

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

HOLLIS, WRIGHT, CLAY & VAIL, PC.)

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NO. _____

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Plaintiff.

)

COMPLAINT FOR

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DECLARATORY

)

JUDGMENT

vs.

)

)

AUDET & PARTNERS, LLP

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)

)

Defendant.

)

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW the Plaintiff, HOLLIS, WRIGHT, CLAY & VAIL, PC. (hereinafter referred to as “Plaintiff” or “Hollis Wright”) and seeks a declaratory judgement against the Defendant AUDET & PARTNERS, LLP (hereinafter referred to as “Defendant” or “Audet & Partners”). The Plaintiff Hollis Wright alleges as follows:

I. NATURE OF THE ACTION

1. This action involves an alleged attorney fee split agreement that the Defendant Audet & Partners contends existed between the parties hereto. The Plaintiff Hollis Wright seeks declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. More specifically, the Plaintiff Hollis Wright seeks a determination that it has no duty or

obligation pursuant to any alleged agreement to pay the Defendant Audet & Partners attorneys' fees from a group of cases that were heretofore settled.

II. THE PARTIES

2. The Plaintiff Hollis Wright is a professional corporation (PC) that functions as a law firm and provides legal services to various clients. The Plaintiff Hollis Wright is incorporated under the laws of the State of Alabama and has its principal and exclusive place of business in Birmingham, Alabama.

3. Upon information and belief, the Defendant Audet & Partners is a limited liability partnership (LLP) that functions as a law firm and provides legal services to various clients. Upon further information and belief, the Defendant Audet & Partners was established in the State of California, has its principal place of business in San Francisco, California and all partners reside in the State of California.

III. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 as well as Rule 57 of the Federal Rules of Civil Procedure.

5. An actual justiciable controversy between the Plaintiff Hollis Wright and Defendant Audet & Partners exists within the meaning of 28 U.S.C. §§ 2201 regarding whether the Plaintiff Hollis Wright has any contractual obligation to pay

Defendant Audet & Partners attorneys' fees from a group of cases that were heretofore settled.

6. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and the suit is between citizens of different states.

7. Defendant Audet & Partners is also subject to the personal jurisdiction of this Court because said Defendant is attempting to specifically enforce an alleged contract with the Plaintiff, a resident of the State of Alabama. Further, Defendant Audet & Partners has had sufficient contacts and does sufficient business in the State of Alabama to invoke personal jurisdiction over said Defendant.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that a substantial part of the events and activities giving rise to this claim occurred in this judicial district and the property (i.e. fees) for which Defendant Audet & Partners makes claim is situated in said district.

IV. FACTUAL BACKGROUND

9. The Plaintiff Hollis Wright re-avers and re-states the foregoing paragraphs 1-8 as if fully set forth herein.

10. The Plaintiff Hollis Wright is a personal injury law firm located in Birmingham, Alabama and has been in existence since the year 2002. The Plaintiff Hollis Wright primarily represents individuals injured in a wide variety of events

and incidents including, but not limited to, the use of medical devices, implants and the ingestion of pharmaceutical drugs.

11. In or around the mid- to late 2000s, the Plaintiff Hollis Wright was involved in litigation against a prescription drug manufacturer regarding a drug used to treat manic episodes associated with bipolar disorder and epilepsy. The litigation centered around women who took the prescription drug while pregnant and had children born with birth defects.

12. During the course of the initial litigation, the Plaintiff Hollis Wright, by and through its attorneys, became acquainted with the attorneys at Defendant Audet & Partners. In or around the year 2010, Plaintiff Hollis Wright and the Defendant Audet & Partners began communications about running joint advertising campaigns for purposes of retaining clients alleged to have been injured by said prescription drug. The purpose of said joint advertising campaigns was to generate leads and/or clients for said pharmaceutical drug litigation

13. As part of the joint advertising campaigns, the Plaintiff and the Defendant agreed that to the extent clients were generated from said advertising campaigns that the parties would mutually share, in some manner, the fees generated on said cases and would share *pro rata* on the costs or expenses associated with the litigation of said cases. The parties also understood at the time of the joint advertising venture that a consortium of attorneys representing similar clients or victims would be

developed, either informally or formally through a multi-district court (MDL) and that the Plaintiff and the Defendant would likely be a part of said consortium. The parties understood that there would be litigation expenses that the Plaintiff and the Defendant would have to pay as part of prosecuting said cases with the consortium of attorneys. The Plaintiff and Defendant agreed to share on a *pro rata* basis these common benefit expenses.

14. The parties further agreed and understood that the attorneys and staff personnel employed by the Plaintiff and the Defendant respectively would share in the workload for any and all cases that were generated pursuant to the joint advertising campaigns. The joint agreement to prosecute, handle and finance the litigation and cases generated through the advertising campaigns was not only for purposes of providing the best possible legal representation to said clients but was also to maintain compliance with the various ethical standards and rules of professional conduct which oftentimes mandate that law firms sharing in attorney fees actively participate and work on the client's file. Additionally, the parties were aware of and understood the obligations required pursuant to Rule 1.5 of the Model Rules of Professional Conduct promulgated by the American Bar Association (ABA).

15. The parties also understood from the inception of the joint advertising

agreement that it would be inequitable and patently unfair for one law firm to be solely responsible for the workload and financing of the jointly generated cases while the other law firm did not participate at all in the prosecution of the claims and merely sat back and waited on fees.

16. At the time the joint advertising campaigns commenced, however, it was unknown whether the campaigns would be successful. The geographical locations of any clients were likewise unknown. Further, there was uncertainty as to whether a multi-district litigation (MDL) court would be created for the litigation thereby altering the specifics of any arrangement as well. Thus, it was not feasible and was impractical to determine on the frontend which parties would necessarily be representing or handling which cases as well as the specific details associated with sharing case expenses as well as common benefit expenses. As such, the parties agreed to address and determine the particular details of the fee splitting, the client workload as well as the cost sharing at the conclusion of the joint advertising campaigns.

17. The Plaintiff Hollis Wright conducted two campaigns, namely campaign I and campaign II, and realized several clients through said advertising activities. The Defendant Audet & Partners alleges that it also paid for and conducted advertising campaigns. However, as further indicated hereinbelow, Defendant now claims that

said campaigns were not fruitful from the standpoint that none qualified for a settlement.

18. After realizing multiple clients through the advertising campaigns as well as through other lead generating and/or referral resources, the Plaintiff Hollis Wright ultimately filed lawsuits on behalf of several individuals, some of whom were generated completely outside of the joint advertising efforts with the Defendant Audet & Partners.

19. At various points in time, the Plaintiff Hollis Wright commenced efforts to address the division of responsibilities amongst the various clients with the Defendant Audet & Partners. However, upon information and belief, a formal, written and signed agreement was never consummated or entered into between the parties. Likewise, upon information and belief, there are no emails, correspondence or other documents establishing a meeting of the minds as to any agreement and the particular details associated therewith.

20. Over the following months and years, the Plaintiff Hollis Wright repeatedly sought, requested and even demanded that the Defendant Audet & Partners participate in the prosecution of the cases derived from the joint advertising campaigns. Defendant Audet & Partners refused to provide any manpower and/or personnel resources towards the prosecution and handling of the subject cases. Moreover, the Defendant repeatedly and consistently failed and/or refused to

contribute towards the individual case expenses as well as pay its *pro rata* share of common benefit expenses to the group or consortium of attorneys. In short, the Defendant Audet & Partners buried its proverbial head in the sand and did very little, to nothing, towards prosecuting and/or handling the cases derived from the joint advertising campaigns.

21. In or around late 2017 and early 2018, attorneys around the Country, including the Plaintiff Hollis Wright, began to settle individual cases. In or around February of 2018, a large group of cases was resolved at mediation proceedings, including the remaining inventory of cases being handled by the Plaintiff Hollis Wright.

22. Upon information and belief, the Defendant Audet & Partners participated in the same mediation proceedings heretofore mentioned and settled its inventory of cases at that time as well. Upon the resolution of the cases, the Plaintiff proceeded to administratively resolve and/or officially conclude the cases by way of executing settlement and release agreements, resolving the subrogation interests and ultimately getting Court approval for the individual settlements. Defendant Audet & Partners did not participate in any such activities for the subject settled cases. In or around December of 2018 and January of 2019, the Plaintiff's cases were officially and completely resolved and the settlement funds were distributed accordingly. During the period of time from the settlement in late February of 2018 to distribution in

December of 2018, the Plaintiff Hollis Wright heard nothing from Defendant Audet & Partners relative to a claim of a fee on any cases.

23. On January 24th and 25th of 2019, Defendant Audet & Partners sent email correspondence to the Plaintiff Hollis Wright whereby said Defendant made claim to a fee at various percentage rates on multiple settled cases. Said email correspondence was followed up by Defendant Audet & Partners with a letter to the Plaintiff dated February 8, 2019 reiterating the claim to fees on various cases. Upon receiving said letter and email correspondence, the Plaintiff Hollis Wright responded to same on or about February 21, 2019 and explained to the Defendant Audet & Partners why no fees were owed on said cases and that no fees would be forthcoming. Since Plaintiff Hollis Wright sent the February 21, 2019 correspondence, the Defendant Audet & Partners has continued to insist and demand that the Plaintiff Hollis Wright remit payment of fees on various settled cases. Additionally, Defendant Audet & Partners has threatened litigation against the Plaintiff Hollis Wright claiming that the Plaintiff is in breach of contract.

24. Additionally, in the course of corresponding with the Defendant Audet & Partners over the forty-five (45) days prior to filing the present matter, the Plaintiff Hollis Wright inquired as to what cases Defendant settled that were generated from the joint advertising campaigns. Despite Defendant Audet & Partners initially suggesting in an email that some of its settled cases were generated from the joint

advertising campaigns, the Defendant Audet & Partners recently informed the Plaintiff that in fact none of its settled cases were derived from said joint advertising efforts and that Plaintiff was therefore entitled to no fees.

25. Upon information and belief, Defendant Audet & Partners has demonstrated a pattern and practice of inventing fee agreements with other law firms and not complying with the terms of fee agreements with law firms, including other firms involved in the subject pharmaceutical litigation, as well as seeking the approval of exorbitant fees from courts in situations where the Defendant contributed little to no work product. (*See Jabbari, et al v. Wells Fargo & Co.*, Case No.: 3:15-cv-02159-VC, wherein Defendant Audet & Partners requested fees ranging from approximately \$3 million to \$4 million for alleged work that the law firm performed towards a class action settlement. Defendant Audet & Partners was awarded zero by the trial court which held that the contribution was “too small to warrant a fee award.”)

26. Based upon the aforementioned factual background information, there presently exists a justiciable controversy between the Plaintiff Hollis Wright and the Defendant Audet & Partners related to attorney fees on various individual cases that were previously settled by the Plaintiff.

FIRST CLAIM FOR RELIEF
(Non-Existence of a Contract)

27. The Plaintiff Hollis Wright re-avers and re-states the foregoing paragraphs 1-

26 as if fully set forth herein.

28. There is a genuine and bona fide dispute and an actual controversy and disagreement between the Plaintiff Hollis Wright and Defendant Audet & Partners regarding whether Defendant Audet & Partners is contractually or otherwise entitled to attorney fees on various cases previously settled by the Plaintiff.

29. Pursuant to the Uniform Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2201, the Plaintiff Hollis Wright in good faith requests that the Court declare the following:

- (a) A joint advertising agreement was entered into by the parties that involved running advertisements, costs sharing for the advertising itself as well as an agreement for the parties to jointly handle, prosecute and finance the cases derived from said campaigns.
- (b) Defendant Audet & Partners failed to conduct and/or adequately conduct its portion or part of the joint advertising campaign which violated said agreement. As a consequence, Defendant Audet & Partners presumably did not generate any cases from said advertising activities and/or no viable cases from a settlement perspective. Due to Defendant Audet & Partners' failures in this regard, an enforceable agreement was never created.
- (c) Subsequent to the actual procurement of cases through the joint advertising arrangement, no legally enforceable contract was created and/or existed

between the Plaintiff Hollis Wright and the Defendant Audet & Partners in light of the fact there was never a meeting of the minds or mutual assent as to the particular details related to fee sharing, cost sharing and the division of labor and responsibilities on said cases.

(d) Due to the lack of any enforceable agreement between the parties, the Plaintiff Hollis Wright has no obligation, contractual or otherwise, to share fees on the subject group of cases that were derived from the joint advertising campaigns.

WHEREFORE, Plaintiff Hollis Wright requests that a judgment be entered against the Defendant Audet & Partners in a manner consistent with the declaratory relief requested herein.

SECOND CLAIM FOR RELIEF
(Breach of Contract)

30. The Plaintiff Hollis Wright re-avers and re-states the foregoing paragraphs 1-29 as if fully set forth herein.

31. There is a genuine and bona fide dispute and an actual controversy and disagreement between the Plaintiff Hollis Wright and Defendant Audet & Partners regarding whether Defendant Audet & Partners is contractually or otherwise entitled to attorney fees on various cases previously settled by the Plaintiff.

32. Pursuant to the Uniform Declaratory Judgment Act, 28 U.S.C. §§ 2201 and

2201, the Plaintiff Hollis Wright in good faith requests that the Court declare the following:

- (a) To the extent that this Honorable Court concludes that an enforceable contract was created and agreed upon between the parties, said contract required Defendant Audet & Partners to meaningfully participate in the prosecution and handling of said cases and contribute a *pro rata* portion of expenses and costs towards the individual cases as well as to the consortium of attorneys performing common benefit work.
- (b) Defendant Audet & Partners materially breached said contract and failed to remedy the breach when it repeatedly and consistently failed to perform any work on the subject cases, failed to contribute its share of costs and expenses towards the individual cases and failed to pay its *pro rata* share of common benefit expenses.
- (c) Due to the breach of the contract or agreement by Defendant Audet & Partners, the Plaintiff Hollis Wright has no obligation, contractual or otherwise, to share fees on the subject group of settled cases.

WHEREFORE, Plaintiff Hollis Wright requests that a judgment be entered against the Defendant Audet & Partners in a manner consistent with the declaratory relief requested herein.

Respectfully submitted,

/s/C. Carter Clay

C. Carter Clay

AL Bar ID: 2907Y85C

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Counsel for Plaintiff Hollis Wright Law Firm

OF COUNSEL:

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REQUEST FOR CERTIFIED MAIL SERVICE BY CLERK

The Plaintiff Hollis Wright hereby requests that the clerk serve the Defendant Audet & Partners by certified mail, return receipt requested.

PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL TO:

Audet & Partners, LLC

Attn. Bill Audet

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San Francisco, CA 94102-3275