

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF MISSISSIPPI

3
4 ALWYN H. LUCKEY

PLAINTIFF

5 VERSUS

NUMBER 1:05CV00089-JAD

6 RICHARD F. SCRUGGS, ET AL

DEFENDANT

7 -----
8 TRIAL TRANSCRIPT

9 JUNE 8, 2005
10 -----

11 BEFORE: U.S. Magistrate Jerry A. Davis
12 TAKEN: June 6-17, 2005
13 LOCATION: Federal Building, Oxford, MS

14 A-P-P-E-A-R-A-N-C-E-S

15 HONORABLE CHARLIE MERKEL
16 HONORABLE CINDY MITCHELL
17 HONORABLE STEVE COX
18 HONORABLE WILL RAIFORD
19 REPRESENTING THE PLAINTIFF

20 HONORABLE JACK DUNBAR
21 HONORABLE JONES
22 HONORABLE ELLINBURG
23 HONORABLE JOEY LANGSTON
24 HONORABLE TIM BALDUCCI
25 HONORABLE CATHERINE HOWIE
REPRESENTING THE DEFENDANT

26 REPORTED BY: DEBORAH A. HARRIS, RMR, CRR, CSR
27 Official Court Reporter

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Richard Scruggs-----		476		
Alwyn Luckey-----		624		
CERTIFICATE OF COURT REPORTER-----				700

1 (DAY THREE, JUNE 8, 2005.)

2 (COURT OPENED.)

3 * * *

4 **THE COURT:** Before we get started this morning, I was
5 asked yesterday after the close to reconsider my ruling
6 admitting the 1992 letter from Mr. Scruggs and Mr. Luckey to
7 Mr. Wilson on their offer of compromise to settle their
8 disagreement.

9 I read the briefs and read some of the cases on it and
10 quite frankly. I'm not sure I understand why we're going to
11 admit some settlement offers such as the one as the agreement
12 with Mr. Luckey and not others, but in the event I looked at
13 it in a vacuum, not considering that -- and there are some
14 cases that support it, even though they're from the Ninth
15 Circuit, I know, that -- which I read that stated that
16 settlement groups could be used to clarify business
17 arrangements, and there are cases that support Mr. Merkel's
18 position, too. I'm not going to say there aren't. But in the
19 final analysis looking at the Fifth Circuit cases which state
20 that if they're going to be used, they should be used as
21 impeachment materials. I'm sure that we can use them when Mr.
22 Luckey testifies as an impeachment matter. So I will admit
23 them for impeachment purposes only and they can be used to
24 question about the business relationship in that regard and
25 that regard only. I think that is the best ruling I can give

1 you on the state of the law as I read it.

2 I also have read now the deposition of Mr. Daniel Myer
3 and that will be admitted as the next numbered exhibit.

4 You may proceed, Mr. Merkel.

5 **MR. JONES:** Lowery Lomax is here, Your Honor, as a
6 preliminary matter.

7 **THE COURT:** Good to see you, Mr. Lomax.

8 **MR. JONES:** Mr. Lomax tell me he was served with a
9 subpoena duces tecum for documents yesterday and he obviously
10 hadn't had an opportunity to get all that together so with 10
11 days under the the rules or 14 days, he just received the
12 subpoena yesterday.

13 **MR. LOMAX:** I just need some -- Your Honor, this is a
14 pretty laborious document to comply with. If I could
15 approach the bench and show Your Honor that.

16 **THE COURT:** Okay.

17 *(DONE.)*

18 **COURTROOM CLERK:** The deposition will be marked as 961.

19

20 **THE COURT:** Yes, okay. And they all deal with the OHL?

21 **MR. LOMAX:** Yes, Your Honor.

22 **MR. MERKEL:** The same subject matter as the motion to
23 produce to compel that we talked about late yesterday
24 afternoon.

25 **MR. LOMAX:** It's thousands of documents. It's -- many

1 are very old and in archives. I don't have any objection to
2 providing them. I do -- I am familiar with these documents
3 and I would doubt very seriously if Mr. Scruggs' office has
4 not already produced those, and I say that because the only
5 documents that I have with OHL are documents that Mr. Scruggs
6 sent to me, a copy to me, or documents that I sent to him, so
7 I can't imagine that they don't already have those.

8 If they would identify which documents they believe they
9 do not have, I can more specifically go find those particular
10 documents. If they want them all, I'll get busy and we can
11 have them within days, but they're in the 10s of thousands,
12 and I just need to know how much I get paid per page and I'll
13 get busy.

14 **MR. MERKEL:** Your Honor, we knew -- literally knew
15 nothing until I want to say April 7 maybe that there was even
16 a settlement of OHL and HAVS in the world and we get a letter
17 on that day saying there's \$17,750,000, that it may come
18 close to netting out the amount of booked expenses for this
19 venture; nothing else.

20 So I wrote and said, You know, we would like certain
21 things, a laundry list of eight or 10 different types of
22 things.

23 And we got another letter the next day that had some
24 copies of a couple of checks that Mr. Lowery had sent to Mr.
25 Scruggs, one of them designated expenses and one of them

1 designated fees, that were from back in last December. We got
2 a couple of client contracts, exemplar contracts that would
3 have been with these kinds of clients, and I believe that's
4 about all at that point. I may be wrong about an item or two,
5 but not very much.

6 We wrote again and said, We want some more. And then we
7 got a box with 4300 pages of literally invoices and receipts
8 and cancelled checks and things of that nature.

9 **THE COURT:** For expenses?

10 **MR. MERKEL:** For expenses over the last 10 years or some
11 such. Again, I'm going by memory, but it starts somewhere
12 around 1990, I think, and comes forward.

13 **THE COURT:** As I understand the theory of your case what
14 you're really looking for is the total amount of settlement
15 and the expenses?

16 **MR. MERKEL:** That's correct.

17 **THE COURT:** So there's a lot of documents in there in
18 those 10s of thousands that Mr. Lomax has that aren't
19 relevant at all?

20 **MR. MERKEL:** We spent literally three weeks combing
21 through that to make sure there was nothing in there other
22 than what I described, and it's not helpful.

23 Now somehow or another Mr. Lomax calculated off of some
24 gross amount, which we don't know what the gross was, but in
25 December he calculated a fee and expense check and sent them,

1 with no explanation really of how he got it and out of what
2 amount he got it. And now there's another \$13 million odd
3 sitting there and it's going to be -- well, it's there. I
4 don't know whether the Paul Minor situation in Jackson is the
5 hang-up on it or what, but we got a letter saying they weren't
6 going to fool with it until July 15. And this is a huge sum
7 of money that the expenses are being, right now, charged to
8 what we claim Mr. Luckey's entitled to.

9 **THE COURT:** I understand that. Now you heard, Mr.
10 Lomax, what the crux of this is. What's your response?

11 **MR. LOMAX:** First off, I would think that this would be
12 a matter that the Court would take up or they could have a
13 final accounting assuming that they're successful in the
14 liability stage of the trial. If not, it's just a waste of
15 effort.

16 However, the reason we haven't distributed the money
17 right now, even the attorney fees, the large share of them, is
18 the fact that this is a settlement that involves some 4000
19 lawsuits and the accounting on it is just a nightmare. And
20 we're just making sure that every penny is distributed to our
21 clients and the insurance carriers and the employers that have
22 subrogation liens and what-have-you, and we need to see that
23 our co-counsel, Mr. Minor, who was a co-venturer in this, as
24 Mr. Lomax was, as the Scruggs firm was, so we're making sure
25 that we get all the expenses from all the entities. And we

1 gave Mr. Minor a little extra time.

2 **THE COURT:** So you don't have all the expenses?

3 **MR. LOMAX:** I don't have any from Mr. Minor and what he
4 claims he spent on this case and we need that before we can
5 see what the net attorney fees are.

6 **THE COURT:** Let's do this, Mr. Merkel, I'm not denying
7 your right to access that at this point at all, but why don't
8 we take the testimony, and I assume Mr. Lomax has been
9 subpoenaed to testify.

10 **MR. LOMAX:** No.

11 **MR. MERKEL:** We tried for several days and Mr. Lomax was
12 not in and so we then had the subpoena served on the office
13 for the records.

14 **THE COURT:** Let's do this, Mr. Lomax. Let's, to the
15 extent you have them, I'd like for you to produce documents
16 reflecting the expenses of the OHL cases and the settlement
17 funds received and that's it. And we'll leave it at that
18 right now and --

19 **MR. MERKEL:** Your Honor, there were disbursements made
20 in December. If we could, we would like that. That's an
21 accomplished fact and we don't know what the gross amount
22 was.

23 **THE COURT:** And the disbursements.

24 **MR. LOMAX:** It's an open book.

25 **THE COURT:** That's all I'll ask you to provide.

1 **MR. LOMAX:** Do you want the underlying documents for the
2 expenses?

3 **MR. MERKEL:** I don't care again about all the invoices
4 at all. I'm not worried about, you know, the Wal-Mart bill
5 or whatever it is, I would like to know what y'all stated in
6 your disbursement sheet in November. You know, if you got a
7 gross of \$4 million, how much client recoverable expense did
8 you take back from the clients, how much fee did you charge
9 grossly and then how did you split up what you did between --

10 **MR. LOMAX:** Are we talking about the synopsis?

11 **THE COURT:** Yeah.

12 **MR. MERKEL:** A disbursement sheet.

13 **MR. LOMAX:** That's easier.

14 **THE COURT:** Okay.

15 **MR. MERKEL:** What you got in gross and how it got to two
16 checks you sent to Mr. Scruggs.

17 **MR. LOMAX:** Even that may take until early next week.

18 **THE COURT:** I think that's fair to give you to early
19 next week, but that ought to be a lot simpler for you.

20 **MR. LOMAX:** I promise you it will be.

21 **MR. MERKEL:** We're trying to make your life simple.

22 **MR. LOMAX:** I thank you for that.

23 **THE COURT:** And Mr. Merkel's.

24 **MR. LOMAX:** And with that, I'll get busy.

25 **THE COURT:** Okay.

1 **MR. JONES:** And on this issue you asked me to give Mr.
2 DeLoach, we've got a project accounting through March 31 that
3 shows the allocation, and no client -- no money's been
4 disbursed except some client money in a December payment.
5 But we've got the April 18 letter and then a project
6 disbursement or a project accounting that Mr. DeLoach did
7 that carries it through the end of March of 2005. We
8 provided that to Mr. Merkel.

9 **MR. MERKEL:** If that's the same stuff I got before, we
10 still don't know what came in in December. There's not --

11 **THE COURT:** Concentrate on the December gross and the
12 expenses charged against it and the disbursements, Mr. Lomax.

13 **MR. JONES:** My understanding is that the December
14 documents that we provided to him were everything. That's
15 all that --

16 **THE COURT:** What we're looking for is the actual total,
17 the summary sheets, and that ought to be something that in
18 Mr. Lomax's books that ought to be easy to come up with.

19 **MR. MERKEL:** Somehow the two numbers that I assume --

20 **MR. LOMAX:** Your Honor, it may be a misunderstanding or
21 lack of understanding on behalf of the plaintiffs that they
22 don't understand what we have here. Maybe we'll sit down and
23 show it to them and explain it to them.

24 **THE COURT:** Great.

25 **MR. MERKEL:** I can't, even from this, Your Honor, give

1 you the identity of it, but there is a letter from Mr. Lomax
2 that says, Dear Mr. Scruggs, enclosed are two checks, three
3 or \$400,000 for expenses, a million, three for fees. Thank
4 you very much.

5 And we don't know what the gross was that that came off
6 of and it's not reflected in this.

7 **THE COURT:** Do you understand what their concerns are?

8 **MR. LOMAX:** Yes, sir.

9 **THE COURT:** Go and sin no more.

10 (LAUGHTER.)

11 **THE COURT:** Any other clean-up matters?

12 **MR. MERKEL:** Do I owe you any exhibits as far as at this
13 time?

14 **COURTROOM CLERK:** No.

15 **THE COURT:** Let me congratulate you Ole Miss folks on
16 the number of baseball players that got drafted yesterday.
17 It was fairly impressive. Although I will note that the
18 first one chosen was a Mississippi State boy.

19 **MR. MERKEL:** I noticed that.

20 **MR. LOMAX:** One other matter, Your Honor. I've just
21 been served with a subpoena that I, quote, have been
22 avoiding. Anyway, it says for the 13th. I would like to
23 know exactly when I will be here because I would like to
24 return. If they need me this week, I'm in town this week.
25 I'm in Oxford this week.

1 **MR. MERKEL:** We can call you and we'll try to get you
2 accommodated this week, and do our best to. If you would
3 give somebody here a number that we can reach you at a cell
4 phone or whatever, we'll give you lead time. We're really
5 not running exactly on schedule.

6 **THE COURT:** There's a whole lot of people from the coast
7 that have sent up questions to ask you under oath.

8 **MR. LOMAX:** Thank you, Your Honor.

9 **THE COURT:** Okay.

10 **MR. MERKEL:** Ready, Your Honor?

11 **THE COURT:** Ready.

12 **MR. MERKEL:** We would like first to offer into evidence
13 Exhibit 318, which is a composite exhibit, clinical
14 evaluations from Dr. Louis Rubin.

15 **THE COURT:** There was an objection preserved. Is there
16 any further objection to that document?

17 **MR. DUNBAR:** No objection, Your Honor.

18 **THE COURT:** Okay. P318 will be admitted.

19 *DIRECT EXAMINATION CONTINUING*

20 **BY MR. MERKEL:**

21 Q Mr. Scruggs, I believe when we closed yesterday we
22 were talking about your arrangement with David Nutt that was
23 entered in October of 1996. Do you recall that subject
24 matter?

25 A Yes.

1 Q I'm going to show you -- I would like to show you
2 Exhibit 266, if we can screen it. And if not, I'll put it on
3 the Elmo.

4 Now, this, Mr. Scruggs, is a letter from you to David
5 Nutt dated October 28th, 1996, which is shortly, I believe,
6 after you entered the letter agreement with Mr. Nutt. It takes
7 the format at least of saying statement for legal services
8 rendered by this firm through October in regards to, and then
9 bills him for \$500 thousand.

10 What was the connotation of that? Why was a bill
11 like that rendered as a statement for legal services if in fact
12 this was simply part of your agreement for him to fund two and
13 a half million dollars of expenses?

14 A It's what I explained yesterday. It was a bill to
15 him for half a million dollars for that portion of his
16 expenses.

17 Q Was it intended to imply that he had performed legal
18 services to the tune of \$500 thousand or you had performed
19 legal services for him that you were billing him for? Why the
20 format there?

21 A I don't have any explanation why it says legal
22 services rather than expenses. The agreement says expenses
23 and that's all he would have been responsible for. There were
24 certainly no legal services being reimbursed or paid at that
25 time.

1 Q I'm going to hand you, Mr. Scruggs, just hopefully
2 to save some time, the rest of that that was apparently
3 attached behind or submitted with one of those bills and ask
4 you if you would leaf through that enough to familiarize
5 yourself with the general character of the pile of papers and
6 then maybe we can identify what they are and why they were
7 submitted to Mr. Nutt.

8 A Okay.

9 Q It appears to be an itemization of expenses that you
10 were telling Mr. Nutt you had expended as of that date on the
11 tobacco venture and that was some backup data for him to know
12 how much he was going to have to match? Is that --

13 A Either expended or incurred, yes, I think so.

14 Q So it could be some things on there that had not
15 been paid for yet?

16 A Possibly.

17 Q Some things like what we talked about the other day,
18 Mr. Paladino and some of those types of things?

19 A It is possible that that was on there. I mean
20 without having looked at this ever --

21 Q So you intended to bring him up to paying for
22 whatever had been billed, whether it had been paid by you or
23 was simply owed by you?

24 A I think that's generally correct, yes.

25 Q All right, sir.

1 **MR. MERKEL:** Your Honor, this is all under the one
2 exhibit, 266, which is the two statements rendered, and the
3 backup.

4 **BY MR. MERKEL:**

5 Q Now, in June of 1999, Mr. Scruggs, by that point in
6 time -- let me withdraw that and start back a little bit.

7 After Mr. Nutt's arrival pursuant to the agreement in
8 October of 1996, how long was it until the first settlement of
9 any kind that was going to throw off money to the Mississippi
10 tobacco litigation was it?

11 A Well, the Mississippi case settled the first week in
12 July of 1997, although there had been a previous settlement
13 with Liggett I think in March of 1996 that potentially threw
14 off money, not attorneys' fees, but money to the state, to the
15 client. The lawyers who participated in representing the
16 states waived all attorneys' fees in that settlement with
17 Liggett, I want to say in March of '96. I think the state
18 benefitted from it.

19 Q From the standpoint of my question, as far as
20 anything that threw off money to the attorneys' fees to help
21 you defray costs and so forth, the Liggett thing didn't do
22 that. The first would have been July of 1997?

23 A We got no attorney fees or cost reimbursement, to my
24 knowledge, from the Liggett resolution; that's correct. The
25 first one would have been in July of 1997.

1 Q All right. And that was the settlement of what in
2 July of '97.

3 A It was the settlement of the State of Mississippi
4 claim against the tobacco defendants.

5 Q And as far as the amounts of the settlement, there
6 was a dollar amount that was agreed upon to be paid to the
7 state of Mississippi, correct?

8 A There was. It was an adjustable amount with the
9 Most Favored Nation clause in case another state got more. It
10 was indexed to what the state of Mississippi would have had
11 under the national settlement negotiated two weeks before
12 that.

13 Q And as far as attorneys' fees, Mr. Scruggs, they
14 were not agreed upon or settled as part of that, but were left
15 to be arbitrated; correct?

16 A Generally, that's correct. They were not paid --
17 attorneys' fees were not paid until a long time after that by
18 arbitration.

19 Q And finally there was an arbitration held and I
20 think Mr. Dunbar was one of the arbitrators on that. When did
21 that take place?

22 A I think the first one was in December of, I want to
23 say '98.

24 Q Okay. Now, you did get some money for attorneys'
25 fees before the arbitration -- well, you got some money,

1 whether it was expenses or fees, it was a chunk of money paid
2 in '97, wasn't there?

3 A It seems to me that we got an advance on those
4 attorneys' fees by virtue of the settlement that Texas reached
5 and the MFN provisions, Most Favored Nation provisions, that
6 in advance was paid to all the states that had settled before
7 the arbitration. I think that's correct. I'm not sure it was
8 '97 or '98 when we got it, but yes.

9 Q And approximately what was that?

10 A I think the legal team for the state of Texas got an
11 advance of like \$50 million on what the arbitration would --

12 Q Ultimately be.

13 A -- ultimately be. If it wasn't that much, they
14 would be responsible for paying it back. And I think
15 Mississippi's 12 law firms and those affiliated with them got
16 a similar gross amount, I think.

17 Q Okay. And then when was the next event that caused
18 amounts of either fees or expenses to be liquidated?

19 A There may have been a similar advance when Florida
20 settled. Other than that, I don't know of any that happened
21 until the arbitration in December of '98.

22 Q And when was the arbitration award made?

23 A Late December of 1998, is my recollection.

24 Q Very shortly after the hearing?

25 A I think there was an agreement that it be resolved

1 within a week or something like that, yes, of the hearing.

2 Q And when did you first, Mr. Scruggs, begin making
3 payments to Mr. Nutt of either reimbursements of the expenses
4 that he had paid into Scruggs Millette or of any of the fees
5 that came out of these advances?

6 A I don't know, as I sit here now.

7 Q Let me show you part of Exhibit 781. No, let me
8 show you 784 first, Mr. Scruggs.

9 (DONE.)

10 **BY MR. MERKEL:**

11 Q Now, that document, Mr. Scruggs, is apparently
12 produced or at least as of July 31, 1999, and it says summary
13 of tobacco payments as of the second quarter and payments to
14 Nutt, McCormick and Benton, wire transferred to Mr. Nutt on
15 July 7, 1998 for some \$4 million, another three weeks later or
16 so for another \$4 million. Would those have been the first
17 payments you began making to Mr. Nutt?

18 A We were not -- I suppose if you say payment rather
19 than fee I think I would agree with that. I don't think we
20 had any fees that early in the day. We did have an expense
21 reimbursement from the tobacco industry of some \$12 million.
22 I would guess that's what that is.

23 Q Mr. Scruggs, Mr. Nutt hadn't advanced 11 and a half
24 million dollars as of that point in time, has he? That's four
25 million, two, and four million, two, and three million, one,

1 all in --

2 A I don't think so. Sounds to me like that's just a
3 duplicate entry, but I don't think so.

4 Q Was that document RFS 10298 on the right-hand corner
5 was that prepared by your accounting department?

6 A Yes.

7 Q By July 1999, who was handling that type of stuff in
8 your office? Was Mr. DeLoach there by that point in time?

9 A Possibly. I think he came in in late '99, maybe
10 2000. So I would assume that someone in my office generated
11 that document and not Mr. DeLoach, but I don't know for sure.

12 Q And in your best judgment is that just a mistake, a
13 duplicate \$4.2 million that's all added up there to get to
14 \$41,800,000?

15 A Well, the first two amounts are identical, it seems
16 to me.

17 Q Undoubtedly, but they're on different dates, 7/7/98
18 and 8/3/98, Mr. Scruggs.

19 A I don't have any explanation, don't know why, didn't
20 produce the documents. That's the best I can do.

21 Q Was it produced by your office at your request as a
22 representation of Mr. Nutt of where you and he were with
23 regard to these fees?

24 A Whether this was ever given to Mr. Nutt or not, I
25 don't know. If it was produced by my office, it was.

1 **BY MR. MERKEL:**

2 Q Attached to --

3 **MR. MERKEL:** No, that's the same page. Let's just do it
4 on the Elmo.

5 **BY MR. MERKEL:**

6 Q Now, that document, Mr. Scruggs, was attached behind
7 the document we looked at. It says Ernie Coward, Nutt's
8 unreimbursed costs. It says airplane cost, 300K -- I guess
9 that's \$300,000 -- no itemization, just 300,000, and
10 contributions as requested by RFS to be made, 200,000-300000.
11 Now, is that the way the expenses have been accounted for on
12 this? Was that justification for paying him 300,000 of
13 airplane expense?

14 A I can't answer that. I assume I took Mr. Nutt at
15 his word on that, but, you know, you can ask him that. I
16 don't know what that is. I do know that after the Mississippi
17 settlement in early September and we got expense
18 reimbursements from the tobacco industry, as I just told you,
19 not attorney fees, but expense reimbursements, we plowed an
20 enormous amount of that back into the effort in Washington to
21 get -- to get National legislation passed as we had agreed to
22 do on the June 20th, 1997 agreement. That's a 1999 or '97
23 memo? Looks like '99.

24 Q 9/22/99 looks like to me.

25 A Right. And we had all done an awful lot of work

1 after the Mississippi settlement, and Florida and Texas, in
2 trying to get the national legislation passed, including
3 poling, hiring lobbyists, you name it.

4 Q Understanding that you say you were taking Mr. Nutt
5 at his word, what did you pay him for contributions? Two
6 hundred or 300?

7 A I don't know.

8 Q Let me show you a HALT account activity statement
9 that is part of Exhibit 621. Looks like up there at the top,
10 Mr. Scruggs, it shows July 6, '93, cash -- I mean, of '98,
11 looks like \$50 million came in at that time. Does that sound
12 about right?

13 A I think that's what I just said. That would have
14 been an advance against the arbitration in -- that happened
15 about six months later.

16 Q And another part of Exhibit 636 shows as of that
17 same -- this is Scruggs Millette litigation fee awards
18 received, inception through July 1, 1999, and it looks like
19 out of those first 7/7/98 you 10,027,000; on August 3rd,
20 another \$10,027,000. Does that sound right there?

21 A I'm sorry, I can't see the dates again.

22 Q The top line is 7/7/98 and the next is August 3rd,
23 '98.

24 A I think that's correct. I think one of them was
25 Texas and one was Florida on the advances against an

1 arbitrated amount. I think that's correct. I don't know
2 which came first.

3 Q And this was the money paid to HALT for the
4 Mississippi case; correct?

5 A I don't know that it was paid to HALT unless it --

6 Q Let's look back at the previous document we had up
7 there, which is the HALT account activity that shows on that
8 same period of time, 7/6, the \$50 million coming in, and then
9 on 7/7, 10 million goes out to you. So would that not seem to
10 be consistent with it having been paid out of the HALT monies?

11 A Mr. Merkel, I can't argue with you, but I just don't
12 know without looking at this and -- in context with other
13 things, whether your surmise is correct.

14 **MR. DUNBAR:** Your Honor, I don't know where this is
15 headed in a way of being relative to even the constructive
16 trust claim. It seems to me the issue is how much did he
17 spend for, that is, did Scruggs Millette firm spend from up
18 through the point that they didn't spend any more, which I
19 think we all agree is at the end of October of '96, and
20 whether he had money to, of his own, to cover that, as
21 opposed to the claim of Mr. Luckey. After that time, and he
22 didn't put any -- well, whether he got ten million here or 40
23 there, what difference does it make? It's the total that
24 came in. And then if they want to question whether his
25 pay-outs of that amount to various sources was a reasonable

1 business expense, that's part of their claim, I guess. But
2 what is the point of saying, We got ten here, 20 there? We
3 can stipulate the total amount of tobacco fees that came in.
4 They know what it is. Everybody's got the books. That's not
5 a big secret. I'm just wondering why are we going through
6 this step by step on --

7 **THE COURT:** Can we speed this up by something like that?

8 **MR. MERKEL:** We'll try, Your Honor. I'll do my best.
9 I'm trying to develop the Nutt situation right now.

10 **THE COURT:** Okay.

11 **BY MR. MERKEL:**

12 Q Mr. Nutt was not in HALT, ever, was he, Mr. Scruggs?

13 A He was not an official member of HALT although his
14 involvement with me was approved at the time by the attorney
15 general, who was the client, so to speak.

16 Q Be that as it may, HALT was a group, had a contract,
17 a firm agreement, didn't they, Mr. Scruggs?

18 A Right.

19 Q And Mr. Nutt was not included in that group ever,
20 was he?

21 A Nor did they have to pay Nutt anything, to my
22 knowledge.

23 Q And, in fact, that \$10 million we looked at there,
24 the 4 million we looked at earlier, going out to Mr. Nutt came
25 out of that \$10 million, didn't it? The two 4 millions that

1 we looked at that you said were duplicates or somebody made a
2 mistake, they were actually 42 percent of your first two
3 payments from HALT, weren't they?

4 A If that were the case, it would have been an expense
5 reimbursement, not fee reimbursement. HALT didn't pay Mr.
6 Nutt any fee, the Scruggs firm paid Mr. Nutt's fee. HALT
7 actually benefitted from Mr. Nutt's work in helping with the
8 national resolution of this case, which would not have
9 happened if it hadn't been a national resolution, in my
10 judgment.

11 Q Well, Mississippi settled long before there was any
12 national resolution, didn't it?

13 A No.

14 Q Didn't settle in 1997?

15 A The national resolution actually happened two weeks
16 before that.

17 Q Okay. And as far as Mr. Nutt, the way that you --

18 **MR. MERKEL:** Let's try 781 and see if we can get it out
19 of that.

20 **BY MR. MERKEL:**

21 Q Exhibit 781, Mr. Scruggs. Now, that document
22 titled, unreimbursed tobacco litigation expenses as of June
23 3rd, 1999 and totals at the bottom some \$19,488,899, are you
24 familiar with that document?

25 A No.

1 Q Are you familiar with that form of document that's
2 periodically submitted to Mr. Nutt and to other people that
3 you are cutting some part of out of your quarterly payments?

4 A We sent routine reports to everyone that gets a fee
5 through our law firm, Mr. Nutt included, so I don't know how
6 to answer that question otherwise.

7 Q All right. And the third line item down, this is
8 June 1999, Mr. Scruggs, and you're showing litigation
9 contribution \$693,959. Now what litigations expenses were you
10 incurring at that point in time in 1999?

11 A We weren't incurring any. I think that's
12 unreimbursed as of June 1999?

13 **MR. DUNBAR:** I just don't know where this is all going,
14 Your Honor.

15 **THE COURT:** As I understood it, this is going to the
16 fact that Mr. Nutt was not part of HALT and the rest of it.

17 **MR. DUNBAR:** Well, it's sort of like so what?

18 **THE COURT:** Don't we have a compilation of the total
19 amounts received?

20 **MR. MERKEL:** We have a compilation of what we think or
21 believe to be the total amount of tobacco fees received to
22 date.

23 **THE COURT:** Can we get with the other side and see if
24 they don't agree? Seems to me if we could agree with that,
25 we would save a lot of time.

1 **MR. MERKEL:** Your Honor, I'm not worried about how much
2 fees came in right now, I'm trying to get to the expenses
3 that have been deducted that are argued to have reduced the
4 amount of the pie that Mr. Luckey's claim would apply to.
5 Those are unreimbursed expenses, is the claim there. That's
6 not the fees; that's expenses.

7 **THE COURT:** Do we not have a compilation of that to
8 date?

9 **MR. MERKEL:** No, sir, we don't have any agreement
10 whatsoever about expenses, either direct or overhead.

11 **MR. DUNBAR:** We certainly do have a list of all the
12 expenses. Now they may question them. If they want to
13 question them one at a time, if you paid X, is that a
14 reasonable business expense, that's within the claim. But
15 looks like we could get there a lot quicker than this.

16 **THE COURT:** I would like to, but by the same token, I
17 think that's what Mr. Merkel's trying to do, so we'll go on a
18 little bit further, but let's try to get to the meat of the
19 coconut.

20 **BY MR. MERKEL:**

21 Q All right, Mr. Scruggs, let's assume for the sake of
22 the question that this is a compilation as of that date.
23 Let's move on from time in there and look at Exhibit 745.

24 **THE COURT:** Can I ask a question?

25 **MR. MERKEL:** Yes, Your Honor.

1 showing you there?

2 A I believe so. It says that in the letter and I
3 believe that to be correct.

4 Q So whether you individually were doing it or not,
5 you were involved in creating these expense reports and
6 certifying the amount on them as being correct, were you not?

7 A I was not involved in generating the reports and I
8 was not --

9 Q You didn't ask them to be generated?

10 A That's a different question.

11 Q Did you, after whoever generated them, did you then
12 represent to the Chancery Court in Jackson County that they
13 were true and correct and --

14 A Yes.

15 Q -- when you filed them?

16 A I did.

17 Q Did you do that without having any idea whether they
18 were true or correct or --

19 A Mr. Merkel, I trusted the people that were compiling
20 them to do them properly. I had an idea about the people that
21 were preparing them and I trusted that they were doing their
22 very best to do it properly.

23 Q All right. Let's talk Mr. Scruggs, in general about
24 the types of expenses and the types of deductions that were
25 being reasonably taken on these quarterly and -- well, start

1 off with the June 1996 cash -- no, June '99 report and then
2 it's done quarterly with the same format every quarter. You
3 were not incurring any actual tobacco related expenses after
4 June of 1999, were you?

5 A You know, it depends on -- we were not litigating
6 anymore and had not been for more than a year or two prior to
7 that, if that's your question. Now, whether there were
8 expenses that were being incurred, for example, in defending
9 the state's allocation or defending the attorneys' fees from
10 political attack, there were expenses of that nature going on.
11 And still are today.

12 Q Well, they were also being deducted in each quarter
13 with all the expenses you had expended in defending this
14 litigation, weren't they?

15 A I think they were by mutual agreement; that's
16 correct.

17 Q And also being deducted were the expenses that you
18 were paying Jeffery Reynolds and others to pursue a
19 5000-dollar lawsuit against Cindy Mitchell in my law firm,
20 weren't you, to the tune of about \$2 million?

21 A Mr. Merkel, that was all sort of part and parcel of
22 the whole process we're here about today, so the answer is
23 yes. You and Ms. Mitchell and your law firm, and your client
24 in particular, is trying to take a big bite out of money that
25 was earned long after he had been dismissed. So, yeah, that

1 was one of the defensive measures we undertook, that's
2 correct.

3 Q You termed it an aggressive defense of this lawsuit
4 to sue the lawyers that had the audacity to bring the lawsuit
5 against you?

6 A Well, aggressive in the same sense that the lawsuit
7 that we're here about today is aggressive. If that's --

8 Q You think filing lawsuits that have no basis in fact
9 or law, Mr. Scruggs, is an ethical thing to do?

10 **MR. DUNBAR:** We're getting argumentative, Your Honor,
11 and I object.

12 **THE COURT:** Sustained.

13 **BY MR. MERKEL:**

14 Q And you've deducted -- let me get an exhibit number
15 on this, please.

16 **COURTROOM CLERK:** 962.

17 **BY MR. MERKEL:**

18 Q I hand you this compilation, Mr. Scruggs, furnished
19 to us within the last week and ask you if you would glance
20 over that.

21 A Okay.

22 Q Have you been through that?

23 A I've been through what's 962, yes.

24 Q Yes, sir. And that lists the attorney fees that you
25 have paid on bills you received during the period reflected on

1 there; right?

2 A Mr. Merkel, the same answer I'll have to give you
3 is --

4 Q You don't know?

5 A I'm not the best person to answer these questions.
6 I know that these were lawyers that defended the lawsuit that
7 you and Mr. Luckey brought that we're here about today.

8 Q And the purpose of the break-down, Mr. Scruggs, was
9 to put into columns, was it not, what lawsuit these various
10 attorneys were being paid for and the Jackson County lawsuit,
11 and the lawsuit you filed against my firm as this aggressive
12 defensive means; right? And everything under that would be
13 expenditures made on that?

14 A That's right. Like the Coahoma County lawsuit is
15 the one --

16 Q That's also related to trying to get the \$5000 out
17 of Cindy Mitchell, isn't it?

18 **MR. DUNBAR:** I object, Your Honor, this doesn't help.

19 **THE COURT:** Let's don't get argumentative. Let's just
20 ask questions about the expenditures.

21 **BY MR. MERKEL:**

22 Q Hinds County is this case we're involved in,
23 wouldn't it?

24 A I think all the cases on here are this very case
25 consolidated into one. That's why we agreed to put them all

1 in the --

2 **MS. MITCHELL:** This is a compilation provided in our
3 response to your order on our motion to compel.

4 **THE COURT:** That's what I understood it to be.

5 **BY MR. MERKEL:**

6 Q And all of these fees listed on that exhibit have
7 been deducted or at least claimed in the accountings that you
8 maintained as being deductions from the amount of attorneys'
9 fees available to be distributed to you and to the other
10 people that you've cut into the venture?

11 A I think the best way to answer that is to say that
12 all of the attacks on the attorneys' fees or on the state's
13 recoveries, for example, what the governor's doing down in
14 Jackson County today to attack the Partnership for a Healthy
15 Mississippi, the litigation that governor Fordice initiated
16 against us, all of that sort of thing would be deductions that
17 we have taken against fees comes out of my pocket at the same
18 rate it comes out of everybody else's. I don't think I would
19 be paying out a lot of frivolous expenses if they were coming
20 out of my pocket.

21 **MR. MERKEL:** We offer at this time, Your Honor,
22 Plaintiff's Exhibit 272, 781, 745 and 841.

23 **THE COURT:** Any objection?

24 **MR. DUNBAR:** I'm not sure I know what they are yet.

25 **MR. JONES:** Yeah, let's see what they are.

1 **MR. MERKEL:** 841 is the letter to Garriga with the
2 underlying stuff that was filed in Jackson County. 745 is
3 the collective of the quarterly unreimbursed tobacco
4 expenses.

5 **THE COURT:** They were questioned about them, but there
6 were objections observed, and I guess if our format, if there
7 had been no objections at the time, they'll come in. Those
8 are all admitted, Mr. Merkel.

9 **MR. MERKEL:** Okay. Thank you. And in the Garriga
10 letter there are two separately numbered -- it's all part of
11 the same, but they have two separate exhibit numbers, 840 and
12 842.

13 **THE COURT:** Okay. All those as marked will be admitted.
14 If you will give copies to Mrs. Featherston, so we can keep
15 up with them.

16 **MR. MERKEL:** And then 272 we would offer which is
17 another compilation of expenditures made to lawyers as well
18 as other backup expense records.

19 **THE COURT:** It will also be admitted.

20 **BY MR. MERKEL:**

21 Q Now, Mr. Scruggs, how many people or different
22 entities --

23 **THE COURT:** Would you mind handing copies so she can --

24 **MR. JONES:** Here are the exhibits.

25 **COURTROOM CLERK:** I'm not getting them. I want to make

1 sure I have all the numbers down.

2 **THE COURT:** Just give her the copies. That way she can
3 check it.

4 **COURTROOM CLERK:** I'll fix it if you will give me the
5 copies and I will give them back to you. Thank you.

6 **BY MR. MERKEL:**

7 Q Mr. Scruggs, each quarter, when the monies come in
8 from the tobacco paying agencies -- I guess we got to get the
9 Court a little bit up to date on how that happens.

10 **THE COURT:** Yeah, I'm confused about that.

11 **BY MR. MERKEL:**

12 Q They're no longer paid to you at all, are they, Mr.
13 Scruggs? The actual tobacco fees are paid directly by the
14 tobacco paying agency to you?

15 A Quite frankly, I'm not sure exactly how it
16 ultimately gets to me, but my share gets to me some way and
17 usually through a paying agent. That may have changed
18 recently. In fact, it changes periodically, the paying agent
19 for a given state or a given group of states, yes.

20 Q All right. Let's see if we can sum it up in general
21 for the judge just so he'll know where we go from here.

22 You and the Ness-Motley firm at some time, after all
23 these cases with the various states had been settled, reached
24 an agreement, which I think we put into evidence on Monday or
25 Tuesday where, in essence, whatever Ness has been awarded in

1 the way of fees and whatever you have been awarded in the way
2 of fees, including your shares in Mississippi, are lumped
3 together or aggregated and then they're divided on a 60/40
4 basis with a couple of exceptions, aren't they?

5 A Yes, that's correct. And then expenses are netted
6 out of that, yes.

7 Q And the exceptions, what are the exceptions? South
8 Carolina is one, isn't it?

9 A I think South Carolina and the District of Columbia
10 are the two that come to mind.

11 Q And why is the District of Columbia different from
12 that, Mr. Scruggs?

13 A It was part of the fee split I negotiated with the
14 Ness-Motley firm to let them have all of the fees from both
15 South Carolina and the District of Columbia and the rest would
16 be divided on a 40 percent to my group basis and a 60 percent
17 to their group basis.

18 Q And South Carolina is Mr. Motley's home state;
19 right?

20 A Like, Mississippi is mine, but he gets part of that.

21 Q And Motley was already in the HALT agreement
22 independent of your other agreement, wasn't he?

23 A Actually, Mr. Motley never signed the HALT
24 agreement. He performed everything that he was required to do
25 and more, his firm did, but for accounting or technical

1 reasons he never did actually sign the HALT agreement.

2 Q Let me show you very quickly, I don't think we even
3 need to put it up, Mr. Scruggs, but look at Exhibit 162,
4 please.

5 A Okay.

6 Q Just enough to be comfortable. What do you think it
7 is? And I'm not going to grill you in-depth on it at all.

8 A (Witness examining documents.) It is quite lengthy.

9 Q Is that the Ness-Motley agreement that you and he
10 ultimately reached to divide and to participate in the fees
11 that you were trying to participate in?

12 A It seems to be.

13 Q And in the back of it does it list each paying state
14 and the amount they're paying to y'all's combined venture and
15 then the way that's going to be split between your firm and
16 his?

17 A It seems to, yes.

18 Q Okay.

19 **MR. MERKEL:** We offer that as the next exhibit, 162,
20 Your Honor.

21 **THE COURT:** It will be received as marked.

22 **BY MR. MERKEL:**

23 Q Now, Mr. Scruggs, what was the rationale for
24 Washington D.C. not being a 60-40 state? Why did Mr. Motley
25 insist that that one -- or Mr. Rice, I guess, is who you dealt

1 with. Why did he insist that you not participate in that
2 state?

3 **THE COURT:** It's not technically a state.

4 **MR. MERKEL:** Excuse me, Your Honor?

5 **THE COURT:** It's not technically a state.

6 **MR. MERKEL:** That entity.

7 **THE COURT:** Okay.

8 **BY THE WITNESS:**

9 A I assume like any negotiations, and up until that
10 point, we had not agreed on how we would divide up other than
11 the handshake and a general understanding that our two firms
12 would share on some mutually agreed basis the fees from the
13 different entities that we represented.

14 They were counsel of record in some states where I
15 was not. I was in some states where they were not, and -- but
16 it was generally agreed that in states that either of us were
17 affiliated or actually retained by the attorney general or the
18 appropriate governmental entity, as in Washington D.C. -- I'm
19 not even sure who that is there -- that we would sit down and
20 resolve that, and I think that's what that agreement you just
21 showed me was. It was a give-and-take in terms of concession
22 on our part to let the Ness-Motley firm have all of the fee
23 from South Carolina and D.C.

24 **MR. DUNBAR:** Your Honor, what difference does it make
25 how he reached an agreement with Mr. Motley over D.C.? Are

1 we going to have a lawsuit now about whether that was a
 2 reasonable deal he made with Motley to split the fees? Is
 3 that an issue in this case? I don't think it is. The point
 4 is he got X dollars and he got X dollars and he gets X
 5 dollars from all these different sources and we can agree on
 6 what that is. We can agree on what the income is unless we
 7 want to question whether he made -- I can't imagine he's
 8 going to question whether he made a bad deal with Ness-Motley
 9 over D.C. Where are we going?

10 **MR. MERKEL:** I think it will be obvious in two
 11 questions.

12 **THE COURT:** Okay.

13 **BY MR. MERKEL:**

14 Q Mr. Scruggs, Washington D.C., a fee was awarded on a
 15 quantum merit basis, wasn't it, as opposed to some of the
 16 others that were arbitrated or agreed upon on the front end?

17 A You mean how was it --

18 Q How was the amount of the fee split between
 19 everybody that worked there and Mr. Motley or Mr. Rice? They
 20 got the quantum merit there because of their investments of
 21 time and money and so forth in that as opposed to the other
 22 states, didn't they? Wasn't that his argument?

23 A Not exactly. The Ness-Motley firm, because they
 24 were far, far larger than mine and had put a lot more lawyers
 25 and a lot more resources into the nation-wide litigation part

1 of the effort than our firm had, wanted far more than 60
2 percent of everything.

3 I mean it's typical of law firms who sit down and
4 negotiate and I didn't agree with that, but in order to get the
5 60-40 split that was one of the trade-offs, so to speak, was to
6 let them have all the fee from D.C. and South Carolina.

7 Q And there was another dispute or difference
8 contended for with regard to the state of Washington, wasn't
9 there? In short, Mr. Rice contend that all they did in the
10 state of Washington was pay money and since you hadn't paid or
11 contributed any money, you should not get a part of that fee,
12 didn't he? Wasn't that his contention?

13 A My firm did not represent the state of Washington
14 until we started the negotiations for the national settlement
15 in early 1997. We were never counsel of record for the state
16 of Washington. They had other law firms. Including
17 Ness-Motley was not counsel of record, to my knowledge,
18 either, but because we were the principal negotiators with the
19 tobacco industry, as I mentioned yesterday and the state of
20 Washington had other lawyers, I think there may have been some
21 question about what our commitment had been to the state of
22 Washington.

23 Q Let me show you a memo, Exhibit 616, Mr. Scruggs.

24 **MS. FULLILOVE:** Exhibit 616?

25 **MR. MERKEL:** Yeah.

(DONE.)

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BY MR. MERKEL:

Q This is a December 21, 1999 letter from you to Joe Rice that says (reading:)

As you know, Ness-Motley, Henderson, Steve Burman, approximately 2.5 million to handle the Washington case. We were to receive an attorneys' fees interest in exchange for that. The fee interest was 3 percent of the fee on the first one million and one and a half -- yeah, one and a half percent of the fee on anything over that. This was to be the only Burman group fee. The liquidated fee is 77 million. The additional fee received, 16 million; therefore, Ness will receive a total 9,750,000. Since our principal involvement in this case was loaning money, I am not sure it should be included in our 60-40 agreement.

Now, do you agree that that was the position taken by Joe Rice about Washington?

MR. DUNBAR: I broke my word, Your Honor. I'm up again. But that's my point, what difference does this make about the

1 total fees he received?

2 **MR. MERKEL:** Your Honor, obviously he and his partner
3 are placing great emphasis on who contributes money, what
4 part money played in getting a fee allocation, which is, as I
5 understand the defendant in the case is contending that our
6 claim to tobacco fees based on our money being used in that
7 litigation is a wrong approach. And this indicates that the
8 lawyers who were involved in it themselves were placing great
9 emphasis on who fronted the money.

10 **MR. DUNBAR:** This is not a constructive trust lawsuit
11 between the state of Washington and Dick Scruggs or
12 Ness-Motley. It's a completely different issue. If he wants
13 to argue that, he can argue that, but --

14 **THE COURT:** I agree. Let's move along. I sustain that.

15 **MR. MERKEL:** We offer Exhibit 616.

16 **THE COURT:** It will be received as marked.

17 **BY MR. MERKEL:**

18 Q Now, Mr. Scruggs, give us, if you will, the
19 mechanism by how you cut up each quarterly payment that comes
20 in from the tobacco paying agencies that ultimately
21 dribbles -- well, we left out one thing yet.

22 You have created an entity called Delmas Capitol,
23 haven't you? Two entities: One is Delmas and one is Delmas
24 One, RNW; is that right?

25 A It's pronounced Delmas, but that's correct, I have,

1 but --

2 Q In essence --

3 A I'm not the only one that created that. There's a
4 whole group that did that.

5 Q And you and some of the people who are derived of
6 their parts of tobacco fees through you have sold,
7 technically, your right to receive those fees to this Delmas
8 Capital, haven't they?

9 A You know, I'm not the best person, again, to testify
10 about the purpose of Delmas Capitol. I think what happened
11 was that a number of lawyers, including members of my firm and
12 a couple of other firms, assigned their fees, their right to
13 receive fees to Delmas Capitol and then Delmas Capital issued
14 shares of stock to each individual.

15 Q And based on how many fees or the calculated value
16 of however many million dollars worth of fees were assigned,
17 stock was issued more or less as payment for that assignment
18 of those fees. And I know we can get more detail, I'm just
19 trying to let the judge have enough idea to know what we're
20 talking about, Mr. Scruggs.

21 A I think I just explained it the best way I can. The
22 lawyers in my law firm and a couple of other law firms
23 assigned whatever right to receive tobacco fees they had to
24 Delmas Capitol and on a mutually agreed basis receive stock in
25 Delmas Capitol.

1 Q And they also receive notes, did you not, that would
2 pay you for the fees that you were assigning, that were
3 calculated as a present value of that future stream of income?

4 A Boy, I think that's correct, but I'm not entirely
5 sure. Again, you're getting out of my area here. These were
6 things that were recommended that we do, and we did, based on
7 professional recommendations, yes.

8 Q And in essence, each quarter the money is paid to
9 Delmas, Delmas then pays the installment on your note and then
10 you get a dividend on your stock in Delmas and the money comes
11 back out of Delmas in two ways; correct?

12 A I don't know that we get a dividend.

13 Q Distribution?

14 A I don't know what you want to call it. I think we
15 get a check from Delmas, each of us who are shareholders in
16 Delmas.

17 Q Okay. And now my question is how many people derive
18 fees from your 40 percent of the agreement with Ness-Motley?
19 How many different people are sharing in that fee?

20 A Well --

21 Q We know about David Nutt. All of the fees -- David
22 Nutt is not a member of Delmas Capitol. A shareholder,
23 rather. But how many people actually share in tobacco fees
24 that --That came from you, that are based on what you get?

25 A Boy, I don't know. A bunch.

1 Q Well, let's take a few of them. One of them is P.L.
2 Blake, isn't it?

3 A He gets a fixed amount, but he's not part of Delmas,
4 yes; that's correct.

5 Q But every quarter when it comes in, Mr. Blake gets
6 400 and I believe it's \$83 thousand every quarter, doesn't he?

7 A I think that's right.

8 Q And that's calculated as a percentage of the tobacco
9 fees, isn't it?

10 A No.

11 Q How is that very unusual, odd amount down to the
12 last penny each quarter, how was that calculated?

13 A It was just an agreed amount that we -- that Mr.
14 Blake and I and all of us who contributed to that payment
15 agreed upon. It's changed a couple of times, I think, over
16 the years, so I can't tell you how exactly it's calculated.
17 It was not a percentage of anything.

18 **MR. MERKEL:** 677.

19 *(DONE.)*

20 **BY MR. MERKEL:**

21 Q Mr. Scruggs, this is Exhibit 677. Now, that shows
22 fees paid to P.L. Blake, August 17, '98, a million dollars;
23 12/2/1998, \$4,000,000; and 4/9/99, 5 million. And then
24 there's a column at the bottom, fees paid to the Langston law
25 firm and a note to right-hand side says: All of these fees

1 were paid to me and I forwarded to P.L. Blake.

2 Can you tell me why P.L. Blake got that \$10 million
3 worth of fees in a period of approximately eight months in '98
4 and '99?

5 A I can tell you why Mr. Blake got any fees he got,
6 which include those fees. It was because of the work he did
7 from 1994 forward in helping us succeed in this litigation.

8 Q Okay. So he got ten million up front in round
9 numbers; correct? Do you agree with that?

10 A If that document said that, that's correct. I don't
11 quarrel with that.

12 Q Well, it bears Bates number RFS 13310 so it was
13 produced by your office, Mr. Scruggs.

14 In the first instance, why was this note written
15 telling you that those fees actually went to P.L., but
16 apparently on your books they were paid to the Langston law
17 firm? Why did you forward or send those funds through the law
18 firm to P.L. Blake instead of simply paying him yourself?

19 A I don't recall exactly why we did it that way, but I
20 can surmise, if you would like for me to.

21 Q Well, I would rather have the facts, Mr. Scruggs,
22 than a surmise.

23 A To the best of my memory, Mr. Blake's involvement
24 was a matter that he deemed to be very private and did not
25 want it to be publicly known and perhaps that's why we did it

1 through the Langston law firm to him.

2 Q Well, why would he be more concerned about receiving
3 money from your law firm than the Langston law firm? Langston
4 law firm is getting tobacco fees, too, from you, weren't they?

5 A Yes.

6 Q And, in fact, that whole accounting amount there was
7 charged on Mr. Langston's account and he created that memo
8 back to you saying you misapplied this. He says, I actually
9 gave P.L. the first 10 of this and it shouldn't be charged to
10 my entitlement, didn't he?

11 A I don't know. The document speaks for itself. If
12 that happened then it happened.

13 Q And then after --

14 **MR. MERKEL:** Let's look at Exhibit 795.

15 *(DONE.)*

16 **BY MR. MERKEL:**

17 Q Now, Mr. Scruggs, this is a memo to you from Allen
18 Jones. Who's Allen Jones?

19 A Allen Jones worked for my law firm in a capacity
20 similar to what Mr. DeLoach did for a while. He took care of
21 various accounting matters and things like that.

22 Q Now, who's DMG, Mr. Scruggs?

23 A I think that stands for Developing Markets Group or
24 something to that effect.

25 Q Who are they?

1 A I think -- I may be wrong, but I think it's Mr.
2 Blake, but it could be Tom Anderson. I just don't know as I
3 sit here now. Maybe you can show me something that will
4 refresh my memory. It's one of the two of them, I think.

5 Q Let's look at it. It says (reading:)
6 *As we discussed earlier today,*
7 *the new payment to DMG will be 468,450*
8 *each quarter, an increase of 218,450*
9 *per quarter. This is based on the*
10 *increase in fees from the base of 1.57*
11 *to 2.95 billion or an 87 percent*
12 *increase. I assume we will review and*
13 *adjust the amounts in June of 2001,*
14 *when all of the awards hopefully are*
15 *finally realized.*

16 It then goes on to say what he's going to do. He
17 says he's going to catch DMG up to the level that he should be
18 and then he'll increase the amount each quarter starting in the
19 third quarter by \$218,450. Now, DMG, at least at that time
20 your office thought was P.L. Blake, didn't it?

21 A I don't know. I said either P.L. Blake or Tom
22 Anderson, who's provided --

23 Q Did you send checks to Mr. Blake care of DMG for a
24 period of time?

25 A My guess is we sent them to DMG or P.L. Blake or Mr.

1 Anderson, whoever was the principal at DMG, would be my guess.

2 Q And tell us what P.L. Blake did for \$468 thousand a
3 quarter through the year 2023 and \$10 million on the front
4 end, \$50 million more or less?

5 A This was -- this litigation from the beginning was
6 quite unorthodox in terms of meeting fire with fire. The
7 tobacco industry had all sorts of resources, particularly
8 political resources, and as I explained yesterday, it was as
9 much a political war as it was a legal war. P.L. Blake lived
10 in Greenwood, and I think hunts with you on a regular basis.

11 Q No, sir, he doesn't. I never hunted with P.L. Blake
12 in my life, Mr. Scruggs, but whatever.

13 A He told me you shared a hunting cabin with him
14 somewhere up north.

15 Q He paid for a pheasant hunt at the same place I paid
16 for a pheasant hunt. I had never met him before. But that's
17 kind of neither here nor there.

18 A But P.L. Blake was a sort of a political operative
19 in terms of being involved in state and national political
20 affairs. One of these guys that's sort of always behind the
21 scenes, but has his ear to the ground. He was our sort of
22 response from 1994 on, maybe even late '93, when we first
23 started thinking about this, to what the tobacco industry was
24 doing. They had a network that was far more extensive than
25 that, and we wanted to be alerted to political attacks before

1 they actually hit us in the nose. For example, Governor
2 Fordice filing suit to shut the whole litigation down in '95
3 or '96. Things like that. We needed to know things like that
4 before they happened so we could head them off, and Blake had
5 a network throughout the state and really throughout the
6 nation that would sort of give us that heads-up information.

7 Q Well, let's talk about your relationship with P.L.
8 Blake, Mr. Scruggs. You represented him in bankruptcy at one
9 point, did you not, sir?

10 A I think in the early '80s, yes.

11 Q And you were still representing him in that, in
12 fact, in the late '80s, were you not?

13 A As long as the bankruptcy case was alive. Sometimes
14 they take years.

15 Q And P.L. Blake was also indicted and ultimately pled
16 guilty to some type of a federal bank fraud type of situation
17 in the early '90s?

18 A It seems to me that he pleaded guilty to some sort
19 misdemeanor involving a bank, yes.

20 Q And as a result of that he was ordered by a federal
21 district court in the Southern district to make restitution
22 for some several million dollars to the FDIC or something of
23 that sort?

24 A Perhaps. I don't recall what he was required to do.
25 I'm sure he had something imposed on him if he pleaded to a

1 misdemeanor.

2 Q And so he had a restitution amount over him and he
3 had had -- he was in bankruptcy in the late '80s?

4 A Perhaps, at various times. I don't know the timing
5 of it, but both of those events happened.

6 Q And, Mr. Scruggs, you began in 1994 to loan P.L.
7 Blake monthly amounts of money that started out at \$15
8 thousand a month and escalated to \$25 thousand a month.
9 Actually, I guess the first one is November the 20th, 1993.
10 Is that right?

11 A Sounds right.

12 Q What was the purpose of those loans that you were
13 making to him?

14 A The purpose of the loans was to do exactly what I
15 just described.

16 Q What is that?

17 A To --

18 Q Were they payments -- were they salary or payments
19 you were making or were they loans, Mr. Scruggs? Which were
20 they?

21 A They were loans.

22 Q Why did you make loans to a man who was in
23 bankruptcy and who was coming out from under a criminal
24 situation with a large restitution amount hanging over his
25 head?

1 A I assume he needed the the money to make
2 restitution.

3 Q Did he did he give you any collateral?

4 A Other than his enormous network of political
5 connections in the state and otherwise, no, he didn't have
6 any -- he didn't give me any collateral for it, no, but he did
7 sign a note every month.

8 Q Signed a note with 8 percent interest on it that you
9 were going to charge him on those notes; correct?

10 A I think so. Whatever the prevailing rate at the
11 time was.

12 Q And by the time the tobacco settled and he got those
13 first of those million dollar -- four million dollar, five
14 million-dollar amounts, he had run up a loan account with you
15 of some 900 -- between \$950 thousand and a million dollars,
16 hadn't he?

17 A It could have been that much with interest, which
18 was deducted from whatever he got paid. He paid it back that
19 way.

20 Q Tell us, if you would, Mr. Scruggs, other than the
21 generalities of how well connected P.L. Blake was and this,
22 that, and the other, anything specific P.L. Blake did to get
23 \$10 million up front and a percentage of tobacco fees
24 calculated at \$468,450 per quarter.

25 A I talked to P.L. Blake on a fairly routine basis

1 throughout the process of this litigation about what might be
2 going on in the legislature, what Fordice might be up to
3 through people that he knew. He obviously didn't readily
4 disclose his methods and sources, as the term is now used, but
5 he knew the key people in the various congressional offices in
6 1996 when political resolution of this started looking
7 promising and it was very helpful providing the names of who
8 these people were and backgrounds on them.

9 Q With all deference, I mean \$50 million seems to be,
10 to me, to be a sizable sum. Can you tell us anything P.L.
11 Blake specifically did? Any piece of information or
12 intelligence that he delivered that was -- couldn't have been
13 found by reading the newspapers and listening to the TV?

14 A I think I just did. You don't find out who's who in
15 Washington or who's -- who the behind the scenes movers and
16 shakers at the state capital are by reading the newspaper.
17 You know who the committee chairs are and people like that,
18 but what's really going on back there inside baseball, I don't
19 think you can find that out, and he kept us routinely
20 informed.

21 Q Tell me some routine intelligence he gave you. Give
22 me the name of a senator or something that was fixing to do so
23 and so. Just something specific, Mr. Scruggs.

24 A Well, he had a relationship with Senator Biden.

25 Q Did he bring you some intelligence from Senator

1 Biden? Maybe he knew him, but did he bring you anything that
2 Mr. Biden told him that you couldn't have found out otherwise?

3 A Well, I didn't know Senator Biden at the time.

4 Q Okay. Did he tell you something?

5 A I know him pretty well now, but I didn't know him at
6 the time.

7 Q Well, actually you paid Senator Biden's brother a
8 bunch of money, too, at the same period of time, didn't you?

9 A No, I paid Mr. Biden's brother's -- I think he was
10 affiliated with a lobbying firm and it wasn't an enormous
11 amount of money. We hired a lot of lobbyists on the hill at
12 that time period of time.

13 Q Don't you think his brother could have been giving
14 you whatever intelligence about his brother's thoughts
15 probably better than P.L. Blake could?

16 A That would seem reasonable, but P.L. Blake's
17 involvement and the intelligence that he was providing us
18 preceded that involvement with Jim Biden by a long long time.

19 Q What intelligence were you ever provided, Mr.
20 Scruggs? Can you give us one concrete example of some
21 intelligence that came from Mr. P.L. Blake for \$50 million?

22 A I can give you examples. I didn't make any notes of
23 this. I didn't sit down and write it down.

24 Q These aren't the kinds of things that people write
25 down or write letters about?

1 A He was very tuned in to the effort to unseat
2 Attorney General Moore in 1995.

3 Q That wasn't very private information, was it, Mr.
4 Scruggs? I thought Fordice was all over the papers and TV and
5 everything else hollering about that daily?

6 A Well, we knew about it from P.L. Blake long before
7 he actually did anything.

8 Q Let me show you, Mr. Scruggs, Exhibit 240. This is,
9 I believe, 13 newspaper clippings that P.L. Blake provided at
10 the time of his deposition which is what he said he provided
11 to you. Did you get those newspaper clippings from him?

12 A If he said so, I did, but he certainly gave us far
13 more than just what was in the newspaper. Why would I, out of
14 my pocket, pay him that sort of money?

15 Q That's what I'm trying to find out, because that's
16 basically what he said he did in his deposition. You read his
17 deposition, haven't you, sir?

18 A No.

19 Q Never have?

20 A No, I have not. Never ever.

21 Q Okay.

22 A And I would understand why he would be reluctant to
23 disclose his inside baseball political connections. I would
24 understand that.

25 Q You think he would misrepresent things under oath,

1 Mr. Scruggs? Is that what you're saying?

2 A I don't think he would.

3 Q Well, if he said he had never talked to any
4 politician and he never talked to anybody at the tobacco
5 industry and he simply listened and read newspapers over the
6 state and gave you the information that's there, can you give
7 us anything else he did concrete beyond that?

8 A I think I already have. I don't know how to answer
9 that any better, sir.

10 **THE COURT:** This is another area we're not going to get
11 agreement on.

12 **BY MR. MERKEL:**

13 Q I put 795 back up and direct your attention to the
14 last line at the bottom to Mr. Jones. It says: I appreciate
15 your getting me a copy of a handwritten agreement with Mr.
16 Blake for the file when you get a chance.

17 Did you ever provide that handwritten agreement to
18 Allen Jones?

19 A I don't recall whether I did or not.

20 Q We've never been provided it, is the reason I'm
21 asking. Is there such an agreement, Mr. Scruggs, that
22 apparently set out why you were going to calculate that exact
23 amount up there based on the fees?

24 A If there is, I'm not aware of one. That doesn't
25 mean there isn't one.

1 Q Let me show you another exhibit, Exhibit 787,
2 September 29th, 2000. Again, to you from -- well, to the
3 file with a carbon copy to you from Allen Jones, talks about
4 DMG-Blake again. It says (reading:)

5 *The payments to Anderson Sears*
6 *have segmented to the individual*
7 *members as follows, with the*
8 *responsibility for payment, in*
9 *parentheses, DMG-Blake, base amount*
10 *250,000 per quarter as long as tobacco*
11 *fees are collected from the industry,*
12 *obligations of Ness-Motley, Scruggs*
13 *Millette 60/40 split or 100,000 Ness*
14 *and 100,000 Scruggs; 2000 has been paid*
15 *added amount based on ratio of increase*
16 *from Mississippi, Florida, Texas base*
17 *to the total awards, calculation*
18 *attached, and now added 218,450.*

19 And at the top it he says in handwriting: Can I get
20 a copy of the Blake agreement you mentioned for the file?
21 Allen. Was there an agreement, Mr. Scruggs?

22 A I think it was more of a handshake agreement than
23 anything else. I don't recall a written agreement with Mr.
24 Blake.

25 Q Why did Mr. Jones think there was when he was

1 writing all those letters?

2 A I told Mr. Jones that we had an understanding or
3 agreement and perhaps he assumed that it was in writing.
4 You'll have to ask him. He was brand new at that time and
5 perhaps didn't quite understand how things had been working.

6 Q Seems he was making a fairly sophisticated
7 complicated calculation based on all these tobacco fees to
8 come up with Mr. Blake's 218,450 addition, Mr. Scruggs. How
9 did he get the information to make that calculation?

10 A He got it based on what he says he got it on. It
11 was an increase based on the Most Favored Nation clause to the
12 fees that came in to all counsel, Ness-Motley, and the Scruggs
13 firm and everybody else.

14 Q Did you have a written agreement with Mr. Blake to
15 split the fees of the tobacco litigation, Mr. Scruggs?

16 A I don't think we did. I don't recall one.

17 Q Did you have a verbal one that you communicated to
18 Mr. Jones enough to let him calculate that like he did?

19 A I told Mr. Jones at some point in time that Mr.
20 Blake and I had an agreement as to how much he would be paid
21 on a quarterly basis and when the fees were subsequently
22 increased as a result of the Most Favored Nation clause, or
23 for whatever reason, told Mr. Jones to increase it.

24 Q Are you aware that it's an ethical violation to
25 split fees with a non-attorney?

1 A I didn't think that it was splitting fees, I think
2 it was just paying Mr. Blake for the work he had done, which
3 was quite considerable, most of which was coming out of my
4 pocket.

5 Q When you calculated based on an increase in fees,
6 that wasn't splitting fees?

7 A It didn't occur to me that it was, and I would take
8 issue with that being unethical.

9 Q You do agree that the canons of ethics say it's
10 improper for any attorney to share fees with another attorney
11 other than is commensurate with their work?

12 A I'm generally familiar with Rule 1.5.

13 Q Yes, sir, that's the one.

14 A And Mr. Blake --

15 Q Is not an attorney?

16 A No, he did -- but that's not the question. You
17 asked me about splitting fees with lawyers that don't do any
18 work.

19 Q Yes, sir. That would be more like Mr. Nutt?

20 A It would be more like Mr. Luckey.

21 Q Did Mr. Nutt do 400 to \$500 million worth of work on
22 this case, Mr. Scruggs?

23 A Mr. Merkel, I guess we can argue again about it. We
24 talked about it all afternoon yesterday about what Mr. Nutt
25 did.

1 about before we broke about, you know, things that Mr. Blake
2 did. I didn't know any of those -- I knew Tommy Anderson, but
3 I didn't know Sears and Hopenstein until Blake acquainted me
4 with them.

5 Q Well, did you make a contract with all of them
6 collectively, Mr. Scruggs, or did you make a contract with
7 each of them individually? Or did you have contracts with any
8 of them?

9 A I think we had a general understanding. I don't
10 know whether you want to call it a contract. Later I think it
11 was reduced to writing long after the fact.

12 Remember, when we undertook this mission it was high
13 risk, to say the very least, given this industry and its power
14 and its 100 percent batting average in litigation and political
15 matters, and so we had a general understanding that they would
16 be adequately compensated at some point.

17 **THE COURT:** Your baseball analogies are already noted.

18 **THE WITNESS:** Did I say 100 percent? A thousand
19 percent.

20 **THE COURT:** But I still note your attempt to use
21 baseball.

22 **THE WITNESS:** They had cork in their bats, and we were
23 trying to meet that challenge.

24 **THE COURT:** Nice try, Mr. Scruggs.

25 **THE WITNESS:** I thought so.

(LAUGHTER.)

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BY MR. MERKEL:

Q Were they on the same team, in that vernacular, or were they all independents?

A I don't know for a fact. I just assumed they were working --

Q Let me show you an office memo that's Exhibit 794. This as to Charlene Bosarge from Sonya Wilkinson. Ms. Bosarge has been your personal secretary for 25 years or more; correct?

A Pretty close.

Q And Sonya Wilkinson was working in the bookkeeping department under Mariea Pigg --

A Yes.

Q -- by 2002? I don't know, Ms. Pigg may not have been there by then. Probably wasn't, was she?

A I don't think she was as of 2002. I may be wrong.

Q But the memo says:

I did ask Mr. Jones for new wiring instructions for my tobacco fee payments. He asked why, I showed him the files, he said this was the only one he never had information and gave me some backup copies where he was confirming conversations with RFS to

1 *try to help us see what is going on.*

2 *What happened was DMG was Blake,*
3 *Hopenstein and Sears, as you're aware,*
4 *of course you told me we only received*
5 *instructions to send separate payments*
6 *to Hopenstein and Sears. Nothing was*
7 *said about Blake not separate from DMG*
8 *and so he was called that, using his*
9 *wire information.*

10 Does that help any at all as to who these people are
11 who are all getting millions of dollars each?

12 A They all earned it. We've talked about Blake. I'll
13 be happy to talk about the other three gentlemen.

14 Q We'll do that. Let's wind up Mr. Blake now. Let's
15 go back to the loan situation, Mr. Scruggs. Were those monies
16 paid to him because he did work or were they loaned to him
17 because he was destitute?

18 A I don't know that he was destitute. It's the way --
19 well --so I can't -- I would have to say no.

20 Q Were they compensation, Mr. Scruggs? That's all
21 that you were paying him for something he did? Or were they
22 gratuities you were loaning to him because of whatever?

23 A It was the way Mr. Blake requested that we have our
24 financial relationship and that at some point he would report
25 it as income and pay taxes on it, which is what I'm quite sure

1 he did.

2 Q Was your motivation because you owed it to him, was
3 it compensation or was it a loan?

4 A They were loans and every month he signed a loan
5 note as we just talked about, at 8 percent or whatever the
6 percentage was.

7 Q Let's look at a clip, Mr. Scruggs, from your
8 deposition of 10/23/96.

9 *(Beginning of next video excerpt as follows:)*

10 Q In looking through your records we found three
11 different fairly substantial amounts of money paid to
12 individuals connected, at least charged to the --

13 *(End of video excerpt.)*

14 *(Beginning of next excerpt.)*

15 Q In looking through your records we found three
16 different fairly substantial amounts of money paid to
17 individuals connected, at least charged to the Asbestos Group,
18 and I want you to identify for me who these people were and
19 why they would have gotten these amounts. There were some
20 \$320,000 or so to -- in loans to a P.L. Blake. Can you tell
21 me what that had to do with asbestos cases?

22 A No.

23 Q What did that have to do with?

24 A Some consulting and lobbying, that sort of thing,
25 consulting that Blake had done. I didn't know it was charged

1 to Asbestos Group.

2 Q What did lobbying have to do with asbestos or
3 something of that nature?

4 A Tort reform, yes.

5 Q Who is Mr. Blake?

6 A He's a -- it wasn't lobbying. I didn't mean to
7 characterize it as lobbying, just sort of a person who keeps
8 his finger on the pulse of the legislature for me.

9 Q At the state level or national?

10 A The state one.

11 Q Okay. Why would loans have been made to him?

12 A That's the way he wanted them. I will suggest to
13 you that it was an error if it came from the Asbestos Group.
14 It should not have.

15 Q So, Mr. Scruggs, were the payments being made
16 monthly and called loans, were they for lobbying efforts Mr.
17 Blake was doing on tort reform or were they loans charged on
18 the Asbestos Group books?

19 A I don't think they were charged on the Asbestos
20 Group books.

21 Q We were looking at them at the time, were we not?

22 A No, I was answering your questions. And I don't
23 think they were charged to the Asbestos Group books. You --

24 Q Did you make a loan or did Asbestos Group make him
25 the loan, Mr. Scruggs?