

**IN THE SUPREME COURT OF MISSISSIPPI**

**CASE NO. 2007-1A-00565-SCT**

**BARTHEL D. WAGGONER and  
JACQUELINE M. WAGGONER,**

**APPELLANTS**

**VS.**

**EDWARD WILLIAMSON, Individually;  
EDWARD WILLIAMSON, P.A.; and  
MICHAEL J. MILLER, Individually**

**APPELLEES**

**From the Circuit Court of Adams County, Mississippi**

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**BRIEF OF THE APPELLEES  
MICHAEL J. MILLER**

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**Respectfully submitted on the 22<sup>nd</sup> day of April, 2008.**

**Robert C. Latham (MSB [REDACTED])  
Jeremy P. Diamond (MSB [REDACTED])  
TRULY, SMITH & LATHAM, P.L.L.C.  
P.O. Box 1307  
Natchez, MS 39121  
Telephone: (601) 442-6496  
Facsimile: (601) 442-8874**

***Attorney for Appellee Michael J. Miller***

### **CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certified that all 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. Barthel D. Waggoner and Jacqueline M. Waggoner, Natchez, Mississippi,  
Plaintiffs - Appellants;
2. Edward A. Williamson and Edward A. Williamson, P.A., Philadelphia, Mississippi,  
Defendants - Appellees;
3. Michael J. Miller, Alexandria, Virginia, Defendant - Appellee;
4. Honorable Forrest A. Johnson, Circuit Judge for Adams County, Mississippi;
5. David Jefferson Dye, Esquire, David Jefferson Dye, L.L.C., 1204 Napoleon Avenue, New Orleans, Louisiana 70115. Attorney of record for Barthel D. Waggoner and Jacqueline M. Waggoner, Plaintiffs - Appellants;
6. Gregg L. Spyridon, Esquire and Philip G. Smith, Esquire, Spyridon, Palermo & Dornan, L.L.C., 3838 North Causway Boulevard, Suite 3010, Metairie, Louisiana 70002.  
Attorneys of record for Barthel D. Waggoner and Jacqueline M. Waggoner, Plaintiffs - Appellants;
7. James P. Streetman, III, Esquire and Matthew A. Taylor, Esquire, Scott, Sullivan, Streetman & Fox, P.C., Post Office Box 13847, Jackson, Mississippi 39236. Attorneys of record for Edward A. Williamson and Edward A. Williamson, P.A., Defendants - Appellees;

8. Robert C. Latham, Esquire and Jeremy P. Diamond, Esquire, Truly, Smith & Latham, P.L.L.C., Post Office Box 1307, Natchez, Mississippi 39121. Attorneys of record for Michael J. Miller, Defendant - Appellee;
9. Those Unsecured creditors identified within In Re: Michael J. Miller, No. 07-02463, U.S. Bankruptcy Court for the Southern District of Mississippi.

Respectfully submitted on the 22<sup>nd</sup> day of April, 2008.

By: 

JEREMY P. DIAMOND

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## INTRODUCTION

In the case at bar, the Plaintiffs seek punitive type damages in attorney fee forfeiture or disgorgement for alleged violations of the Mississippi Rules of Professional Conduct and breaches of fiduciary duty where the Plaintiffs have failed to establish actual damages incurred as a result of the violations and breaches alleged. To support this argument, Plaintiffs have looked to case law in New York and Texas. Defendant Michael Miller submits that in Mississippi, this Court's jurisprudence and the relevant statutory law requires actual, compensatory damages before punitive damages can be considered. The gross settlement negotiated for the Plaintiffs was fair and reasonable for their injuries. This was admitted by Barthel Waggoner in his deposition and by Plaintiffs' counsel in open court. Since technical violations of the Mississippi Rules of Professional Conduct were not intended to be a basis for civil liability, the Plaintiffs must prove actual damages arising from the breach of duty owed to them by the Defendants. The trial court correctly determined that the only material issue relevant to the dismissed claims was whether or not the gross settlement was fair and reasonable. The Plaintiffs' complain that the trial court ruled "that the Waggoners *must prove damages in the same manner as a traditional negligence action.*" See *Appellants' Brief* at p. 46. (Emphasis added). Miller submits that this sums up the Waggoners' arguments against the trial court's order on summary judgment. However, the trial court was correct.

### **STATEMENT OF THE ISSUES PRESENTED**

- A. Was the Trial Court correct in partially granting the Defendants' Motion for Summary Judgment given that the Plaintiffs could not show actual damages arising out of the dismissed claims?
- B. Did the Trial Court correctly hold that actual, compensatory damages moves be proved by the Plaintiffs before punitive damages can be awarded in the case at bar?
- C. Did the Trial Court correctly hold that an alleged violation of the Mississippi Rules of Professional Conduct standing alone cannot form the basis of civil liability against the Defendants?

### **STATEMENT OF THE CASE**

#### **A. Course of Proceedings**

The case at bar arises out of a lawsuit filed by Ed Williamson ("Williamson") on behalf of Barthel Waggoner, his wife ("Waggoners") and other plaintiffs filed in the Circuit court of Holmes County, Mississippi, styled as *Annette Williams, et al. v. American Home Products, Cause number 000-207*. In the *Williams* case, Williamson represented thirty-one (31) Mississippi claimants who alleged injuries arising out of their use of prescription diet drugs, Phen-fen and Redux. Given the complex nature and difficulty of the litigation, Williamson associated the Defendant Michael Miller ("Miller") and Edward Blackmon ("Blackmon") to assist in the trial and settlement of the case. Miller was associated in the case because of his expertise in developing theories of liability in medical based lawsuits and Edward Blackmon was

associated in the case because of his familiarity with juries in Holmes County, Mississippi.<sup>1</sup>

On April 21, 2000, immediately prior to the start of trial, the parties to the *Williams* case reached a settlement. On behalf of the Plaintiff, a gross settlement of \$3,008,961.75 was negotiated. Following deduction of attorney's fees and expenses, the Waggoners received a net award of \$1,472,100.50. Plaintiffs also received a refund of \$4,970.00 for unused funds which were reserved for common benefit expenses on a pro-rata basis from each client for the final accounting, and a \$30,089.62 refund from a Multi-District Litigation ("MDL") fee assessment.

In the settlement of the *Williams* case, each underlying claimants' claims were individually evaluated, litigated and settled. In the case at bar, the Waggoners extended settlement authority of \$600,000 for net recovery, after fees and expenses. Because of the outstanding performance and negotiation skills of counsel, Plaintiffs ultimately received a net recovery of \$1,472,100.50. Pursuant to the terms of the Representation Agreement, executed by Barthel Waggoner, the attorneys would be entitled to a forty-five percent (45%) contingency fee. The contingency fee was shared by Ed Williamson, Michael Miller and Edward Blackmon, with Mr. Blackmon receiving twenty percent (20%) of the fees, and the remaining fee split between Mr. Williamson and Mr. Miller, seventy percent (70%) and ten percent (10%), respectively.<sup>2</sup>

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<sup>1</sup>The Waggoners decided not to include Attorney Edward Blackmon as a defendant in the case at bar even though their own expert, Dane Ciolino, proffered an opinion stating that if one defense attorney violated the Mississippi Rules of Professional Conduct then all three defense attorney, including Edward Blackmon, would be equally culpable for such a violation. *See Dane Ciolino's Deposition at R. Vol. 4, p. 556-557; see also Waggoners' Opposition to Motion to Join an Indispensable Party at R. Vol. 4, p. 556-581.*

<sup>2</sup>It should be noted that the Waggoners represented to this Court that they are seeking disgorge the entire attorneys' fee from Williamson and Miller. *See Appellants' Brief at p. 50.* However, as the Waggoners did not name Blackmon in the suit, they are not entitled to his twenty (20%) percent of the attorneys' fees.



On June 25, 2001, the Waggoners executed a Disbursement Statement, specifically itemizing the fees, expenses and deductions from the gross settlement award. Expenses associated with the litigation of the Williams case were divided into case-specific expenses for each claimant and generic expenses, divided on a pro-rata basis.

In addition to litigation expenses related directly to the litigation of the *Williams* Phen-fen lawsuit, every client was assessed a fee of six percent (6%) pursuant to MDL Order 1203. The money was deducted from the gross settlement by American Home Products before the settlement money was transferred to the settlement fund. Three percent (3%) of the MDL Fee was assessed as expenses and 3% was deducted directly from attorneys' fees. The MDL Fee deduction was paid into a fund established by the Court to fund the MDL Phen-fen litigation.

From this fund, Defendants and Blackmon were able to obtain discovery from the MDL Phen-fen litigation, which was used in the underlying *Williams* case. Following the settlement of the *Williams* case, Judge Bartle, overseeing the national MDL litigation, determined that there was an excess in the MDL Fund and ordered a refund of 1/3 of the MDL deductions from state cases. Therefore, the MDL deduction in the *Williams* case, and specifically for the Waggoners, was reduced from 6% to 4%. Therefore, the Waggoners received a refund for the MDL fee deduction in the amount of \$30,089.62.

Finally, the Waggoners voluntarily approved a contribution of two percent (2%) of his recovery for a contribution to the Mississippi Trial Lawyers' Association Political Action Fund.<sup>3</sup> This contribution was made by the Waggoners, voluntarily, to assist future litigants in like cases.

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<sup>3</sup>Defendant Miller is not a member of the Mississippi Bar nor is he a member of the Mississippi Trial Lawyers' Association.

In their *Amended Complaint*, the Plaintiffs assert the claims of (1) breach of fiduciary duty; (2) breach of contract; and (3) negligent misrepresentation. On March 27, 2006, the trial court granted summary judgment in favor of Williamson and Michael J. Miller as to the claims of breach of contract, negligent misrepresentation, and breach of fiduciary duty to the extent the Plaintiffs' claims arise out of the representation contract, claims of violation of the Mississippi Rules of Professional Conduct and the settlement of the underlying Phen-fen and Redux litigation. The trial court denied summary judgment as to the accounting of expenses and allowed the Waggoners the opportunity to show actual damages through the accounting of expenses and funds. The trial court correctly found that this was a matter based in contract. The trial court further found that the Waggoners were unable to establish actual damages with regard to the settlement procured by the Defendants or for the alleged violations of the Mississippi Rules of Professional Conduct. Therefore, the trial court granted summary judgment finding that there were no genuine issues of material fact that exist because the Waggoners knowingly and willingly executed the contracts and because the Waggoners, and their counsel, admitted that the settlement procured by the Defendants was fair and reasonable for the Waggoners' injuries. Therefore, the court understood that without actual, compensatory damages, there can be no punitive damages, such as disgorgement of attorneys' fees in the case at bar.

**B. Statement of the Facts**

Pursuant to M.P.R.A. 28(b) this section is omitted, as all statements made by the Plaintiffs which Miller is dissatisfied with are found in the Course of Proceedings.

### **SUMMARY OF THE ARGUMENT**

In the case at bar, the Waggoners are seeking an award of punitive type damages where there has not been a showing of actual damages. They are seeking punitive type damages merely on the basis of alleged violations of provisions of the Mississippi Rules of Professional Conduct. However, the Plaintiffs cannot link the alleged violations of the Mississippi Rules of Professional Conduct to any actual damages, as they relate to the dismissed claims, since it is undisputed that the gross settlement received by the Plaintiffs was fair and reasonable. It is clear in Mississippi, that a compensatory damage award is necessary before punitive damages or sanctions can be considered when the cause of action is grounded in negligence and contract. In the case at bar, the trial court dismissed part of the Plaintiffs' claims because they were unable to prove damages as a result of the alleged negligence and because they did not produce any evidence against the contracts they executed.

Mississippi jurisprudence is clear that the Mississippi Rules of Professional Conduct are not intended to be a basis for civil liability. Although Defendant concedes that they can be instructive as to the standard of care an attorney is held too in a negligence analysis, a violation of the Mississippi Rules of Professional Conduct alone does not entitle the Plaintiff to punitive type damages such as disgorgement or forfeiture of attorneys' fees. The Plaintiffs' claims dismissed by the trial court are claims grounded in negligence and contract law. The trial court correctly concluded that the Plaintiffs failed to raise genuine issues of material fact as to the dismissed claims. This is evident in the Plaintiffs' response as articulated in their Brief, that they are entitled to the punitive damages sought without having to show actual damages in tort or contract.

### STANDARD OF REVIEW

This Court reviews the issue of whether a summary judgment is appropriate *de novo*. See *Townsend v. Estate of Gilbert*, 616 So. 2d 333, 335 (Miss. 1993). “There is no violation of a party’s right to trial by jury when judgment is summarily entered in cases where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.” *Brown v. Credit Center, Inc.*, 444 So. 2d 358, 362 (Miss. 1983). If it can be shown that there are no genuine material issues, the burden of rebuttal falls upon the non-moving party. See *Wilbourn v. Stennett, Wilkinson & Ward*, 687 So. 2d 1205, 1213 (Miss. 1996). “Summary judgment is mandated where the respondent has failed to make a showing sufficient to establish the existence of an element essential to that party’s case.” *Galloway v. Travelers Insurance Co.*, 515 So. 2d 678, 683 (Miss. 1987). However, a genuine issue of fact must be of a material fact ***and the existence of many contested issues of fact will not prevent summary judgement where none of the contested issues are material.*** See *Grisham v. John Q. Long V.F.W. Post*, 519 So. 2d 413, 415 (Miss. 1988). (Emphasis added).

## LAW AND ARGUMENT

### **I. THE TRIAL COURT CORRECTLY DETERMINED THAT THERE WERE NO GENUINE ISSUES OF MATERIAL FACT AS TO THE WAGGONERS' INABILITY TO PROVE THE NECESSARY ELEMENTS OF THEIR CLAIMS.**

The Plaintiffs in the case at bar seek a monetary award for alleged injuries where they are unable to establish actual damages. In their Brief, Plaintiffs complain that “the trial court ruled that *the Waggoners must prove damages in the same manner as a traditional negligence action.*” See *Appellants' Brief* at p. 46. (Emphasis added). In their Amended Complaint, Waggoners asserted claims of breach of fiduciary duty, breach of contract<sup>4</sup>, and negligent misrepresentation. See *R. Vol. 2, p. 168-182*. The Waggoners attempt to prove these claims through alleged violations of the Mississippi Rules Professional Conduct. Throughout their Brief, the Waggoners fail to reconcile their claim that they would not have accepted the settlement upon disclosure of certain information and the stipulation that the gross settlement was fair and reasonable for their injuries. See *R. Vol. 7, p. 890-891* and *R. Vol. 3 of 7, p. 130-131*. Miller submits that the trial court correctly granted partial summary judgment on the grounds that the Waggoners could not prove the dismissed claims.

This Court has recognized that legal malpractice may take the form of “a violation of the standard of care of exercising the knowledge, skill, and ability ordinarily possessed and exercised by members of the legal profession..., or the breach of a fiduciary duty.” *Wilbourn*, 687 So. 2d at 1215. An attorney owes his client the duty of care, a duty of loyalty, and any duty imposed by

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<sup>4</sup>Waggoners executed an employment contract for legal representation with Williamson. [REDACTED] employment contract. As such, Miller will not address the contract issue herein as Williamson has fully and adequately addressed these issues in his Brief. See *Williamson's Brief* at p. 5, et seq. [REDACTED]

contract. *Id.* "The duty of loyalty, or sometimes, the duty of fidelity speaks to the fiduciary nature of the lawyer's duties to his client, of confidentiality and of candor and disclosure." *Id.* Therefore, the Waggoners would have to prove an attorney-client privilege existed, the incumbent or applicable duty, a breach of that duty, and damages proximately caused by that breach. *See Montgomery v. Woolbright*, 904 So. 2d 1027, 1029 (Miss. 2004).

[REDACTED] Therefore, the Waggoners are required to establish their claim pursuant to the applicable negligence analysis. The trial court found that there were no genuine issues of material fact as to the Waggoners' inability to prove all the elements of their claims. Miller submits that the Waggoners spend considerable time in their Brief raising issues that may be in dispute; however, the trial court correctly determined that those issues were not material as to their inability to carry their burden of proof on the dismissed claims. The trial court held:

But when the Court looked at this in detail, first of all, what the plaintiffs are asking this Court do is to Order the defendants to disgorge their fees and receive fees on a quantum merit basis, and they are seeking damages, actual damages, of one million one hundred thousand dollars and punitive damages of five million dollars. It's been brought out and stated and listed at a previous hearing, I know, that essentially this is a reasonable fair settlement, the gross settlement, in this case. Which it appears to the Court that it certainly is, three million eight thousand nine hundred sixty-one dollars and seventy-five cents.

*See R. Vol. 13, p. 72-73.* The trial court further held:

First of all, the Court finds that the plaintiffs in this case very clearly agreed to the settlement of this case in the gross amount of three million eight thousand nine hundred sixty-one dollars and seventy-five cents. There can be no question about that. This is fully set out, and the plaintiffs agreed to this amount. There is no genuine issue of material fact in this case that I can see where this should have been some other amount, or that anything that happened in this case changed this amount. There are some speculations. That's what the Court will call it. As to anything else, I see no genuine issue of dispute as to the attorney fees. They ask

the Court to set it by quantum merit, but very clearly by contract it was set out to be forty-five percent. The Court finds this is something that is not - - it's something that's customary in this type of litigation to seek the contingent fees in litigation such as this, and parties agree to contract, and they did contract for forty-five percent for attorney fees, and that's what was paid in this case.

I see no disputed - - I see no genuine issue of fact as to MDL, Multiple District Litigation fees. It was an Order for three percent. It was reduced to two percent. Once percent of this was later refunded.

I see no dispute as to the Mississippi Trial Lawyers contribution. This was a gift, a contribution. Just like you said, it was never represented as anything else. And Plaintiffs very clearly agreed to do this, to pay this. They checked off a box on the May 5 document that they authorized this, and then it was set out on the disbursement sheet.

Where the Court finds genuine issues of material fact are in the expenses that were deducted. There is evidence that there is a genuine issue of material fact as to the deduction of expenses. In particular, the case specific expenses to Williamson Law firm, there is a genuine issue of material fact as to whether or not these expenses deducted are set out on here are legitimate proper expenses.

Also, as to generic expenses, there has been genuine issue of material fact as to whether or not these expenses were proper.

*See R. Vol. 13, p. 73-75.* The trial court summarized its decision by stating "[h]owever, the Court cannot look past the fact that the plaintiffs clearly agreed to the settlement amount, to the amount of attorney's fees, which were set out by contract, and this MTLA contribution." *See Id. at p. 75-76.*

Miller submits that the Waggoners cannot prove the elements of their case as [REDACTED]

[REDACTED] Furthermore, the Waggoners testified that the problem was not with the gross settlement, but with how much was deducted.<sup>5</sup> The trial

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<sup>5</sup>Williamson addresses the undisputed factual and legal issues related to the items withheld from the gross settlement. Therefore, Miller will not re-argue those matters to the Court, but will join in agreement with Williamson's Brief and the trial court's order on the issue.

court recognized that issues of fact existed as to the accounting of the expenses, and it did not grant summary judgment on this issue. Furthermore, the trial court did not foreclose punitive damages if the Waggoners could prove willful and wonton misconduct on the part of the Defendants in their accounting of the expenses. Therefore, Miller moves this Court to affirm the trial court's order granting partial summary judgment on the Waggoners' claims against the Defendants.

**II. THE TRIAL COURT CORRECTLY RULED THAT THE WAGGONERS ARE NOT ENTITLED TO PUNITIVE DAMAGES ON THE DISMISSED CLAIMS.**

Miller has found **Texas** that permits punitive type damages such as disgorgement of attorney's fees for damages sake. Miller submits that there must be support for the relief sought. "Mississippi law does not favor punitive damages; they are considered an extraordinary remedy and are allowed with caution and within narrow limits." *Bradfield v. Schwartz*, 936 So. 2d 931, 936 (Miss. 2006). "As a general rule, exemplary or punitive damages are added damages due because of an injury or wrong." *Id.* In Mississippi punitive damages are provided for under statutory authority. *See Miss. Code Ann. 11-1-65*. The statutory authority provides in pertinent part: "[i]n any action in which the claimant seeks an award of punitive damages, the trier of fact shall first determine whether compensatory damages are to be awarded and in what amount." *Id. at 11-1-65(1)(b)*. Furthermore, the punitive damages statute does not apply to contract claims. *Id. at 11-1-65(2)*.

As discussed herein, the trial court found as an undisputed issue that the Waggoners received a fair gross settlement through the representation of Williamson, Blackmon, and Miller. The Waggoners have not disputed the fairness of the gross settlement nor did they refuse to



execute the settlement documents or seek to return the settlement funds to pursue their claim in court outside of the settlement. The Waggoners are both very intelligent and educated people. The trial court was justified in finding, based on the evidence presented, that the Waggoners could not prove the elements of the dismissed claims nor could they establish the right to punitive damages or sanctions pursuant to those claims. Therefore, Miller moves this Court to uphold the trial court's order granting partial summary judgment to the Defendants in the case at bar.

**III. THE TRIAL COURT CORRECTLY HELD THAT THE MISSISSIPPI RULES OF PROFESSIONAL CONDUCT ARE NOT IN AND OF ITSELF A BASIS FOR CIVIL LIABILITY.**

In the case at bar, Plaintiffs attempt to establish that an alleged violation of the Mississippi Rules of Professional Conduct ("Rules") establishes civil liability and the right to monetary relief without actual damages or injury. As to this issue, the trial court held:

First of all, the Court would note for the record that the Court is not deciding any ethical breaches in this case by the attorneys, except insofar as they apply to this action at law, which is an action at law for breach of certain duties and for damages resulting therefrom.

*See r. Vol. 13, p. 67.* The trial court further held:

You're not up before the bar association prosecuting these attorneys. What you're doing is representing your client seeking a claim for damages before this Court of law. And you're doing that in the same way we do in a negligence action or anything else. [REDACTED]

[REDACTED] Now, what I'm saying is that if you show this breach of this duty the only genuine issue of fact as to the damages is this issue is about the [REDACTED] ss.

*See Id. at p. 88.* As to the role of the Mississippi Rules of Professional Conduct in a civil case, this Court has held:

Violations of a Rule should not give rise to a cause of action nor should it create any presumption that a duty has been breached. The Rules are designed to provide guidance to lawyers and to provide structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability.

*See Wilbourn*, 687 So. 2d at 1215.<sup>6</sup> The Court further held that “[t]he Code of Professional Conduct is not used as a measuring stick to determine civil liability for legal malpractice.” *Id.* at 1216.

The Waggoners spend considerable time arguing that the Defendants violated the Mississippi Rule of Professional Conduct R. 1.8(g) for failing to provide certain disclosures. The Waggoners state what they think are the required disclosure pursuant to the rule, but [REDACTED]

[REDACTED] Rule 1.8(g) requires that “[a] lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims . . . unless each client consents after consultation, including disclosure of the existence and nature of all the claims . . . involved and of the participation of each person in the settlement.” *Mississippi Rule of Professional Conduct R. 1.8(g)*.<sup>7</sup> The Waggoners feel they are entitled to punitive damages as a result of the alleged violation of this rule.

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<sup>6</sup>Waggoners rely heavily on case law outside of Mississippi as being conclusive in the issues in the case at bar. However, Texas jurisprudence takes the same approach to its rules of professional conduct. *See Wright v. Sydow*, 173 S.W.3d 534, 549 (Tex. App. 2004) (Recognizing that “[a] violation of the Disciplinary Rules does not necessarily establish a cause of action.”).

<sup>7</sup>Waggoners attempt to compare Mississippi’s rule with that of Texas Rule. However, Miller submits that the Texas Rule is broader as it requires notice of “the nature and extent of the participation of each person in the settlement.” *Compare Tex. Disciplinary R. Prof. Conduct 1.8(f) with Miss. Rule Prof. Conduct R. 1.8(g)*.

Miller submits that an alleged violation of Rule 1.8(g) cannot form the basis for a breach of fiduciary duty claim against the Defendants. Waggoners cannot show that there were any damages arising from the alleged violation of this rule. Furthermore, the trial court had ample evidence that showed the Waggoners knew other people were involved in the litigation due to their exposure to the weight loss drug and they knew that if you did not execute the settlement documents then you did not participate in the settlement. The Waggoners have proffered no basis for their conclusions as to the scope and breadth of the required disclosures in Rule 1.8(g). The trial court correctly held that the dismissed claims cannot be maintained on a basis of an alleged violation of the Mississippi Rules of Professional Conduct absent a showing of actual damages or some other basis. In the case at bar, Waggoners allege that the Defendants breached their fiduciary duties in the way the *Williams* case was settled. However, Waggoners admit that their gross settlement was fair and reasonable. The trial court found this to be persuasive in holding that as a suit at law the Waggoners must prove injury arising out of the breach of duty before relief can be ordered and not just allege a violation of the rules of professionalism to sustain an award of punitive damages. [REDACTED]

[REDACTED] Defendant submits that the trial court's ruling is in line with the Court's jurisprudence on alleged violations of the Mississippi Rules of Professional Conduct. Therefore, Miller moves this Court to uphold the trial court's order granting the Defendants partial summary judgment of the claims alleged by the Waggoners.

## **CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Defendant Michael Miller moves this Court to uphold the trial court's order granting partial summary judgment on the alleged claims against the Defendants. Miller submits that the Waggoners are not entitled to the relief sought under the dismissed claims as they cannot carry their burden of proof to sustain their case on those claims. The trial court found enumerated the undisputed genuine issues of material fact that supported its order. Miller further submits that the Waggoners are not entitled to maintain a civil suit on the basis of an alleged breach of the Mississippi Rules of Professional Conduct where there is not showing of damages. The Waggoners admitted that the gross settlement was fair and reasonable for the injuries sustained. The Waggoners admitted that at the time of filing this lawsuit, the gross amount recovered was not at issue, but only the amounts deducted. Miller submits that the trial court's order deals with claims arising out of the gross settlement. Miller further submits that the trial court correctly held that the Waggoners failed to establish their right to punitive damages in the case at bar. Based upon the above and foregoing argument and authority, Miller respectfully requests that this Court affirm the trial court's award of partial summary judgment in this action.

Respectfully Submitted this the 22<sup>nd</sup> day of April, 2008.

**TRULY, SMITH & LATHAM, P.L.L.C.**

BY: 

**ROBERT C. LATHAM (MSB [REDACTED])**

**JEREMY P. DIAMOND (MSB [REDACTED])**

Attorney for Appellee,

Mr. Michael J. Miller

100 South Pearl Street

Natchez, Mississippi 39120

Telephone: (601) 442-6495

Facsimile: (601) 442-8874

**CERTIFICATE OF SERVICE**

I, JEREMY P. DIAMOND, do hereby certify that I have this day delivered a true and correct copy of Michael Miller's Appellee Brief by U.S. Mail, postage prepaid, to the following attorneys:

Honorable Forrest A. Johnson  
Circuit Court Judge - Sixth District  
State of Mississippi  
Post Office Box 1372  
Natchez, MS 39121

James P. Streetman, III  
Matthew Taylor  
Scott, Sullivan, Streetman & Fox  
P.O. Box 13847  
Jackson, MS 39236

David Jefferson Dye, Esquire (pro hac admittee)  
David Jefferson Dye, P.L.L.C.  
1204 Napoleon Avenue  
New Orleans, LA 70115

Gregg L. Spyridon, Esquire  
Philip G. Smith, Esquire  
Spyridon, Palermo & Dorman, L.L.C.  
Three Lakeway Center, Suite 3010  
Metairie, LA 70002-8335

SO CERTIFIED, this the 22<sup>nd</sup> day of April, 2008.

By: 

JEREMY P. DIAMOND