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**Platte River Insur. Co. v. Murphy**, No. 2100233 [*Indemnity Agreement: Former company president remained obligated to indemnify surety for payment of the company's unpaid taxes pursuant to an indemnity agreement between the former president and the surety.*] (Thomas, J., 5-0).

## CASE SUMMARIES

#### SUPREME COURT OF ALABAMA

**Heisz v. Galt Industries, Inc.**, No. 1100193. SPC-Alabama purchased substantially all of the assets of Galt Industries, Inc. under an asset-purchase agreement. Pursuant to the agreement, SPC-Alabama agreed to (1) pay Jerry Plath, Galt's president, commissions for a certain period of time; (2) assume certain liabilities of Galt; (3) indemnify Galt for certain debt obligations and indemnify Plath and his wife, Danette, for certain personal guarantees; (4) employ Plath and Danette following the close of the transaction; and (5) pay a brokerage fee to The Genesis Group, LLC for closing the sale. Within months of the purchase, SPC-Alabama's revenues were insufficient to fulfill its obligations under the agreement. Galt, Plath, Danette, and Genesis filed suit against Aegis Strategic Investment Corporation, the parent company of SPC-Alabama, and Mark Heisz, its sole shareholder. The trial court entered a judgment in favor of the plaintiffs on claims for breach of contract and promissory fraud, holding all of the defendants jointly and severally liable. On appeal, the Alabama Supreme Court reversed the trial court's judgment against Aegis and Heisz for promissory fraud. The Court agreed with the plaintiffs that a jury may consider events occurring *prior* to an alleged misrepresentation when assessing whether there was a present intent to deceive, overruling its precedent to the extent it is contrary. However, the Court found the circumstantial evidence presented by the plaintiffs did not indicate that Heisz and Aegis intended that SPC-Alabama would not perform under the asset-purchase agreement at the time Heisz signed the agreement. The Court also determined that the trial court erred in piercing the corporate veil of companies owned and operated by Heisz and Aegis, making them responsible for the judgment against those companies on the plaintiffs' fraud claims. Although there was evidence that Heisz exercised control and domination over the companies, there was no evidence that the control was misused – a requirement for piercing the corporate veil. The Court therefore reversed the trial court's judgment as it related to Heisz and Aegis and remanded the case.

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**Ex parte Jim Walter Resources, Inc.**, No. 1110067. As part of an acquisition transaction, Walter Energy, Inc. entered into a credit agreement with Morgan Stanley Senior Funding, Inc. and a consortium of other lenders. As part of this agreement Walter Energy's subsidiaries, including Jim Walter Resources, Inc., were required to execute contingent guaranty agreements, whereby they each promised to pay Walter Energy's financing debt in the event of a default. Jim Walter Resources secured its guaranty agreement by executing mortgages on certain fee and leasehold properties located in Jefferson and Tuscaloosa Counties. Prior to recording these mortgages, Jim Walter Resources obtained a letter from the Alabama Department of Revenue stating that these mortgages were exempt from the mortgage recording tax imposed by Ala. Code § 40-22-2. When Jim Walter Resources presented some of the mortgages, along with the Department of Revenue letter, to the Tuscaloosa County Probate Court for recording, however, the Probate Court refused to record them until Jim Walter Resources paid the mortgage recording tax. Jim Walter Resources petitioned the Alabama Supreme Court for a writ of mandamus, directing the Probate Court to record the mortgages without payment of the tax. The Supreme Court granted the petition and issued the writ, holding that Ala. Code § 40-22-2 only imposes a tax on the privilege of recording an instrument given to secure the payment of any debt. The Court noted that the mortgage in this case was not given to secure an existing debt, the amount of which is presently ascertainable, but instead secures a contingent guaranty, which only obligates Jim Walter Resources to pay the debt when and if Walter Energy defaults and then only for the unpaid amount remaining on the debt. Because the amount of the debt owed by Jim Walter, if any, is not presently ascertainable, Ala. Code § 40-22-2 does not impose a mortgage recording tax upon the mortgages sought to be recorded Jim Walter Resources.

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#### ALABAMA COURT OF CIVIL APPEALS

**Foster v. Foster**, No. 2101000. On September 1, 2009, Harry Allen Foster Sr. ("Harry") purchased a certified check made payable to Harry Allen Foster Jr. ("Allen") in the amount of \$80,000. Harry mailed the check to Allen on September 2, 2009 by express mail, and it arrived on September 3, 2009. Several hours before the envelope containing the check was delivered to Allen on September 3, Harry committed suicide. Michael Foster ("Michael") was subsequently appointed as the executor of Harry's estate. Michael filed a Petition for Return of Personal Property with the probate court seeking to return the \$80,000 to the estate. Following a hearing, the probate court found that the check was a completed gift and not part of the estate. Michael appealed, arguing that the certified check could not be considered a gift because it was not delivered prior to Harry's death. The Alabama Court of Civil Appeals affirmed the probate court's decision that the certified check was a completed gift to Allen. The Court noted that the giving of a gift is deemed to have been completed when the donor has given up all rights to the gift. Eighty thousand dollars was debited from Harry's account at the time he purchased the certified check. Accordingly, the Court found that Harry had relinquished control over the money at the time he purchased the certified check and, as a result, the gift from Harry to Allen was completed at that time.

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**Ex parte Bingham**, No. 2100676. The Director of the Alabama Department of Public Safety and an Alabama State Trooper (the "DPS defendants") petitioned the Alabama Court of Civil Appeals for a writ of mandamus after the circuit court denied their motion to dismiss the underlying action. The petition stemmed from an action filed in state court against the DPS defendants by two individuals (the "claimants"). In the complaint, the claimants alleged that two Alabama State Troopers seized approximately \$30,000 from them and then wrongfully transferred the money to the Drug Enforcement Administration (the "DEA") to commence federal forfeiture proceedings. Arguing that jurisdiction was vested in the federal courts due to the adoptive-forfeiture doctrine, the DPS defendants moved to dismiss the action. The circuit court denied the motion to dismiss, finding that the adoptive-forfeiture doctrine did not apply, because the DEA agents were not actively involved in the seizure of the claimants' property. On review, the appellate court first noted that the validity of the adoptive-seizure process is not dependent upon federal authorities' direct participation in the seizure of the property itself. Moreover, because the DEA had adopted the seizures, and thus acquired *in rem* jurisdiction over the property, prior to the claimants' filing the *in rem* action in state court for the return of their property, the appellate court held that the circuit court did not have jurisdiction over the underlying action. Accordingly, the Court of Civil Appeals granted the DPS defendants' petition and directed the circuit court to vacate its previous order and to enter an order granting the motion to dismiss. Petition granted; writ issued.

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**Hale v. Hyundai Motor Manuf. Alabama, LLC**, No. 2100991. Plaintiff was terminated from Hyundai Motor Manufacturing, LLC for serious and/or excessive violation of Hyundai's attendance policy and failure to provide proof of a familial relationship to support bereavement leave, both of which constituted "Serious Misconduct Offenses." After his discharge, Plaintiff was awarded unemployment compensation benefits based on a finding by the administrative agency that Plaintiff's violation of the Hyundai attendance policy was not "misconduct" as defined by Alabama law. Thereafter, Plaintiff filed a lawsuit against Hyundai seeking workers' compensation benefits and alleging that he had been discharged in retaliation for filing such a claim. Hyundai settled the workers' compensation claim and was awarded summary judgment on the retaliatory-discharge claim. Plaintiff appealed, arguing that Hyundai was collaterally estopped from claiming it discharged Plaintiff for a legitimate reason, because for unemployment-compensation purposes, Plaintiff was found not to have engaged in misconduct. The Court of Civil Appeals disagreed, holding that the doctrine of collateral estoppel cannot act as a bar to an employer's argument that it discharged an employee for a legitimate reason, merely because an administrative hearing officer determined the employee did not engage in misconduct for the purpose of unemployment-compensation benefits award. The Court noted that "misconduct," as defined for the purposes of the unemployment-compensation statute, did not decide the issue of whether Hyundai's reasons for Plaintiff's termination were legitimate or pretextual. Unlike an instance where an administrative agency determines that an employee had engaged in misconduct, thus leading to a conclusion that the employer had a legitimate reason for terminating him, an administrative finding of *no* misconduct cannot support the conclusion that an employer had no valid reason to discharge the employee or that the employer wrongfully discharged the employee. Accordingly, the Court rejected Plaintiff's argument that the doctrine of collateral estoppel barred Hyundai from arguing that it had a legitimate reason for the termination. The Court thus affirmed the trial court's grant of summary judgment in favor of Hyundai.

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**Platte River Insur. Co. v. Murphy**, No. 2100233. Defendant, as president of Circle M, Inc., entered into a bond agreement with Plaintiff wherein Plaintiff agreed to act as a surety for gasoline taxes that Circle M, a gasoline distributor, owed to the Alabama Department of Revenue. Thereafter, Plaintiff entered into an indemnity agreement with Defendant wherein Defendant agreed to indemnify Plaintiff if Plaintiff was required to pay the gasoline taxes on behalf of Circle M. Defendant later resigned from his position as president of Circle M. After his resignation, the Alabama Department of Revenue filed a claim with Plaintiff for gasoline taxes owed by Circle M, which Plaintiff paid. Plaintiff filed suit against Defendant demanding that Defendant indemnify it for the payment of the gasoline taxes paid on behalf of Circle M pursuant to the indemnity agreement between the parties. The trial court entered judgment in favor of Defendant on Plaintiff's claims. Plaintiff appealed. The Alabama Court of Civil Appeals, in reversing the trial court's judgment, held that Defendant was obligated under the plain, unambiguous terms of the indemnity agreement to indemnify Plaintiff for its payment of Circle M's unpaid gasoline taxes.

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