IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CHARLIE HONEYCUTT — **APPELLANT**

V. — **CAUSE NO. 2010-CA-01470**

TOMMY M. COLEMAN,
ATLANTA CASUALTY COMPANIES,
ATLANTA CASUALTY COMPANY, AND
AMERICAN PREMIER INSURANCE COMPANY — **APPELLEES**

APPEAL FROM THE CIRCUIT COURT
OF LOWNDES COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

JOSEPH E. ROBERTS, JR. (MSB [redacted])
PITTMAN, GERMANY, ROBERTS &
WELSH, L.L.P.
POST OFFICE BOX 22985
JACKSON, MISSISSIPPI 39225-2985

COUNSEL FOR THE APPELLANT,
CHARLIE HONEYCUTT

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

1. Charlie Honeycutt, Plaintiff/Appellant

2. Joseph E. Roberts, Jr., Pittman, Germany, Roberts & Welsh, Attorneys for Plaintiff/Appellant

3. Thomas Y. Page, Esq.
   Jeffrey L. Carson, Esq.
   Attorneys for Defendants/ Appellees, Atlanta Casualty Companies, Atlanta Casualty Company, and American Premier Insurance Company

4. M. Jay Nichols, Esq.
   John W. Crowell, Esq.
   Attorneys for Defendant, Tommy M. Coleman

5. Honorable James T. Kitchens, Jr.
   Lowndes County Circuit Court Judge
   Columbus, Mississippi 39701

JOSEPH E. ROBERTS, JR.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. CASES

II. STATUTES

The Appellant, Charlie Honeycutt [Honeycutt], by and through his attorneys files this his Brief of Appellant as follows:

I. STATEMENT OF ISSUES

The Circuit Court erred in granting summary judgment finding that there was no uninsured motorist coverage available to Honeycutt.

The Circuit Court erred in granting summary judgment on behalf of Tommy Coleman finding the actions of Coleman in the motor vehicle accident were subject to the Mississippi Tort Claims Act.

II. STATEMENT OF THE CASE

A. COURSE OF PROCEEDINGS AND DISPOSITION OF THE COURT BELOW:

This cause of action arises from a motor vehicle accident which occurred on May 15, 1994 in Columbus, Lowndes County Mississippi when a vehicle in which Honeycutt was a passenger was struck by a vehicle being operated by Tommy Coleman [Coleman]. A Complaint was filed on April 16, 2001 against Coleman, Atlanta Casualty Companies, Atlanta Casualty Company and American Premier Insurance Company who were Honeycutt's uninsured motorist carriers [R8]. On July 6, 2001, Atlanta Casualty Companies, Atlanta Casualty Company and American Premier Insurance Company (hereinafter collectively referred to as "the

Insurance Company Defendants") filed their Answer and Affirmative Defenses. On August 15, 2001, Coleman, filed his Motion to Dismiss claiming that Honeycutt's claims were barred by the applicable statute of limitations and that Coleman was an improper party under *Miss. Code Ann. §11-46-7(2)* [R21]. Plaintiff filed his Response to the Motion to Dismiss on August 20, 2003 [R26]. In the Response to Motion to Dismiss, Honeycutt alleges,

> Even if it were to be determined that the Defendant was acting within the course and scope of [his duties as a highway patrolman] which is a factual issue, *Miss. Code Ann. §11-46-7(2)* provides that for the purposes of that chapter, an employee shall not be considered acting within the course and scope of his employment, if the employee's conduct constituted. . . a criminal offense. Therefore, even if the Defendant was acting within the course and scope of his employment of the State of Mississippi at the time of the automobile accident, such fact would not bar this action from proceeding against the Defendant in that the allegations are that the Defendant committed a violation of the traffic laws of the State of Mississippi and the allegations of the Complaint provide that the Defendant's actions evidence a reckless disregard of the safety and well being of the Plaintiff [R28].

Coleman filed his Reply to Plaintiff's Response to the Motion to Dismiss on August 21, 2003 [R33]. On October 15, 2003, Honeycutt took the depositions of Coleman [R44] and David Humphries [R56], who is another highway patrol officer. On February 9, 2005, Honeycutt filed his Supplemental Response to Defendant Tommy M. Coleman's Motion to Dismiss [R41]. On February 10,

2005, Coleman filed his Supplementation to Defendant Coleman's Motion to Dismiss [R68]. On March 16, 2005, the court entered its Order granting Summary Judgment[1] to Coleman on the grounds that Plaintiff's claims were barred by the one year statute of limitations set forth in *Miss. Code Ann. §11-46-11(3)* [R136].

On October 31, 2008, the Insurance Company Defendants filed their Motion for Summary Judgment alleging that Honeycutt's parents, who were the named insureds on the policies of insurance, had rejected uninsured motorist coverage. On December 2, 2008, Honeycutt filed his Response to the Itemization of Facts in Support of the Motion for Summary Judgment [R182] and filed his Response to the Motion for Summary Judgment [R185]. On May 6, 2010, Honeycutt submitted depositions in support of his Response [R207]. On May 25, 2010, Honeycutt filed his Memorandum Brief in Opposition to Motion for Summary Judgment [R247]. On May 7, 2010, the Insurance Company Defendants filed their Rebuttal Memorandum in support of Defendant's Motion for Summary Judgment [R 233].

On March 6, 2009, an Agreed Judgment of Dismissal as to Punitive Damages claims was entered [R203]. On August 24, 2010, the court entered its

---

[1]Coleman's Motion to Dismiss was converted by the Circuit Court to a Motion for Summary Judgment because the court considered evidence outside of the pleadings. [R136]

Order granting the Insurance Company Defendants' Summary Judgment [R273]. On September 8, 2010, Plaintiff filed a Notice of Appeal as to the Judgment of Dismissal as to all claims against Tommy M. Coleman and the Order sustaining the Motion for Summary Judgment for the Insurance Company Defendants and the Final Judgment of Dismissal with Prejudice entered in this cause on September 27, 2010 [R279].

B. FACTS

This cause of action arises as a result of a motor vehicle accident which occurred on May 15, 1994, wherein Honeycutt sustained serious and life threatening injuries. Honeycutt was a passenger in a vehicle being operated by Matthew Blaxton on Hwy. 45 in Columbus, Lowndes County, Mississippi. The vehicle in which Honeycutt was a passenger was struck by a vehicle operated by Coleman at the intersection of U. S. Hwy. 45 and Waverly Road in Lowndes County, Mississippi at 12:38 a.m. [R123]. At the time of the accident, Coleman was employed by the Mississippi Department of Public Safety as a Mississippi State trooper and was operating his highway patrol car.

The area where the accident occurred is a very congested area. Coleman was assigned to Clay County, Mississippi, but on the night of the accident was on his way home from a road block that had been conducted in Lowndes County.

Coleman was headed North on Hwy. 45, which is a through highway. The intersection of Hwy. 45 with Waverly Road is controlled by a flashing yellow light for traffic on Hwy. 45. A flashing yellow light means to use extreme caution crossing the intersection [R 93]. The posted maximum speed at the location of the accident is 35 mph. Coleman testified, and the accident records reveal, that he was going 35 mph at the time of the accident. Prior to the accident, Coleman did not see the vehicle operated by Matthew Blaxton [R92]. A diagram of the accident scene from the Mississippi Highway Patrol Reconstruction Report indicates that Blaxton's vehicle was struck in the right rear by Coleman's vehicle [R134].

The operator of the vehicle in which Plaintiff was a passenger was insured under a policy of automobile liability insurance written by State Farm Mutual Automobile Insurance Company, with liability limits of $25,000 per person and $50,000 per accident[2] [R202]. At the time of the motor vehicle accident, Honeycutt was a minor resident of the household of his parents, Barbara and Bernice (Sam) Honeycutt [R 185]. Honeycutt's parents owned three motor vehicles: a 1991 Chevrolet Geo Prism; a 1998 Ford Mustang; and, a 1988 Ford Aristar van.

---

[2]There were multiple individuals who were injured in the accident. Blaxton's liability insurance with State Farm was exhausted paying these claims [R195].

On or about September 15, 1993, Barbara Honeycutt applied for automobile liability insurance through Larry Phebas at the A-1 Insurance Company in Columbus, Mississippi. Atlanta Casualty Insurance Company [Atlanta Casualty] issued automobile insurance policy #03010110 effective for the six month period September 15, 1993 to March 15, 1994 [R159]. Although it has not been produced, it is alleged by Atlanta Casualty that the application for this policy of insurance included a written rejection of uninsured motorist coverage signed by Barbara Honeycutt. On February 10, 1994, Atlanta Casualty issued its renewal certificate for the above policy with an effective date of March 15, 1994, and an expiration date of September 15, 1994 [R160]. On March 21, 1994, Atlanta Casualty purportedly sent a cancellation notice of the above policy of insurance for non-payment of renewal premium by U. S. Mail to Barbara Honeycutt with an effective date of cancellation in the notice for 12:01 a.m., March 31, 1994 [R161].

On March 11, 1994, Honeycutt's father, Sam Honeycutt, made application to American Premier Insurance Company [American Premier] through the A-1 Agency for a policy of automobile liability insurance for the three motor vehicles referred to above [R178]. American Premium is affiliated with Atlanta Casualty. The application for the American Premier policy #05088064 contains a written rejection of uninsured motorist coverage signed by Sam Honeycutt [R178, 248].

At no time was the uninsured motorist coverage rejection on either policy explained to either Barbara or Sam Honeycutt, and neither Barbara nor Sam Honeycutt understood or appreciated the impact of any such rejection of uninsured motorist coverage [R248].

The insurance agent, Larry Phebas, originally testified that it was Barbara Honeycutt, not Sam Honeycutt who signed the application and the uninsured motorist rejection for the American Premier policy for her husband, Sam Honeycutt. However, when it was pointed out to the Insurance Defendants that the rejection had to be signed by the named insured, Mr. Phebas submitted an amended affidavit stating that it was Sam Honeycutt and not his wife, Barbara, who had signed the application and rejection. For purposes of this appeal, Honeycutt does not dispute the fact that the named insured, Bernice (Sam) Honeycutt, is the named insured in the American Premier Policy and signed the application and uninsured motorist rejection.

III. SUMMARY OF THE ARGUMENT

Miss. Code Ann. § 83-11-1 requires that every policy of automobile liability insurance written in Mississippi include uninsured motorist coverage. Contained in the statute is the exception to this requirement when the named insured has rejected uninsured motorist insurance in writing. It is the burden of the insurance

company to prove that such a written rejection exists **and** that the rejection/waiver was knowingly, understandably, and intelligently made.

In *Owens v. Mississippi Farm Bureau Casualty Insurance Company*, 910 So.2d 1065 (Miss. 2005), the Mississippi Supreme Court confirmed that no statutorily required waiver of uninsured motorist benefits can be effective unless the waiver was obtained from an insured who was reasonably knowledgeable and informed of the costs and benefits of uninsured motorist coverage prior to signing the waiver. *Id.* 1074 (¶ 34). The duty of an agent to explain uninsured motorist coverage prior to obtaining a valid written waiver was recently confirmed by the Court of Appeals in *Reid v. Mississippi Farm Bureau Casualty Insurance Company*, 2010 WL 5093655 (Miss.Ct.App. March 22, 2011). Through affidavits, the Honeycutts presented evidence that the Insurance Company Defendants did not explain uninsured motorist coverage, and that the Honeycutts never intended to reject uninsured motorist coverage. *Owens* and *Reid* clearly confirm the duty of an insurance agent to explain uninsured motorist coverage before the agent can obtain a valid waiver. The evidence created a genuine issue of material fact as to whether the Honeycutts' rejection of statutory coverage was valid.

Atlanta Casualty alleges that it forwarded Barbara Honeycutt by U.S. mail a cancellation notice for non-payment of premium on March 21, 1994, cancellation effective March 31, 1994. Miss. Code Ann. § 83-11-5 requires that insureds receive at least ten (10) days notice of cancellation, where cancellation is for non-payment of premium. The timeliness of the notice is to be determined by the date of receipt. Because the Honeycutts could not have received the cancellation notice from Atlanta Casualty ten (10) days prior to the cancellation date, the cancellation notice of Atlanta Casualty was ineffective.

The trial court granted summary judgment to Defendant Coleman based on the one year statute of limitations in the Mississippi Tort Claims Act (MTCA). The trial court applied the MTCA one year statute of limitations finding, as a matter of law, that Defendant Coleman was acting within the course and scope of his employment with the Mississippi Highway Patrol at the time of the subject accident. In his deposition, Coleman testified that he was not on duty at the time of the collision. He was headed home. There was a genuine issue of material fact which precluded the trial court from finding Coleman was acting within the course and scope of his employment at the time of subject accident.

IV. ARGUMENT

A. STANDARD OF REVIEW

A *de novo* standard of review is used to examine a lower court's grant or denial of summary judgment. *Bowie v. Montfort Jones Mem'l Hosp.*, 861 So. 2d 1037, 1040 (Miss. 2003). The proponent of a summary judgment motion bears the burden of showing that there are no genuine issues of material fact. *Id.* The Supreme Court or Court of Appeals must view all evidence in the light most favorable to the non-moving party. *Id.* at 1041.

Summary judgment is proper only if, "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact." *M.R.C.P. 56(c).* For summary judgment purposes, a fact is "material" if it tends to resolve any of the issues properly raised by the parties. *Glinsey v. Newson*, 911 So. 2d 661, 663 (Miss. App. 2005) (citing *Webb v. Jackson*, 583 So. 2d 946, 949 (Miss. 1991)). When considering a Motion for Summary Judgment, a trial court must view the sources listed above in the light most favorable to the non-moving party. *Id.* (citing *Brown v. Credit Ctr., Inc.*, 444 So. 2d 358, 362 (Miss. 1983)). However, "[i]ssues of fact sufficient to require denial of a Motion for Summary Judgment obviously are present where one party swears to one version of the matter in issue and another

says the opposite." *Titus v. Williams*, 844 So. 2d 459, 464 (Miss. 2003). Also, the moving party has the burden of demonstrating that no genuine issue of material fact exists. *Id.* Furthermore, a Summary Judgment Motion should be denied unless a court finds beyond a reasonable doubt, that the plaintiff would be unable to prove any facts to support his claim. *Rush v. Casino Magic Corp.*, 744 So. 2d 761 (Miss. 1999).

B. ISSUE I

THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT FINDING THAT THERE WAS NO UNINSURED MOTORIST COVERAGE AVAILABLE TO HONEYCUTT.

On February 10, 1994, Atlanta Casualty issued a six month automobile liability insurance policy renewal certificate on policy #03010110 to Barbara Honeycutt with an expiration date of September 15, 1994. The original application for this insurance purportedly contains a rejection of uninsured motorist coverage. According to Atlanta Casualty, the premium was not paid by Barbara Honeycutt, and therefore, on March 21, 1994, Atlanta Casualty alleges that it sent by U. S. Mail a cancellation notice to Barbara Honeycutt on this policy of insurance for non-payment of premium with an effective date of cancellation stated in the notice of March 31, 1994 [R156-167].

On March 11, 1994, Sam Honeycutt made application with American Premier through Larry Phebas of the American Insurance Company and for automobile liability insurance coverage. American Premier is a company affiliated with Atlanta Casualty. The application for this policy of insurance contained a written rejection of uninsured motorist insurance coverage signed by Sam Honeycutt who was the named insured. At the time the above two applications for insurance were taken, uninsured motorist coverage rejection was not explained to either Sam or Barbara Honeycutt. Even if the rejection was explained to them, they did not understand or appreciate the impact of such a rejection [R189-192].

1. By law, insurance companies owe a duty to obtain a knowing and intelligent waiver of uninsured motorist coverage

Pursuant to *Miss. Code Ann. §83-11-101*, every policy of automobile liability insurance written in Mississippi includes uninsured motorist coverage. *Miss. Code Ann.§83-11-101(2)* reads:

> 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.

Pursuant to *§83-11-101*, the exception to the requirement that each policy of automobile liability insurance includes uninsured motorist coverage is when the named insured has rejected uninsured motorist insurance in writing. It is the Insurance Company Defendants' burden to prove that such a written rejection exists and that it was knowingly, understandably and intelligently made. Typically, the rejection would be contained in the application for insurance or be contained in another document signed contemporaneously with the application being taken out.

In their Affidavits, the Honeycutts make it clear that they did not understand or appreciate the consequences of the rejection and it was not explained to them by their agent, Larry Phebas. Sam Honeycutt asked for and was told by the agent that they were purchasing "full coverage" and that he "assumed full coverage covered everything" [R214]. Such purported rejections are not valid.

In order for a rejection of uninsured motorist coverage to be effective, such rejection has to be knowingly and intelligently made. *Owens v. Mississippi Farm Bureau Casualty Insurance Company*, 910 So,. 2d 1065, 1074 (Miss. 2005). Both Barbara and Sam Honeycutt have testified that the importance of any such rejection was not understood or known by them. In granting Summary Judgment to the Insurance Company Defendants, the trial court held that "the insurance agent had no legal duty to fully explain to the Honeycutts their right to purchase UM coverage." [R276]. Although in conflict with Mississippi law, this is the position of the Insurance Company Defendants.

Atlanta Casualty and American Premier take the position that neither the policy written by Atlanta Casualty nor the American Premier policy provides uninsured motorist coverage to Honeycutt. Both claim, and the Court accepted, that they did not owe a duty to the Honeycutts to fully explain uninsured motorist coverage. Both claim that since the insurance applications and/or accompanying documents contain uninsured motorist coverage rejections signed by the named insured, that fact alone is sufficient for the Honeycutts to have waived their statutory right to have uninsured motorist coverage included in their policies. This claim of the Insurance Company Defendants and ruling of the trial court is in conflict with *Owens* and is in conflict with the most recent pronouncement by the

Court of Appeals in *Reid v. Mississippi Farm Bureau Casualty Insurance Co.*, 2010 WL 5093655 (Miss.Ct.App. March 22, 2011).

By way of history, in *Aetna Casualty and Surety Company v. Berry*, 669 So.2d 56 (Miss. 1996), the Mississippi Supreme Court held that an insurance agent had an absolute "statutory" duty to explain the costs, benefits, and risks of purchasing uninsured motorist coverage not less than the statutory minimum "nor in an amount more than the [liability] limits of a particular policy in question." *Id.* at 76. Misreading *Berry*, trial courts began to find that, in the absence of a written waiver, insurance companies were strictly liable to provide uninsured motorist coverage up to the amount of liability coverage. This "misreading" of *Berry* was dismissed by this Court in *United States Fidelity and Guaranty v. Estate of Francis*, 825 So.2d 38 (Miss. 2002). In *Estate of Francis*, this Court ruled that such an interpretation of *Berry* would amount to "negligence *per se.*" *Id.* at 51, (¶ 41). This Court rejected this misinterpretation of *Berry*, finding that insureds must prove the remaining elements of causation, i.e., that the failure to explain was the proximate cause of the insured not purchasing/raising his uninsured limits up to the limits of liability coverage. *Estate of Francis*, 825 So.2d at 51, (¶ 41).[3] *Berry*

[3] In *Estate of Francis*, this Court found that the Chancery Court properly held that the plaintiff had presented a *prima facie* case against the insurance agent for failure to inform the plaintiff about his right to purchase additional UM coverage above the statutory minimum.

defined the legal duty owed by an agent. *Estate of Francis* defined the cause of action, rejecting a strict pro-insured "negligence *per se*" rule.

Next came *Owens v. Mississippi Farm Bureau Casualty Insurance Company*, 910 So. 2d 1065 (Miss. 2005). In *Owens*, the Mississippi Supreme Court "reaffirm[ed] the holding in *Berry*" that the statutory required waiver of uninsured motorist benefits is not effective unless the insured was informed of the costs and benefits of such coverage prior to signing the waiver. *Owens*, 910 So. 2d at 1074, (¶ 34). In *Owens*, this Court rejected and overruled the implication in *Berry* that an insurance agent has the "absolute, court created duty to explain an insured's right to purchase additional UM coverage, over and above the amount of coverage required by statute." *Owens*, 910 So.2d at 1074, (¶ 35). "The simple principle announced here is that no statutorily required waiver of UM benefits is effective unless the waiver was obtained from an insured who was reasonably knowledgeable and informed of the cost and benefits of such UM coverage prior to signing the waiver. To this extent, we affirm the holding in *Berry*." *Id.* Under *Owens*, any waiver of uninsured motorist coverage must be knowing and intelligent.

Estate of Francis, 825 So.2d at 51, (¶ 42).

Relying on *Owens*, the trial court incorrectly granted summary judgment to the Insurance Company Defendants finding "the insurance agent had no legal duty to fully explain to the Honeycutts their right to purchase UM coverage" [R276]. If *Owens* stood for the proposition that "no legal duty was owed," then it would not have been necessary for this Court to reach its decision based on a review of the evidence submitted to the jury. If no legal duty was owed, this Court would have found in favor of Farm Bureau as a matter of law by rendering its decision in *Owens* that the case **never should have been submitted to the jury.** Instead, the *Owens* Court spent five additional paragraphs reviewing the evidence before opining that "the jury verdict in favor of Farm Bureau was supported by sufficient evidence, and must be upheld." *Owens*, 910 So.2d at 175, (¶ 40). The plaintiff in *Owens* presented a *prima facie* case for negligence that made it to the jury with the Court's recognition of a legal duty owed by the agent to explain uninsured motorist coverage.[4]

The Court of Appeals recently had the opportunity to review *Owens* in *Reid v. Mississippi Farm Bureau Casualty Insurance Co.*, 2010 WL 5093655 (Miss. Ct. App. March 22, 2011). In *Reid*, the Court of Appeals specifically found that

---

[4] *See, e.g., Donald v. AMOCO Production Co.*, 736 So. 2d 161, 174, ¶ 43 (Miss. 1999) (whether a duty exists in a negligence case is a question of law to be determined by the court before submitting the case to the jury).

"when an insured waives UM coverage altogether, there is a question as to whether that waiver was knowing and intelligent." *Reid*, 2010 WL 5093655, ¶ 9, *citing, Owens*, 910 So.2d at 1074, (¶ 34). "In answering that question, **the Court will often look to whether the agent explained UM coverage to the insured.**" *Id.* In situations where there is a written waiver of UM coverage, the Mississippi Court of Appeals has specifically, unequivocally, and expressly found that insurance agents owe a duty to "explain UM coverage to the insured."[5] The trial court committed reversible error when it found, as a matter of law, that the Insurance Company Defendants had no legal duty, in the presence of a written waiver, to fully explain uninsured motorist coverage to the Honeycutts.

Pursuant to the pronouncements by the Courts in *Owens* and *Reid*, a UM rejection is only effective if the UM rejection was obtained from a "fully informed insured" and was "knowing and intelligent" from an insured who was "reasonably knowledgeable and informed of the cost and benefits of such UM coverage prior to signing the waiver." The Honeycutts have testified that no such "fully

---

[5] The ultimate issue in *Reid* was whether an insurance agent had a duty to explain uninsured motorist coverage in excess of the statutory minimum. The Court of Appeals set up to two distinct scenarios. Where there was a written waiver of coverage, insurance agents owed a duty to explain uninsured motorist coverage to the insured. However, where there was no written waiver of uninsured motorist coverage, there would be no question as to whether or not the waiver was knowing and intelligent, and, therefore, no duty would be owed. *Reid*, 210 WL 5093655, ¶ 10.

informed", "knowing and intelligent" rejection of UM coverage was made by them with full knowledge of the costs and benefits of such coverage. Both Sam and Barbara Honeycutt in paragraph 5 of their Affidavits state:

> Although I do not deny that my signature appears on the insurance application which is attached to the Amended and Corrected Affidavit of Larry Phebas, at the time our insurance was taken out, it was not explained to me, so that I understood and appreciated it, and I never intended to reject uninsured motorist coverage on a policy of insurance which we had with Atlanta Casualty Company or American Premier Insurance Company [R189-192].

Atlanta Casualty and American Premier will claim since the Honeycutts had the opportunity to read and review their insurance application, that they are bound by its terms, regardless of whether they read or understood what was meant by the uninsured motorist rejection.

The cases cited by the Insurance Company Defendants in support of their Motion for Summary Judgment do not address the rejection of statutorily mandated uninsured motorist coverage in those policies. (*Booker v. American General Life & Accident Ins. Co.*, 257 F. Supp. 2d 850 (S.D. Miss. 2003) life insurance policy. *Carter v. Union Security Live Ins. Co.*, 148 F. Supp. 2d 734 (S.D. Miss. 2001) credit life insurance. *Howard v. City Financial, Inc.*, 195 F. Supp. 2d 811 (S. D. Miss. 2002) credit insurance. *Walden v. American General Life*, 244 F. Supp. 2d 689 (S. D. Miss. 2003) life insurance. *Gorman v.*

Southeastern Fidelity Ins. Co., 621 F. Supp. 33 (S. D. Miss. 1985) expiration of an automobile liability policy with no claim with regard to uninsured motorist coverage. *Langston v. Bigelow*, 820 So. 2d 752 (Miss. App. 2002) commercial property damage claim. *Agnew v. Washington Mutual Finance Group, LLC*, 244 F. Supp. 2d 672 (N.D. Miss. 2003), credit life insurance. *Brainwater v. Lamar Life Ins. Co.*, 207 F. Supp. 2d 561 (S. D. Miss. 2002) life insurance. *Iverson v. Iverson*, 762 So. 2d 329 (Miss. 2000) marital property settlement agreement. *Cherry v. Anthony Gibbs, Sage*, 501 So. 2d 416 (Miss. 1987) tractor trailer property damage policy.

None of the cases cited by the Insurance Company Defendants in support of their position address the issue of statutorily mandated insurance coverages, but instead simply addresses optional contractual coverage. The principle announced in *Owens*, confirming an agent's duty to obtain a knowledgeable waiver of UM coverage when statutorily mandated coverage is involved, is the principle that distinguishes the cases cited by the Insurance Company Defendants from the facts in this case. Clearly, *Owens* and *Reid* require that in order for a rejection of statutorily mandated coverage to be effective, a knowing and intelligent waiver of the statutorily mandated coverage must exist. The named insureds' deposition

testimony and affidavits prove that there was not a knowledgeable or intelligent rejection.

It is anticipated that the Insurance Companies Defendants will claim that the holding in *Owens* and *Reid* speak simply to an agent's duty to obtain such an intelligent and knowing waiver not to the duty of the insurance company. There are two reasons why this position is incorrect. First, the Court in *Owens* speaks in terms of the rejection or waiver not being effective and that it can only be obtained from a fully informed insured. Based upon that language from *Owens,* no such valid rejection or waiver exists in this case. Secondly, as the Court stated in *Berry*, "it must be noted that normally the liability of an insurance agent/agency would be imputed to the company that issued the insurance policy." *Id.* 77.

Owens and *Reid* clearly confirm the duty of an insurance agent to explain uninsured motorist coverage before the agent can obtain a valid statutory knowing and intelligent waiver. The evidence in this case creates a genuine issue of material fact as to whether there was an effective rejection of the statutory mandated uninsured motorist coverage by the Honeycutts. The trial court's grant of summary judgment to the Insurance Company Defendants must be reversed.

2. Whether the Cancellation Notice of the Atlanta Casualty Policy was Effective

Atlanta Casualty alleges that it forwarded Barbara Honeycutt by U.S. Mail, a cancellation notice for non-payment of premium on March 21, 1994, with cancellation effective 12:01 a.m., March 31, 1994 [R61]. The statute which allows for cancellation of automobile liability insurance for non-payment of premium is *Miss. Code Ann. §83-11-5.* This section states, "**no notice of cancellation of a policy** to which *§83-11-3* applies, **shall be effective** unless mailed or delivered by the insurer to the named insured at least thirty (30) days prior to the effective date of cancellation; provided, however, that where cancellation is **for non-payment of premium at least ten (10) days' notice of cancellation** accompanied by the reason, therefore, **shall be given**." [Emphasis added.]

Pursuant to the above statute, the only means by which cancellation of a policy of automobile liability insurance can be effective for non-payment of premium is for the insurance company to provide the policyholder a minimum of ten (10) days written notice prior to the cancellation date. Failure to provide the statutory notice renders the cancellation notice ineffective. The timeliness of the notice is to be determined by the date the insured is in receipt of the notice, rather than date of its mailing. *Black v. Fidelity Guaranty Ins. Underwriters, Inc.*, 582 F.

2d 984 (5th Cir. 1978). Applying *§83-11-5* to the facts of this case, clearly, a notice that was purportedly mailed on March 21st with an effective cancellation date of March 31st would not be effective pursuant to *§83-11-5* in that less than ten days notice of cancellation would have been given to the insured.

Atlanta Casualty advances the notion that their failure to follow the statute and provide ten days notice of cancellation, simply extends the date when the cancellation date would be effective to ten days after the receipt of the cancellation notice by the insured, and therefore, the automobile liability policy listing Barbara Honeycutt as the named insured was cancelled no later than April 1, 1994. The weakness in Atlanta Casualty's argument; however, is that *§83-11-5* does not state that the cancellation will be "effective" ten days after notice of cancellation is given. Instead, the statute reads, "No notice of cancellation of a policy. . . shall be effective unless mailed or delivered by the insurer to the named insured. . . at least ten (10) days' notice of cancellation. . . shall be given." Therefore, the focus in the statute is not on <u>when</u> the cancellation will be effective, but is instead <u>whether</u> the notice of cancellation will have any effect.

There is no Mississippi law directly on the issue of whether a defective cancellation notice is effective; however, Atlanta Casualty directed the Circuit Court to Louisiana law in support of its proposition that if the cancellation was not

timely made pursuant to the statute, that would simply mean that the cancellation was effective ten (10) days after the receipt of the notice by the insured. A reading of this case reveals that although this issue is mentioned in the case, the court in Louisiana was addressing, a contractual provision in a marine excess policy and not a mandatory statutory provision as we have in this case. *Lowe v. O'Mara*, 482 F. 2d 1373 (5th Cir. 1973)

This Court routinely views statutorily mandated provisions differently from contractual provisions. In *Federated Mutual Insurance Company v. McNeal*, 943 So. 2d 658 (Miss. 2006), this Court considered whether the "made whole" doctrine announced in *Hare v. State*, 733 So. 2d 277 (Miss. 1999) was applicable to cases where there was a Workers Compensation subrogation claim. In determining that the "made whole" doctrine was not applicable to the Workers Compensation statutory right of subrogation, although it was applicable to contractual subrogation rights, the Court stated:

> [Workers compensation insurers] subrogation rights do not spring from the contractual agreement as in *Hare*, but rather are conferred by §71-3-71. As the Court of Appeals stated in *Mississippi Food & Fuel Workers Compensation Trust v. Tackett*, 778 So. 2d 136, 143 (Miss. Ct. App. 2000), the workers compensation insurers right of reimbursement, "exists by virtue of statute and must rise or fall strictly as a matter of statutory interpretation." In reversing and rendering a chancery court's order denying a workers compensation insurer its right of reimbursement, the Court of Appeals noted, "[a] chancellor, despite his broad equitable powers, is not free to disregard

> the clear guidance of a pertinent statute simply because he concludes that it would be unfair on the particular facts of the case to apply the statute according to its terms. *Id.*

McNeal at 661, ¶13

Much as the Court views statutory subrogation rights differently from non-statutory subrogation rights, the Court should also view statutory notice provisions differently from contractual ones.

When interpreting *§83-11-5,* the Court must also keep in mind the penal nature of the forfeiture provisions in this cancellation statute. The maxim, "Equity abhors a forfeiture is recognized in Mississippi jurisprudence." *Columbus Hotel Co. v. Pierce*, 628 So. 2d 605 (Miss. 1993) As the Court is aware, Mississippi jurisprudence does not favor penal statutes. In *Quick Shops of Mississippi, Inc. v. Bruce,* 232 So. 2d 351(Miss. 1970), the Mississippi Supreme Court held that it is a fundamental principle of statutory construction that statutes penal in nature must be strictly construed. In *Entrician v. King* 289, So. 2d 913, 914 (Miss. 1974), the Mississippi Supreme Court said that since penalties are not favored in the law, no penalty will be imposed unless it shall be clearly provided for, and statutes shall be strictly construed against the imposition of penalty. *Commercial National Bank v. Fleetwood Homes of Mississippi, Inc.*, 398 So. 2d 659 (Miss. 1981) Under either a strict or reasonably construction of *Miss. Code Ann. §83-11-5*, the notice purportedly given by Atlanta Casualty to Barbara Honeycutt was not "effective" in

that less than ten days notice was given between the receipt date of the notice and the cancellation date contained in the notice.

Even if the Court were to determine that cancellation is effective within ten days of receipt of the notice by the insured, it remains Atlanta Casualty's burden of proving the date of receipt of that notice. The case of *Branch v. State Farm Fire and Casualty Company*, 759 So. 2d 430 (Miss. 2000) discusses this issue. In *Branch,* unlike in the present case, not only did the insurance company offer as proof of receipt of the cancellation notice a certificate of mailing, but a certificate of mailing that was stamped by the post office. The Court in *Branch* found that this proof created a rebuttal of presumption of receipt of the notice. *Id.* 433 In the present case, there is no stamp from the post office which authenticates the mailing. The proof of receipt that the Insurance Defendant Companies offer in this case as proof of mailing is a document titled "Certificate of Mailing for 03/21/04 renewals." At the bottom of that document there is an unsworn certificate signed by "Sheila K. Young" that "certifies that all cancellation notices on this page were prepared for mailing" [R193]. There was no proof offered as to when and/or if the cancellation notice was actually mailed or the means of delivery.

Additionally, the notices of cancellation of non-renewal which are attached to the deposition of Sam Honeycutt and the Affidavit of Larry Phebas are copies of the cancellation notices that were purportedly sent to the lien holder and Atlanta Casualty's internal copy as evidenced by the words "lien holder" and "company" appearing on the center bottom of the cancellation notices [R161-162]. Contrast those notices with the notice of cancellation or non-renewal purportedly sent to Mr. Honeycutt on October 19, 1998, with the word "insured" at the bottom of the cancellation notice which is attached as Exhibit 9 to the deposition of Sam Honeycutt. Atlanta Casualty did not offer in support of the Motion for Summary Judgment the copy of the notice stamped with "insured" which would have been allegedly sent to Barbara Honeycutt on March 21, 1994.

Finally, Sam Honeycutt testified in his deposition that he had not received any cancellation notices with regard to the Atlanta Casualty policy of insurance.

Q: Do you have any recollection, Mr. Honeycutt, about the policy with - - ? I think the first one was with Atlanta Casualty Company, whether it was cancelled for non-payment of premiums?
A. No, sir. If it was, it would have been reinstated if a check missed it in the mail. But, I do not know anything about anything being cancelled out or anything.
Q: Who paid your insurance premiums?
A. They would send me a bill, and I would send a check to Atlanta. . .
Q: And, you did that rather than your wife doing it?
A. I always did it. I wrote a check and sent it in.

Q: You always pay the bills.
A. Yes, sir [R215].

For the above reasons, Atlanta Casualty has not met its burden of proof that effective cancellation of the policy had occurred. Charlie Honeycutt is therefore entitled to all of the coverages that are contained in the Atlanta Casualty policy of insurance, including the uninsured motorist coverage.

C. ISSUE II

THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT ON BEHALF OF TOMMY COLEMAN, FINDING THE ACTIONS OF COLEMAN IN THE MOTOR VEHICLE ACCIDENT WERE SUBJECT TO THE MISSISSIPPI TORT CLAIMS ACT.

The Court entered its Order granting Summary Judgment in favor of Coleman finding, "at all relevant time, Defendant Coleman was acting within his course and scope of employment with the Mississippi Highway Patrol and that the Plaintiff's claims against Coleman are therefore barred by the one (1) year statute of limitations set forth in *Miss. Code Ann. §11-46-11(3)*. Accordingly, this Court finds Defendant Coleman's Motion for Summary Judgment well taken, and is of the opinion that same should be and is hereby granted" [R136].

Since the allegations in this case were not brought under the provisions of the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. §11-46-1* et seq, the trial court erred in ruling that Honeycutt's claims were barred by the one year

limitation period in *Miss. Code Ann. §11-46-11(3). Miss. Code Ann. §11-46-11(3)* provides that, "all actions brought **under the provisions of this chapter** [emphasis added] shall be commenced in one (1) year." In that Coleman failed to prove that this action was brought under the MTCA, the one (1) year limitation in *§11-46-11(3)* is not applicable.

Sovereign immunity in the State of Mississippi was reaffirmed through legislative action in *Miss. Code Ann. §11-46-3.* In that section it provides that the State of Mississippi, "shall not be liable, and are, always have been and shall continue to be immune from suit at law or in equity on account of any wrongful or tortious act or omission." *Miss. Code Ann. §11-46-5* provides for the waiver of that immunity for suits against the State arising out of " . . . the torts of their employees while acting within the course and scope of their employment."

Miss. Code Ann. §11-46-5(2) provides specifically for the vicarious liability of a governmental entity for its employee acting within the course and scope of that employment and provides:

> For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense other than traffic violations.

Miss. Code Ann. §11-46-7 addresses the issues of the exclusiveness of the remedy under the MTCA and whether the employee as an individual may be sued. It provides:

> An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties. For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense.

Therefore, pursuant to *§11-46-7(2)*, if Coleman was committing a criminal offense at the time of the accident involving Honeycutt, then he would not be considered as acting under the course and scope of his employment as a state trooper and he would not be protected by the immunity provided for in *§11-46-3*.

At the time of the accident which is the subject of this litigation, Coleman was operating his vehicle in a congested area at 35 mph which is the maximum speed limit. As he approached the intersection at Hwy. 45 and Waverly Road, he neither slowed his vehicle nor reacted to the flashing yellow light which warned of the need to use extreme caution. *Miss. Code Ann. §63-3-505* reads:

> The driver or operator of any motor vehicle must decrease speed when approaching and crossing an intersection, when approaching

> and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic. All trucks, or truck-trailer combinations and passenger buses shall be required to reduce speed to forty-five miles per hour during inclement weather when visibility is bad.

It is clear from the testimony in this case that Coleman at the time of the accident failed to decrease his speed when approaching the intersection of Hwy. 45 and Waverly Road, as is required by Miss. Code Ann.*§63-3-505.* As a result, he was guilty of criminal activity at the time of the accident. *Greyhound Lines v. Sutton,* 765 So. 2d 1269 (Miss. 2000) In that Coleman was guilty of a criminal offense at the time of the accident, §11-46-7(2) would allow a direct action to be filed against him without being brought under the provisions of the MTCA.

The sole case argued by Coleman to the trial court in support of his Motion for Summary Judgment is the case of *Leslie v. City of Biloxi*, 758 So. 2d 430 (Miss. 2000). The determinative basis for the Court's ruling in *Leslie* is inapplicable to the issue before the Court. In *Leslie* the Plaintiff was a Harrison County Deputy Sheriff who was injured in a motor cycle/automobile accident while leading a funeral procession pursuant to his official duties. The other person involved in the accident was a City of Biloxi police officer who was returning home after testifying in municipal court. As a result of this accident, the Plaintiff received Workers Compensation benefits. The Court in *Leslie* found that the

Plaintiff's claims against the governmental entity and its employee were barred pursuant to *Miss. Code Ann. §11-46-9(1)(l)* which provides governmental entities immunity "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. . . *Leslie* at 432(¶6). While the Court in *Leslie* did make a finding that the City of Biloxi police officer was acting within the course and scope of his employment as a patrol officer at the time of the accident, the basis for the Court's finding of immunity was not that the law enforcement officer was acting within the course and scope of his employment, but that the Plaintiff had received Workers Compensation benefits from the governmental entity which employs him and therefore his claim was statutorily barred under the Workers Compensation provision set out in *§11-46-9(1)(l)*.

If the reading of *Leslie* which is urged by Coleman were to be followed, then any time a state trooper is in his car, his negligent acts would be subject to the MTCA regardless of what he is doing in the car. Under that theory, Coleman would never have any liability for any accident in which he was involved, because

he is always on call as a Mississippi State Trooper. Coleman's deposition testimony is as follows:

Q: But if you're not in the car, you're not on duty?
A: If something happened in front of you, being a law enforcement person, you're going to take responsibility and try to help whatever is going on but I'm saying if something would have happened past 1:00 and I was still in that car, 10-8, I'm still on duty.
Q: But your intention at this time was to go home? You were on your way home?
A: I was patrolling home, still patrolling my way home.
Q: Well, you're always patrolling in a way, right? I mean, like you said, as a law enforcement officer, you see something happening, you're going to be a trooper?
A: Right.
Q: So your intention was to go home?
A: I was patrolling home, right.
Q: Well, I understand - - -
A: My intention was to go home.
Q: Right. You may have been patrolling on the way home - - -
A: Right.
Q: - - but is that any different than you are all the time?
A: No. . . .
Mr. Nichols: Joe, on that last question, are you talking about all the time when he's in the car:
The Witness: That's what I'm saying.
Mr. Roberts: I'm talking about all the time he had - - - Well, I guess the record will speak for itself but if you want to clarify that, you're welcome to do it, or Jay, if you want to clarify that - - -
Mr. Nichols: That's the way I understood it, was that you meant that's no different than all the time when he's in the car. Is that what you mean"
The Witness: When I'm in the car, I'm working [R50].

Even if it were to be determined that he was acting within the course and scope of those duties, which is a factual issue, *Miss. Code Ann. §11-46-7(2)* provides that, "for the purposes of that chapter an employee shall not be considered as acting within the course and scope of his employment. . . if the employee's conduct constituted. . . any criminal offense. Therefore, even if Coleman was acting within the course and scope of his employment with the State of Mississippi at the time of the automobile accident, such fact would not allow the claim against Coleman to be prosecuted under the MTCA since the allegations in this action are that Coleman committed a violation of the traffic laws of the State of Mississippi which pursuant to §11-46-7(2) would require the action to be prosecuted against him outside of the MTCA.

Honeycutt recognizes the case of *Jackson v. Hodge*, 911 So. 2d 625 (Miss. Ct. App. 2005) wherein the Court of Appeals addressed the issue of whether a traffic violation constituted "any criminal offense" pursuant to *Miss. Code Ann. §11-46-7(2).* However, the above case does not direct itself to the argument made by Honeycutt above, that *§11-46-5* concerns the issue of whether the State has vicarious liability for its employee while *Miss. Code Ann. §11-46-7(2)* concerns whether the employee can be joined in an action directly. Unlike the *Jackson* case, in this case, the issue is whether Coleman could be named individually in the

lawsuit, not whether the State was vicariously responsible for his actions, as the issue was in *Jackson*.

The other issue that must be examined in determining the question of whether Coleman is protected by the MTCA is whether he was acting in furtherance of his employer's business at the time he was alleged to have committed negligent acts and violated the traffic laws of the State of Mississippi.

In the case of *Commercial Bank v. Hearn*, 923 So. 2d 202 (Miss. 2006), Commercial Bank was sued as a result of a motor vehicle accident which occurred when one of its employees was involved in a motor vehicle accident while delivering a charity pledge package to local businesses. The accident occurred at a time when the employee was expected to remain at Commercial Bank; however, it appeared that the charity pledge that he was delivering was not related to Commercial Bank's business. In determining that Commercial Bank was not responsible for the actions of its employee in the accident, the Court determined that an "indirect benefit to the employer. . . is not the appropriate test for *respondeat superior*."

The Court in *Commercial Bank* went on to say:

> This Court's recent decision in *Gulledge v. Shaw*, 880 So. 2d 288, 295 (Miss. 2004), more accurately addressed the law regarding the scope of an employee's employment:

> The inquiry is not whether the act in question, in any case, was done, so far as time is concerned, while the servant was engaged in the master's business, nor as to mode or manner of doing it . . . but whether, from the *nature of the act itself* as actually done, it was *an act* done in the master's business, or wholly disconnected therefrom by the servant, not as a servant, but as an individual on his own account. *Holliday v. Pizza Inn, Inc.* 659 So. 2d 860, 864 (Miss. 1995) (quoting *Canton Cotton Warehouse Co. v. Pool*, 78 Miss. 147, 28 So. 823 (1900) (emphasis added)). Moreover, in determining whether *a particular act* is committed by a servant within the scope of his employment, the decisive questions is not whether the servant was acting in accordance with the instructions of the master, but, was he at the time *doing any act* in furtherance of his masters' business? If a servant, having completed his duty to his master, then proceeds to prosecute some private purpose of his own, the master is not liable; but if the servant, while engaged about his master's business, merely deviates from the direct line of duty to accomplish some personal end, the master's responsibility may be suspended, but it is re-established when the servant resumes his duty. *Holliday*, 659 So. 2d at 864-65 (quoting *Barmore v. Vicksburg, S. & P. Ry.*, 85 Miss. 426, 38 So. 210 (1905) (emphasis added)).

Commercial Bank at page 207, ¶13.

As in *Commercial Bank,* the issue in this case is not whether the employee was acting in accordance with the instructions of his employer, but whether he was doing any act in furtherance of his employer's business. In the present case, Honeycutt submits that Coleman heading home from a roadblock was not

committing an act in furtherance of the business of the Mississippi Department of Public Safety.

Because Coleman was committing a criminal act and was not acting in furtherance of his employer's business at the time of the accident, the allegations against him did not have to be prosecuted pursuant to the MTCA. The trial court therefore erred in finding that the claim had to be filed within the one year statute of limitations set out in the MTCA.

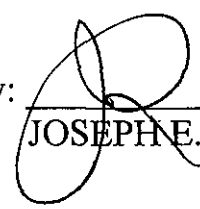
V. CONCLUSION

Based upon the forgoing, the trial court's granting of Summary Judgment to Tommy Coleman and the granting of Summary Judgment to Atlanta Casualty and American Premiere Insurance Companies was error and should be reversed and the case remanded for trial.

DATED, this the 10th day of May, 2011.

Respectfully,

CHARLIE HONEYCUTT

By: 

JOSEPH E. ROBERTS, JR

JOSEPH E. ROBERTS, JR., MSB#[redacted]
PITTMAN, GERMANY, ROBERTS,
& WELSH. L.L.P.
410 SOUTH PRESIDENT STREET
POST OFFICE BOX 22985-2985
JACKSON, MS 39225-2985
PH: (601)948-6200
FAX: (601)948-6187

VI. CERTIFICATE OF SERVICE

I, Joseph E. Roberts, Jr., attorney for Appellant, do hereby certify that I have this day delivered via United States mail with postage prepaid a true and correct copy and an electronic copy of the above and foregoing Brief of Appellant to the following:

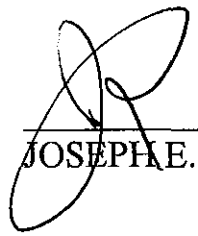
Thomas Y. Page, Esq.
Jeffrey L. Carson, Esq.
Page Kruger & Holland, P.A.
P. O. Box 1163
Jackson, MS 39215-1163
Attorneys for Defendants, Atlanta Casualty Companies, Atlanta Casualty Company, and American Premier Insurance Company

M. Jay Nichols, Esq.
John W. Crowell, Esq.
Nichols, Crowell, Gillis, Cooper & Amos, PLLC
P. O. Box 1827
Columbus, MS 39703
Attorneys for Defendant, Tommy M. Coleman

Honorable James T. Kitchens, Jr.
c/o Lowndes County Courthouse
505 2nd Avenue North
Columbus, Mississippi 39701

Kathy Gillis, Clerk
Supreme Court
P. O. Box 117
Jackson, MS 39205

DATED, this the 10th day of May, 2011.



JOSEPH E. ROBERTS, JR.