

**BEFORE THE COURT APPEALS
STATE OF MISSISSIPPI**

CASE NO. 2007-CA-00693

**GREENE COUNTY, MISSISSIPPI, JOHN
MARSHALL EUBANKS, TOMMY ROBERT
and MARION PIERCE**

**APPELLANTS/
CROSS APPLLEES**

VS.



CORPORATE MANAGEMENT, INC.

**APPELLEE
CROSS APPELLANTS**

Appeal from the Chancery Court of Greene County, Mississippi
Cause No. No. 2005-134-PW

BRIEF OF THE APPELLANTS/CROSS APPELLEES

Oral Argument Requested

Jerry L. Mills [MB# 
Edwin Lloyd Pittman [MB# 
Pyle, Mills, Dye, & Pittman
800 Avery Boulevard North, Ste. 101
Ridgeland, Mississippi 39157
Telephone: 601/957-2600
Facsimile: 601/957-7440

**BEFORE THE COURT APPEALS
STATE OF MISSISSIPPI**

CASE NO. 2007-CA-00693

**GREENE COUNTY, MISSISSIPPI, JOHN
MARSHALL EUBANKS, TOMMY ROBERT
and MARION PIERCE**

**APPELLANTS/
CROSS APPLLEES**

VS.

CORPORATE MANAGEMENT, INC.

**APPELLEE
CROSS APPELLANTS**

CERTIFICATE OF INTERESTED PERSONS

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

Appellant Parties

Greene County, Mississippi Board of Supervisors
Tommy Roberts
Marion Pierce
John Marshall Eubanks

Jerry L. Mills
Edwin Lloyd Pittman
Pyle, Mills, Dye & Pittman
800 Avery Boulevard North, Ste. 101
Ridgeland, Mississippi 39157

Edwin L. Pittman Jr.
206 South 28th Avenue
Hattiesburg, Mississippi 39401-7154

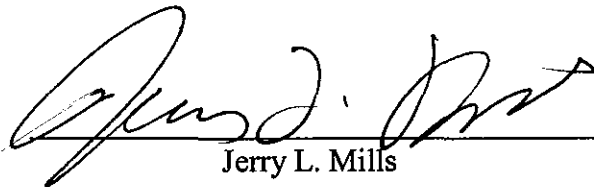
Appellee Parties:

Corporate Management, Inc.

Darren E. Gray
P. O. Box 115
Wiggins, Mississippi 39577

Larry Brown
Greene Rural Health Center
Rebecca Rylee
Safeco Surety
Town of Leakesville, MS
RLI Surety
I. D. Brown
Dorothy Woods

Respectfully submitted this the 5th day of December, 2007.



Jerry L. Mills

TABLE OF CONTENTS

	Page(s)
I. INTRODUCTION	1
II. STATEMENT OF ISSUES	1
III. STATEMENT OF THE CASE	3
IV. STATEMENT OF THE FACTS	6
V. SUMMARY OF ARGUMENT	24
VI. ARGUMENT	24
A. WERE THE AGREEMENTS PROPERLY TERMINATED?	24
B. ARE THE AGREEMENTS BINDING UPON THE BOARD OF SUPERVISORS?	26
1. <i>Neither Contract was Properly Authorized By the Board of Supervisors</i>	26
2. <i>Approval of the Contract by the Board of Supervisors</i>	28
3. <i>Authority of the Board of Trustees to Bind the Supervisors to Offer for Sale or Lease</i>	30
C. THE TRIAL COURT ERRED IN FINDING THAT THE ATTEMPT TO TERMINATE THE AGREEMENTS WAS A BREACH OF THE IMPLIED COVENANT OF FAIR DEALING	32
D. THE TRIAL COURT ERRED IN REMOVING I.D. BROWN FROM THE BOARD OF TRUSTEES	34
1. <i>THE PLEADINGS DID NOT ALLEGE AN ACTION FOR THE REMOVAL FROM OFFICE OF I.D. BROWN</i>	34
2. <i>AN ACTION IN THE NATURE OF QUO WARRANTO IS THE PROPER PROCEEDING TO TEST RIGHT TO OFFICE</i>	34
3. <i>I. D. BROWN WAS AN INDISPENSABLE PARTY TO ANY ACTION TO REMOVE HIM FROM OFFICE</i>	34

4. <i>I. D. BROWN WAS IMPROPERLY REMOVED FROM OFFICE IN A COLLATERAL ATTACK ON HIS RIGHT TO OFFICE</i>	35
5. <i>APPELLEE LACKED STANDING TO CHALLENGE I.D. BROWN'S RIGHT TO OFFICE.....</i>	36
6. <i>ACTIONS FOR REMOVAL FROM OFFICE ARE OUTSIDE THE JURISDICTION OF THIS COURT.....</i>	36
7. <i>THE TRIAL OF RIGHT TO OFFICE MUST BE MADE IN THE NAME OF THE STATE ON RELATION OF THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY OR BY A PRIVATE CLAIMANT TO OFFICE, ON HIS ON RELATION IN THE NAME OF THE STATE</i>	37
8. <i>DURESS.....</i>	38
9. <i>HIRING LARRY BROWN AS AND EMPLOYEE ...</i>	39
E. <i>THE DETERMINATION THAT VIOLATION OF THE BID LAWS WAS NOT ESTABLISHED WAS ERROR IN VIEW OF THE MATTERS PRESENTED IN THE DEFENDANTS' POST TRIAL MOTION.....</i>	41
F. <i>THE CONTRACT WAS ILLEGAL</i>	42
VII. <i>CONCLUSION</i>	44
<i>CERTIFICATE OF SERVICE</i>	45
APPENDIX A	

TABLE OF AUTHORITIES

	Page(s)
 CASES	
<i>Accord Rich & Whillock v. Ashton Dev.</i> , 157 Cal.App.3d 1154, 204 Cal.Rptr. 86, 89 (1984)	38
<i>Adams v. Bark</i> , 75 Miss. 701, 23 So. 395.....	37
<i>Barry K. Cockrell, Esq.</i> 2003 WL 21003288, 3.....	26
<i>Braidfoot v. William Carey College</i> , 793 So.2d 642, 651 (Miss.Ct.App.2000)	33
<i>Burt v. Calhoun</i> 231 So.2d 496, 499 (Miss. 1970)	29
<i>Butler v. Board of Supervisors for Hinds County</i> , 659 So.2d 578, 579 (Miss.1995)	29
<i>Community Extended Care Centers, Inc. v. Board of Sup'rs for Humphreys County</i> 756 So.2d 798, 802 (Miss.App.,1999).....	29
<i>Duckworth v. Allis-Chalmers Manufacturing Co.</i> , 247 Miss. 198, 150 So.2d 163 (1963).....	38
<i>Estate of Stevens v. Wetzel</i> 762 So 2d 293 (Miss. 2000)	37
<i>Ex parte Bolman</i> , (Bollman) 4 Cranch, 75 (2 L.Ed. 554).....	35
<i>Fowler v. Bebee</i> , 9 Mass., 231	35
<i>Golding v. Salter</i> 234 Miss. 567, 107 So.2d 348, (Miss. 1958).....	40
<i>Harrison County v. City of Gulfport</i> 557 So.2d 780, 791 (Miss., 1990)	41
<i>Jackson Equipment & Service Co. v. Dunlop</i> , 172 Miss. 752, 60 So. 734 (1935).....	30
<i>Jackson Redevelopment Authority v. King, Inc.</i> , 364 So.2d 1104, 1109 (Miss., 1978)	35
<i>Justices of Jefferson v. Clark</i> , 1 Monroe, 86.....	35

	Page(s)
<i>Kelso v. McGowan</i> 604 So.2d 726, 732 (Miss.,1992).....	38
<i>Lacey v. Noblin</i> 238 Miss. 329, 333, 118 So.2d 336, 338 (Miss.1960).....	37
<i>Lee County v. James</i> , 178 Miss. 554, 174 So. 76 (1937).....	30
<i>Lippincott v. Mississippi Bureau Of Narcotics</i> 856 So.2d 465, 468 (Miss.App.,2003)	32
<i>Mahon v. City of Columbus</i> 1880 WL 6906, 4 (Miss.) (Miss. 1880)	43
<i>McKein v. Somers</i> , 2 Penn., 269	35
<i>Moore v. Caldwell, Freem. Ch.</i> 222.....	36
<i>Nichols v. Patterson</i> , 678 So.2d 673, 677 (Miss.1996)	29
<i>Pearl Realty Co. v. State Highway Comm'n</i> , 170 Miss. 103, 154 So. 292 (1934).....	30
<i>People v. Collins</i> , 7 Johns., 549	35
<i>Rosetto v. City of Bay St. Louis</i> 52 So. 785, 785 (Miss. 1910)	35
<i>State ex rel. Holmes v. Griffin</i> 667 So.2d 1319, 1323 (Miss.,1995).....	36, 38
<i>Smith v. Board of Supervisors of Tallahatchie County</i> , 124 Miss. 36, 41, 86 So. 707, 709 (1921).....	29
<i>Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Serv. Co.</i> , 584 P.2d 15 (Alaska 1978);	38
<i>Town of Sumner v. Henderson</i> 76 So. 829, 829 (Miss. 1917)	36, 37
<i>Upchurch v. City of Oxford</i> 17 So.2d 204, 205 (Miss. 1944).....	35
<i>Yates v. Summers</i> 170 So. 827, *829 -830 (Miss. 1936)	37
 STATUTES	
Miss.Code 1942, Secs. 1120-1145.....	37

	Page(s)
Mississippi Code of 1942 Section 4045, Vol. 3.....	35
Miss. Code Ann. § 25-4-105.....	40
Miss. Code Ann. § 41-13-10.....	6, 7, 33
Miss. Code Ann. § 41-13-15.....	6, 10, 27, 30, 32
Miss. Code Ann. § 41-13-29.....	6, 13
Miss. Code Ann. §41-13-35(g).....	26, 33
Miss. Code Ann. Section 41-13-35(5)(g)	25
Miss. Code Ann. § 41-13-47.....	12
Mississippi Code Title 41, Chapter 13.....	6
Mississippi Constitution Article 4 Sec. 109 of 1890	40
Rule 65, MRCivP	5
Rule 8, MRCivP	38
Rule 81, MRCivP.....	34
Mississippi Torts Claim Act. (§11-46-1 et seq.).....	33
Mississippi Torts Claim Act. (§11-46-11).....	33
 <i>OTHER AUTHORITIES</i>	
7 Bacon Ab., 283	35
Dill. On Mun. Corp., sect. 61.....	43
2 Kent's Com., 330	35
McQuillan's MUNICORP § 12.92.	35
Pomeroy's Eq. Jur. vol. 5, § 333, §334	36

13 Williston, Contracts § 1617 at 704 (1970).....	38
---	----

I. INTRODUCTION

This case involves significant issues of public interest. The record clearly indicates a course of self dealing inimical to the public interest and contrary to the laws of the State of Mississippi.

II. STATEMENT OF ISSUES

After the conclusion of the trial and hearing of post trial motions the lower court entered a Second Amended Final Judgment. The Judgement incorporated the Court's opinion of December 11, 2006. The lower Court determined:

- That the Nursing Home Agreement and the Hospital Agreement (the "Agreements") are valid and enforceable contracts.
- The Board of Trustees had the authority to enter both agreements for the operation and management of the GRHC.
- Both agreements are to be read together. (CP-1010, RE -82)
- The agreements are not lease or sales agreements.
- The agreements govern the operation and maintenance of the Nursing Home and the Hospital.
- Paragraph 25 of the Hospital Agreement does not obligate Greene County to lease or sell the facilities. However, it does obligate Greene County and GRHC to offer the Nursing Home and Hospital for sale or long-term lease on or before October 30, 2007. The offer for sale or lease shall follow the requirements of Mississippi Code Annotated Section 41-13-15.
- Greene County or GRHC shall not be required to sell or lease the facility; such decision rests solely within the discretion of Greene County. The offer to sell or lease shall not be an exclusive right of CMI, but shall be open to the public and sold or leased to the highest and best bidder, consistent with the statutory requirements.
- If Greene County and GRHC do not complete the sale or long-term lease of the Nursing Home and Hospital on or before December 31, 2007, then Greene County and GRHC shall be required to enter into a management contract with CMI, or a company designated by CMI for both facilities.¹
- The term of the Nursing Home Agreement and Hospital Agreement shall continue through December 31, 2007. (CP -1011 RE-83)
- The defendants are enjoined from suspending the Agreements until December 31, 2007.

¹ The required management agreement is to become effective on January 1, 2008 and continue for a period of not less than 5 years. The compensation to CMI is to be at a rate of 15% of the gross revenue of both facilities during the term of the management agreement. (CP 1011, Re-83)

- That the Board of Supervisors reinstate Larry Brown to his position as Trustee and that he be allowed to serve the remainder of his term. The Trustees shall immediately remove I. D. Brown from the GRHC Board.

Despite the finding that the agreements were valid and enforceable contracts, the lower court struck certain provisions of the agreement and modified others.

Following the rendering of the memorandum opinion by the lower court the Defendants filed a timely motion to alter or amend or in the alternative for a new trial. This motion raised two new issues. Following the close of the trial, the former hospital administrator came forward and provided information which was previously unavailable to Defendants. First he provided information that at least one of the attorney's representing CMI had engaged in a secret course of taping of telephone conversations with at least one of the defendants. Any of this type of tape should have been produced pursuant to specific discovery requests. Secondly, the former hospital administrator provided a sworn statement regarding the course of self-dealing by CMI. More specifically he described a system whereby CMI would make purchases from its own affiliated companies. He went on to describe the instructions he received to circumvent and violate the state's purchasing laws. For the first time the Defendants learned that shortly after his testimony, Larry Brown was hired as a full time employee of the Hospital. This occurred at a time when CMI was completely in control of hiring and firing.

The motion for new trial requested that the Special Chancellor reverse his decision on the enforceability of the agreements, the removal of I. D. Brown from the Board of Trustees and the issue of awarding attorney's fees. The only relief granted was

the reversal of the award of attorney's fees. ~~Though~~ the Second Final Decree denied CMI's claim for attorneys' fees but found as follows:

The Court concludes that Greene County's and GRHC's attempt to terminate the Agreements twice in the first year were without justification and was a material breach of the Agreements. Further, the actions of Greene County and GRHC frustrated the purposes of the agreements and necessitated the commencement of this litigation. Furthermore, the Court finds that Greene County, through its Supervisors, and GRHC breached the implied covenant of good faith and fair dealing that is contained in all Mississippi contracts.

The Appellant respectfully urges that the lower Court erred in finding and ordering the foregoing.² As result of the lower court's order, Appellants raise the following issues.

1. May the management agreements be terminated by the Board of Trustees prior to the expiration of the contractual terms?
2. Are the Agreements binding upon the Board of Supervisors?
3. In view of the plain language of Section 41-13-35 can the termination of the agreements be deemed in breach of the implied covenant of fair dealing?
4. Whether the trial court erred in finding that the termination of the agreements be deemed in breach of the implied covenant of fair dealing?
5. Did the trial court err in removing I. D. Brown from the Board of Trustees?
6. Whether the trial court erred in denying the full relief sought in the motion for a new trial. More specifically as relates to the illegal taping, the issue of compliance with the bid laws, and the hiring of Larry Brown.

III. STATEMENT OF THE CASE

On November 1, 2005, CMI filed its complaint and a Motion for Hearing on Preliminary Injunction. In the complaint, CMI asked the Court to:

² The Second Amended Final Judgement goes on to provide for operation of GRHC in the interim.

- a. Grant a temporary restraining order restraining Greene Rural [Health Center] from suspending or terminating the Management Contracts with CMI, and set aside the Resolution and Order of termination of October 17, 2005 and affirm the Order of October 31, 2005, reinstating the CMI contracts and direct the trustees to follow the law and abide by the management contracts.
- b. Enjoin Greene Rural [Health Center], ... , Marshall [Eubanks], Tommy [Roberts], and James [Meadows], Marion [Pierce] ... from interfering with or obstructing CMI from complying with its obligations under the Management Contracts and will enjoin said defendants to comply with said contracts and remain off of the facilities.
- c. Made said temporary injunction a permanent injunction.
- d. Grant a money judgment against Greene Rural [Health Center], ... , Marshall [Eubanks], Tommy [Roberts], and James [Meadows], Marion [Pierce] .. "" for wrongfully breached (sic) or causing a breach of said management contracts, including such damages, attorney fees and cost as would be required under the terms and conditions of said Management Contracts and such other damages as the Court believes to be just and reasonable for the independent torts perpetrated by the individuals named above.
- e. Grant a judgment in the sum as maybe determined from the evidence in this cause, should this Court find said Management Contracts to have been wrongfully breached and broken.
- f. Grant a judgment against Greene County, Mississippi, on the grounds that Green Rural Health Center is the agent for and the delegated authority that acts for and on behalf of Greene County.
- g. Grant such other relief, either special and general, as required in the event CMI has prayed for wrong or insufficient relief.

Neither the original complaint nor any amendment sought the removal of I. D. Brown from the Board of Trustees, nor the reinstatement of Larry Brown.

By Order dated March 7, 2006, each of the Chancellors of the Sixteenth Chancery District recused themselves from the consideration of this action. By Order dated March

17, 2006, Chief Justice James W. Smith, Jr., of the Mississippi Supreme Court, appointed Judge T. Kenneth Griffis, Jr. to serve as Special Chancellor.

On March 20, 2006, a hearing was held on CMI's Motion for Temporary Restraining Order. The parties agreed to the entry of an Agreed Order. The Agreed Order held the Motion for Temporary Restraining Order in abeyance until the matter could be heard on the Preliminary Injunction.³ The Motion for Preliminary Injunction was set for March 29, 2006. On March 29 and 30, 2006, a hearing was held on CMI's Motion for Preliminary Injunction. Thereafter, on April 27, 2006, the Court entered an Order Granting Preliminary Injunction. The Court determined that CMI had met the prerequisites of MRCP 65 and that a preliminary injunction should be issued.

A final hearing on the merits was held on July 19 and 20, 2006. On December 18, 2006 the lower Court entered its opinion in this cause. A final judgement, the Second Amended Final Judgment was entered on April 20, 2007. (CP 1010). The Appellants timely filed a motion for reconsideration on February 16, 2007. (CP 860). This motion sought relief based not only on errors alleged in the Special Chancellor's original findings, but also on newly discovered material facts. The motion, support by affidavit alleged:

- A course of illegal taping
- That Larry Brown, the reinstated trustee, had been hired by CMI's employee to work for the hospital

³ Until such time, GRHC and Greene County agreed to not take any action to suspend or terminate the Nursing Home and Hospital Agreements. In addition, GRHC and Greene County agreed to not interfere with or obstruct CMI from complying with its obligations under the agreements.

- That CMI had engaged in a deliberate course of voiding the public bid laws so that their affiliated companies sold supplies and services to the hospital. CMI engaged in actively concealing the failure to abide by public purchase laws.

As a result of this motion, the lower court modified the judgment to eliminate the award of attorneys' fees to CMI. No other relief was granted.

IV. STATEMENT OF THE FACTS

Greene County Rural Health Center is a community hospital as that term is defined by §41-13-10 of the Mississippi Code of 1972.⁴ It operates under the provisions of Title 41, Chapter 13 of the Mississippi Code. That title sets forth the manner in which community hospitals will be owned,⁵ governed,⁶ managed, leased, sold,⁷ operated and financed.

⁴ Miss. Code Ann. § 41-13-10

(c) "Community hospital" shall mean any hospital, nursing home and/or related health facilities or programs, including without limitation, ambulatory surgical facilities, intermediate care facilities, after-hours clinics, home health agencies and rehabilitation facilities, established and acquired by boards of trustees or by one or more owners which is governed, operated and maintained by a board of trustees.

⁵ Miss. Code Ann. § 41-13-10 defines owner as follows:

(d) "Owner" shall mean any board of supervisors of any county having an ownership interest in any community hospital or leased facility on behalf of the county or on behalf of any supervisors district, judicial district or election district of the county and shall also mean any governing council or board of any municipality having an ownership interest in any community hospital or leased facility.

⁶ Miss. Code Ann. § 41-13-10

(b) "Board of trustees" shall mean the board appointed pursuant to Section 41-13 -29, to operate a community hospital.

⁷ Miss. Code Ann. § 41-13-15

The case involves two agreements related to the operation, management and sale or lease of the Greene County Rural Health Center. The circumstances giving rise to the dispute are described in the opinion of the Special Chancellor.⁸

Following the conclusion of the trial the Special Chancellor rendered an opinion setting out the following:

At the Supervisors' May 27, 2004 meeting, GRHC Trustee Tommy Roberts appeared at the Supervisors meeting. No other Trustees appeared. The Supervisors minutes reflect that a "discussion was conducted regarding financial reports of nursing home not yet turned over to the Board of Supervisors." Supervisor Marion Hill made a motion "to entertain building a hospital in Greene County following the law at no cost to the tax payers of Greene County." The motion passed unanimously.

On June 24, 2004, the Gary L. Dearman, the President of the Board of Supervisors, executed the Notice of Public Hearing. The Notice provided that "a public hearing will be held on the possibility of the lease, lease with option to purchase, or sale of the Greene Rural Health Center located in Leakesville." The hearing date was set for August 12, 2004. The Notice was published in the Greene County Herald on July 22, 29 and August 5, 2004.

At the Supervisors' August 12, 2004 meeting, the minutes reflect that:

A public hearing was held pursuant to Mississippi Code of 1972 41-13-10 Re: The possibility of a lease, lease with option to purchase, or sale of the Greene County Rural Health Center. The purpose of the hearing being to provide input from the citizens of Greene County regarding the possibilities of such lease or sale of the facility with the stipulation that the lessee or purchaser shall provide for the citizens of Greene County certain hospital services including but not limited to, a 24-hour emergency room

⁸ The following is taken directly from the opinion of the Special Chancellor. Normal single spacing is modified given the length of the quoted language for ease of reading.

care. A copy of the list of people present at this meeting is made a part of these minutes.

On August 23, 2004, Dearman executed a Legal Notice wherein the Board of Supervisors requested "proposals for the purchase or lease of Greene County Rural Health Center by health care organizations experienced in the operation of general acute care hospitals and nursing homes." The notice required the submission of proposals by October 4, 2004.

The "Request for Proposals to Lease or Purchase Greene County Rural Health Center" provided that the Board of Supervisors sought "to solicit proposals from health care organizations ... experienced in the operation of general acute care and/or critical access hospitals and nursing homes." The stated objective was "to obtain, minimally, a Critical Access Hospital (CAR) with 24-hour Emergency Care." Greene County asked for proposals in the following form:

1. Total Purchase of property known as Green Rural Health Center located on Jackson Avenue in Leakesville, MS for the purpose of a Critical Access Hospital (CAR) operation with 24-hour Emergency Care and operation of the 60 bed Nursing Home. The final contract would be caveated to invalidate the sale if the Hospital and Emergency Care operation is not functional within a mutually agreed reasonable time.
2. Total Lease of the Green Rural Health Center facility for a period of not less than 10 years, with negotiable 5-year renewals. This option also requires implementation of the Hospital and 24-hour Emergency Care operation. Similarly, the final contract would be caveated to invalidate the sale if 24-hour Emergency Care and Hospital operation is not functional within a mutually agreed reasonable time.
3. Lease with option to purchase. This option involved a lease arrangement for a minimum of ten years, with further provision that the lease may be converted to a purchase after a minimum of three years, and any subsequent time thereafter during the 10-year lease. Similar to the other two options above, the contract would be

invalidated if Emergency Care and Hospital operation is not functional within a reasonable mutually agreed time.

In a document dated October 4, 2004, CMI submitted its Response to Request for Proposal to the Greene County Board of Supervisors. Thereafter, CMI had several discussions and negotiations with representatives of Greene County.

At the Supervisors' October 6, 2004 meeting, the minutes reflect that "the Board received the request for proposals for the lease, purchase or lease with option to purchase of Greene Rural Health Center at this time. One proposal was received from Corporate Management, Wiggins, Ms." The board unanimously agreed "to take the matter of Greene Rural Health Center under advisement." The minutes also reflect that the board unanimously authorized its attorney to "be able to get any necessary information from Rebecca Rylee, Administrator of [GRHC], that may be needed to move the negotiation process between County and Corporate Management, Inc. along more quickly."

At the Supervisors' October 22, 2004 meeting, the minutes reflect that Supervisor Marion Hill made the following motion:

To notify Greene Rural Health Nursing Home Board Members that their term of appointments expire effective 10/31/04 with the exception of Mr. Tommy Roberts of District Five, which was appointed to serve under the direction of Mr. Marion Pierce for a term of four years which will expire upon same date as Mr. Pierce's Board of Supervisors term. The board further ordered that a copy of the notices be forwarded to Mrs. Rebecca Rylee, Greene Rural Nursing Home Administrator, with notice that if any important matters of urgency should arise during the period of absence of a nursing home board that Greene County Board of Supervisors office be contacted immediately.

Supervisors Dearman, Hill and Pierce were present and voted in favor of the motion. Supervisors Holder and Lambert were absent. Supervisor Hill also made a motion that "the following additional information be requested from [GRHC] on behalf of Greene County Board of Supervisors

and letter of request be sent immediately to the Greene Rural Health Nursing Home Board, Administrator, etc." This motion passed on the same vote of the Supervisors.

At the Supervisors' October 28, 2004 meeting, the minutes reflect that the board-employed attorney Paul D. Walley, of Pierce and Walley, PLLC, "to evaluate the options of the Nursing Home/Hospital sale or lease."

At the Supervisors' November 1, 2004 meeting, the minutes reflect that a motion was made "to appoint Billy Gordon to Greene Rural Nursing Home Board representing District One, Tommy Roberts representing District Five and Doyle James representing District Four." The motion passed unanimously.

By letter dated November 5, 2004, attorney Paul D. Walley, of Pierce and Walley, PLLC, wrote a letter to the Greene County Board of Supervisors. The letter stated:

After a preliminary review of the Request for Proposals ("RFP") that went out on August 23, 2004, the proposal from Corporate Management, Inc. ("CMI") received in response to the RFP and the documentation and findings of the board and its consultants, this firm is of the opinion that the requirements of §41-13-15 of the Mississippi Code of 1972 have been substantially complied with to this point. In fact, we believe the process up to this point, has been administered in a most competent fashion and has placed the board in a position to proceed as it deems fit. In particular, the board is left at a crossroad from which it should direct this firm as to which direction to pursue.

The letter then presented two alternatives. The Board of Supervisors could "proceed in negotiations with the only company that has submitted a proposal," which was CMI, or "reject all proposals and begin a new RFP process." Mr. Walley sought direction of how the Board of Supervisors wanted to proceed.

At the Supervisors' November 15, 2004 meeting, the minutes reflect that a motion was made "to appoint James Meadows as District

Three Greene Rural Health Nursing Home Board Member for remainder of term." The motion passed unanimously.


At the Supervisors' November 23, 2004 meeting, the minutes reflect that "Corporate Management, Inc., Wiggins, MS made a presentation to the Board." Also, the board considered and unanimously approved two motions:

To appoint James Meadows as Greene County District Three Board of Trustee member for Greene Rural Health Center to serve at the will and pleasure of this Board for the remainder of the present Board of Supervisors Term.

To appoint Dorothy Woods as Greene County District Two Board of Trustee member for Greene Rural Health Center to serve at the will and pleasure of this Board for the remainder of the present Board of Supervisors Term.

The minutes also contain the following statement by the board:

All members of this Board agree that they want an emergency room within a three month period and a critical care hospital within one year time and so long as it does not cost this County anything. The Board agrees that Randy Pierce, Paul Walley, Fred Dobbins, and Cary Williams are to research this matter in depth and report back to the Board on December 6, 2004.



At the Supervisors' November 30, 2004 meeting, the minutes reflect that a motion was made "to appoint Marshall Eubanks of District Four to serve as the Board of Trustee for Greene Rural Health Center for the remainder of the terms that Mr. Lambert will serve as District Four Board of Supervisor." The motion passed unanimously.

At the Supervisors' December 6, 2004 meeting, the minutes reflect that Tommy Roberts gave an update on Greene Rural Health Center.

At the Supervisors' December 9, 2004 meeting, the minutes reflect that Supervisor Dearman made a motion "to recommend Board of Trustees to move forward for a period of at least one year contract with a consultant to assist in aiming UPL monies toward building an emergency room/hospital." The motion passed unanimously.

At the Supervisors' January 26, 2005 meeting, the minutes reflect that Supervisor Pierce made a motion "to accept resignation of Tommy Roberts from Greene Rural Nursing Center Board and to replace with Larry Brown to serve at the will and pleasure of the Board." The motion passed with Supervisors Dearman, Hill and Pierce voting in favor and Supervisors Holder and Lambert against.

At the Supervisors' February 7, 2005 meeting, the minutes reflect that Supervisor Pierce made a motion "to rescind any and all previous Board orders of appointments to the Greene Rural Nursing Home Board." The motion passed with Supervisors Dearman, Hill and Pierce voting in favor and Supervisors Holder and Lambert against. Supervisor Dearman then made the motion "to appoint the Greene Rural Nursing Home Board of Trustees with staggering terms as required by statute as follows:

- District One - Billy Gordon - One-Year Term
- District Two - Dorothy Woods - Two-Year Term
- District Three - James Meadows - Three-Year Term
- District Four - Marshall Eubanks - Four-Year Term
- District Five - Larry Brown - Five Year Term."

The motion passed with Supervisors Dearman, Hill and Pierce voting in favor and Supervisors Holder and Lambert against. The minutes also include the following statement:

Mr. Hill also stated that if this Board is expected to operate by Statute as to the appointments of these members then these members are to operate in accordance with the statutes such as 41-13-47 regarding submitting budget to owner, etc ... Mr. Hill also stated that the matter of the facility stating it is self insured should be reviewed by the Nursing Home Board and possibly a change should be made regarding the matter.

At the Supervisors' February 18, 2005 meeting, the minutes reflect that Ms. Rylee appeared and the board "also discussed with Mrs. Rylee the importance of following established By Laws of Greene Rural Health

Center⁹ and the need for liability insurance coverage, and the importance of following the state purchasing laws when making purchases."

At the Supervisors' March 14, 2005 meeting, the minutes reflect that motions were made to accept the resignation of Billy Gordon and appoint Richard W. Neil of District One as a replacement. The motions passed unanimously.

At the Supervisors' March 24, 2005 meeting, the minutes reflect that the board addressed "various issues related to the operation of GRHC with Mrs. Rylee."

At the Supervisors' March 28, 2005 meeting, the minutes reflect that the following motions were made separately and passed unanimously:

By Supervisor Pierce: To accept the resignation of Larry Brown from the Greene Rural Nursing Home Board.

By Supervisor Pierce: To allow Mr. Tommy Roberts to resume his duties as Representative for Greene County District Five on the Greene Rural Health Center Board.

By Supervisor Dearman: To change Nursing Home Board from a five member board to a seven member board in accordance with 41-13-29.

By Supervisor Dearman: To appoint Lloyd Edwards and Larry Brown as Trustees for Greene Rural Health Center to serve at large.

The GRHC Board of Trustees held a meeting on March 30, 2005. The minutes reflect that all members were present except James Meadows. Also in attendance were Supervisors Hill and Pierce, among others. The minutes reflect that the following actions occurred:

Mr. Morris Hill, President Board of Supervisors, then asked the chairman for the floor. He informed the board that the

⁹ The Court is concerned by this reference to the By-laws. No party to this litigation offered the By-laws into evidence. No witness testified about the By-laws, whether such By-laws existed, or whether the Supervisors or the Trustees ever attempted to follow the By-laws. No party argued or discussed the significance of the By-laws in the resolution of this controversy. Accordingly, the By-laws, if they indeed exist, were not available for the Court's consideration.

Board of Supervisors were still waiting for a budget from Thames and Associates and they were also waiting on a full fiscal year budget.

Motion was then made by Marshall Eubanks to adjourn meeting. Motion failed for lack of second.

Motion was made by Ricky Neel to hire local attorney Chris Dobbins, a second was made by Dorothy Woods, motion carried with a vote of 4 for and 2 against.

Verbal Proposal from Chris Dobbins was made for legal services. . . . Mr. Dobbins also informed the board that if a conflict arose between the Trustees and the Supervisors that he would have to refuse the Trustees. A motion was made to accept the verbal proposal by Dorothy Woods seconded by Ricky Neel, motion carried with a vote of 4 for and 2 against.

Consultant contract brought up for discussion. A motion was made by Dorothy Woods for CMI to make a proposal for Consultant Agreement a second was made by Ricky Neel, motion was carried with a vote of 4 for and 2 against.

Presentation given by Mr. Cain. Mr. Cain informed the board that the contract was given out several months ago and it spells out the terms for the agreement for consultation services between Greene Rural Health Center and CMI.

Motion was made by Dorothy Woods to hire CMI for Consulting Services for facility, a second was made by Larry Brown. Mr. Roberts stated that the proposal received earlier from Mr. Cain was not for consultant management, discussion held.

A motion was again made by Ricky Neel to hire CMI to take over consulting effective April 1, 2005, seconded by Dorothy Woods, motion carried with a 4 for and 2 against.

Contract with CMI signed under protest by Tommy Roberts, Chairman, Green Rural Health Center Board of Trustees, also signing was Mr. Ted Cain, CMI. Copies were also signed for Greene Rural Health Center Board of Trustees, Greene County Board of Supervisors and CMI.

The "Operations/Consultant Agreement," dated April 1, 2005, was executed by Ted Cain on behalf of CMI, Tommy Roberts on behalf of the Board of Trustees of GRHC, and Morris Hill on behalf of the Greene County Board of Supervisors. The purpose of the agreement was for "CMI to provide designated management services in relation to Owner [Board of Supervisors] and Agent's [Board of Trustees] operation of Facility." The Facility referred to the licensed nursing home. Hereinafter, this agreement will be referred to as the "Nursing Home Agreement."

The GRHC Board of Trustees next held a meeting on April 18, 2005. The minutes reflect that all members were present except James Meadows. Also in attendance were Supervisor Hill and Supervisor Pierce, among others. The minutes reflect, among other matters, that Mr. Eubanks asked about the budget for the Board of Supervisors and "Mr. Cain informed the board that CMI would be able to prepare a budget and submit to the Board of Supervisors before the next meeting."

At the GRHC Board of Trustees' meeting on June 28, 2005, the minutes reflect that all members were present except James Meadows. Also in attendance were Supervisors Hill, Lambert and Dearman, among others. The minutes reflect that the following actions occurred:

Tommy Roberts turned to Starann Lamier, and asked that she take the floor as CMI had called the special meeting of the trustees. At this time Starann Lamier presented each person present for the meeting a folder which contained an overview of the 1st 90 days that CMI has managed the GRHC. After completion of the overview of the 1st 90 days, a contract was presented to the trustees which would allow CMI to begin the process of re-opening the CAR [Critical Access Hospital] for Greene County. Ted Cain explained to the trustees that the timeframe for approval of the contract was so critical due to the Critical Access Hospital designation being eliminated effective January 1, 2006. Mr. Lambert with the Board of Supervisors asked to take the contract under advisement and to study it.

Again, Ted Cain explained the seriousness of the deadline. Mr. Hill with the Board of Supervisors asked Ted Cain to explain the difference between a CAR and an Acute

Hospital. Mr. Cain did so as follows: "A Critical Access Hospital is under a cost reimbursement system; which allows a small rural community to obtain emergency services that it would not normally be able to afford to do. In an Acute Hospital designation the facility is reimbursed by DRG' s (diagnostic related group); which reimburses at a fixed rate regardless of the cost to provide and/or perform the services to the patient. In a rural community such as Greene [County], the Hospital would not be able to afford to remain open under the DRG system. So without the CAR designation CMI and Greene County will not be able to re-open the hospital". Again, Mr. Lambert asked to be able to study the contract as proposed. Mr. Cain asked for a meeting to be scheduled for Thursday, June 30, 2005, at 5:00 p.m. due to the limited time left in order to meet the deadline of December 31, 2005. Mr. Cain went on to explain that not only did an application have to be submitted to the State, but all construction had to be completed as well as a survey by Mississippi State Department Health. So with that in mind, the meeting to be held on Thursday would allow Mr. Lambert and all parties to study it, but would allow the contract to be approved or denied in a timeframe that was already extremely tight in meeting the deadline. In addition to the contract, CMI is asking the trustees to ask the Board of Supervisors to approve a loan being obtained in the amount of \$700,000 if the contract is approved.

Ricky Neel made a motion with a second being made by Larry Brown for request to the Board of Supervisors for approval of \$700,000 loan for the CAR project. All trustees were in favor but Marshall Eubanks who opposed the motion.

Mr. Cain mentioned that the property right behind GRHC is for sale. He recommended that if the Board was interested in purchasing the property that this should be brought to the meeting on Thursday as well. All trustees except Marshall Eubanks agreed that Mr. Roberts would look into the cost of the land to present to the meeting on Thursday.

At the Supervisors' June 29, 2005 meeting, the minutes reflect that the following action was taken:

Mr. Tommy Roberts addressed the Board on behalf of Greene Rural Health Board. An Operations and Consultant Agreement was presented to each of the board members.

Some concerns the board expressed regarding the agreement was as follows:

1. Escape clause needed to be added.
2. Monthly reporting issue.
3. Fair Market Value if sold.
4. Five year management instead of fifteen year.

Order of the Board

Motion by Supervisor Dearman: After a lengthy discussion, that when the above corrections are made to the Contract, the Contract be accepted.

An unsigned copy of the Hospital Agreement was attached to the minutes.

¹⁰The motion passed with Supervisors Dearman, Hill and Pierce voting in favor and Supervisors Holder and Lambert against. Supervisor Dearman then made a motion "to allow the Nursing Home to borrow money for the new construction of a hospital for Greene County." The motion passed with the same vote.

At the GRHC Board of Trustees meeting on June 30, 2005, the minutes reflect that all members were present except James Meadows. Also in attendance was Supervisor Hill, among others. The minutes reflect that the following actions occurred:

Tommy Roberts asked Starann Lamier if a revised contract was ready to be presented to the trustees. A revised copy was provided for all individuals present at the meeting. Tommy Roberts gave time to all present to review the contract as proposed. After approximately fifteen (15) minutes elapsed, Tommy Roberts asked if all present had

¹⁰ **Note by Appellant:** The unsigned copy of the agreement is not the same as the signed copy sued on in this matter. The changes directed by the board of supervisors have not been made in the unsigned copy. The copy sued on does have some changes, but there is no record that these changes were ever approved by the Board of Supervisors as a body.

ample time for review. Everyone present indicated that they had. Tommy Roberts asked Chris Dobbins about the revision to the contract regarding the five (5) year renewal. Tommy Roberts indicated that he believed that the contract only allowed for renewal at Ted Cain and/or CMI's discretion, and he felt that the trustees should have discretion as to whether or not the contract was renewed at the end of each of the five (5) year's. Ted Cain explained that the contract was revised as per what CMI was instructed to do. Tommy Roberts said he felt that this was not what was agreed upon. Chris Dobbins explained to Tommy Roberts that CMI's contract could be cancelled in the event that it failed to meet the provisions, and or committed any of the offenses as outlined in the contract. Marshall Eubanks said that he felt that the reimbursement per the contract was too much. According to his calculations was about \$ 180,000/year for the hospital, in addition to the \$1 08,000/year for the nursing home. Chris Dobbins explained that the monthly fee is the greater of \$15,000/month or 15% of the gross revenue, but that all expenses are reimbursable under the CAR designation. In addition, it would be indicating that the CAR was performing well if the monthly fee were larger.

Tommy Roberts asked Mr. Cain if the contract could be revised to include GRHC's trustee's renewal as well as CMI's. Ted Cain replied no, that it could not, as there was proper provision in the content of the contract that allowed for the removal of CMI if it were not performing to the conditions of the contract and/or had been convicted of a crime that would exclude them from operations. Tommy Roberts said that he would refuse to vote on the contract as it is presented.

Tommy Roberts asked if there was no CAR by 12-31-05 what happens then? Chris Dobbins explained if the contract was approved, and CMI failed to open under the deadline then CMI would be in default of the contract and the issue would be moot. In addition, no payment on the monthly fee is due until 30 days prior to the scheduled re-opening of the CAR.

Marshall Eubanks asked Chris Dobbins if this entire contract was legal? Chris Dobbins informed Marshall Eubanks as well as all individuals present that in fact this

entire contract was legal and binding if and when it was approved and signed.

Marshall Eubanks asked if the 6,500 square foot addition, and the loan there of had been approved. Morris Hill from the Board of Supervisors answered affirmatively that the Board of Supervisors had approved it.

Marshall Eubanks asked if the prison food would still come from GRHC, and all trustees agreed that it should.

Marshall Eubanks asked if the ambulance service would still be covered after 2007, and all trustees agreed that it should.

Morris Hill informed all present that approximately 1,100 ambulance runs per year left Green County and went elsewhere because there was no hospital to keep them here. When the prison was considering Greene County they did so under the assumption that medical care could be provided. In addition, we need to be able to stop the community from going outside Greene County to receive the services they need.

Ricky Neel told everyone present that something needed to be figured out, as Greene County needed emergency services. Tommy Roberts said that he agreed, but that respect was needed. I met with the Board of Supervisors and we agreed.

Ricky Neel made a motion to put before the Board of Trustees the contract as presented, and Dorothy Woods made a second. All other trustees signified their approval with the exception of Tommy Roberts, and Marshall Eubanks that asked to go on record as officially opposing the re-opening of the Hospital, and the contract with CMI.

A motion was made by Ricky Neel to obtain the loan in the amount of \$700,000 for the Critical Access Hospital with a second by Larry Brown. All trustees agreed with obtaining the loan except Marshall Eubanks.

Tommy Roberts informed all individuals present that the 16 acres of land behind the facility is \$3,000/acre, but he felt like he could probably get it for \$2,500/acre. Chris Dobbins informed the trustees that all land purchases would actually

have to be done through the Board of Supervisors, and motion to ask the Board of Supervisors to look into the purchase of the land was the way this needed to be handled. Tommy Roberts made the motion to request the Board of Supervisors look at the land and purchase if in their discretion they felt it beneficial to the overall medical campus was warranted. Dorothy Woods made a second with all in favor except Marshall Eubanks.*

The "Operations/Consultant Agreement," dated June 30, 2005, was executed by Ted Cain on behalf of CMI, Tommy Roberts on behalf of the Board of Trustees of GRHC, and Morris Hill on behalf of the Greene County Board of Supervisors. The purpose of the agreement was for "CMI to provide designated management services in relation to Owner [Board of Supervisors] and Agent's [Board of Trustees] operation of their critical access hospital." Hereinafter, this agreement will be referred to as the "Hospital Agreement." The Hospital Agreement mirrors the Nursing Home Agreement, with some additional language.

The next action occurred at the October 17, 2005 meeting of the GRHC Board of Trustees. The minutes reflect the following action:

Marshall Eubanks made a motion to cancel CMI's contract, and a 2nd was made by Tommy Roberts. Dorothy Woods asked where this was coming from. Marshall Eubanks replied by telling Ms. Woods that a motion had been made and it needed to be called to a vote. Ms. Woods told Mr. Eubanks that this was a motion, but it was up for discussion. Tommy Roberts said it needs no discussion it needs to be called to a vote. Chris Dobbins asked to speak to the trustees. Ms. Woods turned the floor over to Mr. Dobbins. Mr. Dobbins asked the trustees to go into executive session. Marshall Eubanks and Tommy Roberts became argumentative stating that there was no reason to do so, and that they wanted the motion to be called to a vote. Chris Dobbins asked that the trustees making the motion consider the matter before calling the motion to a vote due to the repercussions that will certainly arise from breaching [sic] the contract. Marshall Eubanks and Tommy Roberts stated that they did not want there to be any further discussion their minds were made up, and they wanted [the] motion called to a vote. Chris Dobbins asked that it be recorded that he had not be[en] advised of this matter and

that his advice was not being heard. He further informed the trustees that in view of this situation he was immediately terminating his services as the trustee's legal counsel. Dorothy Woods asked if there were any further discussion and Ricky Neel told the trustees that they were making a mistake if CMI was voted out as the contract was being breeched [sic] and they had done nothing wrong. Lloyd Edwards and Dorothy Woods both indicated their agreement. Dorothy Woods called the motion to a vote and the original motion to cancel CMI's contract was voted on as follows: Aye's - Marshall Eubanks, Tommy Roberts, James Meadows, and Larry Brown. Nay's - Dorothy Woods, Ricky Neel, and Lloyd Edwards. At this time Dorothy Woods called the meeting to recess.

At the October 31, 2005 meeting of the GRHC Board of Trustees, Marshall Eubanks made a motion to hire Edwin Pittman, Jr. as legal counsel for the Board. The motion failed. Lloyd Edwards made a motion to rehire Chris Dobbins as counsel. The motion passed. Lloyd Edwards then made a "motion to reinstate CMI and to give them the authority to do what they needed to get the hospital open, and to obtain the CAR designation by the deadline of 12-31-05." The motion passed with Larry Brown, Lloyd Edwards, Ricky Neel and Dorothy Woods voting in favor of the motion; Tommy Roberts and Marshall Eubanks voted against the motion; and James Meadows abstained. The minutes also reflect a statement attributed to Marshall Eubanks, "We can kiss this hospital and nursing home good-bye in 2007."

On November 1, 2005, GRHC Trustee Larry Brown reported to work. He worked for Greene County Supervisor Marion Pierce. According to the testimony of Brown, Pierce demanded that Brown resign from the GRHC Board of Trustees and told Brown that he had someone to take Brown's place. Pierce brought Larry Brown to the Chancery Clerk's office where Brown signed and submitted his written resignation. Later the same day, Larry Brown tried to rescind his resignation. CMI offered into evidence the following statement:

I, Larry F. Brown, swear here today that I resigned my position as a Trustee for Greene Rural Health Center because I felt under pressure from Dist. Five Supervisor Marion Pierce. Mr. Pierce asked me when I arrived at work this morning if I wanted to resign from the position of trustee. I told him I did not, but he insisted that I should resign and told me that he already had my replacement picked. I once again told him that I did not want to resign and he insisted again and again that that [sic] we should go to Leakesville and have the paperwork completed. We drove to Leakesville and Lavon Pringle and Cheryl Hovatter typed up the resignation and I signed it because I felt I was between a rock and a hard spot and that there would be trouble for me if I did not resign. I made a mistake this morning in signing the resignation letter, but I was scared of losing my job. He kept telling me I needed to resign and I decided to do what he said. I have bills to pay and this puts me in a bad situation.

Larry Brown signed the statement, and three individuals witnessed it. The only name legible is that of Lloyd Edwards, another Trustee of GRHC. The statement was notarized by Jeff Byrd, Greene County Justice Court Judge. Larry Brown testified that he believed he was still a member of the GRHC Board of Trustees. He testified that he believed that he was illegally removed and replaced by I. D. Brown. He attended the next meeting, but was not allowed to participate.

At the January 16, 2006 meeting of the GRHC Board of Trustees, Marshall Eubanks made a motion "not to renew the contract with CMI for the Nursing Home facility management that expires on April 1, 2006." The motion passed with Marshall Eubanks, I. D. Brown, Tommy Roberts and James Meadows voting in favor of the motion; and Ricky Neel, Dorothy Woods and Lloyd Edward voting against the motion. The Supervisors appointed I. D. Brown to replace Larry Brown on the GRHC Board of Trustees. Larry Brown attempted to attend subsequent meeting but was prohibited from participating in the meetings.

By letter dated January 26, 2006, from Edwin Pittman, Jr., as attorney for the GRHC Board of Trustees, advised CMI of the Board's

decision not to renew the Operations/Consultant Agreement relating to the nursing home facility. Pittman informed CMI that the agreement would expire on April 1, 2006, pursuant to the provisions of Paragraph 3(a).

By letter dated April 18, 2006, Darren E. Gray, General Counsel of CMI, sent a letter to GRHC and Greene County that read:

Pursuant to the contract dated June 30, 2005 executed by and between CMI, the Board of Trustees and the Board of Supervisors, CMI is executing its option to extend the referenced contracts for successive one-year increments. As provided in Section 25, second paragraph:

Owner/Agent and CMI further agree CMI shall have the option to extend the October 30, 2007 purchase date for a period of one (1) year and extend any management contract of which CMI and Greene County Rural Health Center Skilled Nursing Facility and Hospital Facility are parties to for successive one year increments until such time as CMI or an entity designated by CMI shall purchase the facilities or give written notice to Owner/Agent of the desire not to purchase the Skilled Nursing Facility and Hospital Facility.

The trustees complained of CMI's performance following Hurricane Katrina, financial reporting by CMI, and compliance with the state purchasing laws. The proof shows that Greene Rural, while under the control of CMI has gone from a position of being able to pay off a bank debt of \$64,568.98 and having cash on hand of \$720,938.43 on June 28, 2005 to having cash on hand of \$1,115.82 on July 31, 2006.¹¹ Additionally during trial the Plaintiff for the first time attempted to allege a breach of an agreement to build a new 15-bed hospital. This could hardly be done while meeting the goal of achieving that service "as long as it does not cost this County anything".

With regard to the issue of compliance with state purchasing laws, the testimony of I. D. Brown reflects that for one accounting period that at least \$206,527.03 was

¹¹ See Exhibit D-3, August 8, 2006 Letter to Court of Mr. Higginbotham.

expended by CMI for purchases from its own affiliated companies. (T-243). The record shows there was no attempt to competitively bid these items. This amounted to 55% of the month's expenditures. (T-244).

The Board of Trustees gave notice of non-renewal prior to the first anniversary for each agreement. Each of these concerns could certainly lead the trustees to a belief that termination of the contracts are in the best interest of Greene Rural Health Center. Both have continued in place pursuant to the preliminary injunction issued by this Court following a hearing at the end of March 2006. The matter is now before the Court for final hearing.

V. SUMMARY OF ARGUMENT

The Court below treated this matter as a simple contract case. It is not. It involves contracts with two public bodies, the Greene County Board of Supervisors and the Board of Trustees of Greene Rural Health Center. The lower court ignored the fact that the legislature has chosen to impose restrictions on how public entities may contract and the right to terminate contracts of the type involved in this litigation. These provisions are in place for the protection of the public. They cannot be waived. They cannot be ignored.

Additionally the lower court took the unprecedented step of removing I. D. Brown from the Board of Trustees of GRHC. It is significant that Mr. Brown was not a party to this litigation. He was replaced by Larry Brown even though Larry was a defendant and sought no relief. Nothing in the pleadings indicated that the right to the office of Trustee was before the Court.

VI. ARGUMENT

A. WHERE THE AGREEMENTS PROPERLY TERMINATED?

A pivotal issue in this litigation surrounds the issue of whether the “Agreements” were terminated by the Board of Trustees of GRHC. If so, the underpinnings of the lower court’s findings fall away. The Appellants respectfully submit that the agreements were properly terminated.

As the lower court noted it is undisputed that that the “Agreements” were entered into by the Trustees of GRHC.¹² It is extremely important to note that the authority cited by the lower court to permit the agreements to be entered was Section 41-13-35(5)(g). That Section states:

(g) To contract by way of lease, lease-purchase or otherwise, with any agency, department or other office of government or any individual, partnership, corporation, owner, other board of trustees, or other health care facility, for the providing of property, equipment or services by or to the community hospital or other entity or regarding any facet of the construction, management, funding or operation of the community hospital or any division or department thereof, or any related activity, including, without limitation, shared management expertise or employee insurance and retirement programs, **and to terminate said contracts when deemed in the best interests of the community hospital;**
[Emphasis Added]

Any contract entered into pursuant to this provision is terminable when the Board of Trustees deems it to be in the best interest of the hospital. This statutory power of the board of trustees is absolute and may not be modified by contract. The plain language of the statute authorizing management agreements is controlling on the right to terminate. The trustees may “terminate said contracts when deemed in the best interests of the community hospital”.¹³ The lower court simply ignored the plain reading of the statute,

¹² Though the Board of Supervisors does not dispute that the agreements were entered by GRHC it does not concede that the Trustees had authority to commit Greene County to certain provisions which require action by the Board of Supervisors.

¹³ When queried as to whether a hospital covered by the act could enter into a three year lease the Office of the Attorney General opined:

which gives the Board of Trustees the authority to terminate the "Agreements". The authority to terminate is granted by statute and cannot be contracted away.

In this case the Board of Trustees has chosen to exercise that statutory authority. It was first exercised in October 2005. The decision to terminate the management contracts was once again exercised when notice of termination was given prior to the renewal dates of each contract. Only by a strained reading of the two agreements together has the right to terminate been eliminated. The "Agreements" were properly terminated.

B. ARE THE AGREEMENTS BINDING UPON THE BOARD OF SUPERVISORS?

1. NEITHER CONTRACT WAS PROPERLY AUTHORIZED BY THE BOARD OF SUPERVISORS

The lower court failed to address the issue of whether the two contracts were enforceable against Greene County. Instead it imposed obligations on Greene County by finding:

GRHC had the statutory authority to enter the agreements without the approval of the Greene County Board of Supervisors. Indeed, both GRHC and Greene County admit that Nursing Home Agreement and Hospital Agreement are valid and binding insofar as they govern the management and consulting services that are provided by CMI in the operation of the nursing home and the hospital. (CP 712, 713 RE-28)

Therefore, this office is of the opinion the Board of Trustees of Forrest General may enter into a Lease Agreement with an LTAC hospital pursuant to Section 41-13-35(5)(g) for the purposes set forth herein. As to your second query and pursuant to Section 41-13-35(5)(g), the Board of Trustees may enter into a contract with the LTAC hospital for provision of designated ancillary services. **Such contracts would be subject to termination "when deemed in the best interest of the community hospital."** Barry K. Cockrell, Esq. 2003 WL 21003288, 3 [Emphasis Added].

Clearly Section 41-13-35(5)(g) gave the Board of Trustees authority to enter into a contract for the operation and management of GRHC.¹⁴ However both the “Agreements” and the order of the lower court go far beyond the authority of the Board of Trustees alone to enter into a contract.¹⁵ A critical component of the order of this Court is a requirement that Greene County offer for sale or lease the “Hospital” on or before October 31, 2007. The only place this requirement can come from is from the lower court’s interpretation of the “Agreement”.¹⁶ Two questions must be addressed to determine the validity of such an order.

1. Did the County properly enter into the contract so that this contractual provision is binding upon the County?
2. If not, did the Board of Trustees have the authority to bind Greene County to offer the “Hospital” for sale or lease.

¹⁴Miss. Code Ann. § 41-13-35 (g) states as follows:

To contract by way of lease, lease-purchase or otherwise, with any agency, department or other office of government or any individual, partnership, corporation, owner, other board of trustees, or other health care facility, for the providing of property, equipment or services by or to the community hospital or other entity or regarding any facet of the construction, management, funding or operation of the community hospital or any division or department thereof, or any related activity, including, without limitation, shared management expertise or employee insurance and retirement programs, **and to terminate said contracts when deemed in the best interests of the community hospital;** [Emphasis Added]

¹⁵ See § 41-13-15. Establishing, leasing and conveying assets of community hospitals

¹⁶ The Second Amended Final Judgement states:

Paragraph 25 of the Hospital Agreement does not obligate Greene County to sell or lease the facilities. However it does obligate Greene County and GRHC to offer the Nursing Home and Hospital for sale or long term lease on or before October 30, 2007. (CP 1011, Re-83)

Appellants respectfully submit that the answer to both of these questions being negative, the lower court erred in ordering Greene County to offer the “Hospital” for sale or lease on or before October 31, 2007.

2. APPROVAL OF THE CONTRACT BY THE BOARD OF SUPERVISORS

The Nursing Home Contract has not ever been authorized by the Board of Supervisors. At the time the Plaintiff filed this suit it recognized the long-standing legal requirement that an action of the Board of Supervisors must be reflected in the minutes. Paragraph 13 of the complaint states in part: “The Governing authorities of Greene County, Mississippi, by and through Morris Hill, President of the Board of Supervisors, after having been duly authorized in the premises, executed the management Contract for valuable considerations and caused said contract to be spread upon the minutes.” A review of the minutes of the Greene County Board of Supervisors reflects this never occurred. Beginning with the May 12, 2004, the meetings of the Board are abstracted in Appendix A.

Despite the allegations of paragraph 13, there is no record that the Board of Supervisors ever authorized the execution of the April agreement. Additionally the agreement is not spread upon the minutes as alleged by the Complaint.

The abstract of the Board of Supervisors Actions (Appendix A) goes through to the alleged approval of the June agreement. Paragraph 14 of the Complaint alleges that the “contract was duly authorized by the proper resolution by each governing authority, spread upon the respective minutes and properly executed.” Once again the minutes indicate otherwise.

The minutes do have attached a document called Greene Rural Health Center, Overview of Operations for the period from 4/1/05 to 6/28/05 prepared by Corporate Management, Inc.

Neither the Hospital Contract nor the Nursing Home Contract is enforceable in any way against the Board of Supervisors. Neither was properly authorized by the Board of Supervisors according to its minutes. The minutes show absolutely no authorization to enter into the Nursing Home Contract. The only approval of the Hospital Contract was contingent upon changes being made. The minutes do not reflect that a properly revised contract was ever presented to the board. There is no copy of the contract attached to the minutes.

The law on this matter is clear. In *Community Extended Care Centers, Inc. v. Board of Sup'rs for Humphreys County* 756 So.2d 798, 802 (Miss.App.,1999) the Court said:

The Mississippi Supreme Court has held consistently that "[a] Board of Supervisors can act only as a body, and its act must be evidenced by an entry on its minutes. The minutes of the board of supervisors are the sole and exclusive evidence of what the board did." *Nichols v. Patterson*, 678 So.2d 673, 677 (Miss.1996) (quoting *Smith v. Board of Supervisors of Tallahatchie County*, 124 Miss. 36, 41, 86 So. 707, 709 (1921)). The reasoning behind this rule is to protect the board from being bound by the unauthorized acts of individual members of the board or an agent thereof. *Butler v. Board of Supervisors for Hinds County*, 659 So.2d 578, 579 (Miss.1995).

Likewise, the Supreme Court has held in a number of cases that it is the responsibility of the party claiming under a contract with the Board of Supervisors to see to that the minutes properly authorized the agreement. See *Burt v. Calhoun* 231 So.2d 496, 499 (Miss. 1970):

No contract can be implied or presumed; it must be stated in express terms and recorded on the official minutes as the action of the board of supervisors. The responsibility is placed on each person, firm or corporation contracting with a board of supervisors to see that the contract is legal and properly recorded on the minutes of the board. *Lee County v. James*, 178 Miss. 554, 174 So. 76 (1937); *Jackson Equipment & Service Co. v. Dunlop*, 172 Miss. 752, 160 So. 734 (1935); *Pearl Realty Co. v. State Highway Comm'n*, 170 Miss. 103, 154 So. 292 (1934). [Emphasis Added]

3. *AUTHORITY OF THE BOARD OF TRUSTEES TO BIND THE SUPERVISORS
TO OFFER FOR SALE OR LEASE*

If the Minutes of the Board of Supervisors failed to approve the “Agreements” in a manner to make the same binding, the question then becomes whether the Board of Trustees of GRHC had the authority to bind the supervisors to offer the “Hospital” for sale or lease as ordered by the lower court. That question may be answered by reference to the statutes governing the “Hospital”. Section 41-13-15 clearly conveys the decision of whether to sale or lease a “Hospital” to the Board of Supervisors and not to the Board of Trustees. Even then substantial limitations on the Board of Supervisors’ authority are imposed.¹⁷ The statute limits the power of the Board of Supervisors by requiring:

¹⁷ 41-13-15 provides in pertinent part:

(8) Whenever any owner decides that it may be in its best interests to sell or lease a community hospital as provided for under subsection (7) of this section, the owner shall first contract with a certified public accounting firm, a law firm or competent professional health care or management consultants to review the current operating condition of the community hospital. The review shall consist of, at minimum, the following:

(a) A review of the community's inpatient facility needs based on current workload, historical trends and projections, based on demographic data, of future needs.

(b) A review of the competitive market for services, including other hospitals which serve the same area, the services provided and the market perception of the competitive hospitals.

(c) A review of the hospital's strengths relative to the competition and its capacity to compete in light of projected trends and competition.

(d) An analysis of the hospital's options, including service mix and pricing strategies. If the study concludes that a sale or lease should occur, the study shall include an analysis of which option would be best for the community and how much revenues should be derived from the lease or sale.

(9) After the review and analysis under subsection (8) of this section, an owner may choose to sell or lease the community hospital. If an owner chooses to sell such hospital or lease the hospital with an option to sell it, the owner shall follow the procedure specified in subsection (10) of this section. If an owner chooses to lease the hospital without an option to sell it, it shall first spread upon its minutes why such a lease is in the best interests of the persons living in the area served by the facility to be leased, and it shall make public any and all findings and recommendations made in the review required under proposals for the lease, which shall state clearly the minimum required terms of all respondents and the evaluation process that will be used when the owner reviews the proposals. The owner shall lease to the respondent submitting the highest and best proposal. In no case may the owner deviate from the process provided for in the request for proposals.

(10) If an owner wishes to sell such community hospital or lease the hospital with an option to sell it, the owner first shall conduct a public hearing on the issue of the proposed sale or lease with an option to sell the hospital. Notice of the date, time, location and purpose of the public hearing shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of the notice shall be made not less than twenty-one (21) days before the date of the public hearing and the last publication shall be made not more than seven (7) days before that date. If, after the public hearing, the owner chooses to sell or lease with an option to sell the hospital, the owner shall adopt a resolution describing its intention to sell or lease with an option to sell the hospital, which shall include the owner's reasons why such a sale or lease is in the best interests of the persons living in the area served by the facility to be sold or leased. The owner then shall publish a copy of the resolution; the requirements for proposals for the sale or lease with an option to sell the hospital, which shall state clearly the minimum required terms of all respondents and the evaluation process that will be used when the owner reviews the proposals; and the date proposed by the owner for the sale or lease with an option to sell the hospital. Such publication shall be made once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of the notice shall be made not less than twenty-one (21) days before the date proposed for the sale or lease with an option to sell the hospital and the last publication shall be made not more than seven (7) days before that date. If on or before the date proposed for the sale or lease of the hospital, there is filed with the clerk of the owner a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of the owner, requesting that an election be called and held on the question of the sale or lease with an option to sell the hospital, then it shall be the duty of the owner to call and provide for the holding of an election as petitioned for. In that case, no such sale or lease shall be entered into unless authorized by the affirmative vote of the majority of the qualified voters of the owner who vote on the proposition at such election. Notice of the election shall be given by publication in the same manner as provided for the publication of the initial resolution. The election shall be conducted and the return thereof made, canvassed and declared in the same manner as provided by law in the case of general elections in the owner. If, on or before the date proposed for the sale or lease of the hospital, no such petition is filed with the clerk of the owner, then the owner may sell or lease with an option to sell the hospital. Such sale or lease shall be made to the

- A professional study of the operations of the “Hospital”
- A public hearing on the issue of potential sale or lease
- A finding that it is in the best interest of the persons living in the area to sell or lease the “Hospital”
- Notice to the public of the intention to sell or lease the “Hospital”
- Holding an election on the issue on proper petition of citizens

Though the order of the lower court provides that the offer to sell or lease shall be in conformity with Section 41-13-15 of the Mississippi Code that section cannot be fully complied with if the predetermined result is that Greene County will offer to sell or lease the “Hospital”. To require such would make meaningless the outcome of the study required by the statute. It would make meaningless the requirement that the board of supervisors exercise judgment as to the best interest of the citizens of the county. It would make meaningless the input of any citizens at the required public hearing. It would strip away the right of the citizens to call for an election. Appellants submit that the GRHC Board of Trustees nor the lower court had to authority to bind the Board of Supervisors to do so. The limitations on sale or lease are requirements the Board of Supervisors cannot ignore.

**C. THE TRIAL COURT ERRED IN FINDING THAT THE ATTEMPT TO
TERMINATE THE AGREEMENTS WAS A BREACH OF THE IMPLIED
COVENANT OF FAIR DEALING**

This issue should have never been before the Court below. The claim of breach of the covenant of good faith is a tort claim. See *Lippincott v. Mississippi Bureau Of Narcotics* 856 So.2d 465, 468 (Miss.App.,2003) where the Court notes, “Indeed, the

respondent submitting the highest and best proposal. In no case may the owner deviate from the process provided for in the request for proposals.

claim of breach of the covenant of good faith itself asserts a tort, one flowing from tortious breach of contract.” *Braidfoot v. William Carey College*, 793 So.2d 642, 651 (Miss.Ct.App.2000).¹⁸

The claims with regard to tortious breach of contract are clearly barred by The Mississippi Torts Claim Act. (§11-46-1 et seq.).¹⁹ In order to pursue an action for a covered claim, notice must be given as provided by §11-46-11 of the Mississippi Code. In this case evidence is undisputed that no notice under this provision has been given. Appellants made a timely objection to no avail. The Appellants should not have been put to trial on this issue.

Additionally, we call the Court’s attention to the plain language of §41-13-35(g), which provides that authority for the Agreements. It states in pertinent part:

(5) The power of the board of trustees shall specifically include, but not be limited to, the following authority:

(g) To contract by way of lease, lease-purchase or otherwise, with any agency, department or other office of government or any individual, partnership, corporation, owner, other board of trustees, or other health care facility, for the providing of property, equipment or services by or to the community hospital or other entity or regarding any facet of the construction, management, funding or operation of the community hospital or any division or department thereof, or any related activity, including, without limitation, shared management expertise or employee insurance and retirement programs, **and to**

¹⁸ The Defendants raised this matter during the hearing on the preliminary injunction. See Transcript 159

¹⁹ This action is clearly covered. Miss. Code Ann. § 11-46-1 provides in pertinent part:

(i) "Political subdivision" means any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including, but not limited to, any county, municipality, school district, community hospital as defined in Section 41- 13-10 , Mississippi Code of 1972, airport authority or other instrumentality thereof, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.

terminate said contracts when deemed in the best interests of the community hospital; [Emphasis Added].

Given the clear language of the statute it is patently unjust to brand any of the public officials as having violated a covenant of good faith.

D. THE TRIAL COURT ERRED IN REMOVING I.D. BROWN FROM THE BOARD OF TRUSTEES

1. THE PLEADINGS DID NOT ALLEGE AN ACTION FOR THE REMOVAL FROM OFFICE OF I. D. BROWN

Nothing in the pleadings gave any notice that the right of Larry Brown to be reinstated as a trustee was an issue before the Court. To the contrary, Plaintiff was seeking both damages and injunctive relief from Larry Brown. No one could read the complaint in this case and determine that anyone sought to have the defendant, Larry Brown reinstated as a Trustee. Likewise no one could read these pleadings and know that the Court was being asked to remove I. D. Brown from office. This is particularly true when one considers the fact that he was not a party to the litigation. The matter was improperly argued by Plaintiff over the specific objections of Defendants.

2. AN ACTION IN THE NATURE OF QUO WARRANTO IS THE PROPER PROCEEDING TO TEST RIGHT TO OFFICE.

Though the Mississippi Rules of Civil Procedure abolished the writ of *quo warranto* as a separate form of action, the Rules provide that relief shall be obtained by actions seeking such relief by proper motion or pleading. See Rule 81, MRCivP.

3. I. D. BROWN WAS AN INDISPENSABLE PARTY TO ANY ACTION TO REMOVE HIM FROM OFFICE

I. D. Brown was an indispensable party to any action seeking to remove him from office and replace him with Larry Brown. I. D. Brown was never a party to this

litigation. The rule of law in this regard is clearly one of fundamental fairness. Basic due process requires notice and opportunity to be heard by one who is being removed from office.

4. *I. D. BROWN WAS IMPROPERLY REMOVED FROM OFFICE IN A
COLLATERAL ATTACK ON HIS RIGHT TO OFFICE*

The Court improperly determined the right of I. D. Brown to office in a collateral proceeding. As the text writer points out: "Right or title to office cannot be tested or attacked in collateral proceedings or in an action to which the officer is not a party". McQuillan's *MUNICORP* § 12.92.

In the case of Jackson Redevelopment Authority v. King, Inc., 364 So.2d 1104, 1109 (Miss., 1978) the Court stated:

It is a very ancient and salutary principle of the common law, where a person claims to hold an office, **his title shall not come in question in an action to which he is not a party**; but while he holds the office De facto, his acts and doings therein will be deemed good. 7 Bacon Ab., 283; *Fowler v. Bebee*, 9 Mass., 231; *Justices of Jefferson v. Clark*, 1 Monroe, 86; *Ex parte Bolman*, (Bollman) 4 Cranch, 75 (2 L.Ed. 554); *People v. Collins*, 7 Johns., 549; *McKein v. Somers*, 2 Penn., 269; 2 Kent's Com., 330.

See Also: *Upchurch v. City of Oxford* 17 So.2d 204, 205 (Miss. 1944)

"It is a well-settled principle of law that the right of a person to an office, who is in charge of it, performing its functions, cannot be determined, except in a proceeding to which he is a party." Section 4045, vol. 3, Mississippi Code of 1942, reads: "The official acts of any person in possession of a public office, and exercising the functions thereof, shall be valid and binding as official acts, in regard to all persons interested or affected thereby, whether such person be lawfully entitled to hold the office or not, and whether such person be lawfully qualified or not."

See Also: *Rosetto v. City of Bay St. Louis* 52 So. 785, 785 (Miss. 1910)

It is a well-settled principle of law that the right of a person to an office, who is in charge of it, performing its functions, cannot be determined, except in a proceeding to which he is a party.

**5. PLAINTIFF LACKED STANDING TO CHALLENGE
I.D. BROWN'S RIGHT TO OFFICE**

No plaintiff was legally entitled to hold the office of Commissioner. CMI had no standing to seek the ouster of I. D. Brown. In a private action to try the right to office, only the party entitled to the office may bring the action. See *State ex rel. Holmes v. Griffin* 667 So.2d 1319, 1323 (Miss.,1995) Larry Brown was a defendant in this litigation and as such made no claim for relief. CMI was not entitled to seek his reinstatement at the same time they were suing him for breach of his duties.

**6. ACTIONS FOR REMOVAL FROM OFFICE ARE OUTSIDE THE
JURISDICTION OF THE CHANCERY COURT**

The lower court lacked the subject matter jurisdiction to try the removal of I. D. Brown from office.

The proper remedy is by quo warranto, not by injunction. This would be true, even though the town were a party complainant to the suit. The defendants in this case are in office, fulfilling the duties, and are, to say the least, de facto officers. This being true, the only remedy of complainants is by quo warranto. ***"An injunction will not be granted to prevent a party from exercising a public office pending proceedings to determine his right thereto."*** Moore v. Caldwell, Freem. Ch. 222. The rule is thus stated in Pomeroy's Eq. Jur. vol. 5, § 333:

"It is a principle of universal application that an injunction will not issue when its object is to try title to public office."

Section 334, same authority:

"For the same reason, an injunction will not issue at the suit of a member of the appointing body to restrain a person alleged to have been illegally appointed; nor at the suit of a taxpayer or elector; nor at the suit of a local body or municipal corporation." *Town of Sumner v. Henderson* 76 So. 829, 829 (Miss. 1917) [Emphasis Added]

See also *Yates v. Summers* 170 So. 827, *829 -830 (Miss. 1936):

Early in the jurisprudence of this state, a chancellor declared that the legality of an election for trustees could not be investigated in a chancery court by means of an injunction; that this could only be done by information in the nature of a quo warranto, regularly prosecuted before the proper tribunal. Moore v. Caldwell, Freeman Ch. 222. In Town of Sumner v. Henderson, 116 Miss. 64, 76 So. 829, this court said: "This suit is an attempt by injunction to try the right and title to the offices of these defendants who are exercising the duties of these offices. The proper remedy is by quo warranto, not by injunction.*830 * The rule is thus stated in Pomeroy's Eq. Jur. vol. 5, § 333: 'It is a principle of universal application that an injunction will not issue when its object is to try title to public office.' *** The appointment of these defendants by the Governor, whether legal or illegal, and the performance by them of the duties constitute them de facto officers at least. Adams v. Bank, 75 Miss. 701, 23 So. 395." Emphasis Added**

Likewise see *Lacey v. Noblin* 238 Miss. 329, 333, 118 So.2d 336, 338 (Miss.1960)

It is well established that a bill for injunction will not lie to try the right and title to a public office, but the proper remedy is by quo warranto. Miss.Code 1942, Secs. 1120-1145; Town of Sumner v. Henderson, 1917, 116 Miss. 64, 76 So. 829; Yates v. Summers, 1936, 177 Miss. 252, 170 So. 827. The only exception to this general rule was stated but not applied in Yates. An injunction will be granted at the instance of an incumbent of office to restrain a claimant from interfering with him, but the incumbent must show that (a) he has possession of the office, and (b) the prima facie right to occupy it, or there is no other person authorized by law to hold it. Yates v. Summers, 177 Miss. at page 267, 170 So. at page 830.

7. *THE TRIAL OF RIGHT TO OFFICE MUST BE MADE IN
THE NAME OF THE STATE ON RELATION OF THE
ATTORNEY GENERAL OR A DISTRICT ATTORNEY OR BY
A PRIVATE CLAIMANT TO OFFICE, ON HIS OR RELATION
IN THE NAME OF THE STATE*

The right to public office may be tried in either a public action or a private action. In a public action the attorney general or a district attorney may bring the action on behalf of the state. In a private action the action must be brought by a private individual seeking

the right to the office in the name of the state.²⁰ See *State ex rel. Holmes v. Griffin* 667 So.2d 1319, 1323 (Miss.,1995)

8. DURESS

The Special Chancellor removed I. D. Brown as trustee and replaced him with Larry Brown on the basis that the resignation of Larry Brown was under duress and thus not effective. The testimony of Larry Brown establishes that this is plain error.

This Court has clearly setout the elements of duress. In *Kelso v. McGowan* 604 So.2d 726, 732 (Miss.,1992) this Court stated:

This Court defined the elements of economic duress in *Duckworth v. Allis-Chalmers Manufacturing Co.*, 247 Miss. 198, 150 So.2d 163 (1963). The Court there stated that to invalidate a contract on grounds of economic duress, the complaining party must establish: (1) that the dominant party threatened to do something which he had no legal right to do; and (2) that the wrongful threat overrode the volition of the victim and caused him to enter an agreement against his free will. *Id.*, 150 So.2d at 165; *accord Rich & Whillock v. Ashton Dev.*, 157 Cal.App.3d 1154, 204 Cal.Rptr. 86, 89 (1984); *Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Serv. Co.*, 584 P.2d 15 (Alaska 1978); 13 Williston, Contracts § 1617 at 704 (1970).

The testimony of Larry Brown reflects the following:

Q. As I understand it you talked to Supervisor Pierce and he told you he thought you ought to resign.

A. Yes.

²⁰ See: *Estate of Stevens v. Wetzel* 762 So 2d 293 (Miss. 2000)

While M.R.C.P. 8 has eliminated the technical forms of pleadings required in years past, notice pleadings are still required to place the opposing party on notice of the claim being asserted. No magic words are required by the Rules of Civil Procedure; however, this Court has previously stated:

Under Rule 8 of the Mississippi Rules of Civil Procedure, it is only necessary that the pleadings provide sufficient notice to the defendant of the claims and grounds upon which relief which is sought. [Emphasis Original] 762 So. 2d 295.

Q. And tell me, please, sir, what threats he used, what did he tell you would happen if you didn't resign?

A. He just told me I need to go ahead and resign.

Q. He didn't make any threats, did he?

A. No, didn't threaten me. (Transcript 155, 156)

The testimony of Larry Brown conclusively establishes that an essential element of duress was missing in this case. Given this fact together with the fact that I. D. Brown was not a party it was error to remove one trustee and substitute another.

9. HIRING LARRY BROWN AS AN EMPLOYEE

One of the major complaints of the Board of Trustees throughout this litigation was the failure of CMI to provide appropriate information. A prime example of this failure is found in the hiring of Larry Brown, a defendant and now a member of the Board of Trustees to work full time as an employee of the hospital.²¹ As the affidavit filed by the Defendants in this case indicates, the trustees prosecuting this appeal were unaware that Mr. Brown had been hired right after he testified.²² At the time that Larry Brown was hired, the "Agreements" provided that CMI had "final" authority over hiring and firing.²³

The impact of placing Mr. Brown back on the Board of Trustees was immediate. On February 19, 2007, the Board of Trustees voted to terminate all court action between CMI and Greene Rural Health Center. (See Motion to Dismiss and attached Affidavit at

²¹ This is the same Larry Brown who the Court found to have resigned under duress related to his job.

²² It is important to note that the affidavits presented by CMI in opposition to this matter did not deny that Mr. Brown was hired at a time when CMI was in full control of hiring and firing. Rather they simply attached the credibility of the Former Hospital Administrator they had hired. See Affidavit of Darren Gray CP 926, Affidavit of Starann Lamier (CP 929) In fact, counsel for CMI admitted that its employee, James Aldridge hired Larry Brown at the hospital.

²³ The Special Chancellor modified the contract with regard to final authority in the Second Amended Final Judgement. See CP 1012, 1013.

CP 904 et seq.) The Special Chancellor, as well as the Defendants, were not aware that Larry Brown was hired by Mr. Aldridge to work at the hospital.

In response to the Special Chancellor's questions, counsel for CMI made it clear that Larry Brown was not a CMI employee. He was hired by James Aldridge, an employee of CMI. He was hired by Mr. Aldridge pursuant to the terms of the agreements in question. Larry Brown was on the Board of Trustees that adopted the agreements. He thereby became interested in a contract made by the board on which he served. It was a violation of Mississippi's most fundamental ethics pronouncement. Article 4 Section 109 of the Mississippi Constitution of 1890²⁴ provides:

No public officer or member of the Legislature shall be interested, directly or indirectly in any contract with State, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member, during the term for which he shall have been chosen, or within one year after the expiration of such term.

Section 109 clearly applies to hospital boards of trustees. See: *Golding v. Salter* 234 Miss. 567, 107 So.2d 348, (Miss.1958).

²⁴ See also Miss. Code Ann. § 25-4-105

(2) No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

(3) No public servant shall:

(a) Be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent.

If indeed Larry Brown's resignation was never effective, he necessarily was a member of the Board of Trustees at the time he was hired by James Aldridge, a CMI employee to fill an unneeded position.

We suggest that for CMI's employee serving as hospital administrator to hire Larry Brown days after he testified for CMI under authority of a contract approved by the Board of Trustees on which Mr. Brown served is well described by the following language of Justice Hawkins' dissent in *Harrison County v. City of Gulfport* 557 So.2d 780, 791 (Miss.,1990)

No law book is needed to detect the violation of public policy in this action by the Harrison County board of supervisors. You do not even need to be a lawyer. *An unimpaired olfactory sense will suffice.* [Emphasis Added]

E. THE DETERMINATION THAT VIOLATION OF THE BID LAWS WAS NOT ESTABLISHED WAS ERROR IN VIEW OF THE MATTERS PRESENTED IN THE DEFENDANTS' POST TRIAL MOTION

One of the concerns with the operation of GRHC was compliance with public purchasing laws. See Exhibit D42. At trial the testimony of I. D. Brown reflects that for one accounting period that at least \$206,527.03 was expended by CMI for purchases from its own affiliated companies. T-243. The record shows there was no attempt to competitively bid these items. This amounted to 55% of the month's expenditures. T-244.

After CMI fired James Aldridge, the hospital administrator, he came forward with details of the scheme CMI had in place to maximize its profits by purchasing from its own affiliated companies (Companies in which Ted Cain held significant ownership interests.) Under oath, Mr. Aldridge stated: "Seeking competitive prices and services

was never an option. It was mandated that we will buy from Quest Medical.” CP-876.

He went on to state:

I was told from day one basically that we buy all our medical supplies from Quest Medical. We buy all our supplies from Quest Medical and use rehab services through Quest Rehab, that was not an option, that was just the way it is. We own these companies. And basically, a critical access hospital will never make money, we are going to support costs and so forth by buying from these institutions that we own. CP 877

In response to purchases Mr. Aldridge stated that he sort of stumbled across the state purchasing laws standing outside a board of trustees meeting when the issue was raised by one of the members. Upon researching what was required to meet those he describe the instructions from his superiors “You always get the Quest Medical bids first, then you find higher ones than Quest Medical, so we can always buy from Quest Medical.” CP 879. This fraudulent scheme effectively prevented discovery by the trustees.

Coupled with the testimony related to the extraordinarily high percentage of all expenditures being made with Quest, the lower court should have reconsidered on this issue.

F. THE CONTRACT WAS ILLEGAL

The lower court incorrectly held that the “Agreements” were legal and binding contracts. Despite this ruling the court found it necessary to modify certain provisions of the agreements. The Second Amended Final Judgment sets those modifications out as follows:²⁵

²⁵ The strike throughs are deletions. The underlined portions are additions. See Second Amended Final Judgement (CP 1012, 1013)

The Court finds an ambiguity in Paragraph 1 of the agreements and orders that the Agreements be administered with the following language added to the provisions of Paragraph 1(a), in both Agreements:

(11) CMI shall have ~~final~~ authority to negotiate and execute contracts for any and all supplies, services, etc. subject to the prior approval of the Agent;

(18) [CMI shall] have ~~final~~ authority to purchases on behalf of Owner and Agent, necessary items (food, beverages, medical, cleaning, clerical and other supplies necessary for the operation and maintenance of Facility's daily operations, subject to the policies and procedures of the Agent;

(21) CMI has ~~final~~ authority to take actions as needed in all matters affecting Greene Rural Health Center, subject to the prior approval of the Agent.

During the dispute that arose CMI acted in accordance with it having final authority of matters related to GRHC, i.e. the hiring of Larry Brown. That pattern was well established prior to the entry of the final judgment.

Appellants respectfully submit that the Court erred when he found these provisions to be ambiguous. The language of the contract is unambiguous. Under the statutes governing the operation of the "Hospital" the agreements delegated power to CMI, which properly belonged to the Board of Trustees. See: *Mahon v. City of Columbus* 1880 WL 6906, 4 (Miss.) (Miss. 1880)

It was not in its power by contract to divest itself of this public official duty irrevocably for a term of years, for private benefit or advantage."

"Powers are conferred on municipal corporations for public purposes; and as their legislative powers cannot be delegated, so they cannot be bargained or bartered away. Such corporations may make authorized contracts, but they have no power as a party to make contracts or to pass by-laws which will cede away, control, or embarrass their legislative or governmental powers, or which shall disable them from performing their public duties ." Dill. on Mun. Corp., sect. 61.

VII. CONCLUSIONS

In conclusion, the record reflects the following:

The trial proceeded to hear the totality of the claims: even though much of the complaint fell under the tort claims act. The said act was not enforced and was ignored.

2. The Court found the contract allegedly entered into by the Board of Supervisors to be valid contract even though the contract is not attached to the Minutes of the Board of Supervisors and the voting in regards to the alleged contract was to approve the contract after certain changes were made and those changes were never made.
3. The trail Court disregarded the statutes providing for cancellation in the public interest of a contract for management or administration of a nursing home and/or hospital.
4. The GRHC Board found fault of the self dealing of CMI and the extensive purchasing of supplies and services from vendors owned by CMI or its subsidiaries or services being provided by vendors that were primarily owned by Ted Cain, who also is the primary officer and owner of CMI and the Court ignored the GRHC Board complaint to CMI that CMI was failing to follow the statutes concerning purchasings.
5. Further, the Court found the contracts valid, but then proceeded to rewrite the contracts in such a manner that prevented the county and the GRHC Board from abiding by the statutory manner of selling the facilities.
6. The Court removed Trustee, I.D. Brown, who was not a party to this matter from the Board of Trustees of the GRHC, all done without notice to Mr. Brown or without notice to his attorneys and in violation of his protected constitutional rights.
7. The Judge below in chambers insisted on the status quo of the parties and expressed a belief or a knowledge that the case would be settled. His removal of I. D. Brown destroyed the status quo and there has been no settlement resulting in:
8. The Plaintiffs herein have managed the nursing home and the critical care hospital for three years while this matter has been litigated, draining its cash assets, received exorbitant payments from both the nursing home and the critical care hospital and failed to report financial matters to the Board and had their services protected and frozen in place by the Court below.

All of this is to the detriment of the people of Greene County whose true interest has been protected by the Greene County Board of Supervisors and the Greene Rural Health System Board of Trustee.


Respectfully submitted this the 5th day of December, 2007.

**GREENE COUNTY, MISSISSIPPI, JOHN
MARSHALL EUBANKS, TOMMY ROBERTS
and MARION PIERCE, APPELLANTS/CROSS
APPELLEES**

By: 

Jerry L. Mills [MB # 

Of Counsel

Jerry L. Mills [MB 
Pyle, Mills, Dye & Pittman
800 Avery Boulevard North, Suite 101
Ridgeland, MS 39157
Telephone: 601/957-2600
Facsimile: 601/957-7440

CERTIFICATE OF SERVICE

I, Jerry L. Mills, attorney for the Appellants, Greene County, Mississippi, et al., certify that I have this day served a copy of the foregoing by United States mail with postage prepaid on the following:

Judge T. Kenneth Griffis, Jr.
Court of Appeals
P. O. Box 22847
Jackson, Mississippi 39225

Darren E. Gray, Esq.
P. O. Box 115
146 West Pine Avenue
Wiggins, MS 39577

Dated this the 5th day of December, 2007.


Jerry L. Mills

APPENDIX A

The all pertinent minutes of the Board of Supervisors were offered into evidence at trial. From meeting to meeting those minutes reflect the following:

May 12, 2004 – Mr. Dobbins was authorized to move forward with the steps to request proposals “to establish a hospital in Greene County. See Minute book A-18 Page 13. Meeting Recessed Until May 18, 2004 A18, Page 14.

May 18, 2004 – NO ACTION REGARDING ISSUE. Meeting recessed to May 27, 2004.

May 27, 2004 - NO ACTION REGARDING ISSUE. Meeting Adjourned until June 7, 2004. A18 Page 19

June 7, 2004 - NO ACTION REGARDING ISSUE. Meeting recessed subject to call. A18, Page 44.

June 30, 2004 - NO ACTION REGARDING ISSUE. Meeting recessed until July 6, 2004 or until call of President.

July 6, 2004 - NO ACTION REGARDING ISSUE. Meeting Recessed until July 8, 2004. A18- Page 122.

July 8, 2004 - NO ACTION REGARDING ISSUE. Meeting Recessed until July 23, 2004.

July 23, 2004 - NO ACTION REGARDING ISSUE. Meeting Recessed until July 29, 2004 A18, Page 127.

July 29, 2004 - NO ACTION REGARDING ISSUE. Meeting Recessed until August 2, 2004 A18 Page 130.

August 2, 2004 - NO ACTION REGARDING ISSUE. Meeting Recessed until August 12, 2004 A18 Page 154.

August 12, 2004 – The minutes reflect that “A public hearing was held pursuant to Mississippi Code of 1972, 41-13-10 Re: The possibility of a lease, lease with option to purchase, or sale of the Greene County Rural Health Center. The purpose of the hearing being to provide input from the citizens of Greene County regarding the possibilities of such lease or sale of the facility with the stipulation that the lessee or purchaser shall provide for the citizens of Greene County certain hospital services including but not limited to, a 24-hour emergency room care. A copy of the list of people present at this meeting is made a part of these minutes. A-18 at Page 155 Meeting Recessed Until August 16, 2004.

August 16, 2004 - The minutes contain a notation as follows “Mr. Cary Williams and Mr. Dobbins addressed the Board regarding the request for proposals for the lease, lease with an option to purchase or sale of the Greene Rural Health Center.” A-18, page 162.

The Minutes reflect an order to allow Mr. Dobbins and Mr. Williams to make corrections to request for proposals as presented and reviewed and to publish in the Greene county Herald on Tuesday, August 23, 2004.

Meeting Recessed until August 23, 2004 A18 Page 163.

August 23, 2004 – a motion was approved “To approve the request for proposals to lease or purchase Greene County Rural Health Center withstanding any corrections.” A18, Page 164. Meeting Recessed until August 31, 2004 A18 Page 165.

August 31, 2004 – No action regarding issue. Meeting Recessed until September 7, 2004 A18 Page 168.

September 7, 2004 - No action regarding issue. Meeting Recessed until September 13, 2004 A20 Page 44.

September 13, 2004 - No action regarding issue. Meeting Recessed until September 14, 2004 A20 Page 46.

September 14, 2004 No action regarding issue. Meeting Recessed until Called A20 Page 48.

September 17, 2004 - No action regarding issue. Meeting Recessed until September 20, 2004 A20 Page 49.

September 20, 2004 - No action regarding issue. Meeting Recessed until September 27, 2004 A20 Page 52.

September 27, 2004 - No action regarding issue. Meeting Recessed until September 30, 2004 A20 Page 54.

September 30, 2004 - No action regarding issue. Meeting Adjourned until October 4, 2004 A20 Page 58.

October 4, 2004 - No action regarding issue. Meeting Recessed until October 6, 2004 A20 Page 107.

October 6, 2004 – The minutes note “The Board received the request for proposals for lease, purchase or lease with option to purchase Greene Rural Health Center at this time. One proposal was received from Corporate Management, Wiggins Ms.” A motion to take the matter of Greene Rural Health Center under advisement was approved. A20 Page 108

Additionally there was a motion by supervisor holder to allow the Board to review the letter that was presented by Nursing Home Board to Greene County Board of Supervisors and that the matter be taken under advisement. A20 Page 111.

An order was entered to authorize Mr. Fred Dobbins, Attorney, to get any necessary information from Rebecca Rylee, Administrator of Green County

Rural Health Center, that may be needed to move the negotiation process between County and Corporate Management, Inc. along more quickly. A20 Page 111.

Meeting Recessed until October 12, 04 A20 Page 112.

October 12, 2004 - No action regarding issue. Meeting Recessed until called A20 Page 116.

October 19, 2004 - No action regarding issue. Meeting Recessed until called A20 Page 117.

October 22, 2004 – Order re notice to trustees re terms. A20- Page 119

A motion “That the following additional information be requested from Green Rural Health Center on behalf of Green County Board of Supervisors and letter of request be sent immediately to Green Rural Health Nursing Home Board, Administrator, etc.” A20-119. Meeting recessed until October 28, 2004.

October 28, 2004 – Notation in Minutes “Mr. Paul Walley addressed the Board regarding representing the County in the lease or sale of Nursing Home/Hospital at rate of \$95.00/hour.”

A order was entered “To employ Pierce and Walley, PLLC, at the rate of \$95.00/hour to evaluate the options of the Nursing Hone/Hospital sale or lease.” A20 Page 121.

Meeting adjourned until November 1, 2004. A20- 122

November 1, 2004 - - Board appointments A20- 182. Meeting Recessed until November 8, 2004 A20 Page 183.

November 8, 2004 – - No action regarding issue. Meeting Recessed until November 15, 2004. A20 Page 185.

November 15 2004. Board Appointment A20 189. Meeting Recessed until November 23, 2004. A20 Page 190.

November 23, 2004, Corporate Management Inc made presentation to the Board. A20 Page 190.

Board Appointments
A20 – 191

Notation in minutes – “All members of this Board agree that they want an emergency room within three month period and a critical care hospital within one year time and as long as it does not cost this County anything. The Board agrees that Randy Pierce, Paul Walley, Fred Dobbins and Cary Williams are to research this matter in depth and report back to the Board on December 6, 2004” A20-192

Meeting recessed until November 30, 2004. A20 192.

November 30, 2004 Board appointment Meeting Adjourned until December 6, 2004. A20 195.

December 6, 2004 Tommy Roberts addressed the Board giving update on Greene Rural Health Center. Meeting recessed to December 9, 2004. A20 239

December 9, 2004 Notation in minutes "Mr. Paul Walley addressed the Board. At this point they need to know what direction the Board wishes to go."

Order of the Board "To recommend Board of Trustees to move forward for a period of at least one year contract with a consultant to assist in aiming UPL monies toward building an emergency room/hospital." A20 240

Meeting recessed to December 15, 2004 A20 242

December 15, 2004 - No action regarding issue. Meeting Recessed until December 22, 2004. A20 Page 249.

December 22, 2004 - No action regarding issue. Meeting Recessed until January 4, 2005. A20 Page 257.

January 4, 2005 - No action regarding issue. Meeting Recessed until January 7, 2005. A20 Page 260.

January 7, 2005 - No action regarding issue. Meeting Recessed until January 26, 2005. A20 Page 264.

January 26, 2005 - Motion to accept Tommy Roberts resignation and replace him with Larry Brown. A20 267 Meeting Recessed until February 7, 2005. A20 Page 268.

February 7, 2005 - Motion to rescind all previous Board orders of appointment to Green Rural Nursing Home Board. Motion to appoint Trustees with Staggering terms as required by statute. A20 294

Minutes contain statement "Mr. Hill also stated that if this Board is expected to operate by Statute as to the appointments of these members then these members are to operate in accordance with statutes such as 41-13-47 regarding submitting budget to owner, etc ...Mr. Hill also stated that the matter of the facility stating it is self insured should be reviewed by the Nursing Home Board and possibly a change should be made regarding the matter." A20 295

Meeting recessed until February 18, 2005 A20 295

February 18, 2005 Mrs. Rebecca Rylee, Administrator of Greene Rural Health Center addressed the Board regarding Nursing Home Matters. A20 296

Notation in minutes

"The Board addressed Mrs. Rebecca Rylee again at this time. Mrs. Rylee was given strict clarification as to who the Board of Trustees are for Greene Rural Health Center. The Board named their current serving members as follows:

District One – Billy Gordon

District Two – Dorothy Woods

District Three – James Meadows

District Four – Marshall Eubanks

District Five - Larry Brown

The Board also discussed with Mrs. Rylee the importance of following established By Laws of Greene Rural Health Center and the need for liability insurance coverage, an the importance of following the state purchasing laws when making purchases." A20-298.

Meeting Recessed to March 1, 2005. A20- 299.

March 1, 2005 - No action regarding issue. Meeting Recessed until March 7, 2005. A20 Page 318.

March 7, 2005 - No action regarding issue. Meeting Recessed until March 14, 2005. A20 Page 321.

March 14, 2005 – Accept resignation of Billy Gordon, Appoint Richard W. Neil A20 323.

Meeting Recessed until March 18, 2005. A20 324.

March 18, 2005 - action regarding issue. Meeting Recessed until March 24, 2005. A20 Page 326

March 24, 2005 – Notation "The Board addressed Mrs. Rylee, Administrator of Green Rural Health Center to discuss various issues relate to the operation of Greene Rural Health Center." A20- 328

Meeting Recessed to March 28, 2005 A20 328

March 28, 2005 - Motion approved to accept resignation of Larry Brown. A20 330. Motion to allow Tommy Roberts to resume his duties. A20 321

Motion to change Nursing Home Board from a five member board to a seven member board in accordance with 41-13-29. A20 321.

Motion to appoint Lloyd Edwards and Larry Brown as Trustees to serve at large.

April 4, 2005 - No action regarding issue. Meeting Recessed until April 26, 2005. A21 Page 1.

Motion to adjourn A20 332

¹ April 26, 2005 – No action regarding issue. Motion to Adjourn.

May 31, 2005 - No action regarding issue. Motion to Adjourn.

June 6, 2005 - No action regarding issue. Meeting Recessed until June 15, 2005.
A21 Page 93.

June 15, 2005 - No action regarding issue. Meeting Recessed until June 29, 2005. A21 Page 95.

June 29, 2005 – contains this entry:

Mr. Tommy Roberts addressed the Board on behalf of Greene Rural Health Board. An Operations and Consultant Agreement was presented to each of the Board Members.

Some Concerns the Board addressed regarding the agreement was as follows:

1. Escape Clause need to be added.
2. Monthly Reporting Issue.
3. Fair Market Value if sold.
4. Five year Management instead of Fifteen year.

ORDER OF THE BOARD

MOTION BY SUPERVISOR DEARMAN: After a lengthy discussion, that when the above corrections are made to the Contract, the Contract be accepted.

SECONDED BY SUPERVISOR PIERCE:

THE FOLLOWING VOTE WAS RECORDED:

Gary Dearman, Supervisor District I	Aye
Morris Hill, Supervisor District II	Aye
Earnest Holder, Supervisor District III	Naye
Lee Lambert, Supervisor District IV	Naye
Marion Pierce, Supervisor District V	Aye

No copy of the agreement is attached to the minutes. A21-96, 97

April 26, 2005 – No action regarding issue. Motion to Adjourn.

May 31, 2005 - No action regarding issue. Motion to Adjourn.

June 6, 2005 - No action regarding issue. Meeting Recessed until June 15, 2005.
A21 Page 93.

June 15, 2005 - No action regarding issue. Meeting Recessed until June 29,
2005. A21 Page 95.

June 29, 2005 – contains this entry:

Mr. Tommy Roberts addressed the Board on behalf of Greene Rural Health Board. An Operations and Consultant Agreement was presented to each of the Board Members.

Some Concerns the Board addressed regarding the agreement was as follows:

1. Escape Clause need to be added.
2. Monthly Reporting Issue.
3. Fair Market Value if sold.
4. Five year Management instead of Fifteen year.

ORDER OF THE BOARD

MOTION BY SUPERVISOR DEARMAN: After a lengthy discussion, that when the above corrections are made to the Contract, the Contract be accepted.

SECONDED BY SUPERVISOR PIERCE:

THE FOLLOWING VOTE WAS RECORDED:

Gary Dearman, Supervisor District I	Aye
Morris Hill, Supervisor District II	Aye
Earnest Holder, Supervisor District III	Naye
Lee Lambert, Supervisor District IV	Naye
Marion Pierce, Supervisor District V	Aye

No copy of the agreement is attached to the minutes. A21-96, 97