

International Comparative Legal Guides



Practical cross-border insights into litigation and dispute resolution work

Litigation & Dispute Resolution 2023

16th Edition

Contributing Editor:
Greg Lascelles
Covington & Burling LLP

CDR Commercial
Dispute
Resolution

ICLG.com

Expert Analysis Chapter

- 1** **When Will a Defendant Owe a Claimant a Duty to Take Reasonable Care? Recent Changes in How the English Courts Approach This Question**
Greg Lascelles & Alan Kenny, Covington & Burling LLP

Q&A Chapters

- 6** **Austria**
Pitkowitz & Partners: Dr. Nikolaus Pitkowitz & Roxanne de Jesus
- 14** **Belgium**
Lydian: Hugo Keulers, Jo Willems, Yves Lenders & Lola Stenuit
- 22** **Bermuda**
Wakefield Quin Limited: John Hindess
- 30** **Brazil**
LP LAW | LOPES PINTO ADVOGADOS: Diogo José Nolasco Dominguez
- 37** **England & Wales**
Covington & Burling LLP: Greg Lascelles & Alan Kenny
- 52** **Finland**
Borenus Attorneys Ltd: Kristiina Liljedahl & Vilma Haavisto
- 60** **France**
Laude Esquier Champey: Olivier Laude, Benoit Renard & Gauthier Doléac
- 70** **Germany**
Willkie Farr & Gallagher LLP: Matthias Schrader, Dr. Johannes Schmidt, Dr. Harry Nettlau & Svenja Wachtel
- 78** **Ghana**
Juris Ghana Legal Practitioners: Godwin Mensah Sackey, Papa Yaw Owusu-Ankomah & Kwesi Papa Owusu-Ankomah
- 87** **Greece**
Kyriakides Georgopoulos Law Firm: John C. Kyriakides & Alexia Giagini
- 97** **Hong Kong**
Kirkland & Ellis: Fergus Saurin & Jacky Fung
- 106** **India**
Shardul Amarchand Mangaldas & Co.: Shally Bhasin, Chaitanya Safaya & Prateek Gupta
- 118** **Indonesia**
Sandiva Legal Network: Arthur Wailan Sanger, Mochamad Akbar Fachreza & Jessica Novia Puspitaningrum
- 125** **Japan**
Nagashima Ohno & Tsunematsu: Koki Yanagisawa & Hiroyuki Ebisawa
- 134** **Kenya**
Umsizi LLP: Jacqueline Oyuyo Githinji
- 145** **Lithuania**
WALLESS: Gediminas Dominas & Tomas Balčiūnas
- 153** **Luxembourg**
Arendt & Medernach: Clara Mara-Marhuenda & Sandrine Margetidis-Sigwalt
- 161** **Mexico**
OLIVARES: Armando Arenas Reyes & Eduardo Arana Ramírez
- 171** **Netherlands**
Florent: Yvette Borrius & Chris Jager
- 180** **Nigeria**
Famsville Solicitors: Woye Famojuro, Temiloluwa Dosumu, Michael Ajinde & Samuel Olawepo
- 190** **Philippines**
SyCip Salazar Hernandez & Gatmaitan: Ramon G. Songco & Anthony W. Dee
- 199** **Singapore**
Allen & Gledhill LLP: Afzal Ali, Ho Pey Yann & Daniel Seow
- 208** **Spain**
Monereo Meyer Abogados: Sonia Gumpert Melgosa & Michael Fries
- 215** **Switzerland**
BMG Avocats: Rocco Rondi, Guillaume Fatio & Mimoza Lekiqi
- 224** **Thailand**
Chandler MHM Limited: Waree Shinsirikul, Wanchana Bunditkrisada, Sakolrat Srangsomwong & Chonlawat Rojanaparpal
- 232** **USA – Connecticut**
Shipman & Goodwin LLP: Kathleen M. LaManna & Diane C. Polletta
- 243** **USA – Delaware**
Potter Anderson & Corroon LLP: Jonathan A. Choa, John A. Sensing & Carla M. Jones
- 251** **USA – Illinois**
Much Shelist, P.C.: Steven P. Blonder & Charlotte F. Franklin
- 258** **USA – Mississippi**
Jones Walker LLP: Neville H. Boschert
- 266** **USA – Pennsylvania**
Blank Rome LLP: James T. Smith, Rebecca D. Ward, Stephanie C. Chomentowski & Melanie S. Carter
- 273** **Zambia**
Dentons Eric Silwamba, Jalasi and Linyama Legal Practitioners: Eric Suwilanji Silwamba, Lubinda Linyama, Mailesi Undi & Mwape Chileshe

USA – Mississippi

Jones Walker LLP



Neville H. Boschert

1 Litigation – Preliminaries

1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?

Mississippi is a common law jurisdiction where the law develops by precedent established in court decisions. Procedure at the trial court level is primarily governed by the Mississippi Rules of Civil Procedure. Appellate procedure is governed by the Mississippi Rules of Appellate Procedure.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The trial courts of general jurisdiction are the Circuit Courts that operate in each of the 82 Mississippi counties. Chancery Courts in each county have jurisdiction over equitable and family law matters. Justice Courts hear small claims with jurisdiction of matters of \$3,500 or less. Some counties have County Courts which have concurrent jurisdiction with Justice Courts over all matters, and with Circuit and Chancery Courts for matters up to \$200,000. County Courts also have exclusive jurisdiction over eminent domain matters and juvenile matters.

Appeals from the Justice Court are heard *de novo* by the County Court, if there is a County Court, and otherwise by the Circuit Court. Appeals from County Courts are heard on the record by the Circuit Court for legal matters and by the Chancery Court for certain equitable matters.

Appeals from the Circuit and Chancery Courts all go to the Mississippi Supreme Court. The Mississippi Supreme Court retains certain cases and refers others to the Court of Appeals. If a case is referred to the Court of Appeals, the Mississippi Supreme Court may, but is not required to, hear a further appeal on a writ of certiorari.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

A suit is instituted by the plaintiff filing a complaint, which must be served on the defendant within 120 days of filing. The defendant has 30 days after service of process to serve an answer or file a motion to dismiss.

After the defendant answers the complaint, the parties engage in a discovery process. The court usually enters a scheduling order setting forth deadlines for discovery, designation of experts and the filing of dispositive motions.

The parties are entitled to raise substantive and procedural issues by motion. Under controlling case law, some affirmative defences must be promptly raised or are deemed waived. A party may seek summary judgment if there are no material facts at issue, and the moving party is entitled to judgment as a matter of law.

If a case is not resolved by motion or settlement it will proceed to trial. Most legal claims are tried before a jury in Circuit Court, but equitable issues are usually tried before a judge in Chancery Court. A judgment is entered in favour of the prevailing party.

A notice of appeal must be filed with the clerk of the trial court within 30 days of the entry of judgment.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

The court will generally enforce an agreement that a lawsuit be brought in a particular court in a particular venue if the court has subject matter jurisdiction and the venue chosen is reasonable under the circumstances.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

A plaintiff must pay a filing fee which can vary from county to county, but is generally in the \$120 to \$180 range.

Each party to a lawsuit usually pays its own attorney's fees and expenses of litigation. A prevailing party is generally entitled to recover specified court costs from the losing party, but the type costs recoverable are very limited. A losing party may be required to pay reasonable attorney's fees to the prevailing party when there is a contractual agreement to do so, a right under statute, when punitive damages are awarded or as a sanction for asserting a frivolous claim or defence.

A plaintiff's attorney often handles a case on a contingency basis where the plaintiff pays no attorney's fees unless there is a recovery of money. Defendants often have insurance coverage that pays their attorney's fees.

There are no rules that require the parties to budget attorney's fees or costs.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are claimants and defendants permitted to enter into contingency fee arrangements and conditional fee arrangements?

Under the Mississippi Rules of Professional Conduct, fees charged must be reasonable. The factors used to determine reasonableness include the time and labour required, difficulty of the issues and the skill required.

Attorneys usually charge an hourly rate, but fixed fees for some matters have become more common.

Contingency fees are permissible for most matters, but must be in writing and set forth the percentages that will accrue to the attorney upon resolution of the case in the event of settlement, trial or appeal, and also calculate how expenses of litigation will be deducted from the amount recovered.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

Generally, claims are assignable under Mississippi law, and the assignee may bring the claim in its own name. Miss. Code Ann. § 11-7-3. However, champerty and maintenance is illegal under Mississippi law, Miss. Code Ann. § 97-9-11, and prohibits assignments of claims to strangers to the litigation. See *Sneed v. Ford Motor Co.*, 735 So. 2d 306 (Miss. 1999).

1.8 Can a party obtain security for/a guarantee over its legal costs?

Security for legal costs is generally not available at the trial court level, but the posting of a bond is usually required if injunctive relief is awarded. Rule 65(c), Mississippi Rules of Civil Procedure. *Supersedeas* bonds can be posted on appeal by an appellant to delay execution of judgment and to provide security to the appellee if the appeal is unsuccessful. Rule 8(a), Mississippi Rules of Appellate Procedure.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

There are no pre-filing notice requirements for most claims, but there are notable exceptions. In order to file a claim against a state entity under the Mississippi Tort Claims Act, notice of the claim must be provided at least 90 days prior to filing suit. Miss. Code Ann. § 11-46-11(1). Notice is mandatory and failure to provide statutory notice can result in dismissal. See *Newton v. Lincoln County*, 86 So. 3d 270 (Miss. Ct. App. 2012). Prior to filing a claim for medical negligence against a healthcare provider, notice must be given to the provider at least 60 days prior to filing a claim. Miss. Code Ann. § 15-1-36(15).

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Statutes of limitation are codified in the Mississippi Code. Certain types of claims have a specified statute of limitations,

but most claims are covered by the general statute of limitations, Miss. Code Ann. § 15-1-49, which requires an action to be commenced within three years of when the cause of action accrues. If the claim is for a latent disease or injury, the cause of action does not accrue until the plaintiff has discovered or by reasonable diligence should have discovered the injury. If a potential defendant fraudulently conceals a cause of action from a plaintiff, the cause of action does not accrue until the plaintiff discovers or reasonably should have discovered the fraud. Agreements to toll the statute of limitations are generally not enforceable and are recognised only under limited circumstances. See *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

Under Mississippi law, a statute of limitations is deemed to be procedural rather than substantive unless the limitation period is built into a statute that creates the cause of action. See *Williams v. Taylor Machinery, Inc.*, 529 So. 2d 606 (Miss. 1988).

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

Civil proceedings are commenced by filing a complaint. A complaint and summons must be served on a defendant within 120 days of the complaint being filed, unless the plaintiff obtains an order from the court granting additional time for service for good cause shown. Service of a complaint and summons is governed by Rule 4, Mississippi Rules of Civil Procedure. Service of process can be accomplished by personal service on the defendant or the defendant's agent for service of process. Process can be made on in-state defendants by regular mail if accompanied by an acknowledgment form. Service on an out-of-state defendant can be accomplished by personal service or certified mail.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

A party may seek a temporary restraining order or preliminary injunction in conjunction with the filing of a complaint in emergency circumstances, to maintain the *status quo* in order to prevent irreparable harm. A court can grant a temporary restraining order for a period of up to 10 days and can extend the order for up to an additional 10 days. A temporary restraining order can be granted without notice in emergency circumstances. A preliminary injunction can be granted only with notice to the defendant along with an opportunity to be heard. Injunctions are governed by Rule 65, Mississippi Rules of Civil Procedure. The standards to obtain a preliminary injunction are (1) a substantial likelihood of success on the merits, (2) the plaintiff will suffer irreparable harm if an injunction is not entered, (3) the harm to the plaintiff if the injunction is not entered outweighs the potential harm to the defendant if the injunction is issued, and (4) entry of the injunction serves the public interest.

3.3 What are the main elements of the claimant's pleadings?

A complaint must contain a short and plain statement of the claim showing the plaintiff is entitled to relief, and a demand for

a judgment for the relief sought. The plaintiff should plead facts sufficient to establish that the court has jurisdiction over the subject matter and the parties. Allegations of fraud or mistake must be stated with particularity. When a claim is based on a written account or contract, the written document should be attached to or filed with the complaint.

A complaint must also contain a caption stating the name of the court and parties. The names and addresses of the parties should also be contained in the body of the complaint. The body of the complaint should be in numbered paragraphs, with each paragraph addressing a single set of circumstances. Different claims should be contained in different counts.

All complaints should be signed by an attorney unless the party is not represented by an attorney. The signature of the attorney constitutes a certificate that the attorney has read the complaint and that, to the best of the attorney's knowledge, there is information and belief of good ground to support such complaint.

3.4 Can the pleadings be amended? If so, are there any restrictions?

A party may amend a pleading as a matter of course without leave of court if the amended pleading is filed within 30 days of the original filing, unless the case has already been placed on a trial calendar. Otherwise, leave of court is required to file an amended pleading, but amendments to pleadings are liberally allowed if they will not unreasonably delay the proceedings. Rule 15, Mississippi Rules of Civil Procedure.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

There is no provision in the Mississippi Rules of Civil Procedure for withdrawal of pleadings, but Rule 41(a) allows a plaintiff to dismiss a complaint without leave of court by filing a notice of dismissal if the defendant has not yet served an answer or motion for summary judgment, or with a stipulation by all parties who have appeared in the action. Otherwise, a complaint may be voluntarily dismissed only with leave of court.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The defendant must serve and file an answer and admit or deny the allegations in the complaint. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment in the complaint, the defendant may so state, and this has the effect of a denial.

The defendant must also plead all affirmative defences in the answer, in addition to other defences such as lack of subject matter or personal jurisdiction, improper venue, insufficiency of process or service of process, failure to state a claim or failure to join a necessary party.

If the defendant has a claim against the plaintiff arising out of the transaction or occurrence as the plaintiff's claim, the defendant must bring that claim as a counterclaim in the same pleading as the answer. A defendant may bring a counterclaim not arising out of the same transaction or occurrence if the court otherwise has jurisdiction over the subject matter and the parties. Additional parties can be added in a counterclaim if they are necessary parties to the litigation.

A defendant may also file a cross-claim against a co-party if that claim arises out of the transaction or occurrence that is the subject matter of the original claim or a counterclaim.

4.2 What is the time limit within which the statement of defence has to be served?

An answer is due 30 days after service, unless the court enters an order otherwise. If appropriate, a defendant may file a motion to dismiss prior to filing an answer to seek dismissal for failure to state a claim, lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficiency of process, insufficient service of process or failure to join necessary parties. If a motion to dismiss is filed before an answer is denied, the defendant has 10 days after the motion is denied to file an answer to the complaint.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

A defendant is entitled to file a cross-claim against a co-party and assert that the co-party is liable to it for all or part of the claim asserted against it by the plaintiff. A defendant may also bring in a third party by asserting a claim that the third-party is liable to the defendant for all or part of the plaintiff's claim against the defendant.

For most claims under Mississippi law, fault must be allocated among those parties who allegedly caused injury to the plaintiff, and a particular defendant is liable only for its percentage of fault. If more than one party engages in deliberate conduct to commit a tortious act, however, the parties can be held jointly and severally liable to the plaintiff, but with a right of contribution from other defendants acting in concert. *See* Miss. Code Ann. § 85-5-7. Furthermore, Mississippi is a comparative negligence state, and a plaintiff's damages are reduced by the percentage of fault allocated to the plaintiff. *See* Miss. Code Ann. § 11-7-15.

4.4 What happens if the defendant does not defend the claim?

If a defendant fails to plead or otherwise defend, the clerk of the court may enter a default. If a default is entered, the plaintiff is entitled to seek a default judgment. The court may set aside a default for good cause shown. If a default judgment has been entered, the court may set it aside under certain circumstances.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant must dispute the court's personal jurisdiction over it or that objection is waived. Generally, however, a court's subject matter jurisdiction cannot be waived.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Yes. A third party can be joined as a defendant to a counterclaim. *See* question 4.1. A third party can also be joined as a third-party defendant. *See* question 4.3.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Multiple persons may join as plaintiffs in one action if they seek a right to relief arising out of the same transaction, occurrence or series of transactions or occurrences, and if any question of law or fact common to all of the plaintiffs will arise in the action. Multiple defendants may be joined as defendants in a single action if the plaintiff seeks a right to relief arising out of the same transaction, occurrence or series of transactions or occurrences, and if any question of law or fact common to all of the defendants will arise in the action.

If complete relief cannot be accorded without the joinder of an additional party, the court can order that the additional party be joined, if feasible. If the joinder of an additional party necessary for complete relief is not feasible, the court must evaluate whether to proceed without the additional party or dismiss the action.

Under some circumstances, a non-party may intervene in a pending action to protect its interests.

The trial court also has the authority to order consolidation of cases pending before it for trial or hearing on a common question of law or fact. The court can also order separate trials for counterclaims, cross-claims or third-party claims to avoid prejudice, or if conducive to expedition and economy.

5.3 Do you have split trials/bifurcation of proceedings?

The court has the authority to have separate trials when there are multiple parties if necessary to prevent prejudice or delay.

The court also has the discretion to bifurcate issues in a proceeding, such as liability and damages.

When there is a claim for punitive damages, the issue of punitive damages cannot be submitted to the jury unless the jury first finds in favour of the plaintiff on the underlying claim. *See* Miss. Code Ann. § 11-1-65.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

The procedure for allocation of cases to judges in a particular court is established at the district level for that particular court.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The court has the authority to hold discovery conferences and enter scheduling orders setting deadlines for amendments to pleadings, designation of experts, discovery and the filing of dispositive motions prior to trial. The parties have the right to seek relief from the court to enforce compliance.

6.3 In what circumstances (if any) do the civil courts in your jurisdiction allow hearings or trials to be conducted fully or partially remotely by telephone or video conferencing, and what protocols apply? For example, does the court – and/or may parties – record and/

or live-stream the hearings and may transcriptions be taken? May participants attend hearings remotely when they are physically located outside of the jurisdiction? Are electronic or hard-copy bundles used for remote hearings?

Generally, testimony in trials must be presented in open court, but the trial court has discretion to allow testimony to be presented using remote technology in appropriate circumstances. Rule 43, Mississippi Rules of Civil Procedure; *Byrd v. Nix*, 548 So. 2d 1317 (Miss. 1989).

With the advent of COVID-19, the Mississippi Supreme Court entered numerous orders declaring that trial courts have the discretion to conduct proceedings using remote technology.

6.4 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

The court has the power to award attorneys' fees incurred for filing and procuring an order compelling the other party to provide discovery. In some circumstances, the court can hold a party in contempt of court for failing to comply with the court's orders.

6.5 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

The court has the power to dismiss all or part of a claim for lack of subject matter or personal jurisdiction. The court can also dismiss a complaint if it does not adequately state a claim, the venue is not proper, or if the process or service of process was defective. In some circumstances, a case can be dismissed because an indispensable party cannot be joined.

6.6 Can the civil courts in your jurisdiction enter summary judgment?

The court has the power to enter summary judgment on all or part of a case if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.

6.7 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The court has the power and discretion to stay proceedings in a case to protect the interests of the parties or court. The court may have a duty to stay proceedings pending resolution of other proceedings, such as arbitration.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

The scope of discovery is governed by Rule 26, Mississippi Rules of Civil Procedure. Subject to any applicable privilege, parties

are entitled to obtain discovery of documents and information relevant to the issues raised by the claims or defences of any party. The scope of discovery includes information regarding opinions of experts who are designated to testify at trial.

A party must specifically request production of electronic or magnetic data and specify the form in which it wants the data produced. The responding party has the duty to produce the requested data reasonably available to it in the normal course of business. If the responding party cannot produce the data in the form requested through reasonable efforts, it must state an objection. Should the court order production of the electronic or magnetic data, the court may also order the requesting party to pay the reasonable expenses of any extraordinary steps required to retrieve and produce the data.

Discovery is conducted by written requests, interrogatories and oral depositions. The discovery process is undertaken by the parties without involvement of the court, unless there are discovery disputes that cannot be resolved.

The court has authority to enter protective orders to protect parties to the action as well as third parties. It is common for protective orders to be entered by agreement of the parties.

Formal discovery takes place after a lawsuit is initiated. In some circumstances, however, a party is entitled to seek court approval to notice and take a deposition prior to filing a lawsuit, in order to perpetuate a person's testimony to prevent a failure of justice. Rule 27, Mississippi Rules of Civil Procedure.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

The primary privilege recognised in legal proceedings is the lawyer-client privilege, which protects communications between a client and its lawyer from disclosure. This privilege extends to representatives of the lawyer, and protects communications that are confidential and made for the purpose of facilitating the rendition of professional legal services to the client.

The lawyer-client privilege belongs to the client. The client may decide to waive the privilege if it desires to do so. To maintain the privilege, the client must take reasonable steps to maintain the confidentiality of the communication. If privileged communications fall within a discovery request in the discovery process, the client is generally required to assert the privilege and prepare a privilege log of documents it contends are privileged.

Another privilege is the physician and psychotherapist patient privilege. This privilege protects a person's medical records from disclosure. This privilege is waived in part, however, when a person places his medical condition at issue in a legal proceeding. Even if a party places his medical condition at issue and the medical records become discoverable, a lawyer representing a defendant sued by a plaintiff is prohibited from having *ex parte* communication with the plaintiff's physician and can obtain information from the physician only through the formal discovery process. See *Scott v. Fhnt*, 704 So. 2d 998 (Miss. 1996).

Mississippi also recognises a husband-wife privilege and a priest-penitent privilege.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

Third parties can be compelled to produce documents and provide testimony by issuance of a subpoena. The rights of a party to a lawsuit and of a third-party are governed by Rule 45, Mississippi Rules of Civil Procedure.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

The court sets deadlines for discovery and limits the amount of discovery allowed in a particular case. The court will address motions to compel discovery and for protective orders from discovery if the parties cannot resolve a discovery dispute, and can award a party its costs and attorney's fees for prosecuting or defending a discovery motion. The court can also enter a protective order to prevent certain discovery procedures, or limit the use or further disclosure of information and documents obtained in discovery.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

The court has the authority to enter a protective order to limit the use of documents produced during the discovery process.

The Appellate E-Filing Administrative Procedures also require that documents containing confidential information, such as financial account numbers and social security numbers, be redacted before publicly filing such documents with the court.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

The admissibility of evidence is governed by the Mississippi Rules of Evidence.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

To be admissible, evidence must be relevant. Relevant evidence is that which makes the existence of a fact either more or less probable. Relevant evidence is admissible unless otherwise excluded by the Mississippi Rules of Evidence.

There are various exceptions to the admissibility of relevant evidence, such as hearsay and when the probative value of evidence is substantially outweighed by the danger of unfair prejudice or confusion.

Expert opinions can be presented at trial if the expert's opinions have a sufficient factual basis, and the opinions are developed according to an accepted methodology.

8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

Generally, witnesses testify live at trial; however, in some circumstances where the witness is unavailable to testify live, a deposition of the witness can be presented at trial *in lieu* of live testimony.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

Expert opinions may be presented at trial if the court determines that: the expert testimony will be helpful to the trier of

fact; the expert is qualified by virtue of his knowledge, skill, experience, training or education; the testimony is based on sufficient facts or data; the testimony is the product of reliable principles or methods; and the expert has applied those principles and methods to the facts of the case. Rule 702, Mississippi Rules of Evidence. The court acts as a gatekeeper to ensure that only expert testimony based on facts and reliable principles and methods are presented at trial.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

The court has the power to enter various types of relief requested by the parties. The most common type of judgment entered is for money damages, but a judgment for money damages cannot be entered for an amount greater than that requested by the party. In some circumstances where an award of money damages is not an adequate remedy, the court can enter injunctive relief to order that a party do, or not do, a particular thing. In other circumstances, the parties can request that the court enter a declaratory judgment and interpret and declare the rights of the parties under a contract or other written document.

9.2 Are the civil courts in your jurisdiction empowered to issue binding declarations as to (i) parties' contractual or other civil law rights or obligations, (ii) the proper interpretation of wording in contracts, statutes or other documents, (iii) the existence of facts, or (iv) a principle of law? If so, when may such relief be sought and what factors are relevant to whether such relief is granted? In particular, may such relief be granted where the party seeking the declaration has no subsisting cause of action, and/or no party has suffered loss, and/or there has been no breach of contract/duty?

Rule 57, Mississippi Rules of Civil Procedure, governs the availability of declaratory judgments. The court "may declare rights, status, and other legal relations regardless of whether further relief is or could be claimed". Courts can adjudicate rights under contracts, statutes and other documents. The court has the power to order a speedy hearing of an action for a declaratory judgment if necessary. The court can enter orders declaring the rights of the parties as the sole relief, or in conjunction with other remedial relief.

9.3 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

If the case is tried before a jury, it is usually the jury rather than the judge that determines the amount of damages, if any, to which a plaintiff is entitled. The trial judge has discretion to award prejudgment interest on damages awarded where the amount due was liquidated when the claim was originally made, or where the denial of the claim is frivolous or in bad faith. See *Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n*, 964 So. 2d 1100 (Miss. 2007).

Interest on a judgment based on a contract bears interest at the same rate as set forth in the document upon which the judgment is based. Miss. Code Ann. § 75-17-7. For other judgments, the court sets the rate of interest on the judgment as it determines fair. See *Bluwater Logistics, LLC v. Willford*, 55 So. 3d 148, 164 (Miss. 2011). The Mississippi Supreme Court has approved awards of interest

on judgments at the rate of eight per cent *per annum*. *Union Carbide Corp. v. Nix*, 142 So. 3d 374, 394 (Miss. 2014).

Court costs are generally allowed to the prevailing party. Rule 54(d), Mississippi Rules of Civil Procedure. Recoverable court costs, however, are very limited and generally include only court filing fees and witness fees. See *Hubbard v. Delta Sanitation of Miss.*, 64 So. 3d 547, 560-67 (Miss. Ct. App. 2011).

9.4 How can a domestic/foreign judgment be recognised and enforced?

Foreign judgments may be enrolled and enforced in Mississippi in accordance with the Uniform Foreign Judgment Act. Miss. Code Ann. § 11-7-301, *et seq.*

9.5 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

A final judgment from a Circuit Court or a Chancery Court can be appealed as a matter of right to the Mississippi Supreme Court. The appeal is governed by the Mississippi Rules of Civil Procedure. Usually, a notice of appeal must be filed within 30 days after entry of the judgment.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Yes. The Mississippi Supreme Court has promulgated Court Annexed Mediation Rules for Civil Litigation and promotes court-ordered mediation to encourage early settlement of cases. The Mississippi Bar maintains a list of qualified mediators who have met requirements to be included on the list. Many trial courts order the parties to engage in mediation during the discovery process.

11 Alternative Dispute Resolution

11.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Mediation is the most common method of alternative dispute resolution. Courts routinely require mediation by the parties by including a mediation requirement in the scheduling order.

Arbitration is another common method of alternative dispute resolution. It is common for parties to a contract to include a provision requiring any disputes arising from the contract to be resolved by arbitration rather than litigation. Agreements to arbitrate are promoted and regulated by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* Generally, Mississippi courts must enforce arbitration provisions, unless they are determined to be unconscionable. See *East Ford, Inc. v. Taylor*, 826 So. 2d 709, 715-17 (Miss. 2002).

11.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Mediation is conducted in accordance with the Court Annexed Mediation Rules for Civil Litigation.

Arbitration is often conducted in accordance with the Rules of the American Arbitration Association.

11.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Most civil commercial disputes can be resolved by binding arbitration, if the parties agree to such method.

11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

The court will generally require that the parties engage in mediation to attempt to settle the matter. If the parties do settle the case, it will then usually be dismissed by agreement. The court can enforce a settlement agreement, if necessary, if all material terms of the settlement were reached at the mediation.

The court should order arbitration if there is a valid arbitration agreement. After a matter is decided by an arbitrator, the

court can enter an order to enforce the arbitration award. If a party actively participates in a lawsuit without promptly moving the court to enforce an arbitration provision, the party may waive its right to compel arbitration. An order by the trial court compelling arbitration is immediately appealable to the Mississippi Supreme Court as a final order. *See Sanyers v. Herrin-Gear Chevrolet Co.*, 26 So. 3d 1026 (Miss. 2010).

11.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

Arbitration awards are generally binding and there is generally no recourse for seeking reconsideration or appeal. An arbitration award is appealable only for limited issues, such as fraud, unconscionability or lack of jurisdiction of the arbitrator. *See Rogers-Dabbs Chevrolet-Hummer, Inc. v. Blakeney*, 950 So. 2d 170 (Miss. 2007).

11.6 What are the major alternative dispute resolution institutions in your jurisdiction?

The Mississippi Bar maintains a list of qualified mediators. The American Arbitration Association operates in Mississippi.



Neville Boschert is a partner in the Jackson, Mississippi office of Jones Walker LLP. He defends major corporations in consumer protection actions brought by the Attorney General of the State of Mississippi. He also practises in the areas of antitrust, business torts, trade secrets, covenants not to compete, insurance, product liability and intellectual property.

Mr. Boschert prosecutes and defends claims of breach of fiduciary duty by corporate officers and employees, and enforces covenants not to compete against former employees and business owners to enjoin unfair competition and misappropriation of trade secrets. He tries antitrust cases involving monopolisation, price fixing and alleged Walker Process fraud and sham litigation involving patents to verdict and on appeal.

He defends product liability claims against manufacturers and sellers of pharmaceuticals and medical devices, liquefied gas and construction equipment, and he defends health insurance companies regarding bad faith claim denials.

Jones Walker LLP
190 E Capitol St, Suite 800
Jackson, MS 39201
USA

Tel: +1 601 949 4703
Email: nboschert@joneswalker.com
URL: www.joneswalker.com

Jones Walker is among the largest 250 law firms in the United States and is one of the largest law firms in the southeastern United States, serving a full range of local, regional, national and international business interests with more than 350 attorneys located in Alabama, Arizona, the District of Columbia, Florida, Georgia, Louisiana, Mississippi, New York and Texas.

The firm is committed to providing legal services to major multinational, public and private companies doing business in the United States and abroad. The firm builds service-oriented relationships with its clients and is dedicated to understanding its clients' businesses, the industries in which they operate and the myriad of legal challenges they face. The firm fosters an environment that allows for efficient problem-solving and value-added counselling, providing clients with timely, useful and pragmatic legal advice at a fair value.

The firm's attorneys practise law with a high level of creativity, delivering quality legal representation without sacrificing personalised client service

www.joneswalker.com

**JONES
WALKER**

ICLG.com



Current titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms