

IN THE CHANCERY COURT OF MONTGOMERY COUNTY  
STATE OF MISSISSIPPI

**FILED**

AUG 29 2007

LISTON/LANCASTER, PLLC, and  
DAVID H. NUTT, P.A.

PLAINTIFFS

MALCOLM DALE FRIEND HOLDING  
CHANCERY COURT

VERSUS

*2. Wilson*

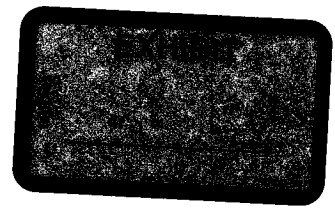
NO. 07-8-074 VC

DAVID P. MATTHEWS, P.C., d/b/a MATTHEWS  
& ASSOCIATES, and DAVID P. MATTHEWS.  
Individually; NICK C. NICHOLS, P.C., RANDALL  
O. SORRELS, P.C., MALCOLM DALE FRIEND,  
d/b/a ABRAHAM, WATKINS, NICHOLS, SORRELS  
AND FRIEND, and NICK C. NICHOLS, RANDALL  
O. SORRELS, and MALCOLM DALE FRIEND,  
Individually

DEFENDANTS

COMPLAINT

COME NOW Liston/Lancaster, PLLC. and David H. Nutt, P.A., Plaintiffs in the above-styled and numbered cause, by and through their attorneys of record, and file this Complaint against David P. Matthews, P.C., d/b/a Matthews & Associates. and David P. Matthews, Individually; Nick C. Nichols, P.C., Randall O. Sorrels, P.C., Malcolm Dale Friend, d/b/a Abraham, Watkins, Nichols, Sorrels and Friend; and Nick C. Nichols, Randall O. Sorrels, and Malcolm Dale Friend, Individually, Defendants, and in support thereof would respectfully show unto the Court the following facts, to-wit:



## PARTIES

1. The Plaintiffs are Liston/Lancaster, PLLC, domiciled at 126 North Quitman Avenue, City of Winona, Montgomery County, Mississippi 38967 and David H. Nutt, P.A., domiciled at 605 Crescent Blvd., Suite 200, City of Ridgeland, Madison County, Mississippi 39157 (hereinafter "Plaintiffs" or "Liston/Lancaster" or "David H. Nutt").

2. The Defendants herein are:

a) David P. Matthews, P.C., d/b/a Matthews & Associates, and David P. Matthews, Individually. David P. Matthews, P.C., is a professional corporation created, organized and existing under the laws of the State of Texas and is doing business under the name of Matthews & Associates domiciled at 2905 Sackett Street, Houston, Texas 77098, whose agent for the service of process at said address is David P. Matthews.

b) David P. Matthews is an adult, resident citizen of the City of Houston, Harris County, Texas.

c) Nick C. Nichols, P.C., is a Texas professional corporation domiciled at 800 Commerce Street, Houston, Texas 77002, whose agent for service of process at said address is Nick C. Nichols.

d) Randall O. Sorrels, P.C., is a Texas professional corporation domiciled at 800 Commerce Street, Houston, Texas 77002, whose agent for service of process at said address is Randall O. Sorrels.

e) Malcolm Dale Friend is an adult, resident citizen of the City of Houston, Harris County, Texas, who may be served with the process of this Court at 800 Commerce Street, Houston, Texas 77002.

f) Abraham, Watkins, Nichols, Sorrels and Friend is an unincorporated partnership consisting of Nick C. Nichols, P.C., Randall O. Sorrels, P.C., and Malcolm Dale Friend. Abraham, Watkins, Nichols, Sorrels and Friend may be served with the process of this Court by service on its members, namely, Nick C. Nichols, P.C., Randall O. Sorrels, P.C., and Malcolm Dale Friend at 800 Commerce Street, Houston, Texas 77002.

g) The individuals, Nick C. Nichols, Randall O. Sorrels, and Malcolm Dale Friend, are adult resident citizens of the City of Houston, Harris County, Texas, and each may be served with the process of this Court at 800 Commerce Street, Houston, Texas 77002.

### JURISDICTION

3. This Court, as a court of equity, has subject matter jurisdiction of this action in that the Plaintiffs assert claims for accounting of all sums due the Plaintiffs shown by the results of the accounting. This Court has jurisdiction over matters of account when (1) the need of discovery is involved, (2) the accounting sought is of a complicated character, and (3) there exists a fiduciary relationship between the defendants and the plaintiffs.

a) The need of discovery exists in this case in that the Defendants hold in their name an unknown amount of funds in which the Plaintiffs have an interest and the Defendants have refused to provide an accounting of the funds to the Plaintiffs. Consequently, the Plaintiffs have not been able to ascertain the amount of fees and reimbursable expenses due them, as well as the amount of interest earned on the deposited funds. Further, Plaintiffs have been unable to determine the status of clients' settlements.

b) The accounting sought here is of a complicated character in that it involves a settlement of claims of hundreds of clients, payment of millions of dollars into the fund by the manufacturer and seller of the suspect drug, thousands of funds dedicated to out-of-pocket expenses incurred by the parties hereto, payment of referral fees to attorneys who referred cases to the parties hereto, the amount of interest earned on the settlement funds, payment of Multi-District Litigation fees and refunds thereof.

c) The existence of a fiduciary relationship exists between the Defendants and the Plaintiffs growing out of a joint venture between the parties under Mississippi law.

These facts establish that there is an actual need for an equitable accounting in this case and, in addition, the Chancery Court is within its authority to retain the entire case, including any

legal claim for damages. *RE/MAX Real Estate Partners v. Lindsley*, 840 So.2d 709, 712 ¶ 15 (Miss. 2003).

4. This Court has *in personam* jurisdiction of the defendants based on the following facts and law:

a) David P. Matthews, individually, is subject to *in personam* jurisdiction pursuant to the provisions of *M.C.A.*, § 13-3-57 in that he is a non-resident person of the State of Mississippi who entered into a contract with residents of this state to be performed in whole or in part in this state and who, by such act or acts, is deemed to be doing business in Mississippi and is thereby subjected to the jurisdiction of the courts of this state;

b) David P. Matthews, P.C., is subject to *in personam* jurisdiction pursuant to the provisions of *M.C.A.*, § 13-3-57 in that it is a corporation not qualified under the Constitution and laws of this State to do business herein but who made a contract with the plaintiffs herein, residents of this state, to be performed in whole or in part in this state and who, by such act or acts, is deemed to be doing business in Mississippi and is thereby subjected to the jurisdiction of the courts of this state;

c) Nick C. Nichols, individually, is subject to *in personam* jurisdiction pursuant to the provisions of *M.C.A.*, § 13-3-57 in that he is a non-resident person of the State of Mississippi who entered into a contract with

residents of this state to be performed in whole or in part in this state and who, by such act or acts, is deemed to be doing business in Mississippi and is thereby subjected to the jurisdiction of the courts of this state;

d) Nick C. Nichols, P.C., is subject to *in personam* jurisdiction pursuant to the provisions of *M.C.A.*, § 13-3-57 in that it is a corporation not qualified under the Constitution and laws of this State to do business herein but who made a contract with the plaintiffs herein, residents of this state, to be performed in whole or in part in this state and who, by such act or acts, is deemed to be doing business in Mississippi and is thereby subjected to the jurisdiction of the courts of this state;

e) Randall O. Sorrels, individually, is subject to *in personam* jurisdiction pursuant to the provisions of *M.C.A.*, § 13-3-57 in that he is a non-resident person of the State of Mississippi who entered into a contract with residents of this state to be performed in whole or in part in this state and who, by such act or acts, is deemed to be doing business in Mississippi and is thereby subjected to the jurisdiction of the courts of this state;

f) Randall O. Sorrels, P.C., is subject to *in personam* jurisdiction pursuant to the provisions of *M.C.A.*, § 13-3-57 in that it is a corporation not qualified under the Constitution and laws of this State to do business herein but who made a contract with the plaintiffs herein, residents of this state, to be

performed in whole or in part in this state and who, by such act or acts, is deemed to be doing business in Mississippi and is thereby subjected to the jurisdiction of the courts of this state;

g) Malcolm Dale Friend, individually, is subject to *in personam* jurisdiction pursuant to the provisions of *M.C.A.*, § 13-3-57 in that he is a non-resident person of the State of Mississippi who entered into a contract with residents of this state to be performed in whole or in part in this state and who, by such act or acts, is deemed to be doing business in Mississippi and is thereby subjected to the jurisdiction of the courts of this state;

h) Abraham, Watkins, Nichols, Sorrels and Friend is a non-resident firm of the State of Mississippi and is subject to the *in personam* jurisdiction of this Court, not qualified under the Constitution and laws of this state to do business herein but who made a contract with the plaintiffs herein, residents of this state, to be performed in whole or in part in the State of Mississippi and is, thereby, subject to the jurisdiction of the Courts of this state.

#### VENUE

5. This Court has venue of this action pursuant to the provisions of *M.C.A.*, § 11-5-1 in that this suit involves personal property consisting of a chose in action of the plaintiffs of which some portion thereof is located in Montgomery County, Mississippi.

### NATURE OF CASE

6. This case involves an accounting of the sums due the Plaintiffs who entered into a Joint Venture ("Venture") with Defendants for the purpose of representing clients who had been injured by the ingestion of the Rezulin drug. The necessity for the filing of this action against the Defendants herein arises from the failure of the Venture Defendants to fully account for settlement monies received pursuant to said litigation, which sums were deposited in a Houston, Texas bank in the name of Abraham, Watkins, Nichols, Sorrels, Matthews and Friend for distribution of attorneys' fees, out-of-pocket expenses, and payments to clients represented by the Venture. This suit is brought by the remaining two (2) members of the Venture consisting of Liston/Lancaster, PLLC, and David H. Nutt, P.A., against the named Defendants for an accounting of all funds received and disbursed by the Texas partnership and for the payment of all sums due Liston/Lancaster, PLLC, and David H. Nutt, P.A., as revealed by the accounting.

### UNDERLYING FACTS

7. On or about September 11, 2000, David P. Matthews, who at that time was a partner in the law firm of Abraham, Watkins, Nichols, Sorrels, Matthews and Friend, approached William H. Liston, President of Liston/Lancaster, PLLC, and David H. Nutt, principal of David H. Nutt, P.A., for the purpose of entering into a joint venture for the representation of persons who had ingested the diabetes drug Rezulin manufactured and sold by Pfizer to persons suffering from diabetes.

8. Shortly prior to September 11, 2000, Matthews, Liston and Nutt, on behalf of their respective law firms, agreed and entered into an oral agreement for the creation of a joint venture for the prosecution of claims for personal injury and/or death resulting from the ingestion of Rezulin in the states of Louisiana, Mississippi, Texas, Alabama, the Commonwealth of Puerto Rico, and any other jurisdictions from which such claims were originated. Subsequent to September 11, 2000, a letter memorandum was prepared, circulated, and executed by David P. Matthews for the then Abraham, Watkins, Nichols, Sorrels, Matthews & Friend firm of Houston, Texas, David H. Nutt for David H. Nutt, P.A., of Jackson, Mississippi, and William H. Liston for the Liston/Lancaster, P.A. firm of Winona, Mississippi. The written agreement provided specific terms concerning the obligations undertaken by each member of the Venture and the share of fees and expenses to be divided among the members. A true and correct copy of the Joint Venture Agreement is attached hereto, marked "Exhibit A," and made a part hereof by reference.<sup>1</sup>

9. In early 2004, Pfizer entered into a settlement agreement with the Venture's clients represented by (a) The Venture and (b) various attorneys who had referred cases to the Venture in a confidential amount.<sup>2</sup> Under the terms of the settlement agreement Pfizer agreed to pay the agreed settlement amount to Abraham, Watkins, Nichols, Sorrels,

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<sup>1</sup> Exhibit A attached hereto does not contain the signature of Matthews. However, Matthews executed the agreement in the form attached to this Complaint marked Exhibit A, thereby binding his firm to the conditions and terms set forth therein.

<sup>2</sup> The total amount of the settlement will be divulged to the Court *in camera*.

Matthews and Friend in four separate installments to be deposited in the Wachovia Bank in Houston, Texas in escrow in the name of Abraham, Watkins, Nichols, Sorrels, Matthews and Friend. Matthews and his firm undertook the responsibility of effecting settlements with the Joint Venture clients and referring attorneys. In addition, the Plaintiffs were advised by Matthews that disbursements of out of pocket expenses incurred by members of the Venture and attorneys fees due from the settlements would be promptly paid.

10. While Liston/Lancaster and David H. Nutt received some payments from the escrow account during the Spring and Summer of 2004, the amounts received did not comply with the terms of the September 2000 Joint Venture agreement. Numerous requests were made by the Plaintiffs to Matthews for an accounting of the settlements, all to no avail.

11. After being unable to obtain an accounting of the receipt and distribution of funds, the Plaintiffs' representatives arranged to meet with Matthews and the firm's accountant in early August of 2004 in an effort to obtain an accounting of the funds due the Plaintiffs. During this meeting, Plaintiffs' representatives were furnished a partial breakdown of client reimbursable expenses, and referral fees paid to three employees of Abraham, Watkins, Nichols, Sorrels, Matthews and Friend. However, numerous issues arose in this meeting which was inconsistent with the terms and conditions of the Joint Venture Agreement.

12. On August 30, 2004, the Plaintiffs contacted Matthews to discuss a resolution of the improper payments made during the preceding Rezulin settlements. The following

agreements emerged from this conference as reflected in William Liston's Federal Express and facsimile letter to Matthews of August 30, 2004:

(a) Matthews agreed during the telephone conference that the Plaintiffs were entitled to 75% of the attorneys' fees from the Mississippi clients and that Matthews would receive 25% of such fees. You agreed that the 75% - 25% split would result in the Plaintiffs receiving approximately \$250,000.00 more in fees than they would have received under a 50% - 50% split.

(b) Matthews acknowledged that the original Association Agreement provided that Jeb Wait, an attorney employed by his firm was entitled only to 5% attorney fees for Texas non-Hispanic clients and that funds were incorrectly withheld from the Plaintiffs for the first three Rezulin settlements to pay Wait. Matthews agreed to adjust the accounting for the fourth settlement in order to reimburse the Plaintiffs for sums improperly paid to Wait for the first three settlements and to ensure that Wait was paid only what he was entitled to receive under the Association Agreement for the fourth settlement. Matthews agreed that the amount to be reimbursed to the Plaintiffs from the adjustment to the fourth settlement accounting for prior overpayment to Wait was \$400,000.00.

(c) The Plaintiffs took issue with Matthew's firm's payment to Lizy Cardenas and Julie Rhoades of a referral fee for Rezulin clients inasmuch as the plaintiffs were never informed of the payment to Julie and Lizy who worked on the Rezulin project as employees of the firm. The Plaintiffs agreed to a reimbursement to the Plaintiffs of one-half of the referral fee that Matthews paid to these employees rather than the entire amount paid them. Matthews agreed that the Plaintiffs' portion of the fee paid these employees would result in a refund to Plaintiffs of \$75,000.

(d) The parties agreed that the Plaintiffs would receive a minimum of \$11,068,443.98 in fees and adjustments from the fourth Rezulin settlement.

(e) In addition to the minimum amount of payment agreed upon, the parties agreed that the Plaintiffs would be entitled to reimbursement of client specific expenses to be withheld from clients funds in the amount of \$110,919.45 and general case expenses to be withheld from gross attorneys' fees in the amount of \$86,250.62.

A true and correct copy of the Plaintiffs' August 30, 2004 letter to Matthews is attached hereto marked "Exhibit B" and is made apart hereof by reference.

13. Notwithstanding the agreements entered into by Matthews for and on behalf of his firm, the Plaintiffs, from August 30, 2004 to September of 2005, only received fees

of \$162,793.23. No fee payments have been received by the Plaintiffs from the Defendants after September 2005.

14. Numerous requests have been made by the Plaintiffs for (1) a full accounting and (2) payment of the minimum amount agreed to be paid to the Plaintiffs; however, the Defendants, while promising time and time again that the requested information and payment was forthcoming, have never provided the accounting or paid the balance owing on the agreed minimum amount or the client specific expenses and general case expenses.

15. Based upon the amounts received by the Plaintiffs subsequent to the Plaintiffs' August 30, 2004 letter, the Plaintiffs are entitled to the sum of \$817,918.59 for fees and expense reimbursement up to September 2005.

16. No fee payments or other expense payments have been received from the Defendants by the Plaintiffs since September, 2005, although, it has come to the attention of the Plaintiffs that certain Mississippi settlements have been consummated since September 2005. The Plaintiffs have no way of knowing how many other clients' cases have been paid or the amount of such payments.

17. Attached hereto marked "Exhibit C" is Liston/Lancaster's letter dated August 15, 2007 to David Matthews and the managing partner of Abraham Watkins demanding a full accounting of the Rezulin settlement funds to consist of:

(a) The total gross amount of settlements funds received by Abraham, Watkins in the Rezulin litigation:

(b) All interest earned on deposited settlement fees less interest paid to referring attorneys;

(c) The names and addresses of each referring attorney who received interest payments, the date thereof, and amount paid;

(d) Payments made to referring attorneys for fees and expenses by name less MDL fees paid out of settlements;

(e) Amount of bank service fees paid;

(f) Any refunds of collected MDL fees; and

(g) A demand to the Defendants for the payment of the outstanding amounts due to the Plaintiffs for attorneys' fees and adjustments under the original Association Agreement entered into between Abraham. Watkins by its partner, David P. Matthews and the firms of David H. Nutt, P.A. and Liston/Lancaster, P.A. on September 11, 2000 and the subsequent agreement between the parties memorialized by letter to David P. Matthews and the Abraham, Watkins firms dated August 30, 2004.

18. In order to determine the value of the Plaintiffs' interest in the Venture, the Plaintiffs have repeatedly, albeit unsuccessfully, attempted to obtain an accounting of the settlement funds held by the Defendants. The Defendants have refused and continued to refuse to provide said accounting.

### CLAIM FOR ACCOUNTING

19. Plaintiffs re-allege and adopt herein by reference the allegations contained and set forth in paragraphs 1-18 herein above.

20. The Defendants and each of them as members of the Venture owed a fiduciary duty to the Plaintiffs, which duty included faithful performance of the duties and responsibilities under the terms of the Venture agreement and to account for the proper distribution of the assets of the Pfizer settlement.

21. Plaintiffs have tried to obtain an accounting from the Defendants so as to be able to determine the amounts due the Plaintiffs for fees, out of pocket expenses and other adjustments. These efforts have been to no avail.

22. Under the facts existing here, the Plaintiffs are entitled to an accounting from the Defendants.

### CLAIM FOR PAYMENTS

23. Plaintiffs re-allege and adopt herein by reference the allegations contained and set forth in paragraphs 1 through 22 hereinabove.

24. Plaintiffs are entitled to payment of all sums due the Plaintiffs from the settlement funds as shown by the accounting.

### PRAYER

WHEREFORE, Plaintiffs pray that process be issued for service upon each of the Defendants commanding said Defendants to answer this Complaint within the time and in

the manner required by law and, upon hearing thereof, the Court enter its judgment against the Defendants as follows:

1. **On the Claim for Accounting:**

Entry of an Order requiring the Defendants and each of them to make a full accounting of the Rezulin settlements to the Joint Venture consisting of:

(a) The total gross amount of settlement received by the law firm of Abraham, Watkins, Nichols, Sorrels, Matthews and Friend in the Rezulin litigation to date;

(b) The total gross interest earned on deposited settlement fees less interests paid to referring attorneys;

(c) The names and addresses of each referring attorney who received interest payments and the date(s) thereof;

(d) The payments made to referring attorneys for fees and expenses by name and date, less MDL fees paid out of settlements;

(e) Amounts of bank service fees;

(f) Any refunds of collected MDL fee;

(g) The date(s) and amounts of fee payments to the Plaintiffs;

(h) The date(s) and amounts of each refund of client specific expenses, common benefit expenses and advertising expenses made to the Plaintiffs;

(i) The date of settlements effected subsequent to September 2005 to include the amount of each such settlement, the name and address of each client and the name and address of the referring attorneys and the amount paid to each referring attorney, if any.

**2. Payment of Funds Due the Plaintiffs:**

Entry of an Order requiring the Defendants to pay to the Plaintiffs all amounts shown by the accounting to be owing to the Plaintiffs.

**3. General Relief:**

The plaintiffs pray for all such other and general relief as they may be entitled to have in equity and good conscious in the premises.

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