

EXHIBIT 1

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, LLC

PLAINTIFF

V.

CIVIL ACTION NO. L07-135

RICHARD SCRUGGS, Individually; DON BARRETT, Individually;
SCRUGGS LAW FIRM, P.A.; BARRETT LAW OFFICE, P.A.;
NUTT & McALISTER, PLLC; and LOVELACE LAW FIRM, P.A.

DEFENDANTS

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF

I. INTRODUCTION

THE GREED OF THE DEFENDANTS

1. This litigation is brought against the Defendants because of their breaches of contract, tortious bad faith breach of contract, breach of fiduciary duties, conversion, interference with prospective business advantages and such other acts as fraud and breach of duties owed as a result of a constructive trust and conduct which is so egregious as to entitle the Plaintiff to punitive damages. All of these actions developed as a result of a joint venture agreement entered into among the Plaintiff and the Defendants. The group was designated the Scruggs Katrina Group (hereinafter "Joint Venture" or "SKG"). The objective of the Joint Venture was to collectively represent aggrieved insureds against the insurers in the aftermath of Hurricane Katrina and the resulting insurance conflicts that developed. Plaintiff Jones, Funderburg, Sessums, Peterson and Lee, LLC, performed substantial and extensive work, both work assigned to the firm and other work constituting the bulk of the most difficult tasks in discovery and trial. After the performance of this

LAFAYETTE COUNTY
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Mary Alice Busby
CIRCUIT CLERK
D.C.

work, the Defendants, in a concerted effort amounting to a conspiracy, determined to “freeze out” the Plaintiff and reduce its proper share of money that was collected after work had been done and performed by the Plaintiff and other monies to be collected in the future as a result of Plaintiff’s labor and, more importantly, its membership in the Joint Venture.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction to hear this case pursuant to the Mississippi Constitution of 1890, Article VI § 156 and Miss.Code Ann. § 9-7-81 (1972). Jurisdiction is proper in circuit court because legal remedies are being sought for common law actions such as a breach of the fiduciary duties of care, loyalty, and good faith and fair dealing as well as violations of Mississippi statutory law. Pursuant to Art. III, § 3 of the Mississippi Constitution, the right of trial by jury is inviolate in all cases to which at common law a jury trial was necessary, such as the case *sub judice*. Therefore the circuit court is the proper jurisdiction and will allow a trial by jury.

3. Venue is proper in Lafayette County pursuant M.C.A. § 11-11-3 (Supp. 2000).

III. PARTIES

4. Plaintiff Jones, Funderburg, Sessums, Peterson & Lee, PLLC, is a Mississippi professional limited liability company with its principal place of business at 901 North State Street, Jackson, Mississippi 39236.

5. Defendant Richard Scruggs is an adult resident citizen of Lafayette County, Mississippi who may be served with process at his place of business at 120-A Courthouse Square, Oxford, Mississippi 38655.

6. Defendant Don Barrett is a Mississippi resident of Holmes County, Mississippi who may be served with process at his place of business at 404 Court Square North, Lexington,

Mississippi 39095.

7. Defendant Scruggs Law Firm, P.A., is a Mississippi professional association with its principal place of business at 120A Courthouse Square, Oxford, Mississippi 38655 and who may be served with process by serving an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive process for this Defendant at the above address.

8. Defendant Barrett Law Office is a Mississippi professional association with its principal place of business at 404 Court Square North, Lexington, Mississippi 39095 and who may be served with process by serving any officer, a managing or general agent, or any other agent authorized by appointment or by law to receive process for this Defendant at the above address.

9. Defendant Lovelace Law Firm, P.A., is a Florida professional association with its principal place of business at 36474 Emerald Coast Parkway, Suite 4202, Destin, Florida 32550 and who may be served with process by serving any officer, a managing or general agent, or any other agent authorized by appointment or by law to receive process for this Defendant at the above address.

10. Defendant Nutt & McAlister, PLLC, is a Mississippi professional limited liability company with its principal place of business at 605 Crescent Boulevard, Suite 200, Ridgeland, Mississippi 39157 and who may be served with process by serving any officer, a managing or general agent or any other agent authorized by appointment or by law to receive process for this Defendant at the above address.

IV. FACTS

The facts of this case show reprehensible conduct by the Defendants.

THE AGREEMENT

11. In November 2005, Plaintiff Jones, Funderburg, Sessums, Peterson & Lee, LLC, a law firm, entered into a Joint Venture Agreement, a copy of which is attached hereto and incorporated herein and marked as Exhibit 1. It should be noted that Paul Benton withdrew before the group began substantial work.

12. Defendant Scruggs approached Plaintiff who committed to the Joint Venture.

13. The only profit-sharing or fee allocation percentage decided upon was a thirty-five percent (35%) share to Defendant Nutt & McAlister in exchange for financing the Joint Venture. Plaintiff commenced intensive work efforts on behalf of the Joint Venture at this point.

14. The agreement was silent as to percentage of fees for all other parties.

THE PLAINTIFF'S WORK

15. From October 2005 until March 2006, Plaintiff logged substantial work for the SKG thereby foregoing other available legal work.

16. Plaintiff's senior partner Jones devoted approximately ninety-five percent (95%) of his available work time to the Joint Venture.

17. Jones was assisted by his partners Stewart Lee and Steve Funderburg who respectively devoted approximately fifty percent (50%) of their time to the Joint Venture at the request of Jones.

18. Plaintiff's work and performance included a variety of legal tasks including but not limited to developing the principal legal theories used by the Joint Venture in its Katrina

insurance litigation, Complaint and motion drafting, briefing, and deposing witnesses including the insurance corporations being sued and the insurance company's expert witnesses designated for trial which took place in July 2006.

19. Within the Joint Venture, the Plaintiff, among other duties, assumed some of the responsibilities of writing briefs, responding to dispositive motions filed by every defendant in the underlying litigation, drafting motions and responding to motions, deposing witnesses including experts and the depositions of the insurance corporations that were being sued.

THE SCHEME BEGINS

20. In December 2006, individual Defendants Scruggs and Barrett conspired among themselves and others to set Plaintiff's fee allocation at a ridiculously low figure of the net earnings of the Joint Venture.

21. After substantial performance by Plaintiff from October 2005 through March 2006 in which substantial legal work was logged, Defendant Scruggs called Jones and dictated Scruggs's "decision" on a division of attorney fees.

22. Scruggs told Plaintiff that it would receive one payment of \$1,000,000 to be paid by Defendant Nutt outside the venture and that Plaintiff would then be paid nothing else.

23. Defendant Scruggs told Jones that Scruggs and his firm would pay nothing for Plaintiff's share and that Defendants Scruggs, Barrett and Nutt had agreed to split some \$26,500,000 in fees from the State Farm settlement.

24. Jones objected and in correspondence immediately requested a buy-out or binding arbitration as provided for in the Agreement.

25. Over the following three months, Defendant law firms and the individual named

Defendants attempted to bully and cajole Plaintiff into taking less than what Plaintiff was rightfully due in legal fees under the common law and Mississippi statutory law governing division of income in a joint venture when no percentages are set.

26. These intentional, egregious acts were intended to cause and did cause extreme distress to individual members of Plaintiff law firm.

27. Further, Defendants began a course of conduct intended to “freeze out” Plaintiff from further involvement in the Joint Venture.

28. Plaintiff rejected the December 6, 2006 offer since it was entitled to an equal division of net fees as all the Defendants well knew and had all recognized.

THE PLAINTIFFS' PLEA FOR ARBITRATION - FAIRNESS

29. Pursuant to the Agreement, Plaintiff was entitled to mandatory binding arbitration conducted in accordance with the American Arbitration Association if any dispute arose under the agreement.

30. Plaintiff gave notice of its intent to arbitrate this fee dispute to members of the Joint Venture over twenty (20) times. Each request for arbitration was rejected by the Defendants.

31. The rejection of Plaintiff's attempt to arbitrate the fee distribution dispute violated Plaintiff's right to arbitration.

32. December 11, 2006, Plaintiff contacted individual Defendant Scruggs and gave notice that the other members of the Joint Venture could present a buy-out offer to Plaintiff or, if no offer were forthcoming, that Plaintiff invoked his rights of mandatory binding arbitration under the Agreement.

THE FIRST BREACH

33. December 11, 2006, Plaintiff, having received notice that the SKG had received fees demanded an accounting of all fees received at that point by the SKG.

34. December 11, 2006, Plaintiff gave notice to the SKG that SKG was in breach of the terms of the Agreement.

35. December 13, 2006 correspondence to the partners in the SKG from Sidney Backstrom of the Scruggs Law Firm, asked for suggestions as to the allocation of fees to Nutt & McAlister, Scruggs Law Firm, Barrett Law Firm, Plaintiff law firm, and Lovelace Law Firm.

SECOND OF MANY REQUESTS FOR ARBITRATION

36. On December 14, 2006 in correspondence from Plaintiff to Sidney Backstrom of the Scruggs Law Firm and courtesy copied to all members of SKG again invoked Plaintiff's rights to arbitration of the net fee distribution, or, at minimum, a suggestion of mediating the dispute.

REQUEST FOR ACCOUNTING AS REQUIRED BY STATUTE

37. On December 20, 2006, Plaintiff sought through correspondence an accounting of revenues and expenses from Meg McAlister of Nutt & McAlister, the correspondence courtesy copied to all members of SKG.

UNAUTHORIZED EXPENDITURES

38. The Defendant Scruggs engaged in various activities such as the wrongful expenditures of funds belonging to the Joint Venture including the unauthorized hiring of personnel for SKG without approval of all members of SKG and continued to do so without authority.

39. On February 20, 2007, Plaintiff again gave notice to all partners of SKG that Plaintiff was invoking its rights to arbitration under the Agreement to resolve the net fee

distribution dispute.

40. On February 22, 2007, Sidney Backstrom of the Scruggs Law Firm gave notice through correspondence to partners in SKG proposing a meeting on March 1 to vote “on a division of attorneys’ fees, as well as the makeup of the venture going forward.”

RECOGNITION OF THE RIGHT TO ARBITRATION

41. On February 22, 2007, Sidney Backstrom of the Scruggs Law Firm recognized in his correspondence to partners of SKG that the Plaintiff had rights under the Agreement when he stated: “Should 4 of 5 venturers not agree on a fee distribution, we may have to resort to the dispute resolution mechanism in the agreement, binding arbitration.”

42. On February 22, 2007, SKG Partner Dewitt “Sparky” Lovelace recognized Plaintiff’s right under the Agreement to dispute arbitration when he faxed Plaintiff correspondence that indicated Lovelace was willing to “... work this out so we all are paid fairly without a fight, or arbitration.”

THE WRONGFUL, GREEDY FREEZE OUT

43. At a meeting of the Joint Venture March 2, 2007, after Plaintiff had given full performance to the Joint Venture and after Defendants consistently violated Plaintiff’s contractual right to arbitration, Defendants Scruggs, Barrett, Nutt, and Lovelace (via telephone) informed Plaintiff representatives Jones and Funderburg that the meeting was intended to force Plaintiff to take a sum determined by the other venturers or the Plaintiff would face immediate termination of all further involvement.

44. Defendant Barrett in bad faith demanded that Plaintiff accept a six percent (6%) share of the fees earned by the Joint Venture in a take-it-or-leave-it fashion and in a further act of

bad faith stated that failure to accept the “offer” would result in immediate termination and the withholding of funds to which even the Defendants admitted Plaintiff was entitled.

45. Jones informed the Defendants that the March 2 meeting was the first at which his firm had been invited to discuss profit sharing or fee allocation.

46. Jones asked Defendants if they wanted to hear the basis the legal authority of Plaintiff’s position.

47. Barrett said such information was irrelevant.

48. Jones and Funderburg objected. Jones and Funderburg reminded Defendants of their attempts over the previous three months to invoke their rights to arbitration.

49. Barrett once again in bad faith informed Jones and Funderburg that arbitration would not take place.

50. Jones and Funderburg asked for an opportunity to discuss the Defendants’ position with the venturers not in attendance.

51. Barrett once again in complete disregard of the Plaintiff’s rights, said “no” and told Jones and Funderburg they would have to give an answer “before you leave this room.”

52. Funderburg told Defendants that he and Jones would like to discuss the matter with their partners privately and would call back when a decision was reached.

53. Before members of Plaintiff firm had reached a decision, Defendant Barrett, in egregious conduct, sent an email at 2:32 p.m. declaring that Plaintiff had eighteen (18) minutes to call “excepting [sic] my suggestion” or the Defendants would “act accordingly.”

54. Plaintiff did not receive this email until the 4 p.m. when Jones returned to his office.

55. Barrett then sent another email at 4:26 p.m. declaring that since Defendants had not heard from Plaintiff by the unilaterally determined time, a vote had been taken at 3 p.m. at which time all four Defendant venturers in bad faith with a complete absence of fair dealing had voted to remove Plaintiff from the Joint Venture.

56. At that time, Plaintiff had made no final decision on the offer but was expelled without cause nonetheless.

57. In addition to the Defendants voting to remove Plaintiff from the Joint Venture, the Defendants also voted to deny Plaintiff all rights under the Agreement and all rights to earned fees due Plaintiff.

58. The stated and only purpose of this action by Defendants in breach of numerous duties of the Defendants and the Plaintiffs was to increase the shares of the remaining venturers and to avoid loss of control by Defendants Scruggs and Barrett irrespective of the terms of the Agreement and Defendants' fiduciary duties to Plaintiff.

59. During this time, individual members of Plaintiff's firm were under extreme pressure and experienced intense distress.

60. March 6, 2007, SKG tendered a check for an alleged three percent (3%) of the net fees or \$617,924.43 which was sent to Plaintiff when the Defendants are wrongfully holding substantially more of the Plaintiff's money, which check was rejected.

PRIOR ACTS OF THIS SAME COURSE OF CONDUCT

61. The Defendant Scruggs has engaged in this same type of conduct on repeated occasions, that is, engage people to do work within a joint venture and then, when funds are collected, to attempt to rearrange the distribution of funds.

62. This has occurred on many repeated occasions with various lawyers and law firms throughout the State of Mississippi and on information and belief elsewhere.

63. This course of egregious coercive conduct entitles the Plaintiff to punitive damages from Richard Scruggs.

64. Don Barrett has engaged in the same type of conduct on multiple occasions where he would engage and be a part of a joint venture to pursue wrongful conduct by tortfeasors on behalf of various clients and when funds became available for distribution would attempt to renegotiate or shortchange his joint venturers.

65. The Plaintiff is on numerous pleadings and various courts as a lawyer with the Joint Venture Group, including in the Southern District of Mississippi and in the United States Court of Appeals for the Fifth Circuit.

66. Plaintiff has not been removed or requested to be removed from clients of the Joint Venture Group.

67. Plaintiff is presently pending as a member of a group seeking certification of a class and seeking to have one of more members of the group named as class counsel.

68. The Plaintiff is a party to numerous contracts with persons who have claims against insurance companies as a result of Hurricane Katrina.

69. None of the clients have requested that the Plaintiff be removed from the pleadings.

70. No orders have been entered by any judge ordering that the Plaintiff be removed from any pleadings.

71. As a result of the Defendants' actions, the Plaintiffs have suffered substantial damages.

V. CAUSES OF ACTION

Count I - Breach of Contract

72. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

73. Defendants failed to abide by the terms of the contract of the Joint Venture and failed to perform under statutory terms provided by Mississippi Statutory Law and the Common Law.

74. Defendants failed to abide by the provisions of the Joint Venture Agreement by refusing to arbitrate the dispute over the disbursement of partnership funds.

75. As a result, Plaintiffs sustained substantial damages.

Count II - Tortious Bad Faith Breach of Contract

76. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

77. The breach was so wrongful, egregious, without justification and in bad faith that it entitles the Plaintiff to punitive damages in such an amount as the trier of fact should determine.

Count III - Breach of Fiduciary Duties

78. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

79. Defendants owe to the Plaintiff certain fiduciary duties of care, loyalty, and fair dealing in the management of the business of SKG.

80. The Defendants breached their fiduciary duties egregiously and in bad faith and/or

were negligent in the conduct of the business of Defendant SKG in their service as partners with relation to its business.

81. Defendants were obligated to provide an account to Plaintiff for the amounts of all income and debits in the operation of the SKG and to pay Plaintiff such monies as are due to the partners of the SKG.

82. Defendants continue to perpetrate breaches, illegalities, and wrongs against Plaintiff by withholding money that belongs to the Plaintiff.

83. Plaintiff, as one partner, is unable to take control of the partnership and is unable to take action to prevent such damages as being inflicted by Defendant partners of the SKG.

84. As a proximate result of the breach of fiduciary duties, Plaintiffs suffered substantial damages as alleged herein.

Count IV - Usurpation

85. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

86. The Defendants through their actions have prevented the Plaintiff from procuring other legal work and representing other clients as well as being associated to do legal work with other law firms.

87. As a result of the Defendants' actions, the Plaintiff has suffered substantial damages.

Count V - Conversion

88. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

89. Defendants currently possess monies due to Plaintiff as its share of partnership profits.

90. Defendants wrongfully possess for their own use and exercise dominion over monies due to Plaintiff and refuse to pay those monies due to the Plaintiff.

91. Plaintiff has demanded that the property be turned over to it.

92. Defendants have refused to turn over the property that rightfully belongs to Plaintiff.

93. These acts also constitute such egregious and wrongful conduct as to justify punitive damages.

94. As a result of the Defendants' actions, the Plaintiff has suffered substantial damages

Count VI - Intentional Interference with Prospective Business Advantage

95. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

96. Defendants intentionally and willfully committed acts that were calculated to cause damage and loss to Plaintiff.

97. Defendants intentionally interfered with Plaintiff's established rights as a partner in the SKG.

98. Actual damages resulted in that Defendants attempted to remove the Plaintiff as a partner and deny the Plaintiff rights in the partnership.

99. Losses occurred as Plaintiff has been denied monies due after full performance on behalf of the SKG.

100. The modus operandi of Defendants is to lure the work of others through false promises.

101. The acts under their conduct caused substantial damages to the Plaintiff.

Count VII - Fraud

This count is applicable to Scruggs and Barrett individually.

102. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

103. The conduct of Scruggs and Barrett continued an established pattern of the same type of conduct as in other previous ventures, actions which constitute fraud.

104. The Defendants have callously added insult to injury.

105. The conduct of Scruggs and Barrett individually justifies an award of punitive damages against them separately from any other award of punitive damages.

Count VIII - Constructive Trust

106. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

107. Pursuant to Miss. Code Ann. § 79-13-404, "General standards of partner's conduct," in particular (b)(1), a partner's duty of loyalty to the partnership and the other partners includes to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity.

108. Monies paid and owing to the SKG form a constructive trust.

109. Partners in the partnership, pursuant to statutory authority, hold as trustee any

property, profit, or benefit derived by a partner in the conduct of the partnership business.

110. Defendants, as partners, are constructive trustees of monies due Plaintiff.

111. Defendants, by intentionally withholding monies paid and forthcoming monies due to be paid to the SKG, have and will breach their duties as constructive trustees.

112. Defendants' breach of their duties as trustees will, and have, damaged Plaintiff in that Plaintiff will not receive monies due through the aforementioned constructive trust.

Count X - Conspiracy

113. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs. The Defendants entered into a plan that has been used before by Scruggs and Barrett to conspire to wrongfully and illegally deprive the Plaintiffs of property.

114. A scheming cabal should not be allowed to succeed.

115. As a result of this conspiracy, the Plaintiff has suffered substantial damages.

Count XI - Unconscionability

116. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

117. The conduct of the Defendants is unconscionable and so egregious as to entitle the Plaintiff to punitive damages.

Count XI - Declaratory Judgment

118. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

119. Plaintiff is entitled to a declaratory judgment that it is entitled under the Agreement to twenty percent (20%) of all past attorney fees collected by SKG and twenty percent (20%) of all

future attorney fees to be collected by SKG.

COUNT XII - Punitive Damages

120. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

121. The conduct hereinabove described entitles the finder of fact to consider punitive damages in such an amount as well as to deter the Defendants from engaging in such conduct in the future and serve as an example to others.

VI. AD DAMNUM

122. Plaintiff demands a declaratory judgment holding that it is entitled under the Agreement to twenty percent (20%) of all past attorney fees collected by SKG and twenty percent (20%) of all future attorney fees to be collected by SKG.

123. The Plaintiff demands actual damages from the Defendants in an amount that far exceeds the statutory amount required for jurisdiction in Circuit Court which will be developed further in the discovery in this matter.

124. The Plaintiff demands punitive damages from all the Defendants in such an amount to compensate it for the expenses and attorneys fees since the conduct in one or more accounts herein mentioned constitutes conduct that requires punitive damages.

125. The Plaintiff demands punitive damages from the Defendant Richard Scruggs and Don Barrett. The punitive damages requested here would be for such an amount as would deter such conduct in the future and would serve as an example to others that such conduct would not be tolerated. The facts will show that such conduct has been a practice by these individual Defendants in the past and punitive damages should be awarded in such an amount that would

deter these two tortfeasors and others from engaging in such conduct in the future.

126. The Plaintiff demands all costs of this proceeding.

127. The Plaintiff also requests that interest be attached to any judgment from the date of the initial breach, that being December 6, 2006.

128. The Plaintiff demands post-judgment interest.

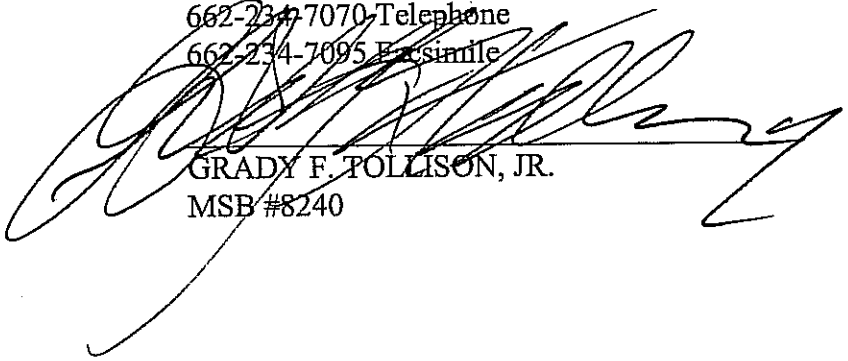
129. The Plaintiff demands all foreseeable expenses of this action.

130. The Plaintiff demands reasonable attorneys' fees.

RESPECTFULLY SUBMITTED, this the 5th day of March, 2007.

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, LLC

By and through its attorneys,
TOLLISON LAW FIRM, P.A.
100 Courthouse Square
Post Office Box 1216
Oxford, Mississippi 38655
662-234-7070 Telephone
662-234-7095 Facsimile


GRADY F. TOLLISON, JR.
MSB #8240

In Re: Katrina Litigation
Joint Venture Agreement
November 8, 2005

The following parties to this agreement have agreed to associate themselves as Joint Venturers in the above litigation.

It is contemplated that this venture will bring a number of lawsuits on behalf of individuals and businesses who were wrongfully denied insurance coverage for property damage arising out of Hurricane Katrina.

Participants in the Venture

Role in the Venture

Scruggs Law Firm, P.A.
P.O. Box 1136
Oxford, MS 38655

Lead Counsel

Barrett Law Office, P.A.
404 Court Square North
Lexington, MS 39095

Witness Development; including acquisition of videos and pictures of storm damage while occurring

Nutt & McAlister, P.L.L.C.
605 Crescent Blvd., Suite 200
Ridgeland, MS 39157

Funding; client relations

John G. Jones
Jones, Funderburg, Sessums & Peterson, P.L.L.C.
901 N. State Street
P.O. Box 13960
Jackson, MS 39236-3960

Briefing

Paul Benton
181 Main Street
P.O. Box 1341
Biloxi, MS 39533-1341

Local Counsel

Dewitt "Sparky" Lovelace
Lovelace Law Firm, P.A.
36474 Emerald Coast Pkwy., Suite 4202
Destin, FL 32541

Expert retention; adjuster retention

Cases Included - This agreement includes all claims asserted and/or cases filed, held, retained or associated on against insurance companies by any party hereto. Joint venturers shall unanimously agree to any association with any other firm and the terms and conditions of any such association with any other party.



Removal - A member of the joint venture may be removed by a super-majority vote of the joint venture members. A super-majority requires a vote of four venturers. All firms must vote to effect a removal. It shall be assumed that the firm sought to be removed votes and votes against the removal. If a firm is removed from the joint venture all rights hereunder shall be forfeited and any capital contribution returned within a reasonable time. Such firm hereby covenants that it will seek no other compensation through litigation or otherwise from the parties to this agreement or any Court before whom this venture has or has had cases pending in the referenced matter.

Capital Contributions - To fund common litigation expenses, Nutt & McAlister will fund up to \$1 million per year as needed. If greater than \$1 million per year is needed, the venturers will fund the litigation pro rata via periodic capital calls. Any venturer who does not pay pursuant to a capital call within 14 days of the call will forfeit venturer status.

Capital Contributions from either of the above sources shall be used only for expenses that are common to the joint venture firms in prosecuting the litigation. Such common fund expenses include but are not limited to the following: retention of consultants and experts, costs to establish and maintain a centralized document depository and an internet-based client database, temporary office and staffing (if necessary), witness fees, deposition costs, document production costs, public relations, etc. Nutt & McAlister will serve as the treasurer for the venture with Ernie Coward serving as the principle contact person. All invoices shall be submitted to Nutt & McAlister for an initial determination of whether an expense is a common account expense or not. A manifest form will be provided to each venturer for use in submitting expenses for reimbursement. The form will provide for three classes: (1) *Client specific* - copies, postage, etc. These expenses must include client's name and social security number and are recoverable from clients from award funds, (2) *Common benefits* - such as experts, depositions, court costs, etc., These expenses are recoverable, pro rata, from clients from award funds (3) *Venture expenses* - are those which benefit the venture but are not recoverable from clients. If these are approved, they will be reimbursed to paying venturer and pro-rated back to all venturers.

There will, from time to time, be disagreements with the Nutt/McAlister decisions relative to payment of expenses. Accordingly, two other reviewers from other venture firms will be elected to review such declinations. If Nutt/McAlister decline payment of an invoice, Mr. Coward and the two other reviewers will decide by 2/3 majority on the final disposition of the matter.

Expenses that are not common fund type expenses include but are not limited to: individual firm's overhead costs, travel expenses (unless for travel related to settlement discussions with one or all defendants), copy costs, mailings, staff, etc. These expenses shall not be reimbursable out of the common fund account when incurred.

Any joint venturer firm may request an accounting or an inspection of the transactions of

the common account of the joint venture upon reasonable notice.

Meetings - Shall occur periodically as the litigation requires.

Disputes - Any dispute arising under or relating to the terms of this agreement shall be resolved by *mandatory binding arbitration*, conducted in accordance with the guidelines of the American Arbitration Association. The site of the arbitration shall be Oxford, MS.

Division of Attorneys' Fees: - All fees or compensation received by any joint venturer and anyone associated by them shall be timely paid in full without reduction to the joint venture and divided as provided in this agreement.

If a judgment or settlement is obtained such that attorneys' fees are to be awarded to the attorneys herein, fees shall be divided as follows:

The joint venture shall distribute proceeds to the firms in the order of capital contributions first, firms' reasonable out of pocket expenses second, and attorneys' fees third. For financing the litigation and for all of their professional efforts herein, Nutt and Associates will receive 35% of the net fee. If the recovery is less than the amount of capital contributions and expenses incurred, the joint venture shall reimburse capital contributions first and then expenses on a pro-rata basis in proportion to the recovery. The joint venture shall distribute proceeds to the firms in the following order: (1) Reimburse Nutt/McAlister for all expenses paid, (2) Refund of all capital contributions, (3) Payment of 35% of net fee to Nutt/McAlister for financing the litigation and for their professional efforts, (4) The remaining 65% of the net fees will be divided among the remaining venturers taking into consideration all factors including Rule 1.5 of the Model Rules of Professional Conduct, and contribution to the success of the litigation. Agreement by 4 of the 5 venturers is required to distribute said fees.

Referring Attorneys

Referring attorneys shall be paid a maximum referral fee of 33 1/3% of the net recovery for each client referred to and accepted by the venture. The venture will consider reimbursement of referring attorneys' expenses, but will not commit to reimburse said expenses unless the venturers decide to do so by unanimous agreement and the expenses are subjected to the same approval process heretofore described.

Miscellaneous

No member shall, without the prior written consent of all of the others, sell or assign his share or interest arising from this agreement.

If one or more of the provisions in this agreement are for any reason held invalid, illegal, or unenforceable, the invalidity or unenforceability shall not effect any other provision, and this agreement shall be construed as if the invalid, illegal, or unenforceable provision was never in the agreement.

This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this agreement.

All notices or other required communications to any party to this Agreement shall be in writing (and shall include telecopy or similar writing) and shall be given to the members hereto at the addresses listed above. Any party hereto may change the name and address of the person designated to receive notice on behalf of such party by notice given as provided in this paragraph.

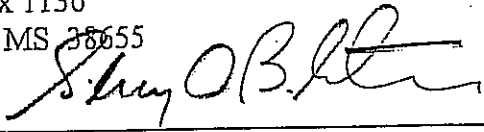
No person shall be considered the drafter of this Agreement.

Modification of this Agreement - This agreement constitutes the sole and only agreement of the members hereto and supersedes any prior understandings, written or oral agreements between the members of this venture. Further, any modification of this agreement will be of no effect unless written and signed by a minimum of 4 of the joint venturers.

DATED this the 14 day of December, 2005, but effective as of _____, 2005.

SIGNATURES:

SCRUGGS LAW FIRM
120-A Courthouse Square
P.O. Box 1136
Oxford, MS 38655

BY: 

BARRETT LAW OFFICE, P.A.
404 Court Square North
Lexington, MS 39095

BY: 

NUTT & MCALISTER, P.L.L.C.
605 Crescent Blvd., Suite 200
Ridgeland, MS 39157

BY: _____

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All notices or other required communications to any party to this Agreement shall be in writing (and shall include telecopy or similar writing) and shall be given to the members hereto at the addresses listed above. Any party hereto may change the name and address of the person designated to receive notice on behalf of such party by notice given as provided in this paragraph.

No person shall be considered the drafter of this Agreement.

Modification of this Agreement - This agreement constitutes the sole and only agreement of the members hereto and supersedes any prior understandings, written or oral agreements between the members of this venture. Further, any modification of this agreement will be of no effect unless written and signed by a minimum of 4 of the joint venturers.

DATED this the _____ day of _____, 2005, but effective as of _____, 2005.

SIGNATURES:

SCRUGGS LAW FIRM
120-A Courthouse Square
P.O. Box 1136
Oxford, MS 38655

BY: _____

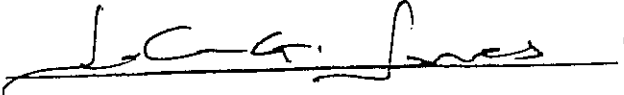
BARRETT LAW OFFICE, P.A.
404 Court Square North
Lexington, MS 39095

BY: _____

NUTT & MCALISTER, P.L.L.C.
605 Crescent Blvd., Suite 200
Ridgeland, MS 39157

BY: Mary E. McAlister

JONES, FUNDERBURG, SESSUMS & PETERSON, P.L.L.C.
901 N. State Street
P.O. Box 13960
Jackson, MS 39286-3960

BY: 

PAUL BENTON
181 Main Street
P.O. Box 1341
Biloxi, MS 39533-1341

BY: _____

LOVELACE LAW FIRM, P.A.
36474 Emerald Coast Pkwy., Suite 4202
Destin, FL 32541

BY: 

EXHIBIT 2

TOLLISON LAW FIRM, P. A.
ATTORNEYS AT LAW
100 COURTHOUSE SQUARE
POST OFFICE BOX 1216
OXFORD, MISSISSIPPI 38655
FACSIMILE (662) 234-7095
TELEPHONE (662) 234-7070
www.tollisonlaw.com

GRADY F. TOLLISON, JR.
WILLIAM K. DUKE
GRAY TOLLISON*
BARBARA MILLER DOLLARHIDE**

LEROY D. PERCY
ROBERT D. SCHULTZE
AMANDA POVALL TAILYOUR
CAMERON ABEL

*ALSO ADMITTED IN TENNESSEE
**ALSO ADMITTED IN MISSOURI
***ALSO ADMITTED IN THE DISTRICT OF COLUMBIA

OF COUNSEL
E. FARISH PERCY***

March 15, 2007

Mr. Richard Scruggs
SCRUGGS LAW FIRM, P.A.
Post Office Box 1136
Oxford, Mississippi 38655

Mr. David Nutt
NUTT & McALISTER, PLLC
605 Crescent Boulevard, Suite 200
Ridgeland, Mississippi 39157

Mr. Don Barrett
BARRETT LAW OFFICE, P.A.
404 Court Square North
Lexington, Mississippi 39095

Mr. Dewitt "Sparky" Lovelace
LOVELACE LAW FIRM, P.A.
36474 Emerald Coast Parkway, Suite 4202
Destin, Florida 32541

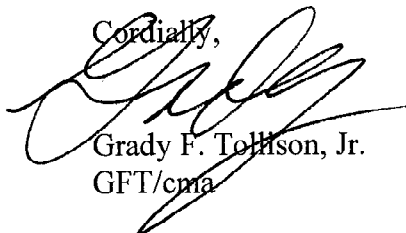
RE: Jones, Funderburg, Sessums, Peterson & Lee, PLLC \Richard Scruggs\Don Barrett\David Nutt\Sparky Lovelace

Gentlemen:

Enclosed you will find a copy of the Complaint that we have filed in the Lafayette County Circuit Court. The Complaint is currently under seal by order of the court at our request as a courtesy to you. We have hand-delivered a copy of the Complaint and the Order to the office of the Scruggs Law Firm today and are overnighting copies to everyone else.

I have not heard from David about my proposal of Monday afternoon. Without a flow of communications, negotiations have stalled. Unless this matter can be resolved by Monday, March 19, at 4:30 p.m., we will move the Court to unseal the Complaint and will move forward with issuing summonses.

Cordially,



Grady F. Tollison, Jr.
GFT/cma

cc: Mr. John Jones
Mr. Steve Funderburg
Mr. Craig Sessums
Mr. Dave Peterson
Mr. Stewart Lee

EXHIBIT 3

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

Civil Docket No.: L07-135

ORDER

On motion ore tenus made before this Court, made by the Tollison Law Firm, P.A., to file a civil complaint under seal, for good cause shown, the Court sustains said Motion.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Clerk shall upon receipt of the proper filing fee, receive and file under seal a sealed civil complaint, stamp filing the same and assigning a number to be reserved, but not docketing it until it is removed from seal or dismissed. The Complaint so filed will remain under seal at least until 4:30 p.m., Monday, March 19, 2007, at which time it may be opened and docketed by its proper style, and process issued, or dismissed without being unsealed at the request of Tollison Law Firm, and this Order shall serve as authority therefor.

ORDERED AND ADJUDGED, this the 15 day of March, 2007.

FILE THIS THE 15 DAY OF March, 20 07
NOTE BOOK 5T PAGE 665
MARY ALICE BUSBY, CIRCUIT CLERK
M. Busby

Henry L. Lacey
CIRCUIT COURT JUDGE

EXHIBIT 4

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, LLC

PLAINTIFF

VS.

CIVIL ACTION NO. L07-135
FILED UNDER SEAL

RICHARD SCRUGGS, Individually;
DON BARRETT, Individually; SCRUGGS
LAW FIRM, P.A.; BARRETT LAW
OFFICE, P.A.; NUTT & McALISTER, PLLC;
and LOVELACE LAW FIRM, P.A.

DEFENDANTS

**DEFENDANTS' MOTION TO (A) DISMISS, OR IN THE
ALTERNATIVE TO STAY PROCEEDINGS, (B) COMPEL ARBITRATION,
AND (C) EXTEND ORDER REQUIRING FILINGS TO REMAIN UNDER SEAL**

COME NOW Richard Scruggs, individually; Don Barrett, individually; Scruggs Law Firm, P.A.; Barrett Law Office, P.A.; Nutt & McAlister, PLLC; and Lovelace Law Firm, P.A.; defendants herein, by and through the undersigned counsel, and move this Court to (A) dismiss plaintiff's Complaint for Damages and Declaratory Relief, or in the alternative stay this action; (B) compel plaintiff, Jones Funderburg, Sessums, Peterson, & Lee, LLC, to submit to binding arbitration; and (C) enter an order extending this Court's March 15 Order directing the clerk to file the Complaint under seal and to further order that all pleadings in this action be filed under seal and remain under seal until further order of this Court, and in support thereof, would show unto the Court as follows:

1.

Plaintiff and defendants are parties to a Joint Venture Agreement dated November 8, 2005. (Exhibit 1 to Plaintiff's Complaint). The joint venture was designated as the "Scruggs Katrina Group," and was formed to bring a number of lawsuits on behalf of individuals and businesses who were denied insurance coverage for property damage arising out of Hurricane Katrina.

3/19

2.

The Joint Venture Agreement contains a mandatory binding arbitration provision (the "Arbitration Clause") that states: "**Disputes** - Any dispute arising under or relating to the terms of this agreement shall be resolved by *mandatory binding arbitration*, conducted in accordance with the guidelines of the American Arbitration Association. The site of the arbitration shall be Oxford, MS." (Emphasis in original). Defendants have given notice to plaintiffs and filed the necessary paperwork with the American Arbitration Association to initiate arbitration pursuant to the Arbitration Clause. (Demand for Arbitration, attached as Exhibit 1).

3.

The Joint Venture Agreement includes a "Division of Attorneys' Fees" provision that provides the mechanism for the distribution of fees or compensation. (Exhibit 1 to Plaintiff's Complaint). A dispute exists between the plaintiff and defendants regarding the distribution of attorneys' fees to plaintiff under the Joint Venture Agreement. (See Plaintiff's Complaint). Plaintiff filed its Complaint on March 15, 2007, alleging breach of contract, tortious bad faith breach of contract, breach of fiduciary duties, usurpation, conversion, intentional interference with prospective business advantage, fraud, constructive trust, conspiracy, unconscionability, punitive damages and seeking a declaratory judgment regarding attorneys' fees. (Complaint). All of plaintiff's claims arise under the Joint Venture Agreement and/or are directly related to the Joint Venture Agreement. Plaintiff has acknowledged that the pending dispute between plaintiff and defendants is subject to arbitration, but nonetheless filed this lawsuit.

4.

The Federal Arbitration Act created a strong policy favoring arbitration, and dictates that arbitration agreements “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” *Rogers-Dabbs Chevrolet-Hummer, Inc. v. Blakeney*, No. 2005-IA-00125-SCT, 2007 Miss. LEXIS 42 at *8-9 (Miss. Feb. 22, 2007). Arbitration is an “effective way to resolve ... disputes privately, promptly, and economically.” COMMERCIAL ARBITRATION RULES Introduction (Am. Arbitration Ass’n 2007). The Mississippi Supreme Court has adopted this strong policy favoring arbitration. *Russell v. Performance Toyota, Inc.*, 826 So. 2d 719, 722 (Miss. 2002). As a matter of law, any doubt regarding the availability of arbitration must be resolved in favor of arbitration. *Doleac v. Real Estate Professionals, LLC*, 911 So. 2d 496, 504 (Miss. 2005); *Russell*, 826 So. 2d at 722.

5.

Courts will respect the rights of individuals or entities to agree to arbitration. *Id.* (Citing *IP Timberlands Operating, Co. v. Denmiss Corp.*, 726 So. 2d 96, 104, 106-08 (Miss. 1998)). Arbitration provisions are to be liberally construed, with the presumption in favor of arbitration proceedings. *Id.* Arbitration is a matter of contract, and courts should give effect to the mutual intentions of the contracting parties. *Blakeney*, 2007 Miss. App. LEXIS at *17-18. The American Arbitration Association recommends a standard broad arbitration provision that provides, “Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration.” *United Offshore Co. v. Southern Deepwater Pipeline, Co.*, 899 F.2d 405, 409-10 (5th Cir. 1990) (quoting COMMERCIAL ARBITRATION RULES 3 (Am. Arbitration Ass’n 1988)). When such broad language is chosen by the parties, as was done in the Joint

Venture Agreement, only an express provision excluding a particular grievance from arbitration or “the most forceful evidence” would lead to a conclusion that the claim should not be arbitrated. *Id.* at 410 (quoting *Mar-Len v. Parsons-Gilbane*, 773 F.2d 63, 636 (5th Cir. 1985)).

6.

The Mississippi Bar Association has recognized that disputes regarding attorneys’ fees will arise between attorneys. In response, the Mississippi Bar has adopted a policy to encourage arbitration of disputes over attorneys’ fees. The Mississippi Bar created the Resolution of Fee Dispute Committee to facilitate arbitration of fee disputes and urges parties to resolve their fee dispute through arbitration.

7.

Plaintiff’s Complaint must be dismissed. Plaintiff contractually agreed to submit any dispute arising under or relating to the terms of the agreement to mandatory binding arbitration, and defendants have not waived arbitration. Plaintiff’s Complaint implies that defendants have waived arbitration, but they have not done so. Instead, defendants have invoked their right to arbitration and initiated arbitration through the Demand for Arbitration attached as Exhibit 1 and through the filing of this Motion. There can be no doubt that the dispute between plaintiff and defendants arises under and directly relates to the Joint Venture Agreement. Furthermore, the Arbitration Clause in the agreement is a broad provision very similar to the provision recommended by the American Arbitration Association. The parties recognized the benefit of resolving disputes through arbitration, including the cost effectiveness, efficiency, and privacy and agreed to submit any disputes to mandatory binding arbitration. (Exhibit 1 to Plaintiff’s Complaint). In addition to agreeing to arbitration in the Joint Venture Agreement, plaintiff has

acknowledged that the privacy which arbitration will provide is important in this case by requesting that its Complaint be filed under seal. The Mississippi Bar Association encourages parties to arbitrate disputes regarding attorneys' fees. Given (a) the strong policy favoring arbitration, (b) the intent of the parties to submit any dispute to arbitration as demonstrated by the execution of the Joint Venture Agreement, (c) the recognized effectiveness of arbitration in resolving disputes economically, promptly and privately, (d) the liberal construction of arbitration agreements, (e) the Mississippi Bar Association's policy favoring arbitration of fee disputes between attorneys, and (f) the Federal Arbitration Act's mandate that arbitration agreements shall be valid, irrevocable, and enforceable, this Court must dismiss plaintiff's Complaint, or, in the alternative stay this action and this Court must compel plaintiff to submit to binding arbitration.

8.

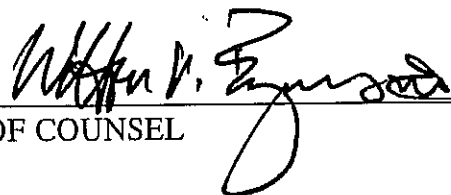
This Court entered an Order on March 15, 2007, ordering that the Clerk file and seal the Complaint in this matter, with the Complaint to remain under seal at least until 4:30 p.m., Monday, March 19, 2007. (See March 15, 2007, Order attached as Exhibit 2). Good cause exists for this Court to extend its March 15 Order and to further order that all pleadings in this action be filed with the Clerk under seal. First, this Court has already determined that the substance of the Complaint and its attachment are proper for being kept under seal. Any additional pleadings filed before the resolution of Defendants' motion will include the same or similar subject matter. Second, the contents of the Joint Venture Agreement and the dispute that has arisen from the agreement include personal information as well as financial information regarding the parties. Third, the Complaint contains impertinent, scandalous and polemic language which is calculated solely to embarrass and harass the defendants. The body of the Complaint is replete with such

improper language, as well as the headings which look more like titles to a chapter in a book designed for public distribution. This Court should enter an Order extending its March 15 Order directing the clerk to file the Complaint under seal and to further order that all pleadings in this action be filed under seal and remain under seal until further order of this Court.

WHEREFORE, PREMISES CONSIDERED, Defendants, Richard Scruggs, individually; Don Barrett, individually; Scruggs Law Firm, P.A.; Barrett Law Office, P.A.; Nutt & McAlister, PLLC; and Lovelace Law Firm, P.A., respectfully request that this Court (A) dismiss plaintiff's Complaint for Damages and Declaratory Relief, or in the alternative stay this action; (B) compel plaintiff, Jones Funderburg, Sessums, Peterson, & Lee, LLC, to submit to binding arbitration; and (C) enter an order extending this Court's March 15 Order directing the clerk to file the Complaint under seal and to further order that all pleadings in this action be filed under seal and remain under seal until further order of this Court.

Respectfully submitted,

RICHARD SCRUGGS, Individually; DON BARRETT, Individually; SCRUGGS LAW FIRM, P.A.; BARRETT LAW OFFICE, P.A.; NUTT & McALISTER, PLLC; and LOVELACE LAW FIRM, P.A.

BY: 
OF COUNSEL

LARRY D. MOFFETT - BAR # 3401
WILTON V. BYARS, III - BAR # 9335
SHEA S. SCOTT - BAR # 100775
DANIEL COKER HORTON & BELL, P.A.
OXFORD SQUARE NORTH
265 NORTH LAMAR BOULEVARD, SUITE R
POST OFFICE BOX 1396
OXFORD, MS 38655-1396
(662) 232-8979

CERTIFICATE

I, Wilton V. Byars, III, of counsel for Defendants, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing pleading to:

Grady F. Tollison, Jr., Esq.
Tollison Law Firm
100 Courthouse Square
P.O. Box 1216
Oxford, MS 38655

THIS, the 19th day of March, 2007.



WILTON V. BYARS, III

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, LLC

PLAINTIFF

VS.

CIVIL ACTION NO. L07-135
FILED UNDER SEAL

RICHARD SCRUGGS, Individually;
DON BARRETT, Individually; SCRUGGS
LAW FIRM, P.A.; BARRETT LAW
OFFICE, P.A.; NUTT & McALISTER, PLLC;
and LOVELACE LAW FIRM, P.A.

DEFENDANTS

ORDER

THIS MATTER is before the Court on the *ore temus* motion of the defendants in the above-referenced matter to file “Defendants’ Motion to (A) Dismiss, or in the Alternative to Stay Proceedings, (B) Compel Arbitration, and (C) Extend an Order Requiring Filings to Remain Under Seal” and any Responses or Replies to said Motion under seal, and for good cause shown, the Court finds that the Motion is well taken and should be, and is hereby, GRANTED.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Clerk shall receive and file under seal the “Defendants’ Motion to (A) Dismiss, or in the Alternative to Stay Proceedings, (B) Compel Arbitration, and (C) Extend an Order Requiring Filings to Remain Under Seal,” stamp the Motion “filed”, but not docket it until it is removed from seal by further Order of this Court. Any Responses or Replies to said Motion shall be filed under seal in the same manner. This Order shall also be filed under seal in the same manner. This Order along with the Motion and any Responses or Replies so filed will remain under seal until further Order of this Court resolving said Motion.

IT IS FURTHER ORDERED AND ADJUDGED that the civil Complaint filed under seal in the above-referenced matter shall remain under seal until dismissed without being unsealed at the request of Tollison Law Firm or until further Order of this Court.

SO ORDERED AND ADJUDGED, this the ____ day of March, 2007.

CIRCUIT COURT JUDGE

EXHIBIT 5



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Balducci: The eye of a legal storm

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By Errol Castens
Daily Journal Oxford Bureau

NEW ALBANY – Some people in this Union County seat wonder how their town ended up identified with Timothy Balducci, a confessed bribery conspirator-turned-informant.

A former public defender, a special assistant state attorney general and a trial lawyer, the 1991 University of Mississippi Law School graduate moved here less than a year ago to establish a law practice after leaving The Langston Law Firm in Booneville, where he and his family had lived several years.

The government claims it was while building his own firm that he plotted to bribe Circuit Judge Henry Lackey of Calhoun City to rule in favor of Oxford mega lawyer Richard "Dickie" Scruggs' firm for legal fees related to Hurricane Katrina insurance settlements.

Balducci was federally indicted Nov. 28 on six counts in an alleged bribery conspiracy. Indicted with him were Scruggs, his attorney son Zach, Oxford legal associate Sidney Backstrom and former State Auditor Steven A. Patterson, who worked with Balducci in his New Albany office.

They all pleaded not guilty, but hours after Balducci's pleas, he changed his mind, pleaded guilty to one count and reportedly agreed to help prosecutors. His whereabouts are not known publicly, but he reportedly is under federal protection.

Why New Albany?

Balducci may have left Booneville because while Langston at times referred to him

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as a “partner,” Langston reportedly does not share ownership of the firm with his associates. That may not have set well with Balducci, often described as ambitious.

But why he chose New Albany, instead of some other county seat or even a bigger city, isn't clear. According to Union County officials, Balducci has had a part in only one case in circuit court – a lawsuit seeking compensation for damage to a recreational vehicle – and two uncontested divorces in chancery court.

“I’ve never heard anybody say why he moved here,” said one New Albany attorney who asked not to be identified. Another wondered if it were to benefit from what he said was the New Albany legal community’s “squeaky clean” reputation.

Some speculate Balducci’s move was prompted by his practice partner, Steve Patterson, who had lived here as a child and had moved back to re-establish roots. Patterson had worked in various financial and politically connected capacities since he was forced to resign as state auditor over an illegal car tag.

They set up shop at 207 E. Main St.

Balducci seems to have been the legal brains, while Patterson’s long-time political connections worked the Mississippi byways and reached to the nation’s capital, where they maintained an office on storied Pennsylvania Avenue.

The firm named several prominent attorneys “of counsel” – associated with but not regular employees of the firm – including former U.S. Magistrate Judge Norman Gillespie, former Hinds County District Attorney Ed Peters, former Gov. Bill Allain and former Chancery Judge Rodney Shands.

The firm Patterson Balducci PLLC stirred controversy, however, when local residents came to believe Patterson and investigator Beau Buse were also attorneys.

After longtime New Albany attorney Tom McDonough noted publicly that Patterson was not an attorney, Patterson responded in a letter, “Piss ants often try to disrupt picnics, but rarely do. Be assured you will not disrupt mine.”

Steve Livingston, as president of the Union County Bar Association, issued a formal complaint to the Mississippi Bar Association about the issue in July but, as of a few days ago, had received no response.

In the spotlight

When Balducci changed his plea to guilty and became a government informant Dec. 4, he agreed to cooperate with federal authorities in their continuing investigation. He has not spoken with media representatives, which gives energy to speculation that he and his family may be in the federal Witness Protection Program.

Some say it’s merely federal protection, perhaps the government’s oversight to ensure he testifies, when and if a trial gets under way.

Area attorneys lament the tarnish being added to their image by Balducci’s admitted misdeeds and the alleged misdeeds of his co-indictees.

“I think it affects the legal profession in the whole state of Mississippi. It makes us look bad,” Livingston said. Whether the charges are “true or not true, it’s still mud thrown on us.”

Who is Tim Balducci?



Born in Cleveland, Miss., on Nov. 17, 1967, Timothy Reese Balducci grew up in Shelby, the son of a Delta banker, and earned his bachelor of arts degree with honors at Delta State University, where he was a member of Pi Kappa Alpha fraternity. After graduation he completed Ole Miss law school. He was licensed to practice in four states and the District of Columbia, no simple feat.

Some law school classmates, none of whom claimed to know Balducci well, had varying recollections of him.

"At that time I knew him to be a very honest person, and competent and diligent," said Oxford attorney Jay Westfaul. "He was a very kind person."

Ed Ellis, a Pensacola, Fla., attorney, had a different view.

"I never got along with him," said Ellis. "I just never thought he was that trustworthy."

The Scruggses, Backstrom and Patterson might say the same in hindsight, if they were talking publicly.

In their Nov. 28 indictment, Balducci is alleged to have:

- Called Judge Lackey on March 28 and asked to meet him later in the day, when Balducci "made an overture" to the judge to resolve the Katrina legal-fees case.
- Called Judge Lackey on May 3 to ask for what he considered a more favorable approach to settling the case.
- Talked to Judge Lackey on May 9 to say he was highly trusted by Scruggs and his close confidante in the bribery scheme.
- Agreed on Sept. 21 to pay Judge Lackey \$40,000 on behalf of Scruggs and the firm for the favorable ruling, then called Backstrom about the transaction.
- Discussed the bribe with Patterson on Sept. 27,
- Delivered \$20,000 in cash to the judge Sept. 27.
- Told Patterson on Sept. 27 "All is done, all is handled and all is well."

It was on Sept. 27 the government says it nailed Balducci with a recorded conversation and video of his visit with Lackey.

His co-defendants insist on their innocence. Scruggs' defense attorney, John Keker of California, has termed Balducci a Scruggs "wannabe" who was acting on his own to impress everybody else.

Ole Miss Law School Professor emeritus Guff Abbott recalled of Balducci, "He was just a nice young fellow, and as I remember, he was really smart."

On the Booneville street where the Balduccis' former home – a 5,400-square-foot, \$524,900 colonial – still stands waiting for a buyer, several neighbors remember Tim and Jennifer Balducci, an Amory girl, and their sons, now ages 11 or 12, as "nice neighbors."

"Their twin boys used to play with my grandson," said one woman who lives nearby. "They loved football."

Debbie Wright remembers that the Balduccis would invite the whole neighborhood to their New Year's Eve parties, mixing with some of the highest-profile lawyers in

the region.

"It usually wasn't a music-and-dancing party; it was just to mix and mingle," she recalled. "One year they hosted a wedding, where (the couple) got married right at midnight."

Wright described Jennifer Balducci, who was a stay-at-home mother when they lived in Booneville, as "laid back" and "down to earth."

Different face

Tim Balducci's legal work, however, was hardly "laid back." Shortly after passing the bar, he and classmate Kent Smith set up a practice in Oxford, where they took on the role of public defenders.

For a time he also had an interest in an Oxford company named Off-Square Leasing at 405 S. Lamar Blvd., where an accounting firm now holds sway just south of the famed Square.

While he was with Joey Langston's high-powered firm in Booneville, Balducci worked as a special assistant attorney general on a state case against pharmacy giant Eli Lilly and to recover taxes from Bernie Ebbers' once-touted MCI/WorldCom. Balducci later partnered with Langston to sue Phil Bryant, state auditor and lieutenant governor-elect, over fees from the MCI/WorldCom case.

A window into who Tim Balducci considered himself to be was published quite literally in black and white on his company Web site, www.timbalducci.com, which has been taken down.

"Tim has gained a reputation as an aggressive advocate, but an honest adversary," the Internet site said in describing him as "a successful trial lawyer."

"Tim has quite a reputation as a premier criminal defense attorney," too, it proudly boasted.

He and Patterson had plans bigger than Union County, though.

The Web site touts their Washington, D.C., office, which it said, "concentrates its national and international representation of clients to cases concerning governmental regulations, federal compliance and litigation resolution."

They also were recent heavy contributors to the presidential campaign of Sen. Joseph Biden, D-Dela.

One can only wonder what pushed Balducci to his admitted bribery attempt. Ambition. The need to be accepted by other important people professionally, especially after a possible rebuff from Langston's firm?

"I was just so shocked – I would never have thought that of him," said Lafayette County Circuit Clerk Mary Alice Busby. "He was always very caring, always jolly, very smart. I just thought he was going to be one of the best young trial lawyers in the state. He had a rapport with the juries."

What surprised Busby even more was just how Balducci fell from grace.

"We all love Judge Lackey," she said. "We couldn't believe Tim would ever try to bribe him. Evidently there was a side of Tim that we didn't know. We just never saw it."

Lackey himself admitted both anger at and concern for Balducci when Lackey first decided to confide in federal law enforcement officials.

"I worried what would become of this young man, his wife, his children," Lackey told the Wall Street Journal soon after their indictments. "He was one of the brightest legal stars on the horizon that I'd come across, and I worried a great deal about the consequences."

What's next for Balducci?

Tim Balducci observed his 40th birthday just nine days before his life and career came crashing down with the federal indictment. Observers of the case speculate he was under the government's "direction" by that time. He may already have known his cherished legal career, his well-heeled life, his political connections and his comfortable lifestyle were over.

Balducci's plea agreement includes helping federal investigators and prosecutors in building their case against Patterson, the Scruggses and their associate Backstrom.

According to Mississippi Bar Association counsel Adam Kilgore, those under indictment are still free to practice law, although the Scruggs firm has turned over Katrina work to other members of the Scruggs Katrina Group, recently re-named the Katrina Litigation Group.

Attorney General Jim Hood says Balducci's status as a special assistant attorney general was strictly as an employee of The Langston Law Firm.

"His only involvement with our office is in whatever tasks he was assigned by his employer," Hood told the Daily Journal.

Hood's chief of staff, Geoffrey Morgan, added, "To my knowledge, Timothy Balducci has not handled any part of the Eli Lilly case since on or about Dec. 1, 2006, when he left the Langston Law Firm."

More details about Balducci's background, both personal and professional, will emerge at the upcoming trial, which was moved Friday from Jan. 22 to Feb. 25. And as the government's key witness, the once-promising attorney will find himself at the center of a firestorm, one likely to make headlines around the nation.

Contact Daily Journal Oxford Bureau reporter Errol Castens at 281-1069 or errol.castens@djjournal.com.

Appeared originally in the Northeast Mississippi Daily Journal, 12/22/2007, section 0, page 0

EXHIBIT 7

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA . Docket No. 3:07CR192
. .
Plaintiff . Oxford, Mississippi
. . January 15, 2008
v. . 10:00 a.m.
. .
STEVEN A. PATTERSON .
. .
Defendant .
.

CHANGE OF PLEA AS TO COUNT ONE OF THE INDICTMENT
BEFORE THE HONORABLE NEAL B. BIGGERS
U.S. SENIOR DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: United States Attorney's Office
Northern District of Mississippi
BY: BOB NORMAN, ESQ.
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Oxford, Mississippi 38865
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Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 And that you, in this agreement, devised a scheme to
2 defraud and to deprive the state of Mississippi of its
3 intangible rights to honest services from its officials. They
4 would have to prove that beyond a reasonable doubt.

5 Secondly, the Government would have to prove that you knew
6 that this agreement was unlawful and you joined it willfully
7 and with the intent to further the unlawful purpose of the
8 agreement. And thirdly, they would have to prove that during
9 the existence of this conspiracy you or at least one of the
10 coconspirators committed at least one of the overt acts
11 described in the indictment in order to carry out the purpose
12 of the conspiracy.

13 The Government would have to prove all of those things
14 beyond a reasonable doubt, Mr. Patterson. Do you understand
15 that?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you think you fully understand this
18 charge?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Do you have any questions at all about
21 it?

22 **THE DEFENDANT:** Could I address the Court?

23 **THE COURT:** Yes, sir.

24 **THE DEFENDANT:** If I could just have the Court's
25 indulgence for just one moment and tell you that I stand here

1 as a very blessed man, Judge. My family, my church, my
2 community have stood by me through this ordeal. I never set
3 out to corruptly bribe a judge. I never set out in my
4 initial -- when this thing started, to do anything of that
5 nature.

6 My attorneys and the Government's attorneys have allowed
7 me and have instructed me that, in fact, at the point at which
8 I joined this alleged conspiracy, that I was in fact, then, at
9 that point, a conspirator.

10 But in -- I feel that it's important that I say that it's
11 very -- from the outset, there was no intent on my part to ever
12 corruptly influence anyone. However, I do understand that once
13 I joined it and once the cat was out of the bag that I became a
14 coconspirator; and that's the reason I'm entering this plea.

15 **THE COURT:** All right. Well, my question on it to
16 you at this time is, Do you understand that the Government
17 would have to prove each of these elements that I just
18 described before you can be found guilty?

19 **THE DEFENDANT:** I do understand.

20 **THE COURT:** All right. Now, we'll get into this
21 other matter later in this hearing. You understand the maximum
22 possible penalty under this count is five years' imprisonment
23 plus a fine of \$250,000 and, also, a certain period of time
24 under supervised release after imprisonment? Are you aware of
25 that?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** All right. Has anyone threatened you or
3 forced you to plead guilty to this charge?

4 **THE DEFENDANT:** No, sir.

5 **THE COURT:** All right. I understand there has been a
6 plea agreement entered into between the defendant and the
7 Government.

8 Mr. Norman, would you state, briefly as you can, the
9 substance of that plea agreement?

10 Mr. Patterson, you listen to him; and I want to ask you,
11 then, if you agree with it.

12 **THE DEFENDANT:** (Nodding head affirmatively.)

13 **MR. NORMAN:** Yes, Your Honor. By the terms of the
14 plea agreement, Mr. Patterson agreed to plead guilty to Count 1
15 of the indictment charging him with conspiring with others to
16 corruptly influence or bribe a state-elected official. He has
17 agreed to cooperate with the United States Attorney's Office
18 and with agents of the FBI.

19 We have agreed that in the event his cooperation rises to
20 the level of substantial assistance that we will ask the Court
21 to consider a downward departure from the applicable guidelines
22 in this case. Mr. Patterson must understand that the decision
23 of whether or not to move the Court for such a departure is
24 ours.

25 Ultimately, the decision of whether or not to depart is

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C E R T I F I C A T E

I, Rita Davis Sisk, RPR, BCR, CSR #1626, Official Court Reporter for the United States District Court, Northern District of Mississippi, was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I, Rita Davis Sisk, RPR, BCR, CSR #1626, have caused said stenographic notes to be transcribed via computer, and that the foregoing pages are a true and accurate transcription to the best of my ability.

Witness my hand, this ____ day of _____, 2008.

RITA DAVIS SISK, RPR, BCR, CSR #1626
Official Court Reporter

EXHIBIT 8



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November 30, 2007

How Scruggs Case Came Together

Judge Helped Probe After He Says Bribe Was Offered to Him

By **ASHBY JONES** and **PETER LATTMAN**

November 30, 2007; Page A4

See *Corrections & Amplifications* item *below*.

The Mississippi state court judge who prosecutors say was offered a bribe in a case involving high-profile plaintiffs' attorney Richard "Dickie" Scruggs said he experienced a "shock that I can't put into words" when first approached.

In an interview recounting the episode, Judge Henry Lackey said the overture came from another lawyer he knew, Timothy Balducci of New Albany, Miss. "My first thought was: What kind of character flaw has he discovered in me that would lead him to think that I would do something like this?" said Judge Lackey, 73 years old. "I was furious. I mean, this strikes at the heart of our judicial system."

The case eventually led to the indictments in federal court Wednesday in Oxford, Miss., of Mr. Balducci, Mr. Scruggs, two other lawyers and a fifth person on charges that they conspired to bribe Judge Lackey with \$40,000 to gain a favorable ruling in a case concerning a \$26.5 million legal-fee dispute. Prosecutors say Mr. Scruggs reimbursed Mr. Balducci the \$40,000 for the bribe and created false documentation to mask the payment as compensation for work on another case.

Mr. Balducci didn't return calls seeking comment on the case yesterday. Mr. Scruggs's attorney, John Keker, said: "I find it remarkable that this high-minded government witness is talking to the national media, and it makes me wonder if he is interested in notoriety rather than seeing that justice is done. I'll say this -- he sure as hell didn't get bribed by Dick Scruggs or anyone else in his law firm."




Dickie Scruggs

The indictment was a stiff blow to Mr. Scruggs, one of the nation's most prominent plaintiffs' attorneys and a well-known local figure. Mr. Scruggs earned millions of dollars bringing lawsuits against asbestos makers and the tobacco industry and in recent years has filed hundreds of lawsuits against the insurance industry on behalf of policy owners claiming damages from Hurricane Katrina.

But yesterday, friends and associates seemed to be distancing themselves from him. Mississippi lawyer Don Barrett, who co-founded a group of plaintiffs' attorneys with Mr. Scruggs to join forces on Katrina-related litigation, told judges across Mississippi in a letter that Mr. Scruggs and his law firm would be withdrawing from all such cases in the wake of the indictment.

In an interview, Mr. Scruggs said "Mr. Barrett was misinformed" and that "the clients will be the ones who will make the call as to their lawyer." He added: "Most of the Katrina families are people I have known all my life, so we are not withdrawing except as to those who ask us to do so," he said. He also sent a letter of his own to

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judges, saying there had been a "misunderstanding."

Meanwhile, the presidential campaign of Sen. Hillary Clinton said it had canceled a Dec. 15 fund-raising event for her that was scheduled to be held at Mr. Scruggs's home.

In his interview with the Journal, Judge Lackey said Mr. Balducci first approached him in March suggesting a bribe. The judge, who sits on a court that covers several counties in Mississippi, said he didn't contact the U.S. Attorney's Office because he considered himself friendly with Mr. Balducci and feared the ramifications.

"I worried what would become of this young man, his wife, his children," said Judge Lackey. "He was one of the brightest legal stars on the horizon that I'd come across, and I worried a great deal about the consequences."

After a few days, he felt he "had to do something" and contacted federal prosecutors in Oxford, Judge Lackey said. Eventually, he agreed to participate in an operation to help them build their case. "I felt like my reputation was being denigrated, so I told them I'd be happy to wear a wire," he said.

Prosecutors instead equipped his office with audio and video-recording equipment, he said. The indictment cites several telephone calls and meetings in Judge Lackey's office with Mr. Balducci in which, prosecutors say, details of the bribe were mentioned and money was given to the judge.

Judge Lackey said he had met Mr. Scruggs only once, at a seminar. "I look forward to testifying at trial," he said.

The indictment in Mississippi isn't the only criminal matter that has ensnared Mr. Scruggs. He faces a federal criminal-contempt charge brought in Birmingham, Ala., for allegedly violating a federal judge's protective order concerning documents in a Katrina-related case. He has denied the charge in this case.

--Mary Jacoby and Liam Pleven contributed to this article.

Write to Ashby Jones at ashby.jones@wsj.com¹ and Peter Lattman at peter.lattman@wsj.com²

Corrections & Amplifications

Wall Street Journal reporter Liam Pleven's last name was misspelled in some editions of this article.

URL for this article:

<http://online.wsj.com/article/SB119638569855608860.html>

Hyperlinks in this Article:

(1) <mailto:ashby.jones@wsj.com>

(2) <mailto:peter.lattman@wsj.com>

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EXHIBIT 9

AFFIDAVIT IN SUPPORT

APPLICATION FOR INTERCEPTION OF WIRE COMMUNICATIONS

Your affiant, William P. Delaney, being duly sworn, deposes and states as follows:

(1) I am a law enforcement officer of the United States, that is, special agent with the Federal Bureau of Investigation within the meaning of Title 18, United States Code, Section 2510(7), and as such am empowered by law to conduct investigations of and make arrests for offenses in violation of the United States Code, including those offenses enumerated in Title 18, United States Code, Section 2516.

(2) I have been employed as a special agent with the United States Department of Justice, Federal Bureau of Investigation, for 11 years. I am presently assigned to the Jackson Division of the Federal Bureau of Investigation and investigate cases involving violations of federal law including offenses of bribery (18 U.S.C. § 666), honest services wire fraud (18 U.S.C. §§ 1343 and 1346), and money laundering (18 U.S.C. § 1956).

(3) I have had extensive experience in investigation of public corruption and other white collar crime investigations and have participated in all normal methods of criminal investigations, including but not limited to visual surveillance, electronic surveillance, general questioning of witnesses and subjects, the use of search warrants, informants, cooperating witnesses, pen registers and other sophisticated investigative techniques.

Purpose of this Affidavit

(4) This affidavit is being submitted in support of an application pursuant to Title 18, United States Code, Section 2518, which seeks an order authorizing the interception of wire communications of Timothy Balducci and others known and unknown over a cellular telephone communications device. The subscriber and telephone are described as follows: Timothy R. Balducci: # 662-416-4243, mobile cellular telephone service by AT&T, formerly Cingular Wireless, IMSI # 310410016154428, billing address P. O. Box 1771, New Albany, MS 38652.

(5) It is further requested that in the event cellular telephone conversations are transferred outside the territorial jurisdiction of the Court, interceptions may take place in any other jurisdiction within the United States. Furthermore, it is requested that the authorization apply not only to the above-referenced cellular telephone number, but also to any changed telephone numbers or any other telephone number subsequently assigned to or used by the instrument bearing the same electronic serial number as the target's cellular telephone during the pendency of authorization under the application and order supported by this affidavit.

(6) I am the case agent in this investigation and have participated in all aspects of the investigation to date and am completely familiar with the offenses to be enumerated in this affidavit.

(7) On the basis of my participation in this investigation to date and on the basis of information and statements from a credible cooperating witness, I submit that the facts contained in this affidavit show that:

- (a) There is probable cause to believe that Timothy R. Balducci, Richard "Dickie" Scruggs, and others as yet unknown, are in the process of committing and will continue to commit violations of Title 18, United States Code, Section 666 (bribery of a state official), Title 18, United States Code, Section 1343 and 1346 (honest services wire fraud), and Title 18, United States Code, Section 1956 (money laundering).
- (b) There is probable cause to believe that particular cellular wire communications of Timothy Balducci and others as yet known and unknown concerning the above offenses, will be obtained through interception of such communications to and from the target cellular telephone number listed above. In particular, these communications are expected to be verbal discussions of the specifics of the above offenses under investigation, including the nature, extent and methods of the corrupt giving and agreeing to give anything of value to a state official with the intent to influence or reward a state official for official action in violation of 18 U.S.C. § 666; the nature, extent and methods of the use of wire communications to commit a fraud as defined by 18 U.S.C. § 1346; the nature, extent and methods of any actions that would violate the money laundering section, Title 18, United States Code, Section 1956; the identities and roles of any accomplices, aiders and abettors or co-conspirators in their participation in illegal activities. In addition, the wire communications sought to be intercepted are expected to constitute admissible evidence of the commission of the above-described offenses.
- (c) Normal investigative procedures have been employed and as will be seen below that further normal investigative procedures are likely to fail to produce the evidence needed to establish conspiracy to violate the above statutes as well as the substantive offenses themselves.
- (d) There is probable cause to believe that the current cellular telephone number mentioned above is being and will continue to be used in the commission of the above-described offenses.

(8) Since this affidavit is being submitted for the limited purpose of securing authorization for the interception of wire communications, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are essential to establish the necessary foundation for an order authorizing interception of wire communications.

(9) Based on a check of the records of the FBI as of September 24, 2007, I know of no previous applications made to any judge for the authorization to intercept, or for the approval of interception of wire or electronic communications involving the persons or specified cellular telephone number specified in this affidavit.

Summary of the Investigation

(10) On March 15, 2007, a civil law suit was filed in the Circuit Court of Lafayette County, Mississippi, and styled Jones, et al. v. Scruggs, et al., being Civil Action No. LO7-135. This lawsuit concerns a dispute over division of approximately \$26.5 million in legal fees. On March 28, 2007, attorney Tim Balducci placed a telephone call to State Circuit Judge Henry Lackey, the judge assigned the Jones, et al. v. Scruggs, et al. lawsuit. Mr. Balducci requested a private meeting with the judge. Later that day, Mr. Balducci met with Judge Lackey in his chambers in Calhoun City, Mississippi. Mr. Balducci is not a party to or an attorney for any party in the lawsuit, nor has he any discernable interest in the lawsuit. During the course of the conversation, Mr. Balducci made corrupt overtures to Judge Lackey, who reported the corrupt attempt to federal officials and is cooperating with the investigation. In private meetings with the circuit judge, Mr. Balducci implied receipt of benefits and rewards to the circuit judge in return for an outcome of the lawsuit favorable to Scruggs. Mr. Balducci explained the details of the lawsuit and told the judge he would consider it a personal favor if the judge would enter an order dismissing the "vicious and almost slanderous and personal allegations or complaints" and the remainder of the lawsuit could be sent to arbitration. Mr. Balducci then said that he had something he wanted to "run by the judge" and stated that when Judge Lackey "got ready to lay down the gavel, hang up your robe" that he wanted the judge to consider becoming "of counsel" with his firm. At the conclusion of the meeting, Judge Lackey called the U. S. Attorney's office and reported the matter to two senior AUSAs. Thereafter, with the consent and cooperation of Judge Lackey, additional meetings and telephone conversations were conducted with Mr. Balducci. On May 3, 2007, Judge Lackey had a telephone conversation with Mr. Balducci at Mr. Balducci's office wherein Mr. Balducci reaffirmed his offer to the judge of his becoming "of counsel" to a new firm that Mr. Balducci was putting together with various former public officials. Mr. Balducci also told Judge Lackey that "they had changed their strategy" and would rely on a motion to compel binding arbitration. They believed they could handle the matter best in this way. Judge Lackey indicated that he would need to meet and discuss the matter with Mr. Balducci. A meeting was arranged on May 9, 2007, and in the interim on May 4, 2007, Mr. Balducci had faxed a proposed order compelling arbitration in the Jones, et al. v. Scruggs, et al. case. On May 4, 2007, Mr. Balducci called Judge Lackey, that conversation being recorded and they discussed the proposed order compelling arbitration that had been faxed from Balducci to Judge Lackey. A further meeting on May 9, 2007, was set and on that date Mr. Balducci met with Judge Lackey. During the course of that conversation, which was recorded with the consent of Judge Lackey, Mr. Balducci confirmed that the previous order he had faxed to the judge was what Mr. Scruggs wanted. At that time Mr. Balducci stated that his relationship with Dick (Scruggs) is such that "he and I can talk very privately about these matters and I have the fullest confidence that if the court, you know, is inclined to rule . . . in his favor everything will be

good." Mr. Balducci further affirmed that "... the only person in the world outside of me and you that has discussed this is me and Dick." Mr. Balducci further stated that "they ain't . . . but three people in the world that have had this conversation . . . and two of them are in this room." Mr. Balducci went on to say that the only other person that's not in the room is Scruggs and that "he and I, um, how shall I say, over the last five or six years there are bodies buried that, that you know, that, that he and I know where . . . where are and, and my, my trust in his, mine and him and his and mine and me I'm sure are the same." Shortly thereafter the meeting concluded.

On May 21, 2007, a telephone conversation, again recorded with the consent of Judge Henry Lackey, took place between Judge Lackey and Mr. Balducci. During this conversation, Judge Lackey asked for reconfirmation about who knew about Mr. Balducci's approach to the judge concerning the order resolving the case in Mr. Scruggs' favor. Mr. Balducci assured Judge Lackey that nobody other than Balducci and Scruggs know of the arrangement suggested by Balducci to Judge Lackey.

On September 18, 2007, Judge Henry Lackey had a telephone conversation with Mr. Balducci which was recorded pursuant to consent of Judge Lackey. During the course of the conversation Judge Lackey told Mr. Balducci that he has been thinking about "... this thing with Mr. Scruggs and 'em and . . . I want to help him any and every way I can." Then Judge Lackey asked if "if I help them would they help me?" to which Mr. Balducci responded, "I think, no question, that would happen, yessir, no question." Mr. Balducci then said, "I think if, you know, we have to, we have to work something out, you know . . . down the road, down the road, and I think but that's, that's, uh, I think that's absolutely, absolutely in the cards." Mr. Balducci further said, "and, and listen, I'm, I'm the one that needs to handle that, you know. . . I'm the one that needs to handle to whole thing, yessir." Judge Lackey told Mr. Balducci to "talk to your man and, and just, you know, whatever you need to do holler back at me." Mr. Balducci responded that "... I mean, I can tell you, I know that I can get that done. . . and, uh, I mean, you know, you want to just leave that to my discretion or do you want, want to give me some kind of ideas of what I need to do, what I need to do." Judge Lackey concluded the conversation by telling Mr. Balducci just to think about and get back with him sometime when they can talk behind closed doors. Mr. Balducci then said that he will try to meet with Judge Lackey on Friday.

Later on September 20, 2007, Judge Lackey placed a call to the subject cellular phone being used by Tim Balducci (662-416-4243). The purpose of this call was to arrange a meeting on September 21 to work out the details of what was to be provided to Judge Lackey in return for an order resolving the case in favor of Mr. Scruggs. A short time later, Mr. Balducci placed a call from the subject cellular telephone (662-416-4243) to Judge Lackey's office in Calhoun City, Mississippi, wherein the arrangements for the September 21 meeting were made. The FBI verified these calls from the pen register/trap and trace reports based on an order in place since August 27, 2007.

On September 21, 2007, Mr. Balducci arrived at Judge Lackey's office in Calhoun

County, Mississippi, for a meeting with the judge concerning how a payment would be made to the judge in return for the order resolving the case in Mr. Scruggs' favor. This meeting was recorded with the consent of Judge Lackey. When the subject matter of what "help" Judge Lackey would need he suggested \$40,000 in cash to which Mr. Balducci agreed. The judge then said that the payment could be \$20,000 up front and another \$20,000 later but he needed to have this resolved before October 1. Again, Mr. Balducci agreed and said that would be no problem. Judge Lackey told Mr. Balducci that he could bring the order that he (Scruggs) wants signed. Judge Lackey emphasized again that he would not deal with anyone other than Mr. Balducci because he trusted Mr. Balducci. Balducci told Judge Lackey he would call him about meeting the following week, at which time payment would be made and the court ordered delivered. At 10:08 a.m. Judge Lackey placed a call to Special Agent Delaney and advised that Mr. Balducci had left the office. At 10:08 a.m. a call was placed from Mr. Balducci's cell phone (662-416-4243) to 662-281-1212, a listing for the Scruggs Law Firm. The call's duration was 4.02 minutes. Again this call was verified by the FBI utilizing the aforementioned pen register/trap and trace reports.

(11) On August 27, 2007, the United States applied for and received an order authorizing installation and use of a pen register and a trap and trace device on the subject cellular telephone number (662-416-4243), a mobile cellular telephone serviced by AT&T, formerly Cingular Wireless, and the trap and trace reports since that time shows multiple calls to telephone listings for the Scruggs Law Firm, as well as the September 21 call to the Scruggs Law Firm immediately after meeting with Judge Lackey. From August 27, 2007, until September 21, 2007, the Pen Register/Trap and Trace records show 12 calls from the target phone to the Scruggs Law Firm. There are four (4) calls from the target cellular phone to the Scruggs Law Firm and eight (8) calls from the Scruggs Law Firm to the target cellular telephone.

(12) Investigative techniques including consensually monitored conversations of meetings and telephone conversations have established circumstantial connection between Mr. Balducci and Mr. Scruggs with respect to the violations of federal criminal law. However, it is the contents of the conversations between Mr. Balducci and other potential co-conspirators that is needed and the investigation to date has shown that the use by Mr. Balducci of the target cell phone number in both setting up a meeting with Judge Lackey and immediate contact with the Scruggs Law Firm at the conclusion of the last meeting utilizing the target cell phone number. No other investigative method that would not expose the existence of the investigation other than an order allowing for the interception of wire communications made to and from the target cellular telephone number will produce the necessary evidence.

The normal investigative techniques considered but rejected as likely to fail and/or exposure of the undercover operation presently existing are as follows:

1. Pen Register/Trap and Trace orders. An application and order for a pen register/trap and trace was made and an order entered August 27, 2007, and has produced records of telephone calls between the target cellular

telephone and other phones providing circumstantial evidence of connections between the target subjects. However, it is the contents of the conversations that will provide critical evidence and such evidence cannot be obtained through the use of pen register/trap and trace orders. Additionally, there are calls made from the target cellular telephone to numbers which are as yet unidentified.

2. Use of informants and sources. As can be seen from the factual rendition above, this is an ongoing undercover operation with the only source being the state circuit judge who immediately reported to the U. S. Attorney's office the attempt to influence a case pending before his court. From the recorded conversations between the source and one of the target subjects, it has been stated that no one other than the source and the target subjects know of the "arrangements" between the source and the target subjects. There are no additional informants or sources that could provide the evidence sought by this application. Likewise, given the ongoing undercover investigation, the introduction of any undercover officer as a third party at this stage of the investigation would have a detrimental effect on the investigation and, in all likelihood, expose the investigation prematurely.
3. Search warrants. As previously indicated, this is an ongoing undercover operation. The use of any search warrants would immediately alert all other co-conspirators and change the investigation from covert to overt before the actual exchange of a thing of value for official action by the state official. In essence, any overt investigative method would sabotage this investigation.
4. Grand jury subpoenas. As previously stated, this investigation is an ongoing undercover operation that normal overt investigative methods such as grand jury subpoenas (whether financial records or testimony would be sought) would expose and essentially end the investigation. There will be an appropriate time for the use of grand jury subpoenas and possibly search warrants, but only after the undercover phase of the investigation has been concluded. As previously stated, no normal investigative method will produce the evidence needed other than an order authorizing the intercept of wire communications as set forth in this application.
5. Physical surveillance. Physical surveillance has very limited usefulness in an investigation as unique as this undercover operation. Some physical surveillance has been employed but, given the rural, small town locations, the risk of exposure is high and the likelihood of obtaining meaningful evidence slight. Physical surveillance intended to show face to face

meetings between the co-conspirators is impossible, and even if successful would only show that meetings took place.

(13) The requirement regarding minimization of the interceptions will be strictly followed. Before interception begins, a meeting will be held for all monitoring agents wherein the requirements of minimization will be provided including instructions on the attorney/client privilege since Mr. Balducci is an attorney at law. A memorandum regarding minimization will be provided to all monitoring agents as well as a copy for the Court order authorizing interception. A copy of that order and minimization memorandum will be posted at a listing site. Before an individual begins to intercept communications, he or she will sign a form indicating that he or she has read the affidavit, the court's order authorizing the interceptions and the minimization memorandum, and that he or she is familiar with the contents of the order and will intercept communications in compliance with the Court's order.

All wire communications will be minimized in accordance with Chapter 119 of Title 18, United States Code. Based on affiant's experience in monitoring communications, and that of other monitoring and supervising agents, many of the criminal conversations may occur during and/or be a part of an otherwise innocent conversation. Lengthy conversations that appear to be non-pertinent will be periodically monitored to determine if the conversation has become criminal in nature.

All intercepted conversations will be recorded and all recordings will be securely preserved. Logs will be prepared regarding the date and time of each call and the parties involved and the subject of the call and if and when minimization occurred.

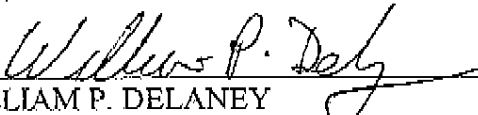
(14) This affidavit is in support of an application for authorization to intercept wire communications for a period not to exceed thirty (30) days. It is requested pursuant to Title 18, United States Code, Section 2518(5), that the period of authorization be measured from the earlier of the day on which the investigative or law enforcement officers first began to conduct an interception under this Court's order or ten days after the order is entered.

Given that the target telephone is cellular, it can be easily taken and used outside the jurisdiction of the Court. It is requested that, in the event the target cellular telephone is transferred outside the jurisdiction of this Court, interception may continue to take place in any other jurisdiction within the United States. It is further requested that the authorization sought herein will apply not only to the target cellular telephone but to any subsequent changed number assigned to the instrument bearing the same electronic serial number as the target cellular telephone.

(15) Any expenses necessarily incurred pursuant to a court order under 18 U.S.C. § 2518(4)(e) relating to technical assistance rendered to the government by a communications service provider or other persons, will be processed by the Federal Bureau of Investigation for payment by the United States unless the Court should direct otherwise.

Conclusion

Your affiant believes that the facts alleged herein establish probable cause to believe that the subjects of this investigation are engaged in ongoing criminal activity and that the evidence sought will likely provide critical evidence solidifying this investigation.


WILLIAM P. DELANEY
Special Agent, Federal Bureau of Investigation

Sworn to and subscribed before me, this the 26th day of September, 2007.



SENIOR U. S. DISTRICT JUDGE
Northern District of Mississippi

EXHIBIT 10

FD-302 (Rev. 10-6-95)

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of

transcription

Investigation on

at

Date dictated

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by

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06/05/2007

The following is a recorded telephonic conversation between
HENRY LACKEY and TIM BALDUCCI on May 4, 2007:

1D3

05/04/2007

Calhoun City, Mississippi

194A-JN-32354

06/01/2007

SA WILLIAM P. DELANEY/jrb

05/04/2007

2

On
, Page

(telephone ringing)

HENRY LACKEY:

...there?

TIM BALDUCCI:

Yeah. Yeah. No problem. I'm, sound like you're eatin' lunch? Did I catch you at a bad time?

LACKEY:

(laughs) No, I'm...

BALDUCCI:

Or chewin' tobacco. One.

LACKEY:

(laughs) No.

BALDUCCI:

(laughs)

LACKEY:

Peanut brittle.

BALDUCCI:

Oh. (laughs)

LACKEY:

(laughs)

BALDUCCI:

(laughs)

LACKEY:

My dessert.

BALDUCCI:

Good. Good. Good.

LACKEY:

Yeah, I'm uh, I've got uh, this order compelling arbitration.

BALDUCCI:

Yeah. That was just some thoughts, ideas, and suggestions that I thought I'd put on paper. Just...

LACKEY:

Yeah.

BALDUCCI:

...see if His Honor thought that that would look like somethin' he might be interested in.

LACKEY:

It, it does. It, it, it, it looks good. Uh...

BALDUCCI:

Ok.

LACKEY:

...uh, uh, sometimes I wanna, let me close this door. Hang on.

BALDUCCI:

Yes, sir.

On
, Page

BALDUCCI:

Be wherever you are.

LACKEY:

Could we hunker about, say
'bout three or four o'clock?
Somethin' like that and I could
let MONETTE go?

BALDUCCI:

Mm-hmm. Yeah...

LACKEY:

Uh...

BALDUCCI:

...you want me to just be down
there 'bout three?

LACKEY:

That, that'll be fine.

BALDUCCI:

I'll be right there.

LACKEY:

I appreciate that.

BALDUCCI:

(Unintelligible) (UI)
Appreciate you.

LACKEY:

How, how the, how are the
curtain climbers?

BALDUCCI:

Man, they're great. They're
great.

LACKEY:

(laughs)

BALDUCCI:

They're great. They great. I
tell ya, I'm...well next time
you're in Union, I wanna know
and, and I'ma, I'ma carry you
to lunch and I'ma make sure
JENNIFER can get the boys up
when they're out of school and
I'ma, I wanna 'em to come up
there and see ya.

LACKEY:

I'd like to see those kids. I
sure would. But uh, well I'll,
I'll see you Wednesday, then.
(UI)

BALDUCCI:

I'll ease down there, uh, I'll
ease down there next Wednesday
at three o'clock.

LACKEY:

(UI)

BALDUCCI:

Thank you, brother.

FD-302a (Rev. 11-6-97) - 32354

Continuation of FD-302 of

LACKEY: TIM BALDUCCI

Thanks now. 05/04/2007

4

On
, Page

BALDUCCI:

Alright.

LACKEY:

Uh-huh.

BALDUCCI:

See ya. Bye.

LACKEY:

Bye. (hangs up)

(END OF RECORDING)