

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
2009-CA-01289**

VALERIE JACKSON-MILLER

APPELLANT

V.

STATE FARM MUTUAL INSURANCE COMPANY

APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF
RANKIN COUNTY, MISSISSIPPI
TWENTIETH CIRCUIT COURT DISTRICT**

REPLY BRIEF OF APPELLANT

Oral argument is requested

OF COUNSEL:

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ATTORNEYS FOR APPELLANTS

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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 judges of the Court of Appeals may evaluate possible disqualification or recusal.

- I. Valerie Jackson-Miller, Appellant
- II. State Farm Mutual Automobile Insurance Company, Appellee
- III. Rocky Wilkins, Counsel for Appellant
- IV. Barry W. Howard, Counsel for Appellant
- V. Philip W. Gaines, Counsel for Appellee

RESPECTFULLY SUBMITTED, this the 28th day of December, 2009.

BY:

Rocky Wilkins
ROCKY WILKINS

OF COUNSEL:

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Like the defendant in *Blake v. Clein*, Appellee State Farm contends that the language in *Brake v. Speed* is merely dicta, and “does not reasonably apply to the evidence in this case.” (See Appellee’s Brief, p. 20). This is not correct, and this Honorable Court has previously rejected an argument identical to State Farm’s position. Clearly, the language cited in Jury Instruction P-3 is binding Mississippi law and not dicta.

Finally, it cannot be overstated that the Appellee did not offer any expert witness testimony in its case in chief to give the jury guidance on the apportionment of damages. Thus, most courts have held that the defendant should not be permitted to escape liability in a meritorious action simply because a jury cannot apportion damages. *Stein, Jacob A.*, *Stein on Personal Injury Damages* § 11:15 (2009). Rather, as is the case in Mississippi, which is stated in *Brake v. Speed*, the defendant should be held responsible for the entire loss when it failed to provide expert medical testimony showing which of Valerie Miller’s injuries were pre-existing, and which injuries were caused on January 13, 2005.

CONCLUSION

In conclusion, the Appellant requests that this Honorable Court grant a J.N.O.V., or in the alternative, a new trial, or in the alternative, an additur.

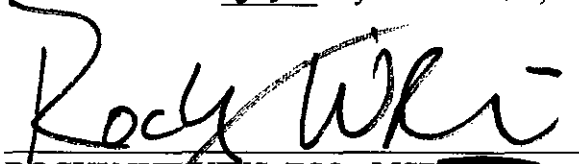
CERTIFICATE OF SERVICE

I, Rocky Wilkins, of counsel for the Appellant in the above-referenced matter, do hereby certify that I have this day served, by United States mail, postage pre-paid, the foregoing to the following:

Hon. William E. Chapman, III
Rankin County Circuit Court Judge
Post Office Box 1885
Brandon, Mississippi 39046

Philip W. Gaines, Esq.
Currie Johnson Griffin Gaines & Myers, P.A.
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THIS the 28th day of December, 2009.



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