

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

LEE YOUNG AND CHARLES J. MIKHAIL

PLAINTIFFS

VS.

CIVIL ACTION NO. 1:09-cv-669

RICHARD F. SCRUGGS, INDIVIDUALLY;
SMBD, INC., DIRECTLY AND AS SUCCESSOR
IN INTEREST TO SCRUGGS, MILLETTE BOZEMAN,
AND DENT A/K/A SMBD, AND AS SUCCESSOR IN
INTEREST TO SCRUGGS LEGAL, P.A.; AND
DOE DEFENDANTS 1-20

DEFENDANTS

DEFENDANTS' MOTION TO DISMISS

Pursuant to FED. R. CIV. P. 12(b)(5)-(6) and 28 U.S.C. § 1367, Defendants Richard F. Scruggs ("Scruggs") and SMBD, Inc. ("SMBD") (collectively, "Defendants"), request this Court to dismiss Plaintiffs' claims. In support of this Motion, Defendants state as follows:

1. Plaintiffs have failed to sufficiently serve Scruggs with process.
2. Plaintiffs' pleadings fail to state a claim upon which relief can be granted under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Plaintiffs have failed to allege that Defendants engaged in a pattern of racketeering activity. Even if proven, Plaintiff's allegations could not establish that any predicate acts posed a threat of continued criminal activity, as all of the alleged predicate acts mentioned in Plaintiffs' Complaint are related to a single, discrete, otherwise lawful transaction.
3. Plaintiffs have also failed to allege that the predicate acts of which they accuse Defendants were related to the conduct of a RICO "enterprise". The "Scruggs Enterprise" identified in Plaintiffs' pleadings does not have an existence separate and apart from the alleged pattern of racketeering activity.

4. Plaintiffs lack standing to assert their RICO claims, as they have failed to allege that they have suffered any injury as a result of any predicate acts committed by Defendants.

5. Having dismissed Plaintiffs' RICO claims, this Court should decline to assert supplemental jurisdiction over Plaintiffs' remaining claims, none of which raise a federal question and should dismiss those claims as well.

6. Plaintiffs' claims based on the portion of the Amended Judgment (July 26, 2005) in *Luckey v. Scruggs, et al.*, 1:05cv89-JAD (N.D. Miss.), allocated to Plaintiffs are barred by the applicable statute of limitations. This Court should dismiss those claims.

7. In support, Defendants rely on the pleadings and other papers filed in this matter, as well as the Schedule enclosed with the letter sent from Rex Deloach to Lee Young on November 14, 2005 (attached as Ex. "C" to the Complaint), a copy of which Schedule is attached to this Motion as Exhibit "A".

FOR THESE REASONS, Defendants request that this Court dismiss Plaintiffs' claims against them and tax all costs of Court against Plaintiffs. Defendants request such other relief as the Court deems appropriate under the circumstances.

THIS, the 21st day of December, 2009.

RICHARD F. SCRUGGS AND SMBD, INC.

/s/ J. Cal Mayo, Jr.

J. CAL MAYO, JR. (MB NO. 8492)
POPE S. MALLETT (MB NO. 9836)
PAUL B. WATKINS (MB NO. 102348)
Attorneys for Defendants

OF COUNSEL:

MAYO MALLETTE PLLC
2094 Old Taylor Road
5 University Office Park
Post Office Box 1456
Oxford, Mississippi 38655
Telephone: (662) 236-0055

CERTIFICATE OF SERVICE

I, J. CAL MAYO, JR., one of the attorneys for Defendants Richard F. Scruggs and SMBD, Inc., do certify that I have electronically filed the foregoing document with the Clerk of the Court using the ECF system, who forwarded a copy of same to the following attorneys:

James R. Reeves, Jr.
Matthew G. Mestayer
Lumpkin, Reeves & Mestayer, PLLC
160 Main Street
P.O. Drawer 1388
Biloxi, Mississippi 39533
ATTORNEYS FOR PLAINTIFFS

THIS, the 21st day of December, 2009.

/s/ J. Cal Mayo, Jr.

J. CAL MAYO, JR.

WITHOUT LUCKEY

Q 3-05 -- Forward	3rd Qtr 2005	4th Qtr 2005	1st Qtr 2006	2nd Qtr 2006	3rd Qtr 2006	4th Qtr 2006	1st Qtr 2007
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Langston participation	27,184,739	326,959	668,925	333,569	334,086	336,153	672,557	335,836
Nuti's participation	289,312,428	3,287,030	7,133,227	3,539,083	3,545,497	3,571,152	7,220,162	3,569,606
McCormick's participation	11,613,242	141,413	303,737	141,393	141,696	142,911	304,897	142,647
Benton's participation	8,295,173	101,009	216,955	100,995	101,212	102,079	217,784	101,891
Bozeman's deferred bonus	101,610,744	1,150,013	2,497,134	1,243,291	1,245,522	1,254,446	2,528,759	1,253,998
Mikhail's participation	28,578,022	323,441	702,319	349,676	350,303	352,813	711,213	352,687
Young's participation	28,578,022	323,441	702,319	349,676	350,303	352,813	711,213	352,687
Unreimbursed (expenses) income	485,172,368	5,653,307	12,224,616	6,057,682	6,068,619	6,112,366	12,386,586	6,109,351
	6,714,982	837,909	250,000	75,000	75,000	75,000	75,000	75,000

WITH LUCKEY including DOM & PTB

Langston participation	27,033,422	319,391	661,357	326,001	326,518	328,585	664,989	328,268
Nuti's participation	282,939,233	2,968,559	6,814,756	3,220,612	3,227,025	3,252,680	6,901,691	3,251,135
McCormick's participation	11,311,630	126,333	288,656	126,312	126,616	127,831	289,817	127,566
Benton's participation	8,079,736	90,238	206,183	90,223	90,440	91,308	207,012	91,119
Bozeman's deferred bonus	99,395,910	1,039,238	2,386,359	1,132,516	1,134,747	1,143,671	2,417,984	1,143,223
Mikhail's participation	27,955,100	292,286	671,163	318,520	319,148	321,657	680,058	321,531
Young's participation	27,955,100	292,286	671,163	318,520	319,148	321,657	680,058	321,531
Unreimbursed (expenses) income	484,670,130	5,128,330	11,699,638	5,532,704	5,543,841	5,587,389	11,841,608	5,584,374
	26,214,982	1,812,909	1,225,000	1,050,000	1,050,000	1,050,000	1,050,000	1,050,000

CHANGE

Langston participation	(151,317)	(7,568)	(7,568)	(7,568)	(7,568)	(7,568)	(7,568)	(7,568)
Nuti's participation	(6,373,195)	(318,471)	(318,471)	(318,471)	(318,471)	(318,471)	(318,471)	(318,471)
McCormick's participation	(301,612)	(15,081)	(15,081)	(15,081)	(15,081)	(15,081)	(15,081)	(15,081)
Benton's participation	(2,154,437)	(10,772)	(10,772)	(10,772)	(10,772)	(10,772)	(10,772)	(10,772)
Bozeman's deferred bonus	(2,214,834)	(110,775)	(110,775)	(110,775)	(110,775)	(110,775)	(110,775)	(110,775)
Mikhail's participation	(622,922)	(31,155)	(31,155)	(31,155)	(31,155)	(31,155)	(31,155)	(31,155)
Young's participation	(622,922)	(31,155)	(31,155)	(31,155)	(31,155)	(31,155)	(31,155)	(31,155)
Unreimbursed (expenses) income	(10,502,238)	(524,977)	(524,977)	(524,977)	(524,977)	(524,977)	(524,977)	(524,977)
	19,500,000	975,000	975,000	975,000	975,000	975,000	975,000	975,000

Lee
Remains
500K
02-10
for

11-14-05