

**Mississippi Secretary of State
2008 Business Reform Committees
Minutes of Business Courts Study Group Meeting # 5
August 27, 2008**

The fifth meeting of the Business Courts Study Group was called to order on Wednesday, August 27, 2008, at 11:00 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of the persons who were present in person or by telephone is attached at Exhibit A.

Introduction

Cheryn Baker, Assistant Secretary of State, Policy and Research Division, welcomed the members to the meeting, and called roll to verify everyone who was present.

Approval of Minutes

The minutes from the July 23, 2008 meeting were unanimously approved.

Review and Discussion of Additional Materials

Ms. Baker referred to the additional materials that the Policy and Research Division (the "Division") had compiled since the last meeting. She noted significant changes to the Division's Survey of the Structure of Business Courts and Executive Summary. She also introduced a condensed version of the Executive Summary. In addition, Ms. Baker distributed charts prepared by the Division which show the number of each type of case filed in the state's busiest Circuit Court and Chancery Court districts. Ms. Baker stated that if more data and analysis were needed, then on-location research would be required. Baker also introduced data from the American Arbitration Association which set forth the number of business-to-business cases which were arbitrated in Mississippi during the past year. The Group discussed the Circuit Court and Chancery Court charts at length.

Sub-Group Reports

Procedure/Technology Sub-Group

Sub-Group member Ron Peresich reported on his group's progress on behalf of Sub-Group Chair Amanda Jones, who was unable to attend the meeting. Peresich said the Sub-Group recommended that a statewide business court pilot program be started by judicial order, rather than by legislative action. The Sub-Group also recommended that eligible cases would be assigned to a business docket and would be heard in the counties in which they were filed. The docket would be established in both the Circuit Court and the Chancery Court. Peresich said the Sub-Group agreed that fast-tracking of discovery was a good idea, but that specific rules on this should be left to the discretion of the business court judges. The Sub-Group also recommended that judges be required to issue written opinions in non-jury cases in order to develop a body of case law. The Sub-Group also encouraged the use of technology where it is available, but did not recommend any significant investment in business court-specific technology.

Members of the Study Group expressed concerns about the constitutionality of creating a new court, to which Peresich responded that the Sub-Group was recommending a new docket created by judicial order of the Supreme Court, not an entirely new court. Ms. Baker stated that most expedited programs for the disposition of business cases in the nation had been created by judicial order, and without legislative involvement.

Judicial Selection Sub-Group

Jim Mozingo, reporting on behalf of Sub-Group Chair Joey Diaz (who was not present), stated that the Sub-Group needed more time to consider the issues before it, especially in light of the recommendations made by the Procedure/Technology Sub-Group. Mozingo indicated that the Sub-Group was leaning toward a recommendation in which the Legislature would create three (3) new Circuit Court and three (3) new Chancery Court districts, modeled after the three (3) existing Mississippi Supreme Court districts. New judges would be elected in each of these districts, who would be authorized to hear business cases in both Chancery Court and Circuit Court.

Mozingo also outlined items that the Sub-Group still needed to discuss, such as whether the Legislature would require special qualification criteria for business court judges and the actual selection process.

Jurisdiction Sub-Group

Sub-Group Chair James Holland presented the Study Group with two jurisdictional options drafted by the Jurisdiction Sub-Group. The first option (attached as Exhibit B) reflected the preferences of the Study Group as taken from the members' responses to a recent survey. The second option (attached as Exhibit C) was a revised version of the first option which the Sub-Group thought would be more acceptable to the Legislature if the Group were to recommend a pilot program be established by the Legislature. Both plans featured three (3) categories: mandatory jurisdiction, optional jurisdiction on agreement of all parties, and excluded from jurisdiction.

The Group discussed the two options, but no recommendation was made to approve either of them.

Funding/Fees Sub-Group

Tom Grantham set forth the recommendations of the Funding/Fees Sub-Group on behalf of Sub-Group Chair Blake Wilson (who was not present). The Sub-Group recommended that additional, reasonable fees be charged for filing those types of business cases which are subject to optional or concurrent jurisdiction in the business court. The additional revenue could be used to help cover the costs of the court, and to provide for staffing and technology. Mr. Grantham stated that the Sub-Group had not made a recommendation regarding a "loser-pays" option or a waiver of special filing fees for mandatory business court cases. In response to a question about supplemental funding sources, such as grants from private foundations, Mr. Grantham replied that the Sub-Group had discussed this option but did not recommend them because its members were concerned about the perception that donors would have influence over the court's decisions.

Adoption of Sub-Group Recommendations; Conclusion of Meeting

Some discussion followed on the topic of whether the proposed business court should be created by judicial order or by legislative action.

Study Group Chair Ed Pittman announced that the Group would defer voting on Sub-Group recommendations until the next meeting of the full Study Group. Ms. Baker suggested that the next meeting be held at a later date to give group members time to analyze new data and to consider the various Sub-Group's recommendations. Without any further business on the agenda, the meeting adjourned at 1:00 P.M.

Respectfully submitted,



Cheryn Baker
Assistant Secretary of State
Policy and Research Division

Exhibit A
to the August 27, 2008 Minutes to the Business Courts Study Group

In Attendance:

Ed Pittman, Chair
Joey Diaz, Vice-Chair
James Holland, Vice-Chair
Henry Chatham
Celie Edwards
Tom Grantham
Joel Hill
John Laws
David Landrum
Jim Mozingo
Ron Peresich
Tom Rhoden
Lex Taylor
Kelley Williams
Carlton Reeves
Jill Beneke

By Telephone:

Malcolm Harrison
B.B. Hosch
Joy Phillips
Brian Sanderson
George Simmerman

Secretary of State Personnel Attending:

Delbert Hosemann, Secretary of State
Cory Wilson, Chief of Staff
Cheryn Baker, Assistant Secretary of State, Division of Policy and Research
Doug Jennings, Senior Attorney, Division of Policy and Research
Phillips Strickland, Division Coordinator, Division of Policy and Research
Amy Foster, Intern, Division of Policy and Research

Exhibit B
to the August 27, 2008 Minutes to the Business Courts Study Group

OPTION ONE
RECOMMENDATIONS OF THE JURISDICTION SUBCOMMITTEE
August 27, 2008

MANDATORY JURISDICTION

In the cases below if the case is accepted by the Business Court then it will be heard by the business court. The parties cannot object to the assignment or request to be transferred out of the business court. Not all of these cases listed below as mandatory jurisdiction will be heard in the trial system by the business court, especially if the court is started as a pilot program with only a couple of judges, etc. We assume that the Business Court will have gate-keeping mechanisms to accept only the number of cases it can handle efficiently.

1. CORPORATE GOVERNANCE/INTERNAL AFFAIRS. Actions relating to: the internal affairs or governance, law governing corporations (except charitable and religious organizations), dissolution or liquidation, rights or obligations between or among owners (shareholders, partners, members), or breach of duty of directors, liability or indemnity of managers (officers, directors, managers, trustees, or members or partners functioning as managers) of business corporations or organizations, mergers and acquisitions, corporate restructuring, election or removal of directors, enforcement or interpretation of shareholder agreements, derivative actions, partnerships, limited partnerships, limited liability companies, limited liability partnerships, professional associations, business trusts, joint ventures or other business enterprises, including but not limited to any actions involving interpretation of the rights or obligations under Mississippi law, articles of incorporation, by-laws or agreements governing such enterprises.
2. BUSINESS TORTS. Business to business "Business torts," involving business plaintiffs and business defendants such as claims of unfair competition, or interference with contractual relations or prospective contractual relations.
3. ANTITRUST LAW.
4. COLLECTION OF PROFESSIONAL FEES. Suits to collect professional fees.
5. INTELLECTUAL PROPERTY. Actions relating to trademarks or intellectual property laws, including software licensing disputes.
6. TRADE SECRETS. Actions between business entities relating to trade secrets.
7. SECURITIES LAWS. Actions relating to securities, or relating to or arising under the Mississippi securities law including proxy disputes and tender offer disputes.
8. COMMERCIAL INSURANCE INDEMNIFICATION CLAIMS. Third-party indemnification claims against insurance companies where the subject insurance policy is a business or commercial policy and where the underlying dispute would otherwise be assigned to the Business Court, not including claims where the underlying dispute is principally a personal injury claim.
9. COMMERCIAL REAL ESTATE. Transactions between businesses involving commercial real property (or commercial personal property), excluding actions for the payment of rent only.
10. STATE TAX COMMISSION APPEALS. Appeals from the State Tax Commission involving business taxpayers.

OPTIONAL JURISDICTION ON AGREEMENT OF ALL PARTIES:

In the cases below all parties must agree that the case be transferred to the Business Court. If one party objects then it will not be accepted into the Business Court. Business Court will have gate-keeping mechanisms to accept only the number of cases it can handle efficiently. Therefore, even if both parties agree to this court, the Business Court may have discretion to not accept the case due to its caseload.

1. **BUSINESS-TO-BUSINESS DISPUTES.** Disputes between or among two or more business enterprises relating to transactions, business relationships or contracts between or among the business enterprises. Examples of such transactions, relationships and contracts include:
 - a. UCC Transactions;
 - b. Purchases or sales of businesses, or the assets or securities of businesses;
 - c. Sales of goods or services by or to business enterprises;
 - d. Non-consumer bank or brokerage accounts, including loan, deposit cash managements and investment accounts;
 - e. Surety bonds;
 - f. Fraud or misrepresentation;
 - g. Franchisor/franchisee relationships;
 - h. Commercial construction matters;
 - i. Technology Disputes
2. **PROFESSIONAL LIABILITY.** Malpractice claims brought by business enterprises against attorneys, or accountants, architects or other professionals (excluding medical professionals) in connection with the rendering of professional services to the business enterprise.
3. **COMMERCIAL INSURANCE COVERAGE** disputes and bad faith claims (e.g. directors and officers, errors and omissions, and business interruption coverage).
4. **COMMERCIAL INSURANCE DECLARATORY JUDGMENTS.** Declaratory judgment actions brought by insurers, and coverage disputes and bad faith claims brought by insured parties, where the dispute arises from a business or commercial insurance policy, such as a comprehensive general liability policy.
5. **ENVIRONMENTAL INSURANCE COVERAGE.**
6. **NON-COMMERCIAL INSURANCE.** First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies.
7. **EMPLOYMENT LAW MATTERS.** Cases dealing with employment contract disputes, discrimination claims, or wrongful termination. This would also include non-competition agreement disputes and confidentiality agreement disputes between employer and employee.

EXCLUDED FROM JURISDICTION:

The cases would be specifically excluded from the Business Court, even if both or all the parties would prefer to be in this court.

1. PERSONAL INJURY, WRONGFUL DEATH. Matters where the primary claim is an action for personal injury or wrongful death.
2. COMMERCIAL LANDLORD-CONSUMER TENANT. Disputes between Commercial Landlord and non-business/consumer tenants.
3. NON-COMMERCIAL REAL ESTATE MATTERS. Individual residential real estate and non-commercial landlord-consumer tenant disputes.
4. ENVIRONMENTAL CLAIMS not involved in the sale or disposition of a business.
5. PRODUCTS LIABILITY. An action brought by an individual consumer based on products liability.
6. OTHER CONSUMER ACTION AGAINST BUSINESSES. An action brought by a consumer against a business or insurer.
7. STATE AGENCY APPEALS OTHER THAN TAX COMMISSION APPEALS INVOLVING BUSINESS TAXPAYERS. Administrative agency, zoning and other appeals from other than the Tax Commission
8. ARBITRATION. Matters subject to Compulsory Arbitration. This would include claims where the enforceability of a mandatory arbitration provision in contract is in dispute.
9. HEALTH AND SAFETY. Matters involving occupational health or safety.
10. Petition Actions in the nature of Change of Name, Mental Health Act Petitions, Petitions to Appoint an Arbitrator, Government Election Matters, Leave to Issue Subpoena, Compel Medical Examination.
11. Proceedings to enforce a judgment regardless of the nature of the underlying case.
12. COMMERCIAL CLASS ACTIONS.

Exhibit C
to the August 27, 2008 Minutes to the Business Courts Study Group

OPTION TWO
RECOMMENDATIONS OF THE JURISDICTION SUBCOMMITTEE
August 27, 2008

MANDATORY JURISDICTION:

In the cases below if the case is accepted by the Business Court then it will be heard by the business court. The parties cannot object to the assignment or request to be transferred out of the business court. Not all of these cases listed below as mandatory jurisdiction will be heard in the trial system by the business court, especially if the court is started as a pilot program with only a couple of judges, etc. We assume that the Business Court will have gate-keeping mechanisms to accept only the number of cases it can handle efficiently.

1. CORPORATE GOVERNANCE/INTERNAL AFFAIRS. Actions relating to: the internal affairs or governance, law governing corporations (except charitable and religious organizations), dissolution or liquidation, rights or obligations between or among owners (shareholders, partners, members), or breach of duty of directors, liability or indemnity of managers (officers, directors, managers, trustees, or members or partners functioning as managers) of business corporations or organizations, mergers and acquisitions, corporate restructuring, election or removal of directors, enforcement or interpretation of shareholder agreements, derivative actions, partnerships, limited partnerships, limited liability companies, limited liability partnerships, professional associations, business trusts, joint ventures or other business enterprises, including but not limited to any actions involving interpretation of the rights or obligations under Mississippi law, articles of incorporation, by-laws or agreements governing such enterprises.
2. BUSINESS TORTS. Business-to-business “Business torts,” involving business plaintiffs and business defendants such as claims of unfair competition, or interference with contractual relations or prospective contractual relations.
3. ANTITRUST LAW.
4. INTELLECTUAL PROPERTY. Actions relating to trademarks or intellectual property laws, including software licensing disputes.
5. TRADE SECRETS. Actions between business entities relating to trade secrets.
6. SECURITIES LAWS. Actions relating to securities, or relating to or arising under the Mississippi securities law including proxy disputes and tender offer disputes.
7. COMMERCIAL REAL ESTATE. Transactions between businesses involving commercial real property (or commercial personal property), excluding actions for the payment of rent only.

OPTIONAL JURISDICTION ON AGREEMENT OF ALL PARTIES:

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1. BUSINESS-TO-BUSINESS DISPUTES. Disputes between or among two or more business enterprises relating to transactions, business relationships or contracts between or among the business enterprises. Examples of such transactions, relationships and contracts include:

- a. UCC Transactions;
- b. Purchases or sales of businesses, or the assets or securities of businesses;
- c. Sales of goods or services by or to business enterprises;
- d. Non-consumer bank or brokerage accounts, including loan, deposit cash managements and investment accounts;
- e. Surety bonds;
- f. Franchisor/franchisee relationships;
- g. Commercial construction matters;
- h. Technology Disputes

EXCLUDED FROM JURISDICTION:

The cases would be specifically excluded from the Business Court, even if both or all the parties would prefer to be in this court.

13. PERSONAL INJURY, WRONGFUL DEATH. Matters where the primary claim is an action for personal injury or wrongful death.
14. COMMERCIAL LANDLORD-CONSUMER TENANT. Disputes between Commercial Landlord and non-business/consumer tenants.
15. NON-COMMERCIAL REAL ESTATE MATTERS. Individual residential real estate and non-commercial landlord-consumer tenant disputes.
16. ENVIRONMENTAL CLAIMS not involved in the sale or disposition of a business.
17. PRODUCTS LIABILITY. An action brought by an individual consumer based on products liability.
18. OTHER CONSUMER ACTION AGAINST BUSINESSES. An action brought by a consumer against a business or insurer.
7. STATE AGENCY APPEALS OTHER THAN TAX COMMISSION. Administrative agency, zoning and other appeals.
19. ARBITRATION. Matters subject to Compulsory Arbitration. This would include claims where the enforceability of a mandatory arbitration provision in contract is in dispute.
20. HEALTH AND SAFETY. Matters involving occupational health or safety.
21. Petition Actions in the nature of Change of Name, Mental Health Act Petitions, Petitions to Appoint an Arbitrator, Government Election Matters, Leave to Issue Subpoena, Compel Medical Examination.
22. Proceedings to enforce a judgment regardless of the nature of the underlying case.