

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, LLC

PLAINTIFF

VS.

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.

CIVIL ACTION NO. L07-135
LAFAYETTE COUNTY

FILED

JUL 09 2007

Mary Alice Busby
CIRCUIT CLERK

BY _____ D.C. DEFENDANTS

**DEFENDANTS' REPLY TO PLAINTIFF'S
SUPPLEMENTAL MEMORANDUM BRIEF IN RESPONSE TO
MOTION TO STAY PROCEEDINGS AND COMPEL ARBITRATION**

A "supplemental memorandum brief" connotes a supplement to a previously made argument based upon a new development or an intervening change in the law rather than a completely new argument, which is directly contrary to an earlier position taken in the same case. Plaintiff's brief falls within the latter category. Plaintiff's untimely "supplemental" memorandum brief is not based upon any new principles of law but is, instead, merely a pretext for plaintiff to make an *ad hominem* argument and unfounded attack on defendants without presenting a meritorious argument with respect to the pending motions.

Plaintiff asserts, for the first time, that some of its claims fall outside the scope of the subject arbitration agreement. Plaintiff's argument is contrary to logic and common sense, and is due to be swiftly rejected.

First, the arbitration agreement at issue in this case provides as follows:

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.

(Exhibit 1 to Defendants' Motion to Stay Proceedings and Compel Arbitration, p. 3) (underlining added; bold type in original).

Plaintiff's entire supplemental brief is proven incorrect by the foregoing arbitration provision and a single sentence found in paragraph 1 of plaintiff's First Amended Complaint:

All of these actions developed as a result of a joint venture agreement entered into among the plaintiff and the defendants.

(Plaintiff's First Amended Complaint, ¶1) (emphasis added).

It is also obvious from an objective reading of the remainder of plaintiff's First Amended Complaint that all of plaintiff's asserted claims "arise under" and/or "relate to" the joint venture agreement and that, as a result, all of plaintiff's claims fall within the scope of the arbitration agreement. In addition, a party cannot avoid arbitration simply by including related claims against individuals who are employed by the signatory parties to the arbitration agreement. *See Greater Canton Ford Mercury, Inc. v. Ables*, 948 So. 2d 417, 419 (Miss. 2007) and *Ford Motor Co. v. Ables*, 207 Fed. Appx. 443 (5th Cir. 2006) (claims against individual employees of signatory defendant and claims against a non-signatory defendant were held subject to arbitration). *See also Fradella v. Seaberry*, 952 So. 2d 165, 2007 Miss. LEXIS 184, *28-29 (Miss. 2007). Indeed, the defendant law firms in this case can only act through their respective attorneys, including Mr. Scruggs and Mr. Barrett, and plaintiff's claims against Mr. Scruggs and Mr. Barrett unquestionably arise under, relate to, and/or touch the Joint Venture Agreement, as plaintiff correctly admits in the very first paragraph of its First Amended Complaint. *See* First Amended Complaint, ¶ 1 ("All of these actions developed as a result of a joint venture agreement entered into among the plaintiff and the defendants."). *See MS Credit Center, Inc. v. Horton*, 926 So.

2d 167, 176 (Miss. 2006) (“[I]t is only necessary that a dispute ‘touch’ matters covered by the contract to be arbitrable.”).

Second, plaintiff's assertion that some of its claims fall outside the scope of the arbitration agreement is an argument (like plaintiff's waiver argument) that, in and of itself, must be submitted to arbitration. The parties' arbitration agreement incorporates the rules of the American Arbitration Association ("AAA"), and Rule R-7(a) of the AAA's Commercial Arbitration Rules (attached to defendants' Motion to Stay Proceedings and Compel Arbitration as Exhibit 2), provides as follows:

The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

(Emphasis added).

Rule 7(a), which has been incorporated into and is part of the parties' Joint Venture Agreement, provides that the arbitrator, not this Court, must resolve plaintiff's (unfounded) assertion that some of its claims fall outside the scope of the arbitration agreement. *See Ables, supra*, 948 So. 2d at 422 ("The terms of the arbitration provision must be honored in a dispute over arbitrability. Therefore, arbitration of the issue of arbitrability is the mandatory result if those are the terms to which the parties have validly agreed."). Indeed, numerous court decisions have held that the incorporation of AAA's rules into an arbitration agreement constitutes "clear and unmistakable" language requiring the parties to arbitrate issues of "arbitrability," including disagreements about whether certain claims are subject to arbitration, i.e., the scope of the arbitration agreement. *See, e.g., CitiFinancial, Inc. v. Newton*, 359 F.Supp.2d 545, 552 (S.D. Miss. 2005) (incorporation of the AAA rules constitutes an agreement for arbitrator to determine

issue of jurisdiction, including scope of arbitration agreement); *Qwest Corp. v. New Access Communications, LLC*, No. 03-N-1278, 2004 U.S. Dist. LEXIS 28523, at 22 (D.Co. March 31, 2004) (incorporation of the AAA rules constitutes an agreement for arbitrator to determine issue of arbitrability); *Contec Corp v. Remote Solution, Co.*, 398 F.3d (2nd Cir. 2005) (scope and validity of arbitration agreement are for arbitrator when parties incorporate AAA rules in their agreement); *Johnson v. Polaris Sales, Inc.*, 257 F.Supp. 2d 300, 308 (D. Me. 2003) (incorporation of AAA rules into arbitration agreement constitutes an agreement for the arbitrator to decide whether a dispute falls within the scope of the agreement); *Brandon, Jones, Sandal, Zeide, Kohn, Chalal & Musso, P.A. v. MedPartners, Inc.*, 203 F.R.D. 677, 684-85 (S.D. Fla. 2001) (incorporation of AAA rules constitutes clear and unmistakable agreement for arbitrator to determine issue of arbitrability). Nothing in the *Smith* opinion cited by plaintiff changes or challenges the controlling principles of *Ables* and the other cases cited above.

Thus, as with plaintiff's waiver argument, plaintiff's "scope" argument must be resolved by the arbitrator, not this Court, and the Court should compel arbitration of the plaintiff's "scope" argument as a threshold matter. If, however, this Court undertakes to decide the "scope" issue, then this Court should find that all of the plaintiff's claims are subject to arbitration. *See* plaintiff's First Amended Complaint, ¶1 ("All of these actions developed as a result of a joint venture agreement entered into among the plaintiff and the defendants.").

Finally, plaintiff's discussion of Judge Acker's opinion in the *Moran* case is irrelevant to the issue presently before this Court: the arbitrability of the plaintiff's claims. Suffice it to say that Mr. Scruggs and his firm disagree with the conclusions reached by Judge Acker and are prepared to defend and establish the propriety of their actions in connection with the *Moran* proceeding. In

any event, to the extent plaintiff believes defendants' actions in *Moran* have a bearing on the merits of plaintiff's claims, plaintiff may assert its arguments in arbitration; but plaintiff's allegations about *Moran* have no relevance to nor bearing upon the issue presently pending before this Court and should be ignored. Indeed, plaintiff's argument smacks of desperation and is nothing more than a "red herring" through which plaintiff seeks to draw the Court's attention away from the well-established and controlling legal precedents which mandate arbitration of the subject claims. Defendants are confident the Court will see plaintiff's arguments for "what they are" and will grant defendants' motion.

Respectfully submitted,

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

BY: Larry D. Moffett
OF COUNSEL

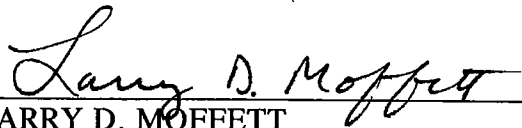
LARRY D. MOFFETT - BAR # 3401
WILTON V. BYARS, III - BAR # 9335
SHEA S. SCOTT - BAR # 100775
DANIEL COKER HORTON & BELL, P.A.
OXFORD SQUARE NORTH
265 NORTH LAMAR BOULEVARD, SUITE R
POST OFFICE BOX 1396
OXFORD, MS 38655-1396
(662) 232-8979

CERTIFICATE

I, Larry D. Moffett, of counsel for Defendants, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing pleading to:

Grady F. Tollison, Jr., Esq.
Tollison Law Firm
100 Courthouse Square
Oxford, MS 38655

THIS, the 5th day of July, 2007.



LARRY D. MOFFETT

**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

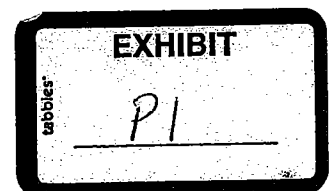
Paul Benton
181 Main Street
P.O. Box 1341
Biloxi, MS 39533-1341

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

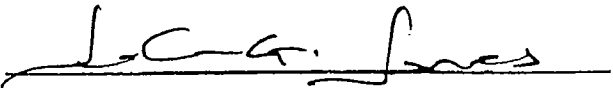
BY: Mary E. McAlister

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: 

JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC

Attorneys at Law
901 North State Street · Jackson, Mississippi 39202
Telephone (601) 355-5200 · Telecopier (601) 355-5400
johnjones@jfsplfirm.com

John Griffin Jones
Steven H. Funderburg
Craig R. Sessums
G. Davis Peterson
T. Stewart Lee, Jr.

Mailing Address:
Post Office Box 13960
Jackson, Mississippi 39236-3960

December 11, 2006

Richard F. Scruggs, Esquire
SCRUGGS LAW FIRM
Post Office Box 1136
Oxford, Mississippi 38655

VIA FAX (662-281-1312) AND A.S. MAIL

Dear Dick:

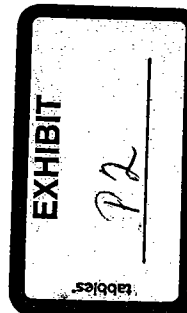
I tried to call this morning but could not reach you. When we talked last Wednesday about fee splits, you said that you and Nutt had agreed that my firm and I would receive \$1,000,000 of the gross attorney fees received on the first State Farm settlement, and nothing else. You made clear that this payment "was only the first one," and that more money was coming beginning with the \$10 to \$15 million the group would be paid in fees as class counsel under the existing State Farm "class" proposal. You then expect that the other insurers will fall in line and settle under similar terms, and that combining our Allstate and Nationwide cases should yield fee amounts similar to the State Farm deal. You said that you had not yet spoken to Barrett about your agreement with Nutt and the amount allocated to my firm.

I remain confused but understood you to say that Nutt, Barrett's firm and your firm had decided to split fees with each of you taking 32% of the gross (I was unsure whether the 32% fee split among you was limited to the State Farm settlements), leaving 4% in payment of my firm's interest in the joint venture. I think you said that Nutt had agreed to pay the \$1 million to my firm without deduction for expenses or his 35% share.

Obviously, your decision deviates substantially from the Joint Venture Agreement. I cannot adequately describe here the extent to which it deviates from my subjective expectations and any objective view of the facts that should drive these determinations. I have spent the past few days thinking of our conversation in light of our friendship over the past several years and the unique legal relationship that exists between joint venturers, and my partners and I have come to the conclusion that it may be best for both of us if you and the other members of the joint venture simply buy my interest out.

If you and the other members are interested in a buy-out, I am willing to propose a figure for a total and complete purchase of my interest in all present and future settlements with our relinquishing further involvement and releasing all claims arising at law and in equity. If there is a buy-out, and the joint venture continues, we will require as part of the Release that the group indemnify and hold us harmless against future liabilities.

If you are not interested in a buy-out, then I would propose that we stick to the terms of the Agreement that we entered into in December, 2005. Under that Agreement, I am entitled to



Richard F. Scruggs, Esquire

December 11, 2006

Page 2

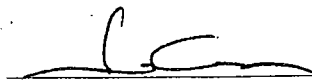
request an accounting of the financial transactions of the Joint Venture and all e-mails or other written and oral communications leading to your declaration of the extent of my firm's involvement in the fees generated by the joint venture. If there is a dispute relating to the terms of the Agreement, or if we are at an impasse on the fee splits, these disputes should be submitted to arbitration.

Based on my limited understanding of what has happened to date outside the specific context of the litigation, there have been some fees received by the joint venture of which I was unaware until fairly recently. Obviously, we anticipate the consummation of the State Farm settlement (presented to the group as a done deal confirmed by State Farm just before you announced it the group on November 14) which will generate additional fees. I would like to receive an accounting of all fees received to date preliminary to reaching an agreement as to the division of those fees in accordance with the Joint Venture Agreement and Mississippi law. If we cannot achieve these two goals promptly, I would like to request that these disputes be referred to arbitration as well.

Consistent with the terms of the Agreement, and in light of the series of oral requests and agreements among us that the group be included in all decisions affecting the group, I am copying all of the members on this letter. I look forward to hearing from you, Sid, or some other member in response to this proposal and request.

Sincerely yours,

JONES, FUNDERBURG,
SESSUMS, PETERSON & LEE, PLLC



John Griffin Jones

JGJ/bkm

Cc: Don Barrett, Esquire (via fax)
Barrett Law Offices (via fax)
David Nutt, Esquire (via fax)
Meg McAlister, Esquire (via fax)
Sparky Lovelace, Esquire (via fax)
Zack Butterworth, Esquire (via fax)
Zach Scruggs, Esquire (via fax)
Sid Backstrom, Esquire (via fax)
Steve Funderburg, Esquire
Craig Sessums, Esquire
Dave Peterson, Esquire
Stewart Lee, Esquire

Bridgett Kellum

From: John Jones [johnjones@jfsplawfirm.com]
Sent: Tuesday, July 10, 2007 12:38 PM
To: 'Bridgett Kellum'
Subject: FW: Skg

John Griffin Jones
JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC Post Office Box 13960 Jackson, Mississippi
39236-3960 Phone (601) 355-5200 Fax (601) 355-5400

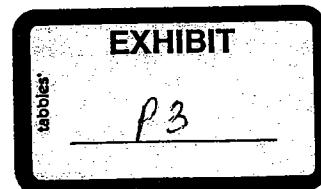
-----Original Message-----

From: Sid Backstrom [mailto:sidbackstrom@scruggsfirm.com]
Sent: Tuesday, December 12, 2006 5:32 PM
To: johnjones@jfsplawfirm.com
Subject: Skg

Johnny

I have a ltr coming to you responding to yours to Dick. Dick does not want to deal with this issue any longer so you get the pleasure of dealing with me.

Give me a call to discuss. I do want to get your allocation. Everyone else us getting me one.



John Jones

From: John Jones [johnjones@jfsplawfirm.com]
Sent: Wednesday, December 13, 2006 10:29 AM
To: 'Sid Backstrom'
Cc: 'sfunderburg@jfsplfirm.com'; 'Steve Funderburg'; 'Craig Sessums'; 'Dave Peterson'; 'Stewart Lee'; 'Jack Dunbar'
Subject: RE: Skg

It is, indeed, a pleasure to deal with you. It is just that I realized that my emotional response to the offer made me an even more ineffective advocate for my/my firm's interest than usual, and I solicited the help of better minds than my own - well, except for Cupit. I know that Dick has talked to Jack Dunbar about mediating this mess, and he and Cupit discussed it very briefly yesterday in the context of the class and Hood, etc. (Dick told Cupit that I had no involvement in trying to work that out, so I guess the marginalizing of our efforts has already begun and I need to withdraw last week's emails and proposals Cupit and I had worked out to get Hood to sign off on the deal last Friday). I think Jack and Dick were going to talk today. I don't want to undercut their efforts. I have sent them, however, a breakdown on the actual out-of-pocket losses my firm and I had in dedicating me full-time and Stewart/Steve half time since 11/1. I can send that along if you think that will be helpful. Otherwise, I think we can simply arbitrate the fee dispute under the Agmt if Jack and Danny can't work this out amicably. I hope we can.

I'm sending a copy of your email to Jack so that he can see where we are and where Dick is. JGJ

John Griffin Jones
JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC
Post Office Box 13960
Jackson, Mississippi 39236-3960
Phone (601) 355-5200
Fax (601) 355-5400

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Sent: Tuesday, December 12, 2006 5:32 PM
To: johnjones@jfsplawfirm.com
Subject: Skg

Johnny

I have a ltr coming to you responding to yours to Dick. Dick does not want to deal with this issue any longer so you get the pleasure of dealing with me.

Give me a call to discuss. I do want to get your allocation. Everyone else us getting me one.

John Jones

From: John Jones [johnjones@jfsplawfirm.com]
Sent: Wednesday, December 13, 2006 4:12 PM
To: 'Zach Scruggs'
Subject: RE: Tuepker Inspection 12/18 or 19 NEED REPLY, Please

I personally apologize to you for what I'm sure you've heard about the fee squabbling. I've never been in this position before. But none of it means that I am not here to help on the document exchange and anything else I or my office can help you with. Tell Sid I've tried twice to call him back. JGJ

John Griffin Jones
JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC
Post Office Box 13960
Jackson, Mississippi 39236-3960
Phone (601) 355-5200
Fax (601) 355-5400

-----Original Message-----

From: Zach Scruggs [mailto:zachscruggs@scruggsfirm.com]
Sent: Wednesday, December 13, 2006 4:03 PM
To: 'Welch, Scott'; johnjones@jfsplawfirm.com; 'Marshall Smith'
Cc: 'Oliver, Wendy'; 'Reed, William N.'; 'Bob Galloway'
Subject: RE: Tuepker Inspection 12/18 or 19 NEED REPLY, Please

I will check and get back you asap.

From: Welch, Scott [mailto:swelch@bakerdonelson.com]
Sent: Wednesday, December 13, 2006 11:38 AM
To: Zach Scruggs; johnjones@jfsplawfirm.com; Marshall Smith
Cc: Oliver, Wendy; Reed, William N.; Bob Galloway
Subject: Tuepker Inspection 12/18 or 19 NEED REPLY, Please
Importance: High

Dear Zach:

At the risk of repetition, please read the e-mail below that Wendy sent you last week. I need to confirm that one of these days is okay with you us to inspect the Tuepker property. If you already replied to Wendy, I apologize; however she has been out ill the last two days and I cannot access [nor do I want to] her e-mail. Your prompt confirmation would be much appreciated. I am copying John Jones and Marshall on this simply because I never know who might be "out of pocket" at a given time.

3/5/2007

Thanks much, Scotty

Zach,

I have been contacted by Michael McCabe regarding a site inspection of the Tuepker's property on December 18th or 19th. Please confirm that we have permission to view the site.

Thank you,
Wendy L. Oliver

W. Scott Welch, III

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC
P.O. Box 14167
Jackson, MS 39236
Direct Telephone: 601-351-2440
Direct Facsimile: 601.592.2440
Receptionist: 601-351-2400
email: swelch@bakerdonelson.com

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC represents clients across the U.S. and abroad from offices in Alabama, Georgia, Louisiana, Mississippi, Tennessee, Washington, D.C. and a representative office in Beijing, China.

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3/5/2007

**SCRUGGS
LAW FIRM**

A Professional Association

126 A COURTHOUSE SQUARE POST OFFICE BOX 1146 OXFORD, MISSISSIPPI 38653
tel 662.281.1212 fax 662.281.1312
www.scruggslawfirm.com

RICHARD E. SCRUGGS
SIDNEY A. BACKSTROM [MS & LA]
ZACH SCRUGGS
DAVID SHELTON [MS & VI]

December 13, 2006

Mr. John Jones
Jones, Funderburg, Sessums & Peterson, P.L.L.C.
P.O. Box 13960
Jackson, MS 39286-3960

RE: Kaurina Litigation

Dear John:

Thank you for your December 11th letter to Dick. As we previously discussed, please direct all future communications on the fee allocation to me.

Also, as we discussed, Dick's conversation with you about the fee split was merely a proposal that Dick and David thought would be acceptable to at least 4 of the 5 five joint venturers. As you know, a minimum of 4 out of 5 joint venturers must agree on any fee allocation.

Since you and Don were unwilling to accept this proposal, I have asked that all joint venturers (you included) give me their suggested approach for the allocation of fees

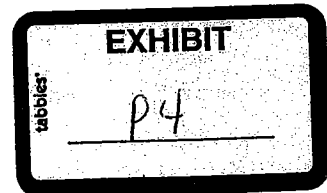
Nutt & McAlister	_____	%
Scruggs Law Firm	_____	%
Barrett Law Firm	_____	%
Jones Funderburg	_____	%
Lovelace Law Firm	_____	%

Okay to share your suggested allocation with other venturers? Yes No

I would ask that you provide this information as soon as possible.

Finally, as to your request for an accounting of the financial transactions of the joint venture, you should direct that request to David Nutt's firm as his firm has maintained the books of the venture since its inception. I do not believe that the joint venture speaks to "emails or

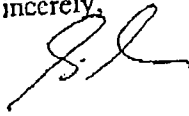
ESTABLISHED 1966



Scruggs Law Firm
December 13, 2006
Page 2

other written or oral communications leading to your declaration of the extent of [your] firm's involvement in the fees generated by the joint venture." Moreover, there has been no such "declaration."

Sincerely,

A handwritten signature in black ink, appearing to read 'S.A. Backstrom', written in a cursive style.

Sidney A. Backstrom

SAB/lh

John Jones

From: John Jones [johnjones@jfsplawfirm.com]
Sent: Wednesday, December 13, 2006 4:12 PM
To: 'Zach Scruggs'
Subject: RE: Tuepker Inspection 12/18 or 19 NEED REPLY, Please

I personally apologize to you for what I'm sure you've heard about the fee squabbling. I've never been in this position before. But none of it means that I am not here to help on the document exchange and anything else I or my office can help you with. Tell Sid I've tried twice to call him back. JGJ

John Griffin Jones
JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC
Post Office Box 13960
Jackson, Mississippi 39236-3960
Phone (601) 355-5200
Fax (601) 355-5400

-----Original Message-----

From: Zach Scruggs [mailto:zachscruggs@scruggsfirm.com]
Sent: Wednesday, December 13, 2006 4:03 PM
To: 'Welch, Scott'; johnjones@jfsplawfirm.com; 'Marshall Smith'
Cc: 'Oliver, Wendy'; 'Reed, William N.'; 'Bob Galloway'
Subject: RE: Tuepker Inspection 12/18 or 19 NEED REPLY, Please

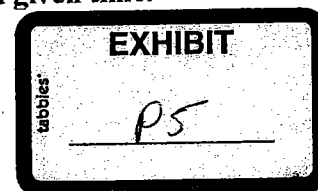
I will check and get back you asap.

From: Welch, Scott [mailto:swelch@bakerdonelson.com]
Sent: Wednesday, December 13, 2006 11:38 AM
To: Zach Scruggs; johnjones@jfsplawfirm.com; Marshall Smith
Cc: Oliver, Wendy; Reed, William N.; Bob Galloway
Subject: Tuepker Inspection 12/18 or 19 NEED REPLY, Please
Importance: High

Dear Zach:

At the risk of repetition, please read the e-mail below that Wendy sent you last week. I need to confirm that one of these days is okay with you us to inspect the Tuepker property. If you already replied to Wendy, I apologize; however she has been out ill the last two days and I cannot access [nor do I want to] her e-mail. Your prompt confirmation would be much appreciated. I am copying John Jones and Marshall on this simply because I never know who might be "out of pocket" at a given time.

3/5/2007



JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC

Attorneys at Law
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johnjones@jfsplfirm.com

John Griffin Jones
Steven H. Funderburg
Craig R. Sessums
G. Davis Peterson
T. Stewart Lee, Jr.

Mailing Address:
Post Office Box 13960
Jackson, Mississippi 39236-3960

December 14, 2006

VIA FAX (662-281-1312) AND U.S. MAIL

Sidney A. Backstrom, Esquire
SCRUGGS LAW FIRM
Post Office Box 1136
Oxford, Mississippi 38655

Dear Sid:

This is an attempt to respond to our various conversations and those with Jack Dunbar, as well as your letter of December 13. We understand that you and/or Dick are trying to resolve the fee splits in connection with our Joint Venture, and that Sparky and I are the only ones who have not responded. To that end, please understand that our position is simply this: under the terms of the Joint Venture Agreement, the statutory and common law briefly cited below, and the Rule 1.5 factors, my firm is entitled to an equal split with all other venturers after deducting the 35% interest that Nutt & McAllister are entitled to by contract.

There is no authority for you, or anyone else in the group, to act unilaterally as fee-split judge. There is no such designation or authority in the Joint Venture Agreement. If you have fee split proposals from the other members of the Joint Venture, please forward that information to me because neither the Agreement nor applicable law governing joint ventures authorizes some of the members to make decisions regarding fee divisions to the detriment of others. There is no language in the Joint Venture Agreement which in any way provides, as your letter states, that four of the five joint venturers can determine the fee splits. I do not accept the conclusion in your letter that the deciding factor on fee splits is getting a four-to-one majority to act, as opposed to the objective elements in Rule 1.5, MRPC. In fact and law, any effort to squeeze any member on fee division or anything else is inappropriate and actionable.

I also understand from your letter that you and/or Dick are taking the position that the fee division is not a matter for arbitration (as the Agreement expressly provides) since the fee division can allegedly be agreed upon by a majority or super-majority vote. Again, I do not find any language to support that position. On the contrary, page 3 clearly states that "any dispute arising under or relating to the terms of this agreement shall be resolved by mandatory binding arbitration..." Further, the Agreement provides that "agreement by four of the five venturers is required to *distribute* said fees." (Emphasis added). There is nothing in the Agreement that permits four of the five venturers to *determine* the amount of those fees to be distributed. According to the Agreement, the amount of the fees is to be determined taking into consideration "all factors including Rule 1.5 of the Model Rules of Professional Conduct, and contribution to the success of the litigation."

Our reading of the Agreement leads invariably to the conclusion that if there is no

EXHIBIT
P 10

agreement as to the amount or percentage of the fees to which each venturer is entitled, that issue should be resolved by arbitration. However, if you wish to take the position to the contrary, then Mississippi statutory law governs. Specifically, Miss. Code Ann. §79-12-35 (and its corollary provision under the Uniform Partnership Law effective 1/1/07 but probably inapplicable since the MUPA has a savings clause for all claims or causes of action that accrued before 1/1/07) applies, and under those provisions, in the absence of an express agreement regarding fee divisions in the document forming the joint venture, it is presumed that the venturers intended that all fees or profits be divided equally. This governing Mississippi statute is fully in accord with CJS, AmJur and all other black-letter-law authorities and the common law all over the country. *See e.g. Nickerson v. Holloway*, 469 S.E.2d 209 (Ga. App. 1996) (“In the absence of an agreement to the contrary, attorneys working together on a case are presumed to be joint adventurers who will share their fee equally.”)

My position is that the Joint Venture Agreement should control over what the fee division should be. My understanding of the Agreement is that Nutt & McAlister are entitled to thirty-five percent (35%) of the net fee, and the remaining sixty-five percent (65%) of the net fee should be divided among the remaining venturers; namely, your office, Barrett, Sparky and my office. If we are unable to reach an agreement on this division, or if you take the position that the fee division is not a matter for arbitration, then my position is that Mississippi law answers all outstanding questions on how the fees are to be divided. If you want to submit this to mediation or binding arbitration, I will make myself available on 24-hours notice so long as we can agree on the neutral, objective judge of these facts and the law.

I could not determine in my conversations with Jack Dunbar or you whether Dick wished to have any further conversations with Jack in an effort to resolve this dispute. At one time Jack was advised by you and/or Dick that his efforts were not needed as this was not a subject for mediation and/or arbitration. Now it seems that there may be an effort to meet and discuss this with Jack. In my own concerted attempt to remove as much emotion from these discussions as possible, I asked Jack to attempt to resolve this dispute informally. If you wish to do it directly with Jack or some other mediator upon whom we can agree, that is fine as well; however, if you disagree with my view that all of us have contributed to this litigation more or less equally, then I think we are all going to be required to produce to each other first and then the mediator/arbitrator whatever documentary information we have to establish the Rule 1.5 factors. I am unwilling to concede that I have done less than the others in bringing the litigation to this point. I am more than happy to share all of the documentation I have gathered together on our hours, unreimbursed costs and expenses incurred to make it possible for me to commit 95% of my time to the venture since October 2005, on condition that we have reciprocal production. What I am unwilling to do in the end is deal with this issue in a vacuum or engage in a process whereby to get what I consider our fair share of this recovery I have to cut the throat of any of my fellow joint venturers.

Once you and Dick have made up your minds about whether you wish to discuss this with Jack, please give him a call. If you take the position that this is not a matter that is amenable to immediate arbitration or at least mediation under the Agreement, then please advise

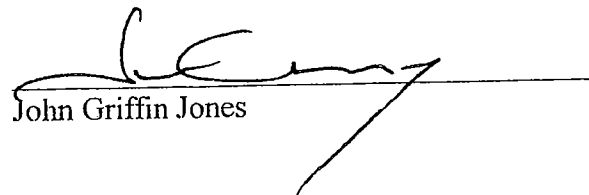
me and I will advise my partners here and all the members of the Joint Venture of the options for resolution that exist in law.

I understand that some contention has been made that this is premature because the State Farm deal had not been finalized. Since Dick started these "negotiations," we assume that the terms of the deal are agreed upon except for the fee split. If we are wrong, let me know and I'll dedicate my firm and all my time to removing any impediments to reaching this final issue on fee splits. Among the many problems we face in this venture is that we are totally dependent upon information from the other venturers (primarily Dick), both as to the immediate issue on fee division as well as contributing to the continuing work. We can only hope that the information critical to all decisions we are making as a group are shared with the group. I have a strong suspicion that I am not the only member in the dark on all of this.

Lastly, everyone should understand that the last thing in the world we want is to hold up this excellent settlement getting to the clients or in any way undercutting the excellent work and results we, *all of us*, have achieved thus far. But our relationship is fiduciary in nature, and we owe each other at a minimum the opportunity to have an equal voice in all important decisions, particularly one that so profoundly affects each of us as fee splits. My reliance to the Agreement and joint venture law to fill in blanks in the Agreement should not be understood as any sort of attack on the venture or the hard work each of us has contributed to it. In truth, I found myself relying on the Agreement and the law when it became crystal clear to my partners and me that the respect, faith and mutual trust that led me to sign on without having a set fee percentage was not being reciprocated now that the issue has turned to dividing up money.

Sincerely yours,

JONES, FUNDERBURG,
SESSUMS, PETERSON & LEE, PLLC



John Griffin Jones

JGJ/bkm

Cc: Don Barrett, Esquire (via fax)
Marshall Smith, Esquire (via fax)
Derek Wyatt, Esquire (via fax)
Richard Scruggs, Esquire (via fax)
Zach Scruggs, Esquire (via fax)
Sparky Lovelace, Esquire (via fax)
David Nutt, Esquire (via fax)
Meg McAllister, Esquire (via fax)
Zack Butterworth, Esquire (via fax)
Steve Funderburg, Esquire
Craig Sessums, Esquire
Dave Peterson, Esquire
Stewart Lee, Esquire

Sessums'; 'Dave Peterson'; 'Stewart Lee'
Subject: FW: Sid Backstrom letter

Sparky: attaching Sid's letter of 12/13 asking me to cut the heads off all other venturers so I could get more money. You know, the thing I feel worst about is that I really must look that dumb and that greedy.

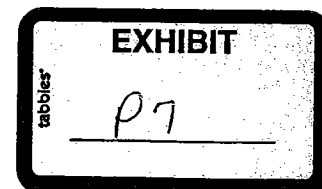
I really appreciate your call. I hate it for both of us, but I'm glad you are equally out of the loop and in the outer darkness as I am on the whole SKG venture. I understand that you will take direction from Don Barrett, but we basically agreed to stand together in objecting to the process advanced by the Scruggs group. You will see in Sid's attached letter that his goal is to get a 4-to-1 majority on fee splits, and then the group can do whatever they want with the fees. That seems to be the goal, not fairness or honest and objective evaluation of each venturer's contribution and effort. I understand that you agree with me that we will not support such a goal and will stand together to fight it, and ensure that there is no 4-to-1 muscle jobs. I promise you that I/we will never combine with any other 3 to take any position adverse to you. We also agreed that Jack Dunbar would be acceptable to mediate and perhaps arbitrate this entire mess.

I'm certainly not trying to hold you to anything. I wouldn't even if I could. I am copying my partners and our erstwhile counsel and letting them know of our conversation and general agreement that we object to what Scruggs is trying to do on the fees and that we seek a fair and objective mediator/arbitrator to determine these issues. If I misstated or misunderstood what your views are, please let me know. It is good to have an alliance, especially on the basic issues with which nobody fair can disagree with. Johnny

John Griffin Jones
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LEE, PLLC
Post Office Box 13960
Jackson, Mississippi 39236-3960
Phone (601) 355-5200
Fax (601) 355-5400

-----Original Message-----

From: Bridgett Kellum
[mailto:bridgett@jfsplawfirm.com]
Sent: Thursday, December 14, 2006 8:30 AM
To: 'John Jones'
Subject: Sid Backstrom letter



Sparky: attaching Sid's letter of 12/13 asking me to cut the heads off all other venturers so I could get more money. You know, the thing I feel worst about is that I really must look that dumb and that greedy.

I really appreciate your call. I hate it for both of us, but I'm glad you are equally out of the loop and in the outer darkness as I am on the whole SKG venture. I understand that you will take direction from Don Barrett, but we basically agreed to stand together in objecting to the process advanced by the Scruggs group. You will see in Sid's attached letter that his goal is to get a 4-to-1 majority on fee splits, and then the group can do whatever they want with the fees. That seems to be the goal, not fairness or honest and objective evaluation of each venturer's contribution and effort. I understand that you agree with me that we will not support such a goal and will stand together to fight it, and ensure that there is no 4-to-1 muscle jobs. I promise you that I/we will never combine with any other 3 to take any position adverse to you. We also agreed that Jack Dunbar would be acceptable to mediate and perhaps arbitrate this entire mess.

I'm certainly not trying to hold you to anything. I wouldn't even if I could. I am copying my partners and our erstwhile counsel and letting them know of our conversation and general agreement that we object to what Scruggs is trying to do on the fees and that we seek a fair and objective mediator/arbitrator to determine these issues. If I misstated or misunderstood what your views are, please let me know. It is good to have an alliance, especially on the basic issues with which nobody fair can disagree with. Johnny

John Griffin Jones
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Post Office Box 13960
Jackson, Mississippi 39236-3960
Phone (601) 355-5200
Fax (601) 355-5400

-----Original Message-----

From: Bridgett Kellum [mailto:bridgett@jfsplawfirm.com]
Sent: Thursday, December 14, 2006 8:30 AM
To: 'John Jones'
Subject: Sid Backstrom letter

Bridgett Kellum-Moore
Legal Assistant to John Griffin Jones

Thanks, Sparky. I think we've both demonstrated that we are team players. I know of no better demonstration of that than our willingness to commit ourselves totally to the team effort for some 14 months now without a fee arrangement; indeed, on our respective beliefs that our fellow members would be fair. The only thing I know for sure is that a small firm practitioner suffers more for making good on this commitment than a larger firm, and that is a factor that an arbitrator can understand better than subjective chest pounding on who flew on the jet to Bloomington to talk to SF. I promise you that I will support you and the work you've done, "ripe" for resolution now or not, even though I don't know the details, I will support the work of all my fellow members. What I will not do is agree to any proposal that anticipates you and me to take the hindmost on every issue because we don't own jets and sometimes have to drive to Oxford and the Coast; really, this so offends everything I truly believe in and have built my law practice to battle – the tyranny of the haves simply because they have – that I'm going to fight this to the ends of the earth, or until some fair process (like a Dunbar mediation/arbitration) decides this issue. So, while I understand your relationship with Barrett and your honest statement that you will follow his direction on this issue, I can promise you that we will be fighting for you ... and us. Sorry about the sing-song emotionalism. Just know that I mean it. Johnny

John Griffin Jones
JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC
Post Office Box 13960
Jackson, Mississippi 39236-3960
Phone (601) 355-5200
Fax (601) 355-5400

-----Original Message-----

From: Sparky Lovelace [mailto:dml@lovelacelaw.com]
Sent: Friday, December 15, 2006 1:09 PM
To: 'John Jones'
Subject: RE: Sid Backstrom letter

Johnny:

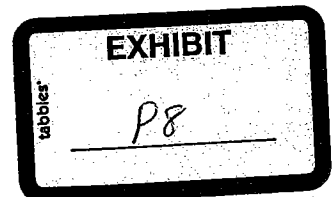
I appreciate your email and our talk this morning. I am a team player and have been involved in many JVs where money has been split. As I told you, I am in no position to judge others as to their profit participation percentages. I know how hard I have worked and how I have contributed to the success of this venture, as well my commitment to continue to work to see this through. As I told you, a lot of what I have been working on for over a year is just now "ripe" and there is much work yet to do. I am sure you have similar thoughts.

I am confident we will work this out on some equitable basis and will do what I can to ensure that happens. I will not muscle or be muscled. The only person I take direction from is my wife. (and God, if he would talk to me)

I look forward to working with you.

Sparky

From: John Jones [mailto:johnjones@jfsplawfirm.com]
Sent: Friday, December 15, 2006 11:49 AM
To: 'Sparky Lovelace'
Cc: DECUPIT@aol.com; 'Steve Funderburg'; 'Craig



John Jones

From: John Jones [johnjones@jfsplawfirm.com]
Sent: Thursday, January 25, 2007 11:44 AM
To: 'sbackstrom@scruggsfirm.com'
Subject: RE: Katrina

Thanks. I appreciate your candor and wish there were not such an elephant in the room that distracts from getting to the bottom of this. In the end, the problem you vent about and the notion that you guys "just sat back and did nothing" is inevitable in the context in which we find ourselves: huge money fixing to start pouring in and no agreement on the front end to settle the self-interest that comes out. Nobody is going to credit anybody else on much if anything, because doing so costs them money. Moreover, every concession or moment of candor ends up getting stuck up one's ass. It is hopelessly deadlocked, and will be no matter how many of the partners are taken care of and coaxed to agree to the detriment of the lone survivor. Do you not see the difficulties such an approach (whatever 4 say controls) presents, particularly in a fiduciary relationship? I want to avoid this as bad as I need to be paid for committing 2 and ½ years on my law practice to what Dick has asked of me, but if that is where it is headed this is going to be awful for all of us. JGJ

John Griffin Jones
 JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC
 Post Office Box 13960
 Jackson, Mississippi 39236-3960
 Phone (601) 355-5200
 Fax (601) 355-5400

-----Original Message-----

From: Sid Backstrom [mailto:sbackstrom@scruggsfirm.com]
Sent: Thursday, January 25, 2007 9:31 AM
To: 'John Jones'
Subject: RE: Katrina

Just to be clear – I don't agree with your view on all starting equal etc, I just followed it to determine where our starting point was. I appreciate knowing where you are coming from but- just as an example – even the things that you mention, if we agreed that you were right about all of that, still pale in comparison to, for example, what we did – some of which I will list: we had 800 of our 1,500 clients (300 of the 639 SF's were from our office) before the venture started; we have spent in hard cash \$600,000 that Nutt has not reimbursed us for; we have 6 people (4 lawyers and 2 paralegals) working full time on this (Dick and Zach full time since the beginning) and had our CPA working around the clock on the client reconciliation project for SF; the whistleblowers came to Dick and they were the sole basis for Hood's interest which really was the 80% of why SF wanted to settle; Trent Lott and Gene Taylor signed up with our office as did Judge Guirola – that mattered big time to SF too; we forewent all other work since this case started and Dick forgot about everything else we had going on – hard to imagine I know – haha; every expert (except Favre and those bad faith guys who I could never figure out) we designated for the post-Leonard cases was found and cultivated by our office.

I say all this because I have been pelted with emails from everyone saying all the good they have done – like we just sat back and did nothing. So I am venting a bit. But seriously, with all of this said, and the agreement which in everyone's view but yours says if 4 of 5 agree on a fee split we have a deal, it is really really hard for me to accept that we should all just take the same amount when the agreement doesn't say anything like that.

I will poll the group about arbitrating with Jack when we get dough on the streets and see what they say.

Sidney A. Backstrom

3/4/2007

Scruggs Law Firm, P.A.
 120A Courthouse Square
 P.O. Box 1136
 Oxford, MS 38655
 (p) 662 281 1212
 (f) 662 281 1312

From: John Jones [mailto:johnjones@jfsplawfirm.com]
Sent: Wednesday, January 24, 2007 5:49 PM
To: sbackstrom@scruggsfirm.com
Subject: RE: Katrina

That's right. It is also right that we must start from an objective place and make equitable adjustments, if any are appropriate, from there. And that place is not only that mandated by law when any joint venture agmt is silent or is left open for precisely this purpose – working out the splits after members see the results – but how this deal was presented to me from the get-go, on the basis of which I convinced my partners that our involvement would be justified. And, for what it may be worth, we knew at that time that dedicating me, the oldest and highest fee generator in the office by far, on this exclusively (meaning that I had to hire another lawyer to take my comp and bad faith work, and then Stewart to help on this and take in the new cases that I couldn't give to another lawyer) for a period of 14 months would cost us in loss of revenue from me alone almost exactly what it did cost us: \$1.4 million for 2006 alone, not counting the last 2 and ½ months of 05 which is our prime cash months. It probably COST us \$2 million just in lost revenue from the time I got involved till we were excommunicated and not asked to do any more work around 12/13/06. If you add to that the amounts it cost to hire other lawyers and staff to do my work, we're way up there. And what member of the joint venture committed to the work on the chance he would simply be made whole? Certainly none I know.

I mentioned all these facts to you and Zach when I reached out during the litigation and asked for an advance or some consideration, and they meant nothing. I'm sure that they mean even less now, at least to any member who didn't commit to do all of this based solely on trust and faith. I really HATE setting any of this down because of the clear self-interest oozing out of every letter of every word. But how do we engage each other on something like this? If you can figure out any way short of arbitration as the Agmt provides, I am, like Ross Perot, all ears.JGJ

John Griffin Jones
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 Jackson, Mississippi 39236-3960
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 Fax (601) 355-5400

-----Original Message-----

From: Sid Backstrom [mailto:sbackstrom@scruggsfirm.com]
Sent: Wednesday, January 24, 2007 3:37 PM
To: 'John Jones'
Subject: RE: Katrina

I put you in at 16.25% given your position that we are all equal except for Nutt.

Sidney A. Backstrom
 Scruggs Law Firm, P.A.
 120A Courthouse Square
 P.O. Box 1136
 Oxford, MS 38655
 (p) 662 281 1212
 (f) 662 281 1312

From: John Jones [mailto:johnjones@jfsplawfirm.com]
Sent: Wednesday, January 24, 2007 2:42 PM

3/4/2007

To: Sid Backstrom
Subject: RE: Katrina

Thanks for the response. I can only imagine how much more than 131.25% it would've been had I submitted anything from my firm and me. I thought that was a bad idea. Still do. It showed me early and with great clarity that the only way to do this is to submit this to an arbitrator whose fairness and disinterest we all count agree upon. Otherwise we're at throats when we ought to be patting backs.

For example, and not to beat the slumbering horse too hard, I don't read the Agreement as allowing a vote of 4 to 1 to determine fee splits. The agreement says that it takes 4 out of 5 to vote to "distribute" fees, which is an entirely different matter than how the fees to be distributed are arrived at and their respective amounts. Plus, if there is ever a 4 to 1 vote on anything that prejudices the 1, there are huge fiduciary-duty problems and liability that I, as a member, certainly don't want to assume.

See? Just responding to an apparently innocuous statement with an attempt at an innocuous answer creates disputes I don't know that we'll ever resolve without the help of a true neutral.

That said, I certainly agree that the clients need to get paid, and first, and as soon as we can get the money in their hands. I volunteered my bunch and me to help do that or anything else. Please tell me what we can do and it will be done. Johnny

John Griffin Jones
 JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC
 Post Office Box 13960
 Jackson, Mississippi 39236-3960
 Phone (601) 355-5200
 Fax (601) 355-5400

-----Original Message-----

From: Sid Backstrom [mailto:sbackstrom@scruggsfirm.com]
Sent: Wednesday, January 24, 2007 2:17 PM
To: 'John Jones'
Subject: RE: Katrina

Hey Man:

For some reason your emails find their way into my SPAM folder. But I did find this one just now.

Since the initial flurry of activity Dick asked me to stop until the hay was in the barn which I did. Now we do need to re-visit. When I asked all to say what they should get the lowest amount it added up to (because some gave a range) was 131.25%. So we have some work to do.

I do think that if 4 of 5 agree then we must abide by that. If we don't come to that level of consensus then I agree that arbitration would be in order. And maybe all would agree to Dunbar. That is just my view.

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3/4/2007

Thanks for the note.

Sidney A. Backstrom
 Scruggs Law Firm, P.A.
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 P.O. Box 1136
 Oxford, MS 38655
 (p) 662 281 1212
 (f) 662 281 1312

From: John Jones [mailto:johnjones@jfsplawfirm.com]
Sent: Wednesday, January 24, 2007 10:10 AM
To: sbackstrom@scruggsfirm.com
Subject: RE: Katrina

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From: Sid Backstrom [mailto:sbackstrom@scruggsfirm.com]
Sent: Wednesday, January 24, 2007 9:19 AM
To: 'Linda Hollowell'; 'Don Barrett'; 'Lena Davis'; 'Mary E. McAlister'; 'John Jones'; 'Dewitt M. Lovelace'
Cc: 'Zach Scruggs'; 'Dick Scruggs'; 'Beth Jones'
Subject: RE: Katrina
Importance: High

Agenda items:

1. handling of press calls
2. handling of client calls
3. plan for getting our clients paid
4. expenses to allocate to clients; expenses to not allocate to clients

1 hour time limit

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3/4/2007

From: Linda Hollowell [mailto:lindahollowell@scruggsfirm.com]
Sent: Wednesday, January 24, 2007 8:42 AM
To: Don Barrett; Lena Davis; Mary E. McAlister; John Jones; Dewitt M. Lovelace
Cc: Sid Backstrom; Zach Scruggs; Dick Scruggs; Beth Jones
Subject: Katrina
Importance: High

A joint venturer telephone conference is set for 11:00 a.m. this morning. Call-in number is 605-772-3900; access code: 598212#

Linda Hollowell
Legal Assistant
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Telephone: (662)281-1212
Fax: (662)281-1312

!DSPAM:2,45b8ce35316109926214014!

3/4/2007

JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC

Attorneys at Law
901 North State Street · Jackson, Mississippi 39202
Telephone (601) 355-5200 · Telecopier (601) 355-5400
johnjones@jfsplfirm.com

John Griffin Jones
Steven H. Funderburg
Craig R. Sessums
G. Davis Peterson
T. Stewart Lee, Jr.

Mailing Address:
Post Office Box 13960
Jackson, Mississippi 39236-3960

December 20, 2006

Meg McAlister
Nutt & McAllister, PLLC
605 Crescent Blvd., Suite 200
Ridgeland, Mississippi 39157

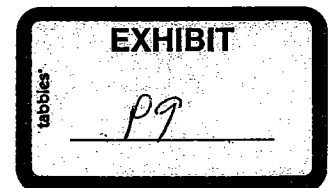
Re: SKG

Dear Meg:

I enjoyed talking to you and Derek yesterday. Congratulations to Derek and your firm for the joining of your substantial forces. If we can be of assistance to you in plunging ahead against dragons far and wide, please don't hesitate to call on us.

As I told you, Sid Backstrom directed me to you when I asked for an accounting of revenues and expenses of SKG in our exchange of letters last week. I understood that you would send me the last quarter's breakdown on expenses claimed and those reimbursed, and that the accountant is working on finalizing the complete reconciliation for the last quarter of the first year of SKG, or through October 31, 2006, and that you would send me that as soon as it is received. In an effort to be clear, let me set forth below exactly what I am requesting:

1. An itemization of all settlements received to date by SKG or any of its members, including the date of the settlement, the defendant, the amount, and the disbursement to the client and to SKG, including any referral fees we paid out, and to whom, and the date of disbursement.
2. I understood from our conversation in September that the net attorney fees from these settlements were plowed back into the venture to pay the ongoing expenses of the litigation. Please confirm that with me. If, however, any fees were disbursed to venture members for any reason, please itemize each such payment.
3. An itemized statement of all expenses claimed by any joint venturer.
4. An itemization of expenses actually reimbursed to any joint venturer, along with a designation of each itemized expense as to whether it was charged off as a client-specific expense, a venture expense, or a common-benefit expense.
5. An itemization of all expenses claimed by any venturer which were denied by you or David, and the present status of those claimed expenses.



6. An itemization of all settlement funds paid to the clients from settlements received, including the total amount of the settlement, the defendant, and the amounts paid to and received by each client, and the dates of payment to the clients.

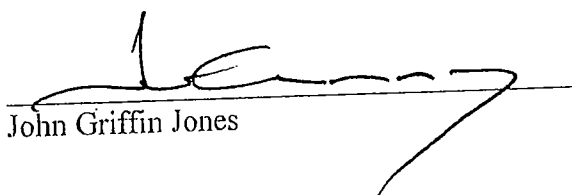
7. Lastly, an itemization of all settlements agreed to but not yet received or disbursed, including the projected disbursements and whether any joint venture member is expected to receive any funds, the identity of the member, and why any member is going to be paid now.

I hope this request will not be unduly burdensome. More importantly, I trust you understand why I am asking for this, and why it is necessary for me have this information in order to determine what net fees have been or are available for distribution. By copy of this letter, I am informing all venturers of this request for an accounting under the Agreement of November 8, 2005, on pp. 2-3.

I have not heard anything from Dick or Sid in response to my letter of December 14. I did talk to Sparky on December 15, and I understood that Sparky had also declined to submit a proposed fee division. Like me, Sparky said that he did not feel like he had enough information to propose fair splits for any of the other venturers. We are awaiting a response from Dick, Sid or any other member of our joint venture to my request that the matter of fee division be immediately submitted to Jack Dunbar (or other mediator/arbitrator upon whom we can all agree) for resolution, or whether I or we should proceed with legal action to protect our interests. I understand that General Hood has essentially agreed to sign off on the deal pending resolution of some final details. I simply wanted all the other venturers to know all information that has come to me since we started down this path last week.

Sincerely yours,

JONES, FUNDERBURG,
SESSUMS, PETERSON, LEE, PLLC



John Griffin Jones

JGJ/bkm

Cc: Richard F. Scruggs, Esquire
Zach Scruggs, Esquire
Sid Backstrom, Esquire
Don Barrett, Esquire
Marshall Smith, Esquire
Derek Wyatt, Esquire
Sparky Lovelace, Esquire
Steve Funderburg, Esquire
Craig Sessums, Esquire
Dave Peterson, Esquire
Stewart Lee, Esquire

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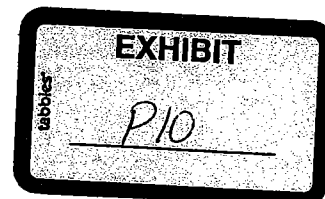
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Subject: RE: Katrina
Importance: High

Agenda items:

3/4/2007



John Jones

From: John Jones [johnjones@jfsplawfirm.com]
Sent: Wednesday, January 24, 2007 2:45 PM
To: 'Steven Funderburg'; 'Craig Sessums'; 'Dave Peterson'; 'Stewart Lee'
Subject: FW: And so it begins

Latest news.

John Griffin Jones
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For example, and not to beat the slumbering horse too hard, I don't read the Agreement as allowing a vote of 4 to 1 to determine fee splits. The agreement says that it takes 4 out of 5 to vote to "distribute" fees, which is an entirely different matter than how the fees to be distributed are arrived at and their respective amounts. Plus, if there is ever a 4 to 1 vote on anything that prejudices the 1, there are huge fiduciary-duty problems and liability that I, as a member, certainly don't want to assume.

See? Just responding to an apparently innocuous statement with an attempt at an innocuous answer creates disputes I don't know that we'll ever resolve without the help of a true neutral.

That said, I certainly agree that the clients need to get paid, and first, and as soon as we can get the money in their hands. I volunteered my bunch and me to help do that or anything else. Please tell me what we can do and it will be done. Johnny

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3/4/2007

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!DSPAM:2,45b7bfd0316102027511470!

John Jones

From: John Jones [johnjones@jfsplawfirm.com]
Sent: Wednesday, January 24, 2007 5:49 PM
To: 'sbackstrom@scruggsfirm.com'
Subject: RE: Katrina

That's right. It is also right that we must start from an objective place and make equitable adjustments, if any are appropriate, from there. And that place is not only that mandated by law when any joint venture agmt is silent or is left open for precisely this purpose – working out the splits after members see the results – but how this deal was presented to me from the get-go, on the basis of which I convinced my partners that our involvement would be justified. And, for what it may be worth, we knew at that time that dedicating me, the oldest and highest fee generator in the office by far, on this exclusively (meaning that I had to hire another lawyer to take my comp and bad faith work, and then Stewart to help on this and take in the new cases that I couldn't give to another lawyer) for a period of 14 months would cost us in loss of revenue from me alone almost exactly what it did cost us: \$1.4 million for 2006 alone, not counting the last 2 and ½ months of 05 which is our prime cash months. It probably COST us \$2 million just in lost revenue from the time I got involved till we were excommunicated and not asked to do any more work around 12/13/06. If you add to that the amounts it cost to hire other lawyers and staff to do my work, we're way up there. And what member of the joint venture committed to the work on the chance he would simply be made whole? Certainly none I know.

I mentioned all these facts to you and Zach when I reached out during the litigation and asked for an advance or some consideration, and they meant nothing. I'm sure that they mean even less now, at least to any member who didn't commit to do all of this based solely on trust and faith. I really HATE setting any of this down because of the clear self-interest oozing out of every letter of every word. But how do we engage each other on something like this? If you can figure out any way short of arbitration as the Agmt provides, I am, like Ross Perot, all ears.JGJ

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From: Sid Backstrom [mailto:sbackstrom@scruggsfirm.com]
Sent: Wednesday, January 24, 2007 3:37 PM
To: 'John Jones'
Subject: RE: Katrina

I put you in at 16.25% given your position that we are all equal except for Nutt.

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From: John Jones [mailto:johnjones@jfsplawfirm.com] -
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To: Sid Backstrom
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3/4/2007

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3/4/2007

John Jones

From: John Jones [johnjones@jfsplawfirm.com]
Sent: Thursday, January 25, 2007 11:44 AM
To: 'sbackstrom@scruggsfirm.com'
Subject: RE: Katrina

Thanks. I appreciate your candor and wish there were not such an elephant in the room that distracts from getting to the bottom of this. In the end, the problem you vent about and the notion that you guys "just sat back and did nothing" is inevitable in the context in which we find ourselves: huge money fixing to start pouring in and no agreement on the front end to settle the self-interest that comes out. Nobody is going to credit anybody else on much if anything, because doing so costs them money. Moreover, every concession or moment of candor ends up getting stuck up one's ass. It is hopelessly deadlocked, and will be no matter how many of the partners are taken care of and coaxed to agree to the detriment of the lone survivor. Do you not see the difficulties such an approach (whatever 4 say controls) presents, particularly in a fiduciary relationship? I want to avoid this as bad as I need to be paid for committing 2 and ½ years on my law practice to what Dick has asked of me, but if that is where it is headed this is going to be awful for all of us. JGJ

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-----Original Message-----

From: Sid Backstrom [mailto:sbackstrom@scruggsfirm.com]
Sent: Thursday, January 25, 2007 9:31 AM
To: 'John Jones'
Subject: RE: Katrina

Just to be clear – I don't agree with your view on all starting equal etc, I just followed it to determine where our starting point was. I appreciate knowing where you are coming from but- just as an example – even the things that you mention, if we agreed that you were right about all of that, still pale in comparison to, for example, what we did – some of which I will list: we had 800 of our 1,500 clients (300 of the 639 SF's were from our office) before the venture started; we have spent in hard cash \$600,000 that Nutt has not reimbursed us for; we have 6 people (4 lawyers and 2 paralegals) working full time on this (Dick and Zach full time since the beginning) and had our CPA working around the clock on the client reconciliation project for SF; the whistleblowers came to Dick and they were the sole basis for Hood's interest which really was the 80% of why SF wanted to settle; Trent Lott and Gene Taylor signed up with our office as did Judge Guirola – that mattered big time to SF too; we forewent all other work since this case started and Dick forgot about everything else we had going on – hard to imagine I know – haha; every expert (except Favre and those bad faith guys who I could never figure out) we designated for the post-Leonard cases was found and cultivated by our office.

I say all this because I have been pelted with emails from everyone saying all the good they have done – like we just sat back and did nothing. So I am venting a bit. But seriously, with all of this said, and the agreement which in everyone's view but yours says if 4 of 5 agree on a fee split we have a deal, it is really really hard for me to accept that we should all just take the same amount when the agreement doesn't say anything like that.

I will poll the group about arbitrating with Jack when we get dough on the streets and see what they say.

Sidney A. Backstrom

3/4/2007

What do you mean "ostercized?" I don't recall making such an allegation, nor would I make such an immature and meaningless statement of self-pity. The dispute that has arisen came at me completely out of the blue. I registered my objections and the basis for each and every one of them. And then ... silence. I tried very hard to make the objection and the remedy for it separate and distinct from contributing to the ongoing litigation efforts. I don't know of a conference or meeting we've been invited to that I've missed. It is a fact, however, that we are in a position where we can be completely frozen out. We have made no allegations that our efforts to reach out and assume responsibilities have been the subject of an intentional freeze-out because I am not in the practice of turning on guys I've worked with this closely the first time a legitimate difference of opinion or dispute arises. I was unwilling to comply with Sid's instruction to tender my own view of what the splits should be because I felt that, in doing so, I would necessarily have to turn on somebody and characterize the value of their contributions under Rule 1.5 when I didn't have all the information I needed and, in any event, didn't see how any submission by any joint venturer would not be so covered up in self-interest as to be worthless. That is why I objected to Dick's initial call and the splits he proposed without at least talking to me and coming up with some criteria first. And that is why I thought, and think, that submitting the fee dispute to a truly impartial arbitrator was the right remedy under the circumstances if we cannot talk and reason together like the responsible people we hold ourselves out as being.

Because of the absence of what I would consider to be honest objectivity on **MY** part, I asked Steve to speak to you and Sid about this. I understand that we are awaiting a return call responding to our unilateral drop to 12.5% in an effort to bring this uncomfortable matter to a conclusion quickly. None of that means, however, that we have abandoned our contractual and good-faith commitment to the litigation we committed ourselves to in October 2005, and to which I committed myself to exclusively through December 2006. Nor does it mean that we have or will start cutting into any of our fellow joint venturers. For whatever differences we may have about fee splits, I'm not that guy. It remains my hope that we can work together on issues of self-interest with the same candor and mutual understanding, or attempt at understanding, that has characterized our work together to get the litigation to this point. And if nothing else is remembered, remember that I committed my small firm to this work without a set fee split on the basis of faith in the cause and trust in my fellow venturers. I am still committed to proceeding on the same bases. If you or any member of the group is not, please let us know.

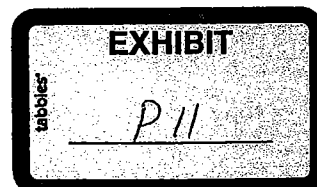
I'll be happy to talk to you, Humphreys and Dick, on Friday or anytime. We want to help. We can help. Johnny

John Griffin Jones
JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC
Post Office Box 13960
Jackson, Mississippi 39236-3960
Phone (601) 355-5200
Fax (601) 355-5400

-----Original Message-----

From: Zach Scruggs [mailto:zachscruggs@scruggsfirm.com]
Sent: Tuesday, January 30, 2007 11:39 AM
To: 'John Griffin Jones'
Subject: RE: Teupker v. State Farm; Nos. 06-61075 & 06-61076

Thanks Johnny, but in all honesty none of us are sure what you wanted or didn't want to do after some of the letters you sent about Dick and your erroneous statements that you have been "ostersized".



JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC

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Telephone (601) 355-5200 • Telecopier (601) 355-5400

John Griffin Jones
Steven H. Funderburg
Craig R. Sessums
G. Davis Peterson
T. Stewart Lee, Jr.

Mailing Address:

Post Office Box 13960
Jackson, MS 39236-3960

February 22, 2007

Richard F. Scruggs, Esquire (via facsimile 662-281-1312)
Sidney A. Backstrom, Esquire
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Post Office Box 1136
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David H. Nutt, Esquire (via facsimile 601-898-7304)
Meg McAllister, Esquire
Derek A. Wyatt, Esquire
NUTT & MCALLISTER, PLLC
605 Crescent Boulevard, Suite 200
Ridgeland, Mississippi 39157

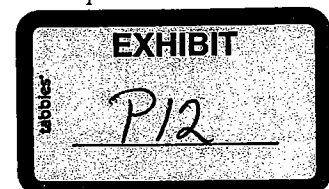
Sparky Lovelace, Esquire (via facsimile 850-837-4093)
LOVELACE LAW FIRM
36474 Emerald Coast Pkwy, Ste. 4202
Destin, Florida 32541

Don Barrett, Esquire (via facsimile 662-834-2628)
Marshall Smith, Esquire
BARRETT LAW OFFICES, P.A.
Post Office Box 987
Lexington, Mississippi 39095-0987

Everyone:

This will follow the numerous conversations I have had with Sid Backstrom over the last several days involving the attorney fees from the first State Farm settlement. It seems readily apparent that we are unable to reach an agreement on the attorney fees. Accordingly, we would like to begin the binding arbitration process provided for in the Joint Venture Agreement. We in no way intend to breach the Joint Venture Agreement or our fiduciary obligations to any of you. This is simply the only fair way we believe the issue can be resolved at this point.

By return facsimile, please confirm that you are in agreement with initiating the binding arbitration process and that the attorney fees from the State Farm settlement should be placed in an interest bearing account until the arbitration process is completed with no disbursements of any kind to any venturer. Our candid concern based on statements that have been made is that there is a belief that binding arbitration is not available if four out of the five venturers agree to a fee split and then dictate to the fifth venturer an amount. We read the Joint Venture Agreement to say that *any dispute* under the terms of the agreement *shall* be resolved by mandatory binding arbitration. We cannot fathom why any of our fellow venturers would not agree to a neutral arbitration process. If



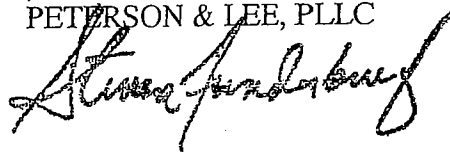
Richard F. Scruggs, Esquire
Sidney A. Backstrom, Esquire
David H. Nutt, Esquire
Meg McAllister, Esquire
Derek A. Wyatt, Esquire
Sparky Lovelace, Esquire
Don Barrett, Esquire
Marshall Smith, Esquire
February 22, 2007
Page Two

arbitration is not acceptable we may be compelled to immediately initiate litigation in Judge Senter's court to prevent disbursement of the fees without arbitration. There is obviously no need for anyone to file any motion or other litigation if the venture is willing to begin the binding arbitration process.

As always, we are more than happy to discuss any of the foregoing with anyone in the venture at any time. Our intention now and always is to abide by the terms of the agreement we all signed and we look forward to hearing from each of you as soon as possible so we can resolve these issues and move forward with representation of the Venture's remaining clients.

Sincerely yours,

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, PLLC



By: _____
Steven H. Funderburg

SHF:lh

JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC

Attorneys at Law
911 North State Street • Jackson, Mississippi 39201
Telephone (601) 255-3200 • Telecopier (601) 355-5400

John Griffin Jones
Steven H. Funderburg
Clayton H. Sessums
C. Davis Peterson
T. Stewart Lee, Jr.

Main Address

Post Office Box 13960
Jackson, MS 39216-3960

February 22, 2007

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Derck A. Wyatt, Esquire
NUTT & MCALLISTER, PLLC
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Ridgeland, Mississippi 39157

Sparky Lovelace, Esquire (via facsimile 850-837-4093)
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Don Barrett, Esquire (via facsimile 662-834-2628)
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Post Office Box 987
Lexington, Mississippi 39095-0987

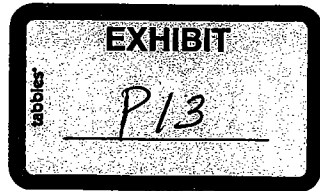
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By return facsimile, please confirm that you are in agreement with initiating the binding arbitration process and that the attorney fees from the State Farm settlement should be placed in an interest bearing account until the arbitration process is completed with no disbursements of any kind to any venturer. Our candid concern based on statements that have been made is that there is a belief that binding arbitration is not available if four out of the five venturers agree to a fee split and then dictate to the fifth venturer an amount. We read the Joint Venture Agreement to say that any dispute under the terms of the agreement shall be resolved by mandatory binding arbitration. We cannot fathom why any of our fellow venturers would not agree to a neutral arbitration process.

To Steve Funderburg
Steve,
BLW, RA., does not
agree that we should
resort to binding
arbitration, at least
now.
I look forward
to the venture meeting
at David's office on
Mar 1, at 1:00 pm.
Hopefully we will
reach a consensus,
as defined in the
Agreement. Don B.

cc: Dick, Sparky, David



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Destin, Florida 32550

Toll Free 888.837.2281
Telephone: 850.837.6020
Fax: 850.837.4093
dml@lovelacelaw.com

36474 Emerald Coast Pkwy.
Suite 4202
Destin, Florida 32541

FAX COVER SHEET

FAX NUMBER: 601-355-5400

of Pages to follow: 1

TO: John
Stuen

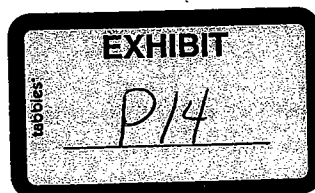
FROM: Sparty

DATE: 2/22/07

RE:

Dewitt M. Lovelace
Lovelace Law Firm, P.A.
Phone: 850-837-6020
Fax: 850-837-4093
dml@lovelacelaw.com

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John Griffin Jones
Steven H. Funderburg
Craig R. Sessums
G. Davis Peterson
T. Stewart Lee, Jr.

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Jackson, MS 39236 1966

TELECOPIER TRANSMITTAL SHEET

TO: Sparky Lovelace, Esquire
FROM: Steve Funderburg, Esquire
DATE: February 22, 2007
NUMBER: 850-837-4093
RE: Hurricane Litigation

The following consists of 3 pages, including this cover sheet. If any part of this message is received illegibly, or incomplete, please contact Lora at (601) 355-5200.

2.22.07

ADDITIONAL COMMENTS: TO: STEVE AND JOHNNY --

I have never had a fight over money and surely do NOT want one in this venture. Surely we can work this out so we all are paid fairly without a fight, OR Arbitration

CONFIDENTIALITY NOTE

Keep me posted -
Sparky

This telecopied transmission contains legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, disclosure, distribution or copying of this transmission is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the United States Postal Service.



IA Professional Association

120 A COURTHOUSE SQUARE POST OFFICE BOX 1146 OXFORD, MISSISSIPPI 38655
Tel 662.281.1212 Fax 662.281.1312
WWW.SCRUGGSIAWYFIRM.COM

RICHARD F. SCRUGGS
SIDNEY A. BACASTROM [MS & LA]
ZACH SCRUGGS
DAVID SHELTON [MS & VI]

February 22, 2007

Via Facsimile

Don Barrett
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Mary E. McAlister
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Dewitt "Sparky" Lovelace
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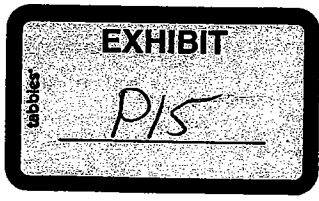
Re: Scruggs Katrina Group

Everyone:

On the issue of attorneys' fees from the State Farm settlement, our firm has had discussions with many of you as you know. To date, there has been no consensus on how to divide the fees. Accordingly, there has been no disbursement of fees collected.

Pursuant to the Joint Venture Agreement, we propose a meeting of all venturers on Thursday, March 1, 2007, at 1:00 p.m. at David Nutt's office so that we may vote on a division of attorneys' fees, as well as the makeup of the venture going forward. Pursuant

ESTABLISHED 1980



Scruggs Law Firm

February 22, 2007
Page 2

to the agreement, "Agreement by 4 of the 5 venturers is required to distribute . . . fees."
Should 4 of 5 venturers not agree on a fee distribution, we may have to resort to the
dispute resolution mechanism in the agreement, binding arbitration.

Please advise of your availability for this meeting by return facsimile.

Regards,



Sidney A. Backstrom

SAB/lh

**SCRUGGS
LAW FIRM**

(A Professional Association)

130 A COURTHOUSE SQUARE POST OFFICE BOX 1136 OXFORD, MISSISSIPPI 38655
tel 662.281.1212 fax 662.281.1213
WWW.SCRUGGS.LAW.FIRM.LL.P

RICHARD F. SCRUGGS
SIDNEY A. BACKSTROM (MS & LA)
ZACH SCRUGGS
DAVID SHELTON (MS & VA)

February 22, 2007

Via Facsimile

Don Barrett
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Dewitt "Sparky" Lovelace
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Re: Scruggs Katrina Group

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*Everyone:
I will be at
the meeting at
1:00 pm on
Mar 1 at David's.
Don Barrett*

JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC

Attorneys at Law
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John Griffin Jones
Steven H. Funderburg
Craig R. Sessums
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T. Stewart Lee, Jr.

Mailing Address:

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February 26, 2007

Richard F. Scruggs, Esquire (via facsimile 662-281-1312)
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Derek A. Wyatt, Esquire
NUTT & MCALLISTER, PLLC
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Don Barrett, Esquire (via facsimile 662-834-2628)
Marshall Smith, Esquire
BARRETT LAW OFFICES, P.A.
Post Office Box 987
Lexington, Mississippi 39095-0987

Everyone:

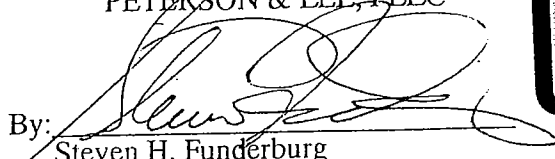
This will follow the correspondence from this office of February 22, 2007 and the letter from Sid Backstrom in response. We have also heard from Don, Sparky and David/Meg. Everyone has indicated a desire to meet on March 1, 2007 at David's office and have requested that we participate in the meeting before pursuing any other action. Without waiver of the legal position set forth in my February 22 letter to Sid, we accede to these requests from our fellow venturers.

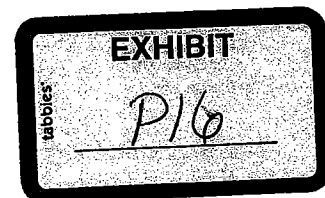
We will attend the venture meeting on March 1, 2007 but would appreciate a response concerning everyone's availability to meet before 1:00 p.m. John was appointed to the Mississippi Civil Rights Education Commission organized by former Governor Winter and the organizational meeting is scheduled for March 1, 2007 at 2:00 p.m. and cannot be rescheduled. Accordingly, if the venture meeting could begin sooner, it would be more productive and appreciated. Everyone please advise whether your schedule will accommodate an 11:00 start time for the meeting on March 1, 2007. Thank you.

Sincerely yours,

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, PLLC

By:


Steven H. Funderburg



SHF:lh

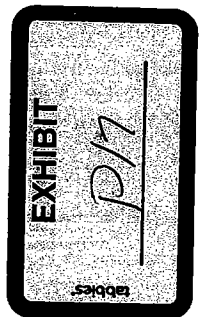
I am responding to this email at 4:00 as I return to office. I have talked to Steve while he is on the road to New Orleans for a planned weekend away with his wife, and Steve called Sid earlier (I do not know the time, but I am certain that Steve did not know of the new deadline Don Barrett placed on us at 2:32 giving us 28 minutes to respond or he, for the entire joint venture, would "act accordingly.") I understood from Steve that Sid told him Barrett would be contacted and told of Steve's call. Speaking solely for me, I was unaware of this new deadline until one hour and ten minutes after it had passed.

For our co-joint venturers copied on this email, and in the event you are as out of the loop as Steve and I were until around 11 a.m. this morning, Steve and I attended a meeting at Nutt's office this morning which was presented to us as an effort to work out our differences on the profit sharing following the State Farm settlements. We had earlier written everybody in the group invoking the arbitration provision of the Agreement in light of the impasse Steve and Sid came to during the phone conversation of late February regarding profit sharing or fee splits. In response, Steve and/or I were personally asked by Barrett, David Nutt, Meg, Sparky (who really just asked us to hold up so that we could try to work this out) and Sid to hold up on asking for arbitration or moving in any other direction until a meeting could be held. We gladly acquiesced to this request from our fiduciaries. After rescheduling, the meeting was held at Nutt's at 11:00 a.m. this morning. Steve and I were in attendance, along with Barrett, Dickie, Sid and David Nutt. Sparky was involved by speaker phone. Without trying to quote verbatim, here is what happened:

Barrett started by saying he was angry with me (Johnny) because I had threatened to sue him and the venture. He read to us the "Removal" provision of the Agmt. He told me that he didn't think that my firm or me were worth even 3% given facts that he didn't want to be nasty enough to describe. I said we didn't want to engage in that type of thing, and for that reason had since December requested that the issue be submitted to binding arbitration before an impartial third party who was not covered up in self-interest. Barrett said we weren't going to arbitrate. He said that he had discussed this with Dickie, Sid, Nutt and Sparky, and that they were in agreement that my firm would be offered 6% of the fees, and that if we didn't take that offer the funds would be disbursed anyway under the Agmt's provision that fees could be disbursed upon 4 to 1 vote. He then said that if we didn't take the final offer of 6% right then, immediately, then the vote had already been taken to remove us from the venture. He said that we would have no more involvement in the venture at all. He said that if we did take this final offer, then we could go forward with the group. (I was unclear as to whether we would go forward at 6%, and don't want to misstate anything, but my clear impression was that we would NOT be entitled to 6% as the venture went forward). In conclusion, Barrett said he wanted a response right then, or before we left the room.

Nutt said that he didn't know all the facts when he and I discussed all of this in a phone call on 2/23. He said that the fee division was arrived at not only by Sid (as I had understood) but upon the recommendations and involvement of Derrick and Meg (I saw Derrick before the "meeting," but didn't speak; I never saw Meg though I walked into her office twice before the meeting started). He said he had been told some facts by Sid, Derrick and Meg after we'd talked that changed his mind. Thus, he was supporting the offer and conditions given us by Barrett. A poll was taken, and Dickie, Zach, and finally Sparky said they were all in agreement. Dickie said nothing during the meeting, or at least nothing I heard.

Steve and I said that we did not know that meeting was for the purposes Barrett conveyed - I think I called it a "how the cow eats the cabbage" lecture - that we were there to discuss this problem in good faith or submit it to arbitration, and I said this was the first time I had ever been involved in any meeting to discuss fees or the manner of arriving at them. I asked if there was any interest in hearing from us on what we wanted or how we analyzed the problem. I was assured there was none. Some other comments were made that were redundant, and Steve said that we understood but needed to go discuss this development with our three other law partners who were in the office in Jackson. Barrett resisted, asked us to go call them, and then Nutt said he didn't object to our going to the office to do so. Dick said he had no objection. Steve said that



we would call as soon as we had discussed this with our partners and came to some sort of conclusion. We left.

The only other factual information given us was that there was some \$22 million in the trust account and that it would be disbursed by the end of today.

At this point we have not reached a final decision. We quickly came to the conclusion that we were not in a position to be objective about what happened at the "meeting" and that we should seek the advice of outside, independent counsel. My partners and I agreed to let this cataclysm sink in over the weekend and speak to counsel early next week before making a formal response to this Hobson's Choice. We are aware of no authority for Barrett or anybody else to, *inter alia*, place arbitrary deadlines on us or any other venturer. We understand from Barrett's email below, however, that the time for us to respond is passed, and assume that the fees have now been disbursed from the Nutt trust account. If we are wrong, please let us know. Please understand, however, that Barrett's type of high-handed treatment of our vested and future interests in existing and future profits of the venture has placed us in this position, that such actions are in intentional and tortious breach of our rights as joint venturers, in flagrant disregard of the fiduciary duties all of us owe each other irrespective of our self-interested positions in the division of profits from the venture. In fairness, and consistent with the fiduciary duties we have and will continue to fulfill notwithstanding this unilateral action essentially voiding our past and future interests, all should fully understand that each and every joint venturer is jointly and severally liable for the acts of each joint venturer, and that MS law is crystal clear that absent a fee allocation set forth in the oral or written agreement forming a joint venture, the fees are split equally. Joint venture law, not some malleable admixture of disciplinary rules (Rule 1.5) or common law governing quantum meruit disputes, governs the issue of profit sharing or fee allocation among joint venturers. We offer that now because we have never once been asked to explain the basis of our position regarding the distribution of the State Farm (or any other) fees by SKG. The assertions and allegations (for that is all they are) directed at us today by Barrett to justify a predetermined allocation of profits will not be responded to here, nor will I indulge the almost irresistible urge to engage in recrimination.

This is the last you will hear from us in this manner. Someone should tell the staff to remove us from the email list. Unless directed otherwise over the weekend, and in light of Barrett's email below, we will cease work on the SKG venture now. Despite what happened to us today, we all wish you well in pursuing relief for the very deserving clients. It has always been, and remains, a worthy cause. Johnny

John Griffin Jones
JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC
Post Office Box 13960
Jackson, Mississippi 39236-3960
Phone (601) 355-5200
Fax (601) 355-5400

-----Original Message-----

From: Don Barrett [mailto:d Barrett@barrettlawoffice.com]
Sent: Friday, March 02, 2007 2:32 PM
To: John Jones; Steven Funderburg
Subject: Katrina

Dear Johnny and Steve,

You said that you would respond right after lunch. We have been waiting for you since then. Unless we have an affirmative response from you by

2:50 p.m., excepting our suggestion, we will assume that your response is negative and act accordingly.

Please respond by e-mail.

Regards,

Don Barrett

Don Barrett, Attorney
Barrett Law Office, P.A.
404 Court Square North
P.O. Box 987
Lexington, MS 39095
662.834.2376
662.834.2628 fax

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!DSPAM:2,45e88c0d316107799237002!

In response to this additional, unilateral deadline (and prescribed manner) for appealing to the decision-maker a decision already reached which deprives us entirely of our interests because we failed to meet earlier deadlines of which we were unaware, please see the email I sent around 5:05 p.m. We will continue to respond as we become aware of these changing deadlines and conditions, but as I said we are going to take the weekend to contemplate the continuing events of this unbelievable day. Please remember, however, that we told you today that we would inform you and the group before we filed anything. We do what we say we're going to do no matter the provocation or perceived usefulness, and in a joint venture can do no less with respect to our fellow venturers. Johnny

John Griffin Jones
JONES, FUNDERBURG, SESSUMS, PETERSON & LEE, PLLC
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Jackson, Mississippi 39236-3960
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Fax (601) 355-5400

-----Original Message-----

From: Don Barrett [mailto:dbarrett@barrettlawoffice.com]
Sent: Friday, March 02, 2007 4:26 PM
To: John Jones; Steven Funderburg
Cc: Dick Scruggs; Beth Jones; David Nutt; sparky@lovelacelaw.com
Subject:

Dear Johnny and Steve:

When you did not respond to our e-mail, giving you a 2:50 p.m. deadline, the remaining members of SKG voted to remove your firm from the SKG, as per the "Removal" section of our Agreement. This occurred at 3:00 p.m. today and was effective immediately.

At 3:25 p.m., you called Sid Backstrom and asked for more time. I, for one, would be willing to consider a reinstatement on agreeable terms, but not under the threat of litigation. You, not your counsel, should give me a call fairly soon, if you are so inclined.

Regards,

Don Barrett

Don Barrett, Attorney
Barrett Law Office, P.A.
404 Court Square North
P.O. Box 987
Lexington, MS 39095
662.834.2376
662.834.2628 fax

This e-mail is intended solely for the person or entity to which it is addressed and may contain confidential and/or privileged

John Jones

From: Steven Funderburg [sfunderburg@jfsplawfirm.com]
Sent: Thursday, June 21, 2007 2:45 PM
To: 'John Jones'
Subject: FW: PERSONAL AND CONFIDENTIAL

Per your request

From: Beth Jones [mailto:bethjones@scruggsfirm.com]
Sent: Monday, March 05, 2007 5:23 PM
To: 'Steven Funderburg'
Subject: RE: PERSONAL AND CONFIDENTIAL

Please see attached letter per Dick Scruggs request.

From: Steven Funderburg [mailto:sfunderburg@jfsplawfirm.com]
Sent: Sunday, March 04, 2007 5:20 PM
To: 'Dick Scruggs'
Subject: PERSONAL AND CONFIDENTIAL

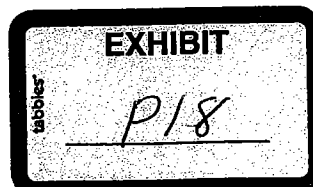
Mr. Scruggs,

I'm just sending this to you because it is nobody else's business. I'm going to mail you a copy as well because I seem to recall that you don't always check your e-mail. I've been thinking about Friday ever since Don Barrett stopped talking. You should know that when Bobs Wilson got the Special Master Recommendation that Merkel said was worth 24 million dollars, it was the lowest point in my legal career. I was absolutely devastated. You had trusted me and my firm and were paying a lot of money for the hourly work on your defense. I felt that you were a fair man and that Wilson and Lucky were accusing you of vile conduct to get money. You (and I guess the other tobacco venturers) paid for hourly work but that's not all that you got. You got me, Steve, up at night worrying about a man and his family. I wanted you to get a break because I thought you were being wronged. So...I worked harder than I have ever worked. I read everything and could reference any scrap of damned paper that mattered to that litigation. I brainstormed with Tim and then he and I wrote the pleadings. When Judge Delaughter refused the Special Master Recommendation and gave you the orders that found Wilson was entitled to "0" dollars I was prouder than I had ever been about a result. I felt that your defense team had worked hard and because of that YOU were going to beat Wilson in court. I know that Tim Balducci and I worked on little else for months and months. Johnny Jones did the same thing on the Lucky case and the Wilson case until the storm hit. He worked his ass off trying to protect YOU. He wanted to help his friend get some justice and he told me countless times that you were a good man and deserved the best work we were capable of. That's what you got from us because we were your friends and we so wanted to protect you and help you get out of the legal nightmare that you were in. You can never buy loyalty and dedication and John and I gave you both for several years of our lives.

I was also proud when you asked Johnny and the firm to become involved with you in the Katrina litigation. The people on the Coast needed (and need) help and we were honored to be asked to work with the group. We trusted YOU completely because we didn't know Don Barrett or David Nutt or Sparky Lovelace. But we knew you and we knew you would treat us fairly.

We were wrong about you. You let Don Barrett talk you into doing something evil for money. Johnny and I never meant to harm you in any way. To be sure, we disagreed about being told that all of the legal work we did was only worth 4% while the other venturers spit 96% but we admitted that we could be wrong. That's why we wanted to work out the dispute or go to a neutral third party. We honestly did not know what the "value" of our work was but we never wanted to question the validity of anyone else's either. We told each other that the arbitrator may come back with 1% and that would be o.k. if in the grand scheme of things the arbitrator thought that was fair.

6/21/2007



You and Don and David and Sparky decided that not only would you not arbitrate, you would tell us what we would get and if we didn't take it you would kick us out and give us nothing. You sat there and let Don Barrett say that to John and me. You went along with it. I have looked in the mirror all weekend and tried to figure out how I could be so stupid. John and I DEFENDED you in fee dispute litigation for God's sake. We DEFENDED you when people said you were greedy, or were a back-stabber, or a liar, or anything else. Good Lord we trusted you as a friend. Well...good job. You have developed a good routine. It worked. But go to your grave knowing that you have shaken my belief in everything I hold dear. I did not believe that people like you really existed. I am ashamed and will always be ashamed of having defended you and protected you. You are a man without honor and you should know that about yourself. You betrayed your friends without even a phone call. You never even tried to work it out with John or me. You just sat there and let Barrett do the talking. Whether you believe it or not, neither Don Barrett nor David Nutt would have stayed up nights worrying about you. I doubt they give a damn about you or your family. You all deserve one another.

Steve Funderburg

!DSPAM:14,45eca861316102136812912! -

Put in
flash 3/2
email files
(all of them)

6/21/2007

SCRUGGS
LAW FIRM

[A Professional Association]

120 A COURTHOUSE SQUARE POST OFFICE BOX 1136 OXFORD, MISSISSIPPI 38655
t/ 662.281.1212 f/ 662.281.1312
WWW.SCRUGGSLAWFIRM.COM

RICHARD F. SCRUGGS
SIDNEY A. BACKSTROM [MS & I.A.]
ZACH SCRUGGS
DAVID SHELTON [MS & VI]

March 5, 2007

VIA ELECTRONIC MAIL
PERSONAL & CONFIDENTIAL

Steve Funderburg, Esquire
Jones Funderburg Sessums & Peterson
901 North State Street
Jackson, MS 39202

Re: Response to your email on March 4, 2007

Dear Steve:

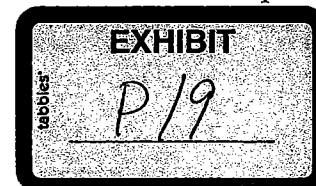
I regret deeply your and Johnny's feelings as expressed above. They are not justified by the facts. I respect and am grateful for the devoted efforts you and Johnny made in your representation of me and those in privity in the Wilson/Luckey matters. Notwithstanding that mixed outcome, you fully earned the \$1.2 million in fees that we paid you. This is an entirely different matter.

The Katrina cases are trying. They are difficult and exasperating given the resources of the industry and the opaque goals of the presiding judge, not to mention the usual difficulty in working with some of the other homeowners' lawyers.

To have any chance of success SKG must be able to work together without expressed or implied threats to "lawyer up" when one of us disagrees with the democratic processes contained within the agreement we, as lawyers, all signed. Nor can we work together when one of us is perceived to be mischaracterizing conversations and motives in quick-tempered missives.

The group has become increasingly leery of working with you guys because of the above concerns. There is an ill-ease that you are awaiting the chance to seize upon

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Funderburg
March 5, 2007
Page 2 of 2

some pretextual violation in order to sue, notwithstanding the agreement's prohibitions and harm that such a distraction would cause our clients.

I think it is now in the best interests of all, and of success for the clients, that SKG move on without you.

I am sorry that this did not work out.

Sincerely,


Richard F. Scruggs