

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
NO. 2010-WC-02019-COA**

**MISSISSIPPI BAPTIST MEDICAL CENTER  
AND RECIPROCAL OF AMERICA (MISSISSIPPI  
INSURANCE GUARANTY FUND ASSOCIATION)**

**APPELLANTS**

**VS.**

**BILLY MURPHY**

**APPELLEE**

**CONSOLIDATED WITH**

**RIVER OAKS HOSPITAL/HEALTH MANAGEMENT  
ASSOCIATES AND LIBERTY MUTUAL  
INSURANCE COMPANY**

**APPELLANTS**

**VS.**

**BILLY MURPHY**

**APPELLEE**

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**BRIEF OF APPELLEE, BILLY MURPHY**

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**ON APPEAL FROM  
THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI  
CASE NO. 2010-200 C**

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**SUBMITTED BY:**

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**CERTIFICATE OF INTERESTED PARTIES**

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NO.: 2010-WC-02019-COA

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MISSISSIPPI BAPTIST MEDICAL CENTER  
AND RECIPROCAL OF AMERICA (MISSISSIPPI  
INSURANCE GUARANTY FUND ASSOCIATION)  
AND  
RIVER OAKS HOSPITAL/HEALTH MANAGEMENT  
ASSOCIATES AND LIBERTY MUTUAL INSURANCE COMPANY,  
APPELLANTS

VS.

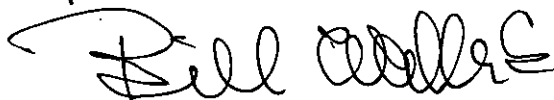
BILLY MURPHY,  
APPELLEE

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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 Court may evaluate possible disqualification or recusal.

1. Honorable Liles Williams, Chairman, Miss. Workers' Comp. Commission
2. Honorable Johnny Junkin, Commissioner Miss. Workers' Comp. Commission
3. Honorable James Homer Best, Administrative Judge, Miss. Workers' Comp. Commission
4. Billy Murphy, Claimant
5. Bill Waller, Sr., Attorney for Claimant
6. Mississippi Baptist Medical Center, Employer
7. Reciprocal of America (Miss. Ins. Guaranty Fund Association), Carrier
8. Donald V. Burch, Esq. Attorney for Employer Mississippi Baptist Medical Center
9. River Oaks Hospital/Health Management Associates, Employer
10. Liberty Mutual Insurance Company, Carrier
11. Douglas R. Duke, Esq., Attorney for Employer River Oaks Hospital/Health Management Associates

CERTIFIED, this the 29 day of April, 2011.



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BILL WALLER, SR.  
Attorney for Billy Murphy, Claimant

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The Appellee and Claimant, Billy Murphy, by counsel, responds to the Brief of Appellants' Mississippi Baptist Medical Center and Reciprocal of America as follows:

### **I. PREAMBLE**

The juxtaposition of the parties is explained in that River Oaks and Liberty Mutual, one of the original Defendants in this claim, failed to give Notice of Appeal from a Final Judgment entered for the Circuit Court of Rankin County, wherein they were held liable for certain medical expenses, therefore, before the Court for consideration is the appeal of the Mississippi Baptist Medical Center. The Claimant was injured in January 2000 while an employee at the Baptist Hospital when he fell from a pulled chair and injured himself rather severely. He did recover well enough to go back to work and went to work at the River Oaks Hospital where he was injured again approximately one (1) year on January 29, 2001 when another chair was pulled and he fell further injuring his back. Therefore, we have two injuries to the same part of the Claimant's anatomy in which each Carrier participated and paid most of the benefits to which the Claimant was entitled. The Court should enter an Order of Dismissal as to River Oaks and Liberty Mutual since the appeal is only between the Claimant and Mississippi Baptist Medical Center.

### **II. STATEMENT OF FACTS**

After the Circuit Court of Rankin County entered an Opinion and Order on November 2, 2010 (R.00058, R.E. 1), an appeal was taken by Mississippi Baptist Medical Center which raises issues set forth in the Brief of the Appellants to some extent leaving out major elements of fact and law.

Both Carriers refused to pay certain medical expenses recommended by Dr. Ronald Williams. Dr. Williams treated the Claimant with frequent and continuous clinical visits for a period exceeding

eight (8) years. He is a board certified internal medicine specialist and has closely observed and treated the Claimant through the years. As stated by Dr. Williams in his deposition and a second opinion given by Dr. John Davis on page 32, lines 10-11 (R.303, R.E. 23), the Claimant's back was so badly injured that he could not undergo any type of surgical procedure, therefore, leaving the sole treatment modality to be pain control and drugs. Since Claimant's back was literally crushed and several nerves were involved and he was in constant pain. Dr. Williams monitored the drugs prescribed and carefully managed the treatment, however, with long drawn out toxic effect of the prescription drugs on the Claimant's gastrointestinal system caused him to be critically ill and treated at River Oaks Hospital for such problem under the care of Dr. Williams and other medical specialist. The suit is to recover the cost of the medical treatment at River Oaks Hospital, plus the failure of either Carrier to provide aquatic therapy recommended repeatedly by Dr. Williams, plus the failure of either Carrier to timely furnish drugs and engage in a continuous argument about the type and the cost of drugs being prescribed, plus the failure to timely pay travel expenses. In addition there is a pain control procedure known in the medical profession as IDET which was recommended repeatedly by Dr. Williams but was refused by the carriers using a defense that procedure was not listed among the approved procedures at the Workers' Compensation Commission.

Dealing directly with the merits of this claim, we point out that the refusal to pay medical expenses prompted the Claimant to file a Motion to Compel (R.133, R.E.11). A hearing was conducted and eventually the Full Commission required and ordered the two carriers to jointly pay the medical expenses claimed. That Order is silent as to the IDET procedure but affirms the treatment drugs, the cost of care at River Oaks Hospital. (R.403, R.E.3). At the trial before the Commission conducted on March 8, 2010, the only two witnesses who testified were the Claimant

and Dr. Ronald Williams by his deposition dated February 20, 2009. (R.295-306, R.E.15-26). The Appellee points out that there are 41 pages of testimony in Dr. Williams' deposition and that with 23 of the pages representing questions by Claimant's counsel; six pages of testimony by counsel for River Oaks Hospital; and four pages of testimony by the Mississippi Baptist Hospital. There were no experts called by the Carriers and Dr. Ronald Williams was the sole expert witness testifying, although records of other doctors, and Claimant has been examined by approximately 12 different doctors, and no contradictory evidence from the records was offered by either Carrier. To some extent, River Oaks' counsel dealt with the IDET procedure and discussed the extent of the Claimant's permanent, total disability. He pointed out that the Claimant had peptic ulcers before his two back injuries, but Dr. Williams denied any causal relationship and distinctly and expressly stated that the gastrointestinal problems were causally connected to the back injuries and further that aquatic therapy would help the level of pain in his back. It was not disputed from the Claimant's testimony that he had continuous and uninterrupted difficulty in obtaining the prescribed drugs and that Carrier Liberty Mutual and the Carrier for the Baptist Hospital, was in a constant hassle and delay in approving the filling of the various prescriptions required. As to the ongoing condition of the Claimant as verified by Dr. John Davis on page 32, line 11 (R.303, R.E. 23), the treatment for the back injuries excludes therapy completely and positively. Claimant has seen several orthopedic surgeons, all of whom agree that surgical treatment and/or any other type of treatment cannot be made and that he must rely upon pain control and drugs.

As to the nature of the problems confronting the Claimant, Dr. Williams testified in his deposition on page 32, line 22: "I see him declining further." (R. 303, R.E. 23). Counsel for the Baptist Hospital used less than five pages of the deposition and simply asked questions as to whether

or not the other doctors, most of whom were orthopedic specialists, were competent doctors, but presented no evidence wherein the opinion of these doctors conflicted of that of Dr. Williams. Mainly, Baptist Hospital's counsel attempted to separate the two injuries showing that the Claimant had returned to work before the second injury and that the main or more severe injury occurred while he was employed at the River Oaks Hospital. However, Baptist offered no medical expert evidence to establish. Baptist's comments were simply that of counsel with no evidence to support that theory.

As stated in beginning of the Brief, River Oaks failed to timely file an appeal from the Order of the Circuit Court of Rankin County and for that reason, the Brief filed by River Oaks on January 5, 2011 is moot and Claimant respectfully suggests that no response would be required to that Brief.

### **III. ARGUMENT**

Appellants cite Miss. Code Ann. § 71-3-51 which simply requires substantial evidence of a causal relationship to an injury for payment of expenses. This case stands basically undisputed since no evidence was presented, directly, indirectly, from medical records, or otherwise that would contradict or dispute the opinion of a doctor who had been treating the Claimant for more than eight (8) years. That opinion, along with Claimant's testimony, represents a preponderance of the evidence and the Court should affirm the decision of the Circuit Court of Rankin County. (R.000058, R.E.1).

The cases cited by the Baptist Hospital, including *Central Electric Power Ass'n v. Hicks*, 236 Miss. 378 110 So. 2d 351 (1959) are basically Evidence 101 and any Court will review the weight and quality of the evidence which as stated is not disputed or contradicted.

We need not lose or overlook the 2007 case of *Casino Magic v. Nelson*, 958 So. 2d 224 (Miss. App. 2007) which held that aggravation of a preexisting condition was compensable and this is one of many cases in which as in the subject case "peptic ulcers" does not foreclose the causal



connection between the back injuries and the treatment for gastrointestinal problems at River Oaks Hospital.

Connecting by causal relationship within a degree of reasonable medical certainty the two back injuries with the gastrointestinal hospitalization and medical treatment is plain and simple under the ruling case law. Where there is no dispute and no question raised regarding an intervening cause of the stomach problems, the Commission correctly quoted from Bradley and Thompson, Mississippi Workers' Compensation §4, 24 (2009 Ed.) which sets out that if the original injury leads to medical complications requiring additional treatment, that the injury is the primary cause of such additional treatment and is compensable. This is taken from *Jacks-Evans Manufacturing Company, Inc. v. Adams*, 344 So. 141 (Miss. 1977). A case showing a related medical condition approval by the Supreme Court is *Myles v. Rockwell International*, 445 So.2d 528 (Miss. 1984). The claimant suffered a head injury which eventually caused him to suffer chronic post-traumatic stress disorder resulting in a severe psychological dysfunction and the Commission and the Supreme Court ruled that the second problem was casually related to the head injury and therefore compensable.

We should not lose awareness that the Commission is an administrative agency and its decisions are liberally construed. The subject case has no conflicting or disputing evidence of the causal relationship claimed as to the treatment denied. It is not arbitrary or capricious and there is substantial evidence supporting the Commission's finding (R. 403, R.E. 3) as well as the decision of the Circuit Court which should not be overlooked. (R.000058, R.E.1).

As to the joint liability of the two employers the Commission points out that Miss. Code Ann. §71-3-37(13) is precisely on point as to the joint or separate liability of two employers that if there is an exchange or a proration of the payments of compensation benefits these two carriers are

required to settle that out of this court and not delay or hinder the payment of benefits to the Claimant.

#### **IV. CONCLUSION**

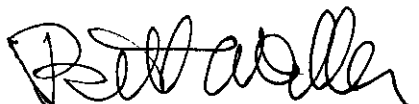
The case before the Court is for medical treatment based upon substantial evidence by the treating physician who covered treated the patient intensively and continuously over a period of eight (8) years. The opinion of this treating physician was not contradicted nor disputed directly nor indirectly. Therefore, there is no reason for the Court to amend or reverse the decision of the Full Commission (R.403, R.E.3) which is fully supported by the evidence.

As in this case, an Order of the Full Commission is affirmed by the Circuit Court and by the Appellate Courts where there is quality evidence establishing the case.

In the case of *Ameristar Casino-Vicksburg v. Rawls*, 2 So. 3d 675 (Miss. App. 2008) this rule was highlighted wherein the Court stated: "The Commission is the ultimate fact finder, and this Court will reverse its judgment only if the judgment lacked the support of substantial evidence, was arbitrary and capricious, or contained an error of law." Additionally, the Court has held: "The standard of review in appeals of workers' compensation cases is limited; this Court must determine only whether the decision of the Commission is supported by substantial evidence and whether the law was correctly applied." *Romine v. Allied Waste North America, Inc.*, 50 So. 3d 372 (Miss. App. 2010). The Court of Appeals will reverse the Commission only where findings of fact are not supported by substantial evidence, matters of law are clearly erroneous, or the decision was arbitrary and capricious." *Westmoreland v. Landmark Furniture, Inc.*, 752 So. 2d 444, 448 (¶ 9) (Miss. App. 1999).

Respectfully submitted this 29<sup>th</sup> day of April, 2011.

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**CERTIFICATE OF SERVICE**

I, Bill Waller, Sr., the undersigned counsel of record for the Appellee, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing via United States mail, postage prepaid, to the following:

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