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IN THIS ISSUE

Editor's Note

By Mary A. Nichols3

Letters of Intent, Avoiding Un-Intended Results

By David M. Allen4

The Corporate Tax Break Competition: Understanding Corporate Interests at Stake and the Related Effects on the States

By Larissa Womack9

Contributors to this Issue13

About the Editor14

How to Contribute15

Section News & Announcements16

Section Leadership17

Section Information18

Editor's Note

By Mary A. Nichols

Well, this Mississippi Bar year is more than half completed and it seems to be picking up speed. The Business Law Section leadership is finalizing the programs for the remainder of this year which will be capped off by the CLE program as part of the Mississippi Bar's Annual meeting in Sandestin. Those upcoming events and the respective dates are found on page 17 of this publication.

A personal thank you to the contributors to the Mississippi Business Law Reporter who found the time to put pen to paper (or used a keyboard) and share their work with us. We hope to bring you updates or information that would be both relevant and of interest to our Business Section membership. If you have an interest in a particular topic, please let us know. Similarly, if you have an article that

you would be interested in sharing, please contact me at mary.nichols@hancockbank.com.

The previous edition contained an article submitted by a University of Mississippi law student. This edition we have a contribution from a Mississippi College law student. Both contributions serve to remind us of the good work that our State educational institutions are doing while challenging us to mentor younger lawyers when we have the opportunity. As practitioners, we all know that there are lessons we have learned, and continue to learn, that don't come from a text book. When the opportunity presents itself, don't hesitate to share your knowledge with those younger lawyers who reach out to you for guidance.

Letters of Intent

Avoid Un-intended Results

By David M. Allen

In order to outline the general framework of a potential agreement, parties often enter into a Letter of Agreement. Such a document can be called by several names-- Letter of Intent; Memorandum of Understanding; Proposal Letter; or, Commitment Letter. The form and terms utilized will vary; regardless of name, each is basically designed to express the mutual desire of the parties to continue to a final agreement, as well as outline the general framework of such an agreement. For the purposes of this article, I will refer to a Letter of Intent, although it would include all of the above terms.

Letters of Intent will generally provide for an agreement to reach a binding final agreement, while at the same time have one or more provisions that it is non-binding. As such, this scenario presents a paradox, either there is an enforceable contract or there isn't. One author has referred to the situation as the contractual equivalent of being "almost pregnant."¹ There are numerous examples of the results of Letters of Intent gone bad; perhaps none is more well-known than the litigation filed by Pennzoil, Co. against Texaco, Inc., predicated upon Texaco's tortious interference with Pennzoil's Memorandum of

Understanding with Getty Oil Company as to the purchase of controlling interest in Getty stock.²

Thus, for the unwary, a Letter of Intent can result in a situation in which the practitioner assumes that the oral discussions and correspondence are non-binding, only to find his client in court under a claim of an express or implied agreement. How then can a practitioner insure that an intended non-binding writing does not result in an enforceable contract? There are several Mississippi cases which provide excellent guidance in differentiating between what is and what is not a non-binding Letter of Intent.

An oft cited case on Letters of Intent and agreements to enter into future contracts is Etheridge v. Ramzy, 276 So.2d 451 (Miss. 1973). Therein, two families, each owning fifty percent of the capital stock in several related corporations, entered into a Letter of Intent as to a stock buy/sell agreement. One family had the right to buy the stock of the other family, contingent on several actions including a commitment to deposit \$150,000 in escrow and timely performance. However, if the first family failed to perform, the other family would have the option to purchase on the same terms and conditions. When the first family was unable make the deposit, the second family notified that it intended to purchase the stock in the corporations. When the first family refused to

¹J. Andrew Halter, Comment: Letters of Intent in Corporate Negotiations: Using Hostage Exchanges and Legal Uncertainty to Promote Compliance. *University of Pennsylvania Law Review*, vol. 162:1237, 2013

²729 S.W. 2d 768 (Tex. App. 1987)

sign a written agreement setting forth the details for the stock transfer, the second family filed suit seeking specific performance; the Chancellor ruled that the Letter of Intent was too indefinite to be enforced, and the second family appealed. The Supreme Court determined that the sole issue before it was the validity and enforceability of the buy/sell Letter of Intent. Citing from *American Jurisprudence 2nd Series*, the Court stated that:

“... a contract is not necessarily lacking in all effect merely because it expresses the idea that something is left to future agreement. However, unless an agreement to make a future

The Etheridge Court then continued, stating that Mississippi Courts have long recognized that an agreement must be definite and certain in order to be enforceable. The Court then cites Welch v. Williams, 85 Miss. 301, 37 So. 561 (1904), for the contract rules set out therein:

“The elementary general rule...is that the contract must be specific and distinct in its terms, plain and definite in its meanings, and must show with certainty that the minds of the parties have met and mutually agreed as to all its details upon the offer made, upon the one hand, and accepted, upon the other. If any of these requisites be lacking, specific performance will not be decreed by a Court of equity.” Etheridge, at 455, citing Welch at 303.

Based on these factors, the Court agreed with the trial court’s decision that essential elements of the purported contract were missing and was too indefinite to be enforced.

Similar findings were had in J. Russell Flowers, Inc. v. Itel Corp., 495 F.Supp. 88 (N. D. Miss. 1980), which dealt with a lease financing transaction for barges. Plaintiff Flowers contended that it had entered into a contract with Itel as

contract is *definite* and *certain upon all* the subjects to be embraced, it is nugatory. To be enforceable, a contract to enter into a future contract must specify all its *material* and *essential* terms and leave none to be agreed upon as a result of future negotiations. (Emphasis in the original.) If any essential terms are left open to future consideration, there is no binding contract, and an agreement to reach an agreement imposes no obligation on the parties thereto.” Etheridge, at 453-454, citing 17 Am Jur 2d, Contracts 26, at 362 (1964).

evidenced by a letter from Itel. Itel provided the terms of the financing in its letter, but then stated that, while the financing was firm, a more definitive document would be finalized within thirty days. Flowers contended in its complaint that the letter was firm as to all major provisions of the lease financing and that only the non-essential provisions of the agreement were to be included in the final document. The Flowers Court, citing Mid-Continent Telephone Corp. v. Home Telephone Co., 319 F.Supp. 1176 at 1189 (N.D. Miss. 1970), stated that, in the situation where all substantial terms of the contract are agreed, the fact that the parties contemplated a formal document at a later date does not render the initial transaction ineffective.

However, the Court further opines that, in order for such an agreement to be given effect, however, there must be evidence of an agreement as to *all material terms* (emphasis added). It further provides, of course, as in all other cases of contractual interpretation, the intentions of the parties will control, but, generally, the Court should look only to the four corners of the instrument itself. Then, citing Robinson v. Martel Enterprises, Inc., 337 So.2d 698 at 701 (Miss. 1976), the Court found specific language in the letter evidence that the parties did not intend for the letter to operate as a contract to deliver the barges and that the letter

openly contemplated further negotiations as to a more definitive agreement. Thus, the Court found that the letter could not be given legal effect, and that no contract existed.

Subsequently, in Knigh t v. Sharif, 875 F.2d 516 (5th Cir. 1989), the Fifth Circuit Court of Appeals heard a case from the Southern District of Mississippi. Therein, buyer and seller entered into a Letter of Intent providing terms and conditions for possible sale of the common stock of a corporation. The Letter of Intent provided for the preparation of a final definitive agreement within thirty days, which would be subject to the approval of counsel for both parties. As of the date of the deadline, the parties had not yet reached a definitive agreement, and the parties negotiated a second Letter of Intent. In conjunction therewith, the prospective purchaser deposited \$250,000.00, which would become earnest money in the event the parties executed a final agreement for the sale of stock within thirty days. When final agreement could not be reached, the prospective purchaser sued for specific performance, *inter alia*. The Court, in holding that no enforceable contract existed, cited from J. Russell Flowers v. Ite l Corp., *supra* and from Etheridge v. Ramzy, *supra*; the Court analogized that the case before it was quite similar to Flowers. The Court held that the letters clearly contemplated further negotiations and then reflected that the parties intended that there be a final definitive agreement before each was bound. The Court further found that the parties' subsequent conduct was entirely consistent with the language of the letters, and in fact shed further light on the intent of the parties. Part of the Court's reasoning was predicated upon the continual redrafting of specific terms of the proposed agreement, providing that such actions were a clear indicator of the importance of the provisions and the parties intentions to be bound only by the final execution and consummation of the agreement. Knigh t, citing Winston v. Mediafare Entertainment Corp., 777 F.2d 78 at 82-83 (2d Cir. 1986), at 525.

A case from Clay County Chancery Court, Duke v. Whatley, 580 So.2d 1267 (Miss. 1991), involved a potential sale of property and a right of first refusal. When the property was sold to another party, the prospective purchaser filed suit for specific performance. The Court cited Etheridge v. Ramzy, *supra*, to the effect that a Letter of Intent, without certain and definite terms, would not support specific performance; it found the same situation in that the right of first refusal did not contain such definite and certain terms as to be enforceable and, therefore, held it as not enforceable. The Court also cited Welch v. Williams, *supra* to the effect that the elementary general rule is that the contract must be specific and distinct in its terms, plain and definite in its meaning, and must show with certainty that the minds of the parties had met and mutually agreed as to all details upon the offer made upon the one hand and accepted on the other. If any of these requirements be lacking, specific performance will not be decreed by a Court of equity.

In King's Daughters v. Delta Regional Medical Center, et al., 856 So.2d 600 (Miss. Ct. App. 2003), the Court found that a Letter of Intent concerning the purchase of a hospital was not enforceable, and the Letter of Intent was a contract to make a contract and not the sort of final contract necessary that would support a tortious interference claim. The Court cited, *inter alia*, Knigh t v. Sharif, Etheridge v. Ramzy and Flowers v. Ite l, in reaching its decision.

In Jackson HMA, LLC v. Morales, 130 So.3d 493 (S.Ct. Miss. 2013), a case involving recruitment of a physician, the Court addressed a purported Letter of Intent addressed to Morales concerning underwriting a move to the area served by Jackson HMA. When the transaction fell through, Morales sued, alleging breach of contract. The Court, analyzing whether there was sufficient evidence to find that a contract existed between the parties, cited Knigh t v. Sharif, *supra*, to the effect that a determination of whether a writing constitutes an enforceable contract can be based upon whether

the parties have manifested an intention to be bound by its terms of the writing, as well as whether the terms of the writing are sufficiently definite to be legally enforced. Inasmuch as the jury in the trial court found that there was sufficient evidence that a contract did exist, the Court upheld the verdict, but remanded the case for determination of damages.

So what happens when the practitioner assumes that the oral communications and correspondence are non-binding, only to find his client in court under a claim of an express or implied contract? What are the potential dangers and exposure to the client? Causes of action in court which a client might face could involve the following: Promissory Fraud; Constructive Fraud; Intentional Misrepresentation; Negligent Misrepresentation; Negligence; Breach of Fiduciary Duty; Breach of Contract; and, Breach of Implied Covenant of Good Faith and Fair Dealing. Even if the client is successful in court, there will still be legal fees as well as the associated costs of the litigation.

What then can a practitioner do to avoid such a situation? As stated above, the purpose of the Letter of Intent is to outline basic terms of the transaction, as well as create a framework within which to proceed toward a formal agreement. Mississippi courts have held that preliminary agreements can be enforced when the parties manifest an intent to be bound. (See *Jackson HMA v. Morales, supra.*) Thus, to avoid such a result, the parties must clearly state that the document is non-binding and must take no action which is inconsistent with the statements of non-binding intent. One suggestion might be to have several sections of the Letter of Intent with a section on general terms, a subsequent section which lists terms which are to be negotiated, and a final section on any exceptions to the non-binding terms; such items might provisions for confidentiality and exclusivity.

Another aspect to be considered is the intent of the parties. A primary purpose of all contract construction, principles, and methods is to determine the intent of the contracting parties. Houston

v. Willis, 23 So.3d 412 (Miss. App.2009). In Houston, the Court reviewed basic contract law, and cited with approval that, when interpreting the intent of the parties in a contract, the Court would first look to the four corners of the contract itself and give effect thereto. Was there evidence, either by the written word or by behavior and content, that the parties intended to be bound? Too much detail in the Letter of Intent, such as including all essential and material terms (terms without which the transaction cannot proceed) can change non-binding to binding. Additionally, the client should be advised and warned that certain behavior following execution of a Letter of Intent may reflect that a contract has been entered into and that the parties are bound. Examples would be oral or written commitments for partial performance; actions which are perceived as giving assent; or, if the client acts in a manner that is inconsistent with statements of non-binding intent.

What other actions could the practitioner take to insure that the non-binding letter of intent is just thatBa non-binding letter of intent. In a presentation at the 2014 Annual Meeting of the American College of Mortgage Attorneys, a panel discussing Letters of Intent stated that Courts would give more weight to the inclusion of material terms in the preliminary agreement than to the fact that an agreement was not made into a formal contract.³ Additionally, the panel related that Courts are less likely to enforce preliminary agreements when the parties exclude material terms, particularly if these material terms are mentioned as being expressly excluded.

³Presentation entitled “Letter of Intent: Traps for the Unwary Lender,” American College of Mortgage Attorneys 2014 Annual Meeting, presented by Deana Lee, Esq.; John L. Hosach, Esq.; Alan Innes, Esq.; and Andrew J. Jagoda, Esq. Use of the materials is by permission from the American College of Mortgage Attorneys and by permission of the individual panel members.

The panel also suggested examples of particular measures that might better protect the client from claims of an express/implied agreement:

a. Identify and list “hot button” items and material terms that need to be negotiated further. Specifically, provide that no binding agreement will exist until these items are fully negotiated and accepted by all parties.

b. Advise the client not to orally communicate unless legal representation is present; ask that all written communications either go through or be approved by the practitioner.

c. Remember that intent will generally control. Clearly state within the Letter of Intent that the intent is that the letter is non-binding until there has been agreement on hot button items and material terms.

d. Provide that either party may terminate negotiation if a definitive agreement has not been achieved by a specific date.

e. Watch the language utilized. Use words which reflect a non-binding intent, in lieu of words which infer a commitment; i.e., “may” or “would” in lieu of “are”, “shall” or “will”.

f. Include a provision that the obligations of all parties are strictly contingent upon agreement and execution of a definitive agreement by a date certain.⁴

Hopefully, these suggestions will prove helpful and your Letter of Intent will not result in unintended results!

⁴Id.

The Corporate Tax Break Competition

Understanding Corporate Interests at Stake and the Related Effects on the States

By Larissa Womack

A corporation's decision to keep and grow existing business in a state or to relocate and create new business facilities in a different state is influenced by state tax credit incentives. State governments offer companies tax incentives to encourage business growth within that state. The growing competition between the states to offer the best tax incentives is comprised of approximately \$50 billion annually.⁵

CORPORATE TAX CREDITS

Corporations can receive various types of tax incentives from the states in the form of relief from tax liability.⁶ What are corporate tax incentives? "Tax credits are economic development subsidies that reduce a company's taxes by allowing it to deduct all or part of certain expenses from its income tax bill on a dollar for dollar basis."⁷ Most commonly used are general investment tax credits and the research and development tax credits.⁸ In addition, some states employ sales tax incentives through exemptions or deferrals. Such credits are

granted to corporations only for investments made within the state.⁹ The tax credits are designed to promote economic growth within the state by allowing corporations to reduce their tax liability.

As a matter of constitutional law, it is not unconstitutional for states to grant tax breaks to companies. In 2006, the issue of whether providing state tax breaks to corporations is constitutional went before the Supreme Court in *DaimlerChrysler v. Cuno*.¹⁰ Automaker DaimlerChrysler operated a Jeep plant in Toledo, Ohio when it entered into a development agreement with the city in 1998 to expand its business operations around the city.¹¹ Ohio agreed to grant tax incentives to DaimlerChrysler in exchange for the construction of a new plant in an economically distressed area of Ohio.¹² After Ohio granted DaimlerChrysler a ten-year property tax exemption and a 13.5% franchise tax credit, taxpayers filed a lawsuit declaring the incentives discriminated against interstate commerce and thus violated the Commerce Clause.¹³ The Supreme Court did not address the question presented on the constitutionality of the credits, but

⁵ Carl Davis, *Tax Incentives: Costly for States, Drag on the Nation*, Inst. on Taxation and Econ. Pol'y (Aug. 12, 2013).

⁶ Symposium, *What Do We Know About the Interstate Economic Effects of State Tax Incentives?*, 4 Geo. J. L. & Pub. Pol'y 133 (2006); See Heather Evanoff and Larry R. Garrison, *Corporate Incentives: Charting State Tax Credits*, 12 J. of Multistate Taxation and Incentives 1, 3-4 (June 24, 2014), which includes a chart tracking state tax credits available to corporations.

⁷ Good Jobs First, <http://www.goodjobsfirst.org/accountable-development/corporate-income-tax-credits>.

⁸ See Evanoff, *supra* note 2, at 3.

⁹ See Symposium, *supra* note 2, at 138.

¹⁰ *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006).

¹¹ Veena Iyer, *Cuno v. DaimlerChrysler Inc., Dormant Commerce Clause Limits State Location Tax Incentives*, 40 Harvard Civil Rights-Civil Liberties Law Rev. 523-538 (June, 2005).

¹² *Id.* at 524.

¹³ *Cuno v. DaimlerChrysler, Inc.*, 386 F.3d 738, 743 (6th Cir. 2004), *reh'g en banc denied* (Jan. 18, 2005).

held that the taxpayers did not have Article III standing to bring such a suit challenging the award of the credits.¹⁴ Consequently, state governments continue to offer tax incentives for businesses that operate within their state.

Before the *Cuno* case was decided, it produced a flood of amici briefs in support of the carmaker corporation.¹⁵ States and the corporations argue that the incentives are a tool that gives both states and corporations the ability to compete at a national and global level.¹⁶

The amici briefs consistently pointed to the importance of the states' ability to control and manage their own economies.¹⁷ Furthermore, a development agreement, like the one between DaimlerChrysler and Ohio, requires corporations to invest time, money and up to billions of dollars for infrastructure and equipment when they build or move facilities into a state. In low wage states the prospect of new high paying jobs from the construction of large plants is appealing. In its brief in support of DaimlerChrysler, Nissan noted a study revealing that for each manufacturing job created in the automotive industry, 9.4 additional jobs are created.¹⁸ States that see actual job growth from the use of these incentives likely will continue to use tax breaks as tools to serve public interests. Similarly, corporations can free up money to invest in other ways to increase their competitive edge.

¹⁴ *DaimlerChrysler Corp. v. Cuno*, 547 U.S. at 349-350.

¹⁵ *Id.*

¹⁶ Reply Brief for Petitioners, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006) (No. 04-1724, 2006 WL 403939 at 19-20).

¹⁷ Brief for Council on State Taxation and Nat'l Ass'n of Manufacturers Supporting Petitioners, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006) (Nos. 04-1704, 04-1724), 2005 WL 3323043, at 10; Brief for Nissan North Am., Inc. as Amicus Curiae Supporting Petitioners, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006) (Nos. 04-1704, 04-1724), 2005 WL 3322933, at 24.

¹⁸ See Amicus Brief for Nissan, *supra* note 13, at 25.

Tax credits are a part of a corporate strategy to lower costs and, as a result, increase profits.¹⁹ Likewise, state tax credits appeal to corporations of different sizes and types, especially now that large federal tax breaks expired.²⁰ Although a tax incentive package is unlikely to be the only factor a corporation considers in its investment decisions, states offer these incentives as a way to tip the scales in their favor.

In addition, some states may have more to offer than other states in ways that cannot be controlled or changed: more attractive climate, geography, natural resources or strong university presence.²¹ To counter such perks, other states can use the tax credits to appeal to corporations that otherwise would have never considered the state as a possible choice for business development.

THE \$50 BILLION COMPETITION BETWEEN THE STATES

Tax incentives are increasingly being used as tools for attracting and keeping companies in a state.²²

The tax incentive strategy employed by a state is to offer better tax breaks than other states in order to influence a company to remain or relocate its operations in that state and commit to creating or

¹⁹ Herwig Schlunk, *Why Every State Should Have An Income Tax (And A Retail Sales Tax Too)*, 78 Miss. L. J. 637, 642, 695-96 (Spring, 2009).

²⁰ The research and experimentation tax (R&E) credit was never a permanent provision of the tax code. See Gary Guenther, *Research Tax Credit: Current Law and Policy Issues for the 113th Congress*, Cong. Research Serv. 3, 18 (Oct. 3, 2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RL31181.pdf>; I.R.C. § 41.

²¹ See Brief for Council on State Taxation and Nat'l Ass'n of Manufacturers Supporting Petitioners, *supra* note 13, at 9-10.

²² *Economic Development and the Dormant Commerce Clause: The Lessons of Cuno v. DaimlerChrysler and Its Effect on State Taxation Affecting Interstate Commerce: Joint Hearing Before the Subcomm. on the Const. and the Subcomm. on Comm. and Admin. L. of the Comm. on the Judiciary*, 109th Cong. (May 24, 2005) (statement of Michele R. Kuhrt, Director of Taxes and Fin. Admin., The Lincoln Electric Co.).

retaining jobs in the state. Benefits of the corporate tax breaks to states come in the form of community investment, local charitable contributions, job growth and economic stimulus. States compete for businesses with the goal of increasing economic activity and investment in certain areas of the state.

Opponents of tax break incentives argue that states can benefit if they all refuse to compete by not offering any tax breaks to companies and keep tax revenues.²³ Yet granting tax incentives does not necessarily mean that states will have an overall decline in tax revenues.²⁴ The argument fails to address the fact that the land and resources used by a corporation in exchange for the tax credits is generally not otherwise generating tax revenues.

A closer look at one of the top state tax incentive packages in the nation demonstrates some of the issues surrounding the current competition between the states. Mississippi awarded Nissan \$1.25 billion in tax incentives for a vehicle assembly plant.²⁵ According to data gathered by The New York Times in a national ten-month investigation prior to the Nissan deal, Mississippi spent \$60.2 million a year on corporate tax credits.²⁶ The automaker declares it has invested \$2.8 billion in the assembly plant in Canton, Mississippi.²⁷ De-

spite facing conflicts with a possible union, Nissan came through for Mississippi, as it is the state's second-largest private employer, employing approximately six thousand workers at this plant with a \$254 million annual payroll.²⁸ Mississippi residents from eighty counties in the state work at Nissan.²⁹ Workers at the plant start at \$23.22 an hour, greater than the starting pay for similar jobs in Mississippi.³⁰

Tax incentives do affect corporate business decisions.³¹ Research data on state tax break packages around the country calculate the "giveaways" to corporations between \$50 and \$80 billion a year.³²

In *DaimlerChrysler v. Cuno*, various scholars, economic public policy groups and non-profit organizations filed briefs making arguments that tax incentives have only minimal impact on business decisions, they impose long-term costs that harm economic growth and they create a zero-sum game for the states.³³ Essentially, the argument against tax incentives is that they are economically ineffi-

²³ Peter D. Enrich, *Saving the States from Themselves: Commerce Clause Constraints on State Tax Incentives for Business*, 110 Harvard L. Rev. 377, 396 (1996).

²⁴ Symposium, *The Law and Policy of State Tax Competition: Much Ado About Nothing?*, 4 Geo. J. L. & Pub. Pol'y 101, 109 (2006).

²⁵ Good Jobs First, *A Good Deal for Mississippi? A Report on Taxpayer Assistance to Nissan in Canton, Mississippi* (May 2013);

http://www.goodjobsfirst.org/sites/default/files/docs/pdf/nissan_report.pdf. The report values the three state tax subsidies at \$632 million and the value of local property tax abatements at \$210 million over 30 years. These values total the package at \$1.25 billion.

²⁶ See N.Y. Times database, <http://www.nytimes.com/interactive/2012/12/01/us/government-incentives.html#MS>, *supra* note 19.

²⁷ Based on the Nissan Canton community page on their website, <http://www.nissan-canton.com/nissan-in-the-community>.

²⁸ *Id.* See Steven Greenhouse, *At a Plant in Mississippi, the Battle to Shape the U.A.W.'s Future*, N.Y. Times, B1 (Oct. 6, 2013) (<http://www.nytimes.com/2013/10/07/business/at-a-nissan-plant-in-mississippi-a-battle-to-shape-the-uaws-future.html>); Canton, Mississippi, <http://www.cantonms.net/quality-of-life.php>.

²⁹ U.S. Census Bureau, State and Cnty. QuickFacts, (last visited Jan. 7, 2015), <http://quickfacts.census.gov/qfd/states/28/2811100.html>.

³⁰ See Greenhouse, *supra* note 27, at B1.

³¹ Kimberly A. Clausing, *The Future of the Corporate Tax*, 66 Tax L. Rev. 419, 422 (Summer 2013).

³² *Id.*; See Good Jobs First, <http://www.goodjobsfirst.org/corporate-subsidy-watch>; *Cuno and Competitiveness: Where to Draw the Line: Hearing on S. 1066 Before the Subcomm. on Int'l Trade, Comm. on Fin., 109th Cong. 5-7* (2006) (statement of Peter D. Enrich, professor of law) at 6-7.

³³ Brief for Ctr. for Budget as Pol'y Priorities Supporting Respondents, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, (2006) (No. 04-1704), 2006 WL 189795, at 7.

cient.³⁴ Other arguments suggest that creation of new jobs means more costs to the local government to provide the necessary road maintenance, utilities and other investments in infrastructure and public services.³⁵ Therefore, the benefits of increased tax revenues from the new jobs must be greater than these costs for the tax incentives to actually benefit the state.³⁶

While other factors certainly play an important role in a corporation's decision to create or relocate its business, trends show a significant increase of tax incentives as a way to attract and maintain business within a state. This trend has implications for tax laws and the availability of such tax breaks for corporations in the years to come. Accordingly, accurate monitoring of the effectiveness of tax incentives at both the state and federal level is vital.

Both corporations and states have plenty at stake in their struggle to achieve success in the long run. History and economic policy research indicates that limits on tax incentives are needed to curb the raging state competition for business in order to realize actual benefits from the relationship between states and corporations. The process of creating viable tax incentives for businesses will continue to develop with the collaborative work of lawmakers, scholars, economists and business leaders.

³⁴ Edward A. Zelinsky, *Efficiency and Income Taxes: The Rehabilitation of Tax Incentives*, 64 Tex. L. Rev. 973, 974 (1985-1986).

³⁵ Timothy J. Bartik, *Jobs, Productivity, and Local Economic Development: What Implications Does Economic Research Have for the Role of Government?*, 47 Nat'l Tax J. 847, 848 (1994).

³⁶ Herwig Schlunk, *Why Every State Should Have an Income Tax (and a Retail Tax Too)*, 78 Miss. L. J. 637, 646-49 (Spring, 2009).

Contributors to this Issue

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David M. Allen is a partner with Page, Mannino, Peresich & McDermott, PLLC. He is a graduate of the University of Mississippi Law Center and subsequently earned an MBA from Tulane University and an LLM (Taxation) from the University of Alabama. He is a member of the American College of Mortgage Attorneys and is past chair of the Real Estate Section of the Mississippi Bar. His practice primarily involves commercial transactions.



Larissa Womack

Larissa Womack is a third year law student at Mississippi College School of Law. Larissa previously attended the University of San Diego and later graduated from Belhaven University with her degree in Political Science. Prior to completing her Bachelor's degree, Larissa served five years active duty in the Marine Corps. Currently, she enjoys her work as a legal extern at the Mississippi Emergency Management Agency (MEMA) in Pearl, MS.



About the Editor

Mary A. Nichols

Mary A. Nichols joined Hancock Bank, Gulfport Mississippi, in 2003 where she is presently serving as Corporate Counsel. A native of Bay Springs, MS, Mary obtained a degree in Marketing from Florida State University in 1975, a Bachelor's in Music from Mississippi College in 1980 and her Juris Doctorate from the University of Mississippi, College of Law, in 1990. Prior to joining Hancock Bank, Mary clerked for Circuit Judge Stephen Simpson and was associated with the law firm of Page, Mannino, Peresich and McDermott in Biloxi, MS. Mary is a member of St. Mark's Episcopal Church, Gulfport MS, where she presently serves on the Vestry and as a Lay Eucharistic Minister.

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How to Contribute to the Reporter

Persons interested in submitting news, a proposal, or an article for publication in The Mississippi Business Law Reporter should submit it by e-mail to the editor Mary A. Nichols at mary.nichols@hancockbank.com. All news, proposals and articles are subject to review and approval by the Editor and Section Leadership.

When submitting an article, the article should be the original work of the author and must not have been previously published (unless proof of consent to reproduction can be provided). Articles shall not, to the best of the author's knowledge, contain anything which is libelous, illegal, or otherwise infringes upon anyone's copyright or other rights. Authors are responsible for the accuracy of all citations and quotations.

Articles should be arranged in the following order: (i) article title, (ii) author's name, (iii) acknowledgement of assistance, if applicable or desired, and (iv) text of the article. All contributions should be submitted in MS Word format.

A short biographical statement should also be provided at the time the article is submitted. The statement should include, at a minimum, the author's (i) current position, (ii) practice areas, (iii) professional affiliations. A head and shoulder photograph of the author(s) in color is requested but not required.

Section News & Announcements – Save the Date(s)

Legislative Update CLE Program April 29

The Business Section's Legislative Update CLE program will be held at the Mississippi Bar Center on April 29, 2015, Jackson MS. Registration begins at 8 a.m. with the first presenter beginning at 8:30 a.m. and program will end by noon.

Ethics Hour CLE Program June 9 at River Hills

The Business Section's Ethics Hour CLE, co-sponsored with the Mississippi Corporate Counsel Association, will be held June 9, 2015 at River Hills Club located at 3600 Ridgewood Road, Jackson, MS. Registration begins at 11:00 a.m. followed by lunch at 11:30 a.m. The Business Law Ethics CLE seminar will begin at noon. The cost is \$50 for both lunch and one hour of ethics CLE credit.

2015 Annual Meeting and Summer School July 6-11

The 2015 Summer School for Lawyers will be held at the Linkside Conference Center in Sandestin Resort July 6-8. The 2015 Annual Meeting will be held at the Sandestin Hilton July 9-11.

CLE Seminar at Bar Convention July 9, 10 a.m.

The Business Law Section will be holding a meeting and CLE seminar at the 2015 Bar convention in Sandestin, Florida. The meeting is scheduled for Thursday, July 9, 2015, from 10 a.m. through 12 noon.

Mississippi Business Law Reporter -- Submission Deadline

For those who are considering submitting an article for publication in the Mississippi Business Law Reporter, the submission deadline for the next edition of the Mississippi Business Law Reporter is tentatively set for **May 22, 2015**. Any questions? Please contact mary.nichols@hancockbank.com

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**The Business Law Section
of the Mississippi Bar has a
listserv.**



**As a member of the
Business Law Section you
are automatically a member
of the listserv.**

**To send a message to the
following listserv email address:**

BusinessLaw@listbox.com

LISTSERV RULES AND ETIQUETTE

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Please review the listserve rules, etiquette and legal disclaimer below. This email is forwarded to participants on all MB listserves on a periodic basis to remind everyone of the rules and etiquette of MB listserves.

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By joining and using The Mississippi Bar's listserves, you agree that you have read and will follow the rules and guidelines set for this listserve. You also agree to reserve list discussions for topics intended for discussion on this listserve.

As with any community, there are guidelines governing behavior on the listserves. Please take a moment to acquaint yourself with these important guidelines. MB reserves the right to suspend or terminate membership on all lists for members who violate these rules.

- **When sending messages use a meaningful subject line.** State concisely and clearly the specific topic of the comments in the subject line. This is a time-saver for all participants. Listserve participants will know if something can wait. Also, if they are not interested in the subject matter they can delete the message.
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