

**IN THE SUPREME COURT OF MISSISSIPPI**

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**NO. 2010-CA-00193**

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**BRANDON WILSON, a minor, Individually, and by and  
through his father and next friend, BARNEY WILSON**

**APPELLANT**

**VS.**

**HIGHPOINTE HOSPITALITY, INC. and  
DARRYL LAPOINTE**

**APPELLEES**

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**ON APPEAL FROM THE  
CIRCUIT COURT OF WARREN COUNTY, MISSISSIPPI**

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**BRIEF OF APPELLANT**

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**ORAL ARGUMENT REQUIRED**

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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 judges of this Court may evaluate possible disqualification or recusal.

1. Brandon Wilson, a minor, Individually, and by and through his father and next friend, Barney Wilson - appellant/plaintiff.
2. Carroll Rhodes, Esq. - attorney for appellant/plaintiff.
3. Highpointe Hospitality, Inc. - appellee/defendant.
4. Darryl LaPointe - appellee/defendant/
5. Sandra D. Buchannan, Esq. DANIEL, COKER, HORTON & BELL, P.A. - attorneys for appellees/defendants.
6. Honorable Frank Vollor - Retired Warren County Circuit Court Judge.
7. Honorable James Chaney, Jr. - Warren County Circuit Court Judge.

  
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CARROLL RHODES

**STATEMENT REGARDING ORAL ARGUMENT**

Appellant/plaintiff, Brandon Wilson, a minor, Individually, and by and through his father and next friend, Barney Wilson, submits that oral argument is necessary in this case inasmuch as the facts, issues, and law involve a complex issue of jurisdiction.

A handwritten signature in black ink, appearing to read "Carroll Rhodes", is written over a horizontal line.

CARROLL RHODES  
COUNSEL OF RECORD FOR  
PLAINTIFF-APPELLANT

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## **STATEMENT OF THE ISSUE**

The central issue in this case is whether the actions of a foreign corporation and nonresident individual who advertise their business in the State of Mississippi and who solicit, communicate, and contract with Mississippi residents enticing the Mississippi residents to do business with them constitute sufficient minimum contacts with the State of Mississippi to establish personal jurisdiction subjecting the foreign corporation and nonresident individual to suit in Mississippi on claims of deceptive advertising and negligence?

## **STATEMENT OF THE CASE**

**a. Nature of the Case.**

This is a personal injury action based on common law negligence and violation of the Mississippi Deceptive Advertising Statute § 97-23-3, Miss. Code Ann. (1972).

**b. Course of Proceedings and Disposition Below.**

Plaintiff, Brandon Wilson (“Wilson”), a minor, individually, and by and through his father and next friend, Barney Wilson, filed his complaint against defendants, Hampton Inns, Inc., Hilton Hotels Corporation, and Charles Harris, in the Circuit Court of Warren County, Mississippi on June 19, 2007. [R. 5-16].<sup>1</sup> Wilson, filed an amended complaint on October 2, 2007 naming as defendants, Crescent City Lodging, LLC d/b/a Hampton Inn New Orleans-Six Flags Area; Hilton Hotels Corporation, Highpointe Hospitality, Inc., Darryl LaPointe, and Charles Harris. [R. 5-16, R. E. 8a-16a, Tab 4]. Wilson’s amended complaint asserted claims of deceptive advertising (§ 97-23-3, Miss. Code Ann. (1972)), and negligence against the defendants. Hilton Hotels Corporation (“Hilton”)

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<sup>1</sup>“R” denotes the Record followed by page numbers. “R. E.” denotes the Record Excerpts filed by Ford followed by the Record Excerpts page numbers and the Tab number.

filed its answer on November 7, 2007. [R. 17-24]. Highpointe Hospitality, Inc. (“Highpointe Hospitality”) and Darryl LaPointe (“LaPointe”) filed their answer and affirmative defenses on November 15, 2007. [R. 25-33]. Highpointe Hospitality and LaPointe asserted “by reference every good faith defense available to them pursuant to Mississippi Rules of Civil Procedure 12(b)(1) through (b)(6).” [R. 25].

Highpointe Hospitality and LaPointe filed a motion to dismiss for lack of personal jurisdiction on August 28, 2008. [R. 34-75, R. E. 21a-24a, 17a-20a, 32a-36a, Tabs 5, 6, & 8]. Wilson filed a response to the motion to dismiss on October 28, 2008. [126-133, R. E. 25a-31a, Tab 7]. Barney Wilson filed an affidavit opposing the motion to dismiss on October 25, 2008. [R. 76-125, R. E. 37a-52a, Tab 9]. The trial court entered an Order Granting Defendants’ Highpointe Hospitality, Inc. and Darryl LaPointe’s Motion to Dismiss for Lack of Personal Jurisdiction on November 10, 2008. [R. 134-135, R. E. 6a-7a, Tab 3]. The trial court did not certify this order as a final order as to Highpointe Hospitality and LaPointe pursuant to *MRCP 54(b)*.

Hilton Hotels Corporation (“Hilton Hotels”), the owner of the Hampton Inn Hotels, filed a motion for summary judgment on October 5, 2009. [R. 136-167]. Wilson filed a response to Hilton Hotels’ summary judgment motion on October 15, 2009. [R. 171-178], and Vickie Wilson filed an affidavit in opposition to the summary judgment motion the same date. [R. 168-170, R. E. 53a-55a, Tab 9].

The circuit court entered a final judgment on December 29, 2009 enforcing the settlement between Hilton Hotels and Wilson in the amount of \$15,000.00 and dismissing the company’s summary judgment motion as moot and “all other claims pending against all other parties...” [R. 179-180, R. E. 4a-5a, Tab 2].

Wilson filed his notice of appeal on January 28, 2010. [R. 181-182, R. E. 56a-57a, Tab 10].

**c. Statement of Facts.**

Brandon Wilson is the minor son of Barney Wilson and Vickie Wilson. [R. 76, 168, 197-205, R. E. 37a, 53a, 10a-16a, Tabs 4 & 9]. On June 24, 2004, Wilson was less than 14 years of age. [R. 77, 168, 199, R. E. 38a, 53a, 10a, Tabs 4 & 9]. On June 24, 2004, Wilson went on a field trip sponsored by the Cedar Grove M. B. Church in Warren County, Mississippi ("Cedar Grove") to the New Orleans-Six Flags Hampton Inn in New Orleans, Louisiana. [R. 76-81, 168-170, 197-205, R. E. 37a-42a, 53a-55a, 8a-16a, Tabs 4 & 9].

The Hampton Inn hotel franchise, including the New Orleans-Six Flags Hampton Inn, was owned by Hilton Hotels. [R. 76-81, 168-170, 197-205, R. E. 37a-42a, 53a-55a, 8a-16a, Tabs 4 & 9]. However, the actual hotel site and grounds were owned by Crescent City Lodging, LLC ("Crescent City"), a New Orleans, Louisiana limited liability company. [R. 76-81, 168-170, 197-205, R. E. 37a-42a, 53a-55a, 8a-16a, Tabs 4 & 9].

Although the hotel was owned by Crescent City, it was managed by Highpointe Hospitality. [R. 76-81, 168-170, 197-205, R. E. 37a-42a, 53a-55a, 8a-16a, Tabs 4 & 9]. Crescent City and Highpointe Hospitality entered into a management contract whereby Highpointe Hospitality agreed to provide an annual plan to Crescent City which included a marketing plan, including a marketing budget. [R. 109, R. E. 48a, Tab 9]. Highpointe Hospitality is a foreign corporation incorporated in and having its principal place of business in the State of Florida. [R. 52-56, 76-81, 168-170, 197-205, R. E. 32-42a, 53a-55a, 8a-16a, Tabs 4, 8, & 9]. Highpointe Hospitality is not licensed to do business in Mississippi. [R. 52-56, R. E. 32-36, Tab 8].

Promus Hotels, Inc. ("Promus"), a division of Hilton Hotels, entered into a license agreement

with Darryl LaPointe granting LaPointe the license to use the Hampton Inn trademark, copyright, and property right at the Crescent City property. [R. 83, R. E. 43, Tab 9]. The license made the Crescent City property a part of the Hilton Hotels system and granted LaPointe rights to identify his hotel as a Hampton Inn and to “be part of the System access to a reservation service, distribution of advertising, publicity and other marketing programs and materials...” [R. 83, R. E. 43, Tab 9]. LaPointe is the president of Highpointe Hospitality and a Florida resident. [R. 54, R. E. 34a, Tab 8].

Hilton Hotels, Crescent City, Highpointe Hospitality, and LaPointe, “jointly and severally, for a period of time leading up to June 24, 2004, with the intent to sell hotel services, directly or indirectly, to the public, with the intent to increase demand for hotel services at the New Orleans-Six Flags Hampton Inn, made, published, disseminated, circulated, and placed before the public within the State of Mississippi, in newspapers, pamphlets, leaflets, brochures, letters, internet advertisements and other publications, advertisements that the New Orleans-Six Flags Hampton Inn had a swimming pool that was safe for minors to use...” [R. 78, R. E. 39a, Tab 9]. The advertisement contained misleading advertising misleading minors, including Wilson, to believe “that it was safe to swim in the hotel swimming pool as long as they were guests at the hotel.” [R. 200-201, 78, R. E. 11a-12a, 39a, Tabs 4 & 9]. This advertising appeared on the Internet in Warren County, Mississippi. [R. 201, 78, R. E. 12a, 39a, Tabs 4 & 9].

In addition to publishing the deceptive advertising on the Internet in Mississippi, Hilton Hotels, Crescent City, Highpointe Hospitality, and LaPointe published the deceptive advertising in brochures that appeared in Hampton Inns and other hotels in the State of Mississippi prior to June 24, 2004. [R. 79, 201, R. E. 12a, 40a, Tabs 4 & 9].

Hilton Hotels, Crescent City, Highpointe Hospitality, and LaPointe knew, or on reasonable

investigation should have known, that the advertising appearing in brochures in hotels in Mississippi and on the Internet was misleading and deceptive. [R. 78, 200, R. E. 11a, 39a, Tabs 4 & 9].

Church officials called the hotel prior to June 24, 2004 and discussed a special reservations rate. [R. 79, R. E. 40a, Tab 9]. Hotel employees called church officials back in Warren County, Mississippi and offered a special group rate. [R. 79, R. E. 40a, Tab 9]. Warren County church officials then sent the hotel a check (Check Number 2634) in the amount of \$744.50 on May 26, 2004 to reserve the rooms for the church group. [R. 79, 122, R. E. 40a, 49a, Tab 9].

Wilson's parents detrimentally relied on the misleading advertising made by Hilton Hotels, Highpointe Hospitality, Crescent City, and Darryl Lapointe and allowed him to go on the church trip. [R. 79, 201, R. E. 12a, 40a, Tabs 4 & 9]. They paid Cedar Grove \$104.00 on June 20, 2004, and Wilson went on the trip. [R. 79, 125, R. E. 40a, 52a, Tab 9]. The church group arrived at the hotel on June 24, 2004. [R. 80, 201, R. E. 12a, 41a, Tabs 4 & 9].

Brandon and some other youths went swimming in the hotel's swimming pool. [R. 80, 201, R. E. 12a, 41a, Tabs 4 & 9]. There were no warning signs posted at the pool and no life guard on duty. [R. 80, 202, R. E. 13a, 41a, Tabs 4 & 9]. There were no strips or plastic grips at the pool to keep children from falling down, and no adult supervision at the pool. [R. 80, 202, R. E. 13a, 41a, Tabs 4 & 9].<sup>2</sup> Wilson either dove into the shallow end of the pool or was playing in the shallow end when he slipped and fell injuring his head resulting in physical pain, emotional distress, and medical bills.<sup>3</sup> [R. 80-81, 202-203, R. E. 13a-14a, 41a-42a, Tabs 4 & 9].

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<sup>2</sup>Charles Harris was a church chaperon who was supposed to supervise the children. [R. 80, 201-202, R. E. 12a-13a, 41a, Tabs 4 & 9].

<sup>3</sup>Wilson's medical bills were in excess of \$45,000.00.

Wilson sued Crescent City, Hilton Hotels, Highpointe Hospitality, and LaPointe for deceptive advertising. He sued Crescent City, Hilton Hotels, Highpointe Hospitality, LaPointe, and Charles Harris (“Harris”) for negligence. Crescent City is no longer in business after Hurricane Katrina. Hilton Hotels settled with Wilson for \$15,000.00. The circuit court granted Highpointe Hospitality’s and LaPointe’s motion to dismiss, and the court entered a final judgment dismissing all claims against Highpointe Hospitality, LaPointe, and Harris on December 29, 2009.

### **SUMMARY OF THE ARGUMENT**

Wilson appeals the trial court’s grant of Highpointe Hospitality’s and LaPointe’s motion to dismiss for lack of personal jurisdiction. The issue of personal jurisdiction is a matter of law, and “this Court is in the same position as the trial court, since all facts are set out in the pleadings or exhibits.” *Yatham v. Young*, 912 So. 2d 467, 469, ¶ 4 (Miss. 2005) (En Banc). See, also, *Horne v. Mobile Area Water & Sewer System*, 897 So. 2d 972, 975-976, ¶ 10-11 (Miss. 2004) (En Banc). Applying the two tier test in determining personal jurisdiction to the facts pled by Wilson, it is clear that Hilton Hotels, Highpointe Hospitality, and LaPointe engaged in activities that make them amenable to suit in Mississippi and they “availed themselves of Mississippi in a manner that the exercise of personal jurisdiction would be consistent with the due process clauses of the federal and state constitutions.” *Yatham v. Young*, at 469, ¶ 5.

Highpointe Hospitality and LaPointe entered into a contract, in part, in Mississippi; committed a tort in Mississippi, and were doing business in Mississippi. Highpointe Hospitality and LaPointe advertised over the Internet, in newspapers, in brochures, and in Hampton Inn hotels in Mississippi. The advertisement was misleading and enticed the Cedar Grove church group and Wilson to visit and stay at the hotel in New Orleans, Louisiana. The hotel was operated and

managed by Highpointe Hospitality and LaPointe. Highpointe Hospitality and LaPointe held a Hampton Inn license from Hilton Hotels and were solely responsible for the operation and management of the hotel, and partially responsible for the advertising of the hotel. As a results of the misleading advertising, church officials called the defendants' hotel and made special reservations. Hotel employees called church officials back in Mississippi, confirmed the reservation, and told church officials how much money to send. Church officials sent the money from Vicksburg, Mississippi to New Orleans on May 26, 2004. They did not go to the hotel until June 24, 2004, almost a month later. The defendants had sufficient specific contacts with Mississippi to confer personal jurisdiction on the Mississippi courts. See, *Estate of Jones v. Phillips*, 992 So. 2d 1131 (Miss. 2008); *Horne v. Mobile Area Water & Sewer System*, supra; *Stubbs v. Wyndham Nassau Resort and Crystal Palace Casino*, 447 F. 3d 1357 (11<sup>th</sup> Cir. 2006); *Carefirst of Maryland v. Carefirst Pregnancy Centers, Inc.*, 334 F. 3d 390 (4<sup>th</sup> Cir. 2003); *Revell v. Lidov*, 317 F. 3d 467 (5<sup>th</sup> Cir. 2002); *Bell v. Imperial Palace Hotel Casino, Inc.*, 200 F. Supp. 2d 1082 (E. D. Mo. 2001); and *Zippo Manufacturing. Co., Inc. v. Zippo Dot Com., Inc.*, 952 F. Supp. 1119 (W. D. Pa. 1997).

## **THE ARGUMENT**

### **a. The Standard of Review.**

This case is an appeal of the trial court's grant of the defendants' motion to dismiss for lack of personal jurisdiction pursuant to *MRCP 12(b)(2)*. The review of an issue involving personal jurisdiction is a matter of law. *Yatham v. Young*, supra. The review is *de novo*. *Id.*; *Horne v. Mobile Area Water & Sewer System*, supra, at 975-976, ¶ 10-11; *Stubbs v. Wyndham Nassau Resort and Crystal Palace Casino*, supra, at 135. A motion to dismiss under *M.R.C.P. 12* "should not be granted unless it appears beyond doubt that the plaintiff will be unable to prove any set of facts in

support of his claim.” *Brewer v. Burdette*, 768 So. 2d 920, 922 (Miss. 2000) (en banc).

**b. The Warren County Circuit Court had personal jurisdiction of the defendants.**

This Court has held that “[w]hether a Mississippi court may exercise personal jurisdiction over a nonresident defendant is determined through the application of a two-tiered analytical framework.” *Horne v. Mobile Area Water & Sewer System*, supra, at 976, ¶ 12. The first tier involves a determination of “whether the defendant is amenable to suit here by virtue of the Mississippi long-arm statute, Miss. Code Ann. § 13-3-57 (Rev. 2002).” *Id.* The second tier involves a determination of whether the nonresident defendant availed himself “of Mississippi in a manner that the exercise of personal jurisdiction would be consistent with the due process clauses of the federal and state constitutions.” *Yatham v. Young*, supra, at 469, ¶ 5. As discussed later, Highpointe Hospitality and LaPointe are amenable to suit under Mississippi’s long-arm statute, Miss. Code Ann. § 13-3-57 (Rev. 2002), and the exercise of personal jurisdiction over the defendants would be consistent with the due process clauses of both the federal and state constitutions.

**1. The defendants are amenable to suit under Mississippi’s long-arm statute.**

The Mississippi long arm statute confers personal jurisdiction over a nonresident defendant (1) if that person has entered into a contract, in whole or part, in Mississippi, (2) committed a tort, in whole or part, in Mississippi, or, “(3) is conducting business in Mississippi.” *Yatham v. Young*, supra, at 469-470, ¶ 6, citing, Miss. Code Ann. § 13-3-57 (Rev. 2002); *Horne v. Mobile Area Water & Sewer System*, supra, at 976-977, ¶ 14; *Gross v. Chevrolet Country, Inc.*, 655 So. 2d 873 (Miss. 1995) (En Banc). The conducting business component of the long-arm statute requires the nonresident defendant to purposefully do some act “or perform any character of work or service in this state...” *Estate of Jones v. Phillips*, supra, at 1139, ¶ 14. Highpointe Hospitality and LaPointe

not only were doing business in Mississippi, but they entered into a contract, in part, in Mississippi and committed a tort, in part, in Mississippi.

**A. Highpointe Hospitality entered into a contract, in part, in Mississippi.**

The renting of a hotel room by a guest is a contract between the hotel and the guest. See, *Edwards House v. Davis*, 124 Miss. 485, 86 So. 849 (1921). Highpointe Hospitality negotiated a contract with Cedar Grove church officials over the telephone in May, 2004. A contract can be established over the telephone when an agreement is reached between the parties. See, *BankPlus v. Toyota of New Orleans*, 851 So. 2d 439, 443, ¶ 13 (Miss. Ct. App. 2003). Church officials called Highpointe Hospitality from Warren County to negotiate a special rate. Highpointe Hospitality employees called the church officials back and quoted them the special rate. Church officials sent a check in the amount of \$744.50 on May 26, 2004 to reserve the rooms for the church group. The church trip was not scheduled until June 24, 2004. The negotiations for a special rate and the tender of funds to secure the rooms took place, in part, in Warren County, Mississippi. [R. 79, 122, R. E. 40a, 49a, Tab 9]. A contract was thus, entered into, in part, in Mississippi. *BankPlus v. Toyota of New Orleans*, supra, at 443, ¶ 13.

Wilson paid Cedar Grove \$104.00 on June 20, 2004 to go on the trip. [R. 79, 125, R. E. 40a, 52a, Tab 9]. This transaction took place in Warren County, Mississippi. Wilson was a third-party beneficiary of the contract entered into between Highpointe Hospitality and Cedar Grove. A third party is a beneficiary of a contract if the contract is entered into for his benefit, “or at least such benefit is the direct results of the performance within the contemplation of the parties...” *Trinity Mission of Clinton, LLC v. Barber*, 988 So. 2d 910, 918, ¶ 21 (Miss. Ct. App. 2007). Wilson’s benefit is the direct results of the performance of the contract between Highpointe Hospitality and

Cedar Grove as contemplated by the parties. He is, therefore, a third party beneficiary of that contract. *Id.*

Since Wilson is a third-party beneficiary of the contract negotiated between Highpointe Hospitality and Cedar Grove in Mississippi and paid by Cedar Grove from Mississippi, the company is subject to personal jurisdiction under Mississippi's long arm statute. *Yatham v. Young*, *supra*, at 469-470, ¶ 6, citing, Miss. Code Ann. § 13-3-57 (Rev. 2002).

**B. Highpointe Hospitality and LaPointe committed a tort in Mississippi.**

Wilson has asserted a claim of deceptive advertising against LaPointe and Highpointe Hospitality. LaPointe is an officer of Highpointe Hospitality. He entered into a license agreement with Hilton Hotels (Promus Hotels, Inc.). That license agreement authorized LaPointe and Highpointe Hospitality to use Hilton's "System." The "System" was "designed to identify 'Hampton Inn hotels'... to the consuming public..." [R. 83, R. E. 43a, Tab 9]. The "System" included "the service marks 'Hampton Inn.'" [R. 83, R. E. 43a, Tab 9]. The "System" also included "access to a reservation service; distribution of advertising; publicity and other marketing programs and materials..." [R. 83, R. E. 43a, Tab 9].

Hilton Hotels, Highpointe Hospitality, and LaPointe advertised the amenities and safety of the New Orleans-Six Flags Hampton Inn over the Internet and in newspapers, pamphlets, leaflets, brochures, letters, and other publications in Mississippi. [R. 78, R. E. 39a, Tab 9]. There are several Hampton Inns in the State of Mississippi, including one in Warren County, Mississippi.<sup>4</sup>

The advertising indicated that the New Orleans-Six Flags Hampton Inn had a swimming pool

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<sup>4</sup>These advertising brochures are placed in all of the Hampton Inns, including the one in Vicksburg.

that was safe for minors to use. [R. 78-80, R. E. 39a-41a, Tab 9]. That advertising was deceptive, false, and misleading because the swimming pool did not have warning signs warning minors about the dangers of diving, swimming, or depth of the pool, there was no life guard on duty, there were no strips or plastic grips at the bottom of the pool to keep minors from falling. [R. 78-80, R. E. 39a-41a, Tab 9]. Wilson and his parents were misled by this deceptive, false, and misleading advertising. [R. 76-170, R. E. 37a-55a, Tab 9].

A claim of deceptive advertising is essentially a tort claim. See, *Sweatt v. Murphy*, 733 So. 2d 207, 212 (Miss. 1999); *Dixieland Food Stores, Inc. v. Kelly's Big Star, Inc.*, 391 So. 2d 633, 636 (Miss. 1980). The deceptive advertising was made in Mississippi and misled Wilson into going to the hotel and swimming in the hotel swimming pool where he was injured. Highpointe Hospitality and LaPointe deceptively advertised in Mississippi inducing Wilson to go to New Orleans and be injured. In short, Highpointe Hospitality and LaPointe are subject to personal jurisdiction under Mississippi's long arm statute. *Yatham v. Young*, supra, at 469-470, ¶ 6, citing, Miss. Code Ann. § 13-3-57 (Rev. 2002).

**C. Highpointe Hospitality and LaPointe were doing business in Mississippi.**

The business that Highpointe Hospitality and LaPointe were doing in Mississippi was advertising, albeit deceptive. The Mississippi Supreme Court has held:

The test to determine whether a nonresident corporation is doing business in Mississippi, as contemplated by our long arm statute, is (1) the nonresident corporation must purposefully do some act or consummate a transaction in Mississippi; (2) the cause of action must either arise from or be connected with the act or transaction; and (3) the assumption of jurisdiction by Mississippi must not offend traditional notions of fair play and substantial justice.

*Gross v. Chevrolet Country, Inc.*, supra, at 877. Highpointe Hospitality purposefully advertised in

Mississippi.<sup>5</sup> One of Wilson's causes of action against Highpointe Hospitality arises from that advertisement. And, as discussed later, the assumption of jurisdiction does not offend traditional notions of fair play and substantial justice.

Highpointe Hospitality and LaPointe advertised the amenities and safety of the New Orleans-Six Flags Hampton Inn over the Internet<sup>6</sup> and in newspapers, pamphlets, leaflets, brochures, letters, and other publications in Mississippi. [R. 78, R. E. 39a, Tab 9]. The advertising was directed at Mississippi patrons enticing them to stay at the New Orleans hotel. As such, Highpointe Hospitality and LaPointe were doing business in Mississippi. *Gross v. Chevrolet Country, Inc.*, supra.

**2. The exercise of jurisdiction is consistent with due process.**

The Due Process Clauses of both the federal and state constitutions require the defendants to have minimum contacts with Mississippi "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Estate of Jones v. Phillips*, supra, at 1139, ¶ 17. A determination of whether the contacts with Mississippi are sufficient to satisfy the minimum contacts requirement depends upon whether specific jurisdiction or general jurisdiction is being asserted. *Estate of Jones v. Phillips*, supra, at 1140, ¶ 20; *Carefirst of Maryland v. Carefirst Pregnancy Centers, Inc.*, supra; *Revell v. Lidov*, supra; *Bell v. Imperial Palace Hotel Casino, Inc.*,

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<sup>5</sup>It has been held that "advertisement of particular foreign entity in forum state constitutes purposeful availment of the privilege of acting in forum state." *Gross v. Chevrolet Country, Inc.*, supra, at 878, relying on *Creech v. Roberts*, 908 F. 2d 75, 79 (6<sup>th</sup> Cir. 1990), cert. denied, 499 U. S. 975, 111 S. Ct. 1619, 113 L. Ed. 2d 717 (1991).

<sup>6</sup>Although it has been held that having an internet site that is not interactive is insufficient to satisfy the minimum contacts requirement of the Due Process Clause, *Revell v. Lidov*, supra, *Bell v. Imperial Palace Hotel/Casino, Inc.*, supra, this Court has not addressed whether an interactive internet website alone is sufficient to satisfy the doing business requirement of the state's long arm statute. In any event, the record does not disclose whether the defendants' internet website was interactive or not.

supra; and *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, supra. Wilson is asserting both specific jurisdiction and general jurisdiction.

The Mississippi Supreme Court has held that “[w]here a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this ‘fair warning’ [that a particular activity may subject the defendant to the jurisdiction of a foreign sovereign] requirement is satisfied if the defendant has ‘purposefully directed’ his activities at residents of the forum...and the litigation results from alleged injuries that ‘arise out of or relate to’ those activities.” *Estate of Jones v. Phillips*, supra, at 1140-41, ¶ 20. In this case, Highpointe Hospitality and LaPointe purposefully advertised in this state and purposefully communicated with and contracted with church officials to stay at their hotel. This litigation results from injuries that arise out of or relate to the defendants’ advertising and contracting activities.<sup>7</sup> Wilson has filed a deceptive advertising claim and negligence claim stemming from and arising out of the advertisement, enticement, and contracting efforts by the defendants in Mississippi. It has been held “that [a] single act by the defendant directed at the forum state can be enough to confer personal jurisdiction if that act give rise to the claim being asserted.” *Horne v. Mobile Area Water & Sewer System*, supra, at 980, ¶ 26. Therefore, specific jurisdiction exists and the actions of the defendants are sufficient to satisfy the minimum contacts requirements of the Due Process Clause. See, *Estate of Jones v. Phillips*, supra; *Horne v. Mobile Area Water & Sewer System*, supra.

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<sup>7</sup>Those advertising activities include placing advertisements about the hotel in newspapers, circulars, brochures, and other printed material in Mississippi and on the internet. While posting an internet site alone is insufficient to establish minimum contacts, *Bell v. Imperial Palace Hotel/Casino, Inc., Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, supra, an interactive internet site can establish minimum contacts. See, *Zippo Manufacturing Co. v. Zippo Dot Com., Inc.*, supra; *Revell v. Lidov*, supra.

The state's highest court has held that general jurisdiction is established when "the defendant's activities in the forum state ... are systematic and continuous." *Estate of Jones v. Phillips*, supra, at 1141, ¶ 20. Systematic and continuous advertising in newspapers and brochures in Mississippi along with an interactive internet site whereby Mississippi residents may make reservations with the defendant's hotel establish general jurisdiction. See, *Zippo Manufacturing Co., Inc. v. Zippo Dot Com, Inc.*, supra. The plaintiff has established systematic and continuous advertising by the defendants sufficient to satisfy the general jurisdiction requirements of the Due Process Clause's minimum contacts requirement. *Zippo Manufacturing Co., Inc. v. Zippo Dot Com, Inc.*, supra.

### **CONCLUSION**

On the basis of the foregoing facts and authorities, this Court should reverse the trial court's order granting Highpointe Hospitality's and LaPointe's motion to dismiss, and remand the case for a trial.

This the 14<sup>th</sup> day of June, 2010.

Respectfully submitted,  
BRANDON WILSON, a Minor, Individually, and by  
and through his father and next friend, BARNEY WILSON

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**CERTIFICATE OF SERVICE**

I, Carroll Rhodes, attorney for Plaintiffs, do hereby certify that I have this day mailed via United States Mail, postage prepaid, a true and correct copy of the above and foregoing ***Brief of Appellant*** to:


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Circuit Court Judge

This, the 14<sup>th</sup> day of June, 2010.

  
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CARROLL RHODES