

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

**MISSISSIPPI UNIVERSITY FOR WOMEN
ALUMNAE ASSOCIATION**

PLAINTIFF

v.

No. 2007-0220-C

**CLAUDIA A. LIMBERT, individually and in
Her official capacity; MISSISSIPPI
UNIVERSITY FOR WOMEN; and BOARD
OF TRUSTEES OF MISSISSIPPI STATE
INSTITUTIONS OF HIGHER LEARNING**

DEFENDANTS

MISSISSIPPI UNIVERSITY FOR WOMEN

COUNTER-CLAIMANT

v.

**MISSISSIPPI UNIVERSITY FOR WOMEN
ALUMNAE ASSOCIATION**

COUNTER-DEFENDANT

**PLAINTIFF MISSISSIPPI UNIVERSITY FOR WOMEN ALUMNAE ASSOCIATION'S
POST-TRIAL BRIEF**

COMES NOW, Mississippi University for Women Alumnae Association, by and through its undersigned counsel, and submits the following post-trial brief for the Court.

This case is before the Court as a result of the decision of Dr. Claudia A. Limbert (“Limbert”), president of Mississippi University for Women (“the University”), to wrongfully terminate the affiliation agreement between the University and the Mississippi University for Women Alumnae Association (“the Association”). Following Limbert’s pronouncement that she intended to disaffiliate the Association, Limbert immediately enacted a plan to create a new alumni association that would operate under her control. This continued pattern of bad faith behavior, coupled with Limbert’s continuous displays of bad faith and an unwillingness to work with the Association, constitute a breach of the affiliation agreement and the IHL policy under which Limbert was bound to operate.

In its amended complaint, the Association requested an injunction to prevent Limbert from proceeding with disaffiliation, citing various theories of law and equity, including breach of contract and violation of IHL policy. Limbert and the remaining defendants responded with a counterclaim requesting that the Court grant a permanent injunction prohibiting the Association from using the University's name, trademarks, word marks, and symbols. Limbert also requested an accounting of the Association's assets to determine whether the University is entitled to gain possession of those assets.

This Court should grant the Association's request for a permanent injunction for the following reasons:

- (1) Limbert, acting on behalf of the University, breached the implied duty of good faith and fair dealing inherent in all contracts
 - (a) by arbitrarily refusing to approve the Association's bylaws, as required by the affiliation agreement, even though the proposed bylaws met all of the conditions set forth in the affiliation agreement; and
 - (b) by attempting to impose bylaws upon the Association which violated the IHL's mandate that the Association remain separate and independent.

When the Association refused to draft bylaws that exceeded the scope of the affiliation agreement and violated the IHL's policy, Limbert attempted to disaffiliate the group.

- (2) Limbert's decision to disaffiliate the Association was inequitable.

With regard to the University's counterclaims, this Court should dismiss those claims for the following reasons:

- (1) The University, which operates as a subdivision of the State of Mississippi failed to acquire the necessary authorization to file a lawsuit; therefore, the University's counterclaims are null and void. See Miss. Code Ann. § 7-5-1.
- (2) Even if the University was authorized to bring the counterclaims, the University's claims are without merit, and the University also failed to prove its claims.

FACTS¹

The Affiliation Agreement

In August 2006, the Board of Trustees of the Mississippi Institutions of Higher Learning (“IHL”) instituted a new policy that required each of the eight Mississippi universities to formalize its relationships with organizations termed “affiliated entities.”² T. at 225; Pl. Exh. 1. Under the new policy, codified at Section 301.0806 of the IHL’s Policies and Bylaws, the University was required to formalize its affiliation with the Association by entering into an “operating agreement.” Above all else, however, the IHL policy required that “[t]he relationship between the institutions of The Mississippi State Institutions of Higher Learning and the foundations/entities supporting those institutions *must be based on a recognition of and respect for the private and independent nature of the foundations/entities.*” Pl. Exh. 1 (emphasis added).

At the time the policy was enacted, the Association was informally affiliated with the University. The Association has existed continuously since 1889, when the University’s first graduates formed an organization to benefit the University. Although the name of the

¹ For the Court’s convenience, a graphic timeline of the events discussed in this section are included as Appendix A to this brief.

² This policy previously was enacted to formalize relationships between Mississippi’s universities and their respective foundations, groups organized to accept, manage, and disperse donations to universities. T. at 224; Pl. Exh. 1. The IHL determined, however, that it was necessary to extend the policy to all groups affiliated with the universities, including alumni associations. Pl. Exh. 1.

Association has changed to coordinate with the University's various name changes, the Association has always retained its status as a viable and beneficial organization. In 1994, the Association registered with the Mississippi Secretary of State as a not-for-profit corporation. Betty Lou Jones ("Jones") began serving as President of the Association in April 2006 and was President when the IHL announced this new policy.

Jones testified that she became aware of the IHL policy and the required operating agreement between the Association and the University in the late spring or summer of 2006. Jones was not worried about the specific requirements of the agreement, due to the Association's long-standing, mutually beneficial relationship with the University. T. at 87-88. Despite the difficulties Jones had faced as Association president, she remained optimistic that Limbert wanted what was best for the University – a strong relationship with its alumni. Jones's confidence disappeared, however, when she received a copy of the proposed operating agreement drafted by the University. As the testimony from the alumni themselves demonstrated, the Association's support of the University has always been staunch and unwavering and marked by good relationships with faculty, students, staff, and many administrators. Over the course of Limbert's tenure, however, the alumni/president relationship had eroded, and Limbert had been increasingly hostile toward and uncooperative with alumni, both individually and as a group.

The proposed operating agreement, which the parties have referred to as the "affiliation agreement," arrived at Jones's home on October 1, 2006, with Limbert's demand that the affiliation agreement be signed and returned by October 27, 2006. T. at 88. When Jones reviewed the agreement, she discovered that "it was very punitive and it included a lot of language that was very restrictive and we just felt like this was not the spirit of cooperation that

you have in an affiliation agreement between two entities that are trying to accomplish the same things.” T. at 88. After reviewing the proposed affiliation agreements between other alumni groups and their universities, Jones also discovered that Limbert’s proposed agreement differed drastically from the other universities’ proposed agreements with their alumni associations. Jones, on behalf of the Association, presented a counterproposal – an affiliation agreement patterned after both Mississippi State University and the University of Southern Mississippi’s recently drafted affiliation agreements. T. at 88. Limbert rejected the proposal outright.

The Association’s leaders, now faced with an October 21, 2006, deadline arbitrarily imposed by Limbert, drafted and submitted a second proposed affiliation agreement on October 19, 2006. T. at 89. That same day, while Jones was attending a University function, Limbert’s office delivered an email from Cal Mayo, the University’s counsel in this litigation, advising Jones that Mayo’s law firm was representing the University in negotiating the terms of the affiliation agreement and advising Jones to seek legal representation. T. at 89. This news shocked Jones, who testified that she “cried because I just didn’t feel like that it was necessary to have attorneys . . . when we were all trying to work for the same thing.” T. at 89. Feeling as though it had no other choice, the Association sought its own legal representation, although it lacked any independent resources or funding to do so.

Limbert continued to push the Association to sign her proposed affiliation agreement. On October 25, 2006, less than a week after the University retained Mayo, the Association signed an affiliation agreement with the University under Limbert’s threat of disaffiliation and despite concerns that the affiliation agreement did not comply with IHL policy. Pl. Exh. 4. T. at 90. The IHL approved that agreement on November 15, 2006.

The Bylaws

Having made the decision to sign the agreement, the Association immediately began plans to comply with its terms. One of the provisions of the affiliation agreement provided that “[w]ithin 60 days of the date of this Agreement, the Association’s governing board will provide to the University President, for the President’s review and approval, a new Constitution, By-Laws and a Mission Statement for the Association, *all of which will be consistent with the mission and priorities of the University, this Agreement, and IHL policy.*” Pl. Exh. 4 (emphasis added). Jones immediately contacted the University to confirm the sixty-day deadline and to set up a meeting with the University’s administration. T. at 91. Jones and other Association members prepared a set of new bylaws for review at that meeting.

On December 6, 2006, Jones and two other alumni met with Dr. Gary Bouse, Vice-President for Institutional Advancement, and Jan Miller, Director of Alumni Relations. T. at 91. The group “spent three hours going over those bylaws and changing words and agreeing that this could be different and, you know, coming up with, you know, lots and lots of changes, and *specifically to be in compliance with IHL policies. That was our main goal to meet that.*” T. at 91 (emphasis added). Jones arranged for a second meeting to be held on January 5, 2007.

On January 4, 2007, the University submitted a revised copy of the bylaws that the Association had submitted for review at the December meeting. T. at 91. Jones testified that “there were several things that we really couldn’t agree on and there were several things that we changed.” T. at 91. That meeting revealed three main areas of disagreement:

(1) **Succession.** Under Limbert’s proposal, the by-laws would eliminate both the office of president-elect and the succession of officers. Under the Association’s current by-laws, the person elected to the vice-president’s position automatically rotates into the office of president-

elect and then into the office of president. T. at 92; Def. Exh. 1. Jones stated that succession provided for training and consistency and the opportunity to interact with the board and committees, a practice that was especially critical because the Association's board only met four times a year. T. at 92. Limbert testified, however, that eliminating both the office of president-elect and the succession of officers would make the Association "more inclusive." T. at 57.

(2) **Officer nominations and election process.** Currently, the nominating committee compiles a slate of officers for the Association Board's approval prior to elections each year. Def. Exh. 1. The Board-approved slate, along with any nominations from the floor, is presented for a vote of the Association membership each year at the Association's annual meeting. Def. Exh. 1. Limbert insisted that the Director of Alumni Relations, a University employee, nominate four members of the Association's nominating committee and that the current Association President nominate three members. Jones testified that the Association had several specific concerns with regard to this demand, but the overarching problem was that Limbert's proposal was "not democratic . . . this means that the association is not really in charge of their election of their officers." T. at 93-94.

Jones's concern about the University's ability to control the Association's nominating committee was exacerbated by Limbert's demand that any nominations from the floor must be approved by 75% of the voting membership before being placed on the ballot. Jones testified that Limbert's intentions were clear. Limbert intended to control the election of the Association's officers. T. at 94. Although Limbert refused, at the time, to explain her reasons for insisting upon such an undemocratic elections process, Limbert's testimony clearly resolved that issue. Limbert wanted control of the Association's election process because she believed it would result in "Limbert-friendly" leadership within the Association. T. at 58, 333.

(3) **Association awards.** The final major point of disagreement involved the process by which the Association would bestow its awards. Limbert initially insisted that she be required to approve any awards to be given by the Association. She later amended that demand to require the Vice-President for Institutional Advancement, a University and IHL employee, to approve them. T. at 94. Limbert also insisted that the criteria for the awards, which under the Association's current structure were based on "service" to the University, be changed to require that the recipient be rewarded for "loyalty." Jones testified that this change constituted a change from objective criteria to subjective criteria. T. at 94.

Following the receipt of the University's revisions on January 4, 2007, Jones continued to negotiate with Dr. Bouse and Limbert until the next meeting, scheduled for January 12, 2007. During that meeting, Limbert abruptly announced that "this isn't working. We're going to have to start all over again." T. at 95. Limbert refused to continue working with the draft that the parties had spent nearly two months revising. According to Jones, Limbert said, "Dr. Meredith said this is a new day. And this is a new day, and we need a whole new set of bylaws." T. at 95.

The next few weeks of negotiations produced very little results, even after Mayo and the Association's attorney stepped in to handle the negotiations. Finally, on January 29, 2007, having received no further guidance from Limbert regarding the provisions with which she disagreed, the Association's attorney sent a letter to Limbert, through Mayo. Pl. Exh. 7. In that letter, the Association attached the most recent version of the bylaws for Limbert's signature. In the event Limbert refused to approve the bylaws, the letter requested that Limbert "explain in writing what provisions are not consistent with the mission and priorities of the University, the Affiliation Agreement, and IHL policy" so that the parties could identify the issues and work toward a resolution. Pl. Exh. 7. Limbert failed to respond. Limbert's next communication was a

letter dated February 1, 2007, stating that she was disaffiliating the Association. Pl. Exh. 5.

ANALYSIS

I. Limbert, acting in bad faith, wrongfully violated the terms of the affiliation agreement.

In Mississippi, “[a]ll contracts contain an implied covenant of good faith and fair dealing in performance and enforcement.” Cenac v. Murry, 609 So. 2d 1257, 1272 (Miss. 1992) (citations omitted). All parties to a contract are required to comport themselves in a manner that constitutes good faith, a duty “based on fundamental notions of fairness.” Id. (citation omitted). Good faith is defined as “the faithfulness of an agreed purpose between two parties, a purpose which is consistent with *justified expectations* of the other party. The breach of good faith is bad faith characterized by some conduct which violates standards of decency, fairness or reasonableness.” Id. (emphasis added). Bad faith is a “*refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.*” Bailey v. Bailey, 724 So. 2d 335, 338 (¶9) (Miss. 1998) (emphasis in original). The phrase “bad faith” “implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; . . . it contemplates a state of mind affirmatively operating with furtive design or ill will.” Id.

In this case, there is no dispute that the affiliation agreement constituted a valid contract. Limbert breached the implied duty of good faith and fair dealing inherent in the affiliation agreement in two ways: (1) Limbert attempted to dictate the Association’s bylaws provisions in contravention of the terms of the affiliation agreement; and (2) Limbert withheld her approval of the bylaws because the Association refused to violate the IHL’s mandate that the Association remain independent from the University. Limbert’s actions, standing alone, constituted bad faith

because those acts violated standards of fairness and reasonableness. Additionally, Limbert's own testimony clearly demonstrates that she acted in bad faith.

A. Limbert's attempts to dictate the Association's bylaws provisions constituted bad faith.

Under the terms of the affiliation agreement, the Association agreed to draft new bylaws that reflected the affiliation agreement. Pl. Exh. 4. The affiliation agreement provided that the bylaws must be "consistent with the mission and priorities of the University, this Agreement, and IHL policy." Pl. Exh. 4. The affiliation agreement required nothing further with respect to the content of the bylaws, but Limbert insisted on provisions that greatly exceeded the scope of the affiliation agreement.

Both Jones and Limbert testified that Limbert demanded that the Association's new bylaws contain provisions that severely limited the democracy of the Association's election process and inhibited the Association's ability to govern itself free of Limbert's control. T. at 36, 56-58, 92-94, 333. Specifically, Limbert insisted upon control of the Association's leadership structure, officer nominations and elections, and awards. When the Association objected to these unreasonable provisions and offered compromises that met the requirements of the affiliation agreement, Limbert refused to negotiate or compromise. T. at 94-95. When Limbert met with Jones on January 12, 2007, she not only refused to negotiate, she sabotaged the entire process by refusing to work with the document that the parties had previously used as the framework for the new bylaws. T. at 94-95.

Limbert also steadfastly refused to explain why she insisted on control of the Association's election process. When the Association specifically requested that Limbert state her reasons for wanting bylaws that placed control of the Association in her hands, Limbert

failed to respond. Pl. Exh. 7. Instead, she declared an impasse and announced her intention to disaffiliate the Association. Pl. Exh. 5

During the hearing, Limbert's reasons for refusing to explain her position became clear. Limbert wanted control of the Association, particularly the Association's elections, in order to ensure that the Association's leadership would comply with her demands for subordination and as an attempt to silence individual criticism of her handling of important University decisions.³ Limbert attempted to assert this control despite the fact that these criticisms originated with individual alumni. The Association itself took no action, a difference that Meredith recognized but that Limbert did not, and a difference that negates Limbert's claims. T. at 39, 47-8, 264, 340.

Limbert testified that she insisted on control in order to "prevent the same alumnae group that we were having problems with, going out on the floor and then putting up their own slate of officers." T. at 58. Limbert also testified that she did not want to "have gone through all of this just to have it all revert back to the same people running the organization, the same small group replicating themselves once again." T. at 58. Ultimately, Limbert testified that under the provisions she wanted, adding candidates to the slate of officers from the floor would be more difficult, but "it would allow us to have a little control. . . ." T. at 333. In other words, Limbert would only approve the bylaws if those bylaws could ensure that the Association's officers agreed with her philosophy and her administrative decisions. Limbert felt threatened by a small group of alumni, none of whom were members of the executive governing body of the

³ During the course of Limbert's tenure, several major decisions raised the concern of individual alumni. These alumni, many of whom were past presidents of the Association, became concerned about the effect that Limbert's first Vice-President for Institutional Advancement had on the University. Allegations arose that Rawles was behaving rudely toward alumni, was mismanaging Foundation funds, was sexually harassing employees, and was guilty of using racial slurs on a regular basis. T. at 51-52; Def. Exh. 12. Rawles left campus suddenly, with a lucrative "consulting contract." The straw that broke the camel's back, however, was Limbert's decision to raid the alumni office the weekend after Homecoming, seize computers and alumni files, and remove both the Director and the Assistant Director on suspicion that individual alumni were "undermining the University" and "interfering with the Foundation." T. at 335, 342. This action was particularly egregious, given the Director's forty-three year employment history with the University.

Association at the time of disaffiliation. Her fear was driven by a vague notion that these individual alumni were attempting to “undermine the University” and control her operation of the University. Even if Limbert’s fears were valid and proven by the record, which they are not, and even if these alumni’s action justified a need for control, which they do not, Limbert’s attempts to control the Association were clearly outside the scope of the agreement, which required only that the bylaws be “consistent with the mission and priorities of the University, this Agreement, and IHL policy.” Pl. Exh. 4.

Limbert’s failure to cooperate during the bylaws meetings and her insistence on provisions outside the terms of the affiliation agreement constituted bad faith. Bad faith is not determined by a pre-set pattern of behavior but “varies according to the nature of the agreement.” Cenac, 902 So. 2d at 1272. The affiliation agreement constituted the formalization of a 118-year-long mutually beneficial and heretofore loving relationship between the University and its graduates. As Jones testified, the Association fought alongside the University to prevent closure or merger on more than one occasion. T. at 96. The Association’s positive influence on the University is unquestionable. Yet, Limbert opted to end that relationship just seventy-eight days after it was formalized because she wanted control to which she was not entitled.

The Defendants presented no testimony and no exhibits to establish how the proposed bylaws failed to meet the requirements of the affiliation agreement. Accordingly, there is no evidence that Limbert’s refusal to approve the bylaws was made in good faith and within her rights under the contract. To the contrary, the evidence conclusively proves that Limbert disaffiliated the Association because she could not exert the control she felt she needed. Under the terms of the affiliation agreement and in the context of the long-term relationship between the parties, Limbert had “a duty not only to refrain from hindering or preventing the occurrence

of conditions of [her] own duty or the performance of the [Association's] duty, but also to take some affirmative steps to cooperate in achieving these goals." Cenac, 902 So. 2d at 1272. Her decisions to impede the negotiations and to arbitrarily refuse to approve the Association's proposed bylaws constitute a bad faith breach of the affiliation agreement.

B. Limbert's decision to disaffiliate the Association for its refusal to break the IHL mandate of "independence" constituted bad faith.

The IHL's policies and bylaws serve as a legal framework for the affiliation agreement. The policy at issue in this case mandates that the relationship between the University and the Association "must be based on a recognition of and respect for the private and independent nature" of the Association. Pl. Exh. 1. The policy also provides that "[t]he Board of Trustees recognizes it cannot and should not have direct control over institutionally affiliated foundations/entities. *These foundations/affiliated entities must be governed separately to protect their private, independent status.*" Pl. Exh. 1 (emphasis added). These requirements are binding on both the University and the Association. Limbert's attempts to wrangle control of the Association violated the IHL policy. It would be impossible for the Association to maintain its independent status if Limbert were to control the nominating committee and inhibit a democratic elections process. Had the Association agreed to Limbert's demands, the Association would have relinquished control over its own self-governance to Limbert.

Throughout the process of drafting both the affiliation agreement and the bylaws, the Association consistently maintained that the agreement with the University must comply with the IHL policy's mandate of independence. Jones testified that while negotiating the terms of the bylaws, the Association's focus was "specifically to be in compliance with IHL policies. That was our main goal to meet that." T. at 91. Limbert, however, had no such intentions, as

evidenced by her behavior and by her testimony that she sought “control” to prevent the “small group of alumnae that we were having problems with” from holding office. T. at 58, 333.

The IHL’s policy references the terms “independent” and “separate” multiple times; however, the policy itself does not define these terms. The University and IHL attempted to argue to this Court that Limbert’s demands for control did not impair the Association’s independent status. Meredith testified that the term “independent” within the meaning of the policy had no objective meaning but was defined by the University’s president. T. at 228, 245. Meredith also stated that an affiliated entity would be independent despite the fact that he believed “[t]he university president would have the authority to direct how that operation would handle it in terms of determining its officers.” T. at 246. As a practical matter, to argue that a word within a state agency’s policy means whatever a person wants it to mean borders on nonsense, particularly when the word at issue has a common definition. More importantly, this argument has no basis in the law.

Compliance with IHL policy is mandated by the affiliation agreement and is specifically incorporated into the affiliation agreement. Pl. Exh. 4. Section 4.2 of the affiliation agreement also states that “[t]he Association is a private, independent entity and, as such, is not governed by the IHL Board or the University.” Pl. Exh. 4. Accordingly, both IHL policy and the affiliation agreement state that the Association must remain “independent.”

With regard to the issue of interpreting a contract term, Mississippi law is clear. Courts should adopt the “four corners doctrine,” reading the contract as a whole and giving contract terms their plain meaning unless they are otherwise defined or given a special legal meaning. Pursue Energy Corp. v. Perkins, 558 So. 2d 349, 352- 53 (Miss. 1990). The contract clearly intends that the Association shall remain “independent” from the University. The word

“independent” is given no special definition within the affiliation agreement; therefore, this Court should afford the term its plain meaning. Merriam-Webster defines the word “independent” as “*not subject to control by others,*” “*self-governing,*” “not affiliated with a larger *controlling* unit,” and “not looking to others for one’s opinions or for guidance in conduct.” See www.m-w.com. (last visited July 17, 2007) (Merriam-Webster website) (emphasis added). Accordingly, the affiliation agreement must be interpreted to mean that the Association is self-governing and not subject to the control of the University.

Likewise, the IHL policy contains no special definition of the word independent. While “[a]n agency’s interpretation of a regulation it has been authorized to promulgate is entitled to great deference,” it must be overturned if it is “plainly erroneous” or if it is “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” Tower Loan of Mississippi, Inc. v. Mississippi State Tax Comm’n, 662 So. 2d 1077, 1081(Miss. 1995) (citing Board of Trustees of State Institutions of Higher Learning v. Sullivan, 763 F.Supp. 178, 184 (S.D.Miss.1991)).

If, as Meredith testified, the IHL intended for the word “independent” to mean whatever an individual university president wanted it to mean, such an interpretation would be both inconsistent with Mississippi law and clearly erroneous. It would also render the IHL policy meaningless. The policy contains no direction that its interpretation shall be left to the discretion of the university presidents.⁴ Pl. Exh. 1. Mississippi Code Annotated Section 37-101-15(c) (Supp. 2006) provides, as a matter of law, that “[t]he board shall adopt such bylaws and regulations from time to time as it deems expedient for the proper supervision and control of the several institutions of higher learning, insofar as such bylaws and regulations are not repugnant to the Constitution and laws, and not inconsistent with the object for which these institutions

⁴ The only matters left to the presidents’ discretion are which entities shall be affiliated, and even then, that discretion is subject to IHL approval. Pl. Exh. 1.

were established.” The Board of Trustees is solely responsible for implementing policy, and it cannot abdicate its responsibility to the discretion of individual university presidents.

Moreover, it is clearly erroneous to interpret the word “independent” within this policy to mean that an individual university president could control an affiliated entity. Such an interpretation would be incompatible with the clearly stated purpose of the policy, with the use of the words “separate,” “governed separately,” and “private” as stated in the policy, and with the plain meaning of the word “independent.” Pl. Exh. 1.

The Association clearly adopted the proper reading of both the affiliation agreement and IHL policy in refusing to meet Limbert’s demands for control in the proposed bylaws. When the Association refused to breach the affiliation agreement and violate IHL policy by refusing to submit to her demands, Limbert announced her intention to disaffiliate and immediately withdrew the University’s support. Such an action constitutes bad faith because Limbert could not require that the Association commit a wrongful or illegal act (i.e. violating IHL policy) as a provision of performance of the affiliation agreement.

II. Equity requires that Limbert fulfill her obligations under the affiliation agreement.

Disaffiliation of the Association is inequitable. Limbert seeks to eliminate a 118-year-old entity because she dislikes a small number of individual alumni who actively participate in the Association’s activities. T. at 38-39, 46-47. Having attempted to disaffiliate the Association, Limbert now seeks to establish a new alumni group over which she can exert control. The IHL is implicit in this scheme, having given its support to Limbert as she attempts to establish a new group. Def. Exh. 8. To allow Limbert to proceed with the establishment of a new group is inequitable for the following reasons: (1) Limbert is in violation of the clean hands doctrine; and (2) Equity regards as done that which ought to be done.

A. Limbert's violations of the clean hands doctrine.

Limbert comes to this Court seeking to justify her actions and to cripple the Association by stripping the Association of its name and its assets. The clean hands doctrine “prevents a complaining party from obtaining equitable relief in court when he is guilty of willful misconduct in the transaction at issue.” Bailey v. Bailey, 724 So.2d 335, 337 (Miss. 1998) (citing Calcote v. Calcote, 583 So.2d 197, 199-200 (Miss. 1991)).

Limbert's willful misconduct, within the context of the breach of contract issue, has been thoroughly discussed *supra*, but her misbehavior does not end there. The Defendants' testimony also revealed that Limbert was considering disaffiliation in the summer of 2006, long before the issue of the affiliation agreement became an immediate concern. T. at 258-60. Both Limbert and Meredith testified that the issue had arisen in their earlier discussions.

Additionally, Limbert appointed Andrea Godwin Overby to begin the process of creating a new alumni group within days of announcing her intent to disaffiliate the Association. T. at 273-78. In so doing, Limbert completely disregarded the sixty-day termination clause contained in the affiliation agreement. Pl. Exh. 4. That group formed itself and signed an affiliation agreement with Limbert on March 27, 2007, before the sixty-day period in the Association's affiliation agreement expired. T. at 273-78; Def. Exh. 9. Limbert also immediately withdrew the University's support of the Association, again in contravention of the affiliation agreement's sixty-day termination period. Meanwhile, Limbert publicly professed to be engaging in good faith negotiations with the Association, but those professions were empty and false. Instead of working with the Association to resolve the dispute, Limbert directed Sansing to write a report that attempted to explain her reasons for wanting to disaffiliate the Association. That report, Defendant's Exhibit 12, is fraught with errors and misrepresentations and constitutes a bad faith

attempt to discredit the Association by attributing what are clearly individual actions to the Association.⁵

Limbert's willful misconduct has continued since the filing of this case. When this Court ordered the parties to mediation, Limbert failed to appear, despite the fact that she is a named party. It is well-known that "Courts of equity will not tolerate interference with their orders nor with their officers in the enforcement thereof." Mississippi Chancery Practice § 34 (2000). Limbert's failure to participate in mediation hindered the efforts to resolve this dispute.

Limbert also participated, with the IHL Board, in violating an agreement between the parties that was reached with this Court, notarized, and read into the record. Pl. Exh. 9. Following the parties' appearance in this Court on April 12, 2007, the University agreed not to place its agreement with Limbert's appointed organization on the IHL's agenda "prior to Judge Colom hearing the motion for preliminary injunction and motion to dismiss." Pl. Exh. 9. The hearing was *begun* on May 8, 2007, but it was not completed until June 5, 2007. In violation of that agreement, the University placed the appointed group's agreement on the IHL's May meeting agenda, and the IHL voted to approve that agreement. T. at 249-50. The University and the IHL gave no notice to the Association that they intended to do so.

Despite this consistent pattern of willful misconduct and inequitable behavior, Limbert has asked this Court to "rubber stamp" her illegal decision and to grant her the right to strip the Association of its ability to operate by taking its name and its assets. The clean hands doctrine simply cannot permit Limbert to prevail.

⁵ For example, Sansing's report relates a purported email exchange between Lydia Quarles and Jimmie Moomaw regarding attempts to "undermine the Foundation" by engaging in fundraising. Def. Exh. 12, p. 5. Upon examination of the emails, however, it becomes clear that not only are the emails not part of a single exchange, Moomaw's "response" was written four months *before* Quarles's email.

B. Equity regards as done that which ought to be done.

Equity also “regards as done that which ought to be done.” Mississippi Chancery Practice, § 34. Simply put, this Court is empowered to do that which is right and just, because “[e]quity delights to do complete justice and not by halves.” *Id.* Limbert’s attempt to disaffiliate, and the IHL’s complicity in her actions, created a situation that threatens to irreparably harm both the University and the Association, a situation which the Association has fought to avoid through continuous good faith attempts to work with Limbert. Additionally, the impact of this decision creates a detrimental precedent that can and will affect future relationships between the universities of Mississippi and their affiliated entities.

Limbert’s decision was unilateral. She testified that *she* made the determination that the bylaws negotiations had reached an impasse (due to her bad faith conduct) and that *she* made the announcement to disaffiliate. T. at 327; Pl. Exh. 6. Limbert also made the decision to create a new organization. IHL has not, to date, formally addressed the disaffiliation, although Meredith testified that IHL was aware of Limbert’s decision and supported her informally. T. at 253, 255.

Limbert’s decision has proven to be not only unpopular, but also a source of great concern to the public at large and the Mississippi Legislature. The Mississippi Legislature recognized that Limbert’s decision should not be allowed to stand. To that end, the Mississippi Legislature passed multiple resolutions urging Limbert to “maintain [the] relationship” with the Association. Pl. Exh. 2 -3. The Mississippi Legislature also proclaimed its recognition of the Association’s right to self-governance, a right given to the Association under both the IHL policy and the affiliation agreement, and a right that Limbert and the IHL have ignored. Pl. Exh. 2-3.

The IHL also has abdicated its responsibility to enforce its own policies and, therefore, to stop Limbert. The IHL policy requires that the IHL approve each operating agreement

“whenever the operating agreement is changed.” Pl. Exh. 1. Termination of an operating agreement certainly constitutes a change to the agreement. Yet, the IHL Board of Trustees has failed to vote on the termination of the agreement, as required by the policy, or to even hear the Association’s position on this matter.⁶ T. at 253.

Because the parties who bear the responsibility of preventing such a despotic action from occurring have failed in their duties, this Court represents the Association’s only avenue for relief. Equity regards as done that which ought to be done. Given Limbert’s willful misconduct in this case and the public policy concerns, this Court can and should require Limbert to complete the contract to which she agreed and declare the contract with the new group null and void as an illegal contract. Such a decision is the only means of achieving complete justice, one of the goals of equity.

This Court clearly has the right and the authority to declare the contract with the appointed association void. That contract was brought to IHL for approval in violation of a binding agreement between the parties and this Court. Pl. Exh. 9. Accordingly, the contract should never have existed. Declaring the contract void will do no harm to the new alumni group. That group, by its very existence, violates the IHL’s mandate of independence, as the group was appointed by Limbert, through her appointment of a single alumna. T. at 37, 273-74. Additionally, both Renee Flynt, the appointed president of the appointed group, and Perry Sansing, counsel for the University and assistant to the President, testified that the new group has no members. T. at 286, 361. Any difficulties in restoring the status quo, as it existed prior to Limbert’s pronouncement of an intent to disaffiliate, are the result of Limbert’s actions, and she should not be permitted to benefit from her own misconduct and her disrespect for this Court’s

⁶ Affiliation of an entity requires IHL approval by a formal vote of the Board of Trustees. Pl. Exh. 1. Accordingly, it follows that the disaffiliation of an entity would also require IHL approval by a formal vote of the Board.

authority. Complete justice can only be done by restoring the Association to its rightful place as the affiliated alumni organization representing the University and by mandating that Limbert fulfill her obligations under the contract.

III. The University’s counterclaims fail as a matter of law and on the merits.

The University filed a counterclaim seeking to enjoin the Association from using the University’s name, trademarks, and other associated symbols. The University also seeks an accounting of the Association’s assets in order to take control of those assets. The University’s counterclaims are void as a matter of law. Alternatively, the University’s counterclaims fail on the merits and for lack of proof. The Association has addressed these issues in part in response to Defendants’ second motion to dismiss and also incorporates that brief by reference.

A. The University was not authorized to file its counterclaims.

In Mississippi, the Attorney General “is given the sole power to bring or defend a lawsuit on behalf of a state agency.” Miss. Code Ann. § 7-5-1. During the hearing, counsel for the Association requested proof of the Attorney General’s authorization for the University to bring its counterclaim. T. at 378. Counsel for the University represented to the Court that the University was entitled to a defense under the Mississippi Tort Claims Act but made no representations that the Attorney General had authorized the counterclaims. T. at 378. Meredith himself testified that he was not aware of any such authorization. T. at 256. Without authorization from the Attorney General, the University cannot, as a matter of law, bring a counterclaim.

B. The University’s counterclaims are without merit.

1. The University’s allegation that the Association is infringing on its trademark is without merit.

The Association previously has submitted a trial brief to the Court regarding the University's allegations that the Association should not be permitted to use the name "Mississippi University for Women" or any marks or slogans associated with the University and hereby incorporates that brief by reference. As the Association's previously-filed briefs explain in greater detail, the University has trademarked a single word mark. Def. Exh. 11. The University has not trademarked the name "Mississippi University for Women," the abbreviation "MUW," the nickname "The W," or any other logo or mark. T. at 323. The University has not alleged that the Association has used this word mark, and the evidence demonstrates that the Association has not used it. The University alleges only that the Association should be enjoined from use of the name of the University and its trademarks. In order to be entitled to such protection, however, the University must demonstrate that it is entitled to such protection.

The testimony and evidence does not support such a finding. The names and symbols that the University cited in its testimony are not registered trademarks and are not afforded trademark protection. The University attempted to argue, through Limbert's testimony, that the individual components of that word mark are protected. This testimony is contrary to trademark law, which provides that "protections afforded to trademarks cover the trademark as a whole, not the individual components which create the mark as a whole" because "[t]he commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail." See Estate of P.D. Beckwith, Inc. v. Commissioner of Patents, 252 U.S. 538, 545-56 (1920); see also J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 11:27 (4th ed. 1996).

Alternatively, even if the Court were to find that the name "Mississippi University for Women" should be protected, the University has not demonstrated a likelihood of confusion.

The use of the name “Mississippi University for Women Alumnae Association,” standing alone is not likely to create any confusion. Mississippi’s trademark law prohibits “the creation of a corporation with the same name as another corporation already existing in the state or creation of a corporation with a name so similar as to be misleading.” Meridian Yellow Cab Co. v. City Yellow Cabs, 41 So.2d 814, 822-23 (Miss. 1949). See also Miss. Code Ann. § 79-4-4.01 et. seq.

A determination that a name is sufficiently similar as to be misleading is dependent on:

circumstances; the identity or similarity of the names; the identity of the business of the respective corporation; how far the name is a true description of the kind and quality of the articles manufactured of the business carried on; the extent of the confusion which may be created or apprehended; and other circumstances which might justly influence the judgment of the judge in granting or withholding the remedy.

Id. at 826 (citation omitted). While the University inexplicably cited Meridian Yellow Cab during the course of the hearing in support of its counterclaim, the facts of the case are clearly distinguishable from this case. As Limbert herself testified, the University and the Association are engaged in two very different occupations. T. at 35-36. The Association exists to provide services to alumni of the University. In contrast, the University exists to educate its current attendees and seeks the business of non-attendees seeking a college education. Therefore, the markets in which the Association and the University function are distinguishable. Moreover, the Association’s name is absolutely descriptive, justifying the Association’s continued use. See KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc., 543 U.S. 111, 122 (2004). Eliminating the use of “Mississippi University for Women” would render it nearly impossible for the Association to promote its purpose. The University also failed to present any evidence of confusion or likelihood of confusion that would negate descriptive use of the University’s name.

2. The University is not entitled to the Association’s assets.

The University also argues that it is entitled to an accounting and to possession of the

Association's assets. The Association has clearly demonstrated ownership and control of those accounts. Pl. Exh. 10-17. Justice Kay Cobb testified that between 1983 and 1987, the Association opted to place those funds, collected from Association dues and fundraisers, into the MUW Foundation at the urging of the University's administration. T. at 177. The Association made the decision in order to "draw a higher rate of interest" and to support the University. T. at 177-78. The deposited money demonstrated a high level of alumni giving which, in turn, impacted the University's ratings and opportunities for grants. T. at 178. The Association made the decision after receiving assurances that the money still belonged to the Association, that it would "forever be separate and apart" from the Foundation's general funds, and that the funds would be administered *as directed by the Association* for the benefit of the University. T. at 178.

The Association never intended for Limbert, in the event of disaffiliation, to take those assets which already existed prior to the existence of the affiliation agreement. T. at 154. The Association intended for that provision to apply to future assets only because the Association cannot divest itself of those assets. All of the accounts belonging to the Association have been entrusted to the Foundation for management and disbursement in accordance with the terms of their endowments. T. at 112. While the Association has limited control to direct those assets for the benefit of the University, it cannot withdraw those funds and give them directly to Limbert to do with as she pleases. Accordingly, the accounts at issue do not fall within the purview of the agreement, and the University has specifically disclaimed any right to pursue those assets. T. at 28-29, 200-201. The University has also disclaimed any desire for the Association's only remaining assets, the cookbooks. T. at 28-29.

Despite this disavowal, Bouse, the VPIA and the President of the Foundation, has refused the Association access to its own accounts following Limbert's attempt to disaffiliate. T. at 78.

As a University employee, Bouse reports to Limbert. T. at 281. The record infers that Bouse's wrongful refusal to provide the Association with the financial records of its own accounts is a result of Limbert's order. T. at 78. The Association has experienced the same refusal with respect to its membership records. T. at 77-78.

Finally, to permit Limbert to seize control of the Association's assets is inequitable. The provision of the affiliation at issue, Section 7.4, is triggered only by the effective disaffiliation of the Association. Limbert has not legally disaffiliated the Association. First, as discussed *supra*, the IHL did not approve the disaffiliation as required by the IHL policy. Pl. Exh. 1. More importantly, however, equity does not permit Limbert, who comes into this Court with unclean hands, to benefit from her willful misconduct and bad faith behavior.

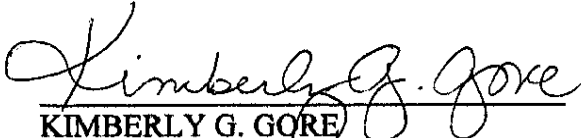
REQUEST FOR RELIEF

For the foregoing reasons, the Mississippi University for Women Alumnae Association respectfully requests that this Court

- (1) Enter an injunction mandating that Limbert, the University, and the IHL uphold the existing and valid affiliation agreement between the Association and the University, dated October 25, 2006, and that Limbert, the University, and the IHL operate under the affiliation agreement in good faith for the duration of the agreement, as required by Mississippi law and IHL policy; and
- (2) Require Limbert, the University, and the IHL to rescind the affiliation agreement between the University and Limbert's appointed group. The existence of both the group and the affiliation agreement are null and void because both were established in contravention of valid and binding agreements among the parties to this litigation.

This, the 23rd day of July, 2007.

Respectfully submitted,

BY: 
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APPENDIX A



1884

Industrial Institute & College
Chartered

1889

Alumnae Association establishes loan fund

Jan 1884

Feb 1884

Jan 1889

Feb 1889



1962
Life membership dues
for MSCW Alumnae
Association is \$10.00

Jan 1962

Feb 1962

Nov 1977

Nov 1977
MUW President gives
MUW Alumnae
Association \$68,000 in
accumulated dues for
investment



Dec 1977
\$50,000 Alumnae Funds deposited with First Federal in certificated titled "Mississippi University for Women Alumnae Association"

Sep 1983
President Kay Cobb presiding - Alumnae Board approves purchase of a CD in the amount of \$40,000

Dec 1977

Sep 1983

Oct 1983





1984
MUW Centennial
Celebration

Mar 28, 1984
Investment of \$50,000 Alumnae
Funds with Foundation Funds
at interests rate of 11.125%

4

Jan 1984 Feb 1984 Mar 1984 Apr 1984



Jul 12, 1986
\$35,000 of original \$60+ remains.

Oct 13, 198
Certificates of
with Foundati
higher yeild b

5



Jul 1986

Aug 1986

Oct 1989

Mississippi University for Women Al

Oct 13, 1989

Certificates of Deposit combined
with Foundation Funds for
higher yeild balance of \$16,164

1994

MUW Alumnae Association
incorporated with Mississippi

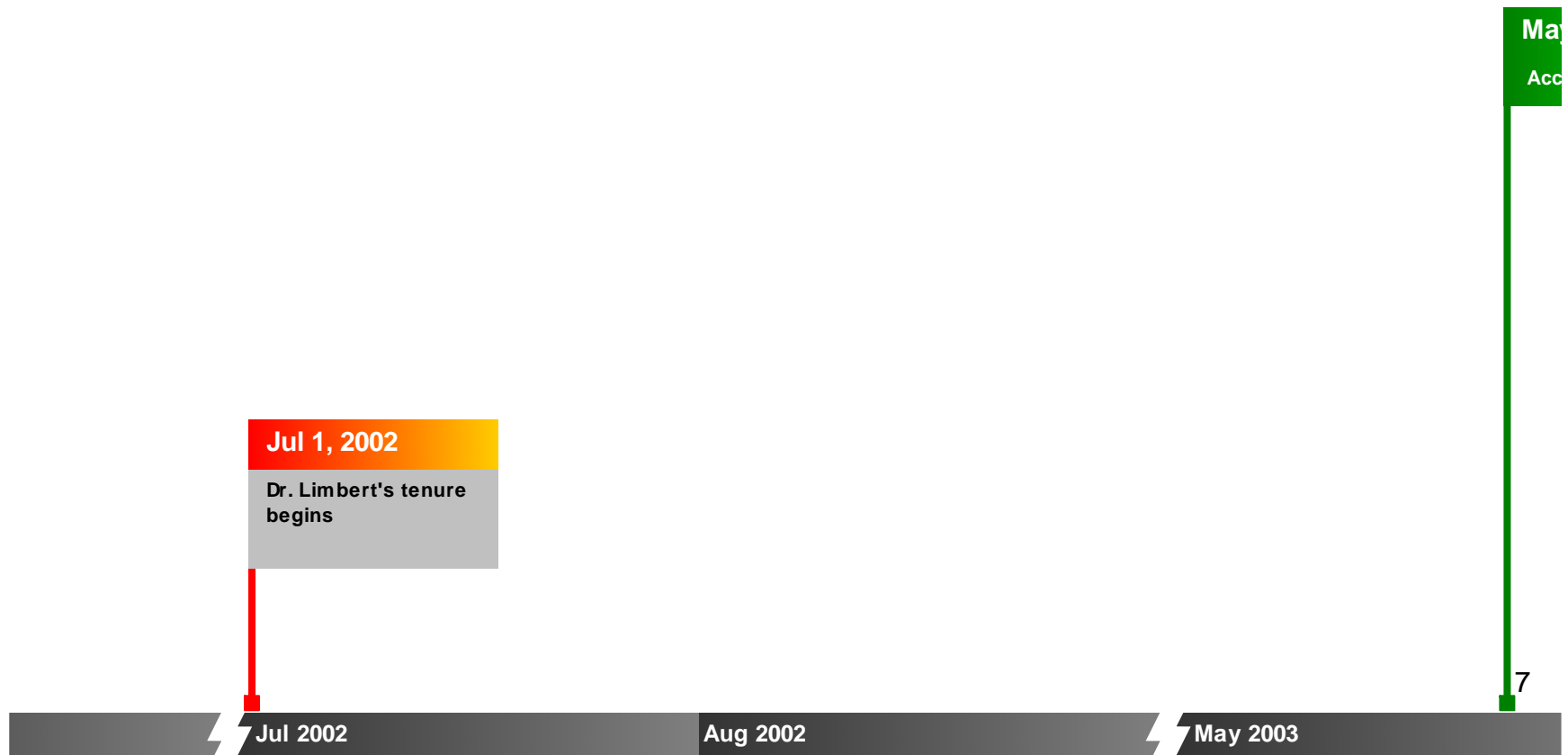
89

Nov 1989

Jan 1994

Feb 1994

Alumnae Association Timeline of Significant Events

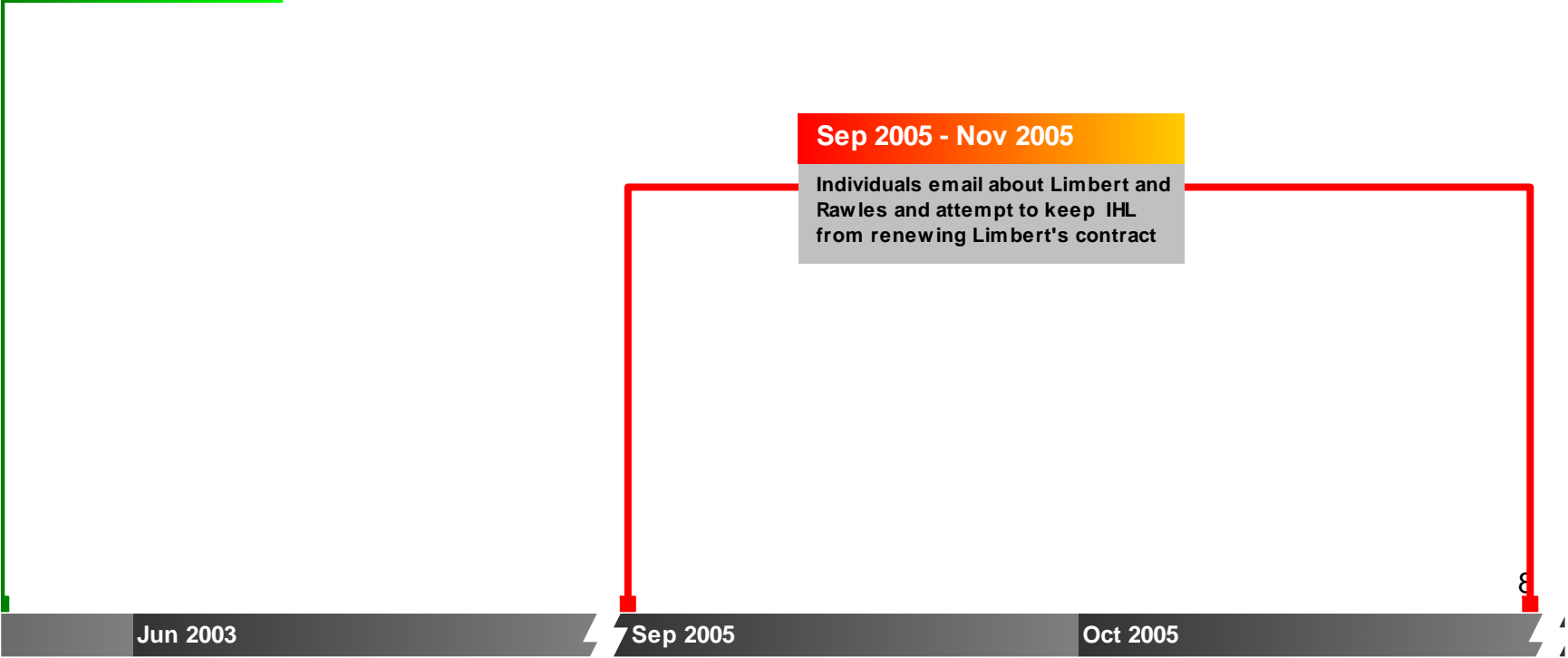




May 23, 2003
Account Balance \$28,187

Sep 2005 - Nov 2005

Individuals email about Limbert and Rawles and attempt to keep IHL from renewing Limbert's contract





May 1, 2006

Facilitated meeting with Alumni Association re Limbert fail to express concern.

May 1, 2006

May 1, 2006, Dr. Me... discussed the...

Apr 24, 2006

Limbert seizes the Alumni Office the Monday after Homecoming



May 1, 2006 - Jul 1, 2006
Facilitated meetings between Association representatives and Limbert fail to resolve issues of concern.

May 1, 2006
May 1, 2006 through July 31, 2006, Dr. Meredith and Dr. Limbert first discuss/email about disaffiliation of the Alumnae Association

Aug 2006
IHL Policy first instituted to require Affiliation Agreements and the Affiliation Agreements with Alumni Associations and they MUST contain a DISAFFILIATION clause

Oct 1, 2006
Jones receives proposed affiliation agreement containing punitive and negative language; Limbert sets October 27, 2006 deadline.

Oct 2, 2006 - Oct 12, 2006
In early October 2006, Association receives proposed affiliation agreement based on proposal from other Mississippi alumnae. Limbert rejects proposal and moves deadline forward to October 27, 2006.



Oct 2, 2006 - Oct 12, 2006

In early October 2006, Association drafts proposed affiliation agreement based on examples received from other Mississippi alumni associations. Limbert rejects proposal outright and arbitrarily moves deadline forward to October 21, 2006

Proposed affiliation agreement including punitive and ; Limbert sets deadline.

Oct 19, 2006

Association submits second proposed agreement. That same afternoon, Jones receives email from Mayo advising her of his representation of University

Oct 25, 2006

Affiliation Agreement between MUW and MUWAA executed after threats of disaffiliation

Nov 15, 2006

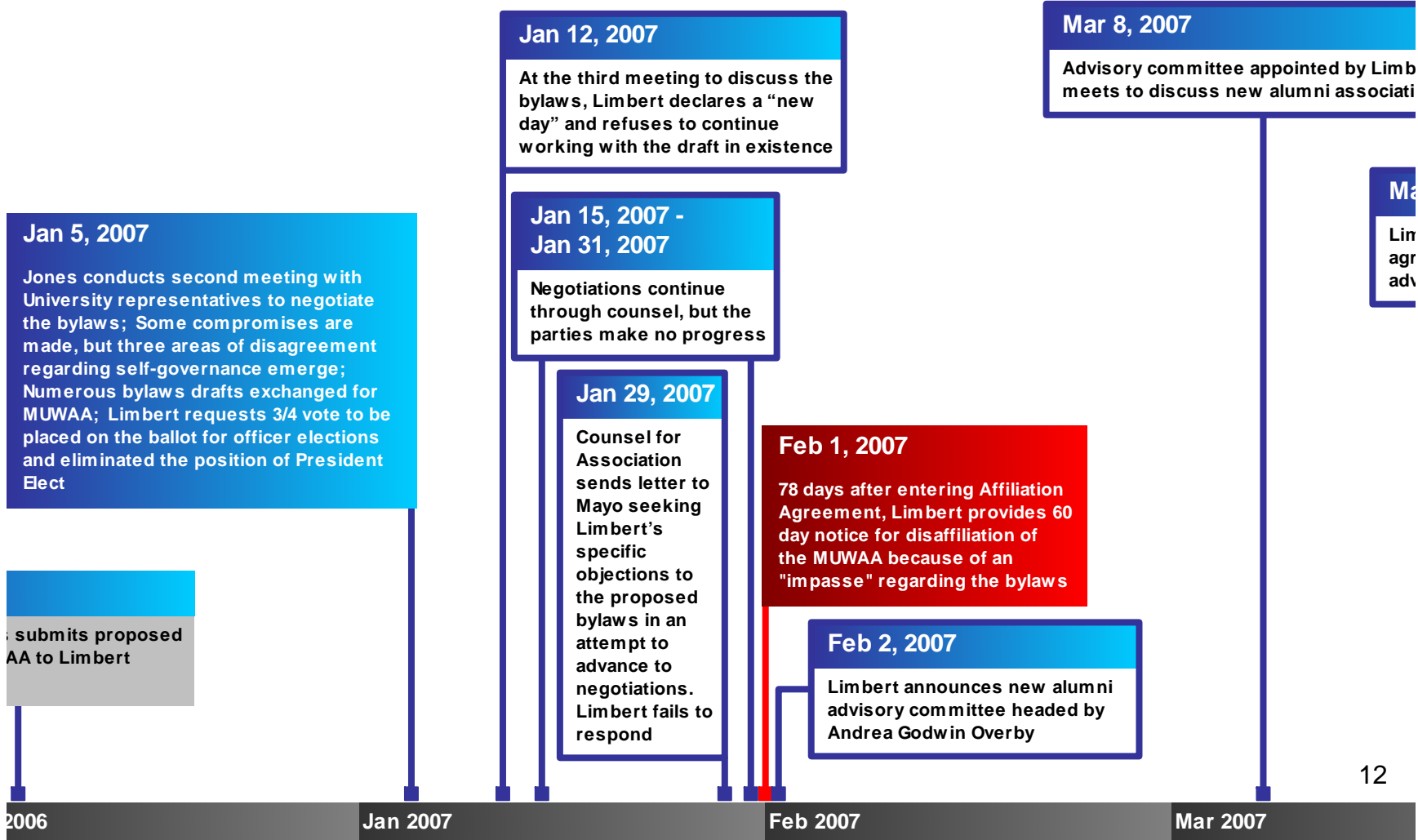
IHL approves Affiliation Agreement

Jan 5, 2007

Jones conducts second meeting with University representatives to negotiate the bylaws; Some compromises are made, but three areas of disagreement regarding self-governance emerge; Numerous bylaws drafts exchanged for MUWAA; Limbert requests 3/4 vote to be placed on the ballot for officer elections and eliminated the position of President Elect

Dec 6, 2006

President Jones submits proposed bylaws for MUWAA to Limbert



CERTIFICATE OF SERVICE

I, KIMBERLY G. GORE, one of the attorneys for Plaintiff, do hereby certify that I have, this day, served via electronic mail, a true and correct copy of the above and foregoing to the following:

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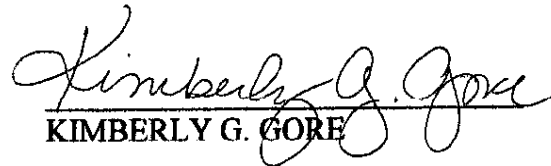
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THIS the 23rd day of July, 2007.


KIMBERLY G. GORE