

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2008-CA-01173-COA**

**JAMES K. TRIPLETT, AS THE ADMINISTRATOR OF  
THE ESTATE OF JEAN B. TRIPLETT, DECEASED AND  
ANDREW MAXWELL TRIPLETT**

**APPELLANTS/  
CROSS APPELLEES**

**VS.**

**RIVER REGION MEDICAL CORPORATION;  
JOHN ADAMS, M.D.; PATTY STONE,  
CRNA; AND JOHN AND JANE DOES 1-20**

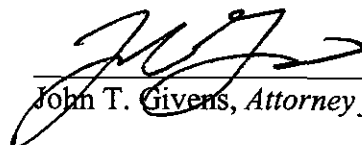
**APPELLEES/  
CROSS APPELLANTS**

**CERTIFICATE OF INTERESTED PARTIES**

The undersigned counsel of record certifies that the following listed parties 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.

1. James K. Triplett.
2. Timothy W. Porter, Patrick C. Malouf, and John T. Givens of Porter & Malouf, Jackson, Mississippi, Counsel of Record for Plaintiff, Mary C. Pittman.
3. Andrew Maxwell Triplett.
4. Estate of Jean B. Triplett.
5. Rufus "Gene" E. Parker, Jr. of Varner, Parker & Sessums.
6. John Adams, M.D.
7. Patty Stone, Certified Nurse Anesthetist.
8. River Region Medical Corporation d/b/a River Region Medical Center.
9. Lamar McMillin, M.D.

This the 25th day of June, 2010.

  
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John T. Givens, Attorney for Appellant

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## **STATEMENT OF THE ISSUES**

- I. WHETHER THE APPELLEE IS BARRED FROM ARGUING THEIR CROSS APPEAL FOR FAILURE TO FILE A NOTICE OF CROSS APPEAL.**
- II. WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ALLOWING THE TOTAL AMOUNT OF MEDICAL BILLS INCURRED INTO EVIDENCE.**

## **STATEMENT OF THE CASE**

The Defendants did not file a Notice of Cross Appeal in the trial court. The issue raised in their cross appeal does not concern any of the Plaintiffs' arguments in their appeal. Therefore, this Court should decline to even hear the cross appeal of the Defendants.

The Defendants filed a Motion in Limine regarding the medical charges incurred by Jean Triplett from River Region Medical Center. The Plaintiffs were seeking the total amount charged by River Region Medical Center, while the Defendants argued the Plaintiffs should only be allowed to collect the amount allowed by Medicaid. The trial judge initially granted the Defendants' Motion in Limine, but on reconsideration, the trial judge denied the Motion in Limine. Finally, the Defendants did not file a Notice of Cross Appeal concerning this issue.

## **SUMMARY OF ARGUMENT**

The Defendants did not file a Notice of Cross Appeal in the trial court. The issue raised in their cross appeal does not concern any of the Plaintiffs' arguments in their appeal. Therefore, this Court should decline to even hear the cross appeal of the Defendants.

If this Court is inclined to allow the cross appeal, the trial court did not commit reversible error in denying the Defendants' Motion in Limine as the trial court followed established Mississippi Supreme Court precedent which he was bound to do in this case.

## ARGUMENT

### **I. WHETHER THE APPELLEES ARE BARRED FROM ARGUING THEIR CROSS APPEAL FOR FAILURE TO FILE A NOTICE OF CROSS APPEAL.**

The Defendants did not file a Notice of Cross Appeal with the clerk of the trial court. This Court has held “in order for the appellee to gain reversal of any part of the decision of a trial court which the appellant brings no complaint, the appellee is required to file a cross-appeal.” *Delta Chem. & Petroleum, Inc. v. Citizens Bank of Byhalia, Miss.*, 790 So.2d 862, 878 (Miss. Ct. App. 2001). Therefore, the Plaintiffs would respectfully submit that this Court should decline to hear the Defendants’ Cross Appeal since it would be procedurally improper.

### **II. WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ALLOWING THE TOTAL AMOUNT OF MEDICAL BILLS INCURRED INTO EVIDENCE.**

The Plaintiffs would respectfully submit that the trial Court’s ruling regarding Medicare payments was in line with Mississippi Supreme Court precedent. Mississippi has long recognized the collateral source rule. The rule states that “compensation or indemnity for the loss received by plaintiff from a collateral source, wholly independent of the wrongdoer, as from insurance, cannot be set up by the latter in mitigation or reduction of damages . . . .” *Brandon HMA, Inc. v. Bradshaw*, 809 So.2d 611, 618 (¶23) (Miss. 2001); citing *Coker v. Five-Two Taxi Serv., Inc.*, 211 Miss. 820, 826, 52 So.2d 356, 357 (1951) (Citing 25 C.J.S. *Damages* § 9). The hospital in *Brandon HMA* made the same exact argument as the Defendants in this case that “the amounts above and beyond the Medicaid payments should not be allowed because no one is responsible for those.” *Brandon HMA*, 809 So.2d at 618 (¶23). The Court held that “Medicaid payments are subject to the collateral source rule. Bradshaw’s brief summarized the logic nicely: “[T]he Hospital (Brandon) does not get a break on damages just because it caused permanent injuries to a poor person.” *Brandon HMA*, 809 So. 2d

at 619 (¶29). The Supreme Court affirmed this holding and stated that “[T]he rationale employed in *Brandon HMA* to Medicaid payments applies equally to Medicare payments. The trial court did not abuse its discretion in admitting proof of the written off portion of the medical expenses.” *Wal-Mart Stores, Inc. v. Frierson*, 818 So.2d 1135, 1140 (¶8) (Miss. 2002).

Therefore, the Plaintiff would respectfully ask that this Court to find that the trial court did not commit reversible error in allowing the full amount of the medical bills to be admitted into evidence.

### **CONCLUSION**

This Court should decline to even hear the Defendants Cross Appeal for their failure to file a Notice of Cross Appeal. If this Court does hear the cross appeal, the Plaintiffs would respectfully submit that the trial court followed established Mississippi Supreme Court precedent in denying the Defendants’ Motion in Limine, and therefore, this Court should find no reversible error was committed in regards to this issue.

DATED, this the 25th day of June, 2010.

Respectfully Submitted,

**JAMES K. TRIPLETT, AS THE  
ADMINISTRATOR OF THE ESTATE OF  
JEAN B. TRIPLETT, DECEASED AND  
ANDREW MAXWELL TRIPLETT**

By:

  
John T. Givens, MS Bar No. [REDACTED]

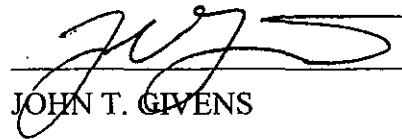
**CERTIFICATE OF SERVICE**

I, John T. Givens, attorney for the Respondent, certify that I have this day served a copy of Appellants' Brief by United States mail with postage prepaid on the following persons at these addresses:

R.E. Parker, Jr., Esq.  
VARNER, PARKER & SESSUMS, P.A.  
Post Office Box 1237  
Vicksburg, Mississippi 39181-1237  
*Attorney for the Appellees*

Honorable M. James Chaney, Jr.  
Warren County Circuit Court Judge  
Post Office Box 351  
Vicksburg, Mississippi 39181-0351

DATED, this the 25th day of June, 2010.

  
\_\_\_\_\_  
JOHN T. GIVENS