

IN THE CIRCUIT COURT OF LOWNDES COUNTY, MISSISSIPPI

FRED C. GOAD

PLAINTIFF

VS.

C. A. NO. 2008-0079-CV1

DONALD R. DEPRIEST and MARITIME COMMUNICATIONS/LAND MOBILE, LLC

DEFENDANTS

DEFENDANT, DONALD R. DEPRIEST'S, ANSWERS AND RESPONSES TO PLAINTIFF'S POST-JUDGMENT INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

COMES NOW, Defendant, Donald R. DePriest, and files this his Answers and Responses to Plaintiff's Post-Judgment Interrogatories and Requests for Production of Documents as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Regarding your current employment, please state:

- (a) the name and address of your employer(s);
(b) your job title(s) and a description of the duties you perform;
(c) the name(s) of your immediate supervisor(s); and
(d) the date you became employed.

ANSWER TO INTERROGATORY NO. 1:

- (a) I am not employed.
(b) Not applicable.
(c) Not applicable.

This is a case by Mr. Goad against Donald DePriest and MCLM. Mr. DePriest asks that Sandra DePriest's financials not be included in this case. However, before the FCC both DePriests are alleging that Sandra is the sole own and controller of MCLM. Thus, Mr. DePriest appears to be admitting in these filing that he is the only relevant party with respect to MCLM and any obligations it may have. This is contradictory to what MCLM is telling the FCC.

In these responses it becomes clear that Mr. DePriest's listed collateral has less value than the debts it is backing. This appears to confirm what Petitioners have shown with the UCC filings of MCLM, that MCLM's FCC licenses and Mr. DePriest's other companies' (WPV and possibly Maritel) FCC licenses are being used as collateral to back debt. See e.g. the collateral and debt listed herein with Pinnacle National Bank. That debt is more than the alleged collateral backing it. The MCLM UCC filing with Pinnacle Bank states that all of its assets including licenses are collateral. This supports Petitioners showing and contradicts what MCLM and Pinnacle National Bank (in an alleged declaration) are telling the FCC.

(d) Not applicable.

**INTERROGATORY NO 2:** Identify the compensation you receive from

any source as follows:

- (a) the method by which your income is determined;
- (b) your base rate of pay;
- (c) gross and net earnings for each paycheck received by you since January 1, 2006; and
- (d) type and amount of each deduction made from your paychecks.

**ANSWER TO INTERROGATORY NO. 2:** The Defendant objects to

Interrogatory No. 2 as being overly broad and burdensome in requesting information going back to January 1, 2008, some 2½ years ago, and for the further reason of relevancy going back to January 1, 2008. However, Defendant will answer to the best of his ability, beginning with November 3, 2008, the approximate date of the Judgment against Mr. DePriest in this action.

→ (a) Any earnings, monies, streams of income of Mr. Depriest subsequent to November 3, 2009, have been minimal. What little income I have is determined by my Certified Public Accountant on a cost basis.

(b) Not applicable.

→ (c) I do not receive any paycheck. As mentioned, my earnings since June 2009 have been minimal.

(d) Not applicable.

Donald DePriest is saying in this filing that he has little income and not much in assets, with many assets being fully collateralized. Yet, per evidence previously provided by Petitioners to the FCC, he is guaranteeing and backing substantial debts of MCLM. This supports Petitioners' past arguments and suggests that Donald DePriest and his wife have conspired to only listed her as the sole controlling interest in MCLM in order to try and protect MCLM's assets from his creditors, even though he is the real owner and controller.

**INTERROGATORY NO. 3:** Please list all companies from which you are receiving, have received, or are entitled to receive, any payments of any kind since January 1, 2006.

**ANSWER TO INTERROGATORY NO. 3:** The Defendant objects to Interrogatory No. 3 as being overly broad and burdensome in requesting information going back to January 1, 2008, some 2½ years ago, and for the further reason of relevancy going back to January 1, 2008. However, Defendant will answer to the best of his ability, beginning with November 3, 2008, the approximate date of the Judgment against Mr. DePriest in this action. Donald R. DePriest will produce his 1040 U. S. Individual Income Tax Return for the 2008 taxable year filed with the Internal Revenue Service of the United States of America filed as a joint return by Donald R. DePriest and wife, Sandra F. DePriest, upon execution and return of a Confidentiality Agreement attached hereto as Exhibit "A" protecting the confidentiality of Sandra F. DePriest, who is not a party to this action. Donald R. DePriest source of income since November 3, 2008 have been minimal.

Donald DePriest admits here that he files a joint tax return with Sandra DePriest. Yet, both of them told the FCC that they maintain entirely separate economic lives. This shows those statements to the FCC to be entirely false. The FCC should proceed to obtain from the IRS copies of the DePriests' jointly filed returns.

**INTERROGATORY NO. 4:** For all monies received by you since January 1, 2008, from sources other than those previously described, including, but not limited to, sale of assets, interest, dividends, payments on promissory notes held by you, rental income, income from investments, or consulting fees, please state:

- (a) the date each sum was received;
- (b) amount of each receipt;

- (c) the source for each receipt; and
- (d) reason for each receipt of money by you.

**ANSWER TO INTERROGATORY NO. 4::**

- (a) See Answer to Interrogatory No. 3 above.
- (b) See Answer to Interrogatory No. 3 above.
- (c) See Answer to Interrogatory No. 3 above.
- (d) See Answer to Interrogatory No. 3 above.

In addition to the tax return, which will be produced upon execution of the Confidentiality Agreement, the Defendant provides the following information:

- (1) Trustmark National Bank, Acct. No. 880-832-6381, in the name of Don DePriest d/b/a Greenbriar Construction Account. (See copy of statement contained in collective Exhibit "B-1");
- (2) BK Bank, Account No. 4483863, in the name of Donald R. DePriest. (See copy of statement contained in collective Exhibit "B-2");
- (3) Bank of Nevis, Ltd., Account No. 1700300, in the name of Donald R. DePriest. (See copy of statement contained in collective Exhibit "B-3");
- (4) Renasant Bank, Account No. 0903428591, in the name of Donald R. DePriest. (See copy of statement contained in collective Exhibit "B-4");
- (5) Servis 1<sup>st</sup>, Account No. 100031236, in the name of Donald R. DePriest. (See copy of statement contained in collective Exhibit "B-5");
- (6) Bank of Vernon, Account No. 163787206, in the name of Donald R. DePriest. (See copy of statement contained in collective Exhibit "B-6");
- (7) BNA Bank, Account No. 127500001, in the name of Donald R. DePriest. (See copy of statement in collective Exhibit "B-7");

- (8) First Commercial Bank, Account No. 000-105-021-6, in the name of Donald R. DePriest or Belinda Hudson. (See copy of statement contained in collective Exhibit "B-8");
- (9) Concordia Bank & Trust Co., Account No. 4567811, in the name of Donald R. DePriest. (See copy of statement contained in collective Exhibit "B-9");
- (10) First Commercial Bank, Account No. \_\_\_\_\_, in the name of Donald R. DePriest. (Closed); and
- (11) BankFirst, Account No. \_\_\_\_\_, in the name of Donald R. DePriest. (Closed).

**INTERROGATORY NO. 5:** For each parcel of real property in which you have an interest, please state:

- (a) the address or location;
- (b) date acquired;
- (c) purchase price;
- (d) names(s) in which titled;
- (e) name and address of note and/or mortgage holder;
- (f) outstanding principal balance of indebtedness secured by a lien on the parcel;
- (g) present fair market value of each parcel; and
- (h) the income tax basis in the property.

**ANSWER TO INTERROGATORY NO. 5:** The Defendant objects to Interrogatory No. 5 as being overly broad and burdensome in requesting information going back to January 1, 2008, some 2½ years ago, and for the further reason of relevancy going back to January 1, 2008. However, Defendant will answer to the best of

his ability, beginning with November 3, 2008, the approximate date of the Judgment against Mr. DePriest in this action. Donald R. DePriest attaches the legal descriptions of these properties, where he has them. (See collective Exhibit "C"). Any documents evidencing interest of Donald R. DePriest (where not produced) is a matter of public record and can be obtained by Plaintiff:

- (1) 4-Unit apartment building, 6<sup>th</sup> Ave. Noth, Columbus, MS, acquired about 1989 for an approximate price of \$100,000.00 with a fair market value today of approximately \$150,000 and mortgaged to Bank of Vernon;
- (2) House located on 1018 4<sup>th</sup> Ave. South, Columbus, MS, acquired about 1988 for the purchase price of \$35,000.00 with a fair market value today of approximately \$40,000 and fully mortgaged to the Bank of Vernon;
- (3) Approximately a 17 acre commercial property located on Lehmborg Road, Columbus, MS, acquired about 1990 at and for approximately \$200,000.00 with a fair market value today of approximately \$375,000 and fully mortgaged to the Bank of Vernon;
- (4) Approximately 8 acre commercial site located on Bluecutt Road, Columbus, MS, acquired at various times between 1976 and 1996 at a average purchase price of approximately \$300,000, with a fair market value today of approximately \$800,000.00 and fully mortgaged to BancorpSouth and Pinnacle National Bank;
- (5) Approximately 1,400 acres of farmland located in Noxubee County acquired at various times between 1989 and 1997 at an average purchase price of approximately \$800,000, with a fair market value today of approximately \$1,700,000 and fully mortgaged to the Bank of Vernon and Renasant Bank;
- (6) Approximately 1,750 acres of farmland located in Clay County, MS, acquired in approximately 1989 for an approximate purchase price of \$600,000, with a fair market value today of approximately \$2,700,000 and fully mortgaged to BancorpSouth and Pinnacle National Bank;
- (7) Approximately 620 acres of farmland located in Monroe County, MS, acquired in approximately 1989 for an approximate purchase price of \$350,000, with a fair market value today of approximately \$900,000 and fully mortgaged to Bank of Vernon and Renasant Bank;

Collateral backing debt with BancorpSouth and Pinnacle National Bank has less value than debt. However, MCLM's UCC says FCC licenses are collateral too, which would explain why the real party collateral can be less than total debt.

- (8) Approximately 8 acres of commercial land, under 16<sup>th</sup> Section Lease, in Carroll County, MS, acquired in approximately 1972 for an annual lease payment of \$5,000, with an unknown fair market value (due to the 16<sup>th</sup> Section Lease) and fully mortgaged to the Bank of Vernon;
- (9) House and lot located at 310 North Wall Street, Natchez, MS, acquired in approximately 1989 for a purchase price, plus remodeling expense, of approximately \$900,000, with a fair market value today of approximately \$2,000,000 and fully mortgaged to BK Bank and Southeast Commercial Finance;
- (10) House and lot located at 663 Greenbriar Dr., Columbus, MS, acquired in approximately 2001 for an approximate purchase price of \$800,000, with a fair market value today of approximately \$800,000 and fully mortgaged to BankFirst and Tennessee Commerce Bank;
- (11) Commercial restaurant building housing La Fiesta Brava, located on Alabama Street, Columbus, MS, acquired in approximately 2002 for an approximate purchase price of \$200,000, with a fair market value today of approximately \$150,000 and fully mortgaged to BancorpSouth; and
- (12) House located at 206 8<sup>th</sup> Street North, Columbus, MS, acquired in approximately 1992 for an purchase price, including remodeling, of approximately \$250,000, with a fair market value today of \$200,000, and fully mortgaged to Trustmark Bank.

With regard to the Answers to Interrogatories Nos. 5(f), 11(e), and 11(f), Mr.

DePriest attaches composite Exhibit "D", which represents the following obligations of

Donald R. DePriest:

	<u>Date</u>	<u>Lender</u>	<u>Principal Amt.</u>	<u>Collateral</u>
→ (1)	12/22/08	Pinnacle National Bank	\$ 2,040,000.00	Clay Co. 1750 acres & Bluecutt Rd.
(2)	12/15/07	Fifth Third Bank	\$ 300,000.00	Unsecured
(3)	12/30/03	BankFirst Financial Serv.	\$ 700,437.00	663 Greenbriar Dr.
→ (4)	2/13/06	BancorpSouth	\$ 3,538,568.00	Clay Co. 1750 acres & Bluecutt Rd.

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Total debt owed to Pinnacle National Bank and BancorpSouth is much more than the alleged collateral backing it. MCLM has said its FCC licenses are collateral in UCC filings.

	<u>Date</u>	<u>Lender</u>	<u>Principal Amt.</u>	<u>Collateral</u>
(5)	12/20/02	Citizens National Bank	\$ 175,072.50	Bluecutt Rd. Commercial Property & Lehmberg Rd. Commercial Property
(6)	10/24/06	BK Bank	\$ 1,130,838.42	House & Lot, Natchez, MS
(7)	3/31/08	Renasant Bank	\$ 1,202,777.08	200 acres in Noxubee County & 504 acres in Monroe County
(8)	7/23/07	Bank of Vernon	\$ 3,578,153.94	1100 acres in Noxubee County, Lehmberg Rd. Commercial Prop., 4 Unit Apartment Building, & 120 acres in Monroe County
(9)	6/20/08	First National Bank of Talladega	\$ 408,927.87	Bioventure stock & Maritel stock
(10)	11/9/01	Trustmark National Bank	\$ 175,000.00	206 8 <sup>th</sup> St. North
(11)	1/9/09	Tennessee Commerce Bank	\$ 329,247.25	636 Greenbriar Dr.
(12)	6/16/09	BNA Bank	\$ 521,857.36	Texco stock
(13)	1/25/07	Priority One Bank	\$ 175,520.00	Oil & water separator
(14)	8/3/05	Servis 1 <sup>st</sup> Bank	\$ 500,000.00	Bioventure stock

	<u>Date</u>	<u>Lender</u>	<u>Principal Amt.</u>	<u>Collateral</u>
(15)	12/22/02	Regions Bank	\$ 700,000.00	Maritel stock
(16)	6/22/07	West Alabama Bank & Trust	\$ 610,541.48	Maritel stock
(17)	2/17/00	BankFirst Financial Serv.	\$ 100,025.00	Excavator

**INTERROGATORY NO. 6:** For all stocks, bonds and other securities owned by you or in which you have had an interest since January 1, 2008, please state for each:

- (a) the name of the company or entity which issued the stocks, bonds or other securities;
- (b) the number of shares owned;
- (c) date acquired;
- (d) purchase price;
- (e) present fair market value;
- (f) date of maturity and value at maturity (if applicable);
- (g) whether the stocks, bonds or other securities have been pledged to secure any debt or obligation. If the answer to item (h) is "yes", please state:
  - (i) the name and address of the creditor;
  - (ii) the date the debt or obligation was incurred;
  - (iii) the reason the debt or obligation was incurred;

- (iv) the original amount of the debt or obligation;
  - (v) the current principal balance; and
  - (vi) the date the debt is due in full.
- (h) whether the stocks, bonds or other securities are still owned. If the answer to item (i) is “no”, please state for each stock, bond, or other security:
- (i) the date of disposition;
  - (ii) the consideration received; and
  - (iii) the disposition of the proceeds.

**ANSWER TO INTERROGATORY NO. 6:** The Defendant objects to

Interrogatory No. 6 as being overly broad and burdensome in requesting information going back to January 1, 2008, some 2½ years ago, and for the further reason of relevancy going back to January 1, 2008. However, Defendant will answer to the best of his ability, beginning with November 3, 2008, the approximate date of the Judgment against Mr. DePriest in this action:

- (a) MCT Investors, Inc. (Dissolved);
- (b) MedCom Development Corporation (Administratively dissolved);
- (c) American Non-Woven Corporation – All assets sold at auction and distributed to Bank of Vernon;
- (d) Smith Moco #1 and #2 – All assets transferred to Victor Smith about six months ago due to inability of Donald R. DePriest to meet capital calls;
- (e) Protective Systems, Inc. (Administratively dissolved);

These appear to be other business or partnerships of Donald DePriest that were not listed with their gross revenues on the MCLM's Form 175 or 601 as affiliates

Donald DePriest owns 100%, but MCLM failed to disclose this company on its Form 175 or 601.

- (f) Penelore Corporation - Donald R. DePriest owns 100% of the issued common stock;
- (g) BioVentures, Inc., a Tennessee Corporation, P. O. Box 2561, Murfreesboro, TN 37133-2561 - Donald R. DePriest owns approximately 12% of the issued common stock, all of which is pledged;
- (h) Maritel, Inc., incorporated under the laws of Tennessee - Donald R. DePriest owns approximately 20% of the issued common stock, all of which is pledged;
- (i) TexCo Communications, Inc., a Texas Corporation - Donald R. DePriest owned approximately 10% of this corporation, which is now dissolved;
- (j) Image Processing Technology, Inc., a Delaware Corporation - This corporation is dissolved;
- (k) Wireless Properties of Virginia, Inc., a Delaware Corporation - Donald R. DePriest owns 100% of the common stock, all of which is pledged;
- (l) Bravo Communications, a Mississippi Corporation - Donald R. DePriest owns 100% of the common stock, all of which is pledged;
- (m) Southeastern Commercial Financial, LLC, an Alabama LLC - Donald R. DePriest owns 10% of this LLC; and
- (n) Various corporations, LLCs, and Limited Partnerships, which have formed from time to time over the last few years which have no assets and have not been capitalized.

Other possible MCLM affiliates.

**INTERROGATORY NO. 7:** For each and every business in which you own

an interest, excluding publicly-held corporations, state:

- (a) the name and address of the company;
- (b) a description of the business activities in which the company engages;
- (c) the percentage of the business owned by you;

- (d) number of shares of stock authorized and outstanding (if incorporated);
- (e) name, addresses and percentage of business owned by all other persons who have an interest in the business;
- (f) dates and amounts of all capital contributions and loans made by you to the business;
- (g) your opinion of the fair market value of your interest in the business as of the date of your answers; and
- (h) the basis of your opinion.

**ANSWER TO INTERROGATORY NO. 7:**

- (a) See Answer to Interrogatory No. 6.
- (b) See Answer to Interrogatory No. 6.
- (c) See Answer to Interrogatory No. 6.
- (d) See Answer to Interrogatory No. 6.
- (e) See Answer to Interrogatory No. 6.
- (f) See Answer to Interrogatory No. 6.
- (g) See Answer to Interrogatory No. 6.
- (h) See Answer to Interrogatory No. 6.

**INTERROGATORY NO. 8:** For each and every checking account, savings account, investment club account, certificate of deposit, money market certificate, treasury bills, mutual fund account, liquid asset account, stock brokerage account or

like monetary asset maintained by you since January 1, 2005, on which you now have, or have had, signatory privileges, to which you have made deposits, from which you have made withdrawals, or to/from which deposits and/or withdrawals have been made for your benefit or on your behalf since that date, please state:

- (a) name and address of financial institution where maintained;
- (b) the name(s) in which the account is/was maintained;
- (c) account number;
- (d) present balance;
- (e) maturity date (if applicable); and
- (f) value at maturity (if applicable).

**ANSWER TO INTERROGATORY NO. 8:** The Defendant objects to Interrogatory No. 8 as being overly broad and burdensome in requesting information going back to January 1, 2008, some 2½ years ago, and for the further reason of relevancy going back to January 1, 2008. However, Defendant will answer to the best of his ability, beginning with November 3, 2008, the approximate date of the Judgment against Mr. DePriest in this action:

- (a) See Answer to Interrogatory No. 3.
- (b) See Answer to Interrogatory No. 3.
- (c) See Answer to Interrogatory No. 3.
- (d) See Answer to Interrogatory No. 3.
- (e) See Answer to Interrogatory No. 3.

(f) See Answer to Interrogatory No. 3.

**INTERROGATORY NO. 9:** For each and every policy of insurance on your life presently in effect or on the life of someone else which is owned by you or in which you claim an interest, please state:

- (a) the name and address of the insurance company;
- (b) policy number;
- (c) the name of insured;
- (d) name of owner of policy;
- (e) face amount of policy;
- (f) present cash surrender value of policy;
- (g) total amount of loans outstanding against cash surrender value;
- (h) name(s) of beneficiary(ies);
- (i) amount of premium;
- (j) interval at which premiums are paid; and,
- (k) name and address of person or entity which pays premium.

**ANSWER TO INTERROGATORY NO. 9:** There are no policies of insurance.

**INTERROGATORY NO. 10:** If you have canceled any policies of life insurance or changed the beneficiary of any policy of life insurance since January 1, 2008, please state,

- (a) the name and address of the insurance company;

- (b) policy number;
- (c) name of owner of policy;
- (d) face amount of policy;
- (e) date of cancellation and/or change of beneficiary;
- (f) cash value at time of cancellation;
- (g) name(s) of current beneficiaries under said policy; and
- (h) disposition of proceeds received from policy at time of cancellation.

**ANSWER TO INTERROGATORY NO. 10:** Not applicable.

**INTERROGATORY NO. 11:** For each and every motor vehicle owned by you or in which you have an interest, including but not limited to, automobiles, trucks and boats (including motors and trailers), and airplanes, please state:

- (a) the type, year, make and model;
- (b) VIN;
- (c) date acquired;
- (d) name(s) in which titled;
- (e) total amount of any outstanding debt;
- (f) name and address of creditor;
- (g) amount of monthly payment;
- (h) fair market value of vehicle; and
- (i) location of vehicle.

**ANSWER TO INTERROGATORY NO. 11:** To the best of Donald R.

DePriest's knowledge, he owns the following personal property:

- (a) 1987 Mazda;
- (b) 2000 pickup truck;
- (c) 1990 Chevrolet Suburban;
- (d) 1996 Dodge pickup truck;
- (e) 1996 Jaguar Sedan;
- (f) 3 John Deere tractors;
- (g) Kamatsu excavator; and
- (h) Oil and water separator machine.

Mr. DePriest is saying that most of his assets are pledged as collateral.

→ All of these vehicles are pledged as security for debts owed by Mr. DePriest. See

Answer to Interrogatory No. 5.

**INTERROGATORY NO. 12:** For each and every asset with a value in excess of \$5,000 owned by you or in which you have an interest not previously listed in your Answer to these Interrogatories, including, but not limited to, debts owed to you, stock options, jewelry, furs, cash, coins or other collectible items, horses, hunting dogs, kennels, gold, silver, antiques and office furnishings, state:

- (a) the name or description of assets;
- (b) date acquired;
- (c) purchase price;
- (d) total amount of debt outstanding against the assets; and

(e) its present fair market value.

**ANSWER TO INTERROGATORY NO. 12:** The Defendant objects to

Interrogatory No. 12 as being overly broad and burdensome in requesting information going back to January 1, 2008, some 2½ years ago, and for the further reason of relevancy going back to January 1, 2008. However, Defendant will answer to the best of his ability, beginning with November 3, 2008, the approximate date of the Judgment against Mr. DePriest in this action. See Answers to Interrogatories 3, 5, 6, and 11. In addition Mr. DePriest has the following brokerage accounts:

- (a) Morgan Keegan Brokerage Account, Account No. 510879222, with approximately \$1,500.00;
- (b) A.C. Edwards Brokerage Account (Wells Fargo), Account No. 423-064390-002, with approximately \$100.00;
- (c) Waddell & Reed United Funds, Account No. 08250854, with very little money.

In addition, Robert M. Sullins, 6006 Murray Lane, Brentwood, TN 37027, owes

Donald R. DePriest approximately \$500,000, \$300,000 principal and approximately \$200,000 interest.

This Interrogatory will be supplemented as soon as the account numbers and addresses can be ascertained.

**INTERROGATORY NO. 13:** Please list each and every asset with a value in

excess of \$5,000.00 sold, conveyed, transferred, given as a gift or otherwise disposed of by you since January 1, 2008, other than those assets which have previously been listed as sold or transferred, showing for each such asset:

As stated above, Mr. DePriest is saying that he has little assets. Yet, he is guaranteeing and backing debt of MCLM and managing several companies.

- (a) description of the asset (including dollar amount of any funds transferred);
- (b) date transferred;
- (c) name(s) and address(es) of person(s) to whom transferred;
- (d) consideration received by you for transfer; and,
- (e) reason for transfer.

**ANSWER TO INTERROGATORY NO. 13:** The Defendant objects to Interrogatory No. 13 as being overly broad and burdensome in requesting information going back to January 1, 2008, some 2½ years ago, and for the further reason of relevancy going back to January 1, 2008. However, Defendant will answer to the best of his ability, beginning with November 3, 2008, the approximate date of the Judgment against Mr. DePriest in this action. Since November 2008, the Answer to Interrogatory No. 13 and subparagraphs (a) through (e) is none.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** All W-2 forms, Forms 1099, K-1s, payroll check stubs, and all other evidence of income and other monies received by you since January 1, 2008, from any source whatsoever, including, but not limited to gifts to you, loans to you, royalties, bonuses, free-lance projects, sale of assets, interest, dividends, payments on promissory notes held by you, rental income, income from investments or consulting fees.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:** Defendant objects to

Request No. 1 as being overly broad and burdensome. However, Defendant will answer to the best of his ability beginning with November 2008, the approximate date of the Judgment against Mr. DePriest in this action. Donald R. DePriest will produce the 1040 U.S. Individual Income Tax Return for the 2008 taxable year filed with the Internal Revenue Service of the United States of America, filed as a joint return by Donald R. DePriest and Sandra F. DePriest upon execution and return of the Confidentiality Agreement attached as Exhibit "A". Donald R. DePriest sources of income since November 2008 have been minimal.

**REQUEST FOR PRODUCTION NO. 2:** Your joint or single federal income tax returns for the tax year 2005 and thereafter, including all W-2s, Forms 1099, K-1s, used in the preparation thereof, and any other documents which were or will be attached and filed therewith.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** See Response to Request No. 1.

**REQUEST FOR PRODUCTION NO. 3:** All documents which reflect the purchase price of, cost of improvements to, and fair market value of all real property in which you own an interest.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:** See Answer to Interrogatory No. 5.

Contrary to what they told the FCC, Donald and Sandra DePriest filed joint returns. They do not live separate economic lives as they stated to the FCC and thus they fully knew that Mr. DePriest was an affiliate who had to be listed on MCLM's Form 175 and 601.

**REQUEST FOR PRODUCTION NO. 4:** Evidence of ownership, such as stock certificates, partnership agreements, operating agreements, and any other documents which evidence any interest which you have in any business, whatsoever, whether it be a corporation, partnership, sole proprietorship, limited liability company, joint venture, or any other form of business organization.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:** See Answer to Interrogatory No. 6.

**REQUEST FOR PRODUCTION NO. 5:** Copies of all Federal Income Tax returns for the last two years of every corporation, partnership, sole proprietorship, limited liability company, joint venture, or other business entity of any kind whatsoever (excluding public held corporations) in which you now own, or have owned, an interest in the past five years, together with copies of all W-2s, 1099s, K-1s, and all other documents, attachments, schedules, and worksheets provided to you regarding those tax returns.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:** See Answers to Interrogatory No. 1 and No. 6.

**REQUEST FOR PRODUCTION NO. 6:** Any written employment agreements, management agreements, consulting agreements, or other contractual agreements of any kind entered into between you and any other persons or business entities.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:** None.

**REQUEST FOR PRODUCTION NO. 7:** All documents evidencing any liens or judgments against you that remain unsatisfied.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:** Defendant objects to Request No. 7 as being overly broad and burdensome. However, Defendant will answer to the best of his ability beginning with November 2008, the approximate date of the Judgment against Mr. DePriest in this action. See collective Exhibit "E" representing the following Judgments against Donald R. DePriest:

Mr. DePriest owes Mr. Phillips over \$9 million related to the sale of Charisma Communications, a company that DePriest said he solely controlled to the FCC, but that court documents, testimony and this judgement show was false and that ownership interests were hidden. The FCC should investigate Charisma and Mr. DePriest further.

- (a) Judgment in favor of Edna H. Smith in the amount of \$43,948;
- (b) Judgment in favor of Oliver L. Phillips in the amount of \$9,133,230;
- (c) Judgment in favor of Fifth Third, N.A. in the amount of \$298,472.45;
- (d) Judgment in favor of Head & Engquist Equipment, LLC in the amount of \$23,639.68;
- (e) Judgment in favor of ADECA in the amount of \$2,219,007.95;
- (f) Judgment in favor of Western Nonwovens, Inc. in the amount of \$118,000;
- (g) Judgment in favor of Fred C. Goad in the amount of \$191,589; and
- (h) Judgment in favor of Fifth Third Bank in the amount of \$259,920.13.

Mr. DePriest owes substantial debt to several parties. It would appear his wife and he conspired to put MCLM in her name to avoid his creditors, especially since all of the facts indicate that he is the sole or principal controlling party of MCLM and a primary source of financing.

**REQUEST FOR PRODUCTION NO. 8:** All complaints asserted against you in any jurisdiction that has not been dismissed or concluded.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:** See Exhibit "F", *Ruby Christine Odom and James Odom vs. American Nonwovens Corporation, Its Successors and Assigns, American Nonwovens Corporation Group Employee Benefit Plan, Donald R. DePriest,*

ADECA is the State of Alabama, which sued Mr. DePriest .

*John M. Hurt, and John Doe Defendants A-F, Cause No. 1:08CV299-A-D, pending in the U. S. District Court for the Northern District of Mississippi, Eastern Division,*

**REQUEST FOR PRODUCTION NO. 9:** All bank statements, deposit slips, canceled checks, end-stub books, and check registers for all checking accounts maintained by you, on which you now have, or have had, signatory privileges, to which you have made deposits, from which you have made withdrawals, and/or to/from which deposits and/or withdrawals have been made for your benefit or on your behalf since January 1, 2008.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:** Defendant objects to Request No. 9 as being overly broad and burdensome. However, Defendant will answer to the best of his ability beginning with November 2008, the approximate date of the Judgment against Mr. DePriest in this action. See Answer to Interrogatory No. 3.

**REQUEST FOR PRODUCTION NO. 10:** All savings passbooks and statements of account for any regular savings accounts maintained by you, on which you now have, or have had, drawing privileges, to which you have made deposits, from which you have made withdrawals, and/or to/from which deposits and/or withdrawals have been made for your benefit or on your behalf since January 1, 2008.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:** Defendant objects to Request No. 10 as being overly broad and burdensome. However, Defendant will answer to the best of his ability beginning with November 2008, the approximate date

of the Judgment against Mr. DePriest in this action. See Answers to Interrogatory Nos. 3 and 12.

**REQUEST FOR PRODUCTION NO. 11:** All statements of account for any and all investment accounts of any type, including but not limited to, money market accounts, mutual funds accounts, ready asset accounts, cash management accounts, and brokerage accounts maintained by you, on which you now have, or have had, drawing privileges, to which you have made deposits, from which you have made withdrawals, and/or to/from which deposits and/or withdrawals have been made for your benefit or on your behalf since January 1, 2008.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:** Defendant objects to Request No. 11 as being overly broad and burdensome. However, Defendant will answer to the best of his ability beginning with November 2008, the approximate date of the Judgment against Mr. DePriest in this action. See Answers to Interrogatory Nos. 3 and 12.

**REQUEST FOR PRODUCTION NO. 12:** Copies of any and all certificates of deposit, money market certificates, treasury bills, or like monetary assets owned by you or in which you now have, or have had, an interest since January 1, 2008.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:** Defendant objects to Request No. 12 as being overly broad and burdensome. However, Defendant will answer to the best of his ability beginning with November 2008, the approximate date

of the Judgment against Mr. DePriest in this action. See Answers to Interrogatory Nos. 3 and 12.

**REQUEST FOR PRODUCTION NO. 13:** All life insurance policies which you own and/or which are currently in force on your life and the applicable beneficiary designation(s).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:** None.

**REQUEST FOR PRODUCTION NO. 14:** All personal financial statements prepared by you or on your behalf in the last four years.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:** Defendant objects to Request No. 14 as being overly broad and burdensome. However, Defendant will answer to the best of his ability beginning with November 2008, the approximate date of the Judgment against Mr. DePriest in this action. Without waiving the objection, Defendant produces the statement of the financial condition of Donald R. DePriest dated September 30, 2007, attached hereto as Exhibit "G". As Donald R. DePriest maintains no financial books and records, see also bank statements attached as collective Exhibit "B" and tax return to be produced pursuant to Answer to Interrogatory No. 1.

**REQUEST FOR PRODUCTION NO. 15:** All documents evidencing the transfer, sale, conveyance, or other disposition since January 1, 2005, of any and all assets having a value in excess of \$10,000.00 owned by you or in which you had an interest.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:** Defendant objects to Request No. 15 as being overly broad and burdensome. However, Defendant will answer to the best of his ability beginning with November 2008, the approximate date of the Judgment against Mr. DePriest in this action. Since November 2008, the Response to Request No. 15 is none.

**REQUEST FOR PRODUCTION NO. 16:** Copies of any Trust of which you are a beneficiary.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:** Defendant objects to Request No. 16 as being overly broad and burdensome. However, Defendant will answer to the best of his ability beginning with November 2008, the approximate date of the Judgment against Mr. DePriest in this action. Since November 2008, the Response to Request No. 16 is none.

**REQUEST FOR PRODUCTION NO. 17:** All documents which reflect any outstanding judgments in favor of you in any action by or against you.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:** See Answer to Interrogatory No. 7.

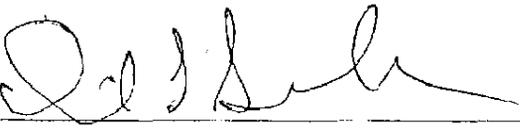
**REQUEST FOR PRODUCTION NO. 18:** All documents evidencing any loans made by any person or financial institution to you at any time for which there is an outstanding balance, including the payment or payoff status of each.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:** Robert M. Sullins,

6006 Murray Lane, Brentwood, TN 37027, owes Donald R. DePriest approximately \$500,000. See Agency Agreement attached as Exhibit "H".

Respectfully submitted,

DONALD R. DEPRIEST

BY:   
DAVID L. SANDERS, MSB #6442

OF COUNSEL:

MITCHELL, McNUTT & SAMS, P.A.  
POST OFFICE BOX 1366  
COLUMBUS, MS 39703  
(662)328-2316

**CERTIFICATE OF SERVICE**

I, the undersigned, **DAVID L. SANDERS**, do hereby certify that I have this day mailed, postage prepaid, U.S. Mail, a true and correct copy of the foregoing **DEFENDANT, DONALD R. DEPRIEST'S, ANSWERS AND RESPONSES TO PLAINTIFF'S POST-JUDGMENT INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS** to:

Clarence Webster, III, Esq.  
Bradley Arant Boult Cummings LLP  
P. O. Box 1789  
Jackson, MS 39215-1789

So certified on this the 3<sup>rd</sup> day of June, 2010.



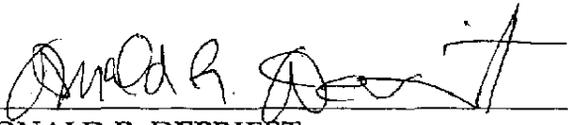
\_\_\_\_\_  
**DAVID L. SANDERS**

STATE OF MISSISSIPPI  
COUNTY OF LOWNDES

AFFIDAVIT

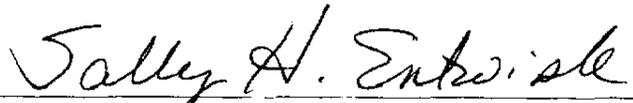
I, Donald R. DePriest, after being first duly sworn according to law, do hereby make oath and affirm that I have read the foregoing Answers to Interrogatories, and that they are true and correct to the best of my knowledge, information and belief.

DePriest's statements herein contradict what has been told to the FCC and show further affiliates and relevant information not properly disclosed to the FCC.

  
\_\_\_\_\_  
DONALD R. DEPRIEST

SWORN TO AND SUBSCRIBED BEFORE ME this the 3<sup>rd</sup> day of June, 2010.



  
\_\_\_\_\_  
NOTARY PUBLIC



BALCH & BINGHAM LLP

Alabama • Georgia • Mississippi • Washington, DC

Donald Alan Windham, Jr.  
(601) 965-8178

Donald DePriest filing with Mississippi Supreme Court regarding his debts. This is a case Mr. Phillips won against Donald DePriest, MCLM, MCT Investors, etc.

Attorneys and Counselors  
401 East Capitol Street  
Suite 200

P.O. Box 22587 (39225)

Jackson, Mississippi 39202

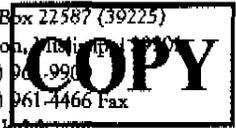
(601) 965-8178

(601) 961-4466 Fax

www.balch.com

(866) 830-1506 (direct fax)

awindham@balch.com



ORIGINAL

October 20, 2009

BY HAND DELIVERY

Betty Sephton  
Clerk of the Supreme Court  
P.O. Box 117  
Jackson, MS 39205

**FILED**

**OCT 20 2009**

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

Re: Donald R. DePriest v. Oliver L. Phillips  
Mississippi Supreme Court; Civil Action No. 2009-TS-01626

Dear Ms. Sephton:

Pursuant to Miss. R. App. P. 8(c), Appellant Donald R. DePriest requests the Court to stay execution of the judgment in the underlying case. Because the Appellee, Oliver L. Phillips, has threatened to begin execution and could at any time, time does not permit the preparation and filing of a written motion. Thus, as allowed by Rule 8(c), DePriest is submitting for consideration the following documents first submitted to the trial court: (1) Donald R. DePriest's Motion to Stay Execution; (2) Oliver L. Phillips's Response to Donald R. DePriest's Motion to Stay Execution; (3) Donald R. DePriest's Rebuttal in Support of his Motion to Stay Execution Pending Appeal; and (4) the trial court's Order denying Donald R. DePriest's Motion to Stay Execution.

By rule, DePriest is also to provide "the opinion giving the reasons advanced by the trial court for denying relief," or provide a "statement of the reason for the omission." In this case, the trial court did not provide an opinion giving the reasons for denying relief.

If the Court requires anything further, please do not hesitate to contact me.

Sincerely,

Donald Alan Windham, Jr.

DAW:nm  
Enclosures

cc: Jay Nichols, Esq.

MOTION# 2009  
1626

IN THE CHANCERY COURT OF LOWNDEN COUNTY, MISSISSIPPI

**FILED**  
OCT 09 2009

**OLIVER L. PHILLIPS**

**PLAINTIFF**

**VERSUS**

**CAUSE NO. 2007-0526**

**DONALD R. DEPRIEST, MCT  
INVESTORS, L.P., and MARITIME  
COMMUNICATIONS / LAND MOBILE,  
LLC**

*Lois Younger Neece*  
Chancery Clerk

**DEFENDANTS**

**AND**

**DONALD R. DEPRIEST**

**COUNTER-PLAINTIFF**

**VERSUS**

**OLIVER L. PHILLIPS, HELEN J.  
PHILLIPS, his wife, and JOHN DOES 1-20**

**COUNTER-DEFENDANTS**

**MOTION TO STAY EXECUTION OF JUDGMENT**

Due to the size of the judgment against Donald R. DePriest, any effort by Oliver L. Phillips to execute would lead to bankruptcy, causing irreparable harm to both Mr. DePriest and his numerous other creditors. Thus, Mr. DePriest requests the Court to stay execution of the judgment pending appeal pursuant to Miss. R. Civ. P. 62(d) and Miss. R. App. P. 8(b)(1). Even if an appellate court were to grant no other relief, the application of basic legal defenses to a number of Mr. Phillips's claims would significantly reduce the amount of the judgment. Mr. Phillips has filed judgment liens, and his position in relation to Mr. DePriest's other creditors is secure. Thus, equity weighs in favor of maintaining the status quo and staying execution of the judgment pending appeal.

## BACKGROUND

On June 30, 2009, the Court entered a final judgment pursuant to Miss. R. Civ. P. 54(b) awarding Oliver Phillips \$9,133,230.00. The Court awarded Mr. Phillips \$5,000,000.00 as the remainder of a 1996 settlement, \$2,862,655 for the value of the MCT of Russia, L.P. option, and \$3,153,786 for the stipulated value owed on the four remaining promissory notes. The Court also gave DePriest credit for \$1,883,211.00 of cash received by Mr. Phillips for Mr. DePriest's shares of MCT Corp. In addition to the other issues raised in his post trial motion, a number of basic legal defenses to Mr. Phillips's claims for the \$5,000,000 and \$2,862,655. Were an appellate court to find merely that those defenses applied, Mr. Phillips's judgment would be reduced to \$1,270,575.00 plus \$250,000.00 in attorney's fees.

As set forth in the attached affidavit, Mr. DePriest is unable to obtain a sufficient bond to stay execution. *See* Affidavit of Donald R. DePriest, attached as Exhibit A. Further, Mr. DePriest has numerous other creditors, and most of his assets are pledged as security for other debts. Although Mr. DePriest continues to have earning potential to pay his creditors, his assets are nominal in relation to the size of Mr. Phillips's judgment. *Id.* at ¶7. Even where Mr. DePriest's assets are not pledged as security, there are also other judgments with higher priority than Mr. Phillips's. *Id.* at ¶5. Mr. Phillips has enrolled his judgment in each county where Mr. DePriest owns real property and in Lowndes County, where most of Mr. DePriest's personal property is located. *Id.* at ¶¶4 and 5. In Lowndes County, there are four judgment creditors whose judgments have priority over Mr. Phillips's judgment in this case. *Id.* at ¶5. *See also* Miss. Code Ann. § 11-7-191 (providing that judgments have "priority according to the order of such enrollment"). Having enrolled his judgment, Mr. Phillips's position in relation to Mr.

DePriest's other creditors is fixed. However, considering the number of secured creditors and other judgment creditors with priority, any attempt to execute on this judgment would likely lead Mr. DePriest's other creditors to force him into an involuntary bankruptcy. *See id.*

### ARGUMENT

1. **Under Miss. R. Civ. P. 62(d) and Miss. R. App. P. 8(b)(1), the Court is authorized to stay execution without the posting of supersedeas bond.**

Miss. R. App. P. 8 governs applications for a stay pending appeal. Miss. R. App. P. 8(b)(1) authorizes the trial court "for good cause shown set a supersedeas bond in an amount less than the 125 percent required in cases under Rule 8(a)." Further, in the comments to Rule 8, it provides that the purpose of the supersedeas bond is to "preserve the status quo while protecting the judgment creditor's rights pending appeal." Mississippi cases have not addressed what constitutes "good cause," but "there is ample federal and other precedent on the question." 1 MS Prac. Civil Proc. § 13:25. Federal Courts have noted that "an inflexible requirement of a bond" is inappropriate in two types of cases:

where the defendant's ability to pay the judgment is so plain that the cost of the bond would be a waste of money; and the opposite case, one of increasing importance in an age of titanic damage judgments-where the requirement would put the defendant's other creditors in undue jeopardy.

*Olympia Equip. Leasing Co. v. Western Union Telegraph Co.*, 786 F.2d 794, 796 (7th Cir. 1986).  
*See also Poplar Grove Planting and Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979) ("if the judgment debtor's present financial condition is such that the posting of a full bond would impose an undue financial burden, the court similarly is free to exercise a discretion to fashion some other arrangement for substitute security through an

appropriate restraint on the judgment debtor's financial dealings, which would furnish equal protection to the judgment creditor.”).

The Seventh Circuit has set out a series of factors to consider on the question of “good cause” related to the reduction or waiving of a supersedeas bond. In *Dillon v. City of Chicago*, 866 F.2d 902, 904-5 (7th Cir. 1988), the Court identified the following factors:

(1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether “the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money;” and (5) **whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.**

In his article on Mississippi Civil Procedure, Justice Banks noted that there was little difference in these factors and the factors traditionally applied to injunctions on appeal, which involve questions of likelihood of success on the merits and irreparable harm to the parties. 1 MS Prac. Civil Proc. § 13:25.

“Application for a stay of the judgment or the order of a trial court pending appeal or for approval or disapproval of a contested supersedeas bond or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance to the trial court.” Miss. R. App. P. 8(b)(1). The filing of a notice of appeal does not relieve the trial court of jurisdiction to hear such an application. See Miss. R. Civ. P. 62(c) (“The power of the court to make such an order is not terminated by the taking of the appeal.”); *Fitch v. Valentine*, 946 So.2d 780, 784 (Miss. 2007) (even after the filing of a notice of appeal, the trial court “retains jurisdiction to cause its *orders* to be *executed*”) (emphasis in original).

2. **On appeal, Mr. DePriest has a substantial likelihood on the merits to reduce the amount of the judgment significantly.**

Although Mr. DePriest submits that all of the issues raised in his post-trial motion, including his counterclaims, warrant review and reversal by an appellate court, that at the very least, the legal defenses presented at the hearing present a substantial likelihood of reversal on appeal. Briefly, these issues are:

- The Court awarded Phillips \$5,000,000 for 70 units of MCT Investors, L.P. that were assigned as security for a \$5,000,000 promissory note. But the statute of limitations on the note, which was due on December 31, 1996, had long run by July of 2007, when Mr. Phillips filed suit. Pursuant to Miss. Code Ann. § 15-1-21, “[i]n all cases where the remedy at law to recover the debt shall be barred, the remedy in equity on the mortgage shall be barred.” Miss. Code Ann. § 15-1-21 expressly applies to mortgages on personal property, and Mr. Phillips’s claim to the 70 units is barred by the statute of limitations.
- The Court’s award of \$5,000,000 was based on a 1996 settlement involving a \$5,000,000 note and a release. At the time, DePriest tendered a \$5,000,000 check to Phillips that stated on its memo line, “Rel.N.” Phillips admitted that the check was tendered for both the release and the note. T.T. Vol. 1, p. 108, ll. 7-9. Thus, when Phillips negotiated the check, an accord and satisfaction occurred. A plaintiff “cannot be allowed to assert his claim for additional sums after having accepted, endorsed, and negotiated the check which was obviously tendered in full settlement.” *Lovorn v. Iron Wood Prod. Corp.*, 362 So.2d 196 (Miss. 1978).

- Regarding Mr. Phillips's claims based on options to units of MCT of Russia, L.P., the Court found that although specific performance was impossible, Mr. Phillips was entitled to damages based on Mr. DePriest's liquidation of the units in 2001, basing its ruling on *McCorkle v. LouMiss Timber Co.*, 760 So.2d 845 (Miss.App. 2000). But under *McCorkle*, Mr. Phillips's cause of action accrued at the time that the liquidation of the units occurred, not when he sought to exercise the option. *Id.* at 851. Thus, if, as the Court found, Mr. Phillips is entitled to damages rather than specific performance, the three-year statute of limitations for breach of contract bars Mr. Phillips's claim. Miss. Code Ann. § 15-1-49.

These issues have already been presented to the Court, and are presented here merely to demonstrate that significant issues remain which could warrant reversal by an appellate court. As set forth above, should an appellate court find these contentions to have merit, Mr. Phillips's judgment would be reduced to \$1,270,575.00.

**3. A balance of the equities requires a stay of execution pending appeal.**

→ Simply put, because most of Mr. DePriest's assets are pledged as security to other creditors and Mr. Phillips's judgment does not have priority over other enrolled judgments, the enrollment of Mr. Phillips's judgment merely secures his position in relation to other creditors. Were Mr. Phillips to execute, any proceeds would go to creditors with superior liens. *See* Miss. Code Ann. § 13-3-181 (requiring the sheriff upon execution to examine the judgment roll and apply proceeds to superior judgments). Thus, Mr. Phillips would not recover anything from an attempt to execute on the judgment, but could force Mr. DePriest into bankruptcy, causing irreparable harm to Mr. DePriest's other creditors. In this case, the requirement of a supersedeas

bond to stay execution would have the opposite effect of its intended purpose, to maintain the status quo. Considering that substantial issues remain for appeal, and the potential irreparable harm not only to Mr. DePriest, but also to his other creditors, the Court should stay execution of this judgment pending appeal.

### CONCLUSION

Mr. Phillips has indicated that he intends to execute on the judgment, and if he does so, the result will be to force Mr. DePriest into bankruptcy. Clearly, for the sake of his many creditors, Mr. DePriest would like to keep this from occurring. Bankruptcy is not an attractive proposition for anyone, including Mr. Phillips. The Court is authorized under Miss. R. Civ. P. 62(d) and Miss. R. App. P. 8(b)(1) to stay execution pending appeal. In order to avoid irreparable harm not only to Mr. DePriest, but also to his other creditors, Mr. DePriest asks the Court to exercise its discretion and grant a stay of execution pending appeal.

Respectfully submitted, this 7th day of October, 2009.

DONALD R. DEPRIEST

BY: BALCH & BINGHAM LLP

BY: Ronald Alan Wintham Jr.  
Of Counsel

William L. Smith (MS 7635)  
Ernest Taylor (MS 7451)  
Donald Alan Windham, Jr. (MS 100909)  
BALCH & BINGHAM LLP  
401 East Capitol Street  
Suite 200  
Jackson, MS 39201  
Telephone: (601) 961-9900  
Facsimile: (601) 961-4466

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I, the undersigned counsel, do hereby certify that I have this day served, via electronic mail, a true and correct copy of the above and foregoing pleading to:

M. Jay Nichols, Esq.  
NICHOLS CROWELL GILLIS COOPER & AMOS  
P. O. Box 1827  
Columbus, MS 39703-1827

This the 7th day of October, 2009.

  
Of Counsel

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

OLIVER L. PHILLIPS

PLAINTIFF

VERSUS

CAUSE NO. 2007-0526

DONALD R. DEPRIEST, MCT  
INVESTORS, L.P., and MARITIME  
COMMUNICATIONS / LAND MOBILE,  
LLC

DEFENDANTS

AND

DONALD R. DEPRIEST

COUNTER-PLAINTIFF

VERSUS

OLIVER L. PHILLIPS, HELEN J.  
PHILLIPS, his wife, and JOHN DOES 1-20

COUNTER-DEFENDANTS

AFFIDAVIT OF DONALD R. DEPRIEST

STATE OF MISSISSIPPI

COUNTY OF LOWNDES

1. My name is Donald R. DePriest. I am an adult resident citizen of Columbus, Lowndes County, Mississippi.

2. On June 30, 2009, the Trial Court entered a judgment in the favor of Oliver L. Phillips in the amount of \$9,133,230.00. Post trial motions were denied on September 28, 2009, and on that same date, the Court awarded Phillips attorneys' fees in the amount of \$250,000.00.

3. I am not currently able to post a supersedeas bond in the amount of 125% of the judgment, which would be in excess of \$11,000,000.00.



Donald DePriest's property assets are fully leveraged, he has creditor judgments against him for over \$11 million and he has numerous creditors secured with his non-real estate assets and unsecured creditors who he owes over \$8 million. These non-real estate assets appear to include, or be exclusively, MCLM, since DePriest says he has negligible income with his wife.

→ 4. As of this date, my primary assets are real property in several locations in Mississippi. Each property holds mortgages or multiple mortgages secured by the property. Mr. Phillips has enrolled his judgment in each of the counties where my property is located.

→ 5. I also have four judgment creditors of which I am aware whose judgments were enrolled prior to Mr. Phillips's. Those are a judgment in the amount of \$2,219,007.95 to the Alabama Department of Economic and Community Affairs, which was enrolled on February 4, 2008, a judgment in the amount of \$118,000.00 to Western Nonwovens, Inc., which was enrolled on February 5, 2008, a judgment in the amount of \$191,589.00 to Fred C. Goad, which was enrolled on November 13, 2008, and a judgment in the amount of \$43,984.00 to Edna H. Smith, which was enrolled on July 8, 2009. Mr. Phillips's judgment was enrolled on July 15, 2009.

→ 6. In addition, I have numerous creditors secured by my remaining non real-estate assets and unsecured creditors to whom I owe a total of over \$8,000,000.

→ 7. If Mr. Phillips attempts to execute upon his judgment, the other judgment creditors could force me into bankruptcy or such execution could force me to take voluntary bankruptcy. I continue to have earning potential to pay my creditors, but my assets are nominal in relation to Mr. Phillips's judgment.

8. If a stay of execution were granted pending the appeal, I believe that bankruptcy might be avoided. If my appeal is successful, then Mr. Phillips's judgment would be severely reduced, if not eliminated. Therefore, the outcome of this appeal directly affects the interests of my unsecured creditors.

FURTHER AFFIANT SAYETH NOT.

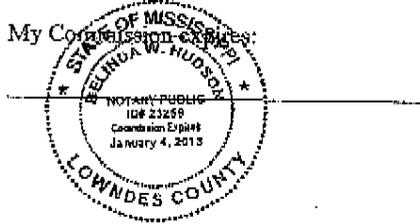
Dated this 7th day of October, 2009.

Donald R. Depriest  
DONALD R. DEPRIEST



SWORN TO AND SUBSCRIBED before me this 7th day of October, 2009.

Shelinda W. Hudson  
NOTARY PUBLIC



IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

OLIVER L. PHILLIPS, JR.

PLAINTIFF

VS.

CIVIL ACTION NO. 2007-0526

MCT INVESTORS, L.P., DONALD R. DEPRIEST, ET AL.

DEFENDANTS

FORMERLY LOWNDES COUNTY CIRCUIT COURT CAUSE NOS.  
2007-0046-CV1; 2007-0091-CV1; 2007-0093-CV1; 2007-0095-CV1; 2007-0096-CV1;  
2007-0097-CV1; 2007-0098-CV1; 2007-0100-CV1; 2007-0102-CV1; 2007-0104-CV1

---

RESPONSE TO DONALD R. DEPRIEST'S  
MOTION TO STAY EXECUTION OF JUDGMENT

---

COMES NOW Oliver L. Phillips, Jr. ("Phillips"), by and through counsel, and submits his Response to Donald R. DePriest's ("DePriest") Motion to Stay Execution of Judgment, and would show unto the Court as follows, to-wit.

I.

DePriest's motion is governed by Rule 8(b) of the Mississippi Rules of Appellate Procedure.

Rule 8(b)(1) provides in relevant part:

The Court shall require the giving of security by the appellant in such form and in such sum as the Court deems proper, and for good cause shown may get a supersedeas bond in an amount less than the 125% required in cases under Rule 8(a).

However, in his motion, DePriest is asking this Court to completely waive the requirement of posting a bond for security in the amount equivalent to the money judgment. Such relief is not contemplated by Rule 8. In fact, the comments to Rule 8(b) provide,

If the appellant seeks a stay on any basis other than by posting a 125% bond to supersede a money judgment, the appellant must apply to the trial court for a stay. **In determining whether to grant a stay, the trial court should endeavor to**

**protect the prevailing party. The purpose of the supersedeas bond is to preserve the status quo while protecting the judgment creditor's rights pending appeal.** (emphasis added)

The comments to Rule 8(b) go on to state:

The trial court may grant or deny stay upon such terms as to bond or otherwise as it considers proper for the security of the adverse party. It may approve security in the form of cash or property bond. . . . While the trial court may not require a bond greater than 125% to supersede a money judgment, the court may, in appropriate cases, approve a supersedeas bond of less than 125% of the money judgment. . . . If an appellant seeks release from the full bond requirement, the trial court must upon notice and hearing find that good cause justifies a departure from the usual bond requirements. **At the hearing, the burden to provide a secure alternative to the required bond rests on the judgment debtor.** Before the trial court can grant a reduced bond, there must be an objective demonstration of the appellant's financial strength and ability to respond or remain undiluted during the pendency of the appeal. (emphasis added)

Miss. Rule App. P., Rule 8(b)(1), comments.

In the present case, and in his motion, DePriest has not offered any alternative to posting a bond in an amount of 125% of the money judgment. To the contrary, DePriest has boldly asked this Court to completely waive any bond requirement and to waive the posting of any other alternative security whatsoever, while at the same time preventing Phillips from executing on his judgment. As is noted in Rule 8, the purpose of the rule and the purpose of the supersedeas bond is to protect the rights of the judgment creditor. Completely waiving the bond requirement and waiving any requirement that DePriest post some alternative security in a sufficient amount to protect Phillips' rights runs headlong into the purpose of Rule 8.

In Tupelo Redevelopment Agency v. Gray Corp., Inc., 972 So. 2d 495 (Miss. 2007), the Court stated:

In re Estate of Taylor, 539 So. 2d 1029 (Miss. 1989) was the first Mississippi Supreme Court case to address what is now MRAP 8 "relating to a stay of judgment pending appeal under a supersedeas bond." In Taylor, we stated:

The procedure by which an unsuccessful litigant seeks a stay of the execution of judgment appealed from is a supersedeas. The granting of a supersedeas commands the staying of a proceeding at law and prohibits the enforcement of the trial court's judgment pending review. To secure such stay of proceedings, it is necessary that the litigants secure a sufficient bond in the amount set by the trial judge.

... The general purpose of the supersedeas bond, is to effect absolute security to the party affected by the appeal. . . . The amount of a supersedeas bond should be sufficient to protect the appellee in his judgment; therefore, it should ensure the payment of the judgment and interest, and any waste that could occur pending the appeal. If the appeal is affirmed, the appellee should be able to satisfy the payment of the judgment in full, together with costs, interest, and the damages for delay.

The bond is the typical means of giving the appellee security. However, the court may approve security in the form of cash or property. The judgment may be secured in other ways such as the court taking possession of personal property or otherwise providing for a method to ensure payment of the appellee's judgment.

Id. at 1031.

Tupelo Redevelopment Agency, 972 So. 2d at 524.

Even the case law cited by DePriest does not provide precedent for this Court to completely waive the bond requirement. DePriest cited Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc., 600 F. 2d 1189, 1191 (5<sup>th</sup> Cir. 1979) for the proposition that:

**"If the judgment debtor's present financial condition is such that the posting of a full bond would impose an undue financial burden, the court similarly is free to exercise a discretion to fashion some other arrangement for substitute security through an appropriate restraint on the judgment debtor's financial dealings, which would furnish equal protection to the judgment creditor."**

(emphasis added).

Accordingly, DePriest must at least provide some sort of alternative security before this Court should even consider waiving any portion of the bond requirement.

Mr. Phillips refers to testimony by Belinda Hudson that most of Mr. DePriest's income goes to pay for assets not in his name.

Also, on page 6 of his brief, DePriest states, "Mr. Phillips would not recover anything from an attempt to execute on the judgment, but could force Mr. DePriest into bankruptcy, causing irreparable harm to Mr. DePriest's other creditors." Contrary to this assertion, there has been no objective proof submitted to this Court to support such a claim. Details regarding DePriest's financial condition and assets have not been discovered as Phillips was not allowed to question DePriest regarding his financial condition during his deposition.<sup>1</sup> Moreover, Belinda Hudson testified during her deposition that much of DePriest's income goes to make payments on and to pay for assets which do not belong to him. Due to these circumstances, Phillips must be allowed to begin execution on his judgment, including the judgment debtor's examination as soon as possible.

As has been evidenced throughout this litigation, DePriest will apparently provide sworn testimony (in affidavit form and otherwise) to anything that he believes will help his current cause. DePriest provided affidavit testimony early in this litigation that he stood ready and willing to pay any monies that he might owe Phillips. Now, contrary to his sworn testimony that he stood ready and willing to pay any monies that he might owe Phillips, he now states in his motion, "Mr. Phillips would not recover anything from an attempt to execute on the judgment, but could force Mr. DePriest into bankruptcy . . . ." Moreover, DePriest has provided a supporting affidavit to his Motion to Stay Execution wherein he identifies over \$2.5 million in judgments against him, and an additional \$8 million plus which he claims to owe to unsecured creditors. In one place or the other, DePriest is not being honest with this Court.

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<sup>1</sup>As this Court will recall, at the request of DePriest's counsel the Court instructed the parties that Mr. DePriest would be subject to a judgment debtor's examination should a judgment be obtained against him, and that details regarding assets and financial condition could be explored in more depth at that time.

All of DePriest's testimony and tactics are nothing more than a front presented in hopes to delay the inevitable. Phillips obtained his judgment against DePriest in June of this year. It has been almost four (4) months since then, and Phillips has still not been able to begin execution on his judgment. During this time, Phillips has continued to pay principal and interest payments on multiple promissory notes, the very "mirror notes" of which DePriest stipulated that he owed Phillips at trial.

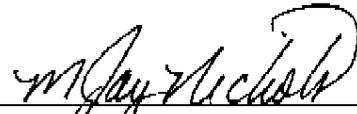
DePriest does not deserve any special treatment in this matter, as there are no exceptional circumstances which warrant the waiver or reduction of the supersedeas bond required to stay Phillips' execution on his judgment against DePriest. Litigants are often faced with judgments that could potentially force them into bankruptcy. This is why bankruptcy protection is available to debtors. If execution on the judgment forces DePriest into bankruptcy, that is just a risk that Phillips must consider. This risk, however, should not prevent Phillips from being able to execute on his judgment without DePriest posting the required bond or providing some sort of alternative security to protect Phillips' rights during the pendency of an appeal. If DePriest wants to stay execution on the judgment, he should be required to post supersedeas bond, or to provide alternative security that is adequate to protect Phillips' rights.

WHEREFORE, PREMISES CONSIDERED, Phillips respectfully requests that this Court deny DePriest's Motion to Stay Execution.

Respectfully submitted this 13<sup>th</sup> day of October, 2009.

OLIVER L. PHILLIPS, JR.

BY:

  
M. JAY NICHOLS, MB #10066

OF COUNSEL:

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**CERTIFICATE OF SERVICE**

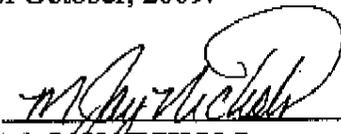
I, the undersigned, M. JAY NICHOLS, one of the attorneys of record for Oliver L. Phillips, Jr., do hereby certify that I have this day served a copy of the foregoing via United States first class mail, postage prepaid, and properly addressed, upon the following:

Ernest Taylor, Esq.  
Donald Alan Windham, Jr., Esq.  
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**Attorney for Plaintiff**

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Timothy J. Segers, Esq.  
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Post Office Box 306  
Birmingham, AL 35201-0306  
**Attorney for Plaintiff**

SO CERTIFIED on this the 13<sup>th</sup> day of October, 2009.

  
\_\_\_\_\_  
M. JAY NICHOLS

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

**FILED**  
OCT 15 2009

OLIVER L. PHILLIPS

PLAINTIFF

VERSUS

CAUSE NO. 2007-0526

DONALD R. DEPRIEST, MCT  
INVESTORS, L.P., and MARITIME  
COMMUNICATIONS / LAND MOBILE,  
LLC

*Le. Young Spear*  
Chancery Clerk

DEFENDANTS

AND

DONALD R. DEPRIEST

COUNTER-PLAINTIFF

VERSUS

OLIVER L. PHILLIPS, HELEN J.  
PHILLIPS, his wife, and JOHN DOES 1-20

COUNTER-DEFENDANTS

**REBUTTAL IN SUPPORT OF MOTION TO STAY EXECUTION PENDING APPEAL**

Under Miss. R. Civ. P. 62(g) and Miss. R. App. P. 8(c), the Court is authorized to stay execution pending appeal. One of the situations where Courts have stayed execution is when it would cause irreparable harm to the judgment debtor's other creditors. DePriest's affidavit clearly establishes that risk. Ultimately, the Court must consider the equities as it would in any other similar request, and, as set forth in DePriest's motion and this rebuttal, the equities weigh in favor maintaining the status quo through a stay of execution.

**ARGUMENT**

The Rules of Civil and Appellate procedure clearly allow for a stay pending appeal.

Miss. R. Civ. P. 62(g) provides:

The provisions in this rule do not limit any power of an appellate court or a judge or justice thereof to stay proceedings during the pendency of an appeal or to

suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Miss. R. App. P 8(c), entitled "Motion to Stay or Vacate Stay in Supreme Court" provides:

A motion for such relief may be made to the Supreme Court (or to the Court of Appeals in cases assigned by the Supreme Court to the Court of Appeals) but the motion shall show that the application to the trial court for relief sought is not practicable, or that the trial court has denied an application or has failed to afford the relief which the applicant has requested, with the reasons given by the trial court for its action.

Clearly, if the Supreme Court has authority to grant a stay, but will only grant a stay after the request was first considered by the Trial Court, then the Trial Court also has authority to grant a stay.<sup>1</sup> Phillips's assertion, that the Court has no authority to stay execution without some sort of security, is not supported by the rules.

DePriest's affidavit is sufficient to establish the threat of irreparable harm to his other creditors. It sets out that his assets are mostly pledged as collateral, that he has several other judgment creditors, and that he owes millions to unsecured creditors. Phillips did not deny these facts – Phillips is fully aware of DePriest's financial condition. Instead, Phillips focuses on DePriest's statements regarding payment of a potential judgment. But those statements have to be viewed in context. Phillips sued DePriest for millions of dollars worth of claims he knew were uncollectible – Phillips abandoned approximately \$8,000,000 of claims prior to trial. DePriest obviously was not claiming to be able to pay \$17,000,000. DePriest could have

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<sup>1</sup> Also note that Mr. Phillips's response focused on cases cited by DePriest related to alternative security, but ignored those cases cited by DePriest that related to a waiver of bond. *See Olympia Equip. Leasing Co. v. Western Union Telegraph Co.*, 786 F.2d 794, 796 (7th Cir. 1986); *Dillon v. City of Chicago*, 866 F.2d 902, 904-5 (7th Cir. 1988).

legitimately believed that the \$5,000,000 note was also uncollectible; Phillips had made no effort to collect for over ten years after its due date.

Finally, Phillips suggests that perhaps bankruptcy is the best option for DePriest and the Court should allow that to happen. Ultimately, however, the Court has to look at this motion as it would any other request for equitable relief. How does the risk of irreparable harm to DePriest's other creditors weigh against the likelihood he has to succeed on the merits? Often, Courts are faced with close questions with the slimmest margin between which party is ultimately the appellant and which is the appellee. DePriest asks the Court to look to the appeal issues presented in its motion, consider the likelihood that any of those issues could result in a reversal, consider the affect on DePriest's numerous other creditors, and determine whether DePriest should be forced into bankruptcy prior to the appellate court ruling on the merits. Considering the relative lack of prejudice to Phillips based on his status as a junior creditor, DePriest submits that these factors weigh in favor of a stay, and that the status quo should be maintained until an appellate court can consider these issues.

DePriest asks that his Motion to Stay Execution Pending Appeal be granted.

Respectfully submitted, this 14th day of October, 2009.

DONALD R. DEPRIEST

BY: BALCH & BINGHAM LLP

BY: *Ronald Alan Wincham Jr.*  
Of Counsel

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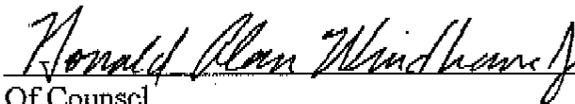
**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I, the undersigned counsel, do hereby certify that I have this day served, via electronic mail, a true and correct copy of the above and foregoing pleading to:

M. Jay Nichols, Esq.  
NICHOLS CROWELL GILLIS COOPER & AMOS  
P. O. Box 1827  
Columbus, MS 39703-1827

This the 14th day of October, 2009.

  
Of Counsel

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

OLIVER L. PHILLIPS

**FILED**  
OCT 16 2009

PLAINTIFF

VERSUS

CAUSE NO. 2007-0526

DONALD R. DEPRIEST, MCT INVESTORS,  
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LAND MOBILE, LLC

*Janet Younger Nasse*  
Chancery Clerk

DEFENDANTS

AND

DONALD R. DEPRIEST

COUNTER-PLAINTIFF

VERSUS

OLIVER L. PHILLIPS, HELEN J. PHILLIPS,  
his wife, and JOHN DOES 1-20

COUNTER-DEFENDANTS

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**ORDER**

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Donald R. DePriest's Motion to Stay Execution of Judgment is overruled.

The Clerk is hereby directed to mail a copy of this Order to all counsel of record after same is filed.

SO ORDERED, ADJUDGED AND DECREED on this the 14<sup>th</sup> day of October, 2009.

*Kenneth M. Burns*  
KENNETH M. BURNS, CHANCELLOR

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