

## **E. FARISH PERCY**

Professor and Jamie L. Whitten Chair of Law and Government  
University of Mississippi School of Law  
Robert C. Khayat Law Center  
P.O. Box 1848  
University, MS 38677  
percy@olemiss.edu

### **EMPLOYMENT**

University of Mississippi School of Law  
Professor: 2014-present  
Jamie L. Whitten Chair of Law and Government: 2020-present  
Associate Professor: 2007-2014  
Assistant Professor: 2001-2007  
Adjunct Professor: 1998-2001  
Mississippi Defense Lawyers Association Distinguished Lecturer: 2013-2020  
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**

*It's Time for Congress to Snap to It and Amend 28 § U.S.C. 1441(b)(2) to Prohibit Snap Removals That Circumvent the Forum Defendant Rule*, 73 Rutgers University Law Review 579 (2021).

*Inefficient Litigation Over Forum: The Unintended Consequence of the JVCA's "Bad Faith" Exception to the Bar on Removal of Diversity Cases After One Year*, 71 Oklahoma Law Review 595 (2019).

*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.

Court and Treatise Citations to the Law Review Articles Above:

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

1. *Lafalier v. State Farm Fire and Cas. Co.*, 391 Fed. Appx. 732 (10th Cir. 2010).
2. *Fuqua V. State Farm Automobile Ins. Co.*, 2021 WL 1123624 (W.D. Okla. Mar. 24, 2021)
3. *Mays County FOP Lodge #116, Inv. v. Farmers Ins. Exchange*, 2020 WL 6136236 (N.D. Okla. Oct. 19, 2020).
4. *Calderon v. Wade*, 2020 WL 2065277 (D. N. Mex. Apr. 29, 2020)
5. *Bailey v. Markham*, 2020 WL 1324477 (D. N. Mex. Mar. 20, 2020)
6. *Hunt v. Jack V. Waters, D.C., P.C.*, 2019 WL 5895782 (D. N. Mex. Nov. 12, 2019).
7. *Hernandez v. Chevron U.S.A., Inc.*, 347 F. Supp. 3d 921 (D. N. Mex. 2018).
8. *Klintworth v. Valley Forge Ins. Co.*, 2018 WL 4945237 (N.D. Okla. Aug. 15, 2018).
9. *Rowan v. State Farm Fire & Cas. Co.*, 2018 WL 1426358 (W.D. Okla. Mar. 22, 2018)
10. *Edison Ranch v. Mosaic Potash Carlsbad, Inc.*, 2018 WL 582578 (D. N. Mex. Jan. 26, 2018)
11. *Pearson v. Safeco Ins. Co.*, 2018 WL 279289 (N.D. Ga. Jan. 3, 2018)
12. *Jones v. Masterson*, 2017 WL 2532044 (D. Colo. June 12, 2017)
13. *Premier Community Services, Inc. v. Goldesberry-Vanmeter et al.*, 2017 WL 2294678 (N.D. Ok. May 25, 2017).

14. *In re: Bard Ivc Filters Products Liability Litigation*, 2016 WL 2956557 (D. Ariz. May 23, 2016).
15. *In re: Bard Ivc Filters Products Liability Litigation*, 2016 WL 2956556 (D. Ariz. May 23, 2016).
16. *In re: Bard Ivc Filters Products Liability Litigation*, 2016 WL 2347430 (D. Ariz. May 4, 2016).
17. *McGrath v. City of Albuquerque*, 2015 WL 4994735 (D. N.M. July 31, 2015).
18. *De La Rosa v. Reliable, Inc.*, 113 F. Supp. 3d 1135 (D. N.M. Jun. 27, 2015).
19. *New Mexico ex rel. Balderas v. Valley Meat Co., LLC*, 2015 WL 3544288 (D. N.M. May 20, 2015).
20. *Bank of America, N.A. v. Lebreton*, 2015 WL 2226266 (D. N.M. Apr. 20, 2015).
21. *McDaniel v. Loya*, 304 F.R.D. 617 (D. N.M. 2015).
22. *Aguayo v. AMCO Ins. Co.*, 59 F. Supp. 3d (D. N.M. 2014).
23. *Target Const., Inc. v. Travelers Prop. Cas. Co.*, 2014 WL 5048241 (D. Nev. Oct. 9, 2014).
24. *Ullman v. Safeway Ins. Co.*, 995 F. Supp. 2d 1196 (D. N.M. Dec. 31, 2013).
25. *Flores-Duenas v. Briones*, 2013 WL 6503537 (D. N.M. Dec. 1, 2013).
26. *Larson v. Abbott Laboratories*, 2013 WL 5937824 (D. Md. Nov. 5, 2013).
27. *Creighton v. Bristol-Myers Squibb & Co.*, 2013 WL 12333214 (N.D. Ill. May 10, 2013).
28. *Franklin D. Azar & Associates, P.C. v. Farmers Insurance Exchange*, 2013 WL 1324916 (D. Colo. Apr. 1, 2013).
29. *Williams v. Altman, McGuire, McClellan & Crum, P.S.C.*, 2013 WL 28378 (E.D. Ky. Jan. 2, 2013).
30. *Montoya v. Ace American Ins. Co.*, 2012 WL 13081206 (D. N.M. Jan. 3, 2012).
31. *Reuter v. Medtronics*, 2010 WL 4628439 (D. N.J. Nov. 5, 2010)

32. *Texas Instruments Inc. v. Citigroup Global Markets, Inc.*, 266 F.R.D. 143 (N.D. Tex. 2010).
33. *Delphis, L.P. v. NFLP Holdings Ltd.*, 2010 WL 11561744 (N.D. Tex. Nov. 3, 2010).
34. *Saunders v. Countrywide Home Loans of Minnesota, Inc.*, 548 F.Supp.2d 692 (D. Minn. 2008).
35. 65 A.L.R. Fed. 2d 527, Construction and Application of Fraudulent Misjoinder Exception to Complete Diversity Rule (2012).

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

1. *Weeping Hollow Avenue Trust v. Spencer*, 831 F.3d 1110 (9th Cir. 2016).
2. *Knudson v. Systems Painters, Inc.*, 634 F.3d 968 (8th Cir. 2011).
3. *Alred v. Preferred Compounding Corp.*, 2020 WL 429486 (N.D. Ala. Jan. 29, 2020).
4. *Meisner v. Zymogenics, Inc.*, 2019 WL 7195628 (D. S.C. Aug. 29, 2019)
5. *Massey v. CNH Indus. Am., LLC et al.*, 2018 WL 3873585 (N.D. Miss. Aug. 15, 2018).
6. *Dillard v. Silvercote, LLC.*, 2018 WL 2364281 (E.D. Mo. May 24, 2018).
7. *Fuller v. Shell Point Mortgage Servicing*, 2017 WL 4326100 (W.D. Mich. Sept. 9, 2017).
8. *Warner v. Select Portfolio Servicing*, 193 F. Supp. 3d 1132 (C.D. Cal. 2016).
9. *Johnston v. Nationwide Mut. Ins. Co.*, 2015 WL 5334275 (N.D. Miss. Sept. 14, 2015).
10. *Aguayo v. AMCO Ins. Co.*, 59 F. Supp. 3d (D. N.M. 2014).
11. *Merkel v. Treestand Manufacturers Assoc'n*, 2014 WL 12654869 (N.D. Miss. Sept. 3, 2014).
12. *Tutor v. Liberty Ins. Corp.*, 2014 WL 1648620 (N.D. Miss. Apr. 24, 2014).
13. *Flowers v. Direct Ins. Co. of Miss.*, 955 F. Supp. 2d 638 (N.D. Miss. July 23, 2103).
14. *Carrillo v. JP Morgan Chase Bank, N.A.*, 2012 WL 3276971 (W.D. Tex. Aug. 9, 2012).

15. *Alpha Biomedical and Diagnostic Corp. v. Philips Medical Systems Netherland BV*, 828 F. Supp. 2d 425 (D. Puerto Rico 2011).
16. *Murriel-Don Coal Co., Inc. v. Aspen Ins. UK Ltd.*, 790 F. Supp. 2d 590 (E.D. Ky. 2011).
17. *LCAP Advisors, LLC v. Penrith Group, Inc.*, 2011 WL 1375572 (C.D. Cal. Apr. 11, 2011).
18. *Bryant v. Merck & Co., Inc.*, 2011 WL 13227774 (C.D. Cal. Jan. 24, 2011).
19. *Padilla v. AT & T Corp.*, 697 F. Supp. 2d 1156 (C.D. Cal. 2009).
20. *Bova v. U.S. Bank, N.A.*, 446 F.Supp.2d 926 (S.D. Ill. 2006).
21. *Brooks v. Merck & Co., Inc.*, 443 F. Supp. 2d 994 (S.D. Ill. 2006).
22. Wright & Miller, 13 Federal Practice & Procedure, §3641.1 Devices to Defeat Diversity Jurisdiction – Joinder of Nondiverse Parties (3d ed. 2019).
23. 3 AM JUR TRIALS 611, Selecting the Forum - Defendant’s Position.

**Citations to: *Inefficient Litigation Over Forum: The Unintended Consequence of the JVCA’s “Bad Faith” Exception to the Bar on Removal of Diversity Cases After One Year*, 71 Oklahoma Law Review 595 (2019).**

1. *Keller Logistics Group, Inc. v. Navistar, Inc.*, 2019 WL 3574636 (N.D. Ohio Aug. 6, 2019).

**Citations to: *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).**

1. *Fruge v. Burlington Resources Oil & Gas Co. LP*, 2015 WL 4131353 (W.D. La. Mar. 30, 2015).
2. *Aguayo v. AMCO Ins. Co.*, 59 F. Supp. 3d (D. N.M. 2014).
3. *Carey v. Allstate Ins. Co.*, 2013 WL 5970487 (W.D. La. Nov. 7, 2013).
4. Wright & Miller: 14C Federal Practice & Procedure, § 3731 Procedure for Removal – Time for Seeking Removal (Rev. 4<sup>th</sup> ed. 2019).

5. 65 A.L.R. Fed. 2d 527, Construction and Application of Fraudulent Misjoinder Exception to Complete Diversity Rule (2012).

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

1. *Estate of Klaus ex rel. Klaus v. Vicksburg Healthcare, LLC*, 972 So.2d 555 (Miss. 2007).

## **AMICUS CURIAE**

Appeared as Amicus Curiae with Professors Erwin Chemerinsky, Andrew D. Brandt, Helen Hershkoff, Lonny Hoffman, Michael Solimine, Adam Steinman, Joan Steinman, Stephen I. Vladeck, Rhonda Wasserman and Anne Bloom in support of the respondent in *BP, P.L.C., et al. v. Mayor and City Council of Baltimore*, No. 19-1189 (U.S. argued Jan. 19, 2021).

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).

## **EDUCATION**

University of Virginia: J.D. 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. 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.

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**

Member: American Law Institute (ALI)

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 (2015-2018).

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 (2006-2021). 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, and Lafayette County Bar Association.

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