

2010-CA-683RT

CERTIFICATE OF INTERESTED PERSONS

Falanda Wilson v. Baptist Memorial Hospital-North Mississippi, Inc., et.al. 2010-CA-00683

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28(a)(1) 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.

Falanda Wilson

Appellant

Baptist Memorial Hospital-
North Mississippi, Inc.

Appellees

Jane Doe

Carlos E. Moore

Attorneys for the Appellant

Tangala L. Hollis

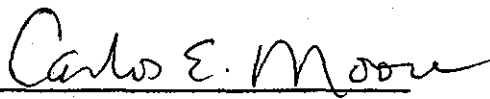
Kate M. Embry, Esq.

Attorneys for the Appellees

John H. Dunbar, Esq.

John A. Gregory

Circuit Court Judge



Carlos E. Moore
Tangala L. Hollis
Attorneys of Record for Appellant

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS.....	2
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES.....	4
STATEMENT OF THE ISSUES.....	5
STATEMENT OF THE CASE.....	6-7
SUMMARY OF ARGUMENT.....	8
ARGUMENT.....	9-18
I. Appellant Wilson was a public invitee at the time of her injury and Appellees were not entitled to summary judgment.....	9-14
II. In the alternative, the Court should hold Appellant Wilson was a business invitee under <i>Biloxi Regional Medical Center v. David</i> 555 So.2d 53 (Miss. 1989).....	14-17
III. Regardless of whether Appellant Wilson was a public invitee or a business invitee, she was an invitee, owed a duty of reasonable care, which Appellee BMH breached.....	17-18
CONCLUSION.....	19
CERTIFICATE OF SERVICE.....	20

TABLE OF AUTHORITIES

MISSISSIPPI SUPREME COURT CASES

<i>Alexander v. Jackson County Historical Soc., Inc.</i> , 227 So.2d 291 (1969).....	9-11
<i>Biloxi Regional Medical Center v. David</i> , 555 So.2d 53 (Miss. 1989).....	8,14-17
<i>Clark v. Moore Memorial United Methodist Church</i> , 538 So.2d 760 (Miss. 1989).....	9
<i>Hoffman v. Planters Gin Co.</i> , 358 So.2d 1008, 1011 (Miss. 1998).....	11,17
<i>Hudson v. Courtesy Motors, Inc.</i> , 794 So.2d 999 (Miss. 2001).....	9-10,17
<i>Jackpot Mississippi Riverboat, Inc. v. Smith</i> , 874 So.2d 959 (Miss. 2004).....	9
<i>Little by Little v. Bell</i> , 719 So.2d 757 (Miss. 1998).....	17
<i>Mantachie Natural Gas Dist. v. Mississippi Valley Gas Co.</i> , 594 So.2d 1170 (Miss. 1992).....	9
<i>McCullough v. Cook</i> , 679 So.2d 627 (Miss. 1996).....	9
<i>Mississippi Dept. of Wildlife, Fisheries and Parks v. Mississippi Wildlife</i> , 740 So.2d 925 (Miss. 1999).....	9
<i>Pigg v. Express Hotel Partners, LLC.</i> , 991 So.2d 1197 (Miss. 2008).....	18

COURT OF APPEALS OF MISSISSIPPI CASES

<i>Martin v. B.P. Exploration & Oil, Inc.</i> , 769 So.2d 261 (Miss. App. 2000).....	11
<i>McCullar v. Boyd Tunica, Inc.</i> , 50 So.3d 1009 (Miss. App. 2010).....	17

SECONDARY SOURCES

Rules Civ. Proc., Rule 56(c).....	9
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STATEMENT OF THE ISSUES

I. Issue 1

Whether Appellant was a public invitee at the time of her injury, and owed a duty of reasonable care by the Appellees, to inspect for dangerous conditions, and to warn of dangerous conditions not obvious to Appellant; and thereby, the breach of said duty proximately caused Appellant's injuries.

II. Issue 2

Whether, in the alternative, this Court should hold Appellant Wilson was a business invitee under *Biloxi Regional Medical Center v. David* 555 So.2d 53 (Miss. 1989).

III. Issue 3

Whether regardless of whether Appellant Wilson was a public invitee or a business invitee, if Appellant was an invitee, owed a duty of reasonable care, which Appellee BMH breached.

STATEMENT OF THE CASE

This is a premises liability case on appeal from an Order of the Circuit Court of Lafayette County, granting summary judgment to Appellees.

On or about June 3, 2007, Appellant Falanda Wilson (hereinafter Appellant Wilson) was visiting a friend at Baptist Memorial Hospital – North Mississippi, Inc. located at Highway 7 South, Oxford, MS 38655. Appellant Wilson was leaving the friend's room on the 5th floor and fell in a puddle of water near the 5th floor nurses' station. Appellees, Baptist Memorial Hospital – North Mississippi, Inc. and Jane Doe (hereinafter collectively Appellees), did not have a wet floor sign in the area. Appellant Wilson suffered injuries as a result of the fall on Appellees' wet floor.

As a result of the foregoing, Appellant Wilson filed her original Complaint on the basis of premises liability in the Circuit Court of Lafayette County against Appellees on or about May 20, 2009. (Rec. p.1-5). Appellant Wilson filed an Amended Complaint on or about June 3, 2009. (Rec. p.6-10). Appellees filed their Answer to Appellant Wilson's Amended Complaint on or about June 19, 2009, in which they admitted Appellant Wilson fell on their premises, and that there was no "wet floor" sign in the area in which Appellant Wilson fell. (Rec. 12).

Appellees subsequently filed for summary judgment in the Circuit Court of Lafayette County. (Rec. p.98-154) On or about February 18, 2010, Appellant Wilson filed her Response in Opposition to Appellees Motion for Summary Judgment with Memorandum of Laws opposing the same. (Rec. p.168-176). Appellant Wilson also filed an Affidavit in Opposition of Summary Judgment. (Rec. 197-198). The matter came on

hearing before Circuit Court Judge Henry Lackey March 4, 2010. Judge Lackey took the matter under advisement and subsequently and erroneously granted Appellees Motion for Summary Judgment March 26, 2010. (Rec. 206).

SUMMARY OF THE ARGUMENT

Appellant Wilson was a public invitee at the time of her injury. As an invitee, she was owed a duty by Appellee Baptist Memorial Hospital-North Mississippi, Inc. (BMH) to use reasonable care, to inspect for dangerous conditions, and to warn of dangerous conditions not obvious to Appellant Wilson. BMH breached said duty when it negligently left a puddle of water on the floor, and did not warn Appellant Wilson of the dangerous condition. Further, as a public facility, the subject hospital certainly provides an implied or expressed invitation to the public to enter its premises for their mutual advantage.

In the alternative, Appellant Wilson was a business invitee under *Biloxi Regional Medical Center v. David* 555 So.2d 53 (Miss. 1989). Under *David*, the injured party was a visitor, as was Appellant Wilson, and this Court held that the trial court did not err in instructing the jury that the wife (plaintiff), who was injured when leaving the hospital, was a business invitee. Appellant Wilson was on the subject premises as a visitor at the time of her injury, and should be categorized as a business invitee under *David*.

Regardless of whether Appellant Wilson was a public invitee or a business invitee, she was an invitee, owed a duty of reasonable care, which BMH breached. Irrespective of Appellant Wilson being a public invitee or a business invitee, she was owed the same duty of care generally owed to an invitee. Further, the genuine issues of material fact regarding Appellant Wilson's status at the time of her injury, and whether BMH breached their duty, preclude summary judgment.

ARGUMENT

The appellate court employs a *de novo* standard of review of a lower court's grant or denial of summary judgment and the evidence must be viewed in the light most favorable to the party against whom motion for summary judgment has been made. *Jackpot Mississippi Riverboat, Inc. v. Smith*, 874 So.2d 959 (Miss. 2004) *citing* *Mississippi Dept. of Wildlife, Fisheries and Parks v. Mississippi Wildlife*, 740 So.2d 925 (Miss. 1999); *McCullough v. Cook*, 679 So.2d 627 (Miss. 1996); *Mantachie Natural Gas Dist. v. Mississippi Valley Gas Co.*, 594 So.2d 1170 (Miss. 1992); *Clark v. Moore Memorial United Methodist Church*, 538 So.2d 760 (Miss. 1989); Rules Civ. Proc., Rule 56(c).

I. Appellant Wilson was a public invitee at the time of her injury and Defendants were not entitled to summary judgment.

Hospitals are public places and thus visitors entering hospitals are public invitees. A “public invitee” is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public. *Hudson v. Courtesy Motors, Inc.*, 794 So.2d 999 (Miss. 2001); *Alexander v. Jackson County Historical Soc., Inc.*, 227 So.2d 291 (1969)(held that a woman injured while visiting the Old Spanish Fort, an historical spot, belonged to that class of invitees known as “public invitees” because she was invited to enter and remain on the land as a member of the public for the purpose for which the land was held open to the public). While BMH engages in a wealth of discussion in its brief that Appellant Wilson was not a public invitee, nothing could be further from the truth.

One of the claims that BMH repeatedly makes is Appellant Wilson has not provided sufficient evidence that she was, in fact, a public invitee at the time of her injury. However, by BMH's own admission, a public invitee is defined as a "person who is invited to enter or remain on land as a member of the public..." *Hudson v. Courtesy Motors, Inc.*, 794 So.2d 999 (Miss. 2001).¹ While BMH falsely claims Appellant Wilson provided only conclusory statements regarding her status as a public invitee in her Response in Opposition to BMH's Motion for Summary Judgment, such is not the case. For instance, the excerpt of Appellant Wilson's response referenced by BMH is misleading.² In addition to the excerpt referenced by BMH in her Response in Opposition, Appellant Wilson provided the following in her accompanying memorandum, supporting her argument that she was a public invitee at the time of her subject injury:

B. Plaintiff was a public invitee at the time of her injury

Hospitals are public places and thus visitors entering hospitals are public invitees. A "public invitee" is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public. *Hudson v. Courtesy Motors, Inc.*, 794 So.2d 999 (2001); *Alexander v. Jackson County Historical Soc., Inc.*, 227 So.2d 291 (1969)(held that a woman injured while visiting the Old Spanish Fort, an historical spot, belonged to that class of invitees known as "public invitees" because she was invited to enter and remain

¹ Appellee Brief, Argument and Authorities, at p.14 ¶ 3).

² It should be noted that the excerpt referenced by BMH is numbered incorrectly, as the portion referenced are paragraphs 7 and 8, and not 8 and 9, as misrepresented to the Court.

on the land as a member of the public for the purpose for which the land was held open to the public). As in *Alexander*, hospitals are held open to the public for the purposes of people visiting their loved ones. This is evidenced by the gift shops, cafeterias, vending machines, etc in hospitals. It is expected and anticipated that members of the public will be entering hospitals to visit their loved ones. As a result, visitors are public invitees.

While visiting her friend at the hospital, Plaintiff was certainly in the position to take advantage of the aforementioned amenities. Whether she partook of such amenities is irrelevant, as a person shopping in Wal-Mart does not lose his or her status as an invitee, simply because he or she does not make a purchase. If the person injured on premises is an invitee, the property owner is under a duty to have the premises in a reasonably safe condition for use in a manner consistent with the invitation or at least a duty not to lead plaintiff into a dangerous trap or expose him to unreasonable risk. *Hoffman v. Planters Gin Co.*, 358 So.2d 1008, 1011 (Miss. 1998). Defendants breached their duty owed to Plaintiff by failing to post a sign warning Plaintiff of the water on the floor. As a result and proximate cause of Defendants' negligence, Plaintiff fell and sustained injuries.

[Rec. Excerpt p. 3-4].

In addition to the foregoing, and contrary to BMH's repetitive allegations, there is a significant amount of probative evidence specific to BMH, proving that Appellant Wilson entered said premises in response to an "expressed or implied invitation" under *Martin v. B.P. Exploration & Oil, Inc.*, 769 So.2d 261 (Miss. App. 2000).

BMH rests much of its claim for Appellant Wilson not being a public invitee on Appellant Wilson's alleged general statements regarding BMH's facility. Appellant Wilson clearly supports her argument that BMH expressed an implied invitation to Appellant Wilson with the providing of visiting hours, gift shops, and a cafeteria. However, in its brief, BMH claims a lack of evidence that any of the aforementioned amenities are specific to BMH's premises. Contrary to this erroneous claim, BMH's website lists a wealth of amenities for their visitors. In fact, said website contains an entire page with numerous links, solely dedicated to visitors, entitled "Visitor Information." Said page even states the following: "Baptist Memorial Hospital-North Mississippi welcomes visitors concerned about friends or family who are patients at our hospital." Baptist Memorial Hospital-North Mississippi: *Visitor Information*, available at <http://www.baptistonline.org/facilities/oxford/visitors.asp> (last visited April 4, 2011). (emphasis added). Said webpage even provides the following information regarding visiting hours:

Visiting Hours

General

Visiting hours are 6 a.m. until 9 p.m. daily. After 9 p.m., all entrances and exits must be made through the front doors. All other doors will be locked. Only one overnight visitor per patient is allowed, and they must obtain a pass from the front desk.

Id.

Said webpage also furthers by providing the following information regarding cafeteria and gift shop hours:

Cafeteria

The cafeteria is located on the first floor of the hospital.

Weekdays

Breakfast: 6:30 a.m.–9:30 a.m. (hot line & grill)

Lunch: 11:00 a.m.–1:30 p.m. (hot line) and 11 a.m.–2 p.m. (grill)

Dinner: 5 p.m. – 7:30 p.m. (hot line & grill)

Weekends

Breakfast: 6:30 a.m.–9:30 p.m. (hot line only)

Lunch: 11 a.m.–1:30 p.m. (hot line & grill)

Dinner: 5 p.m.–6:30 p.m. (hot line only)

Gift Shop

The gift shop is located on the first floor and may be reached at (662) 232-8176.

Gift Shop Hours

Monday-Friday 8:30 a.m.–12 noon and 1-6 p.m.

Saturday 9 a.m.-12 noon and 1-3 p.m.

Sunday 1-5 p.m.

Id.

Additionally, BMH's website invites visitors to visit their chapel, stating: "The hospital chapel, located on the first floor across from the gift shop, is always open and provides a quiet place for prayer and meditation. Chapel service is held every Friday at 8:30 a.m. Special holiday worship services and observances are announced." *Id.* (emphasis added). Despite BMH's repetitious erroneous claim that none of the amenities referenced by Appellant Wilson's primary brief, response in opposition to BMH's motion for summary judgment, and her memorandum of laws, there is a plethora of evidence demonstrating BMH's implied invitation to Appellant Wilson, as well as other public invitees. Further, contrary to BMH's claim of a lack of evidence that Appellant Wilson knew of such amenities, it is apparent Appellant Wilson was aware of the visiting hours of BMH, as Appellant Wilson was on the premises during the appropriate visiting hours. In its brief,

BMH also claims that while individuals are permitted to enter their premises for “non-medical reasons..., access to the hospital premises is restricted.” This claim is completely irrelevant, as there is not a shred of evidence that Appellant Wilson was in a restricted area. Even if despite the foregoing, this Honorable Court finds that Appellant Wilson was not a public invitee, this Honorable Court should find that Appellant Wilson was a business invitee under *Biloxi Regional Medical Center v. David* 555 So.2d 53 (Miss. 1989).

II. In the alternative, this Court should hold Appellant Wilson was a business invitee under *Biloxi Regional Medical Center v. David* 555 So.2d 53 (Miss. 1989).

BMH engages in lengthy discussion regarding Appellant Wilson allegedly conferring no economic benefit to BMH. First, this claim is completely untrue. In fact, after being injured on BMH’s premises, Appellant Wilson elected to be treated at BMH, although she was well within her right to be transported to another healthcare facility. (Rec. 198). Regardless of BMH’s claim that Appellant Wilson “conferred no benefit, realized, or expected to BMH,” Appellant Wilson certainly conferred a benefit to BMH after she was treated at said facility following her injury. (Rec. 198). More importantly, under *Biloxi Regional Medical Center v. David*, 555 So.2d 53 (Miss. 2000), Appellant Wilson need not have conferred an economic benefit to BMH to achieve business invitee status.

As previously discussed in Appellant Wilson’s primary brief, as well as referenced by Appellant Wilson’s counsel during the hearing on BMH’s motion for summary judgment, in *David*, a woman brought suit for damages due to injuries she sustained as a result of tripping over a raised piece of concrete in the parking lot of the

Biloxi Regional Medical Center after visiting her husband. *Id.* at 53. The trial court found in favor of the plaintiff (wife), and the medical center appealed. *Id.* While BMH may be correct that the wife's status in *David* was not the *only* central issue, it was a pertinent issue, in that the case turned on how the jury was instructed by the trial court regarding their ruling. In fact, the jury instruction informing the jurors that the wife was a business invitee as a matter of law, was the central issue the medical center appealed on, after the trial court found in favor of the wife. The medical center claimed the trial court erred in instructing the jury that the wife was a business invitee as a matter of law. *Id.* at 55-56. As previously demonstrated in Appellant Wilson's primary brief, the jury instruction read as follows:

You are instructed by the Court that an invitee is a person who goes upon the premises of another in answer to the express or implied invitation of the owner, either on the business of the owner or for their mutual advantage. In this case, you are instructed as a matter of law that [the wife] was a business invitee on the hospital premises at the time of her accident on April 2, 1982.

A party in control or possession of premises is liable for injuries to an invitee caused by a dangerous condition on his premises if the owner knew or in the exercise of reasonable care should have known about the condition and failed to take measures reasonably calculated to remove the danger or warn the invitee of its existence. If you find from a preponderance of the evidence in this case that:

1. The Defendant, Biloxi Regional Medical Center, was in control or possession of the parking lot and pathway, and
2. The Plaintiff was on the Defendant's premises for a purpose consistent with the hospital business operated by the Defendant, and
3. The subject pathway constituted a dangerous condition upon the Defendant's premises, and
4. The Defendant knew or in the exercise of reasonable care should have known about the condition, and
5. The Defendant failed to take measures reasonably calculated to remove the danger, if any, or to warn the Plaintiff of its existence, and
6. The Defendant's failure to take such measures, if any, was the proximate cause or a contributing proximate cause of the Plaintiff's accident and injuries, then your verdict shall be for the Plaintiff.

Id. at 56. (emphasis added).

While the medical center's specific claim was that paragraph five imposed a higher duty than is required by law, the relevance of *David* in the instant case remains paramount.

The Mississippi Supreme Court in *David*, held in part that it was not error to for the trial court to instruct the jury that the wife in *David* was a business invitee. Just as in *David*, Appellant Wilson was a visitor at BMH's premises, and was on said premises for the purpose of visiting a loved one, which is certainly a purpose in connection with BMH's business (as demonstrated above in reference to BMH's website). In fact, the wife in *David*, was actually *leaving* the medical center at the time of her injury, and was certainly not conferring an economic benefit to the medical center while in the parking lot. However, the *David* Court still held in part, that the trial court did not err in instructing the jury that the wife was a business invitee, as a matter of law, at the time of her injury. Here, Appellant Wilson was still inside of BMH's premises at the time of her injury; therefore, if one's status as a business invitee in a hospital remains intact while one is in the parking lot, attempting to leave (as in *David*), surely one maintains the status of business invitee while inside the hospital. Conferring an economic benefit at the precise time of one's injury is not a requirement to obtain the status of a business invitee under *David*; therefore, according to the precedent set by *David*, Appellant Wilson was a business invitee at the time of her injury, and it was error to dismiss her case on summary judgment. Further, contrary to BMH's false statement that Appellant Wilson does not argue that she was a business invitee, Appellant Wilson does in fact state in her primary brief (and argued the same during the summary judgment hearing) that this Honorable

Court should hold that Wilson was an invitee under *David*, which provides the standard for a "business invitee." (Appellant Brief, Argument, at p.12-14). Appellant not only asks that this Honorable Court hold that Appellant Wilson was a business invitee under *David*, but her primary brief also provides the Court with an analysis based under the requisite factors to designate an individual as a business invitee, using the instant facts. (Appellant Brief, Argument, at p.12-13). At the time of her injury, Appellant Wilson was a "public invitee" under *Hudson*, or in the alternative, a "business invitee" under *David*. Whether Appellant Wilson was a public invitee or a business invitee, there are genuine issues of material fact regarding whether BMH breached its general duty to Appellant Wilson as an invitee. Thus, summary judgment should not have been granted.

III. Regardless of whether Appellant Wilson was a public invitee or a business invitee, Appellant Wilson was an invitee, and owed a duty of reasonable care, which BMH breached.

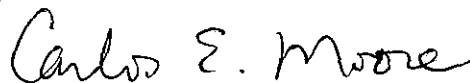
A business owner's duty depends on the plaintiff's status as an invitee, licensee, or trespasser. *McCullar v. Boyd Tunica, Inc.*, 50 So.3d 1009 (Miss. App. 2010). The landowner owes an invitee the duty to keep the premises reasonably safe, and when not reasonably safe, to warn only where there is hidden danger or peril that is not in plain and open view. *Little by Little v. Bell*, 719 So.2d 757 (Miss. 1998). A premises owner is liable for an injury proximately caused by his affirmative or active negligence in the operation or control of a business, which subjects **either** a licensee or an invitee to unusual danger, or increases hazard to him, when his presence is known, and the standard of ordinary and reasonable care has application in such situation. *Hoffman v. Planters Gin Co., Inc.*, 358 So.2d 1008 (Miss. 1978)(emphasis added). In the instant case, BMH's active negligence of failing to warn Appellant Wilson, an invitee, of the dangerous

condition on the premises, proximately caused Appellant Wilson's injuries, and demonstrates BMH's breach of their duty of care. Further, contrary to BMH's claim in its brief of a lack of evidence demonstrating BMH's affirmative or active negligence, Appellant Wilson's sworn affidavit clearly provides that one of the receptionists admitted to having had a previous meeting regarding the policies of keeping the subject floors clean and "posting warning signs regarding substances on the floor." (Rec. 198). Despite having their own policy of keeping the premises safe, specifically the floors, BMH failed to exercise reasonable care to maintain safe premises. While BMH furthers its claim of a lack of evidence that the nurses' close proximity to the location of Appellant Wilson's fall, whether the nurses had actual or constructive knowledge of the dangerous condition is a genuine issue of material fact, precluding summary judgment. A premises owner's duty of reasonable care, to business invitees, includes not only the duty to keep its premises in a reasonably safe condition, but also the duty to warn of any dangerous conditions not readily apparent, of which the owner knew, or should have known, in the exercise of reasonable care, as well as the duty to conduct reasonable inspections to discover dangerous conditions existing on the premises. *Pigg v. Express Hotel Partners, LLC.*, 991 So.2d 1197 (Miss. 2008). Had BMH conducted a reasonable inspection of the subject floors, as was not only their in-house policy, but also their legal obligation, Appellant Wilson would not have been injured. Due to the genuine issues of material fact regarding whether BMH breached their general duty owed to invitees, such as Appellant Wilson, summary judgment should not have been granted.

CONCLUSION

For the foregoing reasons, the Appellant, Falanda Wilson, is asking this Honorable Court to reverse Lafayette County Circuit Court's granting of summary judgment, and to remand the case to the Lafayette County Circuit Court, as there exists genuine issues of material fact that should be decided by a jury.

Respectfully submitted, this the 6th day of April, 2011.



Carlos E. Moore, MB # [REDACTED]
Tangala L. Hollis, MB # [REDACTED]
Attorneys for Appellant

Of Counsel:
MOORE LAW OFFICE, PLLC
P.O. BOX 1487
GRENADA, MS 38902
662-227-9940

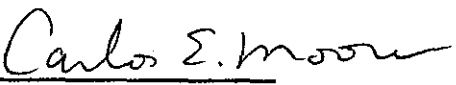
CERTIFICATE OF SERVICE

I, Carlos E. Moore, Appellant's attorney, 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 document to the attorneys for Appellees:

Kate M. Embry, Esq.
John H. Dunbar, Esq.
DUNBAR DAVIS, PLLC
324 Jackson Avenue East
Oxford, MS 38655

Honorable John A. Gregory
Circuit Court Judge
P.O. Box 466
Okalona, MS 38860

THIS, the 6th day of April, 2011.



Carlos E. Moore, Esq.
Tangala L. Hollis, Esq.