

89-R-99001

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October 30, 2023

FILED

OCT 30 2023

Mississippi Supreme Court
Rules Committee on Practice and Procedure
c/o Hon. D. Jeremy Whitmire,
Clerk of Mississippi Appellate Courts
Post Office Box 249
Jackson, Mississippi 39205

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Re: Proposed Amendments to Mississippi Rule of Civil Procedure 26

Dear Supreme Court Rules Committee:

I am honored to serve as the Executive Director of the Mississippi Petroleum Marketers and Convenience Stores Association (the "Association"), a non-profit, statewide trade association representing the petroleum and food industries. Our membership—comprising gasoline & diesel distributors, convenience store owners & operators, suppliers, major oil companies, and suppliers of equipment and industry related services represents approximately 58 active marketer members who own and/or operate the majority of the approximately 2,400 convenience stores in the state of Mississippi. These members employ approximately 40,000 Mississippians.

Please accept this letter as the Association's comments regarding the proposed amendments to Mississippi Rule of Civil Procedure 26 (the "Proposed Amendments").

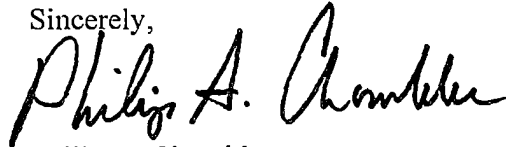
The Proposed Amendments, even if well-intentioned, will significantly and unduly prejudice defendants by allowing plaintiffs to make scant initial designations of experts, lie in wait for the defendants to designate experts and serve expert opinions, then designate "rebuttal" experts to provide opinions on matters not raised by any defense expert, without the defendant having the opportunity to counter such new opinions. *Compare* FED. R. CIV. P. 26(a)(2)(D)(ii) (allowing expert rebuttal testimony "intended solely to contradict or rebut evidence on the same subject matter identified by another party[']s experts]"(emphasis added)). This practice would universally harm defendants and undermine the very purpose of expert testimony—to "help the trier of fact to understand the evidence or to determine a fact in issue," MISS. R. EVID. 702(a)—by allowing only one party's expert to provide testimony on these new matters.

Moreover, litigants are already bound by a duty to supplement their expert disclosures and written discovery responses. MISS. R. CIV. P. 26(f)(1). The Proposed Amendments, in this regard, are unnecessary.

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attachment 2403

The Proposed Amendments are neither insignificant, nor benign. They would undoubtedly prejudice defendants seeking justice through civil litigation. Thank you for your thoughtful consideration of the Association's comments to the Proposed Amendments.

Sincerely,

A handwritten signature in black ink that reads "Philip A. Chamblee". The signature is written in a cursive style with a large, prominent initial "P".

Philip A. Chamblee
Executive Director/CEO

Cc: John E. Milner, Esq., Association Counsel
L. Kyle Williams, Esq.