IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

CASE NO. 2007-CA-00457

ROBERT LEE JACKSON — APPELLANTS

VERSUS

MURPHY FARM AND RANCH, INC.
DPM, INC., AND TMM, INC. — APPELLEES

ON APPEAL FROM THE
CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

BRIEF OF APPELLEE MURPHY FARM AND RANCH, INC.

ORAL ARGUMENT REQUESTED

SUBMITTED BY:

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and/or entities 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 disqualifications or recusal.

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Respectfully submitted,

BY: Gerald L. Kucia
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Attorney for Murphy Farm and Ranch, Inc.

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B. The Madison County Circuit Court correctly found that Mr. Jackson's own negligence was the proximate cause of his injuries.

STATEMENT OF THE CASE

On May 23, 2003, Robert Lee Jackson (hereafter referred to as "Mr. Jackson") filed a Complaint seeking monetary damages from Murphy Farm and Ranch, Inc. (hereafter referred to as "Murphy Farm and Ranch") in the Circuit Court of Madison County, Mississippi (R 004 – 007). Mr. Jackson alleged that, on June 19, 2002, he was working as an equipment operator and laborer for Murphy Farm and Ranch (R 004 – 007). He admitted that a part of his job duties was to operate machinery such as farm tractors (R 004 – 007). Mr. Jackson claimed that he sustained physical injuries while trying to start a tractor (R 004 – 007). He asserted that Murphy Farm and Ranch was liable for his injuries because Murphy Farm and Ranch's management personnel knew and/or should have known that the subject tractor was in a state of disrepair and unreasonably dangerous (R 004 – 007). Mr. Jackson further asserted that his injuries were caused by the negligence of Murphy Farm and Ranch's negligence (R 004 – 007). Specifically, Murphy Farm and Ranch allegedly failed to provide Mr. Jackson with a safe, sufficient and suitable place to work and failed to provide him with safe and suitable equipment with which to work (R 004 – 007).

Murphy Farm and Ranch answered Mr. Jackson's Complaint on June 19, 2003 (R 007 – 012). In its answer, Murphy Farm and Ranch specifically asserted that it was not at fault for Mr. Jackson's injuries (R 007 – 012).

After the parties completed discovery, Murphy Farm and Ranch moved for summary judgment (R 032 – 034). On February 12, 2007, the Circuit Court granted Murphy Farm and Ranch's motion for summary judgment (R 234). Mr. Jackson now presents his appeal to this Court.

STATEMENT OF FACTS

This lawsuit arises from a farming accident that occurred on June 19, 2002 (R 004 – 007). Mr. Jackson filed his Complaint claiming that, on that date, he was an employee at Murphy Farm and Ranch (R 004 – 007). His job duties allegedly involved operating equipment such as farm tractors and working as a laborer (R004 – 007). Mr. Jackson alleged that he tried to start a tractor that was in a state of disrepair (R 004 – 007). As he tried to start the tractor, the tractor supposedly began to roll forward (R 004 – 007). Mr. Jackson asserted that the tractor struck him and injured him (R 004 – 007). He theorized that Murphy Farm and Ranch management personnel knew or should have known that the tractor was in a state of disrepair and that it was their failure to fulfill this duty that caused his injuries and damages (R 004 – 007). Murphy Farm and Ranch denied these allegations (R 007 – 012).

In his interrogatory responses, Mr. Jackson explained why he believed that Murphy Farm and Ranch was liable for his injuries (R 044 – 054). In pertinent part, he answered:

> **INTERROGATORY 2:** Please enumerate and describe completely and explicitly each and every ground upon which you contend to state a cause of action against this Defendant, including therein:
>
> (a) the complete legal and factual basis for each and every alleged ground;
>
> (b) a description of all evidence, physical or otherwise, which supports or tends to support each and every alleged ground; and,
>
> (c) the names and identities of all witnesses, including their present address, whose testimony will support or tend to support said allegations.
>
> **RESPONSE NO. 2:** . . . Plaintiff refers to the Complaint filed in this matter and notes that Plaintiff has no formal education but was nevertheless not provided any training or safety instructions from the Defendant, was asked to use a tractor which was in a known state of disrepair, was not provided adequate assistance to start a tractor in a known state of disrepair and was assigned a tractor

which Defendant knew or should have known was unreasonably dangerous because it did not have basic safety devices/features. . . .

INTERROGATORY 19: Please state in detail everything you contend these Defendants could have and should have done which would have prevented the incident in question from having occurred.

RESPONSE NO. 19: See the Complaint filed in this matter. Additionally, Defendant failed to properly maintain the little tractor, improperly left it in gear and failed to properly train Plaintiff.

(R 044 - 054). Responding to another interrogatory, Mr. Jackson described how the complained of incident took place (R 044 - 054). He stated:

INTERROGATORY 16: Please state in complete and accurate detail your full account of how the incident in question took place, from just before its occurrence, and thereafter until Plaintiff was given medical attention, if any, including a designation of fault from your perspective.

RESPONSE NO. 16: On or about 8:00 a.m., June 19, 2002, Plaintiff attempted to start, "the little tractor." The battery in the tractor appeared to be dead so Plaintiff connected a battery charger. Plaintiff attempted to place the little tractor in neutral and thought that he had done so. With the battery charger attached, he started the tractor and released the clutch. The tractor jumped forward dragging the Plaintiff along after it had run over his leg. Plaintiff was finally able to reach the throttle and kill the engine. He was able to make it back to his vehicle and drive home. At his home, Danny Murphy was contacted by telephone and told of the accident. Mr. Jackson then went to UMC Hospital with Carolyn Jackson and Doretha Small. . . .

(R 044 - 054).

Mr. Jackson provided more details about how the complained of accident happened when he testified during his deposition (R 055 - 108). He testified that, at approximately 8:00 a.m. on June 19, 2002, Mr. Danny Murphy told him to get "the little tractor" and cut some grass in an area from which some equipment had been moved (R 059). When Mr. Jackson retrieved "the little tractor," he climbed into the tractor's seat and unsuccessfully tried to start it (R 059). The battery on the tractor appeared to be dead (R 059). Mr. Jackson then connected the battery to a

charger and let the battery charge for about ten minutes (R 059). He tried again to start the tractor (R 059). As Mr. Jackson tried to start the tractor the second time, he stood on the ground beside the tractor (R 059). He thought that the tractor was in neutral (R 060 - 061). However, the tractor began to roll forward running over his left leg (R 065).

Mr. Jackson made several confessions when he testified during his deposition. He admitted that he had operated tractors for approximately thirty-eight years and had used the tractor involved in this litigation since 1979 (R 057, 064, 066, 072). On occasion, and before the complained of incident, Mr. Jackson sometimes had to use the battery charger to start the tractor's engine (R 060). He confessed that he usually started the tractor involved in this litigation while seated in the driver's seat (R 060). Mr. Jackson also confessed that he knew that the tractor was equipped with a safety switch (R 062). He knew that either the safety switch or the clutch had to be engaged before the tractor would start (R 062). Mr. Jackson admitted that had he been sitting in the driver's seat and turned on the engine with the clutch engaged, the tractor would not have moved forward (R 062 - 063) . He also knew that the tractor would jump forward if the engine was turned on while it was in gear (R 062). Mr. Jackson acknowledged that, at the time of the complained of incident, he assumed that the tractor was in neutral (R 061 - 062, 068) . He further acknowledged that, if he had checked to make sure the tractor was out of gear or had placed it in neutral before trying to start it, he would not have been injured (R 068). Mr. Jackson conceded that, during the time that he worked for Murphy Farm and Ranch, no one ever refused to give him a piece of safety equipment when he asked for it (R 069). He admitted that the only thing that made the tractor dangerous was that its battery was dead (R 074 - 075).

Based upon Mr. Jackson's candid admissions, Murphy Farm and Ranch moved for summary judgment. After notice and hearing, on February 12, 2007, the Circuit Court granted Murphy Farm and Ranch's motion for summary judgment. At the hearing, Judge Chapman declared:

> All right, based on defendant's arguments, but counsel, really looking at the itemization of facts here: Number 25, plaintiff stated that he knew that the tractor would jump forward if the engine was turned on while it was in gear; 26, plaintiff acknowledged that at the time of the complaint of incident, he assumed the tractor was in neutral; 27, plaintiff acknowledged that if he had checked to make sure the tractor was out of gear or placed in neutral before trying to start it, he would not have been injured. Those seem to me to be, if you can isolate down on three facts that are dispositive of the proximate cause of plaintiff's injury, is his own negligence, not any negligence on behalf of, if any, I'm not saying that there was any negligence, but any negligence on behalf of the defendant, the proximate cause of the injury clearly is plaintiff's own negligence. So the motion will be granted.

(TR 9 – 10). Ultimately, this appeal followed (R 235).

SUMMARY OF THE ARGUMENT

A. The Circuit Court correctly refused to find that Murphy Farm and Ranch was negligent in this matter. Mississippi law has long recognized that it is the duty of the master to exercise reasonable care and due diligence to furnish the servant a reasonably safe place in which to work and reasonably suitable and safe tools and appliances with which to do his work. The law does not impose a strict liability standard on employers. In the case now before this Court, it is uncontradicted that the tractor on which Mr. Jackson was injured had a safety switch. Mr. Jackson admitted, among other things, that the only thing that made the tractor allegedly dangerous was that its battery was dead. Based upon Mr. Jackson's admission and the fact that the tractor had a safety switch, the Circuit Court properly refused to find that Murphy Farm and Ranch was negligent in this matter. Accordingly, the Circuit Court correctly granted Murphy Farm and Ranch's motion for summary judgment.

B. The Circuit Court properly found that Murphy Farm and Ranch's negligence, if any, did not cause Mr. Jackson's injuries. Instead, Mr. Jackson's own negligence caused his injuries. Because only Mr. Jackson's negligence caused his injuries, the Circuit Court correctly granted Murphy Farm and Ranch's motion for summary judgment.

ARGUMENT

A. The Circuit Court Correctly Refused to Find That Murphy Farm and Ranch Was Negligent

Rule 56 of the Mississippi Rules of Civil Procedure provides that summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law. Applying Rule 56, the Mississippi Supreme Court and this Court have ruled that where a non-moving party fails to show evidence sufficient to establish the existence of an essential element to the case, summary judgment is proper. *PDN, Inc. v. Loring,* 843 So. 2d 685, 688 (Miss. 2003); *Sligh v. First National Bank of Holmes County*, 735 So. 2d 963 (Miss. 1999); *R. E. Wilbourn v. Stennett, Wilkinson & Ward,* 687 So. 2d 1205 (Miss. 1996); *Benson v. National Union Fire Insurance Company of Pittsburgh,* 762 So. 2d 795, 800 (Miss. Ct. App. 2000). A motion for summary judgment should be granted if the quality of proof offered is insufficient to sustain the plaintiff's burden of proof. *PDN, Inc.,* 843 So. 2d at 689; *Buelow v. Glidewell,* 757 So. 2d 216, 220 (Miss. 2000). In *Sligh*, the Mississippi Supreme Court declared:

> The focal point of our standard for summary judgment is on material facts. If the party opposing the motion is to avoid entry of an adverse judgment, he or she must bring forth evidence which is legally sufficient to make apparent the existence of triable fact issues. Summary judgment is mandated where the nonmoving party fails to show evidence sufficient to establish the existence of an essential element to his case. (Citations omitted).

Sligh, 735 So. 2d at 965-66.

In the matter now before this Court, the Circuit Court specifically refused to find that Murphy Farm and Ranch had been negligent. As stated above, the Circuit Court found:

> All right, based on defendant's arguments, but counsel, really looking at the itemization of facts here: Number 25, plaintiff stated that he knew that the tractor would jump forward if the engine was turned on while it was in gear; 26, plaintiff acknowledged that at the time of the complaint of incident, he assumed the tractor was in neutral; 27, plaintiff acknowledged that if he had checked to make sure the tractor was out of gear or placed in neutral before trying to start it, he would not have been injured. Those seem to me to be, if you can isolate down on three facts that are dispositive of ***the proximate cause of plaintiff's injury, is his own negligence, not any negligence on behalf of, if any, I'm not saying that there was any negligence, but any negligence on behalf of the defendant, the proximate cause of the injury clearly is plaintiff's own negligence.*** So the motion will be granted. (Emphasis added).

A review of the record in this case shows that the Circuit Court was correct when it refused to find that Murphy Farm and Ranch had been negligent in this matter.

To prevail on a negligence claim, a Plaintiff must establish by a preponderance of the evidence each of the elements of negligence: duty, breach, causation and injury. *Mississippi Department of Transportation v. Cargile,* 847 So. 2d 258, 262 (Miss. 2003); *Leflore County v. Givens,* 754 So. 2d 1223, 1230 (Miss. 2000). The Mississippi Supreme Court has long recognized that, in cases such as the one now before this Court, it is the duty of the master to exercise reasonable care and due diligence to furnish the servant a reasonably safe place in which to work and reasonably suitable and safe tools and appliances with which to do his work. *Masonite Corporation v. Graham,* 25 So. 2d 322, 323 (Miss. 1946); *Gulfport Creosoting Company v. White,* 157 So. 86, 87 (Miss. 1934). The master is not an insurer of the employee's safety. *Graham,* 25 So. 2d at 323; *Gulfport Creosoting Company,* 157 So. at 87. The master is not required to furnish the newest, safest and best machinery, appliances, and places for work. *Cherry v. Hawkins,* 137 So. 2d 815, 817 (Miss. 1962). His obligation is met when he furnishes such

items as are reasonably safe and suitable for the purposes had in view. *Cherry*, 137 So. 2d at 817; *Wilson & Company v. Holmes,* 177 So. 24, 26 (Miss. 1937).

The Mississippi Supreme Court has also long recognized that the servant must bear some responsibility for his own safety. It is well-settled that if the master provides a safe means or method for doing certain work, and the servant elects to use different and dangerous methods, he cannot recover for the reason that such act becomes the negligence of the servant. *Brown v. Coley,* 152 So. 61, 63 (Miss. 1934); *Stokes v. Adams-Newell Lumber Company,* 118 So. 441, 441 (Miss. 1928). This principle is otherwise expressed in the rule that the master is as much entitled to expect that the servant will exercise reasonable care in the doing of a prescribed piece of work as is the servant entitled to expect that the master will use reasonable care to furnish him with reasonably proper facilities therefor. *Martin v. Beck,* 171 So. 14, 15 (Miss. 1936); *Newell Contracting Company v. Flynt,* 161 So. 743 (Miss. 1935). Restated, the master is not required to warn the servant to do something which the latter already knows to do. *Masonite Corporation v. Stevens,* 30 So. 2d 77, 80 (Miss. 1947). In *Brown v. Coley*, the Mississippi Supreme Court summarized the master's and servant's duties. The Court declared:

> If the servant is a mature and sensible man of some experience in the character of work there being done, the obligation to look after and to take care of himself as to all obvious or manifest dangers in the details of the work is upon the servant, and the duty of the master exists and is operative only as to non-obvious dangers. In regard to such a servant and in respect to obvious or manifest dangers arising in the details of the work, the master is liable only when he fails to furnish the usual and proper instrumentalities in proper repair which if used, and properly used, will to a reasonable extent obviate the danger. . . .

Brown, 152 So. at 63.

There is no question that Murphy Farm and Ranch provided Mr. Jackson with a tractor equipped with a safety switch. In his deposition, Mr. Jackson admitted that the only thing that made the tractor dangerous was that its battery was dead. He knew of the battery's condition as evidenced by the fact that he attached the battery to a charger. Mr. Jackson also admitted that, had he tried to start the tractor while sitting in the tractor's driver seat and engaged the clutch, the tractor would not have moved forward. He confessed that had he checked to see whether the tractor was in gear before trying to start it, he would not have been injured. Based upon these admissions, the Circuit Court correctly refused to find that Murphy Farm and Ranch was negligent in this matter. In fact, it can only be said that the tractor was not unreasonably dangerous. Because the tractor was in reasonably safe condition, Murphy Farm and Ranch was not negligent.

In his brief to this Court, Mr. Jackson cited *Odom v. Walker*, 11 So. 2d 452 (Miss. 1943) to support his position that the Circuit Court incorrectly granted summary judgment in this matter. However, Mr. Jackson both incorrectly relies upon and interprets the holding in *Odom*. Mr. Jackson incorrectly relies upon *Odom* because it is factually distinguishable from the matter now before this Court. Specifically, *Odom* dealt with a sudden emergency and directions given to the Plaintiff in the context of a quickly occurring emergency. Mr. Jackson incorrectly interprets *Odom* to essentially create a strict liability standard for the master/servant relationship. Mr. Jackson reads *Odom* to stand for the proposition that so long as an employee is relying upon the advice, assurances, and commands of the employer, the employee need not exercise common sense. *Odom* simply does not stand for this proposition. An employee is still charged with exercising reasonable care. Examining the manner and extent to which Mr. Jackson did not

exercise reasonable care, the Circuit Court also correctly ruled that Mr. Jackson caused his own injuries.

B. The Circuit Court Correctly Found That Mr. Jackson's Own Negligence Was The Proximate Cause of His Injuries

The Circuit Court correctly ruled that Mr. Jackson's own negligence was the proximate cause of his injuries. The Mississippi Supreme Court has long recognized that not ***all*** negligence leads to a finding of liability. In *Mississippi City Lines, Inc. v. Bullock,* 13 So. 2d 34 (Miss. 1943), the Supreme Court declared:

> Although one may be negligent, yet if another, acting independently and voluntarily, puts in motion another and intervening cause which efficiently thence leads in unbroken sequence to the injury, the latter is the proximate cause and the original negligence is relegated to the position of a remote and, therefore, a nonactionable cause. Negligence which merely furnishes the condition or occasion upon which injuries are received, but does not put in motion the agency by or through which the injuries are inflicted, is not the proximate cause thereof. ***The question is, did the facts constitute a succession of events so linked together as to make a natural whole, or was there some new and independent cause intervening between the alleged wrong and the injury?*** (Emphasis added).

Mississippi City Lines, 13 So. 2d at 36. This Court has affirmed this principle. *Hankins Lumber Company v. Moore,* 774 So. 2d 459 (Miss. Ct. App. 2000). The Mississippi Supreme Court has also affirmed this principle in recent years. *Mississippi Department of Transportation v. Johnson,* 873 So. 2d 108 (Miss. 2004). The question of proximate causation is generally a matter of law which should be left in the hands of the court. *Owens Corning v. R.J. Reynolds Tobacco Company,* 868 So. 2d 331, 341 (Miss. 2004); *Humble Oil & Refining Company v. Pittman,* 49 So. 2d 408, 319 – 320 (Miss. 1950).

In his deposition, Mr. Jackson admitted that he had operated tractors for approximately thirty-eight years before the complained of incident. He also admitted that he had used the tractor that injured him since 1979. Mr. Jackson knew that the tractor battery sometimes needed to be charged and that he usually started the tractor while seated in the driver's seat. He confessed that he knew that the tractor was equipped with a safety switch. Mr. Jackson acknowledged that he knew the tractor would start if the engine was turned on while it was in gear and that he incorrectly assumed that the tractor was in neutral when he tried to start it. He admitted that he would not have been injured had he checked to make sure that the tractor was out of gear before he tried to start it. His admissions lead to two conclusions: Mr. Jackson tried to start the tractor in a way which he knew was improper (standing on the ground) while making an incorrect assumption regarding whether the tractor was in gear. Had Mr. Jackson not done these things, he would not have been injured. His own choices and incorrect assumptions were the sole cause of his injuries. Presented with Mr. Jackson's admissions, the Circuit Court correctly ruled that Mr. Jackson's own negligence was the proximate cause of his injuries.

In *McGovern v. Scarborough,* 566 So. 2d 1225 (Miss. 1990), the Mississippi Supreme Court recognized that there existed a class of ordinary accidents which are properly imputed to the carelessness or the misfortune of the one injured. *Id.* at 1227 (emphasis added); *see also Wal-Mart v. Littleton*, 822 So. 2d 1056 (Miss. App. 2002). The matter now before this Court falls squarely into that category of cases. This Court should affirm the Circuit Court's order granting Murphy Farm and Ranch's motion for summary judgment.

In his brief to this Court, Mr. Jackson points to several facts and items of evidence which are not material to a full analysis of this matter. He goes to great lengths to convince this Court

that Murphy Farm and Ranch failed to provide proper instruction and supervision to him regarding the tractor and failed to comply with safe tractor operation standards. To bolster this argument, Mr. Jackson relies upon the expert opinion of Mr. Gary Huitink, P.E. Mr. Jackson maintains that Mr. Huitink's opinions are uncontradicted and alone establish a genuine issue of material fact sufficient to defeat summary judgment. However, even if Mr. Huitink's opinions were accepted in their entirety, the Circuit Court still reached the proper conclusion in this case. Mr. Jackson cannot ignore the admissions he made in his deposition.

Mr. Jackson's reading of *United Novelty Company v. Daniels,* 42 So. 2d 395 (Miss. 1949) misconstrues the true holding of that case. Mr. Jackson reads *United Novelty Company* as a case in which the Court's holding focused primarily upon the duties of the employer. However, as explained by the Mississippi Supreme Court in the subsequent case of *Billups Petroleum Company v. Entrekin,* 46 So. 2d 781, 784 (Miss. 1950), the gist of *United Novelty Company* was cause and effect (proximate cause). When read properly, *United Novelty Company* is entirely consistent with Mississippi's jurisprudence regarding proximate causation.

As pointed out in Murphy Farm and Ranch's argument to the Circuit Court, during his deposition, Mr. Jackson admitted that he had operated tractors for approximately thirty-eight years before the complained of incident. He also admitted that he had used the tractor that injured him since 1979. Mr. Jackson confessed that he knew that the tractor battery sometimes needed to be charged and that he usually started the tractor while seated in the driver's seat. He also confessed that he knew that the tractor was equipped with a safety switch. Mr. Jackson acknowledged that he knew the tractor would start if the engine was turned on while it was in gear and that he incorrectly assumed that the tractor was in neutral when he tried to start it. He admitted that he

would not have been injured had he checked to make sure that the tractor was out of gear before he tried to start it. These facts are dispositive of the case before this Court and make every other fact in this litigation immaterial.

As stated above, the master (employer) is as much entitled to expect that the servant (employee) will exercise reasonable care in the doing of a prescribed piece of work as is the servant (employee) entitled to expect that the master (employer) will use reasonable care to furnish him with reasonably proper facilities therefor. *Martin v. Beck,* 171 So. 14, 15 (Miss. 1936); *Newell Contracting Company v. Flynt,* 161 So. 743 (Miss. 1935). Restated, the master (employer) is not required to warn the servant (employee) to do something which the latter already knows to do. *Masonite Corporation v. Stevens,* 30 So. 2d 77, 80 (Miss. 1947). In *Brown v. Coley*, the Mississippi Supreme Court declared:

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Brown, 152 So. at 63.

Based upon the admissions he made during his deposition, there can be no question that Mr. Jackson knew both how to start the tractor that injured him and that the tractor had a problem with its battery. There is also no question that Mr. Jackson knew that he should not start the tractor while it was in gear. He undoubtedly knew that, if he started the tractor while it was in gear, the tractor would move. Under these circumstances, Murphy Farm and Ranch was not

required to say, "Mr. Jackson, make sure the tractor is out of gear before you try to start it." Mr. Jackson knew to do this. Whether Murphy Farm and Ranch gave Mr. Jackson instructions about this in the form of a safety manual, oral instructions, or other means is simply not material to this case. The Circuit Court recognized that these were the material facts in this matter and granted Murphy Farm and Ranch's motion for summary judgment. This Court should affirm the Circuit Court's decision.

CONCLUSION

For the reasons stated above, this Court should affirm the Circuit Court's order granting Murphy Farm and Ranch's motion for summary judgment. This Court should find that the Circuit Court correctly refused to find that Murphy Farm and Ranch was negligent in this matter and that Mr. Jackson's own negligence proximately caused his injuries.

Respectfully submitted,

MURPHY FARM AND RANCH, INC.

BY: _____
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CERTIFICATE OF SERVICE

I, Gerald L. Kucia, of counsel for Murphy Farm and Ranch, Inc. do hereby certify that I have this day served via United States mail a true and correct copy of the above and foregoing Brief of Appellee to:

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Honorable William E. Chapman, III
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THIS, the 14th day of November, 2007.

GERALD L. KUCIA

C84-109377/lrg