

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

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION TO STRIKE AFFIDAVITS**

Defendants Claudia A. Limbert, individually and in her official capacity as President of Mississippi University for Women, Mississippi University for Women, and the Board of Trustee for Mississippi State Institutions for Higher Learning (collectively, "Defendants"), respond and state the following objections to Plaintiff's Motion to Strike Affidavits.

Plaintiff's request to strike the Affidavits of Dr. Thomas C. Meredith and Renee N. Flynt is a thinly-veiled effort to delay resolution of Defendants' Motion for Stay of Judgment Pending Appeal. Plaintiff had agreed to a Scheduling Order (January 10, 2008) affording Defendants the option of submitting their Motion for Stay of Judgment for the Court's consideration without oral argument. By filing and requesting a hearing on its Motion to Strike, Plaintiff is attempting to end run the Scheduling Order and early resolution of Defendants' Motion for Stay of Judgment. Such delay tactics have become common place for Plaintiff in this litigation.

Plaintiff's request to strike the Meredith and Flynt Affidavits lacks merit. This Court should summarily deny Plaintiff's Motion without a hearing.

Dr. Meredith's Affidavit

Plaintiff requests that this Court strike Dr. Meredith's Affidavit for three reasons. First, Plaintiff suggests that Dr. Meredith is not qualified to give testimony. Second, Plaintiff suggests that Dr. Meredith has stated legal conclusions. Finally, Plaintiff argues that Dr. Meredith's Affidavit impermissibly addresses an "ultimate issue" in dispute. Plaintiff is wrong on each count.

If "specialized knowledge will assist" this Court "to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise" ¹ A determination of admissibility is normally a two-pronged inquiry: relevance and reliability. ² Here, however, Plaintiff's attack is different.

Dr. Meredith's Eminent Qualifications

Plaintiff initially challenges Dr. Meredith's qualifications to assist the Court. In other words, Plaintiff alleges that Dr. Meredith lacks any "knowledge, skill, experience, training or education" that would assist this Court in considering the impact of this Court's Opinion and Judgment on the accreditation of Mississippi's eight public universities by the Southern Association of Colleges and Schools ("SACS") and its Commission on Colleges.

As established by his Affidavit, Dr. Meredith is the Commissioner of Higher Education in Mississippi and is responsible for assisting in the administration of the policies and by-laws that govern Mississippi's eight public universities. He has personal knowledge of SACS and of

¹MRE 702.

²*Miss. Trans. Comm. v. McLemore*, 863 So.2d 31, 38 (Miss. 2003).

Mississippi's public universities' membership in SACS. He further has personal knowledge of the SACS Commission on Colleges, its role in accrediting colleges in this region and the importance of accreditation to Mississippi's public universities. Finally, Dr. Meredith is familiar with SACS' standards of accreditation particularly as these standards relate to governance and administration.

If this information is not sufficient to show that Dr. Meredith has "knowledge" that will assist the Court in understanding accreditation issues, certainly this Court is familiar with Dr. Meredith's more than 33 years of "experience" in higher education, as he testified at trial.³ Following his tenure as a senior administrator at two large state institutions of higher learning, Dr. Meredith served as Chancellor of two separate state university systems before becoming Commissioner of Higher Education in Mississippi.

The Mississippi Supreme Court has cautioned against artificial classifications when considering the usefulness of a witness's testimony: "The scope of the witness's knowledge and experience . . . governs the question of admissibility."⁴ It is difficult to imagine any person *more* qualified in the State of Mississippi than Dr. Meredith to assist this Court on issues concerning the accreditation of Mississippi's public universities.

Dr. Meredith's Assistance to Court

Plaintiff next attacks the content of Dr. Meredith's testimony as constituting "speculative" hypotheticals and "expert legal opinions" and addressing an "ultimate issue" in this case. Plaintiff

³See Transcript of Hearing on Motion to Dismiss, pp. 220-222 (June 5, 2007) (Ex. "A" to this Response to Motion to Strike Affidavits). This testimony is already part of the record in this action.

⁴*Univ. Of Miss. Medical Center v. Pounders*, 2007 Miss. LEXIS 691, *9 (Miss. December 6, 2007).

makes only broad general attacks on Dr. Meredith's testimony and fails to identify particular statements or conclusions to which it objects. Thus, it is difficult, if not impossible, for Defendants to respond to Plaintiff's vague assertions. Regardless, like its failed attack on Dr. Meredith's credentials, Plaintiff's assault on Dr. Meredith's testimony lacks any merit. As the Mississippi Supreme Court has noted, the test for expert testimony is "whether it requires 'scientific, technical, or other specialized knowledge' beyond that of the randomly selected adult."⁵

Dr. Meredith has provided specific citations to the SACS standards placed at risk by this Court's Opinion and Judgment. He has provided illustrative examples showing in concrete terms the reality of the problems that result directly from that Opinion and Judgment. Dr. Meredith has not opined that "this Court should grant a stay of judgment pending appeal", which is the ultimate issue before the Court. Instead, Dr. Meredith, a person with a doctorate in education and more than 33 years in higher education administration in four state systems, has provided testimony to assist the Court in understanding the importance of SACS accreditation to higher education institutions and the particular SACS accreditation standards implicated by this Court's Opinion and Judgment. Certainly, this information is beneficial to the Court in determining if harm will result to Defendants as a result of the Opinion and Judgment and if the Mississippi general public's interest is best served by granting a stay pending appeal.

Dr. Meredith possesses more than sufficient credentials to provide assistance to this Court concerning SACS accreditation standards, the relationship between those standards and this Court's Opinion and Judgment and the potential detrimental impact from the Opinion and Judgment on Mississippi's eight public universities. Dr. Meredith's testimony is beyond the knowledge of a

⁵*Palmer v. Volkswagen of Am., Inc.*, 904 So.2d 1077, 1092 (Miss. 2005).

“randomly selected adult” and is certainly useful to the Court in addressing questions presented by Defendants’ Motion for Stay of Judgment Pending Appeal. This Court should deny Plaintiff’s Motion to Strike as it relates to Dr. Meredith.

Ms. Flynt’s Affidavit

Renee Flynt, the elected President of the Mississippi University for Women Alumni Association, has provided this Court with testimony explaining the effect of this Court’s Opinion and Judgment on the Alumni Association and the harm that will result in the absence of a stay pending appeal. Plaintiff seeks to strike Ms. Flynt’s testimony as lacking personal knowledge and specific facts and as addressing an “ultimate issue”. As it must with Plaintiff’s efforts to block this Court’s consideration of Dr. Meredith’s testimony, this Court should also reject Plaintiff’s Motion as it relates to Ms. Flynt’s testimony.

Ms. Flynt testifies to her personal knowledge of the efforts of the members of the Alumni Association Board to create a viable organization supportive of the University and the lack of an opportunity to have the Alumni Association’s interests protected in advance of this Court’s ruling. Ms. Flynt describes the harm to the Association and its members from any further delay in the continued formation of their organization and from not having an organization through which they can pledge support to the University as a result of this Court’s Opinion and Judgment.

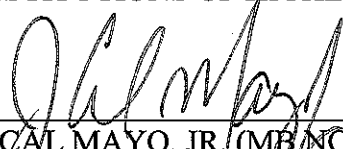
In sum, Ms. Flynt, the leader of the entity directly impacted, has testified about the harm to the Alumni Association and the benefits of a stay. This evidence, along with the testimony of Dr. Meredith and Dr. Limbert, certainly warrants this Court’s consideration as it decides Defendants’ Motion for Stay of Judgment. This Court should deny Plaintiff’s Motion to Strike as relates to Ms. Flynt’s Affidavit.

WHEREFORE, PREMISES CONSIDERED, Defendants ask this Court to deny Plaintiff's Motion to Strike Affidavits. Defendants ask for any other relief that the Court determines appropriate under these circumstances.

THIS, the 24th day of January, 2008.

Respectfully submitted,

DR. CLAUDIA A. LIMBERT, PRESIDENT;
MISSISSIPPI UNIVERSITY FOR WOMEN; and
MISSISSIPPI BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING



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CERTIFICATE OF SERVICE

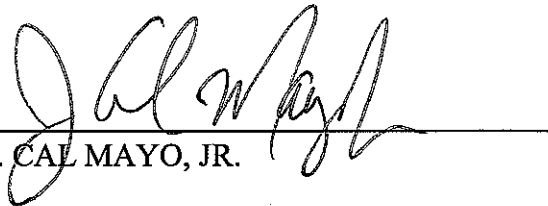
I, J. Cal Mayo, Jr., attorney for Defendants/Appellants, do certify that I have this date delivered by United States mail, postage fully pre-paid, and by electronic means a true and correct copy of the above and foregoing document to the following:

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ATTORNEYS FOR PLAINTIFF/APPELLEE

THIS, the 24th day of January, 2008.



J. CAL MAYO, JR.

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

MISSISSIPPI UNIVERSITY FOR WOMEN
ALUMNAE ASSOCIATION

PLAINTIFF

VERSUS

NO. 2007-0220

CLAUDIA A. LIMBERT, IN HER OFFICIAL
CAPACITY; ALTERNATIVELY, IN HER
OFFICIAL CAPACITY; MISSISSIPPI
UNIVERSITY FOR WOMEN; AND BOARD OF
TRUSTEES OF STATE INSTITUTIONS OF
HIGHER LEARNING

DEFENDANTS

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE ABOVE STYLED
AND NUMBERED ACTION, BEING A MOTION FOR PRELIMINARY INJUNCTION
BEFORE HONORABLE DOROTHY W. COLOM, CHANCELLOR, ON MAY 8, 2007,
AND JUNE 5, 2007, RESPECTIVELY

APPEARANCES:

Present and Representing the Plaintiff:

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1 address that and they can address that. All right.

2 BY MR. WAIDE: Thank you, Your Honor.

3 BY THE COURT: You're welcome. That can be
4 addressed. Now, with that said, you may proceed and
5 call your first witness.

6 BY MR. MAYO: Thank you. I would like to
7 introduce three other people here on our side today.
8 Van Gillespie who is sitting here, is Special Assistant
9 Attorney General and serves as counsel for the Board of
10 Trustees of IHL.

11 BY THE COURT: All right.

12 BY MR. MAYO: And our initial witness will be Dr.
13 Thomas Meredith.

14 BY THE COURT: Yes, all right.

15 BY MR. MAYO: Commissioner of the Board of
16 Trustees. He will be our first witness.

17 BY THE COURT: Would you come around and be sworn,
18 please.

19 BY THE COURTROOM CLERK: Please raise your right
20 hand. Do you solemnly swear to tell the truth, the
21 whole truth and nothing but the truth, so help you God?

22 BY DR. MEREDITH: I do.

23 BY MR. MAYO: May I proceed, Your Honor?

24 BY THE COURT: Yes, you may.

25 DIRECT EXAMINATION OF DR. THOMAS MEREDITH

26 BY HONORABLE CAL MAYO:

27 Q. Please state your name for us?

28 A. Thomas E. Meredith.

29 Q. Are you a doctor? You don't have a Doctorate Degree?

1 A. I do.

2 Q. Dr. Meredith, tell us what you do?

3 A. I'm Commissioner of Higher Education for the Board of
4 Trustees of State Institutions of Higher Learning.

5 Q. What does that mean for those of us who might not fully
6 appreciate what the commissioner does?

7 A. In the State of Mississippi, our eight public
8 universities are all under one governing board and that governing
9 board is the Board of Trustees of the State Institutions of Higher
10 Learning. That governing board hires a professional to be their
11 person to run the system on a day-to-day basis and to whom all the
12 presidents report.

13 Q. So, the various - we refer to them sometimes as the
14 Chief Executive Officer of the institutions - the presidents and
15 chancellors would report to you?

16 A. Yes.

17 Q. Tell us a little bit about your professional background
18 that led you to your position that you currently hold as the
19 commissioner of the board of trustees?

20 A. I've been in higher education for many years, since
21 1974, in formal administrative positions. I've been president of
22 a university, this is the third system, statewide system that I've
23 had the honor to be in charge of, I've been a vice chancellor at a
24 university, I've worked for the board of trustees many years ago
25 as their chief academic officer. I don't know how much detail you
26 want to go into.

27 Q. Well, a little bit more. Tell us a couple of
28 universities where you have worked and what your responsibilities
29 have been at those universities and then about your role as the

1 person in charge of officers.

2 A. I was Vice Chancellor for Executive Affairs and
3 Executive Assistant to the Chancellor at the University of
4 Mississippi. I was the first in charge of running the campus on a
5 daily basis in the absence of the Chancellor. I became a
6 President of a university for nine years, Western Kentucky
7 University in Bowling Green, Kentucky, running a campus with
8 15,000 students, a major comprehensive institution. I was then
9 Chancellor of the University of Alabama system which had the
10 University of Alabama, the University of Alabama at Birmingham and
11 Huntsville in the same role as here, governing board over those
12 three and then responsibility for administering those three. I
13 moved from there to the university system of Georgia with 34
14 institutions in that system, the same situation, all the two year
15 and four year institutions in that state reported to one governing
16 board. That governing board then hired me to run that system for
17 them on a daily basis. All the presidents reported in to me. And
18 then I was asked to come back to Mississippi to head up the
19 governing board here.

20 Q. You mentioned a few minutes ago that the various
21 presidents and chancellors report to you in the system here in
22 Mississippi that you are commissioner of now. Talk to us just a
23 little bit about how those various CEO's, how the authority they
24 are given to run the universities and how they relate to you.

25 A. All those institutional heads report to me on a daily
26 basis in terms of their evaluations, in terms of directions on
27 handling the institutions, but at the same time, we practice a
28 great deal of autonomy. I believe in that as a former campus
29 president. We give the institutional heads, Chief Executive