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July 1, 1999

TO: Lee Young  
Charles Mikhail

FM: Dick Scruggs

RE: Tobacco Fees

This will memorialize the agreement of SMBD to compensate your efforts in the tobacco litigation as follows: You will each receive, from date forward, five percent (5%) of our firm's net fees from the tobacco-related cases handled by our firm. This calculation will be made after deducting from gross fees the fees of associated counsel, principally David Nutt, John Sear's firm, the Butler interests, the Texas attorneys, and any other obligations by our firm in connection with tobacco litigation other than obligations to firm shareholders. This compensation is in addition to the compensation you have previously received. SMBD further agrees to equalize such previously paid compensation between the two of you before the expiration of 12 months from date. It is understood that any portion of fees paid to you that is reimbursed to SMBD by David Nutt or others will not be included in SMBD net fees for the purpose of calculating your fees.

*SMBD, P.A.*  
*Approved: Robert G. [unclear], Pres.*  
*[Signature]*  
*[Signature]*



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

ALWYN LUCKEY

PLAINTIFF

V.

CIVIL ACTION NO. 1:05CV89-JAD

RICHARD F. SCRUGGS, P. A., ET AL

DEFENDANTS

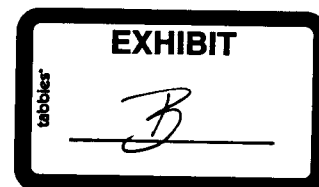
**MEMORANDUM OPINION**

This case was tried before the undersigned from June 6 through June 17, 2005, with the consent of the parties pursuant to 28 U. S. C. § 636 (c)(1). The following is the court's findings of fact and conclusions of law. <sup>1</sup>

Findings of Fact and Conclusions of Law

Plaintiff Alwyn H. Luckey, a 1985 graduate of the University of Mississippi School of Law, was employed by Richard F. Scruggs, P. A., in Pascagoula as an associate that summer. After doing mostly bankruptcy work initially Luckey was approached by Scruggs about doing asbestos work. Luckey was aware the Scruggs had a relationship with attorney William Roberts Wilson concerning asbestos litigation and had observed that Scruggs, P. A., shared office space with the persons handling asbestos work although each entity had a store front. Luckey accepted the offer and began work on the asbestos litigation. About this time Scruggs and Wilson formalized their relationship

The court is aware that the parties' Agreement for Resolution of Cases provides that the entry of a written opinion is discretionary. However, the court is of the opinion that the parties and the public are entitled to know the basis for the court's decision. Because of the time that has elapsed in this litigation and the desire of the parties to have a decision, the court will issue its findings in an abbreviated fashion without a lengthy discussion of all the evidence considered. The court has considered all the evidence, but, as the findings show, determined what portion of the evidence is most believable.



by the formation of Asbestos Group, P. A., a professional corporation with each of them retaining 50% of the stock. Luckey became an employee of Asbestos Group, P. A., in the fall of 1985, earning \$21,000 per year, which was an increase from the \$18,000 per year he earned with Scruggs, P. A. Luckey received his paycheck and his W-2's from Asbestos Group, P. A. In this same time frame the offices of Asbestos Group, P. A., were moved about a block away because they had outgrown their space. Luckey maintained an office in Scruggs, P. A., but spent a great deal of his time in the asbestos office.

Asbestos Group, P. A., began to attract a large number of people alleging injuries due to asbestos exposure. This was due, in large part, because Asbestos Group, P. A., would pay for the medical examinations of the claimants while other lawyers on the coast would only take clients willing to pay for their own examinations. All the expenses of Asbestos Group, P. A., were shared 50-50 between Scruggs and Wilson. The ongoing expenses were being paid by settlements from asbestos defendants such as Combustion Engineering. Initially, contracts with clients were with Asbestos Group, P. A. However, this practice ended when advised by another lawyer that there might be a problem practicing law under a trade name. Accordingly, clients signed a contract with either Scruggs, P. A., or Wilson, P. A., the principal's individual law firms, but the cases were processed by Asbestos Group, P. A. Once accepted as a client, the individual was put on a list for a medical examination. Because of the volume it became increasingly difficult to get individuals seen for medical tests. Therefore, the clients were scheduled for appropriate tests and the results were forwarded to Dr. Reuben in Dallas, as well as others, for interpretation. A written report of diagnosis, if any, would be returned by the retained doctor.

Luckey was the main attorney who handled the processing of claims and settlements, although Scruggs assisted with the medicals and Wilson with the more "traditional lawyer stuff." In 1988 Luckey was given 5% of the stock in Asbestos Group, P. A., with 47.5% being retained by Scruggs and Wilson. In the summer of 1990 Luckey's share was increased to 15% retroactive to January 1. Since Wilson had moved his private law practice to Jackson and Scruggs remained on the coast managing the day-to-day activities of Asbestos Group, P. A., Scruggs retained 45% of the stock and Wilson retained 40%. Pursuant to the agreement of the principals in 1990, Scruggs and Wilson began to take individual asbestos cases in their individual firms and not as a part of the Asbestos Group, P. A.<sup>2</sup>

By the early 90's Asbestos Group, P. A., had over 3000 cases. During this time the relationship between Scruggs and Wilson, which had never been good, worsened. Wilson eventually agreed to a buyout which resulted in a written agreement dated August 7, 1992. Exhibit D-16. As a result of this agreement Luckey's ownership interest in Asbestos Group, P. A., increased to 25% and Scruggs retained 75%. Wilson was to be paid future fees based on a formula set forth in the agreement. After payments to Wilson, the remaining fees were the property of Asbestos Group, P. A., subject to division between Scruggs and Luckey based on their percentage of stock ownership. This arrangement continued unaltered until the summer of 1993. Scruggs had also agreed with Luckey that he would pay him 35% of the fees earned in the asbestos cases maintained in Scruggs, P. A., through agreements with other attorneys for his assistance in these cases. As noted earlier, these cases did not fall within the purview of Asbestos Group, P. A. Luckey's payment for

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<sup>2</sup> For example, Scruggs entered agreements with several attorneys to assist in their cases on a 65-35 basis. The monies obtained through these cases were not included in the income of Asbestos Group, P. A., but were reflected on the books of Scruggs, P. A.

these fees was from Scruggs, P. A., and the yearly amounts were reflected on 1099's.

Asbestos Group, P. A., along with Ness Motley, an associated law firm from South Carolina acting as lead counsel, began the trial of a large consolidated case, known as the Abrams case, in the spring of 1993. Numerous defendants settled either prior to, or during, trial which increased the settlement proceeds coming to Asbestos Group, P. A. The plaintiffs in Abrams rested in mid-June, 1993. Shortly thereafter the events that led to Luckey's termination and this lawsuit occurred. Without belaboring these events, Luckey was called to meet Scruggs at the LaFont Inn in Pascagoula and was advised that he was terminated based on information that Luckey had attempted to have the dates on certain medical records changed by Asbestos Group, P. A., staff who refused to do so and reported their concerns over Luckey's request to Scruggs. The court finds, and notes that the plaintiff does not challenge, that Scruggs had adequate grounds to terminate his employment. The question before the court is the effect of the termination on the various relationships between Luckey and Scruggs and whether Luckey is owed any fees after the date of his termination. It should be noted that the court directed a verdict for the defendants on the claim to monies from the tobacco fees based on a constructive trust theory. Accordingly, that aspect of the case will not be discussed further and the court stands on its oral opinion. Moreover, plaintiff conceded the RICO count at trial and that count will not be discussed.

Asbestos Group, P. A.

There is no question that at the time of his termination Luckey was a 25% shareholder in Asbestos Group, P. A., and that the professional corporation has never been dissolved. Does Luckey's misconduct terminate his ownership in Asbestos Group, P. A.? The court finds that it does not. *Bolstein v. Gimpel*, 125 Misc. 2d 45, 477 N.Y.S. 2d 1014 (S. Ct. N.Y. 1984). Luckey is

owed 25% of all the fees received by Asbestos Group, P. A., from the date of his termination to the present. The court further finds that Asbestos Group, P. A., was absorbed by successive professional corporations of Scruggs which has complicated both the discovery in this case and the computation of the money owed to Luckey. As the majority stockholder Scruggs owed a fiduciary duty to Luckey and the corporation to maintain the records of the corporation and to pay Luckey his share in a timely share. *Retzer v. Retzer*, 578 So.2d 580 (Miss. 1991). The court specifically finds that Scruggs' position concerning Luckey's status within Asbestos Group, P. A., to be unreasonable and in conflict with existing law. Clearly, the cases pending at the time of Luckey's termination were assets of Asbestos Group, P. A., and Luckey was entitled to his share of the fees generated by these assets. See, e.g., *Santalucia v. Sebright Transportation, Inc.*, 232 F.3d 293,299 (2d Cir. 2000). Defendants' arguments to the contrary are simply without merit. The court finds that the refusal to pay Luckey's fees from Asbestos Group, P. A., was frivolous and there was a breach of fiduciary duty entitling plaintiff to prejudgment interest on the monies due him from Asbestos Group, P. A. See, *Estate of Van Williams Ryan v. McMurtray*, 505 So.2d 215, 219 (Miss 1987). Scruggs recalcitrance and litigation conduct entitles Luckey to further damages in the form of attorneys' fees and expenses. *Aqua-Culture Technologies, LTD., et al v. Holly*, 677 So. 2d 171 (Miss. 1996); *Universal Life Insurance Co. v. Veasley*, 610 So.2d 290, 295 (Miss. 1992); *Miss. Code Ann. § 11-55-5*. While the court's findings in this regard could support an award of punitive damages, the court finds that the award of attorneys' fees and expenses is sufficient. This remedy makes the plaintiff whole which is the just result of any litigation in which the plaintiff prevails.<sup>3</sup>

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<sup>3</sup> Luckey is also entitled to fees from the occupational hearing loss (OHL) and the hand, arm vibration (HAVS) cases which were part of Asbestos Group, P. A. Those amounts through December, 2000, have been included in the court's calculations. The court recognizes

Luckey's Status re Cases Maintained by Asbestos Group, P. A.

As was noted previously, Scruggs and Luckey had agreed that Luckey would receive 35% of the fees generated from the joint ventures Scruggs had made with other asbestos attorneys. The court finds that Luckey was not a joint venturer with Scruggs, but was a limited agent and employee of Scruggs. See, generally, *Shanklin v. Allis-Chalmer Mfg. Co.*, 254 F. Supp 223, 225-26 (S. D. W. Va. 1966). Luckey's relationship with Scruggs in this regard was terminable at the will of either Scruggs or Luckey. See, *Clark v. Ritchey*, 759 S.O.2d 516, 518 (Miss. Ct. App. 2000). Accordingly, Luckey's dismissal for misconduct terminated his rights to any fees from this group of cases.

Calculation of Damages

The calculation of damages due Luckey from Asbestos Group, P. A., has been made more difficult by the absorption of the Group by various Scruggs' entities in subsequent years. The court finds that the calculations of Dr. Dennis re Asbestos Group, P. A., to be the most accurate. The court also finds that Dr. Dennis' calculation of overhead based on the historical overhead and the cost of living index for the years 1994 through 1999 to be the most accurate and were utilized by the court in its calculations. Accordingly, the court finds the amounts due plaintiff from Asbestos Group, P. A., as set forth in Attachment "A". As can be noted from the chart, the court included the amount due Luckey from RFS, P. A., on the date of termination, but included as receipts the \$115,000.00 paid to Luckey by Scruggs after termination. The court also included the amount of \$42,455.27 as Luckey's share of the hard assets of Asbestos Group, P. A., in 1994. Based on these calculations the

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that the final amount associated with the December, 2004, settlement of \$17.75 million can not be accurately calculated at this time and may result in no fees to the attorneys. Luckey shall be paid his percentage of these fees upon the conclusion of the cases and the dispersal of fees, if any.

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court finds that judgment shall be entered in the amount of \$13, 688, 907.92 with interest at the rate of 3.59% per annum until paid. The plaintiff shall also recover his attorneys' fees and expenses related to the recovery of this judgment. The parties are urged to negotiate this figure bearing in mind that the court will not approve amounts related to claims that did not prevail. If the parties can not agree to a figure, the plaintiff shall submit his itemization of fees and expenses within 21 days of this order. Defendant shall respond 10 days thereafter.

This 20<sup>th</sup> day of July, 2005.

  
UNITED STATES MAGISTRATE JUDGE

	OHLHAYS	ASBESTOS		ASBESTOS		RFS PA	LUCKEY		AG assets	YEARLY		TOTAL W/	
		SETTLEMENTS	OVERHEAD	RECEIPTS	25.00%		TOTAL	INTEREST		INTEREST			
Dec 1993		\$844,540.00	-\$356,849.00	\$303,359.27	-\$589,809.00					\$201,241.27			\$201,241.27
Dec 1994		\$824,618.00	-\$153,321.00					\$42,445.77		\$713,742.77		\$16,099.30	\$931,083.34
Dec 1995	\$238,420.00	\$1,345,105.00	-\$155,232.00							\$1,428,293.00		\$74,486.67	\$2,433,863.01
Dec 1996	\$125.00	\$2,203,531.00	-\$163,646.00							\$2,040,010.00		\$194,709.04	\$4,668,582.05
Dec 1997	\$93,704.00	\$908,721.00	-\$166,221.00							\$836,204.00		\$373,486.56	\$5,878,272.62
Dec 1998	\$50,167.00	\$943,584.00	-\$106,026.00							\$887,725.00		\$470,261.81	\$7,236,259.43
Dec 1999	\$49,862.00	\$409,942.00	-\$144,481.00							\$315,323.00		\$578,900.75	\$8,130,483.18
Dec 2000	\$13,392.00	\$188,484.00	-\$49,608.00							\$152,268.00		\$650,438.65	\$8,933,189.83
Dec 2001		\$152,476.00								\$152,476.00		\$714,555.19	\$9,800,321.02
Dec 2002		\$106,054.00								\$106,054.00		\$784,025.68	\$10,690,400.70
Dec 2003		\$594,453.00								\$594,453.00		\$855,232.06	\$12,140,085.76
Dec 2004										\$0.00		\$971,206.86	\$13,111,292.62
July 20, 2005										\$0.00		\$577,515.30	\$13,688,907.92
	\$445,670.00	\$8,521,508.00	-\$1,295,384.00	\$303,359.27	-\$589,809.00	\$42,445.77	\$7,427,790.04						\$13,688,907.92

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

ALWYN H. LUCKEY

PLAINTIFF

VS.

CIVIL ACTION NO.: 1:05CV89-JAD

RICHARD F. SCRUGGS, ET AL

DEFENDANTS

AMENDED JUDGMENT

The Court hereby *sua sponte* amends the Judgment previously entered in this action on July 20, 2005, in order to clarify that Judgment so as to be consistent with the Memorandum and Opinion of the same date.

IT IS HEREBY ORDERED, ADJUDGED, DECREED that the plaintiff Alwyn Luckey shall be paid, jointly and severally, by the defendants Richard F. Scruggs, P.A., Scruggs, Millette, Lawson, Bozeman & Dent, P.A., (now Scruggs Legal via name changes filed with the Mississippi Secretary of State), Asbestos Group, P.A., and Richard F. Scruggs the sum of \$13,688,907.92 with interest at the rate of 3.59% per annum until paid, together with attorney's fees and expenses. In addition, the plaintiff Alwyn Luckey shall be paid, jointly and severally, by the defendants Richard F. Scruggs, P.A., Scruggs, Millette, Lawson, Bozeman & Dent, P.A., Asbestos Group, P.A., and Richard F. Scruggs 25 percent of the aggregate funds previously received or to hereafter be received from the December 2004 \$17,750,000 settlement of Occupational Hearing Loss (OIL) and Hand Arm Vibration (HAVS) cases, whether those funds are designated as expense recoveries, overhead recoveries, or fees in the final accounting among the three joint venturers, and Luckey be and he is hereby awarded a lien equal to 25 percent of all funds received by the Scruggs entities from Occupational Hearing Loss and Hand Arm Vibration cases after December 2000 (the amount prior

to December 2000 having been previously included in this Court's \$13,688,907.92 judgment).

With regard to plaintiff's award of reasonable expenses incurred in the prosecution of this action, such amount, together with the plaintiff's award of attorney fees, will be quantified by separate order of the Court if the parties are unable to agree upon the amount of litigation expenses and attorney fees.

SO ORDERED this the 26<sup>th</sup> day of July, 2005.

/s/ JERRY A. DAVIS  
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

ALWYN LUCKEY

PLAINTIFF

V.

CIVIL ACTION NO. 1:05CV89-JAD

RICHARD F. SCRUGGS, P. A., ET AL

DEFENDANTS

**JUDGMENT**

Pursuant to the Memorandum Opinion of this date, plaintiff Alwyn Luckey shall be paid by the defendants Richard F. Scruggs, P.A., Scruggs, Millette, Lawson, Bozeman and Dent, P.A., Asbestos Group, P.A., and Richard F. Scruggs the sum of \$13,688,907.92 with interest at the rate of 3.59% per annum until paid, together with attorney's fees and costs.

SO ORDERED this 20<sup>th</sup> day of July, 2005.

  
\_\_\_\_\_  
JERRY A. DAVIS  
UNITED STATES MAGISTRATE JUDGE

**CG COPY**

**Financial Insights**  
Inc.

November 14, 2005

Lee Young, Esquire  
1407 Jackson Avenue  
Suite 1  
Pascagoula, MS 39567

*Financial Consulting  
Litigation Support  
Forensic Accounting*

Dear Lee,

This is a follow on to our recent phone conversation with regards to tobacco fee participants sharing in the Luckey judgment. As requested, enclosed is a copy of the judgments in the Luckey trial. You also asked that I tell you why I think it is appropriate that you should share in the award.

First, a look at the background of claims against your tobacco fees. As you well know, success has a thousand fathers. Following the unprecedented fee award there were a multitude of "fathers" reaching for a piece of the award: Anderson, Sears, Blake, Hoppenstein, Pete Johnson, the Castano group, Luckey, Wilson and others, not to mention Ness Motley's reach for a much higher percentage. Dick has used his best judgment in dealing with each, litigating successfully in some cases, settling in others. You have carried your share in all of these, graciously and without protest. For this Dick is most appreciative.

In achieving those settlements, Dick has borne an equal share of the financial costs. In addition, he has invested untold hours of time for seven years plus untold emotional and intellectual energy in bringing all of these, except Wilson, to a conclusion **without wrecking the tobacco fee income stream**. Further, he has invested many hours and much energy in defending your tobacco legal fees from attempts by both federal and state governments to grab all or part of the tobacco fees. This he has borne alone with no financial cost to other persons sharing in the fees.

The nature of the Luckey/Wilson litigation makes their situation appear somewhat different from the others. Wilson's is somewhat different; Luckey's is not. Luckey's and Wilson's cases would have long since been gone except for the tobacco fee award and the decision by the federal judiciary to accept and retain the cases. The federal judiciary accepted and retained the case because of the tobacco fee award, and I believe, as does Dick, with ill intent.

Luckey was awarded \$19,474,656 as follows:

Damage award, including pre-judgment interest	\$ 13,688,908
Share of OHL/HAVS recovery (estimated)	2,000,000
Legal fees	2,599,727
Costs and expenses	1,186,021
	<hr/>
	\$ 19,474,656

**EXHIBIT**  
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C

Merkel's argument and Davis's decision causes this to appear to be repaying Luckey for asbestos fees. This is not the case. Luckey was owed at most \$200,000, ignoring his malfeasance. In any event, Dick did not receive any of the asbestos fees that Luckey would have received had he not been terminated. He was receiving 75% while Luckey was an employee. He has received 70% since that time. The award was not for asbestos fees. Instead it was a thinly disguised award of tobacco fees.

The decision to arbitrate, in hind sight a grievous error, was to lessen the chance of a runaway constructive trust award and to mitigate legal defense fees which were averaging \$200,000 per month (\$300,000 in 2005). While the \$19 million award was obscene and sickening, you both benefited by bringing this litigation to a close.

Wilson's case is somewhat different. Wilson had a contract to be paid a share of the asbestos fees. This is an obligation of Scruggs Legal, P.A. Subsequent to the Luckey arbitration, Scruggs Legal, P.A. has paid what our expert says is owed Wilson. Absent a constructive trust-type award, either actual or in disguise, Dick does not intend to ask those sharing in tobacco fees to bear any of the payment to Wilson. He does intend to ask those sharing tobacco fees to share the legal defense costs since the Wilson case is still a reach for tobacco fees.

Lee, I believe that the financial rewards to both you and Dick have far exceeded anything that the two of you might have imagined. I believe that it was your joint intention to share and share alike in the good and the bad, which you have always done. Dick didn't get the \$19.5 million awarded Luckey. Nobody did because it didn't exist. Dick should not be asked to pay it all.

Enclosed is an accounting that shows how much your next share is of the Luckey award, \$31,155 per quarter. That is based on all fee participants bearing \$975,000 per quarter for 20 quarters. Bringing the litigation to a conclusion lowers the quarterly cost by at least \$1,000,000. Therefore, in future quarters you will be slightly better off bearing your share of the judgment than you would have been absent bringing it to a conclusion. Small consolation but factual.

Lee, I hope this adequately explains the situation. Please call me with any questions.

Best Regards,

Rex M. Deloach

Enclosure

**CHARLES J. MIKHAIL**  
ATTORNEY AT LAW  
P. O. BOX 8745  
MOSS POINT, MISSISSIPPI 39562

TELEPHONE 228-623-0194

March 5, 2007

Timothy R. Cantrell  
Scruggs Legal, P.A.  
P.O. Box 1135  
Oxford, MS 38655-1135

VIA FACSIMILE (662) 234-7615

Dear Tim:

Thank you for providing me and Lee with the gross and net calculations relating to the sums paid to Langston in the fourth quarter of 2006.

Lee and I were disappointed in the shareholders' decision not to roll back the monies withheld from our January quarterly payment. For the reasons explained in our conference call last month, and the representations made to us, we still maintain, respectfully, that we should not be paying a portion of these expenses. Unlike the Scruggs Legal shareholders, Lee and I did not receive any fees from asbestos and do not get a tax deduction for the litigation expenses we are contributing.

The defense costs paid Langston are having a substantial and significant impact on our cash flow. We, therefore, request that, as Dick suggested, you spread or amortize this charge over calendar year 2007; that is, refund each of us three-fourths of the amount withheld in January, as soon as possible, and then take that amount out in three equal installments in April, July and October.

As always, your prompt attention to this matter will be greatly appreciated.

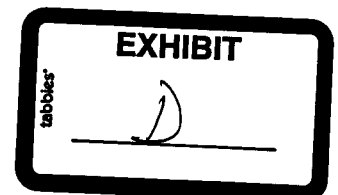
With warm personal regards, I am

Sincerely yours,



Charles J. Mikhail

xc: Lee E. Young



# BYRD & WISER

## ATTORNEYS AT LAW

145 MAIN STREET

P.O. BOX 1939

BILOXI, MISSISSIPPI 39533

TELEPHONE (228) 432-8123

FAX (228) 432-7029

email mgm@byrdwiser.com

ROBERT ALAN BYRD  
NICHOLAS VAN WISER

JAMES R. LOCKARD  
MATTHEW G. MESTAYER

\*ALSO ADMITTED IN MICHIGAN

March 20, 2009

Our file number:

1514.00001

### **CERTIFIED MAIL**

W. Steven Bozeman and SMBD, Inc.  
Post Office Box 3502  
Milton, Florida 32572-3502

### **CERTIFIED MAIL**

Hayden S. Dent and SMBD, Inc.  
623 Washington Avenue  
Ocean Springs, Mississippi 39564

### **CERTIFIED MAIL**

Samuel M. Millette, Jr., and SMBD, Inc.  
6911 Providence Estate Drive S  
Mobile, Alabama 36695

Re: Sums withheld from contract payments to Lee Young and Charles Mikhail

Dear Gentlemen:

Please be advised that our firm has been retained to represent Charles Mikhail and Lee Young with respect to claims against SMBD, Inc., for sums wrongfully withheld from their quarterly payment of tobacco settlement funds.

For the purpose of clarity, I have attached certain exhibits to this letter, but would assume that SMBD, Inc., is more than familiar with the subject matter.

Attached as Exhibit 1 is a copy of the agreement between SMBD and Lee Young and Charles Mikhail.

From the quarterly sums that are due under the terms of the employment contract between SMBD and Mikhail/Young, SMBD has withheld \$31,155.00 from the quarterly distributions to Mikhail and Young since July of 2005 upon the pretext of assessing them with a *pro rata* share of sums awarded to Alwyn Luckey in the United States District Court's decision in *Luckey vs. Richard Scruggs, P.A., et al*; Civil Action no. 1:05-CV-89-JAD in the United States District Court for the

FROM THE OFFICE OF ATTORNEY MATTHEW G. MESTAYER  
BYRD & WISER \* 145 MAIN STREET \* P.O. BOX 1939 \* BILOXI, MISSISSIPPI 39533  
TELEPHONE (228) 432-8123 \* FAX (228) 432-7029



W. Steven Bozeman and SMBD, Inc.  
Hayden S. Dent and SMBD, Inc.  
Samuel M. Millette, Jr., and SMBD, Inc.  
March 10, 2009  
Page 2

Northern District of Mississippi, Eastern Division.

The protestations of Mr. Rex Deloach that this decision was a "thinly-veiled award of tobacco fees" notwithstanding, the District Court's decision and award was precisely what it says it was – an award of asbestosis fees due Mr. Luckey for the reasons articulated in the Order. See Exhibit 2 attached hereto and incorporated herein by reference.

As such, withholding these funds from the Mikhail/Young shares of the tobacco settlement fund is in violation of the employment agreement which set forth that the only deductions from the fees to be paid Mikhail and Young were expenses directly attributable to the tobacco litigation. We have calculated the amount of the payments, together with interest accruing on those amounts from July, 2005, forward, and show that on Exhibit 3 attached hereto. Please consider this letter as demand for the immediate payment in the amount of \$539,085.00 each to Lee Young and to Charles Mikhail. My clients also demand that no more assessments be taken from any future quarterly payments.

The second improper "assessment" to the sums due Mikhail and Young are for what have been termed "litigation expenses" which have been paid to Mr. Joey Langston. No justification whatsoever has been presented as to why litigation expenses related to the tobacco litigation are due Mr. Langston, nor for the sums paid or the justification for deducting it from the payments due to Young and Mikhail in accordance with the contractual agreement with SMBD. Not to mention the fact that Mikhail and Young repeatedly objected and warned that this assessment was improper. Absent such an accounting and justification, withholding these funds from sums due to Mikhail and Young is an additional breach of the agreement with SMBD.

Please consider this letter as formal demand for an immediate accounting of all sums paid to Langston, together with a detailed description of the actions that he took which justify said amounts as being assessable against the payments due to Young and Mikhail under the terms of the SMBD contract.

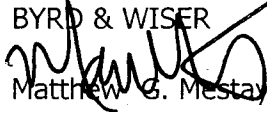
Please be advised that unless satisfactory arrangements have been made for addressing both of these issues within ten (10) days from the date of this letter, I have been instructed to take such steps as are necessary to protect my clients' interest in this matter. It is hopeful that this matter can be resolved amicably in accordance with the terms of the parties' agreement and the United States District Court's decision, and that recourse to litigation will not be necessary.

W. Steven Bozeman and SMBD, Inc.  
Hayden S. Dent and SMBD, Inc.  
Samuel M. Millette, Jr., and SMBD, Inc.  
March 10, 2009  
Page 3

Thanking you for your immediate attention to this matter, I remain,

Yours truly,

BYRD & WISER

  
Matthew G. Mestayer

MGM/krq

Enclosures

cc: Lee Young  
Charles Mikhail

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee <i>Sam Millette</i>	
1. Article Addressed to: SAMUEL MILLETTE JR. AND SMBD 6911 PROVIDENCE ESTATE DRIVE S MOBILE AL 36695	B. Received by (Printed Name) SAM MILLETTE	C. Date of Delivery 3/24/09
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	7004 1350 0002 4890 2474	
	PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee <i>Hayden Dent</i>	
1. Article Addressed to: HAYDEN'S DENT AND SMBD INC 623 WASHINGTON AVE. OCEAN SPRINGS MS 39564	B. Received by (Printed Name) <i>Hayden Dent</i>	C. Date of Delivery
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	7004 1350 0002 4890 2467	
	PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		

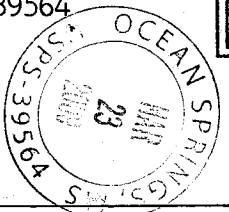


EXHIBIT F

1. On October/November 2006, \$150,000 from Lee Young
2. On October/November 2006, \$150,000 from Charles Mikhail
3. On January 25, 2007, \$44,000.00 from Lee Young.
4. On January 25, 2007, \$44,000.00 from Charles Mikhail.

