HAL WAYNE DEATON APPELLANT

VS.

MISSISSIPPI FARM BUREAU INSURANCE
CASUALTY INSURANCE COMPANY APPELLEE

ON APPEAL FROM THE CIRCUIT COURT OF GRENADA COUNTY

BRIEF OF APPELLEE MISSISSIPPI FARM BUREAU CASUALTY INSURANCE COMPANY

ORAL ARGUMENT IS NOT REQUESTED

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HALL WAYNE DEATON **APPELLANT**

VS.

MISSISSIPPI FARM BUREAU INSURANCE CASUALTY INSURANCE COMPANY **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

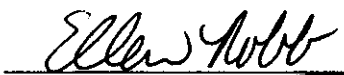
1. Hal Wayne Deaton, Defendant/Appellant.

2. A. Lee Abraham, Preston Rideout, Jr., Daniel L. Egger, and Abraham & Rideout, Attorneys for Defendant/Appellant.

3. Mississippi Farm Bureau Casualty Insurance Company, Plaintiff/Appellee.

4. Dale G. Russell, Ellen Patton Robb, and Copeland, Cook, Taylor & Bush, P.A., attorneys for Plaintiff/Appellee Mississippi Farm Bureau Casualty Insurance Company.

5. Honorable Clarence E. Morgan, III, Circuit Judge for Grenada County, Mississippi.



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Statutes

Rules

1. Whether the Circuit Court was correct in its determination that the Mississippi Supreme Court decisions of *Meyers* and *Alley,* that hold Class II insureds cannot stack their employer's uninsured motorist bodily injury coverage limits, should be applied retroactively in accordance with Mississippi law.

Bureau") issued a Comprehensive Automobile Policy to Gregory L. Carr ("Carr") insuring a total of 31 vehicles. For each of the 31 scheduled vehicles, the Farm Bureau policy provided uninsured motorist bodily injury ("UMBI") coverage in the amount of $10,000 per person/$20,000 per accident. On May 25, 2005, Appellant Hal Wayne Deaton ("Deaton"), an employee of Carr, was involved and injured in an automobile accident caused by an uninsured motorist.[1] Deaton was in the course and scope of his employment with Carr when the accident occurred, and he was using one of the 31 vehicles insured under the Farm Bureau policy.[2]

Following the subject accident, Deaton presented a claim for UMBI benefits under Carr's Farm Bureau policy and asserted a right to stack (i.e. add together) the UMBI benefits on all 31 of the scheduled vehicles. Farm Bureau filed a Complaint for Declaratory Judgment and moved for Judgment as a Matter of Law that Deaton was not permitted to stack the UMBI coverage limits of his employer's policy.

The Circuit Court ruled that Deaton was not allowed to stack the UMBI coverage limits of the 30 non-involved vehicles in a Declaratory and Summary Judgment Order dated May 3, 2007 in accordance with the Mississippi Supreme Court's decisions in *Meyers v. American States Ins. Co.*, 914 So. 2d 669 (Miss. 2005) and *Alley v. Northern Ins. Co.*, 926 So. 2d 906 (Miss. 2006). Deaton brings this appeal arguing that *Meyers* and *Alley* should not apply retroactively to him even though

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1 Mississippi's uninsured motorist ("UM") statute defines an uninsured vehicle as "motor vehicle as to which there is no bodily injury liability insurance." MISS. CODE ANN. §83-11-103(c)(i). The uninsured motorist was determined to be at fault in causing the accident.

2 It is undisputed that at the time of the accident, Deaton was a Class II insured. A Class II insured is "any person who uses, with the consent, expressed or implied, the motor vehicle to which the policy applies." *Alley v. Northern Ins. Co.*, 926 So. 2d 906, 909 (Miss. 2006).

Deaton, a Class II insured, cannot stack UMBI coverage under his employer's policy. Further, the Circuit Court correctly applied the *Meyers* and *Alley* decisions which held that Class II insureds cannot stack UMBI coverage under their employer's policy.

Deaton contends that the holdings of *Meyers* and *Alley* should not apply to his claim which arose prior to those decisions. In other words, Deaton argues that the holdings in *Meyers* and *Alley* cannot be applied retroactively to prevent him from stacking UMBI coverage under his employer's Farm Bureau policy. Deaton's argument is contrary to the well-established rule in Mississippi that, **"all judicial decisions apply retroactively unless the Court has specifically stated the ruling is prospective."** *Cleveland v. Mann*, 942 So. 2d 108, 113 (Miss. 2006) (citing *Mississippi Transp. Comm'n v. Ronald Adams Contractor, Inc.*, 753 So. 2d 1077, 1093 (Miss. 2000) and *Morgan v. State*, 703 So. 2d 832, 839 (Miss.1997)). The *Meyers* and *Alley* opinions do not contain a statement that the rulings therein were prospective only. In fact, this Court applied its holding in *Meyers* retroactively to the Class II insured in *Alley*. Further, the decision of this Court in *Mascarella v. United States Fid. & Guar. Co.*, 833 So. 2d 575 (Miss. 2002), handed down years prior to Deaton's accident, similarly prevents a Class II insured such as Deaton from stacking UMBI coverage under his employer's policy.

Deaton asserts that the retroactive application of the *Meyers* and *Alley* decisions is unfair to him and requests this Court to treat him differently than other Class II insureds in similar situations, including the employee drivers in *Meyers* and *Alley*. Deaton's desire to avoid the application of *Meyers* and *Alley* as to his claim is inconsistent with the long-standing rule cited in *Cleveland v. Mann* and further conflicts with the principle that litigants in similar situations should be treated the

enriched and that he relied on the status of the law prior to the *Meyers* decision when he made decisions regarding selection of his personal UM coverage. It is procedurally improper for this Court to consider these new arguments which are not part of the trial court record and which are made for the first time on appeal. *Alley,* 926 So. 2d at 910; *New Bellum Homes, Inc. v. Swain,* 806 So. 2d 301, 305 (Miss. Ct. App. 2002).

Since the *Meyers* and *Alley* decisions contained no statements establishing that they were to apply prospectively, the Circuit Court was correct in its decision to grant Farm Bureau's Motion for Summary Judgment. RECORD AT 146-47.[3]

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[3] Hereinafter, citations to the record on appeal will be denoted with "R."

In determining whether the trial court properly granted or denied a motion for summary judgment, a de novo review of the record is conducted viewing the evidence in the light most favorable to the nonmoving party below. *Meyers,* 914 So. 2d at 673. "[A] circuit court may grant summary judgment 'if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *MacDonald v. Mississippi Dept. of Transp.*, 955 So. 2d 355, 359-60 (Miss. Ct. App. 2006). A fact is material if it "tends to resolve any of the issues, properly raised by the parties." *Id.* at 360. In the present case, none of the *material* facts were disputed in the proceedings below. Therefore, the Circuit Court was correct to resolve the insurance coverage issue in the declaratory judgment action as a matter of law.

II. The Circuit Court was correct in its determination that *Meyers* and *Alley* apply retroactively because, consistent with well-established Mississippi law, neither opinion contained a statement from the Supreme Court that the ruling is prospective.

Meyers and *Alley* undisputedly hold that a Class II insured does not have the right to stack an employer's uninsured motorist coverage. However, Deaton argues that *Meyers* and *Alley* should not be retroactively applied to his claim since the accident giving rise to his claim occurred prior to those decisions.

It is well established under Mississippi law that judicial decisions apply retroactively in the absence of a specific statement from the Court that the ruling is prospective. *Cleveland,* 942 So. 2d at 113 (stating **"all judicial decisions apply retroactively unless the Court has specifically stated the ruling is prospective"**). **The *Meyers* and *Alley* opinions do not contain a statement**

In *Alley,* Darrell Alley was involved in an automobile accident on December 12, 2002 while in the course and scope of his employment with Hancock County. *Alley,* 926 So. 2d at 907-08; See also Appellee's Brief at *3, *Alley v. Northern Ins. Co.,* 2005 WL 4014710, 926 So. 2d 906 (Miss. 2006) (No. 05-CA-00481) (attached hereto as Addendum A). A Complaint was filed on August 28, 2003. Appellee's Brief at *3, *Alley*, (No. 05-CA-00481). The other driver had automobile liability insurance in the amount of $100,000.[4] *Alley,* 926 So. 2d at 907. Hancock County had a policy covering 109 vehicles with limits of $25,000 per vehicle for UM coverage. *Id.* Darrell Alley contended that his injuries exceeded the $100,000 of liability insurance and sought to stack Hancock County's UM coverage. *Id.* Hancock County's insurer argued that, under *Mascarella*, Darrell Alley was not allowed to stack the UM coverage for all 109 vehicles. *Id.* The *Alley* Court relied on both *Meyers* and *Mascarella* in its ruling that "Alley may not stack Hancock County's uninsured motorist coverage." *Id.* at 909. Darrell Alley's accident (December 12, 2002) was nearly two and one half years prior to the *Meyers* decision (June 9, 2005). The Complaint in *Alley* was filed on August 28, 2003, almost two years prior to the *Meyers* decision. Nonetheless, the Supreme Court clearly applied *Meyers* retroactively as to Darrell Alley.

It is unreasonable for Deaton to argue that this Court's holding in *Meyers* should not be applied to him when it has already been applied to the Class II insured in *Alley*. Further, Deaton's attempt to prevent the application of *Meyers* and *Alley* to his claim is inconsistent with the principle

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[4] Darrell Alley had no personal UM coverage. *Alley,* 926 So. 2d at 907. Deaton had personal UM coverage through Allstate on four vehicles each having limits of $10,000 per person/$20,000 per accident in addition to the $10,000 in UMBI coverage available on the employer vehicle Deaton was using at the time of his accident. R. AT 4; 37.

component of *stare decisis* and the rule of law generally and this should not be allowed.

The record here proves that the trial court properly considered the application of prior decisional law to Deaton's claim when it noted as follows:

> Class II insureds, of which Deaton is one, cannot stack an employer's uninsured motorist coverage unless the employer has specifically contracted to allow it . . . The rulings in [*Meyers* and *Alley*] are retroactive. "Decisions of this Court should be presumed to have retroactive effect unless otherwise specified. When this Court has held a ruling to apply to cases tried subsequent to an opinion, we have specifically stated that the ruling is prospective in nature." *Morgan v. State*, 703 So. 2d 832 (Miss. 1997). Since [*Meyers*] and *Alley* make no such pronouncement, their application is retroactive.

R. AT 147.

Further, Deaton's argument that the retroactive application of the *Meyers* and *Alley* decisions causes him a disruption of the administration of justice fails to recognize that both *Meyers* and *Alley* relied on the Court's holding in the 2002 *Mascarella* decision. *Mascarella* was decided years prior to Deaton's accident and was a departure from prior appellate decisions which allowed Class II stacking.[5] In *Mascarella,* the Court decided Class II insureds were allowed to stack their personal

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[5] Deaton's argument that the retroactive application of *Meyers* and *Alley* would cause a "serious disruption in the administration of justice for the Appellant" is a principle applied in the context of criminal law:

> This Court has followed the United States Supreme Court's general rule of retroactivity, applying decisions in **criminal** cases retroactively except in cases "where retroactive enforcement would cause serious disruption of the administration of justice and where the prior rule was not infected by a serious absence of fundamental fairness."

Morgan, 703 So. 2d at 839.

However, the Court in *Meyers* took the opportunity to explain the implication of *Mascarella* and specifically overruled prior decisions allowing a Class II insured to stack their employer's UM coverage. *Meyers,* 914 So. 2d at 675.

The Circuit Court was correct in its determination that the *Meyers* and *Alley* decisions apply retroactively and its Declaratory and Summary Judgment Order should be affirmed.

III. The general allegations that Farm Bureau is unjustly enriched and that Deaton relied on the potential to stack his employer's UM coverage should not be considered by this Court.

Deaton makes a general allegation that the retroactive application of *Meyers* and *Alley* allows Farm Bureau to become unjustly enriched. SEE BRIEF OF APPELLANT AT ISSUE I. Deaton also makes a general allegation that he relied on the status of the law prior to the *Meyers* opinion when he decided his personal UM insurance needs. *Id.* AT ISSUE II. These mere general allegations are presented for the first time on appeal and are not sufficient to withstand summary judgment. *See Alley,* 926 So. 2d at 910; *New Bellum Homes,* 806 So. 2d at 305 (stating law is well settled in Mississippi that issues cannot be presented for the first time on appeal); *see also Prudential Prop. & Cas. Ins. Co. v. Mohrman,* 828 F. Supp. 432 (S.D. Miss. 1993) (stating mere general allegations are not sufficient to withstand summary judgment). Deaton is procedurally barred from presenting these arguments for the first time on appeal and this Court should not consider them in accordance with *Alley* and *New Bellum Homes.*

Farm Bureau maintains that this Court should not consider these new arguments. Nevertheless, there is absolutely no evidence in the record that supports the argument that the rates for the subject policy were based on the potential that UM coverage for all 31 vehicles could be

employer's policy. In fact, there is no evidence of record indicating that Deaton had knowledge of how many vehicles his employer had insured. Since Deaton makes only mere general allegations and offers absolutely no authority or evidence in support, these arguments cannot withstand summary judgment under *Mohrman* and they further should be considered abandoned by the Court. *See Davis-Everett v. Dale,* 926 So. 2d 279, 281-82 (Miss. Ct. App. 2006) (stating that the appellant has the duty to provide authority in support of assignments of error and the appellate court considers unsupported issues to be abandoned).

CONCLUSION

There is no dispute as to the legal effect of *Meyers* and *Alley* in preventing stacking of uninsured motorist benefits by a Class II insured under his employer's policy. Neither *Meyers* nor *Alley* contained a statement that their holdings were to apply prospectively. Under Mississippi law, absent such a statement, judicial decisions apply retroactively. Deaton provides no reasonable argument, evidence, or authority that the pronouncements in *Meyers* and *Alley* should not apply here. Accordingly, the Circuit Court of Grenada County was correct in granting the Motion for Summary Judgment. The decision of the trial court should be affirmed.

Respectfully submitted, this the 14th day of March 2008.

MISSISSIPPI FARM BUREAU CASUALTY INSURANCE COMPANY

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Mail, first class, postage prepaid, a true and correct copy of the above and foregoing instrument to the following judge and counsel of record herein:

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This the 14th day of March 2008.

ELLEN P. ROBB