

JAN 14 2013

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Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas
☒ Mr.  
☒ Mrs.  
☐ Ms.  
☐ Miss

Jerlene and Elijah Gilmore

Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces			
Claim No.	13-0522-CC		
Date Filed	01	14	13
	(Month)	(Day)	(Year)
Amount of Claim \$	1000000.00		
Fund	ASU		

Amendment attached

Jerlene Gilmore and  
Elijah Gilmore

## COMPLAINT

(Name) the above named Claimant, of 148 Nodaway West Helena  
(Street or R.F.D. & No.) (City)  
AR 72390 870-572-0073 County of Helena represented by Phyllis M. Gillespie  
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claimant)  
of 221 SE Osceola Street, Stuart, FL 34994 772-283-8260, 772-207-8404  
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: ASU, Jonesboro

Amount sought: \$1,000,000.00

Month, day, year and place of incident or service: April 16, 2010, ASU Collegiate Apartments  
Explanation: Michael D. Gilmore was a student at ASU Jonesboro and resided at its housing on campus. On April 16, 2010 Mr. Gilmore arrived home after work. Shortly thereafter there was a knock at his door. Upon answering, he was shot in the head. He was transported to Regional Medical Center in Memphis. He died on April 17, 2010 from the gunshot wounds he sustained. The University Police and the local police department are still investigating this matter. No one has been arrested to date. ASU has a known history of violent crimes committed against its students while in-house campus housing according to the Campus Security Act report. Of note: In July 2005 a Sikeston, MO student at ASU was shot in the chest at Collegiate Park Apartments; in February 2006 an ASU student was shot at the ASU Pavillion; in February 2008 an ASU student was shot; and in February 2010 an ASU student was raped on campus. Claimants' decedent was a full-time student at ASU and was living in campus housing because of his enrollment for classes. Pursuant to the Apartment Contract at paragraph X, "Right to Enter the Room," - continued on Page Two -

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

(Yes/No) when? 10 29 2012 to whom? State Claims Commission (Department)  
(Month) (Day) (Year)  
and that the following action was taken thereon: Motion to dismiss entered for failure to respond

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? If so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)  
and that the nature thereof is as follows:  
and was acquired on in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Phyllis M. Gillespie  
(Print Claimant/Representative Name)

Phyllis M. Gillespie

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at

Stuart

FL

(City)

(State)

(SE) VERONICA VICTORIA GONZALEZ  
MY COMMISSION # EE 172867  
EXPIRES: February 26, 2016  
Bonded Thru Notary Public Underwriters

on this 8<sup>th</sup> day of January, 2013  
(Date) (Month) (Year)

Veronica Victoria Gonzalez

(Notary Public)

SF1-R7/99

My Commission Expires:

February 26, 2016  
(Month) (Day) (Year)

Page Two

Jerlene and Elijah Gilmore, Claimants

v.

State of Arkansas, Respondent

**- Continuation of COMPLAINT -**

[t]he University reserved the right to enter the student's room in several instances. The instance that is relevant here, "when it appears that an occupant may be physically harmed or endangered." Arguably, the Respondent can and will undertake to protect students on its campus when it is apparent that an occupant is at risk of being physically harmed or endangered. See Exhibit 1.

Respondent assumed a duty to employ reasonable security measures to keep students, such as Michael Gilmore, safe from known and foreseeable criminal activities of third parties by its establishment and employment of campus police officers who investigate and handle criminal acts, amongst other things, on ASU's campus and by preserving the right to enter the student's housing when it perceives that the student is at risk of harm or danger.

It is Claimants' contention that ASU at Jonesboro had a duty to provide a safe environment and adequate security for its students, especially when it was foreseeable that such criminal activity could take place given the past incidences of violent crimes. ASU Jonesboro was negligent in failing to employ reasonable security measures to protect Michael D. Gilmore from reasonably foreseeable criminal activity. As a result of the ASU's failures, Michael Gilmore suffered and died.

The tragic loss of Michael Gilmore has caused his parents, Jerlene Gilmore and Elijah Gilmore, along with Michael's siblings, Elijah, Demarcus, Angella and Kaneisha, to experience great pain and suffering.

# ASU-Jonesboro Apartment Contract

## Statement of Terms and Conditions of Occupancy

Name: \_\_\_\_\_ Identification Number: \_\_\_\_\_

Assignment: Room \_\_\_\_\_ Room Type \_\_\_\_\_

Assignment Date: \_\_\_\_\_ Confirmation Date: \_\_\_\_\_

☐ I accept ☐ I do not accept — the terms of this contract.

Student Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### I. Binding Contract

This Room and Board contract is binding when it is signed by you and received in the office of Residence Life by the confirmation date noted above. This contract is binding for the entire 2009 – 2010 academic year. If you leave the Apartments without withdrawing from the university or having received a written release from this agreement from the Director of Residence Life or designee, you will be responsible for all associated fees, including collection costs; court costs and attorney fees. If contract is not cancelled by August 1, 2009, tenant will be responsible for the cost of the contract for the entire 2009 – 2010 academic year.

### II. Contract Cancellation

Students who have contracted with Arkansas State University Residence Life prior to May 1, 2009 have until May 1, 2009 to cancel their contract in writing to avoid forfeiture of the deposit. All other contract cancellations must be postmarked no later than August 1, 2009 and will result in the forfeiture of the deposit. Students who wish to cancel their contracts after August 1<sup>st</sup> must go through contract release. See section XII.

### III. Dismissal from Residence Life

You may be dismissed from Residence Life for committing any of the following acts:

1. Violating policies contained in the contract, the ASU Code of Conduct and all Residence Life publications;
2. Failing to fulfill obligations of a disciplinary sanction;
3. Failing to pay room and board fees; or
4. Failing to remain as a full-time student of the university.

You may be removed from Residence Life for committing any of these acts at the discretion of the university. Should you be removed, you will be responsible for vacating your room as directed by the university and paying all charges and damages that may be assessed. Should you be removed as a result of a disciplinary sanction, you will lose your deposit, and you will be responsible for full payment of rent through the end of the contract period.

### IV. Room Assignment

The university has assigned you a room. You are expected to occupy the apartment and room assigned. Failure to occupy assigned room could result in a reassignment. Occasionally the university may require you to change rooms. Such changes will be kept to a minimum, but will be made at the sole discretion of the university. The university assigns apartments based upon requests of current and prospective occupants. All occupants must have at least 60 credit hours to be considered. First priority will go to current residents of Collegiate Park. Second priority will go to current residents of Residence Life, with the exception of freshmen or sophomores, based upon the date of the completed application and deposit. Third priority will go to junior, senior, and graduate non-resident students. A point value will be assigned to all applicants. This value will determine the order of assignment. If you wish to change your assignment, you may request a change after the second Monday of classes. The university will attempt to fulfill your request, but no guarantee can be made.

### V. Room Furnishings

The university will provide essential apartment furnishings, including bed, desk, dresser, chair and window covering. You will need to bring personal items and bed linens.

### VI. Common Areas

You have access with other residents to the clubhouse containing the laundry, computer/study lounge, vending and multi-purpose room, as well as other common usage areas such as the pool, sand volleyball court,

and barbecue pavilion. You agree to respect the right of other residents and their guests to use these areas.

### VII. Meal Plans

As an apartment resident you may select one of the meal plans offered by the university including Clyde's Cash. Meal plan options and prices are subject to change.

### VIII. Payments

You agree to pay rent in advance or in accordance with individual payment arrangements approved by Student Account Services. If you withdraw from the university or have received a written release from the Director of Residence Life, you may qualify for a partial refund. Otherwise, no refund shall be made. Refunds will be calculated based on official check-out date.

### IX. Liability for Personal Property

The university is not responsible for loss or damage to any personal property or personal injury sustained on the premises. You are encouraged to arrange for private insurance for your property and person through your personal agent.

### X. Right to Enter Room

The university reserves the right to have its representatives enter your room in the following instances:

1. When it appears that an occupant may be physically harmed or endangered;
  2. When it appears university property is endangered;
  3. When it appears university policy is being violated; and
  4. To deliver important judicial and/or administrative letters.
5. To make periodic health, safety and maintenance inspections and repairs.

### XI. Occupying Apartment

You may occupy your apartment on the date below. You may remain in your room until the 3rd of May or 24 hours after your last final, whichever is later. You may extend your contract through the summer by notifying Residence Life after Collegiate Park's priority sign-up process. If you do not occupy your room by the first day of classes of the applicable semester, your reservation may be cancelled and your room reassigned. Actual physical occupancy of the room by the student and/or the student's possessions are not necessary to constitute occupancy.

### XII. Contract Release

To be released from this binding contract; or refunded any part of the room and board payments, you may petition to the Residence Life Contract Release committee for the following reasons: graduation or withdrawal from the university, unanticipated financial hardship, documented medical problems, marriage, and student teaching. Contract release criteria listed above must be satisfied by committee review. All contracts not cancelled by the dates listed below must go through the contract release procedure if the student attends the university. All contract cancellations except graduation will result in the forfeiture of the deposit.



WHITE — RESIDENCE LIFE  
BLUE — STUDENT



Jerlene and Elijah Gilmore, Claimants

v.

State of Arkansas, Respondent

**- Continuation of COMPLAINT -**

It is Claimants' contention that ASU at Jonesboro had a duty to provide a safe environment and adequate security for its students, especially when it was foreseeable that such criminal activity could take place given the past incidences of violent crimes. ASU Jonesboro was negligent in failing to employ reasonable security measures to protect Michael D. Gilmore from reasonably foreseeable criminal activity. As a result of the ASU's failures, Michael Gilmore suffered and died.

The tragic loss of Michael Gilmore has caused his parents, Jerlene Gilmore and Elijah Gilmore, along with Michael's siblings, Elijah, Demarcus, Angella and Kaneisha, to experience great pain and suffering.

# BIRTH CERTIFICATE

DEPARTMENT OF HEALTH  
DIVISION OF VITAL RECORDS  
**CERTIFICATION OF BIRTH**

DATE FILED: 04/24/91 DATE ISSUED: 04/24/91

PERSONAL DATA

NAME: MICHAEL DEON GILMORE

DATE OF BIRTH: 04/24/86 SEX: MALE

PLACE OF BIRTH: COUNTY: LEE

MOTHER'S NAME: EUGENE DANABY AGE: 26

MOTHER'S BIRTH PLACE: ARKANSAS

FATHER'S NAME: ELIJAH GILMORE AGE: 29

FATHER'S BIRTH PLACE: ARKANSAS



THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT  
CERTIFICATION OF NAME AND BIRTH FACTS  
AS PER THE DIVISION OF VITAL RECORDS

*Henry C. Robinson Jr.*

Henry C. Robinson Jr.  
State Registrar

201524

DO NOT WRITE ON THIS CARD. IF YOU HAVE A COLORED BACKGROUND  
OR IF YOU HAVE A WATERMARK, DO NOT WRITE ON THIS CARD.

# DEATH CERTIFICATE

# STATE OF TENNESSEE Office of Vital Records

## TENNESSEE DEPARTMENT OF HEALTH CERTIFICATE OF DEATH

STATE FILE NUMBER **970214**

TYPE/PRINT IN PERMANENT BLOCKING FOR INSTRUCTIONS SEE HANDBOOK

NAME OF DECEASED: **Gilmore, Michael**

DATE OF DEATH: **4/17/2010**

DATE OF DEATH: **4/17/2010**

PHYSICIAN OR MEDICAL EXAMINER EXEMPTING CERTIFICATE MUST BE COMPLETE AND SIGN MEDICAL CERTIFICATION WITHIN 48 HOURS.

SEE INSTRUCTIONS ON OTHER SIDE

DATE OF DEATH

1. DECEASED'S NAME (First, Middle, Last) <b>Michael Dean Gilmore</b>		2. SEX <b>M</b>		3. DATE OF DEATH (Month, Day, Year) <b>April 17, 2010</b>	
4. SOCIAL SECURITY NUMBER <b>24</b>		5. DATE OF BIRTH (Month, Day, Year) <b>2/28/1986</b>		7. BIRTHPLACE (City and State or Foreign Country) <b>Marianna, AR</b>	
6. PLACE OF DEATH (Specify only one) <b>Memphis</b>		8. COUNTY OF DEATH <b>Shelby</b>		9. CITY, TOWN, OR LOCATION OF DEATH <b>Memphis</b>	
10. MARITAL STATUS (Married, Never Married, Widowed, Divorced) (Specify) <b>Never Married</b>		11. SURVIVING SPOUSE (If wife, give maiden name) <b>Never Married</b>		12. DECEASED'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired) <b>Produce Stocker</b>	
13a. RESIDENCE-STATE <b>AR</b>		13b. COUNTY <b>Phillips</b>		13c. CITY, TOWN OR LOCATION <b>West Helena</b>	
13d. STREET AND NUMBER OR RURAL LOCATION <b>148 Nodaway</b>		14. WAS DECEASED OF HISPANIC ORIGIN? (Specify race or ethnicity: Mexican, Puerto Rican, etc.) <b>No</b>		15. RACE (American Indian, Black, White, etc.) (Specify) <b>Black</b>	
16. DECEASED'S EDUCATION (Specify only highest grade completed) <b>12</b>		17. FATHER'S NAME (First, Middle, Last) <b>Elijah Gilmore</b>		18. MOTHER'S NAME (First, Middle, Maiden Surname) <b>Jerlene Donaby</b>	
19a. REFORMANT'S NAME (Type/print) <b>Jerlene Donaby</b>		19b. RELATIONSHIP TO DECEASED <b>Mother</b>		19c. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code) <b>148 Nodaway/W. Helena, AR 72390</b>	
20a. METHOD OF DISPOSITION <input checked="" type="checkbox"/> Burial <input type="checkbox"/> Cremation <input type="checkbox"/> Removal from State		20b. PLACE OF DISPOSITION (Name of cemetery, crematory, or other place) <b>Jackson Memorial Gardens</b>		20c. LOCATION-City or Town, State <b>Lexa, AR</b>	
21a. SIGNATURE OF FUNERAL DIRECTOR <b>Terry Brown</b>		21b. LICENSE NUMBER OF FUNERAL DIRECTOR <b>2226</b>		21c. SIGNATURE OF EMBALMER <b>Terry Brown</b>	
21d. LICENSE NUMBER OF EMBALMER <b>1677</b>		22a. NAME AND ADDRESS OF FUNERAL HOME <b>Brown's Funeral Home/417 Walnut/Helena, AR 72342</b>		22b. LICENSE NUMBER OF FUNERAL HOME <b>487</b>	
23. REGISTRAR'S SIGNATURE <b>Martha S. Dorris</b>		24. DATE FILED (Month, Day, Year) <b>5/20/10</b>		25. PHYSICIAN - To the best of my knowledge, death occurred at the date and place, and due to the cause(s) and manner as stated. <input type="checkbox"/> SIGNATURE AND TITLE OF PHYSICIAN	
26. MEDICAL EXAMINER - On the basis of examination and/or investigation, in my opinion, death occurred at the date and place, and due to the cause(s) and manner as stated. <input checked="" type="checkbox"/> SIGNATURE AND TITLE OF MEDICAL EXAMINER <b>Karen E Chancellor</b>		26b. LICENSE NUMBER <b>38543</b>		26c. DATE SIGNED (Month, Day, Year) <b>April 18, 2010</b>	
27. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN OR MEDICAL EXAMINER) (Type/print) <b>Karen E Chancellor, M.D.; 1080 Madison Avenue, Memphis, TN 38104; MEC2010-0478</b>					
28. PART I. Enter the disease, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.					
IMMEDIATE CAUSE (Final disease or condition resulting in death) <b>a. Pending</b>					
DUE TO (OR AS A CONSEQUENCE OF):					
Sequentially list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (Disease or injury that initiated events resulting in death) LAST <b>b. DUE TO (OR AS A CONSEQUENCE OF):</b>					
<b>c. DUE TO (OR AS A CONSEQUENCE OF):</b>					
<b>d. DUE TO (OR AS A CONSEQUENCE OF):</b>					
PART II. Other medical conditions contributing to death but not resulting in the underlying cause given in Part I.					
30. MANNER OF DEATH <input type="checkbox"/> Natural <input checked="" type="checkbox"/> Pending investigation <input type="checkbox"/> Accident <input type="checkbox"/> Suicide <input type="checkbox"/> Could not be determined <input type="checkbox"/> Homicide		31a. DATE OF INJURY (Month, Day, Year)		31b. TIME OF INJURY	
31c. INJURY AT WORK? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		31d. DESCRIBE HOW INJURY OCCURRED		31e. LOCATION (Street and Number or Rural Route Number, City or Town, State)	

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4442703

I hereby certify the above to be a true and correct copy of the original document on file in this department. This certified copy is valid only when printed on security paper showing the red embossed seal of the Department of Health. Alteration or measure voids this certification.  
Tennessee Code Annotated 68-3-101 et seq., Vital Records Act of 1977.

**Dorris Conner**  
Local Registrar  
Shelby County

JUL 21 2010

Date Issued

**Teresa S. Hendricks**  
STATE REGISTRAR

CERTIFICATION OF VITAL RECORD

8



STATE OF TENNESSEE  
Office of Vital Records

TYPE OR PRINT  
IN PERMANENT  
BLACK INK

A DELAYED  
REPORT OF  
DIAGNOSIS MAY BE  
FILED IF THE  
CAUSE OF DEATH  
CANNOT BE  
DETERMINED  
WITHIN 48 HOURS  
AFTER DEATH.

TYPE OR PRINT  
IN PERMANENT  
BLACK INK

ALL ITEMS ARE TO  
BE COMPLETE AND  
ACCURATE. ITEM  
NUMBERS ARE  
SKIPPED SO THAT  
NUMBERS ARE THE  
SAME AS ON  
CERTIFICATE OF  
DEATH

PH-1686  
Rev. 10-92  
State MEO

DELAYED REPORT OF DIAGNOSIS - DEATH  
TENNESSEE DEPARTMENT OF HEALTH

Page 2 of 2 pages

STATE FILE NUMBER 2010-029102

1. DECEASED'S NAME (First, Middle, Last) <b>Michael Gilmore</b>				2. SEX <b>Male</b>	3. DATE OF DEATH (Month, Day, Year) <b>April 17, 2010</b>	
5a. AGE - LAST BIRTHDAY (Years) <b>24</b>	5b. UNDERLYING YEAR MO: <b>04</b> DAY: <b>17</b> HR: <b>00</b> MIN: <b>00</b>	5c. UNDERLYING DAY <b>24</b>	5d. UNDERLYING HOUR <b>00</b>	5e. UNDERLYING MIN <b>00</b>	6. DATE OF BIRTH (Month, Day, Year) <b>February 24, 1988</b>	
9a. CITY, TOWN, OR LOCATION OF DEATH <b>Memphis</b>			9b. COUNTY OF DEATH <b>Shelby</b>		15. RACE (American Indian, Black, White, etc. (Specify)) <b>Black</b>	
22a. NAME AND ADDRESS OF FUNERAL HOME <b>Brown Funeral Home (Helena) Helena, AR</b>			23. REGISTRAR'S SIGNATURE <i>Candi Daiselle</i>		24. DATE FILED (Month, Day, Year) <b>July 14, 2010</b>	
25a. PHYSICIAN - SIGNATURE AND MAILING ADDRESS  			25b. DATE SIGNED (Month, Day, Year)  		25c. DATE SIGNED (Month, Day, Year) <b>July 27, 2010</b>	
26a. MEDICAL EXAMINER - SIGNATURE AND MAILING ADDRESS <i>Karen E. Chancellor</i> <b>Karen E. Chancellor, M.D., 1060 Madison Avenue, Memphis, TN 38104; MEC2010-0478</b>			26b. DATE SIGNED (Month, Day, Year)  		26c. DATE SIGNED (Month, Day, Year) <b>July 27, 2010</b>	
27. I HEREBY CERTIFY THAT THE DECEASED DIED FROM THE CAUSE STATED BELOW. THE COMPLETE CAUSE OF DEATH COULD NOT BE DETERMINED WITHIN 48 HOURS AFTER DEATH AND ENTERED ON THE CERTIFICATE OF DEATH FOR THE FOLLOWING REASON: <b>Awaiting Arkansas autopsy report</b>						
MEDICAL CERTIFICATION						
28. PART I. Enter the disease, injury, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. Use only one cause on each line.  IMMEDIATE CAUSE (Final disease or condition resulting in death) → <b>a. Gunshot Wound of the Head</b> DUE TO (OR AS A CONSEQUENCE OF)  Sequently list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (disease or injury that initiated events resulting in death) LAST  b. DUE TO (OR AS A CONSEQUENCE OF)  c. DUE TO (OR AS A CONSEQUENCE OF)  d. DUE TO (OR AS A CONSEQUENCE OF)					Approximate Interval Between Onset and Death  	
PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.  					29a. WAS AN AUTOPSY PERFORMED? <input type="checkbox"/> Yes <input type="checkbox"/> No	29b. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? <input type="checkbox"/> Yes <input type="checkbox"/> No
30. MANNER OF DEATH <input type="checkbox"/> Natural <input type="checkbox"/> Accident <input type="checkbox"/> Suicide <input checked="" type="checkbox"/> Homicide <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Could Not Be Determined		31a. DATE OF INJURY (Month, Day, Year) <b>April 16, 2010</b>	31b. TIME OF INJURY <b>12:50 AM</b>	31c. INJURY AT WORK? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	31d. DESCRIBE HOW INJURY OCCURRED <b>Collegiate Park, Jonesboro, AR</b>	
31e. PLACE OF INJURY - At home, farm, street, factory, office building, etc. (Specify) <b>Residence</b>			31f. LOCATION (Street and Number or Rural Route Number, City or Town, State) <b>Collegiate Park, Jonesboro, AR</b>			

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I hereby certify the above to be a true and correct copy of the original document on file in this department. This certified copy is valid only when printed on security paper showing the red embossed seal of the Department of Health. Alteration or erasure voids this certification.  
Tennessee Code Annotated 68-3-101 et seq., Vital Records Act of 1977.

*Teresa S. Hendricks*  
**Teresa S. Hendricks**  
STATE REGISTRAR

*Doris Conner*  
**Doris Conner**  
Local Registrar  
Shelby County

**JUL 21 2010**  
Date Issued

CERTIFICATION OF VITAL RECORD



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# **PHOTOGRAPHS AND NEWS ARTICLES**

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The Entire ASU Campus has  
suffered a HUGE LOSS!!!



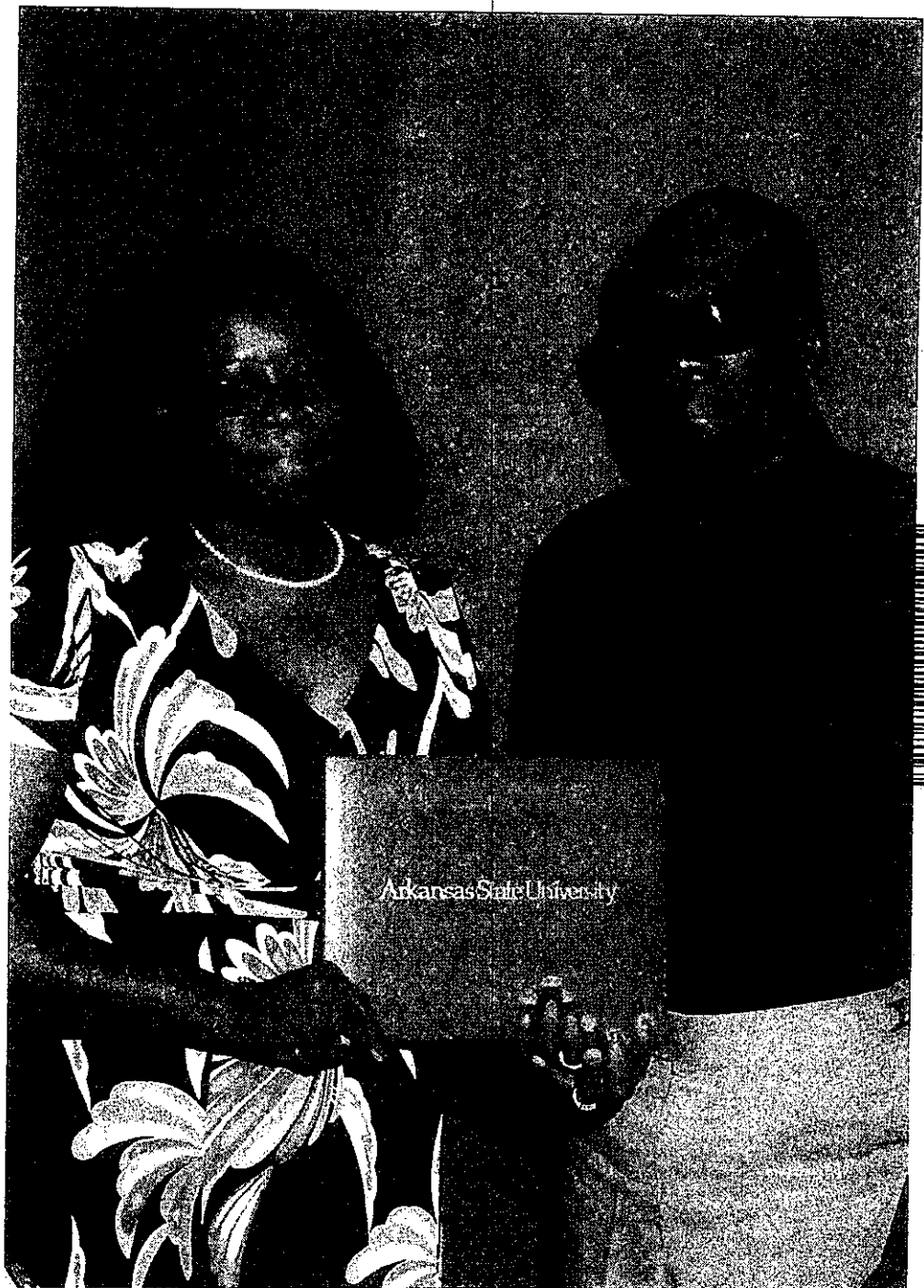
Michael D. Gilmore touched  
many people now take time  
to help as we seek justice.

Contact Investigator Brian Shelton with any information in connection to the  
ongoing investigation.

8702752618

8709722126

8709722093



# Homicide victim recalled fondly

BY SHERRY F. PRUITT  
SUN STAFF WRITER

**JONESBORO** — To most of the Arkansas State University community, Michael Gilmore is known as a homicide victim, a student gunned down in April in his Collegiate Apartments home on the A-State campus while a roommate and the roommate's girlfriend slept in an adjacent bedroom.

It's been almost two months since his death, and authorities have not made an arrest in the case.

Gilmore was a beloved son and brother who excelled in college, gave back to his community and helped his family when he could.

Someone shot Michael Deon Gilmore, 24, of Helena-West Helena in the head with a semi-automatic handgun at about 1 a.m. on April 16. Gilmore died 24 hours later at the Regional Medical Center in Memphis.

## About Gilmore

Family members called him "Rudy," and some of his college friends called him "Mike," his mother, Jerlene Gilmore, said. He had a small body frame,

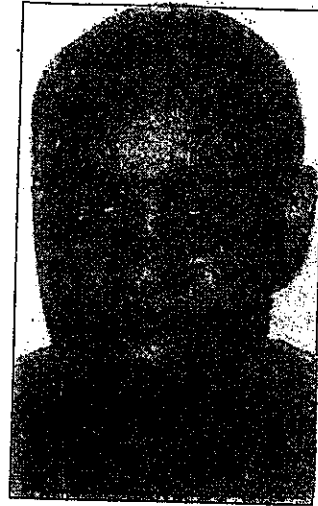
was short and had a contagious smile, she said. Even though he was small, he participated in athletics at the Helena-West Helena School District.

"He played junior high football for three years," she said. "He was the smallest one of the team, but that didn't stop him. He went on and played for senior high football and ran track. He was a member of the Central High Cougar football team and track team. He won many medals, trophies, letterman jackets and plaques for his hard work and commitment. He loved sports."

Gilmore also graduated with honors from high school and attended community college at the University of Arkansas, earning an associate of arts degree.

Mrs. Gilmore said her son loved to work with children, and he combined his love of working with children and his love of sports to make his way through the world as a young adult.

"He was employed as a mentor for Camp Run Around in sports activities from 2004 through 2006 and Gear Up from 2006 through 2010 every summer," she said.



Michael Gilmore

Gilmore may have learned to give back at home. He was the middle child of five children, including a special-needs brother born with spina bifida and additional health problems, Mrs. Gilmore said.

"He would come home on weekends and take care of him," she said.

Gilmore was patient and a go-getter who kept the family together, she said. And using the experience he'd gained from working with his brother, he served as a mentor to challenged youngsters, Mrs. Gilmore said.

Gilmore's major at A-State was physical education and athletic training. He was in line to graduate in December with a bachelor's degree. He worked for Intramural Sports at ASU and was employed at Wal-Mart.

PLEASE SEE GILMORE, A2

"He was honored in the spring graduation," Mrs. Gilmore said. "His family was there to receive it for him. It was very hard for us to walk to receive his degree because my dream was to see him walk and receive it himself so we could cheer and scream for him to recognize his accomplishments he worked so hard to receive."

Mrs. Gilmore shared that her son often talked about passing his teacher's practice test and his December graduation so he could help his family. He had his coaching career lined up so he could give back to his school, Central High School in the Helena-West Helena community.

Gilmore aspired to finish college, teach and coach, marry, have a family and give back to his community so that other boys and young men could have opportunities similar to what he had.

"We miss [him] so much that all our dreams and hopes died when he passed away April 17. He loved Jonesboro. Rudy loved helping young people so much," she said.

The family established the Michael "Rudy-Mike" Gilmore Memorial Scholarship Fund at the Phillips Community College-University of Arkansas to help other young adults fulfill their dreams of higher education.

Even in death, Gilmore was a giving person.

"His legacy will continue to live on through the donation of six of his vital organs, so that others may have another chance at life," Mrs. Gilmore said.

"Michael loved his family, and we loved him very much. We truly, truly miss him so much. Every day is a challenge to try to get through the pain and hurt throughout the days and nights without him," she said.

His eldest brother attends Lemoyne-Jewens College in Memphis, a sister is an honor student majoring in criminal justice at Arkansas State, and his

## QuickINFO |

One of Michael Gilmore's friends died three years ago. At that time, Gilmore wrote about life — and death — on his Facebook page, his mother, Jerlene Gilmore, said Friday.

Part of his writing was included in the funeral program distributed at his April 25 memorial service in the Central High School gymnasium in West Helena.

"Many often wonder (about) the meaning of life. The true meaning of life starts with God. Without him, there is no you, me or life period. The meaning of life is to help others ... I often zone out thinking about the true meaning of life. ... They say when someone dies, there's a child born. I hope those kids will be just like those that have passed, doing what's right in life and continuing the circle."

"I don't have a doubt in my mind that I was put here to help people some way or some how. And I also don't have a doubt in my mind that someone is reading this getting a little closer to their meaning of life ... I wrote this because there is a greater meaning of life on this Earth, and I just wanted to express some of my feelings about it. Thanks for taking the time to read this because you didn't have to, but I'm glad you did. God bless."

youngest sister is an 11th-grade honor student.

one point UPD announced there was a person of interest, but authorities have released nothing more.

"We're plugging along," Chapman said.

sherry@jonesborosun.com

# Search for killer continues

## Student shot 6 months ago

BY SHERRY F. PRUITT  
SUN STAFF WRITER

JONESBORO — It's been six months since Arkansas State University student Michael "Rudy" Gilmore was killed in his Collegiate Park apartment on the Jonesboro campus, and authorities still have not made an arrest in the case.

Someone shot Gilmore in the head with a semi-automatic hand-

apartment he shared with a roommate, and Gilmore, 24, died on April 17. He

Gilmore was a West Helena native studying to become a teacher and coach.

University Police Investigator [redacted] is in charge of the case. He says he talks with the victim's mother, Jerlene Gilmore, two to four times

a month to update her on the investigation.

Mrs. Gilmore said on Friday that she talked with Sheriff [redacted] on Tuesday. Mrs. Gilmore said Sackton told her officers are continuing to investigate and to "just bear with us."

But without closure, that's difficult for her to do.

"I go to the track every day. I walk and pray for God to give me peace to make it through the day," she said. "This week it's been six months, but it still seems like it was yesterday to me. It's something I can't shake. I need to get on with my life, but it's a big blow to us."

Authorities have said there is no interest in [redacted]

Community Police also said the person [redacted]

[redacted] [redacted] [redacted]

PLEASE SEE KILLER 'A2'

Pepper.

"The Great Gatsby." "I read Harry Potter like every

own like I think I can."

# KILLER: Mother of victim says university should do more to help

FROM PAGE A1

Pepper. However, Shelton said Thursday that UPD authorities know where he lives and monitor his whereabouts. Shelton also acknowledged that the person of interest has been identified as a person of interest in the case. However, Shelton maintained not enough "credible evidence" exists to make an arrest on the charge of homicide. "There's not enough to call him a suspect. He is a person of interest," the investigator said.

## Family's response

Mrs. Gilmore wants more to be done to find, prosecute and punish her son's killer. "That was my baby — my youngest son. He was the son that helped me with my son in a wheelchair. I knew if anything ever happened to me Rudy would take care of him. It would help solve the case."

worries me. I don't have that anymore," she said. Something needs to be done, and the negative publicity reflects on the university, she said.

Mrs. Gilmore has asked to meet with the university's president. She has requested that the case be featured in a local segment of TV Crime Stoppers, she said. Shelton said Friday that he's been trying to contact the producer of the program.

Mrs. Gilmore also said she believes Arkansas State should assist in offering a reward for information leading to the arrest and conviction of the killer of her son. That might be an incentive for someone who knows something about the case to talk, she said.


Mrs. Gilmore's family members in the past have posted flyers in West Helena and on the A-State campus in hopes of someone coming forward with information that would help solve the case.

"I hate for my son to have been a statistic. I'm totally hurt. I can't find closure in this. I never imagined what other mothers, other families were going through," she said. "I hear it on television and pray for them to get peace and strength. What did this prove or accomplish? What did Rudy do that was so bad for you to take his life?"

The investigator noted that there is no statute of limitations on homicide, adding the case will remain active until it goes to court. For now Mrs. Gilmore continues to pray someone will come forward with information that will help police solve the crime. "It's torture for me. I think about him (Rudy) constantly," she said. "I know he's with the Lord."

Shelton said anyone with information should call him at 972-268-6333. "I'll take any help I can get," the investigator said.

sherry@jonesborosun.com



# It's Time To Refinance!

## RECORD LOW HOME LOANS

LIBBY DONOHUE  
Senior Vice President  
Mortgage Lending

LIBERTY BANK OF ARKANSAS  
Member FDIC Real Banking.

870-268-5831  
715 Southwest Drive

THE SUN - (USPS 582960)  
Periodicals postage paid  
at Jonesboro, AR

BASIC HOME DELIVERED RATES  
Daily & Sunday: EZ-PAY 4 weeks.

MAIL SUBSCRIPTIONS

## Thanking veterans

The crowd at from Carl Mos officer for Vet Foreign Wars p in Jonesboro; re Gen. Don Morr Maj. Tim Norma tions officer for t Engineer Battalion "I want to than our veterans," said. "I want to th pecially our Wor. If veterans for our country so we free."

Norman said the was also special for bers of the 875th, so whom were in atten on Sunday. More

## Correction

Jim Martin of Bay is the District 76, which incl

The Sun endeavors to m in the event that an error make a correction promp editor of the page where Editor Maria Flora at 935-Jonesboro area.

I pledge to focus on the importance of good, well-kept roads to facilitate commerce and the safety of our school children.

PAID POLITICAL AD

# Mark Hogan craig



# **FUNERAL HOME BILLS**

# Brown's Funeral Home

417 Walnut Street  
Helena, AR 72342

Tel: 870-338-7700

Fax: 870-338-7707

Larry Brown, Director

No. 1260

SERVICES FOR: Michael Deon Gilmore

DATE OF DEATH

PLACE OF DEATH Regional Medical Center

DATE OF CONTRACT April 20, 2010

DATE OF SERVICE April 25, 2010

## SERVICES, FACILITIES & TRANSPORTATION

Basic Services of Funeral Director and Staff	\$ 1195.00
Embalming	\$ 450.00
Other Preparation of Body	\$ 100.00
Use of Facilities & Staff for Viewing / Visitation	\$ 150.00
Use of Facilities & Staff for Funeral Ceremony	\$
Use of Facilities & Staff for Memorial Service	\$
Use of Equipment & Staff for Graveside Service	\$
Use of Equipment & Staff for Church Service	\$
Transfer of Remains to Funeral Home	\$ 125.00
Hearse	\$ 150.00
Sedan	\$
Service / Utility vehicle	\$
(2) Limousines	\$ 400.00
	\$
	\$
<b>TOTAL SERVICE CHARGE</b>	<b>\$ 2,570.00</b>

## MERCHANDISE

Casket (or alternative container)	\$ 2,995
Name / No. Full Couch	
Material	
Color	
Outer Burial Container	\$ 960
Name / No. Oxford Vault	
Material	
Clothing	\$
	\$
Acknowledgment Cards	\$
Register Book	\$
Memorial Folders	\$
Prayer Cards	\$
	\$
	\$
Cremation Urn	\$
	\$
	\$
<b>TOTAL OF MERCHANDISE</b>	<b>\$ 3,955.00</b>

## SPECIAL SERVICES

Forwarding remains to:	\$
Receiving Remains from:	\$
Immediate Burial	\$
Direct Cremation	\$
	\$
<b>TOTAL OF SPECIAL CHARGE</b>	<b>\$</b>
<b>TOTAL FUNERAL HOME CHARGES</b>	<b>\$ 6,525.00</b>
(This total does not include cash advances)	

## EMBALMING REQUIREMENT AND DISCLOSURES

If any law, cemetery or crematory requirements have required an embalming or the purchase of any items, the law or the requirement is explained below.

## STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Charges are only for those items you selected or that are required. If we are required by law or by a cemetery or crematory to use any item, we will explain reasons in writing below.  
If you selected a funeral that may require an embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial. If we charge for embalming, we will explain why below.

### CASH ADVANCES

Certified Copies Death Certificate #	\$
Clergy	\$ 50.00
Musician	\$ 50.00
Paid Notices Daily World Obituary	\$ 75.00
Other Notices	\$
Cemetery	\$ 550.00
Slide Show	\$ 25.00
Basic Programs (150)	\$ 75.00
Flowers	\$ 150.00
Doves	\$ 150.00
Memorial Blanket	\$ 150.00
<b>TOTAL CASH ADVANCES</b>	<b>\$ 1,275.00</b>

We Charge you for our services in obtaining items marked with an "X"

### SUMMARY OF EXPENSES

Total All Above Items	\$ 7,800.00
Sales Tax (if App) 0 %	\$ 0.00
<b>GRAND TOTAL</b>	<b>\$ 7,800.00</b>
Less Credits and Payments	
Payment Made	\$
Discount	\$ 150.00
<b>Balance due May 20, 2010</b>	<b>\$ 7,650.00</b>

**BILLING TO:** Jerlene Donaby

148 Nodaway West Helena, AR 72390

### ACKNOWLEDGMENT AND AGREEMENT

I hereby acknowledge that I have the right to arrange the final service for the person named above, and I authorize this funeral establishment to perform services, furnish goods, and incur outside charges specified in this Statement. I acknowledge that a Casket Price List and a Outer Burial Container Price List were made available to me and that a copy of the General Price List was given to me prior to my making financial arrangements.

**TERMS OF PAYMENT - THIS IS A CASH TRANSACTION, DUE IN FULL BY THE DAY OF SERVICE** unless other terms are agreed upon, *in writing*, by our funeral home. If terms are agreed upon, and any payment is not paid when due, an unanticipated LATE CHARGE of 1.5% per month (ANNUAL PERCENTAGE RATE 18%) will be added to the unpaid balance. I agree to pay the Balance due listed on this statement, plus any Late Charge. In the event I default in payment to this funeral establishment, I agree to pay reasonable attorney fees and all court costs in addition to any Late Charge applicable. I understand and agree that I am assuming personal liability for all the charges set forth in this statement, and that is in addition to the liability imposed by law upon the estate of the deceased. By my signature below, I hereby agree to all of the above and acknowledge receipt of a signed copy of this Statement. If other terms of payment are agreed upon, those terms of payment are:

### DISCLAIMER OF WARRANTIES

Our funeral home makes no representations or warranties regarding caskets or outer burial containers. The only warranties, expressed or implied, granted in connection with goods sold with the funeral service are the express written warranties, if any, extended by the manufacturer thereof. No other warranties including the implied warranties of merchantability or fitness for particular purpose are extended by the seller.

Signature: *Jerlene Gilmore* Apr 20, 2010  
Social Security Number: 431-06-0017 Dated

Signature: *Jerlene Gilmore* Apr 20, 2010  
Dated

**ACCEPTANCE** Our funeral home agrees to provide all the services, merchandise and cash advances indicated on this statement

By: *Larry Brown*  
Larry Brown

Date 9-21-10

I have this day contracted with:

PAYMENT TO BE MADE AS FOLLOWS:

(☒) Cash (☐) Charge Card ( ) 30/60/90

1 Pmts of 375.88 due 9-29-10

( ) Layaway for months 9-29-10

No order is processed until paid in full. A maximum of 3 months is given to pay a layaway account in full.

Amount of Order

Sales Tax

Cemetery Fee

Total

Less Deposit

Balance

Salesperson

TAYLOR SANDBLASTING

507 Plaza Street  
P. O. Box 2778  
West Helena, Arkansas 72390

SERVICE

Phone: 870-572-7591  
Fax: 870-572-0107

Monument # 4 Come Victory

Design #

Lettering style

Emblem

INSCRIPTION

For COLLEGE

MICHAEL DEAN

@ Grace

Epitaph

Work to be delivered to JACKSON, MS  
SOUTH LANE, AL

for which we agree to pay TAYLOR SANDBLASTING SERVICE subject to the terms and conditions herein agreed. No order will be processed until paid in full, unless otherwise so stated. All orders for labor services only, must be paid in full before the work is done. All orders are accepted subject to future contingencies, such as strikes, labor troubles, etc. over which we have no control in regards to deliveries. TAYLOR SANDBLASTING SERVICE will not be responsible for any verbal agreement made between a salesperson and purchaser that is not specific in this order. All orders are binding and cannot be revoked. No refunds are given.

It is understood and agreed that should work mentioned in this contract be delivered and installed, it shall remain the property of TAYLOR SANDBLASTING SERVICE, until paid for in full and may be removed by said company, or its duly appointed representatives, without process of law if default is made in payment. It is further understood and agreed that this order cannot be countermanded, if legal action becomes necessary for collection of the unpaid balance, attorney fees, plus all other reasonable costs of such action will be charged on all past due accounts. Unpaid balances will be charged a 1 1/2 % monthly rebilling fee.

ANY FUTURE INSCRIPTIONS ADDED TO THIS WORK ARE NOT INCLUDED IN THIS CONTRACT PRICE, BUT WILL BE CHARGED FOR AT COST WHEN WORK IS ORDERED BY CUSTOMER

Signed X Forlene Bulmore

Address 148 Nodaway

City & State West Helena, Ark

Phone 870-572-0073 Cell 870-816-8698

Zip 72390

Cell 870-816-8698



P.O. Box 106 • West Plains, MO 65775 • patientaccounts@air-evac.com

Federal Tax ID:43-1371367

MICHEAL GILMORE  
148 NODAWAY  
WEST HELENA, AR 72390

Patient Name: MICHEAL GILMORE

Call Number: 620964-

Date Of Call: 04/16/2010

Loaded Miles: 62

Base: #002-Air Evac EMS Inc Lake City

From Location: Craighead County

JONESBORO, AR 72401

To Location: REGIONAL MEDICAL CTR MEMPHIS  
Memphis, TN 38103

DX Code(s): 959.8 873.9 799.1

<u>DESCRIPTION OF CHARGES</u>	<u>HCPC</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
Base Rate	A0431	1.0	5000.00	5000.00
Loaded Miles	A0436	62.0	40.00	2480.00

Dear Gilmore Family,

again I am sorry for your loss, our thoughts remain with you. I know you are going through a lot & I hate to bother you, please call me when you are up to it, so I may know if there is anything you need & so I may verify

Michael's health coverage. my # ~~866-278-7278~~

TOTAL CHARGES: \$7,480.00

Best wishes,  
Kim K.

Date Printed: 04/27/2010



# MEDIC ONE-ARKANSAS

3301 S. CARAWAY ROAD  
JONESBORO, AR 72404  
(870) 972-8484

Patient name: GILMORE, MICHAEL

Run Number: 10-6636  
Date of call: 4/16/2010  
Time of call: 00:56

To the Estate of  
MICHAEL GILMORE  
148 NODAWAY  
WEST HELENA, AR 72390

From: 615 COLLEGIATE PARK  
To: <LZ>

Primary payer: Bill Patient

Secondary payer:

Description	Payer	Check #	Quantity	Unit Price	Payment Date	Amount
ALS EMERGENCY BASE RATE			1	\$645.00		\$645.00
MILEAGE			1	\$13.00		\$13.00
OXYGEN			1	\$31.00		\$31.00
SPINAL IMMOBILIZATION			1	\$78.00		\$78.00
CARDIAC MONITORING			1	\$20.00		\$20.00
ATROPINE			1	\$15.00		\$15.00
ALS IV SUPPLIES			1	\$55.00		\$55.00

This balance is now 30 days past due and needs your attention. If you have questions about this balance or need to set up a payment plan, please contact our office immediately. 870-972-8484. Thank you for your prompt attention.

**PLEASE PAY THIS AMOUNT**

**\$857.00**

DETACH ALONG LINE AND RETURN STUB WITH YOUR PAYMENT. THANK YOU.

Patient name: GILMORE, MICHAEL

Run Number: 10-6636



We Accept: ☐ VISA ☐ Mastercard ☐ Amex ☐ Discover

Card Number:

Exp Date:

Card Holder Name:

Signature:

Security Code:

AMOUNT  
ENCLOSED:

\$

Due on: 07/01/2010

REMIT TO: MEDIC ONE-ARKANSAS  
3301 S. CARAWAY ROAD  
JONESBORO, AR 72404

Current date: 6/1/2010

22

**MEDIC ONE-ARKANSAS**

3301 S. CARAWAY ROAD  
JONESBORO, AR 72404  
(870) 972-8484

Patient name: GILMORE, MICHAEL

Run Number: 10-6636  
Date of call: 4/16/2010  
Time of call: 00:56

To the Estate of  
MICHAEL GILMORE  
148 NODAWAY  
WEST HELENA, AR 72390

From: 615 COLLEGIATE PARK  
To: <LZ>

Primary payer: Bill Patient

Secondary payer:

Description	Payer	Check #	Quantity	Unit Price	Payment Date	Amount
ALS EMERGENCY BASE RATE			1	\$645.00		\$645.00
MILEAGE			1	\$13.00		\$13.00
OXYGEN			1	\$31.00		\$31.00
SPINAL IMMOBILIZATION			1	\$78.00		\$78.00
CARDIAC MONITORING			1	\$20.00		\$20.00
ATROPINE			1	\$15.00		\$15.00
ALS IV SUPPLIES			1	\$55.00		\$55.00

Please pay the balance due on this invoice. If you have insurance which covers this service, call with insurance information and we will file a claim for you. If you have questions, please contact our Billing Office.

**PLEASE PAY THIS AMOUNT**

**\$857.00**

DETACH ALONG LINE AND RETURN STUB WITH YOUR PAYMENT. THANK YOU.

Patient name: GILMORE, MICHAEL

Run Number: 10-6636



We Accept: ☐ VISA ☐ Mastercard ☐ Amex ☐ Discover

Card Number: \_\_\_\_\_ Exp Date: \_\_\_\_\_

Card Holder Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Security Code: \_\_\_\_\_

AMOUNT  
ENCLOSED:

\$

Due on: 05/30/2010

REMIT TO: MEDIC ONE-ARKANSAS  
3301 S. CARAWAY ROAD  
JONESBORO, AR 72404

Current date: 4/30/2010

23

877 Jefferson Avenue • Memphis, TN 38103



0000000523






MICHAEL GILMORE

148 NODA-WAY PL.

WEST HELENA, AR 72390-1733



 			
MASTERCARD		AMEX	
CARD NUMBER		CVV2 Code	AMOUNT
SIGNATURE		EXR. DATE	
Account #	Statement Date	PAY THIS AMOUNT	Show Amount Paid
V00082381180	05/09/10	\$ 0.00	

Patient Name: MICHAEL D GILMORE



**~~Regional Medical Center at Memphis~~**

PO Box 1000, Dept# 837...

Memphis, TN 38148-0837

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Your balance has been filed with your insurance. If you have any questions, please contact your insurance representative. Insurance balances denied or not paid in full will be your responsibility.

Date	Description	Charges	Payments/ Adjustments
05/05/10	V00082381180 BILL Charges to date: Estimated insurance due:	63870.78 63870.78 63870.78	

**Any Transaction Made After Statement Date  
Will Appear On Next Statement**

**Business Questions: 901-545-7651**  
**Hours: Mon-Fri 8:00AM - 4:30PM**

## TOTAL PATIENT RESPONSIBILITY

\$ 0.00

**Patient responsibility is due upon receipt.**

24



Regional Medical Center At Memphis  
PO BOX 2858  
Raleigh, NC 27602



DATE	ACCOUNT NUMBER	Amount Due	Amount Paid
5/6/2010	V00082380642	\$24636.77	\$
PLEASE CHARGE MY:			
<input type="checkbox"/>	<input checked="" type="checkbox"/> VISA	<input type="checkbox"/> MasterCard	<input type="checkbox"/> Discover
CARD NUMBER	AMOUNT		
SIGNATURE			EXP DATE

# \*\*\*\*\*AUTO\*\*MIXED AADC 275

#23067  
MICHAEL GILMORE  
148 NODAWAY PL  
WEST HELENA AR 72390-1733



Make Checks Payable To:

Shelby County Health Care Corp  
PO BOX 1000-DEPT. # 837  
Memphis, TN 38148-0001

PLEASE DETACH AND RETURN THE TOP PORTION WITH YOUR PAYMENT.

Patient Name	Account Number	Admit Date	Discharge Date	Account Balance
MICHAEL D GILMORE	V00082380642	4/16/10		\$24636.77

Dear Michael Gilmore:

The Regional Medical Center of Memphis ( The Med ) appreciates the opportunity of providing Michael D Gilmore with medical services on 4/16/10. This account has been referred to Patient Financial Services, a billing company that is assisting The Med in resolving your outstanding account balance. We are a billing service and not a collection agency.

Our records indicate that you did not provide health insurance information at the time of service; therefore the balance of \$24,636.77 on the account is your responsibility. If you did have valid insurance coverage on 4/16/10, please call Patient Financial Services at 877-636-5489 and a customer service representative will assist you and file the claim for you.

If you did not have health insurance coverage at the time of service, the balance is your responsibility. Therefore, we ask that you send payment for the remaining balance. You may charge your balance to your MasterCard, VISA, Discover, or American Express by completing the above information or by calling us.

Please mail your payment in the self-addressed envelope that is enclosed for your convenience. If you are unable to pay \$24,636.77 we highly recommend that you complete the enclosed financial assistance application and call 877-636-5489 to make an appointment with our Financial Counselor, who will assist you in qualifying for one of our assistance programs.

Sincerely,

Olivia Britt  
Patient Financial Services



Si usted necesita una traduccion de este documento en espanol,  
por favor llama al 877-636-5489. Gracias.

Please email questions or concerns to:  
customerservice@patientfinancialservices.com



SEMME'S MURPHEY CLINIC  
PO BOX 1000 DEPT 575  
MEMPHIS, TN 38148-0001

31571

 <input type="checkbox"/> MASTERCARD		 <input type="checkbox"/> VISA
CARD NUMBER		SIGNATURE CODE
SIGNATURE		EXP. DATE
STATEMENT DATE 04/30/2010	PAY THIS AMOUNT \$250.00	ACCT. # 130029
PAGE: 1 of 1		SHOW AMOUNT PAID HERE \$

RETURN SERVICE REQUESTED

PAYMENT DUE UPON RECEIPT

FOR BILLING INQUIRIES, PLEASE CALL: 901-522-7700

MICHAEL D GILMORE  
148 NODAWAY PL  
WEST HELENA, AR 72390-1733 USA

SEMME'S MURPHEY CLINIC  
PO BOX 1000 DEPT 575  
MEMPHIS, TN 38148-0001

31571\*TXA0143FD000001

STATEMENT

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

☐ Please check box if address is incorrect or insurance information has changed, and indicate change(s) on reverse side.

DATE	CPT	DESCRIPTION	TOTAL CHARGE	INSURANCE RESPONSIBILITY	PATIENT RESPONSIBILITY	
Michael D 04/16/2010	Gilmore 99253	045X008293 Stephanie L Einhaus MD Inpatient consultation for a new or established pa	Regional 250.00 250.00	Medical Center Traum 0.00 0.00	250.00 250.00	
CURRENT	31-60 DAYS	61-90 DAYS	91-120 DAYS	OVER 120 DAYS	ACCOUNT BALANCE	INSURANCE BALANCE
\$250.00	\$ .00	\$ .00	\$ .00	\$ .00	\$250.00	\$ .00

Reflects transactions posted through 04/30/2010

**DUE FROM PATIENT**  
▶▶▶▶ \$250.00

The amount shown in the "Due from Patient" field is your responsibility. Any other amounts have been filed with your insurance.

PAYMENT DUE UPON RECEIPT

27



INVOICE NUMBER	PROVIDER OF SERVICE	DATE	SERVICE RENDERED AND SUBSEQUENT ACTIVITY	AMOUNT	BILLED TO INSURANCE	PATIENT BALANCE	
14633689	HADLEY MD,JOHNATHAN	04/16/10	COMPUTED TOMOGRAPHY, CERVICAL S	195.00		195.00	
14633690	HADLEY MD,JOHNATHAN	04/16/10	COMPUTED TOMOGRAPHY, HEAD OR BR	155.00		155.00	
14633691	HADLEY MD,JOHNATHAN	04/16/10	COMPUTED TOMOGRAPHY, MAXILLOFAC	155.00		155.00	
14633692	HADLEY MD,JOHNATHAN	04/16/10	COMPUTED TOMOGRAPHY, SOFT TISSU	185.00		185.00	
14633688	MASSIE MD,JAMES D	04/16/10	CEREBROSPINAL FLUID FLOW, IMAGI	135.00		135.00	
14610743	SMITH MD,WILLIAM CHAPMA	04/16/10	RADIOLOGIC EXAMINATION, CHEST;	35.00		35.00	
14610741	SMITH MD,WILLIAM CHAPMA	04/17/10	RADIOLOGIC EXAMINATION, CHEST;	35.00		35.00	
14610742	SMITH MD,WILLIAM CHAPMA	04/17/10	RADIOLOGIC EXAMINATION, CHEST;	35.00		35.00	
14636060	SOBERMAN MD,JUDITH E	04/17/10	ECHOCGRPHY TRNSTHRC REAL/TM W/I	206.00		206.00	
<b>CURRENT</b>	<b>31-60 DAYS</b>	<b>61-90 DAYS</b>	<b>91-120 DAYS</b>	<b>OVER 120 DAYS</b>	<b>TOTAL BALANCE</b>	<b>PENDING INS.</b>	<b>PAY THIS AMOUNT</b>
1031.00	105.00	0.00	0.00	0.00	1136.00	0.00	1136.00
<b>IMPORTANT INFORMATION ABOUT YOUR ACCOUNT</b>				<b>FOR QUESTIONS CALL: 901-866-8813</b>			
IF YOU HAVE INSURANCE, IT IS IMPERATIVE THAT YOU PROVIDE THAT INFORMATION NOW. IF INSURANCE DOES NOT PAY, OR WE CANNOT FILE IT WITHIN THE APPROPRIATE TIME, YOU WILL HAVE TO PAY THIS BILL. PLEASE CALL US. FAILURE TO PAY THE AMOUNT DUE OR MAKE ACCEPTABLE PAYMENT ARRANGEMENTS COULD RESULT IN YOUR ACCOUNT BEING PLACED WITH A COLLECTION AGENCY WITHOUT FURTHER NOTICE. VISIT OUR WEBSITE AT <a href="http://WWW.UTMEDICALGROUP.COM">WWW.UTMEDICALGROUP.COM</a> . CUSTOMER SERVICE HOURS ARE 7:30 AM - 5:00 PM, MONDAY - THURSDAY, AND 7:30 AM - 11:30 AM ON FRIDAY.							



STATEMENT DATE: 04/23/10 PAYMENT DUE DATE: 05/15/10  
PAY THIS AMOUNT: 105.00 AMOUNT PAID: \_\_\_\_\_  
CHARGE TO MY (CIRCLE): VISA MASTERCARD DISCOVER  
CARD AND SECURITY #: \_\_\_\_\_  
EXP. DATE: \_\_\_\_\_ AMOUNT: \_\_\_\_\_  
AUTHORIZED SIGNATURE: \_\_\_\_\_  
PATIENT: MICHAEL D GILMORE  
ACCOUNT #: 12-01945616

MAKE CHECK PAYABLE AND MAIL TO:

13 2914

~~MICHAEL D GILMORE~~

148 NODAWAY PL

WEST HELENA, AR - 72390-1733



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## STATEMENT

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PATIENT: MICHAEL D GILMORE  
ACCOUNT #: 12-01945616

STATEMENT DATE: 04/23/10  
PHONE #: 901-866-8813

## IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

**FOR QUESTIONS CALL: 901-866-8813**

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ARKANSAS STATE  
CLAIMS COMMISSION

JUN 03 2013

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Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

D Mr.  
D Mrs.  
O Ms.  
o Miss

Jerlene Gilmore, Elijah Gilmore,  
Elijah N. Gilmore, Demarcus Gilmore,  
Angella Gilmore, and Kaneisha Gilmore,  
Claimants,  
vs.

State of Arkansas,  
ARKANSAS STATE UNIVERSITY, JONESBORO  
Respondents

Do Not Write In These Spaces  
Claim No.: \_\_\_\_\_  
Date Filed \_\_\_\_\_  
(Month) (Day) (Year)  
Amount of Claim \$ \_\_\_\_\_  
Fund \_\_\_\_\_

AMENDED COMPLAINT  
No.: 13-0522

Jerlene Gilmore, Elijah Gilmore, Demarcus Gilmore, Angella Gilmore and Kaneisha Gilmore, Address 148 Nodaway, West Helena  
Helena County, AR 72390 PH: 870-572-0073; Elijah N. Gilmore, 3260 Night Trial Circle, Apt. 107, Shelby County, Memphis TN  
38115, Attorney: Phyllis M. Gillespie, Jean Laws Scott, Laws Scott & Gillespie, PLLC, 872 Colorado Ave., Stuart, FL 34994; 772-  
600-5875; 772-600-5904 (fx) Brad Dowler, 111 Center St., Ste 1900, Little Rock AR 72201. 501-372-1700; 501-379-1701 (fx).  
State Agency involved: Amount sought: \$1,000,000.00 ASU-Jonesboro

Explanation: Michael D. Gilmore was a student at ASU Jonesboro and resided  
at its housing on campus. On April 16, 2010 Mr. Gilmore arrived home  
after work. Shortly thereafter there was a knock at his door. Upon  
answering, he was shot in the head. He was transported to Regional  
Medical Center in Memphis. He died on April 17, 2010 from the gunshot  
wounds he sustained. The University Police and the local police  
department are still investigating this matter. No one has been  
arrested to date. ASU has a known history of violent crimes committed  
against its students while in-house campus housing according to the  
Campus Security Act report. Of note: In July 2005 a Sikeston, MO  
student at ASU was shot in the chest at Collegiate Park Apartments;  
in February 2006 an ASU student was shot at the ASU Pavillion; in  
February 2008 an ASU student was shot; and in February 2010 an ASU  
student was raped on campus. Claimants' decedent was a full-time  
student at ASU and was living in campus housing because of his  
enrollment for classes. Pursuant to the Apartment Contract at  
paragraph X, "Right to Enter the Room," - continued on Page Two -

As part of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department (roll back)?

(Yes or No) when? 10 29 2012 to whom State Claims Commission  
(Month) (Day) (Year)

and that the following action was taken thereon: Denial's SA 1

and that \$\_\_\_\_\_ was paid thereon: (2) Has any third person or corporation an interest in this claim? \_\_\_\_\_ if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

And that the nature thereof is as follows \_\_\_\_\_

and was acquired on \_\_\_\_\_ -> in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes

that the above are true.  
X Phyllis M. Gillespie  
(Print Claimant/Representative Name)

Phyllis M. Gillespie  
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at \_\_\_\_\_

(SEAL)



Notary Public State of Florida  
Paulette M. Madsen  
My Commission EE080037  
Expires 04/14/2015

(Date)

day of May 3, 2013  
(City) (State) (Month) (Year)

(Notary Public)

STI-R799

My Commission Expires \_\_\_\_\_

(Month)

(Day)

(Year)

30

Page Two

Jerlene Gilmore, Elijah Gilmore,  
Elijah N. Gilmore, Demarcus Gilmore,  
Angella Gilmore, and Kaneisha Gilmore Claimants

v.

State of Arkansas, Respondent

**- Continuation of COMPLAINT -**

[t]he University reserved the right to enter the student's room in several instances. The instance that is relevant here, "when it appears that an occupant may be physically harmed or endangered." Arguably, the Respondent can and will undertake to protect students on its campus when it is apparent that an occupant is at risk of being physically harmed or endangered. See Exhibit 1.

Respondent assumed a duty to employ reasonable security measures to keep students, such as Michael Gilmore, safe from known and foreseeable criminal activities of third parties by its establishment and employment of campus police officers who investigate and handle criminal acts, amongst other things, on ASU's campus and by preserving the right to enter the student's housing when it perceives that the student is at risk of harm or danger.

It is Claimants' contention that ASU at Jonesboro had a duty to provide a safe environment and adequate security for its students, especially when it was foreseeable that such criminal activity could take place given the past incidences of violent crimes. ASU Jonesboro was negligent in failing to employ reasonable security measures to protect Michael D. Gilmore from reasonably foreseeable criminal activity. As a result of the ASU's failures, Michael Gilmore suffered and died.

The tragic loss of Michael Gilmore has caused his parents, Jerlene Gilmore and Elijah Gilmore, along with Michael's siblings, Elijah, Demarcus, Angella and Kaneisha, to experience great pain and suffering.

FEB 13 2013

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BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

JERLENE AND ELIJAH GILMORE,

CLAIMANTS

VS.

CLAIM NO.:13-0522-CC

STATE OF ARKANSAS,

ARKANSAS STATE UNIVERSITY - JONESBORO,

RESPONDENT

**RESPONSE AND MOTION TO DISMISS THE COMPLAINT**  
**WITH BRIEF IN SUPPORT**

**RESPONSE TO COMPLAINT**

Comes now respondent, Arkansas State University - Jonesboro (hereinafter "ASUJ"), by and through its attorneys, Womack, Phelps & McNeill, P.A., and for its Response and Motion to Dismiss the complaint filed by claimants, Jerlene and Elijah Gilmore, states as follows:

1. On October 29, 2012, claimants filed a complaint concerning this matter under Claim No. 13-0362-CC. In that claim, ASUJ filed a response and motion to dismiss. This State Claims Commission denied and dismissed Claim No. 13-0362-CC by Order entered December 14, 2012 because claimants failed to file a response to the Motion to Dismiss filed by ASUJ.

2. Claimants have now re-filed this claim under Claim No. 13-0522-CC and made the exact same allegations against ASUJ that were made in the first claim. Even though this Claims Commission already dismissed this claim, claimants are attempting to refile the claim which was dismissed.

3. The claim of Claimants was properly denied by this Commission because Claimants failed to timely respond to the motion to dismiss in the first claim. That failure does not justify the re-filing of this matter.

4. Therefore, ASUJ moves the Commission to dismiss this claim once again.

5. Alternatively, if the Commission allows Claimants to re-file this claim, ASUJ responds as follows and once again moves for dismissal of the Claim.



6. Admits that ASUJ is an institution of higher education located in Jonesboro, Arkansas, and is an agency of the State of Arkansas.

7. Admits that claimants filed this complaint, but it lacks sufficient information as to their residency and, therefore, denies same.

8. Admits that Michael D. Gilmore was a student at ASUJ in the Spring semester of 2010; that Mr. Gilmore was a tenant at the Collegiate Park Apartments, which were owned and operated by ASUJ; that on April 16, 2010, Mr. Gilmore was shot in the head and died on April 17, 2010 as a result of the injury he sustained; that the University Police Department has continued to investigate this matter and no one has been arrested thusfar.

9. According to Arkansas law, denies that it had any legal duty or that it assumed a legal duty as a landlord to protect a tenant, such as Mr. Gilmore, from criminal actions; further denies that this criminal activity was foreseeable; and denies that it was negligent in any respect whatsoever.

10. Denies the remaining allegations set forth in the complaint; and further denies each and every allegation of the complaint that has not specifically admitted, denied or explained herein.

11. As discussed below in the motion to dismiss with brief in support, denies any and all liability for this claim and specifically contests the claim.

12. Pursuant to Arkansas Rule of Civil Procedure 12(b)(2), (4), (5) & (6), ASUJ pleads that the complaint should be dismissed based on the following affirmative defenses: lack of jurisdiction over the person, insufficiency of process, insufficiency of service of process, and failure to state facts upon which relief can be granted by this Claims Commission.

13. ASUJ further pleads the following affirmative defenses: estoppel, failure of consideration, intervening cause, no proximate cause, superceding cause, and the actions of a third party for whom ASUJ has no liability or ability to control, and all others authorized by Arkansas Rule of Civil Procedure 8(c).

14. Reserves the right to file any additional and/or amended response(s) and to plead further defenses to the complaint of claimants.

WHEREFORE, Respondent, Arkansas State University - Jonesboro, responds to the complaint filed by Claimants and moves for this claim to be dismissed with prejudice; and for all other relief to which it is entitled herein.

**MOTION TO DISMISS THE COMPLAINT WITH BRIEF IN SUPPORT**

**A. Claimants have no right to re-file this claim.**

This claim has been dismissed already by the Commission.

On October 29, 2012, claimants filed a complaint concerning this very matter under Claim No. 13-0362-CC. In that first claim, ASUJ filed a response and motion to dismiss. The Claims Commission dismissed the first claim by Order entered December 14, 2012, because claimants failed to timely respond to ASUJ's Motion to Dismiss.

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Claimants have now re-filed this claim under Claim No. 13-0522-CC and made the exact same allegations against ASUJ that were made in the first claim. Even though the Commission already dismissed this claim, claimants have refiled the claim to get a second bite at the apple.

The claim of Claimants was properly dismissed by this Commission because claimants failed to timely respond to the motion to dismiss. Their failure does not justify the re-filing of this matter, nor does it grant them the right to pursue this action again.

Therefore, ASUJ moves the Claims Commission to dismiss this claim once again.

**B. Claimants have no right of recovery under Arkansas law.**

Claimants, Jerlene and Elijah Gilmore, allege that ASUJ had a legal duty to provide their son, Michael Gilmore, safety and security from foreseeable criminal actions; and that ASUJ assumed a duty of care based on a contract for the lease of the premises. Further, claimants allege that the failure of ASUJ to meet that legal responsibility caused the very unfortunate death of Mr. Gilmore.

Pursuant to Ark. R. Civ. P. 12(b)(6), ASUJ moves this Claims Commission to dismiss the complaint filed by Mr. and Mrs. Gilmore because it fails to state facts upon which relief can be granted.

Whether ASUJ, as a landowner, has a legal duty to protect its tenants from criminal actions is a question of law. *Bartley v. Sweetser*, 319 Ark. 117, 122, 890 S.W.2d 250, 252 (1994). In other words, the law of Arkansas determines whether a legal duty exists which would give rise to any protection owed by ASUJ to a tenant, such as Mr. Gilmore. In this analysis, there is no fact finding mission for this Claims Commission. The question is answered based purely on the Arkansas law. *Id.* If no legal duty exists, there can never be any liability on the part of ASUJ and the claim must be dismissed.

**1. Arkansas law is clear that a landlord has no legal duty to protect tenants from criminal actions.**

In the *Bartley v. Sweetser* case, *supra*, the Supreme Court of Arkansas stated clearly and concisely that the “general and common law rule [is] that a landlord does not owe a tenant ... a duty to protect the tenant ... from criminal acts.” *Id.* at 251 (emphasis added). Our courts agree with the majority of the courts in the United States that “as a matter of public policy, it [is] not fair to impose this duty of protection on the landlord.” *Id.* at 251. The court also noted that there are only two (2) exceptions which might impose a legal duty on a landlord to protect its tenant from criminal activity: (a) when a state statute requires the protection or (b) the landlord has specifically agreed to protect the tenant from criminal actions.

In the *Bartley* case, two men entered an apartment and raped the female tenant, who was a 21 year-old college student. The two men knocked on her door and she opened the door to ascertain who was there. The men then forced their way into her apartment and committed the crime. The victim sued her landlord, the Sweetseres, and alleged that they owed her a duty to provide reasonable security from foreseeable criminal acts against tenants.

The landlord moved to dismiss the case because the complaint failed to state facts upon which relief could be granted. The court agreed and granted the motion based on the fact that “a landlord, under Arkansas law, is not the insurer of the safety of tenants or others upon the premises.” *Bartley*, 319 Ark. at 122, 890 S.W.2d at 252 (emphasis added). Further, there is no statute in Arkansas which imposes an obligation on a landlord; and the lease agreement that the female tenant signed with the Sweetsers did not require the landlord to protect her from criminal actions. Thus, there was no liability for the landlord in the *Bartley* case.

It is significant that the law stated in the *Bartley* case still applies in Arkansas today. This is demonstrated in more recent cases.

First, in 1996, the Arkansas Supreme Court decided the case of *Hall v. Rental Management, Inc.*, 323 Ark. 143, 913 S.W.2d 293 (1996), which is very similar to the complaint filed by Mr. and Mrs. Gilmore. In the *Hall* case, a 17 year-old boy, Kendall Dolls, was shot and killed at the Jefferson Manor Apartments, which were operated by Rental Management, Inc. (RMI). Kendall's mother sued RMI and claimed it was liable for her son's death because it failed to provide adequate security measures that would have prevented the criminal activity. Once again, the court held that a landowner has no legal duty to protect its tenants from the criminal actions of another. Second, in 2006, the Arkansas Supreme Court decided the case of *Lacy v. Flake & Kelley Mgmt., Inc.*, 366 Ark. 365, 235 S.W.3d 894 (2006), which upheld the general rule that a landowner has no legal duty to protect a tenant from criminal actions. Both of these lawsuits were dismissed because the landowners had no legal duty to protect their tenants.

These cases make it clear that in the State of Arkansas, ASUJ, as a landowner, has no legal duty or responsibility to protect Mr. Gilmore from criminal actions committed at the Collegiate Park Apartments. That has been the law in Arkansas for over 75 years.

**2. ASUJ did not contractually agree to protect Mr. Gilmore from criminal actions.**

Claimants contend that ASUJ agreed contractually to protect their son from criminal conduct. The contract between ASUJ and Mr. Gilmore proves otherwise.

Mr. Gilmore entered into a written agreement with ASUJ, which is titled "ASU-Jonesboro Apartment Contract," to rent the Collegiate Park Apartment. (A copy of the Contract is attached as Exhibit 1.) A close review of the Apartment Contract shows that there is no language in the document where the university accepted the responsibility to protect any tenant from criminal actions. To the contrary, paragraph IX., which is labeled "Liability for Personal Property," says: "The University is not responsible for loss or damage to any personal property or personal injury sustained on the premises." (Emphasis added.) Thus, the plain and clear language of the Contract states unequivocally that ASUJ excluded itself from any liability for personal injuries sustained by Mr. Gilmore on the premises.

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In their complaint, claimants reference paragraph X., which says that ASUJ has the right to enter the tenant's room if it appears that an occupant may be physically harmed or in danger.<sup>1</sup> The University's right to enter property to assist one who may be harmed or in danger is not an agreement to protect someone from criminal actions. Indeed, the right of a landlord to enter the premises it owns, for any number of reasons, is completely distinct from accepting a duty to protect one from the actions of a criminal. Paragraph X. does not in any way obligate ASUJ to protect any tenant from the criminal actions of a third person. There is no connection between these two situations.

Once again, the cases in Arkansas support ASUJ on this issue. In *Bartley v. Sweetser*, 319 Ark. 117, 890 S.W.2d 250 (1994), a very similar argument was made and failed. In that case, the female tenant argued that her lease prohibited her from installing additional locks to her apartment

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<sup>1</sup> Of note, paragraph X. also lists six (6) other circumstances in which ASUJ has the right to enter the room of a tenant.

and thus provided the landlord control over her apartment. The court held that this provision of the lease merely assured the landlord access to the premises during reasonable hours for inspection or necessary repairs, but that term did not create a legal duty on the part of the landlord to provide security to tenants or protect them from criminal actions. *Id.* 319 Ark. at 122, 890 S.W.2d at 252. The ability of the landlord to have access to an apartment or enter a room is not a contractual agreement to protect the tenant from criminal conduct. Additionally, in *Lacy v. Flake & Kelley Mgmt., Inc.*, 366 Ark. 365, 235 S.W.3d 894 (2006), the landlord had contracted with an outside security firm to provide a guard in the building where the plaintiff worked. The plaintiff left the building and was attacked in the parking lot. She claimed that the defendant was liable for her injuries because it assumed a duty to provide security and protect her from the criminal actions of third persons, including those in the parking lot. To evaluate the claim, the Arkansas Supreme Court reviewed the lease terms, which required the security firm to “take all such reasonable measures as Landlord may deem advisable for the security of the Building and its occupants . . . .” Even with this language, the Court held that the defendant did not assume a duty to protect the plaintiff from criminal actions. *Id.* 235 S.W.3d at 896-898.

Finally, claimants argue that ASUJ assumed a duty to protect tenants because it employed campus police officers. That argument failed in *Lacy, supra*, where the defendant had contracted with a security firm which provided a guard in the building. That lawsuit was dismissed, so the fact that a landlord has employed guards for security does not create a legal duty. Further, the Arkansas Supreme Court also acknowledged in *Hall v. Rental Mgmt., Inc.*, 323 Ark. 143 913 S.W.2d 293 (1996), that a similar argument had been rejected. In *Hall*, the court quoted *Dailey v. Housing Authority for the Birmingham Dist.*, 639 So. 2d 1343 (1994), which held that the hiring of security guards, along with other actions to discourage crime, was insufficient to find that the landlord assumed a duty to protect tenants from criminal actions.

The *Lacy* and *Hall* decisions clarify that the fact that ASUJ had a University Police Department does not impose any legal duty in this case and does not change the outcome or give rise to a claim. Indeed, if claimants' position were true, any municipality who employed police officers would be liable for the criminal actions of third persons throughout the city. That is not the law in Arkansas.

The law is clear: claimants must be able to demonstrate that ASUJ voluntarily assumed a duty to protect a tenant such as Mr. Gilmore from criminal actions because the law does not impose such a duty. Here, the Apartment Contract shows that ASUJ did not contractually agree to protect Mr. Gilmore from criminal actions. In fact, the terms of the Contract specifically exclude ASUJ from any liability for personal injuries sustained by Mr. Gilmore. And, the presence of University Police does not create a duty. There is no assumption of duty on the part of ASUJ.

**3. There is no statute which imposes a duty on ASUJ to protect tenants from criminal actions.**

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Finally, as specifically noted in the *Bartley* decision, no statute in Arkansas imposes any legal obligation on a landowner to protect tenants from criminal actions; thus, the Arkansas statutory law does not support the claim of the Gilmores. Indeed, claimants do not even suggest that there is any statutory basis to support their claim.

**C. Conclusion**

In conclusion, Mr. and Mrs. Gilmore have no right to file this claim because ASUJ had no legal duty to protect a tenant from criminal activity at the apartment complex where Mr. Gilmore resided. Further, ASUJ never assumed any such duty. For these reasons, ASUJ respectfully moves this Commission to grant the motion to dismiss claimants' complaint with prejudice.

Respectfully submitted,

Jeffrey W. Puryear (93109)  
WOMACK, PHELPS & McNEILL P.A.  
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Jonesboro, AR 72403-3077  
(870) 932-0900  
E-Mail: [jpuryear@wpmfirm.com](mailto:jpuryear@wpmfirm.com)

By: Jeffrey W. Puryear  
Attorneys for Respondent, State of Arkansas,  
Arkansas State University - Jonesboro

**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing *Response and Motion to Dismiss Complaint With Brief in Support* was made by mailing a copy of same to the following attorney on the 12<sup>th</sup> day of February, 2013:

Ms. Phillis Gillespie

Attorney at Law

872 Colorado Avenue

Stuart, FL 34994

*Attorney for Claimants*

Jeffrey W. Puryear  
Jeffrey W. Puryear



## ASU-Jonesboro Apartment Contract

### Statement of Terms and Conditions of Occupancy

Name: \_\_\_\_\_ Identification Number: \_\_\_\_\_  
Assignment: Room \_\_\_\_\_ Room Type \_\_\_\_\_  
Assignment Date: \_\_\_\_\_ Confirmation Date: \_\_\_\_\_  
☐ I accept ☐ do not accept — the terms of this contract.  
Student Signature: \_\_\_\_\_ Date: \_\_\_\_\_

#### I. Binding Contract

This Room and Board contract is binding when it is signed by you and received in the office of Residence Life by the confirmation date noted above. This contract is binding for the entire 2009 – 2010 academic year. If you leave the Apartments without withdrawing from the university or having received a written release from this agreement from the Director of Residence Life or designee, you will be responsible for all associated fees, including collection costs, court costs and attorney fees. If contract is not cancelled by August 1, 2009, tenant will be responsible for the cost of the contract for the entire 2009 – 2010 academic year.

#### II. Contract Cancellation

Students who have contracted with Arkansas State University Residence Life prior to May 1, 2009 have until May 1, 2009 to cancel their contract in writing to avoid forfeiture of the deposit. All other contract cancellations must be postmarked no later than August 1, 2009 and will result in the forfeiture of the deposit. Students who wish to cancel their contracts after August 1<sup>st</sup> must go through contract release. See section XII.

#### III. Dismissal From Residence Life

You may be dismissed from Residence Life for committing any of the following acts:

1. Violating policies contained in the contract, the ASU Code of Conduct and all Residence Life publications;
2. Failing to fulfill obligations of a disciplinary sanction;
3. Failing to pay room and board fees; or
4. Failing to remain as a full-time student of the university.

You may be removed from Residence Life for committing any of these acts at the discretion of the university. Should you be removed, you will be responsible for vacating your room as directed by the university and paying all charges and damages that may be assessed. Should you be removed as a result of a disciplinary sanction, you will lose your deposit, and you will be responsible for full payment of rent through the end of the contract period.

#### IV. Room Assignment

The university has assigned you a room. You are expected to occupy the apartment and room assigned. Failure to occupy assigned room could result in a reassignment. Occasionally the university may require you to change rooms. Such changes will be kept to a minimum, but will be made at the sole discretion of the university. The university assigns apartments based upon requests of current and prospective occupants. All occupants must have at least 60 credit hours to be considered. First priority will go to current residents of Collegiate Park. Second priority will go to current residents of Residence Life, with the exception of freshmen or sophomores, based upon the date of the completed application and deposit. Third priority will go to junior, senior, and graduate non-resident students. A point value will be assigned to all applicants. This value will determine the order of assignment. If you wish to change your assignment, you may request a change after the second Monday of classes. The university will attempt to fulfill your request, but no guarantee can be made.

#### V. Room Furnishings

The university will provide essential apartment furnishings, including bed, desk, dresser, chair and window covering. You will need to bring personal items and bed linens.

#### VI. Common Areas

You have access with other residents to the clubhouse containing the laundry, computer/study lounge, vending and multi-purpose room, as well as other common usage areas such as the pool, sand volleyball court,

and barbecue pavilion. You agree to respect the right of other residents and their guests to use these areas.

#### VII. Meal Plans

As an apartment resident you may select one of the meal plans offered by the university including Clyde's Cash. Meal plan options and prices are subject to change.

#### VIII. Payments

You agree to pay rent in advance or in accordance with individual payment arrangements approved by Student Account Services. If you withdraw from the university or have received a written release from the Director of Residence Life, you may qualify for a partial refund. Otherwise, no refund shall be made. Refunds will be calculated based on official check-out date.

#### IX. Liability for Personal Property

The university is not responsible for loss or damage to any personal property or personal injury sustained on the premises. You are encouraged to arrange for private insurance for your property and person through your personal agent.

#### X. Right to Enter Room

The university reserves the right to have its representatives enter your room in the following instances:

1. When it appears that an occupant may be physically harmed or endangered;
  2. When it appears university property is endangered;
  3. When it appears university policy is being violated; and
  4. To deliver important judicial and/or administrative letters.
5. To make periodic health, safety and maintenance inspections and repairs.

#### XI. Occupying Apartment

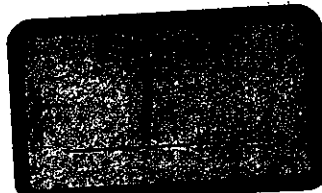
You may occupy your apartment on the date below. You may remain in your room until the 3<sup>rd</sup> of May or 24 hours after your last final, whichever is later. You may extend your contract through the summer by notifying Residence Life after Collegiate Park's priority sign-up process. If you do not occupy your room by the first day of classes of the applicable semester, your reservation may be cancelled and your room reassigned. Actual physical occupancy of the room by the student and/or the student's possessions are not necessary to constitute occupancy.

#### XII. Contract Release

To be released from this binding contract, or refunded any part of the room and board payments, you may petition to the Residence Life Contract Release committee for the following reasons: graduation or withdrawal from the university, unanticipated financial hardship, documented medical problems, marriage, and student teaching. Contract release criteria listed above must be satisfied by committee review. All contracts not cancelled by the dates listed below must go through the contract release procedure if the student attends the university. All contract cancellations except graduation will result in the forfeiture of the deposit.



WHITE — RESIDENCE LIFE  
BLUE — STUDENT



BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

ARKANSAS STATE  
CLAIMS COMMISSION

MAR 04 2013

JERLENE AND ELIJAH GILMORE,

RECEIVED

Claimant,

vs.

CLAIM NO.:13-0522-CC

STATE OF ARKANSAS,  
ARKANSAS STATE UNIVERSITY - JONESBORO,

Respondent.

**CLAIMANTS' RESPONSE TO RESPONDENT  
STATE OF ARKANSAS, ARKANSAS STATE UNIVERSITY-JONESBORO  
RESPONSE AND MOTION DISMISS TO DISMISS THE COMPLAINT**

COMES NOW the Claimants, JERLENE AND ELIJAH GILMORE, by and through their undersigned counsel, and files this their response to Respondent State of Arkansas, Arkansas State University-Jonesboro, ("Respondent") Motion to Dismiss. For the reasons described below, Claimant asks the Commission to deny Respondent's Motion to Dismiss *instantly*:

1. Claimants originally filed their Complaint with the Claims Commission of the State of Arkansas ("Claims Commission") on October 29, 2012 and it was dismissed by this Commission, without prejudice, solely for Claimants failure to timely respond.
2. Respondent has again filed a response on February 12, 2012 and has moved to dismiss asserting that Claimant has failed to state facts upon which relief can be granted and because Commission has previously dismissed claim.
3. Claimants received by U.S. Mail, Respondent's Motion to Dismiss on February 28, 2013. Claimants' refiling of this claim is timely, the statutes of limitation has not expired, and the claim was not been previously dismissed on the merits.

4. Claimants hereby reply to, deny and demand strict proof of each affirmative defense as set forth in paragraphs 9 through 13 of Respondent's Response.

5. Claimants have stated a valid claim against Respondent for negligence on the part of Respondent, and Respondent's argument is one better-suited for a motion for summary judgment, but not a motion to dismiss addressed only to the four corners of the Complaint.

### **MEMORANDUM OF LAW**

Claimants will set out the facts as described in the Complaint and then explain as a matter of law why Respondent's Motion to Dismiss is due to be denied.

#### **I. Facts**

According to the facts described in the Complaint, on April 16, 2010, Mr. Gilmore, who was a student at Arkansas State University, arrived home to ASU Collegiate Apartments after work. Shortly after his arrival there was a knock at his door, upon answering he was shot in the head. Additionally, claimants alleged that according to ASU's Campus Security Act report, there was a known history of violent crimes on Respondent's campus. In particular, In July 2005, a student at ASU was shot in the chest at the Collegiate Apartments; In February 2006 an ASU student was shot at the ASU Pavilion and in February 2008, an ASU student was raped on campus. Further, Claimants alleged that ASU at Jonesboro had a duty to provide a safe environment and adequate security for its students, especially when it was foreseeable that such criminal activity could take place given the past incidences of violent crimes.

#### **II. Law**

When ruling upon a Respondent's Motion to Dismiss, the Commission must accept all of Claimant's well-pleaded facts as true and draw all reasonable inferences from those facts in favor

of the Claimant. See *Griffin v. George's, Inc.*, 589 S.W.2d 24, 25 (Ark. 1979). In this case, when the Commission accepts all the pleaded facts as true and draws reasonable inferences from those facts in favor of the Claimants, the Commission must deny Respondent's Motion to Dismiss.

**A. Plaintiff Has Stated Valid Claim for Relief**

The thrust of Claimant's complaint in this case is that despite the fact that there had been a number of third party violent crimes committed on the ASU campus, and ASU's own campus police department's reporting of such criminal acts, Respondents failed to employ reasonable security measures to protect Michael Gilmore from reasonably foreseeable criminal activity. In turn, that failure to employ reasonable security measures led to the deadly shooting of Claimants' son. A valid tort claims for negligence security is stated in the Complaint.

---

Respondent's Motion to Dismiss is predicated on the general rule that a landowner has no duty to protect its tenants from the criminal acts of third persons as set forth in *Bartley v. Sweetser*, 319 Ark. 117, 122, 890 S.W.2d 250, 252 (1994). Additionally, Respondent's attached a copy of the ASU-Jonesboro Apartment Contract to support its contention that the apartment contract did not create a duty to protect its resident's from the criminal acts of third persons. In particular, the Respondent directs the Commission's attention to paragraph IX. First, paragraph IX does not address criminal activity of third persons on the college campus. Secondly, the facts of the cases relied on by Respondent in support of its motion to dismiss, *Sweetser*, and *Hall v. Rental Management, Inc.*, 323 Ark. 143, S.W.2d 293 (1996) and *Lacy v. Flake & Kelly Mgmt., Inc.*, 366 Ark 365, 235 S.W.3d 894 (2006), can be distinguished from the facts of Claimants' complaint. In each the cases relied on by the Respondent, the relationship between the Landlord

and the Tenants was merely that of housing. In this instance, Claimant's decedent was a full time student at ASU and was living in campus housing because of his enrollment for classes.

Pursuant to the Apartment Contract at paragraph X, "Right to Enter the Room," [t]he University reserved the right to enter the student's room in several instances. The instance that is relevant here, "when it appears that an occupant may be physically harmed or endangered." Arguably, the Respondent can and will undertake to protect students on its campus when it is apparent that an occupant is at risk of being physically harmed or endangered. See, Respondent's Exhibit 1.

More importantly, Respondent has failed to recognize that the general rule is not applicable in this case because the Respondent assumed the duty to provide security to its students and as such, it was bound to use reasonable care. See, *Hall* 323 Ark. at 149., citing, *Glasgow v. Century Property Fund XIX*, 299 Ark. 221, 772 S.W.2d 312 (1989) and *Kilbury v. McConnel*, 246 Ark. 528, 438 S.W.2d 692 (1969). In particular, the Respondent assumed a duty

to employ reasonable security measures to keep students, such as Michael Gilmore, safe from known and foreseeable criminal activities of third parties by its establishment and employment of campus police officers who investigate and handle criminal acts, amongst other things, on ASU's campus and by preserving the right to enter the student's housing when it perceives that the student is at risk of harm or danger.

It is respectfully suggested to the Commission that allegations as set forth in Claimants' Complaint and the reasonable inferences which arise therefrom, lead to a valid claim for relief due to Respondent's negligence in failing to use reasonable security measures to keep its students, including Claimants' decedent safe from reasonably foreseeable criminal acts of third parties. Should the Commission disagree and determine that the Complaint does not adequately

set out these valid claims for relief, Claimant respectfully requests another opportunity to make out the claims above-described and for the opportunity to make those claims in the more traditional legal complaint (numbered paragraphs) framework, rather than the form required generally before the Commission.

### III. Conclusion

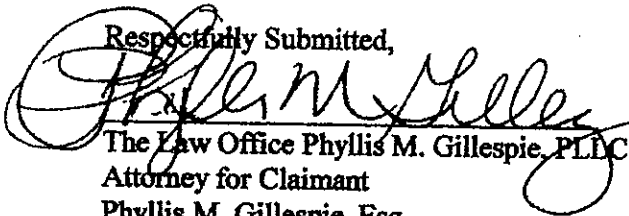
Respondent's argument to dismiss Claimants' Complaint hinges on the general rule that a landlord does not have a duty to protect its tenants from criminal act of third parties is well taken, however, Claimants maintain that the general rule is not applicable in this instance because the Respondent assumed a duty to protect its student residents by reserving the right to enter the students residence when there is a risk of harm or endangerment and by the establishment of a campus police force. It is respectfully submitted that the Complaint adequately states facts upon which relief may be granted, as explained above, but if the Commission disagrees Claimants pray that the Commission will grant them an opportunity to amend so as to state facts upon which relief may be granted.

ARKANSAS STATE  
CLAIMS COMMISSION

MAR 04 2013

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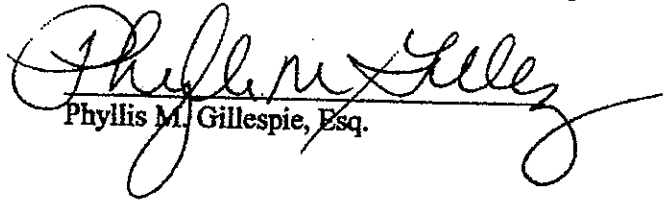
Respectfully Submitted,

  
The Law Office Phyllis M. Gillespie, PLLC  
Attorney for Claimant  
Phyllis M. Gillespie, Esq.  
Florida Bar No. 0130801  
[Phyllis@pmgillespielaw.com](mailto:Phyllis@pmgillespielaw.com)  
PENDING PRO HAC VICE ADMISSION

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of March, 2013, I served a copy of the

foregoing by regular mail to: Jeffrey W. Puryear, Attorney for the Respondent, via Electronic Mail: [jpuryear@wpmfirm.com](mailto:jpuryear@wpmfirm.com) and at P.O. Box 3077, Jonesboro, Arkansas, 72403-3077 by depositing same in the U.S. Mail in a properly addressed envelope with adequate postage thereon.

  
Phyllis M. Gillespie, Esq.

ARKANSAS STATE  
CLAIMS COMMISSION

MAR 04 2013

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ARKANSAS STATE  
CLAIMS COMMISSION  
MAR 08 2013

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BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

JERLENE AND ELIJAH GILMORE,

CLAIMANTS

VS.

CLAIM NO.:13-0522-CC

STATE OF ARKANSAS,  
ARKANSAS STATE UNIVERSITY - JONESBORO,

RESPONDENT

**REPLY TO CLAIMANTS' RESPONSE  
TO MOTION TO DISMISS THE COMPLAINT**

Comes now respondent, Arkansas State University - Jonesboro (hereinafter "ASUJ"), by and through its attorneys, Womack, Phelps & McNeill, P.A., and for its Reply to Claimants' Response to Motion to Dismiss the Complaint, states as follows:

1. This Commission denied and dismissed Claim No. 13-0362-CC. There is no indication that the dismissal was without prejudice, as contended by claimants. Claimants have provided no legal basis for re-filing this claim.

2. The unfortunate events resulting in the death of Michael D. Gilmore were not reasonably foreseeable, as suggested by claimants. Indeed, Mr. Gilmore could not have foreseen these events, inasmuch as he answered the door and was shot.

3. Claimants agree that in Arkansas a landowner has no duty to protect its tenants from criminal actions of third parties.

4. Claimants suggest that Mr. Gilmore's status as a student at ASUJ living in campus housing somehow changes the analysis; however, they have cited no Arkansas case or statute to support their position.

5. Claimants also suggest that ASUJ might undertake more obligations than what is found in the "ASU-Jonesboro Apartment Contract." The language of that Contract is clear: ASUJ did not accept the responsibility to protect a tenant from criminal actions. ASUJ is bound by the terms of the Contract, but claimants cannot interpret the contract to impose additional obligations on ASUJ, particularly those that are contrary to Arkansas law.



6. Claimants also contend that ASUJ assumed an additional duty of protection because it employed campus police officers. ASUJ already addressed this argument in the motion to dismiss the complaint with brief in support. Claimants have no Arkansas law to support this contention.

7. Finally, claimants ask for an opportunity to amend their complaint if the Commission agrees with the motion to dismiss. The Commission should deny this request. Claimants have had every opportunity to state their cause of action but no claims exist under Arkansas law. No amendment is necessary.

ASUJ respectfully moves this Commission to grant the motion to dismiss the complaint of claimants, Jerlene and Elijah Gilmore.

Respectfully submitted,

Jeffrey W. Puryear (93109)  
WOMACK, PHELPS & McNEILL P.A.  
P.O. Box 3077  
Jonesboro, AR 72403-3077  
(870) 932-0900  
E-Mail: [jpuryear@wpmfirm.com](mailto:jpuryear@wpmfirm.com)

By: \_\_\_\_\_

*Jeffrey W. Puryear*  
Attorneys for Respondent, State of Arkansas,  
Arkansas State University - Jonesboro

**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing *Reply to Claimants' Response to Motion to Dismiss Complaint* was made by mailing a copy of same to the following attorney on the 8<sup>th</sup> day of March, 2013:

Ms. Phillis Gillespie  
Attorney at Law  
872 Colorado Avenue  
Stuart, FL 34994  
*Attorney for Claimants*

  
\_\_\_\_\_  
Jeffrey W. Puryear

STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 1,000,000.00

Claim No. 13-0522-CC

Jerlene & Elijah Gilmore Claimant  
vs.

Attorneys  
Phyllis M. Gillespie, Attorney Claimant

AR State University Respondent  
State of Arkansas

Jeffrey W. Puryear, Attorney Respondent

Date Filed January 14, 2013

Type of Claim Wrongful Death

FINDING OF FACTS

The Claims Commission hereby unanimously denies and dismisses the Respondent's "Motion to Dismiss." Therefore, this claim will be set for hearing and all parties notified accordingly.

IT IS SO ORDERED.

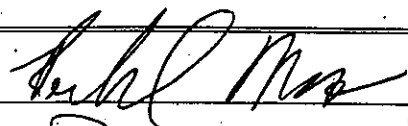
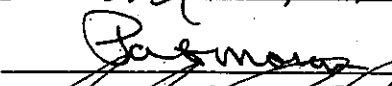
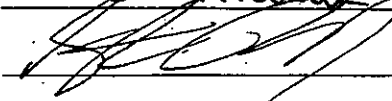
(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies and dismisses the Respondent's "Motion to Dismiss." Therefore, this claim will be set for hearing and all parties notified accordingly.

Date of Hearing March 8, 2013

Date of Disposition March 8, 2013

  
Chairman  
  
Commissioner  
  
Commissioner

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BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

JERLENE AND ELIJAH GILMORE,

CLAIMANTS

VS.

CLAIM NO.:13-0522-CC

STATE OF ARKANSAS,  
ARKANSAS STATE UNIVERSITY - JONESBORO,

RESPONDENT

MOTION FOR SUMMARY JUDGMENT

Comes now respondent, Arkansas State University - Jonesboro (hereinafter "ASUJ"), by and through its attorneys, Womack, Phelps & McNeill, P.A., and for its Motion for Summary Judgment, states as follows:

1. The Claimants, Jerlene and Elijah Gilmore (hereinafter "the Claimants" or "Mr. and Mrs. Gilmore"), are the parents of Michael D. Gilmore, deceased. They filed this claim against ASUJ as a result of Michael Gilmore's unfortunate death on April 17, 2010.

2. In addition to his parents, Michael Gilmore was survived by four (4) siblings: Elijah, Demarcus, Angella and Kaneisha (hereinafter and collectively "the siblings").

3. Mr. and Mrs. Gilmore seek to recover money damages for the death of Michael Gilmore. Specifically, they seek an award from the State for all related medical expenses, the funeral bill and the pain and suffering experienced by them and the siblings.

4. Probate administration has not been opened for the estate of Michael Gilmore, deceased; thus, no one has been appointed as the administrator, executor or personal representative of his estate.

5. The Claimants have filed this action against ASUJ to assert survival and wrongful death claims. These are separate and distinct actions under Arkansas law.

6. First, survival claims are allowed only under Arkansas Code Annotated § 16-62-101(a)(1); and they must be filed by the executor or administrator of the decedent's estate. No other person has the authority or standing to file a survival action under Arkansas law. *Id.*

7. Neither Mr. nor Mrs. Gilmore has been appointed as the executor or administrator of the estate of Michael Gilmore; therefore, they do not have standing, or authority, to file a survival action for his estate.

8. Second, wrongful death claims are allowed only under Arkansas Code Annotated § 16-62-102(a)(1). They must be filed by the personal representative of the deceased's estate; but, if there is no personal representative, the wrongful death action must be filed by all heirs at law, which include the parents and siblings of the deceased individual. Ark. Code Ann. § 16-62-102(b) & (d)(1). No other person has the authority or standing to file a wrongful death action under Arkansas law. *Id.*

9. As stated, there is no personal representative for the estate of Michael Gilmore; thus, the wrongful death action can only be filed by all heirs at law of Michael Gilmore. The Complaint that was filed on January 14, 2013 clearly shows that Mr. and Mrs. Gilmore are the only Claimants. ~~The siblings are not claimants or parties to the action, but Arkansas law required them to join in this~~ wrongful death claim. Mr. and Mrs. Gilmore do not have standing on their own to file the wrongful death claim. They were required to join all of the siblings as parties.

10. The Complaint must be dismissed as a matter of law because Mr. and Mrs. Gilmore do not have standing to file wrongful death claims on behalf of the estate of Michael Gilmore.

11. The Complaint is a nullity and of no effect.

12. All claims for survival and wrongful death must be filed within three (3) years from the date of death. Ark. Code Ann. § 16-62-102(c)(1). More than three (3) years have passed since Michael Gilmore died. This claim was not filed by the proper party within the applicable statute of limitations. Therefore, all claims of survival and wrongful death are time barred and may not be considered by this Commission. Ark. Code Ann. § 19-10-209.

13. This Commission is without jurisdiction to make any award. Ark. Code Ann. § 19-10-204(b)(3)(A) & (B).

14. ASUJ is entitled to judgment as a matter of law and a dismissal with prejudice of the Complaint filed.

15. Pursuant to Arkansas Rule of Civil Procedure 56, ASUJ moves this Commission for the entry of summary judgment.

16. ASUJ's motion is supported by the incorporated memorandum brief.

WHEREFORE, respondent, Arkansas State University - Jonesboro, moves for the Complaint to be dismissed with prejudice and for the entry of summary judgment in its favor because the Claimants have no right to an award in this matter.

**MEMORANDUM BRIEF IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

**A. Introduction.**

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When an individual dies, two (2) separate causes of action come into existence under the Arkansas statutes: (1) a survival claim, Ark. Code Ann. § 16-62-101(a)(1); and (2) a wrongful death claim, Ark. Code Ann. § 16-62-102(b). Parties must strictly adhere to the statutory requirements when they file these claims. *Ramirez v. White Co. Circuit Court*, 343 Ark. 372, 377, 38 S.W.3d 298, 301 (2001); *St. Paul Mercury Ins. Co. v. Circuit Court of Craighead Co.*, 348 Ark. 197, 73 S.W.3d 584, 588 (2002).

The Complaint filed by the Claimants, Jerlene and Elijah Gilmore, (hereinafter "the Claimants" or "Mr. and Mrs. Gilmore"), must be dismissed under Arkansas law. Mr. and Mrs. Gilmore have attempted to file survival and wrongful death claims against ASUJ, but they do not have the legal authority, or standing, to file these claims. In addition, the applicable statute of limitations has run and all survival and wrongful death claims are now time barred.

ASUJ is entitled to summary judgment.

**B. Summary judgment standard.**

ASUJ moves this Commission to dismiss the complaint with prejudice and enter summary judgment in its favor. Summary judgment is proper when “the state of the evidence as portrayed by the pleadings, affidavits, discovery responses, and admissions on file is such that the nonmoving party is not entitled to a day in court.” *Parkerson v. Lincoln*, 347 Ark. 29, 61 S.W.3d 146 (2001). According to the Arkansas Supreme Court, summary judgment is “one of the tools in a trial court’s efficiency arsenal”; it is not a drastic remedy. *Bank of Arkansas, N.A. v. MANA Corp.*, 346 Ark. 469, 58 S.W.3d 366, 368 (2001).

**C. Relevant Facts.**

The Claimants filed a Complaint against ASUJ on January 14, 2013, to assert claims of survival and wrongful death arising from the untimely and unfortunate death of Michael Gilmore, which occurred April 17, 2010. Michael Gilmore was survived by his parents and four (4) siblings: ~~Elijah, Demarcus, Angella and Kaneisha (hereinafter and collectively “the siblings”)~~. ~~Mr. and Mrs.~~ Gilmore seek an award from the State for the expenses for Michael Gilmore’s medical care and funeral and damages for the pain and suffering endured by them and the siblings.

No one has opened a probate estate on behalf of Michael Gilmore, deceased. Thus, there is no probate matter pending and no one has filed a petition to be appointed as the executor, administrator, or personal representative of Michael D. Gilmore, deceased.

**D. Survival claims.**

**1. In general.**

The first claim that is involved is a survival action. This claim permits a decedent’s estate to recover damages that the injured person would have recovered, if he had survived the incident. Ark. Code Ann. § 16-62-101(a)(1). This includes medical bills and funeral expenses. The relevant portion of the statute states:

(a)(1) For wrongs done to the person or property of another, an action may be maintained against a wrongdoer, and the action may be brought by the person injured or, after his or her death, by his or her *executor or administrator* against the wrongdoer. . .in the same manner and with like effect in all respects as actions founded on contracts.

*Id.* (emphasis added). The law is clear that survival claims can only be filed by the executor or administrator of the decedent's estate. *Id.* No one else has the authority to file a survival claim, and any other person who attempts to file a survival claim lacks standing. See Howard W. Brill, *Law on Damages*, § 34:1 (5<sup>th</sup> ed. 2004 & Supp. 2010).

The Arkansas courts have consistently dismissed survival claims when the executor or administrator did not file the claim. In *St. Paul Mercury Ins. Co. v. Circuit Court of Craighead Co.*, 348 Ark. 197, 73 S.W.3d 584 (2002), some of the decedent's heirs filed a survival claim, but it was dismissed because a special administrator had been appointed but did not file the lawsuit. A similar result occurred in *Dachs v. Hendrix*, 2009 Ark. 542, 354 S.W.3d 95 (granting summary judgment).

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In *Hernandez v. Clark*, 2004 Ark. App. LEXIS 481, the survival claim was dismissed because no executor or administrator had been appointed for the estate. The same situations were present in *Hubbard v. National Healthcare*, 371 Ark. 444, 451, 267 S.W.3d 573, 577 (2007); *Norton v. Luttrell*, 99 Ark. App. 109, 257 S.W.3d 580, 582 (2007); and *Farrow v. Sammis*, 2007 U.S. Dist. LEXIS 90429 (E.D. Ark. 2007), and those cases were also dismissed.

Arkansas law is unequivocal: the only person with standing, or authority, to bring a survival claim for the decedent's estate is the executor or administrator. *Norton*, 99 Ark. App. at 114, 257 S.W.3d at 583. That person is the real party in interest. Any effort by anyone else to file a survival action fails as a matter of law.

**2. Mr. and Mrs. Gilmore have no standing to file a survival claim for the estate of Michael Gilmore.**

There is no probate estate for Michael Gilmore; thus, no executor or administrator of his



estate exists. That is the only person who has standing to file a survival claim for the estate of Michael Gilmore, deceased. This Commission recognizes a claim filed by an executor, administrator or other representative ordered by judicial appointment. Ark. Code Ann. § 19-10-208(e).

The Claimants filed this survival claim in their individual capacity against ASUJ; however, the law is clear that they have no authority to assert this claim. *Smith v. St. Paul Fire & Marine Insurance Company*, 76 Ark. App. 264, 64 S.W.3d 764 (2001) (“Heirs cannot file a survival action; it must be brought by the estate.”) The only way the Claimants could have asserted a survival claim against ASUJ is if they had been appointed as the executors or administrators of Michael Gilmore’s estate; but, that never occurred.

**E. Wrongful death claims.**

**1. In general.**

The second cause of action that may be brought is one for wrongful death. This claim is for ~~the beneficiaries of the decedent who claim mental anguish, *First Comm. Bank v. USA*, 727 F. Supp.~~ 1300, 1302 (W.D. Ark. 1990); and it must be brought by the personal representative of the estate. Ark. Code Ann. § 16-62-102(a)(1). If, however, there is no personal representative, the action must be brought by all of the “heirs at law” of the decedent. *Id.* § 16-62-102(b). No other person or group has the authority or standing to file a wrongful death claim.

The “heirs at law” include the decedent’s surviving spouse, children, parents and siblings, all of whom are specifically listed in the wrongful death statute. Ark. Code Ann. § 16-62-102(d)(1); *Rice v. Tanner*, 363 Ark. 79, 210 S.W.3d 860 (2005). All of the listed heirs must join as parties who file the complaint. *Id.*, 363 Ark. at 84, 210 S.W.3d at 864-65. The absence of any single heir as a party means the claim is nullity. *Sanderson v. McCullom*, 82 Ark. App. 111, 116, 112 S.W.3d 363, 365 (2003). An heir joins in the complaint when she is listed as a party in the title of the action, as set forth in Arkansas Rule of Civil Procedure 10(a). *Williams v. Bradshaw*, 459 F.3d 846, 849 (8<sup>th</sup>

Cir. 2006). It is insufficient for an heir to be simply identified in the complaint; rather, he must be specifically named as a party. *Id.*

The Arkansas courts have routinely dismissed wrongful death lawsuits that were not filed by either the personal representative of the estate; or, in the absence of a personal representative, all of the heirs listed in the statute. For example, in *Rice v. Tanner*, 363 Ark. at 84, 210 S.W.3d 864-65, there was no personal representative for the decedent's estate. Some of the heirs filed the wrongful death suit but they failed to include all of the decedent's siblings; therefore, the court granted summary judgment and dismissed the case. *Id.* When similar facts were presented – there was no personal representative and a wrongful death case was filed by less than all heirs at law – in the cases of *Mendez v. Glover*, 2010 Ark. App. 808, 379 S.W.3d 92, 97 (2010); *Hubbard v. National Healthcare*, 371 Ark. 444, 451, 267 S.W.3d 573, 577 (2007); *Brewer v. Poole*, 362 Ark. 1, 207 S.W.3d 458 (2007); *Farrow*, 2007 U.S. Dist. LEXIS 90429; *Rice*, 363 Ark. at 84, 210 S.W.3d at 864-65; *Andrews v. Air Evac EMS, Inc.*, 86 Ark. App. 161, 165, 170 S.W.3d 303, 305 (2004); *Hernandez v. Clark*, 2004 Ark. App. LEXIS 481; *Ramirez v. White Co. Circuit Court*, 343 Ark. 372, 381, 38 S.W.3d 298, 303 (2001); and *Sanderson*, 82 Ark. App. at 116, 112 S.W.3d at 365; the courts entered summary judgment or dismissed those wrongful death lawsuits, as well. *See also Davenport v. Lee*, 348 Ark. 148, 72 S.W.3d 85, 91 (2002).

In *Recinos v. Zelk*, 369 Ark. 7, 11, 250 S.W.3d 221, 224 (2007), the court dismissed a wrongful death suit that was improperly filed by the decedent's statutory heirs because a personal representative had already been appointed and was the only person with standing to file the case. For the same reason, summary judgment was granted in *Dachs v. Hendrix*, 2009 Ark. 542, 354 S.W.3d 95.

There is no exception in Arkansas law. Wrongful death claims must be filed by the personal representative of the estate. If no representative has been appointed by the probate court, the action

can only be filed by all heirs at law of the decedent's estate. Wrongful death actions filed by anyone else fail as a matter of law for lack of standing. *Norton*, 99 Ark. App. at 114, 257 S.W.3d at 583.

**2. The wrongful death claim filed by Mr. and Mrs. Gilmore was not filed by all heirs at law of Michael Gilmore; thus, there is no standing.**

A wrongful death claim for the estate of Michael Gilmore must be filed by the personal representative, if one exists. Given that there is no personal representative, all of the heirs at law of Michael Gilmore's estate had to join as parties in order to properly file a wrongful death claim. Here, Mr. and Mrs. Gilmore filed the lawsuit, but the siblings did not join as parties to the action. The siblings are not listed as Claimants with Mr. and Mrs. Gilmore in the caption of the Complaint, which is required for filing a wrongful death claim with this Commission. To be effective, the complaint had to name all of the heirs – both parents and all siblings – as Claimants and parties. That was not done. Ark. Code Ann. § 19-10-208(a)(2); *see also* Ark. R. Civ. Pro. 10(a).

Moreover, the fact that they were listed in the last paragraph on page 2 of the Complaint is insufficient for them to be named as a party who joins in the action. *Williams*, 459 F.3d at 849.

The absence of even one heir renders the complaint meaningless because the claim was not filed by the parties who had standing to bring the action. None of the siblings joined as parties. Thus, Mr. and Mrs. Gilmore lacked standing.

**F. The effect of the Complaint filed by the Claimants.**

Arkansas law states that when a survival claim or wrongful death claim is filed by one who lacks standing, the complaint is a nullity and of no effect. *St. Paul*, 73 S.W.3d at 588; *Brewer*, 207 S.W.3d at 466. "A complaint that is a nullity 'never existed.'" *Mendez*, 2010 Ark. App. 808, 379 S.W.3d at 97.

This Commission must find that the Complaint filed on January 14, 2013, is a nullity because the Claimants lacked standing. The Complaint is of no effect and never existed under Arkansas law. Mr. and Mrs. Gilmore are not the real parties in interest who can assert a survival or wrongful death claim. Ark. R. Civ. Pro. 17(a); *see Recinos*, 369 Ark. at 12, 250 S.W.3d at 225.

**G. The statute of limitations bars any claims of survival or wrongful death.**

All claims for survival and wrongful death are governed by a three (3) year statute of limitations. Ark. Code Ann. § 16-62-102(c)(1). Michael Gilmore died April 17, 2010; therefore, the applicable statute of limitations ran on April 17, 2013. Prior to that date, there was no claim properly filed against ASUJ. Any claim that has not been timely filed may not be considered by the Commission. Ark. Code Ann. § 19-10-209. This claim must be dismissed with prejudice.

Moreover, any attempt now cannot save the claims for survival or wrongful death. For example, if a personal representative of the estate of Michael Gilmore was appointed now, he could not file a claim after the Complaint is declared a nullity and the statute of limitations has expired. *Norton*, 99 Ark. App. at 112, 257 S.W.3d at 582. It is too late for any amendment or correction. *See Brill, Law on Damages*, § 34:1, *supra*. The same is true if all heirs at law of Michael Gilmore's estate attempted to file a wrongful death claim now – there is no time for correction. *See Brewer*, 207 S.W.3d at 466-67; *Sanderson*, 82 Ark. App. at 117, 112 S.W.3d at 366. The claims had to be filed timely by the person(s) with authority to bring the action.

“The [C]ommission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity.” Ark. Code Ann. § 19-10-204(b)(3)(A). The claims for survival and wrongful death, as a matter of law, would be dismissed from a court of law or equity. ASUJ is entitled to summary judgment and a dismissal as a matter of law on all claims filed by the Claimants.

**H. Conclusion.**

This Commission should dismiss with prejudice the Complaint filed on January 14, 2013, and enter summary judgment in favor of ASUJ. There can be no award to the Claimants.

Respectfully submitted,

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By: Jeffrey W. Puryear  
Attorneys for Respondent, State of Arkansas,  
Arkansas State University - Jonesboro

**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing *Motion for Summary Judgment and Memorandum Brief in Support of Motion for Summary Judgment* was made by mailing a copy of same to the following attorney on the 29<sup>th</sup> day of April, 2013:

Ms. Phillis Gillespie  
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Mr. E.B. Chiles IV  
Mr. Bradley G. Dowler  
QUATTLEBAUM, GROOMS, TULL  
& BURROW, PLLC  
111 Center Street, Ste. 1900  
Little Rock, AR 72201

Jeffrey W. Puryear  
Jeffrey W. Puryear

MAY 15 2013

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

JERLENE AND ELIJAH GILMORE

CLAIMANTS

v.

Claim No. 13-0522-CC

STATE OF ARKANSAS,  
ARKANSAS STATE UNIVERSITY – JONESBORO

RESPONDENT

**CLAIMANTS' RESPONSE IN OPPOSITION TO  
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

Claimants Jerlene and Elijah Gilmore, for their Response in Opposition to Respondent's Motion for Summary Judgment, state:

1. Jerlene and Elijah Gilmore filed a claim with the Commission related to the death of their son Michael Gilmore under the rules and regulations of the Arkansas Claims Commission.

2. The claim is to recover for the medical and funeral expenses and the pain and suffering of the parents, Jerlene and Elijah, and siblings, Demarcus, Angella, Elijah and Kaneisha, as clearly identified in Claimants' complaint. This complies with Commission Rule 2.1, which requires that the claimants be identified in the "statement of facts."

3. The Claimants followed the procedure as required by the Claims Commission outlined in the "Frequently Asked Questions" and pursuant to the instructions for filing of a claim.

4. In particular, the Claimants provided the information and itemized statements and bills as required by section 3. STATEMENT OF FACTS and Section 4. PERSONAL INJURY AND DEATH CLAIMS of the instructions for filing claims.

5. Claimants complaint set forth the address of the claimant, the time, place, amount claimed, and the state department or agency/division in which the claim originated as required by

the Claims Commission filing requirements. Claimant attached the medical bills to the complaint as provided at section 4.

6. Claimants complied with the requirements as set forth in the Claims Commissions rules and regulations to state their claims against Respondent, and the Commission should deny Respondent's motion for summary judgment.

WHEREFORE, Claimants pray that the Commission deny Respondent's motion for summary judgment and resolve this claim on its merits.

**MEMORANDUM BRIEF IN OPPOSITION TO**  
**MOTION FOR SUMMARY JUDGMENT**

**A. Summary Judgment Standard**

Summary judgment is only granted when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. See, *Couch v. Farmers Co. Ins.*, 375 Ark. 255, 289 S.W.3d 909 (2008). Once the moving party has established a prima facie entitlement to summary judgment, the non-moving party must present proof and demonstrate the existence of a material issue of fact. *Id.*

While Arkansas Survival and Wrongful death statutes require that a lawsuit be brought by either the personal representative of an estate or all of the heirs at law, the Claims Commissions rules and regulations are in alignment with those statutes but appear to not be as stringent on how the heirs or claimants are identified.

**B. Argument**

In its motion, Respondent requests that this Commission dismiss Claimants' claims on a technicality. Respondent acknowledges that the Claimants identified all the heirs at law in Complaint's statement of facts but argues that Claimants were required to list all the heirs at law in the caption of the Complaint, citing Arkansas Rule of Civil Procedure 10(a), in order to state a

wrongful death claim. Respondent's Brief, at 8. Rule 8.1 of the Claims Commission Rules, however, provides that the Commission Rules take priority of the Rules of Civil Procedures. The Commission Rules applicable to this claim are not as stringent as the Rules of Civil Procedure and do not require claimants to be named in the style of the complaint. Rule 2.1 regarding "Form of Claims" requires only that "[e]ach claim shall have a statement of facts sufficiently clear to identify the Claimant, the Respondent state agency, the circumstances giving rise to the claim and the amount of monetary damages sought."


Importantly, the Arkansas Claims Commission requires that these rules and regulations be liberally construed to provide a simple and just method for resolving Claimants' claims: "These rules and regulations shall be liberally construed to secure a simple, just and expeditious method for the consideration of claims against the State . . . ." Rule 1.2. As required by Rule 2.1, Claimants identified all the heirs at law as claimants in the Complaint's statement of facts by stating, "[t]he tragic loss of Michael Gilmore caused his parents, Jerlene Gilmore and Elijah Gilmore, along with Michael's siblings, Elijah, Demarcus, Angella and Kaneisha, to experience great pain and suffering. Complaint, at 2. No rule or regulation of the Commission requires that all known claimants must be listed in the style of the Complaint. Particularly when liberally construed, Claimants have complied with the Commission's rules and requirements in properly stating a claim for wrongful death against Respondent. The Commission should deny Respondent's motion for summary judgment and resolve Claimants' claims on their merits.

### **C. Conclusion**

Liberally construing the rules and regulations discussed above, Claimants have complied with the Commission's rules and requirements in properly stating a claim for wrongful death against Respondent, and Respondent's Motion for Summary Judgment should be denied.



Respectfully submitted by:



**LAWS SCOTT & GILLESPIE, PLLC**

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- and -

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Attorneys for Plaintiff

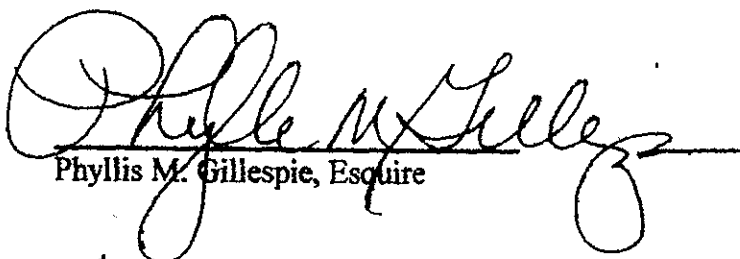
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document has been mailed, postage prepaid, to the following attorneys of record this 15th day of May 2013:

Jeffrey W. Puryear, Esquire  
**WOMACK, PHELPS & McNEIL**  
Century Center  
301 West Washington  
P.O. Box 3077  
Jonesboro, AR 72403



Phyllis M. Gillespie, Esquire

MAY 22 2013

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

JERLENE AND ELIJAH GILMORE,

CLAIMANTS

VS.

CLAIM NO.:13-0522-CC

STATE OF ARKANSAS,  
ARKANSAS STATE UNIVERSITY - JONESBORO,

RESPONDENT

**REPLY TO CLAIMANTS' RESPONSE IN OPPOSITION TO**  
**MOTION FOR SUMMARY JUDGMENT**

Comes now respondent, Arkansas State University - Jonesboro (hereinafter "ASUJ"), by and through its attorneys, Womack, Phelps & McNeill, P.A., and for its reply to claimants' response in opposition to motion for summary judgment, states:

The Gilmores cannot proceed before the Arkansas State Claims Commission because they have no standing to assert a claim. The Commission must dismiss as a matter of law.

**A. SURVIVAL CLAIMS**

The Claimants do not oppose ASUJ's motion for summary judgment on the survival claims. By their silence, they have conceded that they have no standing to assert a survival claim because there is no executor or administrator of Michael Gilmore's Estate.

**B. WRONGFUL DEATH CLAIMS**

In the memorandum brief in support of motion for summary judgment, at pages 6 - 8, ASUJ explained why the Complaint filed by the Claimants was legally insufficient to assert a wrongful death claim, including the fact that the Claimants merely listed Michael Gilmore's siblings at the end of the Complaint. ASUJ's motion for summary judgment is based on the wrongful death statute, Ark. Code Ann. § 16-62-102(a)(1), and the numerous cases from the Arkansas Supreme Court, the Arkansas Court of Appeals and the Arkansas Federal Courts which compel a dismissal of the

Complaint and which are binding on the Commission. There is no law to the contrary, as demonstrated by the Claimants' response, which is devoid of any legal authority.

ASUJ is clearly entitled to summary judgment on the wrongful death claims.

In an effort to avoid a dismissal, the Claimants have turned to the Rules of Practice & Procedure of this Commission and requested that an exception be made so that they do not have to follow the substantive law of Arkansas. The Commission's Rules are subject to the substantive law of Arkansas for wrongful death claims; and this Commission is prohibited from making an award in any claim which, as a matter of law, would be dismissed by a court of law or equity. Ark. Code Ann. § 19-10-204(b)(3)(A). This Commission cannot disregard the statutory mandate of the Arkansas Legislature and must follow the substantive law. The Rules of this Commission provide no exception.

---

The Claimants first suggest that Commission Rule 8.1 provides relief. Rule 8.1 says that the Arkansas Rules of Civil Procedure apply unless the Commission's Rules are to the contrary. The Arkansas wrongful death statute and case law are separate from the Arkansas Rules of Civil Procedure and control over the Commission's Rules. Additionally, Arkansas Rule of Civil Procedure 10(a) addresses the naming of parties in a complaint. There is no similar Commission Rule, including Rule 2.1 which was cited by the Claimants. Rule 2.1 only requires a statement of facts that will clearly "identify" the claimant. This is not contrary to or inconsistent with A.R.C.P. 10(a); therefore, A.R.C.P. 10(a) applies in addition to the wrongful death statute and case law.

The Claimants also suggest that by following the Instructions of this Commission for filing their Complaint they are allowed to bypass the substantive law for wrongful death claims. Those Instructions are not the Rules of the Commission. Even if they were, there is nothing in the Rules

which concerns the naming of parties as stated in A.R.C.P. 10(a), so there is nothing to the contrary. At best, the Instructions are additional requirements for filing a complaint. Following the Instructions cannot create a claim when none exists. The Commission must dismiss.


The complaint form from this Commission requires any claimant to provide his or her name and address. Jerlene and Elijah Gilmore identified themselves as the only claimants who were filing the claim for the death of their son, Michael Gilmore. The siblings were not named as claimants and did not join in the filing of the complaint. Indeed, they were only mentioned at the very end. The Arkansas wrongful death statute and case law require that all siblings must join as claimants with Mr. and Mrs. Gilmore; however, they failed to take that action. The end result is that the Claimants have no standing and the Complaint that was filed is a nullity.

The Arkansas substantive law governs this wrongful death claim. That law must be followed by the Claimants, regardless of the venue where they commence the action. It is undisputed that they failed to follow the Arkansas substantive law: ASUJ's motion for summary judgment is not based on a technicality; it is the law governing all wrongful death claims. The Arkansas Supreme Court mandates strict adherence to the wrongful death statute, which was not done in this case.

ASUJ is entitled to summary judgment. The claim must be dismissed.

Respectfully submitted,

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By:   
Attorneys for Respondent, State of Arkansas,  
Arkansas State University - Jonesboro

STATE CLAIMS COMMISSION DUCKE  
OPINION

Amount of Claim \$ 1,000,000.00

Claim No. 13-0522-CC

Jerlene Gilmore, Elijah Gilmore

Claimant

Attorneys Phyllis M. Gillespie, &  
Bradley G. Dowler, Attorneys

Claimant

vs.

Arkansas State University-Jonesboro

Respondent

Jeffrey W. Puryear, Attorney

Respondent

State of Arkansas

January 14, 2013

Date Filed

Wrongful death

Type of Claim

FINDING OF FACTS

This claim was filed for wrongful in the amount of \$1,000,000.00 against Arkansas State University.

Present at a hearing June 13, 2013 was the Claimant, represented by Phyllis Gillespie and Bradley G. Dowler, Attorneys and the Respondent, Jeffrey Puryear, Attorney.

The Arkansas State Claims Commission unanimously granted, in part, Respondent's written "Motion for Summary Judgment" as to the issue of "Survival." The Commissioner unanimously denied and dismissed the remaining portions of the Respondent's "Motion for Summary Judgment" as the Claimant did put the Respondent sufficiently on notice as to all the Claimant's seeking recovery. The claim will be set for hearing.

In oral argument the Respondent's legal counsel argued that the Claimant cannot "amend" a claim after the original statute of limitations time frame had expired. The Claimant's legal counsel responded to that argument. The Claims Commission unanimously agrees with the Respondent's legal counsel and unanimously denies and dismisses the "Amended Complaint" filed in the claim.

IT IS SO ORDERED.

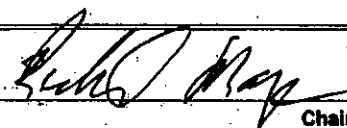
(See Back of Opinion Form)

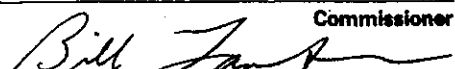

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously denied and dismissed the "Amended Complaint" filed in the claim.

Date of Hearing June 13, 2013

Date of Disposition June 13, 2013

  
Chairman

  
Commissioner  
  
Commissioner

JUL 18 2013

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

JERLENE GILMORE and ELIJAH GILMORE

CLAIMANTS

VS.

CLAIM NO.:13-0522-CC

STATE OF ARKANSAS,  
ARKANSAS STATE UNIVERSITY - JONESBORO,

RESPONDENT

NOTICE OF APPEAL

Comes now respondent, Arkansas State University - Jonesboro (hereinafter "ASUJ"), by and through its attorneys, Womack, Phelps & McNeill, P.A., and for its Notice of Appeal, states as follows:

1. On June 13, 2013, the Arkansas State Claims Commission issued its Opinion/Findings of Fact on the motion for summary judgment filed by ASUJ.

2. In that Opinion, this Commission denied ASUJ's motion for summary judgment with respect to the wrongful death claims filed by the Claimants, Jerlene and Elijah Gilmore.


3. ASUJ gives notice to this Commission and the Claimants that it is appealing that portion of the Court's Opinion which denied its motion for summary judgment on the wrongful death claims. ASUJ takes this appeal to the Arkansas General Assembly, as allowed by Arkansas Code Annotated § 19-10-211(a) & (b)(1).

WHEREFORE, Respondent, Arkansas State University - Jonesboro, gives notice of appeal as to the Opinion/Findings of Fact of the Arkansas State Claims Commission which denied its motion for summary judgment on the wrongful death claims filed by the Claimants, and requests all relief to which it is entitled.

Respectfully submitted,

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E-Mail: [jpuryear@wpmfirm.com](mailto:jpuryear@wpmfirm.com)

By: \_\_\_\_\_

  
Attorneys for Respondent, State of Arkansas,  
Arkansas State University - Jonesboro

**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing *Notice of Appeal* was made by mailing a copy of same to the following attorney on the 16<sup>th</sup> day of July, 2013:

Ms. Phillis Gillespie  
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872 Colorado Avenue  
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and

Mr. E.B. Chiles IV  
Mr. Bradley G. Dowler  
QUATTLEBAUM, GROOMS, TULL  
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Little Rock, AR 72201

*Attorneys for Claimants*

  
Jeffrey W. Puryear

Arkansas  
State Claims Commission  
JUL 29 2013

BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

JERLENE AND ELIJAH GILMORE

RECEIVED  
CLAIMANTS

v.

Claim No. 13-0522-CC

STATE OF ARKANSAS,  
ARKANSAS STATE UNIVERSITY – JONESBORO

RESPONDENT

---

**CLAIMANTS' RESPONSE IN OPPOSITION TO  
RESPONDENT'S NOTICE OF APPEAL**

---

Claimants, Jerlene and Elijah Gilmore, for their Response in Opposition to Respondent's Notice of Appeal, state:

1. On July 16, 2013, Respondent, Arkansas State University –Jonesboro, filed its Notice of Appeal of the Commission's denial of a portion of ASUJ's motion for summary judgment on Claimant's wrongful death claim. Respondent's rely on Arkansas Code Annotated § 19-19-211(a) & (b)(1).

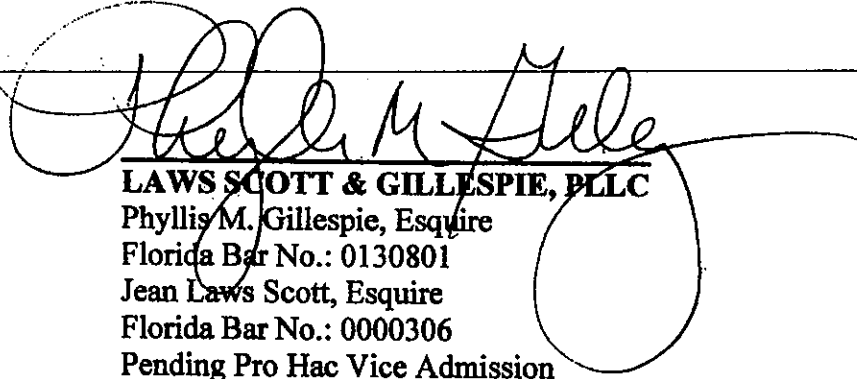
2. Claimants' oppose Respondent's Notice of Appeal on the ground that only a final and binding decision of the Commission can be appealed to the Arkansas General Assembly. *See, Claims Commission Rules and Regulations; Appeal of Commission's Decision.* The Claim Commission's denial, in part, of Respondent's motion for summary judgment is not a final and binding decision. Additionally, the Commission's Order filed on June 14, 2003, did not state that its findings were a final order.

3. Moreover, the granting of or denial of a partial summary judgment is not a final order that is appealable. *U.S. Bank, N.A. v. Milburn*, 352 Ark. 144, 100 S.W. 3d 674 (2003). A final order is one that ends all issues or that establishes a final assessment of damages. *Tri-State Delta Chemicals, Inc. v. Crow*, 347 Ark 256, 61 S.W. 3d 172 (2001).



Wherefore, Claimants' respectfully request that the Commission deny Respondent's Notice of Appeal because the dismissal of part of its summary judgment motion is not a final appealable order.

By:



**LAWS SCOTT & GILLESPIE, PLLC**

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Florida Bar No.: 0000306

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Attorneys for Plaintiff

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(F) 501-379-3838

Local Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document has been mailed, postage prepaid, to the following attorneys of record this <sup>24</sup>23rd day of July 2013:

Jeffrey W. Puryear, Esquire  
**WOMACK, PHELPS & McNEIL**  
Century Center

301 West Washington  
P.O. Box 3077  
Jonesboro, AR 72403

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AUG 05 2013

BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

RECEIVED

JERLENE GILMORE and ELIJAH GILMORE

CLAIMANTS

VS.

CLAIM NO.:13-0522-CC

STATE OF ARKANSAS,  
ARKANSAS STATE UNIVERSITY - JONESBORO,

RESPONDENT

REPLY TO CLAIMANTS' RESPONSE  
IN OPPOSITION TO NOTICE OF APPEAL

Comes now respondent, Arkansas State University - Jonesboro (hereinafter "ASUJ"), by and through its attorneys, Womack, Phelps & McNeill, P.A., and for its Reply to Claimants' Response in Opposition to Notice of Appeal, states as follows:

1. ASUJ admits paragraph 1 of the Claimants' response. According to Ark. Code Ann. § 19-10-211(a), "[a] decision of the Arkansas State Claims Commission may be appealed to the Arkansas General Assembly." According to the law created by the Arkansas Legislature, ASUJ has an absolute and statutory right to appeal the Opinion/Findings of Fact of the Arkansas Claims Commission, dated June 13, 2013.

2. The Claimants' object to ASUJ's appeal and assert that the Opinion/Findings of Fact issued by the Commission was not a final ruling which decided the entire claim and thus contend that an interim order cannot be appealed. This objection is not based upon Ark. Code Ann. § 19-10-211(a), which authorizes the appeal of any decision of the Commission.

3. In other claims before the Commission, parties have appealed interim orders and findings of fact to the Arkansas Legislature. Not all appeals from the Commission to the General Assembly are final decisions which determine every issue in the case.

4. When the Commission denied ASUJ's motion for summary judgment on the wrongful death claims filed by the Claimants', that Opinion/Findings of Fact, dated June 13, 2013, was a final decision. ASUJ must appeal that ruling to the General Assembly because there is no other recourse.

5. Denies paragraph 2 of the Claimants' response. The Rules of this Commission, which address appeals, state that the "process of appealing decisions of the Commission to the General Assembly is found in the Arkansas Code at § 19-10-211." The Rules clearly follow the statute, which state that any decision of the Commission can only be appealed to the General Assembly. The purpose of the Commission's Rules and the statute is to identify the only venue where an appeal can be lodged – the General Assembly. Neither the Rules nor the statute requires that an appealable order must be one which concludes the entire claim, nor do they prohibit an appeal of an interim order.

---

6. ~~The allegations of paragraph 3 of the Claimants' response are denied because the cases cited by the Claimants do not pertain to an appeal of a decision of the Commission or its Rules; thus, they have no application to ASUJ's appeal. As noted in the Rules, the process for appealing a decision is based upon Ark. Code Ann. § 19-10-211(a). Likewise, the Arkansas Rules of Appellate Procedure do not apply to an appeal from the Arkansas Claims Commission.~~

WHEREFORE, Respondent, Arkansas State University - Jonesboro, respectfully submits that the appeal of this matter from the Arkansas Claims Commission to the Arkansas General Assembly is appropriate, precedent shows that such appeal is allowed, ASUJ's only recourse is with the General Assembly, and the Claimants' opposition should be dismissed; and it prays for all other relief to which it is entitled.

Respectfully submitted,

Jeffrey W. Puryear (93109)  
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(870) 932-0900  
E-Mail: [jpuryear@wpmfirm.com](mailto:jpuryear@wpmfirm.com)

By: \_\_\_\_\_

*Jeffrey W. Puryear*  
Attorneys for Respondent, State of Arkansas,  
Arkansas State University - Jonesboro

**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing *Reply to Claimants' Response in Opposition to Notice of Appeal* was made by mailing a copy of same to the following attorney on the 2<sup>nd</sup> day of August, 2013:

\_\_\_\_\_  
Ms. Phillis Gillespie  
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872 Colorado Avenue  
Stuart, FL 34994

and

Mr. E.B. Chiles IV  
Mr. Bradley G. Dowler  
QUATTLEBAUM, GROOMS, TULL  
& BURROW, PLLC  
111 Center Street, Ste. 1900  
Little Rock, AR 72201

*Attorneys for Claimants*

*Jeffrey W. Puryear*  
\_\_\_\_\_  
Jeffrey W. Puryear