HAL WAYNE DEATON APPELLANT

V. NO. 2007-CA-00917

MISSISSIPPI FARM BUREAU
CASUALTY INSURANCE COMPANY APPELLEE

REPLY BRIEF FOR APPELLANT HAL WAYNE DEATON

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ORAL ARGUMENT NOT REQUESTED

TABLE OF AUTHORITIES

Mississippi Cases

The Plaintiff, Mississippi Farm Bureau Insurance Casualty Insurance Company (Hereinafter "Farm Bureau"), argues: (1) the Defendant, Hal Wayne Deaton presents for the first time on appeal, the issue of unjust enrichment; and (2) the Defendant presents for the first time on appeal that he relied on the law as it existed prior to the *Meyers*[1] decision. However, the record clearly shows that the Defendant addressed both issues at the trial level.

The Transcript of the Proceedings Before Circuit Judge Clarence E. Morgan[2] quotes Defendant's counsel as follows:

> "We argue that you have discretion that as a matter of fundamental fairness, particularly in light of the fact that his employer, when he paid the premiums and bought this policy, could stack what he paid for them. And that's what he paid for."[3]

The Circuit Court deferred these arguments to this Court, stating "I don't see where I have the discretion to avoid the law... I don't believe I have that authority. I believe the Supreme Court may have that authority, but I don't think I have got it."[4]

Defendant's counsel also argued these issues in the *Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment*.[5] There the defendant argued in pertinent part that "the retroactive application of the holdings in *Meyers* and *Alley*[6] creates possible unfairness in regard to

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[1] *Meyers v. American States Insurance Company,* 914 So 2d 669 (Miss. 2005)

[2] *Transcript of the Proceedings Before Judge Clarence E. Morgan*, The Transcript is produced in the Appellant's First Record Excerpts

[3] *Id.* at 8:23-27

[4] *Id.* at 9:9-9:16

[5] Record at 137-140. Herinafter, citations to the record on appeal will be noted with "R". [Attached as Exhibit A]

[6] *Alley v. Northern Ins. Co.*, 926 So.2d 906 (Miss. 2006)

part of the record on appeal, these issues should also be considered by this Court.

II. Reply to Plaintiff's Argument that the Retroactive Application of *Meyers* and *Alley* Did Not Create a Disruption of the Administration of Justice for the Defendant

The Plaintiff argues Deaton fails to recognize that *Meyers* and *Alley* relied on this Court's holding in the 2002 *Mascarella*[8] decision. As the Defendant stated in his Appellant's Brief, and as this Court noted in *Meyers*, *"Mascarella* did not definitively overrule the cases contrary to its holding ."[9] The fact that this Court found it necessary to emphatically state the new rule in *Meyers* is convincing evidence that neither the courts nor citizens like Mr. Deaton could safely rely on the *Mascarella* holding until *Meyers* had been finally decided. If the *Mascarella* decision "created uncertainty as to the state of our jurisprudence in this area" for the Supreme Court, it woudl certainly be understandable for the defendant to be likewise uncertain.

Deaton's employer contracted for insurance coverage under the rules established before *Meyers* and the value of the Farm Bureau policy changed dramatically due to the retroactive application of *Meyers*. Deaton could not have possibly known that his coverage would change retroactively, nullifying any decision he might have made to fully insure himself.

Mr. Deaton, at the time of the accident, had potentially more than $300,000 dollars worth of coverage available to him. The retroactive application of *Meyers* reduced his available coverage to $10,000, and left him no retroactive means with which to modify his insurance

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[7] R. at 138, ¶ 6.

[8] *Mascarella v. United States Fidelity & Guaranty Co.*, 833 So.2d 575 (Miss.2003)

[9] *Meyers*, 914 So.2d at 675.

III. Reply to Plaintiff's Argument that this Court Should Not Consider Whether Deaton Relied on the Ability to Stack his Employer's UM Coverage.

The Plaintiff argues the defendant has not shown proof that he relied upon the status of the law prior to the *Meyers* opinion when he determined his personal UM insurance needs. However, the Defendant did not make a contractual argument that he relied on a promise, rather he argued that the retroactive application of *Meyers* unjustly nullified any alternate insurance plans that he might otherwise have made. The defendant argues this issue directly in the Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment.[10]

Logic dictates it should be presumed that when an individual pays for something, he expects to get what he paid for. When Mr. Deaton's employer insured his fleet of vehicles, *Meyers* was not yet determined and *Mascarella* had not definitively overruled the cases contrary to its holding. It should be presumed that Mr. Deaton's employer got what he paid for, viz. – an insurance policy that covered his fleet of vehicles in a legal context in which this Court had not definitively indicated that Class II insureds could not stack UM coverage. This is the level of coverage that Mr. Deaton should reasonably have expected and relied upon at the time of his accident.

IV. Conclusion

For all of the above and foregoing reasons, and for the reasons stated in the Appellant's Brief, the summary and declaratory judgment rendered in the lower court must be reversed, or in the alternative, the matter must be reversed and remanded for discovery and trial.

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[10] R. at 138, ¶ 6.

I, Daniel Layne Egger, Attorney for Appellant do hereby certify that I have this day filed the Reply Brief for Appellant, by delivering the original and three copies of the same via UPS overnight delivery to the Mississippi Supreme Court, P. O. Box 249, Jackson, MS 39205-0249. I do hereby further certify that I have I have delivered copies of the same by U. S. Mail to Hon. Jim Hood, Attorney General, P. O. Box 220, Jackson, MS 39205-0220; Hon. Clarence E. Morgan, III, Circuit Judge, P. O. Box 721, Kosciusko, MS 39090; Hon. Dale G. Russell, P. O. Box 6020, Ridgeland, MS 39158-6020.

Dated this the 29th day of April, 2008.

DANIEL L. EGGER

CASUALTY INSURANCE COMPANY PLAINTIFF

VS. CAUSE NO. 2006-438CVM

HAL WAYNE DEATON DEFENDANT

DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Comes now the Defendant and would respond in opposition to the Motion of the Plaintiff for summary judgment and would respond as follows, to-wit:

1. On May 25, 2005, Hal Wayne Deaton was injured by an uninsured motorist while in the scope and course of his employment. The vehicle he was operating was owned by his employer Greg Carr and was insured by Mississippi Farm Bureau Casualty Insurance Company (hereinafter "Farm Bureau"). The vehicle was one of a fleet of 31 vehicles covered under the Carr's Farm Bureau policy.

2. Defendant sustained serious injuries as a result of the accident including a broken shoulder, broken ribs, crushing fractures to both legs, and the eventual amputation of his right leg.

3. At the time Hal Wayne Deaton filed suit, *Cossitt v. Nationwide*, 551 So 2d 879 (Miss. 1989) allowed Class II drivers to stack uninsured motorist coverages. After the suit was filed, the Mississippi Supreme Court, in *Meyers v. American States Insurance Company*, 914 So 2d 669, 675 (Miss. 2005), overturned that decision, holding that Class II drivers could not stack uninsured policy limits. Subsequent decisions, such as *Alley v. Northern Ins. Co.*, 926 So.2d 906 (Miss. 2006), have affirmed this holding.

4. As stated in *Thompson v. City of Vicksburg*, 813 So.2d 717, 721 (Miss.

with a recognition of possible unfairness where certain events transpired under the former rule. *Johnson v. Memorial Hospital at Gulfport*, 732 So.2d 864, 866 (Miss.1998) (citing *Cain v. McKinnon*, 552 So.2d 91, 92 (Miss.1989)).

5. Courts have created a limited exclusion to the retroactive application of the general rules, 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." *Graves v. State,* 761 So.2d 950, 953-954 (Miss.App.,2000).

6. The retroactive application of the holdings in *Meyers* and *Alley* creates possible unfairness in regard to the Defendant's ability to recover for his significant and life-changing injuries. At the time of the accident, the Defendant was covered by multiple uninsured motorist policies through the principle of "stacking." This ability to stack policy limits potentially affected the policy holder's choice of UM policy limits and potentially affected the Defendant's decision to use this vehicle in reliance of adequate insurance protection.

7. Furthermore, Retroactivity in principle is generally disfavored in the law. "It is a principle in the English common law, as ancient as the law itself, that a statute, even of its omnipotent parliament, is not to have retrospective effect." *Dash v. Van Kleek*, 7 Johns. 477, 503 (NY 1811) as quoted by the US Supreme Court in *Eastern Enterprises v. Commissioner of Social Security*, 524 US 498, 118 S.Ct. 2131, 2151 (1998). Although the holdings in *Meyers* and *Alley* are rules of law created by the court, they have a retroactive

8. In answer to the last unnumbered section of the motion wherein Plaintiffs allege they are entitled to summary judgement, the Defendant would respond as follows:

(a) Defendant is entitled to uninsured motorist benefits beyond those contracted solely for the vehicle he was driving at the time as provided for in *Cossitt v. Nationwide* which was the rule of law at the time of the accident;

(b) Defendant is entitled to stack uninsured motorist benefits as provided for in *Cossitt v. Nationwide* which was the rule of law at the time of the accident;

(c) Defendant is entitled to the maximum amount of uninsured motorist benefits available through stacking the policy limits of the 31 vehicles covered under Greg Carr's Farm Bureau policy.

WHEREFORE, PREMISES CONSIDERED, Defendant, Hal Wayne Deaton, respectfully requests that this Court would deny Plaintiff's Motion for Summary Judgment, and also prays for such other and further relief as the Court may deem just and proper in the premises.

Respectfully submitted, this the 11th day of April, 2007.

DANIEL EGGER, [redacted]
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ATTORNEYS FOR DEFENDANT

Daniel Egger, do hereby certify that I have this date served a true and correct copy of the above and foregoing Defendant's Response In Opposition To Plaintiff's Motion For Summary Judgment by sending the appropriate number of copies thereof by FAX TRANSMISSION and via UPS Overnight, freight prepaid, and addressed as follows, to-wit:

Dale R. Russell, Esq.
Copeland, Cook, Taylor & Bush, P.A.
1062 Highland Colony Parkway
Ridgeland, MS 39157
FAX: (601) 856-7626

THIS, the 11th day of April, 2007.

DANIEL EGGER

FILED
APR 11 2007
LINDA BARNETTE
CIRCUIT CLERK