

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

**JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, PLLC**

PLAINTIFF

V.

CIVIL ACTION NO. L07-135

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

DEFENDANTS

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

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, and such acts such as fraud and breach of duties owed as a result of a constructive trust and other 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, PLLC, 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 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.

2. In furtherance of this conspiracy, some of the Defendants - all of who are implicated as a result of their joint venture relationship - took actions to influence this litigation and in furtherance of the conspiracy to thwart the efforts of the Plaintiffs to promptly receive its fees, caused the acts alleged in Exhibit B to this Complaint to occur. The Plaintiff on information and belief charges that the allegations in the attached indictment are true. All of the Defendants either knew or should have known with the exercise of reasonable care of the acts attempting to improperly influence the outcome of the litigation of the Plaintiff against the Defendants by attempting to bribe a judge.

3. The alleged contract as among the Plaintiff and the Defendants is absolutely void as a result of previous acts as well as the acts alleged in Attachment B - the indictment.

II. JURISDICTION AND VENUE

4. 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.

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

III. PARTIES

6. 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.

7. 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.

8. 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.

9. Defendant David Nutt is a adult resident citizen of Hinds County, Mississippi who may be served with process at his place of business at 605 Crescent Boulevard, Suite 200, Ridgeland, Mississippi.

10. 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.

11. 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.

12. 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.

13. 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

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

15. Specifically, Jones and Funderburg had represented Defendants Scruggs and Scruggs

Law Firm in collateral litigation since August, 2004; and Defendant Scruggs approached Jones in October, 2005, to perform similar tasks for SKG, resulting in Jones's immediate preparation of the initial legal brief that became the template for all insurance litigation initiated by SKG following Hurricane Katrina .

16. 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.

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

18. The agreement is absolutely void as a result of acts of the Defendant in January and February, 2007 as well as acts from March to November of 2007 wherein actions by the Defendants singularly or in concert with actual knowledge or with constructive knowledge attempted to influence the outcome of this litigation and, therefore, the only arrangement among the Defendants is a joint venture under the applicable laws of the State of Mississippi except those acts specifically alleged against various Defendants.

THE PLAINTIFF'S WORK

19. From October 2005 until March 2007, Plaintiff logged substantial work for the SKG thereby foregoing other available legal work.

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

21. 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.

22. 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.

23. 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

24. In December 2006, individual Defendants Scruggs and Barrett conspired among themselves and others to set Plaintiff's fee allocation at a ridiculously low portion of the net earnings of the Joint Venture from the State Farm settlement (as well as earlier settlements of approximately \$1.5 million that had been received, but was used to finance the continuing work of SKG in breach of Defendant Nutt's contractual obligations to finance the venture).

25. After substantial performance by Plaintiff from October 2005 through all pertinent times during which substantial legal work was logged, Defendant Scruggs called Jones on December 6, 2006 and dictated Scruggs's "decision" on a division of attorney fees.

26. 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.

27. 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 approximately

\$26,500,000 in fees from the State Farm settlement by each said defendant taking 32% but paying nothing to Plaintiff nor Defendant Lovelace.

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

29. Over the following three months, Defendant law firms and the individually-named Defendants attempted to leverage, 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.

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

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

32. 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

33. 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.

34. 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.

35. The rejection of Plaintiff’s attempt to arbitrate the fee distribution dispute violated

Plaintiff's right to arbitration.

36. 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

37. 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.

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

39. 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

40. On December 14, 2006 in correspondence from Plaintiff to Sidney Backstrom of the Scruggs Law Firm and courtesy copied to all members of SKG, Plaintiff 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

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

UNAUTHORIZED EXPENDITURES

42. 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.

43. 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.

44. 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

45. 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.”

46. On February 22, 2007, SKG Partner Dewitt “Sparky” Lovelace recognized Plaintiff’s right under the Agreement to 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

47. 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.

48. That in the acts alleged hereinafter, on information and belief, the Plaintiff charges that the Defendants have wrongfully expended funds belonging to the Plaintiff for improper payments to “so-called consultants” or improper expenditures for the operation of airplanes, political advertisements and other legal fees for the Defendants or for some of them and legal fees allocated for a selected persons. All such acts constitute breaches of fiduciary duties by all of the Defendants as well as the acts charged in Exhibit B.

49. 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.

50. 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.

51. Jones asked Defendants if they wanted to hear the basis OF, OR, the legal authority for Plaintiff’s position.

52. Barrett said such information was irrelevant.

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

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

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

56. 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."

57. 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.

58. 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."

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

60. 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.

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

62. 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.

63. 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.

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

65. 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 were wrongfully holding substantially more of the Plaintiff's money, which check was rejected.

PRIOR ACTS OF THIS SAME COURSE OF CONDUCT

66. The Defendant David Nutt changed his position in March, 2007 and actively sought the wrongful ouster of the Plaintiff without authority or without any proper basis whatsoever. These acts, as will be shown more fully hereinafter, authorized the punitive damages as against the Defendant Nutt.

67. 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.

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

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

70. 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.

71. The Defendant David Nutt has engaged in the same type of conduct on multiple occasions where he would engage and be part of a joint venture or partnership with one or more lawyers to pursue wrongful conduct by tortfeasors on behalf of various clients and when funds became available for distribution, would attempt to shortchange or completely freeze out his partner or partners.

72. 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.

73. Plaintiff has not been removed or requested to be removed from clients of the Joint Venture Group. In fact, the SKG has claimed the attorney/client privilege to be asserted as to the Plaintiff in *McIntosh, et al. v. State Farm Fire and Casualty Company, et al.*, in a letter dated September 6, 2007 as is shown by Exhibit C.

74. Plaintiff as a member of SKG was a participant on the pleadings when SKG filed a motion for class certification and the appointment of one or more members of the group as class counsel.

75. A proposed settlement had been agreed to between SKG and State Farm Insurance as a part of which SKG would file for certification of a class action in order to make the settlement comprehensive.

76. As a part of the proposed settlement, and while Plaintiff was a member of SKG, State Farm had agreed to pay an **additional guaranteed** \$10,000,000.00 with increases to \$20,000,000.00, in attorney fees to SKG above and beyond the \$26,500,000.00 in attorney fees

paid by State Farm for settlement of the claims of all existing clients of SKG.

77. Accordingly, SKG, of which Plaintiff was still a member, filed a motion requesting the conditional certification of a settlement class and preliminary approval of the settlement.

78. On March 7, 2007, Defendants, and particularly Scruggs, without notifying Plaintiff, filed a Notice of Withdrawal of Plaintiffs' Motion for Order Conditionally Certifying A Rule 23(b)(1)(A) and (b)(2) Class Action and Preliminarily Approving Settlement, a true and correct copy of which is attached hereto as Exhibit D.

79. The ostensible reason for withdrawal of the motion for conditional class action approval and preliminary approval of a settlement was stated as abandonment of a settlement class is in the interests of the individual policy holders; however, under federal class action practices, any policy holder who is not satisfied with a settlement may opt out and proceed with individual litigation.

80. On information and belief the true reason for withdrawing from the proposed class settlement was to tie that settlement to separate litigation which Defendants were personally interested, but which has no relevance to the interests of the Mississippi clients, and therefore has created a conflict of interest that may have precluded the Defendants as well as Plaintiff from serving as class counsel and participating in the \$10,000,000.00 to \$20,000,000.00 attorney fee.

81. The proposed class settlement had been announced in the press and in other manners, is known to policy holders who would have benefitted under the settlement, and was stated to be satisfactory by the Defendants at such time.

82. Plaintiff has been exposed to potential liability by the action of Defendants from those policy holders who would have benefitted from a class action, for example, avoiding the

expenses of individual litigation, obtaining speedier resolution, and spreading of attorney fees and expenses throughout the entire class.

83. At the commencement of this litigation, but before the case was actually filed, Defendants were provided with a courtesy copy of the proposed Complaint.

84. Plaintiff had repeatedly requested to arbitrate any disputed fee arrangements under the terms of the agreement, but Defendant denied Plaintiff was entitled to arbitration, and refused to arbitrate.

85. Defendants subsequently presented Plaintiff with a copy of a Motion to Compel Arbitration claiming that the Defendants were entitled to arbitration and that arbitration was required by the former agreement.

86. Defendants' belated assertion that they had a right to arbitration, which assertion came only after the Plaintiff had been forced to file a Complaint, and which came after Defendants denied Plaintiff the right of arbitration, is an act of tortious bad faith that has damaged Plaintiff.

87. Defendants' prior refusal to engage in arbitration is a clear waiver of the arbitration clause, voided the arbitration clause, and cancelled Defendants' right to invoke arbitration.

88. At all times pertinent to this Complaint, commencing with the execution of Exhibit A, Plaintiffs' rights to an equal distribution of attorney fees were fully vested.

The Improper Conduct Reached New Heights - Attempted Bribery of a Judge

89. On information and belief which the Plaintiff charges to be true, one or more members of the group engaged in such improper conduct that it constitutes criminal activity.

90. This conduct is set forth in attached indictment which is Exhibit B. All of the Defendants knew or with the exercise of reasonable diligence should have known that this conduct was taking place.

91. Orders were drafted on behalf of the Defendants which would have inured to the benefit of all Defendants if they had been entered.

92. All of the Defendants are charged with the conduct of persons acting on behalf of SKG and are therefore fully responsible for the acts alleged in Exhibit B. All Defendants through singular counsel presented a consolidated defense.

V. CAUSES OF ACTION

The Contract is Void

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

94. The conduct of the Defendants as alleged in the attachment as Exhibit B to this Complaint voids any agreement among the parties.

95. The contract is unconscionable given the right of members of the group the right to vote out and “freeze out” the other members thereby increasing their percentage which makes the contract void.

96. The contract is void because it is apparent from Exhibit E, the letter from Don Barrett to the court stating Scruggs is no longer a member of the group, and Exhibit F, the letter from Scruggs stating that he apparently can not be voted out by the group.

97. 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.

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

99. As a result, of this unconscionable interpretation of the contract and the unconscionable acts of the Defendants, the contract is void and the Plaintiffs sustained substantial damages.

Count II - Tortious Bad Faith Breach of Contract

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

101. Defendants' refusal to recognize Plaintiff's inarguable right to arbitration until after suit was filed, and then to assert it, is itself a separate act of bad faith in addition to the tortious breach of contract set out in the paragraphs above.

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

Count III - Breach of Fiduciary Duties

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

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

105. 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.

106. 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.

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

108. 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.

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

Count IV - Usurpation

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

111. 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.

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

Count V - Conversion

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

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

profits.

115. 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.

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

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

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

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

Count VI - Intentional Interference with Prospective Business Advantage

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

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

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

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

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

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

promises.

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

Count VII - Fraud

This count is applicable to Scruggs and Barrett individually.

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

128. 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.

129. The Defendants have callously added insult to injury.

130. 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

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

132. 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.

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

134. 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.

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

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

137. 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 IX - Conspiracy

138. 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.

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

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

Count X - Unconscionability

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

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

Count XI - Declaratory Judgment

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

144. 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.

145. Plaintiff is entitled to a declaratory judgment that Plaintiff is entitled to indemnification by the Defendants against any and all claims or suits of whatsoever kind that may arise from actions taken by the SKG.

146. The Plaintiff is entitled to a declaratory judgment. The conduct of the “alleged agreement” among the parties is void as a result of the actions of the Defendants including their unconscionability in the “voting out” of the Plaintiff in January of 2007 and the acts of certain of the Defendants, acts which all the Defendants are responsible for because they knew, or should have known, what was taking place in litigation where important orders were being issued as a result of attempted bribery.

147. As a result, a declaration that this matter will be treated as a common law, or statutory partnership with each partner being equal.

COUNT XII - Intentional Interference with the Exercise of Constitutional, Statutory and Common Law Rights

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

150. The conduct of the Defendants, or some of them, as shown in Exhibit B, that is the act of attempting to bribe a judge to influence the outcome of this allegation either by taking direct intentional action or by failing to determine what orders were being drafted and issued by other partners, which makes all of the Defendants responsible for the said acts, constitutes an act depriving the Plaintiffs of their constitutional, statutory and common law rights of due process to use the judicial system for a fair and proper adjudication of not only the liability of the Defendants but the damages, including punitive damages that have been sustained by the Plaintiff.

151. Said acts of any of the Defendants attributed to all of them because of the direct

action of some of the Defendants and the failure to know what they should have known of other Defendants is an egregious breach of their duties to the Plaintiff.

152. The nature of the acts constitute a separate basis for punitive damages as well as the other punitive damage to which the Plaintiff is entitled because of the attempted bribery of the judge in this cause.

COUNT XIII - Punitive Damages

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

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

VI. AD DAMNUM

155. 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.

156. 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.

157. 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 counts herein mentioned constitutes conduct that requires punitive damages.

158. The Plaintiff demands punitive damages from the Defendant Richard Scruggs and

Don Barrett and David Nutt. 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 three tortfeasors and others from engaging in such conduct in the future.

159. The Plaintiff demands punitive damages for the specific act of attempting to bribe the judge from all of the Defendants in this cause either because they did direct acts, their agents did direct acts or they knew or should have known the acts being done by the Defendants who attempted to bribe the judge or the agent of the Defendants who attempted to bribe the judge.

160. The Plaintiff demands a declaratory judgment stating that the “agreement” among the parties is void and the only agreement is statutory a common law partnership whereby all of the proceeds of the partnership prior to January, 2007 and all proceeds to come into the partnership subsequent to January, 2007 are all partnership assets to which the Plaintiff is entitled or its twenty percent (20%) share.

161. The Plaintiff demands separate punitive damages for the attempted bribery of a judge in this cause.

162. The Plaintiff demands all costs of this proceeding.

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

164. The Plaintiff demands post-judgment interest.

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

166. The Plaintiff demands reasonable attorneys' fees.

167. Plaintiff demands a declaratory judgment that Plaintiff is entitled to indemnification by the Defendants against any and all claims or suits that may arise from actions taken by the SKG.

RESPECTFULLY SUBMITTED, this the _____ day of _____, 2007.

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, PLLC

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