

**RESOLUTION PROVIDING CONSENT TO SETTLE
LITIGATION IN CIVIL ACTION NO. 3:09cv236TSL-FKB**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

STYLED

**THOMAS MOORE, INDIVIDUALLY
AND ON BEHALF OF ALL WRONGFUL
DEATH BENEFICIARIES AND HEIRS AT
LAW OF CHARLES MOORE, DECEASED
AND**

**THELMA COLLINS, INDIVIDUALLY
AND ON BEHALF OF ALL WRONGFUL
DEATH BENEFICIARIES AND HEIRS AT
LAW OF HENRY DEE, DECEASED PLAINTIFFS**

V.

FRANKLIN COUNTY, MISSISSIPPI DEFENDANT

There next came on for consideration a matter presented to the Board of Supervisors of Franklin County, Mississippi by National Casualty Company, the carrier of Franklin County's **PUBLIC ENTITY POLICY, LAW ENFORCEMENT LIABILITY COVERAGE POLICY NUMBERED #PKO 0000507**, and the Board does hereby find and adjudicate as follows:

WHEREAS, on August 5, 2008 a lawsuit was filed against Franklin County, Mississippi which is currently styled Thomas Moore, Individually and on Behalf of All Wrongful Death Beneficiaries and Heirs at Law of Charles Moore, Deceased and Thelma Collins, Individually and on Behalf of the Wrongful Death Beneficiaries and Heirs at Law of Henry Dec, Deceased vs. Franklin County, Mississippi; United States District Court for the Southern District of Mississippi, Jackson Division Cause No. 3:09cv236-TSL-FKB; and

WHEREAS, Franklin County, Mississippi had previously purchased a policy of insurance covering law enforcement acts (Current No. PKO 0000507) from National Casualty Insurance Company in 2003 with effective dates from the period beginning February 6, 2003 through February 6, 2004. The policy was renewed on an annual basis with the last effective pertinent dates being February 6, 2008 to February 6, 2009; and,

WHEREAS, National Casualty Company provided defense counsel under a reservation of rights and Franklin County, Mississippi demanded *Moeller* counsel which was provided; and,

WHEREAS, National Casualty Company then filed suit against Franklin County, Mississippi on August 31, 2009 and therein asserted that it had no duty to provide coverage or indemnity to Franklin County, Mississippi. This suit is identified as *National Casualty Company, Plaintiff vs. Franklin County, Mississippi; Franklin County Board of Supervisors, et al, Defendants in Civil Action No. 3:09CV526TSL-FKB*; and,

WHEREAS, by April 29, 2010, United States District Judge Tom Lee ruled in favor of Franklin County, Mississippi and against National Casualty Company ordering that National Casualty Company owed a duty of defense, indemnity being reserved, to Franklin County, Mississippi; and,

WHEREAS, the United States District Court on June 9, 2010 held a settlement conference in the *Moore, et al v. Franklin County* case with the Plaintiffs and counsel for National Casualty, Justin Matheny, of the Jackson, Mississippi law firm of Phelps-Dunbar; and,

WHEREAS, Justin L. Matheny, Esq, an attorney with PHELPS DUNBAR, LLP, ATTORNEYS AT LAW, who has represented National Casualty Company throughout the above referenced litigation, has requested in the letter a copy of which is attached hereto as EXHIBIT "A" and incorporated herein by reference, that the Board of Supervisors of Franklin County comply with the terms of said insurance policy and endorsement thereto, which reads as follows:

"CONSENT TO SETTLE ENDORSEMENT. We have the right to investigate any "claim" or "suit" but we will not settle or compromise a "claim" or "suit" without your written consent. If consent is refused and you elect to consent the "claim" or "suit" or continue legal proceedings, then our liability for the "claim" or "suit" will not exceed the amount for which the "claim" or "suit" could have been settled, plus "loss adjustment expense" incurred up to the date of your refusal."

WHEREAS, Franklin County Board of Supervisors was advised of that certain endorsement in its National Casualty policy known and identified as a "Hammer Clause" which when basically defined and applied to the *Moore, et al v. Franklin County* case means that if Franklin County refused a settlement offer reached between its insurer, National Casualty Company, and the plaintiffs, Moore and Dee, National Casualty Company may, at some point, no longer have a duty to defend Franklin County and no duty to indemnify Franklin County over the proposed settlement amount; and,

WHEREAS, Franklin County is not in a financial position to continue litigation in this matter without insurance coverage; and,

WHEREAS, Franklin County, Mississippi in no way condones the horrific deaths of Charles Moore and Henry Dee. The County desires not to imply that the deaths were anything but abhorrent. Franklin County, Mississippi in all pleadings and discovery has stated affirmatively that it neither knowingly or through indifference, caused or contributed to the deaths of these two young men. These deaths are believed to have resulted solely from the criminal actions of the Ku Klux Klan; and,

WHEREAS, most, if not all, direct recollection of the events which are the subject of this case are lost to time, and because the Plaintiffs have reconstructed allegations based upon unsubstantiated accounts which would not be considered reliable in a court of law, the County is faced with the almost impossible task of attempting to recreate source materials, to identify what the Complaint contains and omits for its own strategic purposes, and then attempt to glean some truth from a period in history (43 years ago) cloaked in secrecy, lore, and media error; and,

WHEREAS, as set forth in the County's Motion for Summary Judgment on file in the *Moore, et al v. Franklin County* case, the County is of the opinion that the Statute of Limitation has run; and,

WHEREAS, due to the "Hammer Clause" recited hereinabove Franklin County, Mississippi does not have the funds to continue its defense through trial and any appeal; and

WHEREAS, the Board of Supervisors has been advised in the premises that in order to perfect the settlement of said litigation, it is necessary to adopt the following resolution:

NOW, THEREFORE BE AND IT IS HEREBY RESOLVED on this the 21st day June, 2010, on Motion of GEORGE COLLINS, seconded by CHAD SMITH, that in compliance with National Casualty Company's Policy #PKO 0000507 the Board of Supervisors of Franklin County, Mississippi does hereby resolve that this RESOLUTION shall be deemed to be the written consent required by said policy in order that Justin Matheny, Esq., an attorney with PHELPS DUNBAR, LLP, ATTORNEYS AT LAW, and counsel provided by National Casualty Company, has the right and consent on behalf of the Board of Supervisors of Franklin County, Mississippi to settle any "claim" or "suit" in the *Moore, et al v. Franklin County* case with the following roll call vote on the RESOLUTION:

District 1 Supervisor Woodrow Wilson voting "Aye"
District 2 Supervisor Chad Smith voting "Aye"
District 3 Supervisor George Collins, voting "Aye"
District 4 Supervisor Jerry Lynn Howell voting "Aye"
District 5 Supervisor M.L. Ezell voting "Aye"

**BOARD OF SUPERVISORS OF
FRANKLIN COUNTY, MISSISSIPPI**

Woodrow Wilson
District 1 Supervisor Woodrow Wilson

Chad Smith
District 2 Supervisor Chad Smith

George Collins
District 3 Supervisor George Collins

Jerry Lynn Howell
District 4 Supervisor Jerry Lynn Howell

M. L. Ezell
District 5 Supervisor M.L. Ezell

The President thereby declared the motion carried and the resolutions adopted, this the 21st day of June, 2010.

FRANKLIN COUNTY BOARD OF SUPERVISORS

BY: George Collins
GEORGE COLLINS, PRESIDENT

ATTEST:

Jill Jordan Gilbert
JILL JORDAN GILBERT, CHANCERY CLERK

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Certified to be a true copy this
the 21 day of June, 2010

Jill J. Gilbert
Chancery Clerk, Franklin County, MS

By: Jill J. Gilbert, Chy. Clerk