

**IN THE
SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

GILBERT LLP
1100 New York Avenue, NW, Suite 700
Washington, DC 20005,

Plaintiff,

v.

TIRE ENGINEERING & DISTRIBUTION, LLC,
2535 Bee Ridge Road
Sarasota, FL 34239,

and

WEISBROD MATTEIS & COPLEY, PLLC
1900 M Street, NW, Suite 850
Washington, DC 20037

Defendants.

CASE NO. _____

COMPLAINT

Plaintiff Gilbert LLP (“Gilbert” or “the Firm”), by its undersigned attorneys, hereby submits the following Complaint against Defendants Tire Engineering & Distribution, LLC (“Alpha Tire” or “Alpha”) and Weisbrod Matteis & Copley, PLLC (“WM&C”), upon information and belief alleges as follows:

NATURE OF THE ACTION

1. Gilbert LLP brings this action to recover millions of dollars in fees and costs that it incurred in obtaining a \$26 million judgment for Alpha Tire. After Gilbert bore the risk and expense of pursuing the Alpha Tire litigation on a contingency basis, former Gilbert partners Weisbrod, Matteis, and Copley, chose to leave the Firm and form their own firm, WM&C, taking Alpha Tire with them as a client of their new firm and agreeing to represent Alpha Tire with respect to the \$26 million judgment. Now

that Alpha Tire is beginning to collect on the judgment generated by Gilbert's substantial investment, WM&C is attempting to reap the benefits. Gilbert remains uncompensated for the millions of dollars it expended to secure Alpha Tire's \$26 million judgment. This action is the result.

2. Gilbert seeks an award of actual and compensatory damages, and all other relief that this Court deems just and proper.

THE PARTIES

3. Gilbert is a limited liability partnership organized under the laws of the District of Columbia with an office at 1100 New York Avenue, NW, Suite 700, Washington, DC 20005.

4. Defendant Tire Engineering and Distribution, LLC, which does business as Alpha Tire Systems or Alpha Mining Systems ("Alpha Tire") is a Florida Limited Liability Company with its principal place of business at 2535 Bee Ridge Road in Sarasota County, Florida.

5. Defendant Weisbrod Matteis & Copley is a District of Columbia professional limited liability company with an office at 1900 M Street, NW, Suite 850, Washington, DC 20037.

JURISDICTION

6. This Court has subject matter jurisdiction over this matter pursuant to D.C. Code § 11-921.

7. This Court has personal jurisdiction over Defendant WM&C pursuant to DC Code § 13-422.

8. This Court has personal jurisdiction over Defendant Alpha Tire pursuant to DC Code § 13-423. Alpha Tire purposely availed itself of the benefits of doing business with both Gilbert and WM&C in the District of Columbia.

FACTS

Alpha Retains Gilbert

9. On August 4, 2009 Defendant Alpha Tire retained Gilbert (formerly known as Gilbert Oshinsky, LLP) to provide legal services to Alpha Tire in connection with the misappropriation, theft and

unauthorized use of Alpha trade secrets, designs and other property by, among others, a former Alpha employee, the Al Dobowi Group, and Shandong Linglong Rubber Company.

10. Pursuant to a signed engagement letter agreement dated August 4, 2009 (the "Engagement Letter"), Gilbert agreed to represent Alpha Tire on a full contingency basis and to advance all expenses and costs. In return, Alpha agreed to compensate Gilbert for its services from any recoveries and to repay all advanced expenses and costs. The Engagement Letter is attached hereto as **Exhibit A**.

11. The Engagement Letter contains a Termination provision which states:

In the event that Alpha elects to terminate our representation, GO will be entitled to a fee based upon the hours expended by the Firm on this representation at the hourly rates normally charged by the involved personnel for the type of work rendered. Notwithstanding the forgoing, if Alpha receives a recovery with respect to the claims that are the subject matter of this representation within 12 months after the termination of the Firm's representation, the Firm may elect to receive a fee that is based upon the amount of the contingent fee that the Firm would have been entitled to as a result of Alpha's recovery under the above-described contingency fee arrangement if the Firm's representation had not been terminated. In any event, Alpha will reimburse the Firm for all out-of-pocket expenses and disbursements incurred by the Firm in connection with this matter at the time of the termination, except to the extent that Alpha has previously paid or reimbursed the Firm for such amounts.

12. When Gilbert entered into the Engagement Letter with Alpha Tire, Stephen Weisbrod, and August Matteis were partners at Gilbert. William Copley subsequently became a partner at Gilbert.

13. In October 2010, Gilbert obtained judgment in favor of Alpha for \$26,32,377.50 in connection with Alpha Tire's claims against its former employee, the Al Dobowi Group, Shandong Linglong Rubber Company, and other third parties.

14. Gilbert performed substantial work for Alpha. The Firm incurred over \$1.8 million in expenses and expended over \$4.5 million in attorney time on Alpha's behalf from August 2009 through October 2011.

Weisbrod, Matteis, and Copley Leave Gilbert to Form WM&C and Take Alpha Tire

15. On or around November 2011, Weisbrod, Matteis, and Copley withdrew from Gilbert and formed WM&C.

16. Prior to departing Gilbert, the WM&C partners solicited Gilbert clients, including Alpha

Tire.

17. After Gilbert obtained judgment in favor of Alpha Tire for \$26,32,377.50 but before the judgment could be collected, Alpha Tire discharged Gilbert without cause and retained Defendant WM&C in connection with the same litigation.

18. Alpha Tire has not reimbursed Gilbert for out-of-pocket expenses and disbursements incurred by the Firm; nor has Alpha paid Gilbert any fees.

WM&C Receives \$200,000 as a Result of the Alpha Tire Judgment

19. On or around September 2013, WM&C notified Gilbert that it received \$200,000 as a partial collection on the Alpha Tire judgment.

20. WM&C has proposed various distributions of: 1) the initial \$200,000 collected and 2) future Alpha Tire collections, between WM&C and Gilbert that interfere with Alpha Tire's contractual obligations to Gilbert and reflect attempts to convert Gilbert assets to payments for WM&C fees.

21. Based upon communications from WM&C, Gilbert believes that WM&C has distributed at least part of the initial partial collection on the Alpha Tire judgment from WM&C's trust account to itself.

22. Based upon communications with WM&C, Gilbert believes that WM&C has received subsequent partial collections on the Alpha Tire judgment.

FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)
(Against Alpha Tire)

23. Gilbert incorporates by reference each and every allegation set forth in the prior paragraphs of this complaint, as though fully set forth herein.

24. As described above, Alpha Tire entered into the Engagement Letter agreement with Gilbert, which is a valid and enforceable contract.

25. Pursuant to the Termination provision of the Engagement Letter, Alpha Tire agreed that if it elected to terminate Gilbert, it would reimburse Gilbert for all of-of-pocket expenses and disbursements incurred by the firm in connection with representing Alpha at the time of the termination.

26. Alpha terminated Gilbert without cause on or around November 2011 but has failed to tender any amounts to reimburse Gilbert for its expenses or disbursements.

27. Alpha also agreed, with respect to fees, that Gilbert is entitled to fees calculated on an hourly basis at normal hourly rates or, at the firm's option, if the matter settles within 12 months of the Firm's termination, the 40% contingent fee provided in the engagement letter.

28. Gilbert incurred over \$1.8 million in expenses representing Alpha Tire and accrued over \$4.5 million in fees calculated on an hourly basis at its normal hourly rates.

29. Gilbert substantially performed its obligations under the Engagement Letter.

30. Alpha's failure to tender the payments required under the contract and election to allow disbursements in connection with its litigation against the Al Dabowi group and others to be directed to WM&C constitute a material breach of the Engagement Letter agreement.

31. Gilbert has sustained at least \$6,354,377 in damages as a result of Alpha Tire's breach of the Engagement Letter.

SECOND CAUSE OF ACTION
(TORTIOUS INTERFERENCE WITH CONTRACT)
(Against WM&C)

32. Gilbert incorporates by reference each and every allegation set forth in the prior paragraphs of this complaint, as though fully set forth herein.

33. Prior to its retention by Alpha Tire, WM&C was aware of the Engagement Letter agreement between Alpha Tire and Gilbert.

34. Despite knowing the terms of the Engagement Letter, including the Termination provision requiring Alpha Tire to reimburse all of Gilbert's costs upon termination, and entitling Gilbert to repayment for fees, WM&C has received Alpha Tire funds due and owing to Gilbert and sought to keep a portion of those funds, intentionally causing Alpha Tire to breach its contractual obligations to Gilbert.

35. Gilbert has sustained at least \$200,000 in damages as a result of the WM&C's tortious interference with the Engagement Letter and Gilbert will sustain additional damages if WM&C continues to receive disbursements of funds due and owing to the Firm.

THIRD CAUSE OF ACTION
CONVERSION
(Against WM&C)

36. Gilbert incorporates by reference each and every allegation set forth in the prior paragraphs of this complaint, as though fully set forth herein.

37. Funds recovered from the Alpha Tire litigation, which was pending at the time the WM&C partners left the Gilbert partnership, are assets of the Gilbert Firm partnership. The foregoing conduct of WM&C, including but not limited to, accepting distributions from funds that have been collected upon the Alpha Tire judgment and seeking to keep them, constitutes a conversion of Gilbert's Firm assets.

38. As a direct and proximate result of the foregoing, Gilbert has suffered at least \$200,000 in damages and will continue to suffer damages if WM&C continues to receive disbursements of funds due and owing to the Firm.

FOURTH CAUSE OF ACTION
QUANTUM MERUIT
(Against Alpha Tire)

39. Gilbert incorporates by reference each and every allegation set forth in the prior paragraphs of this complaint, as though fully set forth herein.

40. Gilbert entered the Engagement Letter agreement with Alpha Tire to provide legal services to Alpha on a contingency-fee basis, and Gilbert conscientiously performed services for Alpha Tire for over two years pursuant to that agreement.

41. Gilbert incurred millions of dollars in fees and costs representing Alpha Tire.

42. It would be unjust and inequitable to allow Alpha Tire to retain the value of services Gilbert provided to Alpha that resulted in the Alpha Tire judgment and not compensate Gilbert for such services. Gilbert is entitled to the reasonable value of the services provided to Alpha Tire. The value of

such services is the amount of such services as would have been charged to a client who had retained Gilbert to provide the same services at the Firm's then usual hourly rates, plus reimbursement of normal expenses.

FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT
(Against WM&C)

43. Gilbert incorporates by reference each and every allegation set forth in the prior paragraphs of this complaint, as though fully set forth herein.

44. Gilbert spent over two years and millions of dollars working for Alpha Tire on a contingency fee basis and succeeding in obtaining a judgment for over \$26 million dollars.

45. The partners of WM&C solicited Alpha Tire, a Gilbert client, before notifying Gilbert of their pending withdrawal from Gilbert.

46. Alpha Tire chose to terminate Gilbert without cause and retain WM&C.

47. WM&C is now retaining the benefit of the fees, costs, and diligent efforts expended by Gilbert to secure a judgment for Alpha Tire.

48. It would be unjust for WM&C to retain the benefits of Gilbert's work now that Alpha has begun collecting on the judgment.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff respectfully requests that this Court:

- (a) enter judgment in its favor and against Defendants;
- (b) award Plaintiff compensatory damages in an amount to be determined at trial;
- (c) in the alternative, award Plaintiff the value of the services Gilbert provided to Alpha Tire;
- (d) award Plaintiff reasonable expenses, including attorneys' fees and costs of this action; and
- (e) award Plaintiff such other and further relief as the Court deems just and proper.

Dated: November 13, 2013

Respectfully submitted,

By 

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Counsel for Plaintiff Gilbert LLP

CERTIFICATE OF SERVICE

I certify that on the 13th day of November 2013, I filed the foregoing with the Clerk of Court of the Superior Court of the District of Columbia and served copies of such filing to the following via U.S.

Postal Service, certified mail, return receipt requested:

TIRE ENGINEERING & DISTRIBUTION, LLC,
2535 Bee Ridge Road
Sarasota, FL 34239,

and

WEISBROD MATTEIS & COPLEY, PLLC
1900 M Street, NW, Suite 850
Washington, DC 20037.



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Counsel for Plaintiff Gilbert LLP