

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

**BRIAN ROBISON, et al**

**APPELLANTS**

**VERSUS**

**NO. 2009-CA-00383**

**ENTERPRISE RENT-A-CAR COMPANY**

**APPELLEE**

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**APPELLEE BRIEF OF ENTERPRISE LEASING COMPANY – SOUTH CENTRAL, INC.**

Improperly identified as Enterprise Rent-A-Car Company

ON APPEAL FROM THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI  
CIVIL ACTION NO. CV07-022(F)L

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**BRIEF FOR APPELLEE**

**ORAL ARGUMENT IS REQUESTED**

**Respectfully submitted,**

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& PAPALE, LLP.**

BY: 

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South Central, Inc.**

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**CERTIFICATE OF INTERESTED PERSONS**

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 Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

- 1) Brian Robison, Appellant;
- 2) Lisa Robison, Appellant;
- 3) Tess Nicole Robison, Appellant;
- 4) James K. Knight, Defendant;
- 5) The Estate of Gregory H. Knight, Deceased, Defendant;
- 6) Enterprise Rent-A-Car Company (Properly identified as Enterprise Leasing Company – South Central, Inc.), Appellee;
- 7) Honorable Judge Paul S. Funderburk, Circuit Court Judge, Lee County, Mississippi;
- 8) Honorable T.K Moffett, (attorney for the Robisons); and
- 9) Honorable Sean P. Mount (attorney for Enterprise Leasing Company-South Central, Inc.).

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**I.**

**STATEMENT OF THE ISSUES**

1. Whether the Trial Court was correct in dismissing plaintiffs' complaint pursuant to MRCP 12 (b) (6) for failure to state a claim upon which relief could be granted?
2. Whether Enterprise Leasing Company-South Central, Inc. had "actual knowledge" that James Knight rented a vehicle specifically for his minor son, Gregory Knight, to drive, even though Gregory Knight was specifically precluded from renting a vehicle from Enterprise due to his age?

## II.

### STATEMENT OF THE CASE

This case is submitted to the Court of Appeals for the State of Mississippi to determine whether Enterprise Leasing Company-South Central, Inc. is responsible for the actions of James K. Knight, who, after having leased a vehicle from Enterprise Leasing Company-South Central, Inc., expressly violated the rental contract and transferred control of the leased vehicle to his son, Gregory Knight. Gregory Knight was an unauthorized driver of the vehicle and was driving the vehicle without the knowledge of Enterprise Leasing Company-South Central, Inc. when he caused the accident that forms the basis of this lawsuit.

Enterprise Leasing Company – South Central, Inc. (hereinafter referred to as “Enterprise”, incorrectly referred to in the Complaint as Enterprise Rent-A-Car Company), is a company licensed to do business in the State of Mississippi. Enterprise is in the business of providing rental vehicles to customers.

Plaintiff has appealed the trial court’s Granting of Enterprise’s Motion to Dismiss on the grounds that the trial court erred in finding plaintiff failed to state a claim in her Complaint upon which relief could be granted, pursuant to Mississippi Rule of Civil Procedure 12(b)(6). However, Enterprise’s Motion to Dismiss was properly granted and the decision of the Court should be upheld.

Appellant originally filed this action against James K. Knight, The Estate of Gregory H. Knight, Deceased and Enterprise Rent-A-Car Company, Jointly and Individually. The Complaint alleges that Enterprise is liable to plaintiffs because it rented a vehicle to James K. Knight while having “actual knowledge that James K. Knight was renting the vehicle for Gregory Knight’s use”. Also, the Complaint alleges that Enterprise was negligent in renting a vehicle “for the sole purpose of providing a vehicle to Gregory H. Knight for him to drive while

Gregory H. Knight's vehicle was being repaired". These are the only allegations against Enterprise set forth in the Complaint.<sup>1</sup>

This case stems from a one vehicle accident which occurred on June 10, 2005 at approximately 11:46 p.m. Gregory H. Knight was the driver of the vehicle in question and plaintiff, Tess Robison was a passenger in the vehicle. The vehicle in question was rented from Enterprise Leasing Company – South Central, Inc. on June 10, 2005 at approximately 1:07 p.m. by James K. Knight. James Knight then drove the rented vehicle away from the Enterprise location and gave the keys to the Enterprise vehicle to his son, Gregory Knight at a later time. At approximately midnight that evening, plaintiff, Tess Robison, allegedly suffered injury while riding as a passenger in the Enterprise vehicle being driven by Gregory Knight, who was killed in the same one car accident.

On March 3, 2008, Enterprise filed a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, pursuant to MRCP 12(b)(6), alleging that even if the allegations set forth in the Complaint were true, no cause of action had been stated against Enterprise. The Appellant submitted a Response on March 13, 2008, simply re-urging the allegations that Enterprise "knew" that the rented vehicle would be driven by an under-age driver, Gregory H. Knight. On March 18, 2008, Enterprise submitted a Response to Appellant's Response to Defendant's Motion to Dismiss, providing further arguments in support of the fact that there was no valid cause of action against Enterprise. The Court heard oral argument on this Motion on July 1, 2008 and took the matter under advisement. On February 4, 2009, Judge Funderburk issued an Order granting Defendant's Motion to Dismiss. In the reasons for Judgment, the Court stated that, even if the allegations set forth in the Complaint were true, there was no relationship created between the rental and/or ownership of the vehicle and the injuries

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<sup>1</sup> Appellant has entered into a settlement agreement with the insurance company for James K. Knight. Thus the remaining defendant is Enterprise.

suffered by plaintiff, Tess Robison, as a result of the automobile accident. The rental contract specifically stated that no other driver besides James K. Knight was permitted to drive the vehicle. Therefore, pursuant to MRCP 12(b)(6), the Complaint was dismissed as to Enterprise for plaintiff's failure to state a claim.

### **III.**

#### **SUMMARY OF THE ARGUMENT**

The Trial Court was correct in granting Enterprise's Motion to Dismiss, pursuant to Rule 12 (b) (6) of the Mississippi Rules of Civil Procedure. Plaintiffs are not entitled to any relief from defendant Enterprise under the facts of the case at bar. The vehicle in question was rented by Enterprise to James K. Knight. The rental contract specifically stated that "no other driver (was) permitted" to drive this vehicle. Despite the clear contractual language, James Knight subsequently allowed his minor son, Gregory Knight to drive the rental vehicle. Gregory Knight was involved in a serious accident in the rental vehicle that resulted in his death and injury to plaintiff, Tess Robison.

The Affidavit of Cameron Floyd, the Enterprise employee who actually rented the vehicle to James Knight, confirms that James Knight was the only authorized driver of the vehicle. Floyd further testified that James Knight was specifically advised that Gregory Knight was not allowed to drive the rented vehicle.

James Knight's deposition testimony was consistent with Floyd's affidavit, as Knight admitted that he drove the car away from the Enterprise Branch and later gave the keys to his son. He also admitted that he was aware that Enterprise refused to rent a vehicle to his son because he was a minor and under 21 years of age. He testified that he did not even ask Enterprise if his son could drive the vehicle. Therefore, Enterprise had "no actual knowledge" that Gregory Knight would drive the vehicle. Both father and son Knight tried to circumvent the



rental contract with their deceptions after the rental contract was executed, and Enterprise cannot be held liable under the facts of the case.

Furthermore, the rental contract was clear and unambiguous. The rental contract clearly stated that no other driver was permitted. Under any interpretation of the contract, there is no cause of action against Enterprise.

Finally, plaintiff has no cause of action against Enterprise because Enterprise's involvement in renting the vehicle played absolutely no part in the causation of damages to plaintiff, Tess Robison. There are no allegations that the vehicle was defective or that any employee of Enterprise was driving the vehicle. Therefore, there is no theory under which Enterprise can be held liable and the case must be dismissed pursuant to Rule 12 (b) (6) of the Mississippi Rules of Civil Procedure.

#### IV.

#### **ORAL ARGUMENT IS REQUESTED**

Appellee, Enterprise, requests oral argument because oral argument will aid the judiciary in determining the key factual issues of the case as well as principles of law upon which all parties will rely.

#### V.

#### **ARGUMENT**

##### **A. The Granting of Defendant's Motion to Dismiss in this Matter was Proper**

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a claim. *Stuckey v. Provident Bank*, 912 So.2d 859, 865 (Miss. 2005). To grant a Rule 12(b)(6) motion to dismiss, "there must appear to a *certainty* that the plaintiff is entitled to *no relief under any set of facts* that could be proved in support of the claim" (emphasis added). See *Children's Medical Group v. Phillips*, 940 So.2d 931 (Miss. 2006).

A motion to dismiss under Rule 12(b)(6), as opposed to other devices in civil law, contemplates a high degree of speculation by the reviewing court. a Rule 12(b)(6) motion tests legal sufficiency, and in applying this rule 'a motion to dismiss should not be granted unless it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of the claim.' Missala Marine Services, Inc. v. Odom, 861 So.2d 290, 294 (Miss.2003). In the case at bar, it is clear that plaintiff is entitled to no relief under any set of facts that could be presented in support of the claim. Therefore, the judgment of the trial court should be upheld.

The vehicle involved in the accident that is the subject of this lawsuit was rented to James K. Knight, who presented a facially valid license at the time the vehicle was rented. This rental contract signed by James K. Knight contained a specific provision stating "No Other Driver Permitted". (See Exhibit "A," Rental Contract). Therefore, Enterprise rented a vehicle to James Knight only. James Knight then drove the rented vehicle away from the Enterprise location and, at some point later that day, gave the keys to the Enterprise vehicle to his son, Gregory Knight. Then, at approximately midnight on the same day, plaintiff Tess Robison was allegedly injured while riding as a passenger in the Enterprise vehicle being driven by Gregory Knight. Gregory Knight was killed in this accident.

It is imperative for the Court to consider that the Enterprise Lease Agreement clearly stated, in simple terms, that no one other than James Knight was authorized to operate the Enterprise vehicle which was leased to James Knight.

The Affidavit of Cameron Floyd, the Enterprise employee who actually rented the vehicle to James Knight, provides testimony that James Knight failed to identify and/or request any other authorized driver when he rented the vehicle from Floyd. Furthermore, he testified that James Knight was the only authorized driver of the Enterprise vehicle that Floyd rented to him. Floyd further testified that James Knight was advised at the time of the rental that Gregory

Knight was not allowed to drive the vehicle rented by James Knight. (See Affidavit of Cameron Floyd, attached hereto as Exhibit "B").

The testimony in this Affidavit is consistent with the deposition of James Knight. (See Deposition of James Knight, attached hereto as Exhibit "C") James Knight admitted in his deposition that he drove the Enterprise vehicle away from the Enterprise office location and then, at a later time, gave the keys to the Enterprise vehicle to his son, Gregory Knight (See Exhibit "C", Deposition of James Knight, at pgs 11 and 17). James Knight further admitted that Enterprise would not rent his son a vehicle because he was not 21 years old. (id at pg 9) James Knight further testified that he signed the rental agreement and gave his address. (id at pg 12) Significantly, he admitted that he did not ask the Enterprise agent if his son could drive the vehicle (id at pg 13). Despite all of these facts, remarkably, Knight still testified that there was no doubt in his mind that Enterprise knew that his son would drive the Enterprise vehicle (id at pg 32). James Knight even admits that his statement is pure speculation. This subjective testimony is not enough to amount to a cause of action against Enterprise. In Knight's own Affidavit, he testifies that Enterprise had "actual knowledge" that his son would drive the Enterprise vehicle. There is no way for Knight to know what Enterprise knew given all of the facts that have been established.<sup>2</sup>

These facts support Enterprise's contention that it had no "actual knowledge" that Gregory Knight would be driving the Enterprise vehicle. The Affidavit of Cameron Floyd is consistent with James Knight's own testimony and confirms that Enterprise informed James Knight that he was the only person permitted to drive the Enterprise vehicle. As James Knight drove the Enterprise vehicle away from the Enterprise office location, Enterprise could have had no possible way of knowing that James Knight would later permit his son, an unauthorized

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<sup>2</sup> Appellants state in their brief on page 5 that it is "undisputed" that "Enterprise had actual knowledge that Gregory Knight was the intended driver of the vehicle" This is clearly an inaccurate statement.

driver, to drive and operate the leased Enterprise vehicle. How could Enterprise have "actual knowledge" that Gregory Knight was going to later drive the vehicle, if not only was he prohibited from doing so pursuant to the terms of the rental contract, but also because James Knight, not Gregory Knight, drove the vehicle away from Enterprise. Such deceptive actions by the father and son Knights do not amount to "actual knowledge" on the part of Enterprise. Clearly, the speculation by plaintiffs that Enterprise had "actual knowledge" that an unauthorized driver would, at some point, drive their vehicle does not amount to a cause of action under any theory of liability. Why should Enterprise be liable for the deception and conspiracy of the father and son Knights? Couldn't Enterprise have just as easily, and subjectively, interpreted James Knights' actions in driving the Enterprise vehicle away from the rental branch as James Knight intending to drive the Enterprise vehicle and giving his son his personal vehicle to drive, since his son was not allowed to drive the Enterprise vehicle? The logical interpretation would be that the Knights would not want to violate the rental contract.

**B. The Rental Contract Was Valid And Unambiguous**

Furthermore, this contract is not open to interpretation, as the terms are clear and therefore valid and enforceable. In determining whether or not a contract is valid, the Court must, "use a three-tiered approach to contract interpretation. Pursue Energy Corp. v. Perldans, 558 So.2d 349, 351-53 (Miss. 1990). Legal purpose or intent should first be sought in an objective reading of the words employed in the contract to the exclusion of parol or extrinsic evidence. [Cooper v. Crabb, 587 So.2d 236, 241 (Miss. 1991)--] First, the "four corners" test is applied, wherein the reviewing court looks to the language that the parties used in expressing their agreement. Pursue Energy Corp., 558 So.2d at 352 (citing Pfisterer v. Noble, 320 So.2d 383, 384 (Miss. 1975)). We must look to the meaning of the terms on the contract whenever possible to determine how to interpret it. McKee v. McKee, 568 So.2d 262, 266 (Miss. 1990).

When construing a contract we will read the contract as a *whole*, so as to give effect to all of its clauses. Brown v. Hartford Ins. Co., 606 So.2d 122, 126 (Miss.1992). Our concern is not nearly so much with what the parties may have intended, but with what they said, since the words employed are by far the best resource for ascertaining the intent and assigning meaning with fairness and accuracy. Simmons v. Bank of Miss., 593 So.2d 40, 42-43 (Miss.1992). Thus, the courts are not at liberty to infer intent contrary to that emanating from the text at issue. *Id* (citing Cooper, 587 So.2d at 241). On the other hand, if the contract is unclear or ambiguous, the court should attempt to "harmonize the provisions in accord with the parties' apparent intent." Pursue Energy Corp., 558 So.2d at 352. Only if the contract is unclear or ambiguous can a court go beyond the text to determine the parties' true intent. *Id* "[T]he mere fact that the parties disagree about the meaning of a contract does not make the contract ambiguous as a matter of law. Cherry v. Anthony, 501 So.2d 416, 419 (Miss. 1987).

Also, if the court is unable to translate a clear understanding of the parties' intent, the court should apply the discretionary "canons" of contract construction. Pursue Energy Corp., 558 So.2d at 352. Where the language of an otherwise enforceable contract is subject to more than one fair reading, the reading applied will be the one most favorable to the non-drafting party. Leach v. Tinsle, 586 So.2d 799, 801-02 (Miss.1991) (citing Stampley v. Gilbert, 332 So.2d 61, 63 (Miss.1976)). Finally, if the contract continues to evade clarity as to the parties' intent, the court should consider extrinsic or parol evidence. [ Pursue Energy Corp., 558 So.2d at 353]. See Facilities, Inc. v. Rogers-USRY Chevrolet, Inc. 908 So.2d 197 (Miss. 2005).

Plaintiffs cite Westfield Insurance Company v. Galatis, 100 Ohio St. 3d 216, 797 N.E. 2d 1256 (2003), in support of their contention that the rental contract was ambiguous. However, this case is distinguishable from the case at bar. In Westfield, while the Court held that a court's role

is to “give effect to the intention of the parties,” this is only in situations where the intent of the parties cannot be determined from the contract itself because the contract is ambiguous. In those situations where a contract is ambiguous, the court may resolve the ambiguity by considering extrinsic evidence, including the intent of the parties. In the case at bar, even if the contract was ambiguous, which is expressly denied, the extrinsic evidence further supports Enterprise’s intent to not allow Gregory Knight to drive this vehicle.

In the instant case, the terms of the rental agreement are clear. The contract for rental of the Enterprise vehicle was executed between James K. Knight and Enterprise. Enterprise clearly printed on the contract “No Other Driver Permitted. This is supported by the affidavit of Cameron Floyd, the Enterprise employee who actually rented the vehicle in question to James Knight, as well as the Affidavit of Enterprise loss control manager Stacy Starling, whose testimony confirmed that the rental contract listed no other authorized drivers besides James Knight and that Gregory Knight was also not listed as an “authorized driver” (See Affidavit of Stacey Starling, attached hereto as Exhibit “D”).

Plaintiffs also cite Dixie Drive It Yourself System Jackson Co.v. Matthews, 54 So.2d 263 (Miss 1951), for the proposition that when an owner of a vehicle entrusts it to one whom he knows or should know is a careless and reckless driver, that owner is liable for any resulting damages or injuries. However, that case is distinguishable from the case at bar, in that Enterprise did not entrust the vehicle to Gregory Knight, but instead, entrusted it to his father, James Knight. Again, Enterprise did not know that Gregory Knight would be driving the vehicle.

Plaintiffs also cite Anderson v. Daniel, 136 Miss 456, 101 So. 498 (1924) for the proposition that when the owner of a vehicle gives his minor child permission to drive it, and the child is a reckless driver and this incompetency is known to the parent, the parent is liable for negligently permitting the child to drive his vehicle. Again, this case is entirely distinguishable

in that in Anderson, the owner was the father and in the instant case, the owner was Enterprise. Again, Enterprise did not negligently entrust the vehicle to Gregory Knight. His father, who did not own the vehicle, let him drive it. Therefore, Enterprise cannot be held liable and the Anderson decision is of no consequence.

Furthermore, Mississippi law is well settled that rental car companies have very few duties to potential customers which would trigger an action for negligent entrustment. Namely, rental car companies have a duty to refuse to rent to drivers who are not "then duly licensed." Miss. Code Ann § 63-1-67 (1) (Rev. 2004). Enterprise Leasing Company-South Central v. William H. Baudin, No. 2007-IA-02275-SCT (5/7/09). Also, they have a duty not to rent to drivers who appear to be intoxicated or who are known to be likely to become intoxicated while driving. Enterprise, supra, citing Dixie supra.

However, the Courts have declined to extend the duty beyond those parameters. In Cousin v. Enterprise Leasing Co-South Central, Inc., 948, So. 2d 1287 (Miss. 2007), the Court refused to impose a duty on Enterprise to verify the validity of a customer's drivers license. The Courts' rationale was that, if the legislative wants to impose additional requirements on rental car companies, it can do so.

Therefore, no duty can be imposed on Enterprise in the case at bar for potential negligent entrustment of this vehicle to Gregory Knight. Gregory Knight possessed a driver's license and there is no evidence to support that he was intoxicated or likely to become intoxicated.

**C. All Evidence And Testimony Supports The Decision of the Trial Court**

Again, the deposition of James Knight confirms that he was the one who rented the vehicle. (See attached Exhibit "C") James Knight admitted that he signed a valid rental agreement which restricted the use of the vehicle by any other person, including his son, Gregory Knight. James Knight gave his personal information to Cameron Floyd, the Enterprise employee

who leased the vehicle in question to James Knight. James Knight also admitted to driving the Enterprise vehicle away from the Enterprise office location. This clearly evidences James Knight's knowledge that he was the only person permitted to drive the Enterprise vehicle. There is no other reason for James Knight to have his son drive his personal vehicle away from the Enterprise office location while James drove the rental vehicle besides the fact that he knew Gregory Knight was not permitted to drive the Enterprise vehicle. Clearly the Knights were attempting to deceive Enterprise into thinking that James would abide by the contract and be the only driver of the vehicle.

Even if plaintiff could prove that Enterprise had "actual knowledge" that Gregory Knight would drive the Enterprise vehicle at some point during its rental period, which is expressly denied, this event did not cause any harm to plaintiff Tess Robison. The single proximate cause of injury to plaintiff Tess Robison was the accident which occurred while Gregory Knight was operating the vehicle. (See Police Report attached hereto as Exhibit "E") The Mississippi State Uniform Crash Report clearly describes a one vehicle accident which listed Gregory Knight as the driver. Gregory Knight was a duly licensed driver who was simply not allowed to rent or operate a rental vehicle under Mississippi State Law. Even if Enterprise had in fact rented the vehicle in question to Gregory Knight or even listed Gregory Knight as an additional driver, Enterprise's involvement played no part in the causation of damages to Tess Robison.

## **VI.**

### **CONCLUSION**

Plaintiff filed suit against Enterprise making the sole allegation that Enterprise was negligent because it rented "a vehicle to James Knight while having actual knowledge that (he) was renting the vehicle for his minor son's use". This allegation is refuted by the rental contract between James Knight and Enterprise, the Affidavits of Cameron Floyd and Stacey Starling, and



the deposition testimony of James Knight himself. There is no evidence that Enterprise had "actual knowledge" that Gregory Knight would drive this vehicle. The evidence all points to the contrary conclusion. The Knights deliberately deceived Enterprise when the father drove the Enterprise vehicle away from the rental branch. This deception provides further evidence to show that there is simply no possible cause of action against Enterprise, under any set of facts that could be developed in support of this claim.

Finally, even if Enterprise knew, or even thought there was a remote possibility that Gregory Knight might drive the Enterprise vehicle, which is expressly denied, that fact would have no relationship to the injuries allegedly suffered by Plaintiff as a result of the accident which is the subject of this lawsuit. Plaintiff has failed to allege any cause of action or claim against Enterprise upon which relief can be granted. Defendant, Enterprise, respectfully requests that this Honorable Court uphold the decision of the trial court granting Defendant's Motion to Dismiss, pursuant to Rule 12(b)(b) of the MRCP.

RESPECTFULLY SUBMITTED, this the 10<sup>th</sup> day of November, 2009.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that I, **Sean P. Mount**, have this day delivered a true and correct copy of the above and foregoing **BRIEF FOR APPELLEE** to the following individuals by placing a copy of same in United States mail, postage prepaid, and mailing to them at their usual business addresses:

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Tupelo, MS 38802

Dated, this the 1<sup>st</sup> day of November, 2009.

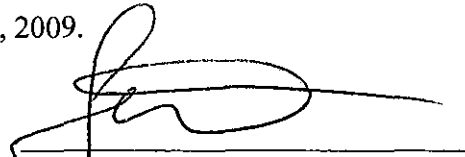
  
\_\_\_\_\_  
**SEAN P. MOUNT**  
Attorney for Appellee

**CERTIFICATE OF FILING**

Four (4) copies of the **Brief of Appellee** have this date been filed by depositing same with Federal Express to be delivered to:

Ms. Betty W. Sephton, Clerk  
Supreme Court of the State of Mississippi  
Court of Appeals of the State of Mississippi  
450 High Street  
Jackson, MS 39201

Dated, this the 10<sup>th</sup> day of November, 2009.

  
**SEAN P. MOUNT**  
Attorney for Appellee