

IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2010-CA-00738

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MILDRED ELAINE THOMPSON RAYNER,  
*INDIVIDUALLY*, AND BILLY JOE BYNUM,  
*AS NATURAL FATHER AND NEXT FRIEND*  
OF BILLY JOE DAVID BYNUM, *A MINOR*

APPELLANTS

VS.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY

APPELLEE

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ON APPEAL FROM THE CIRCUIT COURT  
OF RANKIN COUNTY, MISSISSIPPI

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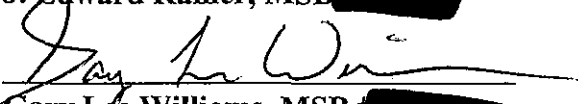

BRIEF OF THE APPELLANT

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ORAL ARGUMENT REQUESTED

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**CERTIFICATE OF INTERESTED PARTIES**

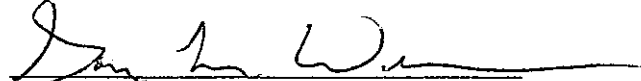
The undersigned counsel of record certifies that the following listed person have an interest in the outcome of this case. These representation are made in order for the Judges of the Mississippi Supreme Court to evaluate disqualification or recusal.

1. Mildred Elayne Rayner, Appellant;
2. Billy Joe Bynum Jr., Appellant;
3. Billy Joe Bynum as next friend of Billy Joe Bynum Jr., Appellant;
4. J. Edward Rainer Esq., Attorney for the Appellant
5. Gary Lee Williams, Attorney for the Appellant
6. State Farm Mutual Automobile Insurance Company, Appellee
7. Phillip W. Gaines Esq., Attorney for Appellee
8. Hon. Judge Samac S. Richardson; Rankin County Circuit Court Judge

Respectfully Submitted



J. Edward Rainer



Gary Lee Williams  
Attorneys for the Appellant

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### **STATEMENT OF THE ISSUES**

The Circuit Court of the Twentieth District for the State of Mississippi granted a Summary Judgment Motion finding “since the final judgment in Cause No. 2007-73C in this Court held the Plaintiffs are not legally entitled to recover against the County/deputy, etc., the Court finds that no UM benefits are owed to Plaintiffs under the State Farm Policy.” This Court must decide whether or not a person is “legally entitled” to recover against their Uninsured Motorist Insurance Provider when they are involved in an accident with a person who is entitled to immunity under Mississippi Code Section 11-46-9(1)(c).

Additionally, this Court should decide whether or not an Uninsured Motorist Insurance Provider may assert the defenses of the tortfeasor when the defense is sovereign immunity.

## STATEMENT OF THE CASE

### **A. Nature of the Case**

This is an appeal of a grant of summary judgment in favor of State Farm Mutual Automobile Insurance Company (hereafter “State Farm” or “appellee”), in the Twentieth Circuit Court District for the State of Mississippi. The Complaint was filed by Mildred Elaine Thompson Rayner and her grandson Billy Joe David Bynum (hereafter “Appellants”) based upon personal injuries and property damages received in a collision with Deputy Michael B. McCarty of the Rankin County Sheriff’s Department on or about March 22, 2006. Appellants, in an earlier lawsuit, brought an action against the Rankin County Sheriff’s Department and Deputy Michael McCarty. The trial court in that action held that the Rankin County Sheriff’s Department and Michael McCarty were entitled to immunity under Mississippi Code Section 11-46-9(1)(c), where police actions do not rise to the level of reckless disregard. Additionally, the court found there were no genuine issues of material fact with regard to the manner in which the accident occurred, and that the evidence presented demonstrated the Deputy involved did not act with reckless disregard. This Court affirmed the trial Court’s decision.

After exhausting all administrative remedies against the State of Mississippi, Appellant’s brought an action against their uninsured motorist insurance provider, State Farm in Cause No. 2009-36. Appellee made a Motion for Summary Judgment asserting where a tortfeasor is absolved from legal liability based upon an immunity, he is not legally liable for UM analysis purposes and no UM payment obligation is present. The Circuit Court for the Twentieth Judicial District granted Summary Judgment to the Appellee finding “since the final judgment in Cause No. 2007-73C in this Court held the Plaintiffs are not legally entitled to recover against the County/deputy, etc., the Court finds that no UM benefits are owed to Plaintiffs under the State

Farm Policy.” This Court must decide whether the Circuit Court of the Twentieth District’s decision should be reversed and remanded based upon a misapplication of law when interpreting “legally entitled to recover” as applied to the state uninsured motorist provisions and granting summary judgment to Appellee.

#### **B. Course of Proceedings and Disposition in the Court Below**

This case began when the Appellants initiated suit on February 6, 2009 by filing a Complaint in the Twentieth District Circuit Court of Rankin County, Mississippi.

Appellee/State Farm received notice of the Complaint and filed it’s Answer and Motion to Dismiss on the Pleadings and/or Undisputed Facts said Motion being filed with the circuit court on February 27, 2009.

On December 9, 2009, the trial court granted appellee/State Farm a final judgment of dismissal finding “since the Final Judgment in Cause No 2007-73C in this Court held that Plaintiffs are not legally entitled to recover against Deputy/County etc., the Court finds that no UM benefits are owed to Plaintiffs under the State Farm policy. State Farm is therefore entitled to Summary Judgment on those grounds.” On December 15, 2009, Appellants filed a Motion for Reconsideration. On April 27, 2010, the trial Court affirmed it’s Order granting Summary Judgment to State Farm. Appellants timely filed a Notice of Appeal on May 5, 2010.

#### **C. Statement of the Facts**

On March 22, 2006, around 1:30 p.m., Michael McCarty, a deputy employed with the Rankin County Sheriff’s Department Court Services Division, was on his way home for lunch. At the same time, Mildred Rayner and her infant grandson Billy Joe David Bynum (hereafter “Appellants”) were traveling East towards Appellant Rayner’s home on U.S. Highway 18.

While on his way home for lunch, at the intersection of Star Road and Highway 468, Deputy McCarty heard a call go out over dispatch that there was a "disturbance".

Deputy McCarty then proceeded South on Hwy 468 toward the intersection of Hwy 468 and Hwy 18. As Deputy McCarty approached the intersection, there was a van in the left hand turn lane of Highway 468, another SUV going West on Highway 18, and another vehicle in the center turn lane. Deputy McCarty then proceeded into the oncoming lane of traffic, with his view from the east obstructed, and ran through the intersection against a red light. At about the same time, Mildred Rayner was approaching the same intersection. On her approach, the Appellant slowed down upon seeing the road sign indicating that there was a light ahead. As Mrs. Rayner proceeded through the intersection while facing a green street light, she suddenly saw a flash of white and thereafter felt a tremendous blow to the car holding herself and her infant grandson. Immediately thereafter, the Appellants felt a second blow. Mrs. Rayner never saw the police vehicle in her approach to the intersection.

Mildred Rayner and the car being operated by her were at all times mentioned herein insured under a policy of automobile insurance (Policy No. 18 1046-E01-24B ) through the Appellee/State Farm, that provides, *inter alia*, uninsured motorist protection for benefits and payment of up to \$25,000 per person and \$50,000 per accident. Mrs. Rayner had multiple lines of insurance with Appellee/State Farm.



### **STANDARD OF REVIEW**

In reviewing a trial court's ruling on a Motion for Summary Judgment, the Supreme Court conducts a *de novo* review and examines all evidentiary matters, including admissions in pleadings, answers to interrogatories, depositions, and affidavits. *Progressive Gulf Ins. Co. v. Dickerson And Bowen, Inc.*, 965 So. 2d 1050, 1052 (Miss. 2007). On appeal of a summary judgment, the Supreme Court must view the evidence in the light most favorable to the party against whom the motion was made. *Id.* at 1053. Furthermore, a *de novo* standard of review applies to questions of law. *See Windham v. Latco of Miss., Inc.*, 972 So.2d 608, 610 (Miss.2008).

### **SUMMARY JUDGMENT STANDARD**

Rule 56(c) of the Mississippi Rules of Civil Procedure provides that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

## SUMMARY OF THE ARGUMENT

The Circuit Court erroneously applied the law when construing the standard for “legally entitled to recover” and therefore, Appellee/State Farm is not entitled to summary judgment as a matter of law. The Circuit Court held “since the final judgment in Cause No. 2007-73C in this Court held the Plaintiffs are not legally entitled to recover against the County/deputy, etc., the Court finds that no UM benefits are owed to Plaintiffs under the State Farm Policy.” This Court shall review, *de novo*, whether or not State Farm may assert the defense of the tortfeasor when that defense is sovereign immunity and/or whether or not a person is “legally entitled to recover” against their Uninsured Motorist Provider when they are involved in an accident with a person who is entitled to immunity under Mississippi Code Section 11-46-9(1)(c).

## ARGUMENT

“By statute<sup>1</sup>, purchasers of automobile liability insurance have a right to purchase UM coverage.” *MSPRAC-ENC* § 40:130. The goal of Miss. Code Ann. § 83-11-101, is to provide an avenue for an innocent party to protect themselves against bodily injury and damages that were no fault of their own. By simply reading the statute, it is clear that the plain meaning of Miss. Code Ann. § 83-11-101 was drafted and created to serve as the baseline wherein Uninsured Motorist Coverage should operate and not as the ceiling for which liability may fall.

Moreover, Miss. Code Ann. § 83-11-103 (c) defines the term “**uninsured motor vehicle**” to mean:

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Miss. Code Ann. § 83-11-101(1). provides that “no automobile liability insurance policy or contract shall be issued or delivered ... unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages for bodily injury or death from the owner or operator of an uninsured motor vehicle.” Subsection (b) provides that the insured also be given the opportunity to purchase UM coverage for property damage.

“(i) A motor vehicle as to which there is no bodily injury liability insurance; or (ii) **A motor vehicle as to which there is such insurance in existence, but the insurance company writing the same has legally denied coverage thereunder or is unable, because of being insolvent at the time of or becoming insolvent during the twelve (12) months following the accident, to make payment with respect to the legal liability of its insured;** or (iii) An insured motor vehicle, when the liability insurer of such vehicle has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist coverage; or (iv) A motor vehicle as to which there is no bond or deposit of cash or securities in lieu of such bodily injury and property damage liability insurance or other compliance with the state financial responsibility law, or where there is such bond or deposit of cash or securities, but such bond or deposit is less than the legal liability of the injuring party; or (v) A motor vehicle of which the owner or operator is unknown; provided that in order for the insured to recover under the endorsement where the owner or operator of any motor vehicle which causes bodily injury to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured; or (vi) **A motor vehicle owned or operated by a person protected by immunity under the Mississippi Tort Claims Act, Title 11, Chapter 46, Mississippi Code of 1972, if the insured has exhausted all administrative remedies under that chapter.**” (*emphasis added*).

Miss. Code Ann. § 83-11-103 subsections (ii) and (vi) encompass the automobile driven by Deputy McCarty of the Rankin County Sheriff’s Department during the accident between he and Appellants on March 22, 2006 to be within the definition of “uninsured motor vehicle”. The state of Mississippi certainly would not have added subsection (vi) to the definition of “uninsured motor vehicle” on July 1, 2009 had the state intended for such vehicles to be excluded from an insureds’ uninsured motorist coverage.

This Court has held that “*Mississippi’s Uninsured Motorist Vehicle Act must be liberally construed to maximize the humanitarian coverage it provides.*” *Preferred Risk Mut. Ins. Co. v. Poole* (N.D.Miss. 1976) 411 F.Supp. 429, affirmed 539 F.2d 574. (*Emphasis Added*). This language was reiterated in *Guardianship of Lacy*, wherein the Mississippi Supreme Court held the “[u]ninsured motorist statute should be construed liberally in favor of insured and to

*strictly avoid or preclude exceptions or exemptions from coverage.” Guardianship of Lacy v. Allstate Ins. Co., 649 So.2d 195, (Miss. 1995) (Emphasis Added).*

In *State Farm Mut. Auto. Ins. Co. v. Nester*, the Mississippi Supreme Court found “the purpose of the uninsured motorist provision is to provide the insured a means of collecting that to which he is legally entitled for bodily injuries caused by accident arising out of the ownership, maintenance and use of an uninsured automobile. This provision *must be construed from the perspective of the injured insured*, from whose standpoint a tort-feasor operating an automobile with no insurance *available* is an uninsured motorist. *It is all the same to him whether there is no insurance at all, or a policy that is incapable of being applied to satisfy his claim because the tort-feasor's insurer lawfully disclaims liability.” State Farm Mut. Auto. Ins. Co. v. Nester 459 So.2d 787, 790 (Miss.,1984)(Emphasis added) .* Clearly, Deputy McCarty was driving an “uninsured motor vehicle” according to Miss. Code Ann. § 83-11-103. As the *Nester* Court held, the criteria used to determine whether or not an insured is entitled to make an Uninsured Motorist claim is not whether there is no insurance, but the ultimate question is whether or not the insurance is available. In the instant case, there is a policy that is incapable of being applied to satisfy Appellee’s claim because the State has lawfully disclaimed liability through immunity. Thus, there is no insurance *available*, thereby making the Rankin County Sheriff’s Department and Deputy McCarty an uninsured motorist.

In regard to Appellee’s assertion that Appellant is not “legally entitled to recover” damages from the tort-feasor, Appellee cites *Medders v. U.S Fidelity and Gauranty, Co.. Medders* is a case where “[h]eirs of an employee killed while riding as passenger in vehicle driven by coemployee acting in course and scope of his employment could not recover uninsured motorist benefits from employer's insurer; under statute and policy, heirs could only recover

those sums they were 'legally entitled to recover' from uninsured motorist and, since uninsured motorist was coemployee, exclusive remedy provision of Workers' Compensation Act barred recovery." *Medders*, 623 So.2d 979 (Miss.,1993). Throughout the *Medders* case, this Court notes that "in disposing of the issue ("legally entitled to recover") one must of necessity speak to the *interrelationship between the exclusive remedy clause of the compensation act and the coverage of the UM statute.*" *Id.* A plaintiff in a Worker's Compensation claim does have the alternative of seeking a remedy for damages through the Workers Compensation Act rather than his employer's uninsured motorist coverage, whereas to come to same conclusion in the instant case would bar Appellant completely and forever from *any remedy*. Such a conclusion spits in the face of this Court's prior holdings that the uninsured motorist coverage should be interpreted broadly from the position of the insured and the efforts to interpret uninsured motorist statutes liberally in favor of the insured and to strictly avoid or preclude exceptions or exemptions from coverage.

"The purpose of Miss.Code Ann. § 11-46-9 is to 'protect law enforcement personnel from lawsuits arising out of the performance of their duties in law enforcement, with respect to the alleged victim.' Police officers and fire fighters are more likely to be exposed to dangerous situations and to liability, and therefore, public policy requires that they not be liable for mere negligence." *Maldonado v. Kelly* 768 So.2d 906, 909 (Miss.2000) *citing City of Jackson v. Perry*, 764 So.2d 373. (Miss. 2000) Similarly, "Mississippi's Uninsured Motorist Vehicle Act must be liberally construed to maximize the humanitarian coverage it provides." *Preferred Risk Mut. Ins. Co. v. Poole* (N.D.Miss. 1976) 411 F.Supp. 429, affirmed 539 F.2d 574. Clearly the purpose of the Miss.Code Ann. § 11-46-9 is to protect law enforcement agencies from lawsuits, but if not for any other reason other reason other than public policy, uninsured motorist coverage

should extend to insureds where the state is clearly negligent but their actions are found not to rise to the level of reckless disregard. Realizing the purpose of the Mississippi Tort Claims Act and the purpose of Miss. Code Ann. § 83-11-101, this Court simply cannot find the legislative intent to exclude insureds from receiving their uninsured motorists benefits when an accident arises with a state actor cloaked in immunity.

This is a case of first impression as to whether or not an insurance company is allowed to claim the immunity of the state as a defense to an insureds claims under their uninsured motorist coverage. "It has been held that if the insured cannot recover from the uninsured motorist because of some bar such as interspousal immunity, parent-child immunity, or a guest statute, the insured is not legally entitled to recover and the insurer is thus not required to pay." Am. Jur. 2d, Automobile Insurance § 297. However, in the following cases involving uninsured motorist provisions under which the insurance carrier sought to avoid liability on the ground that its insured was not legally entitled to collect damages from the owner or operator of the uninsured vehicle because of governmental immunity, the courts have determined that such immunity did not defeat the insured's right of recovery from the insurer, based primarily upon the broad scope of coverage under uninsured motorist provisions." 55 A.L.R.4th 806

In our sister state of Alabama, the Alabama Supreme Court in *State Farm Auto. Ins. Co. v Baldwin*, while noting that in a direct action against the insurer by an insured, the insurer would have available the substantive defenses that would have been available to the uninsured motorist, the court also observed that an exclusion in an uninsured motorist clause for accidents involving government vehicles was void, *since it conflicted with the intent of the statute to broadly confer coverage in uninsured motorist accidents*. The court rejected the insurer's contention that the insured was never "legally entitled to recover damages" against either the driver or the

government, within the meaning of the uninsured motorist law, and therefore was not entitled to recover in a direct action against it. Conceding that such argument was technically correct, the court nevertheless reasoned that the legislative policy of the uninsured motorist statute would not allow the insurer to assert such defense. The court declared that since the insurers could not expressly exclude from uninsured motorist coverage injuries resulting from collisions with government vehicles, it would be completely inappropriate to hold that the insurers might enforce the same exclusion, by implication, because of an anomaly of statutory construction created by the interaction of the serviceman injury exclusion and the uninsured motorist act. *State Farm Auto. Ins. Co.*, 470 So 2d 1230, (1985, Ala).

Likewise, the insureds in *Karlson v Oklahoma City*, a negligence action against a municipality, were held "legally entitled to recover damages" in excess of the limits of liability imposed by a statute. The plaintiff insureds sued the city for damages for injuries and wrongful death arising out of an automobile collision involving a city police vehicle, and joined their own insurer from which recovery of damages in excess of the act's statutory limit was sought under the uninsured and underinsured motorists provisions of their policy. The court noted that the words "legally entitled to recover" simply meant that the insured must be able to establish fault on the part of the uninsured motorist which would give rise to damages and to prove the extent of those damages. Pointing out that when the insured and the insurer entered into their contract, they contemplated a situation where the insurer might be required to pay for injuries caused by some tortfeasor where that tortfeasor was not able to make full compensation for those injuries, the court explained that whether the tortfeasor's inability to make full compensation resulted from lack of sufficient insurance, insolvency, or other reason, was irrelevant. The intention of the parties at the time of their contracting was that the insurer, not its insured, would assume the

risk that the insured might suffer a loss for which a tortfeasor could not make compensation, the court declared, concluding that in a situation where the liability of a tortfeasor was limited by the statute to an amount which would not compensate an insured for all his proven losses suffered in an automobile accident, the insured could recover from his insurer through the uninsured/underinsured motorist provisions of his automobile liability insurance, according to the terms thereof. *Karlson v Oklahoma City*, 711 P2d 72, (1985, Okla).

### **CONCLUSION**

For the above reasons, Appellants respectfully submit that the Twentieth Judicial District Court improperly applied the law when interpreting the whether or not Mildred Rayner and her grandson are “legally entitled to recover” from the Rankin County Sheriff’s Department and Deputy McCarty as applied to her State Farm uninsured motorist coverage. Appellants ask the Court to interpret this provision from the standpoint of the insured and to look towards the intent of the parties when contracting with one another for uninsured motorist coverage. Appellants assert they are legally entitled to recover from the Rankin County Sheriff’s Department and Deputy McCarty, but for the doctrine of sovereign immunity. If this Court were to find that sovereign immunity applies to big insurance companies, the lines would clearly be drawn to afford more protections to corporations than that of the Mississippi citizenry. This Court must find that sovereign immunity is a defense that may be asserted only by local and federal government and their employees/agents who are functioning within the course and scope of employment.

The provisions made within State Farm in their Uninsured Motorist Coverage and their stance to only pay that which a person shall be “legally entitled to recover” is a perfect example of the parasitic nature of the insurance industry as a whole. I implore the Court to simply look



towards their own policies and specifically the policies of State Farm to see if there are any warnings or notices given by their respective Uninsured Motorist Insurance Providers acknowledging their refusal to provide coverage for persons who are involved in accidents with persons subject to sovereign immunity. State Farm has taken a Miss. Code Ann. § 83-11-101(1), a statute intended to serve as the floor for Uninsured Motorist Coverage and utilized it to deny coverage to the very people in which they claim to serve. State Farm would have you believe "like a good neighbor State Farm is there." If State Farm is a good neighbor, then we would all be well served to find a good realtor.

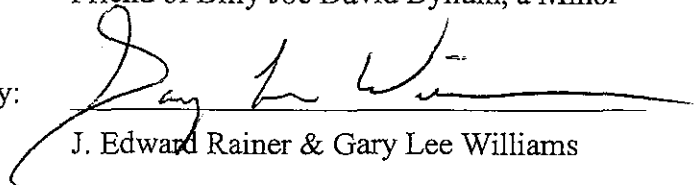
Therefore, Appellants pray this Court will enter its opinion and order finding that Mildred Rayner and Billy Joe David Bynum are legally entitled to recover against their Uninsured Motorist Provider stemming from an accident with a person who is entitled to immunity under Mississippi Code Section 11-46-9(1)(c) and that Uninsured Motorist Insurance Providers may not assert the defenses of the tortfeasor when the defense is sovereign immunity.

Appellants further pray for such general relief as this Court may allow.

DATED this the 25<sup>th</sup> day of August 2010

Mildred Elaine Thompson Rayner, Individually,  
and Billy Joe Bynum, as Natural Father and Next  
Friend of Billy Joe David Bynum, a Minor

By:



J. Edward Rainer & Gary Lee Williams

## CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has this the 25<sup>th</sup> day of August 2010 caused to be mailed, by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to:

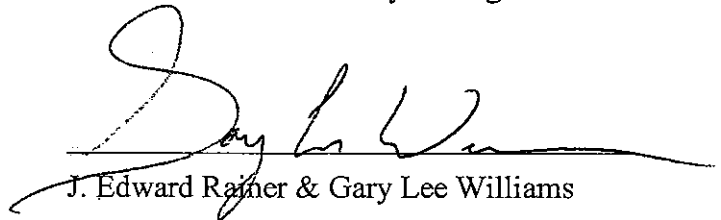
Honorable Samac Richardson  
*Circuit Court Judge, 20<sup>th</sup> Judicial District*  
P.O. Box 1885  
Brandon MS 39043

Hon. Phillip Gaines Esq.,  
Currie Johnson Griffing Gaines & Myers  
P.O. Box 750,  
Jackson MS 39205

The undersigned does hereby certify that he has this the 25<sup>th</sup> day of August 2010 hand delivered a true and correct copy of the above and foregoing Appellant's Brief to:

Hon. Kathy Gillis  
*Supreme Court Clerk for the State of Mississippi*  
Post Office Box 249  
Jackson MS 39205

DATED. This the 25<sup>th</sup> day of August 2010



J. Edward Rainer & Gary Lee Williams

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Westlaw

Miss. Code Ann. § 11-46-9

Page 1



We. St's Annotated Mississippi Code Currentness

Title 11. Civil Practice and Procedure

Chapter 46. Immunity of State and Political Subdivisions from Liability and Suit for Torts and Torts of Employees (Refs &amp; Annos)

→ § 11-46-9. Governmental entities and employees; exemption from liability

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

(a) Arising out of a legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature;

(b) Arising out of any act or omission of an employee of a governmental entity exercising ordinary care in reliance upon, or in the execution or performance of, or in the failure to execute or perform, a statute, ordinance or regulation, whether or not the statute, ordinance or regulation be valid;

(c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury;

(d) Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused;

(e) Arising out of an injury caused by adopting or failing to adopt a statute, ordinance or regulation;

(f) Which is limited or barred by the provisions of any other law;

(g) Arising out of the exercise of discretion in determining whether or not to seek or provide the resources necessary for the purchase of equipment, the construction or maintenance of facilities, the hiring of personnel and, in general, the provision of adequate governmental services;

(h) Arising out of the issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke any privilege, ticket, pass, permit, license, certificate, approval, order or similar authorization where the governmental entity or its employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked unless such issuance, denial, suspension or revocation, or failure or refusal thereof, is of a malicious or arbitrary and capricious nature;

- (i) Arising out of the assessment or collection of any tax or fee;
- (j) Arising out of the detention of any goods or merchandise by any law enforcement officer, unless such detention is of a malicious or arbitrary and capricious nature;
- (k) Arising out of the imposition or establishment of a quarantine, whether such quarantine relates to persons or property;
- (l) Of any claimant who is an employee of a governmental entity and whose injury is covered by the Workers' Compensation Law of this state by benefits furnished by the governmental entity by which he is employed;
- (m) Of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed;
- (n) Arising out of any work performed by a person convicted of a crime when the work is performed pursuant to any sentence or order of any court or pursuant to laws of the State of Mississippi authorizing or requiring such work;
- (o) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including, but not limited to, any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 USCS 715 (32 USCS 715), or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;
- (p) Arising out of a plan or design for construction or improvements to public property, including, but not limited to, public buildings, highways, roads, streets, bridges, levees, dikes, dams, impoundments, drainage channels, diversion channels, harbors, ports, wharfs or docks, where such plan or design has been approved in advance of the construction or improvement by the legislative body or governing authority of a governmental entity or by some other body or administrative agency, exercising discretion by authority to give such approval, and where such plan or design is in conformity with engineering or design standards in effect at the time of preparation of the plan or design;
- (q) Arising out of an injury caused solely by the effect of weather conditions on the use of streets and highways;
- (r) Arising out of the lack of adequate personnel or facilities at a state hospital or state corrections facility if reasonable use of available appropriations has been made to provide such personnel or facilities;
- (s) Arising out of loss, damage or destruction of property of a patient or inmate of a state institution;

(t) Arising out of any loss of benefits or compensation due under a program of public assistance or public welfare;

(u) Arising out of or resulting from riots, unlawful assemblies, unlawful public demonstrations, mob violence or civil disturbances;

(v) Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care;

(w) Arising out of the absence, condition, malfunction or removal by third parties of any sign, signal, warning device, illumination device, guardrail or median barrier, unless the absence, condition, malfunction or removal is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice;

(x) Arising out of the administration of corporal punishment or the taking of any action to maintain control and discipline of students, as defined in Section 37-11-57, by a teacher, assistant teacher, principal or assistant principal of a public school district in the state unless the teacher, assistant teacher, principal or assistant principal acted in bad faith or with malicious purpose or in a manner exhibiting a wanton and willful disregard of human rights or safety; or

(y) Arising out of the construction, maintenance or operation of any highway, bridge or roadway project entered into by the Mississippi Transportation Commission or other governmental entity and a company under the provisions of Section 1 or 2 of Senate Bill No. 2375, 2007 Regular Session, where the act or omission occurs during the term of any such contract.

(2) A governmental entity shall also not be liable for any claim where the governmental entity:

(a) Is inactive and dormant;

(b) Receives no revenue;

(c) Has no employees; and

(d) Owns no property.

(3) If a governmental entity exempt from liability by subsection (2) becomes active, receives income, hires em-

employees or acquires any property, such governmental entity shall no longer be exempt from liability as provided in subsection (2) and shall be subject to the provisions of this chapter.

CREDIT(S)

Laws 1984, Ch. 495, § 6; Laws 1985, Ch. 474, § 5; Laws 1987, Ch. 483, § 5; Laws 1993, Ch. 476, § 4; Laws 1994, Ch. 334, § 1; Laws 1995, Ch. 483, § 1; Laws 1996, Ch. 538, § 1; Laws 1997, Ch. 512, § 2, eff. July 1, 1997. Amended by Laws 2007, Ch. 582, § 21, eff. July 18, 2007.

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We. St's Annotated Mississippi Code Currentness

Title 83. Insurance

Chapter 11. Automobile Insurance

Article 3. Uninsured Motorist Coverage (Refs & Annos)

→ § 83-11-101. Mandatory provisions in automobile policies

(1) No automobile liability insurance policy or contract shall be issued or delivered after January 1, 1967, unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages for bodily injury or death from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than those set forth in the Mississippi Motor Vehicle Safety Responsibility Law, as amended, under provisions approved by the commissioner of insurance; however, at the option of the insured, the uninsured motorist limits may be increased to limits not to exceed those provided in the policy of bodily injury liability insurance of the insured or such lesser limits as the insured elects to carry over the minimum requirement set forth by this section. The coverage herein required shall not be applicable where any insured named in the policy shall reject the coverage in writing and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in any renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

(2) No automobile liability insurance policy or contract shall be issued or delivered after January 1, 1980, unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages for property damage from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than those set forth in the Mississippi Motor Vehicle Safety Responsibility Law, as amended, under provisions approved by the commissioner of insurance; however, at the option of the insured, the uninsured motorist limits may be increased to limits not to exceed those provided in the policy of property damage liability insurance of the insured or such lesser limits as the insured elects to carry over the minimum requirement set forth by this section. The coverage herein required shall not be applicable where any insured named in the policy shall reject the coverage in writing and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in any renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

The property damage provision may provide an exclusion for the first two hundred dollars (\$200.00) of such property damage; however, the uninsured motorist provision need not insure any liability for property damage, for which loss the policyholder has been compensated by insurance or otherwise.

(3) The insured may reject the property damage liability insurance coverage required by subsection (2) and retain the bodily injury liability insurance coverage required by subsection (1), but if the insured rejects the bodily injury liability coverage he may not retain the property damage liability coverage. No insured may have property

damage liability insurance coverage under this section unless he also has bodily injury liability insurance coverage under this section.

CREDIT(S)

Laws 1966, Ch. 524, § 1; Laws 1974, Ch. 393, § 1; Laws 1979, Ch. 429, § 2; Laws 1979, Ch. 432, § 1, eff. January 1, 1980.

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We. St's Annotated Mississippi Code Currentness

Title 83. Insurance

▢ Chapter 11. Automobile Insurance

▢ Article 3. Uninsured Motorist Coverage (Refs & Annos)

→ § 83-11-103. Definitions

As used in this article:

- (a) The term "bodily injury" shall include death resulting from such injury.
  
- (b) The term "insured" shall mean the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies, and a guest in such motor vehicle to which the policy applies, or the personal representative of any of the above. The definition of the term "insured" given in this section shall apply only to the uninsured motorist portion of the policy.
  
- (c) The term "uninsured motor vehicle" shall mean:
  - (i) A motor vehicle as to which there is no bodily injury liability insurance; or
  
  - (ii) A motor vehicle as to which there is such insurance in existence, but the insurance company writing the same has legally denied coverage thereunder or is unable, because of being insolvent at the time of or becoming insolvent during the twelve (12) months following the accident, to make payment with respect to the legal liability of its insured; or
  
  - (iii) An insured motor vehicle, when the liability insurer of such vehicle has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist coverage; or
  
  - (iv) A motor vehicle as to which there is no bond or deposit of cash or securities in lieu of such bodily injury and property damage liability insurance or other compliance with the state financial responsibility law, or where there is such bond or deposit of cash or securities, but such bond or deposit is less than the legal liability of the injuring party; or
  
  - (v) A motor vehicle of which the owner or operator is unknown; provided that in order for the insured to re-

cover under the endorsement where the owner or operator of any motor vehicle which causes bodily injury to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured; or

(vi) A motor vehicle owned or operated by a person protected by immunity under the Mississippi Tort Claims Act, Title 11, Chapter 46, Mississippi Code of 1972, if the insured has exhausted all administrative remedies under that chapter.

No vehicle shall be considered uninsured that is owned by the United States government and against which a claim may be made under the Federal Tort Claims Act, as amended.

#### CREDIT(S)

Laws 1966, Ch. 524, § 2; Laws 1979, Ch. 429, § 1, eff. January 1, 1980. Amended by Laws 2009, Ch. 451, § 1, eff. July 1, 2009.

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