

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

Name: John B. Turner, Jr.

Office Address: 5050 Poplar Avenue [REDACTED]
(including county) Memphis, Shelby County, Tennessee 38157

Office Phone: (901) 312-1640 Facsimile: (901) 312-1639

Email Address: John.Turner@qpwbllaw.com

Home Address:
(including county) [REDACTED]

Home Phone: N/A

Cellular Phone: [REDACTED]

INTRODUCTION

The State of Tennessee Executive Order No. 87 (September 17, 2021) hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

The Council requests that applicants use the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original hard copy (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts as detailed in the application instructions. Additionally you must submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your original application, or the digital copy may be submitted via email to john.jefferson@tncourts.gov.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Of Counsel, Quintairos, Prieto, Wood & Boyer, P.A.

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

1996 018258

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee 018258, Admitted 1996. Active.

Mississippi 101314, Admitted 2004. Active

Alabama 9426N68J, Admitted 2000, Inactive. I allowed this to lapse as I was not handling enough Alabama related matters to justify the expense of keeping the license active.

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

Of Counsel, Quintairos, Prieto Wood & Boyer

October 2024 - Present

Senior Attorney, The Crone Law Firm, PLC

May 2022 - October 2024

Delinquent Tax Attorney, Shelby County Trustee

July 2019 – May 2022

Member, Law Offices of John B. Turner, Jr.

August 2019-May 2022

E Discovery Attorney, Legility	November 2018- July 2019
Assistant County Attorney, Shelby Couty TN	December 2012- October 2018
Cargo Handler, The Home Depot	2016-2017
Prosecutor, City of Horn Lake, MS	January 2011 – December 2012
Associate Attorney, Baskin, McCarroll, McCaskill, Aldridge & Campbell, Southaven, MS	April 2004 – September 2011
Associate, Mark B. Miesse & Associates, Germantown, TN	November 2000-April 2004
Associate, Philip Shanks & Associates, Cordova, TN	December 1999-November 2000
Campaign Staff, Mike Parker for Governor, Brookhaven, MS	1999
Campaign Staff, Charlie Williams for Governor, Jackson, MS	1999
Campaign Manager, Rusty Fortenberry for Attorney General, Brandon, MS	1999
Cargo Handler, FedEx Corporation	November/December 1998
Press Secretary, Delbert Hosemann for Congress	1998
Senior Legislative Assistant	Spring 1997- September 1998
Legislative Correspondent,	
Intern, Office of U.S. Representative Zach Wamp	

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable.

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

My practice consists primarily of personal injury defense (50%), commercial litigation (30%), transactional matters (10%), and general business matters (10%)

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information

about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

I have twenty-five years of experience as a litigator, having handled cases involving commercial disputes, real property, employment discrimination, personal injury, domestic relations, damage to property, property taxation, and criminal matters. While working for Shelby County as an Assistant County Attorney and later as a Delinquent Tax Attorney, I litigated matters involving civil service terminations, property taxation, zoning and land use, mental health commitments, and Government Tort Liability Act matters, among others.

Beyond that, I have developed my skills in many areas of the law, including labor and employment, finance, contracts, and commercial and residential real estate closings, among others.

While an Assistant County Attorney, I argued many cases in front of the County Civil Service Merit Board, and later served as a member of the Memphis Civil Service Commission.

In my most recent position with Quintairos, Prieto, Wood & Boyer, I have focused primarily on commercial litigation and personal injury defense, two types of cases that form a great portion of the Court's caseload. Before that, while with The Crone Law Firm, I represented employers in numerous employment related matters, including a federal jury trial in which I successfully defended the city in an age discrimination claim. In my time with that firm, I served on our Senior Leadership Team and I also led our most productive team of attorneys and paralegals. I also spent my first year in practice handling domestic relations cases, another significant part of the docket of the Court of Appeals.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

I successfully argued a case before the U.S. Court of Appeals for the Fifth Circuit, *Peoples Bank v. Bryan Bros. Cattle Co.* 504 F.3d 549 (5th Cir. 2007) that effectively made new law regarding UCC Article 9. In that case, I convinced the 5th Circuit to adopt a position contrary to that taken by most jurisdictions, persuading that tribunal that a lender could not avoid the priority of a previously filed financing statement that used a debtor's nickname, if that lender was aware of

said nickname.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I have served as a private arbitrator in one construction dispute in 2012 or 2013. I was appointed by the defendant to serve on a three arbitrator panel, and the plaintiff's appointee and I chose a third member to chair the panel. This was a dispute between a homeowner and a builder over alleged construction defects.

I have also sat as special judge over criminal and civil matters in Shelby County General Sessions Court over the years. The criminal matters I heard were traffic cases, and the civil matters were primarily debt collection, detainer warrants, and other civil disputes.

I also heard numerous civil service appeals as a member of the City of Memphis Civil Service Commission, a position to which I was appointed by Mayor Jim Strickland. These cases involved Memphis city employees who had been terminated or suspended and who were appealing those disciplinary actions.

11. Describe generally any experience you have serving in a fiduciary capacity, such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

I served as Administrator of my mother's estate after her passing.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Council.

Not applicable.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor or similar commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

Not applicable.

EDUCATION

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

University of Alabama

School of Law, J.D. 1993-1996

College of Commerce & Business Administration (MBA Program) Fall 1996. (Moved to Washington, D.C. area to seek a position as a Congressional staffer.)

Millsaps College, B.A. 1990-1993

Birmingham-Southern College, Summer 1998, 1989-1990 (Transferred to Millsaps College)

Memphis State University, Summer 1989 (Took summer classes before beginning freshman year)

Alabama Southern Community College, Monroeville, AL, Summer 1990 (Took summer public speaking course)

PERSONAL INFORMATION

15. State your age and date of birth.

53. [REDACTED] 1971

16. How long have you lived continuously in the State of Tennessee?

Fifteen years.

17. How long have you lived continuously in the county where you are now living?

Fifteen years.

18. State the county in which you are registered to vote.

Shelby County

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not applicable.

20. Have you ever pled guilty or been convicted or placed on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

I was the subject of two complaints filed with the Tennessee Board of Professional Responsibility. Both were dismissed.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No.

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No.

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

Yes. *Emily Wade Turner v. John B. Turner, Jr.*, Chancery Court, Desoto County, Mississippi, Docket No. 11-04-0653. Divorce granted by agreement of the parties.

Emily Turner v. John Turner Jr. Shelby County Circuit Court, Docket No. CT-000747-15. Dispute with my former wife over the interpretation of Mississippi divorce settlement regarding obligation to pay private school tuition. Judgment for Plaintiff.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

St. John Orthodox Church, Memphis, TN, Layreader

Shelby County Republican Party, Assistant Parliamentarian, Parliamentarian 2020-24

The Economic Club of Memphis 2022-2024

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- If so, list such organizations and describe the basis of the membership limitation.
 - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

Kappa Alpha Order. College fraternity. Membership limited to male college students.

While no longer an active undergraduate member, I do not intend to resign as an alumnus. I do not believe that membership in a fraternal organization is in any way indicative of bias or prejudice against others.

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have

held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

Tennessee Bar Association
The Mississippi Bar
American Bar Association
Memphis Bar Association
Desoto County Bar Association
The Federalist Society

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

Not applicable.

30. List the citations of any legal articles or books you have published.

Not applicable.

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

Not applicable.

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

Candidate, County Court Judge, Desoto County, Mississippi 2008. Elected position.
Applicant, Shelby County Judicial Commissioner, 2018. Position elected by the Shelby County Board of Commissioners.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No.

34. Attach to this application at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

See attached. Each of these was my own work, with some minor editing or proofreading by colleagues.

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? *(150 words or less)*

I wish to serve the people of Tennessee as a Judge of the Court of Appeals. I view the establishment and maintenance of law courts as one of the fundamental duties of a civilized society. I believe that my time as a litigator and my extensive experience in many areas of the law have given me training and perspective that will serve the citizens of Tennessee well. I want to work hard, move cases forward, and dispense justice to those who seek redress before this court. I also believe that my work ethic, knowledge, and temperament make me well suited for this position.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

I handle *pro bono* cases from time to time. Recently, I represented a fellow church member who is a cafeteria worker in a local public school. She was wrongfully accused of having made a fraudulent unemployment compensation claim and was facing a demand of approximately \$40,000 from the state. We were able to demonstrate, after a considerable amount of effort, that she had been the victim of identity theft. While she had inadvertently received a small overpayment during the COVID pandemic, the vast majority of the money the State sought was due to the identity theft. I successfully convinced the State to reduce the amount sought by more than 90%. Knowing that I helped a friend who may not have been able to successfully navigate the state bureaucracy on her own was among the more satisfying results I have achieved as an attorney.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

I am seeking appointment to the Tennessee Court of Appeals for the Western Section, an appellate court serving the citizens of Tennessee. There are twelve judges on the Court of Appeals, with four serving each Grand Division of Tennessee. I believe that my work ethic and intellect would serve the people well in analyzing and ruling upon appeals from the various Circuit and Chancery courts of West Tennessee.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

I am actively involved in my church, and will continue to be. I have also been proud to serve as a volunteer mentor and judge in the Shelby County Youth Court program, a program that serves the youth of Shelby County by offering a form of diversion for juvenile offenders. Under this program, high school students serve as prosecutors, defense attorneys, and jurors, (with attorneys mentoring the advocates and sitting as judge) to try cases involving their peers. I have found my involvement with this program highly rewarding. As a Judge of the Court of Appeals, I would also like to serve as a mentor to young people considering careers in the law, and to assist with educating young people about the importance of our legal system and the values enshrined in our laws and the U.S. Constitution.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

I believe that my professional experience, intellectual ability, temperament, and integrity make me an excellent candidate for this position.

Having a broad range of legal experience has provided me with legal knowledge that will be invaluable in carrying out the duties of this office. However, my other work and life experiences will be equally important in enabling me to dispense justice.

In my years of courtroom practice, I have had the privilege of appearing before a large number of jurists, and I have benefitted from watching them all. I have been fortunate to see the positive example set by most of them, and I have also learned from a small number how not to conduct oneself on the bench. My time as a courtroom advocate has drilled in me the importance of legal knowledge, professionalism, courtesy, humility, and the willingness to listen attentively.

While the law has long been my vocation, I also enjoy the study of history, and I believe one cannot truly understand the law and the rules governing our society without understanding the people and events that produced them.

One of my law professors told us that to be a successful litigator, one had to be a generalist. I have tried to live by that, seeking to expand my knowledge of many subjects, and never allowing myself to stop learning. This has made me a better litigator, a fair trivia competitor, and I believe it will make me a better judge as well.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

Yes. In one particular case that comes to mind, I was hired to represent a man in Mississippi

who had been charged with possession of drug paraphernalia and driving under the influence. While I personally do not agree with the recent trend of liberalizing drug laws, particularly as regards marijuana, I agreed to represent this gentleman and successfully defended him. In this particular situation, while I don't condone drug use, there was a higher principle at stake, namely this defendant's right to due process. Whatever my views on marijuana, it became clear as I investigated the matter that the evidence against my client had been obtained through an unlawful search incident to his arrest. Citing the U.S. Supreme Court's ruling in *Arizona v. Gant* 556 U.S. 332 (2009), I convinced the court to exclude the illegally obtained evidence, resulting in a dismissal of the charge.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A. Bill Watkins, CPA (retired)	[REDACTED]
B. Leslie Gattas, Attorney, Leslie Gattas & Associates	[REDACTED]
C. Amber Mills, Shelby County Commissioner	[REDACTED]
D. Hon. Lynn Cobb, Shelby County General Sessions Court Judge	[REDACTED]
E. Hon. Kim Koratsky, Municipal Court Judge, Lakeland, TN	[REDACTED]

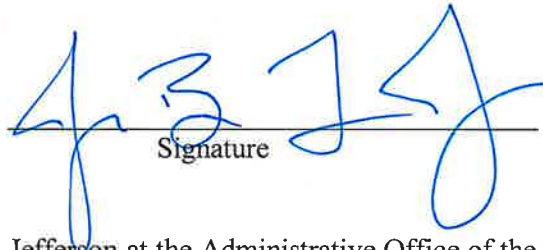
AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Tennessee Court of Appeals, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended application with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this application shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: November 4, 2025.


Signature

When completed, return this application to John Jefferson at the Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.

IN THE CIRCUIT COURT OF TUNICA COUNTY, MISSISSIPPI

PAMELA ALLEN TURNER

PLAINTIFF

VS.

CIVIL ACTION NO. 2019-0137

MGM RESORTS MISSISSIPPI, LLC
d/b/a GOLD STRIKE CASINO
RESORT
and JOHN DOES 1-3

DEFENDANT/THIRD-PARTY
PLAINTIFF

VS.

FULL SERVICE SYSTEMS and
JOHN DOE ENTITIES 1-4

THIRD-PARTY
DEFENDANTS

**RESPONSE OF DEFENDANT, MGM RESORTS MISSISSIPPI, LLC
TO FSS' MOTION FOR PROTECTIVE ORDER**

Comes now, MGM Resorts Mississippi, LLC, through undersigned counsel, pursuant to Rule 26(d) and 30(b)(6) of the *Mississippi Rules of Civil Procedure*, and submits this response to Full Service Systems' Motion for Protective Order and in opposition thereto would state unto the court as follows:

INTRODUCTION

Full Service Systems (hereinafter, FSS) is a corporation which submitted itself to the jurisdiction of the courts of Mississippi when it freely elected to do business in Mississippi, signing a contract with MGM Resorts Mississippi, LLC to provide cleaning services at the Gold Strike Casino Resort in Tunica County. Now, having refused to honor its commitment to indemnify and hold harmless MGM, it is also refusing to honor its agreement to make its corporate representative available for a

FILED

MAY 09 2025

TUNICA COUNTY, MISS.
SHARON A. REYNOLDS, CIRCUIT CLERK
BY Ma. Kish, sec

deposition Rule 30(b)(6) of the *Mississippi Rules of Civil Procedure*.

MGM agrees with FSS that the sole remaining issue to be decided in this litigation is whether FSS must honor its contractual obligations to MGM. FSS was able to piggyback on MGM's successful Motion for Summary Judgment, which limited MGM's damages to its costs of defense and reasonable attorneys' fees incurred in this matter. Where the parties currently disagree is on the issue of whether FSS's corporate representatives enjoy some special privilege allowing them to dictate where they are to be deposed. No such privilege is to be found in the laws of Mississippi and the Motion for Protective Order should be denied.

LAW AND ARGUMENT

I. FSS WAIVED THE DISCOVERY DEADLINE AND DID NOT CONDITION ITS WAIVER ON ANY AGREEMENT TO CONDUCT THE DEPOSITION REMOTELY.

MGM has sought a negotiated resolution of this matter for several years, but the parties have not reached an agreement.¹ That being the case, MGM has been forced to seek to move forward on the merits of its claim against FSS. Toward that end, MGM requested to take the deposition of one or more FSS corporate representatives pursuant to Miss. Rule Civ. Pro 30(b)(6) and sent Counsel for FSS its notice of deposition setting out the time and place of the deposition and listing the topics to be covered. (Exhibit B)

¹ What FSS calls "demands and threats," in its motion, less tender souls would call "negotiations." The "demands and threats" complained of include such incendiary language as "It is time this is resolved. I hope that FSS will act accordingly. If, not, we will go forward with our claims and are considering an action against the carrier." (Exhibit A)

FSS agreed to this request but insisted that its representative would not appear personally and would only appear remotely. No reason was given for the refusal to attend in person. (Exhibit C)

After undersigned counsel advised counsel for FSS that his client's attendance would be required, counsel for FSS claimed to have suddenly discovered the existence of a scheduling order cutting off the deadline for discovery. FSS would use this purported ignorance of a deadline as a shield, arguing that this should excuse it from its clear waiver of same. There are two problems with this argument.

First, the orders of this court are public record, and were available to FSS at all times. MGM cannot speak to what was in FSS's file or when it appeared there, but, given the well documented (by FSS' counsel, no less) problems with prior counsel and his file maintenance issues, FSS had an obligation to take such steps as were necessary to ensure that it was in possession of all pleadings filed and orders issued in this matter.

Second, by acting in a manner inconsistent with said discovery deadline, FSS has waived same. A right may be waived by actions inconsistent with that right. *Century 21 Maselle & Assocs. v. Smith*, 965 So. 2d 1031, 1036 (Miss. 2007) citing *Cox v. Howard, Weil, Labouisse, Friedrichs, Inc.*, 619 So. 2d 908, 914 (Miss. 1993) By agreeing to its representative's deposition after the passage of the discovery deadline (which, by necessity, primarily applied to the Plaintiff's personal injury claim, as Gold Strike's common law indemnification claim was not yet ripe), FSS has waived its right to enforce this deadline.

II. PER MISS. RULE CIV. PRO. 30(B)(1), NOTICE OF A DEPOSITION IS WHAT CONTROLS THE FORM OF THE DEPOSITION.

Further, FSS's motion is baseless, as Mississippi law does not permit a deponent to dictate the terms on which it will be deposed. Per Miss. Rule Civ. Pro. 30(b)(1),

A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. A notice may provide for the taking of testimony by telephone. If necessary, however, to assure a full right of examination of any deponent, the court in which the action is pending may, on motion of any party, require that the deposition be taken in the presence of the deponent.

Per this rule, it is the notice given by the party taking the deposition that determines whether a deposition may be taken telephonically. As can be seen in Exhibit B, this option was not presented to FSS. While taking depositions remotely is permissible at times, it is, as can be seen in the rule, not the default method of taking depositions. In this case, doing so is unnecessary, and would unfairly prejudice MGM. As FSS has not served discovery requests on MGM, it is likely that Gold Strike is in possession of documents unknown to FSS, and that MGM may wish to use for purposes of impeachment or surprise. A remotely conducted deposition would require MGM to transmit any necessary documents to FSS and its counsel

prior to the deposition and allowing it to tailor its testimony appropriately.

Further, while a court may permit a remote deposition if appearing in person would constitute an undue burden on a deponent, such has not been pled here, nor is it the case. FSS is not a pauper. Airlines fly between Florida and the closest major airport, Memphis International, on a daily basis. If FSS had the means to appear in Tunica County when there was profit to be realized therein, it has the means to appear now to explain its failure to honor its contractual obligations. As the above rule and case law (*see Johnson v. Henderson (In re Estate of Johnson)*, 233 So. 3d 265, 266 (Miss. 2017)) make clear, it is fully within the court's power to direct that a deposition be conducted in person. In the present case, FSS has presented the court with no reason why its representative should not be physically present in Tunica County, where it once did business, for this deposition.

CONCLUSION

MGM and this Court have a significant history with Full Service Systems. In *Betty Clark v. Gold Strike Casino Resort, MGM Resorts Mississippi, LLC, MGM Resorts International, The Service Companies, Inc., and John Does I-V*, Civil Action No. 2020-0098, (Full Service Systems and The Service Companies, Inc. are the same entity.) this Court granted MGM's Motion for Summary Judgment. (Exhibit D) Thereafter, The Service Companies failed to comply with this Court's Order. MGM filed a Motion to Enforce the Judgment (Exhibit E) and on September 1, 2023, this Court entered its Judgment for contempt and sanctions for failure to comply with this Court's previous Orders, entering judgment for \$44,956.63 to be paid within fourteen

(14) days. (Exhibit F)

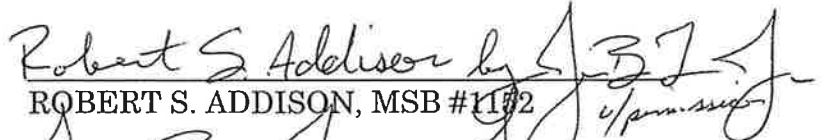
However, The Service Companies did not comply with this Court's September 1, 2023 order within fourteen (14) days. The Service Companies/ FSS refused to honor this Court's jurisdiction, orders and judgments, taking the position that it was immune from compliance as it was domiciled in Florida. Finally, at substantial expense, MGM was forced to retain a Florida lawyer to enforce this Court's judgment. On June 3, 2024, the judgment was finally satisfied, nine (9) months after the deadline imposed by this Court.

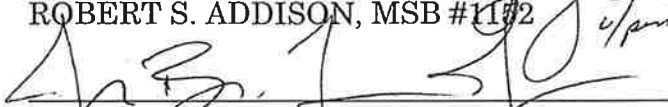
FSS has a history of mocking this Court's orders. It hides in Florida and, though subject to the jurisdiction of this Court, it refuses to send a 30(b)(6) representative to Mississippi and seeks to dictate from afar. Video teleconferencing is intended to benefit all parties when the deponent's physical presence is otherwise impossible (e.g. during the COVID-19 pandemic). In this case, the only beneficiary of a Zoom deposition would be FSS, and MGM would simultaneously be seriously prejudiced. In the *Betty Clark* case, this Court was unable to enforce its judgment on its own, and MGM was compelled to expend unnecessary time and money enrolling this Court's order in Florida. In this case, however, FSS cannot hide behind the palm trees of its state of incorporation, and this court can and should compel its attendance.

For the foregoing reasons, Gold Strike respectfully asks that FSS' motion be DENIED, and that FSS corporate representative be directed to appear personally in Tunica County, Mississippi for the 30(b)(6) deposition.

RESPECTFULLY SUBMITTED, this the 6th day of May, 2025.

MGM RESORTS MISSISSIPPI, LLC

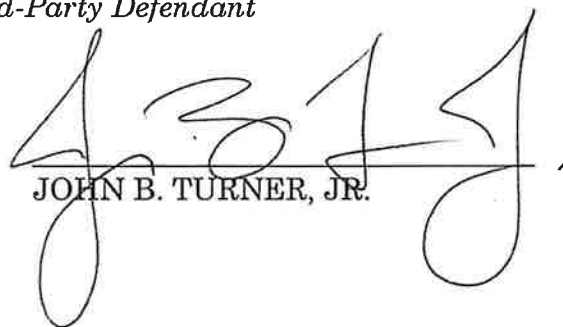

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CERTIFICATE OF SERVICE

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CASE NO. 06-60582

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**PEOPLES BANK (A DIVISION OF FIRST TENNESSEE BANK, N.A.)
PLAINTIFF-APPELLANT**

v.

**BRYAN BROTHERS CATTLE COMPANY;
B&S CATTLE COMPANY
PLAINTIFF-APPELLEES**

v.

**CORNERSTONE BANK
DEFENDANT-APPELLANT/CROSS-APPELLEE**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

BRIEF OF DEFENDANT-APPELLANT/CROSS-APPELLEE CORNERSTONE BANK

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ORAL ARGUMENT REQUESTED

INTRODUCTION

This appeal involves certain cattle (the “Cattle”) owned by Louie Dickerson (as he was known to all parties to this appeal) through his sole proprietorship, Glenbrook Cattle Company, and subject to the perfected security interest of Cornerstone Bank, as well as those of other lenders who sought to perfect their security interests after Cornerstone.

To fund a portion of his operation, Dickerson borrowed money from Cornerstone Bank, and, as security for said loans, gave Cornerstone a security interest in the Cattle, as well as other assets. Cornerstone perfected its security interest in the Cattle when it filed a Form UCC-1 financing statement with the Mississippi Secretary of State on October 14, 1999, more than three years before the first financing statement was filed by any other party to this appeal.

While doing business as a sole proprietor, Dickerson bought cattle at various auctions and later sold them to the Plaintiff-Appellees, Bryan Brothers Cattle Company and B&S Cattle Company (hereinafter sometimes referred to collectively as “Bryan Brothers”). In each and every transaction relevant hereto, the Cattle were purchased by Dickerson and were later sold to Bryan Brothers. Bryan Brothers never purchased any of these cattle directly at auction. Instead, Dickerson, or one of his employees or agents, bought the Cattle for Dickerson and Glenbrook, who took title to the Cattle. Only after Dickerson had taken title to the Cattle, and after the security interests of Cornerstone and the junior secured creditors attached, did Bryan Brothers purchase them.

In spite of the above, the District Court erroneously granted summary judgment to Bryan Brothers, ignoring the perfected liens on the Cattle held by Cornerstone and the junior secured creditors. The District Court failed to adequately examine or weigh the evidence regarding

Dickerson's operations, including the total failure to observe the required corporate formalities and the fraudulent nature of Dickerson's business dealings. In failing to examine these issues, the Court arrived at its erroneous conclusions regarding the cattle and their ownership.

While the District Court erred in granting summary judgment to Bryan Brothers, the Court was correct in refusing to grant Summary Judgment to Peoples Bank against Cornerstone. However, said refusal should have been based upon Cornerstone's superior security interest, rather than a mere declination to address the issue in light of the incorrect ruling in favor of Bryan Brothers. Cornerstone took all steps necessary to perfect its lien on the cattle, and in so doing placed all other potential lenders and buyers on notice as to its liens. Consequently, judgment in favor of any party to this appeal other than Cornerstone is improper.

CERTIFICATE OF INTERESTED PERSONS

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

A. Parties:

Plaintiffs-Appellees:	Bryan Brothers Cattle Company and B&S Cattle Company
Defendant-Appellant/ Cross-Appellee	Cornerstone Bank
Plaintiff-Appellant	Peoples Bank, a Division of First Tennessee Bank, N.A.

B. Attorneys

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STATEMENT CONCERNING ORAL ARGUMENT

Cornerstone Bank submits that oral argument would prove beneficial to the Court because it would provide the Court an opportunity to question counsel and further explore any points of fact and law which the Court might find essential to the proper disposition of this appeal. Accordingly, Cornerstone requests oral argument in order to ensure sufficient discussion of the issues presented for review.

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STATEMENT OF JURISDICTION

Cornerstone Bank appeals a final judgment from the United States District Court for the Northern District of Mississippi. This Court has jurisdiction pursuant to 28 U.S.C. §1291.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Cornerstone Bank's financing statements filed with the Mississippi Secretary of State naming Louie Dickerson (as he was known to all parties to this appeal) as the debtor gave Cornerstone a security interest in all of Dickerson's cattle, including those which are now the subject of this litigation. In Mississippi, a financing statement naming the owner of a sole proprietorship, rather than the proprietorship itself, is effective to create a security interest in the named collateral. Therefore, did the District Court commit reversible error when it ruled that Cornerstone's financing statements were not effective because they named only Dickerson, rather than his sole proprietorship, Glenbrook, as the debtor?

2. Cornerstone Bank possessed a perfected security interest in all cattle and proceeds therefrom owned by Dickerson's sole proprietorship, Glenbrook. Therefore, did the District Court commit reversible error when it failed to determine the capacity – as a sole proprietorship or limited liability company – in which Glenbrook owned and sold the cattle?

3. Glenbrook operated as a sole proprietorship and, as such, sold the Cattle to Bryan Brothers. Therefore, any cattle purchased by Bryan Brothers were purchased subject to the security interest of Cornerstone Bank. Therefore, did the District Court err in granting Bryan Brothers' motion for Summary Judgment against Cornerstone?

4. Was the District Court correct in refusing to find that the liens of Peoples' Bank in the Cattle, having been filed with the Mississippi Secretary of State some three years after the UCC-1 filed by Cornerstone Bank, were the primary liens on the cattle?

STATEMENT OF THE CASE

Procedural History: Litigation in this matter began May 24, 2004, when certain business associates of Louie Dickerson filed a Petition for a Temporary Restraining Order in the

Chancery Court of Tate County, Mississippi. This matter, styled *William C. Weeks, et al., Plaintiffs, v. Brooks Louis "Louie" Dickerson, Ellen R. Hardy, Dennis Bryan, Clayton Zwierski, and All Others in Concert, Defendants*, sought to enjoin Louie Dickerson and any others acting with him from wrongfully transporting certain cattle in his possession to Bryan Brothers. (App. Rec., "*Weeks*", at pp. 6-12). Cornerstone Bank and Peoples Bank intervened in that cause of action, along with certain other secured and unsecured creditors of Mr. Dickerson. The Tate County Chancery Court directed that the TRO be lifted upon Bryan Brothers having deposited \$363,000 with the Tate County Chancery Clerk. (App. Rec. "*Weeks*", at pp. 161-163). When Bryan Brothers removed this matter to the U.S. District Court for the Northern District of Mississippi, these funds were transferred to the Clerk of the District Court. (App. Rec., "*Weeks*", at p. 213).

Bryan Brothers' removal was based on the claim of diversity jurisdiction and one of subject matter jurisdiction, specifically they claim that this case fell under the Food Security Act (FSA), 7 U.S.C. § 1631, *et seq.* (App. Rec., "*Bryan Brothers*", at pp. 1-5). The District Court then consolidated the removed case with one already filed in the U.S. District Court for the Northern District of Mississippi by Bryan Brothers. (App. Rec., "*Weeks*" at pp. 220-221). Bryan Brothers' first Motion for Summary Judgment was denied, with the Court finding that there were material facts in dispute regarding ownership of the cattle. (App. Rec., "*Weeks*", at pp. 682-683).

Judgment on Appeal: On February 1, 2006, both Bryan Brothers and Peoples Bank filed Motions for Summary Judgment against all parties. The District Court granted Bryan Brothers' Motion and denied that of Peoples Bank. The Court based its decision on the erroneous conclusion that the cattle had been owned by Glenbrook, without determining which

Glenbrook entity, the sole proprietorship or the LLC, held title to the Cattle. Having found in favor of Bryan Brothers, the District Court deemed moot the claims of Peoples Bank regarding the priority of its lien relative to that of Cornerstone.

STATEMENT OF FACTS

1. On October 5, 1999 Louie Dickerson signed a promissory note later followed by an extension thereof, with accompanying security agreements, payable to Cornerstone Bank.

(App. Rec. “Weeks” at pp. 193-200). As security for this loan, Dickerson pledged

all livestock of every kind and description including but not limited to beef and dairy cattle, branded or unbranded, plus any increase therefrom, and including steers and bulls now owned by debtor. All accession, additions, replacements, payments for participation in any state or federal farm programs and substitutions (including rights under Commodity Credit programs. ASCS, payment in kind, or any other general intangibles or programs); all records of any kind relating to any of the foregoing; all proceeds(including insurance, general intangibles, rents and accounts proceeds).

(App. Rec., “Weeks”, at pp. 193-194).

2. On October 14, 1999, Cornerstone Bank filed with the Mississippi Secretary of State a form UCC-1 evidencing and perfecting its security interest in these cattle. (App. Rec., “Weeks”, at pp. 193-194).

3. Dickerson defaulted on the note and extension. Interest, attorneys fees, collection costs continue to accrue, as mandated in the note and extension signed by Dickerson. (App. Rec., “Weeks”, at pp. 193-198).

4. Peoples Bank extended credit to Dickerson, filing its first financing statement covering the Cattle on November 19, 2002, more than 3 years after Cornerstone’s financing statement. Other UCC-1s were filed by Peoples after the November 2002 financing statement. (App. Rec., “Weeks”, at pp. 302-318).

5. On February 13, 2002, Dickerson established checking account number 60447430 at BancorpSouth Bank in the name Louie Dickerson, d/b/a Glenbrook Cattle Company. (App. Rec., “*Bryan Brothers*”, at pp. 1690-1697). As noted by Peoples Bank in its Brief, the Resolutions accompanying the account signature card refer to Glenbrook as a sole proprietorship.

6. Glenbrook had no other bank accounts.

7. The taxpayer ID number given for Glenbrook was Dickerson’s social security number, rather than a separate employer ID number that would be required for an incorporated or registered entity. (App. Rec., “*Bryan Brothers*”, at pp. 1686-1689).

8. On or about June 17, 2002, Neal Copeland, a Mississippi real estate appraiser prepared an appraisal of a home and surrounding land on which Peoples Bank took a mortgage from Mr. Dickerson. This appraisal identified the borrower as “Louie Dickerson”. (App. Rec. “*Bryan Brothers*” at pp. 1717-1730).

9. On November 19, 2002, according to a document labeled “Credit Approval Document” and found in the Peoples Bank loan file, this appraisal was reviewed by John P. Champion, the Peoples Bank loan officer who dealt with Mr. Dickerson in connection with this loan and the loans Peoples seeks to collect upon in this litigation. (App. Rec. “*Bryan Brothers*” at pp. 1731-1732).

10. On November 7, 2002, twelve days before it filed the first of the financing statements it relies upon in this case, Peoples Bank made one or more loans to Louie Dickerson, identifying him as “Brooks L. Dickerson, Jr., d/b/a Louie Dickerson Farms.” (App. Rec. “*Bryan Brothers*” at pp. 1733-1780).

11. On July 16, 2003, approximately two months before it filed the second of the

financing statements it relies upon in this case, Peoples Bank received from Shelter Insurance a declarations page regarding a homeowners' insurance policy. (App. Rec. "*Bryan Brothers*" at pp. 1781-1783). This declarations page was sent in connection with a mortgage loan made by Peoples to Mr. Dickerson and secured by a house and land in Tate County, Mississippi. The page identified the holder of the hazard insurance policy in question as "Louie Dickerson."

12. In a document styled "Loan Operations Document Attachment Form" dated July 24, 2003, and naming John Champion as the loan officer, Mr. Dickerson was identified as "BROOKS L. (LOUIE) DICKERSON, JR". (App. Rec. "*Bryan Brothers*" at p. 1784).

13. On August 15, 2003, just over a month before the filing of its second financing statement at issue in this cause, Peoples Bank made at least one of several loans to Mr. Dickerson under the name Brooks L. Dickerson, Jr. d/b/a Louie Dickerson Farms. (App. Rec. "*Bryan Brothers*" at pp. 1785-1848).

14. The Financing Statements relied upon by Peoples in the case at bar were filed on November 12, 2002 (App. Rec. "*Weeks*" at p. 982) and September 25, 2003, (App. Rec. "*Weeks*" at p. 308). three and four years, respectively, after Cornerstone filed its financing statement, and after Peoples Bank had received and demonstrated actual, written notice that Mr. Dickerson did business as "Louie Dickerson".

15. In its initial discovery disclosures, Peoples Bank provided over 1300 pages of documents pertaining to Louie Dickerson and his dealings with Peoples. In the those documents, the name "Louie Dickerson" appears approximately 200 times.

16. In 2004, Dickerson purchased cattle from various sources which were then sold to Bryan Brothers. (App. Rec., "*Weeks*", at pp. 37-105).

17. During the times relevant hereto, Bryan Brothers was not registered as a purchaser

of farm products with the Mississippi Secretary of State. (App. Rec. “Weeks” at p. 644).

18. Bryan Brothers purchased the cattle from Glenbrook by wiring funds to the Dickerson/Glenbrook bank account. (App. Rec., “Weeks”, at pp. 106-157; App. Rec., “Bryan Brothers”, at p. 1685).

19. Each time Bryan Brothers purchased cattle from Dickerson, Dickerson gave them a Bill of Sale listing the seller as “Louie Dickerson/Glenbrook Cattle Company.” (App. Rec., “Weeks”, at pp. 37-105). The Bills of Sale made no mention of any limited liability company. (App. Rec., “Weeks”, “Exhibits to Cornerstone Bank’s Response to Motion of Bryan Brothers Cattle Company and B&S Cattle Company’s Summary Judgment” [separate file folder in “Weeks” record.]).

20. No evidence exists anywhere in the record to indicate any activity on the part of Glenbrook Cattle Company, LLC, with regard to the cattle.

SUMMARY OF THE ARGUMENT

The Court should reverse the District Court’s ruling granting summary judgment to Bryan Brothers and remand this matter for trial on the merits. Cornerstone Bank held the senior security interest in the Cattle, and this security interest was properly perfected in 1999, long before the purchase of the Cattle by Bryan Brothers or the recordation of any financing statement by any other creditor.

Further, because Bryan Brothers failed to register with the Mississippi Secretary of State as a purchaser of farm products as is required by the Food Security Act, 7 U.S.C. § 1631, Bryan Brothers took title to the cattle subject to the security interest of Cornerstone Bank, along with those of any inferior lienholders as well.

Cornerstone Bank holds the first security interest in the cattle at issue, and therefore in the

proceeds held by the District Court. Cornerstone's Financing Statement was filed first, adequately named the debtor, and adequately described the collateral.

Because Cornerstone perfected its security interest in the Cattle long before any other creditor did so, Cornerstone's lien takes priority over that of all other creditors, including Peoples Bank.

STANDARD OF REVIEW

The appropriate standard of review to be applied in considering a lower court's grant of summary judgment is *de novo*. *Storebrand Ins. Co. U.K., Ltd. v. Employers Ins. of Wausau*, 139 F.3d 1052, 1055 (5th Cir. 1998). Summary judgment is appropriate only when the record demonstrates "that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Further, all evidence must be viewed in the light most favorable to the non-movant, as well as all reasonable inferences drawn therefrom, as the movant "bears a substantial burden in showing that it is entitled to summary judgment". *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 469, 112 S.Ct. 2072, 2083 (1992).

ARGUMENT

I. THE DISTRICT COURT ERRED BY NOT RECOGNIZING THAT CORNERSTONE BANK'S SECURITY INTEREST ATTACHED TO THE CATTLE.

Cornerstone avers that the argument set forth by Peoples Bank regarding its own security interest in the Cattle are correct insofar as they pertain to Peoples Bank's rights in the Cattle relative to those of Bryan Brothers. As set out in the Statement of Facts above, and as more fully discussed in Section III of this brief, Cornerstone has 1) given value for its security interest, 2) obtained a security agreement signed by the debtor, and 3) filed a proper financing statement with the Mississippi Secretary of State. *See* M.C.A. 75-9-101 *et seq.* Having done so before Bryan

Brothers purchased its cattle from Dickerson, Cornerstone's security interest in the cattle attached to all Cattle Dickerson sold to Bryan Brothers. In the interest of judicial economy, Cornerstone adopts Peoples Bank's arguments verbatim and states that the case law and statutes cited are equally applicable to Cornerstone Bank.

II. CORNERSTONE BANK'S FINANCING STATEMENTS ARE EFFECTIVE; THEREFORE, THE COURT ERRED IN GRANTING SUMMARY JUDGMENT TO BRYAN BROTHERS.

Cornerstone avers that the argument set forth by Peoples Bank regarding its own security interest in the Cattle are correct insofar as they pertain to Peoples Bank's rights in the Cattle relative to those of Bryan Brothers. As stated above, and for the same reasons, Cornerstone adopts Peoples Bank's arguments verbatim and states that the case law and statutes cited are equally applicable to Cornerstone Bank. Further argument on this point is set out *infra*.

III. CORNERSTONE BANK'S INTEREST IN THE CATTLE IS SUPERIOR TO THAT OF PEOPLES BANK

A. Cornerstone Bank's Security Interest Attached to the Cattle Because the Security Agreement and Financing Statement Covered all Cattle Owned By Dickerson, Regardless of When Acquired

1. UCC Article 9 does not require the presence of any "Magic Words" in a security agreement to encumber after-acquired collateral.

Numerous courts have addressed the issue of whether a security agreement must contain "magic words" such as "now owned or hereafter acquired" in order to encumber collateral after-acquired property. As the U.C.C. itself contains no requirement that this phrase or a similar one must be employed, it should come as no surprise that the overwhelming majority of courts addressing this issue have imposed no such requirement. Rather, courts have held repeatedly that the totality of the security agreement, the nature of the collateral, and the intention of the parties are what should govern a court in determining whether a security agreement covers such

collateral.

In *In re Grey* 902 F.2d 1479, 1481 (C.A.10 (Kan.),1990), the 10th Circuit held that

Even though a security agreement does not specifically use the phrase 'after-acquired property,' the security agreement will include after-acquired property if that is the intent of the parties. *See In re Gary & Connie Jones Drugs, Inc.*, 35 B.R. 608, 611-12 (Bankr.D.Kan.1983)

In *In re Fibre Glass Boat Corp.*, 324 F.Supp. 1054, 1056, 9 UCC Rep.Serv. 118, (S.D.Fla. 1971) a U.S. District Court in Florida held that a specific reference to after-acquired property in a security agreement covering inventory in a business was unnecessary, stating,

Inventory by its nature and definition changes from day to day. In *Bank of Utica v. Smith Richfield Springs, Inc.*, 58 Misc.2d 113, 294 N.Y.S.2d 797 (1968), it was held that the collateral 'motor vehicles' gave the creditor a security interest over after-acquired motor vehicles. Adding the words 'after-acquired' to the collateral's description was not necessary because the debtor, an automobile dealer, was obviously buying and selling cars in pursuit of that business. See also *In re Goodfriend*, 2 U.C.C. Reporting Service 160 (E.D.Pa.1964). Surely the creditor would not enter into a financing arrangement secured by collateral fixed on a particular date, when the collateral by its nature would be constantly changing. It would be straining the normal meaning of the word to find that inventory meant only that on hand on the particular day the contract was executed, and if a can of paint or the like were used, the collateral would be diminished to that extent. Certainly the parties contemplated that the inventory would be sold or used and replaced; that is what inventory means.

Just as a retail store keeps inventory for the purpose of selling it to the public, Louie Dickerson kept Cattle for the purpose of selling them to other ranchers. This being the case, it would, in the words of the Florida U.S. District Court, strain "the normal meaning of the word" to assume that it was the intent of the parties to encumber only those cattle Louie Dickerson owned at the time the loan was made.

In *In re Filtercorp, Inc.* 163 F.3d 570 (1998), 578 -581 (9th Cir., 1998), the 9th Circuit Court of Appeals noted that this position is the majority position in the U.S. Said the Court in rejecting the same argument made by Peoples:

[W]e find more persuasive the contrary position, adopted by the majority of jurisdictions, that a security interest in inventory or accounts receivables presumptively includes an interest in after-acquired inventory or accounts receivables, respectively. *See, e.g., National Bank v. West Tex. Wholesale Supply Co. (In re McBee)*, 714 F.2d 1316, 1330-31 (5th Cir.1983) (applying Texas law); *Claytor v. Shenandoah Warehouse Co. (In re Shenandoah Warehouse Co.)*, 202 B.R. 871, 875 (Bankr.W.D.Va.1996) (applying Virginia law); *In re American Family Marketing Corp.*, 92 B.R. 952, 954 (Bankr.M.D.Fla.1988) (applying Florida law); *Provident Hosp. & Training Ass'n v. GMAC Mortgage Co. (In re Provident Hosp. & Training Ass'n)*, 79 B.R. 374, 380 (Bankr.N.D.Ill.1987) (applying Illinois law); [FN4] *In re Nickerson & Nickerson, Inc.*, 329 F.Supp. 93, 96 (D.Neb.) (applying Missouri law), *aff'd*, 452 F.2d 56 (8th Cir.1971); *Frankel v. Associates Fin. Servs. Co.*, 281 Md. 172, 377 A.2d 1166, 1168 (Md.Ct.App.1977) (applying Maryland law); *Kuemmerle v. United N.M. Bank at Roswell, N.A.*, 113 N.M. 677, 831 P.2d 976, 979-80 (N.M.1992) (applying New Mexico law); *see also Sims Office Supply, Inc. v. Ka-D-Ka, Inc. (In re Sims Office Supply, Inc.)*, 83 B.R. 69, 72-73 (Bankr.M.D.Fla.1988) (applying Florida law); *In re Fibre Glass Boat Corp.*, 324 F.Supp. 1054, 1056 (S.D.Fla.) (applying Florida law), *aff'd*, 448 F.2d 781 (5th Cir.1971).

Citing its opinion in *Stoumbos v. Kilimnik*, 988 F.2d 949, 954-56 (9th Cir.1993) the court went on to state, “Because inventory and accounts receivable are constantly turning over, ‘no creditor could reasonably agree to be secured by an asset that would vanish in a short time in the normal course of business’.” *In re Filtercorp* at 579.

In the present case, the collateral description reads as follows:

all livestock of every kind and description including but not limited to beef and dairy cattle, branded or unbranded, plus any increase therefrom, and including steers and bulls now owned by debtor. All accessions, additions, replacements, payments for participation in any state or federal farm programs and substitutions (including rights under Community Credit Corporation programs, ASCS, payment in kind, or any other general intangibles or programs); all records of any kind relating to any of the foregoing; all proceeds (including insurance, general intangibles rents and accounts proceeds)

Certain things should be noted about this description. First, the description covers “all cattle”. While the meaning of the word “all” is, it would seem, obscure to Peoples Bank, to the

rest of the English-speaking world its definition is quite plain.¹ The description covers each and every head of cattle, along with any other livestock owned by Louie Dickerson. Excepting steers and bulls, it makes no exception for property to be acquired at some later date. If it ate grass, and Louie Dickerson owned it, it was subject to Cornerstone Bank's lien.

In its own brief, Peoples presents the court with only part of the collateral description, and with good reason. Peoples contends that, because Cornerstone included "after-acquired collateral" references in other filings, it must have meant to exclude after-acquired cattle from this transaction. However, a reading of the entire description, including the portions omitted by Peoples, shows this not to be the case. In fact, some after-acquired property was specifically excluded, namely later-acquired steers and bulls. It defies the most basic concepts of logic and reading comprehension to assert that while certain after-acquired livestock were specifically excluded, the remaining inventory were not to be included.

Third, as noted above, and as admitted by all parties, the cattle in question were kept not as pets or ornaments, but as inventory to be bought and sold. This being the case, the overwhelming weight of case law is in agreement: if the collateral is inventory that turns over, it is to be presumed that after-acquired property is covered by the security agreement.

Peoples Bank's protestations notwithstanding, the collateral description in Cornerstone's financing statement and security agreement covered the Cattle in question, giving Cornerstone the senior lien over the Cattle.

1

According to Merriam-Webster Online Dictionary, "all" is defined as, "the whole amount or quantity of..., as much as possible...every member or individual component of...the whole number or sum of...EVERY...any whatever..."

2. UCC Article 9 does not require any reference to after-acquired property in a financing statement.

Peoples incorrectly contends in its brief that Cornerstone's financing statement is ineffective because, according to Peoples Bank, it "does not contain an after-acquired property clause". As discussed *supra*, the argument that the collateral description is insufficient to cover later acquired cattle is incorrect. However, even assuming *arguendo* that the description in the financing statement did not cover after-acquired property, this argument is a red herring. M.C.A. §75-9-502, which governs the contents of a financing statement, includes no requirement that after-acquired property be mentioned. Comment 7 to M.C.A. §75-9-204 states that, "There is no need to refer to after-acquired property or future advances or other obligations secured in a financing statement." Comment 2 to M.C.A. §75-9-502 states "...a financing statement is effective to cover after-acquired property of the type indicated and to perfect with respect to future advances under security agreements, **regardless of whether after-acquired property or future advances are mentioned in the financing statement**..."(emphasis added).

The law of this matter is plain on its face, and Peoples Bank's contentions to the contrary are plainly incorrect. Mississippi law contains no requirement whatsoever that after-acquired property be mentioned in a financing statement. Consequently, the lack of such a clause in no way affects the validity of the financing statement.

- B. Cornerstone Bank's Financing Statement was effective as it complied with all requirements of M.C.A. §75-9-502, et seq. and cannot have been "seriously misleading" to Peoples Bank.

Peoples Bank seeks to avoid the senior security interest of Cornerstone by alleging that a filing under the name of "Louie Dickerson" was so "seriously misleading" that neither Peoples

nor its employees could have known that a filing made under that name would apply to Mr. Dickerson. The documentary evidence found in Peoples' own loan files shows this assertion to be unsustainable.

As stated *supra*, the rules governing perfection by the filing of a financing statement were set out in Section 9-402 of the old article 9 (former M.C.A. § 75-9-402), and in Section 9-503 and 9-506 (current M.C.A. §§ 75-9-503 and 506). In determining whether a financing statement gives effective notice to subsequent lenders, courts presented with the issue have held that such matters must be determined on a case by case basis. *First National Bank & Trust v. Miami County Cooperative Association*, 257 Kan. 989, 897 P.2d 144, (Kan. 1995), *Transamerica Commercial Finance Corporation v. Blueville Bank of Grafton*, 190 W.Va. 474, 438 S.E.2d 817, 23 UCC Rep. Serv. 2d 961(W.Va., 1993), *Lankford v. U.S.*, 1991 WL 185224 (M.D. Tenn., 1991), *In Re Bumper Sales Inc.*, 907 F.2d 1430 (4th Cir., 1990), *In Re Case*, 2000 WL 333800188 (Bankr. N.D. Okla., 2000) citing *Liberty National Bank & Trust Co. v. Garcia*, 686 P.2d 303 (Okla. App. 1984), *In re Service Lawn & Power, Inc.* 83 B.R. 515 (Bankr. E.D. Tenn., 1988), *Matter of Wiskur*, 31 B.R. 39, 36 UCC Rep. Serv. 1050 (Bankr. W.D. Mo., 1983) citing *Matter of Johnson*, 21 B.R. 484, 487.

In the case at bar, Peoples Bank was not misled, seriously or otherwise, by any earlier filings as Peoples used the name Louie Dickerson in its own documents and accepted documents from others, such as the insurance agent and appraiser, under the name "Louie Dickerson". That being the case, Cornerstone's financing statement was clearly sufficient to put Peoples Bank on notice as to the existence of Cornerstone's prior lien.

Peoples contends that Cornerstone's senior lien should be set aside because Cornerstone did not identify Mr. Dickerson with the name Peoples Bank claims to prefer. Though Peoples

contends that Mississippi's version of UCC Article 9 requires that a UCC-1 contain what Peoples describes as Louie Dickerson's "actual name", neither Article 9 nor any other provision of the UCC as enacted in Mississippi (M.C.A. §75-1-101 et seq.) defines "name". The statute cited by Peoples does not say "the debtor's full name" or "the name appearing on the debtor's birth certificate, driver's license, or social security card". It merely requires "the debtor's name". In determining whether the name provided on the financing statement was sufficient, the Court must consider whether the information appearing on the financing statement is sufficient to put the later in time creditor on notice as to the existence of the senior lien.

In Cornerstone's financing statement, the debtor is properly identified as Louie Dickerson, the name by which the debtor identified himself to those with whom he did business, including Peoples Bank. This was not an error. Brooks L. Dickerson, Brooks L. Dickerson, Jr. and Louie Dickerson are all the same person, a fact that was well known to Peoples Bank. Nevertheless, even assuming *arguendo* that using the name under which Mr. Dickerson conducted his business was an error or omission, the fact remains that it could not have been seriously misleading to Peoples, as Peoples' loan files make it abundantly clear that Peoples knew of Mr. Dickerson's name and in fact referred to him as "Louie" frequently.

On December 4, 2002, Peoples Bank made a mortgage loan to Mr. Dickerson that was secured by a house and lot in Tate County, Mississippi. (App. Rec. "*Bryan Brothers*" at 1849-1858). In the course of approving and closing on that loan, Peoples Bank required, among other things, evidence that the home was covered by an acceptable hazard insurance policy, and an appraisal stating the value of the house. Included in the loan file Peoples submitted as part of its initial discovery disclosures was a declaration page from Shelter Insurance indicating the coverage and identifying the policy holder as "Louie Dickerson". (App. Rec. "*Bryan Brothers*"

at 1781-1783). On or about June 17, 2002, appraiser Neal Copeland prepared a real property appraisal that was submitted to Peoples Bank in connection with this loan. (App. Rec. "*Bryan Brothers*" at pp. 1717-1730). The same appraisal appeared a second time in Peoples' disclosures as pp. PB00088- 00101, (App. Rec. "*Bryan Brothers*" at pp. 1861-1874) preceded by a document styled "Retail Credit Residential Appraisal Review Report", signed by John P. Champion and stating that the appraisal had been reviewed by Mr. Champion on November 19, 2002. (App. Rec. "*Bryan Brothers*" at p. 1860). This appraisal identified the borrower as "Louie Dickerson".

How, one may ask, did Peoples respond to the receipt of these documents? Did they notify Shelter Insurance that they had the wrong insured, and that the policy needed to be corrected immediately? Did they demand that the appraiser resubmit his appraisal with the "correct" borrower's name? No, they did not. The documents provided by Peoples contain no corrections, for none were required. Peoples knew the person to whom they were lending money, and knew full well that he conducted much of his business in the name Louie Dickerson.

While Peoples relies on two financing statements identifying the debtor as "Brooks L. Dickerson", its other loan documents tell a very different story about what Peoples could be expected to know about Mr. Dickerson and his name. Peoples Bank made numerous loans to Mr. Dickerson as "Brooks L. Dickerson, d/b/a Louie Dickerson Farms". (App. Rec. "*Bryan Brothers*" at pp. 1733-1780). Further, their loan packages included two handwritten notes, both of which appear to be in the handwriting of John A. Champion, the Peoples Bank loan officer who appears to have overseen much of Louie Dickerson's dealings with Peoples, referring to the debtor as "Louie" or "Louie Dickerson". (App. Rec. "*Bryan Brothers*" at pp. 1875-1876). In the file for another loan is a document styled "Loan Operations Document Attachment Form" identifying the

loan officer as John Champion and the borrower as “BROOKS L. (LOUIE) DICKERSON, JR.” (App. Rec. “*Bryan Brothers*” at p. 1874).

While Mississippi’s version of the Uniform Commercial Code does not define the term “name”, it does define “notice”. Per M.C.A. § 75-1-201(27),

Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence...

In its brief, Peoples maintains that

while Dickerson’s nickname may mean something to those individuals with whom he shares a personal relationship, it in no way alerts individuals or entities conducting business with him that there may be a lien on certain of his property... Creditors that do not share a personal relationship with Dickerson and who are otherwise unaware of his nicknames should not be required to assume that any financing statement containing the last name “Dickerson” may indicate a lien on the property of Brooks L. Dickerson. (Appellant’s brief at 26-27).

A reader unfamiliar with the history of Peoples’ dealings with Mr. Dickerson might well assume that Peoples falls into the category of creditors “who are otherwise unaware of (Mr. Dickerson’s) nicknames.” However, Peoples Bank was intimately familiar with Louie Dickerson and the fact that he conducted much of his business under that name. Peoples had notice of Mr. Dickerson’s name, yet declined to exercise the due diligence that would be required of a reasonably prudent creditor in such a situation. *Transamerica*, 438 S.E.2d at 825.

The cases cited by Peoples in its efforts to avoid the consequences of its negligence are easily distinguishable from the case at bar. The holding in *First National Bank of Lacon v. Strong*, 663 N.E.2d 432 (Ill. Ct. App. 1996), that “a rule that would burden a searcher with guessing at misspellings and various configurations of a legal name would not provide creditors with the certainty that is essential in commercial transactions” is, in this case, a straw man

argument. No party has argued that Peoples Bank was obligated to “guess” at any misspellings or configurations of Mr. Dickerson’s name. The name on the Cornerstone financing statements was not misspelled, nor was it one that involved any guesswork on the part of Peoples Bank. As stated earlier, the name “Louie Dickerson” appears approximately 200 times in the documents provided by Peoples. Peoples did not have to guess at the name Mr. Dickerson used, as they were well aware of it and had in fact used it themselves, repeatedly.

Similarly, the facts in *Reisdorf Bros. Inc. v. Clinton Corn Processing Co.*, 130 A.D.2d 951 (N.Y. App.Div.1987) bear no relationship to those in this case. In *Reisdorf*, the name appearing on the financing statement was erroneously spelled and was not one that had ever been used by the debtor. However, the Court in that case did state that actual knowledge on the part of a later-filing secured party (in that case, actual knowledge of the security interest itself), would result in the second secured party taking subject to the security interest of the earlier filer, in spite of the misspelling in the UCC-1.

In *In re FV Steel & Wire Company*, 310 B.R. 390 (Bankr. E.D. Wisc., 2004) the secured creditor engaged in a practice that was, statutorily, not permitted as a means of perfection, namely, using a trade name for a corporate debtor in lieu of the name under which it had incorporated. In that case, Illinois’ version of Article 9-402(7), which was identical to that in effect in Mississippi at the time Cornerstone filed its financing statement, required the use of “individual, partnership, or corporate name of the debtor, whether or not it adds other trade names.” (810 ILCS 5/9-503, emphasis added). In *In re FV Steel & Wire Co.*, the secured party filed under the trade name, rather than the registered name of a corporate debtor. Neither the pre-revision, nor post revision Article 9 generally permitted this as a means of perfection. The same argument holds true for *In re Columbus Typewriter Co., Inc.* 75 B.R. 834 (Bankr. N.D.

Miss. 1987) and *In re Wardcorp, Inc.* 133 B.R. 210 (Bankr. S.D. Ind. 1990). In the case at bar, the debtor is not a registered entity, but rather an individual, whose individual name appeared on the financing statement.

In citing *In re Strickland*, 94 B.R. 898 (Bankr. N.D. Miss. 1988), Peoples takes the rule it quotes from page 903 of that opinion (“[a] financing statement cannot be misleading to some but not others. If a defective financing statement is not misleading, it imparts notice to the world.”) out of context. In stating that rule, the court was addressing a pre-internet situation in which lenders commonly relied upon employees of the Secretary of State to conduct financing statement searches. The court did *not* state that a lender who had actual knowledge of a name under which a debtor operated was free to ignore any financing statements bearing that name.

Not only does Peoples take the above holding out of context, but omits to mention that the final rule set out and applied in that case was directly contrary to the result Peoples urges upon this Court. In *In re Strickland* the court upheld a security interest taken in the property of an individual debtor, James T. Strickland, in spite of the fact that the financing statements at issue identified the debtor as “Strickland Builders and Supply Company” and “Strickland Builders MFG Company”. The *Strickland* court applied the rule adopted by the Southern District of Mississippi in *In re Hammons*, 438 F.Supp. 1143 (S.D. Miss. 1977) *reversed on other grounds*, 614 F.2d 399 (5th Cir. 1980), which in turn adopted the rule in *In re Platt*, 257 F. Supp.478, 3 U.C.C. Rep. Serv. 719 (E.D.Pa. 1966). In *Platt*, *Hammons*, and *Strickland*, the courts were presented with financing statements that were filed under the trade names of individual debtors. In each case, the trade name began with the debtor’s last name, and for this reason, the financing statement was deemed effective in each case. In *In re Strickland*, the Bankruptcy Court for the Northern District of Mississippi restated the rule in *Platt*:

The *Platt* decision stands for the proposition that where the debtor's trade name is substantially similar to the debtor's true name, the failure to include the true name with the trade name is not a seriously misleading error. Applied to the facts presently before the Court, the *Platt* decision allows the bank's financing statements to remain legally effective despite the failure to include the debtor's true individual name with the trade names.

It should also be noted that Peoples is in the unenviable position of taking two completely contradictory positions in the same brief. To prevail over Bryan Brothers, Peoples argues, correctly, that their filings with the Mississippi Secretary of State served to put the Plaintiffs on notice of their liens because, they provide anyone doing business with Glenbrook with "inquiry notice" of Peoples' claims on the Cattle. However, while Peoples demands the right to prevail upon any later-in-time claimant based upon what their knowledge was or should have been, just a few pages later, they demand that the court allow them to feign ignorance of Mr. Dickerson's name in spite of their actual knowledge of it. Just as Glenbrook and Dickerson were one and the same, so were Brooks Dickerson and Louie Dickerson, and Peoples Bank knew it. Peoples' contradictory positions are logically fallacious and should be rejected by this Court.

CONCLUSION

For the above reasons, Appellee Cornerstone Bank requests that this Court reverse the judgment of the Trial Court as to the Summary Judgment granted to Bryan Brothers, uphold the lower court's refusal to grant Peoples Bank Summary Judgment against Cornerstone, and render judgment in favor of Cornerstone, or, in the alternative, remand this matter for further hearings.

Respectfully submitted, this the 1st day of November, 2006.

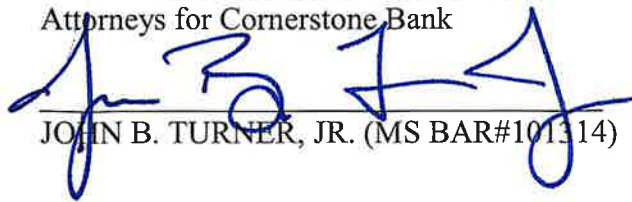
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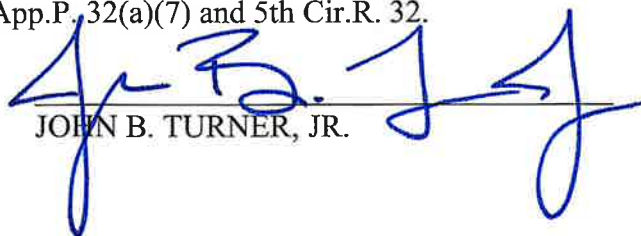
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CERTIFICATE OF COMPLIANCE

Counsel for Defendant-Appellant/Appellee, Cornerstone Bank, hereby certifies that this brief complies with the requirements of Fed.R.App.P. 32(a)(7) and 5th Cir.R. 32.



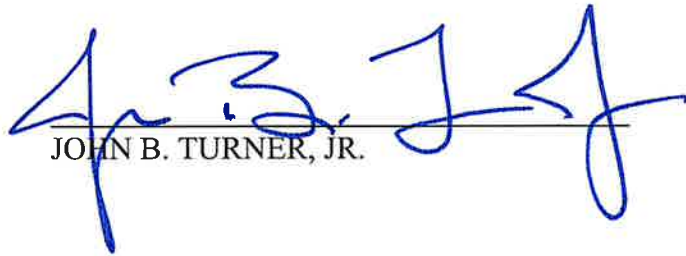
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CERTIFICATE OF SERVICE

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