IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2008-IA-01049-SCT

AMERICAN STATES INSURANCE COMPANY — APPELLANT

VS.

ELLIS R. ROGILLIO — APPELLEE

ON APPEAL FROM THE CIRCUIT COURT OF AMITE COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT AMERICAN STATES INSURANCE COMPANY

ORAL ARGUMENT REQUESTED

W. Wright Hill, Jr. MSB#[redacted]
Jan F. Gadow MSB#[redacted]
PAGE, KRUGER & HOLLAND, P.A.
10 Canebrake Blvd., Ste. 200
P.O. Box 1163
Jackson, MS 39215
(601) 420-0333
(601) 420-0033 facsimile

Counsel for Appellant American States Insurance Company

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

RULES

I. REPLY TO ROGILLIO'S STATEMENT OF THE ISSUE, THE CASE, AND THE FACTS

In his Statement of the Issues, Rogillio posits that the trial court declined American States' invitation to set aside default "after having considered the Three-Prong Test" required by Mississippi law. (Appellee's Brief, p. 1) However, this is a misstatement of the facts as reflected by the record. Instead, the trial court's Order does not indicate *any* consideration of these three factors. The trial court's Order simply denies American States' Motion to Set Aside without any discussion and, specifically, without reference to the required three-prong test or analysis or to American States' argument under M.R.C.P. 55(b), which constitutes an abuse of discretion that is reversible by this Court. ***State Highway Com'n v. Hyman,*** 592 So. 2d 952, 956 (Miss. 1991). *See also* ***McCain v. Dauzat***, 791 So.2d 839, 843 (Miss. 2001); ***Clark v. City of Pascagoula,*** 507 So. 2d 70, 77 (Miss. 1987); ***Bryant, Inc. v. Walters,*** 493 So. 2d 933, 937 n.3 (Miss. 1986).

Next, in both his Statement of the Case and his Statement of the Facts, Rogillio states that his counsel provided American States with a faxed copy of the Complaint, in addition to serving American States. (Appellee's Brief, pp. 2, 5, 6) However, Rogillio does not provide any citation to the record in support of this statement and no such proof exists – not in the trial record, not as an exhibit to Rogillio's Response to American States' Motion to Set Aside, and not in the appellate record.

Also, Rogillio alleges that Clover Hill existed on paper only and owned only one asset, as though this somehow lessens Clover Hill's legitimacy. (Appellee's Brief, p. 2) Clover Hill was, in fact, a separate and distinct legal entity in existence at the time of the

subject accident. (C.P. 151-52) The 2002 Ford-150 that Rogillio was driving at the time of the accident was owned by Clover Hill and was insured by policy number 01CG21189120, a commercial automobile insurance policy issued by American States to Clover Hill, LLC, as the named insured. (C.P. 26, 125-28, 152-53) This Clover Hill policy, separate and distinct from J&N Timber's policy, is further evidence that Clover Hill was a separate and independent entity. Moreover, Rogillio, as a permissive user of the 2002 Ford-150 at the time of the subject accident and therefore an "insured" pursuant to the Clover Hill policy, collected the $25,000.00 UM policy limits under the Clover Hill policy. (C.P. 26-27, 125-28)

Finally, Rogillio's timeline of relevant events has an entry which reflects that Keith Anderson with American States contacted Rogillio's counsel on March 15, 2007 and advised he had received a copy of the Complaint and was aware of the lawsuit; however, Rogillio's timeline entry neglects to mention that Anderson also advised Rogillio's counsel of American States' intent to contest coverage and defend, once served. (Appellee's Brief, p. 6; C.P. 127-28)

II. LEGAL ARGUMENT

A. THE LOWER COURT ERRED IN OVERLOOKING AND WHOLLY NEGATING VALID AND ENFORCEABLE CONTRACT LANGUAGE IN THE SUBJECT INSURANCE POLICY WHEN IT DENIED, CONTRARY TO MISSISSIPPI LAW, AMERICAN STATES' MOTION TO SET ASIDE CLERK'S ENTRY OF DEFAULT AND/OR DEFAULT JUDGMENT.

1. American States Has Good Cause for its Default and a Colorable Defense to the Merits of the Claim, while Rogillio will not be Prejudiced if the Default is Set Aside.

While Rogillio agrees with American States concerning the applicability of the three-prong balancing test for use in determining whether to set aside a default judgment pursuant to M.R.C.P. 60(b), he disagrees as to the outcome.

a. Good Cause Exists for American States' Default Because its Failure to Answer on Time was the Result of Simple Negligence and/or Clerical Error Rather than an Utter Disregard for Service of Process or Indifference.

Rogillio argues that because Keith Anderson at American States received a courtesy copy of the complaint from Bi-County and because American States was properly served via process on its registered agent, the default resulted from American States' complete disregard of service of process and American States and its employees had no reason to and, indeed, did not believe that the subject complaint was related to the Cover Hill policy. However, this position totally disregards certain very important facts.

First, Anderson's receipt of a courtesy copy of the Complaint from American States' co-defendant does not constitute service of process on American States. So, while Anderson understood that this Complaint was related to the J & N Timber policy, there was no reason to take any action at this time because American States had not been served. Moreover, when Anderson received this courtesy copy of the Complaint,

he contacted Rogillio's counsel to discuss the suit. It is undisputed that Anderson specifically advised Rogillio's counsel that once Rogillio had served American States, American States intended to assign defense counsel, defend this matter, and continue its denial of coverage to Rogillio. (C.P. 127-28) Most importantly, Rogillio specifically admits that American States appeared and indicated an intent to defend this matter: "Randy submits that the fact American States' agent advised Randy's counsel of its intent to defend the suit on or about March 15, 2007 . . . ." (Appellee's Brief, p. 14) For Rogillio to argue that this constitutes a disregard of service of process is disingenuous.

Rogillio did, however, subsequently obtain service on CT Corporation, American States' registered agent, which American States admits. CT Corporation forwarded the Summons and Complaint to American States' Home Office in Seattle, Washington, where American States had two UM claims files set up for Rogillio, both arising out of the same accident - one against the American States Clover Hill, LLC policy and one against the American States J & N Timber, Inc. policy. (C.P. 26-27, 125-28) When the Summons and Rogillio's Complaint were received in Seattle, the claims support staff mistakenly placed the Summons and Complaint in the wrong claims file, which was a simple and believable mistake. When Anderson later saw the Complaint in the Clover Hill, LLC, claims file, he mistakenly assumed it was just the courtesy copy he had previously received from Bi-County which had not yet been served on American States and was unaware of the need to answer it at that time. (C.P. 125-28)

Rogillio argues that there is no valid reason why American States should have been confused as to whether it had been served; however, American States submits that because there were two separate claims files pending for Randy Rogillio at the time

it was served, both arising from the same accident, it is certainly understandable that American States mistook one of the claims files for the other and placed the Complaint in the wrong file. American States and their employees obviously had reason for confusion and had reason to believe, though mistakenly, that the subject Complaint was related to the Clover Hill policy rather than to the J & N Timber policy. American States' position here is not that American States' and its employees' actions reflect only thorough diligence and no mistakes, but simply that an honest, understandable mistake was made. Nonetheless, American States' failure to answer on time is not the result of gross disregard or indifference to service of process. Rather, because of simple negligence and clerical errors, they were mistakenly unaware of service of process. It must also be noted that the Affidavit of Keith Anderson remains undisputed; Rogillio's allegations to the contrary are unsupported by any evidence and are at odds with the undisputed sworn evidence in the record.

Again, Rogillio claims that he "reminded" Anderson of the pending litigation with a facsimile copy of the summons and complaint, but there is no proof of this anywhere in the record. Then Rogillio urges that because American States had employed counsel before it became aware that it had been served, and because upon learning of the default it filed an Answer before it filed a Motion to Set Aside, its default is a result of disregard and indifference. American States did retain counsel before it had been served, when Anderson first received the courtesy copy of Rogillio's complaint from Bi-County. At that time, American States' counsel called the clerk of court and confirmed that there was no proof of service on American States in the court file, contrary to Rogillio's bare allegation that neither American States nor its counsel made any effort to

determine whether American States had been served. American States thereafter confirmed to its counsel that it had not been served, but would advise counsel when it received service of process.

On August 2, 2007, counsel for co-defendant Mississippi Farm Bureau Mutual Insurance Company contacted American States' counsel and advised that Rogillio had obtained an Entry of Default and Default Judgment against American States. (C.P. 29) American States immediately investigated the matter and confirmed that it had actually been served. (C.P. 29) This investigation also revealed the clerical error by American States' Claims Support Staff in Seattle, who mistakenly placed the Summons and Complaint in the Rogillio - Clover Hill, LLC policy claim file, rather than placing it in the Rogillio - J & N Timber, Inc. policy claim file. (C.P. 29-30, 128) With this information in hand, American States immediately filed an Answer and Affirmative Defenses on August 6, 2007, in order to prevent any continuing default, then investigated the facts, performed necessary legal research, and prepared a Motion to Set Aside Entry of Default and/or Default Judgment on August 23, 2007, asserting simple mistake, inadvertence, and clerical error as good cause for its failure to answer in a timely fashion. (C.P. 21-25, 26-36) American States' counsel's decision to first file an answer and then a motion to set aside the default reflects the exercise of his professional judgment and deference to, rather than an indifference or disregard of, service of process. Consequently, the teachings of ***International Paper Company v. Basila,*** 460 So.2d 1202, 1204 (Miss. 1984), apply. Failure to recognize that the served copy of the Complaint was in the wrong claims file was an inadvertent clerical error and, given the fact of two UM claims by Rogillio, arising out of the same accident, but on two different

American States policies, such a clerical error is easily understandable. The facts at bar are also inapposite to those presented in ***Guaranty National Ins. Co. v. Pittman,*** 501 So. 2d 377 (Miss. 1987), on which Rogillio relies. In ***Pittman,*** there was no confusion concerning whether the defendant had been served. The individual had been personally served, knew he had been sued, and knew he needed to respond. By way of contrast, American States, an entity rather than an individual, was served with process via its agent, but the summons and complaint were mistakenly placed in the wrong Rogillio UM claims file at American States' home office. Anderson requested a copy of the Complaint from Bi-County, when he learned that Bi-County had been served, but this still provided no notice of service as to American States. (C.P. 127) And despite Rogillio's repeated claim, there is no evidence in the record showing that Rogillio's counsel provided Anderson with a faxed copy of the Complaint. But even if this additional copy of the Complaint had been provided to Anderson, receipt of a filed Complaint does not trigger a duty to answer when a party has not been served with process. And at the time Anderson phoned Rogillio's counsel to discuss the suit, American States had *not* been served. (C.P. 127-28)

As noted by the ***Pittman*** Court, Mississippi has not adopted a policy of irrevocable defaults. ***Pittman,*** 501 So. 2d at 389. There is ample basis in the record for a conclusion, contrary to that in ***Pittman,*** that there was confusion concerning whether American States had been served. Restated, there is ample basis in the record for a conclusion that American States has a *bona fide* excuse for its failure to answer Rogillio's complaint in a timely fashion. ***Pittman,*** 501 So. 2d at 388 (citing ***Basila,*** 460 So. 2d at 1204). This prong weighs in favor of setting aside the default judgment.

b. American States has a Colorable Defense on the Merits of This Claim.

Rogillio alleges that American States admitted, in its initial brief, to some ambiguity concerning whether Rogillio is a named insured on the J & N Timber policy and that such ambiguity should be resolved in favor of coverage. There is, however, no such ambiguity and no admission of same. American States has asserted and continues to assert that neither the vehicle in question nor Rogillio were insured under the American States policy issued to J & N Timber, Inc. American States has also asserted and continues to assert that no ambiguity exists in the subject policy and that Rogillio is clearly not entitled to coverage thereunder. Any claim by Rogillio that American States acknowledged and alleged a policy ambiguity is disingenuous and simply not true.

Rogillio alleges American States created an ambiguous declaration page and ambiguous policy of insurance by listing Rogillio as a driver and insured on the J & N Timber policy. However, Rogillio is neither listed on the subject policy nor on the declarations page thereto. A simple reading of same will confirm this truth. (C.P. 37-124, 38)

In fact, the J & N Timber policy defines an "insured" for purposes of UM coverage as the named insured (J & N Timber, Inc.) and any guest passenger in or permissive user of a vehicle insured under the subject policy. (C.P. 68) For purposes of UM coverage, this policy provides coverage to a 2004 Ford F-150, a 2001 Ford Expedition, a 1998 Ford Ranger, a 2004 Ford Pickup, a 2003 Ford Crown Victoria Sedan, and a 2003 Lincoln Towncar Sedan, none of which were involved in the subject accident. (C.P. 38, 46) The 2002 Ford-150 truck which Rogillio was driving was *not* one of the

vehicles insured by this policy. There is no ambiguity that Rogillio is not named anywhere on the declarations page of the J & N policy. (C.P. 38) Nor is there any ambiguity elsewhere in the policy. Rogillio is not a named insured under the J & N Timber, Inc. policy and he was not a guest passenger in or permissive user of any listed vehicle insured under that policy. It follows that Rogillio is not an "insured" for purposes of UM coverage under the American States J & N Timber, Inc. policy.

Rogillio next refers to an affidavit of William Netterville[1], establishing Netterville's understanding that the J & N Timber policy covered "multiple vehicles and multiple drivers". However, such a statement is vague and misleading, at best. This policy did cover multiple vehicles, namely a 2004 Ford F-150, a 2001 Ford Expedition, a 1998 Ford Ranger, a 2004 Ford Pickup, a 2003 Ford Crown Victoria Sedan, and a 2003 Lincoln Towncar Sedan, when driven by any permissive user (multiple drivers). (C.P. 46, 68) So Rogillio is correct that this policy covered multiple vehicles and multiple drivers, but the vehicle Rogillio was in at the time of the accident is not one of the multiple vehicles covered by this policy and Rogillio himself is not one of the multiple drivers covered by this policy as he is neither a named insured or a permissive user of a covered vehicle.

Rogillio also tries to make a case for coverage based on the DOC endorsement. As thoroughly addressed by American States in its initial brief, the purpose of the DOC is to extend coverage to persons named in the attached Schedule when they are occupying any vehicle, not just the six vehicles listed on the original J & N Timber policy. However, only those persons specifically named on the DOC are entitled to this

1 Rogillio provides no citation to the record for this affidavit.

extended coverage. The "Schedule" for the subject DOC Endorsement names only "William B. Netterville and Vicki Netterville", not "Ellis Rogillio". (C.P. 71) Again, there is no ambiguity; because Rogillio is not listed on the DOC Endorsement, he is not an "insured" thereunder.

Rogillio's claim of coverage in reliance on an incomplete copy of the DOC Endorsement form and a letter to the "Dear Valued Policyholder", both of which were accidentally attached to the certified copy of the J & N Timber policy provided to Rogillio, also fails. (C.P. 41, 43) First, this incomplete DOC names J & N Timber, Inc., as the named insured, but no persons or entities are listed in the Schedule or in the space provided for "Names of Individuals" as others to be covered by the endorsement. (C.P. 41) There is also no reference to any attached documents or information which might supplement or complete this form. The letter to the "Dear Valued Policyholder" simply provides a list of the employees of J & N Timber, all of whom American States considered when issuing the policy and evaluating its risk. The employees named in the letter are not identified as "Named Insureds" on or under the subject policy, nor are they listed in the Schedule of Persons as individuals to be insured under the DOC Endorsement. Instead, it the undisputed sworn evidence reveals that this letter is merely a letter to the named insured, confirming the persons who might potentially be using a scheduled insured vehicle; this letter is not part of a policy or policy application. (C.P. 130-31) This letter contains no title or notation indicating that it is a "Schedule of Named individuals", nor does it contain any other reference or notation tending to show that it is an attachment or exhibit to the DOC Endorsement. (C.P. 43) The DOC Endorsement itself reflects that it consists of 2 pages and there are no notations or

references on the DOC indicating that there are any attached exhibits or documents. (C.P. 41-42) Again, there is no ambiguity. The letter which contains Rogillio's name is a separate and distinct document, not a list of persons to be insured under the DOC Endorsement and not part of the subject policy.

Rogillio ignores the *undisputed* Affidavit of Lynda Czarnomski, of Safeco's Underwriting Department. Czarnomski's affidavit unequivocally states that the DOC Endorsement extended coverage only to Mr. and Mrs. Netterville and *not* to Ellis Rogillio and that the form letter to the policyholder is not part of the DOC Endorsement and has nothing to do with the DOC Endorsement. (C.P. 130-31) There is no proof in the record to the contrary and any allegations to the contrary are wholly unsupported.

Despite his valiant attempts, Rogillio has failed to create any ambiguity. The J & N Timber policy language clearly does not provide coverage for Rogillio's UM claim; therefore, American States has a complete defense to Rogillio's claim for UM benefits against the J & N Timber policy. This second factor outweighs the other two and American States' complete defense to Rogillio's claim warrants vacating the default ***Allstate Ins. Co. v. Green,*** 794 So. 2d 170, 174 (Miss. 2001); ***Bailey v. Georgia Cotton Goods Co.,*** 543 So. 2d 180, 182 (Miss.1989); ***Clark v. City of Pascagoula***, 507 So.2d 70, 77 (Miss. 1987); ***Shannon vs. Henson***, 499 So.2d 758, 763 (Miss. 1986); ***Bryant,*** 493 So.2d at 937, n.3. American States properly satisfied this credible defense prong with facts rather than conclusions and by presenting affidavit/sworn evidence. ***Rush v. North Am. Van Lines, Inc.***, 608 So. 2d 1205, 1210 (Miss. 1992).

c. Setting Aside the Default Judgment will not Prejudice Rogillio.

As prejudice to him if the default is set aside, Rogillio cites the time and expense necessary to pursue and resolve the claim against American States, including discovery, and the financial and emotional distress arising from his injuries. Basically, in addition to delay, Rogillio claims as prejudice that he will have to prove his case against American States if the Default is set aside. First, delay sufficient to constitute prejudice for purposes of the three prong balancing test is typically found when the case relies on the memory of witnesses or other evidence which, along with memory, may be lost over time. ***Pittman***, 501 So.2d at 388. That is simply not an issue in the case at hand because coverage depends on the allegations of the complaint and the clear language of the policy rather than on fallible witness memories. Mississippi case law is clear that the expense and any other burden involved in proving his case against American States also cannot be considered prejudicial to Rogillio. *See* ***Bailey***, *supra* 543 So.2d at 183. Any emotional distress Rogillio may suffer as a result of his injuries is just that – a result of his injuries and not prejudice caused by American States' failure to answer in a timely fashion. Rogillio will suffer no legally cognizable prejudice if this Court sets aside the default judgment against American States.

Instead, American States will sustain huge prejudice if the Default Judgment is not set aside as it will be forced to pay under a policy that provides no coverage for Rogillio's claims. The valid policy language should be honored to prevent American States from paying $600,000.00 under a policy which provides no coverage.

2. The Trial Court did not Exercise its Discretion in Accord with M.R.C.P. 55(c) and 60(b).

Despite a corresponding sub-heading in his brief, Rogillio has offered no response to American States' argument on this topic. To summarize American States' argument, M.R.C.P. 55(c) provides that trial courts may set aside a default judgment for good cause shown and in accord with M.R.C.P. 60(b). M.R.C.P. 60(b) (2) and (6) provide that trial courts may relieve a party from a default judgment for reason of accident or mistake *or any other reason justifying relief.* So, while the trial court has discretion in determining whether to set aside a default judgment, that discretion must be exercised within these bounds. ***Williams v. Kilgore***, 618 So.2d 51, 55 (Miss. 1992) (citing ***Pointer v. Huffman***, 509 So. 2d 870, 875 (Miss. 1987); ***Pittman***, 501 So. 2d at 388). American States followed the proper procedure in seeking relief from the default judgment pursuant to M.R.C.P. 55 and 60, establishing good cause (accident or mistake), a complete defense to Rogillio's claims, and lack of prejudice. Additionally, American States has established another reason justifying relief by showing that the default judgment as to coverage is outcome determinative and will also operate as a judgment or directed verdict as to damages, despite that the J & N Timber policy provides no coverage in the first instance[2]. There is no evidence that the trial court considered the factors suggested in the Comments to the Mississippi Rules of Civil Procedure, propriety of the default is questionable, and the record evidences American States' intent to defend. It follows that the trial court's failure to set aside the default judgment constitutes a failure to exercise its discretion within the boundaries provided

2 Despite Rogillio's claim to the contrary, this case presents exceptional and compelling circumstances warranting relief under M.R.C.P. 60(b), where denial of the Motion to Set Aside would result in American States' payment of $600,000 in damages under a policy which clearly provides no coverage.

by Rules 55 and 60, M.R.C.P. ***City of Jackson v. Presley,*** 942 So. 2d 777, 794 (¶ 29) (Miss. 2006).

3. Conclusion

American States' default is the result of an inadvertent clerical error rather than indifference or disregard for the rules of court; American States has a colorable defense to the merits of Rogillio's claim in that there is no coverage available under the J & N Timber policy for Rogillio's UM claim; and while Rogillio will suffer no prejudice if the default judgment is set aside, American States will suffer prejudice if the default judgment is allowed to stand. ***Capital One Services, Inc., v. Rawls,*** 904 So. 2d 1010, 1013 (¶ 13) (Miss. 2003); ***Stanford v. Parker,*** 822 So. 2d 866, 887-88 (Miss. 2002); ***McCain***, 791 So. 2d at 843. The trial court's Order does not indicate any consideration of these factors, which in itself constitutes an abuse of discretion reversible by this Court. ***Hyman,*** 592 So. 2d at 956. *See also* ***McCain***, 791 So.2d at 843; ***Clark,*** 507 So. 2d at 77; ***Bryant,*** 493 So.2d at 937 n.3. Alternatively, a *de novo* review will also result in a finding that the default judgment should be set aside. ***Presley,*** 942 So. 2d at 781 (¶ 7). The trial court erred when it denied American States' Motion to Set Aside Entry of Default and/or Default Judgment and this Court should reverse.

B. The Default Judgment is Void and Should be Set Aside Because Rogillio Failed to Provide American States with Notice of his Motion for Default Judgment.

M.R.C.P. 55(b) provides that "[i]f the party against whom judgment by default is sought has appeared in the action, he (or if appearing by representative, his representative) *shall* be served with written notice of the application for judgment at least three days prior the hearing of such application . . . ." M.R.C.P. 55(b) (emphasis

added). The comments to Rule 55 provide that if a Defendant indicates his intent to defend, he is entitled to at least three (3) days written notice of the Application to the Court for the Entry of a Default Judgment. The purpose of this notice is to protect parties who have indicated to the movant a clear purpose to defend, although they may not have filed an answer within thirty days. M.R.C.P. 55, Comment.

Rogillio argues that no notice is required where the defendant has neither entered an appearance nor filed any responsive pleading. True, but American States *did* enter an appearance and Rogillio has expressly conceded this point: "Randy submits that the fact that American States' agent advised Randy's counsel of its intent to defend the suit on or about March 15, 2007 . . . ." (Appellee's Brief, p. 14) *See* ***Holmes v. Holmes,*** 628 So. 2d 1361, 1363-64 (Miss. 1993) ("appearance" for purposes of M.R.C.P. 55(b) found where defendant manifests clear intent to defend). Despite Rogillio's urging to the contrary, it is not necessary that a defendant's *attorney* enter an appearance for purposes of this Rule; only the defendant (or its representative, such as Keith Anderson in this case) must appear, and American States did so.

It is an undisputed and admitted fact that, through Keith Anderson, American States appeared and indicated its intent to defend Rogillio's Complaint; therefore, American States was entitled to three (3) days notice of Rogillio's Application for Entry of Default, pursuant to M.R.C.P. 55. It is also an undisputed fact that Rogillio provided no such notice. So, while Rogillio would have this Court require American States' strict compliance with M.R.C.P. 12(a), he would at the same time have this Court ignore M.R.C.P. 60(b) and M.R.C.P. 55(c), and relieve Rogillio of compliance with M.R.C.P. 55(b). Such disparate treatment cannot be considered. The default judgment against

American States must be reversed for Rogillio's failure to provide notice of hearing as required by M.R.C.P. 55(b). ***Williams v. Chase Manhattan Bank,*** 834 So. 2d 718, 720-21 (¶ 11) (Miss. App. 2003). As a result of his failure to provide the required notice and due process, Rogillio's Entry of Default and Default Judgment are void as a matter of law and must be set aside. ***Overbey v. Murray,*** 569 So. 2d 303, 306 (Miss. 1990). This Court must reverse.

III. CONCLUSION

American States is entitled to have the clerk's entry of default and default judgment set aside. The trial court erred in its denial of American States' Motion to Set Aside and this Court should reverse and render an Order setting aside the default judgment on coverage.

RESPECTFULLY SUBMITTED this the 22nd day of December, 2008.

AMERICAN STATES INSURANCE COMPANY

By: _____
W. WRIGHT HILL, JR.
JAN F. GADOW

OF COUNSEL:

W. WRIGHT HILL, JR. ([redacted])
JAN F. GADOW ([redacted])
Page, Kruger & Holland, P.A.
Post Office Box 1163
Jackson, Mississippi 39215
(601) 420-0333

CERTIFICATE OF SERVICE

I, the undersigned counsel for Appellant, do hereby certify that I have this day mailed by U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Reply Brief of Appellant to:

Hollis McGehee
Whittington & McGehee
Attorneys at Law
Post Office Box 279
Meadville, MS 39653

Honorable Forrest A. Johnson, Jr.
Circuit Court Judge
Post Office Box 1383
Natchez, MS 39121

DATED: This the 22nd day of December, 2008.

W. WRIGHT HILL, JR.
JAN F. GADOW