

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**KENNY PAYNE, on behalf of the Estate)
of BETTY SUE HAMRICK and all)
Wrongful Death Beneficiaries)
of BETTY SUE HAMRICK,)
Plaintiff)**

v.)

CIVIL ACTION NO.: 3:15-cv-105-TSL-RHW

**MISSISSIPPI BAND OF CHOCTAW)
INDIANS, MISSISSIPPI BAND OF)
CHOCTAW INDIANS d/b/a)
CHOCTAW RESORT)
DEVELOPMENT ENTERPRISE,)
CHOCTAW RESORT)
DEVELOPMENT ENTERPRISE, INC.,)
PEARL RIVER RESORT, SILVER)
STAR CASINO RESORT,)
and JOHN DOES 1 through 10)
Defendants)**

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO DEFENDANT’S
MOTION TO DISMISS**

COMES NOW Plaintiff Kenny Payne, on behalf of the Estate of Betty Sue Hamrick and all wrongful death beneficiaries, and files this memorandum in opposition to the Motion to Dismiss filed by Defendant Mississippi Band of Choctaw Indians. Mr. Payne relies on the exhibits attached to his Response to state the following:

FACTS

Betty Sue Hamrick was a resident of Alabama before her death on August 1, 2014. *See Death Certificate Betty Sue Hamrick and Order Granting Letters of Administration for the*

Estate of Betty Sue Hamrick, Exhibit "A". Following her death, Mr. Payne created the Estate of Betty Sue Hamrick in an Alabama Court. *Exhibit "A"*. The Probate Court of Shelby County, Alabama named Mr. Payne as the Administrator of the Estate of Betty Sue Hamrick, and granted him Letters of Administration on January 16, 2015. *Exhibit "A"*. Mr. Payne and the Estate of Betty Sue Hamrick are residents of Alabama.

The Mississippi Band of Choctaw Indians is permitted under federal law to control and operate the Silver Star Casino and Pearl River Resort through its Tribal-State Compact with the State of Mississippi, pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. Sections 2701 to 2721 (1988), and specifically 25 U.S.C. §2710(d)(1). The United States Department of the Interior noticed its approval of the Tribal-State Compact on January 29, 1993. Fed. Reg. Vol. 58, No. 18, p.6600; *see Exhibit "B"*.

Section 5.1 of the Tribal-State Compact allocates jurisdiction between the Tribe and the State for the conduct of "gaming activities":

"For purposes of regulating Class III Gaming and enforcing the requirements of the Compact, (i) the Tribe shall exercise exclusive criminal and civil jurisdiction over Tribal members and all other Native Americans, to the extent allowed by federal law; (ii) **the Tribe and the State shall exercise concurrent civil jurisdiction over the Class III Gaming activities as set forth in this Compact**; and (iii) the State shall exercise exclusive criminal jurisdiction over non-Indians; provided however that nothing contained in this Compact shall be deemed to modify or limit federal criminal and civil jurisdiction as provided by federal law over the Class III operations authorized under this Compact."

Exhibit "B", p.12, emphasis added. The agreement disclaims a general grant of jurisdiction to the State of Mississippi "except as expressly authorized under this Compact." *Exhibit "B", p.13.*

The "gaming activities" permitted under the Tribal-State Compact included the operation of casinos: "the Tribe is authorized to own and operate one or more Casinos for the purpose of

conducting Class III Gaming on Tribal Lands.” *Exhibit “B”, p.13*. The agreement defines a “casino” as “one or more buildings wherein Class III Gaming is conducted and includes any bar¹, cocktail lounge, or other facilities housed therein as well as the area occupied by the games.” *Exhibit “B”, at p.5*.

It is uncontested that Defendant Mississippi Band of Choctaw Indians controls and operates the Silver Star Casino and the Choctaw Resort Development Enterprise [Doc. 12, p.3]: “the Silver Star Resort and Casino is simply a gaming facility operated by the Tribe. The Tribe directly operates that facility itself by and through an unincorporated tribal enterprise known as the Choctaw Resort Development Enterprise.” Based on state regulation, the Mississippi Band of Choctaw Indians and the Choctaw Development Enterprise and/or Choctaw Development Enterprise, Inc. operates the Pearl River Resort, or the hotel associated with the Silver Star Casino. *See Examples of Mississippi Gaming Commission Regulations, attached as Composite Exhibit “C”, at Rule 1.5(a)*.

Per the Complaint, Betty Sue Hamrick was an invitee of the Defendant’s Silver Star Casino when she slipped and fell due to the negligent maintenance of the Casino’s bathroom [Doc. 1]. As a result of the negligent management of the Casino’s premises, Mrs. Hamrick broke her shoulder and later died as a result of a pulmonary embolus from her broken shoulder [Doc. 1].

LAW AND ARGUMENT

I. Introduction

Mr. Payne filed the Complaint in this Court pursuant to 28 U.S.C. §1332(a), based on the

¹Pursuant to the operation of these Casinos, the Tribal-State Compact allowed for the sale

parties' diversity of citizenship because "tribal parties" of the Mississippi Band of Choctaw Indians operate the Silver Star Casino and Peal River Resort and are subject to this Court's diversity jurisdiction. The Mississippi Band of Choctaw Indians expressly agreed to the jurisdiction of Mississippi civil law concerning the operation of the Silver Star Casino. The Mississippi Band of Choctaw Indians waived its sovereign immunity for personal injury claims under the Choctaw Torts Claim Act (Choctaw §25-1-1). However, per the Tribal-State Compact and United States case law, Mr. Payne is not required to pursue his claims in Choctaw Tribal Court or follow pre-suit requirements granting tribal court jurisdiction. As this matter may be brought in a Mississippi court and not Choctaw Tribal Court, this Court has subject matter jurisdiction because of the diversity of citizenship of the parties.

II. The Tribal Party Defendants controlled by the Mississippi Band of Choctaw Indians are Mississippi residents for the purposes of diversity jurisdiction.

The Mississippi Band of Choctaw Indians controls and does business as other tribal entities or "tribal parties" who are named in this matter: the Choctaw Resort Development Enterprise, the Choctaw Development Enterprise, Inc., Pearl River Resort, and Silver Star Casino. Diversity jurisdiction may be found against tribal parties as they may be found to be residents of the state in whose borders the reservation is location. *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1226 (9th Cir. 1989) (citing *R.C. Hedreen Co. v. Crow Tribal Hous. Auth.*, 521 F.Supp. 599, 602-03 (D.Mont. 1981), *R.J. Williams Co. v. Fort Belknap Hous. Auth.*, 719 F.2d 979, 982 n. 2 (9th Cir. 1983), cert. denied, 472 U.S. 1016, 105 S.Ct. 3476, 87 L.Ed.2d 612 (1985), and *Parker Drilling Co. v. Metlakatla*

of alcoholic beverages on Casino property pursuant to Mississippi law. *Exhibit "B", p.37.*

Indian Community, 451 F.Supp. 1127, 1138 (D. Alaska 1978) (parentheticals omitted)); see also *Tribal Smokeshop, Inc. v. Alabama-Coushatta Tribes of Texas ex rel. Tribal Counsel*, 72 F.Supp.2d 717, n.1 (E.D. Texas 1999) (citing *Schantz v. White Lightning*, 502 F.2d 67, 70 (8th Cir. 1974), and *Superior Oil Co. v. Merritt*, 619 F.Supp. 526, 531 (D.C. Utah 1985) (parentheticals omitted)). In *Stock West, Inc.*, the Ninth Circuit Court of Appeals found that diversity jurisdiction existed between a non-tribal entity plaintiff and several defendant “tribal parties” where the plaintiff and defendants were residents of different states and the amount in controversy exceeded jurisdictional limits. *Id.* at 1226-1227 (citations omitted), and see *Id.* at 1227 (citing 28 U.S.C. §1332).

The Mississippi Band of Choctaw Indians operates the Silver Star Casino and the Pearl River Resort through the Choctaw Resort Development Enterprise and/or Choctaw Development Enterprise, Inc. [Doc. 12, p.3]. Mr. Payne’s claims arise from the Defendants’ negligent maintenance of the bathrooms in the Silver Star Casino which caused Betty Sue Hamrick injury and death. Mr. Payne and the Estate of Betty Sue Hamrick are residents of Alabama, and the Pearl River Resort and the Choctaw Resort Development Enterprise and/or Choctaw Development Enterprise, Inc. are residents of Mississippi for the purposes of diversity jurisdiction. See, *Stock West, Inc.*, 873 F.2d 1221 at 1227, and *Tribal Smokeshop, Inc.*, 72 F.Supp.2d 717 at n.1. As the Plaintiff and Defendants are residents of different states and the amount in controversy exceeds the jurisdictional limit of \$75,000, there is diversity jurisdiction pursuant to 28 U.S.C. §1332(a).

III. Case law and the Tribal-State Compact support this Court's subject matter jurisdiction.

The Tribal-State Compact is an affirmative agreement by the Mississippi Band of Choctaw Indians to be subject to the jurisdiction of Mississippi civil law regarding the operation of its casino. No published case law has applied the Tribal-State Compact's agreement to the jurisdiction of Mississippi civil law to a personal injury claim caused by the operations of the casino. Yet published case law regarding the limitations of tribal jurisdiction illustrates that the Choctaw Tribal Court may not have sole jurisdiction over the claims of non-members. See, *Montana v. United States*, 450 U.S. 544, 191 S.Ct. 1245 (1981).

Merely because the Plaintiffs' claims arose from an action or occurrence on tribal land does not mean that a Mississippi Court does not maintain jurisdiction. Tribal courts have limited jurisdiction. See, *Harrison v. Boyd Mississippi, Inc.*, 700 So.2d 247, 250 (Miss. 1997)(citing *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 109 S.Ct. 1597 (1989), and *Montana v. United States*, 450 U.S. 544, 191 S.Ct. 1245 (1981)). Indian tribes cannot "exercise power inconsistent with their diminished status as sovereigns... (and) have lost any right of governing every person within their limits except themselves." *Id.* (citing *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 209, 98 S.Ct. 1011, 1021 (1978)). The "inherent sovereign powers of an Indian Tribe do no extend to the activities of non-members of the Tribe." *Montana*, 450 U.S. at 565, 101 S.Ct. 1245.

The *Harrison* decision determined that the Choctaw Tribal Court did not have subject matter jurisdiction over a non-Indian plaintiff's tort claims against a non-Indian defendant which arose from actions on tribal land. *Id.* at 251. The Mississippi Supreme Court considered the rule regarding the subject matter jurisdiction of tribal courts for non-members of the tribe set out in

Montana v. United States:

“Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.” ...

“A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security or health or welfare of the tribe.”

Id. at 250-251 (quoting *Montana*, 450 U.S. at 565, 566, 101 S.Ct. at 1258 (citations omitted)).

As *Harrison* concerned a tort action, no consensual relationship was found to support tribal court jurisdiction. *Id.* at 251. No tribal court jurisdiction was found because “**the conduct of the parties to this action** does not threaten or have any direct effect on the political integrity, economic security, health or welfare of the [Mississippi Band of Choctaw Indians].” *Id.* (emphasis added). The Court reasoned:

“regardless of the outcome of the this litigation, the Band will still own the casino; continue to act pursuant to the terms of its contract with Boyd; and no threat to its political integrity may be discerned from the facts presented to us. The appellee presented no facts establishing adverse consequences to the health or general welfare of the Band. Finally, no direct effect on the economic security of the Band can be predicted under the facts known to us.”

Id. In the absence of tribal court jurisdiction, the doctrine of comity did not apply. *Id.* at 249-250.

As in *Harrison*, “the conduct of the parties to this action”, i.e. the Plaintiff’s and the Mississippi Band of Choctaw Indians’ respective use and maintenance of a bathroom in a casino, “does not threaten or have any direct effect on the political integrity, economic security, health or welfare of the Band.” See, *Id.* at 251. The Tribe will own the casino and will continue to act

pursuant to the Tribal-State Compact regardless of the outcome of this litigation. There is no threat to the Tribe's political integrity presented by the Plaintiff's personal injury and wrongful death claims. There are no facts which establish that this litigation may present adverse consequences to the health or general welfare of the tribe. Therefore, the Choctaw Tribal Court does not have exclusive subject matter jurisdiction.

The Tribal-State Compact was not considered in *Harrison*. The Tribal-State Compact shows that the "concurrent jurisdiction" of Mississippi civil law for the operation of a casino does not threaten the political integrity, economic security, health or welfare of the Mississippi Band of Choctaw Indians. *Exhibit "B", at pp.3-4*. The Mississippi Band of Choctaw Indians expressly relinquished exclusive civil jurisdiction regarding the operations of the casino in the Tribal-State Compact for the betterment of the Mississippi Band of Choctaw Indians. *Exhibit "B", at pp.12-13*. Therefore, the concurrent civil jurisdiction of Mississippi civil law has enabled the Mississippi Band of Choctaw Indians to enjoy the benefits of owning and operating a casino. *Exhibit "B"*.

The *Harrison* Court noted that neither the Mississippi Band of Choctaw Indians nor any of its members were parties. *Id.* Yet the only substantive difference between the facts in *Harrison* and those in the case at bar are that, since *Harrison*, the Mississippi Band of Choctaw Indians relinquished its right to out-source the operational management of the Silver Star Casino to a private entity, as permitted under the Tribal-State Compact. Instead, the Mississippi Band of Choctaw Indians and its "tribal parties" accepted the responsibility to manage and operate the Silver Star Casino pursuant to the concurrent jurisdiction of Mississippi civil law and the Tribal-State Compact. See Doc. 12, p. 3. The *dicta* in the *Harrison* decision regarding the identity of

the parties is of no consequence to this Court where “the conduct of the parties to this action” is fundamentally the same from *Harrison* and to the case at bar. In both cases, the party responsible for operating the Silver Star Casino is subject to the jurisdiction of Mississippi courts for the adjudication of common law tort claims.

The doctrine of comity does not apply here either. See, *Id.* at 249-250. Comity is inapplicable where the substantive law of the foreign jurisdiction is unknown or not reasonably predictable. *Id.* at 250. The forum court must also balance the rights of its own citizens against any interest suggested by the proponents of the law of the foreign jurisdiction. *Id.* In this case, the Tribal-State Compact relinquished subject matter jurisdiction for civil claims related to the operation of a casino and tribal court jurisdiction does not extend to the claims at issue under *Montana*; therefore comity is inapplicable. Comity is further inapplicable where the substantive law of the Choctaw Tribal Court is not reasonably unpredictable and the rights of the Plaintiff are better protected by the jurisdiction of Mississippi courts and this Court’s diversity jurisdiction.

Tribal sovereignty over non-members “cannot survive without express congressional delegation” *Id.* at 251 (quoting *South Dakota v. Bourland*, 508 U.S. 679, 695 .15, 113 S.Ct. 2309, 2320 m.15, (1993)). In the absence of congressional delegation, jurisdiction is properly in Mississippi Court pursuant to the reasoning in *Harrison*, and is likewise properly in this Court pursuant to 28 U.S.C. §1332(a) through the diverse citizenship of the Tribal parties which operate the Silver Star Casino. See, *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1227 (9th Cir. 1989), and *Tribal Smokeshop, Inc. v. Alabama-Coushatta Tribes of Texas ex rel. Tribal Counsel*, 72 F.Supp.2d 717, n.1 (E.D. Texas 1999).

IV. The Mississippi Band of Choctaw Indians consented to Mississippi law to govern the operation of the Silver Star Casino.

The Tribal-State Compact recognized that the IGRA allowed State and Tribal governments to “allocate jurisdiction and control of gaming activities which occur within the federally recognized boundaries of land wherein exclusive jurisdiction is vested in a Tribal government.” *Exhibit “B”, at p.1*; see 25 U.S.C. §2710(d)(3)(A) (allows an Indian tribe to negotiate a Tribal-State Compact governing the “conduct of gaming activities”). Any Tribal-State Compact may include provisions relating to “the allocation of criminal and civil jurisdiction between the State and the Indian tribe”, “standards for the operation of such activity and maintenance of the gaming facility, including licensing”, and “any other subjects that are directly related to the operation of gaming activities.” 25 U.S.C. §2710(d)(3)(C)(ii), (vi), and (vii). Following this language from the IGRA, the Tribal-State Compact allowed the State of Mississippi and the Mississippi Band of Choctaw Indians to share “concurrent jurisdiction over the Class III gaming activities”, which included the operation of the casino. *Exhibit “B”, at pp.12-13*.

Under the Tribal-State Compact, the State of Mississippi “permits and regulates certain activities within the State pursuant to the powers established by... Sections 75-76-1, et. seq. of the Mississippi Code of 1972, as amended.” *Exhibit “B”, at p.1*. The Mississippi Gaming Control Act (MGCA) determined that “[a]ll establishments where gaming is conducted... must... be licensed, controlled and assisted to protect the public health, safety, moral good order and general welfare of the inhabitants of this state.” Miss. Code Ann. §75-76-3(3)(c). The MGCA enabled the Mississippi Gaming Commission to inspect all premises wherein gaming is

conducted and to seize any equipment or supplies found on such premises. Miss. Code Ann. §75-76-27(2)(a)-(c); see also, Miss. Code Ann. §75-76-5(i) and (v).

The legislature empowered the Mississippi Gaming Commission to adopt regulations to carry out the policy, objects and purposes of the MGCA. Miss. Code Ann. §75-76-33(1); and see *Examples of Mississippi Gaming Commission Regulations, attached as Composite Exhibit "C"*. For instance, the Mississippi Gaming Commission requires that "all establishments wherein gaming is conducted in this state be operated in a manner suitable to protect public health, safety, morals, good order, and general welfare of the inhabitants of the State of Mississippi."² *Exhibit "C", at Part 3, Rule 1.1(a) (p.101)*. The Commission must approve the plans to build a casino, including "infrastructure facilities" such as a minimum 500-car parking facility, a 300-room or larger hotel, and at least two restaurants.³ *Exhibit "C", at Part 2, Rule 1.5(a) (pp.30-31)*. The Commission also regulates security and emergency medical response procedures for the casinos under its jurisdiction. *Exhibit "C", at Part 3, Chapter 11 (pp.145-146)*.

Mississippi law requires the Mississippi Band of Choctaw Indians to maintain its casino in a suitable condition to protect the public health, safety and general welfare of its patrons. In

²Responsibility for the "maintenance of suitable methods of operation rests with the licensee, and willful or persistent use of toleration of methods of operation deemed unsuitable will constitute grounds for license revocation or other disciplinary action." *Exhibit "C", Part 3, 1.1(b) (p.101)*. Any activity "that is inimical to the public health, safety, morals, good order and general welfare of the people of Mississippi" is an "unsuitable method of operation and shall be grounds for disciplinary action by the Commission[.]" *Exhibit "C", at Part 3, Rule 1.2 (p.101)*.

³Before any gaming facility may open to the public, "all infrastructure requirements must be fully operational." *Exhibit "C", Part 2, at Rule 1.6 (p.32)*. Any establishment to be constructed for gaming will be required to meet the Southern Standard Building Code and applicable any local county or city building codes. *Exhibit "C", Part 2, at Rule 2.4 (7) (pp.40-41)*.

agreeing to the jurisdiction of Mississippi civil statutes and regulations to control the operations of the Silver Star Casino, the Mississippi Band of Choctaw Indians also agreed to the jurisdiction of Mississippi's civil tort laws to determine the reasonable maintenance of the premises of its casino. Just as other casinos in Mississippi are subject to tort law standards regarding the maintenance of its premises (see, eg, *Lockwood v. Isle of Capri Corporation*, 962 So.2d 645 (Miss. App. 2007)), so to must the Mississippi Band of Choctaw Indians and the other Defendants be subject to Mississippi tort law under Mississippi's concurrent jurisdiction over the operations of the Silver Star Casino. Just as a tribe's written agreement may consent to foreign subject matter jurisdiction⁴, the Tribal-State Compact determined that personal injury claims regarding the operation of the Silver Star Casino be litigated in a Mississippi court, pursuant to Mississippi tort law.

V. The Choctaw Tort Claim Act waived sovereign immunity and any pre-suit requirements under Choctaw law are inapplicable in the absence of Tribal Court jurisdiction.

The sovereign immunity defense presented in the underlying motion was expressly abrogated in the Choctaw Torts Claim Act, specifically Choctaw §25-1-3: "the immunity of the Tribe for monetary damages arising out of the acts of the Tribe, or acts of employees of the Tribe, is hereby waived from and after January 29, 2000." See *Copy of Choctaw Tort Claim Act, Choctaw §25-1-1, et seq., attached as Exhibit "D"*. This waiver of immunity is only to the extent of liability provided for in Choctaw §25-1-8 and is subject to the exemptions of §25-1-5. As the

⁴ See *Mississippi Administrative Service, Inc. v. Mississippi Band of Choctaw Indians, et al.*, No. 3:14-CV-36-CWR-FKB, [Doc. 35, p.2, 8, and 9], wherein this Court remanded contract claims against the Tribe to Mississippi state court pursuant to a forum selection clause in a written agreement between the Tribe and a non-tribal entity.

Plaintiffs' claims request monetary damages for acts of the Tribe and/or its employees, Mississippi Band of Choctaw Indians waived sovereign immunity for these claims.

However, additional language in the Choctaw Torts Claim Act conflicts with the Tribal-State Compact and the limits of Tribal Court jurisdiction of non-members' claims under *Montana*. Pursuant to the Tribal-State Compact, the Mississippi Band of Choctaw Indians expressly shares civil jurisdiction of claims related to the operations of the Silver Star Casino. Additionally, the Choctaw Tribal Court has no jurisdiction over Mr. Payne's claims under the rule in *Montana*. Therefore, Choctaw §25-1-7 does not apply to the case at bar. Mississippi's concurrent civil jurisdiction under the Tribal-State Compact and the absence of tribal court jurisdiction allows Mr. Payne to file his Complaint in a Mississippi court.

In the absence of tribal court jurisdiction under *Montana* and the Tribal-State Compact, there is no requirement that Mr. Payne follow the pre-suit notice or administrative remedy requirements of Choctaw §25-1-6. The Choctaw Tribal Court does not have exclusive jurisdiction over claims related to the operation of casinos pursuant to the Tribal-State Compact. Under the rule set out in *Montana*, the Choctaw Tribal Court has no jurisdiction of Mr. Payne's claims. Therefore Mr. Payne may proceed in an action regarding the tribe's operation of the Silver Star Casino in a Mississippi court (or this Court under diversity jurisdiction) without consenting to the jurisdiction of the Choctaw Tribal Court by presenting pre-suit notice or otherwise complying with Choctaw §25-1-6.

CONCLUSION

The jurisdiction of the Mississippi Band of Choctaw Indians and its Tribal Court are limited by the Tribe's agreement with the State of Mississippi to operate a casino and by United

States case law interpreting the jurisdiction of tribes over the claims of non-members. No statute enacted by the Mississippi Band of Choctaw Indians imposing jurisdiction over non-members has precedent over the Tribe's consent to "concurrent civil jurisdiction" regarding the operation of the Silver Star Casino. Likewise, the Tribe limited its sovereign immunity under the Choctaw Tort Claim Act, but in the absence of exclusive tribal court jurisdiction, there is no requirement that Mr. Payne follow any pre-suit requirement under Choctaw law. Finally, the claims asserted do not affect the administration of the Tribe. Mr. Payne, therefore, submits the claims of the Estate and wrongful death beneficiaries of Betty Sue Hamrick against the "tribal parties" which operate the Silver Star Casino in Mississippi to this Court under its diversity jurisdiction.

WHEREFORE PREMISES CONSIDERED, Plaintiff Kenny Payne, respectfully asks that the Court deny the underlying motion and order the Movant to file an answer within ten days of the issuance of its Order denying the instant motion.

This, the 1st day of April, 2015.

Respectfully submitted,

**KENNY PAYNE, on behalf of the Estate
of BETTY SUE HAMRICK and all
Wrongful Death Beneficiaries
of BETTY SUE HAMRICK**

By His Attorneys,

SIMMONS LAW GROUP, P.A.

BY: /s Heber Simmons III
Heber S. Simmons III
MB No. 8523

Heber S. Simmons III
Seth Hall
SIMMONS LAW GROUP, P.A.
240 Trace Colony Park Drive
Suite 200
Ridgeland, Mississippi 39157
Telephone: (601) 914-2882
Facsimile: (601) 914-2887

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be filed with the ECF electronic court system, a true and correct copy of the above and foregoing *Memorandum in Opposition to Motion to Dismiss* and served by email to the following:

Charles Copeland
ccopeland@cctb.com
Mary Jordan Kirkland
mjkirkland@cctb.com
COPELAND COOK TAYLOR AND BUSH, P.A.
600 Concourse, Suite 100
1076 Highland Colony Parkway (39157)
P.O. Box 6020
Ridgeland, MS 39158-6020

This, the 1st day of April, 2015.

/s Heber S. Simmons III
HEBER S. SIMMONS III