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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
CASE # 2007-TS-01668-CA**

**MARCY WRIGHT**

**APPELLANT**

**VS.**

**ROYAL CARPET SERVICE, LLC.**

**APPELLEE**

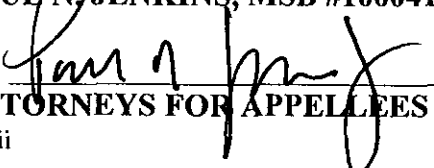
**CERTIFICATE OF INTERESTED PARTIES**

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

1. Marcy Wright, Appellant;
2. John Adams Wright, Former Plaintiff;
3. Jim Waide, Esq., Attorney for Appellant;
4. Waide & Associates, P. A., Attorneys for Appellant;
5. Royal Carpet Service, Inc., Appellee;
6. Paul N. Jenkins, Esq., Attorney for Appellee;
7. B. Wayne Williams, Esq., Attorney for Appellee;
8. Webb Sanders & Williams, PLLC, Attorneys for Appellee.

This the 22<sup>nd</sup> day of May, 2009.

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## **I. STATEMENT OF THE CASE**

### **A. Course of Proceedings and Disposition of Trial Court**

On February 13, 2004, Appellant Marcy Wright<sup>1</sup> (hereinafter referred to as “Wright”) filed suit against Metropolitan Property and Casualty Insurance Company, MetLife Auto and Home, Economy Premier Assurance Company, Royal Carpet Service, LLC, Service Pro South, Micorban Systems, Inc., and II Rep-Z. [R-8]<sup>2</sup>. (“Defendants”) Wright alleged breach of contract, negligent failure to warn of a known danger, and for products liability against the Defendants. [R-8]

The Wrights, on March 3, 2004, filed an Amended Complaint. [R-71] On March 26, 2004, this matter was removed to federal court. [R-146, 148]. The Federal Court, on March 12, 2006, remanded this matter back to the Circuit Court of Lowndes County, Mississippi, after nearly two years of litigation, as a result of the Wrights reaching a settlement with and dismissing the insurance defendants, leaving only resident defendants, Royal Carpet and Service Pro South.[R-158]

Royal Carpet filed its motion for summary judgment and memorandum in support of same on July 7, 2006. [R-163 and 413] The Circuit Court of Lowndes County denied Royal Carpet’s motion for summary judgment and motion to strike Wright’s experts on November 21, 2006. [R-842, 843] Wright, on August 16, 2007, filed a motion *in limine* to exclude evidence of homeowner’s insurance (which we surmise is the point of Wright’s appeal). [R-902] Trial

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<sup>1</sup> Prior to trial the Wrights stipulated that John Adams Wright was not making any claim against Royal Carpet and therefore dismissed any claims he may have had, this was later formalized in an order of dismissal. [R-1022].

<sup>2</sup> Citations to the-RECORD will be as follows: [R-Page Number]. Citations to the Transcript will be as follows: [T-Page Number]

regarding this matter commenced on August 21, 2007. [T-2] The jury returned a verdict in favor of Royal Carpet on August 23, 2007. [R-1018] Judgment was entered by the Circuit Court of Lowndes County in favor of Royal Carpet on September 6, 2007. [R-1024] Wright filed her Notice of Appeal to this Court on September 24, 2007. [R-1026]

**B. Statement of Facts**

This litigation involves alleged damages to the Wright's home and personal injury resulting from alleged exposure to mold and other chemicals. The Wrights had a water leak on the night of October 6, 2001 in their home<sup>3</sup> [T-42-43]. Danny Madison<sup>4</sup> (here in after Madison) with Royal Carpet was contacted by Ms. Wright on Thursday October 11, 2003 [T-150]. Madison met with Wright and Wright's insurance adjuster the next day at 10am. [T-150] Madison, when it arrived at the home, found that the Wrights had removed the water soaked carpet from the home in question. [T-134]. Madison conducted moisture tests to determine the extent of the moisture problem and began the process of drying the home [T-152]. Madison placed two dehumidifiers and two fans in the affected area to facilitate drying [T-152].

Prior to beginning the drying process, Madison applied an antimicrobial, Microban X-580 ("Microban") [T-135]. Madison applied the Microban as directed on the label [T-135]. Madison went over the Microban's label precautions and other precautions with Ms. Wright in detail [T-135]. Madison also informed Ms. Wright to not inhabit the house while the fans and humidifiers were in the home [T-153]. Microban's label requires that the area be clear of inhabitants for only twenty minutes (20) after spraying [T-135]. Madison was informed by Ms. Wright that she would

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<sup>3</sup>All exhibits referenced herein are attached to Royal Carpet's Motion for Summary Judgment.

<sup>4</sup>Danny Madison is the owner of Royal Carpet.

be staying in a trailer home located behind the home and would not be staying in the home while this process was ongoing. [T-153].

The two dehumidifiers and two fans were left operating in the home for three (3) days [T-140]. Madison rechecked the home for moisture levels and determined that the humidity levels were appropriate for removal of the two dehumidifiers and two fans [T-157]. Madison found that the moisture level was less than 40%, which was within acceptable humidity levels for this region of the country [T-157-158]. Joseph M. Drapala, Ms. Wright's expert, agreed with that finding and conclusion. [T-241].

Madison returned to Ms. Wright's home in November 2001, at the request of Ms. Wright, [T-143] when she complained a chemical smell was irritating her [T-143]. Although not necessary, Mr. Madison wiped down the area where he applied the Microban during this visit. [T-144]. In October or November 2001, Royal Carpet did not find any indication of mold growth in the home [T-145].

However, Madison did recommend to Ms. Wright that she remove the tile floor and baseboards as a precaution for mold [T-81]. Ms. Wright declined to remove the tile floor due to the potential that the tiles could contain asbestos and would increase the clean-up cost. She also declined to remove the base boards [T-81; T-137].

Madison also informed Ms. Wright that she needed to have the air conditioning duct work examined and possibly cleaned in case there was mold growth. [T-57]. Ms Wright testified that the only place in the home that mold was present in November 2001 was in the air conditioning ducts. She also testified that she contracted with Service Pro South to clean and disinfect the duct work in October or November 2001.

Ms. Wright opened her house to the weather elements, including humidity, for a three to four week time during October and/or November 2001 after Royal Carpet dehumidified the home [T-54-55;T-84]. Mr. Drapala testified that this opening of the home by Ms Wright could have caused mold growth to occur [T-213]. After December 2001, the house was left essentially abandoned. [T-87]

The trial of this matter took place on August 23, 2007. [R-1018]

Wright argued her motion *in limine* to exclude evidence of homeowner's insurance before Circuit Judge Lee Howard prior to trial. [T-7-25]. The Trial Court never formally ruled on Wright's motion and no order was ever entered denying Wright's motion *in limine*. The Trial Court only commented as to how it believed the evidence of the June 23, 2003 letter Wright wrote to her insurance carrier, in which she placed 100% of the blame for the same damages she is seeking against Royal Carpet on her insurance carrier, [R-899, D-1] could be looked at as a statement against interest.<sup>5</sup> [T-23]. The Court further commented that the parties should refrain from discussing the amounts of money she received from her homeowner's insurance carrier. [T-25] In fact, one of the last comments the trial court made to counsel for parties after all of the motion *in limines* filed by both parties were heard was to "preserve your record", which Wright did not do. [T-36].

Despite the Court's instructions to refrain from discussing amounts of money offered from the carrier, Wright chose to immediately to begin discussing the course of conduct and involvement of her homeowner's carrier and it should be noted Wright was the party that first brought to the jury's attention the existence of Wright's homeowner's insurance. Furthermore,

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<sup>5</sup> This letter was introduced as exhibit D-1 [R-899, D-1] and Wright affirmative stated that she had no objection to



Wright ignored the Court's instructions and mentioned specific amounts of money she received from her insurance company in her closing statement. The pertinent sections where Wright's homeowner's insurance was mentioned at trial are set forth below:

- Wright brought up the issue of homeowner's insurance in her voir dire of the proposed jury panel. [T-22-23]
- Wright brings up homeowner's insurance in her opening statement. [T-64 of opening statement]
- Wright introduces Plaintiff's exhibit P-1[T-61], in which Wright characterizes as a document that was used with Wright's insurance company
- Royal Carpet cross-examines Wright about her failure to repair the house despite the opportunity given to her by her insurance company, no objection was made by Wright. [T-86 - 89]
- Royal Carpet cross-examines Wright about her refusal to attempt to clean her clothes which she has made claim for against Royal Carpet, despite being given the opportunity to do so by her insurance company. [T-92-95]
- Royal Carpet introduces the June 23, 2003 letter Wright wrote to her insurance carrier [D-1, R-899] in which Wright affirmatively stated that she had no objection to the letter being introduced as evidence. [T-99-100]
- Royal Carpet also cross-examined Wright about her mental anguish claims which she had made against her insurance company and against Royal Carpet. [T-102-106]

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the letter being introduced. [T-99]

- Royal Carpet cross-examined Wright about [P-1] the first exhibit Wright introduced, which was a list of personal property she submitted to her insurance company and was also making claim against Royal Carpet. [T-106-107]
- Wright was re-directed by her counsel regarding the assigning of fault to both her insurance company and Royal Carpet. [T-109-110]
- Royal Carpet in its closing statement asked the jury to read [D-1. R-899] during its deliberations, as Wright blamed her insurance carrier for 100% of the damages she was making claim at trial against Royal Carpet. [T-110 of the closing statement transcript]; Royal Carpet also commented on Wright's failure to take reasonable steps to protect her own property, despite having the opportunity given to her by her insurance company [T-114]
- Wright in the second portion of her closing statement introduced to the jury the amount of money the insurance company was going to pay her to get her home fixed and discussed with the jury the assessment of fault by Wright in her June 23, 2003 letter to her insurance carrier. [R-899, d-1] [T-120, 121 of the closing statement transcript]

The Lowndes County jury after hearing the testimony and considering the evidence found in favor of Royal Carpet. [R-1018]

## **II. SUMMARY OF THE ARGUMENT**

Royal Carpet believes, though Wright's brief is unclear, Wright is appealing the trial court's allowance of the Defendant to introduce evidence of Wright's statement against interest to her insurance company that it was 100% responsible for the damages, for which she is making

claim against Royal Carpet. [R-899, D-1] Wright did not object to the introduction of Wright's statement contained in her June 23, 2003 letter. [T-99] It is also believed that Wright is appealing the introduction to the jury of any other evidence regarding Wright having homeowner's insurance. Wright, however, was the party who first introduced any mention of Wright's homeowner's insurance. Wright mentioned homeowner's insurance first in her voir dire of the jury panel. [T-22-23] Wright discussed homeowner's insurance in her opening statement. [T-61] Wright also introduced into evidence [P-1], a document she characterized as a document submitted to her insurance company for a personal property claim – a claim she is also making against Royal Carpet.[T-99]

The evidence introduced by Royal Carpet and the questioning by Royal Carpet of Wright was not barred by the collateral source rule. The evidence and questioning, as the Court can see from the above sections of transcript, was not used to demonstrate monies paid to Wright from her carrier. Royal Carpet used this information, including Wright's June 23, 2003 letter, to demonstrate Wright's statements against interest, [R-899, T-99-104] and to demonstrate Wright's failure to protect her own property from further damage when having the opportunity and means to do so. [T-86-89 and T- 92-95] *Flight Line, Inc. v. Tanksley*, 608 So. 2d 1149 (Miss. 1992); *Traveler's Indemnity Co. v. Rawson*, 222 So. 2d 131 (Miss. 1969). Clearly, Royal Carpet's questioning and evidence it introduced did not violate the collateral source rule. *See Robinson Property Group, L.P. v. Mitchell*, 2009 WL 1085734 (Miss. 2009).

Even if, this Court does not agree that Royal Carpet's position regarding the collateral source rule is correct, Wright has waived any objection she may have had concerning the mention of homeowner's insurance. Wright introduced the information she is now complaining.

Wright may not rely upon her motion *in limine* to exclude evidence of homeowner's insurance as that motion was never denied. [T-7 – T-25] Wright failed to preserve her objections throughout the trial and, in fact, introduced evidence herself for which she now complains and cannot correct such on appeal. Wright also affirmatively stated that she did not object to Wright's June 23, 2003 letter from being introduced into evidence. [R-899, D-1]

Finally, Wright has not demonstrated how the allowance of this information, if improper, was an abuse of discretion and caused irreparable harm at trial. Therefore, given the above arguments, which are more fully set forth below, this Court should affirm the judgment entered in the lower court by the Lowndes County jury.

### **III. STANDARD OF REVIEW**

This Court has held that it should apply an abuse-of-discretion standard of review when reviewing the trial court's decision to allow or disallow evidence. *Webb v. Braswell*, 930 So.2d 387, 396-97 (Miss.2006) (citing *Miss. Transp. Comm'n v. McLemore*, 863 So.2d 31, 34 (Miss.2003)). Furthermore, "a motion *in limine* should be granted only if '(1) the material or evidence in question will be inadmissible at a trial under the rules of evidence; and (2) the mere offer, reference, or statements made during trial concerning the material will tend to prejudice the jury.'" *McLemore*, 863 So.2d at 34 (quoting *Whittle v. City of Meridian*, 530 So.2d 1341, 1344 (Miss.1988)). In order to reverse a case on the admission or exclusion of evidence, the ruling must result in prejudice and adversely affect a substantial right of the aggrieved party. *Terrain Enters., Inc. v. Mockbee*, 654 So.2d 1122, 1131 (Miss.1995). Thus, not only must the trial judge abuse his discretion, the harm must be severe enough to harm a party's substantial right. "[T]he standard of review regarding Rule 403 determinations is an 'abuse of discretion.'" "

*Baldwin v. State*, 784 So.2d 148, 160 (Miss.2001).

#### **IV. ARGUMENT**

##### **A. THE ARGUMENTS RAISED BY WRIGHT ON APPEAL ARE WITHOUT MERIT**

##### **1. ROYAL CARPET DID NOT VIOLATE THE “COLLATERAL SOURCE RULE” IN THE TRIAL OF THIS CASE**

It has long been established that, under the collateral-source rule, “a defendant tortfeasor is not entitled to have damages for which he is liable reduced by reason of the fact that the plaintiff has received compensation for his injury by and through a totally independent source, separate and apart from the defendant tortfeasor.” *Cent. Bank of Miss. v. Butler*, 517 So.2d 507, 511-12 (Miss.1987) (citations omitted). In other words, the wrongdoer is not entitled to have the damages for which he is liable reduced by proving that plaintiff has received or will receive compensation or indemnity for the loss from a collateral source, wholly independent of him. Under this general rule, insurance on behalf of the injured person cannot be considered in mitigation of the loss, however, evidence of insurance can be used for other purposes. *Robinson Property Group, L.P. v. Mitchell*, 2009 WL 1085734 Miss.,2009. (citing *Coker v. Five-Two Taxi Serv.*, 211 Miss. 820, 826, 52 So.2d 356, 357 (1951) (quoting 25 C.J.S. Damages, § 99) (emphasis added). See also *Burr v. Miss. Baptist Med. Ctr.*, 909 So.2d 721, 728 (Miss.2005).)

It is clear from the record of this trial that the collateral source rule was not violated by Royal Carpet. The instances of homeowner’s insurance which were discussed by Royal Carpet are set forth below.

**a. Royal Carpet properly cross-examined Wright about her failure to prevent further alleged damage to her home and her personal property.**

Wright has alleged in her Complaint [R-008] and Amended Complaint [R-071] that the Defendants in the case (which include her insurance carrier, Royal Carpet and others) are responsible for her inability to live in her home [T-86-89] and the alleged loss of her personal property [T-92-95]; [T-114]. Royal Carpet, was properly permitted by the trial court to question Wright about her failure to prevent further damage to her home, which required a discussion of her homeowner's insurance. Wright testified that she had abandoned the home in December of 2001 and refused to attempt to have her clothes cleaned, despite given the means and opportunity by her insurance carrier to do so. [T-86-89; 92-95]

This line of questioning was proper, as Wright was under a duty to prevent further damage to her own property. "A person injured in tort is required to take reasonable steps to mitigate his [or her] damages ... ." *Flight Line, Inc. v. Tanksley*, 608 So. 2d 1149 (Miss. 1992); "Failure to mitigate damages will preclude recovery for any "injuries which the exercise of reasonable care could have avoided." *Traveler's Indemnity Co. v. Rawson*, 222 So. 2d 131 (Miss. 1969). Therefore, this line of questioning was properly allowed by the trial court and, as the Court can see, was not in violation of the collateral source rule. *Robinson Property Group, L.P. v. Mitchell*, 2009 WL 1085734 Miss.,2009.

**b. Royal Carpet was properly allowed to introduce Wright's June 23, 2003 letter (Wright's statement against interest) into evidence as Exhibit D-1**

Royal Carpet introduced the June 23, 2003 letter, that Wright wrote to her insurance company, into evidence during the cross-examination of Wright [T-99-102]and during its closing

statement. [T-110][R-899, D-1] Wright assigned 100% of the responsibility of the blame to her carrier regarding claims that she was making against both Royal Carpet and her carrier. This letter constituted an admissible statement against interest on its own merit. [T-23] *Rankin v. State*, 963 So.2d 1255 Miss.App.,2007. (Court found that letter written to victim's mother by defendant was admissible). The Court commented that this statement could be considered a statement against interest. [T-23]

Further, Wright did not object to the introduction of this letter, [T-99] consequently, she has waived any objection to same and cannot now complain. *Trustmark National Bank v. Jeff Anderson Regional Medical Center*, 792 So. 2d 267 (Miss. 2000). Assuming Wright's failure to object do not waive her objection, clearly, this letter did not violate the collateral source rule, as the letter does not mention any amounts of money Wright may have received from her carrier. The letter was not used for any purpose precluded by the collateral source rule. *Robinson at 1165*.

**c. Royal Carpet was proper in cross-examining Wright regarding her mental anguish claims she made against Royal Carpet which she also made against her insurance company**

Wright made the same claims for mental anguish against her carrier as she did against Royal Carpet. [R-071] Royal Carpet cross-examined Wright about her troubles with her insurance company to demonstrate that someone else besides Royal Carpet could have caused the mental anguish she has alleged. [T-102-106] Clearly, this line of questioning does not fall under the purview of collateral source, as it solely deals with the cause of damages which Wright has claimed against both Royal Carpet and her carrier. *Id.*

**d. Royal Carpet properly cross-examined Wright regarding Exhibit, P-1**

Royal Carpet cross-examined Wright about Plaintiff's exhibit P-1, which was a document that Wright, herself, introduced at trial and was characterized by her as information she submitted to her insurance company. [T-61] Wright placed into evidence information about her insurance, which Royal Carpet properly used to cross-examination Wright [T-106-107]. Even if Wright could somehow be held to not have waived her objection to this document, as it was Wright who introduced it, [T-99] Royal Carpet did not get into any amounts of money which Wright may have received and only asked her why she submitted the document. There was no violation of the collateral source rule, even if there could be an objection to this document which Wright placed into evidence, nor did the document mention the amount of money she received from carrier. *Id.*

**2. WRIGHT HAS WAIVED ANY OBJECTION TO INTRODUCTION OF HOMEOWNER'S INSURANCE EVIDENCE**

Wright has waived any argument related to the preclusion of any mention of homeowner's insurance. Wright, on numerous occasions during the trial made mention of insurance, introduced evidence regarding her insurance, or allowed evidence to be introduced regarding her homeowner's insurance. Wright cannot complain on appeal of alleged errors invited or induced by herself. *Rubenstein v. State*, 941 So.2d 735 Miss., 2006; *Davis v. State*, 472 So.2d 428 (Miss.1985); *Browning v. State*, 450 So.2d 789 (Miss.1984); *Jones v. State*, 381 So.2d 983, cert. den. 449 U.S. 1003, 101 S.Ct. 543, 66 L.Ed.2d 300 (Miss.1980). The following examples cited from the trial record clearly demonstrate Wright's waiver.

Wright said the following in her opening statement:

[T-23]



P64<sup>6</sup> Line 6-11

6       There's going to be a lot of talk. And one  
7       of the defenses that he seems to be making that  
8       He asked her about is, well, she had insurance  
9       and that she also blamed the insurance company, that  
10      they should have gotten the problem solved. And  
11      that's true....

Additionally, during the direct examination of Ms. Wright, Wright, through her counsel, introduced as exhibit P-1 a personal property inventory list that was prepared for the insurance company and was mentioned in that context in her testimony at trial.

[T-61]

P 61 lines 7-23

7       Q.     Well, have you lost the use of all of your  
8       clothes and furniture that was in the house?  
9       A.     Yes.  
10      Q.     All right, I believe at the request of the  
11      insurance company you prepared an inventory of what all  
12      you had in the house - -  
13      A.     Yes, I did.  
14      Q.     - - is that correct?  
15      BY MR. WAIDE:    Your Honor, may I have this  
16      personal property inventory worksheet marked as  
17      an exhibit?  
18      BY THE COURT:    Show it to counsel opposite,  
19      please.  
20      BY MR. WISE:     No objection, Your Honor.  
21      BY THE COURT:    Let it be received and  
22      marked. Pass it to the court reporter, and give  
23      the court reporter time to mark the exhibit.

As mentioned above it is clear that Wright "opened the door" on any discussion of insurance and cannot now complain of same. *Id.* Furthermore, during the cross-examination of

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<sup>6</sup> The transcript for the opening statement was completed later by the Court reporter and later filed with this Court and is a separate supplement and transcript therefore the page numbers coincide with the main transcript.

Wright, Royal Carpet introduced [R-899, D-1]. D-1 was the June 23, 2003 letter Wright wrote to her insurance company wherein she attributed 100% of the damages she was making a claim for against Royal Carpet to her insurance company. Wright did not object and, in fact agreed, to the introduction of the June 23, 2003, letter [R-899] at trial and has therefore waived any objection to same.

[T-99-100]

P 99 lines 21-29, P. 100 lines 1

21 BY THE COURT: You may proceed. You're  
22 asking her to mark that for identification?  
23 BY MR. JENKINS: It's going to be Defense's  
24 Exhibit 1, Your Honor.  
25 BY THE COURT: Do you want to tender it?  
26 BY MR. WAIDE: I'm not going to object to  
27 it, Your Honor.  
28 BY THE COURT: There being no objection, go  
29 ahead and mark it as exhibit then, court

P. 100 line 1

1 reporter. I wanted to get that in the record.

An issue is waived on appeal where there was no contemporaneous objection. *Russell v. State*, 607 So.2d 1107, 1117 (Miss.1992). This Court has held that in such a case to properly preserve the issue for appellate review the defendant must preserve for the record "substantial and detailed evidence of the testimony he would have given." *Heidelberg v. State*, 584 So.2d 393, 395 (Miss.1991) (quoting *Saucier v. State*, 562 So.2d 1238, 1245 (Miss.1990)) (overruled on other grounds). Not only has Wright failed to properly preserve this issue for appeal, Wright conceded and/or introduced the specific thing she wishes to make issue in her appeal.

Clearly, if the argument Wright has raised on appeal had any merit, which the Appellate

does not concede and in fact disputes, Wright has waived any objection to any mention of homeowner's insurance as she was the party who first made her homeowner's insurance an issue or did not timely object to the introduction of same. In fact, Wright agreed to allow evidence which she now complains to be introduced into evidence, with all of the ramifications that entails. Wright's appeal should be denied.

**B. THE DECISION OF THE TRIAL COURT WAS NOT ERRONEOUS.**

In order to reverse a case on the admission or exclusion of evidence, the ruling must result in prejudice and adversely affect a substantial right of the aggrieved party. *Terrain Enters., Inc. v. Mockbee*, 654 So.2d 1122, 1131 (Miss.1995). Thus, not only must the trial judge abuse his discretion, the harm must be severe enough to harm a party's substantial right<sup>7</sup>.

Wright has not made any argument supported by the facts that would demonstrate that the trial court abused its discretion. Wright has not made any showing of prejudice. Wright's argument only consists of a recitation of the state of the law in Mississippi regarding collateral source. Wright does not demonstrate any facts which would give this Court reason to find that Wright was somehow prejudiced and caused severe enough harm to warrant relief.

**C. WRIGHT'S APPEAL IS DEFICIENT ON ITS FACE**

As this Court has undoubtedly noted, Wrights' appeal contains multiple case citations to authority related to the general application of the collateral source rule, but does not connect these citations to any argument related to the issue(s) she is attempting to appeal. As required by Mississippi Rules of Appellate Procedure 28(a)(6), Wright's argument should have contained "the contentions of appellant with respect to the issues presented, and the reasons for those

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<sup>7</sup> It should be noted that as the Lowndes County jury returned a verdict in favor of Royal Carpet no prejudice

contentions, with citations to the authorities, statutes and parts of the record relied on.” Wright has failed to meet her appellate obligations and burden of persuasion and therefore, the decision of the trial court should be affirmed. *See Graves v. State*, 918 So.2d 791 (Miss. App. 2005). The rule has long been established that an issue is barred where the appellant fails to support it with citations to the authorities, statutes and parts of the record upon which he relies. *Johnson v. State*, 154 Miss. 512, 513, 122 So. 529, 529 (1929); *see also North Biloxi Development Co., LLC v. Miss. Transp. Comm.*, 912 So. 2d 1118 (Miss. App. 2005); *Jackson v. State*, 935 So.2d 1108 (Miss. App. 2005); *Williams v. State*, 708 So.2d 1358 (Miss.1998); *Read v. Southern Pine Elec. Power Ass’n*, 515 So.2d 916, 920 (Miss.1987).

As mentioned above in the Standard of Review, it is not enough just to demonstrate that the trial court abused its discretion, which is a high hurdle in and of itself, Wright must also demonstrate that if there was an abuse of discretion that the error was severe enough to cause irreparable harm. Wright’s argument is devoid of any citations to the record and/or the trial transcript to demonstrate an abuse of discretion by the Court, much less an irreparable harm to the appellant.

Wright’s argument clearly does not meet the requirements set forth in the Rules of Appellate Procedure and the issues are barred from consideration by this Court pursuant to the well-settled law in Mississippi. However, out of an abundance of caution, Royal Carpet has attempted to respond to the issues as captioned by Wright as those forming the basis for this appeal.

## **V. CONCLUSION**

Wright's appeal is without merit as Royal Carpet has not violated the "collateral source rule" as none of the evidence or questioning by Royal Carpet involved monetary amounts Wright received from her insurance company. Additionally, Wright cannot now complain of evidence regarding homeowner's insurance which she herself put in front of the trier of fact, failed to make timely objections or allowed in the evidence she is complaining. Therefore, Wright has waived any argument regarding same.

Finally, Wright's appeal is deficient on its face as she does not demonstrate any facts from the record or transcript which would give this Court a basis to find that the lower Court abused its discretion in allowing the evidence for which she is complaining to be introduced at trial. Wright has not demonstrated how this non-specific evidence would prejudice Wright to a degree where this Court would need to reverse the jury verdict in Lowndes County. For these foregoing reasons Wright's appeal should be denied and the judgment of the lower court affirmed.

**WHEREFORE, PREMISES CONSIDERED**, Appellee, Royal Carpet, LLC., respectfully request this Court deny Appellant's appeal and to uphold the jury verdict found in favor of Royal Carpet.

Respectfully submitted, this the 22<sup>nd</sup> day of May, 2009.

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BY: 

**CERTIFICATE OF SERVICE**

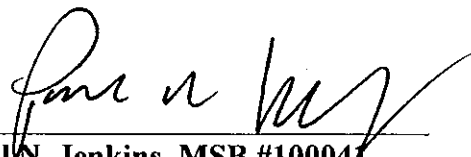
This will certify that the undersigned attorney for Webb, Sanders & Williams, P.L.L.C., has this date delivered a true and correct copy of the above and foregoing Appellee's Brief to all counsel of record by placing a true and correct copy thereof in the United States Mail, postage prepaid, addressed as follows:

**Honorable Lee J. Howard  
Circuit Court Judge  
P.O. Box 1344  
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This the 22<sup>nd</sup> day of May, 2009.

  
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