

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI  
NO. 2008-CA-00529**

ROBIN HARPER, INDIVIDUALLY ND  
ON BEHALF OF REIJAH HARPER, A MINOR

APPELLANTS

V.

CAL-MAINE FARMS, INC. AND JOHN DOES 1-2

APPELLEE

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**APPEAL FROM THE CIRCUIT COURT OF THE  
SECOND JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI**

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**BRIEF OF APPELLEE**

**ORAL ARGUMENT NOT REQUESTED**

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**CERTIFICATE OF INTERESTED PERSONS**

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 disqualifications or recusal.

Michael M. Williams

Counsel for Appellant

Robert P. Thompson

Counsel for Appellee

Caryn Anlage Milner

Counsel for Appellee

Hon. Bobby DeLaughter, Circuit Court Judge

Trial Court Judge

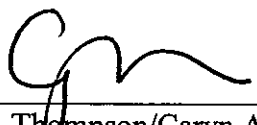
Robin Harper, individually and on behalf of Reijah, a minor

Appellants

Cal-Maine Farms, Inc.

Appellee

This the 5<sup>th</sup> day of September, 2008.

  
\_\_\_\_\_  
Robert P. Thompson/Caryn Anlage Milner  
Attorneys for Appellees

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## **STATEMENT OF THE CASE**

### **A. NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW**

On August 4, 2006, Robin Harper, individually and on behalf of Reijah Harper, a minor (hereinafter “Harper”) filed a complaint against Cal-Maine Foods (hereinafter “Cal-Maine”). In the Complaint, Harper alleges that Cal-Maine denied her claim for workers compensation benefits “without any legitimate or arguable reason, and in violation of the workers compensation laws of the State of Mississippi.” [R.E. 2]. Harper contends Cal-Maine breached its duty “by refusing to provide statutory workers’ compensation benefits to Harper’s dependents (Appellants herein) including but not limited to funeral expenses, immediate lump sum payment and death benefits.” *Id.*

Cal-Maine timely filed its Answer and Defenses. [R.E. 1, Docket Sheet]. On September 22, 2007, Cal-Maine filed its Motion for Summary Judgment, Memorandum Brief and Itemization of Undisputed Facts (hereinafter “Cal-Maine’s Motion”). In its Motion, Cal-Maine asserted that Harper’s Complaint was barred by the applicable three year statute of limitations. [R.E.3]. On October 5, 2007, Harper filed her Response to Cal-Maine’s Motion. [R.E.1, Docket Sheet]. On October 22, 2007, Cal-Maine filed its Rebuttal. [R.E.1, Docket Sheet].

Cal-Maine’s Motion was heard by the Court. On February 28, 2008, the Court issued an Order granting Cal-Maine’s Motion, finding that Harper’s lawsuit was time barred by the applicable three (3) year statute of limitations. [R.E. 6].

Harper thereafter filed her Notice of Appeal to this Court.

### **B. FACTS**

On or about December 1, 2000, Ricky Harper was fatally injured in the course and scope of his employment. [R.E.2]. A dispute arose as to whether Harper’s heirs/dependents were entitled to workers compensation benefits from his employer, Cal-Maine. On October 22, 2001, Ricky Harper’s

widow filed her petition to controvert in which the hearing was held on September 13, 2002 before Administrative Judge Mark Henry. *Id.* at 5.

On January 14, 2003, Administrative Judge Henry, found that because Mr. Harper's death occurred while he was on his way home from work and after he had left the employer's property, the aptly named going and coming rule applies, thus, awarding the deceased's beneficiaries an award under the Mississippi Workers' Compensation Act. [R.E.3, p.43].

Cal-Maine appealed the case to the Full Commission

On July 9, 2003, the Full Commissioner entered an Order, affirming the ALJ's Order. [R.E.3, p. 50]. Cal-Maine did not appeal this matter from the Full Commission. The July 9, 2003 was the final order within the Mississippi Workers Compensation proceedings.

On August 4, 2006, Harper filed a bad faith complaint against Cal-Maine arising out of the July 9, 2003 Order. [R.E.2].

## SUMMARY OF THE ARGUMENT

Harper's lawsuit for bad faith against Cal-Maine is time-barred by the applicable three (3) year statute of limitations provided for by Miss. Code Ann. §15-1-49.

Miss. Code Ann. §15-1-49 provides that, "[a]ll actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after."

Pursuant to Mississippi law, a suit for bad faith or refusal to pay workers compensation benefits may not be filed under the administrative remedies provided by the Mississippi Workers' Compensation Act and the Mississippi Workers' Compensation Commission are "**exhausted.**" See *Bullock v. AIU Insurance Company*, 2008 WL 1970978, ¶ 3 (Miss. 2008). The parties do not dispute the application of this standard to the subject action. Pursuant to this standard, Harper's cause of action for bad faith accrued once she "exhausted" her administrative remedies under the MWCA and through the Mississippi Workers' Compensation Commission.

Harper exhausted her administrative remedies when the Full Commission issued its Order on July 9, 2003, affirming her award of benefits. The July 9, 2003 Order was the last action taken in the administrative process. Following the July 9, 2003 Order, Harper took no further action in the administrative proceedings, i.e., she "exhausted" the administrative process. Applying the three (3) year statute of limitations provided by Miss. Stat. Ann. § 15-1-49, Harper had until July 9, 2006 to file her bad faith claim against Cal-Maine. Harper did not file her Complaint until August 4, 2006. Accordingly, Harper's claim is time-barred by the foregoing statute of limitations.

## STANDARD OF REVIEW

Appellate courts have applied a de novo standard of review when deciding issues of law. *Jackpot Mississippi Riverboat, Inc. v. Smith*, 874 So.2d 959, 960 -961 (Miss. 2004)(citing *Wayne Gen. Hosp. v. Hayes*, 868 So.2d 997, 1000 (Miss.2004); *ABC Mfg. Corp. v. Doyle*, 749 So.2d 43, 45 (Miss.1999)). The “application of a statute of limitations is a question of law.” *Id.* (citing *Sarris v. Smith*, 782 So.2d 721, 723 (Miss.2001)). “Our appellate standard for reviewing the grant or denial of summary judgment is the same standard as that of the trial court under Rule 56(c) of the Mississippi Rules of Civil Procedure.” *Id.* (citing *Heigle v. Heigle*, 771 So.2d 341, 345 (Miss.2000)). “This Court employs a de novo standard of review of a lower court's grant or denial of summary judgment and the evidence must be viewed in the light most favorable to the party against whom the motion has been made.” *Id.* (citing *Miss. Dep't of Wildlife, Fisheries & Parks v. Miss. Wildlife Enforcement Officers' Ass'n, Inc.*, 740 So.2d 925, 929-30 (Miss.1999); *McCullough v. Cook*, 679 So.2d 627, 630 (Miss.1996); *Mantachie Natural Gas Dist. v. Miss. Valley Gas Co.*, 594 So.2d 1170, 1172 (Miss.1992); *Clark v. Moore Mem'l United Methodist Church*, 538 So.2d 760, 762 (Miss.1989)).



## ARGUMENT

### **HARPER'S LAWSUIT AGAINST CAL-MAINE FARMS, INC. IS TIME BARRED PURSUANT TO THE THREE (3) YEAR STATUTE OF LIMITATION PROVIDED BY MISS. CODE ANN. § 15-1-49**

The parties do not dispute that the three (3) year statute of limitations provided under Miss. Code Ann. § 15-1-49 applies to Harper's claim against Cal-Maine Farms, Inc. *See Brief of Appellant, p. 5.*

#### **I. UNDER MISSISSIPPI LAW, A CLAIMANT'S CAUSE OF ACTION FOR BAD FAITH DENIAL OF WORKERS COMPENSATION BENEFITS ACCRUES ONCE HE EXHAUSTS HIS ADMINISTRATIVE REMEDIES**

In *Bullock v. AIU Insurance Company*, the Court explained:

The parties agree that Mississippi law is applicable, and that under Mississippi law, a suit such as Bullock's, for bad-faith failure or refusal to pay workers' compensation benefits, may not be filed under the administrative remedies provided by the Mississippi Workers' Compensation Act, Mississippi Code Annotated Sections 71-3-1 and -129 (Rev.2000), and the Mississippi Workers' Compensation Commission are **exhausted**.

2008 WL 1970978 at ¶ 3 (emphasis supplied).

Once a claimant "exhausts" his administrative remedies provided by the Mississippi Workers Compensation Act and the Mississippi Workers Compensation Commission, he may file his action for bad faith failure or refusal to pay workers compensation benefits. Stated otherwise, a claimant's cause of action for bad faith failure or refusal to pay workers compensation benefits accrues for purposes of Miss. Code Ann. § 15-1-49 when the claimant exhausts all of his administrative remedies.

#### **II. HARPER EXHAUSTED HER ADMINISTRATIVE REMEDIES ON JULY 9, 2003, THE DATE THE FULL COMMISSION ISSUED ITS ORDER AFFIRMING THE ALJ'S AWARD OF BENEFITS TO HER**

On July 9, 2003, the Full Commission affirmed the ALJ's ruling, awarding Harper workers compensation benefits. [R.E.3, p. 50]. Harper did not appeal this ruling. Following this ruling, no further action was taken in administrative proceedings. The July 9, 2003 Order concluded the

administrative proceedings. Stated otherwise, Harper “exhausted” her administrative remedies on July 9, 2003, when the final ruling was handed down in her case. Thus, Harper’s cause of action for any bad faith failure to pay benefits accrued on July 9, 2003, when she exhausted her administrative remedies.

Harper contends her cause of action for bad faith did not accrue until August 9, 2003, because the July 9, 2003 was not a “final order” until after the thirty (30) day appeal period expired. This argument is both legally and factually flawed.

Foremost, legally, there is simply no authority to support Harper’s argument.<sup>1</sup> To the contrary, the overwhelming weight of authority on this issue has held that, *at the very latest*, a cause of action for bad faith accrues once the Order awarding benefits is issued and/or once there is a “final adjudication.”

In *Powers v. Travelers Ins. Co.* 664 F.Supp. 252 (S.D.Miss. 1987), the claimant filed suit against Travelers (a workers compensation carrier), alleging the carrier refused in bad faith to compensate him sufficiently for at-home nursing services. The claimant did not seek an administrative adjudication of his claim before the Commission and pleaded no reason for his failure to do so. After he filed his bad faith action, the carrier brought a motion to controvert the claim before the Commission. The carrier filed a motion to dismiss or to stay the claimant’s bad faith lawsuit, pending the final adjudication in the administrative proceedings. The issue then before the court was whether a worker may bring an action for bad-faith refusal to pay workers' compensation benefits without first having been adjudged entitled to benefits by a final administrative decision of the Workers' Compensation Commission, in which is vested exclusive jurisdiction of claims for benefits. *Id.* (citing Miss.Code Ann. § 71-3-47 (1972); *Everitt v. Lovitt*, 192 So.2d 422, 425 (Miss.1966)). The

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<sup>1</sup> *Bullock v. AIU Insurance Company* likewise does not support Harper’s position, see *supra*, p. 10.

court ultimately held that, “a bad-faith action should not proceed before there is a **final adjudication of the underlying compensation claim** in accordance with the procedures established for the administration of such claims by the Mississippi Workers' Compensation Law.” (emphasis supplied). Concluding, the court held that the claimant “may not proceed with his claim until his administrative remedies are exhausted.”

In *Butler v. Nationwide Mut. Ins. Co.*, 712 F.Supp. 528 (S.D.Miss. 1989), the workers compensation carrier filed a motion to dismiss and/or for summary judgment on plaintiff's claim for bad faith, pending the exhaustion of administrative proceedings. The court held that, “a bad faith action should not proceed prior to a **final adjudication** of the underlying workers' compensation claim in accordance with the administrative procedures provided by the Mississippi Workers' Compensation Act.” *Id.* (emphasis supplied).

In *Brennan v. Western Nat. Mut. Ins. Co.*, 125 F.Supp.2d 1152 (D.S.D.S.Div. 2001), the court held that a worker's claim against her employer's workers' compensation carrier for bad faith denial of benefits did not accrue, for limitations purposes, **until she obtained final administrative judgment** from state department of labor.

In *Brown v. Liberty Mut. Ins. Co.* 513 N.W.2d 762, 764 (Iowa 1994), the court, answering a certified question, held that a claimant's cause of action for bad-faith failure to pay workers' compensation benefits accrues **upon receipt of notification that the carrier has denied the claim.**

In *Davis v. Aetna Cas. & Sur. Co.*, 843 S.W.2d 777 (Tex.App.Texarkana 1992), the court held that a worker's suit against his employer's workers' compensation carrier alleging breach of duty of good faith and fair dealing, cause of action accrues, for limitations purposes, **when the insurer denies coverage.**

In *Brewington v. Employers Fire Ins. Co.*, 297 Mont. 243, 992 P.2d 237 (Mont. 1999), the

court held that Montana's three-year statute of limitations for bringing a bad faith action against a workers' compensation insurer arising from a wrongful reduction of benefits accrued when the workers compensation court **entered a judgment in the worker's favor that restored his total disability benefits.**

Harper refers, generally, to the case of *Walls v. Franklin Corp.*, 797 So.2d 973 (Miss. 2001) ostensibly in support of her position. In *Walls*, however, the issue before the court was whether an injured worker, who is entitled to reasonable and necessary medical services and supplies under Mississippi's Workers' Compensation Law, may incur such expenses without first having the Workers' Compensation Commission determine their reasonableness and necessity. *Walls* did not concern the issue of when a claimant's administrative remedies are "exhausted." Thus, *Walls* does not support Harper's position.

In sum, the overwhelming weight of authority dictates that Harper's claim for bad faith accrued on July 9, 2003 – when she exhausted her administrative remedies.

Second, factually, Harper's argument defies common practice and procedure. By requesting that the thirty (30) day appeal period stay the accrual of the applicable statute of limitations, Harper is trying to take advantage of an appeal period she would never use. The July 9, 2003 ruling was in Harper's favor. If there was an appeal, it would have been by *Cal-Maine*. Following the July 9, 2003 ruling, there was no further action by Harper that was, or could have been, taken. Given the ruling in her favor, all potential remedies for Harper were exhausted on July 9, 2003. Thus, any argument by Harper that she could have exhausted any remedies beyond July 9, 2003 is without merit and notably lacking from the record.<sup>2</sup>

*50-2003-0001  
CM 9/9/03  
HW - 9/9/03  
purvis  
BP Alan*

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<sup>2</sup> In fact, although arguing that her administrative remedies were not exhausted on July 9, 2003, Harper does not cite, argue or direct the Court to any possible "administrative remedy" for her beyond July 9, 2003 – such that she could have exhausted her administrative remedies beyond July 9, 2003.

In sum, Harper's argument the statute of limitations for her to file a claim for bad faith accrued sometime after July 9, 2003 is unsupported by any facts or legal authority. In fact, Harper does not cite a single legal authority to support her argument that the date the appeal period expires is the date the cause of action accrues for bad faith. Harper exhausted her administrative remedies on July 9, 2003, the date of the Full Commission Order. The mere fact an appeal period follows this Order is of no consequence. (Otherwise, the accrual of all causes of action dependent on the issuance of an Order would be questioned). Harper's cause of action for bad faith accrued on July 9, 2003. Applying the applicable three (3) year statute of limitations, Harper had until July 9, 2006 to file her lawsuit for bad faith. Harper did not file her lawsuit until August 4, 2006. Accordingly, Harper's lawsuit is time-barred pursuant to Miss. Code Ann. §15-1-49.

### **III. HARPER'S ARGUMENT THAT THE FULL COMMISSION ORDER SHOULD BE EFFECTIVELY "POST-DATED" TO AFTER THE APPEAL PERIOD EXPIRES IS WITHOUT MERIT**

Harper argues that the July 9, 2003 did not become "final" until after the appeal period expired. *See Brief of Appellant, p. 9.* In effect, Harper contends the Full Commission Order should be "post-dated" thirty (30) days to account for the appeal period. In so arguing, Harper cites MISS. CODE ANN. § 71-3-51 which reads, in relevant part:

The final award of the commission shall be conclusive and binding unless either party to the controversy shall within thirty (30) days from the date of its filing in the office of the commission and notification to the parties appeal therefrom to the circuit court of the county in which the injury occurred.

*Id.*

Pursuant to this statute, a Full Commission Order is conclusive and binding *unless* either party appeals the Order. Applying the unambiguous terms of this statute to the present case, the Full Commission Order of July 9, 2003 remained conclusive and binding since neither party appealed the Order. Thus, this statute actually supports Cal-Maine's position.

Harper cites *T.C. Fuller Plywood Company v. Moffett*, 95 So.2d 475 (Miss. 1957), purportedly for the proposition that a Full Commission Order was not final until the thirty (30) day appeal period expires. Harper's argument is flawed in several regards. First, in *Moffett*, the issue was whether a party could be forced to abide by the terms of a Full Commission Order before his/her time to appeal expired. This is not at issue in this case. Second, since the foregoing statute is unambiguous, the statute should be applied pursuant to its plain meaning. See *Brief of Appellant*, p. 7 (citing *Kerr-McGee Chemical Corp. v. Buelow*, 670 So.2d 12 (Miss. 1995)). Harper's attempt to re-characterize the terms of the statute using a case that has no factual application to the present case is without merit. Third, even assuming Harper's argument to be correct, i.e., that the Full Commission Order does not become final until thirty (30) days after the Order, this "finality" has no relevance to when the statute of limitations for bad faith accrues. The law is clear and unequivocal that the statute of limitations for bad faith accrues once a claimant exhausts his administrative remedies. The law on when a statute of limitations accrues does not speak in terms of "finality." For the reasons already discussed above, Harper "exhausted" her administrative remedies on July 9, 2003 – the date of the Full Commission Order. There was no further action taken by Harper, or that could have been taken, beyond that date. Fourth, to adopt Harper's argument would cause havoc for the future enforcement of Orders. Adopting Harper's argument, **all** bad faith claimants would need to "post-date" the date of all orders on which they rely to account for a thirty (30) day appeal period. Such a result certainly was not intended by the Mississippi legislature or Mississippi Supreme Court. And fifth, adopting Harper's argument, once the appeal period expired, the date of the order, whether "final" or not, was July 9, 2003. The mere fact the Order did not become "final" until thirty (30) days later does not change the date of the Order and thus the date she exhausted her remedies. Stated otherwise, once the appeal period expires, the date of the Order does not become August 8, 2003. Rather, it remains July 9,

2003.

In consideration of the foregoing, Harper's argument that the Full Commission Order should be "post-dated" to August 8, 2003 for purposes of when her statute of limitations accrued is without merit.

#### **IV. *BULLOCK V. AIU INSURANCE COMPANY* DOES NOT SUPPORT HARPER'S ARGUMENT**

Harper's reliance on *Bullock* is misplaced. The facts in *Bullock* differ significantly from the facts in this case. In *Bullock*, Bullock was hurt on the job. See *Bullock v. AIU*, 2006 WL 1195465 (S.D. Miss. 2006). A dispute arose concerning whether Bullock was covered under his employer's workers compensation policy with AIU. *Id.* The timeline in *Bullock* was as follows<sup>3</sup> :

January 9, 2007	Bullock filed a Petition to Controvert.
October 12, 1999	An Administrative Law Judge ("ALJ") ruled that Bullock was entitled to benefits under the subject policy. The "only issue" considered was "the threshold issue of whether defendants are liable for payment of workers' compensation benefits under the Act." See <i>Bullock v. AIU</i> , 503 F.3d 384, 386 (5 <sup>th</sup> Cir. 2007).
—	No one appealed the ALJ's ruling.
—	The employer began paying benefits.
October 15, 2003	A hearing was held on the remaining issues related to compensation
December 1, 2003	The ALJ enters an Order relating to the October 15, 2003 hearing
May 25, 2004	An Order approving a lump sum settlement was entered by the Mississippi Workers Compensation Commission based on benefits that were awarded in the Order of December 1, 2003

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<sup>3</sup> This timeline is derived from the facts provided in the three (3) court decisions from the United States District Court for the Southern District of Mississippi, Mississippi Supreme Court and Fifth Circuit Court of Appeals.

August 26, 2004

Bullock filed a complaint for bad faith against his employer and AIU.

The issue in *Bullock* was whether the October 12, 1999 Order that did not decide all of the issues was a “final order.” *Id.* The employer/AIU argued that the statute of limitations accrued on this date, even though the workers compensation proceeding remained ongoing with issues still undecided. *Id.* Bullock argued that the statute of limitations did not accrue until May 25, 2004 – when an order approving a lump sum settlement was entered by the Mississippi Workers Compensation Commission. *Id.*

The United States District Court for the Southern District of Mississippi found in favor of the employer/AIU, finding that Bullock’s cause of action for bad faith accrued on October 12, 1999. Bullock appealed the case to the Fifth Circuit Court of Appeals.

The Fifth Circuit reviewed the matter and certified the following question to the Mississippi Supreme Court:

Whether an order, issued in 1999, of a Mississippi Workers Compensation Commission Administrative Law Judge which determines only that the named employer and compensation insurer are liable to the named employee for compensation benefits in respect to a particular on the job accidental injury, but does not determine the amount or duration of benefits to be paid or any other matter, becomes final if not appealed by any part to the Commission within twenty days;

And, if so, whether the employee claimant has then so exhausted his administrative remedies, notwithstanding that the employee’s compensation case against the employer and compensation insurer remains pending before the Commission on other issues, such that the three year statute of limitations period under Miss. Code 15-1-49(1) *then* commences and continues to run with respect to a subsequent suit by the employee against the employee or compensation insurer for bad faith failure to pay workers compensation benefits which does not allege any bad faith action or inaction after the expiration of twenty days following the ALJ’s referenced order finding compensability.

503 F.3d 384, 388.



On May 8, 2008, the Mississippi Supreme Court issued its opinion in response to the Fifth Circuit's certified question. See *Bullock v. AIU*, 2008 WL 1970978 (Miss. 2008). The Court noted that, on October 12, 1999, the "only issue" considered was "the threshold issue of whether defendants are liable for payment of workers' compensation benefits under the Act." *Id.* at ¶ 5. This Order, however, did **not** determine significant issues such the amount or duration of benefits to be paid or any other matter. See 503 F.3d at 388. The Mississippi Supreme Court held that the actions of the parties and the ruling by the administrative law judge demonstrated that the October 12, 1999 Order was merely "interlocutory" since issues remained and the parties were again before the Court arguing the same issue in October of 2003. The Court found that Bullock's cause of action for bad faith accrued on the date the final Order was entered on the October 2003 hearing that resolved all the remaining issues (which was entered on December 1, 2003).<sup>4</sup>

*Bullock* has no application to this case. In *Bullock*, the main point of contention was whether the October 12, 1999 Order, which did not decide all of the issues, could be considered a final order. The Court held that it could not, since the parties expressly reserved other issues to be decided at a later time (2003). Once all of the remaining issues were resolved, an Order was entered dated December 1, 2003. The Mississippi Supreme Court held that Bullock's cause of action accrued on this date, since no appeal was taken. Contrary to Harper's argument, *Bullock* does not stand for the proposition that Bullock's cause of action for bad faith accrued on December 31, 2003, after the appeal period expired. Bullock's cause of action for bad faith accrued on December 1, 2003, when all issues were decided with no appeal being taken and thus all administrative remedies exhausted. Correspondingly, all issues in this case were decided by Full Commission Order on July 9, 2003. Harper's cause of action for bad faith accrued on that date.

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<sup>4</sup> Notably, as in *Bullock*, Harper's Complaint does not allege any acts post-dating July 9, 2003.

## CONCLUSION

Harper's cause of action for bad faith accrued on the date in which she exhausted her administrative remedies. Harper exhausted her administrative remedies on July 9, 2003 when the Full Commission issued its Order. Harper did not take any action beyond that date, nor was there any action she *could have* conceivably taken since the Order was in her favor. Harper, however, seeks to "post-date" the July 9, 2003 Order to August 8, 2003 to account for a thirty (30) day appeal period. This argument is without merit as, *inter alia*, there is no law to support such a calculation and Harper, being the prevailing party, would not have appealed the Order. Harper's argument that the Full Commission Order did not become "final" until August 8, 2003 defies the unambiguous terms of MISS. CODE ANN. § 71-3-51. Further, even assuming the Full Commission Order did not become "final" until August 8, 2003, the date of the "final order" remains the same – July 9, 2003. Thus, Harper's argument fails. Harper's cause of action for bad faith accrued on July 9, 2003. As such, Harper had until July 9, 2006 to file a claim for bad faith. Harper did not file her claim for bad faith until August 4, 2006. Accordingly, Harper's claim for bad faith is time-barred by the MISS. CODE ANN. §15-1-49.

Respectfully submitted, this the 5<sup>th</sup> day of September, 2008.

CAL-MAINE FARMS, INC., APPELLEE

BY: 

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Caryn Anlage Milner, MSB No. [REDACTED]  
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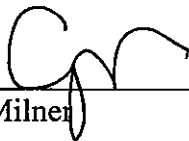
### **CERTIFICATE OF SERVICE**

I, Caryn Milner, of counsel for Appellee, do hereby certify that I have this day caused to be forwarded by U.S. Mail, a true and correct copy of CAL-MAINE FARMS, INC.'s BRIEF OF APPELLEE to:

Micheal M. Williams  
David, Goss & Williams  
1441 Lakeover Road  
Jackson, Mississippi 39213

Honorable Bobby Burt DeLaughter  
CIRCUIT COURT JUDGE  
Post Office Box 27  
Raymond, MS 39154

This the 5<sup>th</sup> day of September, 2008.

  
\_\_\_\_\_  
Caryn Milner