

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

JONES, FUNDERBURG,
SESSUMS, PETERSON & LEE, LLC

PLAINTIFFS

VS.

CAUSE NO. L2007-135

RICHARD SCRUGGS, INDIVIDUALLY;
DON BARRETT, INDIVIDUALLY;
SCRUGGS LAW FIRM; BARRETT
LAW OFFICE; NUTT & MCALISTER;
& LOVELACE LAW FIRM

DEFENDANTS

OPINION

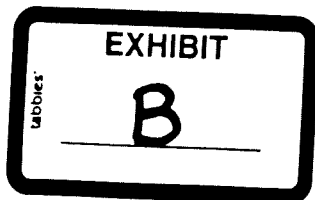
This cause arises out of a joint venture by plaintiff's and defendant law firms set out in this cause for the purpose of persuading claims of insureds against their windstorm carriers as a result of Hurricane Katrina. Settlements of many claims were made and disputes arose over the fees due plaintiff law firm leading to the file of this cause on March 15, 2007, and a first amended complaint on March 28, 2007.

Defendants filed their Answer and Demand for Arbitration and also filed their motion to stay proceedings and compel Arbitration on April 10, 2007. Plaintiff filed its motion to stay Arbitration on April 16, 2007.

Subsequently, several motions and pleadings have been filed including a Motion to File Second Amended Complaint, Motion for Sanctions, Motion for Court Order, Control of Partnership Assets, and Protective Relief Injunction, Motion to Continue hearing of all motions set for January 14, 2008.

Following a telephonic hearing on January 9, 2008, all pending motions were continued pending a hearing on the Motion to Compel Arbitration and Motions to Quash Subpoenas.

The joint venture contract contains a provision for arbitration: "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."



FILE THIS THE 15 DAY OF
January 20 08
MINUTE BOOK 52 PAGE 125-127
MARY ALICE BUSBY, CIRCUIT CLERK
BY A. Roberts D.C.

The Mississippi Supreme Court has held numerous times that arbitration is desirable and Courts should not intervene when the agreement is clear and the parties are aware or should have been aware of its contents. All parties involved in this joint venture were highly qualified, sophisticated trial attorneys with a high degree of experience in litigation practice and all were clearly aware of the consequence of this provision.

Defendants argue that the scope of the arbitration is one for the arbitrators to decide under the AAA Rules of Procedure and that the Court should leave the scope of arbitration to the arbitrators.

Plaintiffs counter that this dispute is outside the scope of arbitration and to be decided by the Court.

In contract law, parties are presumed to have read or should have read any written contract to which they are a party and be aware of its provisions. This legal fiction or presumption should certainly apply to the instant parties, all of whom are highly skilled trial lawyers.

Defendant further argues that if they are incorrect as to this threshold issue, then the motion should be granted for failure of plaintiffs to follow the AAA procedure to initiate arbitration.

Plaintiffs counter that repeated attempts were made requesting arbitration and that the defendant would not respond, and thus, waived the right to arbitration. These attempts are detailed in the transcript of proceedings before presiding Judge Henry Lackey on the 17th day of July of 2007.

Plaintiffs further seek to avoid arbitration arguing that there are matters for the Court to decide, outside the perimeters of the arbitration clause and that the defendants have waived arbitration by attempting to bribe the Circuit court Judge. Although no motion had been filed for summary judgment, the contention is that an agent for defendants presented a proposed order granting such summary judgment to defendants but later decided to proceed and pay the Judge to grant the Motion to Arbitrate.

Having heard arguments and considered all the evidence, I am of the opinion and so find:

- 1 - That Plaintiffs freely entered into the joint venture knowing that the fee dispute would be determined by arbitration under the provision of the Rules and Procedure of the American Arbitration Association.
- 2 - That the Plaintiffs knew or should have known of the provisions of the AAA Rules. By agreeing to be bound by the Rules of the AAA, the parties deemed to have made these provisions a part of the agreement. The rules provide that parties may initiate arbitration by filing with the AAA a written request setting out the facts in dispute, the parties, etc. This was followed by Defendants

subsequent to the filing of the suit. That Plaintiffs failed to initiate arbitration as required in the AAA Rules.

3 - That the scope of arbitration should be determined by the arbitrators for matters arising out of the fee dispute.


4 - That the failure, if any, to respond to Plaintiff's request for arbitration does not constitute an intention permanently to waive the right to arbitration. As set forth in my opinion on the Motion to Quash Subpoenas, alleged attempts to bribe the presiding Circuit Court Judge does not fall within the meaning of "litigation" in issues of arbitration.

5 - That the Motion for Sanctions filed by Plaintiff raises issues not arising out of the dispute for fees and is, therefore, not within the scope of arbitration. That motion should be heard by the Court. In their many requests for sanctions, Plaintiff appears to argue that denial of arbitration could be within the authority of the Court as a sanction.

6 - That the referral of the cause to arbitrators should be delayed until the Motion for Sanctions is heard and decided.

Therefore, the Motion to Compel Arbitrators would normally be granted at this point; however, an order will be held in abeyance until a decision on the Motion for Sanctions.

This the 15th day of January, 2008.


WILLIAM F. COLEMAN
SPECIAL CIRCUIT COURT JUDGE

R-43. Scope of Award

(a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.

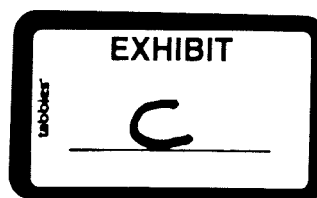
(b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.

(c) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections R-49, R-50, and R-51. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.

(d) The award of the arbitrator(s) may include:

(i) interest at such rate and from such date as the arbitrator(s) may deem appropriate; and

(ii) an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.



FD-302 (Rev. 10-6-95)

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Transcription

Date of

Investigation on

at

File #

Date dictated

by

Your agency,

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

09/27/2007

The following is a recorded telephone conversation between TIM BALDUCCI and STEVE PATTERSON on September 27, 2007:

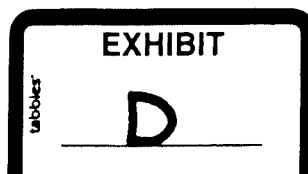
09/27/2007

Jackson, Mississippi

194A-JN-32354

09/27/2007

SA WILLIAM P. DELANEY/jrb



transcription

(number being dialed; telephone ringing)

Investigator

File #
by STEVE PATTERSON:

Date dictated

your agency;

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to

it. It and its contents are not to be distributed outside your agency.

Hello?

Repeat after me. You're the man.

PATTERSON:

I'm the man.

BALDUCCI:

No. I'm the man.

PATTERSON:

Oh, you the man?

BALDUCCI:

I'm the man.

PATTERSON:

You the man.

BALDUCCI:

I'm the man. Say it one more time.

PATTERSON:

Ah. You the man.

BALDUCCI:

There you go.

PATTERSON:

You the man.

BALDUCCI:

(talking simultaneously) Like you mean it. Say it like you mean it.

PATTERSON:

You the man.

BALDUCCI:

Alright. Done. Handled. All is well.

PATTERSON:

Alright. What's done and what's handled and what's all is well (laughs)?

BALDUCCI:

All of it.

PATTERSON:

'Cause all, there's a lot to do. There's a lot to handle...

BALDUCCI:

Yeah. I know.

PATTERSON:

...and there's a lot that ain't well, so (laughs).

BALDUCCI:

(laughs) Well heh, what I can

09/27/2007

Jackson, Mississippi

194A-JN-32354

09/27/2007

SA WILLIAM P. DELANEY/jrb

PATTERSON: Alright.

BALDUCCI: Alright. Top to bottom, soup to nuts.

PATTERSON: Uh, including Oxford.

BALDUCCI: Yep. Everything. Everything.

PATTERSON: Calls made?

BALDUCCI: Calls are made. Everything's great. Follow up has been done by me, just now, touchin' everybody, everything is great.

PATTERSON: (Unintelligible) (UI) was he aware of what we were doin'? Uh, could you tell if P.L. had talked to him?

BALDUCCI: I asked him and he said P.L. had not talked to him.

PATTERSON: Ok. Ok.

BALDUCCI: I said well he's going to be giving you a call here soon.

PATTERSON: Ok.

BALDUCCI: So, anyway, I'll see you this afternoon. I'm on my way back right now. I'm gonna go eat lunch and then I'ma catch up with (UI)

PATTERSON: (talking simultaneously) Alright, what, what about ZEKE?

BALDUCCI: Hadn't heard from the mother fucker.

PATTERSON: Alright, LAYNE just called, uh, I mean I talked to him ten minutes ago.

BALDUCCI: (sighs)

PATTERSON: And he said ZEKE (phonetic) was gonna call you in thirty minutes.

BALDUCCI: Yeah. I been waitin' on a thirty minute phone call, you know, for three days.

PATTERSON: Alright, so he's called you

...ugh...
No. Uh-uh. I'm just sayin' ZEKE, you know, ZEKE's been gon' call me thirty, in thirty minutes for three days.

PATTERSON:

Well EDWIN apparently was of the opinion that, that ya'll got it screwed up last night (laughs). That, uh, I think he thought, I think, from what I understood LAYNE to say, EDWIN thought that you was supposed to call ZEKE back.

BALDUCCI:

Uh, bullshit.

PATTERSON:

Alright.

BALDUCCI:

I mean...

PATTERSON:

(UI)

BALDUCCI:

...that's bullshit. I mean...

PATTERSON:

Alright.

BALDUCCI:

...that mother fucker knows he's supposed to call me and I told him call me back. Uh, the mother fucker was supposed to call me back last night. That's, that...

well he may be sayin'

PATTERSON:

Uh, you da man.

BALDUCCI:

...you know...

PATTERSON:

You da man, you da man.

BALDUCCI:

That's right. I'm...

PATTERSON:

Uh, did uh, uh, did he talk to JIMMY?

BALDUCCI:

Uh, left him a message...

PATTERSON:

Ok.

BALDUCCI:

...but I just talked to JIMMY and I told JIMMY to call him.

PATTERSON:

Ok. Good. Alright.

BALDUCCI:

But yeah, he left him, he left him, I was sittin' right there, left him the, the appropriate message.

PATTERSON:

Good. Good.

PATTERSON: Good and, and did he talk to GABOR?

BALDUCCI: Left him a message too. I told JIMMY that he talked to him, but he actually left him a message.

PATTERSON: Ok. Good enough.

BALDUCCI: But same thing.

PATTERSON: You da man.

BALDUCCI: I'm the man.

PATTERSON: You the man.

BALDUCCI: I'll see you. You, you, you just at the house?

PATTERSON: Hey, (laughs), we got a um, yeah, I tell you what, I'm havin' diarrhea bad today (laughs).

BALDUCCI: Really?

PATTERSON: Yeah.

BALDUCCI: Hmm.

PATTERSON: Uh, did uh, have we got a new member of the firm probably?

BALDUCCI: Uh...

PATTERSON: Or that'd come up?

BALDUCCI: ...oh, oh, oh, oh, um, naw, we didn't really talk about it today, frankly.

PATTERSON: Ok, good.

BALDUCCI: Uh-uh.

PATTERSON: Alright.

BALDUCCI: Naw.

PATTERSON: But you...

BALDUCCI: I'll tell you 'bout all that later.

PATTERSON: ...you know that's coming, right?

PATTERSON:

Yeah, ok. Alright. Good enough.

BALDUCCI:

Yeah.

PATTERSON:

Bye.

BALDUCCI:

Bye. (hangs up)

(END OF RECORDING)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

UNITED STATES OF AMERICA

Versus

No. 3:07-CR-00192-NBB-SAA

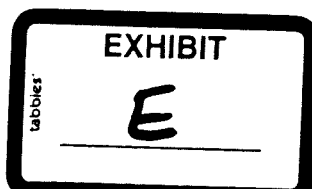
RICHARD F. SCRUGGS,
DAVID ZACHARY SCRUGGS,
and SIDNEY A. BACKSTROM

STATE OF MISSISSIPPI
COUNTY OF LAFAYETTE

AFFIDAVIT OF LINDA HOLLOWELL

Personally came and appeared before the undersigned authority in and for the jurisdiction aforesaid, the within named Linda Hollowell, who first being duly sworn on oath, states as follows:

1. My name is Linda Hollowell. I am 49 years old. I have worked as a legal assistant for various attorneys for approximately 30 years.
2. In March 2004 I began to work as a legal assistant to Sidney A. Backstrom in the Oxford, Mississippi office of The Scruggs Law Firm. I worked in that position continuously throughout the calendar year 2007. I have personal knowledge of the matters set out below.
3. It was Mr. Backstrom's practice to have me prepare drafts of orders and other legal filings. It was his practice to make edits to drafts and return the edited draft to me to be finalized. It was his practice to have me prepare the final proposed order or filing to be submitted for consideration or filing.



4. On September 24, 2007, I prepared for Mr. Backstrom a one (1) page draft order and then final version of a proposed order in the case of *Jones, Funderburg, Sessums, Peterson and Lee, LLC vs. Richard Scruggs, et al.*, In the Circuit Court of Lafayette County, Mississippi, Civil Action No. L07-135. This was the first time I prepared any filing or order using that case style. A copy is attached as Exhibit "A."
5. Sometime after the indictment in this case I was shown an unsigned copy of a two (2) page draft "Order Compelling Arbitration" for the same case. This particular order had the printed facsimile name of "Patterson Balducci" and the printed facsimile date "May 4, 2007" at the top. The word "defendants" is misspelled in the case style as "Defnendants." A copy is attached as Exhibit "B." I had never seen this two (2) page (May 4) draft order prior to this time. I had nothing to do with drafting this order. This order was not stored in any manner in my computer at The Scruggs Law Firm. To the best of my knowledge, I did not misspell the word "defendants" in the case style of any filing or proposed order relating to the Jones case that I drafted and/or finalized for Mr. Backstrom.
6. To the best of my knowledge, information and belief, Mr. Backstrom did not draft this May 4, 2007 order. I base my knowledge that upon my observation as his legal assistant of his practices in drafting and finalizing legal documents and my own knowledge set out above that I had never seen this draft order prior to charges being filed.
7. Attached as Exhibit "C" is a true and correct excerpt from a deposition taken by Mr. Backstrom on September 27, 2007 in New Orleans, Louisiana in what is commonly referred to as the "*McIntosh* case." Mr. Backstrom was a lead attorney in preparing that case for trial. I assisted him with the "*McIntosh* case." This record shows Mr. Backstrom started the deposition at 1:00 p.m. on September 27 and concluded the deposition at 6:35 p.m.

8. Also attached as Exhibit "D" is a true and correct copy of Mr. Backstrom's hotel receipt for the W-New Orleans Hotel for the night of September 26, 2007. It shows that Mr. Backstrom had a hotel room for the night of September 26 in New Orleans before the deposition on September 27.
9. Reviewing deposition record, the hotel receipt and flight records for September 26 and 27 enables me to state that to the best of my recollection and belief, Mr. Backstrom was not in The Scruggs Law Firm office in Oxford, Mississippi at any time during our regular working hours on September 27, 2007.

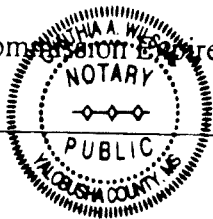
AFFIANT SAYETH FURTHER NOT.

Linda Hollowell
LINDA HOLLOWELL

Sworn to and subscribed before me this the 6th day of June, 2008.

Cynthia A Wilson
NOTARY PUBLIC

My Commission Expires:



MY COMMISSION EXPIRES
February 19, 2011

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

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

PLAINTIFF

VS.

CIVIL ACTION NO.: L07-135

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

DEFENDANTS

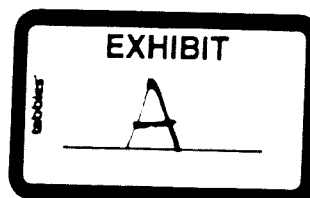
ORDER

THIS MATTER, having come on for consideration pursuant to Defendants' Motion to Stay Proceedings and Compel Arbitration and subsequent pleadings and this Court having considered this motion and found that it is well-taken and should be and is hereby granted.

IT IS HEREBY ORDERED, that this action, including all claims for relief asserted by Plaintiffs, be and is hereby STAYED and Plaintiffs are further compelled to submit all such claims to BINDING ARBITRATION as is provided for in the Joint Venture Agreement signed by all parties.

SO ORDERED AND ADJUDGED, this the ____ day of _____, 2007.

CIRCUIT COURT JUDGE



IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, LLC

PLAINTIFF

VERSUS

CIVIL ACTION NO. L07-135

RICHARD SCRUGGS, INDIVIDUALLY;
DON BARRETT, INDIVIDUALLY; SCRUGGS
LAW FIRM, P.A.; BARRETT LAW OFFICE, P.A.;
NUTT & MCALISTER, ELLC; AND
LOVELACE LAW FIRM, P.A.

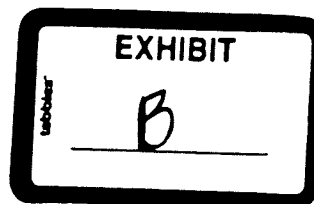
DEFENDANTS

ORDER COMPELLING ARBITRATION

THIS CAUSE is before the Court on several pending Motions filed by the parties. All of the claims and defenses in the instant case arise under a contract, a "Joint Venture Agreement", entered into among all the parties hereto. The contract bound the parties in their joint prosecution of lawsuits brought on behalf of policyholders for alleged damages caused by various insurance companies' failure to pay in the wake of Hurricane Katrina. There has arisen a dispute among the parties as to the whether or not certain terms and conditions of the contract have been breached. As a result, the instant litigation has been initiated by Plaintiff. Plaintiff has filed several Motions requesting specific relief in this case. However, as a preliminary threshold matter, this Court finds that it is appropriate and prudent to address the issue of this Court's role, if any, in adjudicating this dispute.

The parties to the subject contract are all sophisticated lawyers who entered into the joint venture agreement freely and voluntarily. There was included in that agreement a mandatory binding arbitration provision. The arbitration agreement provides that any dispute arising under or relating to the terms of the agreement must be resolved by

1



mandatory binding arbitration pursuant to the guidelines of the American Arbitration Association, and that such arbitration shall occur in Oxford, Mississippi.

The Plaintiff claims that the subject arbitration provision is invalid for a number of reasons. Defendants deny these claims and submit that this dispute must be resolved by arbitration. This Court agrees with Defendant.

To the extent a dispute has arisen over the validity of the arbitration provision of the parties' contract, the Court finds that such dispute must be resolved by arbitration pursuant to the clear terms of the agreement. When sophisticated parties such as these explicitly agree to arbitrate disputes under a contract as here, the Court must yield to an arbitrator as the final authority on the issue. See Greater Canton Ford Mercury, Inc. v. Able, 948 So. 2d 417 (Miss. 2007). Accordingly, the Court finds that this dispute among these parties must be submitted to arbitration.

IT IS THEREFORE ORDERED AND ADJUDGED, that any and all disputes arising under or relating to the terms of the Joint Venture Agreement entered into among the parties hereto must be resolved by mandatory binding arbitration pursuant to the guidelines of the American Arbitration Association, and that such arbitration proceeding shall occur in Oxford, Mississippi.

SO ORDERED AND ADJUDGED, this, the ____ day of _____, 2007.

CIRCUIT COURT JUDGE

Deposition McIntosh- Cody Perry- 9 27 07.txt

1

1 UNITED STATES DISTRICT COURT
 2 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
 3 SOUTHERN DIVISION

4
 5 THOMAS C. And PAMELA PLAINTIFFS
 MCINTOSH

6 VERSUS
 7 STATE FARM FIRE & CASUALTY CIVIL ACTION NO.
 COMPANY, FORENSIC ANALYSIS 1:06-cv-1080-LTSRHW
 8 & ENGINEERING CORPORATION DEFENDANTS
 9 and E.A. RENFROE & COMPANY,
 INC.

10 * * * * *
 11 * * * * *

12
 13 videotape deposition of CODY PERRY, 5480
 14 CR 1101, Rusk, Texas, 75785, taken in the Law
 Street, New Orleans, Louisiana, on September
 15 27th, 2007, at or about 1:00 p.m.

16 APPEARANCES:

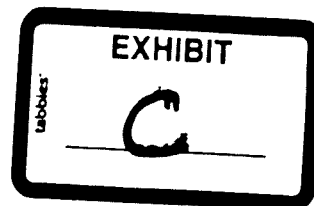
17
 18 SCRUGGS LAW FIRM
 By: Sidney A. Backstrom, Esquire
 19 David Zach Scruggs, Esquire
 120 A Courthouse Square
 20 Oxford, Mississippi 38655
 (Counsel for Plaintiffs)

21
 22 MCGLINCHY STAFFORD
 By: David A. Norris, Esquire
 200 South Lamar Street, Suite 1100
 23 Jackson, Mississippi 39201
 (Counsel for E.A. Renfroe & Company, Inc.,
 24 and Cody Perry)

25
 00000

2

1 APPEARANCES CONTINUED:



2 Deposition McIntosh- Cody Perry- 9 27 07.txt
3 WEBB, SANDERS & WILLIAMS
4 By: Dan W. Webb, Esquire
5 363 North Broadway Street
6 Tupelo, Mississippi 38802
7 (Counsel for State Farm Fire & Casualty
8 Company)

6 GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH
7 By: Kathryn Breard Platt, Esquire
8 1213-31st Avenue
9 Gulfport, Mississippi 39501
10 (Counsel for Forensic Analysis &
11 Engineering Corporation)

9 ALSO PRESENT:

10 Russell Moran, Videographer

11 REPORTED BY:

12 Gail F. Mason, RPR
13 Certified Court Reporter
14 Certificate No. 96004

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I N D E X

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 25

1 S T I P U L A T I O N
 2
 3 It is stipulated and agreed by and between
 4 counsel for the parties hereto that the
 5 deposition of the aforementioned witness is
 6 hereby being taken pursuant to the Federal
 7 Rules of Civil Procedure for all purposes;

8 Deposition McIntosh- Cody Perry- 9 27 07.txt
9 That the formalities of sealing,
10 certification, and filing are specifically
11 waived;

12 That the formalities of signing are
13 specifically not waived;

14 That all objections are to be considered
15 under the Federal Rules of Civil Procedure.

16 * * * * *

17 BY THE VIDEOGRAPHER:

18 Good morning. This is the 27th
19 day of September 2007. I'm Russell Moran with
20 Associated Reporters. We're going on the
21 record at 1:03 p.m. We're here for the
22 deposition of Cody Perry in the matter of
23 Thomas C. McIntosh versus State Farm. Will
24 counsel notice your appearance off camera and
25 then the court reporter will swear in the
witness.

5

1 BY MR. BACKSTROM:
2 Sidney Backstrom for the
3 Plaintiffs.

4 BY MR. SCRUGGS:
5 Zach Scruggs for the Plaintiffs.

6 BY MR. WEBB:
7 Dan Webb for State Farm.

8 BY MS. PLATT:
9 Kathryn Platt for Forensic
10 Analysis and Engineering Corporation.

8 Deposition McIntosh- Cody Perry- 9 27 07.txt
As relates to the last question

9 that you just asked.

10 BY MR. BACKSTROM:

11 Okay.

12 BY MR. NORRIS:

13 I mean, to the extent that the
14 Court were to determine that Mr. Webb's
15 privilege is be valid, we might assert it at
16 that time. But I don't see any need to do so
17 at this point in time.

18 BY MR. BACKSTROM:

19 Okay. So just -- I think I know
20 what you're saying, but just let me be clear.
21 You are reserving the right for this witness to
22 -- to instruct this witness not to answer about
23 questions I have about his conversations with
24 Mr. Webb, correct?

25 BY MR. NORRIS:

P

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1 That's correct.

2 BY MR. BACKSTROM:

3 Okay.

4 BY MR. SCRUGGS:

5 And then we'll come back and he
6 instructs him and we'll have to come back
7 again.

8 BY MR. BACKSTROM:

9 we're done.

10 BY THE VIDEOGRAPHER:

11 Deposition McIntosh- Cody Perry- 9 27 07.txt
12 We're going off the record at
13 6:35 p.m. This concludes the deposition of
14 Cody Perry.

15 (AT THIS TIME, TESTIMONY WAS
16 CONCLUDED AND THE RECORD WAS CLOSED.)
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279

1 WITNESS' CERTIFICATE
2

3 I, CODY PERRY, do hereby certify
4 that I have read or have had read to me the
5 foregoing transcript of my testimony given on
6 September 27th, 2007, and find same to be true
7 and correct to the best of my ability and
8 understanding with the exceptions noted on the
9 amendment sheet;

10
11 CHECK ONE BOX BELOW:

12
13 () without correction

14 () Deposition McIntosh- Cody Perry- 9 27 07.txt
 15 with corrections, deletions, and/or
 16 additions as reflected on the errata
 17 sheet attached hereto
 18
 19
 20
 21
 22 CODY PERRY
 23
 24
 25

1

280

REPORTER'S CERTIFICATE

1
 2
 3 I, Gail F. Mason, RPR, Certified Court
 4 Reporter in and for the State of Louisiana,
 5 Certificate No. 96004, which is current and in
 6 good standing, as the officer before whom this
 7 testimony was taken, do hereby certify that
 8 CODY PERRY, after having been duly
 9 sworn by me upon authority of R. S. 37:2554,
 10 did testify as hereinbefore set forth in the
 11 foregoing pages; that this testimony was
 12 reported by me in the stenotype reporting
 13 method, was prepared and transcribed by me or
 14 under my personal direction and supervision,
 15 and is a true and correct transcript to the
 16 best of my ability and understanding; that I

17 Deposition McIntosh- Cody Perry- 9 27 07.txt
18 am not related to counsel or to the parties
19 herein, nor am I otherwise interested in the
20 outcome of this matter.

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Gail F. Mason, RPR, CCR
Certificate No. 96004



Sidney Backstrom
 American Bar Association/gp
 Po Box 1136
 Oxford, MS 38655-1136

810
 160.55
 1
 252642 EX-A
 1
 13:47
 27-SEP-07
 AX

26-SEP-07	RT810	Room Charge	
26-SEP-07	RT810	Sales Tax	160.55
26-SEP-07	RT810	Occupany Fee	20.87
26-SEP-07	007A	Internet Service In Room	2.00
26-SEP-07	007A	Tax Other	10.95
26-SEP-07	5516	Zoe Restaurant	0.99
27-SEP-07	AX American Express		56.00
		Total-Due	251.36-
			0.00

For your convenience, this zero-balance folio inidicating a \$0 balance on your account. Please be advised that any charges not reflected on this folio will be charged to the credit card on file. While this folio reflects a \$0 balance, you may not be charged until after you depart. You are ultimately responsible for paying all of your charges. No need to stop by the Welcome Desk, simply check out via the Kiosk located near the Lifts in the Living

EXPENSE REPORT SUMMARY

Date	Room & Tax	Food & Bev	Telecom	Other	Total	Payment
26-SEP-07	183.42	56.00	10.95	0.99	251.36	0.00
Total	183.42	56.00	10.95	0.99	251.36	0.00

Thank you for choosing Starwood Hotels. We look forward to welcoming you back soon!

As a Starwood Preferred Guest you have earned at least 439 Starpoints for this visit C50864192758.

Sidney Backstrom
 FOLIO 252642 26-SEP-07



IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, LLC

PLAINTIFF

VERSUS

CIVIL ACTION NO. L07-135

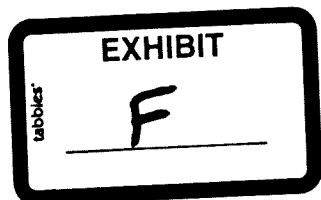
RICHARD SCRUGGS, INDIVIDUALLY;
DON BARRETT, INDIVIDUALLY; SCRUGGS
LAW FIRM, P.A.; BARRETT LAW OFFICE, P.A.;
NUTT & MCALISTER, PLLC; AND
LOVELACE LAW FIRM, P.A.

DEFENDANTS

ORDER COMPELLING ARBITRATION

THIS CAUSE is before the Court on several pending Motions filed by the parties. All of the claims and defenses in the instant case arise under a contract, a "Joint Venture Agreement", entered into among all the parties hereto. The contract bound the parties in their joint prosecution of lawsuits brought on behalf of policyholders for alleged damages caused by various insurance companies' failure to pay in the wake of Hurricane Katrina. There has arisen a dispute among the parties as to the whether or not certain terms and conditions of the contract have been breached. As a result, the instant litigation has been initiated by Plaintiff. Plaintiff has filed several Motions requesting specific relief in this case. However, as a preliminary threshold matter, this Court finds that it is appropriate and prudent to address the issue of this Court's role, if any, in adjudicating this dispute.

The parties to the subject contract are all sophisticated lawyers who entered into the joint venture agreement freely and voluntarily. There was included in that agreement a mandatory binding arbitration provision. The arbitration agreement provides that any dispute arising under or relating to the terms of the agreement must be resolved by



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mandatory binding arbitration pursuant to the guidelines of the American Arbitration Association, and that such arbitration shall occur in Oxford, Mississippi.

The Plaintiff claims that the subject arbitration provision is invalid for a number of reasons. Defendants deny these claims and submit that this dispute must be resolved by arbitration. This Court agrees with Defendant.

To the extent a dispute has arisen over the validity of the arbitration provision of the parties' contract, the Court finds that such dispute must be resolved by arbitration pursuant to the clear terms of the agreement. When sophisticated parties such as these explicitly agree to arbitrate disputes under a contract as here, the Court must yield to an arbitrator as the final authority on the issue. See Greater Canton Ford Mercury, Inc. v. Ables, 948 So. 2d 417 (Miss. 2007). Accordingly, the Court finds that this dispute among these parties must be submitted to arbitration.

IT IS THEREFORE ORDERED AND ADJUDGED, that any and all disputes arising under or relating to the terms of the Joint Venture Agreement entered into among the parties hereto must be resolved by mandatory binding arbitration pursuant to the guidelines of the American Arbitration Association, and that such arbitration proceeding shall occur in Oxford, Mississippi.

SO ORDERED AND ADJUDGED, this, the ____ day of _____, 2007.

CIRCUIT COURT JUDGE