

EXHIBIT 4

b. k. v.

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

FILED
DEC 20 2007
BARBARA DUNN, CIRCUIT CLERK
BY _____ D.C.

THE STATE OF MISSISSIPPI and PHIL BRYANT)
in his capacity as Auditor for the State of Mississippi,)

Plaintiffs)

vs.)

Civil No. 257-07-1258 CIV

THE LANGSTON LAW FIRM, PA, JOSEPH C.)
LANGSTON, and TIMOTHY R. BALDUCCI,)

Defendants)

COMPLAINT

COMES NOW Phil Bryant, as State Auditor of the State of Mississippi, and files herewith his Complaint against Defendants, The Langston Law Firm, PA, Joseph C. Langston and Timothy R. Balducci (collectively the "Defendants"), and in support thereof would respectfully show as follows:

Parties & Jurisdiction

1. Plaintiff Phil Bryant, State Auditor of the State of Mississippi (the "Auditor"), is a constitutional officer in the Executive Branch of state government of the State of Mississippi. The Auditor has the authority and duty under state law to conduct investigations concerning the management of funds belonging to the public, and when public funds have been improperly withheld, misappropriated and/or otherwise illegally expended by a public officer, the Auditor has the authority and the duty to commence a civil action in any court of this state for the recovery of misspent public funds. Miss. Code Ann. §7-7-211(g)

2. Defendants Joseph C. Langston (“Langston”) and Timothy R. Balducci (“Balducci”) are adult resident citizens of the State of Mississippi. Service of process may be had upon Defendant Langston by personal service at 100 South Main Street, Booneville, Mississippi 38829-0787. Service of process may be had upon Defendant Balducci by personal service at 100 South Main Street, Booneville, Mississippi 38829-0787.

3. Defendant The Langston Law Firm, P.A.(“Langston Firm”) is a professional association created under the laws of the State of Mississippi, doing business in Mississippi and domiciled in Mississippi. Service of process may be had upon Defendant the Langston Firm by personal service upon Jeffrey L. Miney at 100 South Main Street, Booneville, Mississippi 38829-0787.

Facts

4. In 2004, the Mississippi State Tax Commission filed a claim in the United States Bankruptcy Court of the Southern District of New York, seeking recovery of tax liability in the amount of \$3,574,779.10, allegedly owed by MCI Corporation (“MCI”), which was at the time involved in Chapter 11 bankruptcy litigation in that court.

5. One week later, on March 31, 2004, Attorney General Jim Hood filed another claim on behalf of the State Tax Commission in that same bankruptcy action and in the same court, also alleging that MCI owed tax liability, this time in the amount of “\$1,000,000,000+”. That claim was reduced to \$956,559,630 two months later.

6. On September 29, 2004, Attorney General Hood retained Defendants Langston and Balducci as Special Assistant Attorneys General to provide legal services in connection with the State’s tax claim against MCI.

7. On May 6, 2005, without any trial in the bankruptcy court on the issue of its tax liability, MCI agreed to a settlement of the tax claim filed by the State of Mississippi, the settlement of which included MCI's payment of \$118,200,000 in cash plus real estate valued at approximately \$6,250,000 (together, the "Settlement Proceeds"). The settlement agreement was documented by a "Settlement Agreement and Release" (the "Settlement Agreement"), which was signed by counsel for MCI and by Attorney General Jim Hood for the State of Mississippi. A true and correct copy of the Settlement Agreement is attached to the Complaint and incorporated by reference.

8. By the clear terms of the Settlement Agreement, all of the Settlement Proceeds paid by MCI were paid in satisfaction of and in return for a release of MCI's tax liability to the State of Mississippi. Specifically, MCI tendered the Settlement Proceeds payments and the payments were received and acknowledged by the signature of the Attorney General "as payments of tax and interest, to or on behalf of the State," *See* Settlement Agreement at 13. Further to confirm the intentions of MCI and the Attorney General that the Settlement Proceeds were all intended for the benefit of the State's taxpayers and in lieu of taxes owed, the Settlement Agreement also provided that: "In exchange for the cash payments and property transfer, the State agrees to compromise and fully release [MCI's] obligation to pay all taxes, interests and penalties" *See* Settlement Agreement at 14.

9. Although the entire \$118,200,000 of the cash portion of the Settlement Proceeds comprised public funds of the State of Mississippi, intended to satisfy and settle an outstanding tax liability, the State of Mississippi received only \$100,000,000 in cash out of the Settlement Proceeds. The remaining \$18,200,000 in public funds was paid out to others, as shown below.

10. Out of the Settlement Proceeds, cash in the amount of \$4,200,000 was paid to an organization called the Children's Justice Center of Mississippi (the "Center"). Under Mississippi law, it is unlawful for public funds to be given as a donation except upon the vote of a two-thirds (2/3) vote of the Legislature. Miss. Const. of 1890, § 66. Payment of \$4,200,000 from the Settlement Proceeds to an organization such as the Center, however worthy, and even as purportedly authorized by the Attorney General of the State by means of his signature, was an illegal donation under Mississippi law.

11. On October 19, 2006, the State Auditor made demand upon the Center for repayment in full of the \$4,200,000 illegally transferred to that organization out of the Settlement Proceeds. On January 26, 2007, the entire \$4,200,000 was repaid to the State of Mississippi by the Center.

12. Out of the Settlement Proceeds, cash in the amount of \$14,000,000 was paid to Defendants Langston, Balducci and The Langston Firm. Under Mississippi law, it is unlawful for lawyers retained as were Defendants Langston and Balducci to assist the attorney general in the MCI tax case, to be paid with public funds except "out of the attorney general's contingent fund, or any other funds appropriated to the attorney general's office." Miss. Code Ann. §7-5-7. Payment of \$14,000,000 from the Settlement Proceeds to attorneys in the form of attorneys' fees was an illegal payment of fees under Mississippi law.

13. On November 20, 2006, and again on March 12, 2007, the State Auditor made demand upon Defendants Langston and the Langston Firm for repayment in full of the \$14,000,000 illegally transferred to them out of the Settlement Proceeds. As of this date, Defendants have not repaid any amount of the \$14,000,000 in public funds illegally paid to and received by them.

Causes of Action

COUNT ONE - ILLEGAL RECEIPT OF PUBLIC FUNDS

14. Plaintiff realleges each of the items set out in paragraph 1-13 above.

15. Any contract for attorneys' fees to be paid to Special Assistant Attorneys General is subject to the provisions of state law, and no contract can supersede the requirements of state law. Because Defendants received fees in the form of public funds that did not come "out of the attorney general's contingent fund, or any other funds appropriated to the attorney general's office," (Miss. Code Ann. §7-5-7), they have illegally received public funds which must immediately be returned to the State of Mississippi, with interest.

COUNT TWO - UNJUST ENRICHMENT

16. Plaintiff realleges each of the items set out in paragraphs 1-15 above.

17. Defendants were unjustly enriched at the expense of the taxpayers of the State of Mississippi. Assuming that Defendants Langston and Balducci both spent 40 hours per week working on no other matter than the MCI matter for the 31 weeks between the date they were retained to represent the State and the date they were paid \$14,000,000 under the Settlement Agreement, they were paid a fee amounting to more than \$5,600 per hour. On information and belief, Counter-Defendants paid half their fee to other lawyers or law firms, who had not been retained by the State. Assuming that half payment to have been made, Defendants Langston and Balducci kept at least \$2,800 per hour by even a conservative estimate. In either event, such a rate of pay unjustly enriched Defendants out of Settlement Proceeds that were paid for the benefit of the people of the State of Mississippi.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Phil Bryant in his capacity as Auditor for the State of Mississippi, prays that this Court enter judgment in favor of the State of Mississippi to the following effect:

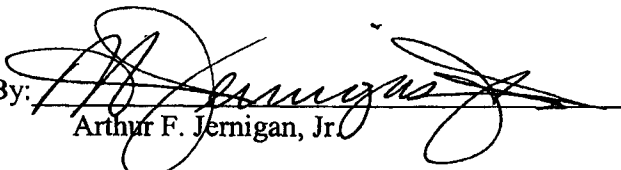
- (1) That Defendants have illegally received public funds in violation of Miss. Code Ann. §7-5-7, and shall immediately tender repayment in cash of all public funds received in the amount of \$14,000,000, plus statutory, pre-judgment and post-judgment interest, to the State of Mississippi for deposit in the State's General Fund, and shall be assessed all costs of investigation and litigation incurred for the recovery of such funds.
- (2) Further, that Defendants have been unjustly enriched by the receipt of fees far in excess of a reasonable fee for the time and expertise provided to the State, and that this matter be set down for hearing before this Court at the earliest possible trial date for the hearing of evidence and argument limited to the issue of just and legal compensation for legal services rendered during the MCI bankruptcy case.

THIS the 20 day of December, 2007.

Respectfully submitted,

PHIL BRYANT in his capacity as Auditor for the
State of Mississippi

By His Attorneys
HARRIS JERNIGAN & GENO, PLLC

By: 
Arthur F. Jernigan, Jr.

OF COUNSEL:

Arthur F. Jernigan, Esq. - MSB No. 3092
Craig M. Geno, Esq. - MSB No. 4793
Samuel L. Anderson, Esq.- MSB No. 9785
HARRIS JERNIGAN & GENO, PLLC
587 Highland Colony Parkway
P.O. Box 3380
Ridgeland, MS 39158-3380
Telephone: (601) 427-0048
Facsimile: (601) 427-0050