

**IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI  
SECOND JUDICIAL DISTRICT**

**LADY LUCK BILOXI, INC. ,  
JOE G. ALDRICH, JACKIE R. ALDRICH,  
AND JOHN BRET ALDRICH**

**PLAINTIFF/COUNTER-DEFENDANTS**

**VS.**

**CAUSE NO. 24CH2:98-cv-00392**

**THE STATE OF MISSISSIPPI AND  
SECRETARY OF STATE OF THE STATE  
OF MISSISSIPPI, THE HONORABLE  
DELBERT HOSEMANN,**

**DEFENDANTS/COUNTER-PLAINTIFFS**

**CITY OF BILOXI, MISSISSIPPI**

**APPLICANT FOR INTERVENTION**

**MOTION OF THE CITY OF BILOXI, MISSISSIPPI  
TO INTERVENE AS A PLAINTIFF/COUNTER-DEFENDANT**

COMES NOW, the City of Biloxi, Mississippi, a municipal corporation and political subdivision of the State of Mississippi, and moves to intervene as a plaintiff/counter-defendant in this action to assert the defenses set forth in its proposed Answer to Counterclaim, a copy of the CITY OF BILOXI'S ANSWER TO COUNTERCLAIM being attached hereto as Exhibit "C" to this motion, on the following grounds:

1. The City should be permitted to intervene as a matter of right under *M.R.C.P.*, Rule 24 (a), because the city has an interest relating to the subject property and is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, and the City's interest cannot adequately be represented by existing parties.
2. Alternatively, the City should be permitted to intervene in the discretion of the Court under *M.R.C.P.*, Rule 24 (b), because the City's defenses have questions of law and fact in common with the main action.

3. The City is entitled to collect ad valorem property taxes on the parcels of real property that are the subject of the main action. The State seeks, contrary to law and facts, to change the boundaries of the subject parcels of property to eliminate all private ownership, which would cause material reductions in future tax collections.
4. Peter Abide, as Biloxi City Attorney, sent two letters to Ben Stone, Counsel for the Secretary of State, dated July 28, 2017 and August 11, 2017, inquiring whether the Secretary of State intends to replace lost ad valorem taxes that local authorities will lose if the Secretary of State prevails in an unresolved case that is similar to the above-styled and numbered cause, but the City received no reply. True copies of these two letters are attached and made a part of this motion, as Exhibits "A" and "B", respectively.

Respectfully submitted this 20th day of October, 2017.

CITY OF BILOXI, Applicant for Intervention

By: /s/ Gerald Blessey

Gerald Blessey, MSB #3591

/s/ Peter C. Abide

Peter Abide, MSB #1026

*Attorneys for City of Biloxi*

PREPARED BY:

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## CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following counsel of record who have appeared in this action:

David A. Wheeler, [david@wheelerattys.com](mailto:david@wheelerattys.com)  
Karl C. Hightower, [kchightower@balch.com](mailto:kchightower@balch.com)  
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Lee Davis Thames, Jr., [LTHAM@ago.state.ms.us](mailto:LTHAM@ago.state.ms.us)

THIS 20th day of October, 2017.

/s/ Gerald Blessey  
Gerald Blessey

# CURRIE JOHNSON

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August 11, 2017

Ben H. Stone, Esquire  
Balch & Bingham LLP  
1310 Twenty Fifth Avenue  
Gulfport, MS 39501-1931

RE: Biloxi Lodging, LLC v. State of Mississippi  
Cause No. 24CH2:16-CV-00299-SS

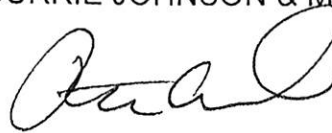
Dear Ben:

I am following up on my letter of July 28, 2017 (copy attached), concerning reimbursement of any lost ad valorem taxes related to the Biloxi Lodging lawsuit. Please favor us with a response by August 17.

I am copying the attorneys for other entities with a similar financial interest. Thank you for your attention to this matter.

Sincerely,

CURRIE JOHNSON & MYERS, P.A.



Peter C. Abide

PCA/jma  
Enclosure

cc: Tim Holleman, Esquire  
Henry Dick, Esquire  
Randi Mueller, Esquire



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July 28, 2017

Ben H. Stone, Esquire  
Balch & Bingham LLP  
1310 Twenty Fifth Avenue  
Gulfport, MS 39501-1931

RE: Biloxi Lodging, LLC v. State of Mississippi  
Cause No. 24CH2:16-CV-00299-SS

Dear Ben:

This letter is being sent on behalf of the City of Biloxi regarding the litigation referenced above ("the K&L Property"). The Secretary of State has filed a counterclaim claiming they are the owners of the K&L Property. According to the Amended Complaint filed on April 4, 2017 [Doc #20], Biloxi Lodging will seek reimbursement of the ad valorem taxes they have paid if the Secretary is successful in taking possession of the property. Presumably the City (along with the County and School District) would be required to refund such ad valorem taxes. If the Secretary is successful in taking possession, the City should not be penalized by having to refund taxes it previously collected for the K&L Property.

This letter is to inquire as to whether or not the Secretary will reimburse the City (or return any funds to the City) that the City may be required to refund to Biloxi Lodging. I look forward to hearing back from you.

Sincerely,

CURRIE JOHNSON & MYERS, P.A.



Peter C. Abide

PCA/jma



**EXHIBIT "C" TO MOTION TO INTERVENE**

**IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI  
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**LADY LUCK BILOXI, INC.,  
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OF MISSISSIPPI, THE HONORABLE  
DELBERT HOSEMANN,**

**DEFENDANTS/COUNTER-PLAINTIFFS**

**CITY OF BILOXI, MISSISSIPPI**

**APPLICANT FOR INTERVENTION**

**CITY OF BILOXI'S ANSWER TO COUNTERCLAIM**

COMES NOW the City of Biloxi, Mississippi, a Mississippi municipal corporation organized and existing as a political subdivision of the State of Mississippi and being a lawful taxing authority of the property that is the subject of the main action filed herein between Lady Luck Biloxi, Inc., et al., and the State of Mississippi and Secretary of State Delbert Hosemann, as Secretary of State and as Land Commissioner; and the City of Biloxi files this its Answer to Counterclaim and in support thereof would show unto the court the following, to wit:

**FIRST THROUGH NINTH AFFIRMATIVE DEFENSES**

The City of Biloxi joins in, adopts by reference pursuant to *M.R.C.P.*, Rule 10 (c), and makes a part of this its Answer to Counterclaim, as if fully stated herein, all of the averments and affirmative defenses, being the FIRST through NINTH AFFIRMATIVE DEFENSES, and all of the averments and affirmative defenses stated in ¶¶ 1 through 25 of the proposed Amended Answer to Counterclaim (DKT. #13-1 and its attached

Exhibit, DKT. #13-2), as filed in the main action of the above-styled and numbered cause by the Plaintiffs/Counter-Defendants, Lady Luck, Inc., et al.

TENTH AFFIRMATIVE DEFENSE:

PAYMENT OF LOST AD VALOREM TAXES

The City of Biloxi is a lawful taxing authority with the power to levy ad valorem taxes on the subject parcels of property in this cause. If the Defendants/Counter-Plaintiffs prevail in their Counterclaim, the subject parcels will be eliminated entirely from the tax rolls as fee simple upland (fastlands) private property that would have been subject to future ad valorem taxes. In the event the Court grants the relief requested by the State of Mississippi and the Secretary of State in their Counterclaim in the current proceeding (the above-styled and numbered cause), the City requests this Court to enter an order directing the Defendants/Counter-Plaintiffs to pay, no later than January 31<sup>st</sup> of each ad valorem tax year following the year of final judgment granting such relief or as soon after January 31<sup>st</sup> of each year that the Public Trust Tidelands Fund has funds sufficient to pay, to the City of Biloxi, from the Public Trust Tidelands Fund, pursuant to *Miss. Code of 1972*, §29-15-9 (2), an amount each year equivalent to the lost taxes in each year, in order to replace lost ad valorem taxes for each tax year affected by a judgment in favor of the Defendants/Counter-Plaintiffs.

ELEVENTH AFFIRMATIVE DEFENSE

ACCOUNTING

This Honorable Court should order the Secretary of State to make and produce an accounting of the following funds to this Court and the Plaintiffs/Counter-

Defendants:

- a. TIDELANDS LEASE RENTALS FROM ALL TENANTS—i.e. an accounting of all tidelands annual lease rental amounts in dollars per calendar year (tax year) that the State has collected from any current tenant and any prior tenant now or formerly holding a leasehold interest in Public Trust Tidelands.
- b. PUBLIC TRUST TIDELANDS FUND—i.e. an accounting by calendar (tax) year of the Public Trust Tidelands Fund since its inception, as created by *Miss. Code of 1972, § 29-15-9 (1)*, showing:
  - i. the annual gross revenues of the fund, including, but not limited to, all tidelands lease rentals collected pursuant to *Miss. Code of 1972, § 29-1-107*;
  - ii. the annual administrative costs incurred by the Secretary of State that were deducted from the Public Trust Tidelands Fund under authority of *Miss. Code of 1972, § 29-15-9 (2)* or any other authority; and
  - iii. the annual amount, net of the Secretary of State's administrative costs, of funds that remained to be “disbursed pro rata to the local taxing authorities for the replacement of lost ad valorem taxes”, as provided in *Miss. Code of 1972, § 29-15-9 (2)*.



This accounting is necessary in order for the Court and the parties to determine the amount of funds on hand in the Public Trust Tidelands Fund, net of the Secretary of State's administrative costs, that will be available to disburse pro rata to the local taxing authorities for the replacement of lost ad valorem taxes, as provided in *Miss. Code of 1972*, § 29-15-9 (2).

And now, answering the unnumbered first paragraph of the Counterclaim and the numbered paragraphs of the Counterclaim, *seriatum*, the City of Biloxi would show unto the Court as follows:

Regarding the unnumbered first paragraph of the Counterclaim, the City of Biloxi denies that the Secretary of State is the Trustee of the Public Tidelands Trust and would show affirmatively that

- (a) the Trustee of the Public Tidelands Trust is the State of Mississippi, for which public policy is set by the *Miss. Const. of 1890* and laws adopted by the Mississippi Legislature, and such laws shall not violate, abrogate, breach or alienate the terms and conditions of the Trust, the rights and duties of the Trustee, or the littoral (riparian) rights and duties of upland owners;
- (b) the Secretary of State, acting in his capacity as Secretary of State and State Land Commissioner in matters pertaining to the Public Tidelands Trust, may exercise only such authority over Public Trust Tidelands as may be delegated by statutes to the office of Secretary of State and State Land Commission to act on behalf of the Trustee (the State)

according to statutes adopted by the Legislature and interpreted by the Courts of the Mississippi Judicial Branch of Government;

(c) the Mississippi Legislature has never delegated, nor could it, to the Secretary of State total, exclusive, or irrevocable authority over the Public Tidelands Trust and the tidelands that are the corpus of the Trust; and

(d) the Legislature, acting as the policy maker of the Trustee (the State) has by numerous statutes delegated to municipalities, counties and other political subdivisions of the Trustee (the State) many rights and duties to act on behalf of the Trustee (the State) regarding tidelands held by the Public Tidelands Trust in their respective jurisdictions.

Regarding the paragraphs of the Counterclaim numbered 1 through 25, *seriatum*, the City of Biloxi joins in, adopts by reference pursuant to *M.R.C.P.*, Rule 10 (c), and makes a part of this its Answer to Counterclaim, as if fully stated herein, all of the averments answers, denials, admissions and affirmative defenses stated in in ¶¶ 1 through 25 of the proposed Amended Answer to Counterclaim (DKT. #13-1 and its attached Exhibit, DKT. #13-2), as filed in the main action of the above-styled and numbered cause by the Plaintiffs/Counter-Defendants, Lady Luck, Inc., et al.

Regarding the last paragraph, unnumbered, and all four of its numbered sub-paragraphs, of the Counterclaim, the City of Biloxi joins in, adopts by reference pursuant to *M.R.C.P.*, Rule 10 (c), and makes a part of this its Answer to Counterclaim, as if fully stated herein, all of the averments answers, denials, and affirmative defenses stated in in ¶ 26 of the proposed Amended Answer to Counterclaim (DKT. #13-1 and

its attached Exhibit, DKT. #13-2), as filed in the main action of the above-styled and numbered cause by the Plaintiffs/Counter-Defendants, Lady Luck, Inc., et al.

Wherefore, premises considered, the City of Biloxi prays that this Honorable Court receive and file its Answer to Counterclaim; that this Court will immediately enter an order requiring the Secretary of State to make and produce forthwith to this Court and to the Plaintiffs/Counter-Defendants a detailed accounting as more fully defined and asserted in the above-stated ELEVENTH AFFIRMATIVE DEFENSE of this Answer to Counterclaim; and that, upon a hearing of this cause, the Court will enter final judgment:

1. Confirming Aldrich's title to the property which is the subject of this Counterclaim and dismissing the Counterclaim with all costs associated herewith assessed against the Defendants/Counter-Plaintiffs;
2. Alternatively, adjudicating that the Defendants/Counter-Plaintiffs are estopped from claiming title to any portion of Aldrich's property as Public Trust Tidelands beyond the property lying north of the current mean high water line reflected on the survey of Brown, Mitchell & Alexander, Inc., dated January 30, 2017 (Exhibit, DKT. #13-2); and
3. Alternatively, in the event the Court grants the relief requested by the State of Mississippi and the Secretary of State in their Counterclaim, the City requests this Court to enter an order directing the Defendants/Counter-Plaintiffs to hold harmless and indemnify the City of Biloxi from any and all claims by Plaintiffs/Counter-Defendants for refunding or reimbursing any and all ad

valorem taxes assessed and paid by Plaintiffs/Counter-defendants prior to the final judgment of this Court; and

4. Alternatively, In the event the Court grants the relief requested by the State of Mississippi and the Secretary of State in their Counterclaim, the City requests this Court to enter an order directing the Defendants/Counter-Plaintiffs to pay, no later than January 31<sup>st</sup> of each ad valorem tax year following the year of final judgment granting such relief, or as soon after each January 31<sup>st</sup> that the Public Trust Tidelands Fund has funds sufficient to pay, to the City of Biloxi, from the Public Trust Tidelands Fund, pursuant to *Miss. Code of 1972*, §29-15-9 (2), an amount each year equivalent to the lost taxes in each year.
5. The City prays for such other, further and general relief to which it may be entitled in law or equity.

Respectfully submitted this \_\_\_th day of October, 2017.

CITY OF BILOXI, Plaintiff

By: /s/ Gerald Blessey  
Gerald Blessey, MSB #3591

/s/ Peter Abide  
Peter Abide, MSB #1026  
*Attorneys for City of Biloxi*

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### CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following counsel of record who have appeared in this action:

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Lee Davis Thames, Jr., LTHAM@ago.state.ms.us

THIS \_\_\_\_ day of \_\_\_\_\_, 2017.

/s/ \_\_\_\_\_  
Gerald Blessey