

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-WC-02019-COA

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

APPELLANTS

V.

BILLY MURPHY

APPELLEE

CONSOLIDATED WITH

RIVER OAKS AND LIBERTY MUTUAL

APPELLANTS

V.

BILLY MURPHY

APPELLEE

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

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

ORAL ARGUMENT REQUESTED

SUBMITTED BY:

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INTRODUCTION

A reply to Appellee's brief is difficult to draft since Claimant's (Appellee's) brief does not address either the second injurious exposure rule or the specific statutory language of Miss. Code Ann. § 71-3-37(13) on appeal regarding whether the Commission erred in assessing one-half the subject medical expenses to Appellants as Employer/Carrier for Claimant's first injury.¹

ARGUMENT

Claimant's counsel, for Appellee herein, has filed a six-page brief which fails to refute either the undisputed medical evidence cited by these Appellants nor the undisputed deposition testimony of Claimant's witness, Dr. Ronald Williams, which is quoted in the original brief of

¹_____

¹ The first injury occurred while Claimant was lifting a computer monitor by himself, not the chair pulling incident as erroneously stated in Appellee's brief. This correction is important because as Dr. Williams' deposition reveals without dispute that the facts of the second injury scenario constitute claimant's sole proximate cause of his pain (RE11 – R. Vol. 3, p 295 through Vol. 4, p. 30)

these appellants. The medications prescribed by Dr. Williams were all after the second injury,² and Claimant/Appellee counsel cites no testimony causally relating the medications in question to the first injury.

Neither the second injurious exposure rule nor case law cited by the undersigned is addressed by counsel opposite, nor does said opposing brief make any argument relative to the distinction in the language of Miss. Code Ann. § 71-3-37 (13) and the undisputed factual and procedural posture for the case as reflected in the record before this Honorable Court making said statute inapplicable.

Appellee does not dispute that River Oaks and Liberty Mutual have paid after the second injury all medical expenses until protesting only compensability of medical expenses herein at issue. Additionally, since the employer/carrier for the second injury has chosen not to continue its appeal regarding compensability of the medical expenses in issue, the Claimant's remedy appears to be exclusively with Liberty Mutual and River Oaks Hospital. Said second injury employer/carrier never opposed payment, as the record reflects, on the grounds that the appellants owed said medical bills. This distinction alone makes the "sharing" statute Miss. Code Ann. § 71-3-37(13) inapplicable to impose a charge of half these isolated medical expenses to Appellants. It was not a dispute between two (2) employers/carriers hindering payment, only the claim that the type of medical expense in question was compensable as a result of any injury.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, it is respectfully submitted that the ruling of the Full Commission and Circuit Court of Rankin County, Mississippi be reversed and rendered, thereby reinstating the Order of the Administrative Law Judge. In the alternative, there is no basis in law, or in fact as reflected from the undisputed record to require Employer/Carrier

²_____

² The second injury occurred from the chair being removed from Claimant, causing him to fall.

(Appellants herein) for the first injury to participate in any sharing of the medical expenses in question.

Respectfully submitted,

Mississippi Baptist Medical Center and
Reciprocal of America (Mississippi
Insurance Guaranty Fund Association)

By:


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CERTIFICATE OF SERVICE

I, the undersigned attorney of record, do hereby certify that I have this day mailed via United States Mail, postage pre-paid, a true and correct copy of the above and foregoing document to the following:

Bill Waller, Sr. Esquire
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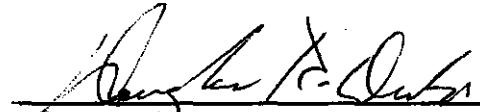
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CERTIFIED this 6th day of May, 2011.



Of Counsel for said Appellants (Employer
and Carrier)

CORRECTED CERTIFICATE OF SERVICE

I, the undersigned attorney of record, do hereby certify that I have mailed via United States Mail, postage pre-paid, a true and correct copy of the *Reply Brief of Appellants Mississippi Baptist Medical Center and Reciprocal of America* to the following:

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CERTIFIED this 11th day of May, 2011.



Of Counsel for said Appellants (Employer
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