

RETURNING FAIRNESS To MISSISSIPPI COURTROOMS

By Vanessa DeLeon Guerrero*

Mississippi's infamous reputation as a haven for civil lawsuits and runaway jury verdicts has led the lawmakers of the state to implement tort reform measures. Mississippi's liberal joinder and venue rules contributed to its reputation as a trial lawyer's jackpot.¹ As a result of such liberal procedural rules and unlimited punitive damages, Mississippi juries have returned multimillion-dollar verdicts, including at least five verdicts of \$100 million or more since 1995.² Many of these verdicts were rendered in counties labeled "magic jurisdictions."³

These large jury awards have prompted many corporations, including insurance companies, to stop doing business in Mississippi.⁴ As a consequence of the multimillion-dollar verdicts, insurance companies that continue to do business in Mississippi have had to raise liability insurance premiums.⁵ Unfortunately, the legal climate in Mississippi has not only impacted businesses, but also consumers. For example, the increased premiums in liability insurance have, in the end, threatened the availability of physicians or other qualified specialists now weary of providing services to the Mississippi consumer base.⁶ In addition, the job market for citizens of the state has been affected. The unfavorable business climate in Mississippi, as a result of large jury verdicts, has forced businesses to shut down, and many Mississippians have lost their jobs.⁷ For example, 8,071 jobs were lost in 2001 and 3,000 jobs in the year 2000 from businesses that shut down.⁸

In response to Mississippi's tort award "crisis," the United States Chamber of Commerce, the world's largest business federation, urged Mississippi to reform its legal system, stating the current system targets out of

state businesses with frivolous lawsuits and runaway jury verdicts, and warned its members about the inherent risks of doing business within the state.⁹ Tom Donahue, Chamber President and CEO, stated, "...[B]usinesses are being unjustly and unfairly targeted..." and "...if Mississippi wants to attract more business, then Mississippians need to push for common sense legal reforms."¹⁰ James Wooten, President of the Chamber Institute for Legal Reform, also asserted during the Chamber's press briefing that the state's unfair legal system imposed a heavy toll on Mississippi's citizens.¹¹ Mississippi's current legal system adversely impacts its citizens because, in addition to loss of jobs, Mississippians suffer losses in annual personal income, increased costs on goods and services purchased, inflated insurance premiums, and deflated job prospects.¹²

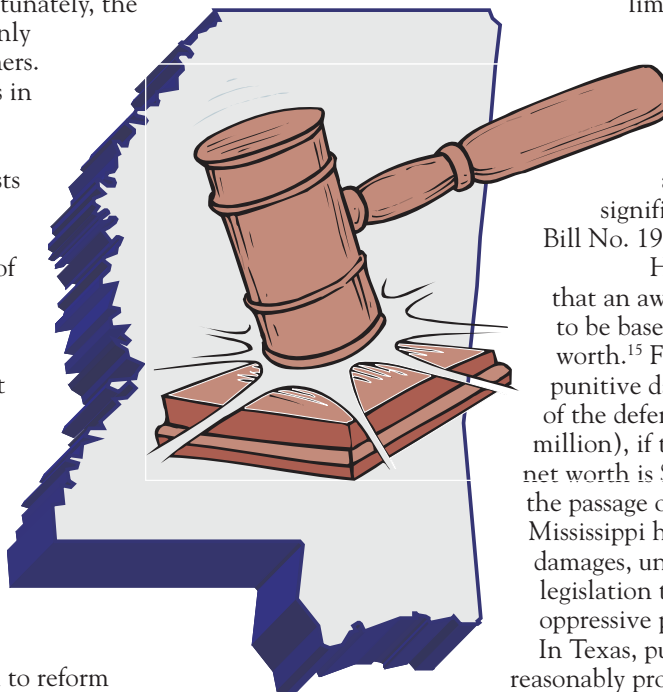
Recognizing the necessity for reform, the Mississippi Legislature called a special session and passed several significant pieces of legislation. House Bill No. 2, approved in October 2002, is a measure aimed at

limiting jury awards against health practitioners, hospitals, and nursing homes.¹³ In December 2002, Ronnie Musgrove, Governor of Mississippi, approved a second

significant reform measure, House Bill No. 19.¹⁴

House Bill No. 19 provides that an award for punitive damages is to be based on the defendant's net worth.¹⁵ For example, an award of punitive damages may not exceed 4% of the defendant's net worth, (\$2 million), if the defendant corporation's net worth is \$50 million or less. Prior to the passage of this tort reform bill, Mississippi had no caps on punitive damages, unlike Texas, which enacted legislation to prevent excessive or oppressive punitive damage awards.¹⁶

In Texas, punitive damages are reasonably proportioned to actual damages – punitive damages are capped at \$200,000 or two



times the amount of economic damages plus non-economic damages up to \$750,000.¹⁷ The Texas limits on punitive damages, however, do not apply to particular criminal acts, such as murder, sexual assault, or theft.¹⁸ Section 6 of Mississippi's House Bill No. 19, now more analogous to Texas's and other states' damages statutes, caps punitive damages at \$20 million for large corporations and a lesser amount, according to a sliding scale, for smaller companies. This provision, by focusing on the defendant's worth rather than the amount of the plaintiff's injury, appears more consistent with the goal of punitive damages, which is to punish the defendant.

Other changes enacted by the Mississippi legislature affect joint and several liability. Prior to reform, if a defendant was found to be at fault in any civil action, regardless of his percentage of fault, that defendant could have been responsible for up to one-half the non-economic and/or economic damages awarded to the plaintiff.¹⁹ By contrast, Texas's comparative liability statute provides that a defendant is liable to a plaintiff only for the percentage of the damages in proportion to his percentage of fault.²⁰ Joint and several liability exists in Texas only if a defendant's percentage of fault exceeds 50%.²¹

Section 3 of Mississippi's House Bill No. 19 eliminates joint and several liability for non-economic damages (e.g., pain and suffering). The bill provides that each defendant is responsible for non-economic damages in proportion to the percentage of individual fault.²² The bill further limits a defendant to several liability, as opposed to joint and several liability, for economic damages, such as lost wages if he is less than 30% at fault. If the defendant is more than 30% at fault, liability is joint and several only to the extent necessary for the plaintiff to recover 50% of his or her damages.

The Mississippi Legislature also addressed issues concerning venue. Before the passage of House Bill No. 19, venue was proper in the county in which the defendant resided, or, if there were multiple defendants, where any of them could be found.²³ Furthermore, Mississippi Rules of Civil Procedure provide that when several parties have been joined in one action, the lawsuit could be filed in a county where any one of the claims could have been brought.²⁴ Thus, in cases of joinder, if venue were proper for any of the defendants then venue would be proper for all plaintiffs and be good as to all defendants.²⁵ This "good for one is good for all" rule permits steering of cases to "magic jurisdictions" that render exorbitant jury awards.²⁶ These procedural rules, however, differ from several other states, including Texas.

Texas rules provide that when several plaintiffs are joined each plaintiff must, independently of the other, establish venue.²⁷ Texas further provides that lawsuits must be filed:

...in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred; in the county of defendant's residence at the time the cause of action accrued if defendant is a natural person; in the county of the defendant's principal office in this state, if the defendant is not a natural person; or if none of those applied, in the county in which the plaintiff resided at the time of the accrual of the cause of action.²⁸

If a venue rule like Texas's existed in Mississippi, "5000 plaintiffs would not be allowed to bring their lawsuits in a particular 'magic jurisdiction' unless that is where the injury occurred or where the corporation's principal office is located."²⁹ Section 1 of House Bill No. 19 was promulgated to promote fairness as to where a suit could be filed and tried.³⁰ This bill, paralleling other states' provisions, including Texas's, restricts venue in civil actions to the county where the defendant resides; where the alleged act, omission, or event causing injury occurred; where plaintiff resides; or in cases where a defective product is involved, where the plaintiff obtained the product.

The enactment of House Bills No. 2 and 19, which were effective January 1, 2003, is a positive stride toward repairing the inequality and windfalls inherent to Mississippi's civil legal framework that have tainted Mississippi's image and ultimately may have negatively impacted the Mississippi consumers. The tort reform measures passed by the Mississippi legislature "balance the interests of business with the rights of consumers and citizens to have access to the courts."³¹ Perhaps implementation of these tort reform measures, which do not limit economic damages, will benefit Mississippi consumers by encouraging businesses and services to re-enter the local market.

* Vanessa DeLeon Guerrero is a law student at the University Of Houston Law Center.

(Endnotes)

¹ See generally David W. Clark, *Life in Lawsuit Central: An Over-View of the Unique Aspects of Mississippi's Civil Justice System*, 71 Miss. L.J. 359 (2001).

² Robert Pear, *Mississippi Gaining as Lawsuit Mecca*, N.Y. TIMES, Aug. 20, 2001, available at 2001 WL 26417393; Kenneth Bredemeir, *Unhappy Clients Bite Back; Problems With a Few Big Customers Drag Down the Reputation of Giant Consulting Firm AMS*, WASH. POST, Aug. 27, 2001 (writing that a Mississippi jury returned a verdict of \$474.5 million against American Management Systems, Inc.), available at 2001 WL 23189853; Richard T. Phillips, *State Litigation Trends in Life and Health Insurance Litigation*, SG092 ALI-ABA 47 (2002) (stating that \$150 million awarded to five users of fen-phen,; \$100 million against the makers of Propulsid; and \$150 million to six Mississippi workers exposed to asbestos).

³ See Clark, *supra* note 1, at 369 (noting that many trial lawyers file a disproportionate number of lawsuits in a few of the poorest counties where unemployment rates exceed the state average and educational levels of its citizenry are below it).

⁴ See Lynne Wilbanks Jeter, *Economic Progress in Two Words: Tort Reform*, 23 Miss. BUS. J.No. 53, available at <http://www.msbusiness.com/archives/23v53n/Cover/13325.php>.

⁵ See Pear, *supra* note 2.

⁶ See Clark, *supra* note 1, at 364-66. See also Jerry Mitchell, *Stakes High at Every Turn*, CLARION-LEDGER, Aug. 11, 2002, available at <http://www.clarionledger.com/news/0208/11/m01a.html>; Jerry Mitchell, *Group Lobbies for Tort Reform*, CLARION-LEDGER, Jan. 9, 2002, available at <http://www.clarionledger.com/news/0201/09/a02.html>.

⁷ See Jeter, *supra* note 4. See also Press Release, U.S. Chamber of Commerce, U.S. Chamber Urges Mississippians to Reform Flawed Legal System Studies Show Lack of Due Process for Businesses and Adverse Impact on Jobs (May 8, 2002) (Citizens of Mississippi are losing more than 7,500 jobs per year), available at <http://www.uschamber.com/press/releases/2002/may/02-87.htm>.

⁸ See Jeter, *supra* note 4.

⁹ Press Release, U.S. Chamber of Commerce, U.S. Chamber Urges Mississippians to Reform Flawed Legal System Studies Show Lack of Due Process for Businesses and Adverse Impact on Jobs (May 8, 2002) available at <http://www.uschamber.com/press/releases/2002/may/02-87.htm>.

¹⁰ *Id.*

¹¹ *Id.*

¹² See economic study by The Perryman Group, *The Potential Impact of Proposed Judicial Reforms on Economic Activity in Mississippi* (February 2002) available at <http://www.litigationfairness.org/pdf/PerrymanStudy.pdf>.

¹³ Act of October 8, 2002, ch. 2, 2002 Miss. Laws 3rd Extraordinary Session sec. 4 (codified as amended at MISS. CODE ANN. § 85-5-7(8) (2003)).

¹⁴ Act of December 3, 2002, ch. 4, 2002 Miss. Laws 3rd Extraordinary Session secs. 1,3,6 (codified as amended at MISS. CODE ANN. §§ 11-11-3, 85-5-7, 11-1-65 (2003)).

¹⁵ Act of December 3, 2002, ch. 4, 2002 Miss. Laws 3rd Extraordinary Session sec. 6 (codified as amended at MISS. CODE ANN. § 11-1-65 (2003)).

¹⁶ Recognizing a need for tort reform, the Texas Legislature, in 1987, set guidelines in the TEX. CIV. PRAC. & REM. CODE Ch. 41, as amended in 1995, for awarding punitive damages.

¹⁷ TEX CIV. PRAC. & REM. CODE ANN. § 41.008(b) (Vernon 2002).

¹⁸ TEX. CIV. PRAC. & REM. CODE ANN. § 41.008(c) (Vernon 2002).

¹⁹ MISS. CODE ANN. § 85-5-7(2) (2002), amended by Act of December 3, 2002, ch. 4, 2002 Miss. Laws 3rd Extraordinary Session sec. 3.

²⁰ TEX. CIV. PRAC. & REM. CODE ANN. § 33.013 (Vernon 2002).

²¹ *Id.*

²² Act of December 3, 2002, ch. 4, 2002 Miss. Laws 3rd Extraordinary Session sec. 3 (codified as amended at MISS. CODE ANN. § 85-5-7 (2003)).

²³ MISS. CODE ANN. § 11-11-3(1) (2002), amended by Act of December 3, 2002, ch. 4, 2002 Miss. Laws 3rd Extraordinary Session sec. 1.

²⁴ MISS. R. CIV. P. 82(c) (2003). See also *Wofford v. Cities Serv. Oil Co.*, 236 So.2d 743 (Miss.1970) (holding plaintiff may elect county in which to bring suit when multiple defendants are joined, so long as choice is proper as to at least one material defendant).

²⁵ MISS. R. CIV. P. 82(c) (2003).

²⁶ See Memorandum by Wiley, Rein, & Fielding, L.L.P., *Is Due Process Afforded to Business Defendants In the Civil Justice System of Mississippi – An Analysis*, May 1, 2002 pg. 15, available at <http://www.litigationfairness.org/pdf/DueProcess.pdf>.

²⁷ TEX. CIV. PRAC. & REM. CODE ANN. § 15.003(a)(1) (Vernon 2002).

²⁸ TEX CIV. PRAC. & REM. CODE ANN. § 15.002(a) (Vernon 2002).

²⁹ See Clark, *supra* note 1, at 378.

³⁰ Act of December 3, 2002, ch. 4, 2002 Miss. Laws 3rd Extraordinary Session sec. 1 (codified as amended at MISS. CODE ANN. § 11-11-3 (2003)).

³¹ Reed Branson, *Mississippi Lawmakers OK Accord on Liability Limits*, COM. APPEAL, Nov. 26, 2002 (quoting Democratic State Representative Percy Watson of Mississippi), available at <http://www.tnchamber.org/taxation/articles/11-26-02a.html>.