IN THE SUPREME COURT OF MISSISSIPPI
NO: 2007-CA-01762

RUBY LEE — APPELLANT

v.

MEMORIAL HOSPITAL AT GULFPORT — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF HARRISON COUNTY MISSISSIPPI
1st Judicial District
Cause No.: A2401-2006-394

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

COUNSEL FOR THE APPELLANT

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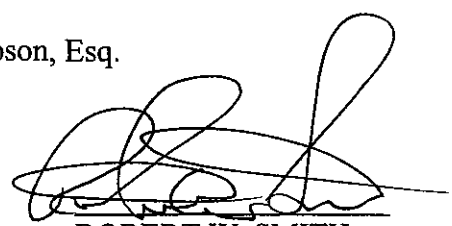
CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel certifies that the following persons or entities have an interest in the outcome of this case. These representations are made in order that justices of this court may evaluate possible disqualification or recusal.

1. Appellant, Ruby Lee
2. Appellee, Memorial Hospital at Gulfport and any entity which owns same
3. Honorable Lisa P. Dodson, Circuit Court Judge for Harrison County
4. Counsel for Appellant; Robert W. Smith, Esq.
5. Counsel for Appellee: Patricia M. Simpson, Esq.



ROBERT W. SMITH
Counsel for Appellant

ORAL ARGUMENT REQUESTED

This is a case of first impression. The precise and simple issue is whether the Defendant waives its statutory right of taking a full ninety days to conduct an investigation after receiving notice of claim under Miss. Code Ann. § 11-46-11 when it sends Claimant a claim denial letter before the ninety days expire. Appellant requests oral argument so the court will be precise in its understanding of the facts and to assist in formulation of a clear appellate opinion.

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1. Miss. Code Ann. (1972), Section 11-46-11 . . . . . .2, 4, 5, 7, 9, 12

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2. **Ballentine's Law Dictionary** 1356 (3d.ed. 1969) 8

STATEMENT OF THE ISSUES

I. DOES WRITTEN ACKNOWLEDGEMENT OF RECEIPT OF CLAIM NOTICE, INVESTIGATION OF THE CLAIM, AND DENIAL OF THE CLAIM WAIVE DEFENDANT'S RIGHT TO THE FULL NINETY DAYS INVESTIGATION PERIOD PROVIDED BY § 11-46-11?

II. DOES § 11-46-11(3) ALLOW FILING OF A COMPLAINT IN A STATE TORT CLAIM CASE PRIOR TO NINETY DAYS AFTER NOTICE IF DEFENDANT HAS ALREADY DENIED THE CLAIM?

III. DID THE TRIAL JUDGE COMMIT ERROR IN APPLYING STRICT COMPLIANCE STANDARD RATHER THAN SUSTANTIAL COMPLIANCE STANDARD TO THE FORM OF THE NOTICE FILED HEREIN?

STATEMENT OF THE CASE

A. NATURE OF THE CASE AND DISPOSITION BELOW

This civil action is an appeal from a summary judgment dismissal of a state tort claim due to alleged violation of the notice provisions of § 11-46-11, Miss. Code Ann. 1972. Plaintiff's position is that proper notice of the claim was in fact provided, and that a complaint may be filed anytime after notice of denial of the claim is received.

Plaintiff Ruby Lee provided a notice of claim to Memorial Hospital at Gulfport on July 26, 2006. The claim was sent via certified mail to the chief executive officer. Memorial Hospital at Gulfport acknowledged receipt of the notice, investigated the claim, and denied the claim thirty-three days later on August 28, 2006, also, via certified mail. Copy of the Plaintiff's notice and copy of the denial letter are attached to this brief as Exhibits A and B.

Plaintiff thereafter filed her Complaint on September 28, 2006. (Record Excerpts 4-5,(hereafter RE)) The Complaint alleged that Mrs. Lee was hospitalized at Memorial Hospital at Gulfport from July 25 to August 23, 2005, and that she had suffered multiple sternum fractures while under the exclusive care of Memorial Hospital at Gulfport's employees. The Complaint was based on *res ipsa loquitur* since Mrs. Lee was unsure of the exact date and etiology of the injury.

On November 17, 2006, Memorial Hospital at Gulfport filed its Answer setting forth some 23 affirmative defenses. (Clerk's Record 27-32(hereafter CR)) Affirmative Defense No. 17 was a general allegation that the "Plaintiff failed to provide proper notice pursuant to § 11-46-11, Miss. Code Ann. 1972." Defendant also filed a motion for summary judgment claiming service of process by mail of the Complaint was insufficient, that Plaintiff failed to wait a full 90 days after filing notice before filing the Complaint, and that the form of the notice was improper. (CR 8-26) Defendant acknowledged receiving the notice and denying the claim. Plaintiff

thereafter personally served the Defendant, eliminating Defendant's objection to lack of personal service. The motion for summary judgment was then heard solely on Defendant's objections to the form and timing of the pre-suit notice.

On February 16, 2007, Judge Lisa Dodson entered an order granting summary judgment. Judge Dodson ruled that a plaintiff must wait ninety days after notice to file suit even though a defendant has already denied the claim. She also ruled that Plaintiff's notice here would be held to a "strict compliance" standard, and was inadequate because it did not have Plaintiff's address and a demand for liquidated damages. (RE 6-15)

Plaintiff filed a motion to reconsider asserting that Defendant had waived the full ninety day investigation period by sending a notice of claim denial, and that substantial compliance, not strict compliance, is the appropriate standard to assess the substance and form of a notice. (CR 57-58)

Judge Dodson entered an order on September 17, 2007 denying the motion to reconsider. This appeal followed. (RE 16)

B. STATEMENT OF FACTS

There are no disputed facts. Mrs. Ruby Lee was hospitalized from July 25, 2005 to August 23, 2005 at Memorial Hospital at Gulfport. The hospitalization included a coronary arterial by-pass graft (CABG) performed on July 26, 2005. This procedure included closure of the chest wall by installation of a Robicsek wire. In the post-op period, Mrs. Lee's physician left town for a weekend. Upon his return, due to changes in his patient's condition, he ordered imaging studies of the chest. It was discovered that Mrs. Lee had multiple sternum fractures, devitalized cartilage, and the Robicsek wire reinforcement had completely pulled through the left sternum.

Mrs. Lee had a stormy course thereafter, including transfer to another state due to Hurricane Katrina. She has incurred medical expenses well into six figures. (Complaint, CR 6-7); (RE 4-5)

Mrs. Lee's family contacted legal counsel and proceedings were initiated on July 26, 2006 by a notice of claim letter being sent to Memorial Hospital at Gulfport's chief executive officer via certified mail. (Copy attached hereto as Exhibit A; RE 17-18)

Memorial Hospital at Gulfport acknowledges it received the claim, investigated the claim, and decided to deny the claim. A notice of claim denial was sent via certified mail to Mrs. Lee's counsel on August 28, 2006. (Exhibit B hereto; RE 19)

On September 28, 2006, approximately 62 days after sending notice of claim, and 30 days after receiving a claim denial, Mrs. Lee filed her Complaint. (CR 6-7)(RE 4-5) Having insufficient facts at the time upon which to base specific allegations of negligence, Mrs. Lee pled *res ipsa loquitur*. It was asserted that post operative CABG patients do not normally experience multiple sternum fractures and Robicsek wire being pulled out of the sternum absent some acts of negligence, and that her body was under the exclusive care and control of Defendant's employees when the injuries occurred. (Complaint, CR 6-7 at ¶¶ 6-7) (RE 4-5)

Defendant Memorial Hospital at Gulfport answered and simultaneously filed a motion for summary judgment alleging inadequacy of the form of the notice, and failure of Plaintiff to wait ninety days after filing of notice before filing the Complaint. (CR 8-26)

After hearing of oral arguments, Judge Dodson entered an order on February 13, 2007 granting summary judgment. (CR 47-53)(RE 6-15) Judge Dodson held that §11-46-11 requires a plaintiff to wait the full ninety days after serving a notice to file a complaint regardless of the fact that defendant has already denied the claim. She also ruled that the form of the notice would be

held to a strict compliance standard, and that the notice here was deficient because it failed to contain Plaintiff's address or a precise dollar amount of damages sought. (RE 6-15)

Plaintiff filed a request for rehearing which was denied. (CR 67) (RE 16)

SUMMARY OF THE ARGUMENT

The full ninety day investigation period provided by § 11-46-11, Miss. Code Ann. is waived by a defendant receiving a notice of claim, investigating the claim and issuing a written denial of claim. 28 Am Jur 2d, *Estoppel & Waiver* § 158; *Taranto Amusement v. Mitchell Assoc.*, 820 So.2d 726 (Miss. App. 2002); *University Medical Center v. Easterling,* 928 So.2d 815 (Miss. 2006); *South Cent. Regional Med. Center v. Guffy,* 930 So.2d 1252 (Miss. 2006).

The statutory notice is merely a means of informing a government entity of the existence of a claim which might give rise to a lawsuit in the future. The ninety day delay between the notice and the filing of the complaint is not a jurisdictional issue and may be waived. *Thornburg v. Magnolia Regional Health Center,* 741 So.2d 220 (Miss. 1990).

In addition to the common law of waiver and estoppel, the Mississippi statutory scheme for filing state tort claims act notices clearly contemplates that action may be taken once the claimant receives formal rejection. § 11-46-11(3) (notice of claim tolls statute of limitations "during which no action may be maintained by the claimant unless the claimant has received a notice of denial of claim.")

The court below erred in holding that the form of the notice requires strict compliance and that the death penalty is warranted for failure to include an address and exact monetary demand. *Carr v. Town of Shubuta,* 733 So.2d 261 (Miss. 1999); *Reaves ex rel Rouse v. Randall,* 729 So.2d 1237 (Miss. 1998); *South Cent. Regional Med. Center v. Guffy,* 930 So.2d 1252 (Miss. 2006).

STANDARD OF REVIEW

This court reviews errors of law, including the proper application of the Mississippi Tort Claims Act, *de novo*. *South Cent. Regional Med. Center v. Guffy, supra; Fairley v. George County,* 871 So.2d 713 (Miss. 2004).

The standard employed by this court in judging the adequacy of notice requires substantial compliance with the notice requirements of the Mississippi Tort Claims Act (MTCA). *South Cent. Regional Med. Center v. Guffy,* 930 So.2d 1252 (Miss. 2006).

ARGUMENT

I. DEFENDANT WAIVED ITS RIGHT TO TAKE A FULL NINETY DAYS TO INVESTIGATE A CLAIM UNDER THE MISSISSIPPI TORT CLAIMS ACT.

With all due respect, the learned trial judge below misread the pronouncements of this court in *University Medical Center v. Easterling,* 928 So.2d 815 (Miss. 2006) and *South Cent. Regional Med. Center v. Guffy,* 930 So.2d 1252 (Miss. 2006).

Both *Easterling* and *Guffy* dealt with a plaintiff having totally failed to file any notice whatsoever before filing his complaint. In *Guffy,* the plaintiff even failed to file a response to the motion to dismiss. Prior to *Easterling* and *Guffy,* this court's rulings had been that a failure to file notice simply meant that the case would be held in abeyance at the defendant's request for ninety days then would proceed. After *Guffy* and *Easterling,* the rule is now that the responsibility lies with the plaintiff, and that failure to serve notice prior to filing a complaint is fatal. If notice is served, the court still reviews the adequacy of the notice under a substantial compliance test. *South Cent. Regional Med. Center v. Guffy,* 930 So.2d 1252 (Miss. 2006). *See also Arceo v. Toliver,* 949 So.2d 691 at 703 (Miss. 2006) (This court has opted to require strict

compliance in the actual delivery of the pre-suit notice while still clinging to the substantial compliance standard when deciphering what the pre-suit notice under MTCA must contain. (Graves dissenting).

Both *Guffy* and *Easterling* are couched in terms that can be quite misleading when cut and pasted and applied to a case in which there actually was a notice. *Easterling* states that the ninety day notice provision § 11-46-11(1) is "a hard edged mandatory rule which the court strictly enforces." (*Easterling, supra* at 820) *Guffy* states the complaint was filed fifty-five days after the accident, and that it was therefore impossible to comply with the ninety day notice provision of the tort claims act. *Guffy, supra,* at 1254. *Guffy* also referenced *Easterling* and reiterated that strict compliance with the ninety day notice provision was now the law and a list of previous cases to the contrary were overruled. *Guffy, supra,* at 1257.

Neither *Guffy* nor *Easterling* addressed the issue before the court today. May a defendant waive the full ninety day investigation period provided in § 11-46-11 and elect to proceed by sending a written denial of claim to plaintiff? Clearly the answer is and should be, yes. It is simply nonsensical to require claimants who are injured and defendants who have investigated and denied a claim to wait further before initiating a law suit. The purpose served by the ninety day delay is to allow time for the government entity to investigate. By sending a denial, the defendant acknowledges it has investigated and waives the remaining portion of the statutory ninety day investigation period. Sending a denial letter is simply the equivalent of filing an answer before the thirty day deadline fixed by the Mississippi Rules of Civil Procedure.

Waiver presupposes a full knowledge of an existing right and an intentional surrender or relinquishment of that right. It contemplates something done designedly or knowingly, which modifies or changes existing rights. It is the voluntary surrender of a right. To establish a waiver, there must be shown an act or omission on the part of the one charged with the waiver

fairly evidencing an intention to surrender the right alleged to have been waived. 28 Am Jur 2d, *Estoppel & Waiver* § 158; *Taranto Amusement v. Mitchell Assoc.*, 820 So.2d 726 (Miss. App. 2002); *First Southwest Corp. v. Lampton,* 724 So.2d 988, 995 (¶36)(Miss. App. 2002); *Ewing v. Adams,* 573 So.2d 1364, 1369 (Miss. 1990), cite to, **Ballentine's Law Dictionary** 1356 (3d.ed. 1969).

The existence of a waiver is a factual determination to be made by the trial court. *Addison Const. v. Lauderdale County School,* 789 So.2d 771 (Miss. 2001).

Moreover, this court has already held that the issue of notice is not jurisdictional. In *Thornburg, v. Magnolia Regional Health Center,* 741 So.2d 220 (Miss. 1999) this court stated:

> The statutory notice required by the Tort Claims Act does not give rise to the same jurisdictional/due process concerns which arise for example, in the context of summonses mailed following the filing of a law suit. *See Hamm v. Hall,* 693 So.2d 906 (Miss. 1997). . . .
>
> The statutory notice is, instead, merely a means of informing a government entity of the existence of a claim which might give rise to a lawsuit in the future. Given that this issue is not a jurisdictional one, there is no valid reason why the sending of the notice by first class mail should result in dismissal.

Thornburg, supra, at ¶¶ 10-11 .

The defendant here clearly acknowledges that it received the notice, investigated the claim and chose not to wait the full 90 days to deny the claim and sent written notice of denial. There simply is no way to rationally conclude that defendant was reserving another fifty or sixty days to maybe change its mind.

It is important also to note that Defendant is not waiving its right to notice, it is waiving the ninety day investigation period. Even if this court were to hold contrary to *Thornburg* that "notice" is now somehow jurisdictional, the ninety day waiting/investigation period is by no means jurisdictional and may be waived.

II. THE STATUTORY SCHEME OF THE MISSISSIPPI TORT CLAIMS ACT ALLOWS FILING OF A COMPLAINT AFTER CLAIM DENIAL.

Quite separate and apart from the issue of waiver, the express provisions of the Mississippi Tort Claims Act also provides that a claimant may proceed once a denial is received. Section 11-46-11(3), Miss. Code Ann. states,

> (3) All actions brought under the provisions of this chapter shall be commenced within one (1) year next after the date of the . . . wrongful conduct . . . provided however that the filing of a notice of claim as required by subsection one (1) shall serve to toll the statute of limitations for a period of 95 days . . . during which time no action may be maintained by the claimant unless the claimant has received a notice of denial of claim.

Miss. Code Ann., Section 11-46-11(3) (emphasis added).

If we follow illogic, we can toll the statute of limitations by serving a notice of claim, "un-toll" the statute and start the statute running again by serving a notice of denial of claim, but still prohibit plaintiff from filing a complaint because the full ninety days from the date of notice has not yet occurred. *Alice in Wonderland* has nothing on such a statutory scheme.

If we are to have some semblance of logic and a statutory scheme which is rational, it only makes sense to read § 11-46-11(3), and § 11-46-11 (1) together. If the statute of limitations is running because defendant has issued a claim denial, does it not make common sense to allow the plaintiff to now file his complaint to stop the statute from running out?

We would respectfully urge the court to hold that as a matter of statutory construction, a plaintiff may file his/her complaint once he/she receives a claim denial, regardless of whether ninety days has passed since filing of the notice.

III. THE TRIAL JUDGE COMMITTED ERROR BY APPLYING A STRICT COMPLIANCE STANDARD TO FORM OF THE NOTICE.

In addition to requiring strict compliance with the ninety day waiting period regardless of claim denial, Judge Dodson further held that form of the notice would be held to a strict compliance standard. This ruling is in direct contravention of the previous opinions of this court. Quite simply put, *University Medical Center v. Easterling, supra,* and *South Cent. Regional Med. Center v. Guffy, supra,* did not abrogate the substantial compliance standard with regard to the form of a tort claim act notice. They did fix a firm rule that strict compliance would be required on filing of a pre-suit notice. A careful reading of *Guffy* is all that is required to confirm that substantial compliance has not been abolished. *See also, Arceo v. Toliver, supra,* at 703 (Graves dissenting).

Guffy was rendered on June 1, 2006, some two months after the *Easterling* decision of April 6, 2006. In *Guffy,* the court stated:

> The standard employed by this Court requires substantial compliance with the notice requirements of the MTCA. *McNair v. Univ. of Miss. Med. Ctr.,* 742 So.2d 1078, 1080 (Miss.1999); *Carr v. Town of Shubuta,* 733 So.2d 261 (Miss.1999); *see also Reaves ex rel. Rouse v. Randall,* 729 So.2d 1237, 1240 (Miss.1998) ("When the simple requirements of the Act have been substantially complied with, jurisdiction will attach for purposes of the Act.").

South Cent. Regional Med. Center v. Guffy, supra, at 1255 (¶7).

How then do we apply a substantial compliance standard to the notice provided here? The simple answer is that every alleged deficiency in the notice here has been previously held by this court to not be fatal and to have passed the substantial compliance standard.

See Carr v. Town of Shubuta, 733 So.2d 261 (Miss. 1999) (Notice was substantial compliance even without liquidated damage demand and having been sent to city clerk, not mayor.); *Reeves ex rel. Rouse v. Randall,* 729 So.2d 1237 (Miss. 1998) (Notice was substantial

compliance despite no specific damage demand, no statement of claimant's residency, and no identification of claimant's witnesses.) *McNair v. UMCMC,* 742 So.2d 1078 (Miss. 1999) (Notice was substantial compliance even though sent to hospital director rather than chief executive office, and even though sent by regular not certified mail.); *Powell v. City of Pascagoula,* 752 So.2d 999 (Miss. 1999) (Motorist failed to include her address and served notice on city clerk not mayor but still substantially complied.); *Thornburg v. Magnolia Regional Health Center,* 741 So.2d 220 (Miss. 1999)(Plaintiff substantially complied even though she failed to include her address, but did include her attorney's address.)

Applying these standards to the notice in the case sub judice, we find that the only things missing are the claimant's address at the time of the incident and at the time of the claim, and a sum certain dollar demand. Both of these inadequacies have been addressed by the cases cited above and this court has held that such notices even without this information substantially comply with the MTCA.

Of particular note, Mrs. Lee was a patient in Memorial Hospital at Gulfport when the incident occurred. The medical records are replete with her address, telephone number, social security number, Medicaid number and relatives' contact information. Mrs. Lee could have been, and was in fact, contacted through her attorney whose name and address were on the pre-suit notice. While a specific dollar demand was not included, the Defendant was told medical specials exceeded $100,000 and the damages described. As an aside, plaintiffs in medical malpractice cases are statutorily prohibited from putting a dollar demand in a complaint, but required to put a dollar demand in a tort claim notice. We do indeed live in a Byzantine world.

The trial judge here declined to apply the substantial compliance rule to the form of the notice and stated she would follow a strict compliance standard. This was clearly reversible

error. *Fairly v. George County,* 800 So.2d 1159 (Miss. 2001) (Reversal required because trial court followed strict compliance rather then substantial compliance standard.)

As stated in both *Easterling* and *Guffy,* strict compliance is required concerning pre-suit service of a notice. The court overruled a line of cases "only as to those cases' analysis of the ninety day notice requirement." *Easterling, supra,* at 810.

An additional consideration is that Mrs. Lee's Complaint asserts the doctrine of *res ipsa loquitur*. She was unconscious much of the time and could explain to no one the names of witnesses or who did what to her or exactly when it happened. The details of nurses' names and when the event happened are better known to the hospital than to Plaintiff. The adequacy of notice must be judged in light of the facts known to Plaintiff.

When judged by an appropriate standard, the notice served herein is sufficient and a death penalty is not warranted for omitting an address and an exact dollar demand.

CONCLUSION

Defendant Memorial Hospital at Gulfport was entitled to and received a pre-suit notice. After investigating, Memorial Hospital at Gulfport chose to deny the claim and sent a formal notice of denial, waiving its right to take a full ninety days for investigating the claim. Waiver means the complaint could be filed at any time.

Aside from waiver, Miss. Code Ann. § 11-46-11(3) expressly provides that "during which time [the tolling time] no action may be taken unless claimant has received a notice of claim." (Emphasis added) The word unless has to mean something. The logical statutory construction is that if one receives a claim denial, one may proceed to file a complaint.

Lastly, the notice here passes the same substantial compliance test that has been applied in previous cases. The court erred in applying strict compliance standard to the form of a notice.

We respectfully request the court's decision be reversed and that Mrs. Lee be allowed to proceed with her lawsuit..

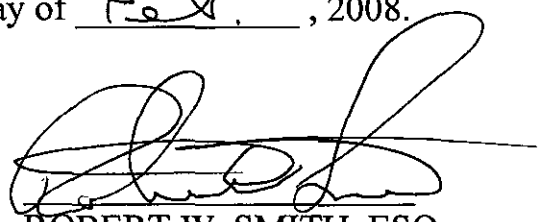
Respectfully submitted,

ROBERT W. SMITH, ESQ.

CERTIFICATE OF SERVICE

I, ROBERT W. SMITH, do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to Patricia Simpson, Esq., Post Office Drawer 460, Gulfport, MS 39502, and Honorable Lisa P. Dodson, Circuit Court Judge, P. O. Drawer 1461, Gulfport, MS 39502.

SO CERTIFIED, this the 27th day of Feb., 2008.



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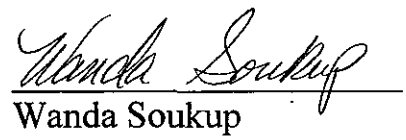
CERTIFICATE OF SERVICE
Pursuant to Mississippi Rules of Appellate Procedure Rule 25(a)

I, Wanda Soukup, do hereby certify that I have this day mailed in the United States Mail, first class, postage prepaid, a package containing the original and three (3) copies of the above and foregoing Appellant's Brief which was addressed to Betty Sephton, Clerk of the Supreme Court of Mississippi, P. O. Box 249, Jackson, MS 39205-0249

SO CERTIFIED, this the 27th day of February , 2008.



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PHONE (228) 818-5205
FAX (228) 818-5206

July 26, 2006

Mr. Gary Marchand, Administrator
Memorial Hospital at Gulfport
Post Office Box 1810
Gulfport, MS 39502

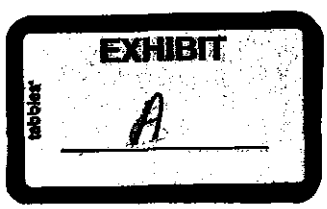
Re: Ruby Lee
DOB: 7/29/1936

Dear Mr. Marchand:

This letter is to provide notice pursuant to Mississippi law of the claim of Ruby Lee. Ms. Lee was hospitalized at Memorial Hospital at Gulfport from July 25, 2005 to on or about August 23, 2005. During the hospitalization she had a CABG with closure of the sternum by Robicsek wire on July 26, 2005. Her post-op care was rendered by multiple Memorial Hospital at Gulfport employees.

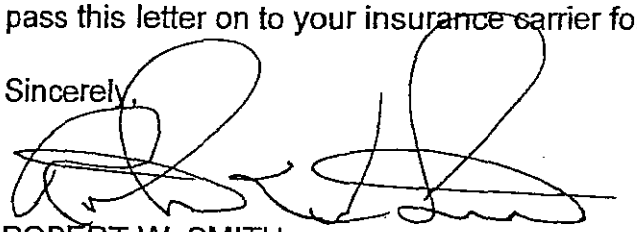
On or about August 8, 2005, due to her deteriorating condition, she was reexamined in the O.R. Findings in the August 8, 2005 surgery include multiple sternum fractures, devitalized cartilage and the Robicsek wire reinforcement had completely pulled through the left sternum. There was one fracture of the right manubrium, one fracture of the right sternal body and three fractures of the left sternal body. The post-operative course was stormy. Medical specials exceed $100,000.

Patients who are properly cared for do not have multiple sternum fractures and grossly dislocated wire reinforcement. Moreover, timely diagnosis of these findings would have lessened or prevented much of the difficulties experienced post-operatively. The substandard care rendered by Memorial Hospital at Gulfport employees proximately caused and/or was a proximate contributing cause of Ms. Lee's injuries.



Should you have an explanation as to why Memorial Hospital at Gulfport should not be held accountable for these injuries, please advise. If there is no explanation, please pass this letter on to your insurance carrier for response.

Sincerely,



ROBERT W. SMITH
RWS/ws

pc Ruby Lee

Memorial
Building a Healthier Community

August 28, 2006 CERTIFIED MAIL – RETURNED RECEIPT REQUESTED

Robert W. Smith
918 Porter Avenue
Ocean Springs, Mississippi 39564

Re: Ruby Lee

Dear Mr. Smith:

This will acknowledge and thank you for your letter dated July 26, 2006, regarding a potential claim arising out of Memorial Hospital at Gulfport on or about July 25, 2005, with regard to Ruby Lee.

Our review of the matter suggests that the facility did not deviate from the applicable Mississippi standard of care with regard to the facility or staff, and we must respectfully deny that Mrs. Lee has any claim against the facility at this time. Accordingly, the demand proffered in your letter we do not find well taken and we are taking this method to advise that this claim, as stated, is denied.

Thank you for your cooperation and attention herein.

Sincerely,

Gary G. Marchand
President and Chief Executive Officer

/lh

EXHIBIT
tabbies
B