IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
CAUSE NO. 2010-CA-00361

WW, INC. d/b/a WEIGHT WATCHERS OF GREATER MISSISSIPPI and BJM INC. d/b/a WEIGHT WATCHERS OF SOUTHERN ALABAMA AND FLORIDA PANHANDLE — **PLAINTIFFS-APPELLANTS**

VS.

DIANNE BELK, ROBERT F. BELK, JR., RAINBOW CASINO-VICKSBURG PARTNERSHIP, L.P., BALLY TECHNOLOGIES, INC. and JOHN DOE DEFENDANTS (1) – (5). — **DEFENDANTS-APPELLEES**

REPLY BRIEF OF APPELLANTS WW, INC. d/b/a WEIGHT WATCHERS OF GREATER MISSISSIPPI and BJM INC. d/b/a WEIGHT WATCHERS OF SOUTHERN FLORIDA AND FLORIDA PANHANDLE

ON APPEAL FROM THE FIRST JUDICIAL DISTRICT OF THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI

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I. Introduction

Rainbow's Brief is an exercise in turning reality on its head. Rainbow would have the Court believe that Weight Watchers and its owner, Robert Jacobs, are entirely responsible for Dianne Belk's malfeasance, and that Rainbow was a passive observer of all that went on -- no different, really, than Trustmark Bank or anyone else who might have cashed a check for Mrs. Belk.

Nothing could be further from the truth. Despite Rainbow's refusal to cooperate in discovery or allow the deposition of a single employee, Weight Watchers has obtained substantial evidence demonstrating Rainbow's role in facilitating Dianne Belk's embezzlement through money laundering. Weight Watchers can prove that Rainbow violated federal anti-money laundering regulations the entire time Dianne Belk cashed stolen checks at the casino. Weight Watchers can prove that Rainbow provided Dianne Belk with false federal tax forms

suggesting she won the stolen money at the casino. Weight Watchers can prove that Rainbow had a motive to facilitate Dianne Belk's embezzlement, because Dianne Belk was a gambling addict, and ended up losing nearly everything she had at Rainbow. Weight Watchers can prove that Rainbow and Dianne Belk both fraudulently concealed the wrongful activity, that each was in privity with the other and that, as a result, the statute of limitations was tolled.

Weight Watchers wants nothing more than its day in court – a chance to present the evidence it has against Rainbow to a jury. The Trial Court terminated that process prematurely by reaching the factual conclusion the Weight Watchers discovered its claim against Rainbow the exact same day it discovered its claim against Dianne Belk. Weight Watchers can prove this is factually incorrect but, for purposes of this appeal, all Weight Watchers has to do is demonstrate the existence of a genuine issue on the question, which it clearly has done.

II. Rainbow's Factual Summary is Selective and Misleading

From the outset, Rainbow blurs critically important distinctions and misstates facts to bolster its case. For example, Rainbow repeatedly notes that "Weight Watchers discovered [Dianne Belk's] embezzlement on December 5, 2005" (Brief of Appellee, p. 2) without ever disputing that Weight Watchers did not learn about *Rainbow's* role (i.e., money laundering) until a later date. By blurring the distinction between these two events, Rainbow would have the Court believe that the statute of limitations began to run against Rainbow on the date when it actually began to run against Dianne Belk.

Similarly, Rainbow repeatedly asserts Weight Watchers "did not make the slightest effort to discover" the embezzlement while it was occurring. (Brief of Appellee, p. 5). This is demonstrably untrue, as reflected in both the sworn deposition of Robert Jacobs and the affidavit of Wendy McLemore (*see supra*, pp. 9 - 11). At a minimum, the testimony of Mr. Jacobs and

Ms. McLemore establishes the existence of a genuine issue of material fact, which should preclude summary judgment.

Rainbow contends "Weight Watchers *never* gave Rainbow any indication that Belk's checks were invalid or that she was embezzling money." Brief of Appellee, p. 6. Of course Weight Watchers never gave any such indication, precisely because Rainbow helped Dianne Belk keep her criminal activities secret from Weight Watchers. According to both federal anti-money laundering regulations and common sense, the burden was on Rainbow to contact Weight Watchers under the suspicious circumstances which existed, and not the other way around. All Rainbow had to do was make a single telephone call at any point during the six year period when Dianne Belk was cashing checks, and Plaintiff's staggering losses could have been avoided.

Rainbow makes the stunning admission that it treated all of the bogus checks presented by Dianne Belk as if they were *payroll checks*. Brief of Appellee, p. 6. "Weight Watchers was an approved employer for cashing payroll checks in the Central Credit System . . ." For this defense to hold water, Rainbow would have the Court believe there is nothing at all suspicious or unusual about a company bookkeeper receiving *multiple* payroll checks of differing amounts during the course of a week, and sometimes even in the course *of a single day.*

Rainbow draws a false comparison with Trustmark Bank by blurring the distinction between checks deposited at Trustmark by Dianne Belk and checks which she cashed at Rainbow. Brief of Appellee, pp. 6-7. Trustmark had no obligation to detect and prevent money laundering; Trustmark never provided Dianne Belk with bogus tax documents suggesting she obtained the stolen funds legally; Trustmark did not end up with the stolen funds in its own pockets.

Rainbow spends nearly four pages of its brief attempting to minimize the evidence of money laundering, baldly asserting the allegations "have no basis in fact." Brief of Appellee, p.

7. In doing so, Rainbow simply ignores the testimony of Weight Watchers' expert witness, who described the pattern of transactions between Rainbow and Dianne Belk as *money laundering*. Rainbow ignores the determination by the Internal Revenue Service that Rainbow was in violation of multiple anti-money laundering regulations during the time frame in question. Most important, Rainbow ignores the sworn testimony of Dianne Belk herself, who testified as follows in her deposition:

> Q. Do you see that? Okay. But wasn't it your prior testimony that all the money that came back from the casino in W2-G's was ultimately – originally stolen from Weight Watchers, correct?
> A. The majority of the money that I spent was stolen, correct.
> Q. It started out as dirty money, correct?
> A. Well, stolen money, yes sir.
> Q. Then it showed up on your tax return as clean money, didn't it?
> A. Yes sir, legitimate win.
> Q. So that is money laundering, isn't it, by your definition of that.
> Mr. Breland: Objection, asking her to make a legal conclusion.
> By Mr. Carroll: As you understand the term, that is money laundering, isn't it? Not that you did, but that the casino did.
> Mr. Breland: I'm going to object again.
> By Mr. Carroll: That is fine. You can answer the question.
> A. I started out with dirty money, and it turned into clean money because I had to claim it on my income tax.
> Q. Isn't that, as you understand it, what money laundering is?
> A. I never really thought about it that way, but I guess so, yes sir.

R. 494-495.

Apparently aware of the weakness of its argument that no money laundering occurred, Rainbow then insists that, even if it did occur, it was "irrelevant." Brief of Appellee, p. 7. This is simply absurd. The fact that Rainbow aided and abetted Dianne Belk, through money laundering, in stealing nearly one million dollars from Weight Watchers is the central fact of Weight Watchers' case against Rainbow. Furthermore, for purposes of this appeal, Rainbow's role in helping Dianne Belk fraudulently conceal her wrongful acts tolled the statute of limitations, meriting reversal of the Trial Court's grant of summary judgment.

III. The Discovery Rule Tolled the Statute of Limitations.

Rainbow's argument against application of the discovery rule has two parts. First, it contends that the *only* claim which Weight Watchers can assert against it is one for conversion, and no other (*"regardless of what terms Weight Watchers uses, the only claim Weight Watchers can even begin to state against Rainbow is for conversion of negotiable instruments."*) Brief of Appellee, p. 16. Second, it contends that the discovery rule does not apply to actions for conversion of negotiable instruments, and therefore the discovery rule does not toll the statute of limitations in this case. Brief of Appellee, pp. 14-16. Both parts of this argument are simply wrong.

A. Weight Watchers is not Limited to Asserting a Claim Against Rainbow for Conversion.

The argument that Weight Watchers must rely exclusively on a claim against Rainbow for conversion, and no other, is absurd on its face.[1] Rainbow cites *Smith v. Franklin Custodian Funds, Inc.,* 726 So.2d 144 in support of this proposition (Brief of Appellee, p. 14) but conveniently neglects to acknowledge that the plaintiff in *Smith* also asserted negligence claims which the court determined were *not* time barred even though more than three years had passed (*Smith* at 151). *Smith* stand squarely for the proposition that, in cases involving conversion of negotiable instruments, a plaintiff may also assert common law claims and is *not* strictly limited to the conversion claim.

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[1] Mississippi's Uniform Commercial Code expressly notes the multiplicity of claims which can be asserted in cases involving negotiable instruments. *See, e.g.,* Miss. Code Ann. 75-3-118(g): "Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within three (3) years after the cause of action accrues."

Rainbow also cites *Hancock Bank v. Ensenat* , 819 So.2d 3, (Miss. Ct. App. 2001) in support of this argument, but the case is clearly distinguishable. In *Hancock Bank,* the niece of an elderly woman with substantial investments moved into the home with her aunt, and then intercepted certain checks issued by brokerage firms payable to her aunt. She then forged her aunt's name to the back of those checks and deposited the funds into her own account. *Hancock Bank* at 6-7. The aunt sued the bank alleging a variety of common law torts, including negligence, gross negligence and reckless disregard.

In analyzing the efficacy of the various common law claims which had been asserted, the Court cited *White v. Hancock* Bank, 477 So.2d 265 (Miss. 1985) for the proposition that, once a check was endorsed and delivered to a bank, the U.C.C. governs the measure of the bank's liability in an action for conversion. *Hancock*, 819 So. 2d at 8-9. Carrying this analysis forward, the Court then examined the specific U.C.C. language regarding "conversion" contained in at Miss. Code Ann. 75-3-420:

> (a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or accepts payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. **An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument . . . .**
>
> Miss. Code Ann. 75-3-420 (Rev. 2000).

The highlighted language demonstrates the absurdity of Rainbow's argument that Weight Watchers can only assert a claim for conversion against it. Weight Watchers cannot be compelled to travel exclusively under a claim for conversion for the simple reason that Weight Watchers was the "issuer" of the checks in question (even though it never intended to be).[2] The code section cited by Rainbow to support its argument that Weight Watchers must exclusively

[2] *See* Miss. Code Ann. 75-3-105(c), "Issuer' . . . means a maker or drawer of an instrument."

rely on a claim for conversion, in fact, *expressly prohibits* Weight Watchers from asserting a claim for conversion against Rainbow -- *"An action for conversion of an instrument may not be brought by the issuer . . . of the instrument."* If Rainbow's argument were to be accepted, then Weight Watchers would have no legal recourse against Rainbow whatsoever, which cannot be the case.

Weight Watchers chose to assert, among other things, a claim for conversion of assets *against Dianne Belk and Robert Belk*, both of whom ended up with assets stolen from it. Rainbow would have the Court believe that this decision to assert a claim for conversion against certain co-defendants precludes Weight Watchers from asserting any other claims against *it* for its role in the embezzlement. Nothing in the language of Miss. Code Ann. 75-3-420 or the *Hancock Bank* decision supports this conclusion. Weight Watchers asserted a variety of claims *against Rainbow* based on its role in laundering the stolen funds, including negligence, gross negligence, fraud and misappropriation and unjust enrichment. Rainbow has failed to cite a single case holding that the discovery rule does not apply toll the statute of limitations for claims such as these, because clearly it does.

B. The Discovery Rule Applies to Actions for Conversion of Negotiable Instruments in Cases Involving Fraudulent Concealment; Privity Between Co-Defendants is Sufficient to Toll the Statute of Limitations Against All Defendants.

Weight Watchers has demonstrated, with the support of expert testimony, that Rainbow was involved in the fraudulent concealment of Dianne Belk's embezzlement. As a threshold matter, this creates a factual issue for determination by a jury rather than resolution by summary judgment. As noted in Appellant's Brief, the affirmative acts designed to prevent discovery occurred at three distinct stages: (1) the embezzlement and concomitant cooking of the books by Dianne Belk; (2) the issuance of fraudulent tax documents by Rainbow falsely suggesting that

Dianne Belk won the stolen funds at Rainbow; and (3) the filing of fraudulent tax returns by Dianne Belk incorporating the bogus Rainbow tax documents.

Mississippi law does not require proof that Rainbow actually participated in each and every stage of the fraudulent concealment for the statute of limitations to be tolled against it. It only requires proof of privity between Rainbow and anyone else (i.e., Dianne Belk) engaged in fraudulent concealment. *Smith*, 726 So. 2d at 147 ("Since Franklin Funds did not commit the fraud, the question is whether Franklin Funds was in privity with Bernie III").

It is beyond dispute that Dianne Belk actively and affirmatively concealed her wrongful acts, up to and including the time in late 2006 when she filed fraudulent tax returns incorporating the bogus W2-G's provided to her by Rainbow, less than three years before suit was filed. Furthermore, Weight Watchers has alleged sufficient facts to demonstrate the existence of privity between Rainbow and Dianne Belk, and should be given the opportunity to prove this point in trial. Rainbow makes no effort to dispute the fact that Dianne Belk fraudulently concealed her wrongful acts, and furthermore makes no argument suggesting a lack of privity between Mrs. Belk and Rainbow. Based on *Smith*, privity alone is sufficient to trigger the tolling provisions of the fraudulent concealment statute.

C. Rainbow Engaged in Affirmative Acts of Concealment By Helping the Embezzler Launder the Stolen Money.

Incredibly, Rainbow asserts "Weight Watchers has not presented any evidence of affirmative acts by Rainbow designed to conceal a cause of action." In its first brief Weight Watchers specifically states, "Rainbow affirmatively aided in the concealment of Dianne Belk's criminal activity *by helping her launder the stolen money.*" Brief of Appellant, p. 15. Weight Watchers presented the affidavit of a 30-year casino industry veteran and expert in matters related to casino cage and financial management, explicitly describing the activities of Rainbow under these circumstances as *money laundering*. Brief of Appellant, pp. 5-6. Weight Watchers

presented the findings of the Internal Revenue Bank Secrecy Act Audit, finding that Rainbow was guilty of *eight different violations* of federal anti-money laundering regulations during the relevant time frame. Brief of Appellant, p. 5.

Rainbow failed to present the opinion of even one single expert witness to counter the opinion presented by Weight Watchers' expert, and yet now they insist there is no genuine issue of material fact on the matter. Obviously, nothing could be further from the truth.

D. Weight Watchers Used Reasonable Diligence to Discover its Injury, and at a Minimum has Established the Existence of a Genuine Issue of Material Fact on this Point.

Rainbow argues at length that Weight Watchers failed to use due diligence which would have led to the discovery of its cause of action against Rainbow, thus failing the second prong of the fraudulent concealment test. Brief of Appellee, p. 20-22 (citing *Andrus v. Ellis,* 887 So.2d 175 (Miss. 2004)). As a threshold matter, this should be a factual issue for determination by a jury rather than resolution by summary judgment. Additionally, Rainbow flatly misrepresents the facts when it asserts that Weight Watchers "did not make any minimal effort to manage its finances" (Brief of Appellee, p. 20); that Weight Watchers "failed to take any action that could have uncovered the embezzlement" (Brief of Appellee, p. 20; that Weight Watchers "did *nothing* for nearly six years" to discover its cause of action (Brief of Appellee, p. 22).

Robert Jacobs (Weight Watchers' owner) testified under oath that he hired Dianne Belk at a point when they were computerizing their financial records, and only after consulting with his C.P.A. and receiving her recommendation:

> Q. Okay. When did Dianne Belk become a part of your office staff?
> A. September of 1999, I believe.
> Q. And what qualifications did she have that prepared her for your job?
> A. We had a – a bookkeeper that came in. We were trying to computerize at some point, had a lady that worked for me that had been with me for 20 years, and she had been doing the books until a year or so before that and when Dianne came in – let's see, we – we had a bookkeeper that totally messed up our books.
> And Veronica, our accountant at the time suggested – and I said, "We need a bookkeeper," and she suggested Dianne Belk. Dianne had worked for her during

tax season and at night and on weekends, and Veronica assured me that she would make sure that Dianne would be a good bookkeeper and would help.
Veronica was our accountant, and we needed somebody there full-time to write checks, et cetera, as a bookkeeper, and Veronica, you know, had her working for hers, so she knew her and recommended her, and I hired her.

R. 641. Mr. Jacobs continued to rely on the C.P.A. to handle his corporate taxes and oversee Mrs. Belk's work after he hired Dianne:

Q. When you said Veronica would help, was Veronica in and out of your office on a regular basis?
A. She came in every month or two or so at least, to help with a little problem here and there if Dianne didn't know what was going on, and like a said Dianne was a bookkeeper and not an accountant. Veronica was an independent person, relatively inexpensive for the job that she was doing, and I always felt she had done a good job.

R. 642. Mr. Jacobs did not rely entirely on the C.P.A. to monitor Dianne Belk's work, though. He testified that he personally reviewed the check register and bank statements:

A. Okay. I would get a weekly or a monthly printout of the check register she would put on my desk. And I would go through and just see where each check was written to. Then occasionally, I would get the bank statements after she had gone through them and either reconciled or not reconciled at that time. I don't know.
But I would occasionally get a bank statement and look through this thick of a bank statement and look through the checks. I never did see anything unusual with her name on it. I never saw anything that would be a red flag for me to – to say anything.

R. 644. Later, Mr. Jacobs hired Wendy McLemore to serve as his corporate controller. Ms. McLemore holds two degrees, one in accounting and a second in human resources. Ms. McLemore described Dianne Belk's embezzlement scheme as follows:

> Dianne concealed her embezzlement of funds by typing company checks on a typewriter, payable to herself. She entered the same check number into the office computer system as if they were payable to a company vendor. When the bank statements arrived she pulled the fraudulent checks out of the stack of returned checks. She was also responsible for reconciling the bank statements.

R. 128. Ms. McLemore explained how this system was able to fool both Mr. Jacobs and his C.P.A. despite the fact that both of these individuals made regular efforts to monitor Dianne Belk's activities:

> Because Dianne had fraudulently entered the stolen checks under the names of legitimate vendors, the bank statements always balanced. Mr. Jacobs or Veronica Strickland (the C.P.A. who handled the companies' tax returns and supervised Dianne Belk) would only have detected this scheme if they personally reviewed every check and compared the entries in the check register with the actual payees on the checks.

R. 129. Obviously, the system employed by Weight Watchers was imperfect. However, it is simply false to assert, as Rainbow does, that (1) computerizing the company financial records, (2) hiring a bookkeeper strongly recommended by the C.P.A., (3) retaining the C.P.A. to come in on a regular basis, and (4) regular review of the financial records by Mr. Jacobs, constitutes "doing nothing" or "failing to take any action."

Even more fundamentally, Rainbow failed to present the opinion of even one single expert willing to say that the steps taken by Weight Watchers to monitor its finances were deficient or otherwise below the standards one would expect for a company like Weight Watchers. Rainbow presented no evidence along these lines of any sort, and yet now pretends there is simply no factual dispute on the question of whether Weight Watchers exercised reasonable diligence. Obviously, nothing could be further from the truth.

Rainbow also argues that Weight Watchers was derelict in filing suit against it more than three years after is discovered Dianne Belk's wrongful acts, citing *Angle v. Koppers, Inc.*, 42 So.3d 1 (Miss. 2010). Brief of Appellee, p. 16-17. Rainbow's reliance on *Angle* is misplaced. In *Angle* the plaintiff contended she was injured as the result of exposure to harmful levels of toxic chemicals released into the environment from railroad tank cars and trucks at a wood-treatment facility near her home. *Angle*, 42 So.3d at 2. She asserted a wide variety of common

law claims against companies involved with the treatment plant in question, but the trial court granted summary judgment after concluding the three-year "catch-all" statute of limitations (Miss. Code Ann. 15-1-49) had run. The Supreme Court upheld the dismissal, noting that the plaintiff's injuries were diagnosed more than three years before suit was filed.

Angle is easily distinguishable from this case for a simple reason -- nowhere in *Angle* is there any allegation that the defendants engaged in fraudulent concealment. Mississippi's fraudulent concealment statute expressly tolls other statutes of limitation (such as the one at issue in *Angle*) if the defendant took affirmative steps to conceal the cause of action.

IV. The Continuing Tort Doctrine Tolls the Statute of Limitations

Rainbow fundamentally misconstrues the case of *Smith v. Franklin Custodian Funds, Inc.*, 726 So.2d 144 (Miss. 1998) in arguing that the continuing tort doctrine does not apply in this case. "As the trial court properly held, the continuing tort doctrine does not apply because each allegedly unauthorized check cashed at Rainbow constituted a separate act of conversion, as the funds were removed from Weight Watchers' accounts at the time the checks were cashed."

The *Smith* Court succinctly summarized the continuing tort doctrine as follows:

> [W]here a tort involves a continuing or repeated injury, the cause of action accrues at, and limitations begin to run from, the date of the last injury, or when the tortious acts cease. Where the tortious act has been completed, the period of limitations will not be extended on the ground of a continuing wrong.

Smith, 726 So.2d at 148. The Court went on to note that a "continuing tort" is one "inflicted over a period of time" and "involves wrongful conduct that is repeated until desisted." It noted that "Each day creates a separate cause of action. A continuing tort sufficient to toll a statute of limitations is occasioned by a continued unlawful act, not by continual ill effects from an original violation." *Id.*

The actions of both Dianne Belk and Rainbow clearly meet the definition of "continuing torts." The injuries were "inflicted over a period of time" and involved wrongful conduct that was "repeated until desisted." That being the case, the cause of action for the entire injury accrued on the date of the last injury (i.e., when the tortious acts ceased).

Rainbow cites *Smith* for the proposition that "the continuing tort doctrine does not apply to conversion claims." Brief of Appellee, p. 23. This is simply not a correct reading of *Smith.* In *Smith,* there was only a single instance of wrongful conduct. "The Franklin Funds shares were liquidated in March of 1987. There was no other time at which the Franklin Funds were liquidated. . . . Thus, if the Smiths were injured by Franklin Funds, they were only injured once." *Smith* at 149. Because there was only a single act of alleged malfeasance, the Court concluded that continuing tort doctrine did not apply.

The facts in *Smith* are obviously distinguishable from those in this case. Dianne Belk embezzled literally hundreds of checks over a six-year period, and Rainbow helped her conceal her wrongful activities by providing her with bogus W2-G's on multiple occasions. This is precisely the sort of circumstance in which the continuing tort doctrine can, and should, apply.

V. Additional Discovery Is Warranted.

Rainbow makes the circular argument that because the statute of limitations bars Weight Watchers' claims, then no further discovery is necessary or allowable. This argument, of course, begs the question whether Rainbow engaged in fraudulent concealment which tolled the statute, or whether Rainbow was in privity with Dianne Belk, who unquestionably undertook affirmative acts to conceal her activities. Additional discovery would enable Weight Watchers to obtain even more evidence related to this crucial point, and should have been granted.

Rainbow's argument that "only Weight Watchers can prove fraudulent concealment" by Rainbow is simply absurd. Weight Watchers cannot possibly know what additional steps

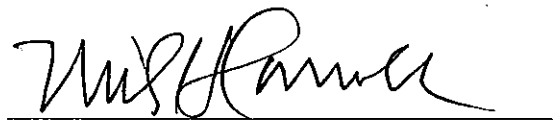
Rainbow took to conceal the wrongful acts in this case until it has been given a reasonable opportunity to view the relevant documents and depose the knowledgeable witnesses. This is not a case like those cited in Appellee's Brief where substantial discovery had been obtained before the filing of dispositive motions. In this case Weight Watchers has not been allowed to take the deposition of a single witness or employee of Rainbow. Rainbow has refused to release complete copies of the bogus W2-G's which they provided Dianne Belk. Rainbow has refused to release information regarding a nearly identical embezzlement case which occurred during the same time frame when Dianne Belk committed her crimes against Weight Watchers.

CONCLUSION

The trial court committed manifest error in granting summary judgment. Rainbow's effort to shift responsibility for their own bad acts to the Plaintiff should be rejected, and this Court should reverse the decision of the Trial Court to grant summary judgment based on the statute of limitations.

RESPECTFULLY SUBMITTED, this the 12th day of January, 2011.

WW, INC. d/b/a WEIGHT WATCHERS OF GREATER MISSISSIPPI, INC. and BJM INC. d/b/a WEIGHT WATCHERS OF SOUTHERN ALABAMA AND FLORIDA PANHANDLE



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CERTIFICATE OF SERVICE

I, WILSON H. CARROLL, do hereby certify that I have this date served by U.S. Mail a true and correct copy of the above and foregoing Reply Brief of Appellants WW, Inc. d/b/a Weight Watchers of Greater Mississippi and BJM Inc. d/b/a Weight Watchers of Southern Florida and Florida Panhandle, to the following:

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This the 12th day of January, 2011.

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