

## Zach Scruggs

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**From:** Zach Scruggs [zachscruggs@scruggsfirm.com]  
**Sent:** Monday, May 29, 2006 10:44 AM  
**To:** John jones  
**Cc:** Zach Scruggs  
**Subject:** RE: brown

Johnny I will call you about this in more detail but here are my initial thoughts on your email:

- (1) We are all operating under the assumption that these cases will ultimately be successful both financially and morally. Nothing is certain but none of us are planning to work for free. If we win, the Jones Funderberg and Sessums firm wins. I do not know what else to tell you on that point. You know better than I what a gamble plaintiffs practice is.
- (2) I did not realize that you were working 100% on these cases to the exclusion of your entire practice. I know you have helped me and Dick a tremendous amount by doing the 2 days of 30 (b)(6) depositions (masterful job) and defending 2 days of witness depositions when I was sick (which I will always owe you for). We have not had much briefing lately. The real fun will start when we have motions in limine to defend in Leonard and our consolidation techniques.
- (3) I certainly have been removed from the details of Wilson and lucky, but I was under the impression that you and your firm were being paid for your hard work over the last year and a half. I certainly hope that you have not been working for free or that that it has not been worth your time. No one would ever ask you to do that.
- (4) I know Steve has been working hard on the Wilson and has done a great job on briefing and getting Joey and Tim up to speed. But I can tell you that you could file briefs on a napkin right now and get it granted given the Judge's view of the case and Merkel/Vicki. Joey and Tim have this situation well in hand. Please don't interpret any absence of Joey in settlement conference (if that is indeed true – I am sure he would be there) as the Court's lack of confidence in him (the Court considers him lead counsel). I think they have turned this thing around before a judge who is fair, doesn't hate Dick or want to punish him for making money like the other 2, and actually understands the case.
- (5) Your work in Katrina has been invaluable and every one respects and appreciates the work you are doing, I am not sure what emails that have been sent that belie that.
- (6) Lastly and most importantly, if your Katrina work is causing you to lose money or causing dissension in your firm, then we certainly do not want to contribute to that. We are all to close and have to much respect for each other for that.

So in sum, its up to you. All I can tell you is that this is a lot of fun and I have enjoyed working with and learning from you.

We can get someone else to do the briefing or all jump in and get it done if we have to. We are going to have to reorganize this whole team anyway at some point if we do bellwether. The main thing we are going to need in the near future is more litigators for all of this because I cant do everything. We appreciate everything you have done and hopefully will do.

Dick is going to be undergoing some tests in Houston over the next 3 days so will be out of pocket. I will call to discuss.

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**From:** John jones [mailto:johnjones@jfsplawfirm.com]  
**Sent:** Sunday, May 28, 2006 7:28 PM  
**To:** Zach Scruggs  
**Subject:** RE: brown

Hell, it's probably easier to answer one of these emails. If you're like me, you can get away from the hurricane in the house only by telling everybody you're gonna "work" for an hour. Otherwise you're talking with 3 indians hanging on to you.

## Zach Scruggs

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**From:** Zach Scruggs [zachscruggs@scruggsfirm.com]

**Sent:** Tuesday, May 30, 2006 10:14 AM

**To:** John Jones

**Subject:** RE: brown

Johnny,

I am sorry if I misunderstood your email and was definitely not implying that you would not do what you said you would do. Everyone that has ever worked with you or knows you knows that. To the contrary, I was only trying to say that we do not want Katrina (or Wilson Lucky for that matter) to be too much of a drain for you and your firm, which is what I thought you were trying to say. Regardless of what you volunteered for or how much you believe in all of this, it would not be fair for us to put that kind of burden on you if it is causing you problems in the firm. Your obligations to yourself and your partners come first. That's all I was trying to say, as a friend.

I am also sorry if I misunderstood that you were emailing about Leonard. From my conversations with Dick and Don (Don's was one hour ago), I think the plan is that we 3 will try the case (I will get a couple of witnesses I guess). We will certainly need and welcome you there also (if you want to be – I figured you could not stand to miss it) for any legal issues that may come up and trial strategy.

I hope that answers your question. We will need to discuss and I will call.

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**From:** John Jones [mailto:johnjones@jfsplawfirm.com]

**Sent:** Tuesday, May 30, 2006 9:52 AM

**To:** Zach Scruggs

**Subject:** RE: brown

You misunderstand. That's why I almost swore off emails on important things. You know me too well to think I was bitching about doing what I said we'd do – if anything is a constant it is that I always do what I say I'm going to do, which is why we didn't bail on Dickie with Dunbar – and I'm not talking about briefing. In fact, I don't want anybody but us to do the briefing: it's too important. Seriously, compare the results in Buente (Jeff's briefing) with Tupecker (not Jeff's briefing). We'll stick on the briefing.

What I was trying to get a feel for is the trial work. I was asking whether you knew the plans for trying Leonard. I know that everybody will be heavily involved after Leonard in trying whatever else we must try to bring the ins cos to the table on settlement. My friend Bill Griffin (with Ned Currie's firm, rep Allstate) tells me we'll have to try and win at least 4 or 5 before they get tired of losing and pay everybody. In terms of planning, it will help to know if whatever powers-that-be want me or my firm to prep and handle X number of witnesses at trial. I'm ready and actually looking forward to the in limine motions and have some ideas we should probably discuss, and regardless of whether we handle any witnesses at trial, I'll be there the whole time because – I could not stand to miss it. Also there are always legal issues that come up that I'll need to address. In fact, if the group wants to do it this way, I'll be prepared to brief and argue the legal issues at trial (subject, of course, to amalgamating all the ideas and suggestions) like I did in Luckey on tobacco and the equitable issues. Modesty does not prevent me from saying we won all the issues assigned to me. (What a self-righteous prick!) But the question I was asking below was what you knew about trial duties in Leonard.

You have some misconceptions about Joey and Tim that I hope do not ultimately need to be explored, but please don't read too many of the messages from birdies literally. If we win, it will be because the law says we win. Letting J. D. have 2 days to read the file and all the briefing back in February helped our cause tremendously. He finally did the hard work that no other judge (including Davis) would do to figure out where the merits lay in these cases. The point is that we're, all of us, driving this to a conclusion. I'm still doing it because I promised Diane and you (I think) that I would, and that we would bring it to an end without costing Dickie any tobacco money. We will certainly do that, with Joey and Tim and sometimes Jack. And by the end of the year, and perhaps while the weather is still hot, we'll be through except for Wilson's appeals, and Dickie tells me he's not worried there. That's not a bad thing.

On Katrina, please understand that I have and will do everything I can do to help us win without regard to recompense. Hell, we're all working on a handshake and trust, and that says it all. I'm not talking about the money. I'm not talking about weighing relative contributions or assessing the worth of contributions at this point. I assume everybody is working as hard as you and I are. I AM asking what you know about how Leonard will be tried so that I can plan out how much time we need to set aside because I'm going to help me partners tend our garden here a bit better. That's all. JGJ

John Griffin Jones  
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Phone (601) 355-5200  
Fax (601) 355-5400

-----Original Message-----

**From:** Zach Scruggs [mailto:zachscruggs@scruggsfirm.com]  
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**To:** 'John jones'  
**Cc:** 'Zach Scruggs'  
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My sense of what's gonna happen in Leonard in terms of trial and trial prep/strategy is that you, Dick and Barrett will try the case. Right? I think I heard that from you or Dick at some point. That's perfectly fine, but I am trying to plan some stuff both at work and summer trips. We had Judge Lee, Stewart, Funderburg, Peterson and wives over last night, and we drank too much. Funderburg and Dave cornered me: "You need to get back to making money with us. We're running low and you can make twice what we can. And anyway, all they asked you to do in Katrina was briefing." True. I copy them on emails just to let them know where we are, and they pointed out that my comments aren't necessarily ... needed. True again. Funderburg has done all the substantive briefing and trial prep for Wilson v. Scruggs except for a couple of things I think Tim did, which has taken him off his cases and cash-production. We've got Wilson trial 8/21, and the judge's clerk told me last week that he's gonna call an all-day settlement conference in June or early July, and judge specifically asked for Dick, Jack and me. We're obviously viewed as the "reasonable" ones. I realize what an insult that can be in certain circles, but there it is. What my partners were essentially asking was that I relax on Katrina a bit and help replenish the coffers, unless I was gonna try Leonard or felt I was needed on trial strategy. I told them that you and I could be totally honest with each other and talk plainly about it.

Please understand that I'm not bitching or asking for anything. I hadn't really thought about this till I got cornered last night by my partners. I told them that I got the sense early in the year that Dick really wanted you to get Leonard ready and come up with a strategy for the other filings; that this would be your opportunity to be lead counsel in something this big and this important. Because of that, and my own faith in your abilities, I have tried to help you all I could on these things, mainly because I've had a lot of experience suing insurance companies but also because I honestly believe in these cases and our cause. If the cases are ultimately your responsibility, I applaud the decision and will continue to do anything else you ask and will, as I have done, drop everything to get something done in these cases. I also will maintain status quo until you and I get a chance to talk. Please think about this and let me know how, if at all outside of the briefing and law part, we can help you. If you want me to try Leonard with you, I would be delighted. I have a suspicion that Dick and Barrett will want to try Leonard at least. After that, I expect that you and I will be scrambling to get anybody to help on the individual cases if things go that way, and that's fine, too.

Reading this I realize that it contains a lot of nonsense and sounds like I've sounded (at least to myself) in the past when I tried to convey to you the predicament that such concentrated work (in August it will be two years of working 90% of my time on something Scruggs related) places on a small firm like ours. I shut up after 2 emails and 2 phone conversations then, and I'm sure I'll do the same again. In the final analysis, if it were just me, I wouldn't think about it. With 4 partners and 15 children among all of us, I must. JGJ

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**From:** Zach Scruggs [mailto:zachscruggs@scruggsfirm.com]  
**Sent:** Saturday, May 27, 2006 10:18 PM  
**To:** 'John jones'; 'Marshall H. Smith, Jr.'; 'Zach Butterworth'; McAlister@davidnutt.com  
**Cc:** 'Steven Funderburg'; 'Stewart Lee'; 'Dave Peterson'; 'Craig Sessums'  
**Subject:** RE: brown

Now I REMEMBER IT.