

5. That Driscoll was hired by the Firm as an employee, and more specifically, as a full time associate attorney in the Firm's St. Louis, Missouri office, and it was fully expected and agreed that Driscoll would devote his efforts on a full time basis to the business of the Firm.

6. That at all times hereinafter mentioned Driscoll was paid a salary commensurate with his position and duties as a full time attorney.

7. That in conjunction with Driscoll's employment, the parties executed a certain "Associate Agreement" which is attached hereto, incorporated herein as if fully set out and marked Exhibit 1.

8. That during the term of his employment, Driscoll and the Firm on several occasions entered into certain attorney-fee apportionment agreements (hereinafter "Attorney Agreements") by and between themselves and others with respect to certain clients.

9. That specifically, with respect to the DeBouse class action, on or about December 31, 2003, Ronald Brown on behalf of the Firm; Christopher Cueto on behalf of the law offices of Christopher Cueto, Ltd; and John Driscoll individually, entered into an Attorney Agreement wherein, in pertinent part, it was agreed that the Firm would receive fifty percent (50%) of the attorney's fees generated from the DeBouse lawsuit; that the law offices of Christopher Cueto, Ltd., would receive thirty three percent (33%) of the attorney's fees generated, and that John Driscoll would receive seventeen percent (17%) of said attorney's fees. That a copy of said Attorney Agreement is attached hereto and incorporated herein by reference and marked Exhibit 2.

10. That on or about January 16, 2004, DeBouse entered into a Client Agreement with the Firm and with the Law Offices of Christopher Cueto Ltd. That a copy of said Client Agreement is attached hereto and marked Exhibit 3.

11. That subsequently, on March 2, 2004, DeBouse agreed to and consented to the Attorney Agreement between the Firm, Cueto and Driscoll. See Exhibit 2.

12. That on or about December 30, 2008, DeBouse terminated the Firm's representation.

13. That during the term of his employment, Driscoll and the Firm also entered into an Attorney Agreement with respect to the Rensing case whereby the Firm would receive a fee of fifty percent of the total fees received in the matter and Driscoll was to receive fifty percent of the total fees. That a copy of said Agreement is attached hereto and incorporated herein by reference and marked Exhibit 4.

14. That despite repeated requests and demands, Driscoll has failed and refused to provide the Firm with a copy of the Client Agreement with Rensing.

15. That during the term of his employment, Driscoll engaged in a course of conduct whereby he systematically and surreptitiously solicited and undertook to represent numerous clients without disclosing their identity to the Firm. Specifically, Driscoll took in clients, signed up clients in his own name; failed to disclose clients to the Firm; failed to enter clients in the Firm's computer system; failed to input clients into the Firm's database; maintained separate files for clients he signed up; maintained physical files outside of the Firm's offices; signed pleadings without including reference to his association with the Firm; used the Firm's address with his individual name on pleadings; used his cell phone on pleadings rather than the Firm's telephone number, and engaged in a covert and clandestine plan to hide clients from the Firm, and to operate his own separate practice of law while an employee of the Firm, all without the permission or consent of the Firm.

16. That during the course of Driscoll's employment, and prior thereto, the Firm expended significant resources to advertise for prospective clients and the Firm is well known in the St. Louis area.

17. That Driscoll took advantage of the Firm's advertising and made a concerted and secret effort to appropriate and steal clients which were rightfully the Firm's.

18. That specifically, during his employment at the Firm, Driscoll signed up various cases and entered into certain retainer agreements or contingent fee arrangements (hereinafter "Client Agreements") with said clients, but failed to disclose and concealed the identity of those clients to the Firm.

19. That during Driscoll's employment, the Firm was completely unaware and had no knowledge that Driscoll was misappropriating clients; that Driscoll was representing numerous clients without entering those clients into the Firm's computer database; that Driscoll was maintaining files at locations other than the Firm's offices; that Driscoll was signing pleadings individually without listing the Firm on the signature block; that Driscoll was using an address and phone number other than the Firm's on pleadings and correspondence; or that Driscoll was essentially operating his own practice of law while working at the Firm and being paid by the Firm.

20. That on or about November 16, 2008 Driscoll resigned from the Firm.

21. That the Associate Agreement governed the procedures which were to take place upon the termination of Driscoll's employment from the Firm, including the method of notice to the Firm's clients in the event of Driscoll's termination.

22. That specifically, under the terms of the Associate Agreement, Driscoll agreed that if he voluntarily ended his employment with the Firm, notice of his pending or actual

departure would be provided by the Firm to the clients on whose matters Driscoll was working in a particular manner.

23. That Driscoll agreed that the Firm would contact clients on whose matters Driscoll was primarily handling or with whom he had significant contact and notify them of the following: that Driscoll was leaving the Firm; that the Firm was prepared to continue working on the matter; that if the client wanted the Firm to continue working on the matter, the client need not do anything; that if the client wanted Driscoll or some other attorney to continue to work on a matter, then the client must give written notice to the Firm; and that the client had complete freedom to choose his/her counsel.

24. That contrary to the terms of the Associate Agreement, Driscoll concealed clients from the Firm, making it impossible for the Firm to notify the clients of Driscoll's departure; and Driscoll contacted several clients, whose identity was known to the Firm, who subsequently made the decision to terminate the Firm's representation and to retain Driscoll.

COUNT I – BREACH OF FIDUCIARY DUTY

25. That Plaintiff incorporates by reference the allegations of paragraphs 1 through 24 as if fully set forth herein.

26. That by virtue of his employment relationship with the Firm, Driscoll owed a fiduciary duty to the Firm to act in the best interests of the Firm; the duty to be fair; the duty not to put self interest before the interests of the Firm; the duty not to engage in conduct which is hostile, adverse, or deleterious to the interests of the Firm; the duty not to compete with the Firm in the business of the Firm; the duty not to conceal clients from the Firm; the duty not to misappropriate clients; the duty not to hide clients; the duty not to lie to the Firm; and the duty not to maintain and operate a separate, concealed and secret business.

27. That Driscoll concealed numerous clients from the Firm and stole clients from the Firm.

28. That Driscoll's conduct in signing up clients without disclosing those clients to the Firm; in failing to enter new clients in the Firm's database; in filing pleadings without the Firm's name on the signature block; in using alternate addresses and phone numbers when preparing pleadings and correspondence in an attempt to hide, conceal and secrete the identity of those clients from the Firm; in secretly maintaining separate clients files off premises; in lying to the Firm; and in furtively operating a separate and secret law practice, all while he was employed as a full time associate attorney by the Firm, was an egregious breach of the aforementioned fiduciary duties.

29. That Driscoll engaged in a secretive and nefarious plan to operate his own law business while a full time employee at the Firm, by representing numerous clients and handling multiple cases for his own benefit, which cases were not disclosed to the Firm and which cases were concealed from the Firm, all to the detriment of the Firm and in contravention of his fiduciary duties.

30. That Driscoll concealed the existence of these clients from the Firm by:

- (a) failing to record cases in the practice management software system or intake database;
- (b) using his personal address and cell phone number on pleadings rather than the Firm's address and phone number;
- (c) using Brown & Crouppen's address but not the Firm's name;
- (d) using his father as process server;
- (e) partnering with other lawyers and law firms;

(f) maintaining files at locations other than the Firm's offices.

31. That following Driscoll's termination of employment, the Firm discovered that during the term of his employment with the Firm, Driscoll met with certain clients, entered into attorney client relationships with clients, executed client agreements, entered into referral fee arrangements with outside counsel, and/or was listed as an attorney of record for the plaintiff in some or all of the following cases:

Baechtel v. Eli Lilly;
Billmeyer et al v. Janssen Pharmaceuticals;
Reynolds et al v. GlaxoSmithKline;
Trebilcock v. Merck;
Myler v. Pfizer, Inc.;
McCallum, et al v. GE;
Driscoll v. Pfizer Inc et al;
Panepinto v. Factory Card Outlet;
Ray et al v. Sanofi Aventis U.S., LLC et al;
Austin et al v. Sanofi Aventis U.S., LLC et al;
Miller etc. v. Wyeth;
Thompson v. Wyeth;
Wilson v. Wyeth Inc et al;
Stainback v. Wyeth;
Long v. Wyeth;
Rustard v Wyeth;
Levin v. Wyeth;
Harvey v. Wyeth;
Harrah v. Wyeth;
Sudbring v. Guidant;
Coviella et al v. Wyeth;
Mcquiter et al v. Wyeth;
Johnson by and through Ed McGrone etc v. General Motors, et al;
McDonough v. Watson Pharmaceuticals;

32. That in addition, the Firm believes that there are additional cases filed by Driscoll, the names of which the Firm is not aware, but which cases Driscoll attempted to secrete and hide from the Firm.

33. That Driscoll failed to enter these clients into the Firm's practice management software system, and/or the Firm's client intake database, and intentionally concealed and failed to disclose his representation of these clients to the Firm.

34. That in addition, during his employment, the Firm discovered that Driscoll was representing the plaintiff, Tonya Wood, in a case styled *Wood v. Pharmacia Corp. et al* and when questioned about the *Wood v. Pharmacia Corp., et al* case, during his employment, Driscoll falsely represented and advised the Firm that the case was a "no fee/no work" case.

35. That during his employment, the Firm also became aware that Driscoll was representing the plaintiff, Lois Collins, in a case styled *Collins v. Brandes, et al* and when questioned about this case during his employment, Driscoll falsely represented and advised the Firm that the case was a pro bono matter.

36. That upon information and belief, Driscoll has collected and will in the future collect attorney's fees on cases which he undertook representation of clients in a secretive and furtive manner, while employed by the Firm, in an amount to be determined, all in breach of his fiduciary duties.

37. That the Firm has sustained actual damages in an amount to be determined as a result of Driscoll's breach of fiduciary duties.

38. That Driscoll's conduct as described herein was willful, intentional and outrageous, evidencing evil motive or reckless indifference to the rights of others, warranting the imposition of punitive damages.

WHEREFORE, the Firm prays for judgment on Count I of its Petition against Defendant Driscoll for actual damages in an amount to be determined, but in excess of \$25,000, for punitive

damages in the amount of \$5,000,000, for its costs herein incurred, and for such other and further relief as this Honorable Court deems just and proper.

COUNT II- BREACH OF CONTRACT

39. Plaintiff incorporates the allegations of paragraphs 1 through 38 as if fully set out herein.

40. That all clients whom Driscoll signed up during his employment with the Firm were clients of the Firm.

41. That Driscoll expressly agreed that in the event of the termination of his employment, the Firm would contact all clients on behalf of both the Firm and Driscoll and advise them that Driscoll was leaving in order to afford the client the option of staying with the Firm.

42. That Driscoll's concealment of clients from the Firm was a breach of his contract of employment, and because said concealment made it impossible for Driscoll to comply with the terms of the Associate Agreement upon his termination, said concealment constituted a breach of said Associate Agreement.

43. That in addition, Driscoll's surreptitious and furtive solicitation of various Firm clients after he resigned his employment, was in direct violation of the terms of the Associate Agreement.

44. That the manner in which Driscoll contacted the Firm's clients was a direct and deliberate violation and breach of the Associate Agreement.

45. That because of Driscoll's breach of the Associate Agreement, the Firm was deprived of the opportunity to contact each client and assure the client that the Firm was well

prepared to continue working on the client's case, before Driscoll solicited the client, as set out in the Associate Agreement.

46. That as a direct result of Driscoll's breach of the contract of employment and breach of the Associate Agreement as set forth above, the Firm has been damaged.

WHEREFORE, Brown & Crouppen, P.C. prays for judgment on Count II of its Petition against Defendant Driscoll in an amount to be determined but in excess of \$25,000, for its costs herein incurred, and for such other and further relief as this Honorable Court deems just and proper.

COUNT III - TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP

47. Plaintiff incorporates the allegations of paragraphs 1 through 46 as if fully set forth herein

48. That during the term of Driscoll's employment, a business relationship and expectancy existed between the Firm and each and every client who contacted the Firm, and each and every client who met with, consulted with or was signed up for legal representation by Driscoll.

49. That Driscoll knew of the business relationship and expectancy between the Firm and its clients.

50. That Driscoll tortiously interfered with the business relationship and expectancy between the Firm and its clients by intentionally and without justification or excuse, hiding clients, concealing clients and misappropriating clients.

51. That in causing the breach of the business relationship and expectancy between the Firm and clients who contacted either Driscoll or the Firm, Driscoll used improper means,

including misrepresentations of fact, in order to steal, hide and misappropriate clients, all to the detriment of the Firm.

52. That in addition, with respect to those clients of which the Firm was aware, when Driscoll terminated his employment with the Firm, Driscoll induced said clients to terminate their relationship with the Firm.

53. That the conduct of Driscoll as described herein caused damage to the Firm in an amount to be determined as a result of the loss of the benefit of the aforesaid business relationship and expectancy with the clients.

54. That Driscoll's conduct herein was willful, intentional and outrageous, in that Driscoll deliberately breached his fiduciary duties, and made false and misleading statements concerning the Firm and the Firm's representation, thereby evidencing evil motive or reckless indifference to the rights of other warranting punitive damages.

WHEREFORE, Plaintiff prays for judgment on Count III of its Petition against Defendant Driscoll for actual damages in an amount which is fair and reasonable in excess of Twenty Five Thousand Dollars (\$25,000.00), for punitive damages in the amount of \$5,000,000, for its costs herein incurred, and for such other and further relief as this Honorable Court deems just and proper.

COUNT IV – EQUITABLE ACCOUNTING

55. Plaintiff incorporates by reference the allegations of paragraphs 1 through 54 as if fully set forth herein.

56. That by virtue of his employment relationship with the Firm, Driscoll owed a fiduciary duty to the Firm.

57. That during his employment Driscoll concealed, hid and misappropriated numerous Firm clients.

58. That Driscoll has received and in the future will receive attorney's fees as a result of his representation of Firm clients, both those whom Driscoll secreted and concealed during his employment with the Firm and those who are the subject of an Attorney Fee Agreement, as set forth in Exhibits 2 and 4 attached hereto.

59. That Plaintiff has a need for discovery of all clients represented by Driscoll during the term of his employment, as well as a need for discovery of all attorney's fees earned by Driscoll during the term of his employment and following the termination of his employment with the Firm.

60. That the determination of the amount owed to the Firm is complicated.

61. That the Firm has no adequate remedy at law.

WHEREFORE, Brown & Crouppen, P.C. prays for an equitable accounting of all sums due and owing the Firm as a result of Driscoll's representation of former Firm clients, and/or the improper solicitation of Firm clients at or around the time of his termination, and for such other and further relief as this Honorable Court deems just and proper.

COUNT V – DECLARATORY JUDGMENT

62. Plaintiff incorporates by reference the allegations of paragraphs 1 through 61 as if fully set forth herein.

63. That under the terms of the applicable Attorney Agreements, attached hereto and marked Exhibits 2 and 4, the Firm is entitled to a percentage of the attorney's fees earned at such time as these two cases are resolved.

64. With respect to the *Rensing* case and the *DeBouse* case, those cases remain pending and no settlement has been made or judgment entered.

65. That this action is brought for a declaratory judgment and there is an actual controversy among the parties.

66. That a controversy exists between the parties concerning their respective rights under the Attorney Agreements, in that Driscoll has denied that the Firm is entitled to any percentage of the attorneys fees which may be earned on the *Rensing* and *DeBouse* files.

67. That by reason of the foregoing, a declaratory judgment is both necessary and proper in order to set forth and determine the Firm's entitlement to a portion of the attorney's fees on the *Rensing* and *DeBouse* files.

WHEREFORE, Brown & Crouppen, P.C. seeks a judgment declaring its rights, obligations and liabilities under the aforementioned Attorney Agreements, awarding the Firm its costs and reasonable attorneys' fees incurred herein; and awarding such other and further relief as the Court deems just and proper.

GOFFSTEIN, RASKAS, POMERANTZ,
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