

IN THE SUPREME COURT OF MISSISSIPPI

TUNICA COUNTY, MISSISSIPPI AND CALVIN HAMP, SR.,
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY
AS SHERIFF OF TUNICA COUNTY

APPELLANTS

VS.

CAUSE NO. 2008-CA-00756

THE HAMPTON COMPANY NATIONAL SURETY, LLC,
A MISSISSIPPI LIMITED LIABILITY COMPANY; JAMES
DEAN, AN INDIVIDUAL; AND JAMES HAMPTON GARDNER,
AN INDIVIDUAL

APPELLEES

BRIEF OF APPELLANTS

APPEAL FROM CIRCUIT COURT OF TUNICA COUNTY,
MISSISSIPPI, CAUSE NO. 2005-0391

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ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PARTIES

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

1. The Honorable Charles E. Webster, Circuit Judge
2. Calvin Hamp, Sr., Appellant
3. Tunica County, Mississippi, Appellant
4. John S. Hill, Counsel for Appellants
5. Stephen P. Spencer, Counsel for Appellants
6. Mitchell, McNutt, & Sams, P.A., Counsel for Appellants
7. The Hampton Company National Surety, LLC, Appellee
8. James Hampton Gardner, Appellee
9. James Dean, Appellee
10. James Harper, Counsel for Appellees
11. William B. Ryan, Counsel for Appellees
12. Stroud and Harper, P.C., Counsel for Appellees
13. Donati Law Firm, LLP, Counsel for Appellees



John S. Hill, One of the Attorneys of Record
for Tunica County, Mississippi and Calvin
Hamp, Sr., Appellants

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Mississippi Rule of Appellate Procedure 34, Appellants Tunica County, Mississippi and Calvin Hamp, Sr., respectfully request that oral argument be permitted. This appeal presents unique and important questions of law regarding the legal right of a county sheriff to control bail bonding operations and maintain jail administration in his county. Oral argument would be beneficial in providing an accurate account of the facts of this case and in demonstrating the error in the Opinion and Judgment ordered in the Circuit Court of Tunica County, Mississippi in this case on April 3, 2008. Appellants Tunica County, Mississippi and Calvin Hamp, Sr. submit that oral argument would be beneficial to the Court and the parties in examining the issues presented.

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page(s)</u>
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<u>Ralph Walker, Inc. v. Gallagher,</u> 926 So.2d 890, 893 (Miss. 2006)	6
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II. OTHER AUTHORITY

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Miss. R. Civ. P., 12(b)(6) (2008)

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STATEMENT OF THE ISSUE

Whether the trial court erred in holding that a local sheriff has no legal right to suspend the privileges of a limited surety bail agent and/or its soliciting bail agent to write bonds in his county.

I. STATEMENT OF THE CASE

A. PROCEDURAL BACKGROUND

Hampton Company National Surety, LLC (hereinafter “Hampton”) and James Dean (hereinafter “Dean”) filed suit against Tunica County (hereinafter “Tunica”) and Calvin Hamp, Sr. (hereinafter “Hamp”) in his individual and official capacity as Sheriff of Tunica County on December 22, 2005 in the Circuit Court of Tunica County, Mississippi.¹ Hampton and Dean alleged in the complaint that Hamp and Tunica unlawfully directed inmates away from their bonding company and unlawfully prohibited them from writing bonds in Tunica County. (R. Vol. 1, p. 13).² Hampton and Dean requested monetary damages, as well as injunctive and declaratory relief. Id.

On October 17, 2006, Tunica and Hamp filed a motion to dismiss pursuant to Rule 12(b)(6) of the Mississippi Rules of Civil Procedure. (R. Vol 1, p. 73). Hampton and Dean responded to the motion to dismiss and also filed an amended complaint January 18, 2007 in which they added James Hampton Gardner (hereinafter “Gardner”) as a plaintiff. (R. Vol. 1, pp. 121, 147). A hearing on the motion to dismiss was held on November 28, 2007 before the Honorable Charles E. Webster, Circuit Judge. (R. Vol. 4, p. 2). On, January 16, 2008, Judge Webster issued an Order dismissing all of Hampton, Gardner, and Dean’s claims for monetary damages. (R. Vol. 3, p. 359). In the Order, Judge Webster recognized that the injunctive and declaratory relief had not been addressed in the Motion to Dismiss or in the hearing on the

¹ Interestingly enough, Hampton and Dean also filed suit against Tunica and Hamp in federal court based on facts identical to the state court action. The federal district court granted Tunica and Hamp’s motion for summary judgment and Hampton and Dean have appealed the matter to the Fifth Circuit Court of Appeals. Curiously, plaintiffs’ amended complaint alleges in the federal action states that “No adequate remedy exists under Mississippi law by which the Plaintiffs can challenge the illegal actions of the Defendants.” However, Hamp and Tunica have actively pursued the present action in state court based upon the same facts alleged in the federal action.

² References to the Record on Appeal are designated by the uppercase letter “R,” the number of the record volume assigned by the clerk of the district court and the relevant page number(s).

Motion to Dismiss. (R. Vol. 3, pp. 387-88). Judge Webster directed the parties to “make their wishes known to the court” regarding the injunctive and declaratory relief within ten (10) days of the Order. Id.

Accordingly, over the course of the next three weeks, each party submitted three letters to Judge Webster regarding the remaining claims for injunctive and declaratory relief. (R. Vol. 3 pp. 407-14). Judge Webster then issued an opinion on April 3, 2008 granting Hampton, Gardner, and Dean’s request for declaratory and injunctive relief. (R. Vol. 3, p. 391). In turn, Tunica and Hamp filed the present appeal on April 29, 2008 and ask this Court to overturn Judge Webster’s ruling regarding the injunctive and declaratory relief. (R. Vol. 3, p. 402).

B. FACTUAL BACKGROUND

Hampton is a limited surety bail agent licensed to underwrite bail bonds in the State of Mississippi and was at all times relevant to this lawsuit licensed with the Mississippi Department of Insurance for that purpose. Dean is a soliciting agent for Hampton for the purpose of soliciting and writing bail bonds in Tunica County, Mississippi. At all times relevant to this litigation Dean was licensed by the Mississippi Department of Insurance for that purpose. Gardner is the owner of Hampton.

Hampton and Dean have been writing bail bonds in Tunica County for several years. On or about February 15, 2005, Hamp, acting in his capacity as Sheriff of Tunica County, suspended Hampton’s privilege to write bail bonds in Tunica County. Hamp removed Hampton from Tunica County’s bonding roster based on a report Hamp received from Judge Albert B. Smith, III that Hampton was in arrears on three bonds because bonded criminal defendants were not produced for arraignment. (Exhibit 2, pp 23-26). Hampton’s state license was not revoked; rather Hampton’s ability to write bonds under its state license was suspended in a single county

pending notice of the cure of the bonds in arrears by either the appearance of the bonded criminal defendants or Hampton's payment of the bonds in arrears.

After producing the three defendants in issue, neither Hampton nor Dean requested that the circuit clerk inform Hamp that the arrearages were clear nor did Hampton or Dean so advise Hamp. (Exhibit 1, p. 26; Exhibit 4, pp. 25-26). Thereafter, Hampton and Dean asserted claims against Tunica County and Hamp in his individual capacity requesting compensatory and punitive damages as well as declaratory and injunctive relief.

After mediation of this action and a determination that the three defendants in issue had made a court appearance, Hampton was allowed to begin writing bonds in Tunica County in late 2006. (Exhibit 2, p. 73). But Dean remained prohibited from writing bonds in Tunica County based on a separate and unrelated incident. (Exhibit 2, pp. 23, 40, 79). Specifically, Hamp learned that Dean illegally loaned money to a jailer employed by the Tunica County Sheriff's department in contravention of Mississippi Code Annotated § 83-39-27, a fact not denied by Dean. (Exhibit 1, pp. 29-30). Because Hamp's predecessors were jailed in connection with improper bonding procedures and exchanges of money between bonding agents and the sheriff's department and because Dean's actions were in contravention of Mississippi law, Hamp suspended Dean's privilege to write bonds in Tunica County for those actions and refused to reinstate Dean.

II. SUMMARY OF ARGUMENT

Hampton was reinstated to the Tunica County bonding roster in 2006, therefore making its claim for injunctive relief moot. Dean, on the other hand, was still prohibited from writing bonds in Tunica County for the separate matter noted above at the time of the Order granting declaratory and injunctive relief. Dean admitted in his deposition that he illegally loaned money

to a Tunica County jailer, which is a direct violation of Mississippi Code Annotated § 83-39-27. (Exhibit 1, pp. 29-30). Therefore, Dean's request for injunctive relief is without merit as a sheriff cannot allow a bonding agent who has admittedly violated bonding laws to remain on the bonding roster. Otherwise, Hamp would risk going to jail just like his predecessors and loses the ability to control his own jail facility. Therefore, all of the injunctive relief sought by the appellees is without merit.

Similarly, the declaratory relief is without merit. The appellees argue that a sheriff has absolutely no authority to suspend the license of a limited surety bail agent or its soliciting agent in his county for any reason. The appellees contend that the Mississippi Department of Insurance is the only agency with the authority to suspend a bail bondsman's license. However, the statutory code in Mississippi indicates that the sheriff is vested with the limited authority to refuse to take a bond from a bail bondsman within his county and is required to keep the peace. See Miss. Code Ann. § 19-25-67 (1995). Because it is ultimately the sheriff's responsibility to ensure that prisoners appear for arraignments and that bail bondsmen obey the law, the sheriff has to retain certain rights to suspend bonding privileges within his county. The Fifth Circuit has agreed with this premise and declared that a bail bondsman does not possess a property right to write bonds within a single county in Mississippi. Baldwin v. Daniels, 250 F.3d 943, 946 (5th Cir. 2001) (citing Richards v. City of Columbus, 92-7359, 1993 WL 413911 (October 12, 1993) (unpublished) (copy attached to Baldwin decision)). Further, a sheriff is required to keep the peace and must control and administer his jail facility. He cannot do so if he must rely on the good offices of the Department of Insurance as the exclusive means to govern the actions of bail bonding agents. Therefore, the trial court erred in granting Hampton and Dean's request for declaratory relief.

III. ARGUMENT AND AUTHORITIES

A. STANDARD OF REVIEW

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of the complaint. Randolph v. Lambert, 926 So. 2d 941, 944 (Miss. App. 2006). In reviewing a motion for dismissal for failure to state a claim, “the pleaded allegations of the complaint must be taken as true, and a dismissal should not be granted unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which entitles him to relief.” Miss. R. Civ. P., 12(b)(6); Poindexter v. S. United Fire Ins. Co., 880 So. 2d 373, 376 (Miss. App., 2004). This Court reviews a Rule 12(b)(6) motion to dismiss with a *de novo* standard of review. Durham v. University of Mississippi, 966 So.2d 832, 835 (Miss. App. 2007) (citing Ralph Walker, Inc. v. Gallagher, 926 So.2d 890, 893 (Miss. 2006)). Under a *de novo* standard, this court affirms a grant or reverses a denial of a Rule 12(b)(6) motion to dismiss, where there are no set of facts that would afford relief to the opposing party. Gallagher, 926 So.2d at 893.

B. THE TRIAL COURT ERRED IN GRANTING HAMPTON AND DEAN’S REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF AGAINST SHERIFF CALVIN HAMP AND TUNICA COUNTY

1. DECLARATORY RELIEF

In its April 3, 2008 Order, the trial court determined that Sheriff Hamp did not have authority to suspend Hampton and Dean’s bonding license in Tunica County, Mississippi. According to the trial court, Title 83, Chapter 39 of the Mississippi Code governs all bonding issues and vests complete authority to suspend a bonding license in the Mississippi Department of Insurance. (R. Vol. 3, p. 392). The trial court dismissed Tunica and Hamp’s argument that a sheriff in Mississippi is granted some limited authority within his county.

Mississippi Code Annotated § 19-25-67 (1995) provides:

It **shall** be the **duty** of every sheriff to keep the peace within his county, by causing all offenders in his view to enter into bonds, with sureties, for keeping the peace and **for appearing at the next circuit court**, and by committing such offenders in case of refusal. He shall certify and return said bonds to the court. (It shall be his duty to quell riots, routs, affrays and unlawful assemblages, and to prevent lynchings and mob violence, and wherever necessary he shall call to his aid the power of the county. Any person who shall fail, neglect or refuse to respond to the call of the sheriff for such aid shall be reported by the sheriff to the circuit court, and it shall be his duty to prosecute all such persons, who, upon conviction, shall be punished as for a misdemeanor.) He shall pursue, apprehend, and commit to jail all persons charged with treason, felony, or other crimes. He **may take bonds**, with good and sufficient sureties, of any person whom he may arrest with or without a warrant for any felony that is bailable as a matter of law. He **may fix the amount of such bonds**, only in emergency circumstances. ("Emergency circumstances" means a situation in which a person is arrested without a warrant and cannot be taken before a judicial officer for a determination of probable cause within a reasonable time, or within forty-eight (48) hours, whichever is the lesser, after the arrest.)

Miss. Code Ann. § 19-25-67 (emphasis added). The sheriff's responsibility to keep the peace is broad and non-delegable. It necessarily includes jail administration and operations -- acts that go to the heart of this appeal.

The use of the word "may" clearly indicates that a Sheriff is not required to take a bond from a particular bondsman. The Mississippi legislature did not vest complete authority with the Department of Insurance regarding the bonding procedures, but left some discretion to a sheriff. Similarly, the legislature did not expressly except the rejection of bonds submitted by limited sureties. (Therefore, it must be assumed that the legislature intended to give the sheriff the right to reject bonds from any bondsman or bonding company regardless of status, especially if necessary to maintain the peace and control jail administration.)

The Fifth Circuit Court of Appeals reached the same conclusion in Baldwin and Richards. The Court in Baldwin opined that a bail bondsman has no property interest in writing bonds within a particular county. 250 F.3d at 946-47. According to the Court, the property

interest in a state issued bondsmen license can be revoked without due process of law within a single county. Id. at 946 (citing Richards v. City of Columbus, 92-7359, 1993 WL 413911 (October 12, 1993) (unpublished) (copy attached to Baldwin decision)).

In a remarkably similar factual scenario, the Baldwin Court explained the Richards decision as follows:

In that case, the plaintiff Richards was licensed to write bail bonds in Mississippi. The municipal chief of police posted a notice at the city jail that Richards would not be able to make bonds at the Columbus Police Department. This action was taken without notice or hearing to Richards. This court assumed that Richards had a property interest in his state-issued bondsmen license and that his state license could not be revoked without due process protection. However, it contrasted the more limited action taken against Richards. As in this case, Richards' state license was not revoked. Rather, like Baldwin, his ability to write bonds under his state license was merely restricted in a single municipality or county. After being barred from writing bonds at the Pontotoc County Jail, Baldwin retained her license to write bonds in other areas of the state.

The Richards court also noted that under Mississippi law Richards had no property interest in his ability to write bonds within a limited political subdivision such as a city or in his ability to have bonds written by him accepted by authorities in that political subdivision. Mississippi law expressly leaves the approval of tendered bonds to the discretion of the responsible officer, Miss. Code Ann. § 21-23-8. Discretionary statutes do not give rise to constitutionally protectable interests. Neuwirth v. La. State Bd. of Dentistry, 845 F.2d 553, 557 (5th Cir. 1988).

Because Baldwin's ability to have her bail bonds accepted at the Pontotoc County Jail is not a property or liberty right protectable by the Fourteenth Amendment, she did not suffer any unconstitutional deprivation when Sheriff Daniels barred her from doing so without notice or a hearing. On these facts, Baldwin cannot state a due process claim under § 1983. Accordingly, we need not address Baldwin's claims regarding qualified immunity or jury instructions relating to this claim.

Baldwin, 250 F.3d at 946-47. See also Olibas v. Gomez, 481 F. Supp. 2d 721, 727-28 (W.D. Tex. 2006) (discussing Baldwin and concluding "that Mississippi law expressly leaves the approval of tendered bonds to the discretion of the responsible officer.")

The facts in Baldwin are very similar to the facts in the present case, except that Hamp had a legitimate reason for removing Hampton and Dean from the approved bonding list. As in Baldwin, Hamp took over a corruption ridden department and instituted measures to end the corruption. (Ex. 2, p. 94). In fact, Hamp instituted these measures in response to the illegal actions perpetrated by his predecessors that eventually lead to both men being sentenced to prison terms. (Ex. 2, p. 94). However, unlike the Baldwin decision, Hamp removed Dean and Hampton for a valid reason; i.e., Dean illegally loaned money to an officer with the Sheriff's Department in violation of Mississippi Code Annotated § 83-39-27 and Hampton failed to produce defendants on the day of their arraignment. Dean does not dispute the fact that he loaned money to a Tunica County jailer and Hampton and Dean do not dispute that they failed to produce three defendants on their February 15, 2005 arraignment. (Ex. 1, pp. 29-30). Accordingly, the Baldwin decision shows that a sheriff possesses limited authority to suspend a bail bondsman's license within their county.

Hampton and Dean counter the above argument and attempt to confuse the issue by arguing that Baldwin is distinguishable because it did not involve a limited surety. This argument is without merit. While the Baldwin decision does not explicitly state whether the bondsman was a limited surety, the decision still provides that the limited action of suspending a bonding privilege within a single county in Mississippi does not affect a property right. Moreover, the decision does not specify that the bondsman was not a limited surety.

Further, the Attorney General of Mississippi has recognized that a sheriff has the discretion to suspend a bail bond privilege. "A sheriff cannot be forced to approve the surety of any bail bond. Since a sheriff is liable under section 99-5-19 where he approves the surety of a bail bond and the same becomes insufficient, the sheriff is vested with the discretion in

approving such sureties.” Miss. Atty. Gen. Op. 1992 WL 613907, Thompson (May 7, 1992).

The Attorney General has also explained that “[s]ection 83-39-23 mandates not accepting a bond from persons who are charging fees unless they are licensed; but nowhere in the act is a sheriff required to accept a bond from a licensed bondsman.” Id. See also Miss. Atty. Gen. Op. 1998 WL 92539, Chamberlin (Feb. 6, 1998) (Stating that “[a] sheriff may not forbid or prohibit a bondsman from writing bonds for an inmate who is being held in the county jail, however, a sheriff with good cause may refuse to approve a bond from a particular bondsman.”).

The Mississippi statutory code reflects numerous instances where a sheriff is given limited authority to accept and deny bonds within his county. The Mississippi Department of Insurance is not the sole authority in this regard. Accordingly, the trial court erred in determining that the appellees were entitled to declaratory relief since Hamp possessed authority to suspend Hampton and Dean’s privilege to write bail bonds in Tunica County, Mississippi.

2. INJUNCTIVE RELIEF

The traditional factors used in determining whether an injunction is appropriate are: (1) there exists a substantial likelihood that plaintiff will prevail on the merits; (2) the injunction is necessary to prevent irreparable harm; (3) the threatened harm to the applicant outweighs the harm the injunction might do to the respondents; and (4) entry of the injunction is consistent with the public interest. American Legion Post # 134 v. Mississippi Gaming Com’n., 798 So.2d 445, 454 (Miss. 2001) (citing City of Durant v. Humphreys County Mem’l Hosp., 587 So.2d 244, 250 (Miss. 1991)).

The trial judge referenced these factors in his decision but failed to address whether the factors favored Hampton and Dean or Tunica and Hamp. These factors clearly favor Tunica and Hamp. First, Hampton and Dean are not likely to prevail on the merits. Hampton and Dean’s

requests for monetary damages were dismissed. Moreover, Hamp was acting in manner consistent with the decisions in Baldwin and Richards. These decisions are almost indistinguishable from the present case and specifically provide that a sheriff has the right to take the limited action of suspending a bail bondsman's license within his county in Mississippi. Moreover, as previously discussed, the Mississippi statutory code repeatedly authorizes sheriff's to take limited actions against bail bonding agents within their county.

Likewise, the injunction is not necessary to prevent an irreparable harm. Neither Hampton nor Dean were prohibited from writing bonds in any other county. In fact, Hampton was placed back on the bonding roster during this suit, and allowing Dean back on the bonding roster is not necessary to prevent an irreparable harm from occurring to Dean. Instead, it would require Sheriff Hamp to allow a bonding agent that has admittedly violated Mississippi Code Annotated § 83-39-27 to remain on a bonding roster. Like his predecessors, Hamp would then run the gambit of allowing illegal bonding actions to occur in his county. This risk to Hamp and the fetter to his ability to operate his jail facility peacefully surely outweighs the benefit that will be received by Dean for writing bonds in Tunica County, Mississippi. And it indisputably is in the best interest of the public that this type of corruption not be overlooked, but be met with stiff and immediate resistance. Injunctive relief as sought by the appellees is wholly inconsistent with the public interest. With Dean allowed back despite violating clear statutory mandate the question must be asked: who now runs the Tunica County jail?

Because Hamp had the authority to suspend Dean and Hampton, the injunctive relief sought should be denied.

IV. CONCLUSION


Hamp did not suspend Hampton and Dean's statewide bonding license. Instead, Hamp suspended their privilege to write bonds only in Tunica County. While the Mississippi legislature devoted an entire chapter to bonding procedures and regulations, the legislature did not entirely eliminate a sheriff's right to take action against limited surety bonding companies and its agents within his jurisdiction. The sheriff is legally bound to keep the peace, maintain his jail facility and ensure that prisoners under his control appear for court hearings. He is duty bound as well to ensure that no bonding company within his county receives preferential treatment because of monetary loans given to himself or one of his deputies. Hamp took action against Hampton and Dean for their failure to produce three defendants for arraignment. Likewise, Hamp continued to deny Dean the privilege to write bonds in Tunica County because he learned that Dean illegally loaned money to one of his jailers. While petitioning the Mississippi Department of Insurance to suspend Hampton and Dean's license may have been an option, the fact that this avenue is available does not prove that it is the only remedy available to a sheriff, especially where the statewide license is not at issue. The Mississippi statutory code contains several statutes relating to bonding that are not found within Title 83, Chapter 39 that specifically give a sheriff or other officer the right to deny bonds to bonding agents. The legislature did not intend for the Mississippi Department of Insurance to be the sole authority regarding whether a sheriff had the right to take action against bonding companies in his county. The trial court clearly erred in determining that Hampton and Dean were entitled to declaratory relief.

Finally, the trial court also erred in granting Hampton and Dean injunctive relief. As previously explained, Hampton was placed back on the bonding roster in 2006 and had Hampton

followed procedural guidelines set forth by Hamp like the other bonding companies suspended along with Hampton on February 15, 2005, Hampton would have been placed back on the bonding roster much earlier. Dean's suspension remained for violating a clearly established Mississippi law prohibiting a bail bondsman from loaning money to a deputy jailer. This is not in dispute. In the event that this Court determines that Hamp has the right to take limited actions against bonding companies within his district, the injunctive relief relating to Hampton and Dean should be overturned.

DATED: August 27, 2008.

TUNICA COUNTY, MISSISSIPPI AND
CALVIN HAMP, SR., INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS
SHERIFF OF TUNICA COUNTY,
APPELLANTS



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CERTIFICATE OF SERVICE

I certify that I have this day served a true and correct copy of the above and foregoing Brief of the Appellants on the attorneys for the appellees and the trial judge, by placing said copy in the United States Mail, postage prepaid, addressed to them at their usual addresses as follows:

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DATED: August 27, 2008.



JOHN S. HILL

CERTIFICATE OF FILING

I hereby certify that I have filed via first class, United States mail, postage prepaid, the original and three copies of the Brief of Appellants and an electronic diskette containing the same on August 27, 2008, addressed to Ms. Betty W. Sephton, Supreme Court of Mississippi, Carroll Gartin Justice Building, 450 High Street, Jackson, Mississippi 39201-1082.

SO CERTIFIED, this the 27th day of August, 2008.



JOHN S. HILL