IN THE SUPREME COURT OF MISSISSIPPI

MARTHA LOTT	CLAIMANT/APPELLANT
v.	
HUDSPETH CENTER	EMPLOYER/APPELLEE
&	
MISSISSIPPI STATE AGENCIES WORKERS' COMPENSATION TRUST	CARRIER/APPELLEE

OPENING BRIEF OF CLAIMANT/APPELLANT MARTHA LOTT

APPEAL FROM THE DECISION OF THE MONTGOMERY COUNTY CIRCUIT COURT

ORAL ARGUMENT REQUESTED

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2007-WC-1525

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CERTIFICATE OF INTERESTED PERSONS

The undersigned attorney of record for Ms. Lott certifies that following listed persons may have an interest in the outcome of this case. These representations are made in order that Justices of this Court may evaluate possible disqualifications or recusal.

1. Ms. Martha Lott, Claimant/Appellent
2. Mr. William B. Ryan, Counsel for Claimant/Appellant
3. Mr. Bienville Skipper, Counsel for Employer & Carrier/Appellees
4. Hudspeth Center, Employer/Appellee
5. Mississippi State Agencies Workers' Compensation Trust, Carrier/Appellee

Respectfully submitted on November 23, 2007.

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STATEMENT OF THE ISSUE

Whether the Montgomery County Circuit Court erred in affirming the MWCC's decision that Ms. Lott was only entitled to disability benefits equivalent to 100% loss to the arm, as opposed to permanent total disability benefits, where it was established that Ms. Lott (age 61) was unable to find work following her shoulder injury despite 194 documented job search efforts.

STATEMENT OF THE CASE

A hearing was held before the Administrative Judge Melba Dixon on July 6, 2005 to determine the extent of Ms. Lott's permanent disability. (Vol. 2, 25). On August 17, 2005, Judge Dixon issued her decision determining that Ms. Lott was permanently and totally disabled under Miss. Code Ann. § 71-3-17(a). (Vol. 2, at 25-34).

Following Judge Dixon's decision, the Employer/Carrier appealed the decision to the full Commission. (Vo. 2, at 35). The Commission heard oral argument on January 30, 2006 and issued its Order on June 29, 2006. (Vol. 2, at 48-53). The Commission reversed Judge Dixon's finding that Ms. Lott was not permanently and totally disabled. Instead, the Commission held that Ms. Lott had only suffered a 100% loss of use of her right arm. Id.

On or about August 31, 2007, the Circuit Court of Montgomery County affirmed the decision of the Commission.

STATEMENT OF FACTS

A. Martha Lott: Background, Age, Education, & Work Experience

1. Martha Jo Lott was born on January 28, 1944 making her 61 years old at

the time of the hearing. (Vol. 3, at 6). She resides in Kilmichael, Montgomery County, Mississippi. (Vol. 3, at 5).

2. Ms. Lott graduated from Kilmichael High School in 1962. (Vol. 3, at 6).

3. After high school, Ms. Lott worked for Baldwin Piano Company from 1962 to 1965 assembling piano music desks. (Vol. 3, at 7). This job was labor intensive and involved lifting 20lbs repetitively with occasional lifting of 50lbs. (Vol. 3, at 7-9). The job paid $1.25 per hour. (Vol. 3, at 11-12).

4. Ms. Lott next worked for McGregor, which operated a shirt factory in Winona. (Vol. 3, at 9). The company is no longer in business. (Vol. 3, at 9). Ms. Lott worked on and off from 1967 to 1971 as an "Inspector". (Vol. 3, at 9-10). Ms. Lott pressed, folded, and packed shirts on a repetitive basis and she had to be able to lift 25lbs and had to do overhead work stacking boxes. (Vol. 3, at 10). The job paid $1.50 per hour. (Vol. 3, at 12).

5. Ms. Lott then got a job as a teacher's assistant with the Montgomery County School System. (Vol. 3, at 10). She worked with remedial students teaching reading and math skills. (Vol. 3, at 10-11). Ms. Lott worked for the Montgomery County School System from 1973 to 1989. (Vol. 3, at 11). The physical demands of this job involved lifting books, moving TVs, and computers. (Vol. 3, at 11). This job paid $600.00 per month before taxes. (Vol. 3, at 11).

6. Ms. Lott next worked as a dorm mother at Wood Junior College in Mathiston, Mississippi. (Vol. 3, at 11-2). Ms. Lott held this job for 9 months. (Vol. 3, at 12). She supervised young men in a home-type atmosphere; cleaned dorm rooms; and picked up mail. (Vol. 3, at 12). Ms. Lott was paid $7,000.00 per year at Wood Jr. College, which is no longer in existence. (Vol. 3, at 12).

7. After Wood Jr. College, Ms. Lott came back to Kilmichael and attempted to return to her old job with the Montgomery County School System, but the school system was not hiring. (Vol. 3, at 13). Fortunately, she found a job as a nurse's aide at Kilmichael Hospital. (Vol. 3, at 13). This job required her to lift patients, clean rooms, and change beds. (Vol. 3, at 13). Ms. Lott only worked for the hospital for 6 weeks before she was laid off because of the hospital's financial condition. (Vol. 3, at 13).

8. Ms. Lott then went to work for a factory called B & L, which was located in Kilmichael. (Vol. 3, at 14). She worked as an inspector making and handling children's pants. (Vol. 3, at 14). This job was heavier than the job she previously worked at the McGregor factory. (Tr. 15). She had to lift heavy bundles of pants on a repetitive basis. (Vol. 3, at 14). Ms. Lott worked at B & L for a year before it went out of business. (Vol. 3, at 14).

9. Ms. Lott then started working for Steel Apparel where she made dress uniforms and pants and skirts. (Vol. 3, at 14-15). She primarily operated a sewing machine. (Vol. 3, at 15). This was repetitive work with her arms and she was required to lift boxes that weighed 25-30lbs on a frequent basis. (Vol. 3, at 16). Ms. Lott worked for Steel Apparel from September 1991 to January 2001, at which time the company closed and moved to Mexico. (Vol. 3, at 16).

10. Ms. Lott then went to work for North Central Planning and Development in Winona, Mississippi as a library assistant. (Vol. 3, at 16). This job was a part-time position. (Vol. 3, at 16-17). She assisted library patrons with their needs and cleaned the library and handled books. (Vol. 3, at 16-17). Ms. Lott was required to lift 20lbs on this job. (Vol. 3, at 17). Ms. Lott performed this job from March 2002 until March 2003. (Vol. 3, at 17).

B. Ms. Lott's Job At Kilmichael Group Home

11. Ms. Lott left her part-time job with North Central Planning and Development to take a full-time position with the Hudspeth Center, an arm of the State of Mississippi. (Vol. 3, at 17). Specifically, Ms. Lott worked at Kilmichael Group Home in Kilmichael, Mississippi caring for mentally retarded adults. (Vol. 3, at 17-18). She was hired on April 1, 2003 and was paid $7.00 per hour. (Vol. 3, at 18). Ms. Lott's average weekly wage at the time of her injury was $296.03. (Vol. 3, at 3). Ms. Lott's job title was Direct Care Worker and her primary job duties included assisting mentally retarded adults with every day needs such as cooking and cleaning and grooming. (Vol. 3, at 18). She would also assist the clients if they were in a wheelchair. (Vol. 3, at 18).

12. Kilmichael Group Home has 2 houses: a house for the men and a house for the ladies. (Vol. 3, at 18). And Ms. Lott alternated working at the men's house and the ladies' house. (Vol. 3, at 18). She worked 8 hours a day, five days a week. (Vol. 3, at 18-19). She would assist by preparing breakfast and putting on clothes and other personal hygiene tasks, such as brushing teeth. (Vol. 3, at 19). Ms. Lott would also drive a van carrying the clients to their jobs in Louisville, Mississippi. (Vol. 3, at 19). Ms. Lott would have to assist with loading the clients who used a wheelchair. (Vol. 3, at 20).

C. Ms. Lott's Work-Related Injury: 5/15/2003

13. On May 15, 2003, Ms. Lott was working at the men's house. (Vol. 3, at 21). Around 10am or 11am, Ms. Lott was asked by the Director to come to the ladies' house. (Vol. 3, at 21). While at the ladies' house she assisted the clients with lunch. (Vol. 3, at 21). One of the clients was a non-verbal, wheelchair user, who indicated to Ms. Lott that she needed to use the bathroom. (Vol. 3, at 21). Ms. Lott and another lady named Kerry Weeks rolled the client to the bathroom. (Vol. 3, at 21). As Ms. Lott was

attempting to lift the client she heard and felt her right shoulder pop. (Vol. 3, at 21-22). She finished lifting the patient and placed her on the commode. (Vol. 3, at 22). Ms. Lott then sat down and cried a little bit because her shoulder hurt. (Vol. 3, at 22). The episode was very painful. (Vol. 3, at 22). Ms. Lott had never injured her right shoulder before this incident. (Vol. 3, at 22). Ms. Lott reported her injury and completed and signed an accident report on the day of the injury. (Vol. 3, at 22-23); (Claimant Exh. 1).

14. Ms. Lott went home after her shift ended at 2pm. (Vol. 3, at 23). The next day was a scheduled day off for Ms. Lott. (Vol. 3, at 23). Her shoulder was not feeling any better so she went to her family physician, Dr. Katrina Poe. (Vol. 3, at 23). Her physician was not at the office so Ms. Lott saw a nurse practitioner named Sandra Bates. (Vol. 3, at 23-24). Nurse Bates referred Ms. Lott to an orthopedic specialist, Dr. Asa Bennett, in Greenwood, Mississippi. (Vol. 3, at 24).

D. Ms. Lott's Treating Physician: Dr. Asa Bennett

15. Dr. Bennett first saw Ms. Lott on May 22, 2003. (Vol. 3, at 24). Dr. Bennett ordered Ms. Lott to undergo a MRI on her shoulder. (Vol. 3, at 24). After receiving the MRI results, Dr. Bennett advised Ms. Lott it looked like she had a torn rotator cuff, but that he could not tell for certain. (Vol. 3, at 24). Dr. Bennett then ordered Ms. Lott to undergo physical therapy, but the physical therapy did not help Ms. Lott's shoulder. (Vol. 3, at 24-25). Ms. Lott was off work during this period of time. (Vol. 3, at 25).

16. In September 2003, Dr. Bennett recommended that he perform surgery on Ms. Lott's shoulder. (Vol. 3, at 25). Dr. Bennett performed surgery on Ms. Lott's right shoulder on October 6, 2003. (Vol. 3, at 25). Following surgery, Dr. Bennett prescribed a course of physical therapy. (Vol. 3, at 25). The physical therapy helped some, but her

shoulder never returned to 100%. (Vol. 3, at 26).

17. Dr. Bennett's evidentiary deposition was conducted on January 13, 2005. Dr. Bennett testified that Ms. Lott's shoulder injury occurred as a result of lifting the patient while at work on May 15, 2003. (Claimant Exh. 7: Dr. Bennett Dep. 12; Vol. 3, at 3).

18. Dr. Bennett testified that he performed surgery on Ms. Lott's right shoulder, where he found and repaired a full-thickness tear to Ms. Lott's rotator cuff. (Claimant Exh. 7: Dr. Bennett Dep. 5-6). The procedure involved re-section or "cutting" of Ms. Lott's shoulder ligament and shaving the acromion bone. (Claimant Exh. 7: Dr. Bennett Dep. 6-7).

19. Dr. Bennett placed Ms. Lott at maximum medical improvement on June 29, 2004. (Claimant Exh. 7: Dr. Bennett Dep. 8; Vol. 3, at 3). Using the 5th Edition of the AMA guides, Dr. Bennett determined that Ms. Lott had sustained a 10% anatomical impairment rating to the upper extremity. (Claimant Exh. 7: Dr. Bennett Dep. 8).

20. Dr. Bennett opined that Ms. Lott suffered a loss in range of motion and strength as a result of her work-related injury. (Claimant Exh. 7: Dr. Bennett Dep. 8-9). Concerning functional limitations, Dr. Bennett advised that Ms. Lott be careful with any significant overhead lifting. (Claimant Exh. 7: Dr. Bennett Dep. 10-11).

21. Dr. Bennett stated he would defer to Kay Cannon's report concerning Ms. Lott's functional abilities. (Claimant Exh. 7: Dr. Bennett Dep. 12). According to Dr. Bennett, he makes general recommendations, whereas a FCE is able to more specifically pinpoint restrictions. (Claimant Exh. 7: Dr. Bennett Dep. 16).

22. Dr. Bennett did not recall any issues with Ms. Lott concerning faking her injury or her pain. (Claimant Exh. 7: Dr. Bennett Dep. 17-18). He did not recall her as

one who was trying to take advantage of the workers' compensation system. (Claimant Exh. 7: Dr. Bennett Dep. 17-18).

E. Ms. Lott's Termination

23. While she was recovering from her shoulder injury, Ms. Lott's employment with the State of Mississippi was terminated. (Vol. 3, at 26-27). She received a letter from John Lipscomb, Director of Hudspeth Regional Center, dated September 29, 2003, which stated her termination was effective September 30, 2003. (Vol. 3, at 27; Claimant Exh. 2; Vol. 3, at 3). Since her termination, Ms. Lott has never been contacted by the State of Mississippi to return to work at the Kilmichael Group Home. (Vol. 3, at 31).

F. Ms. Lott's Post-Injury Job Search: 194 Documented Unsuccessful Attempts To Find Work

24. In March 2004, prior to being placed at maximum medical improvement by Dr. Bennett, Ms. Lott began her search to find another job. (Vol. 3, at 27). Ms. Lott started her job search by going from store to store in Winona. (Vol. 3, at 28). Ms. Lott documented her job search efforts. (Vol. 3, at 28; Claimant Exh. 3). In total, Ms. Lott made 194 unsuccessful job inquiries. (Vol. 3, at 28; Claimant Exh. 3).

25. Of the 194 job inquiries, Ms. Lott only received 1 job offer, which was from Indywood Glen Personal Care Home in Greenwood. (Vol. 3, at 28). When Ms. Lott was told she would have to lift heavy patients, she mentioned her shoulder problem and her recent shoulder surgery. (Vol. 3, at 28-29). She was then told that she would not be hired. (Vol. 3, at 29).

26. Ms. Lott would get varying responses from employers as she sought work. (Vol. 3, at 29). Some employers simply told Ms. Lott they were not hiring. (Vol. 3, at

29). Some employers would not even let Ms. Lott complete an application. (Vol. 3, at 29). Some employers told Ms. Lott that they were not hiring, but allowed her to leave a resume or complete an application. (Vol. 3, at 29-30). Some employers would not hire Ms. Lott because of her work-related injury. (Vol. 3, at 31, 49). Ms. Lott prepared a resume to let employers know about her job experience. (Vol. 3, at 30).

27. Ms. Lott had some serious discussions with employers. For example, a motel in Winona considered hiring her, but she was denied the job when she went for an interview. (Vol. 3, at 31). The subject of her work-related injury came up in the job interview. (Vol. 3, at 31). Ms. Lott was asked why she had left her last job and she stated because of her job-related injury. (Vol. 3, at 31).

28. Ms. Lott sought work in her hometown of Kilmichael, as well as larger neighboring towns such as Winona, Greenwood, and Grenada. (Claimant Exh. 3). Ms. Lott has looked for work in a 40 mile radius from her home. (Vol. 3, at 49-50). Ms. Lott sought work from the largest employers in her area such as Wal-Mart, Dollar General and McDonalds. (Claimant Exh. 3; General Exh. 9).

29. Ms. Lott specifically sought work at day care centers and from her former employers (Montgomery County School System, Kilmichael Hospital, and North Central Planning and Development). (Vol. 3, at 49, 58, 61). Ms. Lott was told there were no openings at her former employers. (Vol. 3, at 49, 57). Most of her former jobs are no longer in existence and the area in which she lives in economically depressed. (Vol. 3, at 49, 59).

G. Ms. Lott's Contact With Ann Allen

30. Approximately 3 months after she was placed at maximum medical improvement by Dr. Bennett, and approximately 6 months after she had begun her job

search, Ms. Lott received a letter from Ann Allen, a vocational rehabilitation counselor with F.A. Richards & Assoc., dated September 17, 2004. (Vol. 3, 31; Claimant Exh. 4).

31. In the letter dated September 17, 2004, Ms. Allen advised Ms. Lott about 3 available jobs, none of which were in Ms. Lott's community. (Vol. 3, at 33).

a. The first job was for cashier's position at Zaxby's Restaurant in Starkville. (Vol. 3, at 33). Ms. Lott contacted Zaxby's and her inquiry was greeted with laughter. (Vol. 3, at 33). They wanted to know why she would drive 60 miles one-way for a $6.00 per hour job. (Vol. 3, at 33). Nevertheless, Ms. Lott then sent Zaxby's a copy of her resume with a stamped, envelope so she could receive and complete a job application, but Zaxby's never sent her a job application. (Vol. 3, at 33).

b. The next job suggested by Ms. Allen was for a production worker position in Durant, Mississippi. (Vol. 3, at 34). Ms. Lott had to go through the job bank/employment service about this job. (Vol. 3, at 34). Ms. Lott recalled that the job bank could not locate the job that Ms. Allen had suggested or it had been filled. (Vol. 3, at 34).

c. The final job suggested by Ms. Allen in her September 17, 2004 letter was for a management trainee's position at Tower Loan Company in Greenwood. (Vol. 3, at 34). Ms. Lott contacted the company and was advised that it required that the person actually live in Greenwood to have this job. (Vol. 3, at 34). Ms. Lott owns her home in Kilmichael and did not want to relocate to Greenwood. (Vol. 3, at 34).

32. Ms. Lott received another letter from Ms. Allen dated October 29, 2004, which identified 4 job opportunities identified in the letter. (Vol. 3, at 35; Claimant Exh. 4).

a. The first job was for a management trainee's position at a bank. (Vol. 3, at

35). Ms. Lott recalled that this position had been taken by the time she contacted the employment service. (Vol. 3, at 35).

b. The second job was for a metal fabricator's position assembling steel structural metal products. (Vol. 3, at 35). Ms. Lott did not know what a metal fabricator is and has no experience as a metal fabricator. (Vol. 3, at 35).

c. The third job was for a front desk clerk's position at a hotel in Greenwood, but when Ms. Lott contacted the hotel she was specifically told that they were not hiring. (Vol. 3, at 35).

d. The final position was a manager's position at a check cashing company in Greenwood. (Vol. 3, at 35). Ms. Lott filled out an application, but never received a call from the company. (Vol. 3, at 35).

33. Because the job opportunities identified by Ms. Allen were not working out, Ms. Lott contacted Ms. Allen and gave Ms. Allen her e-mail address to get faster information. (Vol. 3, at 36).

34. On December 2, 2004, Ms. Allen sent an e-mail to Ms. Lott identifying 3 additional job opportunities. (Claimant Exh. 4).

a. The first job was for a cashier's position at Scott Petroleum. (Vol. 3, at 37). Ms. Lott went to Scott Petroleum and was advised that a person had been hired the day before. (Vol. 3, at 37).

b. The second job was a job bank listing for an information/records clerk's position at a prison south of Greenwood. (Vol. 3, at 37). Ms. Lott applied for this job and authorized a background check, but never heard from the prison. (Vol. 3, at 37).

c. The final job was as a job bank listing for a correctional officer's position at the same prison institution. (Vol. 3, at 37). Ms. Lott went to fill out an application, but

was not allowed to do so by the lady who was taking applications. (Vol. 3, at 37). She was told that she was too old for the job and that it was too dangerous for her. (Vol. 3, at 37).

35. Ms. Lott followed up on each job sent to her by Ms. Allen without any success. (Vol. 3, at 38).

36. Ms. Lott also reached out to Ms. Allen on multiple occasions for assistance in finding work. (Vol. 3, at 38).

a. On January 13, 2005, Ms. Lott sent an e-mail to Ms. Allen asking for additional assistance in finding work. (Vol. 3, at 38; Claimant Exh. 4). Ms. Lott did not receive a response to this e-mail from Ms. Allen. (Vol. 3, at 38).

b. On January 18, 2005, Ms. Lott sent another e-mail to Ms. Allen asking for additional assistance in finding work. (Vol. 3, at 38-39; Claimant Exh. 4). Ms. Lott did not receive a response to this e-mail from Ms. Allen and has never heard from Ms. Allen again in any form or fashion. (Vol. 3, at 39).

H. Ms. Lott's Life Since Her Injury

37. Since her injury, Ms. Lott has been relying on her sister for financial support. (Vol. 3, at 39). Her home and her car are paid for. (Vol. 3, at 39). Ms. Lott receives food stamps. (Vol. 3, at 39).

38. Ms. Lott would like to work if she could find a job she could physically perform. (Vol. 3, at 40). Ms. Lott has applied for Social Security Disability Insurance benefits because she needs income. (Vol. 3, at 40).

39. Ms. Lott spends most days at home. (Vol. 3, at 41). During the Summer she helped her daughter by taking care of her 2 grandchildren (ages 7 and 9) 2 or 3 days per week. (Vol. 3, at 41). The children were able to do most things for themselves.

(Vol. 3, at 41).

40. Ms. Lott does a little cooking and a little cleaning. (Vol. 3, at 41). She used to mow her yard, wash her car, and scrub down walls and wash floors, but no longer does so. (Vol. 3, at 41). It takes Ms. Lott both hands to lift and handle an iron skillet. (Vol. 3, at 41-42). Ms. Lott, who is right hand dominant, has difficulty using her right arm for personal hygiene matters. (Vol. 3, at 42).

41. Ms. Lott's right arm does not move like it should. (Vol. 3, at 42). Ms. Lott's right arm tires easily and she does not have much strength. (Vol. 3, at 43). She cannot lift her body with her right shoulder and has difficulty getting in and out of the bathtub. (Vol. 3, at 43). Ms. Lott cannot do anything overhead with her right arm. (Vol. 3, at 43).

42. Ms. Lott experiences pain in her right arm/shoulder on a daily basis. (Vol. 3, at 43). She describes her pain as a constant dull ache. (Vol. 3, at 43). Her right shoulder is stiff in the morning when she gets out of bed. (Vol. 3, at 43). Ms. Lott takes Tylenol for pain. (Vol. 3, at 43).

I. Ms. Lott's Medical Care Since Her Release From Dr. Bennett

43. Ms. Lott has not seen Dr. Bennett since she was released from his care. (Vol. 3, at 44). However, she has undergone additional physical therapy, which was ordered by Dr. David Collipp, who was the doctor hired by the State to evaluate Ms. Lott. (Vol. 3, at 44-45, 53). Ms. Lott attended physical therapy for 4 weeks, returned for a follow up visit to Dr. Collipp, then underwent 4 more weeks of physical therapy. (Vol. 3, at 45, 53). The exercises were painful, but Ms. Lott gave it her best effort. (Vol. 3, at 45-46).

44. Ms. Lott has undergone 2 FCEs. (Tr. 47). The first FCE was performed

by Kaye Cannon in November 2004, approximately 5 months after she was released by Dr. Bennett. (Vol. 3, at 47). The second FCE was performed after her second round of physical therapy ordered by Dr. Collipp. (Vol. 3, at 47). This FCE occurred on June 7, 2005. (Employer/Carrier Exh. 8). Ms. Lott was feeling much better for the second FCE. (Vol. 3, at 47). The FCE ordered by the Employer/Carrier indicated that Ms. Lott would not be capable of performing all aspects of her pre-injury job. (Employer/Carrier Exh. 8). Specifically, Ms. Lott would not be able to lift up to 100lbs on an occasional basis. (Employer/Carrier Exh. 8).

J. Functional Evaluation: Ms. Kaye Cannon

45. Ms. Lott was evaluated by Ms. Kaye Cannon. (Claimant Exh. 6). Ms. Cannon is an occupational therapist in Tupelo, Mississippi who administered a Functional Capacity Examination (FCE) on November 16, 2004. (Claimant Exh. 6). Ms. Cannon's report indicated that Ms. Lott was limited to perform sedentary-light activities with a 15lb weight limit. (Claimant Exh. 6). Ms. Cannon noted that Ms. Lott would not do well in jobs requiring good manual dexterity or fine motor skills. (Claimant Exh. 6).

K. Vocational Evaluation: Mr. David Stewart

46. Ms. Lott was evaluated by David Stewart, a vocational rehabilitation counselor, on October 19, 2004. (Vol. 3, at 66; Claimant Exh. 5). Mr. Stewart submitted a follow up report on January 26, 2005. (Vol. 3, at 67; Claimant Exh. 5). Mr. Stewart is a highly regarded vocational expert familiar to the MWCC. (General Exh. 10).

47. Mr. Stewart gathered information concerning Ms. Lott's medical and vocational background; administered a series of vocational tests to Ms. Lott; conducted a vocational transferability analysis; and also conducted a labor market survey. (Vol. 3, at 66-68; Claimant Exh. 5).

48. Mr. Stewart opined at the hearing that based on Ms. Lott's age, education, past work experience, and functional abilities, Ms. Lott had sustained a 92% to 95% loss in access to the job market in her community. (Tr. 68-70; Claimant Exh. 5).

49. Mr. Stewart believed that Ms. Lott's job search efforts, which covered a broad spectrum of jobs, were appropriate in that she did not apply for jobs that were unreasonable for her to seek. (Vol. 3, at 71). Mr. Stewart, taking into account Ms. Lott's age, education, work experience and residual functional capacity, stated that Ms. Lott's profile was of someone who is "less competitive" in the job market. (Vol. 3, at 72-73). Mr. Stewart noted that given all the vocational factors Ms. Lott is in a competitive disadvantage in Montgomery County. (Vol. 3, at 72-73). Her advanced age of 61 is a factor going against her (Vol. 3, at 73) and the fact that she has a high school degree does not give her any real advantages. (Vol. 3, at 73).

50. Mr. Stewart characterized Ms. Lott's job search efforts as "impressive". (Vol. 3, at 74). He noted that Ms. Lott had made the effort to find work similar to that which she performed in the past despite her injury, bu these efforts were unsuccessful. (Vol. 3, at 73-74, 84). Mr. Stewart acknowledged that some employers will not hire workers who have been injured on the job previously. (Vol. 3, 85-86).

L. The ALJ'S Decision

51. A hearing was held before Honorable Melba Dixon in Winona, Mississippi on July 6, 2005. (Vol. 2, at 25). The sole issue at the hearing was the existence and extent of permanent disability. (Vol. 2, at 26). Judge Dixon issued her decision on August 17, 2005. (Vol. 2, at 34). Based on all of the evidence presented, Judge Dixon determined that Ms. Lott was permanently and totally disabled under Miss. Code Ann. § 71-3-17(a). (Vol. 2, at 34). Judge Dixon ordered that Ms. Lott receive

benefits for 450 weeks at a rate of $197.36. (Vol. 2, at 34).

M. The Commission's Decision

52. Following Judge Dixon's decision, the Employer/Carrier appealed the decision to the full Commission. (Vol. 2, at 35). The Commission heard oral arguments on January 30, 2006. (Vol. 2, at 48). The Commission issued its Order on June 29, 2006. (Vol. 2, at 53). The only issue before the Commission was the extent of disability benefits due to Ms. Lott. (Vol. 2, at 48).

53. The Commission conceded that Ms. Lott was unable to return "to work like or similar to the job she held at the time of the injury." (Vol. 2, at 52). But, despite her 194 unsuccessful job search efforts, the Commission found that "Ms. Lott retained significant functional abilities which, when coupled with her age, education, and past work history, drives the conclusion that she retains some earning capacity." (Vol. 2, at 52).

54. Interestingly, the Commission never mentioned that Ms. Lott had been specifically denied work due to her work-related injury and because of her advanced age. Instead, the Commission attributed the lack of success to Ms. Lott's job search "in large part to the depressed economic conditions in the area where she lives, and not to the injury itself." (Vol. 2, at 52). While it recognized that "consideration of job availability and economics in the community" is relevant in determining earning capacity, the Commission held that Ms. Lott "may have to be more persistent in her effort to find work" given the economic realities of the community in which lives. (Vol. 2, at 52). Interestingly, the Commission never mentioned that Ms. Lott had been specifically denied jobs of her work-related injury and because of her advanced age.

55. Accordingly, the Commission reversed the decision of the Administrative

Law Judge holding that Ms. Lott was not permanently and totally disabled. (Vol. 2, 52-53). The Commission held that Ms. Lott had suffered a 100% loss of use of her right arm and ordered that the Employer/Carrier pay Ms. Lott permanent partial disability benefits for a period of 200 weeks pursuant to Miss. Code Ann. § 71-3-17(c)(1). (Vol. 2, at 53).

N. The Circuit Court's Decision

55. On or about August 31, 2007, the Circuit Court of Montgomery County affirmed the decision of the Commission.

SUMMARY OF ARGUMENT

The Montgomery County Circuit Court erred in affirming the Commission's decision that Ms. Lott was not entitled to permanent total disability benefits under Miss. Code Ann. § 71-3-17(a). First, as a matter of law, the Commission wholly ignored Mississippi Supreme Court precedent that provides that an injured worker's retention of some functional capacity to perform jobs does not compel the conclusion that she is not permanently and totally disabled under Miss. Code Ann. § 71-3-17(a). Second, as matter of application of facts to law, the Commission ignored all evidence in Ms. Lott's favor that she was unable to find work because of her injury and other relevant vocational factors by summarily concluding that her failure to find work was because of the bad economy in her local community. Therefore, in additional to multiple legal errors, the Commission's factual findings are not supported by substantial evidence. As a result, this Court should determine Ms. Lott to be permanently and totally disabled.

ARGUMENT

A. Standard of Review

Ms. Lott recognizes that the Commission sits as the ultimate fact-finder and that the Commission can accept or reject the ALJ's factual findings. Vance v. Twin River

Homes, Inc., 641 So.2d 11176, 1180 (Miss. 1994). But, this Court may reverse the Commission where the evidence is clearly erroneous and contrary to the overwhelming weight of evidence. Imperial Palace Casino v. Wilson, 960 So.2d 549, 552 (Miss. Ct. App. 2006). "Findings may be determined to be 'clearly erroneous,' although there is some slight evidence to support them, if, on the entire evidence, the reviewing court is left with a definite and firm conviction that a mistake has been made by the commission in its findings of fact and in its application." Vardaman S. Dunn, *Mississippi Workmen's Compensation*, Third Edition (1982), § 289, at 376.

But, unlike factual findings made by the Commission, this Court does not defer to the Commission in determining whether the Commission correctly applied Mississippi law governing workers' compensation claims. University of Mississippi Medical Center v. Smith, 909 So.2d 1209, 1218 (Miss. Ct. App. 2005). Matters concerning the proper application of law are reviewed are reviewed de novo. Dillon v. Roadway Exp., Inc., 823 So.2d 588, 590 (Miss. Ct. App. 2002). Therefore, this Court is not bound by the "substantial evidence rule" or any other rule in determining whether the Commission misapplied Mississippi workers' compensation law.

B. Ms. Lott Sustained A Scheduled Member Injury Resulting In Permanent And Total Disability

In this case, Ms. Lott sustained an injury to her right shoulder. Absent proof that a shoulder injury affects the body-as-a-whole, compensation is determined by reference to the schedule set forth at Miss. Code Ann. § 71-3-17(c). Vance, 641 So.2d at 1180. An injury to the arm is worth a maximum of 200 weeks of monetary benefits. Miss. Code Ann. § 71-3-17(c)(1).

Importantly, an injury to a scheduled member (such as the arm) may result in

permanent and total disability under Miss. Code Ann. § 71-3-17(a). Smith v. Jackson Constr. Co., 607 So.2d 1119 (Miss. 1992); McDonald v. I.C. Isaacs Newton Co., 879 So.2d 486, 490-91 (Miss. Ct. App. 2004). "Where an employee suffers an injury covered by the schedule in 71-3-17(c) and where that injury results in a permanent loss of wage earning capacity within 71-3-17(a), the latter section controls exclusively and the employee is not limited to the number of weeks of compensation prescribed in 71-3-17(c)'s schedule." Smith, 607 So.2d at 1128. Put another way, "[i]f a claimant is unable to earn wages despite only a loss or loss of use of a scheduled member, then the claimant is permanently and totally disabled." Id. A finding of permanent and total disability entitles a claimant to receive 450 weeks of benefits. Miss. Code Ann. § 71-3-17(a).

"Disability" is defined under the MWCA as "incapacity because of injury to earn the same wages which the employee was receiving at the time of the injury in the same or other employment . . ." Miss. Code Ann. § 71-3-3(i). Factors considered in determining loss of wage earning capacity include the amount of education and training the claimant has had, his inability to work, his failure to be hire elsewhere, the continuance of pain, and any other related circumstances. Alumax Extrusions, Inc. v. Wright, 737 So.2d 416, 422 (Miss. 1998).

C. The Commission Erred In Concluding That Ms. Lott Was Not Entitled To Permanent And Total Disability Benefits Under Miss. Code Ann. § 71-3-17(a)

In this case, the Commission erred in concluding that Ms. Lott was not permanently and totally disabled under Miss. Code Ann. § 71-3-17(a).

It is undisputed that while recovering from her shoulder injury Ms. Lott was unable to work at any job until March 2004. When Ms. Lott became able to return to work she was unable to return to Kilmichael Group Home. This is because Ms. Lott's

employment had been terminated approximately 6 months earlier on September 30, 2003. In any event, the results of Ms. Lott's injury were such that she would have been prevented her from performing all aspects of her job at Kilmichael Group Home had been offered to return to work after she reached maximum medical improvement.

1. Ms. Lott Carried Her Burden In Establishing Good Faith Job Search Efforts

Beginning in March 2004, and continuing to the time of the hearing in this case, Ms. Lott made sincere and diligent, but unsuccessful, efforts to find work. Adolphe Lafont USA, Inc. v. Ayers, 958 So.2d 833, 839 (Miss. Ct. App. 2007) ("[t]o demonstrate total disability, the claimant must show that he has made a diligent effort, but without success, to obtain other gainful employment.").

The reasonableness of a claimant's job search efforts includes consideration of job availability and economics in the community, the claimant's skills and background, and the nature of the disability. Sherwin Williams v. Brown, 877 So.2d 556, 558 (Miss. Ct. App. 2004) (citing to Georgia Pacific Corp. v. Taplin, 586 So.2d 823, 828 (Miss. 1991)). A claimant's advanced age is also a consideration in assessing whether an injured worker can find post-injury work. M.T. Reed Construction Co. v. Martin, 215 Miss. 472, 477, 61 So.2d 300, 302 (Miss. 1952)[1] (noting that claimant's advanced age of 59, along with physical condition, made it unlikely that he would be able to pursue any other gainful employment).

In Sherwin Williams v. Brown, the claimant presented evidence that he applied for work at fourteen (14) locations, including retail stores, gas stations, grocery stores and

[1] In M.T. Reed Constr. Co., the Mississippi Supreme Court held that regardless of being permanently and totally occupationally disabled a claimant was limited to compensation for the maximum number of weeks allowed for his injury to the scheduled member. This holding was later overruled by Smith v. Jackson Constr. Co., 607 So.2d 1119, 1126-28 (Miss. 1992).

fast food restaurants. Sherwin Williams, 877 So.2d at 558-59. Under these circumstances, the court held that the claimant made a good faith search for employment. Id. The court further found that the employer and carrier had failed present evidence that the claimant's job search efforts were deceitful or not in good faith. Id. at 559.

In comparison to the claimant in the Sherwin Williams case, Ms. Lott actually began looking for work approximately (3) months before she was placed at maximum medical improvement. It is undisputed that Ms. Lott made sustained job search efforts from March 2004 to the time of the hearing. Unfortunately, she was unable to find work. It is also undisputed that Ms. Lott made 194 documented job search efforts. Notably, Ms. Lott did not limit her search to companies in Kilmichael. Instead, she sought work in larger, neighboring towns such as Winona, Greenwood, and Grenada. (See Claimant Exhibit 3: Claimant's Job Search Efforts). Ms. Lott also sought work on multiple occasions with some of the biggest employers in her area such as Wal-Mart, Dollar General, and McDonalds. (See Claimant's Exhibit 3: Claimant's Job Search Efforts). Even though these employers have high turnover and frequently hire employees, Ms. Lott did not get a single job offer. Also, Ms. Lott specifically sought work at all of her former employers who were still in business, but none of her former employers offered her work. She also unsuccessfully sought work in all types of vocational areas, including retail, clerical, education, health care and child care.

Importantly, Ms. Lott also sought work with each of the companies identified by Ann Allen with FARA, who was hired by the Employer/Carrier. After none of the jobs panned out it was Ms. Lott who contacted Ms. Allen for further job opportunities. But quite amazingly, Ms. Allen never contacted Ms. Lott to assist her with job search. Yet, despite Ms. Allen's unwillingness to help any further, Ms. Lott continued her job search.

Instead of the Commission being critical of Ms. Lott being unable to find a job, the Commission should have been critical of the Employer/Carrier for literally giving up the attempt to assist Ms. Lott in finding a job. If anything, the Employer/Carrier's effort to assist Ms. Lott in finding a job was a contrived litigation ploy that lacked sincerity and good-faith.

2. The Employer And Carrier Failed To Carry Their Burden In Establishing That Ms. Lott's Job Search Efforts Were A Sham Or Not In Good Faith

In response to Ms. Lott's diligent job search efforts, the Employer/Carrier failed to offer any credible evidence that ***any*** employer in Ms. Lott's community would hire Ms. Lott in there were an opening. Indeed, there was no evidence offered by the Employer/Carrier to carry its burden that suitable work was available to Ms. Lott. Thompson v. Wells-Lamont Corp., 362 So.2d 638, 641 (Miss. 1978) (holding claimant has the burden of proof to make out a prima facie case for disability, after which the burden of proof shifts to the employer to rebut or refute the claimant's evidence). Nor did the Employer and Carrier offer any credible proof that Ms. Lott's job search efforts were a sham or not made in good faith. See e.g. Hale v. Ruleville Health Care Ctr., 687 So.2d 1221, 1227 (Miss. 1997) (finding claimant's job search to be unreasonable and not diligent where the claimant began job search only one month before hearing and where claimant could only recall one other specific instance of searching for employment).

The only indication that the Commission questioned Ms. Lott's job search efforts was its mistaken belief that Ms. Lott self-imposed restrictions on her ability to work. The Commission, citing only one of the multiple applications Ms. Lott placed with Wal-Mart, stated Ms. Lott limited herself to working from 7am to 2pm. But, a review of the applications that Ms. Lott submitted to Wal-Mart indicates that she specifically stated she

was available to work nights, as well as weekends. (See General Exhibit 9: Wal-Mart Applications). Further, the Commission failed to note that Ms. Lott applied for work at various Wal-Mart stores on six (6) different occasions without so much as a single job interview. (See Claimant Exhibit 3: Claimant's Job Search Efforts). Nor did the Commission note that Ms. Lott sought employment with various Dollar General Stores on ten (10) different occasions without a single job interview. (See Claimant Exhibit 3). Indeed, it appears that the Commission wholly failed to thoroughly review and appreciate the depth of the Claimant's job search efforts. Therefore, it was error for the Commission to implicitly hold that any of Ms. Lott's job search efforts were not made in good-faith. Cf. Imperial Palace Casino v. Wilson, 960 So.2d 549 (Miss. Ct. App. 2006) (rejecting employer and carrier's argument that claimant did not engage in good faith efforts to find work even though claimant waited to begin job search only four months prior to hearing).

Also, a review of the Mississippi Court of Appeal's decision in Adolphe Lafont USA, Inc. v. Ayers, 958 So.2d 833, 839 (Miss. Ct. App. 2007) in instructive in relation to Ms. Lott's situation. In Ayers, this Court held that the claimant's job search efforts were reasonable and were not a sham were the claimant "made inquiries into thirty to forty jobs, filling out applications where available." The employer and carrier argued that the claimant's back injury did "not prevent the [c]laimant from pursuing some measure of gainful employment, even if that employment only earns minimum wage." Id. Yet, the court swiftly rejected this argument noting that several of the positions for which the claimant applied were minimum wage jobs. Id. Accordingly, the court found that substantial evidence existed to support a finding that the claimant had sustained a total loss of wage earning capacity. Id.

3. Evidence Of Economically Depressed Job Market Supports A Finding Of Permanent And Total Disability

If the record is fairly viewed, the overwhelming evidence indicated that because of her injury, as well as other vocational factors such as advanced age and only a high school education, Ms. Lott was not a very good job candidate in an economically depressed job market. Yet ironically, the Commission used the fact that Ms. Lott's community was economically depressed as a reason to support its decision that she should not receive an award of permanent and total disability. This represents a clear misapplication of Mississippi law.

Indeed, the fact that Ms. Lott lives in an economically depressed area actually supports a finding of permanent and total disability rather than, as the Commission suggested, a finding that she is not permanently and totally disabled. For example, the Mississippi Supreme Court has specifically noted the fact that the claimant had introduced evidence of unsuccessful job search efforts in an economically depressed area. Pontotoc Wire Products, Inc. v. Ferguson, 384 So.2d 601, 604 (Miss. 1980). Further, the Court noted that the employer had failed to carry its burden by introducing evidence that suitable employment was available to the claimant in the claimant's community. Id.

Holding economic factors, over which a claimant has no control, against a claimant is inconsistent with the purpose and spirit of the Mississippi Workers' Compensation Act. Further, such an application of law is inconsistent with the principle that the workers' compensation laws serve a remedial purpose and should be liberally construed in favor of the claimant. Speed Mechanical, Inc. v. Taylor, 342 So.2d 317, 319 (Miss. 1977).

4. Evidence That Ms. Lott Was Not Offered Jobs Because Of Her Work-Related Injury Was Not Even Mentioned By The Commission

Moreover, while the Commission noted that many employers from whom Ms. Lott sought employment were not hiring, the Commission specifically failed to note that a number of employers refused to hire Ms. Lott because she had suffered an injury to her shoulder. (Vol. 3, at 28-29, 31). Further, the Commission wholly failed to mention Mr. David Stewart's unrefuted testimony that employers often refuse to hire persons who have previously been injured on the job or who suffer from work-related injuries. (Vol. 3, at 85-86). Therefore, the Commission erred in concluding that the primary reason that Ms. Lott was unable to find employment was because of the depressed economic conditions in her community when the uncontroverted evidence indicated that Ms. Lott's work-related injury was a central factor in not being offered work. Indeed, it practically defies logic and reason that a person could make so many genuine job search efforts and not be offered a job.

5. David Stewart Considered The Employer/Carrier's FCE, But It Didn't Change His Opinion

With respect to David Stewart's testimony, who was the vocational expert hired to test, assess and opine as to Ms. Lott's vocational impairment, the Commission stated that Mr. Stewart did not consider the functional capacity evaluation (FCE) performed on Ms. Lott's at the Employer/Carrier's request. (Vol. 2, at 51). But, this finding is clearly erroneous. Mr. Stewart specifically testified that he had recently been provided with a copy of the FCE requested by the Employer/Carrier. (Vol. 3, at 76). Mr. Stewart expressly testified that even consideration of the Employer/Carrier's FCE did not change the opinions that he expressed in his reports concerning Ms. Lott's vocational

impairment. (Vol. 3, at 76). Accordingly, it was error for the Commission to state that Mr. Stewart did not consider the Employer/Carrier's FCE.

6. The Fact That Ms. Lott Retains Some Functional Abilities Does Not Preclude A Finding of Permanent and Total Disability

Finally, the Commission seemed to believe that because Ms. Lott retains the functional ability to perform some jobs that this means she cannot be awarded permanent and total disability.[2] But, this too was inconsistent with controlling Mississippi legal precedent. Indeed, this precise argument was addressed and rejected by the Mississippi Supreme Court. Marshall Durbin, Inc. v. Hall, 490 So.2d 877, 880 (Miss. 1986). Incredibly, this binding point of law from the Mississippi Supreme Court was not mentioned or addressed at all by the Commission in its Order.

In Marshall Durbin, Inc. v. Hall, the claimant sustained an injury to his back. Following his recovery, the claimant attempted to return to work, but his employer would not allow him to return to work. Hall, 490 So.2d at 880. The employer argued that the claimant was not permanently and totally disabled because he retained the functional capacity to work at other jobs. Id. Nevertheless, the Mississippi Supreme Court found that the claimant was permanently and totally disabled. Id. In making this finding, the court noted the claimant's wholly reasonable and unsuccessful efforts to find work with

[2] For example, the Commission stated that Ms. Lott was able to keep her grandchildren in her home, but did not charge for her services. (Vol. 2, at 50). Apparently, the Commission believed that this fact was indicative of Ms. Lott's ability to earn wages. The Commission, however, failed to note that in keeping her grandchildren a couple hours a day for a couple of days while they were out of school during the Summer that Ms. Lott's grandchildren were able to do most things for themselves. (Vol. 3, at 41). The Commission also failed to note that she specifically sought work in the child care industry, but was not offered a job. (Vol. 3, at 84). Therefore, it was clearly error for the Commission to suggest Ms. Lott retained the functional ability to care for children as an full-time occupation merely because she supervised her grandchildren from her home on a part-time basis during the Summer.

other employers. Id.

In affirming the finding of permanent and totally disability, the Hall court criticized the argument advanced by the employer, i.e., that although the claimant cannot work for us, he can work for someone else, stating as follows:

> Here we encounter the second feature of the position of Employer and Carrier, which deserves caustic comment. From the outset, Hall, both personally and through his attorney, asserted his strong desire to go back to work. More so that in any compensation case this Court has seen in recent years, we have before us an injured worker who sincerely and persistently has sought compensation benefits allowed by law, and, as everyone knows, upon which no one can maintain a decent standard of living. ***Instead of commending Hall for this attitude, however, Employer and Carrier seek to penalize him for it.*** They make much ado about the fact that at the first hearing Hall both personally and through his attorney stated he wanted his job back far more than he wanted compensation. This, Employer and Carrier tell us, proves that Hall really isn't disabled after all. ***Such a cynical argument has not been made in quite a while, as in Marshall Durbin's next breath we are told "but not us".*** Durbin has made clear it has no intention of rehiring this faithful former employee it contends is not disabled.

Hall, 490 So.2d at 880-81.

Accordingly, based on the Mississippi Supreme Court's decision in Marshall Durbin, Inc. v. Hall, the fact that Ms. Lott retains some functional capacity to work should not have precluded the Commission from finding that she was permanently and totally disabled.

Additionally, the Commission committed clear error by wholly disregarded the FCE performed on Ms. Lott by Kaye Cannon, as well as Ms. Lott's own testimony about her functional abilities, in favor of the FCE performed at the request of the Employer/ Carrier. Dr. Bennett, the orthopedic surgeon who treated Ms. Lott, did not perform or order an FCE. Therefore, it was necessary to have Ms. Lott's functional abilities assessed and evaluated. Ms. Lott was evaluated by Kaye Cannon. In response to the FCE performed by Kaye Cannon, the Employer/Carrier had Ms. Lott undergo an FCE. This

FCE was performed following 2 months of additional physical therapy that had been ordered by Dr. Collipp, the physician to whom Ms. Lott saw at the request of the Employer/Carrier.

The Commission should not have wholly disregarded Ms. Cannon's testimony. A review of the evidence indicates that Ms. Cannon's FCE was consistent with Ms. Lott's testimony as to her own abilities. (See Claimant's Exhibit 6: Affidavit of Kaye Cannon; Tr. 40-44). Further, contrary to the Commission's suggestion that Ms. Lott exhibited self-limited pain behavior at her FCE, Ms. Cannon's report specifically stated that Ms. Lott did not exhibit any excessive pain behaviors. (See Claimant's Exhibit 6: Affidavit of Kaye Cannon). In other words, there was no indication that Ms. Lott attempted to fake her true functional abilities.

7. Mississippi Appellate Court Precedent Supports A Finding Of Permanent And Total Disability

Further, the Commission ignored that finding Ms. Lott not to be permanently and totally disabled would be inconsistent with past Mississippi appellate court precedent even though she retained some functional abilities.

For example, in McDonald v. I.C. Isaacs Newton, 879 So.2d 486, 491 (Miss. Ct. App. 2004) (petition for certiorari denied), the court of appeals stated that "[i]n the absence of any proof that McDonald has the ability to earn the same wages that she was receiving at the time of her injury, she is entitled to permanent and total disability compensation."

Likewise, in Good Earth Development, Inc. v. Rogers, 800 So.2d 1164, 1173 (Miss. Ct. App. 2001), the court of appeals held that "Rogers was unequivocally unable to return to his carpentry career by virtue of his work related injury. Therefore, we find he is

totally occupationally disabled."

Importantly, both of these cases present factual scenarios similar to the instant case, i.e., they involved injured workers who were unable to perform the requirements of their pre-injury positions and who retained some functional abilities, but were unable to find replacement work despite diligent job search efforts. As a result, the Commission erred in concluding that Ms. Lott has failed to carry her burden in this case. Therefore, the Commission's decision should be reversed and Ms. Lott should receive an award of permanent and total disability.

CONCLUSION

For the foregoing reasons, this Honorable Court should reverse the Commission's decision and should reinstate the ALJ's decision that Ms. Lott is permanently and totally disabled under Miss. Code Ann. § 71-3-17(a).

Respectfully submitted,

By: _____

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Dated: 11/23/2007

CERTIFICATE OF FILING & SERVICE

I certify that a copy of the original and four (4) copies of Ms. Lott's opening brief have been filed with the Mississippi Supreme Court by sending same via FedEx, next business day delivery, to Ms. Betty W. Sephton, Clerk, Mississippi Supreme Court, Gartin Justice Building, 450 High Street, Jackson, MS 39201. In addition, I certify that a copy of Ms. Lott's opening brief has been served via U.S. Mail, postage prepaid, on the attorney for the Employer/Carrier, Mr. W. Bienville Skipper, Daniel Coker Horton & Bell, P.O. Box 1084, Jackson, MS 39215.

William B. Ryan

Dated: 11/23/2007

IN THE SUPREME COURT OF MISSISSIPPI

MARTHA LOTT	CLAIMANT/APPELLANT
v.	
HUDSPETH CENTER	EMPLOYER/APPELLEE
&	Case No. 2007-WC-01525-COA
MISSISSIPPI STATE AGENCIES WORKERS' COMPENSATION TRUST	CARRIER/APPELLEE

NOTICE OF CERTIFICATE OF SERVICE OF APPELLANT'S OPENING BRIEF ON TRIAL COURT JUDGE

I certify that on 11/29/07 a copy of the Appellant's opening brief has been served via U.S. Mail, postage prepaid, on:

Hon. Joseph H. Loper
Circuit Court Judge, Fifth Judicial District
P.O. Box 616
Ackerman, MS 39735

William B. Ryan [redacted]
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CERTIFICATE OF FILING & SERVICE

I certify that the original and three (3) copies of Notice of Certificate of Service of Appellant's Brief on Trial Court Judge have been filed with the Mississippi Supreme Court by sending same via FedEx, next business day delivery, to Ms. Betty W. Sephton, Clerk, Mississippi Supreme Court, Gartin Justice Building, 450 High Street, Jackson, MS 39201. In addition, I certify that a copy of the Notice of Certificate of Service of Appellant's Brief on Trial Court Judge has been served via U.S. Mail, postage prepaid, on the attorney for the Employer/Carrier, Mr. W. Bienville Skipper, Daniel Coker Horton & Bell, P.O. Box 1084, Jackson, MS 39215.

William B. Ryan

Dated: November 29, 2007