

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**PLAINTIFF**

**V.**

**CASE NO. 5:06CV160DCB-JMR**

**WILLIE R. HARRIED, a/k/a  
WILLIAM ROY HARRIED,  
and  
WILLIAM S. GUY and  
THOMAS W. BROCK,  
Individually and as partners**

**DEFENDANTS**

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**FIRST AMENDED COMPLAINT**

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COMES NOW the Plaintiff, by counsel, and for its cause of action alleges the following:

**PARTIES**

1. Plaintiff Illinois Central Railroad Company (“Illinois Central”) is an Illinois corporation with its principal place of business in Chicago, Illinois. It is qualified to do business and is doing business in the State of Mississippi as a non-resident corporation with a registered agent in Mississippi for service of process.

2.a. Defendant Willie R. Harried, a/k/a/ William Roy Harried (“Harried”) is an adult citizen of Mississippi resident at 121 Poplar Hill Road, P.O. Box 654, Fayette, Mississippi 39069. Harried may be served with process at this address.

2.b. Defendant William S. Guy (“Guy”) is an adult citizen of Mississippi who maintains a principal place of business at 909 Delaware Avenue, McComb, Mississippi 39649. Guy may be served with process at this address.

2.c. Defendant Thomas W. Brock (“Brock”) is an adult citizen of Mississippi resident at 180 Cedar Ridge Road, McComb, Mississippi 39648. Brock may be served with process at this address.

2.d. Defendants Guy and Brock were partners in the practice of law in McComb, Mississippi at all times relevant hereto.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332. The matter in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and is between citizens of different states.

4. Venue is proper in the District Court for the Southern District of Mississippi, Western Division. Defendants reside within this District, defendants Guy and Brock maintained and operated their business as a law partnership within this District, and the conduct and torts described below occurred in whole or in part within this District.

### **FACTS**

5. On July 14, 1995, Harried became a plaintiff in a case against asbestos manufacturers filed in the Circuit Court of Jefferson County, Mississippi, styled David Cosey, et al. v. E.D. Bullard Co., et al., Civil Action No. 95-0069 (the “Cosey Complaint”). (A copy of the Cosey Complaint and exhibit C thereto (identifying Harried as a plaintiff) is attached as Exhibit A.) The Cosey Complaint alleged that Harried had been exposed to asbestos and suffered from asbestos-related disease.

6. The Cosey Complaint filed by Harried against asbestos manufacturers in 1995 was signed by his attorney in that case, Robert A. Pritchard. Mississippi Rule of Civil Procedure 11

was applicable to that Complaint and required that there be good grounds for the allegations contained in the Complaint.

7. On August 9, 2001, Harried became a plaintiff in a personal injury action against Plaintiff Illinois Central, a former employer, filed in the Circuit Court of Jefferson County, Mississippi, styled Elbert Eakins, et al. v. Illinois Central Railroad Co., Civil Action No. 2001-65 (the “Eakins Complaint”). (A copy of the Eakins Complaint is attached as Exhibit B.)

8. The Eakins Complaint was filed under the Federal Employers’ Liability Act, 45 U.S.C. §§ 51 et seq., and alleged, inter alia, that Harried had sustained damages as a result of exposure to asbestos during his employment with Illinois Central.

9. The Eakins Complaint filed by Harried against Illinois Central in August 2001 was signed by his attorneys, William S. Guy and Thomas W. Brock. Mississippi Rule of Civil Procedure 11 was applicable to that Complaint and required that there be good grounds for the allegations contained in the Complaint.

10. Illinois Central and Guy and Brock as counsel for Harried thereafter entered into a settlement agreement dated August 6, 2002 (the “Agreement,” attached as Exhibit C) which required, among other things, that Harried was to supply truthful and complete information under oath in response to a pulmonary questionnaire (the “Pulmonary Questionnaire”) as a condition precedent to the settlement and payment of his claim in Eakins.

11. On December 23, 2002, Harried became a plaintiff in a case against asbestos manufacturers filed in the Circuit Court of Jefferson County, Mississippi, styled Lee Anderson, et al. v. Garlock, Inc., et al., Civil Action No. 2002-255 (the “Anderson Complaint”). (A copy of the Anderson Complaint is attached as Exhibit D.)

12. In response to the Agreement in the Eakins case, Harried subsequently provided to Illinois Central a sworn response to the Pulmonary Questionnaire dated May 19, 2003. (A copy of Harried's sworn response to the Pulmonary Questionnaire is attached as Exhibit E.)

13. Harried knew at the time he signed and provided a sworn response to the Pulmonary Questionnaire to Illinois Central that he was required to supply truthful and complete information.

14. Harried and his attorneys, Guy and Brock, knew or should have known at the time he signed and provided a sworn response to the Pulmonary Questionnaire to Illinois Central that Illinois Central would rely upon the information provided in response to the Pulmonary Questionnaire in determining whether he would be paid under the Agreement.

15. Illinois Central relied upon the truthfulness and completeness of the information supplied by Harried under oath and tendered to Illinois Central's counsel by Guy and Brock in response to the Pulmonary Questionnaire, including, inter alia, Harried's answer to the following questions in Part VII.B of the Pulmonary Questionnaire:

"Have you ever filed a claim against any asbestos manufacturer?

If yes, please state: The entity against which a claim was asserted; Nature of the claim; Your lawyer; Date the claim was made; Case or claim number; The result of the claim, including any payment made."

16. Harried answered these questions under oath: "Yes. See attached" and attached the cover sheet and excerpts of a single complaint, the Anderson Complaint. He made no reference to the Cosey Complaint. (See Exhibit E at 8 and attachment thereto.)

17. On information and belief, Harried read the questions quoted in Paragraph 15 before providing his answers to those questions under oath and indicated to his attorneys, Guy and Brock, that he understood them.

18. Parts IV.A-B of the Pulmonary Questionnaire asked:

“A. Has any physician ever examined or hospitalized you for any disease(s), illness(es), condition(s) or complaint(s) relating to your lungs or respiratory system?

B. If you answered yes to the above question, please provide the following:

- i) Name and address of the physician(s):
- ii) Date(s) of examination:
- iii) Diagnosis by the physician(s):”

Harried’s sworn responses to these questions identified a single examination and diagnosis, by Dr. Alvin Schonfeld of Chicago, Illinois, on March 18, 2003, of asbestos-related pleural disease. (See Exhibit E at 3-4.)

19. Part IV.D of the Pulmonary Questionnaire asked:

“Have you ever had a chest x-ray?

If you answered yes to the above question, please state: Dates of each x-ray; Reason for each x-ray; The results of each x-ray; Name and address of the hospital or clinic where each x-ray was taken; Name and address of the physician ordering and interpreting each x-ray.”

Harried’s sworn responses to these questions identified a single x-ray taken on May 18, 2001 at Beacham Hospital in Magnolia, Mississippi, ordered and interpreted by a Dr. Abner Landry, and attached an “ILO” purporting to show the results. Harried’s response then stated that he may have had other chest x-rays but “[n]o one ever told me the results of any chest x-ray.” (See Exhibit E at 4.)

20. Part IV.H of the Pulmonary Questionnaire asked:

“Have you ever attended an asbestos screening (whether sponsored by an attorney, or union, or other organization) with respect to your lungs?

If the answer to the above question is yes, please state: A. Who contacted you about the screening; B. Where did the screening occur; C. Who sponsored the

screening; D. What was the result of the screening? (Please include what anyone told you about your lungs, symptoms, or condition); E. Did you engage a lawyer before or after the screening? If so, please state the name of the lawyer.”

Harried’s sworn responses to these questions identified a single screening sponsored by Guy and Brock in McComb, Mississippi, in connection with which he engaged Guy and Brock to file his claim against Illinois Central. (See Exhibit E at 5-6.)

21. In reliance upon the assumed truthfulness and completeness of the sworn information provided by Harried and his attorneys, Guy and Brock, in response to the questions quoted in Paragraphs 15, 18, 19 and 20, and upon their provision of other information and documents required by the Agreement, Illinois Central sought as part of the settlement a release of Harried’s claims against Illinois Central. After Illinois Central and Harried’s attorneys agreed upon the terms of the proposed release (the “Release”), Harried reviewed and signed the Release.

22. In reliance upon the assumed truthfulness and completeness of the sworn information provided by Harried and his attorneys, Guy and Brock, in response to the questions quoted in Paragraphs 15, 18, 19 and 20, and upon the other information and documents supplied by them, Illinois Central delivered to Harried and his attorneys Guy and Brock, through Guy and Brock, a settlement check in the amount of \$90,000.00, payable to Willie R. Harried and his attorneys, Guy & Brock. (A copy of the settlement check is attached as Exhibit F.)

23. The Release acknowledges Harried’s receipt of the sum of \$90,000.00 in settlement of his asbestos claim against Illinois Central. The settlement check was deposited on or about December 8, 2003.

24. On November 22, 2006, Illinois Central filed this lawsuit against Harried. The complaint alleged that Harried fraudulently failed to disclose his prior asbestos claim and

asbestos diagnosis to Illinois Central in a sworn Pulmonary Questionnaire tendered to Illinois Central under the Agreement.

25. On December 19, 2006, Harried filed his Answer to the Complaint.

26. Harried's Response to Paragraph 20 of the Complaint states that Harried informed Guy and Brock – the attorneys who filed his lawsuit against Illinois Central – that he had filed another lawsuit through another attorney against asbestos manufacturers at an earlier point in time.

27. Harried testified at his deposition in this case that Guy and Brock were aware of the prior asbestos claims that Robert Pritchard had filed on Harried's behalf in the Cosey case. See Harried Dep. Tr. (May 15, 2007), at 60-61, 71-72 (attached as Ex. G).

28. Harried testified that Guy and Brock were aware of his prior asbestos claims in Cosey before Harried's settlement with Illinois Central was consummated. See Ex. G at 71-72.

29. Pursuant to the Agreement, Guy and Brock tendered Harried's response to the Pulmonary Questionnaire to Illinois Central by letter dated July 28, 2003. Ex. E, page 1.

30. The July 28, 2003 letter, signed by Thomas Brock on behalf of Guy and Brock, did not disclose Harried's prior asbestos claim in Cosey to Illinois Central.

31. Guy and Brock did not disclose Harried's prior asbestos claim in Cosey to Illinois Central at any other time before Harried's settlement was consummated and the settlement check was accepted and deposited by Guy and Brock.

32. On information and belief, Guy and Brock received a substantial share of the \$90,000.00 settlement check issued by Illinois Central pursuant to the contingent fee agreement between Guy and Brock, on the one hand, and Harried, on the other.

**COUNT I – WILLIE HARRIED  
FRAUD**

33. Illinois Central has learned that Harried's answers under oath to the questions in the Pulmonary Questionnaire quoted in Paragraph 15, which disclosed only the Anderson Complaint referenced in Paragraph 16, were false; those answers misled Illinois Central as to material facts.

34. In his answers to the questions quoted in Paragraph 15, Harried did not disclose to Illinois Central his involvement as a plaintiff in the Cosey case.

35. In his answers to the questions quoted in Paragraphs 18-20, Harried did not inform Illinois Central of any examination, diagnosis, x-ray or screening of him performed in connection with the filing of his claim in the Cosey case. On information and belief, Harried's answers to these questions were also false.

36. On information and belief, Harried knew that his answers to the questions quoted in Paragraphs 15, 18, 19 and 20 were false or he provided the answers to Illinois Central with reckless disregard of the truth or falsity of the information that he provided, or both.

37. Harried intended Illinois Central to accept and act upon the information provided in his sworn response to the Pulmonary Questionnaire and to find that the criteria for payment to him set forth in the Agreement had been met.

38. Illinois Central reasonably relied upon the truthfulness and completeness of the information that Harried provided in his sworn response to the Pulmonary Questionnaire, and did not know or have reason to believe that the information he provided in response to the questions quoted in Paragraphs 15, 18, 19 and 20 about other asbestos claims and screenings was false or materially misleading.

39. Had Harried disclosed the fact that he had previously sued asbestos manufacturers in 1995 for his alleged asbestos-related injuries, Illinois Central would not have been obligated to pay and would not have paid Harried \$90,000.00 in settlement of his claim under the Agreement.

40. Harried's claim against Illinois Central, filed in August 2001, did not meet the criteria for payment under the Agreement because his claim was time-barred under the three-year statute of limitations that applies to claims brought under the Federal Employers' Liability Act.

41. Harried obtained \$90,000.00 from Illinois Central as a result of his intentional conduct and fraudulent act in not disclosing that he had previously sued asbestos manufacturers in 1995 for his alleged asbestos-related injuries.

42. Illinois Central has been damaged as a proximate result of Harried's fraudulent acts.

**COUNT II – WILLIAM GUY AND THOMAS BROCK  
FRAUD**

43. Illinois Central incorporates by reference all preceding paragraphs.

44. On information and belief, Harried advised his attorneys who filed his lawsuit against Illinois Central, Guy and Brock, that he had filed another lawsuit through another attorney against other asbestos manufacturers at an earlier point in time.

45. On information and belief, Harried also advised his attorneys who filed his lawsuit against Illinois Central, Guy and Brock, that he had undergone previous testing for asbestos-related disease.

46. On information and belief, defendants Guy and Brock knew on or before the date they accepted and cashed the settlement check about the asbestos claims in Cosey that attorney Robert Pritchard had filed on Harried's behalf. In the alternative, Guy and Brock acted with

reckless disregard of information known or readily available to Guy and Brock about Harried's prior asbestos claims in the Cosey case.

47. Guy and Brock did not disclose Harried's prior asbestos claims in Cosey when they tendered Harried's Pulmonary Questionnaire response to Illinois Central or at any other time prior to the consummation of Harried's settlement of his claim against Illinois Central.

48. The failure to disclose Harried's prior asbestos claim in Cosey misled Illinois Central as to a material fact under the Agreement.

49. Guy and Brock intended Illinois Central to accept and act upon the information provided by Harried and Guy and Brock to Illinois Central about Harried's other asbestos claims and to find that the criteria for payment set forth in the Agreement had been met.

50. Illinois Central reasonably relied upon the truthfulness and completeness of the information provided by Guy and Brock and Harried concerning the conditions for a settlement payment, and did not know or have reason to believe that the information was false or materially misleading.

51. If Harried's 1995 lawsuit against asbestos manufacturers had been disclosed, Illinois Central would have had a statute of limitations defense and would not have been obligated to pay and would not have issued a settlement check payable to Harried and to Guy and Brock in settlement of Harried's claim.

52. The claim filed by Guy and Brock on Harried's behalf against Illinois Central in August 2001 did not meet the criteria for payment under the Agreement because the claim was time-barred under the three-year statute of limitations that applies to claims brought under the Federal Employers' Liability Act.

53. Illinois Central has been damaged as a proximate result of Guy and Brock's intentional omission or reckless disregard in failing to disclose Harried's prior asbestos claim in Cosey to Illinois Central.

**COUNT III – WILLIAM GUY AND THOMAS BROCK  
BREACH OF DUTIES OF GOOD FAITH AND FAIR DEALING**

54. Illinois Central incorporates by reference all preceding paragraphs.

55. The Agreement imposed an express obligation upon the parties to act in good faith.

56. Implied covenants of good faith and fair dealing also arose by operation of law and applied to the parties' conduct under the Agreement.

57. As parties to the Agreement, Guy and Brock breached these obligations by knowingly failing to disclose to Illinois Central material information that Harried had filed prior claims against asbestos manufacturers in the Cosey case.

58. In the alternative, if and to the extent that Guy or Brock disavows personal knowledge of Harried's prior claim in Cosey, they breached these obligations by acting with reckless disregard in failing to disclose to Illinois Central material information known or readily available to them about Harried's prior asbestos claims in the Cosey case.

59. As a direct and proximate result of Defendants' breach of their obligations of good faith and fair dealing, Illinois Central has incurred actual and compensatory damages in an amount to be proven at trial.

**RELIEF**

60. Illinois Central is entitled to damages in the amount of the \$90,000.00 paid in settlement of Harried's claim under the Agreement with Guy and Brock.

61. Illinois Central is entitled to interest on the \$90,000.00 paid in settlement of Harried's claim from the date that Illinois Central's check was cashed until the date of any judgment.

62. Illinois Central is entitled to attorney fees and expenses incurred in defending against Harried's previous claim against Illinois Central asserted in the Eakins Complaint.

63. By virtue of the intentional nature of Defendants' conduct, Illinois Central is entitled to attorney fees and expenses incurred in prosecuting this lawsuit from the filing of the complaint until the collection of any judgment.

64. Due to the intentional nature of Defendants' conduct and clear and convincing evidence that they acted with actual malice or committed actual fraud, Illinois Central is entitled to punitive damages in an amount to be determined by this Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Illinois Central Railroad Company requests a money judgment against Defendants for \$90,000.00 plus interest, attorney fees and expenses in prosecuting this suit, and for punitive damages, together with pre-judgment and post-judgment interest on all elements of damages, and requests such additional and further relief to which it may be entitled.

Respectfully submitted,

FORMAN PERRY WATKINS KRUTZ &  
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s/Heather J. Wilkins

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**CERTIFICATE**

I hereby certify that on January 17, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

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