IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CIVIL CAUSE NO:2007-TS-00404

WILLIAM JENNINGS — APPELLANT

vs.

RUDOLPH L. MCCELLEIS — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI

BRIEF OF APPELLEE RUDOLPH L. MCCELLEIS

ORAL ARGUMENT IS REQUESTED

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September, 2007

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. William Jennings, (Plaintiff/Appellant)
2. Rudolph L. McCelleis, (Defendant/Appellee)
3. William Waller, (Attorney for Appellant)
4. William M. Dalehite, Jr., (Counsel for Appellee)
5. J. Seth McCoy, (Counsel for Appellee)
6. Honorable Bobby DeLaughter, (presided over Circuit Court proceedings)

By: _____

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. **Cases** **Page**

B. **Statutes and Other Authorities**

STATEMENT OF THE ISSUES

A. Standard of review for failure to grant an additur or motion for new trial is abuse of discretion.

B. This matter is not ripe for appeal in light of the fact that a full and final judgment as to all issues involved in the case has not been entered. This appeal should be dismissed as untimely.

C. The Circuit Court's denial of Plaintiff/Appellant's Motion for Additur or Alternatively for New Trial was proper in this case because a properly empaneled reached a reasonable verdict for the Plaintiff, based on the evidence presented to it.

D. Testimony of one of the Plaintiff's treating physicians regarding permanent partial disability was properly excluded.

E. The Circuit Court's ruling on the jury instruction regarding loss of future income was proper.

E. The selection of the jury in this case was proper and no prejudice exists in the racial makeup of the jury.

F. The Anonymous Defendant Rule was not discussed or raised during the trial of this matter nor was it asserted during in the Plaintiff's Motion for Additur or for New Trial, thus this issue is not properly before this Honorable Court.

STATEMENT OF THE CASE

This matter arose out of a rear-end automobile accident that occurred on August 3, 2004, on Lakeland Drive in Jackson Mississippi. The parties involved were the Plaintiff William Jennings and the Defendant Rudolph McCelleis.

The Complaint in this matter was filed on June 16, 2005. The Complaint stated a negligence cause of action against Appellee Rudolph McCelleis and a bad faith cause of action against State Farm Automobile Insurance Company ("State Farm"). (R.4-59/X.1-56). Both Jennings and McCelleis were State Farm insureds.

Appellee McCelleis filed his Answer on August 4, 2005. In the Answer, Appellee McCelleis stated as his first affirmative defense that the cases should be severed for trial purposes as it would be prejudicial for State Farm to be a co-Defendant with McCelleis at trial. (R.83-90/X. 80-87). On February 16, 2006 Judge DeLaughter entered an order severing the automobile negligence portion of the Plaintiff's case for trial purposes. (R.142-143/X. 88-89). State Farm's subsequent filings in the case were made under the same style and case number. (R.177-178/X.93-94).

The case was tried on January 8, 9, 10, 2007, at the Courthouse of the Second Judicial District of Hinds County, in Raymond, Mississippi. Prior to the trial of this matter, pursuant to a previously filed and granted motion for summary judgment, fault was admitted by Appellee McCelleis and the trial proceeded on the issue of causation and damages only. (R.147-149/X. 90-92).

At the conclusion of the trial the jury returned a verdict for the Plaintiff in the amount of $5,000. (R.272/X. 100). It is based on this verdict that the Plaintiff/Appellant moved for an additur or alternatively for a new trial. Plaintiff's Motion charged the Court with various errors. (R.273-290/X.101-118). Defendant/Appellee McCelleis filed a timely response. (R.291-316/X. 119-144).The Plaintiff/Appellant's motion was denied pursuant to an order issued by Judge DeLaughter on March 1, 2007. (R.317/X. 145). It is from the Denial of this Motion for Additur or New Trial that Plaintiff/Appellant now appeals.

SUMMARY OF THE ARGUMENT

The Appellant's appeal is not timely. However, the Circuit Court's denial of Appellant Jennings Motion for Additur or For New Trial was proper. A properly empaneled jury entered a reasonable verdict for the Plaintiff/Appellant based on evidence presented. No evidence of bias on the part of the jury was shown. The Circuit Court properly decided all evidentiary issues in the case.

ARGUMENT

A. Standard of Review

This appeal arises from the Hinds County Circuit Court's denial of Plaintiff/Appellant Jenning's Motion for Additur or for New Trial. In determining whether a trial court erred in denying a Motion for New Trial, the Court must accept as true the evidence which supports the verdict and will only reverse when convinced that the circuit court has abused its discretion in failing to grant a new trial. Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will the Court disturb it on appeal. *Jenkins v. State*, 947 So.2d 270, 278 (Miss.2006).

An appellate court will not reverse a trial court's denial of a motion for additur unless it is clear that the trial court abused it's discretion. *Boggs v. Hawks*, 772 So2d 1082, 1084 (¶ 5) (Miss.Ct.App.2000).

B. The Appeal filed by Plaintiff/Appellant Should be Dismissed as Untimely

The Complaint in this matter was filed on June 16, 2005, and named Appellee Rudolph McCelleis and State Farm as Defendants. (R.4-59/X.1-56) The Complaint alleged a cause of action based on automobile negligence as to Appellee Rudolph McCellies. The

Complaint also alleged a cause of action based on bad faith and breach of fiduciary duty against State Farm.

Both Appellee McCelleis and co-Defendant State Farm asserted that the cases should be severed for trial purposes (R.60-82 and 83-90/X. 57-89 and 80-87). Judge DeLaughter ordered that the cases would proceed under the same case number but would be severed for trial purposes. (R.142-143/X. 88-89).

The trial of the automobile negligence portion of the claim proceeded and a Final Judgment was entered in the Plaintiff/Appellant's favor against Defendant/Appellee McCelleis *only*. (R.272/X.100). Appellant Jennings then filed a Motion for Additur or For New Trial, which was denied by Judge DeLaughter.

Appellant's appeal in the present matter is not ripe. Only final judgments are appealable. A final, appealable, judgment is one that adjudicates the merits of the controversy which settles *all issues as to all parties* and requires no further action by the lower court. *Walters v. Walters*, 956 So.2d 1050 (Miss.App.2007). In order to bring an appeal as a matter of right there must be a full and final judgment on all aspects of a case. The automobile negligence and bad faith causes of action in this case were never fully and totally severed from one another. Judge DeLaughter's ruling only severed the causes of action for trial purposes. The Plaintiff/Appellant's bad faith case against State Farm is still pending under the same case number. (R.177-178/X.93-94)

Mississippi Rule of Civil Procedure 54(b) states that:

> When more than one claim for relief is presented in an action, whether as a claim. . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more of the but fewer than all of the claims only upon an expressed determination that there is no reason for delay and upon an expressed direction for entry of the judgment. In the absence of such determination and

direction, any order or other form of decision, however designated which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties shall not terminate the action as to any of the claim or parties . . .

The comments explain this rule further:

Rule 54(b) is designed to facilitate the entry of judgments upon one or more but fewer than all the claims.... . The basic purpose is to avoid possible injustice of delay in entering judgment on a distinctly separate claim. . . until the final adjudication of the entire matter by making an immediate appeal available.
This rule gives the court discretion to enter a final judgment and it provides much needed certainty in determining when a final and appealable judgment has been entered. If the court chooses to enter such a final order, it must do so in a definite unmistakable manner. Absent a certification under Rule 54(b), any order in a multiple party or multiple claim action, even if it appears to adjudicate a separable portion of the controversy, is interlocutory.

In the present case, the order entered by Judge DeLaughter contained neither an express request for the entry of the judgment nor an express statement that there is no reason for delay. (R.72/X.100). Without the language as required under *Mississippi Rule of Civil Procedure* 54(b), the Judgment entered by the Circuit Court was not a final and appealable judgment as it did not dispense of the Appellant/Plaintiff's breach of fiduciary duty claims against State Farm.

Accordingly Appellee McCellies would respectfully request that this Honorable Court dismiss the Appellant's appeal until such time as a Final Judgment has been entered as to all claims and parties in this case.

C. No Additur Or New Trial Was Warranted Because the Jury's Verdict Was Not Outrageous.

The burden of proving injuries and other damages is on the party requesting the additur. *Maddox v. Muirhead*, 738 So.2d 742, 743 (¶ 5). Moreover, evidence will be viewed in the light most favorable to the non-moving party, including any favorable inference that

may be reasonably drawn from such evidence. *Id.* The Mississippi Supreme Court has always been reluctant to set aside jury verdicts, noting that a verdict should not be adjusted "unless so unreasonable in amount to strike mankind at first blush as being beyond all measure, unreasonable in amount and outrageous." *Rodgers v. Pascagoula Pub. Sch. Dist.*, 611 So.2d 942, 945 (Miss.1992).

A new trial will not be ordered unless the appellate court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would be to sanction an unconscionable injustice. *Townsend v. Skelton*, 911 So.2d 639 (Miss.App.2005). The present case clearly does not present such as situation.

The Plaintiff/Appellant argues that the $5,000.00 verdict rendered by the properly empaneled jury should be disturbed. Awards fixed by a jury are not merely advisory and will not under the general rule be set aside unless so unreasonable in amount as to strike mankind at first blush as being beyond all measure, unreasonable in amount and outrageous. *City of Jackson v. Ainsworth*, 462 So.2d 325, 328 (Miss.1984). Where testimony is contradicted the Court will defer to the jury which determines, the weight and worth of testimony and the credibility of the witnesses at trial. *Odom v. Roberts*, 606 So.2d 114 (Miss.1992).

The Plaintiff/Appellant Jennings in his motion for Additur or for New Trial, alleged that the evidence presented showed that Jennings incurred medical expenses totaling $11,000 and lost wages of $29,000. According to Plaintiff/Appellant's motion and brief this would indicate that the jury's damage award should be at least $40,000.

The Plaintiff/Appellant contends that medical treatment expenses totaling $11,000 were admitted into evidence without conflict or contradiction. Nothing could be further from

the truth. The amount of *actual reasonable* medical expenses *that were causally related to this automobile accident* was disputed by the Defendant/Appellee.

The Mississippi Supreme Court has stated that a party may rebut the necessity and reasonableness of medical bills and the ultimate question is then for the finder of fact to determine whether the bills incurred were necessary and reasonable. *Jackson v. Brumfield,* 458 So.2d 736 (Miss.1984).

During trial, counsel for Defendant/Appellee McCelleis cross-examined the Plaintiff on several issues that would call into question the reasonableness and necessity of the alleged medical expenses.

Appellant/Plaintiff Jennings was cross-examined on the fact that immediately after the accident occurred, he spoke with Officer H. L. Bullock and reported that he was not hurt. Officer H.L. Bullock, likewise testified that the Plaintiff did not report any pain or injuries at the scene. (T.182/X. 177).

Plaintiff/Appellant was also questioned on the fact that he was one mile from River Oaks Hospital when the accident occurred and, rather than going to the hospital, he drove home, and only after his brother arrived at home did he get the idea to go to the hospital. (T.105/X. 157).

Furthermore, Plaintiff/Appellant was cross-examined on the fact that he was treated at River Oaks, had x-rays taken, which were negative, and was released without admission. (T.105-106/X. 157-158). Also, Appellant Jennings was cross-examined on the fact that, after his initial treatment and x-rays, he went on his on volition to approximately five other doctors primarily to obtain pain medication. (T.109-119/X.159-169)

The Plaintiff/Appellant Jennings was further cross-examined on the fact that he was

visiting multiple pain doctors, who, unbeknownst to the doctors, were prescribing multiple prescriptions of the same potent narcotic pain medications to the Plaintiff. (T.109-119/X.159-169).

Based on this evidence, the jury was clearly entitled to differentiate between what medical expenses they believed were *necessary and reasonable* as a result of the accident and those medical expenses that were not. The jury was entitled to factor the expenses that they felt were unnecessarily incurred as a result of the Appellant's alleged neck strain and deduct those expenses from the total medical expenses the Plaintiff/Appellant alleged to have suffered.

The Plaintiff/Appellant further alleges that the plaintiff lost $1,000 per month in net income since his alleged injuries for a period of 29 months, for a total of $29,000. Plaintiff/Appellant also asserted that this amount was not disputed or rebutted. However, the only evidence of Plaintiff's lost wages that was introduced by the Plaintiff/Appellant was his own testimony. No documentation, i.e. income tax records were ever produced or admitted to back up the Plaintiff/Appellant's testimony even though that documentation was requested by Defendant/Appellee during discovery and the Plaintiff's deposition. (T.41/X.155).

A jury is not required to believe any witness. *General Motors Corporation v. Pegues*, 738 So.2d 746, 753 (Miss.App.2002). Damages such as loss of income must be proved by reasonable certainty. *Id* at 755. The Plaintiff testified that the $1,000 figure could be more or could be less depending on how business was going. (T.111/X. 161).

The Mississippi Supreme Court has specifically stated that a jury is not "bound to accept without question" a Plaintiff's testimony concerning the amount of his damages even

where such testimonies do not directly contradict it. *Farmer v. Smith,* 207 So. 2d 352, 353 (Miss. 1968).

It is clear that a jury is under no obligation to simply accept as true, the unsupported testimony of an interested party. As the Mississippi Supreme Court has repeatedly explained:

> ....the demeanor or bearing, or the tone of voice or the attitude and appearance of the witness, all are primarily for inspection and review by the jury. The jury not only has the right to determine the truth or falsity of the witnesses, it also has the right to evaluate and determine what portions of the testimony of any witness it will accept or reject; therefore, in as much it is clear to this Court that the verdict is contrary to the overwhelming weight of the credible testimony this Court will not set aside the verdict of the jury. *Hinson v. Roberts,* 679 So. 2d 1041, 1045 (Miss.1996) *quoting Travelers Indemnity Co., v. Rawlson,* 222 So. 2d, 131, 134 (Miss. 1969).

The Plaintiff/Appellant's alleged damages for loss of income were not proven with the requisite reasonable certainty. Appellant could easily have submitted tax returns or other financial records for his roofing business to establish his amount of lost income, but instead he chose to rely only upon his own testimony. The jury was entitled to take the lack of proof and certainty of lost income into account when calculating the damages in this case.

Appellant argued in his Motion for Additur or for new trial, the denial of which he now appeals, that the jury's verdict of $5,000 was contrary to the evidence and an additur should be ordered. A Court has no authority to vacate a damage award merely because it thinks the jury erred or because, if the Court had been the finder of fact, it would have awarded a greater or lesser sum. *Flight Line, Inc. v. Tanksley,* 608 So.2d 1149, 1160, 1161 (Miss. 1992).

In the present case, the $5,000 amount of damages awarded to the Plaintiff/Appellant by the properly empaneled jury is neither outrageous or unreasonable. The damages awarded have a direct correlation to the amount of medical expenses that the jury believed were necessarily incurred by the Plaintiff/Appellant as a result of the accident in question.

Very likely, the ***jury concluded that, among the bills admitted by the Plaintiff/Appellant, the bills for the emergency room visit at River Oaks and the ensuing x-rays on the date of the accident; Plaintiff's visit to Dr. Ellingson; Plaintiff's physical therapy at Rankin Medical Center; and Plaintiff's drug prescriptions prescribed on the date of the accident which were filled at Super D Drugs, which total approximately $5,000, were the bills that were causally related to the accident.***

In this case the jury was charged with evaluating the Plaintiff/Appellant's credibility and determining what actual losses he suffered as a result of the accident. Apparently the jury concluded that he was neither credible nor convincing in his testimony regarding losses he suffered. For these reasons it cannot be said that the jury's verdict as to the Plaintiff's claim was unreasonable or outrageous.

In his Motion for Additur or for New Trial and Appeal Brief, Plaintiff/Appellant highlighted the fact that the only witness that was called by the defense was the Defendant/Appellee himself. This is logical in light of the admission of liability by Defendant/Appellee. Plaintiff/Appellant referenced that the Defendant/Appellee testified to the damages to his vehicle as a result of the collision. The Plaintiff/Appellant fails to mention that the Defendant/Appellee additionally testified that after the accident he asked the Plaintiff if he was injured, to which the Plaintiff/Appellant Jennings responded in the negative (T.188/X. 178). The Defendant/Appellee also testified as to his recollection of the accident as well as his estimated speed. (T.187/X.177).

Officer H. L. Bullock was subpoenaed for trial by both the Plaintiff and Defendant. Officer Bullock's testimony also indicated that the Plaintiff/Appellant reported that he was

not injured at the time of the accident and no ambulance was called. (T.182/X. 177).

Clearly sufficient rebuttal to the Plaintiff/Appellant's alleged injuries, the reasonableness or lack thereof of Appellant's subsequently incurred medical expenses and Appellant's lost wages was presented to the jury. Thus the jury's verdict was clearly not outrageous and thus should not be overturned.

D. The Trial Court Properly Excluded the Opinion of Dr. Robert Noland Regarding Plaintiff/Appellant's Alleged Percentage of Disability.

Plaintiff/Appellant argues that the Circuit Court improperly excluded the testimony of Dr. Robert Noland as it pertains to the Plaintiff/Appellant's alleged percentage of permanent disability. A court's ruling on issues of evidence during trial is proper unless it was an abuse of discretion. *Farris v. State*, 906 So.2d 113 (Miss.App.2004). In the present case, the Circuit Court's ruling regarding Dr. Noland's testimony was not only *not* an abuse of discretion, it was proper.

During the trial of this matter, Plaintiff/Appellant offered as evidence, the video taped deposition of Dr. Robert Noland. (T.163/X.176). During his deposition Dr. Noland testified that he was board certified in family medicine only and that he was not certified in radiology, orthopedics, neurology or any other fields. (R.243/X. 99). Noland's deposition testimony also revealed that he did not conduct or order any tests or studies on the Plaintiff/Appellant Jennings. (R.242/X.98). Dr. Noland treated the Plaintiff/Appellant strictly for pain. (R.233/X. 96). The medical records which were introduced into evidence at trial indicated that Dr. Noland did nothing more than refill the Plaintiff/Appellant's potent narcotic pain medications.

As to Jennings percentage of disability Noland testified during his deposition:

"so I guess maybe- if I have to give a number, maybe like 50 percent,

I guess"

(R. 241/X. 97).

Defendant/Appellee objected to Dr. Noland's testimony at the time the deposition was taken, at the time the deposition was offered into evidence and at trial. Appellee objected on the basis that Dr. Noland's statement regarding disability was a generalized, off the cuff, guess that was not based on the American Medical Association Guidelines for determining permanent disability.

The Circuit Court agreed with Appellee and struck Dr. Noland's testimony as it related to a determination of percentage of disability. (T.157-162/X. 170-175). Clearly for the reasons cited above the Court did not abuse its discretion in refusing to allow the off the cuff testimony by Dr. Noland regarding percentage of disability to come before the jury.

E. It was Proper for the Trial Court to remove portion of jury instruction regarding loss of future wages.

The Plaintiff/Appellant further argues that the Court's ruling that the jury could not consider loss of future wages was an error. The issues regarding loss of wages were argued during the portion of the trial dealing with jury instructions. (T.197-203/X. 179-185). At trial the Circuit Court determined that no evidence of present value or a calculation of such present value had been brought into evidence. (T.197-203/X. 179-185)

The Mississippi Supreme Court held that damages including loss of earnings or income, cannot be left to conjecture but must be specifically established. *Mills v. Balius,* 180 So.2d 914 (Miss. 1965). The Plaintiff provided no expert economic testimony as to the decrease in the value of plaintiff's earning capacity over the period of his expected work

rate, nor did he provide any proof as to the effect of inflation, taxes or an appropriate discount rate to be applied to any loss of future earnings. The Mississippi Supreme Court, in the case of *Coleman v. Lehman*, found a lack of this information significant in determining whether loss of future wages could be presented to the jury. *See Coleman v. Lehman*, 649 F.Supp., 363, 369 (N.D.Miss. 1986).

The Plaintiff/Appellant failed to produce any evidence concerning loss of wages. Plaintiff/Appellant was asked prior to trial to produce some concrete evidence for purposes of calculating loss of income such as tax returns, W-2 forms or other documentation. The Plaintiff did not produce any of this evidence prior to trial nor did he admit any evidence of this nature in evidence during the trial. Plaintiff/Appellant's only evidence was his own self-serving testimony as proof of his loss of wages.

Furthermore, no formula for the calculation of present cash value was entered into evidence and thus it would have been improper to submit an instruction regarding present cash value to the jury.

D. The Court Was Correct in Overruling Plaintiff/Appellant's Motion for New Trial Based on the Racial Makeup Of the Jury

Plaintiff/Appellant argues that the fact that jury was approximately 85% black while the Plaintiff/Appellant was white, constituted permissible grounds for a mistrial. The Plaintiff/Appellant's argument is without merit.

The Complaint in this matter was filed in the First Judicial District of Hinds County. (R.4-59/X. 1-56). Plaintiff/Appellant requested that the trial of this matter be moved to Raymond in the Second Judicial District of Hinds County, in order to obtain a speedier trial date. (T.7/X. 151). The Plaintiff/Appellant was in fact, the one who prepared the Order

setting the trial in Raymond. (R.179/X. 95).

Prior to voir dire, Plaintiff/Appellant moved for a mistrial or alternatively to move the case to the First Judicial District of Hinds County. The reason for Plaintiff/Appellant's displeasure with the jury was that the jury panel was 85% black. (T.2-10/X.146-154). Plaintiff/Appellant alleged that since the Plaintiff was white, the racial makeup of the jury would prejudice his case. (T.2-10/X. 146-154). Plaintif/Appellant admittedly had no authority to support this argument. (T.6/X. 150).

Plaintiff/Appellant took the position that the racial makeup of the First Judicial District of Hinds County was somehow more racially skewed in Plaintiff/Appellant assumed favor, than the Second Judicial District of Hinds County and thus the trial should be moved to the First Judicial District. (T.2-10/X.146-154). Plaintiff/Appellant produced census results from Hinds County as a whole regarding the numbers of black and white citizens. (T.2-7/X.146-152). Plaintiff/Appellant did not produce any statistics that differentiated between the racial makeup of the First and Second Judicial Districts. Thus Plaintiff/Appellant did not produce for the record any evidence that a jury from the First Judicial District of Hinds County would be any more "racially acceptable" to the Plaintiff/Appellant than a jury from the Second Judicial District.

The U.S. Census Bureau estimates that African-Americans make up more than 65% of Hinds County as a whole as of 2005. (R.304-305/X.132-133). In *Simon v. State*, the Mississippi Supreme Court held that the defendant was not denied a jury drawn from a fair cross-section of the community, even though the county from which the venue was transferred was predominately African-American and the transferee county was around 85% white. Where the venire was drawn randomly, the percentage of African-American members

on the jury fairly represented the percentage of African-Americans in the transferee county and there was no showing of systematic exclusion. *Simon v. State*, 688 So.2d 791 (Miss. 1997).

The present case presents the same situation, although the Plaintiff /Appellant has presented no evidence of a difference in the racial demographic between the First and Second Judicial Districts of Hinds County. It is apparent, based on the demographics of Hinds County as a whole, that the percentage of whites on the jury is fairly represented. In addition there had been no showing of any systematic exclusion of any white jurors from the panel.

Plaintiff/Appellant also does not address the fact that, if racial bias was the basis for the jury's verdict, why did two of the three white jury members agree with the rest of the jury's decision and further, why did the Plaintiff's attorney strike a white male during jury selection.

Plaintiff/Appellant's arguments regarding the racial makeup of the jury are without merit. Mississippi courts have help that there is no right guaranteeing that a person will have a jury composed in whole or in part of persons of his own race. *See Stephens v. Kemco Foods, Inc.*, 2006 WL 21094551 (Miss.App.2006). Proportional representation of the races on a jury is not required, what is required is that county officials must see to it that jurors are in fact and in good faith selected without regard to race. *See Vinton v. Beckahm*, 2003 WL 21094551 (Miss.2003).

E. Argument Regarding Change in Anonymous Defendant Rule Was Not Timely Made

Plaintiff/Appellant further argues in his appeal brief that the jury verdict in this case was influenced by the effects of the Anonymous Defendant Rule. This argument was not

made by Plaintiff/Appellant at trial, nor in the Plaintiff/Appellant's Motion for Additur or For New Trial, from which this appeal arises. Appeals courts do not address issues raised for the first time on appeal. *Jones v. Fluor Daniel Services Corp.*, 959 So.2d 1044 (Miss.2007).

CONCLUSION

The Appellant's has alleged that the Circuit Court's denial of his Motion for Additur or For New Trial was erroneous and should be overturned. The Appellant's appeal in this matter is not timely and should be dismissed. Alternatively the trial court clearly did not abuse its discretion in their denial of the Appellant's motion. A properly empaneled jury reached a verdict for the Plaintiff/Appellant. This verdict had a direct correlation to the medical records presented in the case.

The Circuit Court was also correct in their rulings on issues regarding evidence of permanent partial disability and loss of future income. As such, the court denial of the Motion for Additur or For New Trial should be denied.

Respectfully submitted,

Rudolph L. McCelleis, Appellee

By: _____

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CERTIFICATE OF SERVICE

I, hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the foregoing to:

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Honorable Bobby B. DeLaughter
Hinds County Circuit Court
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Raymond, Mississippi 39154

This, the 14th day of September, 2007

WILLIAM M. DALEHITE, JR.
J. SETH McCOY