

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO: 2008-M-1233-SCT

**ROGER COLLINS, M.D. AND
LEFLEUR FAMILY MEDICAL CLINIC**

DEFENDANTS/APPELLANTS

VS.

JEANNE HOLMES HICKS

PLAINTIFF/APPELLEE

BRIEF OF APPELLEE

INTERLOCUTORY APPEAL FILED BY DEFENDANTS/
APPELLANTS ROGER COLLINS, M.D., AND
LEFLEUR FAMILY MEDICAL CLINIC, FROM
THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT, CAUSE NO: 251-02-1171CIV

April 21, 2009

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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 justice of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Mrs. Jeanne Holmes Hicks (married to Mike Hicks), 1209 Deerfield Lane, Jackson, MS 39211;
Plaintiff/Appellee
2. Roger Collins, M.D., and LeFleur Family Medical Clinic, Jackson, MS;
Defendants/Appellants
3. Margaret P. Ellis, PLLC, P. O. Drawer 1268, Pascagoula, MS;
Attorney for Plaintiff/Appellee
4. Whitman B. Johnson, III. Kristi D. Kennedy; Lorraine W. Boykin;
CURRIE JOHNSON GRIFFIN GAINES & MYERS, P.A.
Attorneys for Defendants/Appellants
5. Honorable Winston L. Kidd
Hinds County Circuit Court Judge

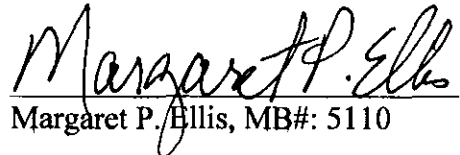

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**PLAINTIFF/APPELLEE'S BRIEF IN OPPOSITION TO
BRIEF FILED BY DEFENDANT/APPELLANTS
ROGER COLLINS, M.D. and LEFLEUR FAMILY MEDICAL CLINIC¹**

SUMMARY OF THE ARGUMENT

Defendants' argue that when Plaintiff filed her suit on September 6, 2002, that her statute of limitations had expired because she knew before August 25, 2000, that she was addicted to OxyContin® and her husband had already taken steps to help her through involuntary detoxification without medical assistance. This argument is based on Plaintiff's statement during deposition that she believed that she had gone through detoxification before her first visit with Dr. McGuire. (Defendants' Brief pp. 3, 7 & 8) However, in the same deposition, Plaintiff testified that she returned to Dr. Collins after her detoxification and that he refused to treat her. (Appendix A, R-102-103) Dr. Collins treated Plaintiff until November, 2000. The records indicate that Dr. Collins last prescribed OxyContin® on September 6, 2000, but that he continued to treat her thereafter with her last Hydrocodone prescription being November 5, 2000. Further, in Plaintiff's answers to interrogatories, number 8 (Appendix B, R-115,120,128) Plaintiff stated, under oath, as follows: "Plaintiff did not realize that she was addicted, however, her husband recognized that she was addicted when she finally could not get out of bed without taking this medicine. **This was sometime after Defendant last prescribed OxyContin®².**"(Emphasis supplied) (Appendix B)

¹Complaint was filed against Collins, LeFleur, Walgreens, and Purdue, et al. Motions for summary judgment were denied to all Defendants. All Defendants filed for interlocutory appeals, and this Court denied interlocutory appeals to Walgreens and Purdue, et al, and those cases were remanded to the circuit court. Plaintiff has now settled her claims against these two Defendants.

²Which was September 6, 2000.

Respectfully, with this conflicting testimony, the trial court recognized that there existed a question of fact which needed to be developed before the trier of fact, and summary judgment was properly denied.

Defendants also argue that Plaintiff's claims were barred by her unlawful conduct in obtaining OxyContin® and other addictive narcotics. However, it is clear when looking at the itemization of the drugs of Hydrocodone and OxyContin® prescribed solely by Defendants (all of which Defendants claim to have been lawfully given), that Plaintiff did not need to seek medications from other sources in order to obtain excessive amounts of these drugs. Thus, Plaintiff committed no wrong in obtaining these drugs from Defendants, and her claims were not barred by any alleged illegal conduct.

Therefore, whether Plaintiff knew or through the exercise of reasonable care, could have known that she was addicted two years before September 6, 2002, is a question of fact which should be decided by the trier of fact. See, *Schiro v. American Tobacco*, 611 So.2d 962 (Miss. 1992).

However, assuming *arguendo*, that Plaintiff did know she was addicted before September 6, 2000, Plaintiff was an addict, and as such, she was not competent to take any affirmative action to protect her rights. Due to the negligence and deviation from the standard of care by Defendants, Plaintiff suffered from unsoundness of mind and was incapable of discovering that she had an actionable injury. There is no question that Defendants Collins and LeFleur prescribed Hydrocodone and OxyContin® in excessive

amounts as opined by Plaintiff's expert (See Appendix C), and her unsound mind was caused by Defendants' actions

ARGUMENT

I. Standard of Review

Defendants were not entitled to summary judgment and the trial judge correctly denied their motion. The evidence overwhelmingly presented a sufficient disagreement as to material facts to require its submission to a jury. *Anderson v. Liberto Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 LEd. 2d (1986). Because Defendants failed to show that Plaintiff was time-barred by a two-year statute of limitations, and failed to establish that Plaintiff is barred by her own wrongful conduct, the summary judgment was correctly denied.

"A motion for summary judgment may be granted only where there is **no** genuine issue of material fact; summary judgment is not a substitute for the trial of disputed facts." *Bennett v. Madakasira*, 821 So.2d 794, 797 (Miss. 2002)(emphasis added). "Where summary judgment is at issue, the evidence must be viewed in the light most favorable to the party against whom the motion has been made. In those instances, all that is required of a non-movant to survive a motion for summary judgment is to establish a genuine issue of material fact." *Id.* Plaintiff established such and summary judgment was properly denied.

"[W]here one party swears to one version of the matter in issue and another says the opposite," or even where Plaintiff's testimony creates the confusion, summary judgment

must be denied. *Id.* A genuine issue as to material facts exist which mandates denial of the summary judgment in this case. *Celatex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 LED. 2d 265 (1986). “The trial court cannot try issues of fact on a Rule 56 motion; it may only determine whether there are genuine issues to be tried.” See, *Waggoner v. Williams*, ___So. 2d ___ (Miss. 2009), (Miss. Sup. Ct. opin. No. 2009-MS-0027.149, ¶ 13 (dec. Feb. 26, 2009), citing *Pollard v. Sherwin-Williams Co.*, 955 So.2d 764, 769 (Miss. 2007).

Plaintiff respectfully submits that the termination of litigation through the reversal of the lower court’s denial of summary judgment would cause irreparable injury to the Plaintiff due to the fact that there are issues of material fact to submit to a jury. Respectfully, Defendants Collins and LeFleur have not met their burden and denial of summary judgment was proper and this matter should be remanded to the trial court and allowed to proceed for a trial before a jury.

II Plaintiff/Appellee’s complaint was filed within the statute of limitations and Plaintiff is not barred from seeking recovery by any illegal actions.

Defendants last prescribed OxyContin to Plaintiff on September 6, 2000. They last prescribed Hydrocodone to Plaintiff on November 5, 2000. Plaintiff states in her deposition on page 126 (R-111) that she does not believe that she ever got another prescription for OxyContin® after she went through withdrawals. Thus, her withdrawals did not occur until after she had used the 60 OxyContin® tablets prescribed for her on September 6, 2000. Contrary to this statement, however, Plaintiff stated in her deposition that she believes she knew that she was addicted to OxyContin® prior to her first treatment by Dr. McGuire,

which was August 25, 2000, on referral from Defendant Collins. Dr. McGuire performed surgery on January 21, 2001. If this is true, she would have gone through withdrawals sometime before August 25, 2000, and before she received her last prescription of OxyContin. Further, she would have also continued to see Dr. Collins for several months after her withdrawals, which is in conflict with her testimony (Appendix A , R-102-103) that she returned to Dr. Collins after her withdrawals so that he could see what he had done to her ³.

Defendants rely on the confusing testimony above to argue that Plaintiff Jeanne Holmes Hicks knew she was addicted to OxyContin prior to September 6, 2000, and that the statute of limitations had expired when she filed her lawsuit on September 6, 2002. However, Plaintiff submits that her withdrawal did not occur until after her treatment with Dr. Collins ceased, and we know that Plaintiff was treated on October 12, 2000, there was contact on October 18, 2000 for a refill (which was denied), and a prescription of Hydrocodone was given to Plaintiff by Defendants and filled on November 5, 2000. Respectfully, Plaintiff submits that the confusing facts do not support the granting of

³ Q. When did you ask him? A. I went back to him after that -- after all of this and finally got off the OxyContin and I went back and talked to his nurse and asked. Q. This was after you had been treated by Dr. Sivils? That is correct. And after I went and talked to the person on Lakeland Drive and before I saw Dr. McGrew, I went down there to see if there was any treatment center or what that I could go to or who I needed to talk to or what steps I needed to take because I wasn't going through what I went through ever again. Q. Okay. You say you talked to his nurse. Did you ever talk to Dr. Collins? A. No, but he was there. He heard everything. Q. And his nurse said we're not going to treat you, A. I wanted Dr. Collins to see what he had done. Q. You were there to punish him? A. In my mind, yes, sir. (R-102-103, Dep. pp. 92-93)

summary judgment, but requires submission to the fact finders for a determination. See, *Schiro v. American Tobacco*, 611 So.2d 962 (Miss. 1992).

However, assuming *arguendo*, that Plaintiff did know she was addicted before September 6, 2000, Plaintiff was an addict because of Defendants' negligent actions, and as such, she was not competent to take any affirmative action to protect her rights. Due to the negligence and deviation from the standard of care by Defendants, Plaintiff suffered from unsoundness of mind and was incapable of discovering that she had an actionable injury. The itemization below shows that from June 23, 1999, through November 5, 2000, Defendants Collins and LeFleur prescribed to Plaintiff the following medications:

<u>DRUG</u>	<u>QTY.</u>	<u>DR. and DATE</u>	<u>PHARMACY</u>
<u>HYDROCODONE /APAP 10/500MG</u>	6	Collins 6-23-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	6	Collins 7-02-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	2	Collins 7-07-99	Kroger
<u>HYDROCODONE /APAP 7.5/500MG</u>	3	Collins 7-28-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	3	Collins 8-06-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	6	Collins 8-20-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	2	Collins 8-30-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	8	Collins 9-17-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	6	Collins 9-22-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	30	Collins 10-21-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	16	Collins 10-28-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	16	Collins 10-31-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	8	Collins 11-11-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	10	Collins 11-15-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	60	Collins 12-03-99	Wal-greens
<u>HYDROCODONE /APAP 10/500MG</u>	60	Collins 12-06-99	Wal-greens
<u>HYDROCODONE /APAP 10/500MG</u>	60	Collins 12-11-99	Wal-greens
<u>HYDROCODONE /APAP 10/500MG</u>	60	Collins 12-15-99	Wal-greens
<u>HYDROCODONE /APAP 10/500MG</u>	2	Collins 12-20-99	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	100	Collins 1-20-00	Wal-greens
<u>HYDROCODONE /APAP 10/500MG</u>	2	Collins 2-02-00	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	16	Collins 2-02-00	Kroger

<u>HYDROCODONE /APAP 10/500MG</u>	8	Collins 2-04-00	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	60	Collins 2-07-00	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	30	Collins 2-14-00	Wal-greens
<u>HYDROCODONE / APAP 10/500MG</u>	10	Collins 4-16-00	Kroger
<u>HYDROCODONE /APAP 10/500MG</u>	20	Collins 7-14-00	Kroger
<u>HYDROCODONE /APAP 10/325MG</u>	60	Collins 7-24-00	Wal-greens
<u>HYDROCODONE /APAP 10/500MG</u>	16	Collins 7-31-00	Kroger
<u>HYDROCODONE /APAP 10/325MG</u>	60	Collins 8-02-00	Wal-greens
<u>HYDROCODONE /APAP 10/325MG</u>	60	Collins 8-16-00	Wal-greens
<u>HYDROCODONE /APAP 10/325MG</u>	60	Collins 8-20-00	Wal-greens
<u>HYDROCODONE /APAP 10/325MG</u>	16	Collins 8-25-00	Kroger
<u>HYDROCODONE /APAP 10/325MG</u>	40	Collins 9-20-00	Wal-greens
<u>HYDROCODONE /APAP 10/325MG</u>	40	Collins 9-22-00	Wal-greens
<u>HYDROCODONE /APAP 10/325MG</u>	40	Collins 10-03-00	Wal-greens
<u>HYDROCODONE /APAP 10/325MG</u>	40	Collins 10-09-00	Wal-greens
<u>HYDROCODONE /APAP 10/325MG</u>	50	Collins 10-12-00	Wal-greens
<u>HYDROCODONE /APAP 10/325MG</u>	40	Collins 10-23-00	Wal-greens
<u>HYDROCODONE /APAP 10/325MG</u>	40	Collins 10-30-00	Wal-greens
<u>HYDROCODONE /APAP 10/325MG</u>	10	Collins 11-05-00	Wal-greens
<u>OXYCONTIN 40MG</u>	10	Collins 9-24-99	Wal-greens
<u>OXYCONTIN 40MG</u>	12	Collins 9-27-99	Wal-greens
<u>OXYCONTIN 40MG</u>	4	Collins 9-28-99	Beemon
<u>OXYCONTIN 40MG</u>	30	Collins 12-21-99	Wal-greens
<u>OXYCONTIN 20MG</u>	30	Collins 12-30-99	Wal-greens
<u>OXYCONTIN 40MG</u>	30	Collins 1-03-00	Wal-greens
<u>OXYCONTIN 40MG</u>	45	Collins 1-13-00	Wal-greens
<u>OXYCONTIN 40MG</u>	45	Collins 2-25-00	Wal-greens
<u>OXYCONTIN 40MG</u>	45	Collins 3-07-00	Wal-greens
<u>OXYCONTIN 80MG</u>	60	Collins 3-15-00	Wal-greens
<u>OXYCONTIN 80MG</u>	30	Collins 3-27-00	Wal-greens
<u>OXYCONTIN 80MG</u>	60	Collins 4-01-00	Wal-greens
<u>OXYCONTIN 80MG</u>	30	Collins 4-10-00	Wal-greens
<u>OXYCONTIN 80MG</u>	30	Collins 4-17-00	Wal-greens
<u>OXYCONTIN 80MG</u>	30	Collins 4-20-00	Wal-greens
<u>OXYCONTIN 80MG</u>	30	Collins 4-26-00	Wal-greens
<u>OXYCONTIN 80MG</u>	60	Collins 5-02-00	Wal-greens
<u>OXYCONTIN 80MG</u>	21	Collins 5-17-00	Wal-greens
<u>OXYCONTIN 80MG</u>	21	Collins 5-24-00	Wal-greens
<u>OXYCONTIN 80MG</u>	21	Collins 5-30-00	Wal-greens
<u>OXYCONTIN 80MG</u>	21	Collins 6-05-00	Wal-greens
<u>OXYCONTIN 40MG</u>	21	Collins 6-12-00	Wal-greens
<u>OXYCONTIN 40MG</u>	28	Collins 6-15-00	Wal-greens

<u>OXYCONTIN 40MG</u>	30	Collins	6-20-00	Wal-greens
<u>OXYCONTIN 40MG</u>	30	Collins	6-26-00	Wal-greens
<u>OXYCONTIN 40MG</u>	60	Collins	6-30-00	Wal-greens
<u>OXYCONTIN 40MG</u>	4	Collins	7-07-00	Eckerd
<u>OXYCONTIN 40MG</u>	25	Collins	7-17-00	Wal-greens
<u>OXYCONTIN 40MG</u>	60	Collins	8-08-00	Wal-greens
<u>OXYCONTIN 40MG</u>	60	Collins	8-28-00	Wal-greens
<u>OXYCONTIN 40MG</u>	60	Collins	9-06-00	Wal-greens

This Court can readily determine by the number of OxyContin® prescriptions (31) and the number of OxyContin® tablets (1,583), not including other mind-altering drugs prescribed by these Defendants, that these drugs were being prescribed in excessive amounts. For example, on August 8, 2000, Defendants prescribed 60 OxyContin®; on August 16, 2000, Defendants prescribed 60 Hydrocodone; on August 20, 2000, Defendants prescribed 60 Hydrocodone; on August 25, 2000, Defendants prescribed 16 Hydrocodone; on August 28, Defendants prescribed another 60 OxyContin®; on September 6, 2000, Defendants prescribed another 60 OxyContin®; on September 20, 2000, Defendants prescribed another 40 Hydrocodone; on September 22, 2000, Defendants prescribed another 40 Hydrocodone; on October 3, 2000, Defendants prescribed another 40 Hydrocodone; on October 9, 2000, Defendants prescribed another 40 Hydrocodone; on October 12, 2000, Defendants prescribed another 40 Hydrocodone; on October 23, 2000, Defendants prescribed another 40 Hydrocodone; on October 30, 2000, Defendants prescribed another 40 Hydrocodone; and finally, on November 5, 2000, Defendants prescribed another 10 Hydrocodone. As to Defendants' conduct regarding these excessive prescriptions and treatment rendered by Defendants, Plaintiff's expert opined as follows:

Dr. Collins prescribed narcotics in excessive amounts and frequency, which resulted in the patient becoming dependent and addicted to these pain relievers. Dr. Collins also fell below the standard of care by prescribing Oxycontin in combination with other narcotics contrary to known recommendations against this practice. Dr. Collins fell below the standard of care by providing many early refills of narcotics, knowing that this would increase the likelihood of dependency and addiction in the patient. Dr. Collins also negligently prescribed Oxycontin at a frequency greater than the recommended twice-daily dosage, further increasing the potential of dependency and addiction in Ms. Hicks.” (R-60-61, Appendix C).

Defendants Collins and LeFleur negligently provided to Plaintiff prescriptions for addictive, mind-controlling substances, which dominated Plaintiff’s life. Plaintiff’s husband (not her husband at that time) realized that Jeanne had a serious addiction problem. Because Jeanne was incapable of exercising reasonable diligence, her now husband forced her to undergo involuntary detoxification without the benefit of medical or psychological assistance or help. At that time, Jeanne was not capable of pursuing detoxification and certainly not capable of the pursuit against those responsible for her addiction and injuries. Thus, her unsoundness of mind disability prevented her from discovering her addiction or from acting upon such knowledge, assuming such knowledge existed, and her complaint was timely filed.

Mississippi Code Annotated, § 15-1-59, states, in part, as follows:

If any person entitled to bring any of the personal actions mentioned shall, at the time at which the cause of action accrued, be under the disability of infancy or unsoundness of mind, he may bring the actions within the times in this chapter respectively limited, after his disability shall be removed as provided by law. (Emphasis supplied)

Miss. Code Ann. § 15-1-59.

The Mississippi Code defines unsound mind as including “idiots, lunatics, and persons not compos mentis.” Miss. Code Ann. § 1-3-57. Black’s Law Dictionary’s definition of *non compos mentis* reads, in part, “[t]his is a very general term, embracing all varieties of mental infirmity.” Black’s Law Dictionary at 1051. Black’s continues its definition of *non compos mentis* by referencing the term “incompetency,” which it defines as the “[l]ack of ability, knowledge, legal qualification, or fitness to discharge the required duty or professional obligation.” *Id.* at 765.

A formal adjudication of incompetency is not necessary in order for § 15-1-59, Miss. Code Ann., to toll the statute of limitations. In reversing a trial court’s granting of summary judgment for the defendant, this Court held “that for purposes of tolling the statute of limitations, a party need not be formally adjudicated as being of unsound mind, but must instead be allowed to present evidence relating to his mental capacity at trial.” *Rockwell v. Preferred Risk*, 710 So.2d 388, 391 (Miss. 1998). The fact that Jeanne Holmes Hicks was not adjudicated incompetent, or found by any court to be of unsound mind during the period of her addiction, is of no consequence in this case. Plaintiff’s actions evince the lack of control Plaintiff had over her life during the period of her addiction, all of which were caused by Defendants Collins and LeFluer. The determination of whether the Plaintiff fits within the exception outlined in § 15-1-59, namely, whether she suffered from unsoundness of mind during the period of her addiction, is not an issue that can be decided on summary judgment or interlocutory appeal, but is an issue to be determined by a jury.

“[T]he statute [of limitations] commences upon discovery of an injury [and] discovery is an issue of fact to be decided by a jury where there is a genuine dispute.” *Schiro v. American Tobacco*, 611 So.2d 962, 962 (Miss. 1992). The medical malpractice statute of limitations, Mississippi Code Annotated, § 15-1-36(5) amended January 1, 2003, also provides that:

If at the time at which the cause of action shall or with reasonable diligence might have been first known or discovered, the person to whom such claim has accrued shall be under the **disability of unsoundness of mind**, then such person or the person claiming through him may, notwithstanding that the period of time hereinbefore limited shall have expired, commence action on such claim at anytime within two (2) years next after the time at which the person to whom the right shall have first accrued shall have ceased to be under the disability, or shall have died, whichever shall have first occurred. (Emphasis supplied)

Plaintiff Jeanne Holmes Hicks clearly met the requirements of Miss. Code, 1972, § 15-1-36, as set forth above, and she should be allowed to present said evidence at trial to the fact-finders for a determination of whether Plaintiff was under the disability of unsoundness of mind.

While the above discussion provides adequate reason why Defendants’ motion for summary judgment was correctly denied, another commanding reason as to why the trial court was correct in its denial of summary judgment, the statute of limitations had not run when Plaintiff filed her complaint is that Defendants’ actions **continued** as Defendants **continued** to prescribe to Plaintiff multiple narcotic medications during the course of care, thereby committing a continuing tort through the date of the last prescription. Defendants

provided the last OxyContin® prescription to Jeanne Holmes Hicks on September 6, 2000. However, even after that last prescription of OxyContin®, Defendants Collins and LeFleur continued to provide other narcotic pain medications to Jeanne with the last narcotic prescription for Hydrocodone being filled on November 5, 2000.

Mississippi has adopted the Continuing Tort Doctrine and this Court has defined it as follows:

A “continuing tort” is one inflicted over a period of time; it involves a **wrongful conduct that is repeated until desisted, and each day creates a separate cause of action.** A continuing tort sufficient to toll a statute of limitations is occasioned by a continual unlawful act, **not by continual ill effects from an original violation.**

Stevens v. Lake, 615 So.2d 1177, 1183 (Miss. 1993) (*quoting C.J.S. Limitations of Actions*, § at 230-31). Indeed, we opined that continuing or repeated injuries can give rise to liability even if they persist outside the time period for the initial injury, but we noted that the defendant must commit repeated acts of wrongful conduct. *Stevens*, 615 So. 2d at 1183 (citing *Hendrix v. City of Yazoo City*, 911 F.2d 1102 (5th Cir. 1990)). We have held that we will not apply the continuing tort doctrine when harm reverberates from one wrongful act or omission. *Id.*

Smith v. Franklin Custodial Funds, Inc., 726 So.2d 144, 148-149 (Miss. 1998).

Recently in the case of *Peavy Electronics Corporation v. Baan U.S.A., Inc.* ___ So. 2d ___ (Miss. Ct. App. 2009) (COA No. 2009-MS-0408.149, dec. April 7, 2009), the Court of Appeals, sitting *en banc*, and relying on this Court’s decision of *Smith v. Franklin Custodial Funds, Inc.*, *supra*, at 148-149, stated as follows: “continuing or repeated injuries can give rise to liability even if they persist outside the time period for the initial injury, but we noted that the defendant must commit repeated acts of wrongful conduct.”

In the case before this Court, Defendants continued to prescribe these addictive medications to Plaintiff, thereby continuing their wrongful conduct. Accordingly, in a continuing tort, such as the one presented in this case, the cause of action begins to run from the date of the last act by the defendants. Although Defendants' course of conduct caused Plaintiff's early usage and subsequent addiction, it was Defendants **continuing** course of conduct which caused Jeanne's injuries and her continuing addiction.

Further, in an earlier case, the Mississippi Court of Appeals, cited this Court, as follows: "[A] continuing tort involves repeated injury and the cause of action begins to run from the date of the last injury, tolling the statute of limitations." *McCorkle v. McCorkle*, 810 So.2d 258, 263 (Miss. Ct. App. 2001), again relying on *Smith v. Franklin Custodian Funds, Inc.*, 726 So.2d 144 (¶17) (Miss. 1998).

Respectfully, Plaintiff filed her suit on September 6, 2002, well within the applicable two-year statute of limitations. Defendants Collins and Lefleur committed a continuing tort until their last prescription of OxyContin® was written on September 6, 2000, and their last prescription of Hydrocodone was filled on November 5, 2000, and the statute of limitations had not expired at the time Plaintiff filed her suit.

Alternatively, Defendants Collins and LeFleur cannot avoid liability based solely on the alleged passage of the statute of limitations period when Defendants' conduct created the very reason Jeanne Holmes Hicks was unable to discover her cause of action and take affirmative action when an actionable injury existed. Cases of this nature are saved by the

discovery rule, i.e., “the cause of action does not accrue until the plaintiff has discovered or by reasonable diligence should have discovered the injury.” Miss. Code Ann. § 15-1-49. Defendants Collins and LeFleur negligently provided to Jeanne Holmes Hicks the addictive, mind-controlling substances that dominated Plaintiff’s life. Plaintiff Jeanne Holmes Hicks properly filed suit no more than two years after the last time Defendants Collins and LeFleur prescribed OxyContin® for her, and certainly well within two years from the last time they prescribed other mind-controlling and addictive scheduled drugs.

When the issue of discovery is the subject of considerable dispute between the parties, it is an issue of fact to be decided by the jury. *Schiro v. American Tobacco*, 611 So.2d 962 (Miss. 1992). This Court should affirm the decision found by the trial court and allow this case to be heard by a jury for full determination.

In *Powe v. Byrd*, 892 So.2d 223, 227 (Miss. 2004), this Court held:

For purposes of the discovery rule, the two-year period begins to run when "the patient can reasonably be held to have knowledge of the injury itself, the cause of the injury, and the causative relationship between the injury and the conduct of the medical practitioner." *Sarris*, 782 So.2d at 723 (quoting *Smith v. Sanders*, 485 So.2d 1051, 1052 (Miss. 1986)).

Defendants’ reliance on this Court’s decision in *Sutherland v. Ritter*, 959 So. 2d 1004 (Miss. 2007), is misplaced. The Plaintiff in *Sutherland* checked into St. Dominic’s Chemical Dependency Unit for abnormal, involuntary movements, including, but not limited to, lip-licking and facial twitching as a result of taking the prescription medication Zyprexa. *Id.* The Plaintiff in *Sutherland* did not have an addiction to Zyprexa, the medication merely made

him suffer from involuntary facial movements and feel “zombie like.” *Id.* at 1005. The Plaintiff in *Sutherland* voluntarily ceased taking Zyprexa and then voluntarily checked himself into a hospital rehabilitation program. At that time, the plaintiff knew what medication was the source of his symptoms. Whereas, in this case, Plaintiff was unaware of her serious addictive problem until her now husband forced her to involuntarily submit to detoxification. Moreover, assuming *arguendo* Plaintiff was aware of her addiction, such an addiction to OxyContin®, the mind-altering drug would not allow Plaintiff to admit to her addiction nor to take any action for treatment to cure the addiction.

Defendants Collins and LeFleur rely upon *PPG Architectural Finishes v. Lowery*, 909 So. 2d 47 (Miss. 2005), as authority for their arguments that the case should be dismissed. However, *Lowery* does not support their arguments. The *Lowery* Plaintiff filed suit after she was exposed to paint fumes, passed-out from the exposure, and was taken to St. Dominic Hospital for treatment of exposure to the paint fumes. Lowery reported that she had inhaled paint fumes while at work. Lowery reported that she suffered immediate complications as a result of her exposure to paint fumes, and medical personnel listed exposure to paint as Lowery’s alleged cause of injury, based on statements made by Lowery. The Plaintiff in the case at bar had no such immediate realization of her injury, the side effects and addictive propensities of OxyContin®. Even if she had such realization, because of her addiction due to the negligent acts committed by Defendants, she was unable to act upon such knowledge. The plaintiff in *Lowery* knew when she presented to the hospital and

reported to the medical personnel that her injury was due to exposure to paint fumes. Plaintiff recognizes now that she went through withdrawals and that she had an addiction over which she had no control. However, at the time, she knew only that she could not function without the drug and she needed it.

Defendants Collins and LeFleur also argue that this Court must address the threshold question of whether Jeanne Holmes Hicks is prohibited from bringing this action by way of unlawful conduct by Jeanne in obtaining OxyContin® prescriptions from Collins and LeFleur, relying on Miss. Code Ann., § 41-29-144. Despite the fact that no other physician ever prescribed OxyContin® to Plaintiff, and despite the fact that these Defendants prescribed excessive amounts of Hydrocodone and OxyContin®, these Defendants claim that Plaintiff wrongfully sought medications from other physicians and such actions caused her addiction. As this Court can readily determine, disregarding all other medications given to Plaintiff, these Defendants (alone) prescribed narcotic drugs in such amounts which would cause addiction to Plaintiff, without prescriptions from any other physicians. (See, opinion by Plaintiff's expert as Appendix C)

In their arguments that Plaintiff's conduct was unlawful, Defendants primarily rely upon the decision of *Price v. Purdue, et al*, 920 So.2d 479 (Miss. 2006), whereby the Court found that the claim was barred because the damages arose from misconduct by the plaintiff, primarily, "fraud and subterfuge, namely acquiring multiple prescriptions from multiple doctors during concurrent periods of time." *Price*, 920 So.2d at 480. Such factual scenarios

do not form the basis of the action before this Court.

In *Price* it is obvious that the plaintiff's wrongful conduct as claimed by Defendant, caused Plaintiff's injuries. Such is not the case before this Court. Plaintiff Jeanne Holmes Hicks (1)**lawfully** sought medical treatment from Defendants; (2) **lawfully** was prescribed OxyContin® by Defendants; (3)**lawfully** presented the prescriptions to be filled as they belonged to her; and, (4)**lawfully** received the drug from the pharmacy. In *Price*, the wrongful conduct **caused** the injury to the plaintiff and created the cause of action. In the case before this Court, there was absolutely no wrongful conduct by Plaintiff. However, again assuming *arguendo*, the wrongful conduct, if any, of the Plaintiff Jeanne Holmes Hicks was caused by these Defendants in their negligent acts, and Plaintiff's conduct resulted only after such negligent acts caused Plaintiff's addiction. The *Price* Court recognized that the wrongful conduct must have caused the injury which forms the basis of the suit and stated:

We now join those jurisdictions in holding that "the wrongful conduct rule" in Mississippi prevents a plaintiff from suing caregivers, pharmacies, and pharmaceutical companies and laboratories for **addiction to a controlled substance which he obtained through his own fraud, deception, and subterfuge**. This Court will not lend aid to a party whose cause of action directly results from an immoral or an illegal act committed by that party. *Price v. Purdue Pharma Co.*, 920 So. 2d 479, 486 (Miss. 2006) (emphasis added).

Plaintiff did not become addicted due to any wrongful act on her part. Defendants Collins and LeFleur treated Plaintiff and, as they claim, **lawfully** prescribed the drugs to her for her treatment. Defendants Collins and LeFleur have always maintained that they that

these medications were lawfully prescribed, and that they did not deviate from the standard of care. Thus, based on the assertions by Defendants, all prescriptions obtained from Defendant Collins and LeFleur by Plaintiff were lawfully obtained, and it is clear that prescriptions obtained from these Defendants were sufficient to cause addiction to Plaintiff. Thus, Plaintiff committed no wrong in obtaining these prescriptions. The wrongful acts on Plaintiff's part, if any, resulted from her addiction, which was caused by Collins and LeFleur and their deviation from the standard of care. There is absolutely no evidence that the Plaintiff committed any wrongful act in obtaining the prescriptions or the drugs which caused her addiction.

Moreover, it is a jury issue as to whether Plaintiff obtained her prescriptions or drugs through any fraud, deception or subterfuge. Plaintiff submits that it is clear from the evidence that Defendants Collins and LeFleur provided Plaintiff with, as they claim, lawful and valid prescriptions, and these prescriptions caused her addiction.

Plaintiff Jeanne Holmes Hicks did not become addicted because of any wrongful act on her part. Any wrongful acts on her part, resulted from Plaintiff's addiction, which resulted **only** because of the wrongs committed by these Defendants. There is absolutely no evidence that the Plaintiff committed any wrongful act in obtaining the drugs which caused her addiction, and thus caused her damages.

Further, the drug list as set forth above clearly shows that Defendants Collins and LeFleur provided excessive prescriptions to Plaintiff, and it was their "wrongful" conduct

which caused Plaintiff's injuries and not Plaintiff's conduct. Plaintiff presented herself to Defendants Collins and LeFleur for treatment and they were the professionals and/or medical doctor who should have known not to prescribe excessive narcotics to her. If Plaintiff's actions in obtaining these prescriptions were illegal, then Defendants Collins and LeFleur were all acting illegally at the time the prescriptions were provided and/or filled and they must accept the responsibility for her addiction and damages. (See Plaintiff's expert report attached as Appendix C, and the PDR excerpt attached as Appendix D)

Defendants' reliance on *Parkinson v. Williamson*, 262 So. 2d 777 (Miss. 1972), *Smith v. Maryland Casualty Company*, 172 So. 2d 574 (Miss. 1965), *Morrissey v. Bologna*, 123 So. 2d 537 (Miss. 1960), *Downing v. City of Jackson*, 24 So. 2d 661 (Miss. 1946), *Capps v. Postal Te. Co.*, 19 So. 2d 491 (Miss. 1944) and *Western Union Tel. Co. v. McLaurin*, 66 So. 2d 739 (Miss. 1914) is misplaced. In *Parkinson*, the Plaintiff was in the process of hiding stolen guns. The boys were taking the guns out of the car to hide them when a gun discharged and hit the plaintiff in the leg causing an amputation. This Court found that the Plaintiff was an "active participant in a criminal act (felony)" when he was unintentionally injured by another party who was participating in that felony and had no cause of action against the other participant. Such is not the case before this Court. Plaintiff was legally and lawfully seeking medical treatment from Defendants Collins and LeFleur when she was prescribed medications, including, but not limited to, OxyContin®. She was not committing any kind of criminal act.

Smith v. Maryland Casualty Company is a 1965 case wherein this Court considered whether it was against public policy for Plaintiff to bring an action against a defendant on its bond for “alleged misappropriation of intoxicating liquor,” which was, at that time, illegal to possess. This Court found that evidence of the plaintiff’s illegal activity in possessing liquor was necessary in order to prove his case. Thus, the defendant was entitled to dismissal. Quoting *Capps*, another case relied upon by Defendants, this Court stated: “if a plaintiff requires essential aid from an illegal transaction to establish his case, he has no case.” Again, such is not the case before this Court. Plaintiff Jeanne Holmes Hicks legally and lawfully sought medical attention from Defendants Collins and LeFleur and she was negligently provided excessive prescriptions for pain medications which she lawfully obtained and lawfully presented to a pharmacy for filling.

In *Downing*, another case relied upon by Defendants, the Court found that decedent’s widow’s claim was founded upon decedent’s violation of a penal statute which made it a crime to perform the act he was performing at the time of his injury, which plaintiff claimed to have ultimately caused his death. Quoting from *Western Union*, another case relied upon by Defendants, this Court stated: “If a plaintiff cannot open his case without showing that he has broken the law, a court will not aid him. . . . The principle of public policy is that no court will lend its aid to a party who grounds his action upon an immoral or illegal act.” Again, such is not the case before this Court. It was not illegal for Plaintiff to seek medical treatment and care from Defendants Collins and LeFleur or to present the legally and

lawfully obtained prescriptions to pharmacies for filling.

Another case relied upon by Defendants, *Morrissey v. Bologna*, 123 So.2d 537 (Miss. 1960), dealt with the illegal sale of liquor during the prohibition in Mississippi. This Court stated in that case: “[T]he public policy of this State, as expressed in Section 2612, supra, is registered most strongly against the collection of whiskey debts and the enforcement of liens attaching on that account. Another maxim of equity, namely, “Equity Follows the law,” is just as potent as the “clean hands” doctrine.” Jeanne Holmes Hicks does not come into this Court with unclean hands and she does not make a claim which violates the maxim that “equity follows the law.” Defendants Collins and LeFleur are all guilty of negligence which caused her damages, and Plaintiff committed no wrong. Thus, Jeanne has clean hands, and the equity which she seeks is lawful.

Unlike the *Price* Plaintiff, Jeanne Holmes Hicks committed no fraudulent acts in seeking medical treatment and receiving prescriptions from Defendants Collins and LeFleur and then presenting these legally obtained prescriptions to pharmacies to be filled. Respectfully, Plaintiff disagrees that the *Price* decision mandates or requires dismissal of Plaintiff’s claims against Collins and LeFleur. Plaintiff should be allowed to proceed to trial.

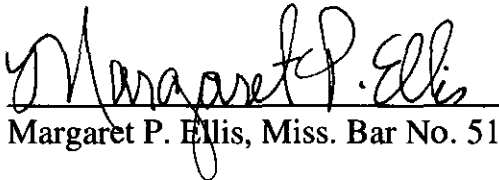
CONCLUSION

WHEREFORE, Jeanne Holmes Hicks respectfully requests that this Court affirm the denial of summary judgment by the lower court and allow this matter to proceed for a trial

for a determination of the material factual issues as set forth above. The lower court was correct in denying summary judgment as there are substantial genuine issues of material facts which need to be decided by the fact finders. Plaintiff requests that all costs of these proceedings be assessed against Defendants Collins and LeFleur.

This the 21st day of April, 2009.

Respectfully submitted,
JEANNE HOLMES HICKS

By: 
Margaret P. Ellis, Miss. Bar No. 5110

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APPENDICES

Appendix A:	Excerpt from Deposition of Plaintiff, Jeanne Holmes Hicks
Appendix B:	Excerpts from Plaintiff's Answers to Interrogatories
Appendix C:	Opinion from Plaintiff's Expert
Appendix D:	Excerpts from PDF

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1 Q. He was talking to both of you?

2 A. Uh-huh.

3 Q. You don't recall when that was?

4 A. Nuh-uh.

5 Q. All right. The antidepressant, does Elavil ring

6 a bell with you?

7 A. I -- I can't -- I don't know. I have taken

8 Elavil.

9 Q. Prescribed by Dr. Sivils or by others?

10 A. I don't remember who it was prescribed by.

11 Q. Okay. So he gave you a prescription or handed it

12 to your husband, a prescription for you to take, an anti-

13 depressant and pain medication. What happened then?

14 A. I took the medications at the scheduled times to

15 slowly take my body off of the pain medication.

16 Q. Did you go to see Dr. Sivils or any other health

17 care provider during that process?

18 A. I don't recall, sir.

19 Q. Okay. Did you inform any of your other health

20 care providers, while it was going on, that Dr. Sivils was

21 treating you for addiction?

22 A. I don't think I was seeing anybody but

23 Dr. McGuire and he was aware of it.

24 Q. Did Dr. Sivils, or Dr. McGuire for that matter,

25 ever recommend to you that you see a psychiatrist or a

90

1 psychologist or a counselor of any kind?

2 A. I don't recall, but I do remember speaking to a

3 psychologist.

4 Q. Who was that?

5 A. I have no idea.

6 Q. Was it a psychologist in private practice or

7 one --

8 A. It was this lady off Lakeland Drive.

9 Q. Her office was off Lakeland Drive?

10 A. Yes, sir.

11 Q. How many times did you talk to her?

12 A. Once.

13 Q. Did she give you any advice that you took?

14 A. I don't remember accomplishing anything while I

15 was there, sir, that I didn't already know myself.

16 Q. In any event, you did not go back to see her?

17 A. No, sir.

18 Q. Did you see any other psychiatrist, psychologist

19 or counselor?

20 A. Yes, I did, sir.

21 Q. Who would that be?

22 A. Dr. Roger Collins, I mean not Roger Collins,

23 Roger McGuire, Dr. Roger McGuire, not McGuire, Robert --

McGrew. I'm sorry. Roger McGrew. He is my pastor --

church.

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1 Q. So he's a counselor?

2 A. He is a criminal psychologist and I went and

3 spoke with him on numerous occasions.

4 Q. What church is that?

5 A. First United Methodist in Canton.

6 Q. I don't know how a priest or preacher works.

7 Would you have been a patient of his, that type of

8 relationship or --

9 A. I really don't know, but he's pretty

10 straightforward, whatever.

11 Q. But you went to see him and said, I got a

12 problem, I need some help, let's talk about it?

13 A. Right, right.

14 Q. Do you recall how many times you met with him as

15 a patient? I'll refer to it as a patient.

16 A. Oh, probably five or six times.

17 Q. And do you recall when that was?

18 A. No, sir.

19 Q. In your interrogatory responses, by the way, you

20 said Dr. Roger Collins refused to treat you for drug

21 addiction. Were you talking about the time your husband

22 went to see him?

23 A. That is correct.

24 Q. And your husband, did your husband ask him to

25 provide drug addiction treatment or was he saying give her

92

1 something to get her rehydrated?

2 A. I was not there, sir. I can't answer that

3 question.

4 Q. So you don't know whether Dr. Collins was ever

5 asked to treat you for drug addiction, you never --

6 A. Yes, he was.

7 Q. When was he asked?

8 A. I asked him that.

9 Q. When did you ask him?

10 A. I went back to him after that -- after all of

11 this and finally got off the OxyContin and I went back and

12 talked to his nurse and asked.

13 Q. This was after you had been treated by

14 Dr. Sivils?

15 A. That is correct. And after I went and talked to

16 the person on Lakeland Drive and before I saw Dr. McGrew,

17 I went down there to see if there was any treatment center

18 or what that I could go to or who I needed to talk to or

19 what steps I needed to take because I wasn't going through

20 what I went through ever again.

21 Q. Okay. You say you talked to his nurse. Did you

22 ever talk to Dr. Collins?

23 A. No, but he was there. He heard everything.

24 Q. And his nurse said we're not going to treat you,

25 leave?

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1 A. That's correct.

2 Q. Okay. Why, after Dr. Sivils had treated you, did

3 you go -- did you leave Dr. Sivils and go back to see

4 Dr. Collins?

5 A. I wanted Dr. Collins to see what he had done.

6 Q. You were there to punish him?

7 A. In my mind, yes, sir.

8 Q. Also, you say it was before you went to see

9 Dr. McCrew?

10 A. McGrew.

11 Q. McGrew?

12 A. Uh-huh.

13 Q. How do you spell McGrew?

14 A. It's M-C-G-R-E-W.

15 Q. So that means that you never went to Dr. McGrew

16 for his assistance or for treatment, if you call it that,

17 until after you were off the OxyContin?

18 A. That is correct.

19 Q. Did you go -- when Dr. Collins or his nurse

20 refused to provide treatment, did you go back to

21 Dr. Sivils at that point?

22 A. No, sir.

23 Q. Have you gone back to see Dr. Sivils since this

24 treatment?

25 A. I don't recall, sir.

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1 Q. Did Dr. Sivils give you more than one

2 prescription for anti-depressant and one for pain killer

3 for your so-called withdrawal? I'll refer to it as that.

4 A. I don't recall. I know I never took all the

5 anti-depressant. I flushed those down the toilet.

6 Q. Okay. So do you recall what space of time this

7 withdrawal took?

8 A. Total of about two weeks.

9 Q. Did you --

10 A. To stop having the physical symptoms.

11 Q. Did you continue to take Ultram and other pain

12 medication during this period, so-called withdrawal

13 period?

14 A. I don't think so, sir.

15 Q. Well, it's your contention that you are dependent

16 upon or addicted to OxyContin, but you are not dependent

17 upon or addicted to Hydrocodone, for example, or

18 Oxycodone, Tylox, Ultram, these other pain medications?

19 A. I can't agree with that statement. Excuse me.

20 Repeat that.

21 Q. My understanding is that you're contention is

22 that you were addicted to OxyContin or dependent upon it,

23 but you are not addicted to or dependent upon the other

24 pain medications that you've been taking and that you've

25 taken since this so-called withdrawal, such as

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1 Hydrocodone, Oxycodone, Lortab?

2 A. I don't know how to answer that. I don't have

3 the withdrawals when I take the Lortab or the Hydrocodone

4 or -- I mean, I can get up and function daily functions.

5 I could not do that when I was taking the OxyContin. I

6 could not get out of bed in the morning without

7 medication. I would set my alarm for an hour before I had

8 to get up and get dressed so I would have that medicine in

9 me so I could get up and get going.

10 Q. And you have abused other pain medications since

11 the so-called withdrawal from OxyContin, have you not?

12 A. I'm sure I have.

13 Q. Including taking morphine prescribed for your

14 husband?

15 A. (Witness nods head up and down.)

16 Q. Are you under any type of therapy now?

17 A. No, sir.

18 Q. Have you ever had any treatment other than that

19 provided by Dr. Sivils that you've described and

20 Dr. McGrew?

21 A. No, sir.

22 Q. And the one lady off of Lakeland?

23 A. No, sir.

24 Q. So that's the only treatment you've had?

25 A. Uh-huh, that's correct.

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1 MR. ALLISON: Let's take a break for a minute, if

2 we can.

3 MS. USRY: We're off record at 12:15 p.m.

4 (Recess.)

5 MS. USRY: We're on record at 12:23 p.m.

6 BY MR. ALLISON:

7 Q. Ms. Hicks, I have just a couple more questions

8 and I will be through with you. Have you ever done any

9 research about OxyContin on the Internet or, you know,

10 medical reference books, magazines --

11 A. Yes, sir.

12 Q. -- medical journals? When did that occur?

13 A. After the withdrawals, after the fact.

14 Q. And what materials did you look at?

15 A. Went on the Internet. Then there was news about

16 it. There was some incidents in Kentucky, I believe.

17 Q. Some news articles?

18 A. News articles.

19 Q. Okay. Anything else?

20 A. Not that I can recall.

21 Q. Do you recall what Internet site you went to?

22 A. No, sir, I don't.

23 Q. All of this occurred after the so-called

24 withdrawal?

25 A. Yes, sir.

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

JEANNE HOLMES HICKS

PLAINTIFF

VS.

CAUSE NO. 251-02-1171CIV

PURDUE PHARMA, L.P.,
PURDUE PHARMA, INC.,
THE PURDUE FREDERICK COMPANY,
ABBOTT LABORATORIES,
ABBOTT LABORATORIES, INC.,
ROGER COLLINS, M.D.,
LEFLEUR FAMILY MEDICAL CLINIC, and
WALGREEN COMPANY

DEFENDANTS

**PLAINTIFF'S ANSWERS TO FIRST SET OF INTERROGATORIES
PROPOUNDED BY DEFENDANTS ROGER COLLINS, M.D.
AND LEFLEUR FAMILY MEDIAL CLINIC**

COMES NOW Plaintiff and answers the First Set of Interrogatories propounded by
Roger Collins, M.D. and Lefleur Family Medical Clinic, as follows, to wit:

INTERROGATORY NO.1: State:

- A. your date of birth and Social Security number;
- B. your marital history;
- C. your educational and occupational background,
including job description and wages for the past
seven (7) years.
- D. all addresses at which you have lived at any time
during the past seven (7) years;



names and addresses of any physicians you were seeing for pain management

ANSWER: Please see answer above. In addition, Dr. Jeffrey Summers, Jackson, Mississippi.

INTERROGATORY NO. 6: Prior to December 1998, list the names and addresses of any physicians you were seeing for pain management.

ANSWER: Please see the answers to interrogatory numbers 4 and 5, and medical records.

INTERROGATORY NO. 7: After October 2000, list the names and addresses of any physicians you were seeing for pain management.

ANSWER: Please see answers above, as well as Dr. Robert A. McQuire, Dr. Larry Sivils, Dr. Roger Collins and Dr. Strong.

INTERROGATORY NO. 8: When and why did you begin to suspect that you had an addiction to OxyContin® or any other medications.

ANSWER: Plaintiff did not realize that she was addicted, however, her husband recognized that she was addicted when she finally could not get out of bed without taking this medicine. This was sometime after Defendant last prescribed OxyContin®.

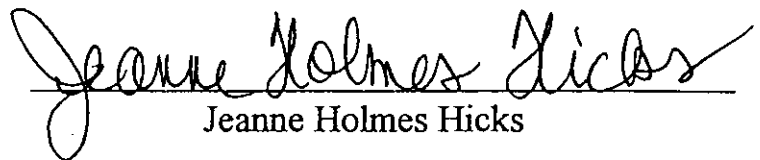
INTERROGATORY NO. 9: Has any physician told you that you have a disability or impairment as a result of taking OxyContin®? If so, please list the physician's name, address, the date of this diagnosis and his or her specific comments.

ANSWER: No, but Plaintiff has been told that she will never be able to take

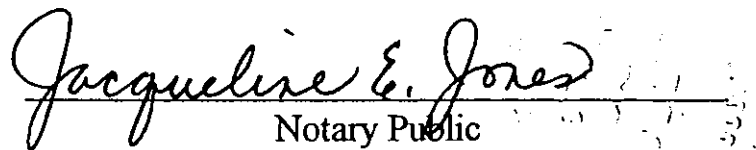
STATE OF MISSISSIPPI

COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for the county and state aforesaid, the within named Jeanne Holmes Hicks, who, having been by me first duly sworn, stated on her oath that the matters and things stated in the above and foregoing answers to interrogatories are true and correct as therein stated.


Jeanne Holmes Hicks

Sworn to and subscribed before me, this the 10 day of February, 2004.


Notary Public

My Commission Expires:

6-5-05

J.D. Haines, M.D.

jdhaines@jdhainesmd.com

Board Certified Family Practice • Medical-Legal Consultant

Margaret Ellis, Esq.
Kitchens & Ellis
610 North Street
Jackson, MI 39202-3116

Re: Jeanne Holmes Hicks

Dear Ms. Ellis:

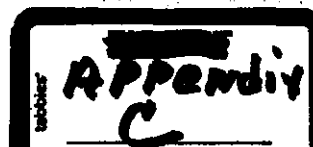
I, Joe Douglas Haines, Jr., am a licensed physician board certified in family practice medicine.

I have reviewed the medical records of Jeanne Holmes Hicks. These include the following:

1. Office records of Dr. Terry dated 9/9/97 to 6/05/01
2. Office records of Dr. Collins dated 12/17/98 to 10/18/00
3. Hospital records from River Oaks Hospital dated 10/05/99 to 10/07/99
4. Office records of Dr. Stringer dated from 9/29/99 to 04/03/00
5. Office records of Dr. McGuire dated 8/25/00 to 6/11/01
6. Prescription medication log dated 8/28/98 to 11/08/00
7. Opinion of Dr. Olson dated 9/09/02
8. Complaint dated 9/06/02

Jeanne Holmes Hicks is a 43-year-old woman with a history of disc herniation at C5-6 diagnosed September of 1999. She underwent anterior cervical discectomy and a fusion of C5-6 on 10/05/99 by Dr. Stringer. Four months following surgery Ms. Hicks began experiencing increasing neck pain radiating down the right arm. X-rays performed on 4/03/00 by Dr. Stringer showed collapse of the bone graft and angulation in the area of surgery. The patient saw Dr. Jeff Summers for pain management in December of 2000 and also January and February of 2000 for epidural steroid injections which provided some relief of her symptoms. The patient ultimately underwent additional surgery on 1/23/01 due to cervical instability with a previous C5-6 nonunion. A C6 corpectomy with a C5-7 fusion with fibular allograft was performed by Dr. McGuire on 1/23/01.

Dr. Collins saw the patient throughout the above time period as her primary care physician. He began prescribing her narcotics for headache, neck, back and arm pain beginning on 7/11/97 through 11/05/00. The prescription log indicates 64 prescriptions for Hydrocodone, varying from #2 to #100 tablets. During the same time period, the patient was also given 31 prescriptions for Oxycontin.

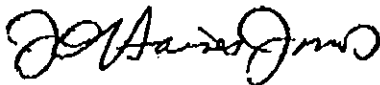


I have concluded that the proper standard of care for treating chronic pain was not met by Dr. Collins. Dr. Collins prescribed narcotics in excessive amounts and frequency, which resulted in the patient becoming dependent and addicted to these pain relievers. Dr. Collins also fell below the standard of care by prescribing Oxycontin in combination with other narcotics contrary to known recommendations against this practice. Dr. Collins fell below the standard of care by providing many early refills of narcotics, knowing that this would increase the likelihood of dependency and addiction in the patient. Dr. Collins also negligently prescribed Oxycontin at a frequency greater than the recommended twice-daily dosage, further increasing the potential of dependency and addiction in Ms. Hicks. Even though Dr. Collins obtained a pain management consult from Dr. Summers, whose role was to prescribe and manage all pain relievers, Dr. Collins continued to prescribe narcotics to the patient without Dr. Summers knowledge. Dr. Collins also failed to warn the patient of the highly addictive potential of the narcotics which he readily prescribed to her.

It is my professional opinion that Dr. Collins deviated from the standard of care by mismanaging the patient's chronic pain, which resulted in her dependency and addiction to Oxycontin. Based upon a reasonable degree of medical certainty, it is my opinion that Dr. Collins did not use such care as a reasonably prudent healthcare provider practicing in the same field in the same of similar locality would have provided under similar circumstances.

This report includes my opinions based on the medical records described above. These opinions are subject to change upon review of additional medical records.

Sincerely,



J.D. Haines, M.D., FACSM