleming attempted to enter the westboud lane of traffic. At trial, the circuit judge gave the jury a comparative negligence instruction which gave the jury the opportunity to find, from conflicting evidence, that both Fleming and Floyd were negligent and that their combined negligence was the proximate contributing causes of the accident, thus allowing the jury to arrive at an award representing just compensation for Fleming, but then reducing that award by percentage of Fleming's negligence. Id. at page 9. However, the jury chose to find from the credible evidence that plaintiff-Fleming was negligent and that her negligence was the sole proximate cause of the accident and her resulting injuries and damages. On writ of certiorari, the Mississippi Supreme Court reversed the Mississippi Court of Appeals' decision and reinstated the jury verdict and noted:

> Certainly, when we consider the totality of the record, classic jury issues were created by the conflicting testimony of the witnesses, and thus it became the responsibility of the properly-instructed jury to determine what weight and credibility it wished to assign to the testimony of the various witnesses. With this being said, we can state with confidence that by allowing the jury verdict in favor of Floyd to stand, we are not by any stretch of the imagination sanctioning an unconscionable injustice. Patterson, 910 So.2d at 1018 (citing Herrington, 692 So.2d at 103-04). The jury verdict therefore is beyond the authority of an appellate court to disturb. Id. At 1022 (citing Maddox v. Muirhead, 738 So.2d 742, 743-44 (Miss. 1999)).

Id. at 10. The reasoning of Fleming is equally applicable in this

case. The trial court properly instructed the jury. Defendants interposed no objection to the trial court's jury instructions. There is no merit to this issue. The jury resolved the conflicting testimony. The jury is in the best position to evaluate the testimony and determine what portions of the testimony and witness it will accept or reject. When conflicting testimony exists, the jury determines the weight and worth of the witnesses' testimony and credibility at trial. Reversal of a jury verdict is not warranted unless it is against the overwhelming weight of the evidence and credible testimony, Wallace v. Thorton, 672 So. 2d 724, 727 (Miss. 1996).

Finally, appellants' reliance on Busby v. Anderson, 2006 WL 3409899 (Miss. Ct. App. 2006) for the proposition that "[t]he trial court's failure to allow a new trial where no fault was allocated to Mr. Wince is reversible error" is seriously misplaced.[2] The reversible error in Busby was not was not predicated upon the jury's failure to apportion fault. Rather, the reversible error in Busby was caused by the trial judge's failure to either grant plaintiff-Busby a permptory instruction that William's negligence was a proximate contributing cause of plaintiff-Busby's injuries or a directed verdict that the jury return a verdict for plaintiff-Busby. The Court of Appeals stated the "[j]ury should never have been allowed to consider that William was not negligent. The uncontradicted proof showed that he was negligent. 2006 WL 3409899

[2] On November 29, 2007, the Mississippi Supreme Court granted a writ of certiorari. See 968 So. 2d 948 (Table).

at page 11. In explaining the trial judge's error, the Court explained that Instruction D-2 was faulty and stated:

> The proper approach would have been to instruct the jury that William was negligent as a matter of law and then allow the jury to consider and determine by proper instructions whether William was solely negligent or whether Marilyn was comparatively negligent. See Choctaw Maid Farms v. Hailey, 822 So. 2d 911 (¶11) (Miss. 2002). If the jury found Marilyn bore some degree of comparative negligence, the jury should have then found to what degree. Id. The jury should have determined Marilyn's total damages and reduced her damages based upon her degree of comparative negligence, if any, all under proper instructions from the court. Id.

Id. at 11. Appellants have simply mischaracterized or misperceived the reversible error in Busby. Moreover, unlike the instructions in Busby, the instructions in this case fairly, accurately and adequately stated the law on comparative fault. In this case, appellants interposed no on the record objection to the jury instructions in chamber or when read in court. The failure to make an on record contemporaneous objection to jury instructions constitute a waiver. Busick, 856 So. 2d at 312. The argument lacks merit.

2. The Trial Court Correctly Denied Defendants' Motion For Summary Judgment, Motion for Directed Verdict and Motion For Judgment Notwithstanding The Verdict

In this appeal, defendants argue that Wince failed to prove a dangerous condition existed and the trial court committed reversible error when it denied defendants' motion for a directed and subsequent motion for judgment notwithstanding the verdict. If an invitee is injured by an artificial/man-made condition on an

adjacent or internal part of the business premises, then there is a jury question as to the openness and obviousness of the danger. Tharp v. Bunge Corp., 641 So. 2d 20 (Miss. 1994); Tate v. Southern Jitney Jungle, 650 So. 2d 1347 (Miss. 1995); Baptiste v. Jitney Jungle, 651 So. 2d 1063 (Miss. 1995); Downs v. Choo, 656 So. 2d 84 (Miss. 1995); Mayfield, 903 So. 2d at 739; Vaughn, 883 So. 2d at 1171.

At trial, the evidence heard by the jury was disputed on the issue of whether the 30 inch piece of angle iron constituted an unreasonably dangerous condition or whether Supervalu and its manager negligently caused Wince's fall and injuries. What constitutes a dangerous condition is not defined by Mississippi law and is to be determined by the trier of fact. Lowery v. Harrison County Bd. of Supervisors, 891 So. 2d 264, 267 (Miss. Ct. App. 2004). The issue of whether the 30 inch high piece of angle iron was a dangerous condition is a jury question. Anderson v. B.H. Acquisition, Inc., 771 So. 2d 914, 919 (Miss. 2000); Lockwood v. Isle of Capri Corp., 962 So. 2d 645, 649 (Miss. Ct. App. 2007). On appellate review of a trial court's denial of a motion for summary judgment, a motion for a directed verdict and a motion for judgment notwithstanding the verdict, this Court must consider de novo the evidence in the same light as the trial court. Wirtz v. Switzer, 586 So.2d 775 (Miss. 1991). In deciding a motion for summary judgment and for directed verdict, the trial court must view the evidence most favorably to the non-moving party, and if by any reasonable interpretation, it can support an inference of liability which the non-moving party seeks to prove, the motion must be

denied. Turner v. Wilson, 620 So.2d 545, 550-51 (Miss. 1993). Fipps v. Piggly Wiggly, 809 So. 2d 722, 725 (Miss. Ct. App. 2002). In other words, if the evidence considered is sufficient to support a verdict in favor of the moving party, the motion for summary judgment and for directed verdict must be denied. See, Paymaster Oil v. Mitchell, 319 So.2d 652 (Miss. 1975); Jesco, Inc. v. Shannon, 451 So.2d 694, 699-700 (Miss. 1984). Therefore, a review of the evidence is necessary to determine if the trial court correctly denied defendants' motion for summary judgment, motion for a directed verdict and motion for judgment notwithstanding the verdict. Wince's charge of negligence is that defendants caused the 30 inch high piece of metal to be bolted to the floor and created a dangerous condition for its customers. In their answer, defendants denied liability for Wince's injuries and asserted affirmative defenses that Wince's own negligence was the sole cause of his injuries, and if not the sole proximate cause, Wince's negligence was a proximate contributing cause, and his damages should be reduced by the doctrine of comparative negligence. Defendants admitted they caused the 30 inch high piece of angle iron to become exposed, but contended the angle iron was open and obvious. Specifically, defendants charged Wince with contributory negligence in failing to use ordinary care to not avoid the 30 inch metal post.

At trial, Wince proved he was an invitee in the Supervalu store; he proved the 30 inch high metal post bolted to the floor caused him to trip and fall and that he was injured as a result thereof. The evidence was sufficient for the jury to find that the

existed to support the award of damages or that the verdict was the product of bias, passion, or prejudice. South Central Bell Telephone Co., Inc. v. Parker, 491 So.2d 212, 217 (Miss. 1986).

In Haggerty v. Foster, 838 So. 2d 948 (Miss. 2003), plaintiff-Haggerty sued defendant-Foster and Foster Construction Company for bodily injuries arising out of an automobile collision. At trial, the trial judge instructed the jury on comparative fault. The jury returned a verdict for the defendants and judgment was entered. The trial court denied plaintiff-Haggerty's motion for judgment notwithstanding the verdict, or alternatively for a new trial. On appeal, the Mississippi Supreme Court held the evidence was sufficient to raise a jury question as to how the accident occurred and that the comparative fault instruction was not error. As to issue of whether the trial court properly denied plaintiff-Haggerty's post-trial motions, the Court noted both parties presented evidence supporting their theory and stated:

deference

> In short, given the deference that is afforded a jury's verdict when, as here, the evidence presented at trial conflicts and is capable of more than one interpretation, it cannot be said that the trial court erred in refusing to grant a judgment notwithstanding the verdict or a new trial.

Id. at 963.

In Busick v. St. John, 856 So. 2d 304 (Miss. 2003), a car wreck case, the jury was instructed on comparative negligence. The jury returned a verdict in favor of defendant-St. John. On appeal, plaintiff-Busick contended the jury verdict was against the overwhelming weight of the evidence. The Mississippi Supreme Court rejected the argument and stated:

matter of law.

On interlocutory appeal, the Mississippi Supreme Court reversed the order granting a new trial and the peremptory instruction upon retrial and reinstated the jury verdict in favor of defendants. The Mississippi Supreme Court's reasoning follows:

> In addition to Ammons' testimony, there is detailed expert testimony to the effect that the intrusion of the white vehicle into the lane of travel occupied by White was the primary cause of the accident. Moreover, the testimony and computer/video models presented by White's expert, Dr. Frank Griffith, demonstrate the plausibility of White's defense and support his testimony that the negligence of the unknown driver of the small white vehicle was at least a proximate contributing cause, if not indeed the sole proximate cause, of White's collision with Stewman. When one examines the evidence presented at trial in the light most favorable to White, and gives White the benefit of all favorable inference that may be reasonably drawn therefrom, it is undeniable that the issue of negligence was, and is, a question for the jury. In Henson v. Roberts, 679 So. 2d 1041 (Miss. 1996), this Court once again stated the test applied to a jury verdict:
> Once the jury has returned a verdict in a civil case, we are not at liberty to direct that judgment be entered contrary to that verdict short of a conclusion on our part that given the evidence as a whole, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could have found as the jury found.

Id. at 38. The White decision supports Wince's contention that the evidence was disputed and it was the jury's right to weigh and resolve the evidence. The argument lacks merit.

Conclusion

For the foregoing reasons, and on the basis of the authorities cited, the jury verdict and final judgment in Wince's favor should

be affirmed.

SO BRIEFED, this the 10th day of January, 2008.

Respectfully Submitted,

Rhudro Wince, Appellee

By: Ellis Turnage
ELLIS TURNAGE

ELLIS TURNAGE, MSB # 8131
TURNAGE LAW OFFICE
108 North Pearman Avenue
Post Office Box 216
Cleveland, Mississippi 38732
TEL: (662) 843-2811
FAX: (662) 843-6133
ATTORNEY FOR PLAINTIFF-APPELLEE

CERTIFICATE OF SERVICE

I, ELLIS TURNAGE, attorney for petitioner, certify that I have this day mailed, postage prepaid, a true and correct copy of APPELLEE'S BRIEF to:

Honorable LeAnn W. Nealy
Honorable Serena R. Clark
BUTLER, SNOW, O'MARA, STEVENS
& CANNADA, PLLC
Post Office Box 22567
Jackson, Mississippi 39225-2567

Honorable Wilton V. Byars, III
DANIEL COKER HORTON AND BELL
Post Office Box 1396
Oxford Mississippi 38655-1396

Honorable Albert B. Smith, III
CIRCUIT COURT JUDGE
Post Office Box 478
Cleveland, Mississippi 38732

This, the 10th day of January, 2008.

Ellis Turnage
ELLIS TURNAGE