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OF COUNSEL:
GLORIA J. GREEN

FILED

October 30, 2023

OCT 30 2023

HAND DELIVERY

Mr. D. Jeremy Whitmire, Supreme Court Clerk
Mississippi Supreme Court Carroll Gartin Justice Building
450 High Street
Jackson, Mississippi 39201.

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

RE: Proposed Amendments to Rule 26(b)(4)(A)(ii)(f)(2), Mississippi Rules of Civil Procedure

Dear Mr. Whitmire:

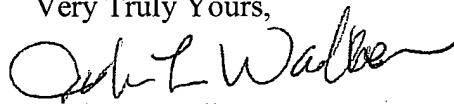
Please be so kind as to give to each of the Mississippi Court Justices one (1) of our accompanying letters in support of the proposed amendment to Rule 26, Mississippi Rule of Civil Procedure, regarding the Designation of Rebuttal Experts.

Further, please file stamp the enclosed copies of the letter to the Justices and this letter and give the file-stamped copies to the gentlemen delivering the letters.

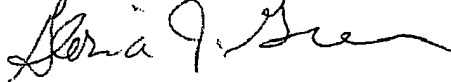
Thank you in advance for your attention to the above matter.

With best regards.

Very Truly Yours,



John L. Walker



Gloria J. Green

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OCT 30 2023

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

MOTION# 2018 2403
attachment

PLEASE GIVE EACH OF THE
JUSTICES ONE (1) OF THE
ATTACHED ORIGINALLY SIGNED
LETTERS

THANK YOU

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Honorable Michael K. Randolph, Chief Justice
Honorable James W. Kitchen, Presiding Justice
Honorable Leslie D. King, Presiding Justice
Honorable Dawn Bean, Associate Justice
Honorable Robert P. Chamberlin, Associate Justice
Honorable Josiah Dennis Coleman, Associate Justice
Honorable T. Kenneth Griffis, Jr., Associate Justice
Honorable David M. Ishee, Associate Justice
Honorable James D. Maxwell II, Associate Justice
Mississippi Supreme Court
Carroll Gartin Justice Building
450 High Street
Jackson, Mississippi 39201.

RE: Proposed Amendments to Rule 26(b)(4)(A)(ii) and (f)(2), Mississippi Rules of Civil Procedure

Dear Justices:

We support the proposed amendments to the above-identified parts of Rule 26 that provide for the designation of rebuttal experts. Therefore, we respectfully request the Court to adopt the amendments of the above-identified parts of Rule 26.

Earlier this year, in a medical negligence case set for trial on May 22, 2023, in which we represented the Plaintiff, on September 9, 2022, we designated medical experts in the fields of obstetrics and gynecology and colon surgery. Defendants, on February 7, 2023, served a supplement opinions of a medical expert in the field of pathology.

Plaintiff's medical experts had concerns about the supplement opinions of Defendants' medical expert in the field of pathology. However, Plaintiff's medical experts could not give a rebuttal opinion because Mississippi law generally requires a medical expert to be a member of the medical specialty regarding which she/he is giving expert opinions. *Troupe v. McAuley*, 955 So. 2d 848 (Miss. 2007). Therefore, in our case, to rebut the supplemental expert opinions of

Defendant's Pathologist, we were required to retain a pathologist to review them and provide us with opinions as to any disagreement that she had with the supplemental opinions of defendant's Pathologist.

Because the Mississippi Rules of Civil Procedure currently does not provide for the designation of a rebuttal expert, without knowing if the Court would allow Plaintiff to designate a rebuttal pathology expert, we were required to hastily identify and employ a pathologist to review supplemental opinions of defendant's Pathologist. After receiving the opinions of the Pathologist whom we employed, we had to file quickly, on March 14, 2023, a Motion to Designate a Rebuttal Pathology Expert. Fortunately, the trial court agreed to schedule a hearing, on an expedited basis, on April 6, 2023, regarding our Motion. Subsequently, on April 17, 2023, the Court entered an Order granting our Motion to Designate a Rebuttal Pathology Expert.

In our above situation, if the Court had denied our Motion to Designate a Rebuttal Pathology Expert, our client would have incurred the expense of employing the rebuttal pathology expert whom we could not call as a rebuttal pathology witness at the trial. Additionally, if the trial court in our case had a crowded docket, as many trial courts do, we would not have secured a hearing on our Motion before the May 22, 2023 trial date. Therefore, if the trial court's docket was such that the Court could not schedule a hearing before the trial, we would have been precluded from the right to have a rebuttal expert pathologist testify at trial. Further, the Plaintiff would not have benefitted from the Court's purpose in adopting the Mississippi Rules of Civil Procedure: "justice, uniformity, and the efficiency of courts."

Based on our above experience, the current failure of Rule 26 to provide for the designation of rebuttal experts, a litigant needing to designate a rebuttal expert must incur expenses and expend time to file, prosecute, and argue motions to designate a rebuttal witness, which would not be necessary if the Rule 26 specifically provided for the designation of rebuttal experts. Hence, the lack of a rule allowing for the designation of rebuttal experts is contrary to provisions of Rule 1 of the Mississippi Rule of Civil Procedure that provide for "the just, speedy, and inexpensive determination of every action."

Rule Rule 26(a)(2)(D)(ii) of the Federal Rules of Civil Procedure specifically provides for the designation of rebuttal experts. Thus, the current failure of the Mississippi Rules of Civil Procedure to provide for the designation of rebuttal experts is contrary to the ruling of the Court in *Brown v. Credit Ctr., Inc.*, 444 So. 2d 358 (Miss. 1983) wherein the Court stated:

We observe here in relevant part the wording of our Rule 56 is identical to the wording of Rule 56 of the Federal Rules of Civil Procedure. Accordingly, we regard authoritative constructions of Federal Rule 56 as persuasive of what our construction of our rule ought to be. As the author of this opinion has urged in another rules context

there is much to be said for uniformity in interpreting the identical language of the federal and Mississippi versions [of Rules of Civil Procedure]. A disparity in interpretation would inevitably lead to forum shopping, which has been a perceived evil for at least half a century.

Robertson, *Joinder of Claims and Parties* -- Rule 13, 14, 17 and 18, 53
Miss.L.J. 37, 63 (1982).

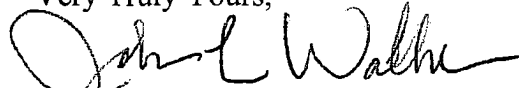
Id at 364 n.1 (Miss. 1983)

Based on the above, we respectfully request the Court to adopt the proposed amendments to Rule 26, which will allow the designation of expert witnesses.

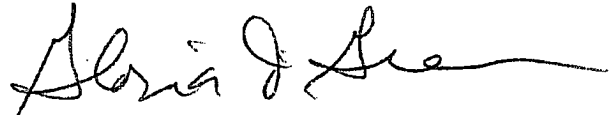
Please contact us if we can be of further assistance to the Court.

With best regards.

Very Truly Yours,



John L. Walker



Gloria J. Green