

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RONNIE ALEXANDER, ET AL

APPELLANTS

V.

CIVIL ACTION NO. 2008-CC-00013

MISSISSIPPI DEPARTMENT OF  
EMPLOYMENT SECURITY AND  
MISSISSIPPI POLYMERS

APPELLEES

REPLY BRIEF OF APPELLANT

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## SUMMARY OF THE ARGUMENT

All of the Employer's statements and actions were admissions that the plant would be closed for lack of work and the employees would be laid-off, until the employer began to consider that the employees would qualify for unemployment benefits and the costs it would incur upon the employees being approved for Unemployment Benefits.

## ARGUMENT

Should the Appellant Court accept what the employer now "says" was the reasons for the plant closing for over three weeks during the year 2006, the right of the employees to draw unemployment benefits will be striped away. However, if the facts, other than the employer's conclusions and self-serving declarations are considered, then the conclusions of the Commission must be rejected, as there is no supporting evidence to uphold the Commissions findings and conclusions.

The real conclusion is that the Employer has invented a scheme to lay off the employees, while circumventing the laws which govern unemployment compensation. Paragraph (8) of Appellee's brief (p. 5) alleges that there is no evidence that the employees were laid-off for lack of work. We totally disagree. It is admitted that the employer did not furnish work for the employees for periods exceeding three (3) weeks during the year 2006. In addition, the Notice given by the employer to the employees on August 23, 2006 (Ex. 1, attached) stated that the plant would be closed from September 3, 2006 until September 10, 2006 for lack of work. In addition, and most important, is the Notice dated November 7, 2006 (Ex. 2, attached), wherein the employer states that

the plant would be closed for lack of work for Thanksgiving week, 2006, and also gives notice that business would be slow through January 1, 2007. It is submitted that the Employer gave these notices before it realized that such closures would cause the employees to become eligible for unemployment benefits.

We submit that the later notices were after the Employer began to consider the costs to the Employer for unemployment benefits. The Employer argues (1) that the later Notice was entitled "2006 Christmas and New Years Holidays"; (4) that a letter sent to MDES after this controversy arose communicated that the closure was for a Holiday; and, (7) that the above notice gave a "suspension" time and a "resume" time. (p. 5 Appellee's Brief). Each of the foregoing contentions are nothing except self-serving declarations and do not aid the Employer's position.

The Employer next argues: (2) that the Employer had a history of suspensions of plant operations for 30 years; and, (3) the Employees admit that such has been the situation for 15 years. (p.5 Appellee's Brief). Such argument only tells a part of the story. The rest of the story is that the Employer had never closed the plant long enough for the employees to be qualified to draw unemployment benefits.

Since this is not a case of termination, but rather lay-off, because of lack of work, arguments (5) and (6) of Appellee's Brief (p. 5) have no application to this action. Whether the employees remained employees and were expected to return to work after three (3) weeks of unemployment because of lack of work, do not support the Employer's position in this cause.

Although, the case of MESC v. Woods, 983 So2 359 (Miss. 2006) was a case

involving termination for cause, the case held that the Employer has the burden to prove that it did not fire ees terminated the employee for good cause. We submit that under that decision, the

Employer has the duty to, at least, prove that the days it closed it's plant, were holidays.

Of course, the Employer has failed to do so and could not have done so. At some point

there must be a determination of amount of time included in a "holiday". We are at a loss

to say that each day of the entire week of Thanksgiving are each holidays, nor can we

justify that each of 17 days beginning before Christmas and ending after New Years day

are holidays. However, we have no problem determining what days are holidays, and the


length of each holiday. The Collective Bargaining Agreement is very specific in stating

which days are holidays and the length of each holiday. (R. vol.3, p.515)

The only way to disallow unemployment benefits to these employees is for the legislature to amend the Statute. These employees qualify under the laws governing unemployment compensation and the commission has no authority to change what the legislature has done. Should the conclusions of the commission be allowed to stand, the employer could close it's plant for a month in every month in which there is a holiday.

### CONCLUSION


All of the reliable proof in this action is that these employees did not work for 3 weeks during the year 2006 and are entitled to a reversal of the decision in this cause and an Order of the Court prohibiting MESC from making effort to collect the benefits already paid to these employees.

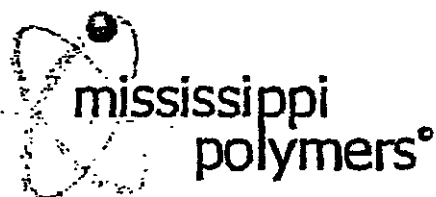
  
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day mailed by U. S. Mail, postage prepaid, a true and correct copy of the foregoing Reply Brief of Appellant to: Hon. LeAnne F. Brady, Attorney for MDEC, P. O. Box 1699, Jackson, MS; Hon. Wendell H. Trapp, Attorney for Mississippi Polymers, P. O. Box 1200, Corinth, MS 38835-1200; and, Hon. Paul S. Funderburk, Circuit Judge, P. O. Box 1100, Tupelo, MS 38802-1100.

SO CERTIFIED, this the 21st day of March, 2008.

  
Charles R. Wilbanks, Sr.



**To:** All Employees

EMP. EX.

No. 3

**cc:** Larry Bridges - USWA Local 759L  
Jeremy Luna - MPEA

**Date:** 11/07/2006

**Re:** Plant Shutdown

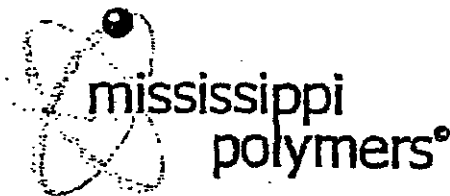
As most of you know, we have shut Calenders down to do maintenance and only operated three Calenders the last couple of weeks. Business is slower than we expected, even for this time of year and we're struggling to load four Calenders. We have some new programs on the horizon and anticipate being busy the first quarter in 2007. However, we need to do something until then to get us there. Therefore, the best thing to do is to close the plant the week of Thanksgiving and hopefully allow orders to catch up.

The plant will be closed for one week starting at 7:00 p.m. on November 19, 2006 and re-opening at 7:00 p.m. on November 26, 2006. This will be a complete closedown for all employees with the exception of the Maintenance person(s) needed to keep the boiler operational.

Paychecks for week ending 11/19/06 will be available in the guardhouse after 9:00 a.m. on Tuesday, November 21, 2006.

Employer's Exhibit 3

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To: All Employees  
From: Jerry Waxman & Jim Jones  
August 23, 2006

As everyone knows, we were forced to close the Print department for four weeks due to lack of work. Unfortunately, we have a similar situation right now in the rest of our business and need to close the entire plant for a week to allow incoming orders to build. We have had this situation the last several years in the summer and even had to close for a period of time in May and July. We were able this year to sustain the business until September, but have reached a point where we have built all the inventory we can and incoming orders have still not picked up. Therefore, we need to close the plant for one week starting at 7:00pm September 3, reopening again at 7:00pm on September 10.

The situation in Print is different from the rest of the plant in that Print is slow because our customers continue to take a portion of their business off shore to China. This is not the case in the Calender department. We have not lost any market share to competitors and have in fact picked up new customers. It is just a slow time for everyone.

We expect orders to start picking up again later in September and continue to grow throughout the end of the year. Therefore, we do not anticipate having anymore closedowns until our regular year end Maintenance closedown in December. However, the tension in the Middle East, the supply, or lack thereof, of oil and more terrorist actions could effect the overall economy of the United States, world and ultimately us, but no one has any control over these things.

Paychecks will be available in the Guardhouse after 8:00a.m. on Wednesday, September 6<sup>th</sup>.

Employer's Exhibit

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