

**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

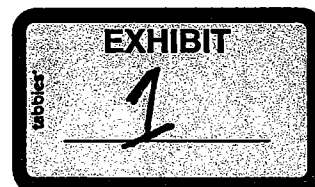
Paul Benton  
181 Main Street  
P.O. Box 1341  
Biloxi, MS 39533-1341

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.

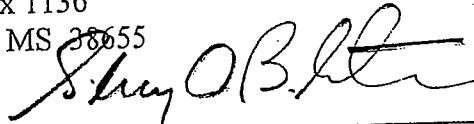
No person shall be considered the drafter of this Agreement.

**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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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

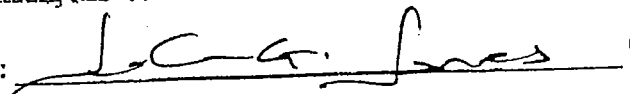
BY: \_\_\_\_\_

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: 

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY

JONES, FUNDERBURG, SESSUMS,  
PETERSON & LEE, LLC

PLAINTIFF

VS.

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

ANSWER, DEFENSES, AND DEMAND FOR ARBITRATION

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 file their Answer, Defenses and Demand for Arbitration to the First Amended Complaint filed herein against them, as follows:

FIRST DEFENSE

All disputes between the parties, including plaintiff's First Amended Complaint and all allegations, claims, and causes of action set forth therein, are subject to binding arbitration pursuant to the arbitration provision included in the Joint Venture Agreement entered into by the parties. This action should be stayed and plaintiff should be compelled to submit to arbitration.

SECOND DEFENSE

Plaintiff's First Amended Complaint fails to state a claim against the defendants upon which relief may be granted.

LAFAYETTE COUNTY  
**FILED**

APR 10 2007

/ Mary Alice Busby  
CIRCUIT CLERK  
BY \_\_\_\_\_ D.C.

### THIRD DEFENSE

Plaintiff's First Amended Complaint should be dismissed pursuant to the Joint Venture Agreement because plaintiff covenanted that it would not seek other compensation through litigation or otherwise from the other parties to the Joint Venture Agreement.

### FOURTH DEFENSE

Plaintiff's First Amended Complaint fails to allege fraud with sufficient particularity pursuant to Miss. R. Civ. P. 9(b).

### FIFTH DEFENSE

The First Amended Complaint contains immaterial, impertinent and scandalous matter which must be stricken pursuant to Miss. R. Civ. P. 12(f). Such matter is detailed in the Sixth Defense, Answer.

### SIXTH DEFENSE

### ANSWER

Without waiving their right to be heard regarding the above Defenses, defendants respond to the allegations of plaintiff's First Amended Complaint paragraph by paragraph, as follows:

Defendants deny the allegations contained in the headings contained in Plaintiff's First Amended Complaint, including the headings before paragraphs 1, 11, 15, 20, 29, 33, 36, 37, 38, 41, 43, 61, 82, 86, 89, 96, 99, 106, 113, 117, 124, 127, 129, and 132. Further, this Court should strike the immaterial, impertinent, and scandalous matter contained in each of the headings in Plaintiff's First Amended Complaint.

1. Regarding the second sentence of Paragraph 1, defendants admit that all the disputes between plaintiff and defendants developed as a result of a Joint Venture Agreement entered

among the plaintiff and the defendants. Defendants admit the allegations contained in the third and fourth sentences contained in Paragraph 1. Defendants deny the remaining allegations contained in Paragraph 1.

2. Defendants deny the allegations contained in Paragraph 2 and affirmatively state that jurisdiction is not proper in this Court because the parties contractually agreed to submit any dispute arising under or relating to their Joint Venture Agreement to binding arbitration pursuant to the guidelines of the American Arbitration Association. Therefore, jurisdiction is proper with the American Arbitration Association.

3. Subject to response to Paragraph 2 regarding lack of jurisdiction, defendants admit the allegations contained in Paragraph 3.

4. Defendants admit the allegations contained in Paragraph 4.

5. Defendants admit the allegations contained in Paragraph 5.

6. Defendants admit the allegations contained in Paragraph 6.

7. Defendants admit the allegations contained in Paragraph 7.

8. Defendants admit the allegations contained in Paragraph 8.

9. Defendants admit the allegations contained in Paragraph 9.

10. Defendants admit the allegations contained in Paragraph 10.

11. Defendants admit the allegations contained in the first sentence of Paragraph 11.

Defendants aver that Paul Benton never became a member of the Joint Venture.

12. Defendants admit that Jones and Funderburg have represented Defendants Scruggs and Scruggs Law Firm. Defendants deny the remaining allegations contained in Paragraph 12.

13. Defendants deny the allegations contained in Paragraph 13.

14. Defendants deny the allegations contained in Paragraph 14.
15. Defendants deny the allegations contained in Paragraph 15.
16. Defendants deny the allegations contained in Paragraph 16.
17. Defendants deny the allegations contained in Paragraph 17.
18. Defendants deny the allegations contained in Paragraph 18.
19. Defendants deny the allegations contained in Paragraph 19.
20. Defendants deny the allegations contained in Paragraph 20.
21. Defendants deny the allegations contained in Paragraph 21.
22. Defendants deny the allegations contained in Paragraph 22.
23. Defendants deny the allegations contained in Paragraph 23.
24. Defendants deny the allegations contained in Paragraph 24.
25. Defendants deny the allegations contained in Paragraph 25, and further request that this Court strike the immaterial, impertinent and scandalous comments contained in Paragraph 25.
26. Defendants deny the allegations contained in Paragraph 26.
27. Defendants deny the allegations contained in Paragraph 27.
28. Defendants deny the allegations contained in Paragraph 28.
29. Defendants admit the allegations contained in Paragraph 29.
30. Defendants deny the allegations contained in Paragraph 30.
31. Defendants deny the allegations contained in Paragraph 31.
32. Defendants admit that plaintiff contacted the Scruggs Law Firm indicating that he would be receptive to a buy-out offer from the other members of the Joint Venture, but defendants deny the remaining allegations contained in Paragraph 32.

33. Defendants admit the allegations contained in Paragraph 33.

34. Defendants deny the allegations contained in Paragraph 34.

35. Defendants admit the allegations contained in Paragraph 35.

36. Defendants admit that plaintiff sent correspondence to Sidney Backstrom of the Scruggs Law Firm and courtesy copied all members of SKG, but deny that plaintiff invoked any rights to arbitration or that any decision regarding attorneys' fees had been made. Defendants further deny the remaining allegations contained in Paragraph 36.

37. Defendants admit the allegations contained in Paragraph 37.

38. Defendants deny the allegations contained in Paragraph 38.

39. Defendants deny the allegations contained in Paragraph 39.

40. Defendants admit the allegations contained in Paragraph 40.

41. Defendants admit that Sidney Backstrom of the Scruggs Law Firm sent a letter dated February 22, 2007, to the members of SKG. Defendants aver that the letter speaks for itself and, therefore, deny the remaining allegations contained in Paragraph 41.

42. Defendants aver that any written correspondence by Dewitt "Sparky" Lovelace to plaintiff speaks for itself, and defendants, therefore, deny the allegations contained in Paragraph 42.

43. Defendants admit that a meeting of the Joint Venture was held on March 2, 2007. Defendants deny the remaining allegations contained in Paragraph 43.

44. Defendants deny the allegations contained in Paragraph 44.

45. Defendants deny the allegations contained in Paragraph 45.

46. Defendants deny the allegations contained in Paragraph 46.

47. Defendants deny the allegations contained in Paragraph 47.

48. Defendants deny the allegations contained in Paragraph 48.

49. Defendants deny the allegations contained in Paragraph 49.

50. Defendants deny the allegations contained in Paragraph 50.

51. Defendants deny the allegations contained in Paragraph 51.

52. Defendants deny the allegations contained in Paragraph 52.

53. Defendants deny the allegations contained in Paragraph 53.

54. Defendants are currently without information or knowledge sufficient to form a belief regarding the truth of allegations contained in Paragraph 54, and, therefore, deny the same.

55. Defendants admit that on March 2, 2007, an agreement of four of the five members of the Joint Venture was reached after a vote regarding the distribution of fees pursuant to the Joint Venture Agreement. Defendants admit that an agreement was reached by four of the five members of the Joint Venture after a vote to remove plaintiff from the Joint Venture pursuant to the "removal" provision contained in the Joint Venture Agreement. Defendants deny the remaining allegations contained in Paragraph 55.

56. Defendants deny the allegations contained in Paragraph 56.

57. Defendants admit that an agreement to remove plaintiff from the Joint Venture was reached by four of the five members of the Joint Venture pursuant to the Joint Venture Agreement after a vote. Defendants admit that the Joint Venture Agreement signed and agreed to by plaintiff provides that any member being removed pursuant to the "removal" provision will forfeit further rights under the Joint Venture Agreement. Defendants deny the remaining allegations contained in Paragraph 57.

