COPY

ON APPEAL TO THE SUPREME COURT

OF THE STATE OF MISSISSIPPI

2007-WC-00026

THERESA ALEXANDER — CLAIMANT / APPELLEE

FILED

VS — CLAIM NO. CV06-273GA

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SUPREME COURT
COURT OF APPEALS

GOOLSBY TRUCKING COMPANY, INC. AND FLEET FORCE — EMPLOYER / APPELLANT

GOOLSBY TRUCKING'S BRIEF IN REPLY TO THE BRIEF OF THE APPELLEE

ORAL ARGUMENT REQUESTED

JOE M. DAVIS
ATTORNEY FOR THE EMPLOYER
MS BAR NO. [redacted]

OF COUNSEL:

RUTLEDGE, DAVIS AND HARRIS, PLLC
113 West Bankhead Street
Post Office Box 29
New Albany, Mississippi 38652
(662) 534-6421

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed parties have an interest in the outcome of the case. These representations are made in order that the judge of this Court may evaluate possible disqualifications or recusal.

1. Theresa Alexander - Claimant / Appellee
2. Hon. Keith S. Carlton - Attorney for Claimant
3. Goolsby Trucking Company, Inc. - Employer / Appellant
4. Hon. Joe M. Davis - Attorney for Goolsby Trucking
5. Fleet Force, Inc. - Employer / Appellant
6. Hon. Jeff Bowling - Attorney for Fleet Force, Inc.

Respectfully submitted, this the 10th day of August, 2007.

JOE M. DAVIS
ATTORNEY FOR THE EMPLOYER
MS BAR NO [redacted]

OF COUNSEL:

RUTLEDGE, DAVIS, AND HARRIS, PLLC
113 West Bankhead Street
Post Office Box 29
New Albany, Mississippi 38652
(662) 534-6421

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STATEMENT OF THE CASE

A.. Course of Proceedings.

The Appellee, Theresa Alexander, filed a Petition to Controvert on March 31, 2004. (T.R. at 88-89). It was stipulated by the parties that the average weekly wage at the time of injury was $920.00 per week. Alexander reached maximum medical improvement on August 30, 2003. The Administrative Judge ruled in favor of Alexander at the workers compensation hearing, finding a 70% loss of wage earning capacity and holding that Goolsby was Alexander's sole employer. The Administrative Judge awarded Alexander Permanent Partial Disability of $154.34 per week for 450 weeks beginning August 30, 2003. (T.R. at 136-146). An amended order was filed requiring Goolsby to pay permanent partial disability in the amount of $331.06 per week for 450 weeks. (T.R. at 147).

Goolsby appealed this decision which was then affirmed by the Full Commission. (T.R. at 151). At that point, Goolsby filed a Notice of Appeal (T.R. at 4-5) with the Circuit Court of Alcorn County which affirmed the decision of the Commission. (T.R. at 329). Goolsby then filed a Notice of Appeal to the Supreme Court of Mississippi. (T.R. at 330-331). Initial briefs have been filed by both the Appellant and the Appellee. Goolsby now files this brief in reply to the Appellee's Brief.

B. Statement of Relevant Facts.

The Appellee, Theresa Alexander, is a forty-two year old, single mother with two children, who would now be approximately sixteen and twenty-one years of age. She has a high school diploma and has finished approximately three years of college. Her work history includes

such jobs as being a dispatcher for the Corinth Police Department and the Alcorn County Sheriff's Department. (T.R. at 16-18).

Alexander worked as a commercial truck driver since 1990. (T.R. at 19). In May of 2002, Alexander learned of Goolsby Trucking through a fellow driver who had a relationship with Goolsby. After that, Alexander completed an application with Goolsby in their New Albany, Mississippi office. (T.R. at 22). Sport Goolsby, an officer of Goolsby Trucking, reviewed the employment application and forwarded it, along with his recommendation, to a company named Fleet Force, Inc. (Fleet) that hires commercial drivers and then leases them to individual trucking companies. (T.R. at 66). Fleet accepted Alexander's application although Alexander stated that she was not aware of Fleet acting as her hiring employer and that she was not consulted regarding the arrangement. (T.R. at 59-61).

In 1998, Ms. Alexander was involved in a serious motor vehicle accident in which she suffered a broken femur, facial disfigurement, and a bruised kidney. These injuries resulted in her being unable to work for approximately three to four months. In 2000, Alexander suffered a low back pain and underwent carpal tunnel surgery. (T.R. at 137-138).

On or about March 31, 2003, Alexander claims to have suffered a work related injury wherein she fell and landed on the center of her back. Even after security at the site of the accident requested Alexander to seek immediate medical attention, she refused and continued to work that day. Several days after the fall, Alexander stated that she began to experience pain and discomfort in her lower back region. Approximately a week after the fall, she went to the Corinth Hospital for treatment where she was instructed to see her family physician. (T.R. at 36-38).

At some point during this week, she informed an officer at Goolsby Trucking about the fall and subsequent injury. (T.R. at 39). She then came to the New Albany office and filed an accident report per request of Sport Goolsby, who then forwarded the accident report to Fleet who handled the worker's compensation insurance. (T.R. at 70). An employee of Fleet handled Alexander's claim, including paying the initial medical expenses. (T.R. at 39). No one at Goolsby ever handled issues with Alexander's injury, medical payments, or her worker's compensation claim. (T.R. at 58).

Alexander was initially seen by Paula Stennett, FNP, who referred her to Dr. Glen Crosby, a neurosurgeon. (T.R. at 38-39). In May of 2003, Alexander underwent an MRI that indicated her lumbar spine was normal even though she had very small disc bulges at two levels. (T.R. at 94, 98). Dr. Crosby's diagnosis was soft tissue and myofascial strain and sprain. He recommended physical therapy and medication. (T.R. at 98). In July of 2004, Alexander was evaluated by Dr. James C. O'Brien, an orthopaedic surgeon who noted bulging discs at three levels. Dr. O'Brien noted that successful medical treatment for Alexander's condition was unlikely. He placed her off work and testified that she was no longer able to perform this type of job. However, he did testify that he would place no restrictions upon her walking or sitting, or her ability to use her hands as related to putting small objects together. (T.R. at 158-187).

Alexander was not fired from her truck driving job. She had requested assignments to drive loads that required no loading or unloading of cargo. (T.R. at 54-55, 69). However, when these assignments were not available in large numbers, she left the company voluntarily. (T.R. 44, 55, 69).

Following the 2003 injury, Alexander attended a mortgage origination school in Florida

and obtained a mortgage broker's license. She is currently licensed in Florida and has secured a job with a mortgage origination company, but she has not started work yet. (T.R. at 46-47). She has testified that her injuries will not affect her ability to perform this job in any fashion. While her ultimate wage earning capacity as a mortgage broker is currently unknown, it is likely that Alexander will earn a 10-11% commission on each loan she procures which will likely result in an even higher wage earning capacity than she had prior to the accident. (T.R. at 55-57).

II.

ARGUMENT

A. Standard of Review of Commission Determination.

On matters of law, the Commission's findings are subject to a *de novo* standard of review. *McElveen v. Croft Metals, Inc.*, 915 So.2d 14 (Miss. App. 2005); citing *KLLM, Inc. v. Fowler,* 589 So. 2d 670, 675 (Miss. 1991) and *Dillon v. Roadway Express, Inc.* 823 So. 2d 588, 590 (Miss. App. 2002). Deference should only be given to a Commission decision when it is not inconsistent with the law. *Lane Furniture Industries, Inc. v. Essary,* 919 So.2d 153 (Miss. App. 2005). The Mississippi Supreme Court must overturn the Commission's decision when it is arbitrary and capricious or based upon an erroneous application of the law. *Weatherspoon v. Croft Metals, Inc.*, 853 So. 2d 776 (Miss. 2003).

In *Masonite Corporation v. Fields,* the Mississippi Supreme Court held that when the decision of the Workmen's Compensation Commission is clearly erroneous and adverse to the overwhelming weight of the evidence the Court must reverse the order of the Commission. 229 Miss. 524, 91 So.2d 282 (1956). "A finding is clearly erroneous when, although there is some slight evidence to support it, the reviewing court on the entire evidence is left with the definite

and firm conviction that a mistake has been made by the Commission in its findings of fact and in its application of the Act." *J.R. Logging v. Halford,* 765 So.2d 580 (Miss. App. 2000). The Mississippi Supreme Court has also held, "where the findings of the Commission are contrary to the overwhelming weight of the credible evidence, we will not hesitate to reverse." *Dependants of Chapman v. Hanson Scale Co.*, 495 So.2d 1357, 1360 (Miss. 1986); citing *Myles v. Rockwell International,* 445 So.2d 528, 536-37 (Miss. 1983) and *Johnson v. Ferguson*, 435 So.2d 528, 536-37 (Miss. 1983) and *Johnson v. Ferguson,* 435 So. 2d 1191, 1194-95 (Miss. 1983).

B. Arguments.

1. Appellee Is Not Entitled to Permanent Partial Disability Benefits.

Disability is defined as the incapacity, because of injury, to earn the wages which the employee was receiving at the time of the injury in the same or other employment. Dunn, Mississippi Worker's Compensation, §72 (3d ed. 1982). If the injury prevents the employee from resuming her former trade, work or employment, this alone is not the test of disability to earn wages or the test of the degree of such disability. *Id.* The definition relates to loss of wage earning capacity in "the same or other employment," and the meaning is that the employee, after his period of temporary total incapacity, must seek employment in another or different trade to earn wages. MWCA, § 2(9); *Compere's Nursing Home v. Biddy,* 243 So.2d 412 (Miss. 1971). The employee's obligation is not discharged by seeking employment unsuccessfully only in a "like or similar" type of work, but must look to other types of gainful employment. *Id.*

When an employee is shown to be able to pursue gainful work of any kind, the Appellee must present a prima facie case that the injury resulted in a loss of wage earning capacity. *Thompson v. Wells-Lamont Corp.,* 362 So.2d 638 (Miss. 1978). The Appellee must show that a

reasonable effort was used in finding other employment. *Pontotoc Wire Products Co. v. Ferguson,* 384 So.2d 601 (Miss. 1980).

A claim for compensation has no analogy to a suit to recover damages, but is related exclusively to compensation for loss of earnings. *Thyer Mfg. Co. v. Mooney,* 173 So.2d 652 (Miss. 1965). Pain alone is not compensable. *Rivers Const. Co. v. Dubose,* 130 So.2d 865 (Miss. 1961). An injury which produces pain but does not prevent the employee from discharging her duties is not compensable for the time while the employee continues to work whether or not she suffers pain in the process. *Mississippi Insurance Guaranty Assoc. v. Clark,* 299 So.2d 205 (Miss. 1974).

The burden of proof is upon the Appellee to establish all of the elements of the claim, including the degree and extent of the disability, injury and the loss of wage earning capacity. *Lauren v. Frazier,* 213 So.2d 548 (Miss. 1968). Generally, in back cases, "medical" is the equivalent to functional disability and relates to the actual physical impairment. Dunn, Mississippi Worker's Compensation, § 118.3 (3d ed. Supp. 1990). "Industrial disability" is the functional or medical disability as it affects the claimant's ability to perform the duties of employment. *Id.* Medical or functional disability may or may not be the same as industrial disability. *Id.* To establish the required industrial disability, the burden is upon the Appellee to prove: (1) medical impairment; and (2) that the medical impairment resulted in a loss of wage earning capacity. *Robinson v. Packard Elec. Div. G.M.C., 523 So.2d 329 (Miss. 1988).*

If an Appellee returns to work and receives wages that were equal to or exceed the wages earned prior to the injury, a presumption of no disability exists. *Wilcher v. D.D. Ballard Const. Co.,* 187 So.2d 308 (Miss. 1966). This presumption is only defeated when the Appellee offers

evidence to rebut that presumption. Dunn, Mississippi Worker's Compensation, § 67 (3d ed. 1982). The presumption is not rebutted by medical estimates of partial disability alone, nor by lay logic which might point to a conclusion that one "having undergone major back surgery, for example, has less capacity, due to a weakened back, than before the injury which necessitated the operation and this is so even where the employee is qualified only for low-skilled, manual or semi-manual labor." Dunn, Mississippi Worker's Compensation, § 67 (3d ed. Supp. 1990). The presumption is a well settled rule of law and cannot be disregarded in individual cases where rebuttal proof might have been, but was not, presented. *Id.* In the absence of qualifying rebuttal evidence, the presumption stands. *Id.* Evidence showing disability to rebut the presumption must independently show incapacity or that post-injury earnings are an unreliable basis for the determination. *Id.*

Furthermore, the Administrative Judge found that Alexander was partially permanently disabled from August 30, 2003 to the present. August 30, 2003 was the date when Alexander quit her job with Goolsby Trucking, but she went on from that to purchase a truck and trailer of her own and drive as an owner/operator for nearly a year after that point. Clearly, she had no loss of wage earning capacity during that time.

The decision of the Commission should be reversed, or in the alternative, remanded with instructions for further proceedings. Under the Mississippi Worker's Compensation statute, Alexander is not disabled and is not entitled to receive compensation benefits. Alexander has failed to present any evidence that the alleged work-related injury caused her to suffer a loss of wage earning capacity as is required to prove the existence of disability under Mississippi Worker's Compensation law. Alexander does not meet the requirements to be considered

disabled. In the case at bar, it is undisputed that Alexander reasonably sought other employment. The issue is not that she sought employment, but that she has been accepted for employment, and still refuses to work.

Alexander has testified that, upon leaving the trucking industry, she enrolled in a mortgage origination school in Florida and obtained her mortgage broker's license. Upon completing the course of study, she obtained a position as mortgage broker in a Florida office, but she has yet to report for a single day of work. Alexander's duty to seek employment does not end with the search itself. If she is able to procure employment, and her alleged injuries do not prevent her from working, she must work. Because Alexander refuses to begin her new job, her true loss of wage earning capacity, if any, cannot be accurately determined. Determining Appellee's actual loss of wage earning capacity is dependent upon the amount she will earn in her new profession.

Alexander has failed in her duty to adequately and fully disclose the expected income she intends to receive as a licensed mortgage broker in Florida. It seems unlikely that she entered a specialized school, passed a state licensing exam, and even went so far as to secure a job in her chosen profession, and still remains ignorant to her expected income. Even if she was not completely certain of her expected earnings, she must, at least, have a reasonable expectation of her future income. An accurate loss of wage earning capacity must be calculated as without this determination any award to Alexander would be unsupported by substantial evidence.

Based upon a report by the United States Department of Labor, a person with Alexander's level of experience, entering a "professional specialty" field, excluding law and medicine, earns an average wage of $38.19 per hour in the Tampa/St. Petersburg/Clearwater, Florida market.

(*See* Exhibit "A.") Even with a 16.8% deviation, Alexander could expect her wage earning capacity to increase by more than 30% from the wage she earned prior to the accident.

If an Appellee returns to work and receives wages that were equal to or exceed the wages earned prior to the injury, a presumption of no disability exists. *Wilcher v. D.D. Ballard Const. Co.*, 187 So.2d 308 (Miss. 1966). The presumption is a well settled area of law, and Alexander would find it difficult to defeat such a presumption. If Alexander began to work, she would likely not be found disable and would "forfeit" any benefits the Court might award.

Alexander attempts to argue in her brief that she did not actually have employment in Florida. However, in the Administrative Judge's Order, he states, "Ms. Alexander attended mortgage origination school in Florida and obtained her mortgage license. She is licensed in Florida and **has obtained a commission based job,** but has not moved." (AJ order, page 5 Record, page 9)(emphasis added). Clearly, the Administrative Judge believed that Alexander had a job in Florida available to her and that she would be physically capable of performing the job as Dr. O'Brien did not place any restrictions on her that would affect her ability to do this job.

Therefore, the Commission had an absolute duty to consider and investigate Alexander's future wage earning capacity. In order to find Alexander disabled, the Commission should have found a loss in wage earning capacity based upon the evidence. Without considering her future wage earning capacity, the Commission has drastically failed to show any loss of wage earning capacity. This failure caused the Commission to enter an order that was not supported by any substantial evidence and which should be reversed.

2. Goolsby Trucking, Inc. Is Not Appellee's Employer.

A person may be the servant of two employers at the precise time of the injury, or may be loaned by the general employer to another. *See, Kugh v. Rex Drilling Co.*, 64 so.2d 582 (Miss. 1953). A person may also be the servant of two masters, not joint employers, at one time as to one act, provided the service to one does not involve abandonment of the service to the other. *See, Meridian Taxicab co., Inc. v. Ward,* 186 So. 636 (Miss. 1989). In the case of two authorized employments, the question of the identity o f the employer for whom the employee is working at the time of the injury is a question of fact. Dunn, Mississippi Worker's Compensation, § 185 (3d ed. 1982). If the employee is in the course of employment by both at the same time, then liability will be jointly imposed. *Id.* Given the fact of dual employment, it is generally held that joint liability follows if there is **any** evidence of joint service at the time or if the matter of joint service is left in any substantial doubt. *Id.* (Emphasis added).

A person may be a "loaned servant" to an employer who is not her general employer. The common law rule is that a servant, in the general employment of one person, who is loaned to another person to do the latter's work, becomes, for the time being, the servant of the borrower, although she remains in the general employment of the lender. Dunn, Mississippi Worker's Compensation, § 185 (3d ed. 1982). While the "loaned servant" doctrine is generally applicable in the compensation field, a shift of emphasis will be noted towards three distinct factors: (1) whose work is being performed, (2) who controls or has the right to control the workman as to the work being performed, and (3) has the workman voluntarily accepted the special employment. *In Index Drilling Co. v. Williams,* 137 So.2d 525 (Miss. 1962). If the employee does not consent to the employment arrangements of the lending and borrowing employers, then

the "contract of hire, express or implied," as required by the statute, does not exist and the general employment is not effectively suspended insofar as the rights of the employee are concerned. Dunn, Mississippi Worker's Compensation, § 186 (3d ed. 1982).

Alexander performed work for both Goolsby Trucking and Fleet simultaneously. She was driving Goolsby's truck and delivering goods to Goolsby's destinations. In doing so promptly and efficiently, she was benefitting Fleet's reputation for providing skilled, dependable and lease-worthy workers. While Goolsby Trucking assigned Appellee her travel destinations, testimony never stated that Goolsby had any control over the manner, method, or route Alexander was to travel in order to reach her destinations. Fleet, on the other hand, had the ultimate control authority, in that they possessed the power to terminate her employment.

As stated, Alexander testified that she was never informed of the employee, lease agreement between Goolsby Trucking and Fleet. Because she never "voluntarily" accepted the "special employment" in relation to the lease arrangement, the general employer, Fleet, remained appellee's master throughout the duration of her employment. Alexander never consented to the arrangement, and Fleet, as the general employer, remained her master throughout the duration of hr employment. Alexander's admission that she never consented to the employment-lease agreement, voids the agreement from its inception. If the employee does not consent to the employment arrangements of the lending and borrowing employers, then the "contract of hire, express or implied as required by the statute, does not exist and the general employment is not effectively suspended insofar as the rights of the employee are concerned. Dunn, Mississippi Worker's Compensation, § 186 (3d ed. 1982). The general employment relationship, therefore, never changed, and Fleet remained the master of Alexander throughout her employment. The

Commission erred in finding Goolsby Trucking was Alexander's employer and liable for her compensation benefits. This decision was not supported by substantial evidence and should be reversed.

The administrative record contains an exhaustive amount of evidence showing that Fleet was Alexander's actual employer even though the case at hand does represent a complex three party relationship. Upon reviewing all the evidence, however, the relationship can be traced to the formal employment agreement between Fleet and Goolsby Trucking, Inc. Even though the Administrative Judge held that the written contract submitted did not apply to the case before the court, Sport Goolsby testified that Goolsby Trucking and Fleet had a long standing business relationship and that the contract exemplified the typical relationship between them.

Throughout Appellee's employment, Fleet has routinely performed employer functions for Alexander. While Sport Goolsby may have initially reviewed the employment application, he forwarded it to Fleet, who had the ultimate authority to hired Alexander. Even though testimony showed that Fleet had never refused to hire one of Goolsby's recommendations, that does not mean that Fleet did not have the power to make such a refusal. It is true that Alexander drove trucks owned by Goolsby Trucking, and she received bonus payments and destination assignments from Goolsby Trucking. Goolsby Trucking, however, did not have the ultimate authority to hire or fire any drivers. That ultimate issue of employment control rested solely with Fleet. Throughout Alexander's employment, Fleet has routinely performed employer functions for her. Though Goolsby Trucking was an integral part of the business relationship, the ultimate authority rested squarely with Fleet.

Alexander received pay checks from both companies, yet her basic mileage pay that

represented her weekly salary (not including any awards or bonuses) came from Fleet. Alexander testified that she always received a weekly check from Fleet, but she did not necessarily receive a check every week from Goolsby Trucking. The injury report Alexander completed after her injury was sent to Fleet; and it was a Fleet employee, Teresa Dill, who followed-up with Alexander after the injury. The incident report itself was a Fleet document. Fleet initially paid Alexander's medical bills after she sustained her alleged injury. Fleet also sent her W-2 tax statements. All these actions are duties typically performed by an employer which roll Fleet undertook.

Alexander testified that she did not consent to the employment-lease agreement between Goolsby Trucking and Fleet. Under Mississippi Worker's Compensation law, this testimony invalidates any Fleet immunity defense under the "loaned servant" doctrine and places sole liability on the general employer, Fleet. The opinion of the Commission is contrary to settled principles of Mississippi employment law.

While Goolsby Trucking contends that Alexander was the employee of Fleet throughout the entire tenure of her employment, should this Honorable Court find that Goolsby Trucking acted in some capacity as Alexander's employer, then state law mandates that joint liability be apportioned to Fleet as well.

A person may be the servant of two employers at the precise time of the injury, or may be loaned by the general employer to another. *See Kugh v. Rex Drilling Co.*, 64 so.2d 582 (Miss. 1953). A person may also be the servant of two masters, at the same moment doing the same act, provided the service to one does not involve abandonment of the service to the other. *See, Meridian Taxicab Co., Inc. v. Ward,* 186 so. 636 (Miss. 1989). If the employee is in the course

of employment by both, at the same time, then liability will be jointly imposed. *Id.* Given the fact of dual employment, it is generally held that joint liability follows if there is **any** evidence of joint service at the time or if the matter of joint service is left in any substantial doubt. *Id.* (Emphasis added).

The Commission incorrectly found Goolsby Trucking as Alexander's sole employer. As aforementioned, Alexander, in performing her truck driving duties, benefitted both Goolsby Trucking and Fleet in the scope and course of her employment. Once a loaded truck arrived safely and promptly at its destination, Goolsby Trucking fulfilled its contract obligations and Fleet benefitted by having leased a productive and efficient employee for profit. Alexander testified that both companies normally compensated her for a single trip. Dual payments may indicate that she was acting in the course of both company's employ.

Given this dual performance, the Mississippi Supreme Court has held that where one employer is found liable for compensable injuries, the second employer **must** be jointly liable for the same compensable injuries. The record clearly shows the existence of a joint service. As was indicated, Alexander received dual payments from both Goolsby Trucking and Fleet for nearly every trip she drove, including the trip when she allegedly sustained her injury. Both companies profited from the same completed deliveries. Goolsby Trucking and Fleet, alike, withheld taxes for the same completed performance. It could be argued that the image, respect, and profitability of both companies grew with each safe and prompt delivery. Substantial evidence exists to establish that Alexander's employment duties represent a joint service.

If it is found that Alexander was acting in the course of employment for Goolsby Trucking, then Fleet must also be apportioned joint liability as it was engaged in a joint service.

Liability for injuries sustained in the course of a joint service must be apportioned to both employers jointly. Apportioning 100% liability to Goolsby Trucking is contrary to the established law set forth by this state's Supreme Court, and the order of the Commission must be reversed.

III.
CONCLUSION

The determination of the Commission must be reversed. Alexander does not qualify for permanent partial disability benefits, for the Commission completely ignored the fact that Alexander worked for nearly a year after she quit her job with Goolsby Trucking and has not shown that she suffered any loss of wage earning capacity during that time. The Commission also failed to adequately evaluate Alexander's income which will result from her newly accepted, but yet to commence, career as a mortgage broker. A full and complete calculation of Alexander's true loss of wage earning capacity must be performed before a determination of disability can be made.

The Commission further erred in finding Goolsby Trucking as the sole employer liable for Alexander's alleged injuries. Alexander was an employee of Fleet, who acted as Alexander's general employer throughout her tenure. In addition, Alexander's admission that she was not aware, and never consented to, the employment-lease arrangement, negates the premise that Alexander was acting as a "loaned servant" of Goolsby Trucking. Fleet remained the general employer throughout Alexander's employment, and therefore is liable for the alleged compensable injuries Alexander sustained.

If this Court should find Goolsby Trucking to be the actual employer of Alexander, then

Fleet must also be found jointly liable as they were engaged in a joint service. Both Goolsby Trucking and Fleet had a pecuniary interest in the successful and safe completion of each one of Alexander's employment duties. Each company's profitability was affected by Alexander's job performance, and if Goolsby Trucking is found liable, then Fleet was engaged in a joint service, and must be found jointly liable as a result.

The determination of the Commission was not supported by substantial evidence and should be reversed. Appellant trusts this Honorable Court will afford Goolsby Trucking the just, equitable, and logical decision the law demands under the Mississippi Worker's Compensation statute.

RESPECTFULLY SUBMITTED, this the 6th day of August, 2007.

GOOLSBY TRUCKING COMPANY, INC.

BY: _____

JOE M. DAVIS, MSBN: [redacted]
ATTORNEY FOR THE APPELLANT
RUTLEDGE, DAVIS, AND HARRIS, PLLC
113 West Bankhead Street
Post Office Box 29
New Albany, Mississippi 38652
(662) 534-6421

CERTIFICATE OF SERVICE

I, Joe M. Davis, do hereby certify that I have this day forwarded by U.S. First Class mail, postage prepaid, a true and correct copy of the above and foregoing instrument to:

Hon. Keith S. Carlton
Attorney for Claimant
Post Office Box 1415
Corinth, Mississippi 38835

Hon. Jeff Bowling
Attorney for Fleet Force, Inc.
Post Office Box 210
Russellville, AL 35565

SO CERTIFIED, this the 6th day of August, 2007.

JOE M. DAVIS, MSBN: [redacted]
RUTLEDGE, DAVIS, AND HARRIS, PLLC
113 West Bankhead Street
Post Office Box 29
New Albany, Mississippi 38652
(662) 534-6421