IN THE SUPREME COURT OF MISSISSIPPI

THE ESTATE (THROUGH THE ADMINISTRATRIX IDA CAMPBELL) AND THE WRONGFUL DEATH AND SURVIVAL BENEFICIARIES OF JOHN EARL SYKES, IDA CAMPBELL, JEFFIE EZELL, DONNIE DRAINE, SAMMIE JOE SYKES, RICKY WAYNE SYKES, BRENDA FAY HARDWICK, TERRY SYKES, AND JAMES E. SYKES	APPELLANTS
VERSUS	NO.: 2010-CA-00654
CALHOUN HEALTH SERVICES	APPELLEE

APPEAL FROM THE CIRCUIT COURT OF CALHOUN COUNTY, MISSISSIPPI

APPELLANTS' REPLY BRIEF

ORAL ARGUMENT REQUESTED

Respectfully submitted by:

DAVID A. BOWLING, ESQ.
MSB[redacted]
SUSANNAH C. McKINNEY, ESQ.
MSB[redacted]
Place St. Charles
201 St. Charles Avenue, Suite 2411
New Orleans, Louisiana 70170-2411
Telephone: (504) 586-5200
Facsimile: (504) 586-5201
(Main Office)
and
1323 28th Avenue
Gulfport, Mississippi 39501
Telephone: (800) 620-1287
Facsimile: (228) 575-4006
(Mississippi Office)

TABLE OF CONTENTS

TABLE OF CASES ii

I. DEFENDANT CALHOUN UNDERESTIMATES THE POWER OF THIS COURT TO CORRECT TRIAL COURT ERROR 1

II. CALHOUN'S BRIEF GLOSSES OVER THE FACT THAT GLARING EVIDENCE OF A BREACH OF THE STANDARD OF CARE TO PERFORM A PROPER TRIAGE FOR ANY PATIENT WAS PROVED AT TRIAL 4

III. THE MASS CASUALTY EXCUSE WAS NOT THE REASON THAT A TRIAGE WAS NOT PROPERLY PERFORMED AND DID NOT EXIST IN REALITY 10

IV. CALHOUN'S BRIEF FAILS TO ESTABLISH THAT THE TRIAL COURT'S RULING ON CAUSATION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE 14

V. CONCLUSION 17

TABLE OF CASES

CASE	PAGE NO.
City of Jackson v. Internal Engine Parts Group, Inc., 903 So.2d 60 (Miss 2005)	2
Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993)	3
Hall v. Hilbun, 466 So.2d 856 (Miss. 1985)	11
Hooks v. George County, 748 So.2d 678, 680 (Miss. 1999)	3
Mississippi Transportation Commission v McClemore, 863 So 2d 31 (Miss. 2003)	3
University of Mississippi Medical Center v. Gore, 40 So.3d 545 (Miss. 2010)	2, 3, 5
University of Mississippi Medical Center v. Pounders, 970 So. 2d 141, 147 (Miss. 2007)	3

I. DEFENDANT CALHOUN UNDERESTIMATES THE POWER OF THIS COURT TO CORRECT TRIAL COURT ERROR

Plaintiffs first reply to Calhoun's brief is one which applies to all of the issues of this appeal: Calhoun expresses an overly restrictive view of this Court's ability to assess a lower court's findings. Although both parties agree that a manifest error/substantial evidence standard of review applies, plaintiffs suggest that Calhoun's brief presents an overstatement of that standard.[1] It is true that battles of experts, to the extent there are reasonable competing views among them, are typically to be resolved by trial rather than appellate courts. However, to take Calhoun's view of the standard of review to its logical conclusion, in a Tort Claims Act case, just so long as a party is able to muster some expert testimony in its favor, a ruling in favor of that party is immune from appellate review. This would read the "substantial" out of the "substantial evidence" standard, and would improperly abdicate the authority of reviewing courts to expert witnesses retained by the winner in the lower court. A party's ability to obtain an expert to convince a trier of fact should not equate to a right to an automatic affirmance from this Court or the Court of Appeals.

---

[1]For example, Calhoun's brief argues that "Campbell's argument runs afoul of the principle that evidence contrary to the trial court's factual findings must be disregarded on appeal, and that resolving conflicts in expert testimony is for the trial court alone (Calhoun's brief, p. 21) . . . It was in the trial court's sole province whether to accept or reject those opinions. The trial court's decision to accept the opinions of CHS's experts and find in favor of CHS on that basis is not subject to second-guessing on appeal. (Calhoun's brief, p. 23) . . . Since Campbell's argument relies on the testimony of her expert witnesses, it is without merit." (Calhoun's brief, p. 28).

conclusions.[4] This Court recited the various formulations of the substantial evidence/manifest error standard of review and noted that "a [trial] court's ruling is not based on substantial evidence if glaringly obvious evidence is ignored," citing *University of Mississippi Medical Center v. Pounders*, 970 So. 2d 141, 147 (Miss. 2007). This Court also cited in footnote 10 to the *Gore* opinion the formulation of the standard of review which equates substantial evidence with "such relevant evidence as reasonable minds might accept as adequate to support a conclusion . . .," Quoting *Hooks v. George County*, 748 So.2d 678, 680 (Miss. 1999). Thus, this Court has long ago announced and has recently reiterated that there is a reasonableness component to evidence that is deemed substantial, and *Gore* illustrates that this Court can indeed weigh competing expert testimony to determine whether a trial court ruling is supported by reasonable, substantial evidence or is against the overwhelming weight of the evidence and is manifestly erroneous.

---

[4]It is significant that this Court in *Gore* assessed the reasonableness of the reliance by the lower court on the plaintiffs' experts without finding or even addressing the question of whether the trial court abused its discretion in admitting the testimony. The rejection of the idea that the assessment of expert testimony is entirely a matter for the trier of fact is arguably the most significant development in civil and criminal practice in the United States over the last 30 years. Although the modern trend empowering judges to more actively patrol expert testimony finds its most frequently concrete application in admissibility rulings, see e.g., *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993) and *Mississippi Transportation Commission v McClemore*, 863 So 2d 31 (Miss. 2003), the role of judges to control excessive influence from retained experts is not limited to admissibility questions, as *Gore* illustrates. The notion advanced by Calhoun's brief that the existence of admitted expert testimony renders the case appeal proof is not only inconsistent with *Gore*, which illustrates that there is still a fenced in area beyond the "gate," but is also contrary to the modern trend to avoid ceding excess authority to experts. This appeal does not raise the issue of the admissibility of expert testimony, but as *Gore* establishes, assessing an admissibility decision under the super stringent abuse of discretion standard is not the only occasion in which this Court can scrutinize expert testimony.

Plaintiffs, then, disagree with the prevalent theme of Calhoun's brief. It is not enough for Calhoun to point to the existence of expert testimony which was relied upon the Trial Court. It must also have been reasonable and sensible for the Trial Court to have so relied on that testimony. As was discussed in plaintiffs' original brief and as will be further discussed below, the Trial Court's ruling disregarded glaring evidence of deviations from the standard of care, and the ruling is not supported by substantial, reasonable evidence notwithstanding the admission of the testimony of two retained defense experts.

II. CALHOUN'S BRIEF GLOSSES OVER THE FACT THAT GLARING EVIDENCE OF A BREACH OF THE STANDARD OF CARE TO PERFORM A PROPER TRIAGE FOR ANY PATIENT WAS PROVED AT TRIAL

In this case, certain facts were undisputed. It was not contested that any patient with any medical complaint seeking medical treatment was entitled to a reasonably prompt triage by a registered nurse. Reasonably prompt in this context does not mean after the passage of an hour. (Record Ex. "E," p. 49; Tr. p. 231 line 25-29). It is indisputable that John Sykes did not receive that triage as contemplated by the policies and procedures which Calhoun's witnesses conceded constituted the standard of care. (Tr. p. 219, line 8-15). What John Sykes received instead was an entirely bizarre *ad hoc* process which glaringly failed to comply with the standard of care. The Trial Court noted that this was "imperfect" but exonerated the defendant on the standard of care issue without addressing the standard of care issue concerning basic triage. Whether or not the patient's chest discomfort complaints were typical or atypical does not even address the question of basic triage. Every patient deserves a triage. Triage is not dependent on whether the complaints are cardiogenic or not.

Indeed, basic triage for a chest complaint patient is necessary to determine whether the patient is having chest discomfort suggestive of ischemia, and if the patient does, the patient undergoes the next level of assessment and treatment pursuant to ACLS protocol (eg., EKG within 10 minutes of arrival, morphine, oxygen and nitrates). The absence of a standard of care basic triage[5] by a registered nurse to determine whether the patient had chest discomfort suggestive of ischemia was admitted and is simply impossible to reasonably dispute. Indeed, aside from the "mass casualty" explanation from Dr. Rick Carlton to be discussed in the following section, there was no expert testimony that the failure of this basic triage did not violate the standard of care.

The testimony of Calhoun's retained expert, Dr. Bo Calhoun, does not support the Trial Court's finding that there was compliance with the standard of care. Dr. Calhoun simply side stepped the question regarding the performance of basic triage which must be performed for any patient, whether they come to the emergency department for a broken toe, a headache or chest discomfort. Dr. Calhoun erroneously equated the question of whether basic triage was performed in accordance with the admitted standard of care as embodied by the Calhoun policies and procedures with the separate and different question as to whether the patient's complaints were sufficiently cardiogenic sounding to launch ACLS protocol.

---

[5]In the previous section of this brief, plaintiffs discuss what it means for evidence to be substantial. In addition to being substantial, the evidence must support the ruling, that is, it must be on point to the fault issues presented. For example, this Court in *Gore* noted that substantial evidence must be relevant, and although this Court did not disagree with Dr. Allen's conclusions, it found that those conclusions did not justify the ruling nevertheless.

When Dr. Calhoun was asked whether the defendant hospital "complied with the applicable standards of care in performing an initial triage evaluation of John Earl Sykes on January 1, 2007 at the hospital emergency department in Calhoun County?," Dr. Calhoun answered a different question:

> "I think it was appropriate" because "Mr. Sykes had just presented with soreness; and when we are evaluating any type of chest complaints, the history is probably the most important component of any type of assessment we do; and we do this everyday. It is what I do for a living, assess chest pain. When somebody complains of soreness and they have a question going back about, open ended question, which is appropriate first of all, and then a more pointed of question, none of the symptoms that he described sounded cardiovascular in nature." (Tr. p. 301, line 23 - Tr. p. 302, line 12).

Indeed, the next question asked of Dr. Calhoun as well as Dr. Calhoun's answer captures the logical flaw in erroneously equating the question of basic triage and the question of whether ACLS protocol must be launched:

Question: . . . does a patient like Mr. Sykes, who presents to an emergency department and indicates that his, quote/unquote, heart is racing; that his chest is sore; and he might have a history of vomiting one time in the past 24 hours, is that the kind of patient that in your judgment healthcare personnel should triage as an acute coronary syndrome patient?

Answer: No it's not.

Question: Why?

Answer: The typical presentation of acute coronary syndrome is two fold. Number 1 is the history, which is more of a squeeze, an ache in the chest going down the left arm. This is accompanied with nausea and vomiting. Its accompanied by shortness of breath. As important as the physical assessment of looking at the patient

> like this who we can look at and tell if they are diaphoretic, breaking out in a sweat, pasty, short of breath. You can tell by looking at the them how much distress they are in. That's more of the presentation of the acute coronary syndrome." (Tr. p. 302, line 13 - Tr. p. 303, line 3).

Dr. Calhoun's testimony would be pertinent had the triage nurse in this case performed a triage contemplated by the policies and procedures of Calhoun, and had personally assessed the patient with her experience as a registered nurse, and had gone through the checklist on the chest pain form and contemporaneously documented this process to make sure that all of the right questions were asked. If she had done all of that and then come to a reasoned decision that in her professional judgment it was not necessary to launch ACLS protocol, then perhaps Dr. Calhoun's testimony would not only be substantial but would also be on point and supportive of the ruling below. Rather, what both the Trial Court and Dr. Bo Calhoun did was to skip over the basic standard of care question and substitute this with the question of whether or not the results of the note passing process yielded symptoms sufficiently typical of a heart attack to launch ACLS protocol.[6] Stated somewhat differently, Dr. Calhoun's testimony did not answer the expert testimony of plaintiffs' experts

---

[6]Plaintiffs have explained in their original brief, and will not repeat here, why the "atypicality" of the complaints was likely the product of the failure to properly perform initial, basic triage. It is remarkable, however, that both Dr. Bo Calhoun and Dr. Carlton place great emphasis on nausea and vomiting as a sign of an acute coronary syndrome in their testimony (See, eg, Tr. p. 302, line 23-26; Tr. p. 361, line 22-26). Calhoun's brief admits that before Mr. Sykes' collapse, he was never asked about these symptoms and did not disclose them. (Calhoun's brief, p.18). Calhoun is simply wrong in suggesting that "CHS personnel cannot be faulted for Sykes' failure to disclose these symptoms . . ." (Calhoun's brief, p. 19). The "Chest Pain" triage form specifically requires the triage nurse to document whether or not the patient had nausea or vomiting. (Ex. "A," p. 5).

which described a failure to perform basic triage. This is not some reasonable disagreement on the same topic among competing experts that strips this Court of the ability to correct the Trial Court's manifest error in failing to find a deviation from the standard of care.

It is remarkable that Calhoun's brief repeatedly makes references to "two experts" supporting its contention that the Trial Court's ruling was supported by substantial evidence on the standard of care issue when the two opinions cannot be reconciled. On the question of whether the information regarding the symptoms ascertained by what plaintiffs contend was an improper basic triage was sufficient to initiate ACLS protocol, Dr. Carlton could not support the testimony of Dr. Bo Calhoun. Although Dr. Carlton agreed that the symptoms were atypical, he did not say that this atypicality precluded the need for the initiation of ACLS protocol. Rather, he indicated that the failure to follow ACLS protocol, as well as basic triage, was excusable because of the mass casualty situation:

> Question: Dr. Carlton, let me ask you this question in a broader sense. If we assume for the sake of this question that Mr. Sykes' presentation to the emergency department consisted of and I understand and I agree with you it was in piecemeal. But let's assume it consisted of a complaint of some chest soreness, a complaint of heart racing, some nausea and vomiting, there was no diaphoresis, there was no dyspnea, there was no acute distress, there was no exertional pain, no radiational pain, no lightheadedness, no fatigue. You had a patient who was awake, alert, oriented, conversant, laughing. And you had a patient in that circumstance is that the kind of patient, Dr. Carlton, that ACLS requires an EKG within ten minutes and an immediate assessment?
>
> Answer: I am going to give you kind of a lengthy answer to that question. You know, I think if you have a totally empty emergency department, plenty of empty beds, more because of the

> information about the nausea and vomiting that somebody with chest soreness that even though it's unlikely it would be nice to go ahead and get an EKG. In what I submit to the Court this was a mass casualty situation. The term used in the emergency department is where the system is strained because of what is going on. The level of acuity, the number of people you have and the fact that mass casualty means that the demand out strips the resources that you had. In this case you had one doctor and two nurses until the third one came in. And you know, a finite amount of space. So the resources were out stripped and in that case unfortunately decisions have to be made as far as timing of who is to be seen next. And while if the emergency department were empty or if you had plenty of space, plenty of personnel that is somebody you would bring back immediately to get an EKG on and begin to ask for information about the complaint but that is not the situation that was being dealt with on January 1, 2007. Again, system was strained and this would drop down in priority, unfortunately, but it would drop down in priority for the timing of when that individual would be evaluated and an EKG would be obtained. (Tr. p. 363, line 9 - Tr. p. 364, line 17) (Emphasis added)

Thus, although Dr. Carlton may have thought the symptoms pieced together in the absence of standard triage were atypical, as an expert in emergency medicine practice he knows that "this is somebody you would bring back immediately and get an EKG and begin to ask for information about the complaint." (Tr. p. 364, line 10-13). He knows that neither basic triage nor ACLS protocol is reserved for those with typical complaints, and his testimony entirely undermined Dr. Calhoun's testimony. On the standard of care issue, Dr. Carlton is in disagreement with Dr. Calhoun and only fundamentally disagrees with plaintiffs' experts in that he believes that the failure to basic triage and initiate ACLS protocols can be justified on the basis of his belief that there was a "mass casualty."

Thus, on the standard of care issue, the expert testimony can be summarized as follows: The testimony of plaintiffs' experts establishes that there was a failure to perform basic triage, and a further deviation to perform ACLS protocol since the information available, despite the flaws in the basic triage process, nevertheless demanded ACLS protocol to be launched. In response to this, Dr. Calhoun's testimony fails to address the issue of basic triage. He simply contends that ACLS protocol did not need to be pursued because the chest complaints were not typical. Dr. Carlton, however, disagrees with Dr. Calhoun and believes that this patient under the standard of care existent in ordinary circumstances had sufficient chest oriented symptoms to require ACLS protocol to be initiated. He believes that extraordinary circumstances are what make the failure to follow standard practice for basic triage, as well as the initiation of ACLS protocol, passable. The mass casualty justification is the only thing which prevented Dr. Carlton from testifying that there were deviations for the failure to follow basic triage procedure and the failure to initiate ACLS protocol for symptoms which were at least potentially indicative of an acute coronary syndrome. As will be seen, the mass casualty justification is unacceptable on this record.

III. THE MASS CASUALTY EXCUSE WAS NOT THE REASON THAT A TRIAGE WAS NOT PROPERLY PERFORMED AND DID NOT EXIST IN REALITY

Calhoun is correct in observing that there is a "resource-based component" to the applicable standard of care. For example, plaintiffs' experts would have been off-base had they testified that Calhoun was at fault for not having a cardiologist come to the emergency department, or had testified that Calhoun was negligent due to its inability to provide

angioplasty or other interventional procedures. The entirety of the criticisms of plaintiffs and their experts, however, was that Calhoun failed to satisfy the standard of care which was within its capability to provide. What Calhoun is advocating here is a "busy hospital" exception to the national standard of care which this Court has imposed on the hospitals in this state. Indeed, this Court is implicitly asked to scuttle its prior opinions holding all Mississippi hospitals to national standards of care. See, eg., *Hall v. Hilbun*, 466 So.2d 856 (Miss. 1985). Calhoun asks this Court to declare that it is permissible for a hospital in this state to allow a patient with chest complaint to sit in its emergency department for an hour before he is triaged or treated and fall out, and then allow that lack of care to be exonerated because there were other seriously ill and/or injured people in the hospital emergency department at that same time. The "mass casualty" excuse is just that, an after the fact rationalization from one of the defense experts unsupported by Calhoun's other expert. Dr. Calhoun made no mention whatsoever of the business of the emergency department in excusing the failure of to perform ACLS protocol. Indeed, Dr. Calhoun stated that if the patient had verbalized the proper descriptors of chest discomfort, such as chest pain, "he would have been triaged immediately and gotten a stat EKG." (Tr. p. 318).

There was undisputable evidence in the record which precluded Dr. Calhoun from joining Dr. Carlton in expressing the opinion that this hospital was entitled to a pass on the care it delivered because the emergency department was not empty. There was no evidence

that reinforcements were called.[7] The head injury which Calhoun's brief offers up as the reason that Ms. Marshall could not attend to Mr. Sykes had left the hospital 20 minutes prior to Mr. Sykes' collapse. (Record Ex. "C,", pp. 46-47). Most importantly, the staff did not testify that they were too busy to perform a basic triage on Mr. Sykes. Indeed, Ms. Marshall simply evaded this question when asked on cross-examination. (Tr. p. 228, line 22 - Tr. p. 229, line 29).

Calhoun's reply brief argues that plaintiffs' original brief misses the point and fails to recognize the distinction between basic triage and the commencement of ACLS protocol with respect to the "mass casualty" issue. ("Campbell points out that it was admitted that the stress on the resources would not have prevented the commencement of the ACLS protocol. However, that was not the issue with regard to the demands on the staff, and that was not what the trial court was addressing in that part of its ruling.") (Calhoun's brief, p. 24). Thus, Calhoun's brief takes the position that although the staff was not too busy to perform ACLS protocol on the patient, it was too busy to perform basic triage and "the trial court properly considered the fact that, because Nurse Marshall was busy caring for patients who unquestionably were emergency situations, it was appropriate for her to have Lafayette obtain from Sykes the information she used to determine if he needed emergency treatment." (Calhoun's brief, p. 24). Calhoun's brief fails to explain how the staff had the time to do

---

[7]Debbie Stroup Russell testified that she would have come in early to help out had she received a call from the emergency department indicating that the staff had more patients than they could handle. She received no call. (Tr. p. 346, line 27 - Tr. p. 347, line 3).

ACLS protocol but not time to do a five minute triage[8] to determine whether ACLS protocol was necessary.

Contrary to the assertion in Calhoun's brief, Dr. Carlton's testimony cited previously on pages 8 and 9 of this brief indeed indicates that he was under the erroneous impression the failure to perform an EKG was due to the mass casualty situation, which also precluded the staff from performing basic triage in accordance with the policies and procedures and "standard of practice." Dr. Carlton did not draw distinctions between basic triage and ACLS protocol as far as the mass casualty justification was concerned. He simply overlooked evidence, admitted in Calhoun's brief, that the staff was not too busy to perform an EKG and other aspects of the ACLS protocol. The notion implicitly advanced by Calhoun's brief, that although the staff was not too busy to perform an EKG and ACLS procotol it was too busy to perform basic triage the right way, is insupportable. The only fair reading of Ms. Marshall's testimony is that she did not perform basic triage because she was too busy, but rather because she deemed it unnecessary because Mr. Sykes said chest soreness rather than chest pain. (Tr. p. 228, line 22 - Tr. p. 229, line 29).

Dr. Carlton's testimony which would condemn the staff's failure to perform basic triage and launch ACLS under ordinary circumstances therefore gives the defendant a pass based on a justification which the testimony of the nurses fails to support. An expert opinion relied upon by a trial judge which ignores glaring, indeed admitted evidence contrary to his

---

[8]Ms Marshall testified that a basic triage could be performed in a minimum of 5 minutes. (Tr. p. 222, line 19 - Tr. p. 223, line 1).

opinion is not safe under the standard of review applicable to this case. The staff was not so busy to properly question a patient just so long as he used the proper terminology in describing his chest complaints. It was not reasonable for Dr. Carlton or the Trial Court to ignore all of this and conclude that this hospital was too busy to perform a proper basic triage on this patient. Indeed, Nurse Marshall said she was busy, but she never testified that she was too busy to do a proper basic triage or initiate ACLS protocol.

In the final analysis, the Trial Court was presented with alternative but ultimately conflicting theories as to why plaintiffs and their experts, who contended that there were deviations from the standard of care which caused a patient with a chest complaint to go for more than an hour without a proper assessment or any treatment, were wrong. Contrary to the assertions in Calhoun's brief, this does not constitute substantial evidence requiring the Trial Court's ruling which ignored glaring evidence of deviations from the standard of care to stand.

IV. CALHOUN'S BRIEF FAILS TO ESTABLISH THAT THE TRIAL COURT'S RULING ON CAUSATION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE

The core of the argument of Calhoun's brief on the causation issue is that this Honorable Court is barred by the Trial Court's acceptance of the testimony of Dr. Bo Calhoun stating that any failure to take measures for the prevention of death due to heart attack could not have caused Mr. Sykes's death because Mr. Sykes did not die of a heart

attack.[9] Dr. Calhoun asked the Trial Court to believe that Mr. Sykes's death was like that of Tim Russert, who as Dr. Calhoun explained just suddenly and without warning collapsed dead due to an arrhythmia related to hypertensive heart disease. Tim Russert, however, unlike John Sykes, did not have a prodrome of chest discomfort sufficient to cause him to go to the local hospital to seek treatment before he collapsed.[10] Dr. Calhoun's testimony that Mr. Sykes' chest complaints were entirely coincidental to his cause of death is incredulous, unreasonable and does not constitute substantial evidence. It does not place the Trial Court's reliance on this testimony beyond the grasp of this Court to correct. Dr. Calhoun stated that "I think it is unrelated" in response to the question ". . . you're not suggesting that the fact that he dropped dead is completely unrelated to the reason that he went to the emergency department, are you?" (Tr. p. 311, line 8-11). He further testified that "I think his symptoms when he presented were not cardiovascular and [sic] etiology at all." (Tr. p. 311, line 20-21). Dr. Calhoun, however, gave no opinion as to what could have been the cause of Mr. Sykes'

---

[9]As explained in plaintiffs' original brief, it is not clear that the Trial Court made the finding that there was no "heart attack" by a preponderance of the evidence, rather, the Trial Court, plaintiffs believe, improperly held plaintiffs to a duty to remove any possibility that Mr. Sykes died of something other than a heart attack. This assertion of error was not addressed in Calhoun's brief.

[10] As Dr. Calhoun characterized these potential symptomless causes of death, "One is an immediate thrombus in the heart, and we see this not infrequently. In fact, a lot of times people present that as their thirst [sic] manifestation. They can be completely asymptomatic and within a second of having a heart attack go into ventricular fibrillation. This is what happened to Tim Russert, the man who used to do Meet the Press. He was fine, walking out of his office, reviewing some report, and just fell flat on his face, dead." (Tr. p. 305, line 10-18). Dr. Calhoun testified that if Mr. Sykes' dysrhythmia was caused by heart attack, "it happened probably within seconds of his arrest where he went out." (Tr. p. 306, line 13-14).

chest discomfort complaints, which he believed had nothing to do with his cardiovascular death. As explained in plaintiffs' original brief, Calhoun's other expert, Dr. Carlton, did not support Dr. Calhoun's testimony that there was no connection between the chest symptoms and the collapse. (Tr. p. 381, line 11-29; Tr. p. 382, line 1-290; Tr. p. 382, line 1-12). Calhoun's brief recites Dr. Calhoun's opinion but it is respectfully submitted that it fails to establish that this testimony was reasonable or substantial; indeed, the effort of Calhoun's brief to bolster Dr. Calhoun's opinion, accepted by the Trial Court, that "there was no autopsy evidence of any blockage of the coronary artery. . ."[11] glaringly omits and disregards the pathology report's description of numerous coronary artery lesions, especially a 70 % narrowing of the left coronary artery. The autopsy indicated that "the decedent was noted to succumb secondary to severe cardiovascular disease producing a picture of sudden cardiac death secondary to severe hypertensive heart disease and *severe coronary artery disease of multiple vessels.*" (Emphasis added) (Ex. "B," p. 31).

Calhoun's brief invites this Honorable Court, implicitly, at least, to affirm the Court's ruling on the grounds that this Court is powerless to fix the improper ruling below because it was founded on an opinion from Dr. Bo Calhoun that Mr. Sykes died a symptomless death unrelated to his chest complaints for which he sought treatment at the defendant hospital. This notion is not only rejected by both of plaintiffs' experts but also lacks support from Calhoun's other expert, Dr. Carlton. It is not substantial, reasonable evidence and this Court should find the Court's ruling that there is no causal connection between Mr. Sykes death and

[11]Calhoun's brief, p. 6.

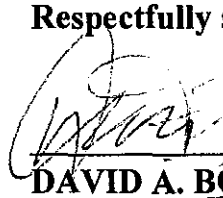
the failure of Calhoun to provide any treatment for the hour before be collapsed to be manifest error.

V. CONCLUSION

Despite the repeated reference in Calhoun's brief that the Court's judgment is supported by its two expert witnesses, the opinions of the two defense experts are actually in conflict with one other. The ruling below that there was no deviation which caused the death of John Sykes is not supported by substantial, reasonable evidence and is manifestly erroneous. The Trial Court's ruling should be reversed.

Considering the foregoing, it is respectfully submitted that the ruling below be reversed.

Respectfully submitted,



DAVID A. BOWLING, ESQ.
MSB# [redacted]
SUSANNAH C. McKINNEY, ESQ.
MSB# [redacted]
Place St. Charles
201 St. Charles Avenue, Suite 2411
New Orleans, Louisiana 70170-2411
Telephone: (504) 586-5200
Facsimile: (504) 586-5201
(Main Office)
and
1323 28th Avenue
Gulfport, Mississippi 39501
Telephone: (800) 620-1287
Facsimile: (228) 575-4006
(Mississippi Office)

CERTIFICATE OF SERVICE

I, David A. Bowling, attorney of record for the plaintiffs, do hereby certify that I have this date forwarded a true and correct copy of the above *Appellants' Reply Brief* via e-mail and via U.S. Postal Service, postage prepaid to the following attorney of record:

JOHN G. WHEELER, ESQ.
Mitchell, McNutt & Sams
A Professional Association
105 South Front Street (38804)
P.O. Box 7120
Tupelo, Mississippi 38802-7120
Telephone: (662) 842-3871
Facsimile: (662) 842-8450
E-mail: jwheeler@mitchellmcnutt.com

This, the 22nd day of December, 2010.

DAVID A. BOWLING, ESQ. (MSB#[redacted]
SUSANNAH C. McKINNEY, ESQ. (MSB#[redacted]

p:\30564\Plead\SupremeCourt\AppellantReplyBrieft-122210