

**Mississippi Secretary of State
2008 Business Reform Committees
Minutes of Business Courts Study Group Meeting #4
July 23, 2008**

The fourth meeting of the Business Courts Study Group was called to order on Wednesday, July 23, 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 is attached as Exhibit A.

Hon. Ed Pittman, Study Group Chair, presided over the meeting.

Approval of Minutes

The minutes from the July 9, 2008, meeting of the Study Group were unanimously approved.

Update on Additional Requested Research

Ms. Baker addressed a number of issues which had been raised in previous group and sub-group meetings as needing further research. A document containing the research was presented to the members for review (see Exhibit B). Baker noted that these materials were extensive and needed review by the members. The topics were:

- **E-Filing Project Update:** Baker stated that the Mississippi Legislature had established a special fund to establish an electronic filing system in the state. Baker stated that funds under this program would be available only for developing electronic filing systems, not for other technology initiatives.
- **Filing Fees:** Baker said that the only jurisdictions which charge additional filing fees for business court cases are Arizona, North Carolina, and Connecticut. In Mississippi's Chancery and Circuit courts, filing fees are generally about \$100.
- **Time Spent per Case:** The Division will not be able to determine the amount of time Mississippi's judges spend on their different types of cases. The Administrative Office of Courts (AOC) does not survey judges regarding the amount of time spent on each case or type of case. To obtain this information a person would have to survey judges individually to get an idea of how judges' time is allocated.
- **Current Cases Filed:** Baker stated that limitations in the way trial courts report their dockets to the AOC makes it difficult to get a detailed picture of the types of business cases filed in the state's Circuit, Chancery, and County courts. For example, in order to determine how many cases were brought under the Mississippi Business Corporation Act in a given year, one would have to search through the pleadings in every case filed that year in every one of the state's trial courts. However, Baker said that the Secretary of State had compiled materials which gave a general idea of the types of cases which had been filed in the state's trial courts over the past several years.

- **Additions to Survey of Business Courts:** Lastly, Baker said that the following were being added to the Secretary of State’s survey of business courts:
 - Arizona’s and Connecticut’s business courts
 - Routes of appeal
 - Venue requirements
 - How caseloads are handled when the appointment of a business judge results in a vacancy on the bench
 - Selection of business court judges

Reports from Sub-Group Chairs and Discussion of Outstanding Issues

1. Procedure/Technology

Joy Phillips presented the report for the Procedure/Technology Sub-Group. Phillips stated that while the group had not yet made any official votes, it was close to consensus that:

- The business court should be begun as a pilot program
- Any such program should take the form of a specialized docket, not a separate court
- Electronic filing should be used if available. However, if that technology is not yet available, the group would prefer using existing filing procedures.
- The right to jury trials be preserved
- business court judges should issue written opinions in every case.

2. Funding/Fees

Sub-Group Chair Blake Wilson presented the report for the Funding/Fees Sub-Group. Wilson said that the group had met twice since the last full meeting of the Study Group, and that previous Delaware Secretaries of State had joined in on the sub-group’s last call.

Mr. Wilson shared some of the facts learned from the Delaware guest speakers. In Delaware, the annual cost of the Court of Chancery is \$5.5 million. There is a selection committee which recommends potential judges for appointment; the Governor appoints one of these candidates, and the state senate approves the appointments. Judges are appointed for twelve-year terms.

Blake reported that the sub-group had not voted on any issues since the last full meeting of the Study Group. However, he stated that the group had appeared to reach consensus that the Mississippi Legislature should help fund the proposed Business Court as part of its general judiciary budget. Additionally, Blake said that the group had reached partial consensus that cases filed in the Business Court should be subject to higher, though still reasonable, filing fees.

Blake stated that the following items were still under discussion, and that no consensus had been reached:

- Incorporating a “loser pays” concept
- Charging additional filing fees for cases which are required by law to be filed in the Business Court

This led to discussion among the members of the Study Group. Suggestions for funding included grants or other types of private financial assistance to cover the costs of the proposed Business Court and use of private sources of funding to fund a prestigious chair of the Business Court.

3. Jurisdiction/Venue

James Holland, Chair of the Jurisdiction/Venue Sub-Group, presented the Study Group with a survey, attached as Exhibit C. This survey contains a list of possible items to be included or excluded in the jurisdiction of the proposed Business Court. Mr. Holland asked the members to complete the survey and to submit their responses no later than Friday, August 1, 2008.

One member noted that placing declaratory judgments within the jurisdiction of the Business Court could result in the court being faced with a huge number of cases. Another member asked whether cases involving punitive damages would be heard in the Business Court. Ms. Baker said that most states' business courts do not exclude cases with punitive damages claims, as long as they involve legitimate business disputes.

4. Judicial Selection

Joey Diaz, Chair of the Judicial Selection Sub-Group, stated that it was not clear that the constitution required all judges to be elected (regardless of the type of court they serve in) or whether the legislature by statute could create an inferior court that has its judges selected by appointment. Diaz believed that it would not be a problem to appoint judges to the Business Court (from a pool of existing judges) if the judges had already been elected.

Format of Upcoming Meetings

The sub-groups were asked to meet in advance of the next full Study Group meeting and to be ready to report on items that were voted on and decided.

The meeting was adjourned at 12:40 P.M.

Respectfully submitted,

Cheryn Baker
Assistant Secretary of State , Policy and Research

EXHIBIT A
To the Minutes of the Business Courts Study Group Meeting #4
July 23, 2008

Attending:

Ed Pittman
James Holland
Joey Diaz
Blake Wilson
Henry Chatham
Joel Hill
Les Lampton
David Landrum
Joy Phillips
Tom Rhoden
Lex Taylor
Kelley Williams

By telephone:

Rick Barry
Cathy Beeding
Brian Sanderson
Bill Painter
Ron Peresich
Dale Persons

Secretary of State Staff:

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

EXHIBIT B
To the Minutes of the Business Courts Study Group Meeting #4
July 23, 2008

EXHIBIT C
To the Minutes of the Business Courts Study Group Meeting #4
July 23, 2008

BUSINESS COURTS STUDY GROUP SURVEY

Please respond by August 1, 2008

TYPES OF CASES AND CAUSES OF ACTION TO BE CONSIDERED FOR MISSISSIPPI BUSINESS COURT

Please complete the following survey and return it to Phillips Strickland at PStrickland@sos.state.ms.us or (601) 359-1499 (fax) by no later than August 1, 2008.

Member Name: _____ (optional)

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.

- _____ INCLUDE (mandatory jurisdiction)
- _____ INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- _____ EXCLUDE
- _____ 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- _____ DON'T KNOW OR NOT SURE

Explanation if any:

2. **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

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

3. **ELECTRONIC COMMERCE.** The Internet, electronic commerce.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

4. **BUSINESS TORTS.** “Business torts,” such as business to business claims of unfair competition, or interference with contractual relations or prospective contractual relations.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

5. **ANTITRUST LAW.**

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

6. **PROFESSIONAL LIABILITY.** Malpractice claims brought by business enterprises against attorneys, or accountants, architects or other professionals in connection with the rendering of professional services to the business enterprise.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

7. **COLLECTION OF PROFESSIONAL FEES.** Suits to collect professional fees.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

8. **INTELLECTUAL PROPERTY.** Actions relating to trademarks or intellectual property laws, including software licensing disputes.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

9. **TRADE SECRETS.** Actions between business entities relating to trade secrets.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

10. **SECURITIES LAWS.** Actions relating to securities, or relating to or arising under the Mississippi securities law including proxy disputes and tender offer disputes.

- INCLUDE (mandatory jurisdiction)

- _____ INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- _____ EXCLUDE
- _____ 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- _____ DON'T KNOW OR NOT SURE

Explanation if any:

INSURANCE MATTERS

11. **COMMERCIAL INSURANCE COVERAGE** disputes and bad faith claims (e.g. directors and officers, errors and omissions, and business interruption coverage).

INCLUDE (mandatory jurisdiction)
 INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
 EXCLUDE
 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
 DON'T KNOW OR NOT SURE

Explanation if any:

12. **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.

INCLUDE (mandatory jurisdiction)
 INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
 EXCLUDE
 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
 DON'T KNOW OR NOT SURE

Explanation if any:

13. **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.

INCLUDE (mandatory jurisdiction)
 INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
 EXCLUDE

- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

14. **ENVIRONMENTAL INSURANCE COVERAGE.**

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

15. **NON-COMMERCIAL INSURANCE.** First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

REAL ESTATE AND LANDLORD-TENANT

16. **COMMERCIAL REAL ESTATE.** Transactions between businesses involving commercial real property (or commercial personal property), excluding actions for the payment of rent only.

INCLUDE (mandatory jurisdiction)
 INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
 EXCLUDE
 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
 DON'T KNOW OR NOT SURE

Explanation if any:

17. **COMMERCIAL LANDLORD-CONSUMER TENANT.** Commercial Landlord- (non-business) tenant disputes.

INCLUDE (mandatory jurisdiction)
 INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
 EXCLUDE
 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
 DON'T KNOW OR NOT SURE

Explanation if any:

18. **NON-COMMERCIAL MATTERS.** Individual residential real estate and non-commercial landlord-consumer tenant disputes.

INCLUDE (mandatory jurisdiction)
 INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
 EXCLUDE
 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
 DON'T KNOW OR NOT SURE

Explanation if any:

19. **ENVIRONMENTAL CLAIMS** not involved in the sale or disposition of a business.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

**INDIVIDUAL AND CONSUMER ACTIONS
AGAINST BUSINESSES**

20. **PERSONAL INJURY, WRONGFUL DEATH.** Matters where the primary claim is an action for personal injury or wrongful death.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

21. **PRODUCTS LIABILITY.** An action brought by an individual consumer based on products liability.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

22. **OTHER CONSUMER ACTION AGAINST BUSINESSES.** An action brought by a consumer against a business or insurer.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

23. **EMPLOYMENT LAW MATTERS.** Cases dealing with employment contract disputes, discrimination claims, or wrongful termination.

_____ INCLUDE (mandatory jurisdiction)

_____ INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)

_____ EXCLUDE

_____ 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.

_____ DON'T KNOW OR NOT SURE

Explanation if any:

ADMINISTRATIVE APPEALS

24. **STATE TAX COMMISSION.** Matters involving the State Tax Commission, including appeals from this commission.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

25. **OTHER.** Administrative agency, zoning and other appeals.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

OTHER

26. **ARBITRATION.** Matters subject to Compulsory Arbitration.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

27. **HEALTH AND SAFETY.** Matters involving occupational health or safety.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

28. 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.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.
- DON'T KNOW OR NOT SURE

Explanation if any:

29. Proceedings to enforce a judgment regardless of the nature of the underlying case.

- INCLUDE (mandatory jurisdiction)
- INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)
- EXCLUDE
- 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.

___ DON'T KNOW OR NOT SURE

Explanation if any:

30. **COMMERCIAL CLASS ACTIONS** without consideration of the monetary threshold.

___ INCLUDE (mandatory jurisdiction)

___ INCLUDE, but make it optional if all the parties agree (concurrent jurisdiction)

___ EXCLUDE

___ 2 OR MORE OF THE ABOVE: I feel that parts of this item should be included, optional or excluded. Explain below.

___ DON'T KNOW OR NOT SURE

Explanation if any: