

## **E. FARISH PERCY**

University of Mississippi School of Law  
Robert C. Khayat Law Center  
P.O. Box 1848  
University, MS 38677  
(662) 915-6848  
percy@olemiss.edu

### **EMPLOYMENT**

University of Mississippi School of Law  
Professor: 2014 - present  
Associate Professor: 2007 - 2014  
Assistant Professor: 2001 - 2007  
Mississippi Defense Lawyers Association Distinguished Lecturer: (2013 - present)  
Jesse D. Puckett, Jr., Lecturer: 2008 - 2013

Courses: Torts, Insurance, Civil Procedure II, and Evidence.

Awards: 2013 Recipient of the Ben A. Hardy Faculty Excellence Award for outstanding teaching, scholarship and service.

### **PUBLICATIONS**

*The Fraudulent Joinder Act of 2016: Moving the Law in the Wrong Direction*, 62 Villanova Law Review 213 (2017).

*The Tedford Equitable Exception Permitting Removal of Diversity Cases After One Year: A Welcome Development or the Opening of Pandora's Box?*, 63 Baylor Law Review 146 (2011).

*Applying the Common Fund Doctrine to an ERISA-Governed Employee Benefit Plan's Claim for Subrogation or Reimbursement*, 65 Florida Law Review 55 (2009).

*Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harvard Journal of Law and Public Policy 569 (2006).

*Making a Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 Iowa Law Review 189 (2005).

*Checking up on the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?* 73 Mississippi Law Journal 1001 (2004).

*Book Review: Moonlight: Abraham Lincoln and the Almanac Trial*, Voir Dire, Vol. 8, Issue 1, Spring 2001.

*William Alexander Percy: Poet at Heart*, The Mississippi Lawyer, Vol. XLIV, Issue 2, Nov./Dec. 1997.

Court Citations to the Law Review Articles Above:

1. *Weeping Hollow Avenue Trust v. Spencer*, 831 F.3d 1110 (9th Cir. 2016) ((citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 Iowa L. Rev. 189, 234 (2005)).
2. *Knudson v. Systems Painters, Inc.*, 634 F.3d 968 (8th Cir. 2011) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 Iowa L. Rev. 189, 234 (2005)).
3. *Lafalier v. State Farm Fire and Cas. Co.*, 391 Fed. Appx. 732 (10th Cir. 2010) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
4. *Jones v. Masterson*, 2017 WL 2532044 (D. Colo. June 12, 2017) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
5. *Premier Community Services, Inc. v. Goldesberry-Vanmeter et al.*, 2017 WL 2294678 (N.D. Ok. May 25, 2017) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
6. *Warner v. Select Portfolio Servicing*, 2016 WL 4492828 (C.D. Cal. June 24, 2016) ((citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 Iowa L. Rev. 189, 234 (2005)).
7. *In re: Bard Ivc Filters Products Liability Litigation*, 2016 WL 2956557 (D. Ariz. May 23, 2016) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
8. *In re: Bard Ivc Filters Products Liability Litigation*, 2016 WL 2956556 (D. Ariz. May 23, 2016) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
9. *In re: Bard Ivc Filters Products Liability Litigation*, 2016 WL 2347430 (D. Ariz. May 4, 2016) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).

10. *Johnston v. Nationwide Mut. Ins. Co.*, 2015 WL 5334275 (N.D. Miss. Sept. 14, 2015) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 Iowa L. Rev. 189, 234 (2005)).
11. *McGrath v. City of Albuquerque*, 2015 WL 4994735 (D. N.M. July 31, 2015) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
12. *De La Rosa v. Reliable, Inc.*, 2015 WL 4042022 (D. N.M. Jun. 27, 2015) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
13. *New Mexico ex rel. Balderas v. Valley Meat Co., LLC*, 2015 WL 3544288 (D. N.M. May 20, 2015) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
14. *Bank of America, N.A. v. Lebreton*, 2015 WL 2226266 (D. N.M. 2015Apr. 20, 2015) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
15. *Fruge v. Burlington Resources Oil & Gas Co. LP*, 2015 WL 4131353 (W.D. La. Mar. 30, 2015) (citing E. Farish Percy, *The Tedford Equitable Exception Permitting Removal of Diversity Cases After One Year: A Welcome Development or the Opening of Pandora's Box?*, 63 Baylor Law Review 146 (2011)).
16. *McDaniel v. Loya*, 2015 304 F.R.D. 617 (D. N.M. 2015) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
17. *Aguayo v. AMCO Ins. Co.*, 2014 WL 5859098 (D. N.M. Oct. 31, 2014) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
18. *Tutor v. Liberty Ins. Corp.*, 2014 WL 1648620 (N.D. Miss. Apr. 24, 2014) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 Iowa L. Rev. 189, 234 (2005)).
19. *Ullman v. Safeway Ins. Co.*, 995 F. Supp. 2d 1196 (D. N.M. Dec. 31, 2013) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
20. *Flores-Duenas v. Briones*, 2013 WL 6503537 (D. N.M. Dec. 1, 2013) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).

21. *Carey v. Allstate Ins. Co.*, 2013 WL 5970487 (W.D. La. Nov. 7, 2013) (citing E. Farish Percy, *The Tedford Equitable Exception Permitting Removal of Diversity Cases After One Year: A Welcome Development or the Opening of Pandora's Box?*, 63 *Baylor Law Review* 146 (2011)).
22. *Larson v. Abbott Laboratories*, 2013 WL 5937824 (D. Md. Nov. 5, 2013) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 *Harv. J.L. & Pub. Pol'y* 569, 572 (2006)).
23. *Flowers v. Direct Ins. Co. of Miss.*, 955 F. Supp. 2d 638 (N.D. Miss. July 23, 2103) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 *Iowa L. Rev.* 189, 234 (2005)).
24. *Franklin D. Azar & Associates, P.C. v. Farmers Insurance Exchange*, 2013 WL 1324916 (D. Colo. Apr. 1, 2013) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 *Harv. J.L. & Pub. Pol'y* 569, 572 (2006)).
25. *Williams v. Altman, McGuire, McClellan & Crum, P.S.C.*, 2013 WL 28378 (E.D. Ky. Jan. 2, 2013) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 *Harv. J.L. & Pub. Pol'y* 569, 572 (2006)).
26. *Carrillo v. JP Morgan Chase Bank, N.A.*, 2012 WL 3276971 (W.D. Tex. Aug. 9, 2012) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 *Iowa L. Rev.* 189, 234 (2005)).
27. *Alpha Biomedical and Diagnostic Corp. v. Philips Medical Systems Netherland BV*, 828 F. Supp. 2d 425 (D. Puerto Rico 2011) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 *Iowa L. Rev.* 189, 234 (2005)).
28. *Murriel-Don Coal Co., Inc. v. Aspen Ins. UK Ltd.*, 790 F. Supp. 2d 590 (E.D. Ky. 2011) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 *Iowa L. Rev.* 189, 234 (2005)).
29. *LCAP Advisors, LLC v. Penrith Group, Inc.*, 2011 WL 1375572 (C.D. Cal. Apr. 11, 2011) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 *Iowa L. Rev.* 189, 234 (2005)).
30. *Reuter v. Medtronics, Inc.*, 2010 WL 4628439 (D. N.J. Nov. 5, 2010) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 *Harv. J.L. & Pub. Pol'y* 569, 572 (2006)).

31. *Texas Instruments Inc. v. Citigroup Global Markets, Inc.*, 266 F.R.D. 143 (N.D. Tex. 2010) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
32. *Padilla v. AT & T Corp.*, 697 F. Supp. 2d 1156 (C.D. Cal. 2009) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 Iowa L. Rev. 189, 234 (2005)).
33. *Saunders v. Countrywide Home Loans of Minnesota, Inc.*, 548 F.Supp.2d 692 (D. Minn. 2008) (citing E. Farish Percy, *Defining the Contours of the Emerging Fraudulent Misjoinder Doctrine*, 29 Harv. J.L. & Pub. Pol'y 569, 572 (2006)).
34. *Estate of Klaus ex rel. Klaus v. Vicksburg Healthcare, LLC*, 972 So.2d 555 (Miss. 2007) (citing E. Farish Percy, *Checking Up on the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Reforms the Cure?*, 73 Miss. L.J. 1001, 1002 (2004)).
35. *Bova v. U.S. Bank, N.A.*, 446 F.Supp.2d 926 (S.D. Ill. 2006) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 Iowa L. Rev. 189, 234 (2005)).
36. *Brooks v. Merck & Co., Inc.*, 443 F. Supp. 2d 994 (S.D. Ill. 2006) (citing E. Farish Percy, *Making A Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 Iowa L. Rev. 189, 234 (2005)).

## **EDUCATION**

University of Virginia: J.D. Degree 1991

Order of the Coif

Virginia Law Review: Editorial Board 1989-90; Articles Review Board 1990-91

Recipient of the Shannon Z Society Award (awarded at graduation to the student who contributed the most to the academic excellence of the law school)

University of North Carolina: B.A. Degree in Economics (with distinction) 1988

London School of Economics and Political Science: General Course Student 1986-87

## **PAST EMPLOYMENT**

Of Counsel: Tollison Law Firm, P.A., Oxford, MS (2001 - 2008)

Concentrated in appellate tort litigation.

Attorney: Tollison Law Firm, P.A., Oxford, MS (1993 - 2001)

Concentrated in commercial litigation, tort litigation, and appellate practice. Tried numerous civil cases in state and federal courts in Mississippi and briefed and argued several appellate cases before the United States Court of Appeals for the Fifth Circuit and the Mississippi Supreme Court.

Adjunct Professor: University of Mississippi School of Law (1998 - 2001)

Taught Appellate Advocacy.

Attorney: Latham & Watkins, Washington, D.C. (1992 - 1993)

Concentrated in Corporate Tax.

Law Clerk: Judge E. Grady Jolly, United States Court of Appeals for the Fifth Circuit (1991 - 1992)

## **BAR MEMBERSHIPS AND OTHER PROFESSIONAL ACTIVITIES**

Lecturer: American College of Coverage and Extracontractual Counsel Symposium, University of Mississippi School of Law, March 21, 2014

Lecturer: Mississippi Trial and Appellate Judges Spring Conference (2015 - 2017).

Sponsor and Lecturer: Summary of Recent Mississippi Law CLE (2012 - present). The CLE provides in-depth coverage of recent Mississippi civil law in the areas of Civil Practice and Procedure, Torts, Evidence, Real Property, Family Law, and Insurance. The six-hour CLE is offered annually in Oxford, Biloxi and Jackson, MS.

Reporter: Mississippi Supreme Court Advisory Committee on Rules (2006 - present). Reporter for the Civil Rules Subcommittee. Responsible for researching proposed rule changes and drafting proposed rule changes and memoranda for consideration by the Committee and the Mississippi Supreme Court.

Lecturer: BarBri/Mississippi Civil Practice and Procedure (2007 - present).

Member: Mississippi Bar, American Bar Association, Lafayette County Bar Association and Mississippi Women Lawyers Association.

Member: 2000 Federal Civil Rules Advisory Committee - Northern District of Mississippi.

Amicus Curiae:

Appeared as Amicus Curiae with other employment law/ERISA law professors in support of the respondents in *U.S. Airways, Inc. v. McCutchen*, 133 S. Ct. 1527 (2013).

Appeared as Amicus Curiae with Professors Arthur R. Miller, Erwin Chemerinsky, Michael Solimine, Adam Steinman, and Rhonda Wasserman in support of the respondents in *Powerex Corp. v. Reliant Energy Services, Inc.*, 551 U.S. 224 (2007).

Appeared as Amicus Curiae with Professors Arthur Miller, Michael Solimine, and Jill Fisch in support of the petitioners in *Kircher v. Putnam Funds Trust*, 547 U.S. 633 (2006).