

CAUSE NO. CC-08-01067-B

ICON BENEFIT ADMINISTRATORS	§	
II, L.P. and AMERICAN	§	IN THE COUNTY COURT
ADMINISTRATIVE GROUP, INC.	§	
Plaintiffs	§	
	§	
vs.	§	AT LAW NO. 2
	§	
JOELLA MULLIN, STANLEY SELF,	§	
ANDREA DAVENPORT, LEE ANN	§	
DUMBAULD, SCOTT SNIDER, LEISA	§	
HUTCHENSON, DAVID MILLER	§	
AND UNKNOWN OTHERS	§	
Defendants	§	DALLAS, COUNTY, TEXAS

PLAINTIFFS' 1st AMENDED PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

COME NOW ICON Benefit Administrators II, L.P. and American Administrative Group, Inc. Plaintiffs in the above styled and numbered action and file their 1st Amended Petition against Defendants Joella Mullin, Stanley Self, Andrea Davenport, Lee Ann Dumbauld, Scott Snider, Leisa Hutcheson, David Miller and others to be named later, and for cause of such action would show the court:

I. Rule 190 Discovery Control Plan

Pursuant to Rule 190.4, Texas Rules of Civil Procedure ("TCRP"), this case will be conducted under Level 3 of the Discovery Control Plan.

II. Parties

Plaintiff ICON Benefit Administrators II, L.P. is a Texas Limited Liability Partnership with its principal place of business at 222 W. Las Colinas Blvd., Irving, Texas. Plaintiff American Administrative Group, Inc. is a Illinois corporation with its principle place of business 222 W. Las

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Colinas Blvd., Irving, Texas.

Defendant Joella Mullin is a resident of Dallas County, Texas who has been served with process and has appeared in the case. Defendant Stanley Self is a resident of Collin County, Texas who has been served with process and has appeared in the case. Defendant Andrea Davenport is a resident of Dallas County, Texas who has been served with process and has appeared in the case. These Defendants will be referred to as “Wachovia Employees” in the remainder of this pleading.

Defendant Lee Ann Dumbauld (“Dumbauld”) is a resident of Lubbock County, who has been served with process and has appeared in the case. Defendant Peter Scott Snider aka Scott Snider (“Snider”) is a resident of Lubbock County who has been served with process and has appeared in the case. Defendant Leisa Hutcheson (“Hutcheson”) is a resident of Lubbock County who has been served with process and has appeared in the case.

Defendant David Miller (“Miller”) is a resident of Lubbock County, who may be served with process at 4202 78th Street, Lubbock, Texas 79423 or 625 13th Street, Lubbock, Texas 79401.

ICON and/or AAG believes there may be additional defendants, whose names, addresses, and activities have not yet been discovered, but who will be added and served with process in this case as soon as practicable upon discovery of their identities.

III. Jurisdiction and Venue

Venue is proper in Dallas County, Texas. ICON and AAG assert defamation and disparagement causes of action. Civil Practices and Remedies Code (“CPRC”) §15.017 provides that, in cases of defamation, venue is established in the county where the plaintiffs resided when the cause of action accrued. ICON’s and AAG’s principal place of business, as stated above, was Dallas County. Additionally, Defendants Joella Mullin and Andrea Davenport are residents of Dallas county

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and were served with suit in Dallas county. Proper venue over any one defendant, establishes proper venue over all defendants. §15.005 CPRC. The damages sought are within the jurisdictional limits of the Court.

IV. Factual Summary

ICON and AAG are organizations which offer third party administration of integrated health benefit plans. Collectively, they have almost forty (40) years experience. ICON and AAG provide their services through regional offices throughout the country. ICON and AAG each have their principal place of business in Dallas County.

In 2006, ICON had a contract, attached as Exhibit A, with the City of Lubbock to provide services as the third party administrator for the self funded health benefit plan of the City of Lubbock, Texas ("Lubbock"). Pursuant to its contract with Lubbock to provide third party administration of claims and health benefit services, ICON was acting as Lubbock's broker of record for the negotiation, procurement and placement of certain insurance policies. During the term of ICON's contract AAG assumed responsibility for providing the third party administration services. The term of ICON's contract ended December 31, 2006. It was agreed that AAG would seek the 2007 contract term with Lubbock.

In approximately June 2006, Lubbock advertised, by Request for Proposal ("RFP"), for Health Benefits Consulting Services. The services being sought in Lubbock's RFP required that, among others, the consultant perform operational reviews of current "benefit vendors", advise and make recommendations concerning the benefits program, as well as, reviewing and providing advice concerning "contract renewals, plan documents, insurance policies" and develop/prepare/review Requests for Proposals for vendors.

The term "insurance counselor" is the term of art used by the Texas Insurance Code in governing the requirements necessary in order to provide these types of services. The Texas Insurance Code, Chapter 4052, requires a license in order to provide these types of service stating:

"§ 4052.001. DEFINITION. In this chapter, "life and health insurance counselor" means a person who: (1) for compensation, offers to examine or examines a life, accident, or health insurance policy, a health benefit plan, or an annuity or pure endowment contract to give advice or other information regarding: (A) the policy, plan, or contract terms, conditions, benefits, coverage, or premiums; or (B) the advisability of: (I) changing, exchanging, converting, replacing, surrendering, continuing, or rejecting a policy, plan, or contract; or (ii) accepting or procuring a policy, plan, or contract from an insurer or health benefit plan issuer; or (2) in any public manner: (A) uses as a title: (I) "insurance adviser"; (ii) "insurance analyst"; (iii) "insurance counselor"; (iv) "insurance specialist"; (v) "policyholders' adviser"; (vi) "policyholders' counselor"; or (vii) any other similar title; or (B) uses any other title indicating that the person gives or is engaged in the business of giving advice or other information to an insured, a beneficiary, or any other person having an interest in a life, accident, or health insurance policy, a health benefit plan, or an annuity or pure endowment contract."

"§ 4052.051. LICENSE REQUIRED. A person may not act as a life and health insurance counselor unless the person holds a license issued by the department under this chapter."

"§ 4052.052. EXAMINATION. (a) An applicant for a life and health insurance counselor license must take an examination administered under Chapter 4002...(b) The department may not issue a life and health insurance counselor license to a person unless the person has passed each part of the examination."

Because taking and passing an examination is required in order to obtain a life and health insurance counselor's license only individuals, as opposed to corporations, may obtain the license.

Lubbock's RFP for Health Benefits Consulting Services required that the applicant be a licensed "life and health insurance counselor" or "broker" and that evidence of the license be attached to any proposal responding to the RFP. Wachovia Insurance Services of Texas presented a proposal in response to Lubbock's RFP ("Proposal"). Defendants Mullin, Self and Davenport were each employed by Wachovia Insurance Services of Texas, LLC at its principal office in Dallas, Texas and were to provide services requested in the RFP. Wachovia Employees, in Wachovia 's Proposal,

“confirmed” that they were, licensed life and health insurance counselors. In fact, not a single individual named in Wachovia’s proposal was a licensed “insurance counselor”.

Wachovia Employees conspired with Dumbauld, Snider, Hutcheson, and others to obtain the contract to act as Lubbock’s “insurance counselor”. Wachovia Employees conspired to submit a Proposal which was fraudulent in the basic requirement that the work be done by a licensed life and health insurance counselor. Dumbauld, Hutcheson, and Snider conspired to accept the fraudulent Proposal and recommend to the City Council that the contract be awarded over the proposals of others applicants who held the required life and health insurance counselor license. Lubbock awarded the contract as recommended, and Lubbock entered a “Professional Services/Consulting Agreement” which incorporated the services listed in the RFP and in the Proposal.

The Wachovia Employees with Dumbauld, Hutcheson, and Snider thereafter proceeded to conspire to have Wachovia appointed as Lubbock’s exclusive broker of record in an attempt to do two things: (1) cutting off ICON and/or AAG’s position as broker in violation of ICON and/or AAG’s contract with Lubbock. This action cut off ICON and/or AAG’s ability to continue to work with any insurers with which it was already dealing on Lubbock’s behalf, and placed all confidential proprietary information of ICON and/or AAG’s on-going negotiations with these insurers in Wachovia’s hands, and (2) covering up the improper acceptance of the Proposal which deprived Lubbock’s citizens of an “insurance counselor”. ICON and/or AAG’s information that was gained in this maneuver was subsequently appropriated and used against AAG during the competition for Lubbock’s 2007 contract for third party administrator and to benefit AAG’s competitors.

Miller, Dumbauld, Hutcheson, and Snider slandered and disparaged ICON and/or AAG and their representatives to third parties and in the press. This slander and disparagement was published

in Dallas County, Texas as well as other locations. Miller, Dumbauld, Hutcheson, and Snider also continued this pattern, course, and conduct of defaming and disparaging ICON and/or AAG even after interfering with ICON's contract and AAG's prospective contract. Miller's acts were committed, not in his public service capacity, but were intended to enhance his chances of re-election and for purely personal and business benefits.

Some examples are: Miller and Dumbauld caused litigation to be filed ostensibly seeking information which they already possessed but represented that the information sought was being withheld when it was not. Miller and Dumbauld caused an unqualified auditor to be hired who they had make an affidavit "seeking" an audit, when the auditor's employees were already at AAG performing an audit at the time the affidavit was presented. Dumbauld stated to third persons that ICON and/or AAG were "crooks, thieves, and liars", "could not be trusted" and "any company Ted Parker had anything to do with could not be trusted". Miller while campaigning for re-election as mayor, published statements to the news media and others in Dallas and the United States, that ICON and/or AAG owed the taxpayers "more than \$6 million dollars" in overpayments. This figure, like the fish story, grew with every Miller re-telling until it was over \$12 million dollars. These statements were unprivileged, intentional and patently false. These statements were published in Dallas County, Texas and many other cities. These statements were made with the express intent to gain political advantage and with personal hubris. These statements were made outside the course and scope of employment or public service. These actions and others have caused ICON and AAG damage in their businesses and their reputations, loss of money and other consequential damages in excess of the jurisdictional limits of this Court.

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V. Civil Conspiracy

ICON and AAG incorporate Sections I, II, III and IV above. Wachovia Employees, Miller, Dumbauld, Hutcheson, and Snider intentionally, knowingly and willfully conspired in the preparation and presentation of a response to Lubbock's request for proposal in which they intentionally misrepresented that they were licensed as health counselor(s).

Wachovia Employee's actions, were done intentionally, willfully and maliciously, for the purpose of enhancing their own careers, benefitting their employer, and for personal gain.

Miller, Dumbauld, Hutcheson, and Snider ' actions, were done intentionally, willfully and maliciously, for the purpose of divesting ICON and/or AAG of its contract and broker of record position and to use ICON and/or AAG as a scapegoat in order to justify their plan to raise taxes, hide salaries, and as political pay back to their allies. Miller, Dumbauld, Hutcheson, and Snider' actions were also done for the purpose of venting their own personal hubris, animosity and vendettas against ICON and/or AAG by divesting ICON and/or AAG of its position and for their own political advantage.

Defendants reached a meeting of the minds regarding both the method and the object of this conspiracy including, to tortiously interfere with ICON and/or AAG's contract with Lubbock, by causing ICON and/or AAG to be divested of the broker of record position before the expiration of ICON and/or AAG's contract, and to tortiously interfere with AAG's prospective contract by preventing AAG from using the stop loss proposal which resulted from AAG's confidential negotiations and having that proposal used against AAG in the competition for the 2007 third party administrator contract. ICON and AAG have suffered actual damages in the loss of business, loss of business opportunities, and damage to its reputation.

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VI. Misappropriation

ICON and AAG incorporate Sections I, II, III, IV, and V above. Through the many years that ICON and AAG have been in the healthcare/third party administration business, they have developed a body of information and expertise which allows them to provide the highest quality service and the most affordable products to their clients. This information and expertise has been developed through the expenditure of a extensive amounts of time, labor, skill and money.

The Defendants through a series of actions including, using deceit in the response to Lubbock's RFP which allowed them to improperly obtain the "insurance counselor" position, and thereafter the exclusive broker of record position, Defendants improperly gained access to ICON and/or AAG's confidential business negotiation information, including the renewal quote from the stop loss carrier, which was provided to and utilized for the benefit of AAG's competitors.

This misappropriation and subsequent misuse of the information has caused ICON and/or AAG actual damages in the loss of business, loss of business opportunities, and damage to its reputation.

VII. Tortious Interference with Existing Contract

ICON and AAG incorporate Sections I, II, III, IV, V, and VI above. ICON and/or AAG had a valid contract with Lubbock. Wacovia Employees, Dumbauld, Hutcheson, and Snider were aware of ICON and/or AAG's contract with Lubbock. By making false representations Defendants tortiously interfered with ICON and/or AAG's contract by terminating ICON and/or AAG's broker of record position in violation of its contract with Lubbock. ICON and/or AAG was cut off from utilizing the insurers with which it was already dealing on Lubbock's behalf, and its information was used by Defendants against AAG and to benefit AAG's competitors.

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Wachovia Employees' and Miller, Dumbauld, Hutcheson, and Snider' tortious interference has proximately caused Icon and AAG actual damages and loss within the jurisdictional limits of this court.

VIII. Tortious Interference with Prospective Contractual Relations

ICON and AAG incorporate Sections I, II, III, IV, V, VI, and VII above. Wachovia Employees and Miller, Dumbauld, Hutcheson, and Snider, as well as unknown others, have tortiously interfered with prospective contractual relations that AAG would have had with Lubbock. There was a reasonable possibility that AAG would have entered into and continued in a contractual relationship with Lubbock but for the unlawful conduct of Defendants. Defendants through misrepresentation, misappropriation and other tortious acts, intentionally interfered with AAG's prospective relationship. AAG was cut off from utilizing the insurers with which it was already dealing on Lubbock's behalf, and its information used by Defendants against AAG and to benefit AAG's competitors. Defendants' tortious interference has proximately caused injury to AAG. AAG has suffered actual damages and loss within the jurisdictional limits of the Court.

IX. Violation of Texas Statutes

ICON and AAG incorporate Sections I, II, III, IV, V, VI, VII, and VIII above. Defendants by these action have conspired to violate and did violate Texas Statutes, including but not limited to the Texas Insurance Code and Texas Local Government Code. These violations caused ICON and/or AAG damages in an amount within the jurisdictional limitations of the Court.

X. Business Disparagement

ICON and AAG incorporate Sections I, II, III, IV, V, VI, VII, VIII and IX above. Miller, Dumbauld, Hutcheson, and/or Snider intentionally published injurious, false and disparaging

statements to third persons and to the press which were disseminated in Dallas County, Texas and many other cities concerning the quality and character of ICON and/or AAG's business. For example, Defendant Dumbauld stated to third persons that ICON and/or AAG were "crooks, thieves, and liars", "could not be trusted" and "any company Ted Parker had anything to do with could not be trusted". David Miller stated that ICON and/or AAG owes the taxpayers "more than \$6 million dollars" in overpayments. A figure which, like the fish story, grew with every Miller re-telling until it was over \$12 million dollars. These statements are intentional, unprivileged and patently false.

The statements above, and others like them, were made knowingly, with malice, and made with the intent to interfere with ICON and/or AAG's economic interests. Miller, Dumbauld, Hutcheson, and Snider's statements proximately caused ICON and/or AAG to suffer special damages of pecuniary loss in an amount within the jurisdictional limitations of the Court.

XI. Defamation

ICON and AAG incorporates Sections I, II, III, IV, V, VI, VII, VIII, IX and X above. Miller, Dumbauld, Hutcheson, and Snider intentionally published false, slanderous and libelous statements to third persons and to the press which were disseminated in Dallas County, Texas and many other cities concerning the honesty, quality and character of ICON and/or AAG's business dealings.

These false statements were made knowingly, with malice, and constitute slander and/or libel per se. Miller, Dumbauld, Hutcheson, and Snider's statements proximately caused ICON and/or AAG to suffer special damages of pecuniary loss in an amount within the jurisdictional limitations of the Court.

XII. Exemplary Damages

ICON and AAG incorporate Sections I, II, III, IV, V, VI, VII, VIII, IX, X and XI above.

ICON and AAG would show that the conduct of these Defendants and any other conspirators was of such an egregious, intentional and violative nature, as to entitle ICON and AAG to exemplary damages in an amount deemed just and right by the trier of fact. Defendants actions were committed willfully, wantonly, intentionally, knowingly, and with conscious indifference to the rights and welfare of others and with the intention to cause harm to ICON and AAG.

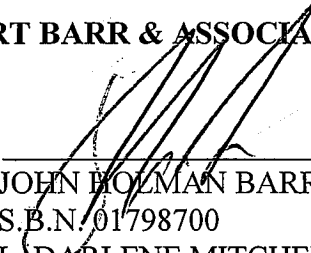
Prayer

WHEREFORE, PREMISES CONSIDERED, American Administrative Group, Inc. and ICON Benefit Administrators II, LP pray that ICON and AAG have judgment on its 1st Amended Petition, or any further amended or supplemental petition, for its actual and consequential damages, exemplary damages, prejudgment interest, post-judgment interest, attorneys fees, costs of court, to which ICON and AAG may show themselves to be justly entitled.

Respectfully submitted,

BURT BARR & ASSOCIATES, L.L.P.

By: _____


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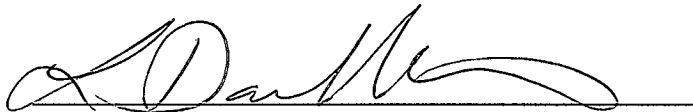
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**ATTORNEYS FOR ICON BENEFIT
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing American Administrative Group's First Amended Petition was served, pursuant to Rule 21a, Texas Rules of Civil Procedure, on all counsel of record on the 24th day of October, 2008.



L. Darlene Mitchell

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