

ON APPEAL TO THE SUPREME COURT  
OF THE STATE OF MISSISSIPPI

BERT BRAND

APPELLANT

vs.

CIVIL ACTION NO: 2007-CA-249

J. DEXTER BARR

APPELLEE

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APPELLANT'S MEMORANDUM BRIEF OF LAW  
SEEKING REVERSAL, REVIEW, OR CLARIFICATION  
OF THE ORDER OF THE TRIAL COURT

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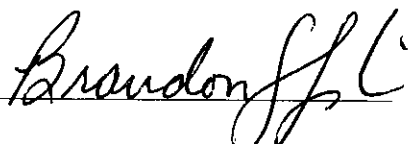
ON APPEAL FROM THE  
CHANCERY COURT OF CLAY COUNTY, MISSISSIPPI

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed parties have an interest in the outcome of the case. These representations are made in order that the judge of this Court may evaluate possible disqualification or recusal.

1. Bert Brand- Appellant
2. Brandon Scott Leslie- Shelton & Associates, P.A., Attorney for Brand
3. J. Dexter Barr- Appellee
4. Hon. Thomas M. Tubb- Attorney Barr
5. Mississippi State University Foundation- Third Party
6. Hon. Aubrey Nichols- Crowell Nichols, Attorneys for MSUF

Respectfully submitted, this the 26<sup>th</sup> day of November, 2007.

BY:   
Brandon Scott Leslie  
Attorney for  
Appellant

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I.  
ISSUES PRESENTED

1. Did the Chancellor err in finding the appellant in material breach of a farm lease, when: (1) the only evidence presented before the Chancellor related to a minor section of the entire property; (2) the Appellant did not maintain and cultivate farmland and pastureland under the farm lease agreement that was not the subject matter of the litigation; (3) that the Plaintiff, Barr, was not seeking to have Brand removed from all the farmland and pastureland encompassed under the farm lease, but only to the extent that Brand was leasing the property Barr had purchased.

2. Did Barr have legal standing to act on behalf of third party property owners in having Brand removed from the entire farm lease agreement, when: (1) Barr had no proprietary, possessory, monetary or ownership interest in the majority of parcels of land included in Brand's farm lease; (2) that Barr was not acting with the legal consent or authority of third party property owners who were subject to the Brand farm lease.

3. Did the Court err in failing to join the Conservatorship of Christine Brand, or its successor, as a party to the proceeding when: (1) the Court found the entire farm lease null and void; (2) the property described in the subject lease included property owned by the Conservatorship; (3) Brand was in compliance of his duties under the lease with respect to the property held by the Conservatorship; (4) the Conservatorship was receiving the benefits under the lease agreement which the Court nullified.

4. Did the Court err in refusing to consider Brand's Motion to Clarify judgment, when: (1) the original Order from the Chancellor held "the lease is to be declared null and void because Brand materially breached provisions of the lease by failing to plant crops and pay crop rent for

the pastureland and maintain the pastureland...”; (2) the issue before the Chancellor was Brand’s relationship to the property owned by Barr; (3) that at no time during the Chancery proceedings did the Court entertain evidence with regards to Brand’s performance under the lease agreement with other parcels of land included under the lease; (4) that the Order’s language was vague and ambiguous with respect to the other parcels of land included the lease agreement that were not the subject of the Chancery Court proceeding; (5) that no party in the Chancery Court proceeding had contemplated that the matter being litigated would have further consequences beyond the relationship of the original parties.

II.  
STATEMENT OF THE CASE

A. Course of Proceedings and Disposition of the Case Below

This matter comes before this Honorable Court on appeal from the Chancery Court of Clay County, Mississippi. This matter was originally brought by the Appellee, J.Dexter Barr, on Complaint to nullify the farm lease agreement between Barr and Appellant, Brand. No other person or entity was made a party to the litigation.

The Chancellor entered her opinion on March 14, 2005. T.R. at 36. Brand did not appeal the original decision of the Chancellor, believing the Chancellor's Order was relevant only to the property between Barr and Brand. After being contacted by the Mississippi State University Foundation in August 2006, Brand respectfully requested the Chancellor to review its previous Order and submitted a Motion to Clarify Judgment. T.R. at 45. On or about January 25, 2007, the Chancellor denied Brand's Motion to Clarify Judgment finding it untimely. T.R. at 160.

Brand timely filed his Notice of Appeal with the Chancery Court of Clay County and now seeks review of the Order entered by the Chancellor on March 14, 2005 as well as the Order entered on January 25, 2007. T.R. at 168.

B. Statement of the Facts.

On or about March 6, 1999 Bert Brand entered into a farm lease with then landowner, Christine Brand. T.R. at 50. The lease allowed Brand to maintain and cultivate farm and pastureland on two different parcels of land. *Id.*

The first parcel, hereinafter referred to as "Gilreath Place," is described as:

### **PARCEL ONE**

**(hereinafter referred to as "Gilreath Place")**

The Southwest Quarter (SW-1/4) of Section 12, Township 15, Range 4 containing 160 acres, more or less; The West Half (W-1/2) of the Southeast Quarter (SE-1/4) of Section 12, Township 15, Range 4, containing 80 acres, more or less; and the East Half (E-1/2) of the Southeast Quarter (SW-1/4) of Section 11, Township 15, Range 4, containing 80 acres, more or less, all containing 320 acres, more or less. T.R. at 50.

The second parcel contained in the farm-lease, hereinafter referred to as "Home Place", is described as:

### **PARCEL TWO**

**(hereinafter referred to as "Home Place")**

The East Half of the Southwest Quarter of Section 11, and 120 acres off the west side of the Northwest Quarter of Section 11, Township 15 South, range 4 east, containing 120 acres, and the Northeast Quarter of Section 10 and the East 100 acres off the east side of the Northwest Quarter of Section 10, Township 15 South, Range 4 East, containing 402 acres, and all the South Half of Section 3 and 82 acres off the South Half of the Northeast Quarter of Section 33, Township 15 South, Range 4 East, containing 402 acres. T.R. at 50.

On or about August 19, 2000, Christine Brand and Barr entered into an Option Agreement for the purchase of the property formerly described as "Gilreath Place." T.R. at 54. Brand continued to hold the ten-year farm lease on the "Gilreath Place" property, as well as the "Home Place" property. Barr had no interest or connection with the "Home Place" property.

On May 5, 2003, the Conservator of Christine Brand (Virginia S. Brand) executed the Option Agreement with Barr, and deeded the "Gilreath Place" property to Barr. T.R. at 61.

On July 27, 2004, Barr filed a Complaint in the Chancery Court of Clay County, Mississippi seeking judgment declaring null and void the farm lease Brand held on the "Gilreath Place." T.R. at 2.

The Chancellor heard testimony and evidence from Barr and Brand relating to the



performance of the farm lease on the “Gilreath Place” property. T.R. 5-117. At no time during the proceeding was the landowner of the “Home Place” property made a party to the litigation. *Id.* In addition, at no time during the proceedings did the Court hear evidence or testimony of the performance of the farm lease with regards to the “Home Place” property. *Id.* It must be noted that the farm lease at issue encompassed both the “Gilreath Place” and the “Home Place” property. T.R. 50-52.

While Barr and Brand continued to litigate the validity of the farm lease on the “Gilreath Place” property, Brand continued to sublease the “Home Place” property to other persons, including Larry Jenkins, who cultivated and farmed the “Home Place” land. T.R. 69-70. Brand continued to pay the contractual rents and profits on both parcels to each respective lessor. T.R. 71-86.

Following the death of Christine Brand, the “Home Place” property was bequeathed to the Mississippi State University Foundation (hereinafter “MSUF”). At no time during the Chancery Court proceeding did MSUF enter as a “necessary or indispensable” party, or even as a “party in interest.” Both Barr and Brand believed that the subject matter of the litigation was solely limited to the “Gilreath Place” property.

On March 14, 2005, the Chancery Court of Clay County, Mississippi held that, “the lease is to be declared null and void because Brand materially breached the provisions of the lease by failing to plant crops and pay crop rent as well as pay rent for the pastureland and maintain the pastureland...” T.R. at 36. It is to be noted that the Chancellor heard no testimony or evidence with regards to Brands performance of the “Home Place” property. *Id.* It is also important to note

that MSUF or the Conservatorship of Christine Brand was never joined as a “necessary and indispensable party” to the Chancery Court proceeding, as they were also parties to the entire farm lease held by Brand. *Id.*

Believing the Court’s Order applied solely to the “Gilreath Place” property, Brand continued to cultivate and maintain the farmland on the “Home Place” property. T.R. 71-86. In August 2006, nearly a year after the Chancery Court’s Order, MSUF contacted Brand informing him that the farm lease under which he was operating had been declared “null and void” with respect to the “Home Place” property and that Brand must vacate the property.

Upon receipt of the MSUF demand, Brand asked the Chancellor for clarification of the March 14, 2005 Order which declared the lease null and void. T.R. at 45. The Court refused to consider Brand’s Motion for Clarification, finding the motion untimely. T.R. at 160. The Court refused to address the genuine and legitimate issue of law that was created by the Court’s Order. *Id.*

Brand petitions this Honorable Court to review the March 14, 2005 Order, and seeks to have this matter remanded to the Chancellor for a hearing to clarify the Order, as well as allow Brand to present new evidence with regards to his performance under both the “Gilreath Place” and “Home Place” properties.

### III. SUMMARY OF THE ARGUMENT

Brand asserts that the Order of the Chancery Court of Clay County, Mississippi should be reversed and this matter remanded for a new trial. The Chancery Court’s Order was based upon

evidence and testimony that were subject only to the “Gilreath Property”, and was completely void of any evidence relating to the “Home Place” property. Brand contends that the Order should have affected only the “Gilreath Place” property, as the Plaintiff lacked any standing to act on behalf of the “Home Place” property. In addition, the Court egregiously erred in failing to join the to do landowner of the “Home Place” property, pursuant to Miss. Rule Civ. Pro. 19. Furthermore, the Chancellor erred in failing to consider Brand’s Motion to Clarify Judgment, as deficiencies and confusion existed with respect to the Court proceeding and the Order issued therefrom. As such, this Honorable Court should reverse the Order of the Chancellor and remand this matter to the trial court for a new trial.

#### IV. ARGUMENT AND AUTHORITIES

##### A. Standard of Review

A chancellor’s findings of fact will not be disturbed unless manifestly wrong or clearly erroneous. *Sanderson v. Sanderson*, 824 So.2d 623, 625 (Miss. 2002). A court of appeals will not disturb the findings of a chancellor when supported by substantial credible evidence unless the chancellor abused his or her discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied. *Id.* at 625-26. Legal questions are reviewed de novo. *Russell v. Performance Toyota, Inc.*, 826 So.2d 719 (Miss. 2002). Brand asserts that the issues raised in this appeal are all issues of law, and this Court has a *de novo* standard of review.

##### B. Applicable Law

Standing to bring suit exists in Mississippi if a party can “assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant.”

*Harrison County v. City of Gulfport*, 557 So.2d 780, 782 (Miss. 1990). The requirements for standing “focuses judicial review on a plaintiff’s legal interest and a defendant’s legal duty.” *City of Picayune v. Southern Reg’l Corp.*, 916 So.2d 510, 526 (Miss. 2005).

Rule 19 of the Mississippi Rules of Civil Procedure states:

**Rule 19: Joinder of Persons Needed for Just Adjudication**

**(a) Person to be Joined if Feasible:** A person who is subject to the jurisdiction of the court shall be joined as a party in the action if:

(1) in his absence complete relief cannot be accorded among those already parties, or

(2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant or, in a proper case, an involuntary plaintiff.

**(b) Determination by Court Whenever Joinder Not Feasible:** If a person as described in subdivision (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: First, to what extent a judgment rendered in the person’s absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person’s absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

“There are at least four main questions a court must consider when deciding a question of joinder under Rule 19: first, the plaintiff’s interest in having a forum; second, the defendant’s wish to avoid multiple litigation, inconsistent relief, or sole responsibility for a liability he shares with another; third, the interest of an outsider whom it would have been desirable to join; fourth,

the interest of the courts and the public in complete, consistent, and efficient settlement of controversies.” Miss. Rule Civ. Pro. 19, comment. There is no precise formula for determining whether a nonparty must be joined under Rule 19(a). The decision has to be made in terms of the general policies of avoiding multiple litigation, providing the parties with complete and effective relief in a single action, and protecting the absent persons from the possible and prejudicial effect of deciding the case without them. *Id.*

### C. Argument.

#### 1.) THE TRIAL COURT ERRED IN VOIDING THE ENTIRE LEASE AGREEMENT.

Brand asserts that the Chancellor erred in voiding the entire farm lease agreement he entered into on March 6, 1999. The Chancellor’s opinion was vague and overreaching, resulting in unintended consequences that were neither litigated nor addressed.

Barr filed his Complaint on July 17, 2004 seeking to have the farm leased nullified because “[Brand] has materially breached the provisions of the purported farm lease and that he has failed to plant crops on any cultivatable land owned by the Plaintiff or pay any rent therefore and has failed to maintain any of the pastureland owned by the Plaintiff or to pay any rent therefore.” *See, Complaint, T.R. at 2*. The only land mentioned in the Complaint is the land which Barr has an interest, the “Gilreath Place” property. Barr never discusses the rents, cultivating or other such maintenance Brand has done with the “Home Place” property.

At trial, both Barr and Brand only testified to the maintenance of the “Gilreath Place” property. That property, alone, was the sole subject matter of litigation. Never did Barr, Brand, or the Court itself, inquire as to the “Home Place” property.

As a result of the testimony and evidence presented before the Court, the Chancellor found that Brand was in material breach of the lease, and declared the entire lease “null and void.” The Court, however, failed to consider that the blunt language used in its Order might have an effect on the “Home Place” property that was encompassed in the same lease. At the time of litigation, no person of interest with relation to the “Home Place” property had voiced opposition or dissatisfaction of Brand’s performance on that property.

The Court’s Order declaring the entire lease to be null and void was overly broad and overreaching. The subject matter that was being litigated was solely Barr’s property, and not the “Home Place” property. The Court’s Order resulted in unintended consequences, which now must be rectified. Brand respectfully requests this Honorable Court to reverse the Order of the Chancery Court of Clay County and remand this matter for a new trial on entire farm lease agreement encompassing both the “Gilreath Place” and “Home Place” properties.

2.) BARR DID NOT HAVE LEGAL STANDING TO ACT ON BEHALF OF THE HOME PLACE.

Brand respectfully asserts that Barr lacked any proper standing to seek declaratory judgments on behalf of the “Home Place” property, and as a result the Order declaring the farm lease null and void with respect to the “Home Place” must be reversed.

Standing to bring suit exists in Mississippi if a party can “assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant.” *Harrison County v. City of Gulfport*, 557 So.2d 780, 782 (Miss. 1990). The requirements for standing “focuses judicial review on a plaintiff’s legal interest and a defendant’s legal duty.” *City of Picayune v. Southern Reg’l Corp.*, 916 So.2d 510, 526 (Miss. 2005).

Brand asserts that the Chancery Court lacked jurisdiction to declare the entire farm lease void due to Barr's lack of standing with respect to the "Home Place" property. It is without dispute that Barr had no financial, ownership, pecuniary, possessory, or leasehold interest in the "Home Place" property. He was not acting under any contractual or legal authority of the rightful parties, the Conservatorship of Christine Brand or MSUF. Barr had no "legal interest" in the "Home Place" property and Brand owed Barr absolutely no "legal duty" with respect to the "Home Place" property. Barr simply had no connection to the "Home Place", what-so-ever. As a result, Barr was the improper property to litigate issues involving the "Home Place" property, and as a result, the Order of the Chancery Court must be reversed and remanded.

**3.) THE TRIAL COURT FAILED TO JOIN NECESSARY AND INDISPENSABLE PARTIES AND THE ORDER MUST BE REVERSED.**

Brand asserts that the Chancery Court failed to properly join necessary and indispensable parties, pursuant to Rule 19 of the Mississippi Rules of Civil Procedure. As a result of this oversight, justice was not served and that the Order of the Chancery Court must be reversed.

Rule 19 of the Mississippi Rules of Civil Procedure states:

**Rule 19: Joinder of Persons Needed for Just Adjudication**

**(a) Person to be Joined if Feasible:** A person who is subject to the jurisdiction of the court shall be joined as a party in the action if:

(1) in his absence complete relief cannot be accorded among those already parties, or

(2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant or, in a proper case, an involuntary plaintiff.

**(b) Determination by Court Whenever Joinder Not Feasible:** If a

person as described in subdivision (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: First, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Brand asserts that the Conservatorship of Christine Brand, or its successor, MSUF, should have been made a necessary and indispensable party pursuant to Miss. Rule Civ. Pro. 19. The Court, having declared the entire lease null and void, affected the interests of the "Home Place's" property interests. The Conservatorship of Christine Brand, or its successor, MSUF, should have been present during the proceeding.

It is obviously apparent that the property owner of the "Home Place" property qualifies as a necessary and indispensable party under Rule 19. If Barr's demand was to invalidate the entire lease, then the Conservatorship of Christine Brand is a party whose absence, complete relief could not be granted. It is also without dispute that the Conservatorship had a significant interest in the farm lease, which Barr sought to nullify. The Conservatorship qualifies as a necessary and indispensable party under Rule 19(a)(1) and Rule 19(a)(2).

Brand asserts that the case *sub judice* is similar to *TXG Intrastate Pipeline Co. v. Grossnickle*, 716 So.2d 991 (Miss. 1998), and *Ladner v. Quality Exploration Co.*, 505 So.2d 288 (Miss. 1987).

In *Grossnickle*, an action seeking nullification of mineral lease contracts, this Honorable Court reversed and remanded the case because the trial court failed to join parties who held



mineral lease contracts that were then being litigated. In *Ladner*, this Honorable Court discussed, in depth, the importance of joining all necessary and indispensable parties who have a colorable interest in the litigation.<sup>1</sup> This Court's concern in *Ladner* is exactly the same concern that is present in the case at bar; impairing absent property owners interests and re-litigation. As such, the Conservatorship of Christine Brand, or its successor in interest, MSUF, should have been made necessary and indispensable parties to the proceeding. By failing to do so, the Chancellor failed to consider the "totality of the circumstances" in nullifying the farm lease held by Brand.

4.) THE TRIAL COURT ERRED IN REFUSING TO CONSIDER BRAND'S MOTION TO CLARIFY JUDGMENT.

Brand asserts that the Chancellor erred in refusing to consider his Motion to Clarify Judgment with respect to its Order entered on March 14, 2005. Though the motion was filed over ten (10) days after the original Order was entered, Brand acted as expeditiously as possible when the unintended consequence of the Chancellor's Order was brought to his attention.

The Court entered its Order on March 14, 2005. Even after the Chancellor issued her opinion, Brand continued to perform under the farm lease agreement with respect to the "Home Place" property. He continued to cultivate and maintain the land, pay rents on the property, and pay taxes on its profits. Not until Brand received correspondence from MSUF demanding he vacate the premises in August 2006, did any issue arise relating to the "Home Place" property.

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<sup>1</sup>"There appears little doubt that the present litigation may impair or impede the ability of the absent mineral interest holders to protect their property interests from violations committed thereon by other persons. An unfavorable judgment from appellants' viewpoint would definitely impair the absent mineral interests holders from bringing suit against the appellee for the identical cause. If not, subsequent actions by the absent mineral interest holders would subject appellee to a substantial risk of obligations and multiple suits. See, Rule 19(a)." *Ladner*, 505 So.2d at 291.

Brand then submitted a Motion to Clarify Judgment to the Chancery Court of Clay County on or about October 30, 2006.

Brand asserts that due to above mentioned deficiencies in both the Court's Order and the previous proceeding, the Chancellor should have considered Brand's Motion to Clarify Judgment. The Court's Order was overly broad, ambiguous, and outside the scope of the subject matter litigated. A hearing on Brand's Motion to Clarify Judgment would have aided all parties to the true intent and scope of the Court's Order and jurisdiction.

Brand respectfully requests this Honorable Court reverse and remand this matter to the Chancery Court of Clay County, Mississippi so that the Chancellor can clarify, review, and rectify its previous deficient judgment. In addition, remanding this cause will allow all necessary parties to have their day in Court and protect their vital interests.

#### V. CONCLUSION

This Honorable Court should reverse the Order of the trial Court and remand this matter for a new trial on the merits. The Chancery Court refused to consider testimony and evidence relating to the "Home Place" property, as the subject matter of the litigation was solely the "Gilreath Place" property. By voiding the entire farm lease agreement, the Chancellor's Order was overly broad and outside the scope of the subject matter being litigated. Brand also asserts that Barr lacked standing to act on behalf of the "Home Place" property. In addition, by voiding the entire farm lease agreement, the Chancellor committed reversible error by failing to join the

property owners of the "Home Place" land, pursuant to Miss. Rule Civ. Pro. 19. Finally, the Chancellor erred in failing to consider Brand's Motion to Clarify Judgment, as deficiencies existed in both the Chancery Court proceeding and the subsequent issued Order. Brand contends this Honorable Court must remand and reverse this matter to the Chancery Court and allow all necessary and indispensable parties to have their day in Court.

**RESPECTFULLY SUBMITTED**, this the 26 day of November, 2007.

**BERT BRAND, APPELLANT**  
BY: Brandon S. Leslie  
**BRANDON SCOTT LESLIE**  
**ATTORNEY FOR PLAINTIFF**  
MSBN# [REDACTED]  
**OF COUNSEL:**  
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**(662) 842-5051**  
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CERTIFICATE OF SERVICE

I, Brandon Scott Leslie, Attorney for the Appellant, hereby certify that I have placed, postage pre-paid, first-class, a true and correct copy of this instrument on the following at the usual business address of:

Hon. Thomas M. Tubb  
Attorney for Barr, Appellee  
P.O Box 332  
113B-B Commerce Street  
West Point, Mississippi 39773

Hon. Aubrey E. Nichols  
Gholson, Hicks & Nichols, P.A.  
Attorney for MSUF  
AmSouth Bank, Third Floor  
710 Main Street  
Columbus, Mississippi 39701

Hon. Judge Dorothy W. Colom  
Chancery Court of Clay County, Mississippi  
P.O. Box 708  
Columbus, Mississippi 39703-0684

SO CERTIFIED, this the 26<sup>th</sup> day of November, 2007.

A handwritten signature in cursive script, reading "Brandon Scott Leslie", is written over a horizontal line.

Brandon Scott Leslie

### **CERTIFICATE OF COMPLIANCE**

I, the undersigned counsel of record, do hereby certify that the foregoing instrument is in compliance with the Mississippi Rules of Appellate Procedure and has been compiled in a word processing program, using Word Perfect 9.0, double spaced using Time New Roman, 12pt. font.

So Certified, this the 26<sup>th</sup> day of November, 2007.

A handwritten signature in cursive script, reading "Brandon Scott Leslie", is written over a horizontal line.

Brandon Scott Leslie

Attorney for Appellant