

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2008-TS-01474

**GAIL SAUL, for and on behalf of all Wrongful
Death Heirs of RAYMOND L. COOK, and
RAYMOND COOK, Individually, by and through
GAIL SAUL, his Personal Representative
Appellant**

V.

**SOUTH CENTRAL REGIONAL MEDICAL CENTER, INC.
Appellee**

**Appeal from the Circuit Court of Jones County
Civil Action No. Cause No. 2007-64-CV6
Judge Billy Joe Landrum, Presiding**

BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

Robin L. Roberts [REDACTED]
Montague Pittman & Varnado, PA
P.O. Drawer 1975
Hattiesburg, MS 39403
(601) 544-1234
Email: rlroberts@mpvlaw.com
8229-1

IN THE SUPREME COURT OF MISSISSIPPI

**GAIL SAUL, for and on behalf of all Wrongful
Death Heirs of RAYMOND L. COOK, and
RAYMOND COOK, Individually, by and through
GAIL SAUL, his Personal Representative**

APPELLANT

Versus

Case # 2008-TS-01474

SOUTH CENTRAL REGIONAL MEDICAL CENTER, INC.

APPELLEE

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.

- Dorothy Gail Saul, Appellant
- Irvin Dewayne Cook
- Raymond Dale Cook
- Ann Windham Cook
- South Central Regional Medical Center, Appellee
- Robert Applewhite, M.D.
- Kevin Ivey, M.D.
- David Sullivan, M.D.
- Richard O. Burson, Gholson Burson Entrekin & Orr
- J. Robert Ramsay, Ramsay & Hammond, PLLC
- Raymond H. B. Fraser, and Stuart B. Harmon, Page Kruger & Holland, PA
- Robin L. Roberts, Montague Pittman & Varnado, PA, Attorney for Appellant
- Brandon L. Brooks, Attorney for Appellant



**Robin L. Roberts, Attorney of
Record for Gail Saul**

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of Facts	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
A. <u>The wrongful death claim of the heirs is not barred by the statute of limitations because notice was filed within one year of death.</u>	3
B. <u>Plaintiff's survivor claim is not barred because she could not have discovered all elements of the claim until later, at the earliest, receipt of medical records.</u>	4
C. <u>This Court should overrule <i>Jenkins v. Pensacola Health Trust, Inc.</i>, 933 So.2d 923 (Miss. 2006), as wrongly decided.</u>	7
D. <u>The MTCA notice given by the plaintiff was legally sufficient.</u>	10
CONCLUSION	11
CERTIFICATE OF SERVICE	12
ADDENDUM A – Notice of Claim Letter	
ADDENDUM B – Miss. Code Ann. § 11-7-13 (1972)	

TABLE OF AUTHORITIES

Cases

<i>Atchison v. Great W. Malting Co.</i> , 766 P.3d 662, 665 (Wash. 2007)	10
<i>Barnes v. Singing River Hospital System</i> , 733 So.2d 199 (Miss. 1999)	5
<i>Beck v. Koppers, Inc.</i> , 2005 U.S. Dist. LEXIS 26613 (N.D. Miss. 2005)	9
<i>Caves v. Yarborough</i> , 991 So.2d 142 (Miss. 2008)	2,3,4,5
<i>Chapman v. Pacemakers</i> , 105 Idaho 785, 786-787 (Idaho 1983)	9
<i>Farmers Bank & Trust Co. v. Rice</i> , 674 S.W.2d 510, 512 (Ky. 1984)	10
<i>Fulton County Adm'r v. Sullivan</i> , 753 So.2d 549, 552 (Fla. 1999)	9
<i>Gentry v. Wallace</i> , 606 So.2d 1117 (Miss. 1992)	8,9,10
<i>Graham v. Pugh</i> , 417 So.2d 536, 541 (Miss. 1982)	5
<i>Horwich v. Superior Court</i> , 980 P.2d 927, 935 (Cal. 1999)	9
<i>Huss v. Gayden, et al.</i> , 991 So.2d 162 (Miss. 2008)	4,5
<i>James v. Phoenix Gen. Hosp.</i> , 744 P.2d 695, 705 (Ariz. 1987)	9
<i>Jenkins v. Pensacola Health Trust, Inc.</i> , 933 So.2d 923 (Miss. 2006)	1,5,6,7,8,9,10
<i>Lee v. Thompson</i> , 859 So.2d 981 (Miss. 2003)	8
<i>Miles v. Ashland Chem. Co.</i> , 261 Ga. 726, 727-728 (Ga. 1991)	9
<i>Moreno v. Sterling Drug, Inc.</i> , 787 S.W.2d 348, 352 (Tex.1990)	10
<i>Pastierik v. Duquesne Light Co.</i> , 514 Pa. 517, 520 (Pa. 1987)	10
<i>Proli v. Hathorn</i> , 928 So.2d 169 (Miss. 2006)	9
<i>Rauschenberger v. Radetsky</i> , 745 P.2d 640, 643 (Colo. 1987)	9
<i>South Central Regional Medical Center v. Guffy</i> , 930 So.2d 1252 (Miss. 2006)	10,11
<i>Sutherland v. Ritter</i> , 959 So.2d 1004 (Miss. 2007)	4,5
<i>Thiroux v. Austin</i> , 749 So.2d 1040, 1042 (Miss. 1999)	7
<i>University of Mississippi Medical Center v. McGee</i> , — So.2d —, WL 5174301 (Miss. 2008)	2,4,6
<i>Wells v. Radiator Specialty Co.</i> , 413 F.Supp.2d 778 (S.D. Miss. 2006)	9

Statutes

Miss. Code Ann. § 11-46-11	7
Miss. Code Ann. § 11-46-11(1)	2
Miss. Code Ann. § 11-46-11(2)	10,11
Miss. Code Ann. § 11-7-13 (1972)	7

STATEMENT OF ISSUES

The issues in this case are as follows:

- A. Does the one-year statute of limitations under the Mississippi Tort Claims Act bar recovery on claims of wrongful death when the notice of claim is given on the one-year anniversary date of the death?
- B. Should this claim have been dismissed based solely on a statute of limitations analysis of when the wrongful act occurred without evidence of the discovery of all elements required to sustain a cause of action?
- C. Should this Court overrule *Jenkins v. Pensacola Health Trust, Inc.*, 933 So.2d 923 (Miss. 2006) as wrongly decided?
- D. Did the notice given to South Central Regional Medical Center substantially comply with the notice requirements of Miss. Code Ann. § 11-46-11?

STATEMENT OF THE CASE

A. Nature of the Case

This is a wrongful death and survivor's action brought by the heirs of Raymond L. Cook, deceased. This appeal involves only the hospital; the other claims against three doctors are currently pending in the Circuit Court of Jones County, MS.

As to this defendant, the Court entered an Order Granting Defendant's Motion to Dismiss and Judgment of Dismissal (R 41; RE 41)¹ on August 21, 2008. The Court found that the plaintiff's complaint was filed after the expiration of the one-year statute of limitations in the Mississippi Tort Claim Act and certified its ruling as a final judgment under Rule 54(b).

B. Statement of Facts

On November 15, 2005, the decedent, Raymond L. Cook, underwent a laproscopic gallbladder removal performed by Dr. Kevin Ivey at South Central Regional Medical Center

¹The record in this case is very limited and the entire record has been bound as Record Excerpts. Reference to RE will be the same as citations to the record throughout.

("SCRMC"). (RE 4) As a result of the complications arising from a severe post-surgery abdominal bleed, Raymond L. Cook died on December 6, 2005. (RE 4)

The record demonstrates that Mary Ann W. Cook, the decedent's wife at the time of his death, received an abstract of the medical records of Raymond L. Cook on January 11, 2006. On May 5, 2006, Dorothy Gail Saul, the decedent's daughter, obtained a copy of the medical record abstract. On June 6, 2006, Saul obtained a copy of the remainder of the medical records of Raymond L. Cook. (RE 39) On December 6, 2006, the one-year anniversary date of his death, Cook's heirs gave notice to SCRMC of their intent to bring a claim against SCRMC. (RE 32, 33) The content of that notice of intent to sue is produced herewith in full as Addendum A to this brief.

Following the statutory waiting period, and within the time allowed for the filing of suit, plaintiff filed her complaint against SCRMC on June 11, 2007. (RE 3)

Subsequently, SCRMC filed a motion to dismiss the plaintiff's claim relying primarily upon Miss. Code Ann. § 11-46-11(1), arguing that the one-year statute of limitations expired on December 3, 2006, at the latest, which was the date that the Cook family ordered a no-code for Raymond L. Cook due to his bleak medical prognosis. (RE 11-18) Consequently, since the notice was not given until December 6, 2006, the defendant argues that all causes of action against the hospital are barred. Plaintiff responded that the notice was timely, arguing the discovery rule. (RE 28)

SUMMARY OF THE ARGUMENT

1. Under *Caves v. Yarborough*, 991 So.2d 142 (Miss. 2008), and *University of Mississippi Medical Center v. McGee*, — So.2d — WL 5174301 (Miss. 2008), the claim of the wrongful death heirs can be brought on or before the one-year anniversary date of the decedent's

death. In this case, that was done, and there is no question that the wrongful death claim of the heirs is not barred by the statute of limitations.

2. *Caves, supra*, establishes that the discovery rule applies in all medical malpractice cases and cases of wrongful death. The plaintiff must be able to discover “all the elements of the tort, including the act or omission, the injury, and the causation link.” In this case, the plaintiff could not have known that the actions of the hospital were negligent and caused the injuries and death within the 19 days between the surgery and Cook’s death because the negligence and its results were not obvious. Plaintiff’s discovery could not have been made until after the medical records were obtained in January 2006. Plaintiff acted diligently to obtain the necessary information.

3. The plaintiff’s notice to SCRMC provided substantial compliance with the notice requirement.

ARGUMENT

- A. The wrongful death claim of the heirs is not barred by the statute of limitations because notice was filed within one year of death.

At the time that the Circuit Court of Jones County considered this matter, the decision on rehearing in *Caves v. Yarborough*, 991 So.2d 142 (Miss. 2008), had not yet been made by this Court. *Caves*, withdrawing an earlier opinion, decided that, “the limitations period for MTCA claims does not begin to run until all elements of a tort exist, and the claimant knows or, in the exercise of reasonable diligence, should know, of both the injury and the act or omission which caused it.” *Id.* This Court’s analysis establishes that the Mississippi Wrongful Death Statute encompasses both the pre-death claims of the decedent for injury, survivor’s claims, as well as the wrongful death claims. However, as the Court states plainly, “while it is true that the

wrongful death statute requires that all such claims be brought in one suit, each claim is subject to its own statute of limitations. The statute of limitations on estate claims does not begin to run until all of the elements of the estate claim are present. The same is true for the loss of society and companionship, which may very well not arise until death.”

Since the decision in *Caves*, the Court rendered an opinion in *University of Mississippi Medical Center v. McGee*, — So.2d — WL 517431 (Miss. 2008), in which the Court held that for the wrongful death claim the tort is not complete until the final element of the tort manifests itself and the cause of action is known. At the earliest, this is the date of death.

Therefore, it is crystal clear under the current decision law in the Supreme Court that the wrongful death claim of the heirs of Raymond L. Cook is not barred by the statute of limitations. However, the survivor’s claim must be dealt with separately.

B. Plaintiff’s survivor claim is not barred because she could not have discovered all elements of the claim until later, at the earliest, receipt of medical records.

The opinion on rehearing in *Caves* makes clear that the discovery rule applies to the Mississippi Tort Claims Act. The decision of the Circuit Court fails to adequately consider the discovery rule re-announced in *Caves*. There is no evidence in the record that the plaintiff knew or should have known before January of 2006 that the injury to Raymond L. Cook was caused by negligent conduct on the part of the hospital.

Further, *Huss v. Gayden, et al.*, 991 So.2d 162 (Miss. 2008), holds that the discovery rule is to be decided on a case-by-case, fact-intensive, process. Although, in this case, the injury and the death were plain, the negligence and causation were not evident. In *Huss*, the Court quoted with approval the following passage from *Sutherland v. Ritter*, 959 So.2d 1004 (Miss. 2007):

Although a hidden or unseen injury might very well serve to trigger the discovery rule and toll the statute of limitations, it is not because the injury itself is hidden or

unknown, but rather because the negligence which caused the injury is unknown. Furthermore, *in the medical malpractice context, the discovery rule may apply in cases where the injury is not latent at all, but where the negligence which caused the injury is unknown*. For instance, a patient who undergoes a medical procedure may develop serious complications which are clearly known. However, if the patient has no reason to know that the doctor's negligence in performing the procedure caused the complications, the discovery rule will apply, even though the injury itself is not latent at all. (emphasis added)

Sutherland's analysis is directly in point with what happened here.

Judge Landrum decided this case on a motion to dismiss solely on the basis of the allegations in the complaint without reference to the discovery rule. The defendants argued that the injury was known to the plaintiff and, therefore, the statute of limitations began to run. While it is true that the first *Caves* decision, which was later nullified by this Court's decision on rehearing, was known at the time, the plaintiff argued that *Barnes v. Singing River Hospital System*, 733 So.2d 199 (Miss. 1999), controlled this case until such time as the *Caves'* decision was final. Under the discovery rule announced in *Barnes*, plaintiff should have prevailed on the motion.

The facts clearly demonstrate that plaintiff acted diligently to investigate the claim. The evidence before the Court at the time was that the plaintiff obtained the medical records abstract of the decedent January 11, 2006. The full medical records of the decedent were obtained June 6, 2006. Viewing the facts before the Court in the light most favorable to the plaintiff, the plaintiff had no way of knowing that there was negligence or causation until, at the earliest, January 2006, and more likely June 2006, when the medical records were obtained. As the Court explained in *Huss, supra*, "some plaintiffs might need medical records in order to know of the negligent conduct" The defendants have the burden of proof on the affirmative defense of the statute of limitations. *Jenkins*, 933 So.2d at ¶ 14; citing *Graham v. Pugh*, 417 So.2d 536, 541 (Miss.

1982). No proof has been adduced that plaintiff discovered the cause of action prior to her father's death.

This case is not like *University Medical Center v. McGee*, — So.2d —, 2008 WL 5174301 (Miss. 2008), in which the Court upheld the wrongful death claim while the survivor's claim or personal injury claim was barred by the statute of limitations. In *McGee*, the plaintiff discovered that a sponge had been left inside her during a surgery. Therefore, the facts were known to the plaintiff, and negligence and causation, in the nature of *res ipsa loquitur*, could be immediately inferred. The Court held that the statute of limitations on the personal injury claim ran from the date of discovery of the sponge primarily because such an act would be *prima facie* evidence of the existence of a cause of action.

In this case, there was no such obvious negligence that could be easily known or knowable. No layman could be held to a standard of knowing that an internal bleed was caused by negligence or that negligence caused the patient to die. In fact, plaintiff had to obtain the medical records and get the opinion of an expert witness before it was decided that there was a good and valid cause of action.

At the very least, this matter should be reversed and remanded for determination of the actual knowledge of the plaintiff as there is not enough information in the record to determine exactly when the plaintiff knew that all of the elements of the tort were present. For instance, the record on the motion to dismiss does not contain any testimony or affidavits stating when discovery was made. The defendants relied solely upon the allegations of the complaint. The actual date upon which the medical opinion stating that the defendants were negligent was not received by counsel until April 25, 2007.

Therefore, this matter should be reversed and returned for a trial on the merits, or at least for a hearing on a determination of the facts related to the discovery rule.

C. This Court should overrule *Jenkins v. Pensacola Health Trust, Inc.*, 933 So.2d 923 (Miss. 2006) as wrongly decided.

Caves effectively overrules *Jenkins* on matters related to the wrongful death claims of the heirs. This Court should make it plain the *Jenkins*' rule will not apply to survivors' claims either. Mississippi's Wrongful Death Statute, Miss. Code Ann. 11-7-13 (1972) (Addendum B), reads, in pertinent part:

Whenever the death of any person . . . shall be caused by any real, wrongful or negligent act or omission . . . as would, if death had not ensued, have entitled the party injured or damaged thereby to maintain an action and recover damages in respect thereof . . . [t]he action for such damages may be brought in the name of the personal representative of the deceased person or unborn quick child for the benefit of all persons entitled under the law to recover, . . . and there shall be but one (1) suit for the same death which shall ensue for the benefit of all parties concerned . . . in such action the party or parties suing shall recover such damages allowable by law as the jury may determine to be just, taking into consideration all the damages of every kind to the decedent and all damages of every kind to any and all parties interested in the suit.

Because this statute does not contain a statute of limitations, the Supreme Court has held that a wrongful death action "is limited by the statute of limitation applicable to the tort resulting in the wrongful death." *Thiroux v. Austin*, 749 So.2d 1040, 1042 (Miss. 1999), and *Jenkins v. Pensacola Health Trust, Inc.*, 933 So.2d 923 (Miss. 2006).

Mississippi Code Section 11-46-11 is the applicable time period, providing for a one-year statute. However, the parties disagree as to when this limitations period began to run. South Central Regional Medical Center argues that the statute of limitations for the plaintiff's survivor claim began to run, at the latest, on November 18, 2005, the date of decedent's code, and not the

date of his death, December 6, 2005. It contends that the one-year statute of limitations under the Mississippi Tort Claims Act expired on November 18, 2006, 19 days before the notice of claim letter was served on December 6, 2006, one year after the death of Cook. Plaintiff contends that the statute of limitations, even on the survivor's claim, should not begin to run until death. There is no way that a legitimate, ethically investigated, claim for medical malpractice could have been filed during those 19 days. Raymond Cook was in a coma, yet while he lived, the plaintiff had no legal right to bring the claim.

South Central Regional Medical Center's argument rests on *Jenkins v. Pensacola Health Trust, Inc.*, 933 So.2d 923, 926 (Miss. 2006), which held that all claims begin at the time of the act or acts which lead to the wrongful death. *Gentry v. Wallace*, 606 So.2d 1117 (Miss. 1992), which held that the limitations period for all claims, including the survivors claim, begin to run on the date of death or when the heirs knew or should reasonably have known about the negligence which caused the death, was overruled.

Jenkins, however, was incorrectly decided. *Jenkins* merely holds that "the statute of limitations on bringing a wrongful death claim *is subject to, and limited by*, the statute of limitations associated with the claims of specific wrongful acts which allegedly led to the wrongful death." It does not make the critical analytical distinction of separate claims under the wrongful death statute. Further, the supporting cases cited as authority by *Jenkins* do not support its conclusion, even as to the survivor's claim.

In *Lee v. Thompson*, 859 So.2d 981 (Miss. 2003), the death and the act occurred on the same date. In such cases, no question exists as to when the limitations period began to run. *Lee*, at 982-83. The underlying tort was murder, so the one-year limitations period for intentional torts applied. *Id.* at 990.

In *Wells v. Radiator Specialty Co.*, 413 F. Supp.2d 778 (S.D. Miss. 2006), and *Beck v. Koppers, Inc.*, 2005 U.S. Dist. LEXIS 26613 (N.D. Miss. 2005), the issue was latent injury or disease and the application of the discovery rule. The holdings are slightly different. *Wells* held that the statute of limitations begins to run on the date of discovery of the injury, while *Beck* held that the statute of limitations begins to run on the date of discovery of the injury *and* its cause. No bright-line test can be gleaned in their distinctly different holdings.

This Court decided *Proli v. Hathorn*, 928 So.2d 169 (Miss. 2006), on the same day as *Jenkins*. However, in *Proli*, the patient was injured on May 2, 2002, but did not die until May 18, 2002. *Id.* at 170. Yet, the Court stated, “[h]ere, the statute of limitations began to run on May 18, 2002.” *Id.* at 175.

Therefore, as *Gentry* stated, “it is elementary that the ‘right to sue’ did not and could not have vested until [the decedent] died. Our wrongful death statute provides a cause of action to the survivors of those who die as a result of wrongful conduct. A person cannot qualify as a ‘survivor’ until he survives someone.” *Gentry*, at 1121. Most jurisdictions which have examined the issue hold that death is the proper time to start the statute of limitations.²

²See e.g., *James v. Phoenix Gen. Hosp.*, 744 P.2d 695, 705 (Ariz. 1987) (“The wrongful death cause of action can accrue *only at the death* of the party injured”) (citations omitted) (emphasis supplied); *Horwich v. Superior Court*, 980 P.2d 927, 935 (Cal. 1999) (“a wrongful death action has its own statute of limitations, which runs *from the date of death* rather than any antecedent injury”) (emphasis supplied (citations omitted); *Rauschenberger v. Radetsky*, 745 P.2d 640, 643 (Colo. 1987) (“wrongful death claim must be filed within two years from the date the alleged negligence resulting in death is discovered, or in the exercise whichever event is later”); *Fulton County Adm’r v. Sullivan*, 753 So.2d 549, 552 (Fla. 1999) (“a cause of action for wrongful death accrues *on the date of death*”) (emphasis supplied) (internal citations omitted); *Miles v. Ashland Chem. Co.*, 261 Ga. 726, 727-728 (Ga. 1991) (“an action for wrongful death ‘accrues’ to the heirs *at death*”) (emphasis supplied) (internal citations omitted); *Chapman v. Pacemakers*, 105 Idaho 785, 786-787 (Idaho 1983) (“the law is clear that a cause of action for wrongful death accrues *on the death of the injured party*, and not before”) (emphasis supplied)

What if Cook had lingered for 364 days? During that time plaintiff would have had no right to sue. At death plaintiff would have one day. This just cannot be the law. The statute should not run against anyone until that person has the legal right to effectuate the claim.

Jenkins should be overruled and *Gentry* should be reinstated not just for wrongful death claims, but for survival claims, also.

D. The notice given by the plaintiff was legally sufficient.

SCRMC relies on *South Central Regional Medical Center v. Guffy*, 930 So.2d 1252 (Miss. 2006). However, the plaintiff in *Guffy* failed to provide any written notice to the hospital before filing suit against the Hospital. “In addition to failing to provide any written notice in the record, Guffy filed suit against the Hospital fifty-five days after the accident.” As such, Guffy also failed to wait the statutory ninety days after providing notice to file suit against the Hospital. *Guffy* at 1254. In addition, the defendant misconstrues the Courts finding in *Guffy*, stating “the failure to provide any one of the seven categories of information is failure to comply with the statutory notice requirements and renders the notice letter invalid.” (RE 16 – SCRMC’s Motion to Dismiss). The Court in *Guffy* states that the “failure to provide any of the seven statutorily

(citations omitted); *Farmers Bank & Trust Co. v. Rice*, 674 S.W.2d 510, 512 (Ky. 1984) (“the statute of limitations for wrongful death actions runs *from the death* of the decedent, even though there was no viable action for personal injury or medical negligence or malpractice at the time of death”) (emphasis supplied); *Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 352 (Tex.1990) (“*the time of death* should be taken as the point from which limitation should begin to run”) (Tex. 1990); *Atchison v. Great W. Malting Co.*, 766 P.3d 662, 665 (Wash. 2007) (“wrongful death actions clearly accrue *at the time of death*) (emphasis supplied).

Other jurisdictions distinguish between “survival” claims (those damages the decedent could have recovered from the time of the injury) and “wrongful death” claims (those damages the beneficiaries may recover for their own injuries), with each claim having its own statute of limitations. See e.g., *Pastierik v. Duquesne Light Co.*, 514 Pa. 517, 520 (Pa. 1987). (Footnote quoted from an unpublished dissent by J.Diaz.)

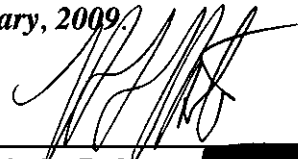
required categories of information falls short of the statutory requirement and amounts to non-compliance with Miss. Code Ann. § 11-46-11(2).” *Guffy* at 1258.

The plaintiff’s Notice of Claim letter meets the content requirements of Miss. Code Ann. § 11-46-11(2). In Mississippi, the notice does not have to disclose each and all facts and details, but when the substantial details are disclosed, there will be compliance with the requirements of Miss. Code Ann. § 11-46-11(2). *Guffy* at 1258. If the information provided is “substantial” enough to comply, then the result is “compliance,” not “substantial compliance.” *Id.* In the instant action, the plaintiff’s Notice of Claim letter states: (1) the circumstances surrounding the injury; (2) the extent of the decedent’s injuries; (3) dates and locations in which the injury occurred; (4) the identity of those persons believed to be involved; (5) amount of damages sought; (6) the decedent’s county of residence; and, (7) the claimant’s current address. See attached Addendum A. Therefore, the Notice of Claim letter meets the requirements of Miss. Code Ann. § 11-46-11(2).

CONCLUSION

The Court’s Order Granting Dismissal should be reversed, and the case remanded for a trial on the merits at which time facts can be fully developed on the limitations defense.

Respectfully submitted, this the 30th day of *January, 2009*.



Robin L. Roberts

Robin L. Roberts ([REDACTED])
Montague Pittman & Varnado, PA
P. O. Drawer 1975
Hattiesburg, MS 39403-1975
(601) 544-1234
Email: rlroberts@mpvlaw.com
8229-1