IN THE SUPREME COURT OF TEXAS

NO. 04-0138

UNAUTHORIZED PRACTICE OF LAW COMMITTEE, PETITIONER,

v.

AMERICAN HOME ASSURANCE COMPANY, INC. AND
THE TRAVELERS INDEMNITY COMPANY, RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE ELEVENTH DISTRICT OF TEXAS

Argued September 28, 2005

JUSTICE JOHNSON, joined by JUSTICE GREEN, dissenting.

Many matters addressed by briefs of the parties[1] and amici involve ethical and potential liability considerations of insurers and their staff counsel when staff counsel defend insureds. As the Court points out, those considerations do not determine what is or is not the unauthorized practice of law. The Court details several such issues, some easily-identified and some not-so-easily-identified, that are imbedded in the relationships when an insurer selects defense counsel for and controls the defense of its insured. Many, if not the majority, of the issues exist regardless of whether defense counsel is an employee of the insurer ("staff attorney" or "staff counsel") or

[1] Unauthorized Practice of Law Committee (UPLC), and American Home Assurance Co., and Travelers Indemnity Co. (collectively, "American Home").

independent counsel. Certainly the issues may be more complex when staff counsel represents an insured than when independent counsel does. Nevertheless, it seems to me that the issue before the Court narrows down to statutory construction: Is an insurance corporation's defense of its insureds by the use of staff attorneys the practice of law as defined in the State Bar Act. *See* TEX. GOV'T CODE § 81.101(a). The Court holds that under certain circumstances it is not. I disagree.

I agree that corporate insurance companies are not permitted to practice law in Texas. ___ S.W.3d ___; *see* TEX. BUS. CORP. ACT art. 2.01(B)(2) (providing that a corporation may not be organized under the Act if any one of its purposes is to engage in an activity that requires a license and such a license cannot be granted to a corporation). Former Penal Code article 430a[2] specifically prohibited corporations from practicing law, but that article was repealed in 1949. There does not seem to have been a great deal of discussion about whether its repeal was a legislative signal that corporations were free to either practice law or defend insureds with staff attorneys. As the Court notes, the legislative record does not indicate that it was. *See* ___ S.W.3d ___.

The Legislature specifically authorized the practice of law by entities other than natural persons over thirty-five years ago. Beginning in January 1970, certain types of corporations were statutorily authorized to render professional legal services. TEX. REV. CIV. STAT. art. 1528e § 3(d).[3] The corporate form was limited to professional legal corporations organized for the sole and specific purpose of rendering legal services. *See id*. "Professional Legal Services" were defined as

[2] Act of May 31, 1933, 43rd Leg., R.S., ch. 238, §§ 1-3, 1933 Tex. Gen. Laws 835-38, *repealed by* Act of May 19, 1949, 51st Leg., R.S., ch. 301, § 1, 1949 Tex. Gen. Laws 548.

[3] Originally enacted as Act of May 28, 1969, 61st Leg., R.S., ch. 779, 1969 Tex. Gen. Laws 2304 (effective Jan. 1, 1970).

> any type of personal service rendered by attorneys-at-law which requires as a condition precedent to the rendering of such service within this state, the obtaining of a license, permit, certificate of registration, or other legal authorization and which prior to the passage of this Act and by reason of law could not be performed within this state by a corporation.

Id. at § 3(c). Insurance companies are not professional legal corporations. And because actual or beneficial ownership of professional legal corporations remains statutorily limited to licensed attorneys, insurance companies cannot own or operate Texas professional legal corporations. *See id.* If they could, the case now before the Court almost certainly would not be here. It is here because corporate insurers cannot be licensed to practice law, but they want the economic benefit of staff attorneys practicing law by defending insureds who are not corporate affiliates, subsidiaries, employees, officers, or agents. Seeking an economic benefit is not bad. In this instance, however, the benefit sought is not one that can be obtained by a corporation without running afoul of Texas' statutory definition of practicing law.

In *Hexter Title & Abstract Co. v. Grievance Committee*, 179 S.W.2d 946 (Tex. 1944), this Court considered whether a corporation was practicing law when attorney employees of the corporation prepared documents related to defects in title and offered them to third persons. Although the corporation had no connection with the transactions, the corporation hoped to issue policies of title insurance as a result of providing the documents. As background, the Court referenced the State Bar Act and two of its relevant purposes: "It will be noted that one of the purposes of the . . . act was to subject all members of the Bar to the provisions of the act, and another purpose was to prohibit those not members of the State Bar from practicing law." *Id*. at 948 (discussing Act of April 6, 1939, 46th Leg., R.S., ch. 1, §§ 2, 3, 1939 Tex. Gen. Laws 64-66,

repealed by Act of April 30, 1987, 70th Leg., R.S., ch. 148, § 3.01, 1987 Tex. Gen. Laws 534, 593 (former TEX. REV. CIV. STAT. 320a-1)). The Court then addressed the question of whether the corporation was practicing law "within the meaning of the Statutes of this State?" *Id*. at 949. The controlling statute was former Penal Code article 430a which we quoted in relevant part:

> Section 1. It shall be unlawful for any corporation or any person, firm, or association of persons, except natural persons who are members of the bar regularly admitted and licensed to practice law.
>
> Sec. 2. For the purpose of this Act, the practice of law is defined as follows: Whoever * * * (b) For a consideration, reward or pecuniary benefit, present or anticipated, direct, or indirect, advises or counsels another as to secular law, or draws a paper, document or instrument affecting or relating to secular rights; * * * or (d) For a consideration, direct or indirect, gives an opinion as to the validity of the title to real or personal property, * * * is practicing law. Nothing in this section shall be construed to prohibit any person, firm, association or corporation, *out of court*, from attending to and caring for his or its own business, * * * nor from preparing abstracts of title, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or encumbrance thereon, * * *.
>
> Sec. 3. It shall be unlawful for any corporation to practice law as defined by this Act or to appear as an attorney *for any person other than itself* in any court in this State, or before any judicial body or any board or commission of the State of Texas; or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall prepare corporate charters or amendments thereto, or other legal documents not relating to its authorized business, or draw wills; or hold itself out in any manner directly or indirectly as being entitled to do any of the foregoing acts; * * *.

Id. at 951 (emphasis added). We held that the title and abstract company was practicing law even if the documents were prepared by licensed attorneys and even if non-lawyer corporate executives did not direct how the documents were to be prepared:

> The fact that the corporation has several licensed lawyers in its employment to prepare the instruments in question does not alter the case. According to the agreed statement of facts the executive officers of the corporation direct the kind of

> instruments to be drawn and what should be put in them. But *even in the absence of such direction by the executives the result would be the same*. The attorney in preparing such papers does so as the agent of the corporation by whom he is employed. His first obligation of loyalty is to the corporation. *His acts are the acts of the corporation, and even though the corporation acts through an attorney, it is nevertheless practicing law.*

Id. at 953-54 (emphasis added).

Fairly reading former article 430a, section 2 addressed out-of-court activities and section 3 addressed in-court activities. Section 3 specifically prohibited corporations from appearing "as an attorney for any person other than itself in any court in this State." *Id.* at 951. As the Court has noted, article 430a specifically provided that an insurer was not precluded from defending its insureds by lawyers of its own selection. *Id.* But what the statute did *not* say was that a corporation could, itself, defend its insureds in court.

More than twenty years after *Hexter* was decided, another case presented the issue of whether a nonprofit corporation was practicing law by using employee attorneys to represent indigents. *Touchy v. Houston Legal Found.*, 432 S.W.2d 690 (Tex. 1968). Hugo A. Touchy, three other practicing attorneys, and an organization composed of attorneys (collectively, "Touchy") brought suit against the Houston Legal Foundation, a charitable corporation.[4] Touchy sought to enjoin the Foundation from engaging in (1) practices which allegedly violated the Texas Canons of Ethics, (2) the unauthorized practice of law, and (3) practices which were demeaning to the legal profession and economically harmful to the plaintiffs. *Id.* at 691. As to the unauthorized practice of law claim, Touchy asserted that the Foundation was practicing law without authorization by directly

[4] The Foundation's trustees were all licensed attorneys or judges who were members of the bar. *Touchy v. Houston Legal Found.*, 417 S.W.2d 625, 628 (Tex. Civ. App.—Waco 1967) *rev'd* 432 S.W.2d 690 (Tex. 1968).

representing clients by signing pleadings, motions, and other documents filed in court. *Id*. at 693.[5] The State Bar Act then provided that all persons licensed to practice law were members of the State Bar and all persons not members were "'prohibited from practicing law in this State.'" *Id*. at 695 (quoting Act of April 6, 1939, 46th Leg., R.S., ch. 1, §§ 2, 3, 1939 Tex. Gen. Laws 64-66, *repealed by* Act of April 30, 1987, 70th Leg., R.S., ch. 148, § 3.01, 1987 Tex. Gen. Laws 534, 593 (former TEX. REV. CIV. STAT. 320a-1)).

The Foundation responded by filing a plea in abatement challenging Touchy's standing to bring suit and a motion for summary judgment urging that Touchy did not have standing and that, as a matter of law, the Foundation was neither practicing law nor engaging in conduct demeaning to the profession. *Id*. at 691. The trial court granted both the plea in abatement and the motion for summary judgment, then dismissed the suit. *Id*. The court of appeals affirmed. *Id*. This Court held that by sustaining the plea in abatement, the trial court held that Touchy did not have standing to maintain the suit and could not have reached the merits. *Id*. at 693. The Court held that Touchy had standing, reversed the lower court judgments and remanded for further proceedings. In remanding, the Court set out the manner in which the unauthorized practice of law claim was to be tried:

> The trial of the cause is to be governed by the following specific instructions: *The petitioners will have the burden of pleading and proving that the Foundation is engaged in the unlawful practice of law by directly representing clients as an attorney, by signing pleadings in its name, or by appearing for such clients through its employees, in presenting pleadings, motions, orders and other documents filed in*

[5] *Touchy* is not completely clear that attorneys employed by the Foundation were the persons signing pleadings, motions, and documents filed in court. But no individual employees of the Foundation were parties to the appeal and allegedly engaging in the unauthorized practice of law, thus the employees signing pleadings and documents on behalf of the Foundation apparently were employee attorneys of the Foundation. The court of appeals' opinion indicates that attorneys employed by the Foundation were the persons signing and filing pleadings, etc. on behalf of the Foundation. *Touchy*, 417 S.W.2d at 628-29.

> *the several courts of this State.* Without pleadings and proof establishing that the activities of the Foundation constitute the practice of law, cases such as *San Antonio Bar Association v. Guardian Abstract & Title Co.*, 291 S.W.2d 697 (1956) and *Hexter Title & Abstract Co. v. Grievance Committee*, 179 S.W.2d 946 (1944), will have no application. In each of those cases, the title companies were corporations for profit. Charges were made and fees were received for legal services rendered to clients of the companies by employee attorneys of the companies. In *Hexter*, this Court pointed out that the facts showed that the employee attorney's first loyalty was to the corporation for which he worked rather than to his client; on occasions, superior officials in the corporation, some being lay officials, instructed the employee attorney as to what kind of instrument to prepare and as to the phrasing of the instrument.
>
> If, on the trial of the case, it is established by competent evidence that the Foundation is truly a legal aid society which acts merely as a conduit or intermediary to bring the attorney and client together and does not purport to control or exploit the manner in which the attorney represents his indigent client, the operations and activities of the Foundation should not be held to be in violation of Article 320a-1, Vernon's Annotated Civil Statutes, which provides that 'all persons not members of the State Bar are hereby prohibited from practicing law in this State.'

Id. at 694-95 (emphasis added). Two points made by the Court are notable in regard to the pending matter. First, the Court recognized that actions of the attorneys employed by the Foundation were those of the corporation and that Touchy had the burden to prove "the Foundation is engaged in the unlawful practice of law by directly representing clients as an attorney, by signing pleadings in its name, *or by appearing for such clients through its employees, in presenting pleadings, motions, orders and other documents filed in the several courts of this State*." *Id*. at 694 (emphasis added). Second, the Court distinguished for-profit corporations where employees provided legal services that resulted in economic benefit to the corporation from nonprofit corporations where neither the attorney nor the corporation benefitted. Even as to the nonprofit Foundation, the Court did not indicate that if the attorneys employed by the corporation filed pleadings and documents in court that

the corporation was not practicing law. The Court simply stated that if the Foundation truly functioned as a legal aid society which acted only as a conduit or intermediary (1) to bring the attorney and client together and (2) which did not purport to control or "exploit" the manner in which the attorney represented the indigent client, the Foundation "should not be held to be in violation of Article 320a-1, Vernon's Annotated Civil Statutes, which provides that 'all persons not members of the State Bar are hereby prohibited from practicing law in this State.'" *Id*.[6]

The State Bar Act (the Act) presently addresses the question of when a person is practicing law. *See* TEX. GOV'T CODE ch. 81. In *Hexter*, we placed our decision "largely upon the statutes" then in place, and did not rely on our inherent or implied powers. *Hexter*, 179 S.W.2d at 954. The Court need take no different approach in this case because the Act directly addresses the issue.[7] The relevant provisions of the Act are not substantively different from provisions of former Penal Code article 430a which this Court addressed in *Hexter*, or the instructions as to how to try the unauthorized practice of law claim in *Touchy*. The Act now provides that for purposes of its provisions,

> the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding *on behalf of a client* before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the

[6] Nonprofit legal services corporations may now contract to pay for services rendered by an attorney to participants in the corporation's plan. TEX. INS. CODE § 961.001(4). The corporation may not, however, contract to practice law, control or attempt to control the relationship between a participant and the participant's attorney, or allow a "contracting attorney" to be an employee of the corporation. *Id*. § 961.303.

[7] For discussions of the Court's inherent and implied powers, see *State Bar v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994), and *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398-99 (Tex. 1979).

> legal effect of which under the facts and conclusions involved must be carefully determined.

TEX. GOV'T CODE § 81.101 (emphasis added). In construing the Act, we ascertain and give effect to the Legislature's intent as expressed by the plain and common meaning of the statute's words, *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006), unless a contrary intention is apparent from the context, *Taylor v. Firemen's and Policemen's Civil Service Commission of the City of Lubbock*, 616 S.W.2d 187, 189 (Tex. 1981), or unless such a construction leads to absurd results. *Univ. of Tex. S.W. Med. Ctr. v. Loutzenhiser*, 140 S.W.3d 351, 356 (Tex. 2004).

Former article 430a section 3 precluded a corporation from practicing law or appearing in court "as an attorney for any person other than itself" whereas the current Act effectively incorporates the prohibition on appearing in court for another by including the phrase "on behalf of a client" in the definition of "practice of law." TEX. GOV'T CODE § 81.101(a). The Act also provides that a person may not practice law in Texas unless the person is a member of the state bar and that the state bar is composed of those persons licensed to practice law in Texas. *Id*. §§ 81.051, .102(a). The restrictions are essentially the same as those in former Penal Code article 430a, section 1, which formed the basis for *Hexter*, and in the State Bar Act, which formed the basis for *Touchy*. The current Act does not make special reference to insurers and the practice of law as did former article 430a. The context of the definition's statement that the practice of law includes "the management of the action or proceeding on behalf of a client before a judge in court" does not indicate that the words do not mean what they clearly say: management of a court proceeding on

behalf of another person is the practice of law. *See Shumake*, 199 S.W.3d at 284; *Taylor*, 616 S.W.2d at 189.

In determining whether an insurer practices law by having its staff attorney represent an insured in a lawsuit, the logical place to begin is with the premise that a corporation cannot act by itself. *See Touchy*, 432 S.W.2d at 694; *Hexter*, 179 S.W.2d at 954. Corporations are legal entities that function through actions of people. *See In re Vesta Ins. Group, Inc.*, 192 S.W.3d 759, 762 (Tex. 2006) (noting that corporations must act through human agents); *Holloway v. Skinner*, 898 S.W.2d 793, 795 (Tex. 1995) ("Corporations, by their very nature, cannot function without human agents.").

The parties agree that staff attorneys are employed for the purpose of defending insureds at a lower cost than could be achieved if the insurer hired independent counsel. The attorney-client relationship between a staff attorney and an insured comes into being and continues only because of the staff attorney's employment by the insurer. Staff attorneys defending insureds thus are employees performing tasks they were employed to perform and defending persons they are assigned to defend by their employer who benefits financially by the staff attorneys' practice of law. The actions of staff attorneys in so defending insureds undeniably are actions of the corporation. *See In re Vesta*, 192 S.W.3d at 762; *Holloway*, 898 S.W.2d at 796; *Touchy*, 432 S.W.2d at 694; *Hexter*, 179 S.W.2d at 954.

When a corporation's employee attorneys prepare documents for and otherwise represent the corporation itself, the corporation is not practicing law as defined by the plain language of section 81.101(a) of the Act. The attorney employees' actions in such instances are actions of the corporation—it is representing itself. *See In re Vesta*, 192 S.W.3d at 762 ("'As a general rule, the

actions of a corporate agent on behalf of the corporation are deemed the corporation's acts.'" (*quoting Holloway*, 898 S.W.2d at 795)). There is no "client" involved as to such corporate actions other than the attorney-client relationship between the corporation's employee attorneys and their corporate employer. This means that an insurer representing itself through actions of a staff attorney is not practicing law because the insurer is not preparing pleadings or documents or managing a lawsuit on behalf of a client. But it is different when the insurer's staff attorneys represent insureds in lawsuits. *Hexter*, 179 S.W.2d at 953-54 ("The attorney in preparing such papers does so as the agent of the corporation by whom he is employed. . . . His acts are the acts of the corporation, and even though the corporation acts through an attorney, it is nevertheless practicing law."). Insureds are not corporate employees or officers who are being defended for actions they took on behalf of the corporation so that their defense is in actuality a defense of the corporation. Insureds are, quite simply, legal entities completely separate from the insurance corporation who must be defended because of acts or omissions not considered to be those of the insurer. So the insurance corporation is not representing itself when it represents its insureds.

There is no contention that insurers are precluded from having staff counsel represent the insurers' own interests in court. It is not unusual for multiple attorneys, each representing different interests, to be present at a proceeding involving an insured. For example, an insured driver involved in an automobile accident might hire a lawyer who then files suit against the driver of the other vehicle. The other driver might assert a counterclaim, or a passenger might join in the same suit and sue the insured. The liability insurer of the original plaintiff will usually hire a separate attorney to defend the claims against the insured and to possibly represent the insurer's subrogation interest, if

any. Or if a claim against the insured involves exposure in excess of primary policy limits and an excess policy is in place, an attorney for the excess carrier may become involved. Or an insurer might have an attorney actually file suit on a subrogation claim. If an insurer wants to have staff counsel represent its own interests, it may do so, but if staff counsel represents the insured then the insurer is also representing a client in court proceedings and is practicing law. *See Touchy*, 432 S.W.2d at 694-95; *Hexter*, 179 S.W.2d at 953-54.

Interpreting the State Bar Act to preclude staff attorneys from defending insureds does not yield an absurd result. *See Loutzenhiser*, 140 S.W.3d at 356. Both authority to control as well as responsibility for controlling corporate actions ultimately lie with the corporation's board of directors, and no claim is made by American Home that its board membership is limited to licensed attorneys. A corporate board's first duties are to the corporation, not customers of the corporation. *See Holloway*, 898 S.W.2d at 795 (noting that it is the duty of corporate officers to protect the interests of the corporation). As part of its duties a board establishes policies, gives overall guidance to the corporation, and hires corporate managers to see that corporate policies and guidance are followed in fulfilling corporate purposes. The board may delegate its authority or right to control the corporation's actions by control of its employees, but the board ultimately remains responsible for corporate actions.

Corporate purposes can be varied, but it cannot seriously be contended that a for-profit corporation does not have making profits and enhancing shareholder value as its primary goals.[8] Good management practices dictate that corporate managers and employees who perform well and

[8] Such goals are not criticized; they drive free market economies.

increase profits will be rewarded while managers and employees who do not perform well or meet performance goals will usually experience negative employment actions. American Home and amici urge that staff attorneys' decisions and conduct in representing insureds have not induced and will not induce negative corporate personnel actions, and there is no reason to doubt the sincerity of their position. But human experience teaches that in the corporate business community, which is the community inhabited by insurance companies, when profit margins are the focus of the entity and are challenged by factors such as adverse loss ratios, downturns in general economic conditions, or premium price wars, then cost-cutting measures must be, and are, instituted. If such measures are not instituted, every person associated with the corporation feels repercussions, including shareholders whose stock price begins to fall, the board of directors that is responsible to the shareholders, management, and each employee of the corporation whose employment depends on the financial success of the business and their individual contribution to that success. In such circumstances, it defies reason to believe that staff attorneys will be immune from cost-cutting of some nature, even if they are immune at all other times. Cost cutting as to staff attorneys, whenever it occurs, may be in the form of being pressured to handle more lawsuits per lawyer, postponing or refraining from engaging experts, limiting referrals of suits to outside counsel even if retaining the suit is ethically questionable, etc.[9] But corporate cost cutting will come sometime, whether by one

[9] The difficulty with such decisions is demonstrated by one amicus's assertion that staff counsel do not represent insureds when there is a material conflict of interest on a matter that is likely to be litigated in the underlying claim. As an example, the amicus claims that a late notice defense would not be an issue in an underlying tort case. On its face that assertion may not seem problematical. But even if the late notice question is not an issue in the tort case, it might be hard for defense attorneys to avoid dealing with late notice facts and questions in defending the tort case. For example, in preparing for and defending depositions of the insured, a defense attorney almost assuredly will review all the facts surrounding the occurrence with the insured, including when the insured found out about the incident (if the insured was not personally involved), and what actions the insured took after the incident. In pre-suit depositions, many plaintiff's attorneys are curious about what the defendants did after the occurrence, such as reporting the incident to the insurer.

of the named insurers in this case, by one or some of amici, or by other corporate insurers. And cost cutting may occur because of financial pressures on the corporation or simply because it is part of the nature of business managers and insurance claims departments to strive for better performance by reducing claims payments and expenses. Most likely the cost-cutting pressures will come from management who are not all attorneys with an understanding of and commitment to the same ethical duties to clients that staff attorneys have, who are not required to make decisions within the context of professional ethics rules, but who nevertheless are in the corporate chain of authority above the staff attorneys. Therein lies the main difference between an insurance corporation and a professional legal corporation. Ultimate control of a professional legal corporation is with attorneys subject to the professional, ethical, and disciplinary rules of conduct. A professional legal corporation also has profit as a goal and seeks to maximize the difference between fee income and expenses. But the professional legal corporation has shareholders who are licensed attorneys subject to and limited by professional, ethical, and disciplinary rules. *See* ___ S.W.3d ___ ("To ensure the quality and integrity of the bar, the Court requires continuing education and imposes strict disciplinary rules, enforced through the grievance process."). When insurance company policies and procedures are formulated and enforced, non-attorney board members, managers, and shareholders are not ethically constrained as are lawyers who are subject to professional discipline. *See Touchy*, 432 S.W.2d at 694.

For an example of a late notice defense case where the late-notice facts may not have mattered in defense of the tort case, but ended up mattering a great deal to the defense attorney and the insurer, see *Employers Casualty Co. v. Tilley*, 496 S.W.2d 552 (Tex.1973).

This record does not evidence directors and managers of the insurers having made anything but ethical business decisions in fulfilling their duties to the corporation. But ethical duties imposed on licensed attorneys as to their clients are different than business ethics of the commercial marketplace. The "practice of law" definition in the State Bar Act does not contain profit or loss considerations. TEX. GOV'T CODE § 81.101. The definition, as relevant here, references only actions taken on behalf of a client, not economic factors. It does not contain an exception allowing corporate insurers to defend insureds whose interests are "congruent" to those of the insurer so the insurer can minimize defense costs and economically benefit its non-attorney management and shareholders. *Id*.

In sum, the Act does not preclude insurers from representing their own interests in lawsuits if they choose to do so. But under the State Bar Act, a corporate insurer cannot represent a client in a lawsuit. Because acts of staff attorneys are acts of the insurer, when staff attorneys defend insureds in lawsuits the insurer violates the Act, is practicing law without a license, and is engaging in the unauthorized practice of law. I would reverse the judgment of the court of appeals and affirm the judgment of the trial court.

Phil Johnson
Justice

OPINION DELIVERED: March 28, 2008