IN THE SUPREME COURT OF MISSISSIPPI
CASE NO. 2008-WC-01840-COA

MISSISSIPPI INSURANCE GUARANTY ASSOCIATION — **APPELLANT**

VS.

BRIDGETTE BLAKENEY — **APPELLEE**

APPEAL FROM THE CIRCUIT COURT OF JONES COUNTY

BRIEF OF APPELLANT MISSISSIPPI INSURANCE GUARANTY ASSOCIATION

ORAL ARGUMENT REQUESTED

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MIGA submits that oral argument in this case would be helpful to the Court. The issue at hand is one of first impression, involving the construction of an important statutory provision governing the rights and obligations of the Mississippi Insurance Guaranty Association, as it interacts with worker's compensation statutes and case law. As the Court will see from the discussion in this Brief, the question of whether MIGA is entitled to credit under statute for uninsured motorist benefits paid to the claimant from solvent insurance involves complex issues of statutory interpretation and analysis of out-of-state authority. The Court could well benefit from clarification of these matters during oral argument.

Respectfully submitted,

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STATEMENT OF ISSUES

1. Whether the exhaustion provision of the Mississippi Insurance Guaranty Association Law, Miss. Code Ann. § 83-23-123, requires a claimant to exhaust solvent uninsured motorist insurance before collecting from MIGA on an insolvent worker's compensation policy.

2. Whether *Cossitt v. Nationwide Mut. Ins. Co.*, 551 So.2d 879 (Miss. 1989), holding that uninsured motorist benefits are excluded from the subrogation rights of a worker's compensation carrier under Miss. Code Ann. §71-3-71, precludes MIGA from receiving a statutory credit under Miss. Code Ann. § 83-23-123.

3. Whether the correct amount of the credit to which MIGA is entitled is $100,000, representing the net face amount of the available solvent insurance.

4. Whether MIGA's credit should be reduced by the contingent attorney's fees and expenses allegedly incurred by Ms. Blakeney to recover against the solvent insurance.

STATEMENT OF THE CASE

A. Nature of Case, Course of Proceedings and Disposition Below.

This is an appeal from the final judgment of October 29, 2008 (E. 2) of the Circuit Court of Jones County affirming the final Full Commission Order (E. 5-9) of the Worker's Compensation Commission dated July 10, 2008, in the worker's compensation proceedings entitled *Bridgette Blakeney vs. Laurel Housing Authority*, MWCC No. 02 08188. The Full Commission reversed a decision of Administrative Judge James Homer Best granting a motion by the Mississippi Insurance Guaranty Association ("MIGA"), as "carrier", to suspend benefits. The MIGA motion was based on its right to receive a credit under the Mississippi Insurance Guaranty Association Law, Miss. Code Ann. § 83-23-101 *et seq.* (the "Guaranty Act") for benefits received by the Claimant, Bridgette Blakeney, from solvent insurance policies, including uninsured motorist coverage.

Administrative Law Judge Best held that MIGA was entitled to suspend benefits to Ms. Blakeney to the extent of the $70,000 in solvent insurance proceeds she received from both the tortfeasor's policy and her employer's uninsured motorist coverage. Although MIGA did not base its motion to suspend on the Worker's Compensation Act, the Administrative Judge nevertheless cited the Worker's Compensation Act subrogation provision, Miss. Code Ann. §71-3-71, as authority for the suspension. Also based on §71-3-71, Judge Best held that the Claimant's cost of collection of the $70,000 should be deducted from the credit to MIGA.

Based on *Cossitt v. Nationwide Mut. Ins. Co.*, 551 So.2d 879 (Miss. 1989) and other similar decisions, the Full Commission reversed Judge Best as to the credit for uninsured motorist benefits. The Commission affirmed a credit to MIGA for the $10,000 paid by the tortfeasor's motor vehicle liability policy, but it reduced the amount, again under Miss. Code Ann. §71-3-71, by the amount of the Claimant's attorney's fees and costs of collection.

MIGA appealed the Full Commission Order to the Circuit Court of Jones County. By an Order dated October 29, 2008, (E.2), Judge Billy Joe Landrum affirmed the Commission without comment. MIGA then filed a timely Notice of Appeal to this Court (E. 3-4).

B. Statement of Facts.

The Claimant, Bridgette Blakeney, was employed by the Laurel Housing Authority when she was injured in an automobile accident on June 3, 2002, during the course of her employment. The employer's worker's compensation carrier, Legion Insurance Company, paid worker's compensation benefits to Ms. Blakeney prior to its insolvency. On July 25, 2003, Legion was declared insolvent by an Order of Liquidation (E.10-17) issued in the Commonwealth Court of Pennsylvania.

As a statutory association of insurance carriers organized to provide limited protection upon an insurance company's insolvency, MIGA began making benefit payments to or on behalf of the

Bridgette Blakeney and became a party to the worker's compensation proceedings before the Commission. MIGA has paid in excess of $98,000 to or for the benefit of Ms. Blakeney, as is shown in MIGA's payment records (E. 18-24). MIGA filed a Notice of Controversion (E. 25-38) with the Commission on November 27, 2007, denying that any additional medical or indemnify benefits are owed.

Ms. Blakeney has received $70,000 from solvent insurance companies for her injuries in the automobile accident. One payment of $10,000 was from a policy issued by the solvent insurer, Progressive Insurance Company, covering the driver of the other vehicle involved in the accident. The other insurance payment was $60,000 out of the $100,000 uninsured motorist limits of an auto policy issued by Coregis Insurance Company, another solvent carrier. See letter from Eugene Tullos, attorney for claimant (E. 39).

MIGA filed a Motion to Suspend Benefit Payments (E. 40-46), requesting that the Administrative Judge suspend the obligation of MIGA to make any benefit payments, until indemnity and medical benefits equaling the $100,000 of solvent insurance limits have accrued. MIGA was entitled to a credit under the exhaustion provision of the Mississippi Insurance Guaranty Association Law, Miss. Code Ann. § 83-23-123, reducing MIGA's obligations by the liability limits of the solvent insurance policies.[1]

SUMMARY OF ARGUMENT

The Guaranty Act established a number of mechanisms to ensure that MIGA is truly the coverage of last resort in the event of an insurance company insolvency. These include the

[1] MIGA initially asked for the $70,000 actually paid by solvent insurance but subsequently moved to amend its motion to obtain a credit for the full $100,000 face amount of the coverage. The issue of whether there should be a $100,000 credit was not reached by the MWCC.

exhaustion statute, Miss. Code Ann. § 83-23-123, which provides that any solvent insurance policy covering the claimed injury must be exhausted first, with the amount of any such insurance being credited against MIGA's statutory limit of liability. The types of solvent insurance that must be exhausted includes uninsured motorist insurance, as the Mississippi Court of Appeals very recently held in *Leitch v. Mississippi Ins. Guar. Ass'n*, --- So.2d ----, 2009 WL 441222 (Miss. App. 2009).

The question in the present case is whether the MIGA should be denied its right to a credit under § 83-23-123 for solvent UM insurance, simply because the insolvent policy happens to be a worker's compensation policy. The Mississippi Worker's Compensation Commission ("MWCC") treated MIGA like any solvent worker's compensation carrier and applied *Cossitt v. Nationwide Mut. Ins. Co.*, 551 So.2d 879 (Miss. 1989) to bar MIGA from any subrogation rights against UM coverage.

We will demonstrate that the MWCC incorrectly applied *Cossitt* and ignored the fact that MIGA's rights stem from an entirely different statute not governed by *Cossitt*. The exhaustion statute eliminates MIGA's obligation on the worker's comp claim, up to the face full amount of the solvent insurance coverage, irregardless of any subrogation rights, or the lack thereof, under the Worker's Compensation Law.

Finally, the exhaustion statute does not require the deduction of the cost of the claimant's collection of the solvent insurance benefits. Regardless of whether §71-3-71 of the Worker's Compensation Act requires such a deduction in ordinary worker's compensation subrogation situations, MIGA's statutory right to a credit under Miss. Code Ann. § 83-23-123 is for the full amount of the solvent insurance, without regard to any collection costs. As a result, this Court should reverse the MWCC and enter a judgment that MIGA is entitled to suspend $100,000 of future benefits in this case.

ARGUMENT

1. The Exhaustion and Worker's Compensation Subrogation Statutes.

a. The Exhaustion Statute.

The "exhaustion provision" at issue in this case is found in Miss. Code Ann. § 83-23-123(1). The provision is part of the Guaranty Act, which defines the duties and obligations of MIGA with regard to insurance company insolvencies. The exhaustion provision (which we will also refer to as the "exhaustion statute") provides in pertinent part as follows:

> Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer, which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this article shall be reduced by the amount of any recovery under such insurance policy.

There are two parts to this provision. The first is a requirement that the claimant exhaust all solvent insurance before looking to MIGA for payment. The second provides that MIGA's obligations under the Act are reduced by the amount of the available recovery from a solvent policy.

How does the exhaustion provision fit into the purpose and function of the Guaranty Act as a whole? It is important to keep in mind that MIGA is NOT an insurance company. Rather, it is an involuntary unincorporated association of insurance carriers who operate in the State of Mississippi and was created to provide limited remediation in the event of an insurance insolvency.

The Mississippi Supreme Court recently spelled out the limitations on the scope of MIGA coverage as follows:

> MIGA is not an insurance company, but rather a guaranty association created by the Legislature to provide protection to claimants and policyholders of insolvent insurance companies. Miss.Code Ann. § 83-23-103 (Rev.1999). MIGA's duties and responsibilities are strictly controlled by statute. Upon reviewing all of the provisions of the Mississippi Insurance Guaranty Association Law, Mississippi Code Annotated Section 83-23-101 to-235, we conclude that MIGA's obligation to stand in the shoes of PHICO [the insolvent carrier] under Section 83-23-115(1)(b) is

subject to the limitations and qualifications found within the other statutes in the Mississippi Insurance Guaranty Association Law, in which is found Section 82-23-123(1), which states quite clearly:

> Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer, which is also a covered claim, shall be required to exhaust first his right under such policy.

Miss. Code Ann. § 82-23-123(1) (Rev.1999). ***This provision, in effect, eliminates from MIGA's statutory guaranty any obligation to pay a claim prior to the exhaustion of all other-insurance,*** other than coverage under true excess policies.

National Union Fire Ins. Co. v. Mississippi Ins. Guar. Ass'n, 990 So.2d 174, 176-177 (Miss. 2008) (emphasis added).

b. The Worker's Compensation Subrogation Statute.

The employer/insurer subrogation provisions Worker's Compensation Statute, Miss. Code Ann. §71-3-71, provide in pertinent part as follows:

> The acceptance of compensation benefits from or the making of a claim for compensation against an employer or insurer for the injury or death of an employee shall not affect the right of the employee or his dependents to sue any other party at law for such injury or death, but the employer or his insurer shall be entitled to reasonable notice and opportunity to join in any such action or may intervene therein. If such employer or insurer join in such action, they shall be entitled to repayment of the amount paid by them as compensation and medical expenses from the net proceeds of such action (after deducting the reasonable costs of collection) as hereinafter provided.
>
> The commencement of an action by an employee or his dependents (or legal representative) against a third party for damages by reason of the injury, or the adjustment of any such claim, shall not affect the right of the injured employee or his dependents (or legal representative) to recover compensation, but any amount recovered by the injured employee or his dependents (or legal representative) from a third party shall be applied as follows: reasonable costs of collection as approved and allowed by the court in which such action is pending, or by the commission of this state in case of settlement without suit, shall be deducted; the remainder, or so much thereof as is necessary, shall be used to discharge the legal liability of the employer or insurer; and any excess shall belong to the injured employee or his dependents. The employee or his dependents bringing suit against the third party must notify the employer or carrier within fifteen days of the filing of such suit.

Thus, §71-3-71 is a subrogation statute, giving the carrier an affirmative right to recover from a third party damages for which the third party is liable to the employee on a claim arising out of the workplace injury. *St. Paul Travelers Ins. Co. v. Burt*, 982 So.2d 992 (Miss. App. 2008). The Mississippi Supreme Court has held that the §71-3-71 subrogation right does not extend to permitting the carrier to recover uninsured motorist proceeds – even those due under the employer's policy. *Cossitt v. Nationwide Mut. Ins. Co.*, 551 So.2d 879 (Miss. 1989). However, MIGA has never sought to recover directly from Coregis the UM proceeds under the subrogation rights conferred by Miss. Code Ann. §71-3-71. Instead, MIGA is seeking a *credit against future benefits due to the claimant*, by virtue of MIGA's statutory rights under Miss. Code Ann. § 83-23-123(1).

There is little doubt that MIGA generally has a right to a § 83-23-123 credit for solvent UM insurance. The Court of Appeals held as much in its February 24, 2009, opinion in *Leitch v. Mississippi Ins. Guar. Ass'n*, --- So.2d ----, 2009 WL 441222 (Miss. App. 2009). *Leitch* is in alignment with the position of the courts of virtually every other state. *See also, Zhou v. Jennifer Mall Rest., Inc.*, 699 A.2d 348, 354-55 (D.C.1997) (quoted at length in *Leitch*). The Court of Appeals reasoned as follows in *Leitch*:

> Being that Leitch's claim for uninsured motorist coverage was a "covered claim" as provided by section 83-23-109(f) [of the Guaranty Act], MIGA was entitled to offset any amount Leitch recovered under that claim against its liability resulting from Reliance's insolvency. Not only was MIGA entitled to reduce its liability pursuant to section 83-23-123(1), but the statute further required Leitch to exhaust any claim such as his claim against State Farm.
>
> Leitch's claim against State Farm was a "covered claim"; therefore, MIGA was entitled to offset its liability with any amount paid by State Farm. State Farm settled its claim with Leitch for the policy limit of $300,000, which is also the maximum amount for which MIGA may be held liable. Therefore, pursuant to section 83-23-123(1), MIGA was entitled to offset the entire amount of its $300,000 liability with the $300,000 State Farm settlement.

2009 WL 441222, *4-*5. We will now demonstrate that there is no reason to deny MIGA this UM

offset, just because the insolvent policy happens to be worker's compensation insurance.

2. The Exhaustion Statute Entitles MIGA to a Credit, Regardless of the Worker's Compensation Law.

The MWCC based its ruling exclusively on Miss. Code Ann. §71-3-71 and the *Cossitt* line of cases. The Commission held as follows:

> We do not for a second deny that MIGA, under § 83-23-123(1) is entitled to have "[a]ny amount payable [by it to Blakeney] on a covered claim under this article . . . reduced by the amount of any recovery" which Blakeney obtains from a liable third party. However, the amount by which MIGA may effectively reduce the amount it has paid in worker's compensation benefits necessarily must be determined by reference to §71-3-71, i.e., MIGA may, under § 83-23-123(1), effectively reduce the amount of worker's compensation benefits payable to Blakeney by the "net proceeds", under §71-3-71, recovered by Blakeney in her third party claim. We hold, therefore, that the proceeds which Blakeney has recovered from and through Progressive and Coregis are to be rationed according to the terms of §71-3-71 of the Mississippi Worker's Compensation Law, and MIGA's liability for payment of worker's compensation benefits reduced accordingly.

Full Commission Order at 4. The Commission then went on to hold that "unquestionably, under §71-3-71, MIGA has no claim to the uninsured motorist benefits provided by Coregis since the Employer's own uninsured motorist carrier is not a 'third party' within the meaning of the statute." Full Commission Order at 5 (E. 5-9).

MIGA respectfully submits that the MWCC (as affirmed by the Circuit Court) was wrong in holding that "the amount by which MIGA may effectively reduce the amount it has paid in worker's compensation benefits necessarily must be determined by reference to §71-3-71. . ." Section 83-23-123, on which MIGA relies, is an entirely different statute from §71-3-71 and has entirely different remedial purposes. Thus, the two statutes are not *in pari materia*, there is no need to construe them together. *James v. State*, 731 So.2d 1135, 1138 (Miss. 1999).

The Guaranty Act and its exhaustion provisions are more specific and narrow than the broader Worker's Compensation Law and its §71-3-71. The Guaranty Act addresses only the rights

and obligations of MIGA, while the Worker's Compensation Law deals more broadly with situations where workers are injured and the rights and duties of employers, employees and insurers. The specific statute prevails over the general one to the extent there is any conflict between the two. *State ex rel. Hood v. Madison County ex rel. Madison County Bd. of Sup'rs*, 873 So.2d 85 (Miss. 2004). Therefore, if there is a conflict between §83-23-123's grant of a credit to MIGA for solvent UM insurance proceeds and §71-3-71's denial to any insurer of subrogation rights to such proceeds, the specific rights conferred by §83-23-123 should prevail.

However, we submit that there is no inherent conflict between Guaranty Act §83-23-123 and the Worker's Compensation Law §71-3-71, because the two statutes have very different purposes and effects. The conditions and limitations under which MIGA assumes the obligations of an insolvent worker's compensation carrier in the first place are set forth in the Guaranty Act. Section 83-23-123 is one of those conditions and limitations and is designed to limit the exposure of MIGA to that of a guarantor of last resort, by requiring *the claimant* to first exhaust all available solvent insurance, before looking to MIGA for payment on the claim. MIGA receives a credit for any such insurance, rather than exercising a right of subrogation to collect the solvent insurance proceeds.

In contrast, §71-3-71 has nothing to do with remedying insurance insolvencies. It gives the employer and *any* carrier – whether solvent or insolvent – a right to be reimbursed the amount of their outlay from any recovery due to the employee from a "third party." *Cossitt* held that UM proceeds are not a "third party" recovery falling within §71-3-71, but it does not address in any respect the rights of MIGA under §83-23-123. Again, MIGA never even becomes a "carrier" subject to the Worker's Compensation Act and §71-3-71, except under the limitation that all solvent insurance, including UM coverage, must be exhausted ahead of MIGA's obligation for worker's compensation benefits.

The courts of this state have not yet addressed whether MIGA's rights under the exhaustion statute are somehow preempted by the bar against subrogation rights to UM coverage under the worker's compensation act. However, in *Colorado Ins. Guar. Ass'n v. Menor*, 166 P.3d 205 (Colo. App. 2007), the Court of Appeals of Colorado rejected the very same argument advanced by Ms. Blakeney in this case – that the exemption of UM policies from the worker's compensation act subrogation provision prevents a guaranty association from receiving a credit for UM insurance under the state's exhaustion statute. 166 P.3d at 214. The court recognized the clear distinction between an insurance guaranty exhaustion statute and a worker's compensation subrogation statute and held that, "although workers' compensation insurers may have no right of subrogation against UM/UIM insurance payments pursuant to [the worker's compensation act], this rule has no application where CIGA [the Colorado Insurance Guaranty Association] seeks to assert its right of nonduplication of recovery under [the exhaustion statute] with respect to any recovery by an injured party against his or her insurer that is also a covered claim under the Act, including claims against a UM/UIM insurer . . ." *Id.*

In *Menor*, the court turned down the contention that CIGA's right to receive a benefit based on UM coverage was no greater than any private worker's compensation carrier, holding as follows:

> In our view, [the exhaustion statute] is properly interpreted to mean that CIGA is deemed to be the insurer to the extent of its obligation on covered claims, subject to the purposes and other provisions of the [Insurance Guaranty Association] Act. . . . As discussed above, various provisions of the Act, including [the exhaustion statute], further its purposes by conserving the resources available to CIGA to pay claimants and policyholders. Thus, as well as being deemed to be the insurer to the extent of its obligation on the covered claims, CIGA is limited by other provisions of the Act, such as the [exhaustion] provision . . . [W]e conclude that CIGA assumed [the insolvent carrier's] obligations to pay [the claimant's] workers' compensation benefits, subject to any other rights and obligations set forth in the Act, such as the [exhaustion] provision....

166 P.3d at 214. We submit that the reasoning in *Menor* is highly persuasive and clearly points out

why MIGA is entitled to suspend benefits based until the Coregis uninsured motorist insurance has been exhausted.

3. The Correct Amount of MIGA's Credit is $100,000.

At a minimum, MIGA is entitled to a credit for the amount which Bridgette Blakeney actually received from the Progressive and Coregis policies, which totals $70,000. However, MIGA submits that it is in fact entitled to suspend benefits until the entire face amount of the $100,000 in available benefits have accrued. $100,000 is the total amount of solvent insurance benefits available to Ms. Blakeney ($10,000 in benefits from the driver's policy, plus $90,000 in UM benefits).

The exhaustion statute contemplates a credit in the face amount of the solvent policies and not in the amount which Ms. Blakeney unilaterally accepted to settle with Coregis.[2] The Mississippi Supreme Court has not decided the issue of whether the credit under the exhaustion statute is in the amount which the claimant accepts from the solvent carrier or the amount of the policy limits. However, the majority rule among other states is that a guaranty association is entitled under the exhaustion statute to a credit for UM *policy limits* and not just the amount actually paid. *Robinson v. Gailno*, 880 A.2d 127, 136 (Conn. 2005). In *Hasemann v. White*, 686 N.E.2d 571 (Ill. 1997), the Illinois Supreme Court applied the majority rule under an exhaustion statute virtually identical to Mississippi's. The court explained the rationale for the majority rule as follows:

> There is an obvious tension between the other possible constructions of the nonduplication [exhaustion] provision and the language and purpose of the Act. On the one hand, limiting the Fund's setoff to the amount actually received by the claimant under the settlement would invite collusion and provide little incentive for a claimant to pursue a full and fair settlement with his own carrier. On the other hand, requiring a claimant to fully litigate his uninsured-motorist claim in order to satisfy the exhaustion requirement would be contrary to our public policy which encourages the settlement of claims. . . .

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[2] Ms. Blakeney received the full policy limits of the $10,000 Progressive policy.

> Allowing a claimant to recover from the Fund subject to a reduction corresponding with the policy limits of his uninsured-motorist coverage avoids duplicative and windfall recoveries. The Act requires that the claimant first collect from his own uninsured-motorist coverage before he makes a claim on the Fund. After the claimant has received up to the policy limit of his uninsured-motorist coverage, he is then entitled to recover from the Fund up to the policy limits of the defendant's insolvent insurer, less the policy limits of the claimant's uninsured-motorist policy. The rationale behind the nonduplication provision is to insure that the Fund is a recovery of last resort by requiring that the claimant first seek to cover his loss with funds available from other insurers. Consistent with this rationale, a claimant who settles with his uninsured-motorist carrier for less than the policy limit should be assumed to have received the policy limit for purposes of assessing Fund liability. ***When a claimant settles with his own carrier for less than the policy limits, the claimant must bear the risk of settling too cheaply.***

686 N.E.2d at 573-574 (citations omitted; emphasis added). MIGA submits that this Court should follow the majority rule and allow MIGA a credit (with the corresponding suspension of benefits) in the amount of the available policy limits of the Coregis policy, for a total credit of $100,000 when you include the Progressive policy.

4. There Is No Right of an Offset or Reduction for Costs of Collection.

Ms. Blakeney claims a right to reduce MIGA's credit by the costs of collection and the amount of the recovery attributable to non-economic damages. The MWCC allowed a reduction for the costs of collection, because those amounts constitute an offset under §71-3-71. However, no such offsets are permitted under §83-23-123. The plain language of the exhaustion statute says that MIGA is entitled to a credit for the full amount of the solvent insurance, and it says nothing about the credit being only for the net recovery after expenses of the claimant. It is a basic rule of statutory construction that "the courts have neither the authority to write into the statute something which the legislators did not write therein, nor to ingraft upon it any exception not included by them." *Balouch v. State,* 938 So.2d 253, 260 (Miss. 2006). We have not found any cases construing any state's guaranty act to reduce the exhaustion statute credit by the attorneys' fees and other costs of collecting

the solvent insurance benefits.

Contrary to the statement by the Full Commission in its opinion (E.5-9, p. 4), MIGA *has* challenged the unsubstantiated statements by Ms. Blakeney's counsel as to her attorney's fees and expenses, in that we have raised throughout this matter the fact that the correct amount of these expenses has never been proved. The unsworn statement by counsel in their briefing to the MWCC is not evidence of the amount of collection costs, nor does it form a proper basis to deduct $4,000 from the $10,000 Progressive policy proceeds, as the Commission did. There is no proof in the record as to these items, or that these items even exist, and the Claimant cannot assert any right to apply them to reduce the amount of the MIGA's exhaustion statute credit.

CONCLUSION

MIGA is not an insurance company but is a statutorily-formed association responsible for providing a limited guaranty of insurance benefits when an insurer becomes insolvent. In this case, MIGA has paid nearly $100,000 in worker's compensation benefits to or on behalf of the Claimant, Bridgette Blakeney, following the insolvency of her employer's carrier, Legion Insurance. Ms. Blakeney has also received $70,000 in benefits from solvent liability and uninsured motorist carriers, and she was entitled to receive $100,000 in such benefits. The MWCC (and the circuit court) erroneously held that MIGA's claim to these solvent insurance proceeds is governed by the Worker's Compensation Act, Miss. Code Ann. §71-3-71, and its provisions conferring subrogation rights on carriers. On the contrary, the controlling statute in this case is the exhaustion provision of the Mississippi Insurance Guaranty Association Law, Miss. Code Ann §83-23-123. Under it, MIGA should be given a credit for the $100,000 in available solvent insurance and should be allowed to suspend $100,000 of future benefits in this case, without any reduction for costs of collection. This Court should therefore reverse the ruling of the MWCC, as affirmed by the Circuit Court of Jones

County, and render a judgment for MIGA.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, CLIFFORD C. WHITNEY III, Attorney for Mississippi Insurance Guaranty Association, do hereby certify that I have this day mailed, postage prepaid, by United States Mail, hand-delivered, or via facsimile, a true and correct copy of the above and foregoing document to the following counsel of record:

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THIS THE 17TH DAY OF MARCH, 2009.

CLIFFORD C. WHITNEY III