

IN THE SUPREME COURT OF MISSISSIPPI

MICHAEL CRAWFORD

PLAINTIFF/APPELLANT

V.

DOCKET NO. 2006-TS-00185

**MORRIS TRANSPORTATION, INC.,
ALEX JORDAN, INDIVIDUALLY, AND
AS AGENT DRIVER OF MORRIS
TRANSPORTATION, INC., AND
CUSTOM SIGN COMPANY OF BATESVILLE,
INC. F/K/A CUSTOM SIGN CO. OF
GRENADA, INC.**

DEFENDANTS/APPELLEES

----- CONSOLIDATED WITH -----

MICHAEL CRAWFORD

PLAINTIFF/APPELLANT

V.

DOCKET NO. 2007-TS-00322

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GRENADA, INC.**

DEFENDANTS/APPELLEES

**APPEAL FROM THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL DISTRICT OF COAHOMA COUNTY, MISSISSIPPI
CAUSE NO. 14-CI-03-0017 (2006-TS-00185)
CAUSE NO. 14-CI-05-0081 (2007-TS-00322)**

**BRIEF OF DEFENDANTS/APPELLEES ALEX JORDAN AND
MORRIS TRANSPORTATION, INC.**

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ORAL ARGUMENT REQUESTED

I. CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Defendants/Appellees Alex Jordan and Morris Transportation, Inc. certifies that the following listed persons or entities have an interest in the outcome of this case. These representations are made in order that Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Michael Crawford, Plaintiff/Appellant
2. Derek D. Hopson, Sr., Esq., Hopson Law Firm, PLLC
Counsel for Plaintiff/Appellant
3. Alex Jordan, Co-Defendant/Appellee
4. Morris Transportation, Inc., Co-Defendant/Appellee
5. R. Brittain Virden, Esq. and Charles S. Hewins, Esq., Campbell
DeLong, LLP, Counsel for Co-Defendants/Appellees Alex Jordan
and Morris Transportation, Inc.
6. Custom Sign Co. of Batesville, Inc., Co-Defendant/Appellee
7. Gerald H. Jacks, Esq., Mary McKay Lasker, Esq. and Kathy R. Clark,
Esq., Jacks, Adams & Norquist, P.A., Counsel for Co-
Defendant/Appellee Custom Sign Co. of Batesville, Inc.

R. Brittain Virden, [REDACTED]
Charles S. Hewins, [REDACTED]

By: 

Attorneys for Appellees Alex Jordan and Morris
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II. TABLE OF CONTENTS

I. CERTIFICATE OF INTERESTED PERSONS	i
II. TABLE OF CONTENTS	ii
III. TABLE OF CASES AND AUTHORITIES	iii
IV. STATEMENT OF THE ISSUES	1
V. STATEMENT OF THE CASE AND FACTS	1
A. Nature of the Case	1
B. Course of Proceedings in the Court Below	2
1. The 2003 Matter	2
2. The 2005 Matter	8
VI. SUMMARY OF THE ARGUMENT	9
VII. ARGUMENT	10
A. It Was Proper for the Trial Court to Strike All Pleadings and Enter an Order of Dismissal and Final Judgment in the 2003 Matter Following the United States District Court's Order of Dismissal	10
1. Applicable Law	10
2. Discussion	14
B. It Was Proper for the Trial Court to Dismiss the 2005 Matter on the Grounds that the Statute of Limitations Expired	17
1. Applicable Law	17
2. Discussion	17
3. The Plaintiff's Tolling Argument Fails Because He Did Not Raise the Issue at Any Stage of Litigation Prior to Appeal	21
4. The Plaintiff's Priority Jurisdiction Argument Fails Because it Is Inapplicable Under the Facts	22
C. The Plaintiff's Judicial Estoppel Argument Fails Because Jordan and Morris Are Not Taking Conflicting Positions	23
VII. CONCLUSION	24
IX. CERTIFICATE OF SERVICE	25

III. TABLE OF CASES AND AUTHORITIES

CASES

<i>Alexander v. Daniel</i> , 904 So.2d 172 (Miss. 2005)	21
<i>Bean v. Clark</i> , 85 So.2d 588 (Miss. 1956)	12
<i>Davis v. Estate of Harrison</i> , 214 F. Supp. 2d 695 (S.D. Miss. 2002)	11
<i>Frith v. Blaxon-Flexible Flyer, Inc.</i> , 512 F.2d 899 (5 th Cir. 1975)	11
<i>Grant v. State</i> , 686 So.2d 1078 (Miss. 1996)	22
<i>Hopson v. North American Ins. Co.</i> , 233 P.2d 799 (Idaho 1951)	12
<i>Jackpot Mississippi Riverboat, Inc. v. Smith</i> , 874 So.2d 959 (Miss. 2004)	19
<i>Jones v. Fluor Daniel Services Corp.</i> , 959 So.2d 1044 (Miss. 2007)	21
<i>Lowe v. Jacobs</i> , 243 F.2d 432 (5 th Cir. 1957)	11
<i>Mississippi Power Co. v. Luter</i> , 336 So.2d 753 (Miss. 1976)	12-13, 16
<i>Raleigh Co. v. Barnes</i> , 109 So. 8 (Miss. 1926)	20
<i>RAS Family Partners, LP v. Onnan Biloxi, LLC</i> , 968 So.2d 926 (Miss. 2007)	22-23
<i>Rayner v. Raytheon Co.</i> , 858 So.2d 132 (Miss. 2003)	13-14
<i>Resolution Trust Corp. v. Murray</i> , 935 F.2d 89 (5 th Cir. 1991)	11
<i>Ryan v. Wardlow</i> , 382 So.2d 1078 (Miss. 1980)	19
<i>Sanghi v. Sanghi</i> , 759 So.2d 1250 (Miss. App. 2000)	11
<i>Shaw v. Shaw</i> , 603 So.2d 287 (Miss. 1992)	21
<i>Triplett v. Mayor and Board of Aldermen of Vicksburg</i> , 758 So.2d 399 (Miss. 2000) ..	21

STATUTES

MISS. CODE ANN. § 15-1-49 (Rev. 2003)	17
MISS. CODE ANN. § 15-1-57 (Rev. 2003)	9, 21-22
MISS. CODE ANN. § 15-1-69 (Rev. 2003)	<i>passim</i>
28 U.S.C. § 1441 (1991)	10
28 U.S.C. § 1446 (1991)	<i>passim</i>
28 U.S.C. § 1447 (1991)	15, 20
28 U.S.C. § 2283 (1948)	11

RULES

MISS. R. CIV. PRO. 4	5, 7
MISS. R. CIV. PRO. 27	2, 3
MISS. R. APP. PRO. 28	24

OTHER AUTHORITIES

14A Wright & Miller, FED. PRAC. & PROC. § 3737 at 550-51	11
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IV. STATEMENT OF THE ISSUES

This appeal is the consolidation of two matters considered and dismissed by the Circuit Court of Coahoma County, Mississippi, both of which involved Plaintiff Michael Crawford and Defendants Alex Jordan, his employer, Morris Transportation, Inc., and Custom Sign Co. of Batesville, Inc., and both of which relate to a traffic accident occurring between vehicles driven by Plaintiff Crawford and Defendant Morris. The first matter was filed on March 5, 2003 (hereinafter “the 2003 matter”), and the second matter was filed on July 14, 2005 (hereinafter “the 2005 matter”) after the 2003 matter was dismissed. Therefore, the consolidated appeals will require this Court to address two issues:

1. Whether it was proper for the Coahoma County Circuit Court to dismiss the 2003 matter on the grounds that the United States District Court’s dismissal effectively terminated the matter?
2. Whether it was proper for the Coahoma County Circuit Court to dismiss the 2005 matter on the grounds that the statute of limitations had expired?

V. STATEMENT OF THE CASE AND FACTS

A. Nature of the Case

On July 14, 2001, Plaintiff/Appellant Michael Crawford was driving his vehicle North on State Street in Clarksdale, Mississippi, when at a high rate of speed he crashed the front of his vehicle into the rear of a truck and trailer owned by Morris Transportation, Inc. and driven by Alex Jordan. Jordan had stopped his truck in front of a railroad underpass for fear that his truck was taller than the overhead space would allow. The underpass is a landmark of sorts in Clarksdale, thanks to the prominently displayed “Welcome to Clarksdale” sign. This sign was painted and erected by Custom Sign Co. of Batesville, Inc.

The 2003 action was originally commenced by the Plaintiff as a “Petition to Perpetuate Testimony” pursuant to Rule 27 of the *Mississippi Rules of Civil Procedure*. That action was removed to federal court by Jordan and Morris and was subsequently transformed into a civil action when the U.S. Magistrate Judge permitted the Plaintiff to file his Complaint in federal court. On August 26, 2004, the 2003 action was dismissed, and not remanded, by the U.S. District Court pursuant to the Plaintiff’s own motion. Subsequent efforts by the Plaintiff to revive the 2003 matter in state court, in spite of the U.S. District Court’s dismissal, were prohibited by the Coahoma County Circuit Court, who dismissed the 2003 action once and for all on January 4, 2006.

The 2005 matter was commenced at the same time the Plaintiff sought to revive - - in state court - - the 2003 action which had been dismissed by the U.S. District Court. Even though the 2005 matter was filed more than three years after the traffic accident occurred, the Plaintiff claimed the statute of limitations had not expired on the 2005 matter because it had been commenced within one year of the 2003 matter being dismissed by the U.S. District Court. The Circuit Court disagreed with the Plaintiff and dismissed the 2005 matter on January 4, 2006.

B. Course of Proceedings in the Court Below¹

1. The 2003 Matter

The 2003 matter began when the Plaintiff filed a Petition to Perpetuate Testimony against Jordan and Morris on March 5, 2003, citing Rule 27 of the *Mississippi Rules of Civil Procedure*. *Petition to Perpetuate Testimony*, at R03-4; RE-001. The Plaintiff admitted in the Petition that the reason he sought to conduct depositions before formally commencing his case was so he could find an “unknown local defendant contractor” which could defeat federal court jurisdiction as the Plaintiff

¹Due to the consolidated appeals, Jordan and Morris will differentiate between the records as follows: The 2003 matter (at trial level No. 14-CI-03-0017, and on appeal 2006-TS-00185) will be referenced as “R03”, while the 2005 matter (at trial level No. 14-CI-05-0081 and on appeal 2007-TS-00322) will be referenced as “R05.” Selected record excerpts will be labeled “RE.”

and Defendants were residents of different states. *Id.* at R03-7; RE-004.² Jordan and Morris objected to the proposed scheme since Rule 27 proceedings are not designed for use by future plaintiffs as fishing expeditions for diversity-destroying defendants, but the trial court entered an order allowing the Plaintiff to conduct the depositions of Jordan and Morris. *Order Authorizing Petitioner to Take the Depositions of Those Named in Petition to Perpetuate Testimony*, at R03-12. Following discovery which revealed no diversity-destroying defendants, Jordan and Morris filed their Notice of Removal on August 4, 2003, removing the action to the United States District Court for the Northern District of Mississippi, on the grounds that complete diversity of citizenship between Plaintiff and Defendants existed. *Notice of Removal*, at R03-16; RE-011.³ As required by federal law, Jordan and Morris likewise filed a notice indicating removal had taken place with the Coahoma County Circuit Court on August 12, 2003, which prohibited any case activities in state court. *Notice*, at R03-14; RE-009.

Following removal, the Plaintiff filed Petitioner's Motion to Dismiss Without Prejudice, Alternatively to Remand. *See* R03-341Z; RE-015.⁴ The Plaintiff alternatively sought dismissal of the 2003 matter (*Id.* at R03-341AA; RE-016) or else remand. *Id.*

During the course of discovery to allegedly perpetuate testimony, the Plaintiff filed an unusual motion with the U.S. District Court seeking to file a complaint either in state court or in

²The Plaintiff is a Mississippi resident, while both Jordan and Morris are Arkansas residents.

³The U.S. District Court cause number, when removed, was 2:03cv264. Following a transfer from the Delta Division to the Greenville Division, the matter was assigned a new cause number, 2:03cv435. The docket sheet for the 2:03cv435 matter, which contains entries for both matters, is part of the record at R05-211.

⁴In the original clerk's papers for the 2003 matter, two essential pleadings filed by Jordan and Morris, which contained copies of pleadings filed in federal court, were left out by the clerk. Jordan and Morris sought, and obtained, an order from the trial court allowing the clerk's papers to be supplemented. As a result of the supplementation, those pleadings, and their extensive exhibits, were inserted into the clerk's papers in their correct spot chronologically based on filing date. Accordingly, this brief will contain citations to the record on appeal such as "R03-341Z," and later, "R03-341AAAAA."

federal court. *Plaintiff's Motion for Leave to File Complaint, Alternatively to Add Additional Defendants*, at R03-341BBBB; RE-020. His request was as follows:

Wherefore, Plaintiff requests that he be allowed leave to file his Complaint in the Circuit Court of Coahoma County, Mississippi, and the Clerk of said Court thereafter be given notice to stamp "Filed" said Complaint and forward the same to this Court to be included in the removal action.⁵ **Alternatively, Plaintiff requests that he be allowed leave to file his Complaint in this Court.**

Id. at R03-341CCCC; RE-021 (emphasis added). The Plaintiff also sought, for the first time, to name co-Defendant Custom Sign Co. of Batesville, Inc. *Id.* Attached to the motion was his proposed Complaint. *Id.* at 341EEEE; RE-023. The precipice contained the "Circuit Court of Coahoma County Mississippi" heading in light of the first alternative request for relief. *Id.*

The Magistrate Judge entered an order granting the motion, finding as follows:

the plaintiff's motion for leave to file complaint, alternatively, to add additional defendants is granted; **the plaintiff's complaint . . . is hereby deemed filed**; counsel for plaintiff shall, within five days, submit to the clerk's office for filing a signed original of this document for substitution of the unsigned copy.

Order, at R03-341AAAAA; RE-041 (emphasis added). The language of the order deeming the proposed Complaint "filed" clearly shows that the Magistrate Judge permitted its filing in Federal Court only. The federal docket shows that the U.S. Clerk, in accordance with the Magistrate Judge's instructions in her Order, filed the Complaint, effective the same day the Order was entered. R05-211. The interpretation of the Magistrate's order being one permitting the filing of the Complaint in Federal, rather than state, court is correct because it is consistent with (1) 28 U.S.C. § 1446's mandate which prohibits any actions in state court - - including the filing of pleadings - - while a matter remains pending in federal court, and (2) the fact that there is no law which permits a U.S.

⁵Note the specific instructions that the Plaintiff asked the U.S. Magistrate Judge to give to the Coahoma County Circuit Clerk if this version of the relief requested was granted. The subsequent Order contained no such language, and the Coahoma County Circuit Clerk took no such actions.

Magistrate Judge to direct a state court clerk to perform any actions in contravention of § 1446.

In accordance with the Magistrate's instructions to file a signed substitute copy of the Complaint with the U.S. Clerk within five days, the Plaintiff submitted his signed substitute Complaint to the U.S. Clerk on November 20, 2003, which was marked "received" on November 24, 2003. R03-91, R03-106. However, the Plaintiff next exceeded the authority granted by the Magistrate Judge when, on December 10, 2003, he filed with the Coahoma County Circuit Clerk (1) the Magistrate Judge's Order (*Order*, at R03-90), and (2) the version of the Complaint which had been signed on November 20, 2003 and marked "received" by the United States Clerk on November 24, 2003. R03-106. The Plaintiff's actions in filing documents with the Coahoma County Circuit Clerk on December 10, 2003 were unauthorized and in direct contravention of 28 U.S.C. § 1446's prohibition of state court action until a matter which has been removed has been remanded.⁶

After the Complaint was deemed filed in federal court, Jordan and Morris answered the Complaint using the federal court precipice and filing it in federal court only. *Separate Answer of Morris Transportation, Inc. and Alex Jordan*, at R03-341NNNNN; RE-042.⁷ The U.S. Court docket shows that Jordan and Morris' Answer was filed on December 8, 2003, two days before the Plaintiff filed a copy of his Complaint in state court. R05-211. Later, even though Jordan and Morris had already filed their Answer to the Plaintiff's Complaint in federal court, the Plaintiff took the unnecessary step of serving, pursuant to Fed. R. Civ. Pro. 4(d), a Notice of Lawsuit and Request

⁶The Plaintiff insists that the U.S. Magistrate Judge's Order provided him with the authority to file his original Complaint in state court. For instance, at page 4 of the Brief of Appellant, the Plaintiff states: "Plaintiff moved the Federal Court for leave to file his Complaint in State Court and add parties. On or about November 12, 2003, the Federal Court granted such leave." On page 20 of the Brief of Appellant, the Plaintiff again makes the same assertion, only this time it is in bold and underlined. The Plaintiff's assertion is merely a false interpretation of the Magistrate Judge's Order and federal law.

⁷The date Jordan and Morris filed their Answer in federal court is in further compliance with the Magistrate Judge's Order, which provided a deadline of December 13, 2003 to file an Answer. *Order*, at R03-341AAAAA; RE-042.

Also, see the Coahoma County Circuit Clerk's Docket, R03-1 to R03-3, which show that Jordan and Morris did not file their Answer in state court, as doing so would violate the provisions of 28 U.S.C. § 1446.

for Waiver of Summons, which was entirely on a federal form. Jordan and Morris, using the federal form, executed the waiver and filed it in Federal Court on March 26, 2004. *Waiver of Service of Summons*, at R03-243; RE-060; *see also* R05-212.

Following additional motions and briefing at the Federal Court level, U.S. District Court Judge Allen Pepper entered his Order which specifically granted the Plaintiff one of his alternative requests for relief:

IT IS THEREFORE ORDERED AND ADJUDGED that:

(1) petitioner's Motion to Dismiss Without Prejudice is hereby **GRANTED**; accordingly,

(2) The current action is hereby **DISMISSED WITHOUT PREJUDICE**; and

(3) This case is **CLOSED**.

Order, R03-232D; RE-061. The U.S. District Court did not remand the matter. *Id.*

The U. S. District Court's Order dismissing the case was dated August 26, 2004. The Plaintiff did not seek reconsideration of the Order. However, nearly eleven months later, the Plaintiff sought to revive the 2003 matter by filing a First Amended Complaint (R03-107), Plaintiff's Motion to Consolidate (R03-168), and Plaintiff's Motion for Enlargement of Time to Serve Complaint (R03-210). The First Amended Complaint was filed July 14, 2005, while the Plaintiff's Motion to Consolidate and Plaintiff's Motion for Enlargement of Time to Serve Complaint were filed on July 18, 2005.

In response, Jordan and Morris filed Defendant's Motion to Strike Plaintiff's Motion to Consolidate (R03-228), Motion to Strike Plaintiff's Motion for Enlargement of Time to Serve Complaint (R03-232A), and Motion to Strike "First Amended Complaint" Alternatively to Dismiss and Close Proceeding (R03-251). These motions argued that since the 2003 matter had been

dismissed by the U.S. District Court rather than remanded, there was no case to be joined with the 2005 matter. Therefore, they sought to strike the motion in the 2003 matter because it was moot. The Motion to Strike Plaintiff's Motion for Enlargement of Time to Serve Complaint also pointed out that the 2003 matter had been dismissed, and therefore it was not possible to serve a Complaint in a matter which had been dismissed. *Id.* at R03-232A. Furthermore, even though the Plaintiff's filing of his original Complaint in state court while the matter was pending in federal court was illegal, he never formally served Jordan or Morris with a state court summons within the 120 day time period required by Rule 4(h) of the *Mississippi Rules of Civil Procedure*, and never demonstrated good cause for that failure. *Id.* at R03-232B. Similarly, the Motion to Strike "Fist Amended Complaint" Alternatively to Dismiss and Close Proceeding, pointed out the same things contained in the other motions filed by Jordan and Morris, namely that the 2003 matter had been dismissed by the U.S. District Court, and that any actions taken in state court both while the matter was pending in federal court, and subsequent to dismissal, were of no consequence.

A hearing was held regarding the pending motions in the 2003 matter (as well as the 2005 matter) on November 14, 2005 before the Hon. Albert B. Smith, III. The transcript is contained in Volume 3 of the Record of Appeal. At the hearing, the trial court concluded that the U.S. District Court's August 24, 2004 dismissal ended the 2003 matter, and further that even if the 2003 matter was not ended, the Plaintiff failed to serve Jordan and Morris with a copy of the Complaint it filed in state court on December 10, 2003, pursuant to Rule 4 of the *Mississippi Rules of Civil Procedure*, and within the 120 day time limit prescribed by the rule. Accordingly, the trial court's Order of Dismissal and Final Judgment was entered on January 4, 2006 and filed January 9, 2006. *Order of Dismissal and Final Judgment*, at R03-391.

2. The 2005 Matter

At the same time the Plaintiff sought to revive the 2003 matter, he created a brand new cause of action by filing another Complaint with the Coahoma County Circuit Clerk, creating the 2005 matter, which was assigned cause No. 14-CI-05-0091. *Complaint*, at R05-3. The 2005 Complaint was filed on July 14, 2005. *Id.* at R03-20. Thereafter, on July 18, 2005, the Plaintiff filed his Plaintiff's Motion to Consolidate, which was identical to the Plaintiff's Motion to Consolidate filed in the 2003 matter.

Jordan and Morris objected to Plaintiff's Motion to Consolidate on the same grounds as when the identical motion was filed in the 2003 matter. In response to these pleadings, Jordan and Morris filed a Motion to Dismiss on the ground that the statute of limitations had expired prior to the Plaintiff's filing of the 2005 matter, because the accident happened exactly four years earlier, on July 14, 2001. *Motion to Dismiss*, at R05-103.

Although he did *serve* a response to Jordan and Morris' Motion to Dismiss on September 30, 2005, the Plaintiff erroneously included on the case precipice the 2003 cause number. And, even though Jordan and Morris' Rebuttal in Support of Motion to Dismiss (R05-186) pointed this error out, the Plaintiff made no efforts to correct it. Therefore, the trial court's Order Amending Record on Appeal correctly struck the response from the 2005 Record on Appeal. *Order Amending Record on Appeal*, at R05-289. Furthermore, there is no entry on the handwritten 2005 docket showing the response - - even with its erroneous precipice - - was ever filed with the clerk. Nevertheless, in response to a similar motion to dismiss filed by co-Defendant Custom Sign (*Custom Sign's 12(b)(6) Motion to Dismiss Complaint, Alternatively for Summary Judgment*, at R05-109), the Plaintiff made essentially the same argument made on appeal - - that although the 2005 matter was initiated more than three years after the accident, Mississippi's "savings statute," MISS. CODE ANN. § 15-1-69,

applied, thus making the 2005 matter timely because it was commenced within one year after the 2003 matter was dismissed. *Plaintiff's Objection and/or Response to Custom Sign's Rule 12(B)(6) Motion to Dismiss, or In the Alternative, Motion for Summary Judgment*, at R05-200. At the hearing on the motions, the trial court rejected that argument and found the statute of limitations expired, and therefore entered his Order of Dismissal and Final Judgment, at R05-276. The Plaintiff filed a Notice of Appeal in both the 2003 and 2005 matters. *Notice of Appeal*, at R03-392; R05-277. These two matters were consolidated on appeal by this Court.

VI. SUMMARY OF THE ARGUMENT

The rulings by the Coahoma County Circuit Court in both the 2003 and 2005 matters were correct. When the U.S. District Court entered its order dismissing the 2003 matter, the 2003 matter was dismissed, not remanded. It ceased to exist and therefore could not be revived by the Plaintiff, notwithstanding the fact that he improvidently filed his Complaint in state court while the matter was pending in federal court. The 2005 matter was likewise properly dismissed, as it was filed outside the applicable statute of limitations for personal injury actions. Mississippi's savings statute (MISS. CODE ANN. § 15-1-69 (Rev. 2003)) did not apply to make the 2005 matter timely because the circumstances under which the 2003 matter were dismissed do not allow for its application. Likewise, the tolling statute (MISS. CODE ANN. § 15-1-57 (Rev. 2003)) does not excuse the Plaintiff's delinquent actions because (1) the Plaintiff did not raise the issue of tolling at the trial court level and it is therefore waived on appeal, and (2) even if it did apply, the tolling period was so brief that the 2005 action was still untimely by several months. Finally, the Plaintiff's arguments regarding judicial estoppel fail because Jordan and Morris are not taking - - and have not taken - - inconsistent positions in the two matters before this Court on appeal. Jordan and Morris respectfully request that this Court uphold the rulings of the trial court in both matters and affirm that the matters

are dismissed.

VII. ARGUMENT

A. It Was Proper for the Trial Court to Strike All Pleadings and Enter an Order of Dismissal and Final Judgment in the 2003 Matter Following the United States District Court's Order of Dismissal

1. Applicable Law

28 U.S.C. § 1441 confers upon a defendant in a civil action the right to remove to federal court actions in which diversity of citizenship may exist. 28 U.S.C. § 1441.⁸ The procedure for proper removal is governed by 28 U.S.C. § 1446. It provides that a notice of removal must be filed with the U.S. District Court, and that the removing party give notice to the other parties and the state court of the removal. 28 U.S.C. § 1446(a) & (d). Jordan and Morris complied with the filing and notice provisions of § 1446(a) and (d), which triggered a stay of any future proceedings in state court unless and until remand took place:

Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, **which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.**

28 U.S.C. § 1446(d) (emphasis added).

Section 1446(d) is an injunction against state court action once a matter has been removed.

⁸The Plaintiff goes to great lengths to point out that the 2003 matter started out as a *Petition to Perpetuate Testimony* and was not, therefore, removable. The commentary to 28 U.S.C. § 1446, published on Westlaw, points out that a common dilemma among litigants to matters which might be considered quasi-causes of action, is whether or not to remove lest they be shut out of their removal right at some point in the future. The commentary identified Jordan and Morris' actions as those taken by litigants in other jurisdictions facing the same issues - "resolve all doubts in favor of prompt removal." In briefing before the U.S. District Court, Jordan and Morris asked the Court that if it chose to remand the matter because it was merely a *Petition to Perpetuate Testimony* rather than a full-blown civil action, that remand be prefaced with a strict finding that the *Petition to Perpetuate Testimony* did not meet the requirement of being a removable civil action under § 1446. Although remand with such a caveat was an option available to the U.S. District Court, the Court decided against remand and in favor of the Plaintiff's alternative request, voluntary dismissal.

Frith v. Blaxon-Flexible Flyer, Inc., 512 F.2d 899, 901 (5th Cir. 1975). In *Frith*, the 5th Circuit Court of Appeals stated:

Although the anti-injunction statute, 28 U.S.C.A. s 2283, generally prohibits federal courts from enjoining or staying state court proceedings, an exception is made where an injunction is expressly authorized by an Act of Congress. One of the long recognized statutory exceptions to the prohibition of the anti-injunction statute is the language in 28 U.S.C.A. s 1446(e) that upon removal from state to federal court “the State court shall proceed no further unless and until the case is remanded.”

Frith, 512 F.2d at 901.

In *Sanghi v. Sanghi*, 759 So.2d 1250, 1254 (Miss. App. 2000), the Court of Appeals held:

A petition to remove to federal court halts the state proceedings as soon as the steps necessary to remove are completed. 14A WRIGHT & MILLER, FED. PRAC. & PROC., § 3737 at 550-51; 28 U.S.C.A. § 1446 (Supp. 1999). **The state court has no further authority to act even if a frivolous removal petition has been filed, until such time as the case has been remanded.**⁹

Sanghi, 759 So.2d at 1254 (emphasis added). In *Resolution Trust Corp. v. Murray*, the 5th Circuit Court of Appeals stated “a state court has no power to proceed with a case which has been properly removed to federal court.” *Resolution Trust Corp. v. Murray*, 935 F.2d 89, 93 (5th Cir. 1991). In *Lowe v. Jacobs*, 243 F.2d 432, 432 (5th Cir. 1957), the Plaintiff sought to proceed in state court while a motion to remand was pending in federal court, arguing that since the defendant’s removal was improper, he had the right to proceed in state court. *Id.* The 5th Circuit rejected this reasoning, holding that the injunction against state court proceedings while an action has been removed is

⁹ Although the U.S. District Court did ultimately find that 2003 matter was not removable, it did not state that the removal was frivolous. The *Sanghi* case nevertheless demonstrates that whether a matter has been properly removed based on procedural requirements should not be confused with the different question of whether the matter is one in which the U.S. District Court has the power to keep the case upon removal. Section 1446 contains some strict requirements regarding the proper procedure for removal, which entails (1) filing a Notice of Removal in federal court, (2) notifying the parties, and (3) filing a copy of the notice in state court. Until these things are done, the state court still has the power to act. *Davis v. Estate of Harrison*, 214 F.Supp. 2d 695, 696 (S.D. Miss. 2002). But when they are done, the state court loses all power. *Id.*

absolute, without regard to the ultimate merits of the removal. *Id.* The 5th Circuit stated removal

expressly deprives the state court of jurisdiction to proceed with any phase of litigation that has been properly removed unless and until the case is remanded, and that such remand is solely within the power of the United States court. We have no doubt that this is the effect of the law as it now stands.

Id.

The *Lowe* case did “find several state court cases in which it has been held that the state court now loses all jurisdiction after compliance with the removal statute, until there has been a remand.”

Lowe, 243 F.2d at 432. One of those cases was a Mississippi case, *Bean v. Clark*, 85 So.2d 588 (Miss. 1956). The *Bean* case involved a Mississippi resident’s personal injury lawsuit against two defendants, one a resident of Mississippi and the other not. After the non-resident removed the action to federal court, the Plaintiff obtained a default judgment - - in state court - - against the resident defendant. *Bean*, 85 So.2d at 589. In reversing the trial court’s entry of default judgment, the Mississippi Supreme Court stated:

We are of the opinion that under Sections 1441-1447, inclusive, 28 U.S.C.A., that the filing of the petition and bond¹⁰ by the nonresident defendant for a removal of the cause to the United States District Court, effected the removal of the entire cause and that no further proceedings could thereafter be held in the circuit court where the suit had been filed, unless and until the cause is remanded by the Federal Court to the State Court.

Bean, 85 So.2d at 589. The Mississippi Supreme Court continued, citing with favor an opinion from Idaho: “furthermore, that any action so taken in the State court thereafter and prior to remanding the cause to such State court, will have no force or effect.” *Id.* at 589 (citing *Hopson v. North American Ins. Co.*, 233 P.2d 799, 802 (Idaho 1951)).

In *Mississippi Power Co. v. Luter*, 336 So.2d 753 (Miss. 1976), the defendant removed the

¹⁰The Historical and Statutory Notes accompanying 28 U.S.C. § 1446 point out that the posting of bond was once a prerequisite to removing actions to Federal Court, but that this requirement has been abolished.

case to federal court on April 24, 1974. *Luter*, 336 So.2d at 755. On April 25, the circuit court empaneled a jury, and once the case was remanded back to state court, that jury found the defendant liable for the plaintiff's injuries. *Id.* The defendant appealed, arguing that "the court had no jurisdiction to empanel the jury after the case was removed to Federal District Court." The Mississippi Supreme Court agreed:

This Court held in [*Bean*] that, when a case is removed to a Federal District Court under 28 U.S.C.A. s 1446, the state court shall not proceed after defendants give written notice of removal to all adverse parties and file a copy of the petition for removal with the clerk of such state court. We also held that any action taken in the state court thereafter before remand, had no force or effect. The jury in this case was impaneled without authority of law and any verdict rendered by it was a nullity.

Id.

In *Rayner v. Raytheon Co.*, 858 So.2d 132 (Miss. 2003), the plaintiff originally filed suit in state court, but the defendant removed to federal court on diversity of citizenship grounds. *Rayner*, 858 So.2d at 133. On the plaintiff's motion to remand, the U.S. District Court elected *not* to grant the motion to remand, but instead to dismiss the case for lack of jurisdiction. *Id.* In spite of the dismissal, the plaintiff sought default judgment back in state court, but the trial court denied the motion on the grounds that the U.S. District Court's dismissal resolved the matter. *Id.* In affirming, the Mississippi Supreme Court highlighted the ultimate necessity of a remand before a state court is permitted to proceed further:

In the instant case, the district court denied Rayner's motion to remand. Without a remand by the federal court, the circuit court lacked jurisdiction to proceed further.

Because this case is in the federal courts, Rayner's only remedy in this case was to appeal the order of the district court to the United States Court of Appeals for the Fifth Circuit. As a matter of law,

until there is a remand order, the state court cannot proceed in a case that has been removed to federal court.

Id. at 134.

2. Discussion

There are two undisputed facts which resolve the issue of whether it was proper for the Coahoma County Circuit Court to deny the Plaintiff's efforts to revive the 2003 matter. First, the 2003 matter was removed from state court to the U.S. District Court by Jordan and Morris in August 2003. Second, the U.S. District Court dismissed, rather than remanded, the removed action in August 2004. Removal effected an absolute bar on state court activity in light of 28 U.S.C. § 1446 and the cases cited above which discussed the ability of state courts to act once a matter had been removed. The dismissal of the 2003 matter in federal court meant that the case was resolved, not remanded. It was proper, therefore, for the Coahoma County Circuit Court to deny the Plaintiff's Motion for Enlargement of Time to Serve Complaint, reject his Amended Complaint, and dismiss the action with prejudice. Furthermore, it was proper for the circuit court to disregard the original Complaint the Plaintiff filed in December of 2003, because the filing in state court was a nullity in light of 28 U.S.C. § 1446.

The procedural path followed in this case closely resembles what occurred in the *Rayner* case, *infra*. In both, a matter originally commenced in state court was removed to federal court. Next, both matters were dismissed, rather than remanded, by the U.S. District Court. Next, each Plaintiff sought to revive his dismissed action - - the *Rayner* plaintiff by seeking default judgment, while the Plaintiff here filed a *First Amended Complaint* and sought leave of the trial court to serve his original *Complaint*. In both, the defendants objected and the trial courts agreed, finding that the federal courts' orders meant precisely what they said - - that the matters had been dismissed and the cases were closed. Jordan and Morris therefore submit the precedent set by *Rayner* is controlling

and this Court should deny the Plaintiff's efforts to revive an action which had already been dismissed by the Federal Court.

The Plaintiff would have this Court believe he has been victimized by these circumstances. However, his entire position is based on his own gross misinterpretation of the federal court orders, and it also ignores the fact that he was specifically granted one of the alternative forms of relief requested, in this case dismissal. The Magistrate Judge did *not* permit the Plaintiff to file his Complaint in state court, as allowing the Plaintiff to do so would be the equivalent of allowing the Plaintiff to violate the clear mandate of 28 U.S.C. § 1446. Likewise, the U.S. District Judge did *not* remand the case - - he dismissed it at the Plaintiff's request - - an essential fact which profoundly impacts the Plaintiff's ability to revive the 2003 matter. While the Plaintiff identifies himself as a victim, Jordan and Morris submit that he has merely engaged in procedural gamesmanship and a gross misreading of both the U.S. Magistrate and U.S. District Judge's orders to his detriment, and seeks a bail-out from this Court for his errors.

The Plaintiff's alleged "victim" status is further called into question by the fact that he was not without recourse from the dismissal which he requested and received. 28 U.S.C. § 1447 provides that "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." The U.S. District Court's order was clear: "The current action is hereby **DISMISSED WITHOUT PREJUDICE**; and this case is **CLOSED**." If the Plaintiff changed his mind and did *not* want dismissal, preferring instead remand, he could have asked for it on a motion for rehearing. He elected not to do so, however, choosing instead to take no action for nearly 11 months.

While the Plaintiff is steadfast in his assertion that he was allowed to file his Complaint in state court and that this was of some consequence, there is simply no authority in existence which

holds that a matter, once it is removed to federal court, somehow remains in existence in state court when the case is dismissed. The purpose for remand is to revive a removed state court action. Without a remand, there can be no more state court action..

The Plaintiff's entire case for reviving the 2003 matter revolves around his assertion that he was permitted to file his original Complaint in state court in December 2003, and therefore it remained a viable action in spite of the dismissal. Although the Plaintiff did file his Complaint in state court, he was not given authority to do so. His assertion to the contrary is a gross misinterpretation of the U.S. Magistrate Judge's Order. The language of the Order stating that "the plaintiff's complaint . . . is hereby deemed filed" is a clear, unequivocal signal that not only was the U.S. Magistrate Judge permitting the Plaintiff to file his Complaint, it was doing so itself. The Plaintiff has provided this Court with no legal authority which demonstrates a U.S. Magistrate Judge is permitted to do such a thing, nor has he engaged in any appreciable effort to identify any ambiguity in the U.S. Magistrate Judge's Order which could be interpreted in his favor.

Once the 2003 matter was removed to the United States District Court, it ceased to be a state court matter, and could not once again become a state court matter unless and until it was remanded by the U.S. District Court. The law in Mississippi is and has unequivocally been that once a matter has been removed to U.S. District Court, there is no authority to act in state court. Any action taken in state court while a matter is pending in U.S. District Court, such as Plaintiff's filing of a Complaint, is a nullity. *Luter*, 336 So.2d at 755 ("action taken in the state court thereafter before remand, had no force or effect") (holding verdict rendered by jury empaneled while case was removed to federal court a nullity). Accordingly, it was proper for the trial court to determine that the 2003 matter had been closed upon the U.S. District Court's dismissal of the action in August 2004. Therefore, Jordan and Morris respectfully submit that this Court should affirm this ruling.

B. It Was Proper for the Trial Court to Dismiss the 2005 Matter on the Grounds that the Statute of Limitations Expired

The traffic accident giving rise to the alleged cause of action occurred on July 14, 2001. The Plaintiff initiated the 2005 matter by filing his Complaint in the Circuit Court of Coahoma County, Mississippi on July 14, 2005. Jordan and Morris submit that because the Plaintiff failed to file his Complaint in the 2005 matter within the applicable 3-year limitations period, it is untimely and, therefore, it was proper for the trial court to dismiss the 2005 matter on those grounds. Further, the savings clause, MISS. CODE ANN. § 15-1-69 (Rev. 2003) does not apply here to excuse the Plaintiff's delinquent filing.

1. Applicable Law

For personal injury actions, suit must be filed within three years "after the cause of such action accrued, and not after." MISS. CODE ANN. § 15-1-49 (Rev. 2003). The Plaintiff relies on the savings statute in support of his contention that even though the original statute of limitations had expired, his *Complaint* creating the 2005 matter was nevertheless timely because it was filed within 1 year of the U.S. District Court's dismissal of the 2003 matter:

If in any action, duly commenced within the time allowed, the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if, after verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on appeal, the plaintiff may commence a new action in the same cause, at any time within one year after the abatement or other determination of the original suit, or after reversal of the judgment therein, and his executor or administrator may, in the case of the plaintiff's death, commence such new action, within the said one year.

MISS. CODE ANN. § 15-1-69 (Rev. 2003).

2. Discussion

The Plaintiff's success in obtaining this Court's reversal of the 2005 matter's dismissal is

dependent on his showing that the matter's untimeliness is excused under Mississippi law, specifically Mississippi's savings statute, MISS. CODE ANN. § 15-1-69 (Rev. 2003). Accordingly, whether or not the savings statute applies is wholly dependent on the circumstances of the 2003 matter's dismissal.

After the 2003 matter was removed by Jordan and Morris in August, 2003, the Plaintiff filed Petitioner's Motion to Dismiss Without Prejudice, Alternatively to Remand. R03-341Z; RE-xx. The Plaintiff sought voluntary dismissal as his primary objective: "Petitioner moves this Court to dismiss this action without prejudice in order that Petitioner can file his action in a proper Mississippi Court." *Id.* at 341AA; RE-016. After filing, and receiving, permission to file his Complaint in federal court, and therefore seek compensation for his alleged injuries, the Plaintiff made no effort to amend or withdraw his request for voluntary dismissal.

This was the stage set for the U.S. District Court's order, which granted the Plaintiff precisely what he requested:

This cause comes before the court upon Petitioner's Motion to Dismiss Without Prejudice, Alternatively to Remand. Upon due consideration of the motion and the responses thereto the court finds as follows, to-wit: **The motion to voluntarily dismiss without prejudice should be granted.**

(1) Petitioner's Motion to Dismiss Without Prejudice is hereby **GRANTED**; accordingly,

(2) The current action is hereby **DISMISSED WITHOUT PREJUDICE**; and

(3) This case is **CLOSED**.

Order, at R03-232D; RE-061. After this Order was entered by the Court on August 26, 2004, the Plaintiff passed up on a second opportunity to keep the 2003 matter on the right path when he failed

to file a motion seeking the U.S. District Court's reconsideration of its ruling in light of the matter's changed circumstances following the filing of his Complaint in federal court. The question to be resolved, therefore, is whether the U.S. District Court's dismissal was a dismissal of the type which makes the Plaintiff's otherwise untimely 2005 action timely. Under the savings statute, it must be determined whether the 2003 matter was dismissed for a "matter of form." MISS. CODE ANN. § 15-1-69 (Rev. 2003).

The Mississippi Supreme Court has issued a number of rulings on what constitutes a dismissal for a matter of form. In *Jackpot Mississippi Riverboat, Inc. v. Smith*, 874 So.2d 959 (Miss. 2004), the first action was dismissed for lack of prosecution and the Plaintiff sought to revive his case against a casino by filing a second cause of action. The Mississippi Supreme Court refused the Plaintiff's argument, noting that it has long been decided that "the saving statute does not apply to dismissal of cases as stale." *Smith*, 874 So.2d at 961. On the other hand, dismissals based on a lack of jurisdiction have been held to be dismissals as a matter of form. *Ryan v. Wardlow*, 382 So.2d 1078 (Miss. 1980).

The Plaintiff relies on *Wardlow* and similar cases addressing the jurisdiction issue to argue that his 2003 matter was dismissed by the U.S. District Court on jurisdictional grounds. In his brief, at page 13, he states:

Before the Trial Court, the Sign Company, in error, focuses its argument on the fact that plaintiff's (sic) voluntarily dismissed the federal court action, **when that is simply not true**. Plaintiff attempted to voluntarily dismiss his petition to perpetuate testimony after Truck Driver Jordan and Morris Transportation removed the matter to federal court. Since the complaint had not been filed at the time plaintiff filed his motion to dismiss, there is no way the motion can be interpreted as a voluntary attempt by plaintiff to dismiss a complaint that was not filed.

Brief of Appellant, at 13. What the Plaintiff fails to account for is the fact that he *did* file a

Complaint in U.S. District Court, yet made no effort - - either prior to or after the U.S. District Court's dismissal - - to modify his previous requests to account for the case's changed circumstances. He alleges that he destroyed diversity by adding Custom Sign, yet fails to state why he did not simply modify his motion to seek only remand, to the exclusion of dismissal.

In spite of the Plaintiff's contention, the dismissal was indeed voluntary and it was at the Plaintiff's request. This is bolstered by the fact that had the U.S. District Court's ruling been on jurisdictional grounds, U.S. law only permits remand. 28 U.S.C. § 1447(c) provides that "if at any time before final judgment it appears the district court lacks subject matter jurisdiction, **the case shall be remanded.**" (emphasis added). The U.S. District Court was provided a choice by the Plaintiff - - dismissal or remand. The fact that the court chose the Plaintiff's voluntary request for dismissal over remand is clear indication that the U.S. District Court's ruling was not on jurisdictional grounds.

Voluntary dismissals are not dismissals for a matter of form. In *Raleigh Co. v. Barnes*, 109 So. 8 (Miss. 1926), the Mississippi Supreme Court examined a situation in which the Plaintiff sought, and received, a voluntary dismissal of his first lawsuit, which had been filed within the appropriate statute of limitations. *Barnes*, 109 So. at 9. Examining the identical statutory language as exists today, the Mississippi Supreme Court held that the second-filed cause of action could not be maintained because it was filed outside the applicable limitations period:

A nonsuit or dismissal without prejudice is, of course, within both of these statutes, but under our statute the dismissal must be for a matter of form, and, as hereinbefore stated, it does not appear that the appellant's prior suit was dismissed for that reason.

Id.

Consequently, the dismissal, being voluntary, is not under Mississippi law a dismissal as a matter of form. Therefore, Mississippi's savings statute has no applicability to this matter and the

2005 Complaint must stand on its own against the statute of limitations. Since the traffic accident happened on July 14, 2001, but the Plaintiff failed to initiate the 2003 matter until July 14, 2005, the 2005 matter is untimely and it was therefore proper for the trial court to dismiss it.

3. The Plaintiff's Tolling Argument Fails Because He Did Not Raise the Issue at Any Stage of Litigation Prior to Appeal

In addition to his savings statute argument, the Plaintiff alleges on appeal that the statute of limitations on his 2005 action was tolled during the time in which the 2003 matter was pending in U.S. District Court. MISS. CODE ANN. § 15-1-57 (Rev. 2003). At the trial level, however, he never made this argument. Rather, in response to any and all of the defendants' motions related to dismissal of the 2005 action at the trial court level, the Plaintiff argued *exclusively* that the savings statute applied to legitimize his 2005 action. See *Plaintiff's Objection and Response to Defendant's Motion to Strike Plaintiff's Motion for Enlargement of Time to Serve Complaint*, R05-89, at ¶ 15; *Plaintiff's Objection and Response to Defendant's Motion to Strike Plaintiff's Motion to Consolidate*, R05-95, at ¶ 15; *Plaintiff's Rebuttal to Custom Sign's Response to Plaintiff's Motion to Consolidate*, R05-190, at ¶ 15; *Plaintiff's Objection and Response to Custom Sign's Rule 12(b)(6) Motion to Dismiss, or in the Alternative, Motion for Summary Judgment*, R05-200, at ¶ V.

The Mississippi Supreme Court has consistently held that arguments raised for the first time on appeal are waived. *Jones v. Fluor Daniel Services Corp.*, 959 So.2d 1044, 1048 (Miss. 2007); *Alexander v. Daniel*, 904 So.2d 172, 183 (Miss. 2005); *Triplett v. Mayor and Board of Aldermen of Vicksburg*, 758 So.2d 399, 401-02 (Miss. 2000); *Shaw v. Shaw*, 603 So.2d 287, 292 (Miss. 1992). In accordance with this precedent, Jordan and Morris respectfully request that this Court decline to consider this argument on appeal.

The Plaintiff's waiver of this issue notwithstanding, the argument in favor of tolling has no merit. Mississippi's tolling statute, MISS. CODE ANN. § 15-1-57 (Rev. 2003), provides as follows:

When any person shall be prohibited by law, or restrained or enjoined by the order, decree, or process of any court in this state from commencing or prosecuting any action or remedy, the time during which such person shall be so prohibited, enjoined or restrained, shall not be computed as any part of the period of time limited by this chapter for the commencement of such action.

However, the Mississippi Supreme Court has held that the tolling provision of § 15-1-57 applies only where a plaintiff is prohibited from filing suit. *Grant v. State*, 686 So.2d 1078, 1083-84 (Miss. 1996). Throughout his appellate brief the Plaintiff consistently argues he *was* permitted to file his Complaint, though he erroneously asserts he was permitted to do so in both federal and state courts. Furthermore, Jordan and Morris both *answered* his Complaint in federal court. The Plaintiff's case is not a candidate for tolling where the prohibitions which allow a party to assert tolling are not present.

At the most then, the Plaintiff was prohibited from filing suit from September 18, 2003 (the date in which the U.S. Magistrate Judge imposed a stay of the federal court proceeding for remand-related discovery - see R05-211), until the date the U.S. Magistrate Judge actually permitted the Plaintiff to file his Complaint. *Order*, at R03-341AAAAA; RE-041. This is a period of merely 56 days which might arguably be considered as tolling under the statute, far short of the amount of time needed to make up for the 1 year delay between the date the statute of limitations expired on July 13, 2004 and the date the Plaintiff's second matter was initiated on July 14, 2005. Accordingly, the Plaintiff's contention that the tolling statute renders his 2005 action timely is without merit.

4. The Plaintiff's Priority Jurisdiction Argument Fails Because it is Inapplicable Under the Facts

The Plaintiff correctly notes that "where two suits between the same parties over the same controversy are brought in courts of concurrent jurisdiction, the court which first acquires jurisdiction retains jurisdiction over the whole controversy to the exclusion or abatement of the

second suit.” *RAS Family Partners, LP v. Onnam Biloxi, LLC*, 968 So.2d 926, 929 (Miss. 2007).

Jordan and Morris are at a loss to understand how priority jurisdiction has any applicability to this case. In each of the cases cited by the Plaintiff in his brief, there were, indeed, two actions simultaneously pending at the same time. That was not the case here. The Plaintiff suggested that priority jurisdiction came into play because the U.S. Magistrate Judge permitted him to file his Complaint in both state and federal courts back in November/December of 2003. As discussed in detail above, the Magistrate Judge did not permit the Plaintiff to file his Complaint in state court; the Plaintiff did that on his own. Furthermore, the fact that he did so in violation of the injunction imposed by 28 U.S.C. § 1446 did not create two separate causes of action to which principles of priority jurisdiction would apply. To the contrary, when the 2003 matter was removed from state court to federal court, it remained the *same* matter. Jordan and Morris are simply unaware of any case in which priority jurisdiction applied simply because a Plaintiff attempted to violate the statutory injunction imposed by 28 U.S.C. § 1446 for cases removed from state court to federal court. Accordingly, this argument of the Plaintiff lacks merit.

C. The Plaintiff's Judicial Estoppel Argument Fails Because Jordan and Morris Are Not Taking Conflicting Positions

The Plaintiff next argues that Jordan and Morris have taken inconsistent positions with regard to their defense against the 2003 action *vis a vis* the 2005 action. In his brief, he states:

Defendants, at the Trial Court level took and manifested direct opposite position in the '03 action versus this '05 action. In the '05 action in the lower court, they argue Plaintiff should have filed a State Court complaint before July 14, 2004. Simultaneously, on the other hand, in the initial action they argue Plaintiff had no authority to file the December 2003 Complaint. Which is it?

Brief of Appellant, at 19.

The Plaintiff mis-characterizes the arguments of Jordan and Morris to create this judicial

estoppel argument, and in doing so suggests that if one attacks the filing of a case on statute of limitations grounds, he cannot also attack earlier attempts to file a Complaint which is procedurally improper or is statutorily barred from being filed. Jordan and Morris defended the 2005 action on the grounds that the 2005 action was not filed within the 3 year statute of limitations. They defended the 2003 action on entirely different grounds -- that it had been dismissed by the U.S. District Court, not remanded, and therefore it could not be revived as the Plaintiff sought to do in state court. Jordan and Morris merely pointed out that the Plaintiff's action of filing his Complaint in state court in December 2003 was a nullity in light of the statutory injunction imposed on state court action while a matter has been removed to federal court. It is not inconsistent to argue that a Plaintiff should file suit within 3 years and at the same time point out that an effort to do so which is not in compliance with applicable law is of no benefit. The Plaintiff's argument on this point, therefore, has no merit.

VII. CONCLUSION

For the reasons stated herein, Jordan and Morris respectfully request that this Court affirm the decisions of the trial court and uphold the dismissals of the 2003 and 2005 matters.¹¹

RESPECTFULLY SUBMITTED, THIS, the 24th day of January, 2008.

R. BRITTAIN VIRDEN,
CHARLES S. HEWINS,

BY: 

Attorneys for Alex Jordan and Morris
Transportation, Inc.

¹¹ Pursuant to Rule 28(i) of the *Mississippi Rules of Appellate Procedure*, Jordan and Morris adopt by reference and incorporate herein the arguments and authorities contained and referenced by co-Defendant/Appellee Custom Sign Co. of Batesville, Inc.

OF COUNSEL:

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IX. CERTIFICATE OF SERVICE

I, **Charles S. Hewins**, one of the attorneys for Alex Jordan and Morris Transportation, Inc., do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing document to the following:

Derek D. Hopson, Sr., Esq.
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Gerald H. Jacks, Esq.
Kathy R. Clark, Esq.
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P.O. Box 1209
Cleveland, MS 38732

Hon. Albert B. Smith, III
Circuit Court Judge, District 11
P.O. Drawer 478
Cleveland, MS 38732-0478

THIS, the 24th day of January, 2008



CHARLES S. HEWINS

IN THE SUPREME COURT OF MISSISSIPPI

MICHAEL CRAWFORD

PLAINTIFF/APPELLANT

V.

DOCKET NO. 2006-TS-00185

**MORRIS TRANSPORTATION, INC.,
ALEX JORDAN, INDIVIDUALLY, AND
AS AGENT DRIVER OF MORRIS
TRANSPORTATION, INC., AND
CUSTOM SIGN COMPANY OF BATESVILLE,
INC. F/K/A CUSTOM SIGN CO. OF
GRENADA, INC.**

DEFENDANTS/APPELLEES

----- **CONSOLIDATED WITH** -----

MICHAEL CRAWFORD

PLAINTIFF/APPELLANT

V.

DOCKET NO. 2007-TS-00322

**MORRIS TRANSPORTATION, INC.,
ALEX JORDAN, INDIVIDUALLY, AND
AS AGENT DRIVER OF MORRIS
TRANSPORTATION, INC., AND
CUSTOM SIGN COMPANY OF BATESVILLE,
INC. F/K/A CUSTOM SIGN CO. OF
GRENADA, INC.**

DEFENDANTS/APPELLEES

CERTIFICATE OF FILING

NOW COMES Charles S. Hewins, one of the attorneys for Co-Defendants/Appellees Alex Jordan and Morris Transportation, Inc., in accordance with Rule 25 (a) of the Mississippi Rules of Appellate Procedure, and certifies hereby that he has actually mailed the original, three copies and one electronic copy of the Brief of Defendants/Appellees Alex Jordan and Morris Transportation, Inc., and the original and one copy of this Certificate, to Ms. Betty Sephton, Supreme Court Clerk on this date, the 24th day of January, 2008 by Federal Express, addressed to the aforesaid Clerk of Court.

THIS, the 24th day of January, 2008.

R. BRITTAN VIRDEN,
CHARLES S. HEWINS, [REDACTED]

BY: 

Attorneys for Co-Defendants/Appellees
Alex Jordan and Morris Transportation, Inc.

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CERTIFICATE OF SERVICE

I, **CHARLES S. HEWINS**, one of the attorneys for Alex Jordan and Morris Transportation, Inc., do hereby certify that I have this day mailed, by first class United States mail postage prepaid, a true and correct copy of the above and foregoing document to the following:

Derek D. Hopson, Sr., Esq.
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Gerald H. Jacks, Esq.
Mary McKay Lasker, Esq.
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Honorable Albert R. Smith, III
Circuit Court Judge
Post Office Drawer 478
Cleveland, MS 38732

THIS, the 24th day of January, 2008.



CHARLES S. HEWINS