

IN THE SUPREME COURT OF MISSISSIPPI

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CASE NO. 2007-CA-01926

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DR. CLAUDIA A. LIMBERT, individually and in  
her official capacity as President; MISSISSIPPI  
UNIVERSITY FOR WOMEN; and MISSISSIPPI  
BOARD OF TRUSTEES OF STATE  
INSTITUTIONS OF HIGHER LEARNING

DEFENDANTS/APPELLANTS

V.

MISSISSIPPI UNIVERSITY FOR WOMEN  
ALUMNAE ASSOCIATION, INC.

PLAINTIFF/APPELLEE

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ON APPEAL FROM THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

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**APPELLANTS' MEMORANDUM BRIEF IN SUPPORT OF  
THEIR RESPONSE TO APPELLEE'S MOTION TO VACATE  
STAY AND IN SUPPORT OF THEIR COUNTER-MOTION  
FOR COMPLETE STAY OF JUDGMENT PENDING APPEAL**

This matter relates to the continued efforts of the Mississippi University for Women Alumnae Association leadership to interfere with the administration of and usurp the management and control of Mississippi University for Women. Because the Mississippi Constitution vests responsibility for this management and control solely and exclusively with the IHL Board of Trustees and its delegates (such as Dr. Claudia Limbert, President), the Chancery Court's Opinion and Judgment (October 1, 2007) erroneously mandates that the University maintain its affiliated relationship with the Alumnae Association and that the University rescind

any affiliation agreement with any other alumni group.<sup>1</sup> Defendants/Appellants President Limbert, the University and the IHL Board have already provided this Court with their Brief on Appeal addressing the Chancery Court's errors.<sup>2</sup>

After perfecting their appeal and before submitting their Brief on Appeal, Defendants asked the Chancery Court to completely stay these mandates pending final appellate resolution. A few days later, the Alumnae Association asked the Chancery Court to "enforce" and expand its Opinion and Judgment by, among other things, re-writing the Affiliation Agreement between the Alumnae Association and the University. In February 2008, following a hearing and oral argument, the Chancery Court denied Defendants' request to stay the Opinion and Judgment with the exception that the Chancery Court did stay that portion of the Opinion and Judgment mandating that the University rescind its affiliation with any other alumni group. The Chancery Court denied the Alumnae Association's request to broaden and "enforce" the Opinion and Judgment by re-writing the Alumnae Association's Affiliation Agreement with the University. Dissatisfied and desperate, the Alumnae Association now asks this Court to vacate the Chancery Court's Order staying that portion of its Opinion and Judgment mandating that the University rescind its affiliation with any another alumni group, including the Alumni Association.<sup>3</sup>

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<sup>1</sup> In March 2007, the University entered a written affiliation agreement with a new entity named the "Mississippi University for Women *Alumni* Association", which is referred to as the "*Alumni* Association". Plaintiff/Appellee is referred to as the "*Alumnae* Association".

<sup>2</sup> See Appellants' Brief on Appeal (February 15, 2008) (Appendix "A" to this Brief).

<sup>3</sup> According to its Brief in Support of Motion to Vacate, the Alumnae Association is separately appealing the Chancery Court's ruling related to the Alumnae Association's request that the Chancery Court rewrite the Affiliation Agreement and otherwise expand the Chancery Court's Opinion and Judgment. See Brief, p. 4, n.5.

This Court should deny the Alumnae Association's Motion to Vacate Stay. Instead, this Court should stay *in toto* the mandates of the Chancery Court's Opinion and Judgment.

### **BACKGROUND**

On February 1, 2007, the University gave the Alumnae Association its notice of termination of their Affiliation Agreement pursuant to Section 7.2: "This Agreement may be terminated by either party upon at least 60 days written notice."<sup>4</sup> The Alumnae Association sued Dr. Limbert in her individual capacity on March 29, 2007, to prevent the University from terminating the affiliation. The Alumnae Association failed to obtain any relief, and the affiliation ended on April 2, 2007, after expiration of the contractually-required 60-day termination period. The Alumnae Association amended its complaint on April 4, 2007, naming as defendants Dr. Limbert (as President), the University, and the IHL Board of Trustees.

The Chancery Court tried this matter on May 8, 2007 and June 5, 2007. The parties submitted trial briefs on July 29, 2007. Among other things, the Alumnae Association requested that the Chancery Court mandate Dr. Limbert, the University and the IHL Board "uphold the existing and valid affiliation agreement between the Association and the University, dated October 25, 2006", and "operate under the affiliation agreement in good faith for the duration of the agreement . . .".<sup>5</sup>

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<sup>4</sup> See Affiliation Agreement (October 25, 2006) (Ex. "B" to Defendants' Motion for Stay of Judgment Pending Appeal) (**Ex. B to Appellee's Motion to Vacate Stay**).

<sup>5</sup> See Alumnae Association's Post-Trial Brief, p. 25 (July 23, 2007) (Ex. "D" to Motion for Stay of Judgment) (**Ex. B to Appellee's Motion to Vacate Stay**).

In its Opinion and Judgment, the Chancery Court determined that Dr. Limbert wrongfully “refus[ed] to approve the By-Laws” as presented by the Alumnae Association in January 2007.<sup>6</sup> Thus, the Chancery Court concluded, Dr. Limbert acted in bad faith when she terminated the Affiliation Agreement between the University and the Alumnae Association “over the By-Laws”. Further, the Chancery Court held that “the primary motivating factor behind Dr. Limbert’s disaffiliation with the Association were the actions . . . of the various members and/or officers of the Association that pertained to the so-called ‘criticism’ of Dr. Limbert and her administration.” The Chancery Court ruled that Dr. Limbert terminated the Affiliation Agreement “for constitutionally impermissible reasons” that were *per se* bad faith.

The Chancery Court then granted the following ultimate relief:

An injunction mandating that Dr. Limbert uphold the existing and valid affiliation agreement between the Association and the University, dated October 25, 2006, and that Dr. Limbert operate under the affiliation agreement in good faith for the duration of the Agreement is hereby ordered and entered. Since the actions of Dr. Limbert in terminating the agreement were in bad faith, actions taken by her to form a new alumnae association and enter into a new affiliation agreement were also in bad faith. Therefore, Dr. Limbert and IHL are mandated to rescind any affiliation agreements made by Dr. Limbert with any other alumni group. . . .

After release of the Chancery Court’s Opinion and Judgment, the Alumnae Association did not formally ask this Court to alter or amend its ruling (*i.e.*, the Opinion and Judgment mandating that Defendants “uphold the valid and existing affiliation agreement”) to modify the terms of the Agreement. However, in an effort to side-step the Chancery Court ruling, the Alumnae Association took the novel position that the Opinion and Judgment magically amended

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<sup>6</sup> See Opinion and Judgment, p.11 (October 1, 2007) (Ex. “E” to Motion for Stay of Judgment) (Ex. B to Appellee’s Motion to Vacate Stay).

the Affiliation Agreement in numerous ways, despite the Opinion's clear language to the contrary.<sup>7</sup> In doing so, the Alumnae Association sought to dramatically redefine its relationship with the University, using terms that conflict with the very IHL Policy which establishes the conditions under which the University may affiliate with an outside entity, such as the Alumnae Association.<sup>8</sup> If the Alumnae Association had initially insisted upon such terms, the University would never have signed the Agreement, and the IHL Board would never have approved it.

Faced with an unworkable court-mandated relationship with the Alumnae Association with leaders unwilling to abide by the existing Affiliation Agreement, Defendants asked the Chancery Court to stay the mandates issued in favor of the Alumnae Association pending resolution of their appeal in December 2007. In response, the Alumnae Association asked the Chancery Court to "enforce" the judgment by re-writing the Affiliation Agreement.

In February, the Chancery Court granted in part the relief requested by Defendants. Specifically, the Chancery Court stayed the portion of its Opinion and Judgment mandating that the University rescind its affiliation with any other alumni groups, such as the Alumni Association.<sup>9</sup> Otherwise, the Chancery Court denied Defendants' Motion to Stay. On the other hand, the Chancery Court refused to modify and expand its Opinion and Judgment to "rewrite the

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<sup>7</sup> See Email from Gore to Mayo (November 30, 2007), including Redlined Affiliation Agreement (Ex. "A" to Motion for Stay of Judgment) (**Ex. B to Appellee's Motion to Vacate Stay**).

<sup>8</sup> See Brief in Support of Motion to Stay Judgment Pending Appeal, pp. 1-3 (**Ex. B to Appellee's Motion to Vacate Stay**).

<sup>9</sup> See Opinion (February 19, 2008), and Order (February 25, 2008) (**Ex. G to Appellee's Motion to Vacate Stay**).

agreement of the parties”, as requested by the Alumnae Association in its Motion to Enforce Judgment. The Alumnae Association filed is Motion to Vacate Stay on March 5.

## ***ARGUMENT***

### ***Standard of Review***

Rule 62(c) of the Mississippi Rules of Civil Procedure provides that a court “in its discretion may suspend, modify, restore, or grant an injunction” during an appeal. The taking of an appeal does not terminate “the power of the court to make such an order”. Defendants agree that this Court should review the action of the Chancery Court under an abuse of discretion standard for a clear error of judgment.<sup>10</sup> Further, in reviewing the decision of a chancellor where the chancellor made no specific findings of fact, “the assumption is that the chancellor resolved all issues in favor of the [prevailing party] or at least in a manner consistent with the decree.”<sup>11</sup>

### ***Alumnae Association’s Flawed Legal Analysis***

The Alumnae Association cites a single decision of the Mississippi Court of Appeals<sup>12</sup> in support of its contention that the Chancery Court’s February 19 Opinion and February 25 Order improperly “altered” its original Opinion and Judgment by granting a partial stay. Not only does the Alumnae Association err in its analysis, a proper reading of the Court of Appeal’s decision shows that the Chancery Court correctly granted the stay and rejected the Alumnae Association’s

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<sup>10</sup> *Beverly v. United States*, 468 F.2d 732, 740-41 n.13 (5<sup>th</sup> Cir. 1972).

<sup>11</sup> *Lahmann v. Hallmon*, 722 So.2d 614, 620 (Miss. 1998); see also *Schlotzsky’s, Ltd. v. Sterling Purchasing and National Distribution Co., Inc.*, 2008 U.S. App. LEXIS 4801, \*22 (March 5, 2008 5<sup>th</sup> Cir.) (finding no error when district court implicitly finds litigant would suffer irreparable harm).

<sup>12</sup> See Alumnae Association’s Brief, pp. 6-8, citing *Bert Allen Toyota, Inc. v. Grasz*, 947 So.2d 358 (Miss. App. 2007).

efforts to modify and broaden the Opinion and Judgment by re-writing the Affiliation Agreement and by limiting Dr. Limbert's control of the University's relationships with affiliated groups.

In *Bert Allen*, the chancellor granted injunctive relief in favor of plaintiff Grasz requiring the defendant car dealer to provide Grasz with a new vehicle of a particular model year ("2003"). The car dealer appealed but did not seek a stay of the judgment pending appeal. Grasz filed a motion to enforce the judgment. Responding to a contention by the car dealer that it could not possibly satisfy the court's mandate by providing the specific model year vehicle required by the chancellor's judgment, the chancery court amended its judgment to require the car dealer to provide Grasz with an auto of "model 2003 or later." The Court of Appeals reversed the chancery court, holding that the lower court lacked jurisdiction to modify its judgment following the auto dealer's appeal of that decision.

In the present case, the Chancery Court did not modify or expand its decision when granting the partial stay in favor of Defendants. To the contrary, the Chancery Court's February 19 Opinion merely makes a legal observation: "There is no IHL policy which prevents a university president from affiliating with any or as many alumni associations that it desires." Obviously realizing as a result of the absence of any such policy that Defendants have a substantial likelihood of succeeding on their appeal of this issue, that harm would result to the University without alumni affiliations of its choosing and that the new Alumni Association would suffer without affiliation with the University, the Chancery Court granted the stay to permit the University to exercise its discretion in affiliating with other alumni groups like the Alumni Association. The Chancery Court specifically realized that it was "too late to amend its judgment", and that its authority was limited to granting the stay pending appeal.

In contrast, consistent with the jurisdictional limitations discussed in *Bert Allen*, the Chancery Court rejected the Alumnae Association's efforts to "misconstrue" and "misinterpret" the Court's "narrow" Opinion and Judgment. Having previously declared the Affiliation Agreement to be "existing and valid", the Chancery Court refused the Alumnae Association's request to "re-write" that contract and otherwise control Dr. Limbert's decisions concerning the University's relationships with its affiliated entities. To satisfy the Alumnae Association, the Chancery Court would necessarily have needed to reach back to the original Opinion and Judgment and expand its provisions and mandates, an exercise which *Bert Allen* makes clear the Chancery Court lacked jurisdictional authority to undertake.

*Standard Under MRCP 62(c) and (g) and MRAP 8(c)*

Under MISS. R. CIV. P. 62(c) and (g) and Miss. R. App. P. 8(c), a court granting an injunction may suspend, modify, restore, or grant an injunction during the pendency of an appeal from such judgment. An application for a stay "must ordinarily be made in the first instance to the trial court."<sup>13</sup> The court should grant a stay if the applicant shows: (i) a likelihood of success on the merits of the appeal, (ii) irreparable injury absent a stay, (iii) no substantial harm to other interested persons, and (iv) no harm to the public interest.<sup>14</sup> This Court is not limited to these four factors and may look at "other relevant considerations" when considering a stay request.<sup>15</sup>

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<sup>13</sup> MISS. R. APP. P. 8(b)(1).

<sup>14</sup> MISS. R. CIV. P. 62 cmt.

<sup>15</sup>*Id.*

“The duty of this Court is to weigh the strength of these showings against each other and balance them against the potential harm to the interests of the plaintiffs and the public.”<sup>16</sup>

As detailed below, Defendants meet and exceed the requirements for a stay. The Chancery Court did not abuse its discretion in granting a partial stay but did abuse its discretion in not granting a complete stay of its mandates. This Court should grant a complete stay of the Chancery Court’s Opinion and Judgment (October 1, 2007).

***A. Substantial Likelihood of Success on Merits***

As discussed in detail in Appellants’ Brief on Appeal (February 15, 2007),<sup>17</sup> Defendants have a strong likelihood of succeeding on the merits of their appeal. However, an applicant for post-trial stay “need not always show a ‘probability’ of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.”<sup>18</sup> Defendants have certainly presented a “substantial case on the merits”. Moreover, this appeal involves a “serious legal question”, as the Chancery Court has granted extraordinary mandatory relief against two State entities and a public official in a matter that involves issues of academic integrity, separation of powers, and the outer limits of jurisdiction of this State’s courts. Weighing all the equities, Defendants satisfy the requirements for a stay of judgment.

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<sup>16</sup> *Board of Trustees of Jackson Public Schools v. Knox*, 638 So.2d 1278, 1281 (Miss. 1994).

<sup>17</sup> Appendix “A” to this Brief.

<sup>18</sup> *Arnold v. Garlock, Inc.*, 278 F.3d 426, 439 (5th Cir. 2001) (citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. Unit A 1981)). In *Ruiz*, the court held that, “[i]f a movant were required in every case to show that the appeal would probably be successful, the Rule would not require as it does a prior presentation to the district judge whose order is being appealed.” 650 F.2d at 565.

***B. Defendants' Irreparable Injury***

In its Opinion and Judgment (October 1, 2007),<sup>19</sup> the Chancery Court determined that Alumnae Association leaders were trying to control the management and leadership of the University and to remove Dr. Limbert as President. The Chancery Court further found that these leaders' criticisms of Dr. Limbert and her administration were "unmerited" and that Dr. Limbert had "well-grounded" fears that these Alumnae Association leaders were "interfering with the administration of university business".

This misconduct continued after the Chancery Court rendered its Opinion and Judgment. For example, as discussed above, the Alumnae Association leaders sought to completely re-write the Affiliation Agreement with the University and attempted to hold the University hostage to their interpretation of the Chancery Court's Opinion and Order pending the University's complete capitulation. The Alumnae Association leaders also attempted to carry out their own legislative agenda against the express objections of the IHL Board and the University.<sup>20</sup>

The University needs a healthy relationship with its affiliated alumni association.<sup>21</sup> Thus, the Chancery Court properly permitted the University to continue affiliation with the Alumni Association, a group led by persons with demonstrated ability to support the University and its mission, by granting a partial stay of the Opinion and Judgment. However, the University could

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<sup>19</sup> Opinion and Judgment, pp. 4 n.2, 5, 8, 9, 12 and 13. (October 1, 2007) (Ex. "E" to Motion for Stay of Judgment) (**Ex. B to Appellee's Motion to Vacate Stay**).

<sup>20</sup> See Supplement to Motion for Stay of Judgment (February 4, 2008) (**Ex. E to Appellee's Motion to Vacate Stay**).

<sup>21</sup> See Affidavit of Dr. Claudia A. Limbert (December 12, 2007) (Ex. "I" to Motion for Stay of Judgment) (**Ex. B to Appellee's Motion to Vacate Stay**).

never have such a relationship with the Alumnae Association under these circumstances. Because of the continued harm caused to the University by the Alumnae Association, the Chancery Court should have completely stayed its Opinion and Judgment pending appeal.

The Chancery Court's Opinion and Judgment also raises serious questions concerning the accreditation of the public institutions governed by the IHL Board. Each of the public institutions in Mississippi are members of the Southern Association of Colleges and Schools, commonly referred to as SACS. The SACS Commission on Colleges is the recognized regional accreditation body for colleges in the eleven southern states, including Mississippi. As observed by Dr. Thomas Meredith, IHL Commissioner, the Opinion puts at risk the accreditation of Mississippi's public institutions of higher learning under the sections that address governance and administration and external influence.<sup>22</sup> In other words, the Opinion decreases the ability of Mississippi's universities to control their mission and priorities and increases the ability of officially-sanctioned affiliated entities to interfere with university operations. This evidence weighs heavily in favor of granting a stay of the entire Opinion and Judgment pending appeal.

### *C. Other Interested Parties*

Other parties with a direct interest in the outcome of this litigation are the Alumnae Association and the new Alumni Association. Since receiving its written notice of termination more than a year ago, the Alumnae Association has remained an active Mississippi corporation, held regular business meetings, and elected new officers. There is no reason to believe that the Alumnae Association cannot survive pending resolution of Defendants' appeal without affiliation

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<sup>22</sup> See Affidavit of Thomas C. Meredith, Ed.D. (December 11, 2007) (Ex. "J" to Motion for Stay of Judgment) (**Ex. B to Appellee's Motion to Vacate Stay**).

with the University, as it did for six months while the litigation was pending below. Thus, the Chancery Court should have granted the stay as to the Alumnae Association affiliation.

On the other hand, the new Alumni Association has just begun operations after months of hard work by its organizers. The new Association is in the middle of a membership drive and has not yet had time to establish itself as a viable organization. Without a stay, the Chancery Court's mandate would have seriously disrupted the new Association's fledgling operations and made it very difficult for the new Association to resume operations once Defendants prevail on their appeal.<sup>23</sup> The Chancery Court properly granted the stay as to the Alumni Association.

***D. Public Interest***

A stay of the Chancery Court's Opinion and Judgment pending appeal does not harm the public interest. The public is best served by private entities which actually support the mission and priorities of their respective affiliated public universities - - - rather than entities which continually seek to undermine and wrest control from the public servants appointed by the IHL board to administer those institutions.

In fact, public interest weighs in favor of a stay, thus allowing the IHL Board to administer the operations of Mississippi's universities as provided in the Mississippi Constitution, applicable statutes, and the policies of the IHL Board. The Court's ruling, in effect, eliminated the University's authority to ensure that its affiliated entities support the mission and priorities of the University and the IHL, and requires the University to withstand further attacks on its autonomy and administration from an officially-sanctioned group. The ruling could have a

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<sup>23</sup> See Affidavit of Renee N. Flynt (December 12, 2007) (Ex. "K" to Motion for Stay of Judgment) (Ex. B to Appellee's Motion to Vacate Stay).

far-reaching impact on the day-to-day operations of colleges and universities, including their ability (and desire) to work with affiliated entities and their ability to maintain a sufficient degree of institutional autonomy to meet appropriate accreditation standards. The uncertainty created by the Chancery Court's mandates could cause substantial harm to all of the State's universities.

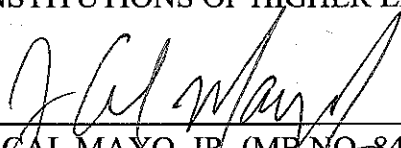
***CONCLUSION***

Far from an abuse of its discretion, the Chancery Court properly stayed the mandate concerning rescission of the University's affiliation with other alumni groups. Thus, this Court should uphold the Chancery Court's decision to stay its mandate that the University rescind affiliation with other alumni groups, including the Alumni Association. On the other hand, however, the Chancery Court abused its discretion by refusing to stay the mandate related to continued forced affiliation with the Alumnae Association. Pending final resolution on appeal, this Court should grant the stay of the mandate that requires Defendants to affiliate with the Alumnae Association.

THIS, the 12<sup>th</sup> day of March, 2008.

Respectfully submitted,

Dr. CLAUDIA A. LIMBERT, individually and as  
President of Mississippi University for Women;  
MISSISSIPPI UNIVERSITY FOR WOMEN; and  
BOARD OF TRUSTEES OF MISSISSIPPI STATE  
INSTITUTIONS OF HIGHER LEARNING



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**CERTIFICATE OF SERVICE**

I, J. Cal Mayo, Jr., one of the attorneys for Appellants do certify that I have this date delivered, by United States mail, postage fully prepaid, and by electronic means, a true and correct copy of the above and foregoing Appellants' Response to Appellee's Motion to Vacate Stay to:

Honorable Dorothy W. Colom  
Lowndes County Chancery Court  
P. O. Box 708  
Columbus, MS 39703  
CHANCERY COURT JUDGE

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THIS, the 12<sup>th</sup> day of March, 2008.

  
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J. CAL MAYO, JR.