IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO. 2007-CA-00751

LISA EDMONDS and LARRY EDMONDS — APPELLANT

VS.

EDWARD A. WILLIAMSON, Individually,
EDWARD A. WILLIAMSON, P.A.,
GEORGE W. HEALY, IV, Individually, and
GEORGE W. HEALY, IV & ASSOCIATES — APPELLEES

APPEAL FROM THE CIRCUIT COURT
OF KEMPER COUNTY

BRIEF OF APPELLEES EDWARD A. WILLIAMSON, INDIVIDUALLY AND EDWARD A. WILLIAMSON, P.A.

ORAL ARGUMENT NOT REQUESTED

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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. Lisa Edmonds, appellant.
2. Larry Edmonds, appellant.
3. John J. Mueller, attorney for Lisa and Larry Edmonds.
4. Joseph W. Hutchinson, III, attorney for Lisa and Larry Edmonds.
5. Edward A. Williamson, Individually, and Edward A. Williamson, P.A., appellees.
6. John B. Clark, Brandi N. Smith, attorneys for Edward A. Williamson, Individually, and Edward A. Williamson, P.A.
7. George W. Healy, IV, and George W. Healy, IV & Associates, appellees.
8. William B. Carter, attorney for George W. Healy, IV, and George W. Healy, IV & Associates.

9. Michael Miller, appellee.

10. William T. May, attorney for Michael Miller.

11. Honorable Lester F. Williamson, Jr., Circuit Judge, Kemper County, Mississippi

This the 6th day of March, 2008.

JOHN B. CLARK, Attorney for
Edward A. Williamson, Individually,
and Edward A. Williamson, P.A., Appellees

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STATEMENT REGARDING ORAL ARGUMENT

It is passing strange that attorneys who did not attend the dispositive motion hearing which resulted in summary judgment against their clients now insist that their appeal from that summary judgment deserves oral argument.

The Williamson Defendants submit that this case does not require oral argument. Of the issues raised by the Edmondses, those which concern the Williamson Defendants were all considered and dealt with in the well-reasoned opinion of the Court below granting Defendants' summary judgment motions.

As their first reason advanced in support of the request for oral argument, the Edmondses go to the issue of whether a non-injured spouse who never signed or joined in a representation agreement can assert claims of lawyer malpractice. The law and the facts of this case are so clear that the derivative claim of Larry Edmonds against Williamson cannot succeed (See Brief of Williamson Appellees pp. 30-32), that that issue does not merit oral argument.

The second reason advanced in the request for oral argument has to do with the issues concerning ownership of the case file of one of the former attorneys for Ms. Edmonds, George Healy. Williamson Defendants are not involved in that issue. However, that issue appears to have been correctly decided also by the Court below. That issue does not merit oral argument, in the opinion of counsel for the Williamson Defendants.

However, if the Court for any reason wishes to hear oral argument in this case, counsel for the Williamson Defendants will be pleased to attend, participate, and attempt to answer any questions which the Court might have.

STATEMENT OF ISSUES

Edward A. Williamson and Edward A. Williamson, P.A. ("Williamson") accept the Statement of the Issues which Lisa and Larry Edmonds (sometimes hereinafter "Lisa," "Larry" or "the Edmondses") present to this Court for review in their appeal from a summary judgment for defendants in this legal malpractice or professional liability case.

Williamson is not involved as an appellee with regard to issues 6 through 9 which the Edmondses raise against one of their former attorneys in this professional liability case, George W. Healy, IV ("Mr. Healy").

STATEMENT OF THE CASE

I. NATURE OF THE CASE.

The description of the nature of the case provided by the Edmondses is correct.[1]

II. COURSE OF PROCEEDINGS.

The "Course of proceedings" as described by the Edmondses is generally correct, if terse. Williamson submits the following supplementary facts:

At the time of the settlements of his clients' cases against American Home Products ("AHP") in 2001, Williamson believed that he could not disclose to each of his individual clients the settlement amounts of other clients, nor the total of the settlement amounts as to all clients. Williamson held this belief for three reasons: (1) he understood that the settlement agreement with AHP and the releases signed by each of his 31 clients precluded him from disclosing this

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[1]This is the third appearance of this case before this Court. The first interlocutory appeal, by Williamson in 2004, resulted in this Court's decision in *Williamson v. Edmonds*, 880 So. 2d 310, 320 (Miss. 2004). The second attempted interlocutory appeal came when the Edmondses petitioned this Court to allow them to appeal from the July 31, 2006 order of the Court below deciding the controversy regarding Mr. Healy's case file. That petition was denied by this Court (R. 3523).

information; (2) Williamson believed that disclosing such information could cause adverse tax consequences for his clients (Supp. Exh. "14" - Williamson 12/16/04 Dep. pp. 89-91; R. 3134-35; A.R.E. Tab 2);[2] and (3) Williamson had assured each client that their individual affairs would remain confidential. (Supp. Exh. "17" - Williamson 12/09/02 Dep. pp. 54-55; R. 3149; A.R.E. Tab 2). Williamson did tell each of his clients that the other clients had settled, and the clients had met each other at client meetings, so they could speak to each other about their settlements.

The issues of confidentiality of individual and total settlement amounts were decided by this Court's opinion on the prior interlocutory appeal (the "Prior Appeal").[3] This Court held that Williamson's clients were entitled to information regarding the total settlement amount and each client's share. However, this Court's opinion on the prior appeal noted an absence of previous Mississippi case law on these issues. *Id.* at 319. Because of the lack of controlling Mississippi case law, it was reasonable for Williamson to believe that the three reasons stated above required him to withhold such information from the individual clients.

Following the *Edmonds v Williamson* decision, Williamson complied with this Court's requirements as to document disclosure and production. Eventually several hundred thousand documents were exchanged among the parties or discovered from the files of AHP and others. Dozens of depositions were taken in the consolidated cases of *Edmonds v. Williamson* and *Edmonds v. Miller*–in Tennessee, Louisiana, California and Virginia, as well as in Mississippi. Numerous sets of written discovery were served (mainly by the Edmondses) and answered.[4]

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[2]In this brief, "Appellees' Record Excerpts" are abbreviated "A.R.E."

[3]*See Williamson v. Edmonds*, 880 So. 2d 310, 320 (Miss. 2004).

[4]See Docket, R. Vol. 1; R.E. 01-30.

To familiarize this Court with the circumstances at the time that Williamson's motion for summary judgment ("MSJ") was heard in the Court below, the following explanation is offered.

By Scheduling Order dated October 1, 2004, Circuit Judge Larry Roberts set this case for trial on October 10, 2005–a full year's notice of trial (R. 536; A.R.E. Tab 3).

The Edmondses moved for partial summary judgment on certain issues ("Edmonds' MPSJ") on January 18, 2005 (R. 630; A.R.E. Tab 4). Following the completion of discovery, Williamson on August 16, 2005, also moved for summary judgment ("MSJ") (R. 2517, R.E. 61). Miller joined in Williamson's MSJ (R. 2661; A.R.E. Tab 5). Williamson's MSJ was noticed for hearing on September 30, 2005 (R. 2715; A.R.E. Tab 6).

Mr. Healy, then attorney for the Edmondses,[5] also noticed their MPSJ for hearing on September 30, 2005, along with numerous other motions (R. 3191; A.R.E. Tab 7). On August 26, 2005, Mr. Healy filed a lengthy response to Williamson's MSJ (R. 2721; A.R.E. Tab 8).

Only four days before the scheduled hearing, Mr. Healy on September 26, 2005, moved to withdraw from representation of the Edmondses (R. 3194; A.R.E. Tab 9). That motion was granted, and the Edmondses were allowed 120 days to secure other counsel (R. 3200; A.R.E. Tab 10).

The Edmondses failed to obtain new counsel within 120 days. After the passage of six months, Joseph Wood Hutchinson of Butler, Alabama and Eric A. Tiebauer, Jr., of Waynesboro, Mississippi (both Mississippi Bar members) entered their appearances on March 30, 2006, as the

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[5]Mr. Healy was the second attorney for the Edmondses. See Exh. "8" to MSJ, R. 2603; R.E. 150.

third and fourth attorneys for the Edmondses (R. 3286; A.R.E. Tab 11).[6] The Edmondses also moved for *pro hac vice* admission of John J. Mueller, of Cincinnati, Ohio, as additional plaintiffs' counsel (R. 3290; A.R.E. Tab 12). Mr. Mueller was duly admitted *pro hac vice* as the Edmondses' fifth attorney by April 11, 2006 order signed by Circuit Judge Lester Williamson, Jr., who had been appointed to fill the circuit judgeship vacated when Judge Larry Roberts was appointed to the Court of Appeals (R. 3344-47; A.R.E. Tab 13).

After their appearances, none of the new attorneys for the Edmondses took any action to move the consolidated Williamson and Miller cases along, other than to file numerous lengthy motions and briefs in their dispute with Mr. Healy concerning his case file (R. 3219-3503).[7] Following a hearing, Judge Lester Williamson by a July 31, 2006 order decided that controversy (R. 3521; R.E. 33). The Edmondses petitioned this Court for an interlocutory appeal from that order, which was denied by this Court on September 13, 2006 (R. 3523; A.R.E. Tab 14).

In November 2006, defendant Miller's attorney, Bill May, wrote to the Edmondses' attorneys seeking an agreed date for a hearing on Williamson's MSJ, in which Miller had joined. Mr. May had obtained from Judge Williamson's court administrator and tendered to Edmondses' attorneys six dates which were open on Judge Williamson's calendar in January and February, 2007 for the hearing (Exh. 1 to Transcript ("Tr.") of January 26, 2007 Hearing ("1/26/07 Hearing"); A.R.E. Tab 15).[8] Mr. May received a two-page November 27 reply from Mr.

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[6]An order was later entered allowing Eric Tiebauer to withdraw from his role as counsel for the Edmondses (R. 3519).

[7]Williamson is not involved in the controversy between the Edmondses and their prior attorney over Mr. Healy's case file.

[8]The Exhibits to the January 26, 2007 Hearing are contained in a separate manila envelope in the record on this appeal.

Mueller, detailing conflicts on all six of the tendered dates. Mr. Mueller's only claimed conflict for January 26, 2007, however, was a Bar committee meeting. Mr. Mueller's letter stated,

> From among the dates you provided, this latter date, January 26, represents the best date to set the hearing. Mr. Hutchinson can attend the hearing and he will be able to reach me by telephone, if necessary.

(Exh. 2 to 1/26/07 Hearing; A.R.E. Tab 16).

Mr. May responded that he would notice the hearing on the MSJs for January 26, adding, "I don't think that scheduling this motion for two months ahead is unreasonable," and inviting Mr. Mueller to "file any appropriate motion you wish . . . ."[9] Accordingly, Mr. May noticed Miller's MSJ hearing for January 26, 2007, copying all attorneys (Exh. 4 to 1/26/07 Hearing; R. 3524; A.R.E. Tab 18). Williamson's attorney also noticed Williamson's MSJ for hearing on January 26, 2007 (Exh. 5 to 1/26/04 Hearing; R. 3526; A.R.E. Tab 19).

On December 5, 2006, Williamson's attorney's paralegal wrote to Judge Williamson's court administrator forwarding copies of filings regarding the pending MSJs. The Edmondses' attorneys were copied on this letter, which concluded,

> . . . the hearing to argue the defendants' motions for summary judgment has been set for 1:30 p.m. on January 26 . . . .

(Exh. 6 to 1/26/07 Hearing; A.R.E. Tab 20).

Nothing further was heard from the Edmondses' attorneys until the very day of the hearing, January 26, 2007. On that day, at about 11:00 a.m., only 2½ hours before the noticed hearing,

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[9]Mr. Hutchinson was copied on Mr. May's letter to Mr. Mueller (Exh. 3 to 1/26/07 Hearing; A.R.E. Tab 17).

the Court below received from Mr. Mueller a faxed motion to continue the hearing (Exh. 7 to 1/26/07 Hearing, R. Vol. 27, pp. 12-13; R. 3578-80; A.R.E. Tabs 21 and 22).

At 1:30 p.m. on January 26, the court below denied the late-filed motion to continue, and proceeded to hear the arguments of Williamson and Miller's attorneys on the MSJs which had been noticed. Neither attorney for the Edmondses appeared to oppose the MSJs, nor to argue the Edmondses' pending MPSJ. The court asked numerous questions of counsel as reflected in the 47-page transcript of the hearing. The court took the MSJs under advisement (Tr. of 1/26/07 Hearing, R. Vol. 27; A.R.E. Tab 22).

Almost two months elapsed after the hearing before Judge Williamson on March 19, 2007 issued his 26-page Memorandum Opinion deciding the MSJs.[10] During that two-month period, the Edmondses' attorneys took no action to defend the MSJs. They did not move that the record be reopened or that they be allowed to offer oral or written arguments, and they did not point out to the Court below any evidence opposing the defendants' MSJs.

III. DISPOSITION IN THE TRIAL COURT.

On March 19, 2007, the Court below issued his 26-page Memorandum Opinion ("Opinion") granting summary judgment to Williamson and Miller as to all claims of the Edmondses (R. 3590; A.R.E. Tab 1).

IV. STATEMENT OF FACTS.

The Edmondses contend that the Court below erred as a matter of law in granting summary judgment to defendants. The Edmondses do not identify nor contend that any substantial issue of

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[10]The Memorandum Opinion copy included among the Appellants' Record Excerpts is incomplete, and its pages are unnumbered. A complete, numbered copy is therefore included at Tab 1 of the Appellees' Record Excerpts.

material fact exists. Instead they accept the facts as found and related in the MSJ Opinion.[11] Except for the following point, Williamson does not disagree with the facts (as opposed to the conclusions and arguments) stated by the Edmondses in their brief on this appeal.

Williamson denies that he and the attorneys associated with him (Mike Miller of Alexandria, VA, and Ed Blackmon of Canton, MS) negotiated an "aggregate" settlement on behalf of their clients in *Annette Williams, et al. v. American Home Products Corp.* ("*Williams v. AHP*").[12] As Ed Williamson testified,

> I explained . . . in the presence of . . . Ms. Edmonds . . . [t]hat we were going to present everybody's individual case and everybody's individual facts of their case and determine the old fashioned way, that is by subjective evaluation . . . and discussions between the lawyer and the client and looking at the medical records and looking at the subjective facts that color the value of a case, come to the value of the case, and submit these cases to Wyeth.[13]

(MSJ Exh. 2C, R. 2543; R.E. 76).

ARGUMENT

I. STANDARD OF REVIEW.

The Edmondses state correctly that this Court reviews grants of summary judgment *de novo*. *See One South, Inc. v. Hollowell*, No. 2006-CA-01048-SCT (¶ 6) (Miss. 2007). While the movant bears the burden of showing that no genuine issue of fact exists, "'The non-moving party may not rest upon more allegations or denials in the pleadings, but must set forth specific facts

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[11]See Brief for Appellants, p. 8, fn. 4.

[12]The Court below did not find there had been an "aggregate settlement." That phrase in the Memo Opinion was picked up from dictum in this Court's opinion in *Williamson v. Edmonds*, 880 So. 2d 310, 314 (Miss. 2004) (R. 3593; A.R.E. Tab 1).

[13]At some point in time, AHP changed its name to Wyeth. It is referred to by both names in the record.

showing that there are genuine issues for trial.'" *Albert v. Scott's Truck Plaza, Inc.*, No. 2007-CA-00008-SCT (Miss. 2008), *quoting Massey v. Tingle*, 867 So. 2d 235, 238 (Miss. 2004).

The Edmondses did not show any genuine issues of material fact for trial in this case (and concede in their brief that there are no genuine issues of material fact). Neither did the Edmondses show that they were entitled to a judgment as a matter of law under Miss. R. Civ. P. 56.

II. ISSUES ON THIS APPEAL.

The Edmondses posit five issues on their appeal as against Williamson,[14] as follows:

> Issue No. 1: Did the Edmondses waive the claims of lawyer malpractice, breach of contact, and breach of fiduciary duty they have asserted against Williamson?
>
> Issue No. 2: Are the Edmondses estopped from prosecuting the claims of lawyer malpractice, breach of contract, and breach of fiduciary duty they have asserted against Williamson?
>
> Issue No. 3: By signing the acknowledgment and separate agreement, did the Edmondses release the claims of lawyer malpractice, breach of contract, and breach of fiduciary duty they have asserted against Williamson?
>
> Issue No. 4: By signing the acknowledgment and separate agreement, did the Edmondses enter into an accord and satisfaction with Williamson?
>
> Issue No. 5: Can Larry Edmonds have claims against Williamson for lawyer malpractice and breach of fiduciary duty?

(Brief for Appellants, pp. 2-4).

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[14]Issues 6 through 9 argued by the Edmondses go to their dispute with Mr. Healy over the case file. As pointed out above, Williamson is not involved in that dispute.

In large measure, the Edmondses' arguments on issues 1 through 4 are based on this Court's decision in *Channel v. Loyacono*, 954 So. 2d 415 (Miss.2007). While *Channel* at first glance seems similar to this case, *Channel* dealt with different and distinguishable facts, and does not require reversal of the trial court below. The judgment of the Court below should therefore be affirmed.

A. ISSUE NO. 1: THE COURT BELOW DID NOT ERR IN HOLDING THAT LISA EDMONDS WAIVED THE CLAIMS SHE ATTEMPTS TO ASSERT AGAINST WILLIAMSON IN THIS CASE.

The Edmondses mischaracterize the holding of the Court below as to waiver when they state,

> The trial court erred on the law in finding that the Edmondses waived the claims of lawyer malpractice, breach of contract, and breach of fiduciary duty they have asserted against Williamson by accepting the proceeds of the settlement with AHP. Accordingly, in entering summary judgment in favor of Williamson on the ground that the Edmondses waived their claims against Williamson by accepting payment of a settlement of claims the Edmondses asserted against AHP, the trial court erred.

(Brief for Appellants, p. 18) (Emphasis added).

Contrary to the Edmondses' assertion, the trial court did not hold that "by accepting payment of a settlement of claims . . . against AHP" the Edmondses waived their claims against Williamson. Rather, the trial court held that by signing the "Acknowledgment" and the "Agreement," and representing after a controversy had arisen that she would accept $1.5 million net to her after deduction of expenses and attorneys fees of 45%, Lisa Edmonds entered into a separate contract with Williamson and gave up any right to further contest litigation expenses and attorney fees, which are the very claims she attempts to assert against Williamson in this case. (See Opinion pp. 22-23, R. 3611-12; A.R.E. Tab 1).

The Edmondses' argument on waiver is based primarily on *Channel v Loyacono*. However, the facts and the arguments presented by the attorney defendants in *Channel* are different from those in the present case. In *Channel* the defendant attorneys argued and the trial court held that

> . . . simply because the plaintiffs accepted the settlement funds, . . . they waived any right to sue for malpractice.

Channel, 954 So. 2d at 426. On appeal this Court rejected that argument. *Id.*

In the present case, Williamson did not argue below that merely by agreeing to settle her claims against AHP, Edmonds waived her right to sue her attorneys for malpractice. Rather, Williamson argued that under the unique facts of this case and the Edmonds-specific documents signed and agreements made by Edmonds after a dispute had arisen with her attorneys, her conduct constituted a "voluntary surrender or relinquishment of some known right, benefit or advantage," constituting a waiver. *See Channel*, 954 So. 2d at 426, *quoting, Sentinel Indus. Contracting Corp. v. Kimmins Indus. Serv. Corp.*, 743 So. 2d 954, 964 (Miss. 1999).

The unique facts of the present case as found by the trial court (which are not challenged on this appeal) are as follows:

> . . . the Plaintiff, Lisa Edmonds, entered into a valid Representation Agreement with Edward Williamson in order to prosecute her claim against American Home Products. During the settlement negotiations with AHP, Mr. Williamson obtained from the Plaintiff the settlement amount that she wanted to settle her claim. There is a dispute over the amount she stated that she was demanding. Mr. Williamson states that she demanded $1.5 gross and she states that she demanded $1.5 net. The entire settlement was reached with AHP for all of Mr. Williamson's 33 clients. Thereafter, his office contacted the Plaintiff in order to obtain a release for the settlement. She and her husband, Larry Edmonds, went to Williamson's office. There was a disagreement over the amount Ms. Edmonds was

> demanding to settle her claim. She would not agree to settle for less than $1.5 net. . . .

(Opinion p. 20, R. 3609; A.R.E. Tab 1).

Although he understood that he had authority from Lisa to settle her case for $1.5 million gross, Williamson actually settled Lisa's case against AHP for $2.1 million gross (Opinion p. 7, R. 3596; Tab 1). Since AHP agreed to pay more than the total of the individual clients' authorized settlement demands, Williamson, Miller and Blackmon had some "wiggle room" above the total of the individual settlement authorizations they held from their clients (*Id.*). "We . . . had come up with settlement values for each client, and we had [settled for] money in excess of that . . ." (MSJ Exh. 2C, p. 95, R. 2546; R.E. 76).[15] It was the intention of Williamson and Miller ". . . to give everybody their [minimum settlement] values and push them up pro rata . . ." *Id.*

However, a California ethical expert consulted by Williamson and Miller (MSJ Exh. 2C, pp. 84-85, R. 2544; R.E. 76) advised them that likely some client ". . . would be a fly in the ointment," or "someone is going to try to hold you up" (*Id.*, p. 96). The ethical expert, an attorney named William Winslow, advised Williamson and Miller to anticipate a problem client or two, and to set aside 10 percent of the gross settlement amount as a fund to use to reach agreement with any problem clients, as well as to pay any late-billed expenses (*Id.*), with the final excess amount to be distributed to the clients pro rata after all fees and expenses had been deducted. Mr. Winslow advised that this practice "was acceptable because it was to the benefit of others" to be able to complete the settlement. He said, "[Y]ou're not going to get the money

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[15]Or, as the United States District Court phrased it in a related case (see footnotes 16 and 19, *infra*), ". . . [D]efendants obtained a settlement from AHP that exceeded the aggregate of minimum amounts each of their clients agreed to accept, resulting in a substantial amount of 'excess' funds to be allocated by defendants." *Williams v. Williamson*, 2006 U.S. Dist. LEXIS 1913,*10 (S.D. Miss. 2006).

if you don't have the kind of releases" that AHP/Wyeth wanted. *Id.* Wyeth wanted a hundred percent of the releases, or as close to that as they could get. *Id.*

Sure enough, Lisa Edmonds became a fly in the ointment/problem client. Faced with her demand in early May 2001 that she must receive $1.5 million net of expenses and attorney fees, Williamson, Miller and Blackmon after discussion agreed to allocate from the 10% "overage" funds an additional $885,000 to Lisa Edmonds' gross settlement amount, in order to reach her demanded $1.5 million net figure, and to prevent the entire settlement from falling through (Opinion pp. 7, 21, R. 3596, 3610; A.R.E. Tab 1).

Lisa Edmonds accepted the upwardly revised settlement amount. Lisa and Larry Edmonds returned to Williamson's law office and signed the Confidential Release, Indemnity and Assignment required by AHP. As the trial court found, two other documents which were unique and case-specific to Lisa Edmonds were negotiated and signed:

> Both of the Plaintiffs also signed an Acknowledgment of Expenses, which states:
>
> > I, Lisa Edmonds . . . acknowledge that it cannot be determined with exact specificity at this time, the full extent of expenses incurred in the prosecution of this litigation and do realize that they have been very substantial. Further, I/we realize that the following categories of expenses will be deducted from my/our net proceeds.
> >
> > a. Three percent of the gross recovery for expenses ordered to be deducted from each settlement by the multidistrict authority and an additional three percent is to be deducted from attorney's fees, making a total of six percent.
> >
> > b. Common benefit expenses incurred in the prosecution of the lead case, Williams v. American Home Products, et al to the litigation. These

expenses will be assessed on the percentage of the total recovery;

c. All expenses directly attributable to my/our specific case . . . .

Both Lisa Edmonds and Williamson executed another Agreement, which stated:

> The Williamson Law Firm will see to it that Lisa Edmonds receives $1,500,000.00 after applicable expenses as per the acknowledgment and attorneys' fees in the amount of FORTY-FIVE PERCENT (45%) . . . .
>
> I, Lisa Edmonds, will provide to the Williamson Law Firm all properly executed documents required by American Home Products including signature of my husband on any release required by American Home Products or disbursement sheets in accordance with the above and the acknowledgment.

The Defendant argues that the Plaintiff did receive more than $1.5 million net for which she insisted, and in fact she received $1,518,562.73. The Plaintiff has filed this suit on July 15, 2002, alleging that the Defendant breached fiduciary duties owed to the Plaintiffs in disbursements of the settlement proceeds, expenses charged to the Plaintiff and the 45% attorney fee charged to the Plaintiff.

(Opinion pp. 7-8, R. 3596-97; A.R.E. Tab 1).[16]

Parsing the specific wording of the two documents, we see that by signing the Acknowledgment, both Edmondses "acknowledge that it cannot be determined with exact specificity at this time [May 9, 2001] the full extent of expenses incurred in the prosecution of this

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[16]A handful of clients in addition to the Edmondses filed similar suits against Williamson and Miller. The only one of those to proceed to trial before a jury resulted in a unanimous jury verdict for Williamson and Miller following a two-week trial (Tr. p. 29; A.R.E. Tab 22). Copies of the Jury Verdict, Final Judgment and Order denying post-trial motions are attached as Appendix "A" to this brief. The plaintiff in that case, Carolyn Williams, was represented by Ms. Edmonds' attorney George Healy.

litigation . . . ." However, the Edmondses ". . . do realize that they [the expenses] have been very substantial." The Acknowledgment continued,

> Further, I/we realize that the following categories of expenses will be deducted from my/our net proceeds.
>
> > a. Three percent of the gross recovery . . . ordered to be deducted from each settlement by the multidistrict authority . . . .
> >
> > b. Common benefit expenses incurred in the prosecution of the lead case . . . to the litigation. These expenses will be assessed on . . . [each client's] percentage of the total recovery . . . .
> >
> > c. All expenses directly attributable to my/our specific case . . . .

Thus, although the exact amount of the substantial expenses could not be determined as of May 9, 2001, the Edmondses agreed to deduction from Lisa's gross recovery of the 3% MDL fee, her pro rata share of common benefit expenses, and her case-specific expenses.

By the Agreement, which Lisa and Williamson signed, it was further agreed that

> . . . Lisa Edmonds receive $1,500,000.00 after applicable expenses as per the acknowledgment and attorneys' fees in the amount of FORTY-FIVE PERCENT (45%) . . . .

(Emphasis added).

So, after the dispute had arisen over her settlement amount, Williamson, Miller and Blackmon capitulated to Ms. Edmonds' demand that her settlement amount be increased so that she would receive $1.5 million net. Lisa acknowledged that the applicable three categories of expenses and attorneys fees of 45% would be deducted from her gross recovery. She would receive $1.5 million net after those deductions. She in fact received $1,518.562.74 (Opinion p. 8, R. 3597; A.R.E. Tab 1), so the bargain made by the attorney defendants was upheld.

Thus, unlike the *Channel* plaintiffs, Mrs. Edmonds voluntarily surrendered or relinquished a known right, benefit or advantage (the right to question and demand an accounting of expenses, and to argue that the attorney's fee should be tiered lower than 45%). She gave these rights up in consideration of Williamson's meeting her demand of $1.5 million in her pocket, net of any attorney's fees and expenses. This was a perfect "voluntary surrender or relinquishment of a known right, benefit or advantage," constituting a waiver. *See Channel*, 954 So. 2d at 425; *Sentinel Indus. Contracting Corp*, 743 So. 2d at 964.

B. ISSUE NO. 2: THE COURT BELOW DID NOT ERR IN HOLDING THAT MS. EDMONDS IS ESTOPPED FROM PROSECUTING THE CLAIMS WHICH SHE ASSERTS AGAINST WILLIAMSON.

As to estoppel, the Court below held,

> . . . By executing the Agreement, she agreed in writing to accept the $1.5 million after deduction of expenses and attorneys fees of 45%. She accepted the proceeds from the settlement. The Court is of the opinion that it would be inequitable to allow Ms. Edmonds to accept the terms and benefits of a settlement contract and later challenge its validity. By signing the Agreement, she agreed to the settlement, waived her right to challenge the settlement and failed to make a reservation of rights in any way. Therefore, the Court finds that Ms. Edmonds is estopped from asserting her claims against Mr. Williamson.

(Opinion, R. 3612). The holding of the Court below was correct.

> In order to establish that a claim is barred by estoppel, three essential elements must be proven: "(1) a representation that later proves to be untrue, (2) an action by the person seeking to invoke the doctrine, such action being taken in reliance on the representation, and (3) a resulting detriment to that person arising from his action." ***Miss. Dep't of Pub. Safety v. Carver, 809 So. 2d 713, 718 (Miss. 2001) (citing Town of Florence v. Sea Lands, Ltd., 759 So. 2d 1221, 1229 (Miss. 2000)).***

Channel, 954 So. 2d at 425-26.

Equitable estoppel "arises when one party may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had." *Morrow v. Vinson*, 666 So. 2d 802, 803 (Miss. 1995). Estoppel is rooted in "[f]undamental notions of justice and fair dealing," *PMZ Oil Co. v. Lucroy*, 449 So. 2d 201, 206 (Miss. 1984). Its purpose is to "forbid one to speak against his own act, representation, or commitment to the injury of one to whom they were directed and who reasonably relied thereon." *Koval v. Koval*, 576 So. 2d 134, 137 (Miss. 1991). A court may enforce equitable estoppel "in those cases in which it would be substantially unfair to allow a party to deny what he has previously induced another to believe and take action on." *PMZ Oil Co.*, 449 So. 2d at 207.

In discussing the doctrine of equitable estoppel in *Channel*, this Court observed,

> . . . Loyacono and Verhine state that they were induced to "consummate the settlement agreements with AHP and to disperse [sic] the settlement proceeds to plaintiffs." So, taking these facts as they are stated, one could conclude that the plaintiffs represented to Loyacono and Verhine that they wanted to settle and that Loyacono and Verhine took action relying on that representation to negotiate a settlement agreement with AHP. This would satisfy the first two requirements for estoppel to apply . . . .

Channel, 954 So. 2d at 426 (emphasis added).

By signing the Acknowledgment and the Agreement (see above at 13-15), Lisa represented to Williamson that if her settlement amount were increased so as to yield her a net of $1.5 million after deduction of the categories of expenses outlined in the Acknowledgment and 45% attorney's fees, she would accept the settlement, sign the settlement documents, obtain her husband's signature thereon, and not argue further over expenses or attorney fee. Williamson took action relying on her representations; he, Miller and Blackmon increased Lisa's settlement value by allocating to her an additional $885,000 from the "excess" settlement funds, in order to keep the

very large settlements as to all of their clients from falling through (Opinion pp. 7, 21, R. 3596, 3610; A.R.E. Tab 1). These actions by Williamson ". . . satisfy the first two requirements for estoppel to apply." *See Channel*, 954 So. 2d at 426.

The estoppel defense broke down in *Channel* because there were

> . . . no facts stated to show, and . . . no specific allegations asserting that Loyacono and Verhine suffered any detriment by negotiating the settlement agreements with AHP on behalf of the plaintiffs . . . . Therefore, the third requirement not being met, the plaintiffs' claims were not barred by estoppel.

Id. In this case, however, the facts absent in *Channel* are present.

As stated above, Williamson evaluated each of the clients' cases individually before presenting settlement demands to AHP/Wyeth. (MSJ Exh. 2C, R. 2543; R.E. 76).

Had hers been a "stand alone" case, rather than being prosecuted as an "unfiled plaintiff" linked with stronger cases filed in Holmes County Circuit Court (a venue not available to her), Lisa's case against AHP would have had numerous weaknesses, which were discussed by the Court below at Opinion p. 6 (R. 3595; A.R.E. Tab 1). Additionally,

> . . . Lisa's diagnosis, mild mitral regurgitation with elevated pulmonary pressures, could be found in the normal non-Fen-Phen population . . . . [T]here was no good proof that either the mild mitral or the elevated pulmonary pressure was a result of the ingestion of Fen-Phen.

(MSJ Exh. 2B, p. 17, R. 2534; R.E. 73).

As the Court below summed it up, Lisa ". . . received far more than the average because she received far more than similarly-situated Plaintiffs." (Tr. p. 34; A.R.E. Tab 22).[17] By

[17]The numerical average settlement of the Fen-Phen plaintiffs would have been about $1,771,000, rather than Lisa Edmonds' $2,985,000 ($54,900,000 ÷ 31 = $1,770,967.74). Despite the fact that her condition could be found in the normal non-Fen-Phen population, only 5 clients received more than Lisa's extorted increased amount (Supp. Exh. 17, pp. 55-56; R. 3149; A.R.E. Tab 2).

acceding to Lisa Edmonds' demands allocating to her more than her share of the "excess" settlement funds so that she would receive $1.5 million net after expenses, Williamson, Miller and Blackmon took a risk. They opened themselves up to claims by other clients that by increasing Edmonds' settlement beyond what it merited based on the facts of her case, others were damaged. And such contentions were made by others. Client Carolyn Williams, represented by Mr. Healy, the same attorney then representing Lisa Edmonds, filed a suit contending that Williamson and Miller

> . . . divided up the funds in such a way that some clients with lesser injuries than hers received a greater share of the settlement than she . . . .

Williams v. Williamson, 2006 U.S. Dist. LEXIS 1913,*3 (S.D. Miss. 2006) (emphasis added).

By acceding to Lisa's demands in order to keep the settlement from "cratering" (thus damaging all clients), Williamson exposed himself to an increased risk of claims or suits by clients other than Lisa. This increased risk was a detriment to Williamson. It constitutes the element of detrimental reliance by Williamson–the third element of equitable estoppel which was missing in *Channel*. All elements of estoppel being present in this case, the Court below did not err in holding the Edmondses estopped to bring suit questioning expenses and attorney's fees after agreeing in writing to an increased settlement amount net of expenses and attorney's fees.

C. ISSUE NO. 3: THE COURT BELOW DID NOT ERR IN HOLDING LISA EDMONDS CONTRACTUALLY BOUND BY HER WRITTEN AGREEMENTS WITH WILLIAMSON, AND IN HOLDING THAT SHE HAD RELEASED THE CLAIMS SHE NOW ATTEMPTS TO ASSERT AGAINST WILLIAMSON.

1. THE MISSISSIPPI CONSTITUTION PROHIBITS IMPAIRMENT OF OBLIGATIONS OF CONTRACTS.

Miss. Const. Art. 3, § 16 (1890) prohibits impairment of contractual obligations, in the following simple words:

> . . . [L]aws impairing the obligation of contracts, shall not be passed.

Id. In *In re Savell v. Renfroe*, 876 So. 2d 308 (Miss. 2004), this Court examined the application of Art. 3, § 16 of the Constitution to contingency fee contracts. The salient facts were stated in two sentences:

> . . . Renfroe and Jordan executed a valid, enforceable contingency fee contract with Dunbar . . . . Renfroe and Jordan did not object to the contingency fee, nor did the chancellor make a finding that the contract was unconscionable, fraudulent or otherwise improper.

Savell v. Renfroe, 846 So. 2d at 313. Although the chancellor in that case noted that in his experience contingency fee contracts ranged from 20% to 50%, he approved only a 33-1/3% contingency fee. *Id.* This Court reversed the judgment of the chancery court as well as that of the Court of Appeals, noting,

> . . . The chancellor . . . failed to uphold the constitutional provision which prohibits the impairment of obligations of contracts. Miss. Const. Art. 3, § 16 (1890.

Id. at 315. Williamson respectfully submits that it is the duty of courts to uphold the obligations of his contracts as well as those of others.

2. THE ATTORNEY-CLIENT REPRESENTATION AGREEMENT WAS VALID, AND WAS RATIFIED BY LISA EDMONDS IN THE MAY 9, 2001 AGREEMENT.

In Mississippi, contingency fee agreements of up to 50% of the net recovery, if any, of a cause of action are valid. This Court so held in *Koehring Co. v. Hyde Constr. Co.*, 236 So. 2d 377, 387 (Miss. 1970). *See also, Mississippi State Bar v. Blackmon*, 600 So. 2d 166, 176 (Miss. 1992) (dissenting opinion). The representation agreement signed by Lisa Edmonds did not exceed 50%. The representation agreement was specifically held by the Court below to be valid and enforceable (Opinion p. 20; R. 3609; A.R.E. Tab 1).

After Ms. Edmonds' claim had been prosecuted, mediated, negotiated and successfully settled for a very high value, Lisa raised questions regarding the attorney's fee and the amount she would receive after all fees and expenses. To conclude that issue, Williamson and his associated attorneys after discussions over several days agreed to increase the amount of Lisa's settlement so that she would receive her demanded $1.5 million net.

On May 9, 2001, after several days of negotiation and deliberation, Ms. Edmonds and Williamson signed the Agreement by which she ratified the 45% attorneys' fee provided in the representation agreement (MSJ Exh. 1; R. 2522; R.E. 65).

The Court below correctly held that ". . . [T]he Plaintiff, Lisa Edmonds, entered into a valid Representation Agreement with Edward Williamson in order to prosecute her claim against American Home Products." ("Opinion p. 20, R. 3609; A.R.E. Tab 1). The Edmondses do not attack the validity of the Representation Agreement on this appeal.

3. THE ACKNOWLEDGMENT AND AGREEMENT CLEARLY RELEASE THE CLAIMS THE EDMONDSES NOW ATTEMPT TO ASSERT AGAINST WILLIAMSON.

The Edmondses on this appeal do not contend that the Acknowledgment or the Agreement are ambiguous. On the contrary, they state, ". . . the Edmondses and Williamson clearly and unambiguously conveyed their intentions." Brief for Appellants, p. 26. Williamson agrees that the documents are clear and unambiguous.

Ms. Edmonds is a college-educated woman, holding a B.S. degree from the University of Southern Mississippi. (MSJ Exh. "3-B" p. 10, R. 2560; R.E. 96). Ms. Edmonds read and signed the Agreement wherein she agreed to sign all the releases required by AHP in return for her receiving $1.5 million after deduction of (a) expenses "in accordance with . . . the acknowledgment" and (b) attorney's fees in the amount of 45%.[18] This Agreement precludes her from questioning further the expenses and attorney's fees, since it guaranteed her a net sum of $1.5 million after deducting fees and expenses.

What damages did Lisa Edmonds seek in filing the present suit? They were exactly the categories of possible damages she gave up for a valuable consideration in signing the Acknowledgment and Agreement. In "Plaintiffs' Opposition to Williamson Motion for Summary Judgment"[19] Edmondses' attorneys summarized her claims as follows:

> It must be emphasized that Ms. Edmonds did NOT ask for a greater share of the aggregate settlement. What she asked for was:

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[18]As stated above at 13-15, the Acknowledgment recognized that one-half of the MDL fee, Lisa's pro rata share of common benefit expenses incurred in prosecution of "the lead case, *Williams v. American Home Products*" and all expenses attributable to Lisa's specific case would be deducted from her settlement proceeds. (See MSJ Exh. 6, R. 2598, R.E. 147).

[19]This "opposition" was the only response ever filed to Williamson's MSJ.

> (1) a refund of the MDL charge; (2) to be charged a 33 1/3% legal fee instead of a 45% fee; (3) information and documentation relating to the settlement and expenses so that she could determine whether or not she had received her fair share of the settlement and paid her fair share of the expenses . . . .

(R. 2731). Items (1) and (2) in the quoted paragraph are the categories of damages released by the Acknowledgment and the Agreement, and item (3) was supplied by Williamson in great quantity and detail after this Court's decision on the Prior Appeal.

From time to time in this litigation, various attorneys for the Edmondses have argued or implied that claims of breach of fiduciary duty somehow stand on their own, and that raising such charges against a lawyer somehow excuses plaintiffs from proving that damages were proximately caused by the alleged breach of duty. Such contentions are not the law in this state. In Mississippi, in order to establish legal malpractice, "proximate cause and the extent of the alleged injury must be proven by the plaintiff." *Wilbourn v. Stennett, Wilkinson & Ward,* 687 So. 2d 1205, 1215 (Miss. 1996).

Edmonds' accusations of improprieties by Williamson do not carry her burden to show that recoverable damages were proximately caused by Williamson's alleged failures. Under similar circumstances, this Court has observed,

> . . . even though the appearance of impropriety may be the basis for disciplinary proceedings against the lawyer, and perhaps the basis for disqualification in a legal proceeding, it cannot be the basis for civil liability without proof of a causal connection between a lawyer's conduct and any claimed damages. . . .

Id., 687 So. 2d 1205, 1217 (Miss. 1996). *See also Williams v. Williamson*, 2006 U.S. Dist. LEXIS 1913, *6 ("To recover for . . . breach of fiduciary duty, . . . the claimant must prove . . . that the violation of that fiduciary duty caused injury, and the fact and extent of the injury . . . .").

Lisa Edmonds never raised any coherent claim of damages except for (1) litigation expenses and (2) attorney's fees charged in her case. The Court below did not err in holding that Ms. Edmonds had released these claims in signing and agreeing to the Acknowledgment and the Agreement (Opinion, pp. 21-22, R. 3610-11; A.R.E. Tab 1).

D. ISSUE NO. 4: THE COURT BELOW DID NOT ERR IN HOLDING THAT LISA EDMONDS ENTERED INTO AN ACCORD AND SATISFACTION WITH WILLIAMSON.

The Court below correctly held that Lisa Edmonds entered into an accord and satisfaction with Williamson, which bars her from prosecuting her present claims.

The Mississippi law of accord and satisfaction has been succinctly summarized in two paragraphs:

> . . . This Court has consistently held that accord and satisfaction consists of four basic requirements. *Wallace v. United Mississippi Bank, 726 So. 2d 578, 589 (Miss. 1998); Alexander v. Tri-County Coop. (AAL), 609 So. 2d 401, 404-05 (Miss. 1992); Lovorn v. Iron Wood Prods. Corp., 362 So. 2d 196, 197 (Miss. 1978).* In *Cook v. Bowie, 448 So. 2d 286 (Miss. 1984)*, this Court further noted that an accord and satisfaction "must have all the essentials of a contract and may be express, or implied from the circumstances." *Id. at 287 (quoting Roberts v. Finger, 227 Miss. 671, 677-78, 86 So. 2d 463, 465 (1956))*. First, something of value must be offered in full satisfaction of demand. *Wallace, 726 So. 2d at 589*. Second, the offer must be accompanied by acts and a declaration which amount to a condition that if the thing offered is accepted, it is accepted in satisfaction. *Id.* Third, the party offered the thing of value is bound to understand that if he takes it, he takes it subject to the conditions. *Id.* Last and fourth, the party must actually accept the item offered. *Id.*
>
> As clearly required by the first three elements of a valid accord and satisfaction, there must be a "meeting of the minds of the parties." *Id.* (citing *Cook, 448 So. 2d at 287*; (quoting *Roberts, 227*

> *Miss. at 677-78, 86 So. 2d at 465*)). This Court has held that an obligee may execute a valid accord and satisfaction by cashing checks which were offered as full satisfaction of a demand. *See, e.g., Lovorn, 362 So. 2d at 197-98.*

Royer Homes of Miss., Inc. v. Chandeleur Homes, Inc., 857 So. 2d 748, 753-54 (Miss. 2003). The four requirements for accord and satisfaction were reiterated by the Court in *Channel*, 954 So. 2d at 426.

The facts of this case lead unequivocally to the conclusion that Lisa Edmonds and Williamson reached an accord and satisfaction of their differences on May 9, 2001. All of the requirements of that doctrine outlined in *Royer Homes* and reiterated in *Channel* were met:

> **First, something of value must be offered in full satisfaction of demand.**

By the May 9, 2001 Agreement, Williamson and his associated attorneys agreed to increase Lisa's share of the settlement from the $1.5 million gross to which she had agreed pre-settlement to $1.5 million net (almost doubling it). Certainly that concession constituted something of value.

> **Second, the offer must be accompanied by acts and a declaration which amount to a condition that if the thing offered is accepted, it is accepted in satisfaction.**

In return for the increase in her settlement amount to $1.5 million net to her, Ms. Edmonds agreed to provide

> . . . all properly executed documents required by American Home Products including signature of my husband on any release required by American Home Products or disbursement sheets in accordance with the above and the Acknowledgment.

(MSJ Exh. "7," R. 2601; R.E. 149). By agreeing to sign "disbursement sheets in accordance with the above," Ms. Edmonds agreed to accept ". . . $1,500,000.00 after applicable expenses as per

the acknowledgment and attorneys' fees in the amount of FORTY-FIVE PERCENT (45%)." (Emphasis added.)

The "acknowledgment" referred to in both paragraphs of the Agreement is MSJ Exh. "6," (R. 2598; R.E. 147), in which Ms. Edmonds acknowledged that "it cannot be determined with exact specificity, at this time, the full extent of expenses incurred in the prosecution of this [*Williams v. AHP*] litigation"; that she and her husband "do realize that they [expenses] have been very substantial"; and that

> "I/we realize that the following categories of expenses will be deducted from my/our net [should be gross] proceeds:
>
> 1. Three percent [for MDL fees] . . . .
>
> 2. Common benefit expenses incurred in the prosecution of the lead case, Williams v. American Home Products, et al. to litigation. These expenses will be assessed on the percentage of the total recovery.
>
> 3. All expenses directly attributable to my/our specific case . . . .

Thus Ms. Edmonds had to understand that in consideration for the increase in her net settlement amount, she was giving up any claims or contentions regarding the applicable rate of attorneys' fees (45%); the MDL fees; pro rata share of common benefit expenses in *Williams v. AHP* to be assessed on Lisa's percentage of the total recovery; and Lisa's case specific expenses.

> **Third, the party offering the thing of value is bound to understand that if the thing offered is accepted, he takes it subject to the conditions.**

The Acknowledgment and the May 9, 2001 Agreement read together plainly required that if Lisa Edmonds accepted the $1,500,000, she did so subject to the condition that she must give up contentions contrary to the terms of the Acknowledgment and Agreement.

Last and fourth, the party must actually accept the item offered.

Ms. Edmonds, by accepting and never returning the sum of $1,518,562.73 (MSJ Exh. "8," R. 2603; R.E. 150), did accept the offer of Williamson and his associated attorneys, subject to the conditions stated in the Acknowledgment. Thus all four elements of accord and satisfaction are present in this case.

In explaining why accord and satisfaction was not available as in a defense in the *Channel* case, this Court stated,

> The plaintiffs did not demand anything of Loyacono and Verhine except reasonable care in legal service. The settlements released AHP, not Loyacono and Verhine, from liability and future claims. Furthermore, Loyacono and Verhine provided nothing of value to the plaintiffs. Therefore, accord and satisfaction does not bar the plaintiffs' claims.

Channel, 954 So. 2d at 426-27.

Once again, the facts in the present case are distinct from the *Channel* facts. Taking the sentences above from *Channel* one by one will emphasize the distinctions:

> **"The plaintiffs did not demand anything of Loyacono and Verhine except reasonable care in legal service."**

In the present case, after authorizing settlement for $1.5 million gross (as Williamson understood it) and after her case was actually settled for $2.1 million gross, Lisa Edmonds demanded that she receive $1.5 million net of attorney fees and expenses. That was a very substantial demand of something beyond reasonable care in legal service, unlike *Channel*.

> **"The settlement released AHP, not Loyacono and Verhine, from liability and future claims."**

Unlike the facts in *Channel*, Williamson relies not on Lisa's settlement with AHP per se, but on the Acknowledgment and the Agreement, in which Ms. Edmonds agrees to settle her case

if her settlement amount is increased to the sum of $1.5 million net to her after expenses per the Acknowledgment, and a 45% attorney's fee. By agreeing to a sum net of such expenses and a 45% attorney's fee, Ms. Edmonds gave up the right to come back for a second bite at the apple by litigating over the expenses and attorney's fee.

"Loyacono and Verhine provided nothing of value to the plaintiffs."

The Court below held, ". . . [Lisa Edmonds] was offered something of value in satisfaction of her demand by Mr. Williamson offering her $1.5 million net in satisfaction of her demand." (Opinion p. 25, R. 3614; A.R.E. Tab 1). Ms. Edmonds argues, ". . . Williamson provided nothing to Lisa Edmonds in presenting her with an offer of her share of the total settlement that AHP offered." Brief for Appellants, p. 30. This is the crucial point which Ms. Edmonds and her numerous attorneys have always refused to recognize: she was offered and accepted far more than her share of the total AHP offer, under any measure or theory. Ms. Edmonds' claimed injuries were in fact minimal, if they existed at all, and were far less serious than those of several other clients represented by Williamson (See MSJ Exh. 2B, pp. 12-20; R. 2534; R.E. 73). The average settlement for Williamson's clients was $1,771,000.[20] Due to the justified fear of her attorneys that she would "crater" the entire wonderful settlement, Ms. Edmonds demanded, extorted and received $2,985,000 gross–more than $1 million above the average settlement.

AHP did not offer Lisa Edmonds a specific dollar amount. Williamson, Miller and Blackmon made individual evaluations and demands for their clients, including a $2.1 million demand for Lisa Edmonds (MSJ Exh. 2C, pp. 77-80; R. 2542-43; R.E. 73). AHP responded with

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[20]See footnote 17, page 18 above.

a "global" offer of $55 million (later reduced to $54,900.00) in settlement of all of Williamson's Mississippi cases (*Id.*). When Williamson, Miller and Blackmon accepted that offer, they were above the total of the authorized minimal settlement authorities extended by their clients. The plan was to adjust each client's settlement upward pro rata from that client's authorized minimum settlement authority (MSJ Exh. 2C, p. 96; R. 2546; R.E. 76). However, Ms. Edmonds and one other client[21] upset the plan and held the settlement hostage until their demands were met by the attorneys (and then they both sued the attorneys anyway!). So, contrary to her present attorney's arguments, Williamson did not simply present Ms. Edmonds with "an offer of her share of the total settlement that AHP offered."

As explained above at 18-19, Williamson and his associated attorneys increased the risk of complaints from other clients by allocating to Lisa Edmonds a greater share of the total settlement than she deserved under any reasonable theory. That risk was taken, however, because the total settlement was in the best interests of the clients as a whole. Williamson therefore incurred a detriment, which constitutes value offered by Williamson for purposes of the accord and satisfaction analysis.

All required elements for accord and satisfaction are present in this case. The Court below correctly held that doctrine to apply, stating,

> . . . To this Court there is no question that the settlement documents signed by the Plaintiff, including the release to AHP, the

[21]The other problem client was Carolyn Williams, later Mr. Healy's client, who also insisted on a net settlement to her which approximated the gross settlement authority she had given. *See Williams v. Williamson*, 2006 U.S. Dist. LEXIS 1913 (S.D. Miss. 2006).

> Acknowledgment and the Agreement constitute an accord and satisfaction. Therefore, the Plaintiff is barred from bringing these claims against the Defendants.

(Opinion, p. 25, R. 3614; A.R.E. Tab 1).

E. ISSUE NO. 5: THE COURT BELOW CORRECTLY HELD THAT LARRY EDMONDS HAD NO CLAIM ON WHICH TO RECOVER AGAINST WILLIAMSON.

As to Larry Edmonds, the Court below held as follows:

> The Court is also of the opinion that the other Plaintiff, Larry Edmonds, has no claim against Mr. Williamson at all. He is the husband of Lisa Edmonds. He was not a Plaintiff in the AHP case. He received no settlement monies at all from the settlement with AHP. He signed a release to AHP of any claim for loss of consortium. Therefore, the Court finds that the Plaintiff, Larry Edmonds, may not maintain this action against his wife's former attorneys, Edward Williamson and Michael Miller.

(Opinion, pp. 25-26, R. 3614-15; A.R.E. Tab 1).

Larry admits that to be able to sue Williamson for lawyer malpractice, Larry must prove three elements: (1) a lawyer-client relationship with Williamson; (2) negligence (or a breach of a fiduciary duty) by Williamson; and (3) that Williamson's negligence proximately caused damage to Larry (Brief of Appellants, pp. 30-31). Larry admits that he never signed a representation agreement with Williamson (*Id.*, p.32), and that he never asserted a claim against AHP (*Id.*, p. 30).

Larry also admits that no Mississippi case law holds that he can assert a claim against Williamson in the absence of a representation agreement between them (*Id.* at 32). Larry argues weakly that courts in California and New York have extended the duty of a lawyer for a married person to that person's spouse in "rather limited circumstances," (*Id.*), citing a California Appellate Division case and a New York U.S. District Court decision. However, even those

foreign cases hold only that the attorney has a duty to inform the non-represented spouse of a potential loss of consortium cause of action. *See Meighan v. Shore*, 34 Cal. App. 4th 1025, 1029, 40 Cal. Rptr. 2d 744, 745-46 (Cal. App. 1995); *Jordan v. Lipsig, Sullivan, Mollen & Liapakis, P.C.*, 689 F. Supp. 192, 197 (S.D.N.Y. 1988).

Even if there were Mississippi law to support a duty by an attorney to inform the spouse of a married client of a possible loss of consortium claim, two reasons exist why Larry cannot possibly recover against Williamson.

First, Larry undoubtedly knew he had a loss of consortium claim, because he signed the release in favor of AHP, which stated in part,

> 3. The term "Settled Claims" shall mean any and all claims . . . . These "Settled Claims" include . . . all claims for damages or remedies . . . for:
>
> . . . .
>
> d. Loss of support, services, consortium, companionship, society or affection, or damage to familial relations, by spouses, former spouses, parents, children, other relatives or "significant others" of the Claimant;

(MSJ Exh. 5, R. 2589-96; R.E. 139) (Emphasis added). This Release was signed by Larry Edmonds on oath (R. 2596; R.E. 139).

Additionally, in paragraph E of the Release, the Claimant (Lisa) agreed to indemnify and hold harmless AHP against any claim asserted by her spouse (R. 2593; R.E. 139). This paragraph constitutes further notice to Larry that he had or might have had a consortium claim, which he was giving up.

As the Opinion of the Court below observed,

> "It is well settled under Mississippi law that a contracting party is under a legal obligation to read a contract before signing it." *McKenzie Check Advance of Miss., LLC v. Hardy*, 866 So. 2d 446, 455 (Miss. 2004), *First Family Fin. Servs. v. Fairley*, 173 F. Supp. 2d 565, 570 (D. Miss. 2001), *Godfrey, Bassett & Kuykendall Architects, Ltd. v. Huntington Lumber & Supply Co.*, 584 So. 2d 1254, 1257 (Miss. 1991). Further, "[a] person cannot avoid a written contract which he has entered into on the ground that he did not read it or have it read to him . . . ." *Cont'l Jewelry Co. v. Joseph*, 140 Miss. 582, 105 So. 639 (1925).

Opinion p. 20, R. 3609; A.R.E. Tab 1). Being under a legal obligation to read the AHP release before he signed it, Larry Edmonds was charged with knowledge that it released all claims, including consortium claims of spouses. Larry Edmonds had no reason to sign the AHP release except to release whatever claim he might have as a spouse of the settling claimant. He was therefore necessarily aware that he might have had such a claim, and cannot have a cause of action against Williamson for failing to advise him that he might have a consortium claim.

The second reason why Larry had no right to recover against Williamson is that consortium claims of husbands are derivative to the wife's claim for injuries. ". . . [W]rongful death and loss of consortium are treated as derivative actions subject to all defenses that would have been available against the injured person . . . ." *Choctaw, Inc. v. Wichner*, 521 So. 2d 878, 882 (Miss. 1988) (Emphasis added). *Accord, Daulton v. Miller*, 815 So. 2d 1237, 1241 (Miss. Ct. App. 2001) (". . . [A] spouse has no better claim in court than the primary claimant does.")

As is shown above, Lisa Edmonds had no viable claim against Williamson, for the reasons spelled out in the Opinion. Since Lisa had no right to recover against Williamson, and since Larry's consortium claim was derivative to hers, he also has no right to recover.

CONCLUSION

Williamson was stunningly successful in litigating and settling the claims against AHP. After the settlement, Lisa Edmonds engaged in tactics which further increased her recovery. Sadly, Ms. Edmonds may have spent most of her recovery in suing Williamson for more yet. However, Williamson has no liability to the Edmondses.

The Trial Court was correct in holding that Lisa Edmonds had waived the claims she attempts to assert against Williamson in this case; that she is estopped from prosecuting those claims; that she released those claims; and that those claims are barred by the doctrine of accord and satisfaction.

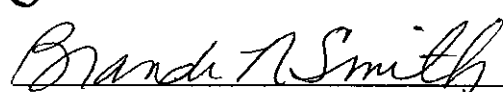
Likewise, the Court below was correct in holding that Larry Edmonds, as a non-injured spouse who had no representation agreement with Williamson, cannot maintain claims for legal malpractice against Williamson, particularly since his spouse has no right to recover either.

The case was correctly decided in the Court below as to all issues affecting the Williamson Defendants. It is therefore requested that the judgment of the Court below be affirmed.

Respectfully submitted,

EDWARD A. WILLIAMSON AND
EDWARD A. WILLIAMSON, P.A.

BY: 
OF COUNSEL

BY: 
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CERTIFICATE

I, John B. Clark, of counsel for Edward A. Williamson, Individually, and Edward A. Williamson, P.A., do hereby certify that I have this day served by United States mail a true and correct copy of the above and foregoing document to:

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THIS, the 6th day of March, 2008.

JOHN B. CLARK

107093PTE

Appendix A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

CAROLYN WILLIAMS — PLAINTIFF

VS. — CIVIL ACTION NO. 4:03CV88LN

EDWARD A. WILLIAMSON, INDIVIDUALLY,
EDWARD A. WILLIAMSON, P.A., AND
MICHAEL MILLER — DEFENDANTS

JURY VERDICT

_____ We, the jury, find for plaintiff, Carolyn Williams, against defendants Edward A. Williamson, individually, Edward A. Williamson, P.A., and Michael Miller, and assess compensatory damages in the amount of $_____ and find that plaintiff is not entitled to punitive damages.

_____ We, the jury, find for plaintiff, Carolyn Williams, against defendants Edward A. Williamson, individually, Edward A. Williamson, P.A., and Michael Miller, and assess compensatory damages in the amount of $_____ and assess punitive damages in the amount of $_____.

__✓__ We, the jury, find for defendants, Edward A. Williamson, individually, Edward A. Williamson, P.A., and Michael Miller.

THIS the 3rd day of November, 2006.

Larry W. Moore
(Foreperson)

Timothy E. Parks

William C. McRee

Amanda Ratcliff

Marcella Cox

Robert T. Gentry

Marguerite Johnson

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

CAROLYN WILLIAMS — PLAINTIFF

VS. — CIVIL ACTION NO. 4:03CV88LN

EDWARD A. WILLIAMSON, INDIVIDUALLY,
AND EDWARD A WILLIAMSON, P.A.,
AND MICHAEL J. MILLER — DEFENDANTS

FINAL JUDGMENT

On November 2, 2006, the jury composed of Larry W. Muse, Foreperson, and seven others returned to consider its verdict and on November 3, 2006, returned its verdict as follows:

> "We, the jury, find for defendants, Edward A. Williamson, individually, Edward A. Williamson, P.A., and Michael Miller."

According to the Verdict, the claims of Carolyn Williams, Plaintiff, against the Defendants, Edward A. Williamson, individually, Edward A. Williamson, P.A., and Michael Miller, are finally dismissed with prejudice.

SO ORDERED this the 6th of November, 2006.

/s/ Tom S. Lee
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

CAROLYN WILLIAMS — PLAINTIFF

VS. — CIVIL ACTION NO. 4:03CV88TSL-JMR

EDWARD A. WILLIAMSON, INDIVIDUALLY,
EDWARD A. WILLIAMSON, P.A., AND
MICHAEL J. MILLER — DEFENDANTS

ORDER

This cause is before the court on the motion of plaintiff Carolyn Williams for judgment as a matter of law or for new trial and for findings and conclusions of law on her claim for disgorgement. Additionally before the court is plaintiff's objection to both defendants' bills of cost. Having considered the parties' arguments, the court concludes as follows.

First, the court is of the opinion that there was a legally sufficient basis for the jury's verdict in favor of defendants and accordingly concludes that plaintiff's motion for judgment as a matter of law should be denied. The court further concludes that plaintiff has failed to demonstrate grounds entitling her to a new trial. In support of her motion for new trial, plaintiff objects principally that as a result of defendants' having "added" members to the defense team following voir dire, she was impaired in her ability to adequately voir dire the jury panel regarding relationships with persons involved in the trial. However, no one was added to the defense team, and this objection is without merit, as is her related objection that the court erred in failing

to exclude certain jurors for cause. Williams also complains that the court erred in prohibiting plaintiff from introducing evidence relating to the Reed case (in which the trial court concluded that defendant Miller had engaged in the unauthorized practice of law), and prohibiting her from proving the total amount of attorneys' fees obtained by defendants through the settlement. However, the court was and remains of the opinion that this evidence is irrelevant to Williams' claims, and potentially misleading and unduly prejudicial to defendants. Accordingly, plaintiff's motion for new trial will be denied.

Prior to the trial of this cause, the court determined that plaintiff's request for fee disgorgement was an equitable claim to be tried to the court. Plaintiff is now before the court requesting a ruling from the court that defendants be required to reimburse all or a portion of their attorneys fee as a consequence of the breach of their fiduciary duty to plaintiff. Relative to this request, Williams acknowledges this court's observation that it would likely use the jury's findings as an advisory verdict and she acknowledges the jury's verdict against her on her claim for breach of fiduciary duty. However, she argues that because the jury was not asked to separately address the issues of fault and damages, the jury could have found that there was a breach but that plaintiff suffered no damages as a result; and she reasons that since proof of damages is not an element of a claim for fee

disgorgement, the jury's verdict is useless as an advisory verdict and the court could order disgorgement without disregarding the jury's findings. She contends that, indeed, the record fully supports a finding that defendants breached their fiduciary duty to her and that they should not be permitted to retain any attorney fee, or at least should not retain the full contract fee. The court is not persuaded that plaintiff established a breach of fiduciary duty and therefore concludes that her request for fee disgorgement should be denied.

Lastly before the court for consideration is plaintiff's objection to defendants' bills of cost. Defendants were clearly the prevailing party, and it is "strong[ly] presum[ed] that the prevailing party will be awarded costs." Pacheco v. Mineta, 448 F.3d 783, 794 (5th Cir. 2006) (additional citations omitted).

> Indeed, [the Fifth Circuit] has held that "the prevailing party is prima facie entitled to costs," and has described the denial of costs as "in the nature of a penalty." As a result of this cost-shifting presumption, the general discretion conferred by Rule 54(d)(1) has been circumscribed by the judicially-created condition that a court "may neither deny nor reduce a prevailing party's request for cost without first articulating some good reason for doing so." Schwarz, 767 F.2d at 131 (citation omitted); cf. Delta Air Lines, Inc. v. August, 450 U.S. 346, 101 S.Ct. 1146, 1151 n.14, 67 L. Ed. 2d 287 (1981) (assuming that costs are denied to the prevailing party "only when there would be an element of injustice in a cost award").

Id. Among the reasons courts have given to justify withholding costs from a prevailing party are "(1) the losing party's limited financial resources; (2) misconduct by the prevailing party;

(3) close and difficult legal issues presented; (4) substantial benefit conferred to the public; and (5) the prevailing party's enormous financial resources." Id. at 794. The losing party's good faith in prosecuting an action has also been cited as a factor, but alone is not a sufficient basis for refusing to assess costs against that party. Id. Here, while plaintiff did not prevail, the court does not doubt her good faith in bringing and pursuing this action. Moreover, although she did receive a substantial amount of money in settlement of her claim, it appears that her financial resources are, in fact, quite limited, as contrasted with defendants, who have significant financial resources. Accordingly, the court concludes that in the circumstances of this case, each party should bear his/her own costs.

Based on the foregoing, it is ordered that plaintiff's motion for judgment as a matter of law or, alternatively, for a new trial, is denied, and her objection to payment of costs is granted.

SO ORDERED this 18th day of December, 2006.

/s/ Tom S. Lee
UNITED STATES DISTRICT JUDGE