

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

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

PLAINTIFF

V.

CIVIL ACTION NO. L07-135

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

DEFENDANTS

**MOTION FOR COURT ORDERED CONTROL OF PARTNERSHIP
ASSETS, DISGORGEMENT OF FUNDS, PAYMENT OF UNDISPUTED
FUNDS TO THE PLAINTIFF AND OTHER RELIEF**

INTRODUCTION

This Motion is brought by the Plaintiff in the above styled and numbered cause to require that all attorneys fees brought into the Scruggs Katrina Group (hereinafter "SKG") partnership before January, 2007 and subsequent to January, 2007 be paid into a fund as directed by court order; and, that the Defendants, all of them, be directed to pay the fees that they have admitted in the pleadings that are owed to the Defendants in the Answer to the Plaintiff immediately; further, that they be ordered to disgorge all fees already disbursed to any of them into this fund; and, further, that they be ordered to disgorge improper expenses for such things as improper payment of expenses for fuel for private airplanes, "consulting fees," attorneys fees to defend wrongful conduct of any of the parties, bribe money and any other improper expenditures made.

For further grounds of this Motion, the Plaintiff will show unto the Court the following:

1. In the Answer to the Complaint filed herein, the Defendants state the following:
"Plaintiff failed to mitigate its damages, if any."
2. The Movant moves the Court to direct the Defendants to pay six percent (6%) of

all fees received to the Plaintiffs immediately without any conditions attached such as foregoing the rights against the Defendants for all the improper conduct stated in the First Amended Complaint as well as improper conduct stated in the Motion to File the Second Amended Complaint.

3. Pursuant to the provisions of 1.15 (c) styled “Safekeeping Property” the Mississippi Rules of Professional Conduct provides the following:

(c) “When a lawyer is in possession of property in which both the lawyer and another are claiming interest, the property shall be kept separate by the lawyer until completion of an accounting and severance of their respective interests. If a dispute arises concerning their respective interests, the lawyer shall disburse the portion not in dispute and keep separate the portion in dispute until the dispute is resolved.”

The Defendants are required to place all fees into a proper fund. The Court should supervise the fund.

4. Other than the amount of money \$617,924.43 as well as the remainder of six percent (6%) of all fees collected, which the Defendants should immediately pay to the Plaintiff, all other funds taken in as fees by the Defendants should be held in a fund as ordered by the Court including all improper expenses only to disbursed as a proper expense with a court order.
5. The Plaintiff herein has claimed an interest in all fees that have come into the SKG partnership as well as a claim for improper expenses.
6. The conduct set out in the indictment attached as Exhibit A to this Motion indicates that the Defendants are not proper persons to have control of any funds that belong to the partnership of which Plaintiff is a member and claims an interest.

7. The Defendants have recognized that the Plaintiff is a member of the group by having a client of Scruggs Katrina Group claiming attorney/client privilege in a case presently pending *McIntosh, et al. v. State Farm Fire and Casualty Company, et al.* in the United States District Court for the Southern District of Mississippi. The letter asserting that attorney/client privilege is attached as Exhibit B.
8. The Scruggs Katrina Group has been advised of their duties under the provisions of Rule 1.15 (c) of the Mississippi Rules of Professional Conduct as is shown by the letter attached to this Motion as Exhibit C.

WHEREFORE, PREMISES CONSIDERED, the Movant herein respectfully requests the Court to:

1. Order the payment of money alleged in the Answer that is admittedly due and owing to the Plaintiff in the amount of six percent (6%) of all fees collected..
2. That all funds of the Scruggs Katrina Group that have been collected as fees since the inception of the group, in that the Plaintiff claims an interest of its proportionate share, one-fifth (1/5), should be paid into a fund designated by the Court with no disbursal unless approved by the Court consistent with a lawyer's duty to those in which it is in a fiduciary relationship and pursuant to Rule 1.15 (c) of the Mississippi Rules of Professional Conduct.
3. That the members of the Scruggs Katrina Group, the Defendants herein, immediately disgorge all monies which have been paid to them into the fund requested to be established by the Court which the Defendants are bound to do pursuant to the Mississippi Rules of Professional Conduct since the Plaintiff

claims an interest to all those funds.

Respectfully submitted, this the _____ day of December, 2007.

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, PLLC

By and through its attorneys,
GRADY F. TOLLISON, JR., MSB 8240
CAMERON ABEL, MSB 102319
WILLIAM K. DUKE, MSB 6210
TOLLISON LAW FIRM, P.A.
100 Courthouse Square
Post Office Box 1216
Oxford, Mississippi 38655
662-234-7070 Telephone
662-234-7095 Facsimile

GRADY F. TOLLISON, JR.
MSB #8240

CERTIFICATE OF SERVICE

I, Grady F. Tollison, Jr., hereby certify that I have this date caused to be hand delivered, a true and correct copy of the foregoing document on this the _____ day of December, 2007 to:

Mr. Wilton V. Byars, III
DANIEL COKER HORTON & BELL, P.A.
265 North Lamar Boulevard, Suite R
Oxford, Mississippi 38655

GRADY F. TOLLISON, JR.