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**\*393 NOW OPEN FOR BUSINESS: THE TRANSFORMATION OF MISSISSIPPI'S LEGAL CLIMATE**

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Over the past decade, Mississippi developed a nationwide reputation as an unfavorable legal forum for many civil defendants, particularly employers with their principal places of business in other states. [\[FN1\]](#) The state became known as the "lawsuit capital of the world." [\[FN2\]](#) A survey of senior attorneys sponsored by the U.S. Chamber Institute for Legal Reform ranked Mississippi as having the worst overall legal system in the entire country in 2002, 2003 and 2004. [\[FN3\]](#)

Mississippi's legal system got its black eye from the state courts in a few counties. [\[FN4\]](#) The American Tort Reform Association called these counties "Judicial Hellholes." [\[FN5\]](#) Prominent Mississippi plaintiffs' attorney Richard Scruggs has called them "magic jurisdictions":

**\*394** [W]hat I call the "magic jurisdiction," . . . [is] where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected; they're State Court judges; they're popul[ists]. They've got large populations of voters who are in on the deal, they're getting their [piece] in many cases. And so, it's a political force in their jurisdiction, and it's almost impossible to get a fair trial if you're a defendant in some of these places. . . . These cases are not won in the courtroom. They're won on the back roads long before the case goes to trial. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or law is. [\[FN6\]](#)

The national media, including the New York Times, [\[FN7\]](#) the Los Angeles Times, [\[FN8\]](#) and the Washington Times, [\[FN9\]](#) recognized the Mississippi lawsuit phenomenon as front-page news. The television news program 60 Minutes called Jefferson County, Mississippi, the "jackpot justice capital of America" in a story examining why plaintiffs from all over the country were flocking to Mississippi courts. [\[FN10\]](#)

Locally, Jackson's Clarion-Ledger newspaper ran a series of front-page articles describing a legal environment where "the litigation industry . . . saturated the community with bias" against civil defendants. [\[FN11\]](#) Even a federal appellate court recognized that Mississippi's state courts were "a mecca for plaintiffs' claims against out-of-state businesses." [\[FN12\]](#) One prominent Mississippi defense lawyer said that Mississippi's reputation as a place for plaintiffs to hit the jackpot was not only perception, but reality. [\[FN13\]](#)

**\*395** Clearly, if economic opportunity were to flourish in Mississippi, serious problems regarding the state's legal environment would need to be addressed. [\[FN14\]](#) As former Mississippi Supreme Court Justice Reuben Anderson explained in 2001, "[Mississippians] profit greatly from being part of a national economy. This state simply cannot expect to thumb its nose at national enterprise in the courtroom, while reaching out to shake its hand in the customer line." [\[FN15\]](#)

Recently, Mississippi's legal system has made impressive strides to become fairer and more balanced. The state has gone from being the poster child of litigation abuse to a shining example of how a state can join the legal mainstream and foster economic growth through legal reform. [\[FN16\]](#) As one commentator has explained, "A combination of Haley Barbour's leadership, sound decisions from the Mississippi Supreme Court, and a slate of civil justice reforms are bringing business back to Mississippi and stabilizing the state's medical liability marketplace." [\[FN17\]](#)

This article will examine how Mississippi earned its reputation for having a biased legal climate, how the various branches of government are working to reverse trends that were driving business from the state, and what lessons can be learned for other states that may want to replicate Mississippi's recent successes and improve their own legal environments.

#### I. How Mississippi Developed a Reputation for Jackpot Justice

Mississippi's reputation as an unfavorable forum for civil defendants stemmed from a confluence of various factors. First, a permissive joinder rule allowed for the aggregation of cases with diverse facts and questions of law that would not be consolidated elsewhere. In addition, a liberal venue rule encouraged plaintiffs' lawyers to flood the friendliest courts with cases having little or no connection to the state. In one recent year, the number of plaintiffs suing in Jefferson County actually exceeded the number of residents living in the county. [\[FN18\]](#) The state's reputation was further tarnished \*396 by a multitude of verdicts of \$100 million and above. [\[FN19\]](#) The state's extreme appeal bond requirement also made it difficult for defendants to exercise their right to appeal extraordinary judgments. [\[FN20\]](#)

Out-of-state lawyers came to view Mississippi as a profitable place to bring lawsuits. According to Mississippi Board of Bar Admissions records, in February 2004, more out-of-state attorneys who were already licensed in other states took the Mississippi bar exam than Mississippi residents. [\[FN21\]](#) The enactment of tort reform in neighboring Alabama and Texas is thought to have exacerbated the flow of claims to Mississippi courts. [\[FN22\]](#) As one Jackson lawyer commented, "Out-of-state plaintiffs' lawyers can hardly be criticized for coming to Mississippi to litigate when liberal joinder and venue rules present the best forum for huge awards for their clients' alleged injuries." [\[FN23\]](#)

Lawsuit abuse, and the state's reputation for having a judicial system that was spinning out of control, had serious effects on Mississippians. For instance, a February 2002 Perryman Group study commissioned by Mississippians for Economic Progress revealed that Mississippi's tort system led to less consumer choice and "an overall increase in prices which is 2.25% higher than would occur with a more balanced judicial framework." [\[FN24\]](#) The researchers also estimated that the state's tort system cost Mississippians \$1.294 billion in 2001--\$192.7 million more than if it performed comparably to the United States as a whole in recent years. [\[FN25\]](#)

\*397 In addition, rising medical malpractice insurance rates resulting from large verdicts and settlements were forcing doctors to leave the state, jeopardizing Mississippians' access to affordable health care. [\[FN26\]](#) In 2002 and 2003, the American Medical Association listed Mississippi among the states that the organization considered in a "crisis because of high malpractice costs." [\[FN27\]](#)

Mississippi's insurance commissioner found that by the middle of 2002 seventy-one insurance companies had made the business judgment to stop writing coverage in the state, thereby reducing competition in the marketplace. [\[FN28\]](#) Employers and jobs went elsewhere. For example, Toyota Motor North America's Senior Vice President cited Mississippi's unfavorable litigation climate as a key factor in leading his company to decide against building an \$800 million auto assembly plant in northern Mississippi in 2003. [\[FN29\]](#)

#### A. Joinder Abuse and the "Mass Action" Phenomenon

As stated, Mississippi courts allowed plaintiffs to join numerous claims that few, if any, courts outside the state would permit to be joined together. When Mississippi adopted its Rules of Civil Procedure on May 26, 1981 (effective January 1, 1982), the state did not include a class-action rule that corresponded with [Rule 23 of the Federal Rules of Civil Procedure](#). [\[FN30\]](#) Consequently, Mississippi courts liberalized the requirements for joinder "to fill the gap left open by the unavailability of class actions . . ." [\[FN31\]](#)

\*398 What emerged were "mass actions"--aggregated proceedings similar to class actions, but without defined rules to guide courts or to ensure fairness for all litigants. [\[FN32\]](#) Some proceedings combined cases with vastly different facts and injuries, such as where the only commonality may have been a shared defendant or product. This practice raises serious due process issues. [\[FN33\]](#) Furthermore, as the distinguished former United States Second Circuit Court of Appeals Judge Henry J. Friendly described in the class-action context, mass aggregation of claims can produce coercive "blackmail settlements." [\[FN34\]](#)

For example, in a mass consolidation in Jefferson County in 1998, the trial court judge allowed the claims of 1738 plaintiffs alleging various asbestos-related injuries from around the country to be joined in a single case. [\[FN35\]](#) The trial of twelve plaintiffs' claims resulted in a jury verdict of \$48.5 million, including \$2 million for each of five plaintiffs who reported no respiratory problems and had normal pulmonary function test results. [\[FN36\]](#) The prospect of analogously large punitive damages caused most of the defendants to settle the twelve individual cases. [\[FN37\]](#) The judge reportedly told the defendants that if they did not settle, he would try the remaining claims immediately before the same jury, and allegedly reminded the defendants that they might not be able to afford the bond necessary to appeal an adverse verdict. [\[FN38\]](#) That sounded like "this side of hell," the defense counsel said, to which the judge purportedly replied, "no, counselor, that is hell." [\[FN39\]](#)

\*399 A study commissioned by the Center for Legal Policy of the Manhattan Institute, a nonprofit think tank, issued a compelling and well-documented indictment of Jefferson County's treatment of mass actions. [\[FN40\]](#) According to the study, mass actions increased fourfold in Jefferson County during the period 1999-2000. [\[FN41\]](#) That study also found that the number of civil filings was "vastly disproportionate" to Jefferson County's population and civil docket. [\[FN42\]](#) These cases had little, if any, legitimate relationship to Jefferson County. [\[FN43\]](#)

#### B. Choosing the Friendliest Courts

The flood of cases into certain Mississippi counties was facilitated by the state's liberal venue rule, which some described as the "good as to one, good as to all" rule. [Mississippi Rule of Civil Procedure 82](#) provided that when several parties were joined in one action, venue would be proper for all of the parties if it would be proper for any of the parties. This meant that a lawsuit could be brought in any county where either a single plaintiff or a single defendant resided. [\[FN44\]](#) This practice allowed plaintiffs' counsel to obtain exorbitant settlements from civil defendants by grouping hundreds or even thousands of claims together in the court of their choosing. For example, "[i]n April 2000, 398 people who took diet drugs joined in a single lawsuit suing 203 physicians and pharmacies in Jefferson County Circuit Court. None of the plaintiffs and only one defendant lives in Jefferson County." [\[FN45\]](#)

Mississippi law also allowed plaintiffs to join local product sellers (wholesalers, distributors and retailers) in tort actions for the purpose of trying to defeat federal diversity-of-citizenship jurisdiction over claims that should be heard in federal court. Naming local sellers in an action also allowed for proper venue in a county that otherwise had nothing to do with the dispute between the plaintiff and the primary target defendant. This practice subjected small business owners to numerous lawsuits and thousands of dollars in legal costs even though these innocent sellers bore \*400 no responsibility for the injury; they just participated in the stream of commerce by selling a product that became the subject of a lawsuit.

For instance, one small business, the Bankston Drug Store in Fayette, became known as "ground zero" in pharmaceutical litigation because, as the only pharmacy in Jefferson County, the store was named as a defendant in numerous lawsuits targeting out-of-state pharmaceutical companies. [\[FN46\]](#) The owner of the store, pharmacist Traci Swilley, said: "My lawyers tell me that we're only sued because they want to stay in Jefferson County because the verdicts are so high." [\[FN47\]](#)

#### C. Extraordinary Verdicts

In recent years, Mississippi became known for extraordinary verdicts, particularly because of large punitive damage awards. Prior to 1995, there were no verdicts greater than \$9 million in Mississippi courts. [\[FN48\]](#) Between 1995 and 2001, twenty-four verdicts in Mississippi exceeded \$9 million and at least seven of those awards were for \$100 million or more. [\[FN49\]](#) According to the National Law Journal, for the period 1994-2000, Mississippi had the second-highest percentage of verdicts over \$100 million of any state in the nation, ranking behind only Alabama, which enacted tort reform addressing the issue in 1999. [\[FN50\]](#)

In June 2003, it was reported that the Federal Bureau of Investigation was probing possible corruption in connection with some of these multimillion-dollar awards. [\[FN51\]](#) The first public action stemming from this investigation occurred in August 2004, when the FBI arrested eleven people who \*401 allegedly forged prescriptions to cash in on a \$400 million settlement with American Home Products (now Wyeth) involving the diet drug combination Fen-Phen in Jefferson County in 1999. [\[FN52\]](#) Each individual was charged with receiving at

least \$250,000 in settlement funds by submitting false prescriptions. [FN53] Ultimately, twelve Fayette residents pleaded guilty and received sentences ranging from six months of home confinement to eighteen months of imprisonment. [FN54] In addition, each was ordered to make \$250,000 in restitution to the drug manufacturer. [FN55]

#### D. Unfair Appeal Bond Requirements

The appeal bond requirements in Mississippi made it difficult for defendants to challenge unconstitutionally excessive verdicts. Specifically, Mississippi's Rules of Appellate Procedure required defendants to post a bond equal to 125% of the judgment in order to appeal. [FN56] This rule pressured defendants to settle even questionable claims because of the possibility that companies would be on the receiving end of a jury verdict so large they could not afford the bond necessary to appeal.

O'Keefe v. Loewen Group, Inc. [FN57] demonstrates the devastating impact defendants faced if a jury returned a verdict so large that the defendant could not afford to post a bond for appeal. Loewen, a Canadian corporation that owned a chain of funeral homes, was forced into bankruptcy due in large part to its inability to post the \$625 million bond necessary to appeal a \$500 million Hinds County verdict arising from a \$4 million contract dispute. [FN58] As one Mississippi practitioner observed, "The [Loewen] decision confirmed that the effective power to change state law rests not in the hands of any elected state officials, but in locally elected trial judges and \*402 the juries they empanel. Any judgment that cannot be appealed because it cannot be bonded is law of the most immediate character." [FN59]

### II. Mississippi's Transformation: 2001-2004

Over the past three years, each branch of the Mississippi government has contributed to a positive improvement in the state's litigation climate. The changes happened incrementally and involved the altering of attitudes as well as formal rules and laws.

#### A. The Mississippi Judiciary Acts to Check Litigation Abuse

Since 2001, the Mississippi judiciary has taken significant steps to address the problem of litigation abuse. First, the Mississippi Supreme Court amended its appeal bond rule. Second, on several occasions the court, along with a key trial court judge, has acted to curb joinder abuse. Third, the court has strengthened the standard for admissibility of expert evidence and authorized the taking of independent medical examinations. Finally, the court has acted to rein in excessive awards.

##### 1. Protecting the Right to Appeal

In April 2001, the Mississippi Supreme Court took a step to protect the right to appeal by amending [Rule 8 of the Mississippi Rules of Appellate Procedure](#). [FN60] Revised [Rule 8\(b\)\(2\)\(c\)](#) provides that "[a]bsent unusual circumstances, the total amount of the required bond or equivalent security for any case as to punitive damages shall not exceed \$100 million." [FN61] In amending its rule, Mississippi became one of the first states to address the appeal bond problem. Since that time, most other states have acted, either through legislation or by judicial action, to put in place bonding requirements that offer greater protections for defendants regarding their right to appeal. [FN62] Mississippi can and should do more, [FN63] but the current rule is an improvement over the pre-2001 practice.

##### \*403 2. Stemming Mass Action Abuse

Three months following the Mississippi Supreme Court's action to protect the right to appeal, Jefferson County's Circuit Court Judge Lamar Pickard took an important step to police joinder abuse in his courtroom. Judge Pickard scrutinized his court's practices and announced:

[T]his court is taking a much, much different view as to joinder in this district not because I've had a change of heart or anything like that, but it's because I've been trained. I've had some very fine lawyers training me on what joinder is, and I think I'm probably in a better position to know whether joinder is proper and whether it's not in a case, such as in an asbestos case where you have different work sites, different defendants,

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different exposures, plaintiffs from different places and different injuries. I don't think joinder is proper in those cases. . . . Joinder rules, like discovery rules or like any other rules are subject to some abuse. And the joinder rule was never intended to be a class rule in Mississippi. . . . And we have very--we have some very, very fine legal talent, legal minds in Mississippi that have crafted a class action rule into our joinder rule and that's not what it was intended for. [\[FN64\]](#)

Since that time, Judge Pickard has reportedly permitted joinder only if all plaintiffs reside in Jefferson County. [\[FN65\]](#) By restoring traditional standards to joinder and preventing his court from continuing to be a magnet court for nonresident claims, Judge Pickard's decision will speed access to justice for residents of the county and relieve local taxpayers and jurors of the cost and burden of deciding disputes that would more properly be decided elsewhere.

The Mississippi Supreme Court also has acted decisively in several cases and revised its court rules to rein in mass action abuse. For instance, in *Janssen Pharmaceutica, Inc. v. Armond*, [\[FN66\]](#) decided in February 2004, fifty-six plaintiffs sued their doctors and a drug manufacturer in Jones County for various injuries allegedly caused by the prescription drug Propulsid, used to treat gastroesophageal reflux disease. The case would have involved forty-two different physicians and claimants with various medical histories, as well as varied witnesses and evidence. [\[FN67\]](#) The Mississippi Supreme Court unanimously held that trying the cases in a single lawsuit would "unavoidably confuse the jury and irretrievably prejudice the \*404 defendants." [\[FN68\]](#) The court reversed the trial court's order to join the numerous claims and remanded the case for severance of all claims against defendants who had no connection to the named plaintiff, including all physicians who did not prescribe the Propulsid taken by the named plaintiff. [\[FN69\]](#) The court also ordered the trial court to transfer the severed cases to proper venues. [\[FN70\]](#)

On February 20, 2004, one day after *Armond* was decided, the Mississippi Supreme Court amended the comments to [Rules 20](#) and [42 of the Mississippi Rules of Civil Procedure](#) to clarify when cases can be consolidated for trial. [\[FN71\]](#) Most significantly, the court struck its general philosophy that "virtually unlimited joinder" is appropriate at the pleading stage. Now, plaintiffs seeking joinder under [Rule 20](#) must have a "distinct litigable event linking the parties." [\[FN72\]](#) The court also acknowledged in [Rule 42](#) that "on some issues consolidation may be prejudicial" and that consolidation should be invoked only where the reasons for consolidation "predominate over" individual issues. [\[FN73\]](#) The court said that plaintiffs must make the factual basis for joinder known "as early as practicable," and admonished trial courts to resolve joinder issues "sufficiently early to avoid delays in the proceedings." [\[FN74\]](#)

In addition, the court amended [Rule 82 of the Mississippi Rules of Civil Procedure](#) to recognize the forum non conveniens doctrine. [\[FN75\]](#) The new [Rule 82\(e\)](#) gives trial judges the discretion to transfer a case to another county that is more convenient. [\[FN76\]](#)

In a series of cases from May 2004 through March 2005, the court continued to strictly apply joinder and venue rules to ensure that judicial efficiency does not trump a civil defendant's right to a fair trial. The first of these cases, *Janssen Pharmaceutica, Inc. v. Bailey*, [\[FN77\]](#) involved the first Propulsid case in the country to be completed through trial, which resulted in a jury award of \$10 million in compensatory damages to each of the ten named plaintiffs. [\[FN78\]](#) The court found that the claims of the plaintiffs were improperly joined because they did not "arise out of the same transaction or occurrence." [\[FN79\]](#) The court also ruled that the Jefferson County trial court erred when, after finding that the defendant could not receive a fair trial in \*405 Jefferson County because of trial lawyer advertising, media coverage, past Fen-Phen lawsuits, and the prominence of local plaintiffs, the trial court transferred the case to neighboring Claiborne County--"a county almost identical in community makeup to Jefferson County" and subject to the same likelihood of bias. [\[FN80\]](#) The Mississippi Supreme Court then voted six to one to reverse the judgment of the trial court, sever the ten consolidated suits, and require individual trials in appropriate venues. [\[FN81\]](#)

Two months later, in July 2004, the court decided another Propulsid case, *Janssen Pharmaceutica, Inc. v. Scott*, [\[FN82\]](#) arising out of Holmes County. That case involved the consolidation of sixty-five plaintiffs' claims against the drug's manufacturer, the estate of a local doctor who allegedly prescribed the drug to at least one named plaintiff, and "other unknown defendants," a place marker for the other prescribing physicians. Two of the plaintiffs were



from Holmes County, with the rest residing in twenty-three Mississippi counties. [\[FN83\]](#) Citing Armond, the court recognized that:

It is imperative we strike a balance in our jurisprudence between the need for fairness to the parties and judicial economy. In the end, the benefits of efficiency must never be purchased at the cost of fairness. For "it is possible to go too far in the interests of expediency and to sacrifice basic fairness in the process." The discretion to consolidate cases is restrained by our paramount concern for a fair and impartial trial for all parties, plaintiffs and defendants. There is an innate danger in asking jurors to assimilate vast amounts of information against a variety of defendants and then sort through that information to find what bits of it apply to which defendant. [\[FN84\]](#)

The Mississippi Supreme Court reversed the trial court's decision to join the various claims and remanded the case for severance of all claims against the physician defendants who did not prescribe the Propulsid taken by the named plaintiff. [\[FN85\]](#) The court also ordered the trial court to transfer the severed cases to proper venues. [\[FN86\]](#)

The following month, the court again severed a multi-plaintiff case, Harold's Auto Parts, Inc. v. Mangialardi. [\[FN87\]](#) Two hundred sixty-four plaintiffs exposed over a seventy-five-year period to asbestos products in approximately 600 workplaces sued 137 named defendants. In unusually strong language, the supreme court called the joinder of these plaintiffs' \*406 claims a "perversion of the judicial system unknown prior to the filing of mass-tort claims." [\[FN88\]](#) The court clarified that "mature torts" in general, and asbestos cases in particular, are not exempt from general joinder and pleading rules, an issue that was left open to interpretation by dicta in the court's decision in Armond. [\[FN89\]](#) The court also took issue with the plaintiffs' lawyers' apparent failure to disclose core information about the underlying claims, stating that the complaints provided "virtually no helpful information" with respect to each individual's claim. [\[FN90\]](#) Four out of five plaintiffs (220 out of 264) had not even identified any employment within Mississippi. [\[FN91\]](#) The court said,

Complaints should not be filed in matters where plaintiffs intend to find out in discovery whether or not, and against whom, they have a cause of action. Absent exigent circumstances, plaintiffs' counsel should not file a complaint until sufficient information is obtained, and plaintiffs' counsel believes in good faith that each plaintiff has an appropriate cause of action to assert against a defendant in the jurisdiction where the complaint is to be filed. To do otherwise is an abuse of the system, and is sanctionable." [\[FN92\]](#)

The court then ordered severance as to each plaintiff and ordered the trial court to transfer each case to a court of appropriate venue and jurisdiction, where known. [\[FN93\]](#) The court also ordered the trial court to dismiss, without prejudice, the complaint of each plaintiff who failed, within forty-five days, "to provide the defendants and the trial court with sufficient information for such determination, and transfer if warranted." [\[FN94\]](#) The court added that such information "must include" the name of the defendant(s) "against whom each plaintiff makes a claim, and the time period and location of exposure." [\[FN95\]](#)

In late September 2004, the Mississippi Supreme Court twice returned to consolidation of Propulsid claims when it decided Culbert v. Johnson & Johnson [\[FN96\]](#) and Janssen Pharmaceutica, Inc. v. Jackson. [\[FN97\]](#) In Culbert, the court relied on Armond and Scott to require dismissal of all claims filed by \*407 eighteen out-of-state plaintiffs in Jefferson County. [\[FN98\]](#) The court also ruled that the claims of ten Mississippi residents living outside of Jefferson County should not have been filed in that county and would have to be transferred to more appropriate counties. [\[FN99\]](#) Finally, the court said that the claims filed by the two Jefferson County residents in the case should not have been joined, because their claims did not meet the "same transaction or occurrence" standard required under [Rule 20\(a\) of the Mississippi Rules of Civil Procedure](#). [\[FN100\]](#) The court ordered separate trials for each of those two claims. [\[FN101\]](#)

Jackson involved a similar case filed in Holmes County involving claims by thirty-one alleged Propulsid users against two pharmaceutical companies, twenty-seven prescribing physicians, and fifteen pharmacies. [\[FN102\]](#) As in Culbert, the court severed and transferred the non-resident plaintiffs to the appropriate jurisdictions and ordered separate trials for the Holmes County plaintiffs. [\[FN103\]](#)

In January 2005, the court in 3M Co. v. Johnson [\[FN104\]](#) considered claims included as part of an asbestos case in Holmes County that originally involved over 150 plaintiffs and sixty-two defendants. The appeal in Johnson involved four plaintiffs who were part of an initial ten-plaintiff trial group selected by plaintiffs' counsel. Each

plaintiff claimed unprotected asbestos exposure in the workplace; the four plaintiffs in the appeal also claimed asbestos exposure that allegedly occurred while wearing respiratory protection. [\[FN105\]](#) All defendants at trial either made or sold asbestos-containing products except 3M, which manufactured respiratory protection equipment. [\[FN106\]](#) The trial court denied 3M's motion for a directed verdict and submitted the claims to the jury. The jury returned six verdicts, awarding each plaintiff \$25 million in compensatory damages. [\[FN107\]](#) With respect to four plaintiffs in Johnson, 3M was found twenty-five percent at fault for the other two plaintiffs' injuries. [\[FN108\]](#) The Mississippi Supreme Court ruled that "there was no single transaction or occurrence connecting all of the plaintiffs to all of these defendants to justify joinder pursuant to [Rule 20.](#)" [\[FN109\]](#) The court went on to hold that the plaintiffs in the initial trial group had not established the elements of a cause of action against 3M, because "[n]o plaintiff provided any evidence that he was exposed to asbestos while wearing a 3M product." [\[FN110\]](#) As to the remaining plaintiffs not in the initial trial \*408 group, the court ordered the trial court to sever and transfer the claims of those plaintiffs to an appropriate venue. The court also ordered the trial court to determine whether severance would be proper as to each defendant. [\[FN111\]](#)

In February 2005, the court in *3M Co. v. Hinton* [\[FN112\]](#) ruled that 115 asbestos plaintiffs failed to comply with Mississippi pleading requirements by not providing basic information about their claims in a mass-tort litigation against seventy-seven defendants for asbestos-related injuries. Relying on *Mangialardi*, the court remanded the case and instructed the trial court to "dismiss, without prejudice, the complaint of each plaintiff who fails, within forty-five days of [the supreme court's] mandate, to provide the defendants and the trial court with sufficient information for such determination of joinder, severance, venue and transfer if warranted." [\[FN113\]](#) Among the information the court required--at a minimum--was the "name of the defendant or defendants against whom each plaintiff alleges a claim, the time and location of exposure, and the medical condition caused by such exposure." [\[FN114\]](#)

Similarly, in March 2005, the Mississippi Supreme Court in *Amchem Products, Inc. v. Rogers* [\[FN115\]](#) severed all claims in an asbestos mass-tort litigation and instructed the trial court to transfer the severed cases and dismiss, without prejudice, all out-of-state claims lacking a connection to Mississippi. The court relied on *Armond* and *Mangialardi* to find that the claims of seventy-six plaintiffs against 136 defendants were improperly joined because "[t]he only factor that [was] common to each Plaintiff [was] alleged exposure to asbestos during some time period of their career." [\[FN116\]](#) In addition, the court found that "only 6 out of the 76 Plaintiffs in [the] case [had] ties to the State of Mississippi." [\[FN117\]](#) The court concluded that the trial court had abused its discretion by denying *Amchem's* motion to sever and transfer or dismiss the cases. [\[FN118\]](#)

On the same day, the court decided *Illinois Central Railroad Co. v. Gregory*, [\[FN119\]](#) involving Federal Employers' Liability Act claims by present and former railroad workers against a railroad for lung diseases allegedly contracted through occupational exposure to various toxic substances, including asbestos, diesel exhaust, silica rock dust, and coal. The court held that joinder of the claims was improper, because "[p]laintiffs worked under \*409 different supervisors, had different jobs, in different locations, were exposed to several different substances at different times, and have different injuries." [\[FN120\]](#) The court then ordered separate trials for some plaintiffs and dismissed the claims of out-of-state plaintiffs with no connection to Mississippi.

The above series of cases, using strong language and coming in close succession, shows that the Mississippi Supreme Court will not tolerate the consolidation of cases that do not stem from the same transaction or occurrence or that are brought in improper forums.

### 3. Promoting Truthful and Reliable Testimony

Recently, the Mississippi Supreme Court has taken two important steps to help ensure the veracity and reliability of courtroom testimony. First, in January 2003, the Mississippi Supreme Court adopted [Mississippi Rule of Civil Procedure 35](#), which authorized independent medical examinations for the first time in state court practice. [\[FN121\]](#) In commentary accompanying the new rule, the court noted that it "had omitted [Rule 35](#) when it adopted the text of almost all of the other Federal Rules of Civil Procedure in 1982." [\[FN122\]](#) Moreover, the court had previously concluded that this omission precluded a trial court from ordering an examination under any circumstances, "even [where] the party may have placed his or her physical, mental or emotional conduct at issue

and thereby waive[d] the physician/patient privilege." [\[FN123\]](#) New [Rule 35](#) will help ensure the veracity of personal injury and emotional distress claims.

Second, the court clamped down on the admission of "junk science" evidence in the courtroom. As early as 1961, Mississippi applied the Frye "general acceptance" test as the standard for the admissibility of expert testimony in the state's courts. [\[FN124\]](#) The state continued to apply this standard even after the Supreme Court of the United States adopted the more rigorous test stated in *Daubert v. Merrell Dow Pharmaceuticals*, [\[FN125\]](#) as modified in *Kumho Tire Co. v. Carmichael*. [\[FN126\]](#) In May 2003, however, the Mississippi Supreme Court amended [Mississippi Rule of Evidence 702](#) to **\*410** adopt the modified Daubert standard. [\[FN127\]](#) The court also held in *Mississippi Transportation Commission v. McLemore* [\[FN128\]](#) that revised [Rule 702](#) provides the standard for assessing the reliability and admissibility of expert testimony. [\[FN129\]](#) Stating that the modified Daubert test "has effectively tightened, not loosened, the allowance of expert testimony," [\[FN130\]](#) the Mississippi Supreme Court in *McLemore* found that the trial court should have excluded the speculative testimony of an expert appraisal witness in an eminent domain action. [\[FN131\]](#)

#### 4. Controlling Excessive Damage Awards

Recently, the Mississippi Supreme Court has diligently controlled excessive punitive and noneconomic damage awards. For instance, in 2002 the court reversed several multimillion-dollar awards:

- The court threw out a \$30 million punitive-damages award against General Motors Acceptance Corporation and \$6 million punitive-damages award against its indirect subsidiary MIC Life Insurance Co. for failing to refund \$637.99 in unearned premiums on a credit life insurance policy. [\[FN132\]](#) Among other errors, the supreme court found that prejudicial statements by plaintiffs' counsel inflamed the jury, that the trial court improperly entered a directed verdict against both defendants, and that the punitive-damages award was grossly excessive. [\[FN133\]](#)

- The court reversed a \$1.5 million award for emotional distress to a mother who witnessed her sons killed when a train collided with their car at a railroad crossing, as well as a \$5.2 million punitive-damages award. [\[FN134\]](#) The court found that the award for emotional distress lacked sufficient basis when the only evidence produced at trial was vague testimony of nightmares and sleeplessness and three visits to an unidentified doctor. [\[FN135\]](#) Likewise, there was an insufficient basis for punitive damages where the only conduct alleged was **\*411** the railroad's failure to properly trim vegetation that obstructed the driver's view at the crossing. [\[FN136\]](#)

- The court reversed a \$2.5 million punitive-damages award on top of \$600,000 in compensatory damages in a lawsuit brought by a customer against a bank stemming from a real estate loan transaction. [\[FN137\]](#) The court found that the trial court had improperly allowed the jury to consider punitive damages before determining liability and compensatory damages. [\[FN138\]](#) In remanding the case for a new trial, the court found no "clear and convincing" evidence of willfulness or maliciousness to support a punitive-damages award. [\[FN139\]](#)

- The court remitted a \$5 million punitive-damages award to \$500,000 in an action brought against an employer for bad faith denial of workers' compensation benefits. [\[FN140\]](#) The court found that the "verdict clearly evidenced bias and prejudice by the jury." [\[FN141\]](#)

The Mississippi Supreme Court continued this trend in 2003 when it reduced a pain-and-suffering award of nearly \$500,000 in an auto accident case by \$300,000. [\[FN142\]](#) The court also reversed an award of \$2.5 million in compensatory damages and \$15 million in punitive damages in a case involving a workplace accident that led to the death of an employee. [\[FN143\]](#)

The court has overturned excessive awards at least three times since 2004. In June 2004, the court reversed a \$5 million punitive-damages award in a bad faith insurance case where there was no request for compensatory damages, no instruction to the jury on awarding compensatory damages, and no award of compensatory damages. [\[FN144\]](#) The next month, the Mississippi Supreme Court affirmed a trial court's entry of judgment notwithstanding the verdict, setting aside a \$2.5 million award against an insurance company and a \$1 million award on a wrongful repossession claim. [\[FN145\]](#) These compensatory damages were purportedly for emotional distress, primarily because of "loss of sleep," without evidence of any medical treatment or professional counseling; for tortious breach



of contract; and for \*412 "breach of peace." [FN146] In October 2004, in a conversion action against a bank for improperly repossessing the plaintiff's property after he defaulted on a loan payment, the court reduced an award of \$345,000 in actual damages and \$5 million in punitive damages to about \$6,000. [FN147] On appeal, the court found that the plaintiff's purported lost profits were speculative and that he did not show sufficient evidence to recover for emotional distress. [FN148] The court remitted the compensatory award to \$45,040, set off that amount by the loan balance of \$38,803.12, and struck the punitive-damages award for lack of evidence of malicious conduct to support a jury charge. [FN149]

This series of decisions demonstrates that the Mississippi Supreme Court is properly applying the law to ensure that punitive-damages awards meet constitutional and statutory safeguards, and that punitive- and noneconomic-damages awards are supported by the evidence.

## B. Governor Barbour and Lieutenant Governor Tuck Set the Tone for Civil Justice Reform

The strong leadership of Mississippi Governor Haley Barbour and Lieutenant Governor Amy Tuck also helped to significantly improve Mississippi's legal climate. Both the Governor and Lieutenant Governor made enactment of tort reform a prominent issue in their 2003 campaign platforms and a top priority for 2004. [FN150] Lieutenant Governor Tuck, a former Democrat who switched parties to run as a Republican in 2003, became a lead spokesperson for tort reform. As presiding officer in the Senate, Lieutenant Governor Tuck set the stage for tort reform on the opening day of the 2004 session when she proposed splitting the Senate Judiciary Committee into "A" (civil justice) and "B" (criminal justice) committees along the House model. The Senate voted in favor of the split on January 6, 2004. Lieutenant Governor Tuck named Republican Charlie Ross, a tort reform supporter, to chair the new civil justice committee. Senator Ross's leadership was a significant factor in the Senate's passage of broad civil justice reform, in addition to the efforts of the Governor and Lieutenant Governor.

Later that month, Governor Barbour devoted a significant portion of his 2004 State of the State Address to improving Mississippi's litigation climate. He said, "We need to do more to end lawsuit abuse, generally." [FN151] \*413 In particular, he pointed out that the state's "joinder and venue loopholes allow huge mass-tort suits to be filed in our state courts by thousands of non-Mississippi plaintiffs. That's wrong. It's unfair. It has to be stopped." [FN152] Governor Barbour also called for a cap on noneconomic damages in all civil actions, "proportionate" liability in place of "deep pocket" joint liability, and liability protections for innocent sellers and premises owners. [FN153] In addition, Governor Barbour expressed support for reforms that would help make jury service "more people-friendly." [FN154]

## C. The Mississippi Legislature Passes Tort Reform Legislation

### 1. First Steps: The 2002 Tort Reform Laws

In late 2002, during a lengthy special session called by Governor Ronnie Musgrove, the Mississippi Legislature passed a civil justice reform package, H.B. 19. [FN155] The new law, which became effective on January 1, 2003, included an amendment of the state's venue law to require that lawyers file claims in counties with some relationship to the facts of the case. [FN156] The reform law also provided for modest "sliding caps" on punitive damages based on the net worth of the defendant, [FN157] some relief to innocent sellers, [FN158] and abolition of joint liability for noneconomic damages for any defendant found to be less than thirty percent at fault. [FN159] In addition, the legislation stopped duplicative recovery of "hedonic" or lost-enjoyment-of-life damages, [FN160] limited advertising by out-of-state attorneys, [FN161] \*414 authorized the imposition of a small penalty for frivolous pleadings, [FN162] limited the liability of premises owners for the criminal acts of third parties on their property unless they reasonably should have known of the risk of such conduct and failed to exercise reasonable care to deter it, [FN163] and limited manufacturers' liability in lawsuits related to the lawful design, manufacture, distribution or sale of firearms and ammunition. [FN164]

In a separate bill, H.B. 2, the Mississippi Legislature enacted changes to the state's medical malpractice laws, including the establishment of a \$500,000 limit on noneconomic damages such as pain and suffering, [FN165] and elimination of joint liability for noneconomic damages for any defendant found to be less than thirty percent at fault. [FN166] H.B. 2 also contained safeguards to reduce the number of nonmeritorious medical malpractice cases. The

law generally requires a plaintiff's attorney in any medical malpractice case in which he or she will introduce expert testimony to attach an affidavit to the complaint certifying that an expert has concluded that there is a reasonable basis upon which to commence the case. [\[FN167\]](#) Finally, H.B. 2 provided for complaints in product defect cases involving prescription drugs to include more specific allegations than otherwise required, [\[FN168\]](#) required plaintiffs to give defendants sixty days' written notice before commencing a medical malpractice lawsuit, [\[FN169\]](#) and reduced the statute of limitations in medical malpractice cases against nursing homes from three years to two, consistent with the statute of limitations for lawsuits against other medical professionals and healthcare providers. [\[FN170\]](#)

\*415 Following a rush on Mississippi courts by plaintiffs' lawyers to file thousands of "last-minute lawsuits" before the new law went into effect, [\[FN171\]](#) there were signs that the legislation caused a "tremendous decrease in the number of cases filed." [\[FN172\]](#) The 2002 legislation, however, did not change Mississippi's "good for one, good for all" rule, which allowed plaintiffs' attorneys to continue to choose to bring a lawsuit in any county in the state in which a single plaintiff resides, no matter the number of plaintiffs. Thus, mass joinder of cases in plaintiff-friendly venues continued to loom large over the Mississippi legal landscape.

## 2. Comprehensive Reform in 2004

In June 2004, the Mississippi legislature, prompted by the efforts of Governor Barbour and Lieutenant Governor Tuck, enacted a comprehensive civil justice reform bill, H.B. 13, in a special session. [\[FN173\]](#) The law, which generally went into effect on September 1, 2004, includes several significant reforms that strengthen and go beyond the legislation enacted in 2002.

First, the legislature revisited venue and joinder abuse. The new law provides that a civil suit may be filed in the county where the corporation has its principal place of business or in the county where a "substantial alleged act or omission occurred or where a substantial event that caused the injury occurred." [\[FN174\]](#) If venue cannot be asserted against a nonresident defendant under the above criteria, then the plaintiff may file in the county where he or she lives. [\[FN175\]](#) Most notably, the new law eliminated the problematic "good for one, good for all" rule by requiring venue to be proper for each plaintiff. [\[FN176\]](#)

The 2004 law also limited recovery of noneconomic damages (i.e., pain and suffering) against any civil defendant (other than a health care liability defendant) to \$1 million, while keeping in place the existing \$500,000 limit on noneconomic damages in medical liability actions enacted in 2002. [\[FN177\]](#)

In addition, the legislation placed tighter limits on punitive damages that may be awarded against medium and small businesses. Now, in Mississippi, punitive-damages awards cannot exceed \$20 million for a defendant with a net worth of \$1 billion; \$15 million for a defendant with a net worth between \$750 million and \$1 billion; \$5 million for a defendant with a net worth of more than \$500 million but not more than \$750 million (one-half of old cap); \$3.75 million for a defendant between \$100 million and \$500 million (one-half of old cap); \$2.5 million for a defendant worth \$50 million but not more than \$100 million (one-half of old cap); or two percent of the defendant's net worth for a defendant with a net worth of \$50 million or less (one-half of old cap). [\[FN178\]](#)

The legislature enacted several other civil justice reforms, including abolishing joint and several liability for all defendants. Under the new law, defendants are not responsible for the liability of others, such as those that are immune from suit or whose liability is limited by law. [\[FN179\]](#) Innocent sellers of a product, such as retailers or distributors, were given greater protection against being pulled into lawsuits directed at manufacturers. [\[FN180\]](#)

After enactment of H.B. 13, Governor Barbour declared that "We have re-struck the balance of fairness in our civil justice system so that defendants and their insurers will have a level playing field and not be subject to a litigation lottery." [\[FN181\]](#) In addition to the tort reform provisions in H.B. 13, the new law fulfilled Governor Barbour's pledge to make jury service less of an inconvenience and financial burden. It allowed jurors to easily reschedule their service, protected jurors' leave time and employment, and made additional compensation available to jurors serving in lengthy trials. [\[FN182\]](#)

In a separate bill, H.B. 1517, the legislature limited the asbestos-related liability of successor companies to the current, fair market value of the acquired company's assets at the time of the merger or consolidation. [\[FN183\]](#) This law, which went into effect in April 2004, is important to businesses whose only connection with asbestos is having bought a company that manufactured, sold or used asbestos-containing products many years ago. By limiting liability in this fashion, the law protects business assets that were not part of the original company allegedly connected with asbestos.

### III. Lessons Learned From Mississippi's Transformation

Mississippi's progress toward a more balanced and fair civil justice system can serve as an example to other states. [\[FN184\]](#) Establishment of grassroots organizations to inform the public of the adverse impact of lawsuits on the state's economy, commitment of key state leaders, and recognition by the courts of the need to administer justice in a fair and unbiased manner appear to be the most important elements to success.

#### \*417 A. Establishing Grassroots Support

Grassroots support was particularly important in enacting legislative reform and educating the public in judicial elections in Mississippi. In support of their efforts, groups within the state implemented strong public affairs programs to educate voters, keep the pressure on legislators, and place a spotlight on judicial decision-making.

The leader of the legislative effort that culminated in the passage of a comprehensive civil justice reform package in 2004 was a coalition of Mississippi industry and medical associations known as Mississippians for Economic Progress (MFEP). [\[FN185\]](#) Founded in 2001, the organization adopted a mission of educating Mississippi citizens and courts on the impact of outrageous verdicts on the economic climate in Mississippi. [\[FN186\]](#) The MFEP's umbrella grew quickly to unite hundreds of professional, trade and medical associations, businesses, and individual citizens committed to fairness and balance in the civil justice system. [\[FN187\]](#) During consideration of the 2004 tort reform legislation, the MFEP was particularly active in educating the public on the effects of the lawsuit culture in Mississippi. The organization sponsored television advertisements, [\[FN188\]](#) asked legislators to sign a pledge in support of tort reform, [\[FN189\]](#) worked closely with the Governor, and held press conferences to support the pending legislation. [\[FN190\]](#)

Several other grassroots organizations contributed to the recent improvements in Mississippi's legal climate. One of the first organizations to push for tort reform in the state, Stop Lawsuit Abuse in Mississippi (SLAM), held luncheons and sponsored television advertisements in support of tort reform, published op-eds, and spotlighted plaintiffs' lawyers' influence in judicial elections. [\[FN191\]](#) Another organization, the Business & Industry Political Education Committee (BIPEC), analyzed the decisionmaking of appellate judges in order to educate the public in judicial elections as \*418 to which candidates appeared to exercise balanced and fair reasoning. [\[FN192\]](#) BIPEC also tracked the donations of plaintiffs' lawyers to judicial candidates. [\[FN193\]](#)

Finally, the Mississippi Economic Council (MEC), which is considered the state's chamber of commerce, strongly supported tort reform. [\[FN194\]](#) MEC's "Mississippi Express" visited cities and towns across the state to discuss tort reform and other economic development issues with business leaders. [\[FN195\]](#) The MEC has taken on the mission of monitoring the success of the 2004 legislation so that it may publicize the improvement in Mississippi's legal environment as the law takes effect. [\[FN196\]](#)

National organizations, such as the U.S. Chamber of Commerce, the American Insurance Association, and the American Tort Reform Association, among others, also played a role in supporting the legislative efforts in Mississippi.

The lesson learned from Mississippi is that strong, local grassroots efforts are key to change. Mississippi also highlights that there can be some sensitivities to the involvement of national organizations in state politics, particularly in state elections. Visible and substantial involvement by national organizations in local affairs can backfire. [\[FN197\]](#) Local groups appear to have more influence and credibility with voters than national organizations, and experience counsels against direct involvement in local matters by organizations in Washington, D.C.

## B. Gaining the Commitment of the State Leadership

Another important step is gaining the commitment of key members of the state executive and legislative branches. In Mississippi, for example, Governor Barbour and Lieutenant Governor Tuck set the tone and laid the groundwork for the 2004 tort reform law through their election platform, \*419 use of the "bully pulpit," and work with the business community. Senate Judiciary Committee A Chairman Charlie Ross steered the bill through his committee.

## C. The Importance of Judicial Commitment to Change

The recent improvements that have come from Mississippi's courts, particularly from the Mississippi Supreme Court, also highlight the importance of the judiciary's role in affecting a state's legal climate. Judicial efforts to achieve a balanced and fair civil justice system are critical since the vast majority of tort law continues to be made, and applied with a large degree of discretion, by state court judges, even after the enactment of tort reform legislation. [\[FN198\]](#)

In addition, judges can affect liability law in a state when they rule on constitutional challenges to tort reform legislation. Tort reform legislation can be undermined if those wearing the robes choose to sit as a "super-legislature" and nullify policy decisions by the legislature simply because the judges personally disagree with those policies. [\[FN199\]](#) Time will tell whether the Mississippi Supreme Court will respect the legislature's recent tort policy decisions. [\[FN200\]](#) "In the past, the Mississippi Supreme Court has consistently upheld as constitutional laws modifying the state's civil justice system." [\[FN201\]](#) The court's recent decisions to help erase Mississippi's past image as the poster child for lawsuit abuse run wild suggest that the court may accord deference to the legislature's work to further the same goal.

Some would like to believe that the judiciary is insulated from politics, but experience has shown that state court judges are not beyond the influence of the electorate. Nationally, about fifty-three percent of state appellate judges and seventy-seven percent of all state trial court judges are subject to some form of election, whether partisan, nonpartisan or "retention." [\[FN202\]](#) In Mississippi, all levels of the judiciary are elected through nonpartisan elections. [\[FN203\]](#) In recent years, judicial elections have become more contentious, more expensive, and more partisan, both in Mississippi and throughout the nation. [\[FN204\]](#)

\*420 Traditionally, plaintiffs' lawyers have had a dominant role in judicial elections. [\[FN205\]](#) This is understandable since local lawyers, unlike out-of-state businesses, know and appear routinely before local judges. In recent years, the Mississippi business and medical communities have taken a more active role in judicial races, particularly at the appellate level, with some success. It appears that changes in the composition of the Mississippi Supreme Court since 2000 have resulted in a more-restrained court that is open-minded to the need for reform.

According to the American Judicature Society, in 2000 nine candidates for four seats on the Mississippi Supreme Court raised nearly \$3.4 million, [\[FN206\]](#) shattering previous judicial fundraising in the state. [\[FN207\]](#) In that year, the topic of tort reform dominated Mississippi's elections. [\[FN208\]](#) The U.S. Chamber of Commerce reportedly spent nearly \$1 million on television advertising favoring four Mississippi Supreme Court candidates. [\[FN209\]](#) According to an organization that tracked plaintiffs' lawyers' contributions to judicial campaigns, the trial bar collectively contributed \$2 million to Mississippi judicial candidates in 2000. [\[FN210\]](#) Donations from lawyers or their immediate families accounted for almost one-half of campaign contributions to incumbent Justice Oliver Diaz Jr. and sixty percent of contributions to Jones County Circuit Judge Billy Joe Landrum. [\[FN211\]](#) Overall, neither business-favored nor trial-lawyer-supported candidates swept the election, with two candidates reportedly viewed unfavorably by business, Chuck Easley and Oliver Diaz Jr., retaining their seats, and two incumbent candidates reportedly viewed favorably by business, Kay Cobb and James Smith Jr., being re-elected to the court. [\[FN212\]](#) Incumbent Chief Justice Lenore Prather, who was favored by business groups, lost her seat to Justice Easley. [\[FN213\]](#)

In 2002, three candidates for a single seat on the Mississippi Supreme Court raised nearly \$1.7 million--the most expensive campaign in the state's history. [\[FN214\]](#) Justice Charles McRae, a former president of the Mississippi Trial Lawyers Association who received nearly all of his financial support from plaintiffs' attorneys, was

defeated. [\[FN215\]](#) He was beaten by Jess \*421 Dickinson, an attorney who campaigned against out-of-control litigation. Justice Dickinson was supported by a variety of constituencies, including doctors, small business owners, and local business groups, among others. [\[FN216\]](#) Two intermediate appellate court incumbents also lost their seats to candidates supported by the business community, leading to more balance in Mississippi's appellate courts. [\[FN217\]](#)

The results of the November 2004 election indicate that Mississippi is likely to continue to progress in developing a fair litigation environment and not slide back to pre-2000 days. Incumbent Justices Michael Randolph (recently appointed by Governor Barbour to replace retired Chief Justice Edwin Lloyd Pittman), William Waller Jr., and George Carlson Jr. all retained their seats by wide margins in the general election. [\[FN218\]](#) BIPEC listed all three justices as "best for business." [\[FN219\]](#) Incumbent Justice James Graves Jr., who was not endorsed by BIPEC, was also returned to the bench, leaving the current court in place. [\[FN220\]](#) The 2004 judicial elections again involved well over \$1 million in candidate spending and campaign advertising funded by political action committees. [\[FN221\]](#)

Critics may condemn the increasing money and partisanship in judicial races, [\[FN222\]](#) but as long as judges are elected, those who support candidates \*422 with particular points of view must play an active role in judicial races. Court reform must stand on an equal footing with tort reform.

#### D. Change Happens Incrementally

Finally, the Mississippi experience teaches the sometimes-forgotten principle that change happens incrementally. Some may view Mississippi's passage of tort reform and significant judicial rulings in 2004 as a sudden sea change in the state's litigation climate, but the foundation for those changes really began several years ago. Before the tort reform enactments of 2002, and even before the judicial campaigns of 2000, businesses and trade groups had begun public education efforts to highlight the adverse impact Mississippi's unbalanced legal system was having on ordinary citizens.

It also must be remembered that gains made can become ground lost if these efforts stop. The battle to achieve balance and predictability in liability law is ever ongoing. That may be a tiresome challenge to both sides of the tort reform debate, but it is unlikely to change.

#### IV. Evidence of a Changing Legal Environment

Steve Browning, executive director of Mississippians for Economic Progress, said on the day the 2004 legislation took effect: "It's going to be the beginning day for courtroom fairness. . . . You will see more balance for businesses and industry in the courtroom." [\[FN223\]](#) Already, Mississippi has begun to reap some of the benefits of the improving legal climate in the state. For instance, on the day Governor Barbour signed the 2004 reform law, Massachusetts Mutual Life Insurance Company announced that it would re-enter the market for Mississippi municipal bonds. [\[FN224\]](#) The company indicated that by adopting tort reform legislation, "Mississippi has signaled that it is once again open for business." [\[FN225\]](#)

More recently, Mississippi Insurance Commissioner George Dale announced that St. Paul Travelers, the nation's second largest commercial insurance company, will begin writing homeowners' and auto insurance policies again in the state, joining two other insurers (World Insurance Co. and Equitable Life Insurance Co.) that returned because of the recent tort \*423 reform laws. [\[FN226\]](#) There are indications that several other insurance companies may begin writing new policies in the state. [\[FN227\]](#) Commission Dale has explained, "Those who said tort reform would do no good were wrong." [\[FN228\]](#) He added that insurers are acting "in response to the positive steps the state of Mississippi has taken towards creating a balanced legal climate that makes the state a more attractive place in which to do business." [\[FN229\]](#) The American Tort Reform Association removed all Mississippi counties from its 2004 list of judicial hellholes, citing the changes that have occurred in the state. [\[FN230\]](#)

In 2004, Mississippi had more net new jobs created than in any year since 1999. [\[FN231\]](#) The state experienced a net increase of 10,000 jobs after losing 39,000 jobs between January 2000 and January 2004, and the manufacturing sector saw its first increase in jobs since 1998. Governor Barbour credits the new legal environment



with Mississippi's successful recruitment of new businesses, "like Textron, a \$35 million investment in Greenville; Winchester Ammunition, located in Lafayette with a \$3.5 million payroll; and Kingsford Charcoal in Glen." [FN232] Viking Range, Northrop Grumman, and others have expanded their businesses in Mississippi. [FN233] Can manufacturer Crown Cork & Seal (Crown)--the inventor of the bottle cap--decided to show its appreciation for improvements in Mississippi's legal climate by locating its national eight-ounce can manufacturing center in its Batesville plant. Crown manufactures all of its eight-ounce cans in Batesville and ships them from Mississippi to customer locations across the United States and Canada.

The full effect on Mississippi's economy and other benefits flowing from the recent changes in the state's legal climate will take some time. [FN234] Many of the reforms have just recently gone into effect. In addition, investor and insurer confidence does not change overnight. [FN235] Businesses need \*424 to gain assurance that the changes that have taken place will be long lasting. One businessperson predicted that "as the new legislative changes come on-line and the jackpot justice we have seen come more under control that should greatly reduce loss costs and create a much more healthy insurance environment." [FN236]

A look at Texas's experience after tort reform demonstrates the types of benefits that Mississippi may expect as a result of tort reform. A Perryman Group study commissioned by Citizens for a Sound Economy examined the effect of Texas's 1995 tort reform legislation, which included limits on punitive-damages awards; increased sanctions against lawyers who file frivolous lawsuits; more equitable standards for joint liability; limits on "venue shopping" and out-of-state lawsuit filings; and other modifications with respect to deceptive trade practices and medical malpractice cases. [FN237] The study found that over the five years after the tort reform legislation took effect, Texas saw a substantial reduction in legal costs. [FN238] The report concluded that tort reform led to \$10.4 billion in total direct savings, including \$7.6 billion directly attributable to the 1995 legislation. [FN239]

In November 2003, Texans took another step by passing Proposition 12, a constitutional amendment limiting noneconomic damages to no more than \$250,000 against any one physician and no more than \$750,000 if one medical professional and two or more hospitals or nursing homes are found liable. [FN240] Approximately one year after this law went into effect, there were indications that Texas doctors had lower premiums and more insurance choices. [FN241] In the year following reform, there was a seventy percent reduction in lawsuits against hospitals resulting in seventeen percent lower \*425 medical malpractice premiums in the state. [FN242] Sixteen new obstetricians opened practices in Austin, reversing the loss of sixteen obstetricians in the thirty-six months prior to reform. [FN243] Mississippi can expect similar improvements if the state continues to move toward a fairer civil justice system.

## V. Conclusion

The litigation environment has changed dramatically in Mississippi over the past three years with each branch of the state government taking an active role in transforming the state's image. We hope that Mississippi will continue to serve as a shining example of how a legal system can be reformed, made fair, and serve as a springboard for economic growth and job creation.

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[FN1]. See Jerry Mitchell, Hitting the Jackpot in Mississippi Courtrooms: Out-of-State Cases, In-State Headaches, Clarion-Ledger (Jackson, Miss.), June 17, 2001, at A1.

[FN2]. Tim Lemke, Lawyers in Paradise: Mississippi Has a Reputation as a Haven For Trial Lawyers Pursuing Mega-Lawsuits, Insight on the News, Aug. 12, 2002, available at [http://www.findarticles.com/p/articles/mi\\_m1571/is\\_29\\_18/ai\\_90439295](http://www.findarticles.com/p/articles/mi_m1571/is_29_18/ai_90439295).

[FN3]. Harris Interactive, Inc., U.S. Chamber of Commerce State Liability Systems Ranking Study, Jan. 11, 2002, available at <http://www.instituteforlegalreform.com/resources/012202.pdf>; Harris Interactive, Inc., Case File: State Liability Systems Ranking Study, Apr. 9, 2003, available at <http://www.instituteforlegalreform.com/resources/IRLLiabilityStudy.pdf>; Harris Interactive, Inc., State Liability Systems Ranking Study, Mar. 8, 2004, available at <http://www.instituteforlegalreform.com/pdfs/ILR%20Harris%20Poll.pdf>.

[FN4]. See Am. Tort Reform Ass'n, Judicial Hellholes 2004, available at <http://www.atra.org/reports/hellholes/report.pdf> (last visited May 16, 2005) [hereinafter ATRA Report].

[FN5]. *Id.* at 10. ATRA named Mississippi's 22d Judicial Circuit, which includes Copiah, Claiborne and Jefferson Counties, as a Hellhole in both 2002 and 2003. ATRA added Holmes and Hinds Counties to its list in 2003. Significantly, ATRA removed all Mississippi counties from its 2004 Judicial Hellholes report, noting that "Mississippi has transformed its litigation environment for the better over the past three years, making it th[e] report's brightest 'point of light.'" *Id.*

[FN6]. The Prudential Ins. Co. of Am., Asbestos for Lunch 5, (June 11, 2002) (emphasis added) (on file with authors); see also Commentary: [Tobacco Lawyers' Roundtable: A Report from the Front Lines](#), 51 DePaul L. Rev. 543, 545 (2001).

[FN7]. See Robert Pear, Mississippi Gaining as Lawsuit Mecca, N.Y. Times, Aug. 20, 2001, at A1.

[FN8]. See Ken Ellingwood, Mississippi Curbs Big Jury Awards, L.A. Times, Dec. 4, 2002, at A1.

[FN9]. See Tim Lemke, Best Place to Sue?, Wash. Times, June 30, 2002, at A1.

[FN10]. 60 Minutes, Jackpot Justice, (CBS television broadcast, Nov. 24, 2002). Ironically, after airing the program, 60 Minutes found itself named as a defendant in a \$6.4 billion defamation lawsuit in Jefferson County. See Judge Dismisses Two from Defamation Lawsuit, Winston-Salem Journal (N.C.), July 7, 2003, at B5. The lawsuit was filed by former jurors who were offended by the program. *Id.* Soon after, six other jurors filed a similar lawsuit. Theresa Kiely, '60 Minutes' Remarks Spark 2nd Lawsuit, Clarion-Ledger (Jackson, Miss.), Dec. 28, 2002, at B1. This second lawsuit, after being removed to federal court, was dismissed in July 2004 on a motion for summary judgment after the court found that the statements in the broadcast referred to no specific jury or juror, and that the broadcast's broad reference to jurors in Jefferson County did not provide the necessary nexus to the plaintiffs to give rise to an action for defamation or any other alleged claim. *Gales v. CBS Broadcasting, Inc.*, 2004 U.S. Dist. LEXIS 22937 (S.D. Miss., July 9, 2004) (memorandum opinion and order), *aff'd*, 2005 U.S. App. LEXIS 3581 (5th Cir. Mar. 3, 2005).

[FN11]. See, e.g., Jerry Mitchell, Hitting the Jackpot in Mississippi Courtrooms: Out-of-State Cases, In-State Headaches, Clarion-Ledger (Jackson, Miss.), June 17, 2001, at A1; Jerry Mitchell, Jefferson County Ground Zero for Cases, Clarion-Ledger (Jackson, Miss.), June 17, 2001, at A1.

[FN12]. [Arnold v. State Farm Fire & Cas. Co.](#), 277 F.3d 772, 774 (5th Cir. 2001).

[FN13]. David W. Clark, [Life in Lawsuit Central: An Overview of the Unique Aspects of Mississippi's Civil Justice System](#), 71 Miss. L.J. 359, 361-62 (2001).

[FN14]. See, e.g., [Litigation in Mississippi Today: A Symposium](#), 71 Miss. L.J. 343, 439 (2001) [hereinafter

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Symposium] (statement of W. Scott Welch III, partner, Butler, Snow, O'Mara, Stevens and Cannada, PLLC: "The system in Mississippi has got some problems right now."); Editorial, *Mississippi Tort Triumph*, Wall St. J., June 16, 2004, at A14 (quoting Toyota Motor North America's Senior Vice President Dennis Cuneo stating that "Reform of Mississippi's tort system would, in my opinion, substantially improve your business climate and improve the State's prospects for attracting new economic development.").

[FN15]. Reuben V. Anderson, [Why Mississippi Needs to Pay Attention to National Trends on Punitive Damages](#), 71 *Miss. L.J.* 579, 584 (2001).

[FN16]. See Press Release, Gov. Haley Barbour, Governor Barbour Signs Landmark Legislation: Tort Reform Act of 2004 (June 16, 2004), available at <http://www.governorbarbour.com/Tort2004.htm>.

[FN17]. Steven B. Hantler, Editorial, *States Compete to Clear the Tort Bar*, Wall St. J., July 19, 2005, at B2 (Mr. Hantler is Assistant General Counsel at DaimlerChrysler Corporation and Chairman of the American Justice Partnership, a coalition of state and national organizations working for legal reform at the state level.).

[FN18]. Robert Pear, *Mississippi Gaining as Lawsuit Mecca*, N.Y. Times, Aug. 20, 2001, at A1 ("Jefferson County, with 9,740 residents, is a small county, but litigation there is a big business. An affidavit ... said that more than 21,000 people were plaintiffs in Jefferson County from 1995 to 2000.").

[FN19]. See *infra* § I(C).

[FN20]. See *infra* § I(D). Mississippi also gained national attention when Mississippi Attorney General Michael Moore and private lawyers sued the tobacco industry for the cost of treating alleged tobacco-related illnesses. The tobacco lawsuit began a legal trend that former Clinton Administration Labor Secretary Robert Reich has called "regulation through litigation." Robert B. Reich, *Regulation is Out, Litigation In*, USA Today, Feb. 11, 1999, at A15 (stating that the "era of big government may be over, but the era of regulation through litigation has just begun.") Other commentary on the subject: Sherman Joyce & Michael Hotra, [Mississippi's Civil Justice System: Problems, Opportunities and Some Suggested Repairs](#), 71 *Miss. L.J.* 395, 404-17 (2001) (discussing regulation through litigation and suggesting reform approaches); Michael Krauss, [Regulation Masquerading as Judgment: Chaos Masquerading as Tort Law](#), 71 *Miss. L.J.* 631 (2001) (criticizing use of courts by state executives to regulate entire industries).

[FN21]. *More Than Half of February Bar Exam Takers Out-of-Staters*, Miss. Bus. J., June 7, 2004, at 10 (reporting that a statistical analysis of bar exam applications showed that 101 out-of-state attorneys were among the 182 people who took the one-day or three-day bar exam, and that 95 of the 176 applicants who took the three-day bar exam were already licensed in another state). According to a review of Mississippi Board of Bar Admissions records conducted by Mississippians for Economic Progress, the number of Alabama lawyers who became licensed to practice in Mississippi increased steadily from 6 in 1999 to 49 in 2002. *Out of State Lawyers Hijacking Mississippi's Justice System, Our Progress* (Mississippians for Econ. Progress, Ridgeland, Miss.), Aug. 2003, at 4, available at <http://www.mfep.org/MFEP%20Newsletter-August%202003.PDF>. Forty-three percent of those passing the February 2003 Mississippi bar exam were attorneys from out-of state, a percentage that rose to fifty-five percent in February 2004. *Id.*

[FN22]. The Perryman Group, *The Potential Impact of Proposed Judicial Reforms on Economic Activity in Mississippi 2* (2002), available at <http://www.instituteforlegalreform.com/resources/050802jud.pdf> [hereinafter *Perryman Report*].

[FN23]. Clark, *supra* note 13, at 367.

[FN24]. *Perryman Report*, *supra* note 22, at 4, 7.

[FN25]. *Id.*

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[FN26]. Scott Shepard, Malpractice Costs Driving Doctors Away, *Memphis Bus. J.*, June 14, 2002, available at <http://memphis.bizjournals.com/memphis/stories/2002/06/17/story4.html>.

[FN27]. Bruce Japsen, AMA Says Illinois, 5 Other States Join Malpractice Crisis, *Chi. Trib.*, Mar. 4, 2003, at 2.

[FN28]. Lawsuit Climate Blamed in Exodus of 71 Insurance Firms From State, *Commercial Appeal* (Memphis, Tenn.), May 2, 2002, at DS4; see also George Will, Tort Law Resembles Extortion, *Albany Times Union* (N.Y.) Sept. 29, 2002, at B5, available at 2002 WLNR 361652; Jimmie E. Gates, Living in Fear of Lawsuits, *Clarion-Ledger* (Jackson, Miss.), Nov. 19, 2001, at A1.

[FN29]. Emily Wagster Pettus, Fear of Lawsuits Scaring Off Business, *Barbour Says*, *Memphis Com. Appeal*, Apr. 27, 2004, at 3 available at 2004 WLNR 9659873. Instead, Toyota decided to build its plant in Texas, a state that had passed substantial tort reform legislation. *Id.*

[FN30]. *Am. Bankers Ins. Co. of Fla. v. Booth*, 830 So. 2d 1205, 1212 (Miss. 2002) (observing that a companion to Federal Rule 23 was "intentionally omitted" from the rules adopted in Mississippi and citing comments to *Miss. R. Civ. P. 23* stating that "Few procedural devices have been the subject of more widespread criticism and more sustained attack--and equally spirited defense--than practice under Federal Rule 23 and its state counterparts.... [N]o meaningful reforms have as yet been developed to render class action practice a more manageable tool."). In June 2004, the Mississippi Supreme Court said that "as we have not made a rule which provides for class actions, they are not a part of Mississippi practice ...." *USF&G Ins. Co. v. Walls*, No. 2002-IA-00185-SCT, 2005 WL 1384678, at \*5 (Miss. June 9, 2005) (en banc). In July 2004, the Mississippi Supreme Court held a symposium to discuss the possibility of reforming the Mississippi Rules of Civil Procedure to allow for class actions. Such a move could raise new problems. See generally Victor E. Schwartz et al., *Federal Courts Should Decide Interstate Class Actions: A Call For Federal Class Action Diversity Jurisdiction Reform*, 37 *Harv. J. on Legis.* 483 (2000).

[FN31]. Richard T. Phillips, *Class Actions & Joinder in Mississippi*, 71 *Miss. L.J.* 447, 456 (2001) (quoting *Am. Bankers Ins. Co. v. Alexander*, 818 So. 2d 1073, 1078 (Miss. 2001)).

[FN32]. See Clark, *supra* note 13, at 368-71 (distinguishing the purposes of the joinder and class-action devices).

[FN33]. Victor E. Schwartz et al., *Addressing the "Elephantine Mass" of Asbestos Cases: Consolidation Versus Inactive Dockets (Pleural Registries) and Case Management Plans that Defer Claims Filed By the Non-Sick*, 31 *Pepp. L. Rev.* 271, 285 (2004); see also John H. Beisner et al., One Small Step for a County Court ... One Giant Calamity for the National Legal System, *Civil Justice Report* (Apr. 2003), available at [http://www.manhattan-institute.org/html/cjr\\_7.htm](http://www.manhattan-institute.org/html/cjr_7.htm).

[FN34]. *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1298 (7th Cir. 1995) (quoting Henry J. Friendly, *Federal Jurisdiction: a General View* 120 (1973)); see also *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 746 (5th Cir. 1996) (recognizing that class-action settlements have been referred to as "judicial blackmail"); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784-85 (3d Cir. 1995) (recognizing "that class actions create the opportunity for a kind of legalized blackmail").

[FN35]. See The Fairness in Asbestos Compensation Act of 1999: Legislative Hearing on H.R. 1283 Before the House Comm. on the Judiciary, 106th Cong. 13 (1999) (statement of Prof. William N. Eskridge, Yale Law Sch.) [hereinafter Eskridge Testimony]; see also Paul F. Rothstein, *What Courts Can Do in the Face of the Never-Ending Asbestos Crisis*, 71 *Miss. L.J.* 1, 15-16 (2001) (citing *Cosey v. E.D. Bullard Co.*, No. 95-0069 (Miss. Cir. Ct. Jefferson County 1995)).

[FN36]. Roger Parloff, The \$200 Billion Miscarriage of Justice, *Fortune*, Mar. 4, 2002, at 154, available at 2002 WLNR 11958234.

[FN37]. *Id.*; Symposium, *supra* note 14, at 528 (statement of Thomas W. Tardy, III, partner, Forman, Perry, Watkins, Krutz & Tardy LLP, Jackson, Mississippi) ("Rather than take a risk to see just how great a verdict for punitives the jury would assess, we settled [the Cosey] case.").

[FN38]. Eskridge Testimony, supra note 35, at 13.

[FN39]. Id. at 13-14. Although the defendants did settle the twelve individual claims that afternoon, they resisted settling the remaining 1700 coplaintiff claims. They were eventually forced to settle those claims as well after the judge scheduled a group trial for sixty more claims and the Mississippi Supreme Court denied the defendants' emergency petition seeking to disqualify the judge for bias. See Parloff, supra note 36.

[FN40]. Beisner, supra note 33.

[FN41]. Id. (finding an increase in the number of mass actions filed against out-of-state defendants from seventeen in 1999 to seventy-three in 2000, with the number of mass action filings at thirty-nine in 2001).

[FN42]. Id. (finding that mass actions accounted for 10%, 11% and 18% of civil lawsuits in 1999, 2000 and 2001, respectively).

[FN43]. Id. at 19-20.

[FN44]. By contrast, the venue rules in states such as Alabama and Texas require that when several plaintiffs are joined, venue must be proper as to each plaintiff. E.g., [Ala. Code § 6-3-7\(c\) \(2005\)](#) (providing that "in any action against a corporation, venue must be proper as to each and every named plaintiff joined in the action," except in certain circumstances); [Tex. Civ. Prac. & Rem. Code Ann. § 15.003](#) (Vernon 2005) (providing that "In a suit in which there is more than one plaintiff, whether the plaintiffs are included by joinder, by intervention, because the lawsuit was begun by more than one plaintiff, or otherwise, each plaintiff must, independently of every other plaintiff, establish proper venue," with certain exceptions).

[FN45]. Jerry Mitchell, Jefferson County Ground Zero for Cases, Clarion-Ledger (Jackson, Miss.), June 17, 2001, at A1.

[FN46]. Id.

[FN47]. Mark Ballard, Mississippi Becomes a Mecca for Tort Suits, Nat'l L.J., Apr. 30, 2001, at A1. The former owner of the store, Hilda Bankston, explained the adverse impact the litigation had on her business: "I've searched record after record and made copy after copy for use against me.... I've had to hire personnel to watch the store while I was dragged into court on numerous occasions to testify. I have endured the whispers and questions of my customers and neighbors wondering what we did to end up in court so often. And I have spent many sleepless nights wondering if my business would survive the tidal wave of lawsuits cresting over it." Tom Wilemon, Judicial Probe Looking at Big Jury Awards, Sun Herald (Gulfport, Miss.), July 12, 2003; Class Action Litigation: Hearing Before the Sen. Comm. on the Judiciary, 107th Cong. (2002) (statement of Hilda Bankston).

[FN48]. Jerry Mitchell, Doctors Taking Fight Over Suits to Capitol, Clarion-Ledger (Jackson, Miss.), Jan. 16, 2002, at 1A.

[FN49]. Id.; Wilemon, supra note 47 (listing eight awards over \$100 million and noting that most of these extraordinary awards were eventually settled for much lower, undisclosed amounts, or later reduced by the trial court judge or on appeal); Betty Liu, The Poor Southern County That's Big on Lawsuits, Fin. Times (London), Aug. 20, 2001, available at 2001 WLNR 9006504; Melody Petersen, Jury Levies \$100 Million Award Against Heartburn Drug Maker, N.Y. Times, Sept. 30, 2001, at A1.

[FN50]. Clark, supra note 13, at 363-64 (citing Current Award Trends in Personal Injury, 2001 Edition, Jury Verdict Research Series (LRP Publications, 2002), at 35-36; Andrew Harris, Report Maps Million Dollar Verdict States but Trial Lawyers are Skeptical of the New Study's Award Data, Nat'l L.J., Feb. 12, 2001, at A4. Alabama's 1999 tort reform legislation limited punitive damages in non-physical injury cases to the greater of three times compensatory damages or \$500,000. For businesses with a net worth of less than \$2 million, Alabama limits punitive damages to \$50,000 or ten percent of the business's net worth up to \$200,000, whichever is greater. In physical injury cases,



Alabama limits punitive damages to the greater of three times compensatory damages or \$1.5 million. These limits are adjusted by the Consumer Price Index in three-year intervals. See [Ala. Code § 6-11-21 \(2005\)](#).

[FN51]. Wilemon, *supra* note 47; 'Jackpot Justice' Awards Spur Mississippi Investigation, Wash. Times, Oct. 4, 2003, available at <http://www.washtimes.com/national/20031004-123030-2013r.htm>; see also Tom Wilemon & Beth Musgrave, Indictments Cast Doubt on Trial Lawyers, Mississippi Justice System, Sun Herald (Gulfport, Miss.), July 26, 2003.

[FN52]. Jerry Mitchell, Probe Nets 11 Arrests in Diet Drug Fraud Case, Clarion-Ledger (Jackson, Miss.), Sept. 1, 2004.

[FN53]. *Id.* One plaintiff is charged with fraudulently receiving \$2.75 million in settlement funds through forging prescriptions for family members, which went to the purchase of personal items such as a new Jaguar automobile. *Id.*

[FN54]. Jimmie E. Gates, 2 More Defendants Get Prison Terms in Fen-Phen Scam, Clarion-Ledger (Jackson, Miss.), May 10, 2005, at 1. A thirteenth person was also indicted and expected to plead guilty. *Id.*

[FN55]. *Id.* A Mississippi law firm that allegedly recruited plaintiffs regardless of whether they had ever taken Fen-Phen reportedly could face disciplinary action by the state bar association. Jimmie E. Gates, Miss. Bar Might Probe Jackson Law Firm, Clarion-Ledger (Jackson, Miss.), May 10, 2005, at 1.

[FN56]. [Miss. R. App. P. 8\(b\)\(2\)\(c\) \(2001\)](#) (stating that "[t]he appellant shall be entitled to a stay of execution pending appeal if the appellant gives a supersedeas bond ... of 125 percent of the amount of the judgment appealed.").

[FN57]. *O'Keefe v. Loewen Group, Inc.*, No. 91-67-423 (Miss. Cir. Ct. Hinds County 1995).

[FN58]. Michael Krauss, [NAFTA Meets the American Torts Process: O'Keefe v. Loewen](#), 9 *Geo. Mason L. Rev.* 69 (2000). Plaintiff's counsel Willie Gary took the unique step during the Loewen trial of taking out full-page color advertisements in local newspapers with the American and Mississippi Flags on one side--and the word "yes" next to his client's name--with the Canadian and Japanese flags and the word "no" next to Loewen's name. [Id. at 77](#).

[FN59]. Ctr. for Legal Policy at the Manhattan Inst., Regulation By Litigation: The New Wave of Government Sponsored Litigation Conference Proceedings 9 (1999) (remarks of Michael Wallace).

[FN60]. [Miss. R. App. P. 8\(b\)\(2\)\(c\) \(2001\)](#).

[FN61]. *Id.*

[FN62]. Nat'l Ass'n of Mut. Ins. Cos., Appeal Bond Reform, available at <http://www.namic.org/reports/tortReform/AppealBond.asp> (last visited May 16, 2005) (providing a chart of state appeal bond reforms). See generally Mark A. Behrens & Donald Kochan, Protecting the Right to Appellate Review in the New Era of Civil Actions: A Call for Bonding Fairness, 2:17 *Class Action Litig. Rep.* (BNA) 644, Sept. 14, 2001, also printed in 29:21 *Prod. Safety & Liab. Rep.* (BNA) 515, May 21, 2001.

[FN63]. See Anderson, *supra* note 15, at 580 (noting that the Mississippi Supreme Court's amendment of [Rule 8](#) was a "good step for the court to take, but the court's very choice of the figure \$100 million is cause for concern because it suggests that the court contemplates punitive damage awards that are vastly greater than the amounts typically awarded around the country."); Clark, *supra* note 13, at 381 (calling for clarification of appeal bond rule and lower bonding requirement); Joyce & Hotra, *supra* note 20, at 404 (welcoming further guidance from Mississippi Supreme Court to add clarity to the rule).

[FN64]. John H. Beisner et al., One Small Step for a County Court ... One Giant Calamity for the National Legal System, Civil Justice Report, part 2 (Apr. 2003), available at [http://www.manhattan-institute.org/html/cjr\\_7\\_contd.htm](http://www.manhattan-institute.org/html/cjr_7_contd.htm).

[FN65]. Id.

[FN66]. [Janssen Pharmaceutica, Inc. v. Armond, 866 So. 2d 1092 \(Miss. 2004\)](#) (en banc).

[FN67]. [Id. at 1095.](#)

[FN68]. [Id. at 1098.](#)

[FN69]. [Id. at 1102.](#)

[FN70]. Id.

[FN71]. In re The Miss. R. Civ. P., No. 89-R-99001-SCT (Miss. 2004), available at <http://www.msllawyer.com/mssc/cases/20040226/89r99001.html> (last visited May 3, 2006).

[FN72]. Id., Exh. A, [Rule 20](#) cmt.

[FN73]. Id., Exh. B, [Rule 42](#) cmt.

[FN74]. Id., Exh. A, [Rule 20](#) cmt.

[FN75]. Id., Exh. C, [Rule 82\(e\)](#).

[FN76]. Id. ("With respect to actions filed in an appropriate venue where venue is not otherwise designated or limited by statute, the court may, for the convenience of the parties and witnesses or in the interest of justice, transfer any action or any claim in any civil action to any court in which the action might have been properly filed and the case shall proceed as though originally filed therein.")

[FN77]. [Janssen Pharmaceutica, Inc. v. Bailey, 878 So. 2d 31 \(Miss. 2004\)](#).

[FN78]. [Id. at 36.](#) The trial court reduced the \$100 million award to \$48 million. Id.

[FN79]. Id. at 48.

[FN80]. Id. at 53.

[FN81]. Id. at 63. See also Lynne Jeter, Reversal of Fortune? Court Overturns \$48-Million Judgment, Miss. Bus. J., June 14, 2004, at 17, available at 2004 WLNR 11513397.

[FN82]. [Janssen Pharmaceutica, Inc. v. Scott, 876 So. 2d 306 \(Miss. 2004\)](#).

[FN83]. [Id. at 307.](#)

[FN84]. [Id. at 308](#) (internal citations omitted).

[FN85]. [Id. at 307-08.](#)

[FN86]. Id.

[FN87]. [Harold's Auto Parts, Inc. v. Mangialardi, 889 So. 2d 493 \(Miss. 2004\)](#).

[\[FN88\]. Id. at 495.](#)

[\[FN89\]. Id. at 493.](#)

[\[FN90\]. Id. at 494.](#)

[\[FN91\]. Id.](#)

[\[FN92\]. Id. \(emphasis in original\).](#)

[\[FN93\]. Mangialardi, 889 So. 2d at 495.](#)

[\[FN94\]. Id.](#)

[\[FN95\]. Id.](#) Mangialardi is already rippling through Mississippi courts. As of the time of this writing, Judge Lamar Pickard was considering dismissing thousands of asbestos claims pending in Jefferson, Copiah and Claiborne counties or ordering the plaintiffs to provide more information on their claims. See Judge Delays Hearing on Asbestos Lawsuits in Mississippi, Clarion-Ledger (Jackson, Miss.), Oct. 4, 2004 (reporting that Judge Pickard rescheduled a hearing on the motion to dismiss for Oct. 15, 2004).

[\[FN96\]. Culbert v. Johnson & Johnson, 883 So. 2d 550 \(Miss. 2004\).](#)

[\[FN97\]. Janssen Pharmaceutica, Inc. v. Jackson, 883 So. 2d 91 \(Miss. 2004\).](#)

[\[FN98\]. Culbert, 883 So. 2d at 553.](#)

[\[FN99\]. Id.](#)

[\[FN100\]. Id.](#)

[\[FN101\]. Id.](#)

[\[FN102\]. Jackson, 883 So. 2d at 91-92.](#)

[\[FN103\]. Id. at 92.](#)

[\[FN104\]. 3M Co. v. Johnson, 895 So. 2d 151 \(Miss. 2005\).](#)

[\[FN105\]. Id. at 157.](#)

[\[FN106\]. Id.](#)

[\[FN107\]. Id. at 158.](#)

[\[FN108\]. Id.](#)

[\[FN109\]. Id. at 159.](#)

[\[FN110\]. Johnson, 895 So. 2d at 157.](#)

[\[FN111\]. Id. at 160.](#) As this article went to print, the Mississippi Supreme Court heard a subsequent appeal in this case and found that the trial court abused its discretion in denying 3M's motion to dismiss the claims of eighteen wholly out-of-state plaintiffs, none of whom "worked, resided or had any connection with Holmes County," under the doctrine of forum non conveniens. See 3M v. Johnson, Slip Op., No. 2004-IA-00289-SCT, at 3 (Miss. Apr. 13, 2006) (en banc).

[FN112]. [3M Co. v. Hinton](#), 910 So.2d 526 (Miss. 2005).

[FN113]. [Id.](#) at 527-28.

[FN114]. [Id.](#) at 528.

[FN115]. [Amchem Prod., Inc. v. Rogers](#), 912 So.2d 853, 855 (Miss. 2005).

[FN116]. [Id.](#) at 858.

[FN117]. [Id.](#)

[FN118]. [Id.](#) at 859.

[FN119]. [Ill. Cent. R.R. Co. v. Gregory](#), 912 So.2d 829 (Miss. 2005).

[FN120]. [Id.](#) at 835.

[FN121]. [Miss. R. Civ. P. 35](#) (adopted effective Jan. 16, 2003).

[FN122]. David W. Clark, Commentary, Mississippi Joins the Ranks for Tort Reform Success Stories, 26:23 *Andrews Asbestos Litig. Rep.* 10 n.1 (Sept. 9, 2004).

[FN123]. [Swan v. I.P., Inc.](#), 613 So. 2d 846, 859 (Miss. 1993) (holding that trial court did not commit error when it refused to order the plaintiff in a chemical exposure case to submit to an independent medical examination).

[FN124]. See [Mattox v. State](#), 128 So. 2d 368, 372-73 (Miss. 1961); [Frye v. United States](#), 293 F. 1013 (D.C. Cir. 1923).

[FN125]. [Daubert v. Merrell Dow Pharmaceuticals](#), 509 U.S. 579 (1993). In *Daubert*, the Court held that [Federal Rule of Evidence 702](#) requires scientific evidence to be subject to a reliability test. Later, in [General Electric Co. v. Joiner](#), 522 U.S. 136 (1997), the Court concluded that under *Daubert*, district courts should scrutinize the reliability of experts' reasoning processes as well as their general methodology.

[FN126]. [Kumho Tire Co. v. Carmichael](#), 26 U.S. 137 (1999). *Kumho Tire* extended *Daubert's* reliability test to nonscientific expert evidence.

[FN127]. [Miss. R. Evid. 702](#) (amended effective May 29, 2003).

[FN128]. [Miss. Transp. Comm'n v. McLemore](#), 863 So. 2d 31 (Miss. 2004).

[FN129]. [Id.](#) at 39.

[FN130]. [Id.](#) at 38.

[FN131]. [Id.](#) at 43.

[FN132]. [MIC Life Ins. Co. v. Hicks](#), 825 So. 2d 616 (Miss. 2002). The trial court reduced the punitive-damages awards against GMAC and MIC Life to \$5million and \$1million, respectively. [Id.](#) at 618-19. The Mississippi Supreme Court ordered a complete new trial for GMAC and a new trial on punitive damages with respect to MIC Life. [Id.](#) at 625.

[FN133]. [Id.](#) at 622 (noting that the ratio of punitive to compensatory damages with respect to MIC Life was 1567:1, that it is improper to measure harm based on "some 'potential' hypothetical aggregate of harm to persons not before

this Court and against whom no harm has been proven," and when the maximum civil or criminal penalty was \$5,000).

[FN134]. [Ill. Cent. R.R. Co. v. Hawkins](#), 830 So. 2d 1162, 1175 (Miss. 2002). The trial court had, in addition to the award for emotional distress, awarded the beneficiaries \$3.3 million in compensatory damages. [Id. at 1168.](#)

[FN135]. [Id. at 1175.](#)

[FN136]. [Id. at 1172-73.](#)

[FN137]. [AmSouth Bank v. Gupta](#), 838 So. 2d 205 (Miss. 2002).

[FN138]. [Id. at 222-24.](#)

[FN139]. [Id. at 224-25](#) (citing [Miss. Code Ann. § 11-1-65\(1\)\(1\)](#)).

[FN140]. [Miss. Power & Light Co. v. Cook](#), 832 So. 2d 474, 485-86 (Miss. 2002). The employer denied an employee's claim for total disability based on the reports of two doctors that found him only fifteen percent impaired in one shoulder. [Id. at 481.](#)

[FN141]. [Id. at 485-86.](#) The Mississippi Supreme Court also found that the trial court abused its discretion in awarding \$2 million in attorneys' fees to plaintiff's counsel. [Id. at 486-87.](#)

[FN142]. [Entergy Miss., Inc. v. Bolden](#), 854 So. 2d 1051, 1058 (Miss. 2003). The court found "scant testimony" to support the size of the pain-and-suffering award, which it found "shock[ed] the conscience" of the court. [Id.](#)

[FN143]. [Crane Co. v. Kitzinger](#), 860 So. 2d 1196, 1198 (Miss. 2003). The court ruled that the trial court improperly excluded evidence, such as the employer's safety training materials, that would have shown the employee's state of mind and the extent of his exercise of reasonable care at and prior to the accident. [Id. at 1200-01.](#)

[FN144]. [U.S. Fid. & Guar. v. Knight](#), 882 So. 2d 85, 90 (Miss. 2004) (en banc).

[FN145]. [Wilson v. Gen. Motors Acceptance Corp.](#), 883 So. 2d 56 (Miss. 2004). The trial court immediately reduced the award against the insurer because the plaintiff had represented that she sought no more than \$75,000 in order to avoid federal jurisdiction over the lawsuit. [Id. at 59.](#)

[FN146]. [Id. at 64, 69-72.](#)

[FN147]. [Cnty. Bank v. Courtney](#), 884 So. 2d 767 (Miss. 2004). The trial court had remitted the punitive damage award to \$1.5 million prior to appeal. [Id. at 771.](#)

[FN148]. [Id. at 775.](#)

[FN149]. [Id. at 776.](#)

[FN150]. See, e.g., Haley Barbour, Speech at the Mississippi College School of Law (Mar. 27, 2003), available at <http://www.haleybarbour.com/MCLaw.htm>; Geoff Pender, Tuck Vows End to 'Lawsuit Abuse,' Sun Herald (Gulfport, Miss.), Sept. 30, 2003; Lynne Jeter, Barbour Vows Comprehensive Tort Reform in 2004, Miss. Bus. J., May 3, 2004, at 18, available at 2004 WLNR 11438797.

[FN151]. Gov. Haley Barbour, State of the State Address (Jan. 26, 2004), available at <http://www.governorbarbour.com/StateoftheState04.htm>.

[FN152]. [Id.](#)



[\[FN153\]](#). Id.

[\[FN154\]](#). Id.

[\[FN155\]](#). H.B. 19, 2002 Leg., 3d Ex. Sess. (Miss. 2002).

[\[FN156\]](#). Id. § 1 (amending [Miss. Code Ann. § 11-11-3\(1\)](#)). The amendment provided that "[c]ivil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides or in the county where the alleged act or omission occurred or where the event that caused the injury occurred. Civil actions against a nonresident may also be commenced in the county where the plaintiff resides or is domiciled. Civil actions alleging a defective product may also be commenced in the county where the plaintiff obtained the product."

[\[FN157\]](#). Id. § 6 (amending [Miss. Code Ann. § 11-1-65\(3\)](#)). The bill limited punitive damages to no more than \$20 million for a defendant with a net worth of more than \$1 billion, \$15 million for a defendant with a net worth between \$1 billion and \$750 million, \$10 million for a defendant with a net worth between \$750 million and \$500 million, \$7.5 million for a defendant with a net worth between \$500 million and \$100 million, \$5.5 million for a defendant with a net worth between \$100 million and \$50 million, or four percent of the defendant's net worth if the defendant has a net worth of \$50 million or less. Id.; see also U.S. Magis. Judge Louis Guirola & Thomas L. Carpenter, Jr., [Punitive Damages in Mississippi: What Has Happened, What is Happening, and What is Coming Next?](#), 73 *Miss. L.J.* 135 (2003).

[\[FN158\]](#). H.B. 19, § 4 (codified at [Miss. Code Ann. § 11-1-64](#)). The new law provides for the dismissal of a defendant whose liability is based solely on participation as a seller in the stream of commerce. If no party comes forward with evidence supporting some basis for holding the seller liable other than the seller's participation in the chain of distribution, then the court is to dismiss without prejudice the claim against the seller.

[\[FN159\]](#). Id. § 3 (amending [Miss. Code Ann. § 85-5-7](#)). Joint liability continued to apply to any defendant found to be thirty percent or more at fault, but only to the extent necessary for the claimant to recover fifty percent of his or her recoverable damages. Any fault allocated to an immune tortfeasor or to one whose liability is limited by law is not to be reallocated to any other tortfeasor. Id.

[\[FN160\]](#). Id. § 10 (codified at [Miss. Code Ann. § 11-1-69](#)); see also Victor E. Schwartz & Cary Silverman, [Hedonic Damages: The Rapidly Bubbling Cauldron](#), 69 *Brooklyn L. Rev.* 1037 (2004) (analyzing the state of the law with respect to the recognition of hedonic damages, discussing problems with hedonic damages, and urging courts and legislatures not to permit recovery of hedonic damages as a separate element of recovery).

[\[FN161\]](#). H.B. 19, § 12 (codified at [Miss Code Ann. § 11-1-8](#)).

[\[FN162\]](#). Id. § 13 (codified at [Miss. Code Ann. § 11-1-54](#)).

[\[FN163\]](#). Id. § 7.

[\[FN164\]](#). Id. § 9.

[\[FN165\]](#). The cap increases to \$750,000 in 2011 and to \$1 million in 2017. H.B. 2, 2002 Leg., 3d Ex. Sess., § 7 (Miss. 2002) (codified at [Miss. Code Ann. § 11-1-60](#)).

[\[FN166\]](#). H.B. 2, § 4.

[\[FN167\]](#). Id. § 6.

[\[FN168\]](#). Id. § 3.

[\[FN169\]](#). Id. § 5 (codified at [Miss. Code Ann. § 15-1-36\(15\)](#)).

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[FN170]. *Id.* (amending [Miss. Code Ann. § 15-1-36\(1\)](#)). In 2003, the Mississippi legislature enacted the Medical Malpractice Insurance Availability Act, which created a Medical Malpractice Insurance Availability Plan, funded by participants, to provide medical malpractice insurance coverage to health care providers licensed in Mississippi in an amount not to exceed \$1 million per occurrence and \$3 million in the aggregate per year. Act of Apr. 24, 2003, ch. 560, 2003 Miss. Laws 961 (codified at [Miss. Code Ann. § 83-48-5](#)). The plan "provided temporary relief for physicians unable to obtain coverage," Lynne Jeter, Reform Remains Big Issue in Malpractice Insurance Market, *Miss. Bus. J.* Dec. 1, 2003, at 14, available at 2003 WLNR 10056899, but was never intended to be a permanent solution to Mississippi's health care liability insurance problem. Act of Apr. 24, 2003, ch. 560, 2003 Miss. Laws 961 (codified at [Miss. Code Ann. § 83-48-3](#)) (stating that "The purpose of this chapter is to provide a temporary market of last resort to make necessary medical malpractice insurance available .... It is not intended that the insurance plan authorized by this chapter shall become a permanent facility."). The legislation was enacted with a repeal date of July 1, 2007. Act of Apr. 24, 2003, ch. 560, 2003 Miss. Laws 961 (codified at [Miss. Code Ann. § 83-48-1](#)).

[FN171]. Jimmie E. Gates, Caps Prompt Lawsuit Blitz, *Clarion-Ledger* (Jackson, Miss.), Jan. 1, 2003, at 1A; Some Counties See Late Rush of Lawsuits, *Sun Herald* (Gulfport, Miss.), Dec. 31, 2002, at A3, available at 2002 WLNR 3564094.

[FN172]. Matt Volz, Fewer Lawsuits Filed in Jefferson, *Memphis Com. Appeal*, Oct. 5, 2003 at 6, available at 2003 WLNR 8918763.

[FN173]. H.B. 13, 2004 Leg., 2d Ex. Sess. (Miss. 2004).

[FN174]. *Id.* § 1 (amending [Miss. Code Ann. § 11-11-3\(1\)](#)).

[FN175]. *Id.*

[FN176]. *Id.* (providing that "[i]n any civil action where more than one (1) plaintiff is joined, each plaintiff shall independently establish venue; it is not sufficient that venue is proper for any other plaintiff joined in the civil action").

[FN177]. *Id.* § 2 (amending [Miss. Code Ann. § 11-1-60](#)).

[FN178]. *Id.* § 4 (amending [Miss. Code Ann. § 11-1-65](#)).

[FN179]. *Id.* § 6 (amending [Miss. Code Ann. § 85-5-7](#)).

[FN180]. *Id.* § 3 (amending [Miss. Code Ann. § 11-1-63\(h\)](#)). The 2004 law provides that a product seller is not liable for a defect in the product unless it exercised substantial control over some aspect of the product, had knowledge of the defective condition at the time the product was sold, or made an express warranty about the aspect of the product which caused the plaintiff's harm.

[FN181]. Denise Bedell, A Time for Change, *U.S. Insurer*, Fall 2004, at 39, 41.

[FN182]. H.B. 13, § 8-16 (effective Jan. 1, 2007).

[FN183]. H.B. 1517, Reg. Sess. (Miss. 2004).

[FN184]. See, e.g., Editorial, Mississippi Can Do It, Why Can't West Virginia?, *Herald-Dispatch* (Huntington, W. Va.), June 20, 2004, at A6 (stating that reforms like those adopted in Mississippi are needed in West Virginia if the state is "ever to erase [its] well-deserved image as 'tort hell.'").

[FN185]. Shelia Hardwell Byrd, Legislators, Candidates Sign Pledge to Enact More Tort Reform, *DeSoto Times* (Hernando, Miss.), Oct. 1, 2003, available at <http://www.godesoto.com/modules.php?op=modload&name=News&file=article&sid=2081>.

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[FN186]. For more information, see Mississippians for Economic Progress, <http://www.mfep.org> (last visited May 16, 2005).

[FN187]. See [http://www.mfep.org/MFEP\\_Members.htm](http://www.mfep.org/MFEP_Members.htm) (last visited Nov. 3, 2004). For example, MFEP's diverse membership includes Associated Builders & Contractors of Mississippi, the Mississippi Manufacturers Association, the Business and Industry Political Education Committee, the Mississippi Restaurant Association, the Mississippi State Medical Association, and the Mississippi Chapter of the National Federation of Independent Business. *Id.*

[FN188]. Andy Kanengiser, Groups' Ads Push for Tort Reform, *Clarion-Ledger* (Jackson, Miss.), May 23, 2004, at A1.

[FN189]. Byrd, *supra* note 185.

[FN190]. See, e.g., Press Release, Office of Gov. Haley Barbour, Public Opinion Poll Results: Mississippians Want Lawsuit Abuse Stopped (May 24, 2004), available at <http://www.governorbarbour.com/LawsuitStopped.htm> (announcing results of public opinion survey of more than 500 likely Mississippi voters on lawsuit abuse released at a press conference with MFEP).

[FN191]. Chip Reno, Public Looks to House for Real Tort Reform, *Meridian Star* (Meridian, Miss.), Apr. 12, 2004 (guest column by the executive director of SLAM); Kanengiser, *supra* note 188; Jack Weatherly, Does 'Lawsuit Lab' Climate Hurt Our Economic Efforts?, *Clarion-Ledger* (Jackson, Miss.), Mar. 5, 2000; Editorial, Group Urges Voters to Track Money, *Hattiesburg Am.* (Hattiesburg, Miss.), Oct. 19, 2002.

[FN192]. Richard Wilcox, Letter to the Editor, Miss. Businesses Not After One-Sided Courts, Just Fair Ones, *Clarion-Ledger* (Jackson, Miss.), Jan. 11, 2002, available at <http://orig.clarionledger.com/news/0201/11/107.html>. BIPEC also issued a report ranking legislators as "business champions," "moderate business supporters," "marginal business helpers," or "anti-business." Editorial, BIPEC Ratings Worth a Look, *Miss. Bus. J.*, Sept. 17-23, 2001.

[FN193]. Beth Musgrave, Trial Lawyers Gave \$2 Million to Candidates, *Sun Herald* (Gulfport, Miss.), Oct. 7, 2002, at 7.

[FN194]. Miss. Econ. Council, MEC Link (June 21, 2004), [http://www.harvesthost.com/accounts/mec/ecast/archives/web/2004.06.18\\_17.14.43/june2.htm](http://www.harvesthost.com/accounts/mec/ecast/archives/web/2004.06.18_17.14.43/june2.htm); Miss. Econ. Council, MEC Link (June 1, 2004), [http://www.harvesthost.com/accounts/mec/ecast/archives/web/2004.05.28\\_14.48.00/may4\\_m.htm](http://www.harvesthost.com/accounts/mec/ecast/archives/web/2004.05.28_14.48.00/may4_m.htm).

[FN195]. E.g., Joseph McCain, Mississippi Express Visits Winston County, *Winston County J.* (Louisville, Miss.), Aug. 21, 2003, available at <http://www.winstoncountyjournal.com/articles/2003/08/21/news/news05.txt>.

[FN196]. Miss. Econ. Council, Blueprint Mississippi (2004), <http://www.msmecc.com/mechw/hw.dll?page&file=bpms3legalenv>.

[FN197]. A frequently-cited example of such a situation in Mississippi was one national business group's backing of Chief Justice Lenore Prather in 2000 as "putting victims' rights ahead of criminals' and protecting our Supreme Court from the influence of special interests." See, e.g., Jimmie E. Gates, Chamber Ad Ruling Allowed to Stand, *Clarion-Ledger* (Jackson, Miss.), Nov. 13, 2002, at 1. Some have suggested that the advertisements may have hurt Justice Prather's chances for reelection and ultimately may have contributed to her defeat. E.g., Jonathan Groner, Mississippi: Battleground for Tort Reform, *Legal Times*, Jan. 26, 2004, at 1.

[FN198]. W. Page Keeton et al., *Prosser and Keeton on Torts* 19 (5th ed. 1984) ("Tort law is overwhelmingly common law, developed in case-by-case decisionmaking by courts.").

[FN199]. See Victor E. Schwartz & Leah Lorber, [Judicial Nullification of Civil Justice Reform Violates the Fundamental Federal Constitutional Principle of Separation of Powers](#), 32 *Rutgers L.J.* 907 (2002).

[FN200]. See Victor E. Schwartz et al., [Fostering Mutual Respect and Cooperation Between State Courts and State Legislatures: A Sound Alternative to a Tort Tug of War](#), 103 W. Va. L. Rev. 1 (2000).

[FN201]. Joyce & Hotra, supra note 20, at 430.

[FN202]. Research and Policy Committee of the Committee for Economic Development, Justice for Hire 1 (2002), available at [http://www.ced.org/docs/report/report\\_judicial.pdf](http://www.ced.org/docs/report/report_judicial.pdf); see also Mark A. Behrens & Cary Silverman, [The Case for Adopting Appointive Judicial Selection Systems for State Court Judges](#), 11 Cornell J.L. & Pub. Pol'y 273, 314-60 (2002) (providing a state-by-state summary of approaches to judicial selection).

[FN203]. [Miss. Const. § § 145, 153](#); [Miss. Code Ann. § § 9-4-5, 9-5-1, 9-7-1, 23-15-976](#). Appellate judges stand for reelection after an eight-year term. [Miss. Const. § 149](#); [Miss. Code Ann. § § 9-4-5, 23-15-991](#). Vacancies are filled by the Governor for the remainder of the unexpired term. [Miss. Const. § 177](#); [Miss. Code Ann. § 23-15-849](#).

[FN204]. Behrens & Silverman, supra note 202, at 274-75.

[FN205]. Id. at 279-80.

[FN206]. Am. Judicature Soc'y, Judicial Selection in the States: Mississippi, available at <http://www.ajs.org/js/MS.htm> (last visited May 3, 2006).

[FN207]. Brad Branan, Judicial Race a Rich One; Business, Lawyers Ante Up Big, Sun Herald (Gulfport, Miss.), Nov. 4, 2000, at A1 (reporting that the largest amount previously spent on a single judicial race in Mississippi was \$400,000).

[FN208]. Am. Judicature Soc'y, supra note 206; Branan, supra note 207.

[FN209]. Id.

[FN210]. Musgrave, supra note 193 (reporting findings by the Business and Industry Political Education Committee).

[FN211]. Branan, supra note 207.

[FN212]. See Business & Industry Political Education Committee & Judicial Evaluation Inst., The Economic Judiciary Report: A Summary (2004) (scoring each Mississippi Supreme Court Justice on their record to restrain the spread of liability) (on file with authors).

[FN213]. Robert Lenzner & Matthew Miller, Buying Justice, Forbes, July 21, 2003, at 64, available at 2003 WLNR 10961915.

[FN214]. This amount does not count soft money contributions, such as television advertising by organizations not linked to the candidates.

[FN215]. Lenzner & Miller, supra note 213.

[FN216]. Id.; Michael Orey, Business Targets Judicial Race in 'Tort Mecca', Wall St. J., Oct. 30, 2002, at B1.

[FN217]. See Ben Bryant, Tort Reformers Get Big Boost, Sun Herald (Gulfport, Miss.), Nov. 7, 2002, at 4.

[FN218]. Jimmie E. Gates & Lora Hines, Election 2004, Clarion-Ledger (Jackson, Miss.), Nov. 3, 2004 at 13.

[FN219]. Business & Industry Political Education Committee, Mississippi Supreme Court Candidates Best for Business Recommendations (2004) (on file with authors).

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[FN220]. Jimmie E. Gates, Graves Wins High Court Runoff, Clarion-Ledger (Jackson, Miss.), Nov. 17, 2004, at 1A.

[FN221]. Financial Contributions Continue to Pour in for Judicial Candidates, Hattiesburg Am. (Hattiesburg, Miss.), Oct. 28, 2004, at 9 (reporting that nine supreme court candidates had raised more than \$500,000 in contributions in less than one month); Editorial, State Needs to Consider New System, Hattiesburg Am. (Hattiesburg, Miss.), Oct. 13, 2004, at A11 (reporting that incumbent Justices Mike Randolph and George C. Carlson had raised \$363,649 and \$276,275, respectively) [hereinafter State Needs to Consider New System]; Sid Salter, Best Judges Money Can Buy, Clarion-Ledger (Jackson, Miss.), Sept. 26, 2004, at 1G (providing breakdown of contributions to each candidate from business/health sources and from lawyers); Jimmie E. Gates, Justice Candidates to Spend \$1M Each, Clarion-Ledger (Jackson, Miss.), June 29, 2004, at 2B (reporting that incumbent Justices Graves and challenger Judge Richardson each planned to spend \$1 million on the judicial race). Appellate court judge Joe Lee, who was defeated by incumbent Justice Michael Randolph, chose to spend no more than \$70,000 in his campaign in what proved to be an unsuccessful strategy. Tracy Dash, Randolph Thanks Lee for Honorable Campaign, Sun Herald (Gulfport, Miss.), Nov. 3, 2004, at A1, available at 2004 WLNR 5166753; Jimmie E. Gates, Lee Running Low-budget Race, Clarion-Ledger (Jackson, Miss.), Sept. 21, 2004, at 2B.

[FN222]. Mississippi Chief Justice Jim Smith, state legislators, and newspaper editorial boards have called for abandoning judicial elections in favor of gubernatorial appointment. See Editorial, Electing Judges, Clarion-Ledger (Jackson, Miss.), Nov. 1, 2004, at 8A ("Mississippi needs to get out of the business of electing appellate court judges."); State Needs to Consider New System, supra note 221; Editorial, Justice for Sale? Campaign Cash Taints Court's Image, Clarion-Ledger (Jackson, Miss.), Sept. 26, 2004, at 4G ("A better way of choosing appellate judges would be the appointive system with up or down elections on performance."); Editorial, Chief Justice Supports Appointment, Clarion-Ledger (Jackson, Miss.), June 14, 2004, at 10A (reporting that the Chief Justice favors appointment with a screening committee that would submit a list of potential nominees to the Governor); Emily Wagster Pettus, Appoint Top State Judges, Chief Justice Smith Urges, Sun Herald (Gulfport, Miss.), May 19, 2004, at A8 (reporting that Mississippi House Judiciary A Chairman Ed Blackmon (D-Canton) and Mississippi Senate Judiciary A Committee Chairman Charlie Ross (R-Brandon) both agree with Chief Justice Smith that the state should appoint appellate judges). Such a change would require adoption of a constitutional amendment. See Miss. Const. § 145.

[FN223]. Flurry of Lawsuits Filed Ahead of Today's Deadline, Sun Herald (Gulfport, Miss.), Sept. 1, 2004, at A9.

[FN224]. Press Release, MassMutual Fin. Group, MassMutual Re-Enters Mississippi Municipal Bond Market Company Cites Passage of Tort Reform Legislation [sic] (June 16, 2004), available at <http://www.governorbarbour.com/Tort2004.htm> (last visited May 16, 2005) [hereinafter MassMutual Press Release]; Shelly Sigo, Massmutual Ends Mississippi Boycott After Tort Reform Passes, The Bond Buyer, June 23, 2004, at 6, available at 2004 WLNR 1267176.

[FN225]. MassMutual Press Release, supra note 224.

[FN226]. Jerry Mitchell, Tort Reform Brings Insurance Firm Back to Miss., Clarion-Ledger (Jackson, Miss.), Oct. 18, 2004, at 1A.

[FN227]. See Bedell, supra note 181, at 40.

[FN228]. Id.

[FN229]. Editorial, Tort Reform: Insurer's Decision Affirms Action, Clarion-Ledger (Jackson, Miss.), Oct. 11, 2004, at 8A (quoting Commissioner Dale); Editorial, Tort Reform is Making a Difference, Hattiesburg Am., Oct. 10, 2004, at C8 (reporting that Medical Assurance Co. of Mississippi, which provides medical malpractice insurance for about sixty percent of the doctors in Mississippi, would not be raising its insurance premiums in 2005).

[FN230]. ATRA Report, supra note 4, at 10-14; Sherman Joyce, Judicial Hellholes, Wall St. J., Dec. 15, 2004, at A20.

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[FN231]. Gov. Haley Barbour, State of the State Address (Jan. 11, 2005), available at <http://www.governorbarbour.com/StateoftheState.htm> (last visited May 16, 2005).

[FN232]. Wash. Legal Found., The Issue: Legal Reform in Mississippi 5, Conversations with ..., Spring 2005, available at <http://www.wlf.org/upload/032405CWBarbour.pdf>.

[FN233]. Id.

[FN234]. See generally Editorial, Even If Overhyped, Tort Reform Should Benefit Mississippi, Sun Herald (Gulfport, Miss.), June 16, 2003, at B4, available at 2004 WLNR 4538410.

[FN235]. See Lynne Jeter, Mississippi Tort Reform: The Doctor Is In Again, Miss. Bus. J., July 12, 2004, at B2, available at 2004 WLNR 11615861 (quoting Mississippi Insurance Commissioner George Dale as stating that tort reform should have positive impacts on the cost and availability of insurance in Mississippi but "[i]t'll take a while" for insurers to react).

[FN236]. Bedell, *supra* note 181, at 40.

[FN237]. The Perryman Group, The Impact of Judicial Reforms on Economic Activity in Texas (Aug. 2000) available at [http://www.cse.org/reports/perryman\\_texas\\_study.pdf](http://www.cse.org/reports/perryman_texas_study.pdf).

[FN238]. Id. at 8. In the year 2000 alone, the 1995 tort reforms enacted in Texas produced savings of \$23.207 billion in annual total expenditures, \$11.601 billion in annual gross state product, \$7.056 billion in annual personal income, and \$2.901 billion in annual retail sales. Id. at 5.

[FN239]. Id. at 4. Alabama's reputation for an unbalanced civil justice system, which was comparable to Mississippi's, also began to change after it enacted tort reform in 1999, including modest limits on punitive damages and venue reform. Alabama is now viewed as much more hospitable to business development and expansion. In 2000, The Perryman Group found that "If Mississippi implemented similar measures, it is estimated that the costs to the tort system in 2006 would be approximately \$1.226 billion, as compared with an estimated \$1.763 billion if present patterns persist. Thus, the aggregate direct savings is almost \$537.0 million (\$467.3 million in 2001 dollars)." Id. In percentage terms, if Mississippi enacted tort reforms similar to Alabama's, the result would be "a 3.49% reduction in the rate of price increase and gains in productivity growth of 2.1%." Id. at 9.

[FN240]. H.B. 4, 78th Leg., Reg. Sess., § 10.01 (2003) (codified at [Tex. Civ. Prac. & Rem. Code Ann. § § 74.301, 74.302](#)).

[FN241]. Terry Maxon, Insurance Lowers Rates; Some Leaders Say Move is Sign that Malpractice Caps are Working, Dallas Morning News, Sept. 21, 2004, at 1D (reporting that the Texas Medical Liability Trust, which insures nearly half of Texas doctors, announced that it would reduce premiums by 5% effective January 1, 2005, following a 12% cut in early 2004, and that thirteen insurance carriers entered or indicated that they will enter the market in the year since the law took effect); 12 Months After Prop. 12's Passage, Texas Physicians Have More Choices for Insurance, PR Newswire, Sept. 7, 2004 (reporting Advocate, MD Insurance of the Southwest recently entered the Texas malpractice insurance market, providing physicians with 25% more insurance protection than the most popular policy limit that had been available from competitors in the state at a lower cost for most doctors).

[FN242]. Hon. John Cornyn, Medical Liability Reform Puts Our Doctors Back in Business, Austin Am.-Statesman, Sept. 14, 2004, at A9.

[FN243]. Id.