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5 IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

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13 JONES, FUNDERBURG,

14 SESSUMS, PETERSON & LEE, PLLC PLAINTIFFS

15 VERSUS NO. L2007-135

16 RICHARD SCRUGGS, INDIVIDUALLY

17 DON BARRETT, INDIVIDUALLY;

18 SCRUGGS LAW FIRM; BARRETT

19 LAW OFFICE; NUTT & MCALISTER

20 & LOVELACE LAW FIRM DEFENDANTS

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26 TRANSCRIPT OF CHRISTY M. LITTLEJOHN, CSR

27 OFFICIAL COURT REPORTER

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2 APRIL TERM, 2008

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14 TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE
15 SANCTIONS HEARING OF THE ABOVE STYLED AND NUMBERED
16 CAUSE, BEFORE THE HONORABLE WILLIAM F. COLEMAN, SPECIAL
17 CIRCUIT JUDGE, IN LAFAYETTE COUNTY ON THE 15TH AND 16TH
18 DAYS OF APRIL, 2008.

19 * * * * *

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21 APPEARANCES:

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23 Present and Representing the Plaintiffs:

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25 Honorable Grady Tolison
26 Honorable Roy Percy
27 Honorable Cameron Able
28 Honorable Bill Duke
Tolison Law Firm
Post Office Box 1216
Oxford, Mississippi 38655

1 Present and Representing the Defendant,
2 Richard Scruggs and Scruggs Law Firm:

3 Honorable J. Cal Mayo, Jr.
4 Honorable Pope Mallette
5 Mayo Mallette, PLLC
6 Post Office Box 1456
7 Oxford, Mississippi 38655

8 Honorable Brook Doolley
9 Kecker & Van Nest
10 710 Sansome Street
11 San Francisco, California 94111-1704

12 Present and Representing the Defendants,
13 Barrett Law Firm, Nutt & McAlister,
14 and Dewitt Lovelace:

15 Honorable Larry Moffett
16 Honorable Wilton V. Byars, III
17 Daniel, Coker, Horton & Bell
18 Post Office Box 1396
19 Oxford, Mississippi 38655

20 Honorable Ken Rutherford
21 Attorney at Law
22 Post Office Box 1381
23 Oxford, Mississippi 38655

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Transcript of Jones v Scruggs Sanctions Hearing (SF FCA) (2).TXT
5 substantially the same, your Honor.

6 BY THE COURT: Any objection?

7 BY MR. BYARS: No, your Honor.

8 BY THE COURT: Any objection?

9 BY MR. MAYO: I don't think so, your Honor,
10 if it's the same thing. No objection.

11 BY THE COURT: Admitted Number 9.

12 (EXHIBIT P-9, INTERROGATORIES, WAS MARKED AND
13 RECEIVED INTO EVIDENCE)

14 BY MR. TOLLISON: Number 10, your Honor, we
15 are going to offer the interrogatory answers of
16 Richard F. Scruggs.

17 BY MR. MAYO: Your Honor, we would object to
18 these because there are no answers. There are
19 objections that are stated, but there are no
20 answers. There's no testimony under oath from Mr.
21 Scruggs. There are just objections made.

22 BY MR. TOLLISON: Your Honor, I believe it
23 states in there that he is going to take the Fifth
24 Amendment to these interrogatories. That's the
25 purpose of offering them.

26 BY MR. MAYO: Well, that's fine, your Honor,
27 but Mr. Scruggs is here and he can be asked to
28 testify, but this is not an answer. It is an
29 objection that was stated to responding which is

19

1 what the rules provide are supposed to happen when
2 you have an objection to interrogatories and
3 that's what was done. It's not testimony; it's

4 not under oath; and it's not admissible.

5 BY THE COURT: It will be admitted for what
6 it's worth as Number 10.

7 (EXHIBIT P-10, INTERROGATORIES, WAS MARKED
8 AND RECEIVED INTO EVIDENCE)

9 BY MR. TOLLISON: The same thing for the
10 Scruggs Law Firm.

11 BY MR. MAYO: Same objection, your Honor.

12 BY THE COURT: Overruled. Number 11.

13 (EXHIBIT P-11, INTERROGATORIES, WAS MARKED
14 AND RECEIVED INTO EVIDENCE)

15 BY MR. TOLLISON: One last one is the Nutt &
16 McAlister request for admissions. We would offer
17 those into evidence where there are some
18 admissions regarding the \$40,000. We would offer
19 that as Number 12.

20 BY MR. BYARS: No objection, your Honor.

21 BY MR. MAYO: No objection, your Honor.

22 BY THE COURT: Number 12.

23 (EXHIBIT P-12, REQUEST FOR ADMISSIONS, WAS
24 MARKED AND RECEIVED INTO EVIDENCE)

25 BY MR. TOLLISON: May I proceed, your Honor?

26 BY THE COURT: Yes, sir.

27 BY MR. TOLLISON: We would call Mr. Richard
28 Scruggs.

29 BY MR. DOOLEY: Your Honor, Brook Dooley with

Direct Examination - Richard F. Scruggs 20
1 Kecker & Van Nest. I will be representing Mr.

Transcript of Jones v Scruggs Sanctions Hearing (SF FCA) (2).TXT
2 Scruggs in connection with this examination.

3 BY THE COURT: Thank you. Raise your right
4 hand.

5 RICHARD F. SCRUGGS,
6 upon being called to testify as a witness on behalf of
7 the Plaintiff, after having been first duly sworn by
8 the Court testified as follows, to-wit:

9 BY MR. TOLLISON: May I proceed?

10 BY THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. TOLLISON:

13 Q. Would you tell us your name, please?

14 A. Richard F. Scruggs.

15 Q. And you are a member of the Scruggs Law Firm,
16 a professional association?

17 A. Based on the advice and instruction of my
18 counsel, I respectfully decline to answer based upon my
19 privilege against self-incrimination under the Fifth
20 Amendment and the Mississippi Constitution.

21 Q. Okay. And the Scruggs Law Firm was a member
22 of the Scruggs Katrina Group?

23 A. Based upon the advice and instruction of my
24 counsel, I respectfully decline to answer based upon my
25 privilege against self-incrimination under the Fifth
26 Amendment and the Mississippi Constitution.

27 Q. The finances of the Scruggs Katrina Group
28 were handled by Nutt & McAlister; is that correct?

29 A. Based on the advice and instruction of my

1 counsel, I respectfully decline to answer based on my
2 privilege against self-incrimination under the Fifth
3 Amendment and the Mississippi Constitution.

4 BY THE COURT: Just a minute. Maybe we can
5 speed things up and save a lot of the court
6 reporter's time if we just say, For the same
7 reasons, I decline to answer. Is that
8 satisfactory with everyone?

9 BY MR. TOLLISON: Yes, sir. We understand
10 that's invoking the Fifth Amendment.

11 BY THE COURT: Is that satisfactory?

12 BY MR. DOOLEY: That is satisfactory for us,
13 your Honor, as long as it's understood and on the
14 record that that response is an assertion of Mr.
15 Scruggs' rights under the Fifth Amendment and
16 under the Mississippi Constitution.

17 BY THE COURT: Thank you. Go ahead.

18 BY MR. TOLLISON: (Continuing)

19 Q. You individually and the Scruggs Law Firm are
20 defendants in the Jones, Funderburg, Sessums, Peterson
21 & Lee versus Scruggs, Et al, Civil Action Number
22 L07-135 in the Circuit Court of Lafayette County?

23 A. Same response, sir.

24 Q. The other defendants are Nutt & McAlister,
25 Don Barrett, Barrett Law Office, and Lovelace Law Firm;
26 is that correct?

27 A. Same response, sir.

28 Q. And the case was assigned to Judge Henry
29 Lackey?

Direct Examination - Richard F. Scruggs 22

1 A. Same response, sir.

2 Q. And all defendants were originally up until
3 December of 2007 represented by the law firm of Daniel,
4 Coker, Horton & Bell?

5 A. Same response, sir.

6 Q. And the defendants filed a Motion to Stay and
7 to Compel Arbitration early in that proceeding; is that
8 correct?

9 A. Same response.

10 Q. And Timothy Balducci was not an attorney of
11 record for any of the defendants in that lawsuit above
12 mentioned, Jones, Et al v. Scruggs, Et al?

13 A. Same response.

14 Q. I've just got a few more, Mr. Scruggs. Isn't
15 it a fact that Timothy Balducci, Steve Patterson, and
16 Sidney Backstrom have all plead guilty to conspiring
17 with you to corruptly influence Judge Lackey in this
18 case?

19 A. Same response, sir.

20 Q. And you have plead guilty to Count 1 of an
21 indictment charging you with conspiring to corruptly
22 influence Judge Lackey in this case?

23 A. Same response, sir.

24 Q. You have been in open court under oath and
25 admitted that you conspired with the others to bribe
26 Judge Lackey in this case?

27 A. Same response, sir.

28 Q. You have admitted that the Government's
29 statement of the underlying facts is correct under

Direct Examination - Richard F. Scruggs 23

1 oath?

2 A. Same response, sir.

3 Q. You knew that Sid Backstrom had, in fact,
4 conspired with Tim Balducci to bribe Judge Lackey to
5 obtain an order compelling arbitration?

6 A. Same response.

7 Q. And you, in fact, knew that a payment of
8 \$40,000 had been agreed to and paid to Judge Lackey by
9 Tim Balducci?

10 A. Same response.

11 Q. Did you talk to Steve Patterson and ask him
12 why the order that Judge Lackey was to sign had not
13 been entered?

14 A. Same response.

15 Q. You've prepared some type of document, an
16 invoice or something else, to submit to Nutt &
17 McAlister to be reimbursed for the \$40,000 bribe money
18 that went to Judge Lackey; is that correct?

19 A. Same response, sir.

20 Q. The invoice or the payment to Balducci was
21 ostensibly to do a voir dire or prepare questions for
22 voir dire?

23 A. Same response, sir.

24 Q. There was no questions prepared for voir
25 dire; is that correct?

26 A. Same response.

27 Q. And the case the voir dire was to be done for
28 has never been tried; is that correct?

Direct Examination - Richard F. Scruggs 24

1 Q. Balducci asked you for another \$10,000 to
2 give to Judge Henry Lackey after the \$40,000 had been
3 given to him?

4 A. Same response.

5 Q. You gave Balducci that \$10,000 and prepared
6 documents to show that it was for jury instructions; is
7 that correct?

8 A. Same response.

9 Q. No jury instructions were prepared; isn't
10 that correct?

11 A. Same response.

12 Q. The purpose of these jury instruction
13 invoices or documents and the voir dire was to be
14 reimbursed with SKG money that was being used to bribe
15 Judge Lackey, ostensibly to bribe Judge Lackey?

16 A. Same response.

17 Q. Nutt & McAlister, a member of SKG, the
18 Scruggs Katrina Group was on the pleadings in a case
19 called Lisnby versus USAA Insurance Company; is that
20 correct?

21 A. Same response.

22 Q. And that case that I just mentioned, Lisnby
23 v. USAA, was ostensibly where the jury instructions
24 and the voir dire were being done by Timothy Balducci?

25 A. Same response.

26 BY MR. TOLLISON: Your Honor, we have no
27 further questions.

28 BY MR. DOOLEY: No questions.

29 BY MR. BYARS: We have no questions, your

25

1 Honor.

2 BY THE COURT: May the witness be excused?

3 BY MR. TOLLISON: Yes, sir, your Honor.

4 BY THE COURT: You may be excused.

5 A. Thank you, Judge.

6 (WITNESS FINALLY EXCUSED)

7 BY MR. TOLLISON: Your Honor, may I make a
8 note that we ask that the inference of the
9 invocation of the Fifth Amendment be taken that
10 the answers to the questions would have been
11 favorable to the plaintiffs in this hearing.

12 BY MR. MAYO: Your Honor, the inference is a
13 permissive inference and not a mandatory
14 inference, and we would ask the Court to wait
15 until the end of the hearing to make any
16 determinations about the credibility or inferences
17 as to any evidence.

18 BY THE COURT: I intend to. Thank you.

19 BY MR. TOLLISON: Your Honor, I think I can
20 shorten it if you give me just one minute.

21 (BRIEF PAUSE IN PROCEEDINGS)

22 BY MR. TOLLISON: Your Honor, I would make
23 the announcement we are prepared to rest after we
24 put Judge Lackey on. We don't need to call
25 anymore witnesses.

26 BY THE COURT: Can you give me an estimate of
27 how long we will be from this point? I need to
28 let the motel know when I will be leaving. I
29 don't anticipate leaving today, but I would like

26

1 to know.

2 BY MR. MAYO: Could you give us just a
3 moment, your Honor?

4 BY THE COURT: Yes, sir.

5 (BRIEF PAUSE IN PROCEEDINGS)

6 BY MR. MAYO: Your Honor, to answer your
7 question, based on the discussions with Mr.
8 Tollison and the counsel for the other defendants,
9 I don't think we would go beyond today. I think
10 they have about an hour of their testimony and I
11 think that the proof we will put on will not take
12 any longer than that.

13 BY THE COURT: Okay. Regardless, I intend to
14 come back in the morning. I will review the
15 evidence this afternoon or this evening and render
16 an opinion tomorrow, but I anticipate that that
17 would probably be the conclusion of the hearing at
18 this point, unless there are other matters to be
19 taken up.

20 BY MR. TOLLISON: Your Honor, I'm kind of at
21 a loss for Judge Lackey. Could we let them put
22 their witnesses on out of order? Would that be
23 satisfactory?

24 BY CIRCUIT CLERK, MARY ALICE BUSBY: Judge