HAL WAYNE DEATON
VS.
MISSISSIPPI FARM BUREAU CASUALTY INSURANCE COMPANY

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 disqualification or recusal.

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The Law Firm of Abraham & Rideout - Attorneys for Appellant
Mississippi Farm Bureau Casualty Insurance Company - Defendant and Appellee
The Law Firm of Copeland Cook Taylor and Bush - Attorneys for Appellee

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2007-CA-00917-SCT

Appellant submits that the facts and legal arguments are adequately presented in the briefs and appellate record and the decisional process of this Court would not be significantly aided by oral argument. M.R.A.P. 34 (a)(3).

I. STATEMENT OF ISSUES

The following issues shall be addressed in this appeal:

1. Whether the decisions in *Meyers*[1] and Alley[2] should be applied retroactively when the result would allow the Appellee to be unjustly enriched?

2. Whether the decisions in *Meyers* and *Alley* should be applied retroactively when retroactive application would cause serious disruption of the administration of justice and where the prior rule was not infected by a serious absence of fundamental fairness?

II. STATEMENT OF THE CASE

On August 31, 2006, the Appellee, Mississippi Farm Bureau Casualty Insurance Company, (hereinafter "Farm Bureau") filed its Complaint for Declaratory Judgment in the Circuit Court of Grenada County, Mississippi. In the Complaint, the Appellee petitioned the court to determine the limits of liability under the uninsured motorist provisions of a 31-vehicle fleet policy issued to the Appellant's employer, Gregory L. Carr.

On May 3, 2007, the court ordered that Appellee was entitled to summary and declaratory judgement finding that the policy's uninsured motorist coverage could not be stacked for a Class II driver and that coverage for the Appellant , Hal Wayne Deaton, was limited to $10,000.00. The

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

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

retroactively.

Thereafter, the Appellant filed a timely Notice of Appeal appealing the May 3, 2007, Declaratory and Summary Judgement.

III. STATEMENT OF THE FACTS

Appellant Hal Wayne Deaton was injured on May 25, 2005, by an uninsured motorist while in the scope and course of his employment.[3] The vehicle he was operating was owned by his employer Gregory L. Carr and was insured by a Farm Bureau policy issued on March 3, 2005.[4] The vehicle was one of a fleet of 31 vehicles covered under this policy.[5] As an employee unnamed in the policy, Deaton is classified as a Class II driver. 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.[6]

When the Appellant's accident occurred, this court had not definitively overruled a series of cases allowing Class II drivers to stack multiple uninsured motorist coverages from the same policy. However, on June 9, 2005, the Supreme Court handed down its ruling in *Meyers v. American States* holding that Class II drivers cannot stack uninsured policy limits and specifically overruled previous cases stating otherwise. Subsequent decisions have affirmed this holding.

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[3] Appellee's original Complaint for Declaratory Judgement. (Record Excerpt Tab #2, page 2).

[4] *Id.*

[5] *Id.* at 3.

[6] *Id.*

standard of review is de novo.[7]

V. SUMMARY OF THE ARGUMENT

Appellant does not dispute that Class II Insureds cannot currently stack multiple UM coverages from the same policy. However, the retroactive application of these decisions, which were handed down after the Appellant's accident, has created an inequitable result for the following two reasons.

First, the decisions, when applied retroactively, allow Farm Bureau to be unjustly enriched by benefitting from insurance rates calculated on previously-existing liability that Class II insureds could stack UM coverage. Because the rules definitively changed after the contract had been entered into and the accident had occurred, Farm Bureau has received a windfall. The company has contracted for rates to cover significantly greater pre-*Meyers* liability while benefitting by only paying this claim on the lesser post-*Meyers* liability.

Second, retroactive application of these decisions causes disruption of the administration of justice. The retroactive application of the Meyers decision has dramatically changed the Appellant's means of recovery and has left Appellant no alternate means to plan for supplementary coverage or just recovery.

As a result, this Court should reverse the trial court's summary and declaratory judgment.

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[7] *Hubbard v. Wansley*, 954 So.2d 951, 956 (Miss.2007).

retroactively which they allow the Appellee, Frank Brent, to ... unjustly enriched

Until recently, the Supreme Court has, through the Mississippi Motor Vehicle Safety Responsibility Law, allowed intra-policy stacking of the host vehicle's uninsured motorist benefits for Class II insureds[8]. In 2003, this Court departed from a long line of decisions supporting Class II UM coverage stacking. This about-face in *Mascarella v. United States Fidelity & Guaranty Co.*[9] created uncertainty as to the state of Mississippi jurisprudence on this point.[10] By inserting the phrase "[u]nder these facts" at the end of its decision, combined with the failure to overrule its previous decisions, the Court suggested a willingness to find a fact pattern under which its previous decisions were still valid law.[11]

Most importantly, as this Court noted in *Meyers*,[12] *Mascarella* had not expressly overruled the cases contrary to its holding. It wasn't until *Meyers* was handed down that this Court explicitly overruled the previous decisions which held that Class II insureds could stack.

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[8] *Meyers v. American States Ins. Co.*, 914 So.2d 669, 676 FN6 (Miss.,2005). (citing previous cases holding that Class II insureds can stack coverages including: *Glennon v. State Farm Mut. Auto. Ins. Co.*, 812 So.2d 927, 931-33 (Miss.2002); *McDaniel v. Shacklee United States, Inc.*, 807 So.2d 393, 395-99 (Miss.2001); *State Farm Mut. Auto. Ins. Co. v. Davis*, 613 So.2d 1179, 1182 (Miss.1992); *Thiac v. State Farm Mut. Auto. Ins. Co.*, 569 So.2d 1217, 1220-21 (Miss.1990); *Harris v. Magee*, 573 So.2d 646, 654-55 (Miss.1990); *Cossitt v. Nationwide Mut. Ins. Co.*, 551 So.2d 879, 883-84 (Miss.1989); *Wickline v. United States Fid. & Guar. Co.*, 530 So.2d 708, 714-15 (Miss.1988); *Brown v. Md. Cas. Co.*, 521 So.2d 854, 855-56 (Miss.1987)).

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

[10] *Meyers v. American States Ins. Co.*, 914 So.2d 669, 676 FN6 (Miss. 2005).

[11] Jeremy Vanderloo, Note, *Insurance without Assurance: Stacking Uninsured/Underinsured Motorist Coverage under Commercial Fleet Policies after Mascarella v. United States Fidelity and Guaranty Company*, 23 Miss. C.L.Rev. 157, 177-78 (2004).

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

insureds could stack coverages may still have been in effect.

This Court has noted that the insurance industry carefully writes its contract to preclude stacking of UM coverage, noting that insurance policies are prepared by the companies' experts, who are highly technical in their phraseology, complicated and voluminous and in their numerous conditions and stipulations furnishing what may be veritable traps for the unwary.[13] The court also noted that "when the entire insurance industry writes its policies to preclude stacking of UM coverage, attempting to circumvent case law and defeat public policy, the insured is denied any choice whatsoever".[14]

Farm Bureau is a savvy insurance company. It knew at the time the contract was signed that the decisions that Class II drivers could stack UM coverage had not been overturned. As a result, a savvy insurance company would certainly have calculated its rates based upon the potential liability of 31 stacked coverages. The retroactive application of the *Meyers* decision gives the Appellee an unearned windfall by erasing the potential liability of 30 of those coverages while allowing Farm Bureau to keep the benefits of the higher rates charged on these policies.

Good conscience and equity dictate that Farm Bureau was unjustly enriched by the retroactive application of the *Meyers* decision. As noted in *U.S. Fidelity and Guar. Co. v. Ferguson*, "courts, while zealous to uphold legal contracts, should not sacrifice the spirit to the

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[13] *U.S. Fidelity and Guar. Co. v. Ferguson*, 698 So.2d 77, 80 (Miss. 1997), *declined to follow by, Mascarella v. U.S. Fidelity and Guar. Co.*, (S.D.Miss. Nov 17, 1999).

[14] Id.

> when retroactive application would cause serious disruption of the administration of justice and where the prior rule was not infected by a serious absence of fundamental fairness.

The general rule is that decisions are presumed to have retroactive effect unless otherwise specified.[16] However, our courts have created a very 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."[17]

The retroactive application of the holdings in *Meyers* and *Alley* causes a serious disruption in the administration of justice for the Appellant in regard to his ability to recover for his significant and life-changing injuries. The Appellant's employer contracted for coverage under the rules established before *Meyers*. He agreed to pay for an insurance policy that changed dramatically due to the retroactive application of *Meyers*. Likewise, the Appellant prepared his personal insurance plans based on the rules at that time. He had no possible way to know that the rules would change retroactively and eliminate any opportunity for him to plan for or provide better insurance for himself.

As a rule, judicial decisions apply retroactively. In fact, a legal system based on precedent has a built-in presumption of retroactivity.[18] However, when the application of

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[15] *Ferguson*, 698 So.2d at 80.

[16] *Morgan v. State*, 703 So.2d 832, 839 (Miss.1997).

[17] *Graves v. State*, 761 So.2d 950, 953-954 (Miss.App.,2000).

[18] *Solem v. Stumes*, 465 U.S. 638, 642, 104 S.Ct. 1338, 1341, 79 L.Ed.2d 579 (1984).

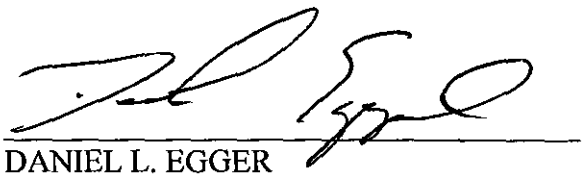
Finally, as indicated by the long line of well-reasoned decisions in favor of Class II stacking prior to *Meyers*, the prior rule was not infected by a serious absence of fundamental fairness. As a result, this court should find that this matter falls under the limited exception to the retroactive application of the general rules.

VII. CONCLUSION

For all of the above and foregoing reasons, 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.

the Brief for Appellant, by depositing the original and three copies of the same in UPS overnight delivery to the Mississippi Supreme Court, Gartin Justice Building, 450 High Street, Jackson, Mississippi 39201. I do hereby further certify that I have I have delivered a copy of the same by UPS overnight delivery to Dale G. Russell, Esq., Copeland, Cook, Taylor & Bush, 1062 Highland Colony Parkway, Suite 200, Ridgeland, Mississippi 39158.

Dated this the 18th day of December, 2007.



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