

IN THE COURT OF APPEALS OF MISSISSIPPI
NO. 2013-CA-00966

DEBRA BARTLEY-RICE

APPELLANT

V.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, IDALAN HAYMON,
AND JUDY AUSTIN

APPELLEES

APPEAL FROM THE CIRCUIT COURT OF HOLMES COUNTY, MISSISSIPPI

BRIEF OF APPELLANT
ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal.

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4. IDALAN HAYMON, APPELLEE
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7. HONORABLE JANNIE LEWIS, CIRCUIT COURT JUDGE

/s/ Tyvester Goss

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STATEMENT OF THE ISSUES

WHETHER THE CIRCUIT COURT ERRED WHEN IT FAILED TO REQUIRE THE JURY TO CLARIFY ITS VERDICT WHERE THE GENERAL VERDICT FORM WAS IN OBVIOUS CONFLICT WITH THE SPECIAL VERDICT FORM?

WHETHER THE JURY VERDICT EVINced BIAS, PREJUDICE AND PASSION AS TO REQUIRE A NEW TRIAL?

I. STATEMENT OF THE CASE

A. NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

This appeal arises from a negligence action tried in the Circuit Court of Holmes County. Aggrieved by the disposition of the trial, Debra Bartley-Rice, hereinafter “*Bartley-Rice*”, filed this appeal asserting that the trial court erred when it failed to make the jury clarify its verdict where the general verdict form was in obvious conflict with the special verdict form. Bartley-Rice further contends the jury verdict is unsupported by the evidence and evinces bias, prejudice or passion by the jury.

On or about August 5, 2011, Bartley-Rice filed a negligence action against State Farm Mutual Automobile Insurance Company¹, Idalan Haymon and Judy Austin in the Circuit Court of Holmes County seeking monetary damages for personal injuries suffered as a result of an automobile accident. (CP, p. 8 -15) A jury trial was held May 7 - 8, 2012. (TT, p. 1) The jury returned a general verdict form in favor of defendants, Idalan Haymon and Judy Austin, which read:

We the jury conclude that the accident was unavoidable in any event, and returned a verdict for the defendants Idalan Haymon and Judy Austin.

The amount of damages is 0

¹At the time of the accident, Bartley-Rice had underinsured motorist coverage with State Farm Mutual Automobile Insurance Company and sued them based on that coverage. Subsequent to entering a final judgment in favor of Idalan Haymon and Judy Austin, the trial court determined there existed no viable basis for the underinsured motorist claim since the jury *allegedly* found in favor of defendants. As such, State Farm Mutual Automobile Insurance Company is a not a party to this appeal.

(CP, p. 457)(RE 3). In direct conflict with the general verdict, the jury returned a special verdict form, which apportioned sixty-six percent (66%) fault for the accident to defendants. Specifically, the special verdict form read:

IN THE CIRCUIT COURT OF HOLMES COUNTY, MISSISSIPPI

DEBRA BARTLEY-RICE
VS.
EDALAN HAYMON AND
JUDY AUSTIN

PLAINTIFF
CIVIL ACTION NO. 2011-00283
DEFENDANTS

SPECIAL VERDICT FORM 27

In returning your verdict in this case, you are to consider all of the facts and instructions of law given to you and return your verdict by filling out this form. When your verdict has been reached, write out your answers to the following questions on this form and notify the Clerk that you have reached your verdict:

1) Do you find that the person or vehicle who dropped the tire on the road was guilty of negligence which proximately caused damages to the Plaintiff?
Yes ✓ No ✓

2) Do you find that the person who stopped his or her car in the road was guilty of negligence which proximately caused damages to the Plaintiff?
Yes ✓ No ✓

3) Do you find that the Plaintiff, Debra Bartley-Rice, was guilty of negligence which proximately caused her damages?
Yes ✓ No _____

4) Do you find that Edalan Haymon was guilty of negligence which proximately caused damages to the Plaintiff?
Yes ✓ No _____

5) Do you find that Judy Austin was guilty of negligence which proximately caused damages to the Plaintiff?
Yes _____ No _____

ENTERED
Mins. Clk. 105 Pg. 284
Dock. Clk. _____ Pg. _____
J. J. M. L.

RECORDED
"A"

FILED
MAY 10 2013
CLERK OF HOLMES COUNTY, MISSISSIPPI
K. J. M. L.

Yes ✓ No ~~✓~~ K.C.

6) If you answered "Yes" to any of the above questions, then
list the proportion, or percentage, of negligence which you attribute to each of those persons.

Unknown driver of vehicle who left tire debris
on the roadway _____ %

Unknown driver of red vehicle who stopped his or her car
in the roadway _____ %

Plaintiff Debra Bartley-Rice 33.3 %

Defendant Idalan Haymon 33.3 %

Defendant Judy Austin 33.3 %

(These figures should add up to 100%.)

7) What is the amount of damages that you find by a preponderance of the evidence to have
been incurred by the Plaintiff as a result of the accident in question?

\$ 0

(CP, p. 453 -457)(RE 3). The trial court entered a *Final Judgment* in favor of defendants. (*Id.*) This appeal arises out of the conflict between the general verdict form and the responses to the interrogatories set forth in the special verdict form. The general verdict form indicates the jury found no liability on the part of defendants but the special verdict form indicates the jury found liability and apportioned sixty-six percent (66%) of fault to defendants. As such, Bartley-Rice asserts that this Honorable Court should reverse and remand this matter for a new trial since the lower court erred when it failed make the jury clarify its verdict where the general verdict form was in obvious conflict with the special verdict form.

B. STATEMENT OF THE FACTS

On or about August 8, 2009, Bartley-Rice was driving North on Interstate 55 in Madison County, Mississippi when she noticed the vehicle traveling directly in front of her slam on brakes and swerve. (TT, p. 25) The vehicle which was driven by an unidentified driver slammed on brakes and swerved to avoid commercial tire debris left in the middle of the road. (TT, p. 25 - 26) Once Bartley- Rice noticed the actions of the unknown driver, she changed lanes and continued to travel northbound on Interstate 55. (TT, p. 26) Judy Austin, hereinafter “*Austin*”, was traveling behind Bartley-Rice and when she noticed Bartley-Rice changing lanes, she attempted to change lanes. (TT, p. 27) As Austin changed lanes, she collided with the vehicle driven by Idalan Haymon, hereinafter “*Haymon*”. (TT, p. 27 - 28) After colliding with the vehicle driven by Austin, Haymon lost control of her vehicle and rearended the vehicle driven by Bartley-Rice. (TT, p. 28). Haymon, on the contrary, asserts

that she did not rearend the vehicle driven by Bartley-Rice, but rather Bartley-Rice crossed into her lane and hit her vehicle. (TT, p. 95).

As a result of the accident, Bartley-Rice suffered a torn rotator cuff and soft tissue injury to her back and neck as a result of the accident. (TT, p. 31 - 42). She underwent surgery to correct the torn rotator cuff. (TT, p. 31- 42). Because of the injuries, plaintiff suffered pain and discomfort and was unable to perform her household duties. (TT, 43 - 44). Plaintiff was seen by several different physicians on numerous occasions and at the time of trial, she still experienced pain and discomfort in her shoulder. (TT, p. 46 - 48). As a result of the accident, she incurred over \$40,000.00 in medical bills and expenses. (TT, Exhibits, p. 28 - 220).

II. SUMMARY OF ARGUMENT

The trial court committed reversible error when it failed to make the jury resolve the conflict between the general verdict form and the special verdict form. The general verdict form indicates the jury found no liability on the part of defendants but the specific verdict form indicates the jury found liability and apportioned sixty-six percent (66%) of fault to defendants. Because of the unresolved conflict between the general verdict form and the special verdict form, this Honorable Court should reverse and remand this matter for a new trial.

In the alternative, the zero damages verdict shocks the judicial conscience and raises an inference that bias, passion, prejudice, or other improper cause invaded the purview of the

jury since the jury found the defendants liable and apportioned sixty-six percent (66%) of fault to them. The lack of a damages award is directly contrary to the overwhelming weight of credible evidence which clearly indicated, *without dispute*, that Bartley-Rice suffered personal injuries and medical bills as a result of the accident. Therefore, this Honorable Court should reverse and remand this case for a new trial on damages only.

III. ARGUMENT

A. STANDARD OF REVIEW

A new trial may be granted “*when the verdict is against the overwhelming weight of the evidence, or when the jury has been confused by faulty jury instructions, or when the jury has departed from its oath and its verdict is a result of bias, passion and prejudice.*” *Bobby Kitchens, Inc. v. Miss. Ins. Guar. Ass’n*, 560 So.2d 129, 132 (Miss. 1989). A new trial should be granted where an “*error within the trial mechanism itself has caused a legally incorrect or unjust verdict to be rendered.*” *Solanki v. Ervin*, 21 So.3d 552, 569 (Miss. 2009).

B. THE CIRCUIT COURT ERRED WHEN IT FAILED TO REQUIRE THE JURY TO CLARIFY ITS VERDICT WHERE THE GENERAL VERDICT FORM WAS IN OBVIOUS CONFLICT WITH THE SPECIAL VERDICT FORM.

Mississippi law generally presumes that “*jurors follow the trial judge’s instructions, as upon their oaths they are obliged to do.*” *Parker v. Jones County Community Hosp.*, 549 So.2d 443, 446 (Miss. 1989). The facts of this case, however, take this case out of the purview of that general rule. In other words, the presumption that the jury followed the law as instructed has been sufficiently rebutted, which requires this Honorable Court to reverse and remand this case for a new trial.

Where the form of the verdict is ambiguous, confusing and improper, the trial court on its own initiative, should order the jury to return to the jury room to reform and reword their verdict so that the verdict is in proper form. *Saucier v. Walker*, 203 So.2d 299 (Miss. 1967); *Harrison v. Smith*, 379 So.2d 517 (Miss. 1980)(where a jury returns a verdict that is defective and improper, the court has the duty to require the jury to reconsider and amend or change its verdict). Specifically, Miss. Code Ann. §11-7-161 (1972) provides that “*if the verdict is not responsive to the issue submitted to the jury, the court shall call their attention thereto and send them back for further deliberation.*” Where a trial court fails to follow this procedure, the verdict may be reversed and remanded for a new trial. *Baham v. Sullivan*, 924 So.2 580 (Miss. Ct. App. 2006).

This procedure is further codified in Miss. Unif. Rules of Cir. & Cty Ct. Prac., Rule 3.10, which clearly requires the trial court, with proper instructions, to direct the jurors to reconsider the verdict where the verdict is so defective that the court cannot determine the intent of the jury. No verdict should be accepted until it clearly reflects the intent of the jury. The trial court is “*under the duty to see that loss of time and the expense of the trial should be nullified by the failure of the jury to put their verdict in proper form.*” *Universal C.T.T. Credit Corp. v. Turner*, 56 So.2 800, 803 (Miss. 1952).

In *Baham v. Sullivan*, 924 So.2d 580 (Miss. Ct. App. 2006), plaintiff slammed on brakes to avoid hitting an unidentified driver that suddenly pulled into traffic, however, defendant, who was traveling behind plaintiff was unable to stop and rammed into the back

of plaintiff's vehicle. Plaintiff brought a negligence action against defendant. After a trial, the jury returned the following verdict:

We, the jury, determine John W. Sullivan to be 10 percent at fault, if any.

We, the jury, determine the absent driver of the third vehicle to be 90 percent at fault, if any.

We, the jury, assess Plaintiff Sheri Baham's damages at \$0.00.

We, the jury, assess Plaintiff Conway Baham's damages at \$0.00.

This Honorable Court found the verdict was not responsive to the jury instructions and such failure "*implicates the validity of the final judgment.*" *Id.* at 582. Specifically, this Court found that the jury's insertion of the phrase "*if any*" rendered the verdict indefinite, and in the absence of a definitive verdict, there was nothing upon which to predicate a final judgment. *Id.* In summary, this Court ruled, in relevant part:

After rendering of a proper verdict by the jury, then and only then was the circuit judge authorized to enter a judgment upon that verdict. Since there was no proper verdict, it was improper for the circuit judge to enter a final judgment. Therefore, we reverse and remand for a new trial.

In *Loyacono v. Travelers Insurance Company*, 2013 WL 811975 (Miss. Ct. App.), this Honorable Court found there was sufficient evidence of juror confusion and faulty instruction where the jury gave conflicting answers to special interrogatories. The trial court submitted special interrogatories to the jury with five questions. The trial court answered *Question One* before submitting the form to the jury. The interrogatories read, in relevant part:

1. Do you find that the Defendant, Watacha Shelby was negligent and caused or contributed to the accident in question? Yes X
No _____

3. Do you find that the collision of July 25, 2005, caused or contributed to by the negligence of Watacha Shelby, proximately resulted in injuries and damages to Kathryn Layacono? Yes _____ No _____

After considering the evidence, the jury returned a verdict indicating that defendant was not the proximate cause of plaintiff's injuries. This Honorable Court found that the trial court, by answering *Question One* directed a verdict for plaintiff, and as such, the jury's response to *Question Three* created a conflict which required a new trial.

The Mississippi Supreme Court, in *First Bank of Southwest Mississippi v. Bidwell*, 501 So.2d 363 (Miss. 1987), found the jury was confused where there was an obvious inconsistency in the jury's answer to an interrogatory and its award of actual damages. Plaintiff sued defendant bank for breach of contract and negligence for allowing a third party to enter his safe deposit box and remove the contents. The jury assessed damages to defendant in the amount of \$20,000 but returned a special interrogatory finding that only \$8,700 was removed from the safety deposit box owned by plaintiff.

Applying *Guidry v. Kem Mfg. Co.*, 598 F.2d 402 (5th Cir. 1979), a case which held that a new trial is generally required where there exists conflicting responses in special verdicts, the Mississippi Supreme Court held that "*based on the obvious confusion inherent in the jury's response, this case is reversed.*" Id. at 366.

The reasoning of *Bidwell* is further codified in Miss. R. Civ. P. 49(c), which reads:

The court, in its discretion, may submit to the jury, together with instructions for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such

explanation or instruction as may be necessary to enable the jury both to make answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered consistent with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. *When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.*

1. *The interrogatory answers given by the jury on the special verdict form are inconsistent with each other.*

A cursory review of the special verdict form completed by the jury clearly indicates the interrogatory answers are inconsistent. The jury allocated sixty-six percent (66%) fault to defendants but refused to award damages to plaintiff despite the fact that there was undisputed evidence that she suffered injuries as a result of the accident. This inconsistency is in direct contradiction to *Jury Instruction No. 23* which instructs the jury to award a “*verdict in an amount which will reasonably compensate the Plaintiff for the losses sustained*” if it finds the defendants liable. (CP, p. 438)(RE 4).

In *Harrison v. Smith*, 379 So.2d 517 (Miss. 1980), the jury returned a verdict in which it found plaintiff and defendant negligent but awarded no damages to plaintiff. The trial court accepted the verdict without any further activity and reformed the verdict by announcing the verdict was for defendants. The Mississippi Supreme Court reversed and remanded for a new trial since the verdict was inconsistent with the comparative negligence instructions. The Court further held that the trial “*should have returned the jury to its room to further deliberate on a proper verdict.*” *Id.* at 519.

Like *Harrison*, the jury in the case *sub judice* returned a comparative fault verdict but failed to award damages. Consistent with the reasoning of *Harrison*, this Honorable Court should reverse and remand this matter for a new trial since the interrogatory answers given on the special verdict form are inconsistent with the comparative negligence instructions given by the trial court.

2. *The interrogatory answers given by the jury on the special verdict form are inconsistent with the general verdict form.*

A review of the special verdict form completed by the jury clearly indicates the interrogatory answers are inconsistent with the general verdict. The jury allocated sixty-six percent (66%) fault to defendants on the special verdict form but found the “*the accident was unavoidable*” and returned a verdict for the defendants on the general verdict form. (CP, p. 457)(RE 3). The special verdict form and general verdict form are squarely inconsistent since the special verdict form renders a verdict for plaintiff and the general verdict form renders a verdict for defendant.

Harrison v. Smith, 379 So.2 517, 518- 519 (Miss. 1980), sets forth the basic test used to determine whether a verdict is sufficiently clear. Specifically, *Harrison* holds, as follows: “*the basic test with reference to whether or not a verdict is sufficient as to form is whether or not it is an intelligent answer to the issues submitted to the jury and expressed so that the intent of the jury can be understood by the court.*”

Applying the *Harrison* test, it is abundantly clear that the special verdict form and general verdict form conflict to such a degree that the intent of the jury can not be understood

and the trial court lacked authority to reconcile the conflicting verdicts. Consistent with *First Bank of Southwest Mississippi v. Bidwell*, 501 So.2d 363 (Miss. 1987) and *Guidry v. Kem Mfg. Co.*, 598 F.2d 402, 406 (5th Cir. 1979), cases which held that a new trial is generally required where there exists conflicting verdicts, this Honorable Court should reverse and remand this matter for a new trial since the special verdict form and general verdict form are squarely inconsistent.

Furthermore, where the answers to the interrogatories set forth on the special verdict form are inconsistent with each other and one or more is inconsistent with the general verdict, Miss. R. Civ. P. 49(c) required the trial court to direct the jury to reconsider its answers and verdict or order a new trial. Since the trial court failed to direct the jury to reconsider its answers and verdict, this Honorable Court, applying Miss. R. Civ. P. 49(c), should reverse and remand this matter for a new trial. This reasoning is further supported by *Bidwell*, *Loyacono* and *Baham*, cases which hold that where there exists conflicting responses to the interrogatories on a special verdict form, a new trial should be granted. As such, consistent with *Bidwell*, *Loyacono* and *Baham*, this Honorable Court should reverse and remand this matter for a new trial.

C. THE JURY VERDICT IS UNSUPPORTED BY THE EVIDENCE AND EVINCES BIAS, PREJUDICE AND PASSION BY THE JURY.

To determine whether a verdict is against the overwhelming weight of the evidence, this Court must view all evidence in the light most consistent with the jury verdict. *Motorola Commc'ns & Elecs., Inc. v. Wilkerson*, 555 So.2d 713, 723 (Miss. 1989). Proof of bias and

prejudice on the part of the jury is commonly proven by “*an inference, if any, to be drawn from contrasting the amount of the verdict with the amount of damages.*” *Gatewood v. Sampson*, 812 So.2d 212, 222 (Miss. 2002).

The verdict of zero damages to Bartley-Rice shocks the judicial conscience and raises an inference that bias, passion, prejudice, or other improper cause invaded the purview of the jury and that the damages awarded are contrary to the overwhelming weight of credible evidence. Therefore, this Honorable Court should reverse and remand this case for a new trial on damages only.

In *Knight v. Brooks*, 881 So.2 294, 297-298 (Miss. Ct. App. 2004), this Court held that where the jury found for plaintiff and it was clear plaintiff suffered injury as a result of the automobile accident, the jury award of zero damages was against the overwhelming weight of the evidence.

Applying *Knight*, this Court in *Loyacono v. Travelers Insurance Company*, 2013 WL 811975 (Miss. Ct. App.), again held that where liability existed and plaintiff clearly suffered an injury, a jury award of zero damages was against the overwhelming weight of the evidence. In *Loyacono*, defendant backed into the vehicle driven by plaintiff and plaintiff suffered muscle strain to her neck and back. It was uncontradicted that plaintiff suffered injuries as a result of the accident. The court, after applying *Knight*, concluded the jury’s award of zero damages was against the overwhelming weight of credible evidence.

In *Pham v. Welter*, 542 So.2d 884 (Miss. 1989), plaintiff proved actual damages in the amount of \$28,682.70 and sought additional damages for his pain, suffering and future disability. The evidence was uncontradicted regarding the severity of plaintiff's injuries and the resulting pain and anguish. Nevertheless, the jury only awarded plaintiff \$30,000 for his total damages, which allowed only \$1,327.30 for pain and suffering. The Mississippi Supreme Court held that the verdict was so inadequate "*as to shock the conscience and indicate bias, prejudice and passion on the part of the jury.*" *Id.* at 889. The Court further held that after reviewing the claim for damages, the jury wrongfully ignored plaintiff's evidence regarding his pain, suffering and future disability. *Id.*

Reading and interpreting *Knight* and *Loyacono* together, it is clear where a jury finds liability and plaintiff presents uncontradicted evidence of her resulting injury, a jury award of zero damages is against the overwhelming weight of the evidence. *See also Dunn v. Butler*, 172 So.2d 430, 431 (Miss. 1965)(holding that a verdict was an inadequate amount that it evinces bias and prejudice and should be reversed where a jury denies recovery for past and future pain and suffering and permanent disability).

Bartley-Rice, along with other witnesses, testified at trial, that she suffered injuries and was in great pain after the collision. Specifically, Bartley-Rice suffered a torn rotator cuff and soft tissue injury to her back and neck as a result of the accident. She underwent surgery to correct the torn rotator cuff. Bartley-Rice's testimony and her related medical records were admitted into evidence and they provided undisputed testimony regarding her injuries and resulting pain and suffering.

Bartley-Rice also testified that her injuries and pain prevented her from caring for herself and family. Furthermore, she was prescribed pain medication for her injury. Bartley-Rice's testimony, which was corroborated by her medical records, indicated that she was seen by several different physicians on numerous occasions. She also testified that as of the time of trial, she still experienced pain and discomfort in her shoulder.

Austin and Haymon offered no credible evidence at trial to dispute the extent of the injuries suffered by Bartley-Rice as a result of the accident. The Mississippi Supreme Court has repeatedly held that an inference of jury prejudice or bias should be drawn when there is a contrast between the amount of the jury verdict and the amount of damages, even if there is a dispute as to the extent of the damages. *Rodgers v. Pascagoula Public School District*, 611 So.2 942, 944-945 (Miss. 1992).

In the case at bar, there was no evidence offered whatsoever disputing the extent of the injuries suffered by Bartley-Rice as a result of the accident. As such, applying *Knight* and *Loyacono*, it is clear that the verdict awarding zero damages was against the overwhelming weight of the evidence since the jury, applying the principles of comparative negligence, found Haymon and Austin, sixty-six percent (66%) at fault for Bartley-Rice's injury and the record is replete with uncontradicted evidence that Bartley-Rice suffered an injury and incurred over \$40,000 in medical expenses as a result of the accident. As such, this Honorable Court should reverse and remand this case for a new trial on damages only. Where a jury decides the issue of liability but "*proves to have rendered a damage award*

tainted by prejudice, the reviewing court may appropriately remand for a new trial on damages alone.” Johnson v. Fargo, 604 So.2d 306, 311 (Miss. 1992).

CONCLUSION

Considering the aforementioned arguments, this Honorable Court should reverse the and remand the matter to the Circuit Court of Holmes County for a new trial. In the alternative, considering only the special verdict form, which allocated sixty-six (66%) fault to Idalan Haymon and Judy Austin, this Honorable Court should reverse the jury verdict and remand the matter back for a new trial on damages only.

SO BRIEFED, the 23rd day of January, 2014

Respectfully submitted,
DEBRA BARTLEY-RICE, APPELLANT

By: /s/ Tyvester Goss
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CERTIFICATE OF SERVICE

I, TYVESTER GOSS, attorney for the appellant, DEBRA BARTLEY-RICE, do hereby certify that I have forwarded via the court electronic filing system, *MEC*, a true and correct copy of the **BRIEF OF APPELLANT** to:

J. Seth McCoy, Esq.
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This, the 23rd day of January, 2014.

/s/ Tyvester Goss
TYVESTER GOSS