

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

NEIL J. GILLESPIE

Plaintiff,

v.

Case No.:05-CA-007205

Division: C

BARKER, RODEMS & COOK, P.A.,  
a Florida Corporation; and  
WILLIAM J. COOK,

Defendant,

FILED  
JUL 12 10 13  
CLERK OF COURT

*Am*

**PLAINTIFF'S MOTION FOR REHEARING**

Plaintiff, NEIL J. GILLESPIE, files this Motion for Rehearing in accordance with Rule 1.530 of the Florida Rules of Civil Procedure, and alleges the following:

1. This action was heard on October 30, 2007, and July 1, 2008, and the resulting judgment was entered on July 7, 2008. A copy of the judgment is attached as Exhibit A and made a part of this Motion for all purposes.
2. Plaintiff moves for rehearing on the grounds that the Court's judgment was based on the Defendants' representations that there was a signed attorney fee agreement between Barker, Rodems & Cook and the Plaintiff.
3. Defendants have not produced a signed copy of the attorney fee agreement between Barker, Rodems & Cook and the Plaintiff.
4. Defendants have only produced a signed copy of the attorney fee agreement between Alpert, Barker, Rodems, Ferrentino & Cook and the Plaintiff. A copy of the fee agreement is attached as Exhibit B and made a part of this Motion for all purposes.
5. Defendant Cook signed the attorney fee agreement between Alpert,

Barker, Rodems, Ferrentino & Cook and the Plaintiff.

6. Defendants breached the attorney fee agreement by disregarding the provisions of the agreement and taking an amount of attorneys' fees that far exceeded the amount enumerated in said agreement.
7. The total recovery in the class action lawsuit was \$56,000.
8. Defendants took \$50,000 under the false assertion that this was the amount of court-awarded attorneys' fees.
9. In the attorney fee agreement, the Defendants were entitled to receive either court-awarded attorneys' fees, 33.334% of total recovery prior to the time an answer is filed or a demand for appointment of arbitrators is made, or 40% of the total recovery from the time of the filing of an answer or the demand for appointment of arbitrators through the entry of judgment. The law firm was entitled 5% of the total recovery after a notice of appeal is filed by any party or if post judgment relief or action is required for recovery on the judgment.
10. Defendants were actually entitled to \$31,325.46, which consists of the attorneys' fees, costs and expenses, and the expenses paid to the former law firm.
11. Defendants received \$18,675.54 more than they were entitled to.
12. Each plaintiff in the class action suit was entitled to \$8,224.78.
13. Plaintiff recovered only \$2,000.00 from the class action suit.
14. Plaintiff was damaged by this breach of the fee agreement in the amount of \$6,224.78.

15. Defendant Cook was the Plaintiff's lawyer individually.
16. The final judgment on Defendant Cook on the count of breach of contract is contrary to law because it was through Defendant Cook's actions in negotiating and representing the settlement, in which the law firm breached the attorney fee agreement.
17. The final judgment on the count of fraud is contrary to law in that the conduct of the Defendants in making false representations to the Plaintiff is not an act in performance of the fee agreement.
18. The final judgment on the count of fraud is contrary to law in that the Plaintiff's claim is not barred by the economic loss rule because the Defendants' fraudulent actions were independent of the Defendants' actions in breaching the contract.
19. Defendants breached the contract by receiving a greater percentage of the total recovery amount than they were entitled.
20. Defendants committed fraud outside of the scope of their legal representation and the attorney fee agreement by deceiving their client, the Plaintiff.
21. The scope of the Defendants' representation of the Plaintiff did not include deceiving their client with false representations about the terms of the settlement of the case.
22. The scope of the Defendants' representation of the Plaintiff did not include falsifying a closing statement to induce the Plaintiff to settle.
23. Plaintiff is entitled to a rehearing to decide the issues based on the signed

fee agreement that is to be produced by Defendants.

24. Plaintiff is entitled to a rehearing to decide the issues based on the conduct of making false representations to the Plaintiff.

25. Plaintiff is entitled to a rehearing to decide the issues based on the conduct of preparing a false closing statement.

WHEREFORE, Plaintiff, NEIL J. GILLESPIE, requests that the Court set aside the judgment entered on July 7, 2008, and grant a new hearing.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above PLAINTIFF'S MOTION FOR REHEARING has been sent by U.S. Mail to the following this 16<sup>th</sup> day of July, 2008.

Ryan C. Rodems, Esq.  
400 North Ashley Drive, Suite 2100  
Tampa, FL 33602

Law Office of Robert W. Bauer, P.A.

BY: Tanya M. Uhl  
Robert W. Bauer, Esq.  
Florida Bar No. 0011058  
Tanya M. Uhl Esq.  
Florida Bar No. 0052924  
2815 NW 13<sup>th</sup> Street, Suite 200E  
Gainesville, Florida  
Telephone: (352) 375-5960  
Fax: (352) 337-2518

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
GENERAL CIVIL DIVISION

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205

Division: C

BARKER, RODEMS & COOK, P.A.,  
a Florida corporation; and WILLIAM  
J. COOK,

Defendants.

FINAL JUDGMENT AS TO DEFENDANT COOK

THIS ACTION was heard on Defendants' Motion for Judgment on the Pleadings on  
Tuesday, October 30, 2007 and Tuesday, July 1, 2008, and

IT IS ADJUDGED that Plaintiff Neil J. Gillespie take nothing by this action against  
Defendant William J. Cook, whose address is 400 North Ashley Drive, Suite 2100, Tampa,  
Florida 33602, and that Defendant Cook go hence without day and recover costs from Plaintiff,  
the amount of which the Court shall retain jurisdiction to determine.

DONE AND ORDERED in Chambers this \_\_\_\_\_ day of July, 2008.

ORIGINAL SIGNED

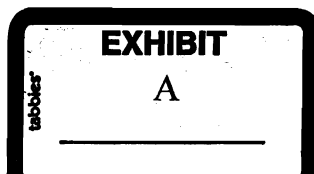
JUL 7 2008

JAMES M. BARTON, II  
CIRCUIT JUDGE

\_\_\_\_\_  
James M. Barton, II  
Circuit Judge

Copies to:

Robert W. Bauer, Esquire (Counsel for Plaintiff)  
Ryan Christopher Rodems, Esquire (Counsel for Defendants)



CLASS REPRESENTATION CONTRACT

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I. PURPOSE

I/We, Neil Gillespie  
do hereby retain and employ the law firm of Alpert, Barker, Rodems, Ferrentino & Cook, P.A., to investigate my potential claim resulting from My transaction  
ANSCOT  
and, if advisable, to pursue necessary litigation on my behalf.

I/We understand that I/we may be one of several plaintiff(s) or part of a class of plaintiff(s) represented by Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

II. COSTS AND EXPENSES

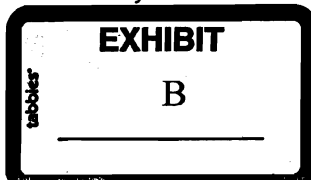
I/We hereby agree to pay for the costs and expenses of the investigation and preparation of my/our claims for damages. Should it be necessary to institute a lawsuit or arbitration proceeding, I/we agree to pay all costs and expenses associated with any Court or arbitration proceeding. If an appeal of any decision is filed, regardless of the person or party filing such appeal, I agree to pay the costs and expenses associated with initiating or responding to such appeal.

I/We authorize Alpert, Barker, Rodems, Ferrentino & Cook, P.A., to advance and pay any costs and expenses it deems appropriate to the handling of my case. I/We will pay Alpert, Barker, Rodems, Ferrentino & Cook, P.A., for the costs and expenses advanced out of the portion of any recovery remaining after attorneys' fees have been subtracted. I/We will then receive the portion of what remains, which is known as the "net recovery". Thus, the "total recovery" (all monies received or collected, including attorneys' fees, if awarded) less Alpert, Barker, Rodems, Ferrentino & Cook, P.A.'s attorneys' fees and any costs and expenses will equal the "net recovery".

I/We understand that my/our portion of the "net recovery" will be a prorated or per person share which will be proportional to that of all other class members. The amount of money I/we receive will be determined by dividing the "net recovery" (the amount of any recovery remaining after attorneys' fees and expenses have been subtracted) by the number of class members who are determined eligible to receive proceeds from any judgment or settlement. I/We understand that the Court or other tribunal may approve a different ratio or formula depending upon the circumstances.

If there is no recovery, or if the total recovery is not adequate to pay for all of the costs and expenses advanced, I/we understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will not seek payment from me for any expenses.

If I/we terminate this contract, then Alpert, Barker, Rodems, Ferrentino & Cook, P.A., may seek payment from me/us for any costs and expenses allowed by law.



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### III. ATTORNEYS' FEES

In almost all cases in America, each party to a lawsuit or arbitration proceeding pays its own attorneys' fees. In rare cases, the Defendant(s) may pay all or part of the attorneys' fees or the Court or arbitration panel may award attorneys' fees based upon a statute or otherwise.

I/We agree to pay Alpert, Barker, Rodems, Ferrentino & Cook, P.A., an attorneys' fee if it is successful in obtaining any monies or other benefit on my behalf. I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will receive the attorneys' fees awarded by a Court or arbitration panel or will receive the applicable percentage of the "total recovery" (all monies received from the Defendant(s) including, but not limited to, money for actual damages, punitive damages, interest, penalties, attorneys' fees and expenses), whichever is higher. The applicable percentages shall be as follows:

- A. 33.334% of the "total recovery" prior to the time that an answer is filed or a demand for appointment of arbitrator(s) is made; thereafter,
- B. 40% of the "total recovery" from the time of the filing of an answer or the demand for appointment of arbitrator(s), through the entry of a judgment;
- C. An additional 5% of the "total recovery" after a Notice of Appeal is filed by any person or party or if post-judgment relief or action is required for recovery on the judgment.

In the event that my/our claim is settled on terms of an agreement calling for payment in installments, whether monthly, annually or otherwise, in the future, my/our attorneys' contingent fee percentage shall be calculated on the costs of any structured settlement or, if the cost is unknown, on the present money value of the structured settlement. If both the damages and the attorneys' fees are to be paid out in future installments, this limitation shall not apply.

I/We understand that if there is no recovery, I/we will not be indebted to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., for any attorneys' fees.

If I/we terminate this contract, then Alpert, Barker, Rodems, Ferrentino & Cook, P.A., may seek payment from me/us for any attorneys' fees allowed by law.

**IV. ALPERT, BARKER, RODEMS, FERRENTINO & COOK, P.A. MAY  
WORK WITH OTHER LAWYERS ON MY CASE**

I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., in its discretion, may work with other lawyers on my/our case if deemed necessary. If Alpert, Barker, Rodems, Ferrentino & Cook, P.A., agrees to work with other lawyers on my/our case, I/we understand that the attorneys' fees I/we will have to pay will not increase. Other law firms or lawyers hired by Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will be paid out of the attorneys' fees agreed to in this contract and, if I/we so desire, I/we will be advised regarding how the attorneys' fees are divided.

**V. WHAT THIS CONTRACT COVERS**

**A. Scope of Representation**

At the time of signing this contract, I/we also signed a Statement of Client's Rights as well as an Acknowledgment regarding investigation of my claim. These three documents encompass the entire agreement between me/us and Alpert, Barker, Rodems, Ferrentino & Cook, P.A. These signed agreements take the place of any prior, oral or written agreements and may only be changed or modified by a separate, written agreement signed and dated by me/us and Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

This contract is to be interpreted in accordance with Florida law.

I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., has no duty to represent me/us in any matters other than my/our potential claim resulting from \_\_\_\_\_  
my transactions with AMSCOT

I/We understand that if Alpert, Barker, Rodems, Ferrentino & Cook, P.A., determines, at some later date, that my claim should not or cannot be reasonably prosecuted by the Firm, the Firm may notify me in writing of this decision and withdraw as my attorneys. Under such circumstances, I shall be responsible to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., only for any fees and costs permitted by law.

**B. Documents and Information**

I/we authorize the lawyers to utilize my/our documents and/or information in any regulatory, enforcement, or other proceedings of any kind as may be necessary in the lawyers' sole discretion.



**APPROVAL OF THIS CONTRACT**

The undersigned client(s) has/have, before signing this contract, received and read the Statement of Client's Rights and understands each of the rights set forth therein. The undersigned client(s) has/have signed the Statement and received a signed copy to refer to while being represented by the undersigned attorneys.

This contract may be cancelled by written notification to the attorneys at any time within three (3) business days of the date the contract was signed, as shown below, and if cancelled the client(s) shall not be obligated to pay any fees to the attorneys for the work performed during that time. If the attorneys have advanced funds to others in representation of the client(s), the attorneys are entitled to be reimbursed for such amounts as the attorneys have reasonably advanced on behalf of the client(s).

I/We have read this contract and any documents specifically referenced herein, and agree to all terms referenced within such documents.

DATED: 11/3/2000

DATED: 11-3-2000

William G. Cook of  
Alpert, Barker, Rodems,  
Ferrentino & Cook, P.A.  
Post Office Box 3270  
Tampa, Florida 33601-3270  
813/223-4131

Pat Frank  
Client  
  
\_\_\_\_\_  
Client

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH)  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 3rd DAY OF August 2010



PAT FRANK  
CLERK OF CIRCUIT COURT

BY Donna Healey C.C.