

**SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
NO.: 2009-CA-00920**

**TONYA MELTON, CHARLES DAVID MELTON, JR.  
PAULA DAWN HARRIS AND JAMES KENDALL HARRIS                      APPELLANTS**

**VS**

**SMITH'S PECANS, INC., A MISSISSIPPI  
CORPORATION, ALFRED RANDOLPH SMITH, JR.,  
JOHN DOES 1 THROUGH 5, JANE DOES 1  
THROUGH 5, AND DOE CORPORATIONS 1 THROUGH 5                      APPELLEES**

**APPEAL FROM THE CIRCUIT COURT OF  
THE SECOND JUDICIAL DISTRICT OF  
HINDS COUNTY, MISSISSIPPI**

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**APPELLANT'S BRIEF  
(Oral Argument Not Requested)**

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**Submitted By:**

**JOHN R. McNEAL, JR., [REDACTED]  
POST OFFICE BOX 690  
JACKSON, MISSISSIPPI 39215  
(601) 969-7794**

**ATTORNEY FOR APPELLANTS**

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THROUGH 5, AND DOE CORPORATIONS 1 THROUGH 5      APPELLEES

CERTIFICATE OF INTERESTED PARTIES

I, the undersigned counsel of record certify that the following persons have  
an interest in the outcome of this case. These representations are made in order  
that the Justices of this Court may evaluate possible disqualification or recusal:

TONYA MELTON  
CHARLES DAVID MELTON, JR.  
PAULA DAWN HARRIS  
JAMES KENDALL HARRIS      APPELLANTS

SMITH'S PECANS, INC.,  
ALFRED RANDOLPH SMITH, JR.,      APPELLEES

JOHN R. McNEAL, JR., ESQ.      ATTORNEY FOR APPELLANTS

J. TUCKER MITCHELL, ESQ., W. SHAN  
THOMPSON, ESQ.; LATOYA J. JETER, ESQ..      ATTORNEYS FOR APPELLEES

HON. WILLIAM COLEMAN

CIRCUIT COURT JUDGE

  
\_\_\_\_\_  
JOHN R. McNEAL, JR.

## TABLE OF AUTHORITIES

### CASES CITED:

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- |    |  |     |
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## **STATEMENT OF THE ISSUES**

(1) The Court erred as a matter of law when it granted Appellee's Motion to Enforce Settlement.

(2) The Court erred as a matter of law when it granted Appellee's Motion For Citation of Contempt and Appointment of Clerk to Execute Settlement Documents.

## **STATEMENT OF THE CASE**

### **A. NATURE OF THE CASE AND COURSE OF THE PROCEEDINGS**

This matter was originally set for trial on January 12, 2009 in the Circuit Court of the Second Judicial District of Hinds County, Mississippi. Pre-Trial motions were argued on January 6, 2009, six (6) days before the trial of the case was scheduled to begin. The Court made inquiry at that time as to whether settlement negotiations were ongoing and the Court was advised that attorneys had been talking about settlement. Attorney for the Appellants herein and the Appellees contend that on January 7, 2009 an agreement was reached settling all issues in the claim for \$80,000.00 in settlement of all four (4) claims. Appellants contend that settlement negotiation specifics were never discussed with them nor had they given Attorney Michael Brown the authority to settle their claim for \$80,000.00 or any other amount.

Appellants subsequently refused to sign settlement documents which resulted in a Motion to Enforce Settlement being filed in the Second Judicial District of Hinds County, Mississippi and the hearing had thereon on March 6, 2009.

The Trial Judge set out in that case that the question to be decided was obviously, was there a meeting of the minds as to the settlement. [Pg. 1, L.5-6]. The Trial Judge entered an order enforcing the judgment. [Pg. 20, L.1-2]. Subsequent to the entry of that order the Appellants continued to refuse to sign the documents to settle the claim because they had not agreed to settle it nor had they

authorized their attorney to settle it on their behalf under the terms and conditions under which it was settled.

The Appellees filed a Motion for Citation of Contempt and the Appellants herein filed a Motion to Reconsider the Judge's previous ruling, all set to be heard on May 8, 2009. On page 30, lines 12 through 23 of the transcript sets out the primary interest of Michael Brown in settling the Appellants' case without their authority.

**B. ARGUMENT**

Appellants herein had not had the opportunity to testify in any of the previous hearings concerning their authority to settle their claim. Their attorney, Michael Brown, did not call them to testify at the first hearing in March 2009 to establish whether or not he had the specific authority to settle their claim under the terms and conditions at issue. Michael Brown was asked "When did you communicate the terms of the settlement to the Plaintiffs?" His answer, "Well the Plaintiffs communicated the terms of the settlement to me." Michael Brown was asked "When did you negotiate the settlement on behalf of the Harris' and the Meltons, the Appellants herein." His answer, "No negotiations period could be ascertained." [T.Pg. 36, L.4-29; T.Pg. 37, L.1-29; T.Pg 38, L.1-29] . As a matter of fact, Mr. Brown even admits on T. Pg. 38, L.18-23, that the Appellant, Tonya Melton, did not give him the authority to settle for everybody, only for her and her husband for the amount of \$70,000.00. This is the only testimony of the attorney for the Appellants herein that he was given any authority, whatsoever, as to an amount to settle for. In reading this statement it is evident that the most authority Tonya Melton could

have given him would have been to settle for \$70,000.00 for their part. Michael Brown further testified he did not confirm the settlement negotiations nor the terms of the settlement , in writing, with the Appellants. As a matter of fact, Mr. Brown wrote a letter to the Appellants, dated January 5, 2009 wherein he was discussing reasons why the Appellants should enter into settlement negotiations. There is no mention in the letter that settlement negotiations were ongoing or that any figures had been discussed or proposed, only the fact that he was imploring Appellants to consider entering into settlement negotiations in advance of the trial date. See Exhibit "A" attached hereto.

If you review the transcript beginning at Line 1 on Page 41 and continuing on to Page 54 through Line 12 of the record, it is obvious that Mr. Brown had not discussed all the ramifications of the settlement with the Appellants, including, but not limited to, how to handle the Medicare and Medicaid Liens for medical bills in the amounts of \$400,000.00; the fact that his attorney fees and expenses would total \$64,000.00 and without having advised Appellants how to handle the above referenced liens and in light of any settlement that may have been reached. These are obvious breaches of the Rules of Professional Conduct, specifically, Rule 1.2(a), Rule 1.4(b) and Rule 1.5(c).

Additionally, there is no evidence in the record that any attempts were made by Appellants' attorney to resolve the medical lien issues with the providers prior to settlement negotiations. And it is blatantly clear that the Appellants could not have made a good faith judgment as to the fair value of their claim without knowing what the liens were for medical expenses attributable to the claim, as well as, what the



total amount of Mr. Brown's attorney fees and expenses would be so that they could determine if settlement would be better than risking a trial. It is clearly a breach of the implied duty of good faith and fair dealing existing between Mr. Brown and the Appellants herein and it is clear that this duty was breached in that the Appellants did not have sufficient information to give Mr. Brown the authority to settle. The results of settlement was to enrich Mr. Brown and to leave Appellants with a net zero plus liability for all liens. Under the facts and circumstances apparent authority could not remotely exist. See Release attached hereto as Exhibit "C".

Testimony was taken from the Appellants, Tonya Melton, David Melton, Paula Harris and James Harris. Their testimony begins on Page 61 of the transcript at Lines 27-29 and continuing on transcript Page 72, Lines 1-26.

It is obvious in reading the record as aforesaid that Appellants herein were never provided sufficient information by their attorney within which to determine whether or not to accept any settlement offer that was on the table. Mr. Brown, Appellants' attorney at that time, could not identify any specific correspondence or discussions with the Appellants when all elements of their case were discussed, including, medical expenses, liens, other expenses, attorney fees, admissibility of evidence and so forth and so on, so that the Appellants could put into perspective a fair and reasonable settlement range. Instead, the direct testimony of the Appellants differs greatly from that of Mr. Brown and said testimony affirmatively states that they never gave Michael Brown the authority to settle their claim for \$80,000.00 under any condition.

In further confirmation that Michael Brown had breached the implied covenant of good faith and fair dealings and failed to properly inform the Appellants herein of all necessary elements to discuss their settlement, see Mr. Brown's letter dated January 8, 2009 attached hereto as Exhibit "B". Only then, after the fact does Mr. Brown make a weak attempt to inform the Appellants of the process necessary to resolve the issue. The very first paragraph of the letter indicates that this is the first time he had informed the Appellants that the matter had been resolved for \$80,000.00. In reading the letter it is blatantly clear that Mr. Brown had not made any effort whatsoever to resolve any of the lien issues with Medicaid and/or Medicare or any of the other medical providers which provided medical treatment for the Appellants, but instead was more motivated by his fee contract and recovery of the expenses for a total of \$64,000.00 out of the \$80,000.00 for which he settled without authority. It is clear that there could not have been a meeting of the minds sufficient to form a contract or to grant authority to settle because material facts about the liens, fees and expenses were not known by Appellants prior to the settlement. It would have been impossible for them to grant authority to settle because of the withholding of material information by Mr. Brown.

### **C. SUMMARY OF THE ARGUMENT**

"Settlements are contracts and will be enforced according to their terms. *McManus v. Howard*, 569 So.2d 1213, 1215 (Miss. 1990)." "For an enforceable settlement to exist, there must have been a meeting of the minds. *Hastings v. Guillot*, 825 So.2d 20, 23 (Miss. 2002). The party claiming that a binding settlement

is in force must demonstrate by a preponderance of the credible evidence that there was a meeting of the minds. *Id.* It is obvious from the record herein that Michael Brown did not have authority to settle this claim on behalf of the Appellants. To the contrary, it is blatantly clear that Mr. Brown was either grossly misinformed or intentionally failed to properly advise the Appellants as to all of the facts of the settlement and the terms and conditions for which he settled their claim and how settlement would benefit them as opposed to a trial.

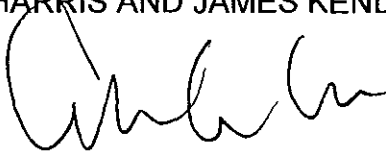
**D. CONCLUSION**

For the foregoing reasons, Appellants request that the judgment of the Circuit Court enforcing the settlement be set aside, that all settlement documents be voided and that the \$80,000.00 settlement proceeds be reimbursed to the Appellees herein and that this matter be set back on the trial docket in the Second Judicial District of Hinds County, Mississippi to proceed to trial.

Respectfully submitted, this the 4 day of February, 2010.

TONYA MELTON, DAVID MELTON, DAWN  
HARRIS AND JAMES KENDALL HARRIS

BY:



JOHN R. McNEAL, JR., Appellants' Attorney

**CERTIFICATE OF SERVICE**

I, John R. McNeal, Jr., do hereby certify that I have this day caused to be delivered by United Postal Service, first class prepaid postage or facsimile/electronic transmission and/or by hand-delivery a true and correct copy of the above and foregoing Brief of Appellant as follows:

Honorable William Coleman  
Hinds County Circuit Court Judge  
407 E. Pascagoula Street (39201)  
Post Office Box 22711  
Jackson, Mississippi 39225-2711

J. Tucker Mitchell, Esq.  
W. Shan Thompson, Esq.  
LaToya T. Jeter, Esq.  
Copeland, Cook, Taylor and Bush, P.A.  
600 concourse, Suite 100  
1076 Highland Colony Parkway  
Ridgeland, MS 39157

This the 4 day of February, 2010.

  
\_\_\_\_\_  
JOHN R. McNEAL, JR.

January 5, 2009

Kendall Harris for  
Tonya Melton and David Melton  
Paula Harris and Kendall Harris  
135 Cedar Ridge Road  
Raymond, MS 39154

**Re: Settlement Negotiations**

Dear Mr. and Mrs. Harris, Tonya, and David:

It was good talking to you earlier today. I am writing in follow up to our conversation. Please know your willingness to discuss settlement is not a weakness. I would encourage discussions. It is the only way you are going to determine the Defense's bottom line settlement number prior to trial for you to consider. I would recommend that you do not put yourself in the position of hearing their final offer just prior to trial when you have not had a chance to see whether they might pay more. The decision of whether to settle is ultimately up to you. You will put yourself at a disadvantage if you do not discuss settlement.

As we have discussed during this, my office has a 40% fee agreement covering sums received from any work on this matter. We have expended significant sums in excess of \$30,000.00 in cost which are also recoverable separately from fees. We have had to take several depositions, and secure expert testimony given the variety of symptoms at issue.

My office will work with you significantly in settlement negotiations to reduce costs and/or fees this week. I will reserve the right to recover all cost and fees under the contract should we not resolve the case by Friday. I sincerely enjoy working with you and believe in your right to recover.

Please consider the above points together. I would recommend that you come close to see the range the Defense may be willing to pay so that you may see if they can get additional authority to resolve the case prior to their further expenses and risks. You will be reserving the right to make a final decision. Without the process of settlement negotiations you will actually be putting yourself at a disadvantage even though you may feel like maintaining a high number. I see your reasons. I believe in you as well. I thank you again.

Sincerely,

Michael R. Brown

EXHIBIT "A"

# THE MICHAEL R. BROWN LAW OFFICES, P.L.L.C.

120 N. CONGRESS ST.  
SUITE 710  
JACKSON, MISSISSIPPI 39201

January 8, 2009

Kendall Harris *for*  
Tonya Melton and David Melton  
Paula Harris and Kendall Harris  
135 Cedar Ridge Road  
Raymond, MS 39154

## Re: Settlement Information

Dear Mr. and Mrs. Harris, Tonya, and David:

I am writing to confirm this matter has been resolved for \$80,000.00. I understand this was an extremely difficult situation for you. I know this involved very difficult decisions, and we worked to make them considering everything.

I am writing this letter, because there are still several matters which will need to be worked out following settlement. As I discussed with Mr. Harris, your decision not to advance arguments at trial that every single matter in your records was work-related will allow you to argue with medical providers that certain conditions may have been agreed by the parties not to be work-related, regardless of whether or not you agreed to that throughout the course of the matter. It is important to be clear as to what you claim. It is also my understanding you saw some of the difficult distinctions, and that entered into your settlement decision as well.

There are a few areas of the law which have come up in recent years and must be attended to here. There are required procedures in this claim which are similar to many others where Medicare or Medicaid are involved (even many workers compensation claims or other types of claims).

Some of the medical treatment was paid for by Medicare and Medicaid. We will need to provide a disbursement statement and show the settlement has been signed off on, in order to provide Medicare and/or Medicaid information they need for us to negotiate issues with them.

I have no reason to believe that the release will be anything other than a standard release.<sup>1</sup> We will then need to have a disbursement statement showing the details of the transaction including anything worked out for attorney's fees and reimbursements for costs. I again will work with you on this insofar as I can, and have every intention to do so.

The disbursement statement will need to outline the transaction for Medicare and Medicaid. I believe the amounts paid for by Medicare are very minimal though I am not sure. Medicare will usually take into consideration amounts paid for attorney's fees and costs in reducing their liens. That is part of the reason they ask for the details to be disclosed so they can work with you. Medicaid may very well do the same. We will also assure there is clear

communication with Medicaid so they do not charge for any unrelated medicals. We will make possible arguments to that effect on anything we can claim is not related. It is likely we will have to wait some time until Medicare directs what can be done. They require the settlement proceeds held in trust until we hear from them after they reviewing the transaction. It is also during that time I will make the best possible arguments that the settlement has considered many medicals are not related when dealing with any other matters which must be attended to such as the King's Daughters lien.

To summarize, the process will therefore involve signing the settlement documents, forwarding certain ones to Medicare and waiting for their direction. I will notify them that a enforceable agreement has been reached ahead of time so they can anticipate receiving the documents soon. Please be advised that getting Medicare approval is very standard practice and there is no way to avoid it here. I will work in the best possible way to account for what we need to efficiently move this along.

I again very much appreciate the chance to work with you. Please be prepared for some delay as we work further. I do anticipate that we will receive the release soon. The sooner that is signed, and the sooner we have a disbursement statement of how the sums are allocated, the better in terms of dealing with the governmental entities and whatever else may be required.

I will be in touch soon. Should you have any questions in the meantime, feel free to let me know. Thank you again.

Sincerely,



Michael R. Brown

JUN 11 2009

BARBARA DUNN, CIRCUIT CLERK

FULL, FINAL AND ABSOLUTE RELEASE OF  
ALL CLAIMS, SETTLEMENT AND INDEMNITY AGREEMENT

BY S. W. Dunn D.C.

FOR AND IN CONSIDERATION of the total sum of EIGHTY THOUSAND DOLLARS AND NO/100 CENTS (\$80,000.00), cash in hand paid into the registry of the Circuit Court of Hinds County, Second Judicial District, as payment to TONYA DAWN MELTON, CHARLES DAVID MELTON, JR., JAMES KENDALL HARRIS and PAULA DAWN HARRIS, the receipt and sufficiency of which is hereby acknowledged, We, by and through BARBARA DUNN, the Circuit Clerk of the Second Judicial District of Hinds County, TONYA DAWN MELTON, CHARLES DAVID MELTON, JR., JAMES KENDALL HARRIS and PAULA DAWN HARRIS, and our representatives, agents, heirs and assigns (sometimes hereinafter collectively referred to as the "RELEASORS"), do hereby release, acquit and forever discharge SMITH'S PECANS, INC., ALFRED RANDOLPH SMITH, JR., MISSISSIPPI FARM BUREAU MUTUAL INSURANCE COMPANY, MISSISSIPPI FARM BUREAU CASUALTY INSURANCE COMPANY AND SOUTHERN FARM BUREAU CASUALTY INSURANCE COMPANY, and their adjusters, affiliated companies, agents, assigns, attorneys, board of directors, family members, relatives, independent contractors, insurers, investigators, law firms, members, officers, owners, parent companies, partners, past and present employees, predecessors, representatives, shareholders, sister companies, stockholders, subsidiaries, successors (hereinafter collectively referred to as "RELEASEES"), and any and all other persons, firms, entities, and corporations associated or affiliated with the RELEASEES, from any and all claims, actions, causes of action, demands, damages of any nature, costs, liens, expenses, attorneys fees and expenses, and all other liabilities whatsoever of every kind and nature, both at law and in equity, whether known or unknown, accrued or to accrue, including, but expressly not limited to, any and all claims for any negligent acts and/or omissions of any type, kind or nature; vicarious liability; any intentional acts and/or torts of any type, kind or nature; actual or compensatory damages; punitive damages; bodily injury; personal injury; pain and suffering; mental and emotional distress; property damage; all economic and non-economic damages; lost wages; loss of income; loss of wage earning capacity; loss of consortium; and any other actions, causes of action, expenses, claims and/or damages that RELEASORS may now or hereafter have against RELEASEES in any way arising out of or pertaining to an alleged exposure to chemicals anywhere on the premises of Smith's Pecans in Raymond, Hinds County, Mississippi which is the subject of litigation between RELEASORS and RELEASEES.

The undersigned RELEASORS have made certain claims and allegations against RELEASEES and any and all said claims and allegations are now hereby fully compromised and settled by this instrument.

It is understood and agreed by the undersigned that the payment as set forth above is not to be construed as an admission of liability on the part of any of the RELEASEES. The parties hereby released do not admit any liability whatsoever, but expressly deny same.

The consideration expressly mentioned herein is the only consideration paid or to be paid by said parties hereby released, and this is so even though more serious and permanent damages and/or



injuries may result from said damages and/or injuries sustained by RELEASORS on account of the alleged chemical exposure. No representations, promises or inducements of any nature whatsoever for this Release, not herein expressly set forth, have been made and no such representations, promises or inducements are relied upon as a consideration for this Release, or otherwise, but any and all claims and allegations of whatever nature are hereby fully released.

Full and complete accord and satisfaction are hereby acknowledged, and it is expressly agreed by the undersigned RELEASORS never to sue any of the parties hereby released on any alleged promise or inducement for this Release not herein expressly set forth.

In further consideration of the aforesaid payments, the RELEASORS do hereby covenant that any and all medical bills, pharmaceutical bills, liens, expenses, or payments of any kind or nature arising out of the aforesaid alleged chemical exposure and/or any such medical bills, pharmaceutical bills, liens, expenses, or payments that have been paid or that will be paid by any insurance carrier, Medicaid, Medicare, or any like or similar government organization, or any insurance carrier, and/or any other person or entity whatsoever which has the right to claim for reimbursement or payment of said medical bills, pharmaceutical bills, liens, expenses or payments from the parties being released, hereby have been or will be satisfied from the proceeds of this settlement. RELEASORS do hereby stipulate, covenant, agree and warrant to indemnify and hold harmless the RELEASEES from any and all claims, demands, actions, causes of action, suits or complaints that may be brought by any person or entity whatsoever, both private or governmental, including, but not specifically limited to, Medicare Parts A and B, which may make any claim against RELEASEES for reimbursement or for payment of medical bills and expenses, workers' compensation and disability payments, subrogation liens, legal fees and expenses or former counsel, property damage, injury, damage and loss of any kind or nature arising out of the aforesaid alleged chemical exposure. This indemnification includes any expenses incurred by the RELEASEES in defending, responding to or paying such a claim, including amounts paid in settlement, as a result of a judgment and attorneys' fees and other defense costs. This indemnification further includes all costs incurred in enforcing the indemnity agreement or collecting damages for breach of the indemnity agreement, including attorneys' fees and court and litigation costs.

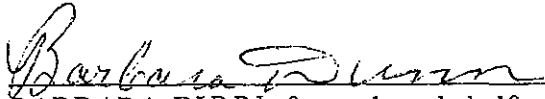
For the same consideration aforesaid, the undersigned RELEASORS do hereby release, acquit and forever discharge RELEASEES from any and all claims and allegations of every kind made in that certain action now pending and styled *Tonya Dawn Melton, Charles David Melton, Jr., Paula Dawn Harris and James Kendall Harris vs. Smith's Pecans, Inc., A Mississippi Corporation, Alfred Randolph Smith, Jr., John Does 1 Through 5, Jane Does 1 Through 5, and Doe Corporations 1 Through 5*; In the Circuit Court of the Second Judicial District of Hinds County, Mississippi, Cause No. 2004-56, on the docket of said Court, and do hereby agree to cause said action to be dismissed with prejudice forthwith.

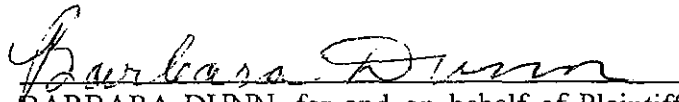
This Release contains the entire agreement between the parties hereto, and the terms of this Release are contractual and not a mere recital. Since the purpose of this agreement is to end this matter forever, should it develop there are any errors, mistakes or any omissions in this instrument, whether legal or factual and whether mutual or unilateral, which would cause the release of the

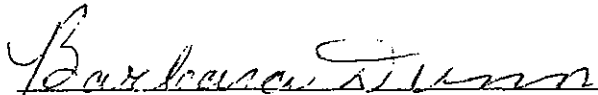
parties herein released to be defective or less than complete, then the undersigned RELEASORS will sign any and all documents and do any and all things necessary to effectuate a full, final and complete release of RELEASEES and all others having any liability in the premises.

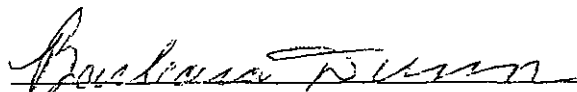
The undersigned RELEASORS further state that they have carefully read the foregoing instrument; that they know the contents thereof; that it has been fully explained to them by their attorney(s); that they understand and agree to each and every term and condition contained herein; that they signed the same as their own free act and deed; and that they have not assigned any right to any person or organization, private or governmental, so that they retain all rights with regard to any claims, allegations, actions, expenses, damages and/or loss arising as a result of the aforesaid alleged chemical exposure and resulting injuries and damages to RELEASORS.

WITNESS OUR SIGNATURES, this the 11<sup>th</sup> day of June, 2009.

  
BARBARA DUNN, for and on behalf of Plaintiff  
**Tonya Dawn Melton**, per order of the Circuit Court of  
Hinds County, Second Judicial District

  
BARBARA DUNN, for and on behalf of Plaintiff  
**Charles David Melton, Jr.**, per order of the Circuit  
Court of Hinds County, Second Judicial District

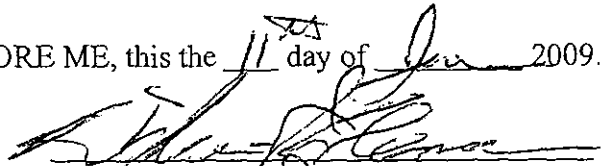

  
BARBARA DUNN, for and on behalf of Plaintiff  
**James Kendall Harris**, per order of the Circuit Court  
of Hinds County, Second Judicial District

  
BARBARA DUNN, for and on behalf of Plaintiff  
**Paula Dawn Harris**, per order of the Circuit Court of  
Hinds County, Second Judicial District

STATE OF MISSISSIPPI  
COUNTY OF Hinds

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, **BARBARA DUNN**, who, having been by me first duly sworn, stated on her oath that she executed and delivered the above and foregoing FULL, FINAL AND ABSOLUTE RELEASE OF ALL CLAIMS, SETTLEMENT AND INDEMNITY AGREEMENT on the day and year therein indicated as authorized and ordered via the Hinds County Circuit Court's Order Granting Defendants' Motion for Citation of Contempt and Appointment of Clerk to Execute Settlement Documents.

SWORN TO AND SUBSCRIBED BEFORE ME, this the 11<sup>th</sup> day of Jan 2009.

  
NOTARY PUBLIC  


My Commission Expires:

\_\_\_\_\_