2007-CA-01454 Am. C

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SUPREME COURT OF MISSISSIPPI
NO. 2007-CA-01454

FRANKLIN CORPORATION — APPELLANT

VS.

PAULINE TEDFORD, LORA L. SMITH,
JUDY HAIRE, and SAMANTHA MIXON, — APPELLEES

BRIEF OF AMICUS CURIAE MISSISSIPPI WORKERS' COMPENSATION INDIVIDUAL SELF-INSURER GUARANTY ASSOCIATION

INTRODUCTION

The fundamental reason why Amicus Mississippi Workers' Compensation Individual Self-Insured Guaranty Association ("MWCISIGA" of "the Association") appears in this case is its concern that the Circuit Court of Calhoun County has decided questions that are well within the quasi-judicial adjudicative authority of the Mississippi Workers' Compensation Commission and its concern that the Commission has been bypassed altogether. The problem is not so much that these questions have been decided wrongly, though it certainly appears that they have. The problem, rather, is greater and broader: the wrong tribunal in the wrong branch of government has decided these questions.

Exercising general original jurisdiction, and not its greatly constrained power of judicial review, the Circuit Court has construed important and interrelated provisions of the Mississippi Workers' Compensation Act and has decided that the Act does not apply. The Circuit Court has done so, even though this case involves workers who were injured while at work and on the job and who have suffered resulting disabilities.[1] Some sixty years ago, these questions were constitutionally and legislatively removed from judicial jurisdiction, at least *ab initio*, and committed to the Commission, an administrative agency in the

[1] Plaintiffs alleged jurisdiction in the Circuit Court in their First Amended Complaint, ¶ 18. (R. at 283).

executive branch of state government. 1948 Miss. Laws 528-29, chapter 354, § 37; *Walters v. Blackledge*, 220 Miss. 485, 71 So. 2d 433 (Miss. 1954). This is not just a matter of concern to Franklin Corporation, the employer defendant here. This is a matter of general importance in the administration of the law of workplace injuries and remedies for the occupationally disabled. This is a matter of great concern to all who function within the Act and whose reason for being depends upon the reasonable, proper and correct administration of law.

With great respect, MWCISIGA in its role as Amicus Curiae suggests that there are established doctrines of value within administrative law that should profitably be brought to bear in cases like this. We refer first to the doctrine of "exclusive original jurisdiction" of administrative agencies, recognized in cases such as *Davis v. Barr,* 250 Miss. 54, 157 So. 2d 505 (1963), and *Scott v. Lowe*, 223 Miss. 312, 78 So. 2d 452 (1955), and held applicable to the Commission's jurisdiction in *Everitt v. Lovitt*, 192 So. 2d 422, 426-27 (Miss. 1966). We call to the Court's attention as well the doctrine of primary jurisdiction, long recognized in Mississippi. *Campbell Sixty-Six Express, Inc. v. J. & G. Express, Inc.*, 244 Miss. 427, 141 So. 2d 720, 725 (1962); *Ill. Cen. R.R. Co. v. M. T. Reed Constr. Co.*, 51 So. 2d 573 (Miss. 1951). Your Amicus suggests with respect that this case is an appropriate vehicle for reaffirming the power and parameters of these administrative law doctrines, and their utility in avoiding problems like today's, to the end that hereafter any suits such as this will be dismissed *ab initio* or, at the very least, held in abeyance pending the Commission's exercise of its statutory authority and jurisdiction, with the role of the courts limited to judicial review.

I. THE DIMENSIONS OF THE PROBLEM

In 1948 the legislature created the Commission as an administrative agency in the executive

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Defendant Franklin denied these allegations. (R. 363e).

branch of the government of the State of Mississippi. 1948 Miss. Laws 528-29; see also, John R. Bradley and Linda A. Thompson, Mississippi Workers' Compensation § 6:1 (2007). In the Act the legislature finds that the "cumulative experience [of the commissioners] is conspicuously essential to the proper administration of a workmen's compensation law, ..." Miss. Code Ann. § 71-3-85(1) (Rev. 2007). "The commission shall have the powers and duties necessary for effecting the purposes of this chapter, ..." Miss. Code Ann. § 71-3-85(3) (Rev. 2007). Within these broad powers and duties, the Act specifically states that "[t]he commission shall have full power and authority to determine all questions relating to the payment of claims for compensation." Miss. Code Ann. § 71-3-47 (Rev. 2007).

Here we have a case where the Circuit Court has expressly, or by necessary implication, decided any number of questions that are within the power and authority of the Commission. Among these are the following:

(1) By its refusal to grant the employer tort immunity under Mississippi Code Annotated § 71-3-9, the Circuit Court necessarily decided that these four employees did not have claims that were made compensable under Mississippi Code Annotated § 71-3-7, albeit they were in fact injured while at work and on the job.

(2) In deciding that these four employees did not have compensable claims under the Act, the Circuit Court necessarily decided that these four employees had not suffered harms within "injury" as defined in Mississippi Code Annotated § 71-3-3(b).

(3) In deciding that these four employees did not have compensable claims under the Act, the Circuit Court necessarily decided that the individual persons who caused the harms were not "third persons" whose acts were "willful act[s] . . . directed against [these] employee[s] because of [their] employment while so employed and working on the job," within the fourth sentence of Mississippi Code Annotated § 71-3-3(b).

(4) The Circuit Court decided that the employer had committed an intentional tort that injured these four employees.

(5) The Circuit Court decided that whether the employer had intentionally injured these four employees was a function of whether the harms suffered by these employees were certain, or substantially certain, to result from the employer's acts, a standard that comes not from the Act but from Restatement (Second) of Torts, § 8A (1965).

Questions relating to the proper legal treatment of the circumstances under which these four employees were injured, and to the remedies available to them, are "question[s] relating to the payment of

claims for compensation." Miss. Code Ann. § 71-3-47. The Commission determines many such questions, including whether those injuries result from intentional acts. See *Barta v. Harrell Constr.*, MWCC No. 06 01827-J-4549-E, 2007 WL 892470, filed Feb. 16, 2007; *Dobbins v. Stewart,* MWCC No. 06 01290-J-4550-D, filed July 31, 2007.[2] Whether the employer here was liable to pay compensation under Miss. Code Annotated § 71-3-7 is also a "question relating to the payment of [a] claim[] for compensation." Whether anything turns on the fact that the harms suffered by these employees were "substantially certain" to result from the employer's actions or inactions is also a "question relating to the payment of [a] claim[] for compensation."

These are just some of the "question[s] relating to the payment of claims for compensation" determined by the Circuit Court. If these judicial rulings are permitted to stand and to become precedent that the circuit courts have authority to determine in the future the same or similar "questions relating to the payment of claims for compensation," the legislature's carefully calibrated allocation of burdens and benefits among employers and employees will have been wholly ignored. Of particular importance to Amicus MWCISIGA is that the judicial rulings in this case will require employers to reallocate the financial risks associated with work place injuries: the lower court's decision forces an employer to shift the risks for "substantially certain" harms from the workers' compensation arena (where the potential liability is more predictable, thereby allowing the employer to anticipate the liability and treat it as a cost of doing business) to the civil litigation system (where potential liability is highly unpredictable, thereby preventing the employer from anticipating and planning for it).

II. EXCLUSIVE ORIGINAL JURISDICTION

"The doctrine that administrative agencies have exclusive original jurisdiction of particular matters .

[2] Copies of these cases are provided in the Appendix.

. . precludes an original action in court in regard to such matters. This doctrine is referred to as the doctrine of 'exclusive original jurisdiction'." *Everitt*, 192 So. 2d at 426. The doctrine is a function of statute, the statute that creates and empowers the administrative agency. Within its jurisdiction, the Commission's authority is exclusive. *See, e.g., Day-Brite Lighting Div. v. Cummins*, 419 So. 2d 211, 213 (Miss. 1982).

Thus, the Commission has exclusive original jurisdiction to determine whether these claimants sustained a covered injury under the Act and whether and to what extent they incurred disability under the Act. There is no question of the competency of the Commission to decide whether compensation is due, nor of its competency to require an employer to pay such compensation to the exclusion of any other liability. The legislature has directed the Commission to make these determinations only after investigating the claims as necessary. Miss. Code Ann. § 71-3-47. By deciding the claimants' claims were not covered under the Act, the Circuit Court decided these issues that are within the Commission's exclusive original jurisdiction, notwithstanding the court's "primary duty, *sua sponte*, to determine whether a particular case lies within [its] jurisdiction." *Common Cause of Miss.v. Smith*, 548 So. 2d 412, 414 (Miss. 1989).

III. THE DOCTRINE OF PRIMARY JURISDICTION

There is an additional doctrine of consequence here, should the Court not consider the original jurisdiction of today's questions vested exclusively within the Commission. Amicus refers the Court to the doctrine of primary jurisdiction, which affords a vehicle for avoiding the untoward consequences that are substantially certain to occur should the course taken by the Circuit Court be affirmed. Amicus recognizes that this Court has said that injured workers may sidestep the Compensation Act and bring tort suit where the employer has an "actual intent to injure" the employees. *Blailock v. O'Bannon*, 795 So. 2d 533, 535 (Miss. 2001); *Peaster v. David New Drilling Co.*, 642 So. 2d 344, 347-48 (Miss. 1994). Your Amicus respectfully suggests that the rationale underlying the line of cases, dating back to *Miller v. McRae's, Inc.*,

444 So. 2d 368, 371 (Miss. 1984), is flawed, and not just for the reasons set forth by Judge Leslie Southwick in his concurring opinion in *Goodman v. Coast Materials Co.*, 858 So. 2d 923 (Miss. Ct. App. 2003). Should the Court be disinclined to revisit the *Miller* line of cases, the doctrine of primary jurisdiction in administrative law is available to ameliorate the harm *Miller* has caused within the workers' compensation system in the quarter of a century of its existence and misapplication.

Primary jurisdiction "determines whether the court or the agency should make the initial decision." *Campbell Sixty-Six Express, Inc.*, 141 So. 2d at 725. Primary jurisdiction is broader than exclusive administrative jurisdiction; it is more pragmatic and less mechanical.[3] Where disputed issues such as those at the heart of this case are within the primary jurisdiction of an agency, the court has two options. The court may dismiss the action, or the court may stay its hand until the issue is first presented to the agency. 2 Richard J. Pierce, Jr., Administrative Law Treatise § 14.1 (4th ed. 2002). The Circuit Court of Calhoun County did neither.

A half century ago, this Court decided *Illinois Central*, and first recognized the doctrine of primary jurisdiction in this state.

> The doctrine of primary jurisdiction is that the courts cannot or will not determine a controversy involving a question which is [1] within the jurisdiction of an administrative tribunal [2] prior to the decision of that question by the administrative tribunal, where [3] the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and [4] a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.

Ill. Cent. R.R., 51 So. 2d at 575 (citations omitted). The doctrine originated in federal administrative law, where it received its first mature expression in *Texas & Pacific Railway. v. Abilene Cotton Oil Company*,

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[3]The differences between the doctrine of primary jurisdiction and the doctrine of exhaustion of administrative remedies are considered in Leslie Southwick, *Administrative Law* §2:72 in 1 Encyclopedia of Mississippi Law 95-98

204 U. S. 426 (1907), which held that the Interstate Commerce Act ousted the trial court of its common law jurisdiction to determine whether a common carrier's rates were reasonable and granted that authority to what was then known as the Interstate Commerce Commission. Primary jurisdiction "comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body." *In Re Mid-Delta Health Sys., Inc.*, 251 B. R. 811, 815 (Bankr. N.D. Miss. 1999) (citing and quoting *United .States v. W. Pac. R.R. Co.*, 352 U.S. 59, 63-64, (1956)).

More recently, the United States Supreme Court had before it a plaintiff's claim grounded in an alleged violation of the National Labor Relations Act which had not been presented to the National Labor Relations Board. The Court held that the doctrine of primary jurisdiction precluded judicial consideration of the claim. *Marquez v. Screen Actors Guild*, 525 U.S. 33, 52 (1998). Congress had granted the authority to resolve disputes with respect to the interpretation and application of the NLRA to the NLRB. Mississippi applies the doctrine of primary jurisdiction across the board in the administrative law of this state. *Campbell Sixty-Six Express, Inc*, 141 So. 2d at 725; *Ill. Cent. R.R.*, 51 So. 2d 573.

This view makes sense. More importantly, it is consistent with well-settled principles of administrative law. The matter of assessing the nature and extent of work connected injuries and the benefits that should follow is committed in the first instance to the jurisdiction and responsibility of the Commission. Because of the "cumulative experience of the three commissioners representing diverse interests and their expertise in their particular field of endeavor," the Act vests in the Commission "full power and authority to determine all questions relating to the payment of claims for compensation." *Malley v. Over the Top, Inc.*, 229 Miss. 347, 354, 90 So. 2d 678, 681 (1956), (cited with approval in *Smith v. Jackson Constr. Co.*, 607 So. 2d 1119, 1124-25 (Miss. 1992)); and *Walker Mfg. Co. v. Cantrell*, 577 So. 2d

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(Jeffrey Jackson and Mary Miller eds., 2001) and 2 Richard J. Pierce, Jr., Administrative Law Treatise §14.2 (4th ed. 2002).

1243, 1246 (Miss. 1991) Yet the central questions noted above were never considered or decided by the Commission. The four injured and disabled employees here declined to pursue their compensation remedy, though it was and remains available to them. See administrative claims files for Plaintiffs Tedford, Smith, Haire and Mixon.[4] On February 18, 2005, MWCC Administrative Judge Cindy P. Wilson entered an Order in all four of these claims, providing that "the Commission retains jurisdiction . . . to the extent necessary to preserve possible claims and/or applicable defenses . . . subsequent to the pending civil litigation."

Our courts have long respected and deferred to the Commission's experience and expertise in the field for which it has been given responsibility, the same as they do the decisions of any other administrative agency. *Cf. McGowan v. State Oil & Gas Bd.*, 604 So. 2d 312, 322-23 (Miss. 1992). The most familiar instance of this is the Court's extension of deference to Commission findings that are supported by substantial evidence. *See, e.g., Fisher v. Empire Gas, Inc.*, 770 So. 2d 1002, 1005 (Miss. Ct. App. 2000). It is the duty of the Commission to hear and evaluate the medical evidence and to accept the testimony the Commission finds plausible. *El Patio Motor Court, Inc. v. Long's Dependents*, 242 Miss. 294, 134 So. 2d 437, 439 (1961); *Miss. Prods., Inc. v. Skipworth*, 238 Miss. 312, 118 So. 2d 345, 350 (1960)(same). This case is unlike those where there "is reasonable doubt as to the availability and adequacy of the administrative remedy." *Campbell Sixty-Six Express*, 141 So. 2d at 726. That the benefits these four workers may receive at the hands of the Commission may be less than tort damages does nothing to undermine the legal adequacy of the workers' compensation remedy.

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[4] See Pauline Tedford v. Franklin Corporation and Liberty Mutual Fire Insurance Company, MWCC No. 0411659, Date Of Injury [DOI] 3/29/04; Lora L. Smith v. Franklin Corporation and Liberty Mutual Fire Insurance Company, MWCC No. 0404505, DOI 1/29/04; Judy Haire v. Franklin Corporation and Liberty Mutual Fire Insurance Company, MWCC No. 0500301, DOI 2/10/04; Samantha Mixon v. Franklin Corporation and Liberty Mutual Fire Insurance Company, MWCC No. 0404506, DOI 2/16/04.

IV. JUDICIAL DEFERENCE TO COMMISSION CONSTRUCTION AND APPLICATION OF THE ACT

Several years ago this Court reminded one and all that "[t]he agency that works with a statute frequently, if not daily, that sees it in relation to other law in the field, necessarily develops a level of insight and expertise likely beyond our ken. When such agencies speak, courts listen." *Hill Brothers Constr. & Eng'g Co., Inc. v. Miss. Transp. Comm'n*, 909 So. 2d 58, 64 (Miss. 2005) (quoting with approval *Grant Ctr. Hosp. of Miss., Inc. v. Health Group of Jackson, Miss., Inc.*, 528 So. 2d 804, 810 (Miss. 1988)). Primary jurisdiction assures that the Commission will have first and foremost opportunity to speak when questions arise "relating to the payment of claims for compensation." Miss. Code Ann. § 71-3-47.

The nature and extent of this duty of deference are well stated by the United States Supreme Court in *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837. In the context of the doctrine of primary jurisdiction, *Chevron* is well explained in 2 Richard J. Pierce, Jr., Administrative Law Treatise § 14.3 (4th ed. 2002). *Chevron* has found favor within the appellate courts of this state. *See, e.g., Hill Brothers*, 909 So. 2d 58, 64 (Miss. 2005); *Titan Tire of Natchez, Inc. v. Miss. Comm'n on Environmental Quality*, 891 So. 2d 195, 200 (Miss. 2004); *Parkerson v. Smith*, 817 So. 2d 529, 534 (Miss. 2002); *Hollingsworth v. Miss. Dep't of Employment Sec.*, 2008 WL 569829, ¶ 19 (Miss. Ct. App. 2008); *cf. Barbour v. State Ex Rel. Hood*, 2008 WL 316085, ¶ 15 (Miss. 2008). Under the *Chevron* doctrine, as recognized in this state, "When an agency interprets a statute that it is responsible for administering, we must defer to the agency's interpretation so long as the interpretation is reasonable." *Titan Tire*, 891 So. 2d at 200 (quoting *Parkerson*, 817 So. 2d at 534). Necessarily implied in this view is that the agency, in this instance the Workers' Compensation Commission, will get the first opportunity and responsibility for interpreting and applying the statute that it is responsible for administering.

V. THE CRITERIA FOR PRIMARY JURISDICTION APPLIED

From what we have said above, we trust it is apparent that the criteria for primary jurisdiction are satisfied. Each of the questions central to this case and noted above is "within the jurisdiction of an administrative tribunal." *Ill. Cent. R.R.*, 51 So. 2d at 575. See the Commission's jurisdiction set forth in Mississippi Code Annotated §§ 71-3-47, -85 (internal citations omitted). Each of these questions demands "the exercise of sound administrative discretion requiring special knowledge, experience and the services of the administrative tribunal to determine technical or intricate matters of fact[.]" *Ill. Cent. R.R.*, 51 So. 2d at 575. Moreover, the legislature has preempted the point by ousting the tort system conferring upon the Commission authority to decide these questions.

A. The Commission's Primary Jurisdiction of Compensability Questions

Within its authority, the jurisdiction of the Commission is exclusive. *See, e.g., Day-Brite*, 419 So. 2d at 213. "Liability can not be imposed on an employer under both common law and the Workers' Compensation Act as entitlement to one excludes the other[.]" *Sawyer v. Head, Dependents of*, 510 So. 2d 472, 479 (Miss. 1987). The Federal Employees Compensation Act is to like effect. *See Tippetts v. U.S.*, 308 F.3d 1091, 1094 (10th Cir. 2002). *Tippetts* arose from a complaint filed by a federal employee claiming intentional infliction of emotional distress and invasion of privacy. These claims are not dissimilar from *Miller* type intentional tort claims. The Court of Appeals invoked primary jurisdiction. "[W]e determine that it is prudent to transfer these claims to the Secretary [of Labor] for an initial determination of whether they are covered by the FECA." *Tippetts*, 308 F.3d at 1096.

Employer Franklin Corporation argues that, if the harm suffered by these four employees is such that it is liable for compensation under Mississippi Code Annotated § 71-3-7, then it follows as a matter of law that Mississippi Code Annotated § 71-3-9 clothes employer Franklin with tort immunity. The question here is not whether this is correct, though it certainly seems so from the statutes on their face. The

question rather is who *ab initio* should decide the question and its component parts under Sections 71-3-3(b), 71-3-7 and ultimately 71-3-9. *Tippetts* read with *Chevron* strongly counsel that the Commission is the proper agency for first deciding whether the claims of these four employees are made compensable under Mississippi. Code Annotated § 71-3-7, and, *en route*, whether these four employees suffered injuries within "injury" as defined in Mississippi Code Annotated § 71-3-3(b).

B. The Commission's Primary Jurisdiction of the Effect on Compensability of Willful or Intentional Employer Actions or Omissions

Substantially related is the question of who should have the first responsibility to decide whether and to what extent employer Franklin may lose its tort immunity on grounds it acted intentionally. There certainly are suggestions in past cases that Franklin has compensation liability even though it may have acted willfully or intentionally. For example, *Borden's Inc. v. Eskridge*, 604 So. 2d 1071, 1074 (Miss. 1991), holds compensable injuries "caused by a deliberate course of conduct by [the claimant's] employer." We should have the Commission's view, given all of the facts and circumstances of this case.

C. The Commission's Primary Jurisdiction of Questions of Construction of the Definition of "Injury"

Whether an employee has suffered an "injury" is a function of the careful consideration of the first four sentences of Mississippi Code Annotated § 71-3-3(b). Of particular importance here is the wording within the fourth sentence, which includes within "injury" a disability that results from "the wilful act of a third person directed against an employee because of his employment." Perhaps the most important question is the meaning of "third persons." Precedent from this Court suggests that supervisors or superiors are within "third persons." *Kerr-McGee Corp. v. Hutto*, 401 So. 2d 1277, 1281-82 (Miss. 1981) ("injury . . . occasioned . . . by a superior"). This seems to make sense. Still, the Commission should be heard from as to how far up into management "third persons" may be found. In the case of a corporate employer, even the president of the company may be a "third person." Primary jurisdiction says the courts should stay their

hands until the Commission has had its say.

Determining the meaning of arguably ambiguous terms in statutes and regulations is within the doctrine of primary jurisdiction. The Seventh Circuit Court of Appeals had such a question as to the meaning of "at the same location" in the Telecommunications Act, 47 U.S.C. § 153(30). The Court said,

> Instead of trying to divine how the FCC would resolve the ambiguity created by the word "location," we think it best to send this matter to the Commission under the doctrine of primary jurisdiction. . . . Only the FCC can disambiguate the word "location; all we could do would be to make an educated guess. And although the FCC's position would be subject to review by the judiciary for reasonableness, the agency's views are the logical place for the judiciary to start.

In re StarNet, Inc., 355 F.3d 634, 639 (7th Cir. 2004). Similarly, the Workers' Compensation Commission's views are a logical place for the judiciary to start answering the questions at issue here, especially in light of the Commission's special knowledge and expertise.

D. The Need For Uniformity

The final criteria for primary jurisdiction is showing that "a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered." *Ill. Cent. R.R.*, 51 So. 2d at 575. Especially important to Amicus MWCISIGA is uniformity in rulings on whether a work place injury is within the Act's coverage. The Association has as one purpose detecting and preventing insolvency among member self-insurers. Miss. Code Ann. §§ 71-3-153 and 71-3-163(2)(d). If various circuit courts and civil juries are allowed to make the determinations at issue here, uniformity of ruling will be compromised, thereby undermining an employer's ability to predict liability for work place injuries. Making risk less predictable will, in turn, make detecting and preventing member insolvencies more difficult. Assessing an employer's ability to function as a self-insurer will be more difficult without uniformity of ruling. Mississippi Workers' Compensation General Rule 7 sets forth the procedure and guidelines adopted by the Commission for approving employers as self-insurers, requiring that an employer's application for self-insured status "be

considered upon its merits with strict regard to the hazards involved and the financial strength of the applicant." MWCC Gen. R. 7(A)(1). Thus, an employer seeking approval as a self-insurer must submit information not only about its assets and liabilities but also about its operations, including its "[s]afety, sanitation and welfare conditions."[5] The Commission must then assess the employer's financial strength in light of the "hazards" likely to give rise to injuries in that employer's workplace.

If the circuit courts are allowed to decide which workplace injuries are within the Act's coverage using the "substantially certain" standard adopted by the trial court, potential injuries from some "hazards" may be outside the Compensation Law's coverage, exposing the employer to highly unpredictable tort damages. In assessing an employer's application for self-insurer status, the Commission would have no reliable way of accounting for the impact such unpredictable tort liability would have on the employer's financial stability, thereby increasing the potential for a future insolvency.

In addition, this new unpredictability will make former assessments conferring self-insurer status less reliable. Each of the current 140 members has qualified as a self-insurer by showing it was "willing and able to furnish adequate security for the payment of its obligations under the Act" as such obligations were understood before the decision at issue. MWCC Gen. R. 7(A). If this Court affirms that decision, an employer's obligations under the Compensation Law will change. Liability formerly allocated to the Compensation Law's known and predictable standards will be shifted to the common law's less predictable ones; decisions about which injuries belong in each category will be left to the various circuit courts and civil juries and will not be assured uniformity of the ruling. That result will undermine the employer's ability to anticipate and plan for all risks and to ensure its continued solvency despite such risks. The Association will potentially face increased financial liability for the workers' compensation obligations of such insolvent members.

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[5] See Application included in Appendix.

VI. THE COURT SHOULD BE CAREFUL TO AVOID CREATING INCENTIVES FOR FURTHER FUTURE JURISDICTIONAL CONTESTS

There is analogous precedent for these fears. In the not too distant past, this Court was "inundated with interlocutory appeals, many of which involve the issue of whether a case has been appropriately commenced in circuit or chancery court." *Trustmark Nat'l Bank v. Johnson*, 865 So. 2d 1148, 1152 (Miss. 2004). An affirmance here will accelerate the filing of *Miller* type intentional tort cases in which the Court will have to review questions of whether an injured worker should have filed a petition to controvert with the Commission or whether he was entitled to file a tort suit in circuit court. "Interlocutory appeals (or even worse a trial on the merits in the wrong court), are costly and time-consuming." *Id.* at 1153. While this case may show the Court was correct when it said these words, your Amicus Curiae is not concerned with the past which cannot be undone, but with the future.

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

MISSISSIPPI WORKERS' COMPENSATION INDIVIDUAL SELF-INSURERS GUARANTY ASSOCIATION

BY: _____

JAMES W. SNIDER, JR. (MSB No. [redacted])

SUBMITTED BY:
Mississippi Workers' Compensation Individual
Self-Insurers Guaranty Association
Post Office Box 2354
Clinton, Mississippi 39060-2354

CERTIFICATE OF SERVICE

I, James W. Snider, Jr., do hereby certify that I have this day mailed via United States Mail, postage fully prepaid, a true and correct copy of the above and foregoing document to:

James L. Robertson, Esq.
Jennifer H. Scott, Esq.
Bridget E. Kobs, Esq.
Elizabeth A. Ganzerla, Esq.
Wise, Carter, Child & Caraway
401 East Capitol Street, Suite 600
Post Office Box 651
Jackson, Mississippi 39205-0651
APPELLATE ATTORNEYS FOR APPELLANT

Timothy Dale Crawley, Esq.
Kenneth S. Womack, Esq.
Anderson Crawley & Burke, PLLC
805 S. Wheatley Drive, Suite 400
Post Office Box 2540
Ridgeland, Mississippi 39158
TRIAL ATTORNEYS FOR APPELLANT

Heber S. Simmons III, Esq.
Simmons Law Group, P.A.
240 Trace Colony Park Drive, Suite 200
Ridgeland, Mississippi 39157
ATTORNEY FOR APPELLEES

Douglas G. Mercier, Esq.
David Nutt & Associates
605 Crescent Boulevard, Suite 200
Ridgeland, Mississippi 39157
TRIAL ATTORNEY FOR APPELLEES

Thomas A. Wicker, Esq.
Michael David Tapscott, Esq.
Holland, Ray, Upchurch & Hillen
322 Jefferson Street
Post Office Drawer 409
Tupelo, Mississippi 38802-0409
ATTORNEYS FOR MID-SOUTH ADHESIVES, INC.
Honorable Andrew K. Howorth
One Courthouse Square, Suite 201
Oxford, Mississippi 38655

TRIAL COURT JUDGE, CIRCUIT COURT OF CALHOUN, MISSISSIPPI

Ms. Deborah Dunn
Calhoun County Courthouse
Post Office Box 25
Pittsboro, Mississippi 38951
CIRCUIT CLERK

This the 14th day of March, 2008.

JAMES W. SNIDER, JR.

2007 WL 892470 (Miss.Work.Comp.Com.)

Workers' Compensation Commission
State of Mississippi

*1 JOHN E BARTA, CLAIMANT
v.
HARRELL CONSTRUCTION, EMPLOYER
AND
ACIG INSURANCE COMPANY, CARRIER

MWCC No. 06 01827-J-4549-E

February 16, 2007

Representing Claimant: Brad M. Williams, Attorney at Law, Jackson, Mississippi
Representing Defendants: Robert L. Grant, Attorney at Law, Ridgeland, Mississippi

FULL COMMISSION ORDER

The above styled cause came on for consideration by the Commission in the offices of the Mississippi Workers' Compensation Commission in Jackson, Mississippi on "Employer/Carrier's Petition for Review Before The Full Commission".

Having thoroughly studied the record in this cause and the applicable law, the Commission affirms the "Order of Administrative Judge" dated September 20, 2006.

SO ORDERED on February 16, 2007

Mississippi Workers' Compensation Commission

Liles Williams
Commissioner

Barney Schoby
Commissioner

John Junkin
Commissioner

ORDER OF THE ADMINISTRATIVE JUDGE

Mr. Barta alleges disability from injuries to his left lower extremity, head and ribs resulting from a physical altercation with a fellow employee on July 20, 2005. The defendants have denied the claim. A hearing on the merits, essentially

to determine compensability, was conducted in Jackson on June 27, 2006.

Stipulations/Evidentiary Matters

Prior to the hearing the parties stipulated that Mr. Barta's average weekly wage at the time of injury was $280.00, that no benefits of any kind had been paid, and that General Exhibits 1-4, as set out in the Exhibit Inventory herein, were admissible in evidence.

During the hearing, an accident report produced by the employer was admitted as Employer/Carrier Exhibit 5, and a written statement purportedly given by Jonathan Johnson, the co-employee involved in the subject altercation, was marked for identification only.

Summary and Evaluation of the Relevant Evidence

Mr. Barta is a 25 year old Jackson resident who had been working as a carpenter's helper for Harrell Construction on the renovation of the Electric Building in Jackson for nine months as of July 20, 2005. He testified that on that date he was working on the 10th floor of the project using a shop-vac to remove some standing water; that he had to take the implement to the first floor to empty it, which required the use of a service elevator; that the elevator was being operated that day by Jonathan Johnson, who had been working as an engineer trainee on the project for about a month; and that when he got on the elevator and asked Johnson to take him to the first floor, Johnson stated that he did not like the way Mr. Barta was talking to him and would "beat his [Barta's] ass." The claimant said that there had been no prior words or contact between himself and Johnson that day, nor had there been anything more than "daily chit-chat" between them on previous days. As they proceeded to the first floor, Mr. Barta said, Johnson kept threatening him and said he would meet him in the parking lot, to which the claimant answered that he did not want any trouble.

*2 The claimant testified that he then got off the elevator to empty the shop-vac and Mr. Johnson took the elevator back up on another run. He said that when Mr. Johnson returned to the lobby he approached Mr. Barta and began yelling and "throwing his arms around," again saying that he wanted to meet in the parking lot, to which the claimant replied that he would not let that happen. It was then, Mr. Barta said, that Mr. Johnson "started hitting me," first with his fist on the right side of Mr. Barta's face. The claimant said he tried to defend himself by grabbing Mr. Johnson by the shoulders, and at this point Mr. Johnson pushed him causing him to fall to his knees. He said that Mr. Johnson then began striking him in the back of the head, causing him to fall on his back and lose consciousness.

Once he regained consciousness, Mr. Barta said, he felt pain in his left leg which prevented him from getting up, and two plumbers helped him into a chair, at which point he talked to Dale Truett, the site superintendent, about what had happened. He could not recall what he told Mr. Truett, saying that he was groggy and bleed-

ing from the back of his head at the time. The claimant said that he was taken by Brian Corley to the emergency room at Baptist Hospital, where he was treated for a broken left tibia, a dislocated left ankle, a cut to the back of his head and sore ribs.

Mr. Barta testified that the emergency room staff referred him to Dr. Penny Lawin for further treatment of his leg injuries, and that Dr. Lawin performed surgery two days after he was hurt. He said that he continued seeing Dr. Lawin for weekly check-ups after the surgery, but eventually had to stop seeing her because he could no longer afford it; that she had never released him from treatment; and that when he last saw her on April 27, 2006, she told him he needed another surgery to repair the screws that had been inserted in his ankle.

The claimant acknowledged that he had worked intermittently since his injury, performing janitorial work at Milwaukee Tools for a month and a half at $7.50 per hour for 40-hours weeks, stacking scaffolding and doing inventory at United Scaffolds for four days of eight hours each at $6.50 per hour, and setting up for parties at the Jackson Telecommunications Center at $7.50 per hour, once for eight hours and once for 12 hours.

On cross-examination, Mr. Barta denied that he used profanity when he asked Mr. Johnson to take him to the first floor and that they had ever exchanged cross words before. He acknowledged that he had not contacted Harrell about returning to work since his injury, but said he would return to work there if a job were offered.

Both Dale Truett, scheduled to appear as the employer representative and testify as a fact witness, and Jonathan Johnson, subpoenaed to testify for the employer, failed to appear. The defense thus presented no witnesses. The accident report admitted as Employer/Carrier Exhibit 5 corroborates the occurrence of the fight between the claimant and Mr. Johnson on July 20, 2005 and the injuries to Mr. Barta's left leg and head, but it does not, in any noteworthy way, contradict the claimant's version of the events leading up to the fight.

*3 Records from Baptist Health Systems (Gen. Ex. 1) confirm that the claimant was treated at the Baptist Hospital emergency room for a head laceration and a fracture/dislocation injury to his left ankle on July 20, 2005, with the patient reporting that he had been injured in a fight at work.

Records from Mississippi Sports Medicine and Orthopaedic Clinic (Gen. Exs. 2&3) and Mississippi Surgery Center (Gen. Ex. 4) confirm that Mr. Barta began treatment with Dr. Penny Lawin, an orthopaedic surgeon, on July 21, 2005 on referral from Baptist Hospital; that Dr. Lawin performed surgery to repair his fractured left ankle on July 22, 2005; that Dr. Lawin treated the claimant in follow-up to the surgery, restricting him against bearing any weight on the left leg, through September 12, 2005; that Dr. Lawin performed surgery to remove a screw from the

ankle on September 21, 2005; and that Dr. Lawin did not see the claimant again until April 27, 2006, at which time she recommended additional surgery to repair broken screws in the ankle. Mr. Barta was again instructed to be "strictly non weight bearing" regarding his left leg, and he has not seen Dr. Lawin since.

Decision

Upon consideration of the pleadings, the record evidence and the applicable law, the Administrative Judge finds and concludes as follows:

1. There is no dispute that Mr. Barta suffered injuries to his head and left lower extremity as the result of a physical entanglement with fellow employee Jonathan Johnson at their work place on July 20, 2005, and the parties have stipulated that Mr. Barta's AWW at the time was $280.00.

2. The defendants deny that the claimant has suffered an "accidental injury ... arising out of and in the course of employment" within the meaning of § 71-3-3(b) of the Compensation Act, arguing specifically that the claimant has not proved that his injuries were "caused by the willful act of a third person directed against an employee because of his employment while so employed and working on the job" as required by § 71-3-3(b) under these circumstances. Thus they take the position that Mr. Barta's injuries are not compensable.

3. The undisputed testimony of the claimant proves that he was intentionally assaulted at work by Mr. Johnson, his co-employee. This assault was an act committed outside the course and scope of Mr. Johnson's employment, so Mr. Johnson's act was indeed the "willful act of a third person" within the meaning of § 71-3-3(b). Miller v. McRae's, 444 So. 2d 368, 371 (Miss. 1984); Hawkins v. Treasure Bay Hotel & Casino, 813 So. 2d 757, 759 (Miss. App. 2001). The remaining question is thus whether the assault occurred "because of [the] employment" within the meaning of § 71-3-3(b).

4. When claims based on fights between coworkers have been dismissed in the part, it has usually been because the subject matter of the particular fight originated or was concerned with something outside of the work environment. If the subject matter of the quarrel is related to the work, and not to any outside involvement between the combatants, the resulting injury is sufficiently work-related to be compensable. Sanderson Farms v. Jackson, 911 So. 2d 985, 989 (Miss. App. 2005), citing John Hancock Trucking v. Walker, 138 So. 2d 478, 480 (Miss. 1962).

***4** Based on the claimant's undisputed testimony, there was no imported grudge here between himself and his assailant, and the quarrel arose strictly out of the work. Mr. Barta's head and left leg injuries are therefore compensable within the meaning and requirements of § 71-3-3(b).

5. The medical services and supplies provided and prescribed by Baptist Hospital and Dr. Penny Lawin to date have been reasonable and necessary to the treatment of

the claimant's compensable injuries and are thus the responsibility of the employer and carrier. Furthermore, based on the evidence from Dr. Lawin, the claimant's primary treating physician, Mr. Barta is in need of additional surgical treatment for his leg injury, and it is the responsibility of the employer and carrier to provide that treatment.

6. Based on the medical evidence of record and the claimant's own testimony, Mr. Barta was totally occupationally disabled as the result of his compensable injuries from July 21, 2005 through at least September 21, 2005, and he is entitled to temporary total disability benefits for at least that period of time.

Further evidence is required to determine occupational disability beyond September 21, 2005.

ORDER

IT IS, THEREFORE, ORDERED AND ADJUDGED that Harrell Construction and ACIG Insurance are to pay and provide workers' compensation benefits to John Barta as follows:

1. Temporary total disability benefits at the rate of **$186.68** per week for the period from July 21, 2005 through September 21, 2005, and to each such installment there is added the 10% statutory penalty and interest at the legal rate.

2. Such medical services and supplies as are required by the nature of the claimant's compensable injuries and his recovery therefrom, consistent with the foregoing decision and with the Compensation Act and the rules and fee schedule of the Commission.

IT IS FURTHER ORDERED that the parties are to take such steps as are necessary for disposition of the remaining issues regarding additional medical care, maximum medical improvement and occupational disability.

SO ORDERED this the 20th day of September, 2006.

James Homer Best
Administrative Judge

2007 WL 892470 (Miss.Work.Comp.Com.)
END OF DOCUMENT

MISSISSIPPI WORKERS' COMPENSATION COMMISSION

MWCC NO. 06 01290 ~~061290~~-J-4450-D

DANIEL DOBBINS **CLAIMANT**

VS.

JAMES S. STEWART AND
MIDTOWN ENTERPRISES, LLC
D/B/A MIDTOWN GRILLE **EMPLOYER**
(UNINSURED)

Representing the Claimant:

David H. Linder, Esquire, Meridian, Mississippi

Representing the Employer/Carrier:

Steven D. Slade, Esquire, Meridian, Mississippi

ORDER OF THE ADMINISTRATIVE JUDGE

Mr. Dobbins suffered a fractured jaw in a physical altercation with a co-employee on April 28, 2004. The employer has denied compensability. A hearing on the merits of the claim was held in Meridian on July 19, 2007.

Stipulations/Evidentiary Matters

Prior to the hearing the parties were able to stipulate to the following:

1. That the claimant was involved in a physical altercation with fellow employee Gary Lingerfelt at work on April 28, 2004, at which time the claimant was struck by Mr. Lingerfelt resulting in a fracture to the claimant's jaw;

2. That the claimant's average weekly wage (AWW) at the time was $336.50;

3. That the claimant was temporarily totally disabled for two weeks as a result of the fractured jaw;

4. That the claimant received reasonable and necessary medical treatment for his fractured jaw as represented by the medical records placed in evidence;

5. That the claimant returned to work for the employer at the same AWW following his two weeks of temporary disability;

6. That the claimant has not suffered any permanent occupational disability;

7. That no additional medical costs are owed to Jeff Anderson Regional Medical Center for the claimant's injury, the employer having paid $3,325.00 in full settlement of that account; and,

8. That General Exhibits 1 (Jeff Anderson Regional Medical Center records) and 2 (Meridian Ear, Nose and Throat Clinic records) were admissible in evidence.

Summary of the Relevant Evidence

Daniel Dobbins is a 26 year old resident of Meridian who began working at Midtown Grille, a restaurant and bar there, in 2001. On the day of the subject encounter, he was working as the bartender and sole attendant in the upstairs bar, which area also contained several tables available for dining, and his adversary, Mr. Lingerfelt, was one of two cooks working in the kitchen downstairs. The downstairs portion of the building also contained the main of the restaurant. According to Mr. Dobbins, he entered upstairs food orders at a computer terminal and would then have to go downstairs from time to time to check on their readiness. He said that it was Gary Lingerfelt's responsibility to make final preparation of all food orders and also prepare the corresponding customer bills, with the orders and bills to be placed, once ready, on a window shelf dividing the kitchen and the restaurant proper.

The claimant testified that both upstairs and downstairs at the restaurant were very busy during lunch on April 28, 2004; that Mr. Lingerfelt was not preparing his orders in a timely fashion,

which eventually prompted the claimant to verbally chastise Mr. Lingerfelt; that Mr. Lingerfelt continued to be dilatory with the orders, causing some of the claimant's regular customers to begin complaining; and that this in turn spurred Mr. Dobbins to again confront Mr. Lingerfelt, this time telling him he was tired of Mr. Lingerfelt not doing his job, and also possibly cursing him. Mr. Dobbins said that at this point Mr. Lingerfelt left his work station and began walking toward the entrance to the kitchen; that he believed Mr. Lingerfelt was coming out to discuss the situation, so he also walked to the kitchen entrance; and that Mr. Lingerfelt then emerged from the kitchen and immediately punched him in the jaw. The claimant testified that he then retreated from Mr. Lingerfelt and did not fight back, and that he was subsequently taken to the hospital for treatment of his jaw injury. He said that at no time did he ever raise a hand to Mr. Lingerfelt or physically threaten him.

Travis Cole was called as a witness for the employer. Mr. Cole was the saute` and fry cook at Midtown Grille on the date in question, working in the kitchen with Gary Lingerfelt. He testified that Mr. Dobbins first "had words" with Mr. Lingerfelt over slow orders during lunch on April 28, 2004, such that he had to ask the two of them to "hold it down;" that Mr. Dobbins came back a second time and cursed at Mr. Lingerfelt about the orders; and that the third time Mr. Dobbins came down for his orders he leaned over the kitchen window shelf, put his finger in Mr. Lingerfelt's face and cursed Mr. Lingerfelt again. Mr. Cole said that Mr. Lingerfelt then told Mr. Dobbins not to speak to him in that manner again, at which point both of them started walking toward the entrance to the kitchen and left his field of vision. He said that he then heard "licks passed," more than one, and next heard Belinda Faye Edwards, another employee, calling for him to "break them up," so he left the kitchen and found Mr. Lingerfelt holding Mr. Dobbins in a headlock; whereupon he split the

two apart. He recalled that the claimant was bleeding from the mouth.

Faye Edwards, a salad preparer at Midtown Grille, also testified for the defense. Ms. Edwards recalled that the claimant said something to Mr. Lingerfelt, that Mr. Lingerfelt told the claimant not to say that again, and that the next time the claimant came downstairs the two of them talked again through the window and were "acting mad at each other," although she could not hear what was being said this time. Ms. Edwards stated that Mr. Lingerfelt then walked through her salad prep area and the next thing she knew they were "locked together" in a fight, so she called Travis Cole to separate them. She denied seeing "who passed the first lick."

As previously indicated, medical records from **Jeff Anderson Regional Medical Center** and **Meridian Ear, Nose and Throat Clinic** are in evidence as General Exhibits 1 and 2, and these records document the treatment Mr. Dobbins received for his fractured jaw.

Decision

Upon consideration of the pleadings, the record evidence and the applicable law, the Administrative Judge finds and concludes as follows:

1. Mr. Dobbins must prove that he suffered an "accidental injury arising out of and in the course of [his] employment without regard to fault . . . ," and "[t]his definition includes . . . an injury caused by the willful act of a third person directed against an employee because of his employment while so employed and working on the job . . ." Miss. Code Ann. §71-3-3(b).

2. The undisputed testimony of the claimant proves that he was intentionally assaulted at work by Mr. Lingerfelt, his co-employee. This assault was an act committed outside the course and scope of Mr. Lingerfelt's employment, so Mr. Lingerfelt's act was indeed the "willful act of a third person" within the meaning of §71-3-3(b). Miller v. McRae's, 444 So. 2d 368, 371 (Miss. 1984);

Hawkins v. Treasure Bay Hotel & Casino, 813 So. 2d 757, 759 (Miss. App. 2001). The remaining question is thus whether the assault occurred "because of [the] employment" within the meaning of §71-3-3(b).

3. When claims based on fights between coworkers have been dismissed in the past, it has usually been because the subject matter of the particular fight originated or was concerned with something outside of the work environment. If the subject matter of the quarrel is related to the work, and not to any outside involvement between the combatants, the resulting injury is sufficiently work-related to be compensable. Sanderson Farms v. Jackson, 911 So. 2d 985, 989 (Miss. App. 2005), citing John Hancock Trucking v. Walker, 138 So. 2d 478, 480 (Miss. 1962).

Based on the claimant's undisputed testimony, there was no imported grudge here between himself and his assailant, and the quarrel arose strictly out of the work. Mr. Dobbins' fractured jaw is therefore compensable within the meaning and requirements of §71-3-3(b).

4. The medical services and supplies provided and prescribed by Jeff Anderson Medical Center and Meridian ENT Clinic were reasonable and necessary to the treatment of the claimant's fractured jaw, as stipulated by the parties, and are thus the employer's responsibility.[1]

5. The claimant's AWW at injury was $366.50 and he was temporarily totally disabled for two weeks as a result of this injury, as stipulated by the parties, so he is entitled to two weeks of disability benefits at the rate of $244.35 per week.

6. The claimant is not entitled to any permanent disability benefits, as stipulated by the parties.

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[1] The Jeff Anderson bill has been settled in full, as stipulated by the parties.

ORDER

IT IS, THEREFORE, ORDERED AND ADJUDGED that Midtown Enterprises, LLC and/or James Steven Stewart, d.b.a. Midtown Grille must pay and provide workers' compensation benefits to Daniel Dobbins as follows:

1. Temporary total disability benefits in the amount of $244.35 per week for a period of two weeks beginning April 29, 2004. To each such installment there is added the 10% statutory penalty and interest at the legal rate.

2. Reasonable and necessary medical services and supplies related to the claimant's fractured jaw, consistent with the foregoing decision and with the Compensation Act and the rules and fee schedule of the Commission.

SO ORDERED on JUL 3 1 2007.

JAMES HOMER BEST
ADMINISTRATIVE JUDGE

MISSISSIPPI WORKERS' COMPENSATION COMMISSION
ATTEST

Phyllis Clark, Commission Secretary
MWCC NO. 061290-J-4450-D

Form A-2

CONFIDENTIAL

MISSISSIPPI WORKERS' COMPENSATION COMMISSION

P. O. Box 5300

JACKSON, MISSISSIPPI 39296

EMPLOYER'S APPLICATION FOR THE PRIVILEGE OF PAYING COMPENSATION PROVIDED IN THE MISSISSIPPI WORKERS' COMPENSATION ACT AS SELF-INSURER

To the Mississippi Workers' Compensation Commission:

The undersigned, an employer subject to the provisions of the Mississippi Workers' Compensation Law, hereby applies for the privilege of becoming a self-insurer for the payment of compensation provided in that Law, and submits the following facts, under oath, to the Mississippi Workers' Compensation Commission to enable it to determine if sufficient financial ability exists to render certain the payment of such compensation:

1. Name of applicant_____

2. Address_____
(Number) (Street) (City or town) (County) (State)

3. The applicant is_____
(State whether individual, co-partnership, limited partnership, corporation, receiver or trustee)

4. Describe briefly the general character of the operations performed and the articles manufactured or compounded at or away from the plant or premises of the applicant_____

5. Description of employment for ensuing year:

Location of Plant or Plants	Kind of Employment	Estimated Average No. of Employees at all Points	Estimated Average No. of Employees in Mississippi	Estimated Pay Roll of all Employees

6. If a corporation or limited partnership list, below, names of officers, directors, and residence of each:

If a partnership, list below, names of members and residence of each

Sole owner Residence

7. Statement of assets and liabilities as of last closing date ,

ASSETS		LIABILITIES	
Cash on hand		Capital stock (common)	
Cash in bank		Capital stock (preferred)	
Notes receivable of customers less than one year old (not transferred)		Cumulative?	
		Non - cumulative?	
Accounts receivable of customers less than one year old (not transferrable)		Notes payable given for merchandise	
		Accounts payable	
Merchandise		Notes payable negotiated to banks	
Machinery and fixtures		Notes payable negotiated otherwise	
Real estate (give description):		Bonded indebtedness	
		Mortgage indebtedness	
If included in a partnership, statement, in whose name held?		Other liabilities (describe):	
Investments (describe nature of same):		Surplus	
		Undivided profits	
Other assets (describe):			
TOTAL		TOTAL	

Contingent liability. Notes receivable of customers discounted or sold and not included in assets enumerated above

Other contingent liabilities

If a limited partnership, give date of formation and duration

Statement—Is it based on actual inventory? If so, date

Verification—Have the books been audited by a certified public accountant?

If so, give date of audit

Is the applicant a subsidiary?_____If so, give name and address of parent company_____

7. (a) If a corporation, also answer the following: Charter obtained under the laws of the State of_____

(Date of Incorporation)

7. (b) If a foreign corporation give name of home office_____
Authorized capital stock (common) $_____ (preferred) $_____

Paid and subscribed as follows:

Cash_____ $_____
Patents, trade marks_____ $_____
Good will_____ $_____
Property listed among assets_____ $_____

8. Relate facts, covering the past three years:

	Sales	Expenses (Including Pay Roll)	Pay Roll	Profits
Year _____				
Year _____				
Year _____				

Amount of indebtedness past due_____ $_____
Insurance on merchandise_____ $_____
Insurance on buildings and plants_____ $_____

9. Safety, sanitation and welfare conditions:

Is your plant inspected otherwise than by State authority?_____
If so, by whom?_____
Have you fulfilled all safety requirements of the State Department of Labor and Welfare Department?____

Have you a committee of safety whose duty it is to recommend safety devices and to secure compliance with statutes or general orders of the Department of Labor as to safety and sanitation?_____
Do you maintain a hospital in connection with your works? _____
If so, state description of its equipment and service_____

10. Past accident experience: Year _____ Year _____ Year _____
Number of deaths_____
Number of dismemberments_____
Number of injuries or occupational diseases causing disability of 8 days or longer_____
Number of accidents of all kinds_____

11. In consideration of the approval of this application, the applicant hereby expressly agrees as follows:

(a) That this privilege may be revoked at any time in the discretion of the Mississippi Workers' Compensation Commission, as provided in Section 32 (b) of the Act.

(b) That the applicant will fully discharge by cash payments all liabilities that may arise under Chapter 354. Laws of 1948, and known as Mississippi Workers' Compensation Law.

(c) The applicant agrees to deposit with the Mississippi State Treasurer, as directed by the Commission, acceptable security or idèmnity bond to secure payment of compensation liabilities in the amount and manner as directed by Commission.

(d) This applicant agrees to pay to the Mississippi Workers' Compensation Commission the premium tax and initial fee of $100.00 as required by law.

_____
(Signature of Applicant)

By_____
(Official and Title)

State of _____

County of _____

_____, being first duly sworn, appeared personally and declared that the facts set forth in the foregoing application are true to the best of his knowledge, information and belief.

Subscribed and sworn to before me the_____day of _____, _____.

(SEAL) _____

My commission expires on the_____day of_____, _____.

(This affidavit may be sworn to before any person authorized to administer an oath.)

IMPORTANT

When the applicant is a subsidiary company or a partnership, the Commission may require that the parent company, or any other company or persons holding stock in the applicant company, or a partner or partners in the applicant partnership, shall give a satisfactory guarantee that the applicant will fully and promptly pay all sums which are or may become payable under the provisions of the Mississippi Workers' Compensation Act and under the terms of the agreement contained in his application.