Mississippi College Law Review

Volume 5
Issue 2 *Vol. 5 Iss. 2*

Article 5

1985

Workers' Compensation - Carrier's Intentional Tort Is Not Controlled by Exclusive Remedy Provision - Southern Farm Bureau Casualty Insurance Co. v. Holland

Philip M. Reeves

WORKERS' COMPENSATION — Carrier's Intentional Tort Is Not Controlled by Exclusive Remedy Provision - *Southern Farm Bureau Casualty Insurance Co. v. Holland,* 469 So. 2d 55 (Miss. 1984)

FACTS

Clara J. Holland was employed by K & B Slaughter House as a meat wrapper. In the course of her employment, Ms. Holland injured her back and as a result underwent back surgery.[1]

The employer's Workmen's Compensation insurance carrier paid her medical bills and temporary total benefits for approximately a year and one-half and then, based on medical advice, terminated those benefits. Twenty-six months later the Mississippi Workmen's Compensation Commission ordered the carrier to resume payment of temporary total disability benefits to Ms. Holland, and the carrier complied.[2]

However, Ms. Holland brought an intentional tort action against the carrier for its intentional refusal to pay workers' compensation benefits to her. She alleged that the carrier refused to make the payments in an effort to force her into an inadequate settlement of her claim, and that this constituted a breach of fiduciary duties, a tortious breach of contract and the intentional infliction of mental distress. The circuit court denied the defendant's motion to dismiss but granted his motion for an interlocutory appeal to the Mississippi Supreme Court to determine the application of the exclusive remedy provision of the Mississippi Workmen's Compensation Act to a Workers' Compensation insurance carrier.[3]

The supreme court affirmed the order of the circuit court overruling the defendant's motion to dismiss and held that the exclusive remedy provision of the Workmen's Compensation Act does not bar a claim by an employee against the employer's insurance carrier for the commission of an intentional tort.[4]

HISTORY AND BACKGROUND

The Mississippi Workmen's Compensation Act was first enacted in 1948.[5] The premise of the Act is a no-fault doctrine that relieves the employer of liability for an injury to the employee arising out of and in the course of his employment, regardless of the reason

1. Southern Farm Bureau Casualty Ins. Co. v. Holland, 469 So. 2d 55, 56 (Miss. 1984).
2. *Id.*
3. *Id.*
4. *Id.* at 59.
5. 1948 Miss. Laws ch. 354, § 1.

and cause of the injury.[6] Before the Act was adopted the employee had the common law remedy of bringing an action against his employer for negligence. However, few claims were successful because the employer had the defenses of contributory negligence, assumption of risk and the fellow-servant rule, all of which barred recovery.[7]

To give some form of relief to the injured employee and his dependents, the legislatures adopted the *quid pro quo* of the modern workers' compensation system:[8] the employee relinquishes his common law actions against the employer in exchange for quick economic relief regardless of the fault or negligence causing the injury. The employee also receives any vocational rehabilitation needed to restore him to the work force.[9] As for the employer, he acquires limited liability and is protected against civil actions by the exclusive remedy nature of the Act.[10]

The exclusive remedy provision of the Mississippi Workmen's Compensation Act not only applies to the employer as an individual but also to an employer in the form of a partnership, association or corporation.[11] Officers or agents of a corporation who act within the scope of their authority on behalf of the corporation are also given the protection of the exclusive remedy provision.[12] Co-employees are also protected.[13]

In determining the application of the exclusive remedy provi-

6. MISS. CODE ANN. § 71-3-7 (1972). Mississippi statutes restrict recovery from injuries to those that are strictly work related. The applicable statute reads: "Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease."

7. *Compendium On Workmen's Compensation. The National Commission On State Workmen's Compensation Laws*, 12 (N. Rosenblum ed. 1983).

8. 2A A. LARSON, THE LAW OF WORKER'S COMPENSATION § 65.11 (1983). Professor Larson states that the *quid pro quo* is seen in the balancing of what is gained and relinquished by the employer and employee.

9. MISS. CODE ANN. § 71-3-1 (1972).

10. MISS. CODE ANN. § 71-3-9 (1972), which states: "The liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee . . . and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death . . . ."

11. MISS. CODE ANN. § 71-3-3(e) (1972 & Supp. 1985).

12. Brown v. Estess, 374 So. 2d 241, 243 (Miss. 1979).

13. Mississippi courts addressed the question of whether an employee who is injured by the negligent act of a fellow employee can sue that negligent co-employee or whether he is limited to the benefits and coverage of the Workmen's Compensation Act. In Stubbs v. Green Brothers Gravel Co., Inc., 206 So. 2d 323 (Miss. 1968), the court stated that the injured employee's recovery was limited to the benefits provided by the Workmen's Compensation Act. In another case dealing with this question, McCluskey v. Thompson, 363 So. 2d 256 (Miss. 1978), the court reasoned that to do otherwise would permit the employer or his insurance carrier to shift the burden of compensation benefits to the fellow employee and not on the intended employing industry. The legislature implemented the concept of enterprise liability to place the cost of the no-fault compensation system upon the industries employing the workers because, "(1) industrial injuries are causally related to the fact of employment, and (2) the employer is in a position to pass this cost to society in the form of higher prices." *Id.* at 259. By examining the total language of the statute and not just segments thereof, the court concluded that it was the intent of the legislature not to allow an employer to recover compensation benefits paid by him from a co-employee of the injured employee, and, therefore, the co-employee is included within the exclusive remedy provision of the Act. *Id.*

sion to an insurance carrier, Mississippi and other jurisdictions use different provisions of their Acts in deciding whether or not to impose liability on the carrier for some alleged tort committed against the claimant. The type of tort allegedly committed, be it intentional or negligent, is also an important factor in this determination.

A considerable number of states are explicit in giving immunity to the insurance carrier along with the employer.[14] Other states blend language in their Acts to imply a close relationship between "employer" and "carrier."[15] In Arkansas' third party liability provision,[16] the phrase "employer or carrier" is followed closely by "any third party," thus distinguishing the former from the latter and giving immunity to the carrier.[17] Although Mississippi's statutes are similar to those of Arkansas, Mississippi courts have interpreted those similar provisions differently. In *Stacy v. Aetna Casualty and Surety Company*[18] the court analyzed the Act's provisions by equating the carrier with the employer.[19] However, the

14. *See, e.g.*, ALA. CODE § 25-5-1(4)(1985); DEL. CODE ANN. tit. 19, § 2301 (10) (1974 and Supp. 1984); FLA. STAT. § 440.11 (1983); GA. CODE ANN. § 34-9-1 (1982 and Supp. 1985); HAWAII REV. STAT. § 386-1 (1976); ILL. REV. STAT. ch. 48, § 138.5 (1967 and Supp. 1985); IND. CODE ANN. § 22-3-2-5 (Burns 1974 and Supp. 1985); ME. REV. STAT. ANN. tit. 39, § 2(6) (1964); MICH. COMP. LAWS ANN. § 418.131 (West 1985); MO. ANN. STAT. § 287.030.2 (Vernon 1965 and Supp. 1985); NEB. REV. STAT. § 48-111 (1984); N.H. REV. STAT. ANN. § 281:2 (1977); OR. REV. STAT. § 656-018(3) (1983); PA. STAT. ANN. tit. 77, § 501 (Purdon 1952 and Supp. 1985); S.D. CODIFIED LAWS ANN. § 62-1-2 (1978); TENN. CODE ANN. § 50-6-102 (C)(3) (1983 and Supp. 1985); TEX. REV. CIV. STAT. ANN. art. 8307, § 6a (Vernon 1967); VT. STAT. ANN. tit. 21, § 601(3) (1978); VA. CODE § 65-1-3 (1980).

15. *See, e.g.*, ARK. STAT. ANN. § 81-1340 (1976).

16. *Id.*

17. Horne v. Security Mutual Casualty Co., 265 F. Supp. 379 (E.D. Ark. 1967).

18. 334 F. Supp. 1216 (N.D. Miss. 1971). The plaintiff alleged that the exclusive remedy provision did not bar his right to bring a common law action in tort against the insurance carrier for its negligent failure to adequately inspect the work premises which resulted in an injury to the claimant.

19. The pertinent statutes involved in this litigation were MISS. CODE ANN. § 71-3-71, dealing with third party liability; § 71-3-9, the exclusive remedy provision; and § 71-3-3, which contains definitions. Section 71-3-71 provides in part:

> The acceptance of compensation benefits from or the making of a claim for compensation against an employer or insurer for the injury or death of an employee shall not affect the right of the employee or his dependents to sue any other party at law for such injury or death . . . .

Section 71-3-9 provides in part: "The liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee . . . and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death . . . ." Section 71-3-3 gives the definitions of "employer" and "carrier": " '[E]mployer,' except when otherwise expressly stated, includes a person, partnership, association, or corporation and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation. . . . '[C]arrier' means any person authorized in accordance with the provisions of this chapter to insure under this chapter and includes self-insurers." Aetna contended that the placement of the words "employer or insurer" together followed by "any other party" meant that the insurer could not be "any other party," thereby equating them with the employer. However, the court reasoned that the use of "employer or insurer" in certain statutes and the use of "employer" alone in others indicated a legislative intent for a different result. The court stated that the common use of "employer" and "carrier" in § 71-3-71 was clearly limited to matters of compensation benefits and nothing else. In considering the definitions of the words "employer" and "carrier," the court stated that these terms were separate and not interchangeable; had there been any other legislative intent, the definitions of these terms would have so stated.

court concluded by stating that "nowhere does the Mississippi Act provide that Workmen's Compensation benefits shall be the exclusive remedy against the employer's carrier."[20] In *Fuller v. Aetna Casualty and Surety Company*[21] the court held that "an injured claimant is not deprived of his right to proceed in common law against the compensation carrier for the carrier's alleged negligence in failing to properly inspect the employer's premises, despite the immunity of the employer under workmen's compensation."[22]

Although these cases involved a negligent act or omission by the carrier, they represent the view in Mississippi that certain tortious conduct by the carrier will give rise to a cause of action against it as a third party. However, in determining liability, a distinction must be made between negligent acts and intentional ones.

Under *Stacy* and *Fuller*, the courts recognized the insurer as a third party and did not bar an action against it for its negligent failure to inspect the employer's work premises. However, the Mississippi Supreme Court has obviated the grounds upon which an action can be brought against the insurer based on negligence, an unintentional tort. In *Taylor v. United States Fidelity and Guaranty Company*[23] the court barred an action against the compensation carrier for its alleged bad faith and malicious refusal to pay compensation benefits. Although the plaintiff's pleadings did not explicitly allege an intentional tort, there appears to be some language implying both intentional and negligent actions on the part of the carrier.[24] The *Taylor* court used analagous third party situations to reach its conclusion barring the action against the carrier. Citing *McCluskey v. Thompson*,[25] the court stated that one employee cannot bring a negligence action against a co-employee because the injured employee's exclusive remedy is under the Workmen's Compensation Act.[26] The court also noted a prior decision that held that a suit was barred by the exclusivity provision where the employee alleged that the doctor, selected by the employer to provide medical services for injured employees,

20. 334 F. Supp. 1221 (N.D. Miss. 1971).

21. 369 F. Supp. 967 (S.D. Miss. 1974).

22. *Id.* at 968.

23. 420 So. 2d 564 (Miss. 1982).

24. *Id.* at 564. The declaration in *Taylor* alleged that the carrier "negligently, carelessly, wrecklessly [sic], willfully and hazardiously [sic], failed, refused and neglected to process legitimate medical claims." The words "willfully" and "refused" can be construed as implying intentional conduct.

25. 363 So. 2d 256 (Miss. 1978).

26. *Id.* at 264.

had negligently aggravated a pre-existing compensable injury.[27] The decision in *Brown v. Estess*,[28] which held that an action by the employee based on negligent conduct by an officer of the corporation was barred by the exclusivity provision of the Act, was also used by the *Taylor* court to show the distinction between negligent and intentional conduct by third parties.

As can be seen by these cases, the court has extended the immunity given to the employer under the Act's exclusivity provision to include certain third parties when the action against them is based on negligence. However, a different rule is used when the action is based on some intentional tort.

The distinction between actions based upon intentional torts and those based upon negligence was set forth in *McCluskey*. The *McClusky* court stated, "Our Act and the common law right to sue a fellow employee for negligence, as opposed to an intentional tort, cannot coexist, so the common law right to sue a fellow employee where the injured employee is covered by the Act must give way."[29]

The Mississippi Supreme Court discussed this concept in *Miller v. McRae's, Inc.*[30] In *Miller* the co-employee brought an action against her employer for false imprisonment by a co-employee, alleging that as a result thereof, she suffered great humiliation, loss of reputation and physical illness.[31] In determining whether the exclusive remedy provision of the Act was applicable in such cases, the court stated that two questions must be decided: 1) Did the injury arise out of and in the course of employment? and 2) Is the injury compensable under the Workmen's Compensation Act?[32] In resolving the question of compensability, the court directed its attention to the definition of "injury" under the Act.[33] In so doing, the court stated that false imprisonment is obviously not an accidental act but rather a willful one.[34] The next step by the court was to define the term "third party," used in the "injury" provision, as being either a stranger to the employer-employee relationship or a co-employee acting outside the scope and course

27. Trotter v. Litton Systems, Inc., 370 So. 2d 244 (Miss. 1979).
28. 374 So. 2d 241 (Miss. 1979).
29. 363 So. 2d at 264.
30. 444 So. 2d 368 (Miss. 1984).
31. *Id.* at 369.
32. *Id.* at 372.
33. MISS. CODE ANN. § 71-3-3 provides:
(b) 'Injury' means accidental injury or accidental death arising out of and in the course of employment, and includes injuries to artificial members, and also includes an injury caused by the willful act of a third person directed against an employee because of his employment while so employed and working on the job . . . .
34. 444 So. 2d at 370.

of his employment.[35] However, when an employee is injured by a willful act of a fellow employee who is acting within the scope of his employment, the injured employee is not precluded from seeking a remedy outside the Workmen's Compensation Act.[36]

The *Miller* court distinguished *Brown* by saying that in *Brown* the allegations were based on negligence and not on a willful or malicious act.[37] The court in *Miller* also distinguished *Taylor* by stating, "[I]n *Taylor* the plaintiff was merely seeking compensation due him under the Act. As the Act provides a specific penalty for bad faith refusal to pay, the Act was the exclusive remedy available to Taylor."[38] Jurisdictions have reached differing results when addressing the question of whether an action by an injured worker against the compensation carrier based on an intentional refusal to pay is barred by the exclusivity provision or some other provision.

Perhaps the leading case in this area of workmen's compensation law is *Stafford v. Westchester Fire Insurance Company.*[39] In this case, the Supreme Court of Alaska held that although the employer is given immunity under the exclusivity provision, the insurer is not.[40] The court explained that when the insurer committed an intentional tort against the claimant, it ceased being the "alter ego" of the employer and became instead a separate entity against which a civil action for damages could be brought.[41] Pointing out that the penalty provisions in the Act only applied to negligent delay in payments, the court stated that when the insurer commits "tortious conduct that goes beyond the bounds of untimely payments, the immunity from suit provided by the Workmen's Compensation Act is lost."[42]

In *Martin v. Travelers Insurance Company* the court stated that the exclusivity provision does not extend to the insurer when it willfully stopped payments to the claimant. The court held that not only was the exclusivity provision inapplicable, but the injury alleged was not compensable under the Act.[43] It further stipulated that the injury did not arise out of and in the course of employment but was "incurred in the course of arising out of plain-

35. *Id.* at 371.
36. *Id.*
37. *Id.*
38. *Id.*
39. 526 P.2d 37 (Alaska 1974), *overruled on other grounds*, Cooper v. Argonaut Ins. Co., 556 P.2d 525 (Alaska 1976).
40. 526 P.2d at 42.
41. *Id.* at 43.
42. *Id.*
43. 497 F.2d 329 (1st Cir. 1974).

tiff's status as a claimant seeking compensation, after his status as an employee had terminated." [44] Therefore, the employee was not barred from bringing an intentional tort action against the carrier outside the workmen's compensation statute.

Several courts have used the exclusivity provision to bar this type of action including the decision in *Escobedo v. American Employers Insurance Company*,[45] which stated that the plaintiff's separate action for bad faith refusal to pay claims was inseparable from the original claims for compensation. The court explained that whether the insurer acted in good faith or bad, the plaintiff's only remedy was that stipulated in the Workmen's Compensation Act.[46] Claims against the insurer based on intentional or negligent refusal to pay benefits were barred by the exclusive remedy provision of the Act in *Sandoval v. Salt River Project.*[47] The court further stated that "where the essence of the claim is the alleged wrongful deprivation of benefits, the . . . Commission has the exclusive jurisdiction to adjudicate that controversy." [48]

Several other jurisdictions follow the decisions in these cases and bar an action by the injured worker against the carrier based upon the insurer's intentional failure to pay compensation benefits because of the exclusive remedy provisions available under Workmen's Compensation Acts.[49]

Another theory that courts have adopted as a basis for granting or denying independent actions against insurers is the penalty provisions placed in the compensation acts for non-payment of compensation benefits. Several courts deny a separate action when the alleged injury is based upon mere negligent failure to pay compensation claims.[50] However, when the activity exceeds mere negligence, some courts will not limit the remedy to the Act but will grant an action at common law.[51] The courts reasoned that

---

44. *Id.* at 330, 331. *See also* Gibson v. National Ben Franklin Ins. Co., 387 A.2d 220 (Me. 1978); Hayes v. Aetna Fire Underwriters, 609 P.2d 257 (Mont. 1980) (The *Hayes* opinion also stated that when the alleged injury is incurred after the employment relationship is terminated, "the insurance carrier is no longer the 'alter ego' of the employer, but rather is involved in an independent relationship to the employee when committing such tortious acts." *Id.* at 261); Coleman v. American University Ins. Co., 86 Wis. 2d 615, 273 N.W.2d 220 (1970).

45. 547 F.2d 544 (10th Cir. 1977).

46. *Id.* at 545.

47. 117 Ariz. 209, 571 P.2d 706 (Ariz. App. 1977).

48. *Id.* at 215, 571 P.2d at 712.

49. *See, e.g.*, Depew v. Hartford Acc. & Indemnity Co., 135 Cal. App. 3d 574, 185 Cal. Rptr. 472 (1982); Physicans & Surgeons Hospital, Inc., v. Leone, 399 So. 2d 806 (La. App. 1981); Young v. United States Fidelity & Guaranty Co., 588 S.W.2d 46 (Mo. App. 1979); Dickson v. Mountain States Mutual Casualty Co., 98 N.M. 479, 650 P.2d 1 (1982).

50. *See, e.g.*, Stafford v. Westchester Fire Insurance Co., 526 P.2d 37 (Alaska 1974), *overruled on other grounds*, Cooper v. Argonaut Insurance Co., 556 P.2d 525 (Alaska 1976); Hayes v. Aetna Fire Underwriters, 609 P.2d 257 (Mont. 1980).

51. *See supra* notes 43-44 and accompanying text.

the penalty statutes were only intended to deter untimely or negligent payments and were not legislated to operate as the exclusive remedy for all intentional torts.[52]

INSTANT CASE

In *Southern Farm Bureau Casualty Insurance Company v. Holland*,[53] the court addressed the issue of whether a worker who has sustained an injury compensable under the Mississippi Workmen's Compensation Act may maintain a separate action against the insurance carrier for the commission of an intentional tort in the processing of the worker's claim.[54] The court stated that the exclusivity provision which is often used to bar such actions against third parties does not apply to the carrier when that carrier commits an intentional tort against the claimant.[55] The court's rationale is based upon two grounds. First, when the insurance carrier committed such intentional torts it was acting outside its "alter ego" relationship shared with the employer and is therefore not given the immunity of the employer.[56] The actions of the insurer are a part of an independent relationship with the employee and do not arise out of the claimant's employment status.[57]

Secondly, penalty provisions provided by some compensation acts are only intended to deter negligent delay in payments and are not legislated as exclusive remedies for all intentional acts committed by "an overreaching insurance company against a weekly wage earner."[58] The court concluded by stating that "to extend immunity to compensation carriers for a separate injury to workers goes far beyond the intent of the Act."[59]

However, Justice Walker in his dissenting opinion stated that the present case is indistinguishable from *Taylor*, and therefore the penalty provision of the Act should have been the exclusive remedy available to the claimant.[60]

ANALYSIS AND CONCLUSION

The court in *Southern Farm* begins its opinion by distinguishing the prior case of *Taylor*. The distinction made between the two cases is based upon the type of allegations made by the claimant

52. *Id.*
53. 469 So. 2d 55 (Miss. 1984).
54. *Id.* at 56.
55. *Id.* at 59.
56. *Id.* at 58.
57. *Id.*
58. *Id.*
59. *Id.* at 59.
60. *Id.* (Walker, J., dissenting).

against the carrier. In *Taylor*, the employee alleged the injury of "emotional stress" due to the carrier's "negligent" and "willful" refusal to pay medical claims.[61] In *Southern Farm*, the plaintiff alleged "intentional infliction of mental distress" based upon the carrier's refusal to pay compensation benefits. The distinction made by the court between the two allegations is that in *Taylor* the allegations sound in negligence and in *Southern Farm* plaintiff's allegations derive from an intentional tort. However, as seen by the pleadings of *Taylor*, there is also language present that sounds of an intentional tort.[62] To distinguish between negligent and intentional acts in barring an action is justifiable based upon the law in prior cases,[63] but to make this distinction based upon the pleadings in these cases is unwarranted. In doing so the court glorifies form over substance and allows an employee to bring a separate action against the carrier based purely on the language of the pleadings. A claimant would be successful in changing an unactionable delay in payments claim into an actionable intentional tort by simply using the words "intentional infliction of mental distress" instead of "emotional distress" due to the carrier's "negligent" and "willful" refusal to pay medical claims. Surely this is contrary to the intent of the legislature in its enactment of the Workmen's Compensation Act.

If the court's attempt to distinguish the cases of *Southern Farm* and *Taylor* based upon their pleadings is disregarded, it appears that barring a claim for a negligent act and allowing the action when it is grounded on an intentional tort is well reasoned. As noted in the discussion of *Miller*,[64] the courts have recognized the necessity of allowing separate actions when the alleged injury is committed by the intentional act of co-employees. However, when the injury is based upon the negligence of a co-employee, the action is barred.[65] By applying these standards to the third party carrier, we find that mere negligence in making payments is covered by the Act,[66] while an intentional refusal to pay provides an alternate ground for recovery.[67] The result in *Southern Farm* can also be supported by considering the "injury" definition in the Workmen's Compensation Act as exclusive of injuries caused by the willful act of a third person when that act is not directed against the employee because of his employment while so employed and

61. *See supra* note 24 and accompanying text.
62. *Id.*
63. *See supra* note 30 and accompanying text.
64. *Id.*
65. *See supra* note 13.
66. 420 So. 2d at 566.
67. 469 So. 2d at 58.

working on the job.[68] Other jurisdictions follow this analysis and allow separate actions when the injury is based upon an intentional, not negligent act of the carrier.[69] These courts recognize that the carriers' intentional refusal to pay a claim and the possible subsequent infliction of emotional stress arise from a separate and independent relationship with the employee as a compensation claimant and not from the original employment status.[70] The court in *Southern Farm* takes this logical approach by stating that when the insurance carrier commits an intentional tort against the employee, the carrier ceases being the "alter ego" of the employer.[71] "Rather, the carrier is involved in an independent relationship with the employee when committing such tortious acts."[72]

The court's second reason for granting a common law action involves the inadequacy of the Act's penalty provision. Although the Act's penalty provision provides for ten percent and twenty percent of the amount owed as penalties for failure to pay an installment of compensation due, the court believes that this is adequate only when the failure is due to the carrier's negligence and it is totally inadequate in deterring intentional wrongdoings by the carrier.[73] With this interpretation the court again follows the majority of jurisdictions.[74]

In analyzing the court's holding and rationale, one can conclude that the court used the principles and theories set forth in their prior cases and those stipulated in the majority of other jurisdictions addressing similar actions. However, the court's position in distinguishing between the pleadings of *Taylor* and the pleadings in *Southern Farm* is questionable. As noted earlier,[75] both of the allegations involved include similar language and are based on the same type of actions and allege the same form of injuries. Nevertheless, the court is determined to find negligence in the former, thus barring it, and to find an intentional tort in the latter, therefore allowing the action. Indeed, no one disputes the necessity for precise, succinct and explicit language in the pleading, and the barring of actions for failing to state a proper claim, but it is questionable that this is the court's motivation. The court is making a distinction, and justifiably so, between actions of this nature based upon negligent conduct and those based upon an in-

68. *See supra* note 33.
69. *See supra* note 44 and accompanying text.
70. *Id.*
71. 469 So. 2d at 58.
72. *Id.*
73. *Id.*
74. *See supra* note 52 and accompanying text.
75. *See supra* note 62 and accompanying text.

tentional tort. The problem that arises is how an attorney or trial judge who has read the opinions in *Taylor* and *Southern Farm* can correctly discern whether the damages of any specific case are limited to the provisions of the Mississippi Workmen's Compensation Act.[76] The possibility exists that any employee who wants to bring a separate action against the compensation carrier for failure to make benefit payments on time need only to disguise his action in terms of "intentional infliction of emotional stress." The temptation to abuse such actions is all too obvious. However, the court points out that the question is one of statutory construction, and the failure of the state legislature to provide a more explicit exclusive remedy provision places the burden on the court as to the extent to which the exclusive remedy will be carried. The question still remains: How far will the provision be limited or extended?

Philip M. Reeves

76. 469 So. 2d at 61 (Hawkins, J., dissenting).