IN THE SUPREME COURT OF MISSISSIPPI

ESTATE OF BRANDON BOLDEN, BY AND
THROUGH MARILYN BOLDEN, ADMINISTRATRIX — APPELLANT

VERSUS — CASE NO.: 2007-CA-01121

CEDRIC WILLIAMS AND
AUTOZONE MISSISSIPPI, INC. — APPELLEES

BRIEF OF THE APPELLANT

ATTORNEYS FOR APPELLANT:

GARY D. THRASH / MSB# [redacted]
JOHN N. SATCHER, II / MSB# [redacted]
SINGLETARY & THRASH-JACKSON, P.A.
POST OFFICE BOX 587
JACKSON, MS 39205-0587
(601) 948-7410

IN THE SUPREME COURT OF MISSISSIPPI

ESTATE OF BRANDON BOLDEN, BY AND THROUGH MARILYN BOLDEN, ADMINISTRATRIX — **APPELLANT**

VERSUS — **CASE NO.: 2007-CA-01121**

CEDRIC WILLIAMS AND AUTOZONE MISSISSIPPI, INC. — **APPELLEES**

CERTIFICATE OF INTERESTED PERSONS

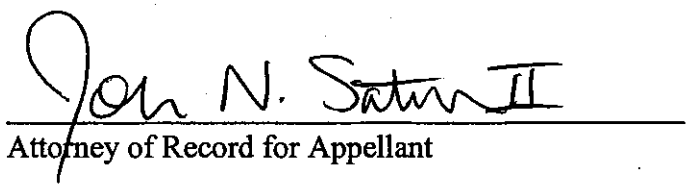
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

The Estate of Brandon Bolden, By and Through Marilyn Bolden, Administratrix, Appellant

Cedric Williams, Appellee

Autozone Mississippi, Inc., Appellee

Honorable W. Swan Yerger, Circuit Court Judge of Hinds County



Attorney of Record for Appellant

TABLE OF CONTENTS

PAGES

TABLE OF AUTHORITIES

Authority **Page(s)**

STATEMENT OF THE ISSUES

I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY STRIKING PLAINTIFF'S DESIGNATION OF HIS TREATING PHYSICIANS AS EXPERT WITNESSES THAT WERE DESIGNATED TO TESTIFY AT TRIAL.

II. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY STRIKING PLAINTIFF'S MEDICAL EXPENSES FROM EVIDENCE (EXHIBITS 3-10) WHICH WERE ADMITTED INTO EVIDENCE PURSUANT TO MISS. CODE ANN. § 41-9-119.

IN THE SUPREME COURT OF MISSISSIPPI

ESTATE OF BRANDON BOLDEN, BY AND THROUGH MARILYN BOLDEN, ADMINISTRATRIX — **APPELLANT**

VERSUS — **CASE NO.: 2007-CA-01121**

CEDRIC WILLIAMS AND AUTOZONE MISSISSIPPI, INC. — **APPELLEES**

BRIEF OF APPELLANT, ESTATE OF BRANDON BOLDEN, BY AND THROUGH MARILYN BOLDEN, ADMINISTRATRIX

COMES NOW THE APPELLANT, the Estate of Brandon Bolden, by and through Marilyn Bolden, Administratrix (hereinafter "Appellant" or "Bolden"), and files this its Appellant's Brief, and would respectfully show unto the Court the following, to-wit:

STATEMENT OF THE CASE

Pursuant to Rule 28 of the Mississippi Rules of Appellate Procedure, Appellant submits its Statement of the Case.

This is a case arising from personal injuries suffered by Brandon Bolden, a pedestrian crossing Mill Street, when he was struck by an automobile driven by Cedric Williams (hereinafter "Williams") and employed by AutoZone Mississippi, Inc. (hereinafter "AutoZone" or collectively as "Defendants") on December 20, 2002. Bolden filed suit against Williams and AutoZone on August 12, 2004 for the injuries he suffered as a result of the accident. The case proceeded through lengthy discovery, as outlined below, and the parties entered the first Agreed Scheduling Order on April, 4, 2006. The scheduling Order set forth, among other things, that Bolden's experts shall be designated by July 14, 2006 and Appellees' experts shall be designated by August 18, 2006. Bolden

timely and properly designated his treating physicians, on June 14, 2006, as expert witnesses that may testify at trial (Appellant's R.E. 3). Bolden hired no expert witnesses to testify at trial, all designated experts were treating physicians of Bolden. As such, Bolden provided the opposing party and referenced in his designation, the treating physicians' curriculum vitaes, medical records, summaries and opinions as related to Bolden and his injuries.

On or about August 18, 2006, Appellees filed a Motion to Extend Time to Designate Defendants' Experts and Motion to Strike Bolden's Designation of Expert Witnesses for failing to properly set forth expert matters pursuant Miss.R.Civ.P. 26(b)(4). Additionally, Appellees filed their Designation of Expert Witnesses listing two medical experts and an economist; however, they failed to provide any opinions, conclusions or reports for any of the designated experts. The parties then entered into an Agreed Amended Scheduling Order on or about December 12, 2006. This final scheduling order set forth the following deadlines: Bolden's experts shall be designated by January 1, 2007; Defendants' experts shall be designated by February 1, 2007; and Discovery to be completed by March 1, 2007. Prior to entering the amended scheduling order, Plaintiff filed his amended designation of experts (Appellant's R.E. 4) on October 30, 2006. The amended designation of experts included two treating physicians (Dr. Vohra and Dr. Ramsey), which had been previously designated on June 14, 2006 (Appellant's R.E. 3). Defendants filed their amended designation of expert witnesses on February 1, 2007 designating one hired expert, Dr. Mark Webb; however, the only record that was attached was Dr. Webb's curriculum vitae. Defendants designation failed to provide any records, reports, or written opinions by Dr. Webb. On March 30, 2007 Defendants filed a Renewed Motion to strike Plaintiff's treating physicians as experts and Plaintiff filed a Motion to Strike Defendants' Expert Witnesses pursuant to Miss.R.Civ.P. 26(b)(4) on the same day. On April 27, 2007, approximately one week prior to trial, the trial judge, Honorable W. Swan Yerger, granted

each party's motion to strike each others experts pursuant to Miss.R.Civ.P. 26(b)(4)(Appellant's R.E. 5). Bolden then proceeded to trial without the ability to call his treating physicians who were designated as expert witnesses and Defendants proceeded to trial without any expert witnesses.

The case proceeded to trial and Bolden testified as to the injuries he received and the course of treatment that he received from different doctors and medical facilities over the course of approximately one and a half years following the date of the accident. Bolden introduced into evidence Plaintiff's Trial Exhibits 1-10 consisting of medical bills from each medical provider that rendered treatment to him as a result of the accident. All Exhibits (1-10) were admitted into evidence by Judge Yerger, overruling the objections raised by the Defendants as to each exhibit. At the close of Bolden's case in chief, Defendants moved for a directed verdict which was denied by Judge Yerger. Defendants then presented their arguments to the jury and then rested. At the close of Defendants case, counsel renewed their motion for directed verdict which was then denied after a lengthy explanation (Appellant's R.E. 7). However, Judge Yerger then struck from evidence Exhibits 3-10 which consisted of all of the medical providers and medical bills which were seen by Bolden after the day of the accident (Appellant's R.E. 7, Page 18 Lines 1-11). Judge Yerger reasoned that since the Defendants (Williams and AutoZone) had no expert witnesses to testify at trial to rebut Bolden's claimed injuries that Defendants were at a disadvantage and caused Defendants to be unfairly prejudiced (Appellant's R.E. 7, Page 16 Lines 1-29). As such, Judge Yerger determined that the Defendants were "hamstrung" in their effort to rebut the causal connection established by Bolden with the injuries he received and the services received from all medical providers except for the undisputed injuries which were received on the day of the accident, which Judge Yerger determined, in his opinion, were the only undisputed injuries and medical services received (Appellant's R.E. 7, Page 15 Lines 18-29 and Page 18 Line 8).

Bolden's Exhibits 3-10 were then stricken from the record, excluding approximately $15,000.00 in damages consisting of a little more than one year's worth of medical treatment as a result of the accident. The only damages remaining in the record were Exhibits 1-2 consisting of medical bills from the day of the accident totaling approximately $2,000.00. The jury returned a verdict finding Bolden was 60% negligent and Defendants Williams and AutoZone were 40% negligent in causing the accident. The award from the jury was in favor of Bolden in the amount of $591.44 which was then reduced to $236.58 (Appellant's R.E. 2). It is from this Judgment and Judge Yerger's rulings with regards to striking Bolden's exhibits which were previously allowed into evidence and Judge Yerger's decision prior to trial to strike Bolden's treating physicians from testifying that Appellant Bolden appeals to the Supreme Court of Mississippi.

The Facts

On December 20, 2002, Bolden was attempting to cross Mill Street in front of his parents' business Bolden Body Shop in Jackson, Mississippi. Located adjacent to the Bolden Body Shop Mill Street has four lanes of travel running north and south. Bolden was struck near the center line by Williams's automobile, who in the course and scope of his employment with AutoZone. Bolden had cleared the first southbound lane of travel and was approximately one stride away from reaching the center line and clearing the second southbound lane on Mill Street. Williams struck Bolden with the left front portion of his automobile and Bolden bounced off Williams's windshield and was catapulted down Mill Street. There was only one eye witness that testified, other than the parties involved, and who saw the events transpire, Randy Holliday. It is from his testimony that these facts were derived.

From the scene of the accident, Bolden was taken by an ambulance to University Hospital and Clinics where he complained of his left leg, head, neck, back and shoulder pain immediately

following the accident. Bolden received the following medical treatment as a result of the injuries he sustained on the day of the accident:

12/20/02	12/20/02	AMERICAN MEDICAL RESPONSE SOUTH	$473.75
12/20/02	12/20/02	UNIVERSITY EMERGENCY PHYSICIANS	$197.00
12/20/02	12/20/02	UNIVERSITY RADIOLOGY ASSOCIATES	$97.00
12/20/02	12/20/02	UNIVERSITY MEDICAL CENTER	$1,560.81
12/23/02	12/23/02	BAPTIST MEDICAL CLINIC NORTHTOWN Dr. Larry Collins and Dr. Massie Headley	$60.00
12/31/02	05/01/03	MISSISSIPPI SPORTS MEDICINE Dr. James Randall Ramsey	$755.00
01/16/03	01/16/03	MISSISSIPPI DIAGNOSTIC IMAGING	$2,040.00
01/22/03	02/05/03	NEUROLOGICAL ASSOCIATES Dr. Richard Weddle	$250.00
01/31/03	02/05/03	BAPTIST HEALTH SYSTEMS	$2,261.50
02/05/03	02/05/03	RADIOLOGICAL GROUP PA	$229.00
02/21/03	07/30/03	HEALTHSOUTH SPORTSMED JACKSON Dr. Wayne Jimenz, Dr. Lisa Latham, and Dr. Joseph Thomas	$2,118.00
06/19/03	08/25/04	SOUTHERN PHYSICAL MEDICINE Dr. Rahul Vohra	$585.00
06/19/03	03/23/04	DIAGNOSTIC RADIOLOGY ASSOCIATES	$274.00
08/08/03	10/23/03	MISSISSIPPI METHODIST HOSP. & REHAB.	$3,979.00
12/10/03	02/02/04	ACTION CHIROPRACTIC INC. Dominique Chagnon, D.O.	$1,625.00
		TOTAL	$16,505.06

Bolden filed suit against Williams and AutoZone on August 12, 2004 for the injuries he sustained as a result of the accident. Discovery was commenced and on or about April 3, 2006 and the parties entered into the first agreed scheduling order which set forth the following dates: discovery to be completed by September 29, 2006; Plaintiff's experts to be designated by July 14, 2006; Defendants' experts to be designated by August 18, 2006; and all motions, other than *in limine*, shall be served by October 20, 2006.

Bolden timely and properly designated his treating physicians, on June 14, 2006, as expert witnesses that may testify at trial (Appellant's R.E. 3). Bolden hired no expert witnesses to testify at trial, all designated experts were treating physicians of Bolden. As such, Bolden provided the opposing party and referenced in his designation, the treating physicians' medical records, summaries and opinions contained therein, and the curriculum vitaes, as related to Bolden and his injuries.

On or about August 18, 2006, Defendants filed a Motion to Extend Time to Designate Defendants' Experts and Motion to Strike Bolden's Designation of Expert Witnesses for failing to properly set forth expert matters pursuant Miss.R.Civ.P. 26(b)(4). Additionally, Defendants filed their Designation of Expert Witnesses listing two hired medical experts and an economist; however, they failed to provide any opinions, conclusions or reports for any of the designated experts. Bolden then filed a Response to Defendants' Motion to Extend Time and Motion to Strike Plaintiff's Designation of Expert Witnesses or, in the alternative, a Motion to Strike Defendants' Designation of Expert Witnesses, should the Court find that Plaintiff's treating physicians should be stricken for failing to provide a separate written and signed report containing the treating physicians' opinions (Appellant's R.E. 6). Bolden filed his Supplemental Designation of Expert Witnesses (Appellant's R.E. 4) on or about October 30, 2006 setting forth two of the treating physicians previously

designated in his original designation from June 14, 2006 (Appellant's R.E. 3). Bolden then supplemented his discovery responses on or about October 31, 2006 by serving Defendants with Plaintiff's Supplemental Responses to Requests for Production of Documents and attaching Bolden's medical records, that supported the injuries suffered as a result of the accident, from his treating physicians (designated experts).

Defendants Williams and AutoZone filed a Motion for Extension of the Scheduling Order Deadlines on or about November 30, 2006 and an Agreed Amended Scheduling Order was entered on or about December 12, 2006, with the following relevant dates: all discovery shall be completed by March 1, 2007; Bolden's experts shall be designated by January 1, 2007; Williams and AutoZone's experts shall be designated by February 1, 2007; and the matter was set for a jury trial beginning on May 7, 2007. On the day of the deadline February 1, 2007, Defendants filed their Amended Designation of Experts, naming Dr. Mark C. Webb, a psychiatrist, to testify as to Bolden's mental and emotional conditions. Defendants did not provide any opinions, summaries, or records from Dr. Webb and they failed to designate any experts that could testify, contradict, or oppose any of Bolden's claimed physical injuries as a result of the accident.

Defendants then filed a Motion for Summary Judgment, a renewed Motion to Strike Plaintiff's Experts, and Plaintiff filed a Motion to Strike Defendant's Designation of Experts on March 30, 2007 with the hearing set for all pending motions on April 9, 2007. On or about April 27, 2007, approximately one week prior to trial, Judge Yerger entered his Order Denying and Granting the parties various motions, (Appellant's R.E. 5). Judge Yerger's harsh decision was to strike Bolden's treating physicians and strike Defendants' designated experts for discovery violations pursuant to Miss.R.Civ.P. 26(b)(4), (Appellant's R.E. 5). Bolden then proceeded to trial without the ability to call his treating physicians who were designated as expert witnesses and Defendants

Williams and AutoZone proceeded to trial without any expert witnesses.

The trial began on May 7, 2007 and Bolden testified how the accident took place, the injuries he received to his left leg, head, neck, back and shoulder. Bolden also testified as to the reasonable and necessary medical services that he received from the above listed medical providers as a result of the accident and the medical bills that he incurred from each and every provider. Bolden requested that each and every medical bill be admitted into evidence and Judge Yerger granted Plaintiff's request admitting each and every medical provider's bills into evidence. Bolden's medical bills became Plaintiff's Trial Exhibits 1-10. At the close of Bolden's case, Defendants Williams and AutoZone moved for a directed verdict; however, Defendants' motion was denied by Judge Yerger. Defendants then presented their case and defenses; however, Defendants presented no medical testimony to rebut the reasonableness or necessity of Bolden's medical treatment received as a result of the accident. At the end Defendants' case, they renewed their Motion for Directed Verdict which Judge Yerger denied with regards to negligence. However, Judge Yerger then made the decision to strike and exclude from evidence Exhibits 3-10 which consisted of the majority of Bolden's medical expenses/damages (Appellant's R.E. 7, Page 18 Lines 1-11). Judge Yerger reasoned that since the Defendants Williams and AutoZone had no expert witnesses to testify at trial and rebut Bolden's claimed injuries that Defendants were at a disadvantage which caused Defendants to be unfairly prejudiced (Appellant's R.E. 7). As such, Judge Yerger determined that the Defendants were "hamstrung" in their effort to rebut the causal connection established by Bolden with the injuries he received and the services received from all medical providers except for the undisputed injuries which were received on the day of the accident, which Judge Yerger determined, in his opinion, were the only undisputed injuries and medical services received (Appellant's R.E. 7, Page 15 Lines 18-29 and Page 18 Line 8).

As a result of Judge Yerger's decision to strike Bolden's Exhibits 3-10, which had been previously and properly admitted into evidence, Bolden was not able to present all of his damages and unable to receive a fair trial. The jury should have had the opportunity to determine credibility of the witnesses, examine the damages sustained by Bolden, and determine the value of his injuries as a result of the accident with Defendants. However, Judge Yerger struck from evidence Bolden's damages which were questions of fact that should have been analyzed by the jury: degree and nature of Bolden's injuries, reasonableness and necessity of medical treatment, and Bolden's physical and mental damages. It is from Judge Yerger's decision to strike Bolden's damages (Exhibits 3-10) from evidence and his decision to strike Bolden's treating physicians as experts prior to trial, that Bolden appeals.

SUMMARY OF THE ARGUMENT

Bolden timely and properly designated his treating physicians as experts witnesses to testify at trial. The trial court's finding that Plaintiff's experts should be stricken as a result of discovery violations pursuant to Miss.R.Civ.P. 26(b)(4) was not well founded. Bolden properly designated his treating physicians and he was not required to provide written and signed reports, in addition to the physicians' medical records provided and opinions contained therein, as argued by Defendants. Bolden's treating physicians should have been allowed to testify at trial as to the facts known to them and opinions contained in their medical records. Defendants also had their designation of expert witnesses stricken; however, Defendants had "hired gun" experts and the standard for non-treating physicians (experts) requires written and signed reports to be provided in a timely manner or pursuant to the trial court's scheduling order. Defendants' designation of expert witnesses provided no records, no opinions, no written or signed reports. As such, the trial court was correct in striking Defendants experts; however, the trial court later relaxed its position that the Defendants'

experts were stricken pursuant to Miss.R.Civ.P. 26(b)(4) and stated that the Defendants were "hamstrung" and unable to properly designate their experts because Plaintiff did not first designate his experts properly. To presume that Defendants could not timely or properly designate their expert physician witnesses after receiving the names, contact information, areas of expertise, curriculum vitaes, and medical records of Plaintiff's treating physicians is an erroneous rationale. In addition, Defendants argued that Plaintiff's treating physicians failed to provide separate written and signed reports, as required by non-treating physicians (experts); however, that is not the standard.

The trial court erred in striking Plaintiff's Trial Exhibits 3-10 from evidence at the end of trial which had been properly admitted into evidence during Plaintiff's case in chief. Pursuant to Miss. Code Ann. § 41-9-119 testimony that medical, hospital, and/or doctor bills were incurred because of any injury shall be *prima facie* evidence that such bills incurred were necessary and reasonable. In our case, Bolden testified as to his injuries suffered, the medical treatment and rehabilitation received, and the medical expenses that were incurred from the medical providers. As in our case, the medical expenses were then properly admitted into evidence. The burden then shifts to the opposing party to rebut such damages by putting forward proper proof, in the form of medical testimony, tending to negate the necessity and reasonableness of the expenses. However, Defendants provided no such evidence or proof to the trial court and, as such, Plaintiff's medical expenses should not have been stricken from evidence. Further, the trial court erred in striking Plaintiff's medical expenses for lack of medical testimony providing a causal connection between Plaintiff's head, back, shoulder and leg pain and the accident. Judge Yerger admitted that it was undisputed that the Plaintiff suffered injuries to his head, neck, shoulder and other injuries as a result of the collision with Defendant's windshield; however, Judge Yerger then ruled that the Defendants were handicapped in refuting the reasonable and necessity of the medical bills (See Appellant's R.E. 7,

Page 15 Line 18 – Page 16 Line 6). There is no authority which supports the trial court's rationale. Defendants were in sole control of their own actions or inactions and were not restricted from properly and timely designating their "hired gun" physicians to testify as expert witnesses. The trial court's decision to exclude Plaintiff's medical expenses incurred after the day of the accident severely prejudiced the Plaintiff from recovering his real damages and eliminated the opportunity to present all of his damages to the jury. The trial court's decision, robbed the jury from their role as finders of fact, in weighing the evidence, the credibility of the witnesses, and determining whether or not the accident had caused the injuries which Bolden testified. As a result of the trial court's decision to strike Plaintiff's designation of treating physicians as expert witnesses and its decision to strike Plaintiff's medical expenses incurred after the day of the accident, Plaintiff was unfairly prejudiced and unable to obtain a fair trial. The trial court abused its discretion in both regards and the result caused harm to the Plaintiff and entitles him to have his case reversed and remanded.

Standard of Review

A trial court is granted wide discretion in managing discovery and an abuse of discretion standard of review applies to such matters. Bowie v. Monfort Mem'l. Hosp., 861 So.2d 1037, 1042 (Miss.2003). The trial court's decision to strike both parties expert witnesses for discovery violations, pursuant to Miss.R.Civ.P. 26(b)(4), would be reviewed under an abuse of discretion standard. Robert v. Colson, 729 So.2d 1243, 1245 (Miss.1999).

The Court also uses an abuse of discretion standard when reviewing evidentiary rulings by a trial judge. Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc., 716 So.2d 200, 210 (Miss.1998). In order to reverse a case on the admission or exclusion of evidence, the ruling must result in prejudice and adversely affect a substantial right of the aggrieved party. Terrain Enters., Inc. v. Mockbee, 654 So.2d 1122, 1131 (Miss.1995). Thus, not only must the trial

judge abuse his discretion, the harm must be severe enough to harm a party's substantial right. Brandon HMA, Inc. v. Bradshaw, 809 So.2d 611 (Miss. 2001).

ARGUMENT AND THE LAW

I. The lower court abused its discretion by striking both parties expert witnesses for discovery violations when less harsh remedies were available.

Plaintiff disclosed his treating physicians as potential experts in his initial responses to Defendants' discovery more than one year prior to trial. Plaintiff timely and properly designated his treating physicians as experts through two designations, which included their medical records, summaries and opinions contained therein, and curriculum vitaes. The following time lime is provided for reference to the parties' actions taken with regards to discovery and other relevant matters:

08/09/2004 Plaintiff files a complaint against Williams and AutoZone.

10/04/2004 Plaintiff serves his first set of interrogatories and requests for production of documents on Defendants, including interrogatories requesting expert witness information.

11/15/2004 Defendants serve their first set of interrogatories and requests for production of documents on Plaintiff, including interrogatories requesting expert witness information.

05/25/2005 Notice of substitution of counsel for Plaintiff.

08/19/2005 Defendant AutoZone's responses to Plaintiff's first set of interrogatories and requests for production of documents, which was not signed by Defendant. AutoZone responds to the expert interrogatory by stating that it has not determined who it expects to call as an expert witness at trial and that the response will be seasonably supplemented.

09/07/2005 Plaintiff's responses to AutoZone's first set of interrogatories and requests for production of documents. Bolden responds to the expert interrogatory by stating that it has not

determined who he expects to call as an expert witness at trial; however such potential expert witnesses would include Bolden's treating physicians: Dr. Vohra, Dr. Coleman, Dr. Ramsey, Dr. Collins, Dr. Hunt and Chagnon D.C. and after a decision has been made as to which experts will be called at trial, their reports will be provided and such shall be deemed a supplementation to this response.

09/13/2005 Plaintiff's first supplemental responses to AutoZone's first set of interrogatories.

01/10/2006 Plaintiff's first supplemental responses to AutoZone's first set of requests for production of documents.

04/04/2006 First Agreed Scheduling Order. Discovery to be completed by September 29, 2006; Plaintiff's experts to be designated by July 14, 2006; Defendants' experts to be designated by August 18, 2006.

06/14/2006 Plaintiff's first designation of expert witnesses which included the names, addresses, phone numbers, areas of practice, medical records and summaries of the following treating physicians: J. Randall Ramsey, M.D.; Rahul Vohra, M.D.; Richard E. Weddle, M.D.; and Howard T. Katz, M.D. (with medical records to be supplemented)(Appellant's R.E. 3).

08/16/2006 Defendants' motion to extend time which to designate experts and motion to strike Plaintiff's designation of experts stating that Plaintiff did not provide additional written and signed reports containing the substance of the facts and opinions of each expert or a summary of the grounds for each opinion held.

08/16/2006 Defendants designation of expert witnesses. Defendants designated Dr. Mark C. Webb, Dr. Gerald Lee and Dr. Samuel J. Cox; however, none of the designated experts had examined Bolden, reviewed his medical records, or provided any written opinion as to Bolden's

physical or mental condition. Defendants' designation did not include any medical records or curriculum vitaes from their experts.

08/31/2006 Plaintiff's response to Defendants' motion to extend time and motion to strike Plaintiff's designation of experts or in the alternative motion to strike Defendants' designated experts pursuant to M.R.C.P. 26(b)(4), (Appellant's R.E. 6). Plaintiff clarified that no experts were hired for litigation and that all of Plaintiff's designated experts were treating physicians. Further, Defendants were in possession of all opinions, summaries and records created by said experts with the exception of Dr. Howard Katz whose records had been requested but not produced at said date. No written opinions had been formed by the treating physicians outside of the opinions contained in their medical records and summaries.

10/30/2006 Plaintiff's supplemental designation of expert witnesses (Appellant's R.E. 4). Plaintiff supplemented his previous designation to include the curriculum vitaes of Dr. J. Randall Ramsey and Dr. Rahul Vohra that had not bee attached to his previous designation.

10/31/2006 Plaintiff's second supplemental responses to Defendants' first set of requests for production of documents. Plaintiff produced all medical records and bills in his possession that were being claimed as a result of the accident.

11/30/2006 Defendants' motion for extension of scheduling order.

12/12/2006 Agreed Order setting case for trial on May 7, 2007.

12/15/2006 Agreed amended scheduling order. Discovery to be completed by March 1, 2007; Plaintiff's experts to be designated by January 1, 2007; Defendants' experts to be designated by February 1, 2007.

01/24/2007 Defendant AutoZone's signed answers to Plaintiff's first set of discovery propounded on October 4, 2004.

02/01/2007 Defendants' amended designation of expert witnesses. Defendants designated Dr. Mark Webb and attached his curriculum vitae which had not been previously produced. Said designation still failed to contain any written and signed reports, medical records, summaries, or opinions contained by Dr. Webb.

03/30/2007 Defendants' renewed motion to strike Plaintiff's designation of experts pursuant to M.R.C.P. 26(b)(4) for failing to provide the experts' (treating physicians) summaries or opinions in addition to the opinions contained in the medical records. However, there were no written opinions held by the treating physicians except the opinions contained in their medical records and summaries which had been in Defendants possession as early as September 7, 2005 and subpoenas issued by Defendants to all of Plaintiff's treating physicians on November 8, 2005.

03/30/2007 Plaintiff's motion to strike Defendants' designation of experts pursuant to M.R.C.P. 26(b)(4) for failing to provide any written and signed reports, records, opinions, or summaries from their designated experts and for failing to supplement their discovery responses.

04/26/2007 Defendants' motion *in limine* (Appellant's R.E. 8). Defendants' only limiting request with regards to Plaintiff's medical bills was contained in Paragraph 17 which requested an instruction that any medical expense that was not timely produced during discoveryshould not be allowed into evidence.

04/27/2007 Judge Yerger's Order granting and/or denying the parties various motions (Appellant's R.E. 5). Defendants' motion for summary judgment was denied. Plaintiff motion for partial summary judgment was granted and Plaintiff was found negligent as a matter of law (for jaywalking). Defendants' and Plaintiff's experts were stricken for failure to comply with M.R.C.P. 26(b)(4).

A. The trial court abused its discretion by not allowing Plaintiff's treating physicians to testify at trial. Trial courts should not refuse to permit testimony and sanction the parties only as a means of last resort.

The reason for the foregoing exhaustive time line, involving the discovery issues and the designations of Plaintiff's treating physicians as experts, is to show the due diligence and effort that was put forth by the Plaintiff in providing Defendants information and records concerning the injuries and damages sustained by Bolden, including the designation of the treating physicians as expert witnesses. As referenced above, Plaintiff began providing Defendants the names and records of Plaintiff's treating physicians that may testify at trial on September 7, 2005, in excess of eighteen (18) months prior to trial, through Plaintiff's first set of discovery responses. Defendants were aware of Plaintiff's designated experts on June 14, 2006, which were timely designated pursuant to the Court's first scheduling order, approximately eleven (11) months prior to trial. Defendants were aware of each treating physicians' areas of expertise and were in possession of the physicians medical records. The trial court had less harsh options than to strike both parties experts, approximately one week prior to trial, as sanctions for alleged discovery violations pursuant to M.R.C.P. 26(b)(4). Further, the trial court should have permitted the treating physicians to testify as to the information and opinions contained in their medical records.

In Robert v. Colson, 729 So.2d 1243, 1247 (Miss. 1999) the Court stated that "failure to make or cooperate in discovery should first be resolved by making a motion in the proper court requesting an order compelling such discovery." Robert, 729 So.2d at 1247 (citing M.R.C.P. 37(a)(2)). The Court in Robert elaborated that:

> Lower courts should be cautious in either dismissing a suit or pleadings or refusing to permit testimony. . . . The reason is obvious. Courts are courts of justice not of form. The parties should not be penalized for any procedural failure that may be handled without doing violence to court procedures.

Robert, 729 So.2d at 1247 (quoting Clark v. Miss. Power Co., 372 So.2d 1077, 1080 (Miss. 1979)).

There were no motions to compel discovery, motions to compel complete responses to interrogatories, nor motions to compel additional information concerning the experts that were provided during discovery. Using the standard set forth above, Judge Yerger's decision to strike both parties experts amounted to a sanction against both parties for their attorneys' alleged discovery violations. However, when reviewing Plaintiff's interrogatory responses, production of documents, first and second supplemental discovery responses, first designation and amended designation of expert witnesses (Appellant's R.E. 3 and 4), Judge Yerger clearly abused his discretion by striking Plaintiff's treating physicians from testifying at trial. Looking specifically at Plaintiff's first designation of expert witnesses (Appellant's R.E. 3)and the amended designation of expert witnesses (Appellant's R.E. 4), there are no deficiencies in said designations.

The Defendants, on the other hand, failed to provide any reports, summaries or records from the experts such designated and have less of an argument that the trial court abused its discretion when striking their experts. Plaintiffs' timely designation of his treating physicians as experts supported by the physicians medical records which were stricken by the trial court was an abuse of discretion.

B. When designating a treating physician as an expert witness, a written report containing the physician's opinions, separate and apart from the physician's medical records, is not required.

The Federal Rules of Civil Procedure have additional comments that expound the different requirements when designating treating versus non-treating physicians as experts. Looking at Rule 26(b)(4) in both the state and federal context the rules are very similar. In the case of Robbins v. Ryan's Family Steak Houses East, Inc., 223 F.R.D. 448 (S.D. Miss. 2004) the Court looked at the

plaintiff's attempt to designate her treating physician as an expert witness. The plaintiff was unsuccessful for untimely designating her treating physician as an expert witness; however, the Court went through the process of analyzing the different requirements that are placed upon designations of "hired gun" experts versus designations of treating physicians. Robbins, 223 F.R.D. 448 at 451. In Robbins, the Court noted that Rule 26.1(A) of the Uniform Local Rules of the Northern and Southern Districts of Mississippi and the corresponding Advisory Committee Notes "treat **disclosure procedures and expert designation procedures of treating physician experts differently** as compared to expert witnesses in general." {emphasis added} Id. According to the Court in Robbins, when designating a treating physician as an expert witness it is not mandatory that the designation be accompanied by a separate written report including the opinions to which the expert (treating physician) will testify. Id. at 453. The Court in Robbins went on to say that "the different treatment applies to treating physicians, not to non-treating physicans, sometimes referenced as "hired gun" physicians, who are retained to offer expert opinions for a calling party." Id. As in our case, Bolden designated his treating physicians while Defendants Williams and AutoZone designated "hired gun" experts.

The Court rationalized its decision by looking at Uniform Local Rules in conjunction with the corresponding Federal Rule and had the following analysis:

> Sub-paragraph 26.1(A)(2)(f) of the Uniform Local Rules was adopted in order to relieve busy treating physicians of the onerous task of keeping records of the information required of expert witnesses by Federal Rule 26(a)(2)(A) and Uniform Local Rule 26.1(A)(2)(c) and to clarify that treating physicians ordinarily must be designated as expert witnesses. This latter purpose was perceived by this District as necessary to address the statement in the Advisory Committee Notes to the 1983 Amendments to the Federal Rules which states in part:
>
> 'The **requirement of a written report** in paragraph (2)(B), however, **applies only to those experts who are retained or specially employed** to provide such testimony in the case or whose duties as an employee of a party regularly involve the giving of

such testimony. **A treating physician, for example, can be deposed or called to testify at trial without any requirement for a written report.** By local rule, order, or written stipulation, the requirement of a written report may be waived for particular experts or imposed upon additional persons who will provide opinions under Rule 702.' {emphasis added}

Robins, 223 F.R.D. 448 at 453.

The Court in Robbins added that when a treating physician is designated as an expert witness, without a written and signed report, the treating physician will be limited at trial to testify only to those opinions expressed in the office records. Id. Thus, if an attorney wishes to elicit additional opinions from a treating physician at trial, he should have the physician sign a written report, or run the risk of having an objection to the additional opinions sustained at trial. Id. In our case, Bolden expert designations of his treating physicians (Appellant's R.E. 3 and 4) were proper. Further, the correct procedure for the trial court should have been to allow Plaintiff's designations, and then if, and only if, Plaintiff sought additional opinions at trial not contained in the physicians' medical records, the trial court could have sustained Defendants' objections and not allowed the additional testimony.

C. There are four factors a trial court must weigh when deciding to strike expert designations.

In Hamburger v. State Farm Mut. Auto. Ins. Co., 361 F.3d 875, 882-83 (5th Cir. 2004) the Court set forth four factors that the trial court must consider when considering to strike an expert designation: "(1) the explanation for the failure to identify the witness; (2) the importance of the testimony; (3) potential prejudice in allowing the testimony; and (4) the availability of a continuance to cure such prejudice." Under the first factor the trial court must determine the reason for the failure to identify the witness. In our case, the identities of the treating physicians were known to Defendants. Further, the Plaintiff's designations were timely. Defendants only point of contention

with Plaintiff's designations was that Plaintiff did not provide separate written reports signed by the treating physicians in addition to the medical records that were in Defendants' possession.

The second factor that must be considered is the importance of the testimony of Bolden's treating physicians. Bolden's treating physicians testimony was of utmost importance; other than Bolden himself, the treating physicians were to testify as to Bolden's injuries, the causal connection between his injuries and the accident, and the rehabilitation treatment that Bolden received.

Third, the trial court should consider the potential prejudice of allowing the testimony. This factor also weighs in Bolden's favor. Defendants had been aware of Bolden's treating physicians as late as June 14, 2006 approximately eleven (11) months prior to trial. Defendants had plenty of time to depose the treating physicians if they were concerned about the opinions held by the physicians. Further, the treating physicians could have been instructed to testify only as to the opinions contained in their medical records and any additional opinions elicited could have been properly excluded by the trial court.

Finally, the trial court could have continued the trial to cure any alleged prejudice suffered by Defendants. Since Plaintiff feels that his designation of his treating physicians was proper in this matter, the continuance of the trial date would have been a more proper remedy than the harsh sanctions of striking Plaintiff's treating physicians from testifying.

Using the analysis set forth above, Plaintiff clearly designated his treating physicians in line with the Rules of Civil Procedure and with the case law of Mississippi. The trial court abused his discretion in striking Plaintiff's treating physicians as expert witnesses which severely prejudiced Bolden in presenting his medical evidence and testimony at trial.

II. Bolden's testimony that medical bills were incurred as a result of the injuries he sustained in the accident is *prima facie* evidence that such bills were necessary and reasonable.

Pursuant to Miss. Code Ann. § 41-9-119 (Rev. 1993), "[p]roof that medical, hospital, and doctor bills were paid or incurred because of any illness, disease, or injury shall be prima facie evidence that such bills so paid or incurred were necessary and reasonable." Mississippi's case law strictly adheres to the statute set forth above that plaintiffs may testify as to their injuries and the medical services incurred as a result of an accident and the medical bills become *prima facie* evidence that such bills were necessary and reasonable. See Dennis v. Prisock, 221 So.2d 706, 710 (Miss. 1969); Jackson v. Brumfield, 458 So.2d 736 (Miss. 1984); Stratton v. Webb, 513 So.2d 587 (Miss. 1987). Then the defendant can rebut such damages by putting forward medical testimony tending to negate the necessity and reasonableness of the expenses. See Jackson v. Brumfield, 458 So.2d 736, 737 (Miss. 1984); Moody v. RPM Pizza, Inc., 659 So.2d 877 (Miss. 1995)(reversible error for trial court to refuse to submit disputed medical bill to jury). In our case, Bolden testified at trial as to the injuries he sustained as a result of being struck by Williams, the medical services that he received and the medical bills that were incurred as a result. The medical bills were then properly admitted into evidence as Exhibits 1-10. The burden then shifted to the Defendants Williams and AutoZone to rebut the damages by offering proper evidence in the form of expert medical testimony that the bills incurred were either unnecessary or unreasonable for various reasons. See Jackson v. Brumfield, 458 So.2d 736, 737 (Miss. 1984); Moody v. RPM Pizza, Inc., 659 So.2d 877 (Miss. 1995)(reversible error for trial court to refuse to submit disputed medical bill to jury). However, Williams and AutoZone presented no such evidence to rebut Bolden's medical bills from being admitted into evidence (Williams and AutoZone's expert witnesses were stricken prior to trial)(Appellant's R.E.3). As such, Judge Yerger abused his discretion by striking Bolden's

damages, Exhibits 3-10, that had been previously and properly admitted into evidence.

A. Bolden's testimony is sufficient and proper proof of the injuries he sustained, the medical services that were rendered and the medical bills that were incurred.

In Dennis v. Prisock, 221 So.2d 706, 710 (Miss. 1969) the court found that any witness is competent to testify who has evidentiary facts within his personal knowledge, gained through any of his senses. The court went on to say, "a nonprofessional witness may describe his personal injuries including physical pain, weakness, exhaustion, and the like". Dennis, 221 So.2d 706, 710 citing Whiddon v. Malone, 220 Ala. 220, 124 So. 516 (1929); Whistle Bottling Co v. Searson, 207 Ala. 387, 92 So. 657 (1922); Vincent-Wilday, Inc. v. Strait, 273 App. Div. 1054, 79 N.Y.S.2d 811 (1948).

In Dennis, the plaintiff Kay Prisock was injured in an automobile accident with defendant Frank Dennis on July 6, 1959. Dennis, 221 So.2d 706,708. Mrs. Prisock was seen by her physician the following day and complained of back related pain. Id. Evidence was presented by defendants that Mrs. Prisock had injured her back in a previous fall in March of 1959 and then she was in two subsequent automobile accidents in September of 1959 and January of 1962. Id. It was after the January, 1962 accident that doctors discovered she had a ruptured disc and they performed back surgery. Id. at 710. Mrs. Priscok testified at trial that her back was stiff and hurt and that her back was not hurt at any other time in any of her other accidents. Id. Defendants argued on appeal that Mrs. Prisock should not have been allowed to testify that her back was not hurt in other accidents and that she could not causally link her complained of back injury and surgery to the accident on July 6, 1959. Id. The court also looked at the Corpus Juris Secundum for authority on the subject:

> While a nonexpert or lay witness may not testify as an expert and give expert testimony as to the character or extent of a personal injury which he has sustained, a witness has been permitted to testify as to his own health or physical condition, his

began receiving treatment for her back and continued to see her treating physician up through trial. Id. at 589. Webb was also involved in a subsequent accident on December 3, 1980 which defendant Stratton argued was a superceding cause of Webb's injuries. Id. Stratton appealed the trial court's decision to allow Webb's medical bills into evidence that were incurred after December 3, 1980, on the basis of a lack of causal connection between the injuries, treatment and the accident with Stratton. Id. at 590-91. The Court relied upon the previous decisions in Dennis supra. and Jackson v. Brumfield, 458 So.2d 736 (Miss. 1984). In short, the Court in Jackson stated:

> When a party takes the witness stand and exhibits bills for examination by the court and testifies that said bills were incurred as a result of the injuries complained of, they become prima facie evidence that the bills so paid or incurred were necessary and reasonable. However, the opposing party may, if desired, rebut the necessity and reasonableness of the bills by proper evidence. The ultimate question is then for the jury to determine.

Jackson, 458 So.2d 736, 737.

In view of the Jackson decision the Court found that Webb's testimony regarding her injuries and medical treatment were a sufficient basis for the admissibility of her medical bills. Stratton, 513 So.2d 591. The Court also referenced Miss. Code Ann. § 41-9-119 (1972) which they quoted as requiring only "proof that the bills were incurred or paid" to sustain admission into evidence. Id.

In our case, Bolden testified at trial with specificity the injuries he sustained as a result of the accident on December 20, 2002. Bolden testified that Williams's automobile struck him in the left leg and that his shoulder and head bounced off of the drivers' side windshield. Bolden testified in detail the immediate pain and soreness to his left leg, head, back and shoulders and the continuing pain in his back that resulted in ongoing medical treatment and rehabilitation. Bolden introduced his medical bills as evidence of his damages that were a proximate result of the accident with Williams. The trial court allowed Bolden's medical bills into evidence encompassing Plaintiff's

Trial Exhibits 1-10 over the objections raised by Defendants Williams and AutoZone. Defendants objected that Bolden lacked expert medical testimony causally relating the medical services received to the accident on December 20, 2002. However, immediately prior to submitting the evidence to the jury to deliberate, Judge Yerger struck Plaintiff's Trial Exhibits 3-10 (which included all medical bills after the day of the accident, approximately a year's worth of treatment and rehabilitation) (Appellant's R.E. 7, Page 16 Lines 20-29 and Page 18 Lines 1-11). Judge Yerger clearly abused his discretion by denying Bolden the ability to submit his medical bills to the jury as evidence of his damages. Pursuant to Miss. Code Ann. § 41-9-119 proof that medical bills were incurred because of any injury shall be *prima facie* evidence that such bills incurred were necessary and reasonable. This Court has previously ruled that when a party testifies as to the injuries received, his physical pain or mental suffering, and presents medical bills that he claims were incurred as a result of the accident, it becomes *prima facie* evidence that must be admitted. See Dennis v. Prisock, 221 So.2d 706, 710 (Miss. 1969); Jackson v. Brumfield, 458 So.2d 736 (Miss. 1984); Stratton v. Webb, 513 So.2d 587 (Miss. 1987); Miss. Code Ann. § 41-9-119.

B. Once medical bills have been incurred and introduced as evidence the burden shifts to the opposing party who must present proper evidence to rebut the reasonableness and necessity of the medical bills in question.

Once Bolden testified as to his injuries, the necessity to seek the advice of physicians, receive medical treatment and rehabilitation and presented his medical bills associated therewith, the burden then shifted to the defendants to present proper evidence to rebut the reasonableness and necessity of the medical treatment received. See Jackson v. Brumfield, 458 So.2d 736, 737 (Miss. 1984); Moody v. RPM Pizza, Inc., 659 So.2d 877 (Miss. 1995)(reversible error for trial court to refuse to submit disputed medical bill to jury); Green v. Grant, 641 So.2d 1203, 1209 (Miss. 1994); Purdon v. Locke, 807 So.2d 373 (Miss. 2002).

In Purdon v. Locke, 807 So.2d 373 (Miss. 2002) the defendant Purdon argued that the trial court abused its discretion in denying his motion *in limine* to exclude plaintiff Locke's medical bills from evidence. Locke relied on Miss. Code Ann. § 41-9-119 to show that once the bills are incurred they become *prima facie* evidence that such bills were necessary and reasonable. The Court relied upon Green v. Grant, 641 So.2d 1203, 1209 (Miss. 1994) which held "that the opposing party, in this case Purdon [in our case Williams and AutoZone], must present proper evidence in order to rebut the necessity and reasonableness of the bills incurred." The Court found that after Locke put on evidence of the bills incurred the burden shifted to Purdon to rebut the reasonableness of the bills incurred. Purdon, 807 So.2d 373, 378-79. Further, Purdon did not introduce any proper evidence to rebut the reasonableness of the bills. Id. at 379. The Court found that the trial judge properly denied Purdon's motion *in limine* to exclude the medical bills offered by Locke. Id. Similar to our case, Williams and AutoZone attempted to exclude Bolden's medical bills from evidence which was initially denied. However, at the close of the case the trial court erred in striking from evidence the medical expenses that had been previously admitted. Likewise, the jury was denied the opportunity to review Plaintiff's full damages, as a result of Judge Yerger's late decision to exclude Plaintiff's Trial Exhibits 3-10 (Appellant's R.E. 7, Page 18 Lines 1-11). In our case, Williams and AutoZone presented no proper evidence to rebut Bolden's testimony. As such, Judge Yerger abused his discretion in striking Bolden's medical bills that were properly and previously admitted into evidence.

C. Expert testimony is not required to prove causation between injuries suffered and medical treatment received.

Despite the fact that Plaintiff's expert witnesses were stricken one week prior to trial, Bolden's testimony was sufficient to establish a causal connection between the injuries he sustained

was injured in an automobile accident and alleged to have suffered a herniated disc as a result of the accident. Id. The plaintiff Hamburger designated his expert witnesses almost three months after the trial court's deadline, without submitting expert reports. Id. at 879. The trial court barred Hamburger's expert testimony on the ground that the designation was untimely. Id. at 875. The trial court concluded that expert testimony was not required because "the jury should be entitled to decide causation with or without medical testimony in areas of common experience." Hamburger, 361 F.3d 875, 885 quoting Fidelity & Guaranty Ins. Underwriters, Inc. v. La Rochelle, 587 S.W.2d 493, 494 (Tex. App. Dallas 1979, writ dism'd). Plaintiff Hamburger failed, as required by Texas law, to put on evidence of the necessity and reasonableness of the medical expenses. In Mississippi, Plaintiff's burden is met pursuant to Miss. Code Ann. § 41-9-119. The Fifth Circuit agreed with the trial court's ruling to exclude plaintiff's medical expenses as a result of Hamburger failing to present evidence of the reasonableness and necessity of the medical treatment received. Id. at 886. However, the Fifth Circuit overruled the trial court's judgment as a matter of law that the plaintiff could not recover for his pain and suffering without the support of expert testimony causally connecting plaintiff's injuries and the accident. Id. The Fifth Circuit relied upon a litany of Texas cases in which the plaintiff did not require the testimony of an expert witness to create a fact issue on causation. The mere testimony of the plaintiff presenting evidence of a sequence of facts from which the trier of fact could properly infer that the accident caused the injuries alleged is suffice. Id. at 884-87.

In our case, Bolden testified that he was struck in the left leg and that his left shoulder and head struck the driver's side windshield of the car driven by Williams. Bolden testified that his back and neck were additional sources of continued pain as a result of the accident. Bolden testified that he received the medical treatment and rehabilitation services listed above which involved continuous

treatment from the day of the accident through the summer or 2004 and incurred the medical expenses as itemized above. Pursuant to Miss. Code Ann. § 41-9-119 Bolden met his burden to have his medical expenses admitted into evidence. Further, Bolden asserts that he presented evidence of a sequence of events sufficient to allow the jury to properly infer that the accident had caused the injuries which he testified and that a fact issue as to causation had been established. Thus, the trial court's decision to strike from evidence Plaintiff's Trial Exhibits 3-10, for a lack of a causal connection between the injuries and the accident, was an abuse of discretion.

CONCLUSION

The trial court erred in striking the Plaintiff's designation of his treating physicians as expert witnesses. Bolden had timely designated his treating physicians (Appellant's R.E. 3 and 4) and Defendants were in possession of the medical records of the physicians. Bolden is not required to provide a written and signed report by a treating physician who is designated as an expert witness. Plaintiff's expert designations were timely and proper and Defendants can not escape their own deficiencies in designating expert witnesses by blaming Plaintiff for a faulty designations. The trial court struck from evidence Plaintiff's Trial Exhibits 3-10 and stated that Defendants were prejudiced by not having expert witnesses to rebut the reasonableness or necessity of Plaintiff's medical expenses and that the Defendants were "hamstrung" (Appellant's R.E. 7, Page 18 Lines 1-8). However, the case law of Mississippi and Miss. Code Ann. § 41-9-119 clearly set forth that a plaintiff's testimony that medical, hospital, and/or doctor bills were incurred because of any injury shall be *prima facie* evidence that such bills incurred were necessary and reasonable; and then the burden shifts to the opposing party to rebut such damages by putting forward proper proof or medical testimony tending to negate the necessity and reasonableness of the expenses. In our case, no such rebuttal evidence was submitted by the Defendants, as a result of Judge Yerger's prior ruling

of striking all parties' experts (Appellant's R.E. 5). Therefore, Plaintiff's medical expenses were properly before the jury which had been previously admitted into evidence, and the trial court abused its discretion in removing Plaintiff's Trial Exhibits 3-10 from evidence immediately prior to the jury deliberating. The trial court erred in striking Plaintiff's designation of his treating physicians as expert witnesses and abused his discretion when it struck from evidence all of Plaintiff's medical expenses incurred after the day of the accident. Bolden was prejudiced as a result of the trial court's rulings and it resulted in Bolden not being able to present his damages incurred after the day of the accident, which was a substantial right that was harmed.

WHEREFORE, PREMISES CONSIDERED, the Estate of Brandon Bolden, by and through Marilyn Bolden, Administratrix prays that the decision of the Hinds County Circuit Court be reversed and remanded for a new trial.

RESPECTFULLY SUBMITTED, this the 9th day of MAY, 2008.

THE ESTATE OF BRANDON BOLDEN,
BY AND THROUGH MARILYN BOLDEN,
ADMINISTRATRIX, APPELLANT

BY: SINGLETARY & THRASH, P.A.
Its Attorneys

BY: John N. Satcher II
GARY D. THRASH / MSB[redacted]
JOHN N. SATCHER, II / MSB[redacted]

GARY D. THRASH / M[redacted]
JOHN N. SATCHER, II / M[redacted]
SINGLETARY & THRASH, P.A.
P.O. BOX 587
JACKSON, MISSISSIPPI 39205
(601) 948-7410

CERTIFICATE OF SERVICE

I, the undersigned counsel, do hereby certify that I have this day mailed, postage prepaid, through the U.S. Mail, a true and correct copy of the above and foregoing Appellant's Brief and Excerpts to:

Keith D. Obert, Esq.
Obert Law Group, P.A.
P.O. Box 2081
Madison, Mississippi 39130-2081

Honorable W. Swan Yerger
Circuit Court of Hinds County
P.O. Box 327
Jackson, MS 39205

So certified, this the 9th day of MAY, 2008.

John N. Satcher II

GARY D. THRASH
JOHN N. SATCHER, II

GARY D. THRASH / MSB# [redacted]
JOHN N. SATCHER, II / MSB# [redacted]
SINGLETARY & THRASH, P.A.
P.O. BOX 587
JACKSON, MISSISSIPPI 39205
(601) 948-7410