IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REVEREND MITCHELL HEDGEPETH AND CATHERINE HEDGEPETH — **APPELLANTS**

VS. — **CAUSE NO. 2006-IA-1991**

MELODY JOHNSON, Individually and as an agent of State Farm; STATE FARM FIRE AND CASUALTY COMPANY; and JOHN AND JANE DOE DEFENDANTS A; B; C; D; E; F ;G; AND H — **APPELLEES**

Brief

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Special Judge, Jackson County Circuit Court	The Honorable Edward C. Prisock
Appellants	Reverend Mitchell Hedgepeth and Catherine Hedgepeth
Appellees	Melody Johnson and State Farm Fire and Casualty Company
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STATEMENT OF THE ISSUES

1. Whether the 2004 amendment to Mississippi Code Annotated § 11-11-3 provides appellee Melody Johnson the right to defend against plaintiffs' claims in her county of residence, Madison, if she so chooses.
2. Whether the trial court was in error when it concluded, after review and consideration of the legislative context and judicial construction of prior versions of Mississippi Code Annotated § 11-11-3, that Mississippi Code Annotated §11-11-3(1)(a)(i) mandates venue be transferred to Madison County, Johnson's county of residence.

A. STATEMENT OF THE CASE

1. Procedural History

Reverend Mitchell Hedgepeth and Catherine Hedgepeth (the Hedgepeths) purchased renters insurance from State Farm Fire and Casualty Company (State Farm) to cover their personal property when they moved into the parsonage of the St. Paul United Methodist Church in Ocean Springs, Jackson County, Mississippi in June 2004. [RE, 18-19, 31, 34; R, Vol. 1, 7-8, 97, 100]. They purchased the insurance through Melody Johnson, a State Farm agent whose office is located in Jackson, Mississippi and who resides in Madison County. [RE, 19, 82; R, Vol. 1, 8, 37]. On August 29, 2005 much of the Hedgepeths' personal property was destroyed by Hurricane Katrina. [RE, 19-20; R, Vol. 1, 8-9].

On February 13, 2006, the Hedgepeths brought suit in Jackson County against Ms. Johnson and State Farm to recover damages for their losses. [RE, 16-33; R, Vol. 1, 5-15]. The complaint included, among others, claims against State Farm for bad faith; against Ms. Johnson for malpractice and failure to procure flood insurance; and against both of them for gross negligence, misrepresentation, and negligent and intentional infliction of emotional distress. [RE, 22-28; R, Vol. 1, 11-17]. Ms. Johnson filed a *Motion to Dismiss Pursuant to Rule 12 and Alternatively Motion For Change of Venue and Severance.* [RE, 65-84; R, Vol. 1, 20-54]. The motion to change venue sought to transfer the lawsuit to Madison County, the county where Ms. Johnson has resided since January 2003. [RE, 65-66, 80; R, Vol. 1, 20-21, 27-35]. State Farm filed an answer in which it also objected to venue, and subsequently joined in Ms. Johnson's motion to change venue. [RE, 85-94; R, Vol. 1, 102-111].

After all three Jackson County Circuit Court Judges and a Special Judge recused themselves, this Court appointed the Honorable Edward C. Prisock as Special Judge to hear this case. [RE, 96, 15, 118; R, Vol. 2, 117, 167; R, Vol. 3, 16]. Judge Prisock held an evidentiary hearing on the motion to change venue on September 29, 2006. [RE, 8; R, Vol. 2, 160]. Ms. Johnson and State Farm argued that section 11-11-3 of the Mississippi Code, as amended effective September 1, 2004, mandated that any suit against Ms. Johnson be brought only where she resides, i.e., Madison County. [RE, 111-117 ; R, Vol. 3, 6-12]. The Hedgepeths argued that section 11-11-3 allowed them to sue Ms. Johnson in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred, which they claimed included Jackson County. [RE, 122; R, Vol. 3, 66].

On November 7, 2006, Judge Prisock issued Findings of Fact and Conclusions of Law in favor of Ms. Johnson and State Farm. [RE, 8-15; R, Vol. 2, 160-167]. He concluded that "the legislature did not intend, nor does the statute show that the legislature ever intended to create a situation were [sic] a resident defendant would be deprived of his right to be sued in the county of his residence . . . ." [RE, 15; R, Vol. 2, 167]. He concluded, therefore, "that venue does not lie in Jackson County, Mississippi, but in the county of residence of the defendant [Johnson]." *Id.* [RE, 15; R, Vol. 2, 167]. The court did not order the immediate transfer of the case, however, opting instead to remand it for further proof "establishing the residence of the defendant Johnson" and "any other issues concerning the transfer to the proper venue." *Id.* [RE, 15; R, Vol. 2, 167].

On November 20, 2006, the Hedgepeths filed with this Court a *Combined Petition and Brief for Interlocutory Appeal.* This Court granted the petition on December 20, 2006, and this appeal followed. [R. Vol. 2, 177-178]. In the meantime, the trial court ordered venue transferred to Madison County, but stayed the transfer and any further proceedings in the lower court pending the outcome of this appeal. [R. Vol. 2, 168-170].

2. Statement of the Facts

In June 2004, Reverend Hedgepeth was re-assigned from Vicksburg, Mississippi, to the St. Paul United Methodist Church in Ocean Springs, Jackson, County, Mississippi. [RE, 18; R, Vol. 1, 7]. Prior to moving, the Hedgepeths contacted their State Farm agent, Ms. Johnson, to obtain renters insurance for their personal belongings in their new home in the parsonage of the church in Ocean Springs. [RE, 18-19; R, Vol. 1, 7-8]. Ms. Johnson's office was and is located in Jackson, Mississippi and she resides in Madison County.[1] [RE, 82; R, Vol. 1, 37]. State Farm's principal place of business in Mississippi is in Madison County. [RE, 66; R, Vol. 1, 21].

The Hedgepeths allege that they asked Ms. Johnson prior to their move whether flood insurance was available for the home they were renting. [RE, 19; R, Vol. 1, 8]. According to the Hedgepeths, Ms. Johnson told them that flood insurance was not available because they did not own their home. [RE, 19-20; R, Vol. 1, 8-9]. The Hedgepeths further allege that Ms. Johnson repeated this statement in a telephone call on September 13, 2004. [RE, 19; R, Vol. 1, 8]. All of these conversations occurred over the

[1] Since May 1, 2004, Ms. Johnson's office address has been and continues to be 1855 Lakeland Drive, Suite A-20, Jackson, Mississippi 39232. [RE , 82; R. Vol. 1, 37]. A dispute arose in the trial court as to whether Ms. Johnson's office is located in Rankin or Hinds County. The trial court did not address the issue, however, and it is not currently before this Court.

phone while Ms. Johnson was in a county other than Jackson County. [RE, 83; R, Vol. 1, 38].

The Hedgepeths obtained renters insurance but did not obtain flood insurance for their personal property in the parsonage. [RE, 67; R, Vol. 1, 22]. On August 29, 2005, Hurricane Katrina struck the Mississippi Gulf Coast and flooded the first floor of the Hedgepeth's home. [RE, 19-21; R, Vol. 1, 8-10]. Many of the Hedgepeths personal belongings were destroyed. [RE, 20; R, Vol. 1, 9].

Prior to the hurricane, the Hedgepeths had evacuated to Jackson, Mississippi. [RE, 19; R, Vol. 1, 8]. On their way back to Ocean Springs, they allege that they called Ms. Johnson to notify State Farm that their home had been damaged. [RE, 19-20; R, Vol. 1, 8-9]. After returning home, the Hedgepeths allege that they had a further telephone conversation with Ms. Johnson in connection with making a claim under their renters insurance policy. [RE, 20; R, Vol. 1, 9]. These conversations occurred over the telephone while Ms. Johnson was in a county other than Jackson County. [RE, 83; R, Vol. 1, 38].

The Hedgepeths allege that a State Farm adjuster came to their home on or about September 11, 2005, and notified them that they did not have coverage for flood and their claim would be denied. [RE, 21; R, Vol. 1, 10]. They allege that Mrs. Hedgepeth then traveled to Jackson, Mississippi and met with Ms. Johnson where they discussed the handling of the Hedgepeths' claim. [RE, 21; R, Vol. 1,10]. The Hedgepeths allege that on October 23, 2005, another State Farm adjuster arrived to inspect their home and told them that they were not covered. [RE, 21-22; R, Vol. 1, 10-11]. Following this adjuster's visit, the Hedgepeths allege that they called Ms. Johnson, who was again not

located in Jackson County, to discuss the handling of their claim. [RE, 22, 83; R, Vol. 1, 11 38].

Finally, the Hedgepeths allege that a week later Ms. Johnson came to their home in Ocean Springs with another State Farm employee, David Haddock, to inspect their loss. [RE, 22; R, Vol. 1, 11]. State Farm subsequently denied their claim. [RE, 22; R, Vol. 1, 11].

B. SUMMARY OF THE ARGUMENT

As part of its continued effort to carry out tort reform, the Mississippi Legislature amended the venue statute in 2004 to further narrow the permissible counties in which venue is proper. Under the current version of the statute, a resident defendant, such as Melody Johnson, may only be sued in the county of her residence. Under the plain language of the venue statute, Minn. Code Ann. § 11-11-3(1)(a)(i), civil actions of the circuit court "shall be commenced in the county where the resident resides."

Corporations are subject to different rules—a corporation may be sued in the county of its principal place of business or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred. However, if an individual resident defendant is sued in the same action as a defendant corporation, the county of that individual defendant's residence takes precedence. Venue in this action is proper in Madison County, the county where Ms. Johnson resides.

C. ARGUMENT

1. The Trial Court Correctly Concluded That The New Version Of The Venue Statute For Actions In Circuit Courts Mandated That Suit Against Ms. Johnson Be Brought In Madison County.

a. The Evolution Of The Current Venue Statute Shows That The Legislature Intended To Limit Suits Against Residents To The County Of Their Residence.

The current venue statute for actions in circuit courts – section 11-11-3 of the Mississippi Code – was amended twice in recent years in connection with legislative and political efforts to achieve tort reform and improve civil justice in Mississippi. *See* Mark A. Behrens & Cary Silverman, *Now Open For Business: The Transformation of Mississippi's Legal Climate*, 24 Miss. C. L. Rev. 393, 415 (Spring 2005). The impetus for the change grew out of Mississippi's reputation as an unfavorable forum for civil defendants—resulting in part from the state's permissive joinder rule and a liberal venue rule. Behrens, 24 Miss. C. L. Rev. at 395.[2] Understanding the current statute, then, requires a review of the changes that were made recently to accomplish the legislature's goals.

Prior to January 1, 2003, the general venue statute provided as follows:

> Civil actions of which the circuit court has original jurisdiction shall be commenced in the county in which the defendant or any of them *may be found* or in the county where the cause of action *may occur or accrue* and, if the defendant is a domestic corporation, in the county in which said corporation is domiciled or in the county where the cause of action may occur or accrue.
>
> Miss. Code Ann., § 11-11-3 (2002) (emphasis added).

Moreover, there was a separate venue statute concerning insurance companies that provided in pertinent part as follows:

> .... In case of a foreign corporation or company, such actions *may* be brought in the county where service of process may be had on an agent of such corporation or company or service of process in any suit or action, or any other legal process, may be served upon the insurance commissioner of the state of Mississippi, and such notice will confer jurisdiction on any court in any county in the state where

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[2] In fact, the Fifth Circuit called the Mississippi state courts "a mecca for plaintiffs' claims against out-of-state businesses." *Arnold v. State Farm Fire & Casualty Co.*, 277 F. 3d 772, 774 (5th Cir. 2001).

the suit is filed, provided the suit is brought in the county where the loss occurred, *or in the county in which the plaintiff resides.*

Miss. Code Ann., § 11-11-7 (2002) (emphasis added).

Beginning on January 1, 2003, the venue statute was amended as follows:

Civil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides or in the county where the alleged act or omission occurred or where the event that caused the injury occurred. Civil actions against a nonresident may also be commenced in the county where the Plaintiff resides or is domiciled.

Miss.Code Ann. § 11-11-3, as amended by 2002 Miss. Laws, 3rd Ex.Sess., ch. 4, § 1, effective January 1, 2003.

In addition, the special venue statute for insurance companies – section 11-11-7 – was abolished. *See* 2002 Miss. Laws, 3rd Ex.Sess., ch.4, § 2, eff. Jan. 1, 2003.

Beginning on September 1, 2004, the venue statute was amended again to provide as follows:

Civil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides, or, *if a corporation,* in the county of its principal place of business, or in the county where a *substantial* alleged act or omission occurred or where a *substantial* event that caused the injury occurred.

Miss. Code. Ann. § 11-11-3(1)(a)(1) (emphasis added). The 2004 amendments also added a provision defining corporate residence as "the county of its principal place of business." House Bill No. 13, First Extraordinary Session § 1 (2004).

To summarize, the amendments to the venue statutes in 2003 and 2004 made the following changes that are important here:[3]

- Eliminated the reference to "where any" defendant might be found, plainly requiring venue to be established as to each individual defendant.

[3] A side-by-side comparison of the text of the three versions of the venue statute is provided at Appendix A.

- Deleted reference to where a defendant might be "found," e.g., any location where a defendant might happen to be, however temporary, and replaced it with reference to the defendant's "residence."
- Deleted reference to where a cause of action might occur or accrue, and replaced it with where the alleged act or omission occurred or where the event that caused the injury occurred. Under the 2004 amendments, the concept of "substantiality" was added.
- Under the 2002 amendments, eliminated special venue rules for corporations generally, but in 2004 re-introduced the language "if a corporation." This language had the effect of distinguishing venue for individuals from venue for corporations.

This Court has held that "'when called upon to apply statutes to specific factual situations, we apply the statutes literally according to their plain meaning.' *Brown v. Hartford Insurance Co.*, 606 So.2d 122, 124 (Miss. 1992). Further, we attempt to give a statute 'that reading which best fits the legislative language and is most consistent with the best statement of policies and principles justifying that language.' *Gentry v. Wallace,* 606 So.2d 1117, 1122 (Miss. 1992); *Warren County v. Culkin,* 497 So.2d 433, 436 (Miss. 1986). *See also Marx v. Broom,* 632 So.2d 1315, 1318 (Miss. 1994)." *Jones v. Mississippi Employment Sec. Comm'n,* 648 So.2d 1138, 1142-43 (Miss. 1995).

The plain meaning of the new venue provisions requires that the Hedgepeths suit be brought in the county of Ms. Johnson's residence, Madison County. In addition, reading all of the legislature's changes as a whole and in light of the legislature's purpose to carry out tort reform, the 2004 version of the venue statute narrowed the permissible

counties in which venue is proper, providing that a resident defendant must be sued in his or her county of residence and that a *corporation* may be sued "in the county of its principal place of business or in the county where a 'substantial alleged act or omission occurred or where a substantial event that caused the injury occurred.'" As revised, venue was no longer proper for a resident defendant in a county other than his or her county of residence. Corporations were subject to different venue rules.

The Hedgepeths' interpretation of the venue statute is based on a formulistic interpretation of sentence structure, completely ignoring the political atmosphere in which the Legislature was operating.[4] Statutes are not interpreted in isolation. Rather, they are to be interpreted in light of an assumed purpose. As stated in Karl N. Llewellyn's, *Remarks on the Theory of Appellate Decision and the Rules Or Canons About How Statutes Are To Be Construed,* 3 Vanderbilt Law Review 395 (1950), and relied upon by the Plaintiffs: "If a statute is to make sense, it must be read in the light of some assumed purpose. A statute merely declaring a rule, with no purpose or objective, is nonsense." Llewellyn, 3 Vanderbilt Law Review at 400. [RE, 129, 119-120; R, Vol. 2, 136; R, Vol. 3, 23-24; Appellant Brief, 8-9]. The Hedgepeths' expert witness, Mrs. Mohler, admitted at the evidentiary hearing that she considered the 2004 version of the statute in isolation, did not compare the 2004 version of the statute with earlier versions of the venue statute, and had no opinions about the history and progression of the version of the statute she was interpreting. [RE, 22, 83; R, Vol. 3, 119].

[4] Similarly, Mississippi Trial Lawyers Association's argument that the meaning of the venue statute turns on the difference of the terms "or" and "and," is a "rigorous and forced application of the rules of grammatical construction" that completely ignores the political climate and the intent of the legislature. [*See* Amicus Brief, 3-5; *see* RE, 14; R, Vol. 2, 166].

According to the Trial Judge, the method of interpretation promoted by the plaintiffs was "a rigorous and forced application of the rules of grammatical construction." [RE, 14; R, Vol. 2, 166]. The Trial Judge explained that construing statutes based on punctuation and grammatical construction "can often lead to absurd results when considered outside a contextual framework." *Id.* Ms. Johnson submits that the Hedgepeth's interpretation would produce such results.

b. The Plain Meaning Of The Venue Statute, Which Limits Suit Against Ms. Johnson To Madison County, Is Consistent With Prior Decisions Of This Court Interpreting Earlier Venue Statutes

This Court has repeatedly affirmed that a resident defendant has a right to be sued in his or her own county of residence. *See Dunn v. Dunn,* 577 So. 2d 378, 300 (Miss. 1991) (when venue issues are raised in the trial courts, a defendant sued alone *in personam* "shall be sued in the county of his residence."); *Baptist Memorial Hospital-DeSoto Inc. v. Bailey,* 919 So. 2d 1, 3; (¶ 9) (Miss. 2005) ("The venue statutes which control this case were never designed to remove a resident defendant's right to be sued in his or her own county of residence.") (referring to Miss. Code Ann. §§ 11-11-3 (2002); 11-11-7). Plaintiff's interpretation of the new venue statute would make this right meaningless; and this Court has avoided interpreting venue in a way that would eviscerate this right, even if a venue statute might literally appear to do so.

For example, the general venue statute at issue in *Dunn* provided that suit could be brought in "any county where the defendant . . . may reside or be found." 577 So. 2d at 379. The defendant was sued in Hinds County Chancery Court. He was served in Hinds County, where he was living temporarily. Defendant objected to venue and filed a motion to change venue to the county in which he claimed he resided, Rankin County.

The Chancery Court denied his motion, but this Court reversed. The Supreme Court conceded that the defendant was "found" in Hinds County. Thus, a literal application of the venue statute would suggest that venue was proper. The Court rejected this formulistic approach, however. The Court's policy was that "a defendant sued alone *in personam* shall be sued in the county of his residence." *Id.* at 380. The Court held that the "or may be found" language applied "only to non-residents of the state, and to those who have no fixed place of residence in the state." *Id.* In short, this Court rejected a grammarian's application of the statute (as the Hedgepeths urge here) in favor of an interpretation that accorded more accurately with the Court's policies and the legislature's intent. *Cf. Rose v. Bologna*, 942 So. 2d 1287 (¶9) (Miss. 2006) (literal terms of section 11-11-3(3) regarding venue in medical malpractice actions do not apply to wrongful death actions governed by 11-7-13).

Under prior versions of the venue statute, venue was proper "in the county where the cause of action may occur or accrue"; or, under the 2003 version, "in the county where the alleged act or omission occurred or where the event that caused the injury occurred." Miss. Code Ann. 11-11-3 (2001), (2002). In *American Home Products Corporation v. Sumlin,* 942 So. 2d 766, 771 (¶ 15) (Miss. 2006), the Court applied the pre-2003 version of the statute and, without addressing where the resident defendant resided, ruled venue was proper where the alleged injury occurred or accrued. In *Baptist Memorial Hospital-Desoto Inc. v. Bailey,* 919 So. 2d 1 (¶ 12) (Miss. 2005), the Court held that venue was proper in DeSoto County—the county of the defendant corporation's principal place of business and the county in which the defendant received the alleged negligent care and treatment. The Court in *Namihira v. Bailey,* 891 So. 2d 831, 832 (¶6)

(Miss. 2005), applied the pre-2003 version of the statute, and without considering where the cause of action accrued or occurred, held: "Warren County is the only county in Mississippi in which a defendant resides. If that was true at the time the suit was originally filed, the suit should have been filed in Warren County."

In *Capital City Insurance Company v. G.B. "Boots" Smith Corporation,* 889 So. 2d 505 (¶ 38) (Miss. 2004), the Court interpreted the pre-2003 version of the statute and held that venue was proper in either the defendant's county of residence or in the county where the cause of action occurred. The Court noted, however, that if the action had been filed under the 2004 version of the statute, the lawsuit would yield a different venue result. *Id.* at 513, n. 4. Plainly, the result under the 2004 version of the statute in *"Boots" Smith* would have mandated that the action be brought in the defendant's county of residence.

None of these prior cases are directly on point because this Court is now interpreting the 2004 statute, a statute which the Legislature narrowed in order to protect a resident defendant's right to be sued in his or her home county. The Legislature has made it clear that subject to certain exclusions not relevant here, a resident defendant, other than a corporation, shall be sued in his or her county of residence, regardless of the other defendants that have been joined.[5]

c. Case Law And Legislative Intent Supports Defendant's Interpretation of The Statute

[5] It was the legislature's intent to protect an individual defendant's right to be sued in his or her county of residence, even if severance of the multiple claims against multiple individual defendants is required. This is not, however, an issue before this Court because the litigation at hand does not involve multiple individual resident defendants who live in different counties; this litigation only involves one individual resident defendant—Melody Johnson, a resident of Madison County.

As noted by the plaintiffs and the trial court in its Order, *Capital City Insurance Company v. G.B. "Boots" Smith,* 889 So. 2d 505 (Miss. 2004); *Snyder v. Logan,* 905 So. 2d 531 (Miss. 2005); and *Baptist Memorial Hospital-DeSoto, Inc. v. Bailey,* 919 So. 2d 1 (2005), were all interpreting the venue statute, Miss. Code Ann. § 11-11-3, in the context of whether venue was proper in a *plaintiff's* county of residence when one of the defendants was a resident of Mississippi and the other defendant was a non-resident. This Court ruled in all three cases that where there is a resident defendant, the general venue statute shall apply and when there is no resident defendant, other options are available such as commencing the suit in the plaintiff's county of residence.

Contrary to the Plaintiffs' argument, the reasoning and holdings in these cases are not limited to situations in which a plaintiff is attempting to sue a resident defendant in the plaintiff's county of residence simply because a non-resident defendant is joined. The Trial Judge recognized that *Boots Smith* and *Snyder* were decided when the Miss. Code Ann. § 11-11-7, the venue statute for insurance companies, was still in effect.[6] [RE, 15; R. Vol. 2, 167]. However, according to the Trial Judge, the cases were helpful in interpreting the 2004 statute. The Trial Judge recognized that what was most important in the Court's rulings in those cases was whether there was a resident defendant. If so, then venue should be based on the county of residence of the resident defendant.

Plaintiffs argue that the Legislature's use of the word "only" in section 11-11-3(3) implies that the plaintiffs have multiple venue options for suits against resident defendants. [Appellant Brief, 13]. Section 11-11-3(3) applies only to cases, such as

[6] In 2002, the Legislature repealed the insurance venue statute, § 11-11-7 and § 11-11-5, the relating to venue of actions against transportation or communications companies venue statue, and made the general venue statute applicable to almost all actions.

malpractice and negligence cases, brought against members of the health professions and other legal entities. The statute provides:

> (3) Notwithstanding subsection (1) of this section, any action against a licensed physician, osteopath, dentist, nurse, nurse-practitioner, physician assistant, psychologist, pharmacist, podiatrist, optometrist, chiropractor, institution for the aged or infirm, hospital or licensed pharmacy, including any legal entity which may be liable for their acts or omissions, for malpractice, negligence, error, omission, mistake, breach of standard of care or the unauthorized rendering of professional services shall be brought only in the county in which the alleged act or omission occurred.

This special venue statute does nothing more than (1) require that suits against resident health professional defendants be brought "in the county in which the alleged act or omission occurred" instead of in their county of residence and (2) require that suits against corporations be brought "only in the county in which the alleged act or omission occurred" instead of, as an alternative, the county of their principal place of business or the county in which a substantial event causing the loss occurred. There is nothing about section 11-11-3(3) that mandates the interpretation of section 11-11-3(1) that Plaintiffs espouse.

The Plaintiffs also cite *The Park on Lakeland Drive, Inc. v. Spence,* 941 So. 2d 203, 207 (¶ 8) (Miss. 2006), for the proposition that the "'venue is good for one is good for all rule' is still alive and well." [Appellant Brief , 14]. *Spence* is distinguishable. The Court merely held that when the defendant upon whom venue was validly based at the outset of the case is subsequently dismissed, venue as to the remaining defendants continues even though venue would have been improper if the original action had named them only. *The Park on Lakeland Drive, Inc,* 941 So. 2d at 207 (¶ 8). This does not mean, as the Plaintiffs assert, that wherever venue is proper for State Farm, it is proper for all defendants. Further, the Court in *Spence* was applying the 2002 version of the

statute, not the 2004 version.[7] As this Court has expressed "venue is a valuable right to the defendant as well [as to the plaintiff] and timely objections to improper venue must be honored." *The Park on Lakeland Drive, Inc.*, 941 So. 2d at 207 (¶ 10). Thus, *Spence* does not mandate the result Plaintiffs urge here.

2. Even If The Court Disagrees With The Defendant's Interpretation Of Miss. Code Ann. § 11-11-3, Venue Is Not Proper In Jackson County

The Trial Court did not specifically address whether venue would be proper in Jackson County even if the Hedgepeths' interpretation of the statute were adopted. Ms. Johnson asserts, however, that the facts in this case do not support the conclusion that a "substantial" alleged act or omission occurred in Jackson County or that a "substantial" event that caused the injury occurred in Jackson County. This Court may affirm the Trial Court's order on this alternative basis. *See, e.g., Pass Termite and Pest Control, Inc. v. Walker*, 904 So.2d 1030 (¶6) (Miss. 2004) ("While the circuit court based its decision . . . on reasons different from ours, we may on appeal affirm the decision of the trial court where the right result is reached, even though we may disagree with the trial court's reasons for reaching that result.").

This is an action in which the Plaintiffs' allege, first, that Ms. Johnson failed to obtain a policy of flood insurance for them. But not one of the alleged acts or omissions

[7] In its 2004 amendment to the venue statute, the legislature intended to narrow the permissible counties in which venue is proper. If the plaintiffs' arguments and the Mississippi Trial Lawyers Association's arguments are correct, then the legislature made no significant changes in its 2004 amendment. [*See* Appendix A, attached, which provides a side-by-side comparison of the text of the three versions of the venue statute]. The venue statute did change significantly—beginning September 1, 2004, civil actions in a Mississippi circuit court against a resident defendant, *shall be commenced where the defendant resides.*

by Ms. Johnson that forms the basis for this claim occurred in Jackson County.[8] In *Medical Assurance Company of Mississippi v. Myers,* 956 So. 2d 213 (¶¶ 15, 21) (Miss. 2007), the Court applied the current venue statute in an analogous situation and found that Plaintiff's choice of venue was improper. There, the plaintiff doctor sued his medical malpractice insurer in Holmes County for failing to renew his insurance policy. Plaintiff alleged that in Holmes County he completed his application for insurance, mailed premium payments, communicated with the insurer by mail and telephone, and received his policy, notice of non-renewal and other documents. His insurer, however, was located in Madison County, and all its alleged acts or omissions occurred there. Consequently, the Court concluded that venue was improper in Holmes County and the case should have been transferred to Madison County. Similarly, here, all of Ms. Johnson's alleged acts and omissions relating to the Hedgepeths' failure to obtain flood insurance occurred outside of Jackson County and cannot form the basis for venue in Jackson County.

Plaintiffs also make claims against Ms. Johnson for statements she allegedly made after Hurricane Katrina. [Appellant Brief, 3-6]. Again, all but one of these acts, even if they were actionable, occurred outside of Jackson County. Plaintiffs' go to great lengths to allege that Ms. Johnson visited their home on one occasion several months after the hurricane, and to allege that she said things upon which they base their claims. [Appellant Brief, 11]. These allegations merely piggy-back on allegations of the same

[8] Contrary to the argument of the Mississippi Trial Lawyers Association, the forum non conveniens factors contained in § 11-11-3(4)(a), are necessary even though a resident defendant *shall* be sued only in the county of his or her residence. [Amicus Brief, 6]. The legislature made clear in the 2004 version of the statute that there are two instances where venue is proper in only one county: (1) if a resident defendant, the county in which he or she resides; and (2) if one of the health practitioners or institutions listed in 11-11-3(3), then only in the county in which the alleged act or omission occurred. In all other circumstances, venue may be proper in more than one county.

type that occurred before the visit and can not form a separate, discrete basis for liability. *Myers, supra,* specifically instructed that the venue statute "does not allow the 'piling' of acts or events to establish venue," 956 So.2d 213 (¶ 26), and Plaintiffs' effort to pile on here should be rejected. Likewise, these alleged allegations are not substantial enough to allow for venue in Jackson County. *Myers, supra,* 956 So. 2d 213 (¶ 26) (the place where plaintiff "experienced" being uninsured was not alleged substantial act, omission or injury-causing event); *American Home Products Corp. v. Sumlin,* 942 So.2d 766 (¶ 14) (Miss. 2006) (place where plaintiff's injuries were revealed through an echocardiogram and where she experienced emotional distress and psychological injuries not substantial enough to establish venue in any particular county).

Lastly, Hurricane Katrina is not an injury-causing event that allows for venue in Jackson County. Although the hurricane was an enormous meteorological event, for the present case its legal consequence is no different than if the Hedgepeths had experienced a broken water pipe: the damage caused was merely the *result* of substantial acts or omissions that occurred outside of Jackson County. *Myers, supra,* 956 So.2d 213 (¶ 25) (plaintiff's claims that he was left uninsured in Holmes County was the *result* of substantial acts, omissions or injury-causing events that occurred outside of the county; venue improper).

In sum, even if the Court were to accept the Hedgepeths' interpretation of 11-11-3(1), the result in the trial court would have been no different. There are no facts that allow for venue in Jackson County.

D. CONCLUSION

This case presents an issue of first impression. The Trial Court correctly interpreted the amendments to the venue statute for actions in circuit court to mandate that venue be in the county of Ms. Johnson's residence. Even if the amendments allow Plaintiffs the option to sue a resident defendant outside her county of residence, the facts in this case do not support the conclusion that there were acts, omissions or injury-causing events in Jackson County that support venue there.

WHEREFORE, PREMISES CONSIDERED, the Defendants respectfully request this Honorable Court to affirm the order of the Trial Court.

RESPECTFULLY SUBMITTED, this 25th day of July, 2007.

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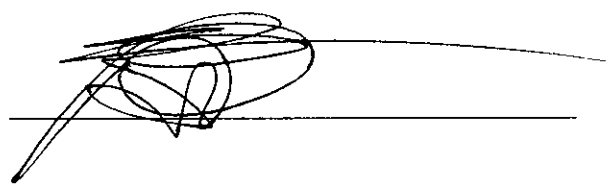
By: 

APPENDIX A

The table below provides a side-by-side comparison of the different versions of the venue statute. As evident when comparing the 2003 and 2004 venue statutes, the only significant change other than the elimination of the "good for one, good for all rule" is the requirement that a resident defendant, other than a corporation, ***shall*** be sued in the county where the defendant resides. The plaintiffs' interpretation of the 2004 statute would result in there being no significant change between the 2003 and 2004 versions.

Pre-2003 Version	**2003 Version (Effective January 1, 2003)**	**2004 Version (Effective September 1, 2004)**
"Civil actions of which the circuit court has original jurisdiction	"(1) Civil action of which the circuit court has original jurisdiction	"(1)(a)(i) Civil actions of which the circuit court has original jurisdiction
shall be commenced in the county in which the defendant *or any of them may be found* or in the county where the *cause of action may occur or accrue* **and,**	**shall** be commenced in the county where the defendant *resides* or in the county where the *alleged act or omission occurred or where the event that caused the injury occurred.*"	**shall** be commenced in the county where the *defendant resides,* **or,**
if the defendant is a domestic corporation, in the county in which said corporation is domiciled or in the county where the cause of action may occur or accrue, ..."	["where the defendant *resides* or in the county where the *alleged act or omission occurred or where the event that caused the injury occurred.*"] [This portion of the statute also applied to corporations under the 2002 statute and, therefore, is repeated here for purposes of illustration].	*if a corporation*, in the county of its principal place of business, or in the county where a *substantial alleged act or omission occurred or where a substantial event that caused the injury occurred.*"

Pre-2003 Version	2003 Version (Effective January 1, 2003)	2004 Version (Effective September 1, 2004)
		"(1)(b) If venue in a civil action against a *nonresident* defendant cannot be asserted under paragraph (a) of the subsection (1), a civil action against a *nonresident may* be commenced in the county where the plaintiff resides or is domiciled." [This section of the statute follows (1)(a)(ii) quoted below.]
	"Civil actions against a *nonresident may also* be commenced in the county where the plaintiff resides or is domiciled."	
	"Civil actions alleging a *defective product may also* be commenced in the county where the plaintiff obtained the product."	"(1)(a)(ii) Civil actions alleging a *defective product may also* be commenced in the county where the plaintiff obtained the product."
	[Sections 11-11-5, 11-11-7, 11-11-11; and 11-11-13, Mississippi Code of 1972, which provided venue in actions against nonresidents, nonresident motorists, railroads, and insurance companies, were repealed].	
		"(2) In any civil action where more than one (1) plaintiff is joined, each plaintiff shall independently establish proper venue; it is not sufficient that venue is proper for any other plaintiff joined in the civil action." [Eliminating the "good for one good for all" rule].

Pre-2003 Version	2003 Version (Effective January 1, 2003)	2004 Version (Effective September 1, 2004)
	"(2) Any action against a licensed physician, osteopath, dentist, nurse, nurse practitioner, physician assistant, psychologist, pharmacist, podiatrist, optometrist, chiropractor, institution for the aged or infirm, hospital or licensed pharmacy, including any legal entity which may be liable for their acts or omissions, for malpractice, negligence, error, omission, mistake, breach of standard of care or the unauthorized rendering of professional services shall be brought in the county in which the alleged act or omission occurred."	"(3) Notwithstanding subsection (1) of this section, any action against a licensed physician, osteopath, dentist, nurse, nurse-practitioner, physician assistant, psychologist, pharmacist, podiatrist, optometrist, chiropractor, institution for the aged or infirm, hospital or licensed pharmacy, including any legal entity which may be liable for their acts or omissions, for malpractice, negligence, error, omission, mistake, breach of standard of care or the unauthorized rendering of professional services shall be brought *only* in the county in which the alleged act or omission occurred."