

**MISSISSIPPI WORKERS' COMPENSATION UPDATE  
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The following case summaries are taken verbatim from the MISSISSIPPI LAW JOURNAL BRIEFING SERVICE, *"Recent Decisions of the Mississippi Supreme Court and Court of Appeals"*  
Mississippi Cases Editor: Patrick R. Lofton

**I. 2011 CASELAW UPDATE**

**COOK v. THE HOME DEPOT**, 2009-WC-01551-COA (Jan. 11, 2011)

**Affirmed** – Opinion by Judge Roberts  
Hon. Samac S. Richardson (Rankin County Circuit Court)  
Briefed by Patrick Lofton

**FACTS** – Paul Cook claimed that he was entitled to workers' compensation for an injury he sustained while working for The Home Depot. On Aug. 6, 2004, Cook filed a petition to controvert with the Mississippi Workers' Compensation Commission. The Home Depot filed a B-31 Final Notice form on the same day, providing Cook with disability payments. On Apr. 29, 2005, Cook filed a motion with the Commission to review the cessation of his disability benefits, alleging that he needed further medical treatment. The Home Depot disputed this, and on June 30, 2005, the administrative judge ordered The Home Depot to pay for an independent medical examination of Cook. On July 27, 2006, the administrative judge dismissed Cook's claim for failure to file a completed prehearing statement. Cook then filed a petition to reinstate his claim and a prehearing statement, which the administrative judge also denied on Dec. 6, 2006. Cook filed an amended prehearing statement on Dec. 13, 2006, and again on Jan. 8, 2007. Cook also filed notices of depositions. In June 2008, Cook's attorney wrote the Commission alleging that he had delivered a second amended petition to reinstate with an amended prehearing statement in July 2007. However, Cook's file did not contain these documents until the Commission received them in 2008, after the statute of limitations had run. The administrative judge dismissed Cook's claim because the one-year statute of limitations for review of a workers' compensation claim had run and he had not taken any action that would toll the statute of limitations. Cook appealed to the full Commission, which affirmed the administrative judge's decision. The Rankin County Circuit Court affirmed the Commission's decision. Cook appealed.

**ISSUES** – Whether (1) filing notices of depositions and submitting amended prehearing statements during the one-year statute of limitations for review of a workers' compensation claim was sufficient to toll the statute of limitations, (2) alleging to have filed a petition to reinstate during the one-year statute-of-limitations period was sufficient to toll the statute of limitations when no such filing appeared in the Commission's record.

**HELD** – (1) Filing notices of depositions and submitting amended prehearing statements was not sufficient to toll the statute of limitations for review of a workers' compensation claim because such documents did not sufficiently articulate the nature of the claimant's claim or clearly express an intent to pursue whatever remedies might be available to the claimant. (2) Where such filing does not appear in the Commission's record, alleging to have filed a petition to reinstate does not toll the statute of limitations for review of a workers' compensation claim. Therefore, the Court of Appeals affirmed the ruling of the Rankin County Circuit Court.

**MISS. INS. GUARANTY ASSOC. v. BLAKENEY**, 54 So.3d 203 (Jan. 13, 2011)

**Reversed & Rendered** – En Banc Opinion by Justice Dickinson (joined by Carlson, P.J., Randolph, Lamar, & Chandler, JJ.) – Dissent by Waller, C.J. (joined by Graves, P.J., Kitchens & Pierce, JJ.)

Hon. Billy Joe Landrum (Jones County Circuit Court)

Briefed by Jeffrey Brown

**FACTS** – Bridgette Blakeney was injured in a work-related automobile accident. Soon thereafter, she collected \$10,000 in payments from the other driver's policy. She also settled for \$60,000 of the \$100,000 policy limits from her employer's policy. She began receiving workers' compensation payments, but her employer's worker's compensation provider was declared insolvent, and Blakeney's claims were assumed by the Mississippi Insurance Guaranty Association. After learning of the \$70,000 in previous payments, MIGA petitioned the Workers' Compensation Commission in order to have payments suspended until Blakeney's accrued benefits had exceeded \$70,000. MIGA later amended its petition to give them a credit of \$110,000 - the total of the maximum under her employer's policy plus the amount from the other driver's policy. Initially, the administrative law judge allowed a credit of \$70,000, but the full Commission ruled that MIGA was entitled to a \$10,000 credit for the liability policy (less approximately \$4,000 in collection costs) but allowed no credit for the uninsured motorist policy. The circuit court and Court of Appeals affirmed, and the Mississippi Supreme Court granted MIGA's petition for certiorari.

**ISSUES** – Whether (1) MIGA was required to offset Blakeney's uninsured motorist benefits, (2) MIGA was entitled to a credit for the full policy or the amount actually paid, and (3) collection costs could be deducted from the credit.

**HELD** – (1) Because the MIGA statute required a workers' compensation award to be reduced by any recovery from an insurer, MIGA was entitled to a credit for the uninsured motorist benefits. (2) Because there was no bad faith in the settlement and the statute used the word 'recovery', the proper credit [taken from the uninsured motorist policy] was only \$60,000. (3) Because Miss. Code Ann. § 83-23-123(1) controlled, reduction of costs was not available [from the liability policy, giving MIGA credit for the full \$10,000]. Therefore, the Supreme Court reversed the ruling of the Court of Appeals.

**DISSENT** – The dissent argued that under Miss. Code Ann. § 83-23-109(f), the insurance credits were not covered claims, and therefore, should not be considered credits. The uninsured motorist claim was thus completely separate from the workers' compensation claim.

**MOLD PRO, INC. v. ALFORD**, 52 So.3d 1260 (Miss.App., Feb. 1, 2011)

**Affirmed** - Opinion by Judge Griffis

Hon. William E. Chapman III (Madison County Circuit Court)

Briefed by Elliott G. Flaggs

**FACTS** – Peggy Alford applied for workers' compensation benefits after sustaining an injury during the course of her employment with Mold Pro. However, Mold Pro denied that the injury resulted from work during employment. Subsequently, the administrative judge held that Alford was within the scope of her employment. After Mold Pro appealed with the Miss. Worker's Compensation Comm'n, the Comm'n upheld the administrative judge's decision. Mold Pro then appealed to the Madison County Circuit Court, where the circuit court also found in favor of Alford on May 5, 2009. The record showed that neither Mold Pro nor its attorney received notice of the circuit clerk's order, but on June 19, 2009, Mold Pro's attorney received notice from Alford's attorney. Mold Pro filed a motion to reopen the time for appeal on July 17, 2009, but

the trial court denied the request and dismissed the case with prejudice because Mold Pro failed to timely appeal. Aggrieved, Mold Pro appealed.

**ISSUE** – Whether the circuit court erred by not granting the out-of-time motion to reopen the time for appeal.

**HELD** – Because the lack of notice from the clerk did not affect the time for appeal and the motion to reopen the time for appeal was not filed within seven days of the party's receipt of notice of entry of the judgment, there was no error in denying the request. Therefore, the circuit court's decision was affirmed.

**HUGH DANCY CO., INC. v. MOONEYHAM**, 68 So.3d 76 (Miss.App., Feb. 15, 2011)

**Affirmed** – Opinion by Judge Carlton

Hon. Robert P. Chamberlin (Desoto County Circuit Court)

Briefed by Mary Jordan Kirkland

**FACTS** – Thurman Mooneyham filed a workers' compensation claim after he sustained an injury on property owned by the Hugh Dancy Company, Inc. The Administrative Judge held that Mooneyham was an employee of Dancy who had suffered a work-related injury. On appeal before the Mississippi Workers' Compensation Commission, Mooneyham testified that he was a former Dancy employee who had returned to assist in the cleaning of one of Dancy's construction shops at the request of Dancy's office manager, Pam Guess. During this time, Mooneyham received four checks from Dancy. Guess asserted that Mooneyham was not on the payroll and therefore not a Dancy employee. The Commission, as well as the Desoto County Circuit Court, affirmed the AJ's finding Mooneyham was an employee of Dancy at the time of his injury because the checks reimbursed Mooneyham for expenses incurred for Dancy, for reimbursement of Dancy parts, and for services rendered by Dancy. Aggrieved, Dancy appealed.

**ISSUES** – Whether the Commission erred in (1) determining that Mooneyham was an employee of Dancy at the time of his injury, and (2) failing to determine that Mooneyham worked as an independent contractor.

**HELD** – (1) Because substantial evidence revealed that the relationship between Dancy and Mooneyham was based on mutual assent, that the requisite consideration was met in the form of the four checks, and that Guess maintained the right of control over Mooneyham's work, the Commission did not err in determining that there was an implied contract of hire. (2) Since the Commission determined an employee relationship existed, it was unnecessary for the court to address whether Mooneyham was an independent contractor. Therefore, the Court of Appeals affirmed the Desoto County Circuit Court's judgment.

**BRITTON & KOONTZ BANK v. TOWNSEND**, 2010-WC-00535-COA (Mar. 1, 2011)

**Appeal Dismissed** – Opinion by Chief Judge King

Hon. Lillie Blackmon Sanders (Adams County Circuit Court)

Briefed by Wes Francis

**FACTS** – Florence Townsend underwent surgery to treat injuries sustained when she fell over a bag of coins while working as a bank teller at Britton & Koontz Bank. The doctor treating Townsend concluded that she would suffer permanent impairment of her right arm due to the fall. At this point, Britton & Koontz conceded its liability and made payments to compensate Townsend. Britton & Koontz discontinued these payments on Dec. 3, 2004. In 2006, Townsend's physical health had deteriorated to the point that she could not continue working. The Miss. Workers' Comp. Comm'n ordered Britton & Koontz to pay Townsend all the

compensation due for a permanent total disability on June 7, 2007. This amounted to \$90,891.47 plus \$3,882.15 in interest, which was calculated from the date that Britton & Koontz ceased payment in 2004. Britton & Koontz paid the lump-sum amount on Aug. 3, 2007 but refused to pay the interest because there was no final judgment in the case to use for interest accrual. With a motion to compel payment, Townsend sought to obtain the interest from Britton & Koontz. Citing the lump-sum settlement paid to Townsend, Britton & Koontz gave notice to the Comm'n of final payment. After the Comm'n granted the motion to compel payment on Oct. 23, 2008, Britton & Koontz appealed to the Adams County Circuit Court. The circuit court affirmed the Comm'n's decision to grant the motion to compel payment. Aggrieved, Britton & Koontz appealed.

**ISSUES** – Whether the Comm'n (1) had authority to assess Britton & Koontz with interest and (2) erred in assessing interest to Britton & Koontz without an award that constituted a final judgment.

**HELD** – (1) Because Britton & Koontz failed to appeal the Comm'n's interest award to Townsend within thirty days and paid the lump-sum amount without question, the Court of Appeals had no jurisdiction to consider the merits of this issue. (2) Because Britton & Koontz failed to appeal within the statutory period, the Court of Appeals had no jurisdiction to consider the merits of this issue. Therefore, the Court of Appeals dismissed the appeal based on lack of jurisdiction.

**PETERS v. BELK INC.**, 67 So.3d 805 (Miss.App., Mar. 1, 2011)

**Affirmed** – En Banc Opinion by Judge Irving  
Hon. Paul S. Funderburg (Lee County Circuit Court)  
Briefed by Andrew S. Harris

**FACTS** – Brenda Peters, an employee of Belk Inc., injured herself and began to experience neck pain after moving boxes on Mar. 12, 2003. That day, Peters saw a physician who prescribed anti-inflammatory medication. After the pain returned, Peters went to see the physician again and began a lengthy journey through a series of spinal-scans, second-opinions, and specialist-referrals. During her many doctor visits, Peters was treated by a neurosurgeon, pain specialist, neurologist, cardiologist, and finally a psychiatrist. Peters was intermittently taken off work or put on light duty assignment, and none of the physicians believed that surgery was an option. Several of the physicians also characterized Peters' description of her symptoms as highly exaggerated. Peters described to the psychiatrist, Dr. Sudhakar Madakasira, her numerous unsuccessful doctor visits. She also claimed that she was depressed and suicidal, but had never felt depressed prior to her on-the-job accident. Dr. Madakasira prescribed Peters anti-depressants, but in Dec. 2003 she was hospitalized due to her medication and depression. Dr. Madakasira re-diagnosed her with more severe depression, opining Peters was fixated on her pain. Peters returned to work in Jan. 2004. Although her original position was no longer available, Peters was given a new position and Belk fulfilled all three of her subsequent transfer-requests. In Nov. 2004, Peters requested more days off work than were medically necessary for a colonoscopy, and was terminated after refusing to work her scheduled shift on Nov. 10, 2004. At the request of Belk and its insurer, Liberty Mutual Insurance Co., Dr. David Collipp evaluated Peters on Feb. 11, 2005, and Dr. Mark Webb evaluated her on May 11, 2005. The physicians separately acknowledged that Peters suffered from depression, but both found that the depression was not caused by the Mar. 12, 2003, injury and that Peters was not permanently psychiatrically disabled. In Dec. 2005, Dr. Madakasira admitted Peters into an intensive outpatient psychiatric treatment program. Although she was discharged in April of the following year, Dr. Madakasira saw little improvement and classified Peters as permanently and totally psychologically disabled. No physician found Peters to be

permanently disabled on account of her spinal injury. On Sept. 14, 2007, Peters filed a petition to controvert, alleging she suffered a spinal injury while working at Belk and that the injury resulted in her depression. Belk and Liberty denied any responsibility for any psychological injury allegedly resulting from the spinal injury. Peters' expert, Dr. Madakasira, speculated that the depression was related to the spinal injury, but Belk and Liberty's experts, Dr. Collipp and Dr. Webb, found the depression was unrelated to Peters' spinal pain. An administrative judge found the psychological injury was connected to the spinal injury, and classified Peters permanently and totally disabled. Belk and Liberty appealed to the Miss. Workers' Comp. Comm'n, which reversed the AJ's decision, finding Peters failed to present clear and convincing evidence that her depression was related to her spinal injury. Peters appealed to the circuit court, which affirmed the Comm'n. Aggrieved, Peters appealed.

**ISSUES** – Whether (1) the Comm'n applied an incorrect legal standard in denying benefits for Peters' psychological injury, and (2) the Comm'n's reversal of permanent total-disability benefits and its denial of benefits for Peters' psychological injury were not supported by substantial evidence and were arbitrary and capricious.

**HELD** – (1) The Comm'n did not err because it applied the synonymous and correct "clear and convincing evidence" standard in its evaluation of Peters' psychological injury claim. (2) As the finder of fact, the Comm'n did not err when it weighed the expert opinions of Dr. Collipp and Dr. Webb as controlling over Dr. Madakasira's speculation, and found that Peters' depression was not causally related to her on-the-job injury. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

**MISS. SECURITY POLICE AND COMMERCE AND INDUSTRY INSURANCE CO. v. PATTERSON**, 64 So.3d 526 (Miss.App., Mar. 15, 2011)

**Affirmed** – En Banc Opinion by Chief Judge Lee (joined by Irving & Griffis, P.JJ., Myers, Barnes, Ishee, Roberts & Maxwell, JJ.) – Dissent by Judge Carlton Hon. Dale Harkey (Jackson County Circuit Court)  
Briefed by Joshua R. Daniel

**FACTS** – Susan Patterson purported to have suffered a work-related injury on Nov. 19, 2005 when she stepped out of a vehicle owned by her employer, Mississippi Security Police (MSP), and injured her back. Patterson reported her injury to her supervisor the next day, but no company report of the incident was ever documented. Although Patterson had suffered from intermittent lower-back problems for years, she continued to work and did not seek medical treatment until Dec. 20, 2005, a whole month after the accident at work. Later, on Mar. 31, 2006, Patterson filed a petition to controvert with the Miss. Workers' Comp. Comm'n claiming to have sustained a loss of wage-earning capacity due to her injury. Patterson's employer denied that she suffered a work-related injury. Both the administrative judge and the Comm'n, by way of MSP's appeal, determined that Patterson had suffered a work-related injury and was entitled to all benefits and reasonable and necessary medical treatment. MSP then filed another appeal to the Jackson County Circuit Court. At trial, James Wilson, Patterson's co-worker, testified that he had overheard Patterson tell their supervisor that she had hurt her back while stepping out of a truck at work. Also, Dr. Fineburg, Patterson's treating physician, testified that while Patterson initially had back problems, the problems were made significantly worse due to a work-related injury that required emergency surgery. Dr. McCloskey, Patterson's surgeon, also opined that Patterson's back injury was caused, aggravated, or accelerated by her injury at work. However, Patterson's testimony contained several inconsistencies about when she actually informed either treating doctor about her accident at work. Dr. McCloskey testified that he was not informed about the accident until Jan. 24, 2006, after Patterson's first surgery had already taken place, and Dr. Fineburg had no knowledge of the accident until Mar. 2006, at least four months

after his initial consultation with Patterson. After the trial, the court affirmed the decision of the Comm'n. Aggrieved, MSP appealed.

**ISSUE** – Whether the Comm'n's decision was supported by substantial evidence; specifically, whether Patterson's testimony was credible because she failed to inform Dr. Fineburg that she injured her back at work during her first visit with him.

**HELD** – Because the Comm'n's decision was based on Wilson's, Dr. Fineburg's, and Dr. McClosky's testimony regarding Patterson's back injury, there was substantial evidence to support its decision. Therefore, the judgment of the Jackson County Circuit Court was affirmed.

**DISSENT** – Judge Carlton argued that because (1) Patterson failed to inform her treating doctors of any work-related injury until much later than the initial accident, and (2) her testimony was inconsistent, Patterson failed to meet her burden of proof.

**CITY OF LAUREL v. GUY**, 58 So.3d 1223 (Miss., Mar. 29, 2011)

**Reversed & Remanded** – Opinion by Judge Maxwell  
Hon. Billy Joe Landrum (Jones County Circuit Court)  
Briefed by Will Craven

**FACTS** – While working as a patrolman for the Laurel Police Dept., Gavin Guy injured his knee in pursuit of a fleeing suspect. After several surgeries, he continued working as a patrolman, but was worried he would not be able to chase suspects or easily get in and out of his patrol car. Thus, he voluntarily left to become a warrant officer at the Petal Police Dept., and was eventually promoted to the Investigations Unit. His new job paid \$10,000 a year more than his former position with Laurel. Guy was required to undergo physical testing for his new job, however, and the police chief allowed him to perform the test on a stationary bike rather than by running. At the hearing before the ALJ, Guy expressed concerns that his special place at Petal might not last long. He was worried that the police chief might not be employed for much longer, and that he wouldn't be able to pass the physical test in the future. In its findings, the ALJ cited Guy's several knee injuries, his incapacity to work as a patrol officer, and his special accommodations in physical testing to support the conclusion that Guy sustained a 100% industrial loss to his leg. Moreover, the ALJ noted that Guy's present employment and higher salary did not weigh against such a conclusion, as the police chief might not be reelected, therefore leaving open the possibility of a more stringent physical exam in the future. Both the Worker's Comp. Comm'n and the circuit court affirmed. Aggrieved, the City of Laurel, along with the Miss. Municipal Workers' Comp. Group, appealed.

**ISSUE** – Whether the evidence supported the finding of 100% industrial loss to Guy's leg.

**HELD** – Because (1) Guy's leg only had a 25% impairment, (2) Guy voluntarily left his employment with Laurel, (3) Guy remained in the field of law enforcement, and (4) Guy's yearly salary had increased by \$10,000 since his injuries, the award of 100% industrial loss was not supported by the evidence. Therefore, the Court of Appeals reversed and remanded the decision of the Jones County Circuit Court.

**SUPERIOR MFG. GROUP, INC. v. CRABTREE**, 62 So.3d 992 (Miss.App., May 17, 2011)

**Affirmed Commission's Allowance of Claimant's Motion to Reopen Claim & Dismissed Appeal** - Opinion by Judge Ishee  
Hon. Billy Joe Landrum (Jones County Circuit Court)  
Briefed by J. Austin Stokes

**FACTS** – In 1997, Bill Crabtree began working for Superior at age forty-seven. While working for Superior, he obtained various positions and performed numerous tasks. Crabtree claimed

that he was injured during the scope of his employment with Superior on multiple occasions. First, in 2003, Crabtree claimed that his arm went numb and would not “wake back up” while he was performing his duties as a forklift driver. After he was evaluated by a doctor, Crabtree was diagnosed with having degenerative disc disease in his neck. Superior denied that his injury was work related. Second, in 2004, Crabtree claimed that he injured his back while at work. Superior also denied that this injury was work related. After considering all of the evidence related to Crabtree’s claims, an administrative judge found that Crabtree failed to prove that his injuries were causally connected to his employment requirements, and the ALJ denied both claims. On Nov. 3, 2008, Crabtree filed a petition to reopen. On June 16, 2009, the Mississippi Court of Appeals held that the “right to reopen a workers’ compensation case for introduction of testimony should be liberally allowed” in *Short v. Wilson Meat House, LLC*. Following this decision, the ALJ granted the motion to reopen, and this decision was affirmed by the Workers’ Compensation Commission and by the circuit court. However, the Mississippi Supreme Court eventually overruled *Short* in 2010, which led to a reversal in part of the grant of the motion to reopen. Aggrieved, Superior appealed the decision of the circuit court.

**ISSUE** – Whether a party may appeal an interlocutory judgment.

**HELD** – Because the case was still open for the introduction of new testimony and because the commission had not ordered a final order, the Court lacked jurisdiction in this matter. Therefore, the court affirmed the commission’s allowance of Crabtree’s motion to reopen the claim and dismissed Superior’s appeal.

**GREGG v. NATCHEZ TRACE ELEC. POWER ASSOC.**, 64 So.3d 473 (Miss., June 9, 2011)

**Reversed & Remanded** – En Banc Opinion by Justice Chandler

Hon. Joseph H. Loper, Jr. (Webster County Circuit Court)

Briefed by Michael Barbee

**FACTS** – Barry Gregg worked as a serviceman for Natchez Trace Elec. Power Assoc. On July 21, 2004, he sustained a compensable injury to his lower back while lifting a tool belt. Gregg had surgery on his back, and his treating physician determined that he had reached maximum medical improvement on May 2, 2006. He returned to work on Dec. 15, 2006, with a ten percent anatomical disability rating and a permanent climbing restriction. At a hearing before an ALJ, Gregg testified that his pre-injury job duties had consisted of restoring power, turning power on and off, climbing poles, and climbing ladders and hooking up service. He also performed on-call service calls. He stated that his pre-injury duties had required climbing and some heavy lifting. After the injury, Gregg returned to work as a serviceman; his supervisor testified that other members of Gregg’s crew performed any climbing that was required on the job. Both Gregg and his supervisor testified that, because Gregg could no longer climb, he was taken off the on-call list. Gregg claimed that he was permanently partially disabled because, due to the climbing restriction, he was no longer able to earn on-call compensation after the injury as he did before the injury. Gregg earned more money after the injury than he earned before the injury. Gregg argued that, but for the injury, he would receive compensation for on-call duties in addition to his base pay, as he did pre-injury. Therefore, Gregg argued, his wage-earning capacity had decreased due to the injury. The ALJ found that Gregg had failed to show any permanent disability as a result of the injury. The full Commission, with one commissioner dissenting, adopted the decision of the ALJ. Gregg appealed to the circuit court, which affirmed the order of the Commission. The Court of Appeals affirmed the decision of the circuit court. Aggrieved, Gregg appealed.

**ISSUE** – Whether the Commission erred in denying permanent partial disability benefits.

**HELD** – The Commission erred by considering Gregg’s higher wage post-injury as determinative of no lost wage-earning capacity. All of the evidence before the ALJ showed that

Gregg had rebutted the presumption of no lost wage-earning capacity. Therefore, the Court reversed and remanded the case to the Commission for further development of the evidence concerning Gregg's wage-earning capacity.

**DAVIS v. BILOXI PUB. SCH. DIST.**, 2010-CP-00338-COA (July 19, 2011)

**Affirmed** – Opinion by Judge Carlton

Hon. Lisa P. Dodson (Harrison County Circuit Court)

Briefed by Tulio D. Chirinos

**FACTS** – Joseph Davis Jr. was terminated by the Biloxi Public School District from his position as a teacher's aide based on his continuous acts of unprofessional and disrespectful conduct. The following year, Joseph's wife, Gilda Davis, a physical education teacher's aide for the same School District was notified that her employment contract would not be renewed. Mr. Davis filed a complaint against the School District in the Harrison County Circuit Court. The complaint was dismissed after the court found Mr. Davis to be an at-will employee. The Court of Appeals affirmed the decision. Mr. Davis filed a second suit in Harrison County, asserting the same allegations against the same defendants as the first suit. Both the circuit and appeals court agreed that Mr. Davis' complaint was barred by collateral estoppel and res judicata. Mr. Davis filed another suit against the School District, this time adding claims that Mrs. Davis received injuries to her side, back and legs while on School District property. The county court found that Mrs. Davis' claims were barred by the applicable statute of limitations, and that Mr. Davis' claims were barred by collateral estoppel and res judicata. The county court also sanctioned Mr. Davis \$2,000 for filing a frivolous lawsuit. The circuit court affirmed. The Davises appealed.

**ISSUES** – Whether (1) the circuit court erred by dismissing Mrs. Davis' worker's compensation and wrongful termination claims based on the applicable statute of limitations, and (2) the School District was entitled to damages and double cost based on the Davises' frivolous lawsuit.

**HELD** – (1) The circuit court did not err in dismissing Mrs. Davis' worker's compensation claim because she failed to make an application for benefits within two years from the date of her injury, as required by the Miss. Worker's Compensation Act. Mrs. Davis' Wrongful Termination claim was barred by the Miss Tort Claims Act, which requires an injured party to commence an action within one year of the actionable conduct. (2) Mrs. Davis filed a frivolous suit and double costs are the most appropriate sanction. Therefore, the Court of Appeals affirmed the circuit court's decision.

**SCOTT COLSON'S SHOP, INC. v. HARRIS**, 67 So.3d 841 (Miss.App., July 19, 2011)

**Reversed & Rendered** – Opinion by Judge Roberts – Dissent by Presiding Judge Irving (joined by Ishee and Russell, JJ.)

Hon. Winston L. Kidd (Hinds County Circuit Court)

Briefed by Michael Williams

**FACTS** – Parnell Harris began making horseshoes in SCSI's blacksmith shop. On his second day of work, Harris claims his supervisor, Alex McGowan, began harassing him and later claimed McGowan was verbally abusive. Harris also claimed McGowan was critical of prominent African Americans and repeated racial slurs. Harris ultimately left work because of McGowan's actions. After leaving SCSI, Harris became fearful McGowan or Scott Colson would try to kill him and claimed the feeling was directly related to his time at SCSI. This mental condition completely disabled Harris by the time he had a hearing before the AJ seven years after quitting SCSI. Dr. Wood Hiatt, a board-certified psychiatrist, examined Harris on behalf of SCSI and declared that Harris suffered from severe, chronic paranoid schizophrenia with two of

Harris's three treating physicians agreeing. However, Dr. Hiatt did not believe Harris's experience at SCSi caused the condition. The AJ found that Harris was entitled to workers' compensation benefits and SCSi appealed the AJ's opinion to the Commission. The Commission made its findings and overruled the AJ's opinion. Harris appealed to the circuit court, and the circuit court reversed the Commission's decision and awarded full compensation benefits. SCSi appealed.

**ISSUES** – Whether (1) the Commission erred when it considered hearsay evidence that the AJ refused to consider; (2) the circuit court improperly substituted its judgment for the Commission's; and (3) whether the Commission properly found Harris was not entitled to workers' compensation benefits.

**HELD** – (1) The Commission did not err when it considered hearsay evidence the AJ refused to consider because the Commission was entitled to use and consider Hudson's affidavit during deliberations due to the fact the rules of evidence are relaxed during the Commission's proceedings and the information was not dispositive of Harris's claims or conditions. (2) The circuit court did improperly substitute its judgment for the Commission's because the circuit court held the Commission did not give proper weight to the testimony of Harris's treating physician and too much weight to the testimony to SCSi's expert, but the circuit court did not specify any of Harris's expert's testimony which the Commission failed to weigh properly. Also, objectively weighing the evidence was not a proper component of the circuit court's review as an appellate court. (3) The Commission properly found that he was not entitled to workers' compensation benefits because none of Harris's treating physicians mentioned a causal connection between Harris's mental illness and employment at SCSi and, therefore, failed to present clear and convincing evidence that his mental condition was causally connected to his employment.

**DISSENT** – Judge Irving argued the Commission failed to consider whether Harris suffered from a mental infirmity during his employment with SCSi and, if so, whether the condition was exacerbated by the events that happened at SCSi. As a result he would reverse and remand to the Commission with instructions to consider when Harris's schizophrenia had its onset and whether the incidents at SCSi aggravated or exacerbated his mental state.

**KUKOR v. NE. TREE SERV., INC.**, 2010-WC-01280-COA (July 26, 2011)

**Affirmed** – Opinion by Judge Myers  
Hon. William E. Chapman III (Madison County Circuit Court)  
Briefed by Erin Doctor

**FACTS** – Jim Albritton owned and operated two businesses, Northeast and Jay's. Northeast's business was cutting and trimming trees. Jay's performed stump and debris removal services. The two businesses occasionally worked on jobs together, and sometimes workers employed primarily with Northeast would work for Jay's. Employees of Jay's would not, however, work for Northeast. If, in the course of a job, an employee first trimmed trees and subsequently removed stumps, Albritton considered and paid them as working first for Northeast and then for Jay's. An employee who worked for both companies had to fill out separate documentation for each company, and received checks from both companies' payroll. Michael Kukor worked for both Northeast and Jay's. He originally applied with Northeast, but worked the majority of his hours with Jay's. Kukor fell while rappelling from a tree that he had trimmed and suffered back and wrist injuries. The Miss. Workers' Comp. Comm'n determined that, at the time of his injury, Kukor was working only for Northeast. Therefore, only his average weekly wage from Northeast was used to calculate the amount of benefits Kukor was entitled to. Had the Comm'n included

Kukor's wages from Jay's, his benefits would have increased substantially. His injuries prevented him from returning to his pre-injury employment as a tree trimmer. A year later, Kukor attempted to return to work at a light-duty position with Jay's but the stress to his back was too great. Kukor alleged to the Miss. Workers' Comp. Comm'n that for purposes of workers' compensation, Jay's and Northeast were alter egos of one company and his injuries left him permanently and totally disabled. The Comm'n rejected his contentions, and the circuit court affirmed their finding that Jay's and Northeast were two distinct companies and that Kukor had suffered only a 75% loss of earning capacity. Kukor appealed.

**ISSUES** – Whether the circuit court erred in affirming the Miss. Workers' Comp. Comm'n's holding that (1) the two businesses Kukor worked for at the time of the injury were distinct companies for purposes of the workers' compensation statute and (2) Kukor's injuries did not render him permanently and totally disabled.

**HELD** – (1) Northeast and Jays had distinct business purposes and a clear demarcation between their respective activities; as such there was substantial evidence indicating they were not alter egos of the same company. (2) Based on his age, work history and injury-related impairments, Kukor was still employable and capable of earning wages and thus was not permanently and totally disabled by his fall. Therefore, the Court of Appeals affirmed the rulings of the circuit court.

**BATES v. DEDICATED MANAGEMENT GROUP, LLC**, 67 So.3d 855 (Miss.App., Aug. 2, 2011)

**Affirmed** – Opinion by Judge Myers

Hon. David H. Strong Jr. (Lincoln County Circuit Court)

Briefed by Grant Mullins

**FACTS** – Terrence Bates claimed that he suffered a work-related injury to his back in Aug. of 2005 while operating machinery for Dedicated Management Group, LLC. In Mar. of 2006 he filed a petition to controvert claiming he injured his back on Aug. 26, 2005. In a deposition, Bates told his counsel he could not remember the exact date of the injury and referred counsel to his medical records. DMG and its insurance carrier disputed the claim both because Bates did not report the claim and the medical records did not corroborate a work injury. The case came before an administrative judge in May of 2008. Bates testified he informed a supervisor named "Eric" of the injury and was told to go to the hospital, but DMG had no record of a supervisor by that name. Additionally, DMG's general manager, James Hughes, testified that Bates arrived at work on Aug. 22 with a doctor's release. The doctor's release excused Bates from working that week. Bates acquired a second doctor's release that excused him from work until Aug. 29, 2005; neither release indicated that any injury occurred while Bates was at work. Bates never returned to work and was terminated on Oct. 10, 2005. The AJ found by a preponderance of evidence that Bates had suffered a work related-injury in spite of "considerable factual conflicts" in the case. Citing conflicting testimony on the part of Bates and medical evidence which showed the pain occurred one month before the alleged injury occurred, the MWCC found Bates had not met his burden of proof under the Miss Workers' Compensation Law and reversed. Bates timely appealed.

**ISSUES** – Whether the evidence by which the Commission based its decision was sufficient in determining whether Bates suffered a work-related injury.

**HELD** – Because Bates presented no corroborating evidence with respect to his alleged injury and because no witnesses contemporaneously observed Bates exhibit signs, or express complaints, of a disability in August 2005, Bates failed to prove he suffered a work injury beyond

speculation and conjecture. Thus, Bates did not meet the required burden. Therefore, the Court of Appeals affirmed the MWCC's ruling.

**KNIGHT PROPERTIES, INC. v. SANDERS**, 2010-CA-00404-COA (Aug. 2, 2011)

**Reversed & Remanded** – Opinion by Judge Myers  
Hon. William E. Chapman III (Madison County Circuit Court)  
Briefed by Ben McMurtray

**FACTS** – Knight Properties, Inc. employed Kenny Sanders as a subcontractor. First Comp Ins. Co., Sanders' insurer, purported to cancel his policy for nonpayment of premiums. One of Sanders's employees was subsequently injured on the job. The employee sought compensation, contending that Sanders did not have workers' comp. coverage and that Knight, the general contractor, was therefore his employer under Miss. Code Ann. § 71-3-7. The Miss. Workers' Comp. Comm'n determined that First Comp had failed to follow the statutory notice requirements when it attempted to cancel Sanders's policy. The Comm'n ordered First Comp to assume responsibility for future payments to the injured employee. At the time of the ruling though, Knight had already paid more than \$200,000 in compensation and benefits. Knight sought indemnity from First Comp, but the Comm'n held that it did not have jurisdiction over that claim. Knight brought suit in Madison County against First Comp to recover the benefits Knight had paid to the injured worker. The circuit court dismissed Knight's indemnity suit, holding that Miss. Code Ann. § 71-3-37(13) provided the Comm'n with exclusive jurisdiction to resolve issues of reimbursement between carriers. Aggrieved, Knight appealed from that judgment.

**ISSUES** – Whether the trial court erred in dismissing Knight's indemnity suit for want of jurisdiction.

**HELD** – Because Miss. Code Ann. § 71-3-37(13) does not grant the Miss. Workers' Comp. Comm'n exclusive jurisdiction over all claims for reimbursement between workers' comp. insurers, the trial court erred in dismissing Knight's indemnity suit for want of jurisdiction. Therefore, the Court of Appeals reversed the judgment of the Madison County Circuit Court and remanded the case for trial.

**BALL v. ASHLEY FURNITURE INDUS.**, 2010-WC-01627-COA (Oct. 11, 2011)

**Affirmed** – Opinion by Judge Ishee  
Hon. James Lamar Roberts Jr. (Pontotoc County Circuit Court)  
Briefed by Laura E. Collins

**FACTS** – In Oct. 2003, Sandy Ball slipped and fell while working for her employer, Ashley Furniture Indus.. She sustained a knee-injury that was determined to be a preexisting, degenerative condition not completely related to, but aggravated by, her work injury. Ball was released back to work two months later. In April 2004, she filed a petition to controvert with the Miss. Workers' Comp. Comm'n (the Comm'n) against her employer, claiming her injuries sustained. Later that year, she filed for workers' compensation benefits to cover a requested knee surgery. Ashley Furniture denied the benefits, and Ball asked the Comm'n to compel her employer to pay. Ashley Furniture contested the motion, asserting that the injury was a pre-existing one, only aggravated by the fall. Ball conceded that the injury was pre-existing but argued that the aggravation to her knee was going to require ongoing treatment. The parties agreed to allow an administrative judge to review the evidence and rule on the case. But before

the waiver was signed, Ball's counsel tried to submit additional medical records from Ball's doctor, Dr. Rice. The ALJ ruled that the injury was pre-existing and aggravated by the fall, but Ashley Furniture was not responsible for treatment after Ball was released back to work. The Comm'n reviewed the ALJ's order and affirmed the decision. Ball appealed the Comm'n's findings to the Pontotoc County Circuit Court, and the circuit court affirmed. Ball appealed.

**ISSUES** – Whether the Comm'n (1) committed prejudicial and reversible error in upholding the ALJ's finding that Ashley Furniture was not responsible for Ball's medical treatments to her right knee after Dec. 2003, (2) based its order on substantial evidence because the ALJ's ruling was founded on inapplicable law, (3) failed to resolve all issues of doubt in the medical testimony submitted, and (4) improperly upheld the ALJ's decision to exclude the written medical records from Dr. Rice.

**HELD** – (1) Because the ALJ based her decision on the strong evidence of Ball's treating physician's remarks and Ball's medical records, the issue is meritless. (2) Because the ALJ applied relevant law to Ball's case and an injury is no longer compensable when the effects of the injury have subsided, the issue is meritless. (3) Because the court reviewed the record and failed to see any doubt in Ball's doctor's testimony that would indicate Ball's current alleged disability has any connection to Ashley Furniture, the issue is meritless. (4) Because Ball blatantly failed to meet the requirements of Procedural Rule 9 in her attempted admission of new medical evidence from Dr. Rice, the issue is without merit. Therefore, the Court of Appeals affirmed the judgment of the Pontotoc County Circuit Court.

**MISS. BAPTIST MED. CTR. v. MURPHY**, 2010-WC-02019-COA (Oct. 11, 2011)

**Vacated & Remanded** – En Banc Opinion by Presiding Judge Irving  
Hon. William E. Chapman III (Rankin County Circuit Court)  
Briefed by Meagan Linton

**FACTS** – Billy Murphy was working for Miss. Baptist Med. Ctr. (Baptist) in Jan. 2000 when he injured his back while lifting a machine over his head. Approximately one year later, while working for River Oaks Hospital, Murphy fell on the floor and sustained further injuries. As a result of his injuries, Murphy took a variety of painkillers in the years following the injuries. In 2005 and 2006, Murphy was treated for severe gastrointestinal issues. Dr. Ron Williams, who had been treating Murphy for his pain, testified by deposition that the painkillers had substantially contributed to Murphy's need for gastrointestinal treatment. Murphy filed workers' compensation claims against both Baptist and River Oaks. The administrative judge (ALJ) found that Murphy's gastrointestinal issues were not related to the injuries he suffered while working for Baptist and River Oaks. Murphy appealed to the Workers' Compensation Commission (Commission), which issued an order in 2010, amending the findings of the ALJ and requiring Baptist and River Oaks to share the costs of Murphy's gastrointestinal treatments and a discogram procedure. However, the Commission's order did not make any finding as to who would ultimately be liable for the costs of any treatments. The Commission then remanded the case to the ALJ for additional proceedings. However, Baptist filed an appeal, and there is no indication of any further proceedings before the ALJ. The Rankin County Circuit Court affirmed the judgment of the Mississippi Workers' Compensation Commission. Baptist appealed.

**ISSUE** – Whether the circuit court lacked jurisdiction to hear Baptist's appeal.

**HELD** – The order entered in this case was not a final judgment of the Commission, therefore Baptist's appeal was interlocutory and the circuit court lacked jurisdiction. Therefore, the Court of Appeals vacated and remanded the case to the Commission for further proceedings.

**STANFORD v. V.F. JEANSWEAR**, 2010-WC-01284-SCT (Oct. 11, 2011)

Affirmed – Opinion by Presiding Judge Irving  
Hon. Andrew K. Howorth (Union County Circuit Court)  
Briefed by Holly Hosford

**FACTS** – Martha Kay Stanford allegedly sustained injuries from a fall that occurred during the course of her employment driving a truck for V.F. Jeanswear. Three physicians who treated Stanford – Dr. Prater, Dr. Mitias, and Dr. Crosby – found that she did have physical injuries, but only Dr. Crosby claimed to be aware of Stanford’s fall. According to Dr. Crosby, Stanford told him of her work-related injury more than two years after the injury allegedly occurred. Stanford filed a petition with the Mississippi Workers’ Compensation Commission. A hearing was held before an administrative law judge (ALJ), who denied Stanford’s claim for workers’ compensation benefits. The Commission affirmed the ALJ’s decision. Stanford argued that the ALJ demonstrated bias in favor of V.F. Jeanswear by allowing V.F. Jeanswear employee Sally Jo Rupley to testify that she did not observe Stanford having trouble with any parts of her body while on a cruise together, placing undue emphasis on the fact that Stanford went on a cruise two months after her alleged work-related injury, and favoring the medical records of Dr. Mitias who Stanford claimed she only saw once. Stanford also argued that the Commission’s decision to deny benefits was not supported by substantial evidence. The Circuit court affirmed the Commission’s decision to deny benefits. Stanford appealed.

**ISSUES** – Whether (1) the AJ showed bias in favor of the employer and insurance carrier, and (2) the commission’s denial of disability benefits was arbitrary and capricious and not supported by substantial evidence.

**HELD** – (1) Because Rupley denied that anyone at V.F. had threatened or coerced her to testify, allowing her to testify where the ALJ also permitted the testimonies of Stanford’s relatives and friends did not demonstrate bias. Nor was there any bias demonstrated by the ALJ in considering the video evidence of Stanford’s cruise as one piece of evidence in rendering her decision. Furthermore, because the ALJ also discussed the medical records of the other two treating doctors, there was no evidence that the ALJ unfairly favored Dr. Mitia’s records. Therefore there was no merit to the claim that the ALJ showed bias in favor of V.F. Jeanswear or Guaranty Insurance Company. (2) Because Stanford’s medical records did not contain mention of a work-related fall until two years after the alleged injury and the employer V.F. Jeanswear denied ever having notice of any work injury, the Commission did not err in finding that Stanford had failed to prove by a preponderance of the evidence that she had sustained a compensable work-related injury. Therefore, the Court of Appeals affirmed the judgment of the Circuit Court of Union County.

**WRIGHT v. THE UNIV. OF MISS. MED. CTR.**, 2010-WC-01881-COA (Nov. 22, 2011)

Affirmed – Opinion by Judge Barnes  
Hon. S. Malcolm O. Harrison (Hinds County Circuit Court)  
Briefed by Cody Roebuck

**FACTS** – Irene Wright, formerly a certified nurse’s assistant (CNA) employed by The University of Mississippi Medical Center, suffered a back and neck injury while on the job. Wright’s base salary as a CNA was \$7.16 an hour. Wright filed a petition to controvert, and UMMC paid temporary total disability benefits and medical payments for just over two years from Mar. 2002 to Apr. 2004. In Mar. 2003, Dr. Rahul Vorha conducted a functional capacity evaluation (FCE) on Wright, and determined that it was difficult to surmise what Wright’s abilities and limitations

were, as she was “self-limited by complaints of low back and neck pain.” In July 2003, Dr. Denzil Robertson stated that Wright could return to work “in a sedentary occupation, but is prohibited from duties that might stress her back.” Wright temporarily returned to work as a CNA in May 2004, but quit after two months due to her injury. Wright later worked for UMMC as a file clerk for five months, and received \$7.38 and later \$7.65 an hour. The job as a file clerk required no strenuous activity, but Wright quit because she claimed to be in pain. Wright then worked part-time as a cashier as well as for Avon as a representative. Wright made \$75 to \$100 a week working for Avon, and claimed \$9,531.00 in net profit business income from Avon in 2006. After quitting the file clerk job, Wright met with Bruce Brawner, a vocational-rehabilitation counselor, who referred her to forty-four different potential jobs, but Wright failed to contact a majority of the employers. An administrative judge denied Wright’s request for permanent disability benefits in Feb. 2010, finding that Wright “failed to prove that she suffered any permanent disability and/or loss of wage-earning capacity.” Wright filed a petition for review, and the Commission affirmed the judge’s findings. Wright appealed the Commission’s order to the Hinds County Circuit Court, which affirmed the decision. Wright appealed.

**ISSUES** – Whether the administrative judge erred in denying Wright’s request for permanent disability benefits for loss of wage-earning capacity.

**HELD** – The administrative judge did not err in denying Wright permanent disability benefits because Wright’s salary as a file clerk and her profits as an Avon representative were greater than her salary as a CNA, and the file clerk job merely required sitting at a desk and standing at a copier, activities which Brawner testified were within Wright’s capabilities. Further, Wright failed to pursue many of the job opportunities provided her by Brawner, some of which would have paid more than her CNA salary. Therefore, the Court of Appeals affirmed the Commission’s denial of permanent disability benefits.

**SMITH v. TRONOX LLC**, 2010-WC-01875-COA (Dec. 13, 2011)

**Affirmed** – Opinion by Judge Roberts  
Hon. James Lamar Roberts Jr. (Monroe County Circuit Court)  
Briefed by Laura E. Collins

**FACTS** – Angela Smith sustained carpal tunnel syndrome during her employment with Tronox LLC. While employed, Smith was primarily responsible for monitoring gauges and machinery, emptying fifty-pound bags of sand into a machine approximately every two hours, and turning various handles when necessary. Smith first received carpal tunnel treatment in 2000. In 2001, she had surgery to repair an unruptured brain aneurysm. In Sept. 2001, she petitioned to controvert, stating she was entitled to workers compensation from the work-induced carpal tunnel syndrome. In 2002, Smith underwent carpal tunnel release surgery for one of her arms but claimed it did not relieve her symptoms. She declined to have release surgery on her other arm but continued to see her doctor for treatment. Two years later, Smith saw a different doctor for an independent evaluation. The independent doctor found Smith’s work duties were generally not the type of actions to cause carpal tunnel, Smith should have experienced relief once she stopped working, Smith should have experienced relief after the carpal tunnel release surgery, and Smith’s brain aneurysm surgery could lead to a variety of nervous sensations. In June 2007, the parties went before an administrative judge who found Smith was entitled to permanent disability benefits for twenty weeks and she was not entitled to temporary benefits. The Comm’n concluded Smith had a five percent industrial loss of use regarding both of her arms. Yet, the Commission’s order reduced Smith’s permanent disability benefits to ten weeks and granted Smith temporary disability benefits. Tronox appealed the order to the circuit court,

and Smith cross-appealed. The circuit court affirmed the permanent disability benefits and reversed Commission's decision to grant temporary disability benefits. Smith appealed.

**ISSUES** – Whether (1) the Comm'n erred when it concluded Smith had a five percent disability to both arms, and (2) the circuit court erred in reversing the Commission's grant of temporary disability benefits.

**HELD** – (1) Because Smith did not present enough evidence to prove otherwise, the Comm'n did not err when it concluded Smith had a five percent disability to both arms. (2) Because Smith failed to sustain her burden of proof, the circuit court properly reversed the Commission's grant of temporary disability benefits. Therefore, the Court of Appeals affirmed the judgment of the Monroe County Circuit Court.

## II. 2012 CASELAW UPDATE

### **THADISON v. UNIV. LIGHT'G TECH., INC.**, 2010-WC-01563-COA (Jan. 10, 2012)

**Affirmed** – Opinion by Presiding Judge Irving  
Hon. Michael M. Taylor (Lincoln County Circuit Court)  
Briefed by Tulio D. Chirinos

**FACTS** – Anthony Thadison was an employee of Universal Lighting Technologies Inc. Thadison experienced neck and back pain after hitting a bump while operating a forklift at work. He was treated by Dr. Liverman and released to return to work. He did not mention any work-related injury to Dr. Liverman. Sometime later Thadison reported to the emergency room complaining of left-side neck pain. Dr. Barrett diagnosed Thadison with spinal stenosis and a herniated disc. Dr. Senter performed cervical surgery thereafter on Thadison. Thadison failed to indicate his injury was work related during the emergency room visit. Additionally, Dr. Senter testified Thadison's neck condition did not have anything to do with the operation of the forklift and that only a possibility existed that his job contributed to or aggravated his existing spinal condition. Nonetheless, Thadison filed a petition to controvert with the Miss. Workers' Compensation Commission (Commission) claiming he was injured while working as a forklift operator for Universal. The Commission denied Thadison's petition and the circuit court subsequently affirmed. Thadison appealed.

**ISSUES** – Whether the circuit court erred in (1) granting Universal's motion to dismiss and (2) affirming the Commission's ruling that Thadison's injury was non-compensable due to the lack of medical testimony.

**HELD** – (1) The circuit court did not err in granting Universal's motion to dismiss because Thadison failed to submit an appellate brief. (2) The circuit court did not err in affirming the circuit court's decision because substantial evidence existed to show Thadison did not sustain a compensable work-related injury. Therefore, the Court of Appeals affirmed the decision of the circuit court.