

03/30/2015 MON 14:38 FAX

003/023

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 1 of 21 PageID #: 9

THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI

ALBERT LEE ABRAHAM, JR.

PLAINTIFF

VS.

CAUSE NO. 2012-0053-CI

R. ARNOLD SMITH, JR., M.D.,
NORTH CENTRAL MISSISSIPPI
REGIONAL CANCER CENTER, and
Defendants A Through R, Being
Those Persons or Legal Entities Whose
True Names Have Yet to be Discovered

FILED

MAR 11 2014

F. L. MUS STOCKHILL, CIRCUIT CLERK

BY: *Lisa Roberts*

DEFENDANTS

SECOND AMENDED COMPLAINT

Comes now, the Plaintiff, and files this, his Second Amended Complaint,
and in support thereof would show unto the Court as follows, to-wit:

I. THE PARTIES

(1) The Plaintiff, Albert Lee Abraham, Jr., ("Abraham"), is an adult
resident of Leflore County, Mississippi.

(2) The Defendant, R. Arnold Smith, M.D. ("Smith"), is likewise an adult
resident citizen of Leflore County, Mississippi. He has previously been served
with process and is therefore before this court.

(3) The Defendant, North Central Mississippi Regional Cancer Center,
Inc. ("Cancer Center"), is a Mississippi corporation. It has likewise been
previously served with process and is before this court.

(4) "John Doe" Defendants A through R are persons or entities who
committed or conspired to commit acts similar in nature to those as described
herein. Plaintiff Abraham is currently unaware of the identities of these persons
and entities. When their true identities have been discovered, Plaintiff Abraham

Exhibit
"A"

03/30/2015 MON 14:38 FAX

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 2 of 21 PageID #: 10

004/023

will have process issued and served on them. He will likewise move the court to amend all pleadings to reflect the true identities of these person(s) or entities.

II. JURISDICTION AND VENUE

(5) This court has subject matter jurisdiction over this matter by virtue of Miss. Code Ann. §9-7-81 et seq. Defendant Smith is a resident citizen of Leflore County. Defendant Cancer Center has its principal place of business in Leflore County. Substantial acts and omissions of which Plaintiff Abraham complains occurred in Leflore County. Therefore, pursuant to Miss. Code Ann. §11-11-3, this court is a proper venue.

III. THE FACTS

(6) Leading up to the April 28, 2012 attempted murder/assassination of Abraham, Smith began to accumulate cash. On April 16, 2012, he cashed a check for one thousand dollars, writing a memo on the check reading, "expense for Lee Abraham." On April 17, he wrote another check for two thousand dollars made payable to cash, again writing a memo on the check, "use for Lee." On April 19, he cashed a check for two thousand dollars, and on April 20, he cashed two separate checks, one for two thousand dollars, and the other one for three thousand dollars. On April 24, Smith cashed another check in the amount of four thousand dollars. Thus, within the nine days prior to the assassination attempt on Abraham, Smith cashed checks totaling \$14,000 which Plaintiff contends was to have been used to finance the hit.

(7) On April 23, 2012, Smith executed three General Powers of Attorney ("POA's") in the Jackson office of attorney Ralph Yelverton. All of these

03/30/2015 MON 14:39 FAX

005/023

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 3 of 21 PageID #: 11

were "global" handing over full control of all of Smith's affairs, business and personal. Smith gave these general POA's to his wife, Mary Smith; his son, Arnold Bouchard Smith; and, his daughter, Jennifer Smith Welch. These POA's, which have been filed with the Chancery Clerk's office, are unexplained. Smith has, to date, never alleged he was unable to take care of his own affairs on account of any physical or mental infirmities. Plaintiff contends these instruments, meant to assist the aged and infirm, have been and are, instead, being wielded as weapons to direct Smith's defense, hire attorneys, and support his frivolous counterclaim.

(8) On April 27, 2012, Abraham ran an ad in the *Greenwood Commonwealth*, the local newspaper, offering a \$2,500 reward to anyone providing information as to the identity of the author of a scurrilous and filthy letter which had just been circulated in the community in which the anonymous author had libeled both Abraham's brother, Sam Abraham, and, his sister, Magdalene Abraham. Ostensibly in response to the reward offer, Abraham, that same day about 5:00 p.m., received a phone call on a restricted phone line. The caller, although he refused to identify himself, offered to exchange a video allegedly tying Smith in with writing the libelous letter about his siblings.

(9) Abraham told the unidentified caller he would be glad to look at the video at 7:30 that evening, April 27, at Honest Abe's Donut Shop, a local business owned by Abraham. After he had viewed the video, Abraham told the caller he would then decide whether the caller had met the conditions for the \$2,500 reward.

03/30/2015 MON 14:39 FAX

006/023

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 4 of 21 PageID #: 12

(10) The anonymous caller did not show up at Honest Abe's Donuts that evening. Instead, the man called Abraham's cell phone at 7:30 p.m. and told Abraham that if he wanted to see the video, he would have to go to the other side of town from Honest Abe's and meet the caller at Church's Chicken. Abraham refused these terms and the anonymous caller then told Abraham to meet him at the bank (which was actually the Chamber of Commerce building) across the street from Church's Chicken. Abraham again refused.

(11) Abraham then offered to meet him in the alley behind the Greenwood police station. The anonymous caller said he would not agree to this meeting place. He said, behind the police station, he would be seen on police video cameras and Smith would kill him.

(12) At this point for the first time, the anonymous caller said, in addition to the video, he had an automatic weapon belonging to Smith and it had Smith's fingerprints on it. Abraham told the caller he didn't know anything about an automatic weapon and the reward offered pertained solely to the letter.

(13) Abraham then told the caller, if he would not come to either the donut shop or the police station, he could not meet him that night. Instead, Abraham offered to meet him the next evening, Saturday, April 28, at 8:00 p.m. at Abraham's law office at 305 West Market Street, Greenwood. Abraham also told the man he would have to call Abraham at 7:30 p.m. the next evening and verify he was coming to the 8:00 p.m. meeting and bringing the tape.

(14) At that time, the Office of Attorney General Jim Hood was already investigating Smith for a prior attempt to hire a killer to snuff out Abraham.

03/30/2015 MON 14:39 FAX

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 5 of 21 PageID #: 13

007/023

Instead, this person, Keno Billingsley, had told Abraham that Smith was out to kill him.

(15) Later on the evening of April 27, Abraham told AG Hood about the reward in the paper and the anonymous calls he had received about Smith. Because he was fully aware of Smith's murderous intent and because he wanted his investigators to be present to view the taped evidence and learn more about the anonymous caller, AG Hood detailed three of his investigators to be with Abraham on the night of April 28.

(16) The next morning, Saturday, April 28, the anonymous caller called Abraham again. He again stated his desire to meet with Abraham and show him the tape and he wanted to meet that morning. Abraham told him he was busy that morning and could not meet with him until the previously arranged meeting for that night at Abraham's office.

(17) On the evening of April 28, at some point prior to 7:30 p.m., Abraham met three investigators from the Attorney General's office at his home. The investigators told Abraham if the anonymous caller phoned again at 7:30 p.m., Abraham should tell him that under no circumstances should he bring a gun to the meeting.

(18) The officers also told Abraham that during the encounter with the anonymous caller, he should never place himself between the officers and the man who was coming to his office. Rather, he should always remain behind. They asked about the office layout, and Abraham told them there was a front door and a garage door in the back.

03/30/2015 MON 14:39 FAX

008/023

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 6 of 21 PageID #: 14

(19) The anonymous caller called again at the appointed hour of 7:30 p.m. to confirm the 8:00 p.m. meeting at Abraham's office. In that call, as instructed by the investigators, Abraham told the anonymous caller that under no circumstances was he to bring a gun with him to the meeting. Abraham told the caller he had no interest in the gun.

(20) One officer remained outside Abraham's office, sitting in a vehicle. The other two officers rode with Abraham to Abraham's law office but remained hidden from sight while in Abraham's car. The three men went in the garage entrance at the back of the building. Abraham then went through the length of the office and unlocked the front door. The investigators then told Abraham to go to his office located in the center of the building and they would stay in the front part of the building and handle the evidence being brought and would advise Abraham of what they found.

(21) On the pretext he did not know where Abraham's law office was located, the anonymous caller called again at 8:00 p.m. Abraham gave him directions to the office.

(22) After several more calls, it was clear the anonymous caller wanted Abraham to meet him at the building's front door. The caller then said he needed to go home to get a recorder and would be back in 15 minutes to show Abraham the video.

(23) He called back around 8:20 p.m. and told Abraham the front door was stuck and he asked Abraham to come to the front of the building and open it. Abraham realized then, the man was there to kill him. Abraham then heard

03/30/2015 MON 14:39 FAX

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 7 of 21 PageID #: 15

something in the back of his office. He stuck his head out his office door into the hallway in an attempt to get the officers' attention up front to alert them to the possible intruder in the rear. One of the two officers up front then motioned Abraham to go back into his office which he did.

(24) Abraham realized if there was someone in the back of the office, he, Abraham, would have to deal with that person or persons, himself. Abraham had a .45 caliber semi-automatic Colt pistol and a 9mm Sig-Sauer semi-automatic pistol—one in each hand. He also had .38 Smith & Wesson in his back pocket. Abraham aimed two pistols towards the rear door expecting someone to enter to make an attempt on his life.

(25) At that point gunfire erupted in the front of the building. Because someone was in the hallway running toward him and he could not positively identify the person, Abraham switched pistols to cover the hall door.

(26) Abraham thought the officers had been killed, and the runner was coming to kill him. The person who came in the doorway turned out to be an uninjured officer who told Abraham to call 9-1-1 which he immediately did. He then told Abraham to call again and tell them the man at the front door with a gun was an officer and not to shoot him when they arrived.

(27) Abraham never entered the room in the front part of the office building where the hit men were and the shootout had taken place. He remained in the hall with the officer between him and the front room (the reception and waiting area) but still watching the back office door. Abraham believes what he

03/30/2015 MON 14:39 FAX

010/023

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 8 of 21 PageID #: 16

heard in the rear of the building had been the driver of the assassins' get-away vehicle.

(28) According to MDOC records Keaira Byrd ("Byrd"), the hit man carrying an automatic weapon, wearing a ski mask, and who was killed in the gunfight, had previously been convicted of burglary and armed robbery and had been released from prison in September 2011. Derrick Lacey ("Lacey"), the second hit man who was seriously injured in the gun battle, had completed a burglary sentence in October 2010. This incident occurred on April 28, 2012 – nineteen months after Byrd had been released from prison and eight months after Lacey had been released from prison.

(29) The next morning, Sunday, April 29, Smith was arrested and, thereafter, he and Lacey were charged with felony murder. After Smith's arrest, a search warrant was issued and executed at Smith's office at the Cancer Center. The search yielded evidence which linked Smith to the attempted murder of Abraham.

(30) On May 16, 2012, at Smith's preliminary hearing, a videotape was produced, which had been obtained at Smith's office at the Cancer Center. The video showed Smith in his office at the Cancer Center. It also showed Smith and the then dead, would-be assassin, Byrd, making a deal to kill Abraham. The full context of this murder-for-hire conspiracy is shown in detail on the videotape. Also found at the Cancer Center was a list of numerous hit men candidates whom Smith had interviewed for the job.

(31) The videotape and other evidence make the following facts clear: (A) the murder-for-hire contract was made by Smith within the four walls of his office at the Cancer Center; (B) Smith was, at all times material to this litigation, the President, Vice-President, Treasurer, Secretary, Sole-Director, and Agent for Process for the Cancer Center, and, at all relevant times, served as its General Manager and Chief Executive Officer; (C) as to the business and transactions of the Cancer Center, the authority of the corporation and the authority of Smith was co-extensive; (D) the Cancer Center and its premises, managed by Smith, served the purpose of providing a physical location, security and secrecy for the interview of the hit men, the videotaped murder contract with Byrd, the planning of the murder, and for the storage of evidence relating to the planned criminal enterprise, i.e. – the cold-blooded murder of Abraham by Smith's hit men.

(32) Abraham alleges the planning of his murder took place on dates prior April 28, 2012, over a span of time, and included a series of events where cash money was obtained in small denominations. The accumulated \$14,000 in cash was for the purpose of paying the hit men; and, the POA's were executed so Smith, if he was ever implicated in the criminal enterprise, could continue to operate, both at a personal level and in business-related transactions.

(33) In support of these allegations, Abraham would remind the court the criminal discovery files which have been exchanged by the State of Mississippi and counsel for Smith have not yet been provided to Abraham for use in this civil action. Plaintiff contends additional information and evidence is contained in these files which would support the details and facts relating to the

03/30/2015 MON 14:39 FAX

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 10 of 21 PageID #: 18

attempted murder of Abraham. Secondly, all of the planning and preparation for this criminal enterprise took place in Smith's office which is physically located at the Cancer Center. Further factual information may be found in cause numbers 2012-0208 and 2012-0209, and as set forth in the indictments against Smith and Lacey.

(34) In addition, although Plaintiff is not in possession of them, there are a number of CD's and DVD's in existence, which are to be used as evidence in the criminal case, and which contain further information and evidence related to Smith and others involved in the murder-for-hire plot.

(35) Circumstances pointing to the fact that Smith was, and is, the *alter ego* of the Cancer Center and that the Cancer Center is a principal in the murder-for-hire plot as an accessory before and after the fact, are set forth in the following paragraphs.

(36) The Cancer Center had no regular meetings and minutes; and, it disregarded all corporate formalities, including the implementing of policies, rules, regulations and requirements for the performance of duties and responsibilities while on the premises of the Cancer Center.

(37) Smith was, at all times material to this litigation, the President, Vice-President, Treasurer, Secretary, Sole-Director, and Agent for Process for the Cancer Center, and, at all relevant times, served as its General Manager and Chief Executive Officer.

(38) The Cancer Center knowingly and voluntarily served as the base of operations and origin for this criminal enterprise and it intentionally allowed

03/30/2015 MON 14:40 FAX

013/023

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 11 of 21 PageID #: 19

ongoing criminal activity on its premises by Smith, its employee, agent, officer and director by his:

- a) Criminal planning;
- b) Criminal solicitation of murder-for-hire; and,
- c) Employment of other criminal co-conspirators, namely, the

hit man, selected after interviews of others, who conspired with Smith to attempt to murder Abraham.

(39) Smith's authority to carry on the affairs of the Cancer Center was, at all times material to this litigation, co-extensive with the authority of the Cancer Center to carry on its own affairs.

(40) The Cancer Center provided a location together with secrecy and security for meetings for the purpose of planning, conspiring, encouraging, directing, engaging and soliciting assistance with criminal acts, and interviewing and soliciting persons for the purpose of engaging in criminal acts. The physical location, secrecy and security provided by the Cancer Center were integral parts of the entire criminal enterprise, and the Cancer Center's recording equipment was utilized to ensure that the acts were carried out and its safe was used to store evidence of the criminal enterprise.

(41) The Cancer Center, through Smith, its agent, servant, director, officer, and the single person in charge overall, had knowledge of an ongoing criminal enterprise, acted to conceal it, and engaged in criminal acts which constituted a misprision of a felony for failure to alert law enforcement officials of a crime, inasmuch as its sole member, manager, officer, and director, who

03/30/2015 MON 14:40 FAX

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 12 of 21 PageID#: 20

014/023

planned, encouraged, and solicited the attempted murder of Abraham, also served in the role and capacity of directing all the affairs of the Cancer Center.

(42) The Cancer Center furnished funds along with its other resources to solicit, plan, and overtly attempt Abraham's murder and to protect and defend Smith post arrest.

(43) The Cancer Center knew of and encouraged the planning of the murder and did nothing; allowed its premises to be used for the planning, solicitation, and instructions on the planned murder and did nothing; provided resources for the planned murder and did nothing; provided security and secrecy for clandestine meetings for the purpose of planning, soliciting, instructing, and directing the planned murder and did nothing. It likewise willingly and intentionally allowed the use of its premises, which provided safety, security, and secrecy to plan the crime and store criminal evidence before and after the attempted murder of Abraham. As a result, the Cancer Center actively participated in all phases of the planned and attempted murder of Abraham as both the *alter ego* of Smith and as a principal, being an accessory both before and after the fact.

(44) All officers of the Cancer Center were aware of the criminal planning, acts, and events, and engaged in, aided, abetted, and encouraged all such criminal planning, acts, and events and the preparation therefor.

IV.

PLAINTIFF'S CAUSES OF
ACTION

FIRST CAUSE OF ACTION – CIVIL
RICO AGAINST SMITH

03/30/2015 MON 14:40 FAX

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 13 of 21 PageID #: 21

015/023

(46) The Mississippi Racketeer Influenced and Corrupt Organization Act or for short, "RICO," is codified at Miss. Code Ann. §97-43-1 et seq. Under Miss. Code Ann. §97-43-5(3) and (4), it is unlawful for any person associated with any enterprise to conduct the enterprise or participate in the enterprise or conspire to conduct or participate in the enterprise through a pattern of racketeering activity.

(46) The first RICO element is a person who is associated with an enterprise. The facts in this case make it clear that Smith, Byrd, the "John Doe" Defendants, and perhaps others were "associated" in an "enterprise" including a conspiracy and attempt to murder Abraham. See the facts set out in ¶¶ 6 through 44 above.

(47) The second RICO element is the "enterprise" itself. An "enterprise" is defined in Miss. Code Ann. §97-43-3(c) to include "any association or group of individuals associated in fact. It includes illicit as well as licit enterprises...as well as other entities." The facts are clear that Smith, Byrd, the "John Doe" Defendants and, perhaps, others associated, in fact, in an illicit enterprise, i.e., the conspiracy and attempt to murder Abraham. See the facts set out in ¶¶ 6 through 44 above.

(48) The third RICO element is that the persons conspired, conducted, or participated in the illicit enterprise. The facts are clear that Smith, Byrd, the "John Doe" Defendants, and perhaps others conspired and participated in the enterprise, the object of which was to murder Abraham. See the facts set out in ¶¶ 6 through 44 above.

03/30/2015 MON 14:40 FAX

016/023

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 14 of 21 PageID #: 22

(49) The fourth RICO element is that the persons acted through a pattern of racketeering activity. Miss. Code Ann. §97-43-3(a) and (d) define "pattern of racketeering activity" to mean "engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents...accomplices, victims...or otherwise are interrelated by distinguishing characteristics and are not isolated incidents...." This includes an attempt to commit, a conspiracy to commit, or soliciting another person to commit, among other predicate offenses, murder in violation of Miss. Code Ann. §97-3-19; and, burglary in violation of Miss. Code Ann. §97-17-33. This case includes factual allegations and proof of aggravated assault on a law enforcement officer, conspiracy to commit murder, solicitation to commit murder, an attempt to commit murder, and burglary which is defined by case law to include breaking and entering, in day or night, any building, or office therein, with the intent to commit a felony. "Breaking and entering" is defined by case law to include gaining entry by deceit or false pretenses.¹ In this case Byrd entered Abraham's law office under false pretenses. He told Abraham he was coming to show him a videotape involving Smith, when, in fact, he wanted to gain entrance to the building to murder Abraham. See the facts set out in ¶¶ 6 through 44 above.

(50) Under Miss. Code Ann. §97-43-9(6), Plaintiff's damages under the civil RICO statute include treble damages, punitive damages, attorneys' fees (in trial and appellate courts), and all costs incurred in litigation and investigation.

SECOND CAUSE OF ACTION – CIVIL
CONSPIRACY AGAINST SMITH

¹ Templeton v. State, 725 So. 2d 764, 766 (Miss. 1998).

03/30/2015 MON 14:40 FAX

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 15 of 21 PageID #: 23

017/023

AND THE CANCER CENTER

(51) The elements of a civil conspiracy are: (A) two or more persons or corporations; (B) an object to be accomplished; (C) a "meeting of the minds" on the object or course of action; (D) one or more unlawful, overt acts in furtherance of the conspiracy; and, (E) damages as a proximate result of the conspiracy.

(52) In this case: (A) Smith, the Cancer Center, Byrd, and the "John Doe" Defendants were two or more persons or corporations; (B) the object to be accomplished was the murder of Abraham; (C) the co-conspirators reached a "meeting of the minds" which was an agreement to prepare for and kill Abraham; (D) the object to be accomplished was the death of Abraham; (E) Smith hiring a hit man, the Cancer Center providing a place for Smith and the would-be killers to meet and plan the murder and prepare to carry out the plan, Byrd (a convicted felon) being in possession of a firearm, Byrd's attempts to lure Abraham out into the open so he could murder him, Byrd breaking and entering the law office under false pretenses, and Byrd shooting it out with the law enforcement officers present were all unlawful, overt acts committed in furtherance of the conspiracy; and, the conspiracy proximately resulted in damages to Abraham as set out below.

(53) Plaintiff is not alleging the Cancer Center is a co-conspirator because of the "alter-ego" theory. Plaintiff alleges the Cancer Center is a co-conspirator and a principal because its chief operating officer, Smith, made the decision on behalf of the corporation to participate in the conspiracy, providing a

03/30/2015 MON 14:40 FAX

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 16 of 21 PageID #: 24

018/023

place for Smith and the would-be killers to meet and plan the murder and prepare to carry out the plan.

THIRD CAUSE OF ACTION - AIDING
AND ABETTING AS AN ACCESSORY
BEFORE THE FACT - AGAINST
SMITH AND THE CANCER CENTER

(54) For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he knows that the other's conduct constitutes a breach of duty and gives substantial assistance and encouragement to the other so to conduct himself.

(55) In this case both the Cancer Center and Smith offered Byrd substantial assistance and encouragement to kill Abraham at a time when they knew that Byrd attempting to or, in fact, killing Abraham, would be a breach of a duty owed by Byrd to Abraham. As such, both the Cancer Center and Smith are liable for aiding and abetting Byrd as accessories before the fact.

(56) Incorporated by reference as further factual allegations, see the facts set out in ¶¶ 6 through 44 above.

FOURTH CAUSE OF ACTION - TORT OF
OUTRAGE - AGAINST
SMITH AND THE CANCER CENTER

(57) The "tort of outrage" is the recovery of damages for mental pain and suffering. The elements are: (A) either intentional conduct or unintentional conduct with reasonably foreseeable results; (B) which in the average person would evoke "outrage and revulsion;" and, (C) which proximately causes pain and anguish but not bodily injury.

03/30/2015 MON 14:40 FAX

019/023

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 17 of 21 PageID #: 25

(58) In this case both Smith and the Cancer Center have intentionally engaged in misconduct which supported, encouraged, and made possible the attempted murder of Abraham. A murder-for-hire plot is certainly misconduct which, in the average person, would evoke "outrage and revulsion." The murder-for-hire plot has proximately caused Abraham pain and mental anguish.

FIFTH CAUSE OF ACTION – ALTER EGO
LIABILITY OF THE CANCER CENTER

(59) There are two ways to prove that a person and a corporation are the *alter ego* of one another. The first paradigm for analysis of the question of "*alter ego*" is inextricably bound up with "piercing the corporate veil." It requires proof of facts showing a flagrant disregard of corporate formalities and some misfeasance on the part of the shareholder alleged to be the *alter ego* of the corporation. The purpose of the rule is simply to prevent the shareholder from committing wrongdoing then hiding behind the corporate veil.

(60) Facts supporting this theory of liability are that Smith was, at all times material to this litigation, the President, Vice-President, Treasurer, Secretary, Sole-Director, and Agent for Process for the Cancer Center, and, at all relevant times, served as its General Manager and Chief Executive Officer.

(61) Smith has treated this legal entity as his own. The Cancer Center is but a legal fiction for Smith. At all times material to this litigation, the Cancer Center failed to have regular meetings and minutes and disregarded all corporate formalities, including its failure to implement policies, rules, regulations, and requirements for the performance of duties and responsibilities while on the premises of the Cancer Center, including the negligent retention (and intentional

03/30/2015 MON 14:41 FAX

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 18 of 21 PageID #: 26

020/023

retention) of employees, i.e. – Smith, who was clearly unfit for the conducting of business, and for the safety of patients and others with whom it came in contact.

(62) The second rule of law is totally different in both analysis and purpose. A corporate officer and the corporation are the *alter ego* of one another if the power and decision-making authority of the particular agent or officer of the corporation is co-extensive with the power and decision-making authority of the corporation. In these circumstances, *ipso facto*, without further proof, that person is deemed as a matter of law to be the corporation's *alter ego*. The purpose for the rule is simple. If the person has been given the right by the corporation to exercise all the same powers as the corporation itself then his act is treated as the act of the corporation. In this case the corporation gave Smith the same powers which the corporation itself held. Smith was therefore, *ipso facto*, the *alter ego*, of the Cancer Center.

(63) As the *alter ego* of Smith, the Cancer Center is likewise liable for all damages awarded against Smith.

SIXTH CAUSE OF ACTION – PUNITIVE
DAMAGES AGAINST BOTH
SMITH AND THE CANCER CENTER

(64) The evidence is clear and convincing that Smith and the Cancer Center acted with actual malice which evidenced a willful, wanton, and reckless disregard for the safety of Abraham. See the factual allegations in ¶¶ 6 through 44 above.

(65) For these reasons Abraham is entitled to an award of punitive damages against both Smith and the Cancer Center.

V. DAMAGES

(66) Abraham has been caused substantial harm including mental and emotional distress and some physical injury.

(67) As a proximate result of Defendants' actions, Abraham has been and is altering his normal daily activities and, therefore, has suffered the loss of enjoyment of his normal life. Additional damages have been incurred with Abraham being required to pay the cost to install enhanced security measures at a number of locations owned by him. Additional damages include the constant fear and worry that Smith continues to plot to kill Abraham and Abraham being isolated because his friends and family are reticent to be in his presence for that reason. Finally, Abraham has suffered great emotional shock as a result of the efforts to kill him and the office shoot-out.

PRAYER FOR RELIEF

Under his First Cause of Action, civil RICO, Plaintiff seeks judgment for damages including treble damages, punitive damages, attorneys' fees (in trial and appellate courts), and all costs incurred in litigation and investigation. As to the remainder of the causes of action, Plaintiff demands judgment against all Defendants for such compensatory damages as are necessary to compensate him for the damages he has sustained, and punitive damages sufficient to deter like future misconduct by these Defendants or other similarly situated.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues.

03/30/2015 MON 14:41 FAX Case: 15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 20 of 21 PageID #: 28

022/023

Respectfully submitted,



H. SCOT SPRAGINS, MSB #7748
LAWRENCE J. TUCKER, JR., MSB #100869
HICKMAN, GOZA & SPRAGINS, PLLC
Post Office Box 668
Oxford, MS 38655-0668
(662)234-4000
ltucker@hickmanlaw.com

Ralph Chapman, MSB # 5962
Chapman, Lewis & Swan
Post Office Box 428
Clarksdale, MS 38614
Tel: (662)627-4105
ralph@chapman-lewis-swan.com

ATTORNEYS FOR PLAINTIFF

03/30/2015 MON 14:41 FAX

Case: 4:15-cv-00036-DMB-SAA Doc #: 3 Filed: 03/30/15 21 of 21 PageID #: 29

CERTIFICATE OF SERVICE

I, LAWRENCE J. TUCKER, JR., of Hickman, Goza & Spragins, Attorneys
at Law, Oxford, Mississippi do hereby certify that I have, this the 10th day of
March, 2014, mailed by United States Mail, first class postage prepaid, a true
and correct copy of the above and foregoing Second Amended Complaint
addressed as follows, to-wit:

William C. Bell
Simmons Law Group, PA
240 Trace Colony Park Drive, Suite 200
Ridgeland, MS 39157

Hugo Rodriguez
Rodriguez & Associates
1210 Washington Avenue, Ste. 245
Miami Beach, FL 33139

Timothy H. Jones
Assistant District Attorney
P.O. Box 253
Greenwood, MS 38935



LAWRENCE J. TUCKER, JR.