



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
BIRMINGHAM DIVISION**

<b>DAVID ROBERSON and ANNA ROBERSON</b>	§	
<b>Plaintiffs,</b>	§	
	§	
<b>v.</b>	§	<b>Case No.: CV-2019-901210.00</b>
	§	
<b>DRUMMOND COMPANY, INC. AND BALCH &amp; BINGHAM, LLP</b>	§	
<b>Defendants.</b>	§	
	§	

**PLAINTIFF’S THIRD AMENDED COMPLAINT**

1. At all times relevant to this case, Joel Gilbert (“Gilbert”) was a registered lobbyist and the agent of Defendant Balch & Bingham, LLP (“Balch”), and his acts and omissions described herein were committed pursuant to and in the course of that agency relationship, or Balch has ratified, approved, and adopted his acts. Balch is liable for the torts committed by its agent, Gilbert, under respondeat superior, ratification, and/or adoption.

2. At all times relevant to this case, Defendant Balch was the agent of Defendant Drummond Company, Inc. (“Drummond”), and its acts and omissions described herein were committed pursuant to and in the course of that agency relationship, or Drummond has ratified, approved, and adopted Balch’s acts. Drummond is liable for the torts committed by its agent, Balch & Bingham, LLP, under respondeat superior, ratification, and/or adoption.

3. At all times relevant to this case, Blake Andrews (“Andrews” or “General Counsel”) was the General Counsel and agent of Defendant Drummond, and his acts and omissions described herein were committed pursuant to and in the course of that agency relationship, or Drummond has ratified, approved, and adopted Andrews’ acts. Drummond is liable for the torts committed by its agent, Blake Andrews, under respondeat superior, ratification, and/or adoption.

4. At all times relevant to this case, Mike Tracy (“Tracy”) was the CEO and agent of Defendant Drummond, and his acts and omissions described herein were committed pursuant to and in the course of that agency relationship, or Drummond has ratified, approved, and adopted Tracy’s acts. Drummond is liable for the torts committed by its agent, Mike Tracy, under respondeat superior, ratification, and/or adoption.

5. At all times relevant to this case until February 7, 2019, David Roberson (“the Plaintiff”) was a Vice-President with Drummond. Roberson was subordinate to Andrews and Tracy, and he was required to perform duties and responsibilities assigned to him by Andrews and Tracy. The Plaintiff is not a lawyer and has no legal training concerning the matters described herein.

6. At all times relevant to this case, the Co- Plaintiff Anna Roberson (“Co-Plaintiff”) was and has been the wife of Plaintiff David Roberson.

7. In late 2013 the Environmental Protection Agency (“EPA”) proposed placing a particular site in Jefferson County, Alabama on a National Priorities List (“NPL”); this was a prelude to designating Drummond as a Responsible Party for the cleanup costs at the site. The cleanup costs were estimated at over \$100 million dollars.

8. Joel Gilbert was a registered lobbyist employed by Balch & Bingham, LLP, and Drummond hired Balch & Bingham to create and implement a public-relations campaign that would prevent the placement of the site on the National Priorities List and the designation of Drummond as a Responsible Party. Balch & Bingham never functioned as Roberson’s attorney nor was Roberson or Drummond ever a legal services client of Balch & Bingham for or concerning the acts and omissions on which the Plaintiffs’ claims are based. Likewise, Roberson was never the client of Drummond’s in-house legal department for or concerning the acts and omissions on which the Plaintiffs’ claims are based. Nor did Drummond ever provide Roberson any legal advice. Finally, Balch & Bingham was not functioning as Drummond’s legal counsel for or concerning the acts and omissions on which the Plaintiffs’ claims are based.

9. Balch, as Drummond’s agent, devised a public relations plan (“the Plan”) to employ a seemingly-legitimate local foundation, the Oliver Robinson Foundation (“the Foundation”), to conduct a seemingly-innocent campaign directed

toward the community, the State of Alabama, and the EPA. Oliver Robinson was a respected state legislator, and he controlled the Foundation.

10. Under the Plan, Oliver Robinson and the Foundation would (a) seek to convince the residents of North Birmingham not to have their property tested for toxins, such as lead and arsenic and (b) Trey Glenn and Scott Phillips would seek by lobbying ADEM to prevent the State of Alabama from giving the legally required assurances to the EPA that the state would cover the required 10% of the cleanup costs that could not be recovered from PRPs.

11. In November 2014, before implementation of the Plan, the Plaintiff asked Gilbert if he had inquired with the ethics lawyers at Balch & Bingham whether the Plan was legal and ethical. Gilbert represented to the Plaintiff that Balch's in-house ethics attorneys had reviewed the Plan and determined that it was legal.

12. On or about February 12, 2015, Gilbert and Balch prepared a contract between Balch and the Foundation. The Plaintiff did not participate in preparing the contract, and he did not see the contract until the summer of 2018 – during his criminal trial.

13. Balch thereafter made payments to the Foundation under the contract and submitted invoices to Drummond for reimbursement.

14. Blake Andrews, General Counsel for Drummond (“General Counsel”),

represented to the Plaintiff that he was “confused” by having to process the Balch invoices for the Foundation as well as other Balch invoices. Consequently, he asked and directed the Plaintiff to process Balch’s invoices for payments to the Foundation.

15. The Plaintiff, having been assured by Gilbert that Balch’s in-house ethics attorneys had reviewed the Plan and determined that it was legal and ethical, did not know that the payments were illegal. Consequently, he performed his duties for Drummond exactly as instructed by Drummond’s General Counsel, and he approved reimbursements to Balch for payments to the Foundation.

16. During Balch’s implementation of the Plan, Balch’s in-house ethic’s attorneys had informed Gilbert that, in fact, Robinson had and was acting illegally in performing duties under the Plan. Both Balch and Drummond failed to notify the Plaintiff of these facts or take any remedial or corrective action. This constituted a ratification and adoption of Gilbert’s conduct.

17. On September 27, 2017, Balch attorney Gilbert and the Plaintiff were indicted for violating 18 U.S.C. §§ 371, 666(a), 1343, 1346, and 1956(h), but neither Drummond Corporation nor Balch & Bingham, LLP, was indicted.

18. The indictment charged that the payments to the Foundation were bribes, and it charged that the Plaintiff was guilty of criminal conduct because he had “caused Drummond Company to pay” Balch’s invoices for payments to the Foundation – as instructed by Drummond’s General Counsel.

19. The case against the Plaintiff and Gilbert was tried in the United States District Court in Birmingham in June-July 2018. As was his constitutional right, the Plaintiff elected not to testify at trial.

20. During the trial, the prosecution read in evidence the following sentence from a summary of Plaintiff's statement to the FBI: "After the Hubbard trial, Roberson considered what they were doing, i.e., contracting with a state representative, in light of the ethics law but determined that the area targeted by the campaign was not in Robinson's district."

21. The Plaintiff then sought to introduce the balance of the summary, which included the following: Roberson stated that they (Drummond) have always been very careful, and he (Roberson) has a reputation to maintain. Roberson had a conversation with Gilbert about ethics considerations. Roberson wanted to know if it was a problem for him (Roberson) to be associated with the effort because he was a lobbyist. Gilbert later told Roberson that he had checked with Greg Butrus and Chad Pilcher at Balch and there was no problem with what they were doing.

22. The indicted Balch attorneys blocked admission of this evidence, arguing that it violated their Fifth and Sixth Amendment rights. Exclusion of this evidence allowed the U.S. Attorney to falsely argue at closing that the Plaintiff had never asked Joel Gilbert at Balch & Bingham whether the Plan to pay the Foundation was legal.

23. On July 20, 2018, the jury convicted the Plaintiff and Gilbert on all counts.

24. Drummond thereafter issued a Press Release, stating that the Plaintiff had “not knowingly engage[d] in wrongdoing”:

While we respect the judicial process, we consider David [Roberson] to be a man of integrity who would not knowingly engage in wrongdoing. When an environmentalist group raised allegations regarding our operations in the Birmingham area, Drummond responded by hiring one of Alabama’s most well-respected environmental law firms. As the testimony in the trial showed, we were assured the firm’s community outreach efforts on our behalf were legal and proper.

Drummond is estopped by its Press Release from now contending that the Plaintiff “knowingly engage[d] in wrongdoing.” Alternatively, the Press Release is substantive evidence that the Plaintiff did not “knowingly engage in wrongdoing.”

25. At his sentencing hearing, Joel Gilbert apologized to the Plaintiff, stating, “I’d like to apologize to David Roberson, who I view as a friend.”

26. The Plaintiff was sentenced to 30 months in federal prison, but he has appealed his conviction to the Eleventh Circuit Court of Appeals, where the case remains pending.

27. The Plaintiff was permitted to remain free on bond pending his appeal,

and Drummond retained him as an employee for six months and eighteen days after his conviction. The purpose of this six-month retention was to make Plaintiff think his job was secure and to dissuade him from filing any action against Balch or Drummond within what Drummond thought was the applicable statute of limitations (the six-months discovery rule in the Alabama Legal Services Liability Act).<sup>1</sup> This conduct by Drummond constituted a ratification and adoption of the conduct of Balch and Gilbert.

28. On February 7, 2019, Drummond terminated the Plaintiff's employment without any prior notice and without stating any reason.

29. On or about the same date, Drummond took and removed from Plaintiff's office his "employment letter" from Mr. Drummond, training certificates he had received over his forty-year career (some while employed by the State of Alabama), billing records and correspondence from his criminal-defense attorneys, and other personal documents.

30. As a proximate consequence of the conduct of Drummond and Balch,

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<sup>1</sup> The ALSLA, however, applies only to claims by "clients" against their attorneys. Balch was never the Plaintiff's attorney and was doing public-relations work. Consequently, the ALSLA does not apply to the Plaintiff's claims asserted herein. Alternatively, even if the ALSLA applies, the Plaintiff did not suffer legal injury or damage sufficient maintain a suit until he was indicted on September 27, 2017, and he filed this action within two years from that date – well within the ALSLA statute of limitations.



the Plaintiff has been indicted, prosecuted, and convicted of a criminal offense; he is and has been unemployed; he has been humiliated; his reputation has been destroyed; he may lose 30 months of his life behind bars at the age of 69 years old; he has experienced extreme emotional distress; and he has been deprived of personal property. He has also suffered large economic losses, and the emotional toll on his family has been horrific. Drummond, on the other hand, has prevented the site in Jefferson County from being placed on the National Priorities List and saved itself over 100 million dollars.

#### **COUNT I: INDEMNIFICATION BY DRUMMOND**

31. Drummond's General Counsel directed and instructed the Plaintiff to process Balch's invoices for payments to the Oliver Robinson Foundation. The prosecution charged, and the jury found, that such payments were bribes.

32. The Plaintiff did not know that the payments were bribes, and he acted in good faith, not knowing that the payments were illegal. Gilbert had misrepresented to the Plaintiff that Balch's in-house ethics counsel had reviewed the Plan and determined that it was legal when in fact Balch's in-house ethics attorneys had told Gilbert the opposite – that the plan was illegal.

33. As the direct and immediate consequence of performing duties assigned to him by Drummond and its General Counsel, the Plaintiff was indicted, prosecuted, and suffered the other damages described above.

34. Drummond had and has a duty to indemnify Plaintiff from all losses and damages that he has suffered and will suffer as a direct result of performing the duties assigned to him by Drummond and its General Counsel.

35. After the Plaintiff was indicted, Drummond undertook to perform its duty of indemnity, and it has paid the Plaintiff's legal fees in the United States District Court and in the Eleventh Circuit Court of Appeals to date. The last such payment was made in this calendar year, 2019. Drummond also continued to pay Plaintiff his salary while he was on administrative leave with the last payment being in February of 2019.

36. Drummond has not, however, indemnified the Plaintiff from the other losses and damages he has incurred or will incur; namely, his loss of employment and income, his conviction and sentence of imprisonment, and his extreme mental anguish, worry, and distress.

37. The Plaintiff first suffered legal injury or damage when he was indicted on September 27, 2017; he did not suffer any legal injury or damage before that date. This action was filed within three years of the date he was indicted. Consequently, the action was timely filed.

38. Alternatively, Drummond's partial payments on the Plaintiff's indemnity claim tolls the running of any statute of limitations concerning this claim (Ala. Code § 6-2-16).

**COUNT II: MISREPRESENTATION BY DRUMMOND**

39. In or about February 2015, Drummond's General Counsel represented to the Plaintiff that he was "confused" by having to process Balch's invoices for payments to the Foundation as well other Balch invoices.

40. General Counsel's representations were false, and General Counsel made the misrepresentations willfully to deceive, recklessly without knowledge, or by mistake, but with the intent that the Plaintiff act on the representations.

41. Plaintiff trusted and believed Drummond's General Counsel in his words that he wanted him to process the Balch invoices for payments to the Foundation solely because he was confused by so many different Balch invoices, and he reasonably relied on such representations and processed the invoices.

42. As a result of his reliance on General Counsel's representations, the Plaintiff was indicted, prosecuted, and suffered the other damages described above.

43. The Plaintiff first suffered legal injury or damage when he was indicted on September 27, 2017; he did not suffer any legal injury or damage before that date. This action was filed within two years of the date the Plaintiff was indicted and suffered damage. Consequently, the action was timely filed.

44. Alternatively, the Plaintiff did not learn of the falsity of General

Counsel's representations until after he was terminated on February 7, 2019. This claim was filed within two years of the date that Plaintiff discovered the fraud, as permitted by section 6-2-3 of the Alabama Code, and the claim was therefore timely filed.

### **COUNT III: CONCEALMENT BY DRUMMOND**

45. Drummond and its General Counsel withheld, concealed, and failed to disclose to the Plaintiff that the Plan to pay the Foundation was illegal or of questionable legality and that this was the reason that General Counsel did not himself process the payments.

46. Drummond and its General Counsel had a duty to disclose these facts to the Plaintiff based on a confidential relationship between the parties, the particular facts of case, and General Counsel's direction that Plaintiff process Balch's invoices for payments to the Foundation.

47. The Plaintiff reasonably relied on Drummond to disclose such facts if they existed.

48. As a proximate result of Drummond's failure to disclose, the Plaintiff was indicted, prosecuted, and suffered the other damages described above.

49. The Plaintiff first suffered legal injury or damage when he was indicted

on September 27, 2017; he did not suffer any legal injury or damage before that date. This action was filed within two years of the date the Plaintiff was indicted and suffered damage. Consequently, the action was timely filed.

50. Alternatively, the Plaintiff did not learn of Drummond's concealment until after he was terminated on February 7, 2019. This claim was filed within two years from the date that Plaintiff discovered the fraud, as permitted by section 6-2-3 of the Alabama Code, and the claim was therefore timely filed.

#### **COUNT IV. CONVERSION BY DRUMMOND**

51. On or about February 7, 2019, Drummond and its agents, servants, or employees wrongfully took and removed from the Plaintiff's office his "employment letter" from Mr. Drummond, training certificates he had received over his forty-year career (some while employed by the State of Alabama), personal bill paying records, correspondence from Plaintiff's criminal-defense attorneys and other personal documents. In addition, Drummond wrongfully took the file with all the records for The Alliance For Jobs and The Economy, Inc. (or "The Alliance") including but not limited to the records of who contributed money to The Alliance, the bills to The Alliance from the Oliver Robinson Foundation, the Balch invoices requesting reimbursement for the Balch payments to the Oliver Robinson Foundation, and the records of the payments made to Balch from The Alliance. Drummond took unauthorized wrongful dominion and control over the personal property of Plaintiff

to the exclusion of the rights of the Plaintiff. As a result, Drummond's taking of these documents and records constituted a conversion.

**COUNT V: MISREPRESENTATIONS BY BALCH (November 2014)**

52. In November 2014, before implementation of the Plan, the Plaintiff asked Gilbert if he had inquired with the ethics lawyers at Balch & Bingham whether the Plan was legal and ethical. Gilbert misrepresented to the Plaintiff that Balch's in-house ethics attorneys had reviewed the Plan and determined that it was legal.

53. At the criminal trial in June of 2018, Balch's ethics attorney testified that in fact he had informed Gilbert that Robinson had and was acting illegally in performing duties under the Plan.

54. Gilbert misrepresented to the Plaintiff what was told to him by Balch's in-house ethics attorneys and Plaintiff relied on that misrepresentation to his great detriment.

55. Gilbert's representations were false, and he made the misrepresentations willfully to deceive, recklessly without knowledge, or by mistake, but with the intent that the Plaintiff act on the representations.

56. Plaintiff is not a lawyer or otherwise legally trained regarding such matters, and he believed and reasonably relied on Gilbert's misrepresentations to his detriment by refraining from objecting to the Plan and approving Balch's invoices

seeking reimbursement for what the prosecution charged and the jury determined were “bribes” to Oliver Robinson.

57. As a proximate result of the Plaintiff’s reliance on the representations of Gilbert and Balch, the Plaintiff was indicted, prosecuted, and he has suffered the other damages described above.

58. The Plaintiff first suffered legal injury or damage when he was indicted on September 27, 2017; he did not suffer any legal injury or damage before that date. This action was filed within two years of the date the Plaintiff was indicted and suffered damage. Consequently, the action was timely filed.

59. Alternatively, the Plaintiff David Roberson did not learn of the falsity of Gilbert’s representations and that Balch’s in-house ethics attorneys had told Gilbert the plan was illegal until Balch attorneys Butrus and Pilcher testified in his federal trial on July 11, 2018. This claim was filed within two years from the date the Plaintiff discovered the fraud, as permitted by section 6-2-3 of the Alabama Code, and this claim was ~~is~~ therefore timely filed.

#### **COUNT VI: CONCEALMENT BY BALCH (November 2014)**

60. Gilbert and Balch withheld, concealed, and failed to disclose to the Plaintiff that its ethics attorneys had not determined that the public relations campaign was legal in November 2014.

61. Gilbert and Balch had a duty to disclose these facts to the Plaintiff based

a confidential relationship between the parties, the particular facts of the case, and the Plaintiff's specific questions to Gilbert.

62. The Plaintiff reasonably relied on Gilbert and Balch to disclose such facts if they existed.

63. As a proximate result of their failure to disclose, the Plaintiff was indicted, prosecuted, and suffered the other damages described above.

64. The Plaintiff first suffered legal injury or damage when he was indicted on September 27, 2017; he did not suffer any legal injury or damage before that date. This action was filed within two years of the date the Plaintiff was indicted and suffered damage. Consequently, the action was timely filed.

65. Alternatively, the Plaintiff did not learn of this failure to disclose until Butrus and Pilcher testified in his federal trial on July 11, 2018, that they had not determined that the public relations plan was legal in November 2014. This claim was filed within two years of the date that Plaintiff discovered the fraud, as permitted by section 6-2-3 of the Alabama Code, and this claim is therefore timely.

#### **COUNT VII: MISREPRESENTATIONS BY BALCH (June 2016)**

66. In June 2016, after the conviction of State Representative Hubbard for ethics violations, the Plaintiff again asked Gilbert if Balch's in-house ethics attorneys had any "problem" with the Plan or his association with it since the Plaintiff is also a registered lobbyist.



67. Gilbert again represented to the Plaintiff that he had checked with Greg Butrus and Chad Pilcher and there was no problem with what they were doing.

68. Gilbert's representations were false, and he made the misrepresentations willfully to deceive, recklessly without knowledge, or by mistake, but with the intent that the Plaintiff act on the representations.

69. Plaintiff is not a lawyer or otherwise legally trained regarding such matters, and he believed and reasonably relied upon Gilbert's misrepresentations to his detriment by refraining from objecting to the Plan and approving Balch's invoices seeking reimbursement for what the prosecution charged and the jury determined were "bribes" to Oliver Robinson.

70. As a proximate result of the Plaintiff David Roberson's reliance on the representations of Gilbert and Balch, he was indicted, prosecuted, and has suffered the other damages described above.

71. The Plaintiff first suffered legal injury or damage when he was indicted on September 27, 2017; he did not suffer any legal injury or damage before that date. This action was filed within two years of the date the Plaintiff was indicted and suffered damage. Consequently, the action was timely filed.

72. Alternatively, the Plaintiff did not learn of the falsity of Gilbert's representations that there was no legal problem with the Plan and what they were doing until his criminal trial in July of 2018. The Plaintiff did not learn of the falsity

of Gilbert's representations that he had checked with Butrus and Pilcher until they testified in his criminal trial on July 11, 2018, that they had made no such review or determination at or near the time of Gilbert's misrepresentation and that in fact Gilbert had been told that elements of the public relations plan involving Oliver Robinson were in fact illegal. This claim was filed within two years from the dates the Plaintiff discovered the fraud, as permitted by section 6-2-3 of the Alabama Code, and the claim was is therefore timely filed.

**COUNT VIII: CONCEALMENT BY BALCH (June 2016)**

73. Gilbert and Balch withheld, concealed, and failed to disclose to the Plaintiff that Butrus and Pilcher had not determined that the public relations plan to defeat the EPA devised by Gilbert was legal at or near the time of Gilbert's misrepresentations.

74. Gilbert and Balch had a duty to disclose these facts to the Plaintiff based a confidential relationship between the parties, the particular facts of the case, the Plaintiff's specific questions to Gilbert, and Gilbert's continuing representations that the Plan had been deemed legal by Balch's in-house ethics attorneys.

75. The Plaintiff reasonably relied on Gilbert and Balch to disclose that Butrus and Pilcher had not determined that the Plan and Contract with Robinson was legal at or near the time of Gilbert's representations.

76. As a proximate result of their failure to disclose, the Plaintiff was indicted, prosecuted, and suffered the other damages described above.

77. The Plaintiff first suffered legal injury or damage when he was indicted on September 27, 2017; he did not suffer any legal injury or damage before that date. This action was filed within two years of the date the Plaintiff was indicted and suffered damage. Consequently, the action was timely filed.

78. Alternatively, the Plaintiff did not learn of this failure to disclose until Butrus and Pilcher testified in his federal trial on July 11, 2018, that they had not determined that the public relations plan devised by Gilbert was legal in June 2016. This claim was filed within two years of the date that Plaintiff discovered the fraud, as permitted by section 6-2-3 of the Alabama Code, and this claim was therefore timely filed.

#### **COUNT IX: CONCEALMENT BY BALCH (February 2017)**

79. In February 2017, Gilbert asked Chad Pilcher of Balch whether he saw any “issues” or problems with the Plan or the relationship with Oliver Robinson and the Foundation.

80. As part his review, Pilcher discovered that Robinson had written a letter on his House of Representatives letterhead, and he advised Gilbert that Robinson’s use of his official letterhead in performing work under the contract was illegal.

81. The government later charged in the Plaintiff’s indictment that

Robinson committed this act in furtherance of the alleged criminal conspiracy, for which the Plaintiff was convicted.

82. Gilbert and Balch withheld, concealed, and failed to disclose to the Plaintiff that Gilbert himself was questioning the legality of the Plan and the relationship with Robinson and his foundation and that Pilcher had determined that Robinson had acted illegally.

83. Gilbert and Balch had a duty to disclose this information to the Plaintiff based on a confidential relationship between the parties, the particular facts of the case, the Plaintiff's specific questions to Gilbert, and Gilbert's continuing representations that the Plan was "legal and ethical" and that there were no "problem" with the Plan.

84. The Plaintiff reasonably relied on Balch and Gilbert to disclose information about the legality of the Plan and its relationship with Robinson.

85. This failure to disclose by Gilbert and Balch denied the Plaintiff an opportunity to employ independent counsel to evaluate his potential responsibility for Robinson's conduct and to avoid criminal prosecution based on Robinson's conduct. As a proximate result of this failure to disclose, the Plaintiff was indicted, prosecuted, and suffered the other damages described above.

86. The Plaintiff first suffered legal injury or damage when he was indicted on September 27, 2017; he did not suffer any legal injury or damage before that date.

This action was filed within two years of the date the Plaintiff was indicted and suffered damage. Consequently, the action was timely filed.

87. Alternatively, the Plaintiff first discovered this failure to disclose during the testimony of Chad Pilcher in his federal trial on July 11, 2018. This claim was filed within two years of the date that Plaintiff discovered the fraud, as permitted by section 6-2-3 of the Alabama Code, and the claim is therefore timely.

**COUNT X – CONCEALMENT BY BALCH**

88. As part of its public relations campaign to defeat the EPA in North Birmingham and at the request of Joel Gilbert of Balch Bingham, David Roberson, on behalf of Drummond Company, wrote a \$5,000.00 check to be used to purchase 100 fifty dollar gift cards to Burlington Coat Factory to be used to purchase winter coats for kids in North Birmingham.

89. Unbeknownst to Plaintiff Roberson as Joel Gilbert concealed this information from the Plaintiff, Balch and Oliver Robinson had agreed for Oliver to keep \$2,500.00 out of the \$5,000.00. Plaintiff did not learn of this hidden fact until his criminal trial in July of 2018. Plaintiff suffered damages as a result of Balch's concealment of it allowing Oliver to keep half of the \$5,000.00 as the prosecution in Roberson's criminal trial used this \$2,500.00 payment to Oliver Robinson as damaging evidence against Roberson in his criminal trial to help it obtain a conviction against him. Roberson did not even know that Robinson had kept half of

the coat money per his agreement with Balch attorney Gilbert until this came out at the criminal trial.

**COUNT XI – CONCEALMENT BY BALCH AND DRUMMOND**

90. Balch & Bingham, LLP contracted with Trey Glenn (who invoiced Balch under the company name of Southeast Engineering & Consulting, LLC and directed the payments to Scott Phillips) to lobby the Alabama Department of Environmental Management (or “ADEM”) to oppose the EPA in listing the North Birmingham site on the National Priorities List. The Balch invoices to Drummond seeking reimbursement for the payments to Trey Glenn and Scott Phillips were paid by Drummond General Counsel Blake Andrews and approved by Drummond CEO Mike Tracy. At the time that Scott Phillips and Trey Glenn were receiving money from Balch via Drummond to lobby ADEM on a policy matter involving the listing of North Birmingham as a Superfund site, Scott Phillips was on the Alabama Environmental Management Commission (or “AEMC”). The AEMC is the entity that oversees ADEM.

91. Neither Glenn nor Phillips, while they were lobbying ADEM about it opposing the EPA’s listing of North Birmingham as a Superfund site, disclosed to ADEM the existence of their contract with Balch & Bingham or that they were indirectly being paid by Drummond Company.

92. Balch and Drummond Company concealed from Roberson that Drummond was paying Phillips (who was on the AEMC), pursuant to a contract with Balch, to lobby the entity in which the AEMC supervises (ADEM). Roberson suffered damages as a result of Balch and Drummond's concealment of their payments to Glenn and Phillips as their testimony that Drummond was paying Phillips to lobby ADEM when he was on the commission that supervises ADEM was very damaging to Roberson at his criminal trial and was used in part by the prosecution to convict Roberson even though he had no knowledge of this scheme and even though Glenn's and Phillips' invoices were being paid by Balch and reimbursed by Blake Andrews and Mike Tracy.

**COUNT XII – PROMISSORY FRAUD BY DRUMMOND**

93. On or about July 25, 2018 (after the Plaintiff David Roberson was convicted), Tracy and Drummond promised and represented to both Plaintiffs that "they had nothing to worry about" and that Drummond would keep David Roberson on paid administrative leave until his appeal process was completed and that Drummond would pay him his full salary, bonuses, and benefits until the matter had been fully adjudicated.

94. The above representations concerned a material existing fact; namely, Drummond's intent to retain the Plaintiff as an employee and pay him the benefits described above.

95. The above representations were false, and Drummond knew that the representations were false. Drummond had no intent to keep the Plaintiff David Roberson on paid administrative leave until his appeal process was completed and to pay him his full salary, bonuses, and benefits until the matter had been fully adjudicated. Instead, Drummond intended to deceive the Plaintiffs and cause the Plaintiff David Roberson to delay filing any action against it and Balch until more than six months after his conviction – which Drummond thought was the applicable statute of limitations for the Plaintiff's claims.

96. The Plaintiffs believed the representations of Tracy and Drummond, and in reasonable reliance thereon, the Plaintiff David Roberson delayed seeking independent legal advice or filing suit against Drummond or Balch, and he did not pursue other employment opportunities that were offered to him immediately after his conviction.

97. In reasonable reliance on the representations of Tracy and Drummond, the Plaintiff Anna Roberson turned down employment opportunities that would have allowed her to earn income for herself and husband.

98. Finally, in reasonable reliance on the representations of Tracy and Drummond, the Plaintiffs jointly delayed placing the home on the market for sale.

99. Tracy and Drummond terminated the employment of David Roberson on February 7, 2019, without any prior notice and without stating any reason. The



termination date was six months and eighteen days after David Roberson was convicted. This coincided with what Drummond thought was the applicable statute of limitations for all causes of action that David Roberson could bring against Drummond Company and/or Balch and Bingham, LLP.

100. As a proximate consequence of the Plaintiffs' reliance on the promises and misrepresentations of Tracy and Drummond, the Plaintiffs have suffered extreme and severe emotional distress; they have lost employment opportunities that were available to them when Drummond made the misrepresentations, and they had to "fire sale" their house at a loss and all of its contents including but not limited to their Christmas decorations and furniture. In addition, David Roberson has lost the salary and benefits that Drummond promised to pay him, and the Robersons have been even further humiliated by a company and individuals that they once regarded as friends. Finally, the Defendants have contended that the Plaintiff did not timely file this action.

101. The Plaintiffs specifically allege that the fraud described in this count tolls the running of any statute of limitations that may otherwise apply to all of the Plaintiff's claims described in this Complaint.

**WHEREFORE**, Plaintiffs demand judgment against Drummond Company, Inc. and Balch & Bingham, LLP for compensatory and punitive damages of \$75,000,000.00, plus costs.

/s/ Burt W. Newsome

Burt W. Newsome (NEW047)

Attorney for Plaintiff

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Plaintiff demands trial by struck jury on all claims.

/s/ Burt W. Newsome

Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed and served a copy of the foregoing upon the below listed parties to this action by placing a copy of same in the United States Mail, postage prepaid and properly addressed, this the 12th day of November, 2019.

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Hon. Bruce F. Rogers  
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