

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

KEITH MCFARLAND,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 03-433-MJR
BRYAN CAVE LLP, PAUL WEIL,)	
MARSHALL & STEVENS INCORPORATED,)	
CARL G. HOGAN, JR., BRIAN J. HOGAN, and)	
DAVID HOGAN,)	
)	
Defendants.)	
)	

SECOND AMENDED COMPLAINT

COUNT I

The Plaintiff, Keith McFarland, by and through his attorney, Daniel F. Goggin, for his complaint herein, alleges as follows:

NATURE OF ACTION

This is an action to recover damages sustained by the plaintiff caused by the fraudulent and tortious conduct of defendants, and to restrain defendants and their co-conspirators from engaging in fraud and other unlawful conduct in the future.

This action is brought pursuant to **18 U.S.C. § 1964(c)** regarding Racketeer Influenced and Corrupt Organizations, to correct unlawful practices by defendants herein, in committing and conspiring to commit violations of **18 U.S.C. § 1962** subsection (c), and whose actions in furtherance of those conspiracies injured plaintiff in his business and property.

In all relevant respects, defendants acted in concert with each other in order to further

their fraudulent scheme. Beginning not later than September, 2001, defendants, their various agents and employees, and their co-conspirators, form an “enterprise” (the “Enterprise” herein) as that term is defined in **18 U.S.C. § 1961(4)**. That Enterprise has functioned as an organized association-in-fact since 2001 to achieve its goal, through illegal means, of receiving illegal funds derived by falsifying both federal and state estate tax returns and avoiding the consequences of its actions. Each defendant has participated in the operation and management of the Enterprise, and has committed numerous acts to maintain and expand the Enterprise.

In order to avoid discovery of their fraudulent conduct and the possibility that they might be called to account for their conduct, defendants engaged in a scheme to ruin and discredit the plaintiff by making false and deceptive statements and concealing documents that they knew would have exposed their illegal conduct.

The effect of defendants’ fraudulent scheme and wrongful conduct continues to this day; defendants continue to enjoy the illegal funds obtained by their unlawful and tortious conduct and continue to conceal their activity from the authorities; and unless restrained by this Court, defendants are likely to continue their unlawful activities into the future.

I. JURISDICTION AND VENUE

Jurisdiction of this Court is invoked in part pursuant to **28 U.S.C. § 1331**. This action is authorized pursuant **18 U.S.C. § 1964(c)**, and is based on **18 U.S.C. § 1962(d)** conspiracies to violate **18 U.S.C. § 1962©**).

Plaintiff, Keith McFarland, resides at Greenville, Illinois, in the Southern District of Illinois. He was employed by the defendant, Marshall & Stevens Incorporation, for more than 15 years and much of his duties of employment with said defendant were executed in the

Southern District of Illinois. Plaintiff began his employment with Marshall & Stevens Incorporation at its Illinois office in Chicago, Illinois.

Defendant, Bryan Cave LLP, has law offices in Illinois and conducts much of its affairs in the Southern District of Illinois making said district appropriate for venue pursuant to **18 U.S.C. § 1965 (a)**.

Defendant, Marshall & Stevens Incorporated, has appraisal offices in Illinois and conducts much of its affairs in the Southern District of Illinois making said district appropriate for venue pursuant to **18 U.S.C. § 1965 (a)**.

II. PARTIES

Plaintiff, Keith McFarland is an individual citizen and protected by the laws of the United States.

At all relevant times the defendant, Bryan Cave LLP, has continuously been and is now a limited liability partnership doing business in the Southern District of Illinois. At all relevant times said defendant acted as a fiduciary for the Estate of Carl G. Hogan, Sr. At all times pertinent to this Complaint, said defendant individually and through its agents, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful and fraudulent conduct alleged herein, and has affected interstate commerce in the United States, including the Southern District of Illinois.

At all relevant times the defendant, Paul Weil, was an individual citizen acting as a fiduciary for the Estate of Carl G. Hogan, Sr, and as agent for the defendant, Bryan Cave LLP. At all times pertinent to this Complaint, said defendant individually and through his agents,

materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful and fraudulent conduct alleged herein, and has affected interstate commerce in the United States, including the Southern District of Illinois.

At all relevant times defendant, Marshall & Stevens Incorporation (M & S herein), has continuously been and is now a Missouri corporation doing business in the Southern District of Illinois. At times pertinent to this Complaint, said defendant individually and through its agents, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful and fraudulent conduct alleged herein, and has affected interstate commerce in the United States, including the Southern District of Illinois.

At all relevant times the defendant, Carl G. Hogan, Jr., was an individual citizen acting as a fiduciary for the Estate of Carl G. Hogan, Sr. At all times pertinent to this Complaint, said defendant individually and through his agents, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful and fraudulent conduct alleged herein, and has affected interstate commerce in the United States, including the Southern District of Illinois.

At all relevant times the defendant, Brian J. Hogan, was an individual citizen acting as a fiduciary for the Estate of Carl G. Hogan, Sr. At all times pertinent to this Complaint, said defendant individually and through his agents, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful and fraudulent conduct alleged herein, and has

affected interstate commerce in the United States, including the Southern District of Illinois.

At all relevant times the defendant, David Hogan, was an individual citizen acting as a fiduciary for the Estate of Carl G. Hogan, Sr. At all times pertinent to this Complaint, said defendant individually and through his agents, materially participated in the Enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other defendants in the unlawful and fraudulent conduct alleged herein, and has affected interstate commerce in the United States, including the Southern District of Illinois.

At all relevant times, each defendant was a “person” within the meaning of **18 U.S.C. § 1961(3)**, because each defendant was “capable of holding a legal or beneficial interest in property.”

III. STATEMENT OF CLAIM

A. The Formation of the Enterprise and the Nature of the Conspiracy

1. The Effect of Estate Taxes

For a person who died in the year 2001, the laws and regulations of the United States provides that any estate with a net value of more than \$675,000.00 shall incur an estate tax. The computation of the tax is determined by a schedule which varies according to the size of any particular estate.

For a person dying with an estate in 2001 worth \$100,000,000.00, the estate tax imposed on such an estate would roughly be \$9,230,650.00 on the first \$17,184,000.00 of the estate, plus 55% of amount from \$17,184,000.00 to \$100,000,000.00, or \$45,548,800.00, producing a total federal estate tax liability of \$54,779,450.00.

Many of the states of the United States impose separate and additional estate taxes. The

State of New Hampshire in 2001 imposed an 18% estate tax on transfers of property at death. If the same person in the above hypothetical died in New Hampshire in the year 2001, then a possible state inheritance tax liability of roughly \$18,000,000.00 might have been imposed under New Hampshire law.

Since the election of George W. Bush there have been many changes with respect to estate taxes, both at the federal and state level.

At the federal level, the estate tax will be phased out over a ten year period with its total elimination by year 2010.

Many states, like New Hampshire, have completely repealed their inheritance tax laws. An estate for a person dying after January 1, 2003, in New Hampshire will incur no estate tax liability for the assets transferred at death.

With gradual disappearance of the federal and state estate tax provisions there are those in the industry providing services to the computation of such taxes, such as lawyers, accountants and appraisers, who believe that is acceptable to falsify information relating to estate tax returns which under existing law would create large tax liabilities.

2. The Formation of the Initial Enterprise and the Nature of its Conspiracy

On or about January 14, 2001, Carl G. Hogan, Sr., passed away at his New Hampshire residence leaving behind a substantial sized estate.

The Estate of Carl G. Hogan, Sr., was probated in the Cheshire County Probate Court at Keene, New Hampshire. Defendants, Carl G. Hogan, Jr., Brian J. Hogan and David Hogan were the co-executors of said estate, herein referred to as the "Hogan Brothers".

The Hogan Brothers sought the counsel of Paul Weil for preparation and filing of Federal

Form 706, which is the Federal Estate Tax form used to report any such tax liability. Paul Weil at all times acted as the agent of Bryan Cave LLP, which is a law firm boasting more than 800 attorneys world wide.

In or around June of 2001, Paul Weil, Bryan Cave, through Weil, and the Hogan Brothers conspired to generate false state and federal estate tax returns for the Estate of Carl G. Hogan, Sr., by acquiring, inter alia, appraisals of estate assets containing false and fraudulent information and values. The conspiracy consisted of a scheme whereby Paul Weil and Bryan and Cave LLC, through Weil, would engage an appraisal firm for making certain appraisals of certain assets of the Estate of Carl G. Hogan, Sr. Weil and Bryan and Cave LLP, would then illegally and inappropriately interfere with the appraisal firm's ability to prepare accurate appraisals by providing said firm with false legal conclusions and information regarding matters affecting the values of certain assets. The scheme also provided that the Hogan Brothers would assist Paul Weil and Bryan Cave LLP in interfering with said appraisals by personally providing, or having the employees the Estate's companies provide agents of the appraisal firm false information about assets of the companies and/or the accounting records of said companies.

By forming the above said conspiracy, PAUL WEIL, BRYAN CAVE LLP, CARL G. HOGAN, JR., BRIAN J. HOGAN and DAVID HOGAN create and "Enterprise" whose fundamental goal was to illegally prepare and file federal and state estate tax returns. The Enterprise and conspiracy had the further purpose and scheme beyond the filing of such tax returns of misleading government officials and concealing information from them to prevent detection of their illegal activity. Included in the continuing scheme would be letters of opinion by Paul Weil and Bryan Cave LLP to the appraisal firm to make any decision of value reduction

by said firm look as if it were based on “strategy” by legal opinion, when in fact the underlying basis would be the illegal conduct of the attorneys. Further, it was contemplated that the issue of value might be litigated and that the Enterprise would have to take certain actions to continue to conceal from and deceive government officials as a result thereof.

3. Mashall and Stevens Incorporated Joins the Enterprise and Conspiracy

Soon after the initial Enterprise and conspiracy was made, the Enterprise retained Marshall & Stevens Incorporated to prepare appraisals of certain assets of the Estate of Carl G. Hogan, Sr.

The assets of the Estate of Carl G. Hogan, Sr., included, inter alia, the following businesses:

- a) Hogan Services, Inc.;
- b) Hogan Racing, LLC;
- c) Hogan Real Estate Development Partnership;
- d) Hogan Motor Leasing, Inc.; and
- e) C & M Service, Inc.

Marshall & Stevens Incorporated agreed for a certain fee to prepare appraisals on the above referenced businesses of the Hogan Estate. The preparation of the those appraisals is referred to herein as the “Hogan File”.

At the time the Hogan File began, the plaintiff, Keith McFarland, served as Appraisal Director in the St. Louis office of Marshall & Stevens Incorporated and his duties included reviewing reports by other appraisers in the office regarding the ethical and legal compliance of certain undertakings by the other appraisers in completing assignments. As such, the other appraisers would from time to time report to the plaintiff if he or she believed someone was attempting to procure a false or otherwise unethical determination of value in an appraisal.

Plaintiff was assigned to completing the appraisal of Hogan Real Estate Development Partnership. Other appraisers in his office were assigned work on the other four business listed above as being the Hogan File.

Prior to his issuing his first draft appraisal on or about July 23, 2001, the plaintiff received reports by the other appraisers working on the Hogan File that the attorneys (Paul Weil and others at Bryan Cave LLP) were asserting undue pressure on them to state false and fraudulent values in their appraisals. Undue pressure included false and misleading information being provided by said attorneys through telephone calls, emails, faxes, letters and in person conversations.

In early September the plaintiff received false communications by telephone from Paul Weil regarding a proposed bridge project which Weil believed would lower the value of the property for which the plaintiff was compiling an appraisal.

On or about July 23, 2001, the plaintiff submitted his draft appraisal of the Hogan Real Estate Development Partnership.

On or about September 3, 2001, the plaintiff was summoned to a conference room at M & S for a teleconference meeting with Paul Weil and some of the other appraisers working on the Hogan File. Present in the conference room were Ray Essma, a regional manager for M & S, and Steven Krekeler, senior appraiser at M & S., and Jared Renderer an associate appraiser at M & S. The conference was held with Paul Weil via speaker phone.

During said teleconference the Enterprise, through Paul Weil, attempted to influence the plaintiff's conclusions as to value by asserting false information regarding EPA issues involving certain real estate. The plaintiff opined that it would be illegal and unethical to use the suggested

reduction in value ordered by Weil based on hypothetical EPA issues. The plaintiff refused to modify his appraisal based on such information and refused to participate in the Enterprise at which time the Enterprise, through Paul Weil, through acts of extortion, threatened to ruin plaintiff's career and lively hood by emailing every law firm in the St. Louis area and seeing to it that he would never work as an appraiser again if he didn't join the Enterprise, all in violation of **18 U.S.C. § 1951.**

After said teleconference meeting, and based on information provided by Steven Krekeler and Jared Renderer, the plaintiff concluded that the entire Hogan File have been illegally influenced and that it would be a felony for his firm to provided final appraisals based on the illegally influenced values that had been generated.

On at least two occasions on or about September 3 or 4, 2001, the plaintiff personally telephoned M & S's CEO in Los Angeles, Mark Santasario, and advised him that the Enterprise was attempting to commit fraud and that M & S should withdraw from the project.

M & S thereafter renegotiated its fee with the Enterprise and agreed to participate in the Enterprise and conspiracy by providing false appraisal values for the purpose of federal and state estate tax returns.

M & S, as a new member of the Enterprise, opined with the other members of the conspiracy that the plaintiff had become a problem in that he would not participate in the fraud. It was believed that he might even alert government officials regarding the scheme. It was therefore agreed that the Plaintiff would be removed from working on the Hogan File and later terminated after sufficient time had passed. Further it was agreed that all prior draft appraisals and file documents at M & S would have to be destroyed for which M & S would have to

purchase a paper shredder.

On or about September 5, 2003, Paul Weil sent Steve Krekeler an email confirming that the two of them had agreed that M & S would provided sworn certification to Weil's office that all prior draft appraisals had been destroyed. A copy of said email is attached hereto as Exhibit "A".

On or about September 21, 2001, Merle Atkins, Appraisal Vice President at M & S, emailed Steve Krekeler a letter attaching the plaintiff's original draft appraisal as amended by Paul Weil. This communication by Atkins illustrates that once the plaintiff was removed from the Hogan File, Paul Weil coerced a signature of someone other than plaintiff which Merle Atkins clearly states is a felony. A copy of said email is attached hereto as Exhibit "B" (Attachments omitted).

In September of 2001, M & S clearly joined and became a member of the Enterprise and conspiracy. Throughout the course of the Enterprise and conspiracy and to the present day, defendants have engaged in illegal and fraudulent acts knowingly and intentionally with a common purpose.

B. Defendants' Liability For Violations of The Racketeer Influenced and Corrupt Organizations Statute

In violation of **18 U.S.C. § 1962(d)** defendants entered into conspiracies to violate **18 U.S.C. § 1962**, subparagraph ©), and did in fact violate and continue to violate said statute, as more specifically set out herein.

Defendants, BRYAN CAVE, LLP, PAUL WEIL, MARSHALL & STEVENS INCORPORATED, CARL G. HOGAN, JR., BRIAN J. HOGAN, and DAVID HOGAN, and others known and unknown, being persons employed by and associated with the Enterprise did

unlawfully, knowingly, and intentionally conduct and participate, directly and indirectly, in the conduct, management, and operation of the affairs of the aforementioned Enterprise, which was engaged in, and the activities of which affected interstate and foreign commerce, through a pattern of racketeering activity consisting of numerous acts of racketeering, indictable under various statutes as further set out below, all in violation of **18 U.S.C. § 1962(c)**.

The racketeering activity contemplated and conducted by the Enterprise pursuant to said conspiracy included but was not limited to the activity set out below.

Through said employment with M & S, Plaintiff learned that the defendants were attempting to file false federal and state estate tax returns by intentionally understating the asset appraisal values by tens of millions of dollars. Upon information and belief by the plaintiff, the defendants did in fact file false federal and state estate tax returns thereby defrauding the United States and the State of New Hampshire, and the defendants continue to defraud the United States and the State of New Hampshire by failing and refusing to make proper amendments to said returns or otherwise report the illegal activity. A copy of the Inventory of Fiduciary is attached hereto as an exhibit labeled "REF: 0536" through "REF: 0543".

The defendants, in violation of **18 U.S.C. § 1957**, sought to engage in monetary transactions involving criminally derived property in excess of \$10,000.00, by dispersing funds from the Estate of Carl G. Hogan, Sr., to certain legatees knowing that said funds would be illegally acquired or retained due to the filing of a false federal and state estate tax returns.

Plaintiff refused to participate in the Enterprise at which time the enterprise, through Paul Weil, through acts of extortion threatened to ruin plaintiff's career and lively hood by emailing every law firm in the St. Louis area and seeing to it that he would never work as an appraiser

again if he didn't join the tax fraud scheme, all in violation of **18 U.S.C. § 1951**.

Plaintiff refused to participate in deriving false value conclusions and refused to sign or affix his signature to said appraisal which effectuated him being removed from working on the Hogan File by the enterprise and then later being terminated from employment with Marshall & Stevens Incorporated.

The acts committed by defendants as set out in the preceding two paragraphs above were committed in furtherance of the conspiracy and as a necessary component of the alleged conspiracy.

_____ When the plaintiff refused to join conspiracy the defendants became concerned and worried, and believed the plaintiff would either tell law enforcement officials of the activity or would be asked by law enforcement officials about the illegal activity.

On or about September 5, 2001, after plaintiff had been removed from the Hogan File, the enterprise through Paul Weil and Marshall & Stevens Incorporated agreed to destroy all prior appraisal drafts in violation of **18 U.S.C. § 1510** knowing the plaintiff was either likely to tell law enforcement officials about the illegal activity or otherwise be questioned by law enforcement officials about such activity (Exhibit "A").

On or about September 24, 2001, the enterprise through Paul Weil modified plaintiff's original appraisal draft in violation **18 U.S.C. § 1510**, knowing the plaintiff was either likely to tell law enforcement officials about the illegal activity or otherwise be questioned by law enforcement officials about such activity. (Exhibit "B").

Contemplated in the conspiracy to violate **18 U.S.C. § 1962©)** was that the participants of the Enterprise would necessarily violate the **18 U.S.C. § 1341** mail fraud, and **18 U.S.C. § 1343**

wire fraud provisions of law by utilization of the United States Postal Service and telephone/email communications to facilitate the scheme.

From July of 2001 to July of 2002 the enterprise did in fact transmit dozens of letters, telephone calls and emails through either the U.S. Postal Service or wire communication in interstate commerce, for the purpose of executing their conspiracy.

The transmittals referenced in the above preceding paragraph included but are not limited those matters set out as follows:

a) On or about September 5, 2001, Defendant, attorney Paul Weil, emailed Steve Krekeler of Defendant, Marshall & Stevens Incorporated, a communication wherein said attorney confirmed in writing that they had agreed to destroy all prior appraisal drafts. (Exhibit "A", also labeled as "REF: 0012".)

b) On or about August 21, 2001, Defendant, attorney Paul Weil, emailed Steve Krekeler of Defendant, Marshall & Stevens Incorporated, a communication wherein said attorney dictates reduction of values to the appraisal firm. (A copy of said email is attached hereto as an exhibit labeled as pages "REF: 0001" through "REF: 0004".)

c) On or about August 23, 2001, Defendant, attorney Paul Weil, emailed Steve Krekeler of Defendant, Marshall & Stevens Incorporated, a communication wherein said attorney dictates reduction of values to the appraisal firm. (A copy of said email is attached hereto as an exhibit labeled as pages "REF: 0005" through "REF: 0008".)

d) On or about August 23, 2001, Defendant, attorney Paul Weil, emailed Steve Krekeler of Defendant, Marshall & Stevens Incorporated, a communication wherein said attorney suggests inappropriate reduction of values to the appraisal firm by way of said

attorney's accountant's notes. (A copy of said email is attached hereto as an exhibit labeled as pages "REF: 00015" through "REF: 00017".)

e) On or about August 23, 2001, Defendant, attorney Paul Weil, emailed Steve Krekeler of Defendant, Marshall & Stevens Incorporated, a communication wherein said attorney dictates reduction of values to the appraisal firm. (A copy of said email is attached hereto as an exhibit labeled as pages "REF: 0018" through "REF: 0020".)

f) On or about September 12, 2001, Defendant, attorney Paul Weil, emailed Steve Krekeler hypothetical information regarding the Mississippi River Bridge project. (A copy of said email is attached hereto as an exhibit labeled "REF: 0033" through "REF: 0034".)

g) On or about September 7, 2001, Paul Weil emailed Steve Krekeler hypothetical information about bridge project to influence value reduction. (A copy of said email is attached hereto as an exhibit labeled "REF: 0035" through "REF: 0036").

h) On or about September 7, 2001, Paul Weil emailed Steve Krekeler hypothetical information about environmental hazards to influence value reduction. (A copy of said email is attached hereto as an exhibit labeled "REF: 0038").

i) On or about September 4, 2001, Steve Krekeler faxed David Hogan outlines showing how both the Report and Model could be changed per the information provided by Weil and the Hogan Brothers. (A copy of said fax is attached hereto as an exhibit and labeled "REF: 0485 through "REF: 492").

j) On or about September 15, 2001, Paul Weil emailed Steve Krekeler information regarding real estate values. (A copy of said email is attached hereto as an exhibit labeled

“REF: 0497”).

Upon information and belief the plaintiff alleges that the defendants, in violation of **18 U.S.C. § 1957**, did in fact engage in monetary transactions in criminally derived property in excess of \$10,000.00, by dispersing funds from the Estate of Carl G. Hogan, Sr., to certain legatees knowing that said funds were be illegally acquired. Said transactions began soon after the death of Carl G. Hogan, Sr., and continue to the date hereof.

As a result of aforesaid conspiracy to commit unlawful acts and the unlawful acts committed by defendants, plaintiff has been damaged in his business and property.

IV. PRAYER FOR RELIEF

WHEREFORE, the plaintiff, as against the defendants, BRYAN CAVE LLP, PAUL WEIL, MARSHALL & STEVENS, INC., CARL G. HOGAN, JR., BRIAN J. HOGAN, and DAVID HOGAN, respectfully requests this Court to:

A. Grant a permanent injunction enjoining defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any unlawful activity which is the basis of this action.

B. Order defendants to make whole plaintiff by paying his loss of income and pre-judgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful racketeering activity.

C. Order defendants to make whole the plaintiff by providing compensation for past and future pecuniary losses from the unlawful racketeering activities described herein.

D. Order defendants to make whole the plaintiff by providing compensation for past and future nonpecuniary losses resulting from the unlawful activities described herein, in an amount

to be determined at trial.

E. Order defendants to pay the plaintiff triple damages as allowed by law.

F. Order defendants to pay the plaintiff punitive damages for their malicious and/or reckless conduct, in an amount to be determined at trial.

G. Grant such further and relief as the Court deems necessary and proper.

PLAINTIFF REQUESTS A TRIAL BY JURY.

COUNT II

_____TORTIOUS INTERFERENCE WITH CONTRACT

The Plaintiff, Keith McFarland, by and through his attorney, Daniel F. Goggin, for his complaint herein, alleges as follows:

_____NATURE OF ACTION

This action is also based on the common law of Illinois for tortuous interference with the contractual rights of the plaintiff.

I. JURISDICTION AND VENUE

Jurisdiction is invoked pursuant to **28 U.S.C. § 1367**. This action is predicated on the common law of Illinois and supplemental jurisdiction is necessary.

II. PARTIES

Plaintiff, Keith McFarland, by and through his attorney Daniel F.Goggin, realleges and incorporates by reference in this Count the allegations contained in Section II of Count I of this Complaint, as if fully set forth herein.

III. STATEMENT OF CLAIM

Plaintiff, Keith McFarland, by and through his attorney Daniel F.Goggin, realleges and

incorporates by reference in this Count the allegations contained in Count I of Section III of this Complaint, as if fully set forth herein.

At the time the conspiracy alleged herein was formulated the plaintiff had a contractual right of employment with the defendant, MARSHALL & STEVENS, INC.

The plaintiff had a reasonable expectation that his contractual right of employment with Marshall & Stevens, Inc., would continue.

The defendants, BRYAN CAVE, LLP, PAUL WEIL, CARL G. HOGAN, JR., BRIAN J. HOGAN and DAVID HOGAN (CAVE AND HOGAN herein), knew or should have known of the plaintiff's contractual right of employment with Marshall & Stevens, Inc.

CAVE and HOGAN tortiously interfered with the plaintiff's contract of employment with Marshall & Stevens, Inc., by convincing Marshall & Stevens, Inc., to alter the plaintiffs' job duties and ultimately terminating his employment.

CAVE and HOGAN effectuated the termination of plaintiff's employment with Marshall & Stevens, Inc., for their own benefit and profit as alleged herein in that with the plaintiff's departure it would be more likely that CAVE and HOGAN would succeed in defrauding the United States in tax fraud.

MARSHALL & STEVENS, INC., acquiesced in CAVE and HOGAN's influence over it with respect to the plaintiff's termination, despite the fiduciary duty it had to deal with the plaintiff in good faith.

MARSHALL & STEVENS, INC., otherwise converted its fiduciary duty owed to the plaintiff to its own benefit.

All of the defendants received a benefit from the tortious interference with the plaintiff's

employment right by sharing in the illegal revenue made possible by the plaintiff's termination.

The unlawful acts complained of above were committed willfully, intentionally and with callous and reckless disregard to the rights of plaintiffs.

IV. PRAYER FOR RELIEF

WHEREFORE, the plaintiff, as against the defendants, BRYAN CAVE LLP, PAUL WEIL, MARSHALL & STEVENS, INC., CARL G. HOGAN, JR., BRIAN J. HOGAN, and DAVID HOGAN, respectfully requests this Court to:

A. Grant a permanent injunction enjoining defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any unlawful activity which is the basis of this action.

B. Order defendants to make whole plaintiff by paying his loss of income and pre-judgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the tortious interference with the plaintiff's employment right.

C. Order defendants to make whole the plaintiff by providing compensation for past and future pecuniary losses from the wrongful activities described herein.

D. Order defendants to make whole the plaintiff by providing compensation for past and future nonpecuniary losses resulting from the unlawful activities described herein, in an amount to be determined at trial.

E. Order defendants to pay the plaintiff punitive damages for their malicious and/or reckless conduct as allowed by law, in an amount to be determined at trial.

F. Grant such further and relief as the Court deems necessary and proper.

PLAINTIFF REQUESTS A TRIAL BY JURY.

COUNT III

SLANDER OF CHARACTER

The Plaintiff, Keith McFarland, by and through his attorney, Daniel F. Goggin, for his complaint herein, alleges as follows:

NATURE OF ACTION

This action is based on the common law of Illinois for slander of character.

I. JURISDICTION AND VENUE

Jurisdiction is also invoked pursuant to **28 U.S.C. § 1367**. This action is predicated on the common law of Illinois and supplemental jurisdiction is necessary.

II. PARTIES

Plaintiff, Keith McFarland is an individual citizen and protected by the laws of the United States.

At all relevant times the defendant, Bryan Cave LLP, has continuously been and is now a limited liability partnership doing business in the Southern District of Illinois

At all relevant times the defendant, Paul Weil, was an individual citizen acting as a fiduciary for the Estate of Carl G. Hogan, Sr, and as agent for the defendant, Bryan Cave LLP.

At all relevant times the defendant, Carl G. Hogan, Jr., was an individual citizen acting as a fiduciary for the Estate of Carl G. Hogan, Sr.

At all relevant times the defendant, Brian J. Hogan, was an individual citizen acting as a fiduciary for the Estate of Carl G. Hogan, Sr.

At all relevant times the defendant, David Hogan, was an individual citizen acting as a fiduciary for the Estate of Carl G. Hogan, Sr.

III. STATEMENT OF CLAIM

Around or about June of 2001, Plaintiff, Keith McFarland, under the employ of Marshall & Stevens Incorporated (M & S herein) undertook an agreement with M & S whereby Plaintiff agreed to perform certain appraisal work and professional services for M & S.

M & S had been retained by the defendants, BRYAN CAVE LLP, PAUL WEIL, CARL G. HOGAN, JR., BRIAN J. HOGAN and DAVID HOGAN, to perform appraisals of assets belonging to the Estate of Carl G. Hogan, Sr.

Plaintiff, pursuant to said agreement and retention by the defendants, did perform said appraisal work and professional services, all of which was reasonable and complied with industry standards.

Despite the quality work and professionalism Plaintiff performed for the defendants, the defendants, through Paul Weil, repeatedly made communications to other parties that Plaintiff did not and cannot perform quality work.

Defendants have made such slanderous statements with malice and intent to injure Plaintiff's business and property.

Plaintiff has and will be damaged by Defendants' slanderous statements.

Plaintiff has had to retain an attorney to bring this action against Defendants for their slanderous conduct and Defendants should pay for such attorney.

IV. PRAYER FOR RELIEF

WHEREFORE, the plaintiff, as against the defendants, BRYAN CAVE LLP, PAUL WEIL, CARL G. HOGAN, JR., BRIAN J. HOGAN, and DAVID HOGAN, respectfully requests this Court to:

A. Grant a permanent injunction enjoining defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any unlawful activity which is the basis of this action.

B. Order defendants to make whole the plaintiff by paying his loss of income and pre-judgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the slanderous conduct by the defendants.

C. Order defendants to make whole the plaintiff by providing compensation for past and future pecuniary losses from the wrongful activities described herein.

D. Order defendants to make whole the plaintiff by providing compensation for past and future nonpecuniary losses resulting from the unlawful activities described herein, in an amount to be determined at trial.

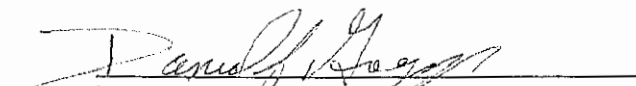
E. Order defendants to pay the plaintiff punitive damages for their malicious and/or reckless conduct as allowed by law, in an amount to be determined at trial.

F. Grant such further and relief as the Court deems necessary and proper.

PLAINTIFF REQUESTS A TRIAL BY JURY.

Respectfully submitted,

KEITH MCFARLAND



Daniel F. Goggin, his attorney

Attorney at Law

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Attorney # 06210814

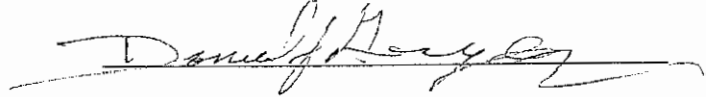
CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the following:

Russell Scott
Emily Singley
Attorneys at Law
12 Wolf Creek, Suite 100
Belleville, IL 62226

Robert Schultz, Jr.
Raymond Rose
103 W. Vandalia St., Suite 100
Edwardsville, IL 62025

by enclosing the same in an envelope addressed to such attorneys and by depositing said envelope in a U.S. Post Office box at Greenville, Illinois, on December 29, 2003.

A handwritten signature in cursive script, appearing to read "Daniel J. Heryan", written over a horizontal line.

Subj: Hogan Trucking
Date: 9/21/01 8:22:44 PM Central Daylight Time
From: Antman145@aol.com
To: Stkreker@aol.com
CC: kmcfarla@marshall-stevens.com
File: Hoganrevanf1.doc (247808 bytes) DL Time (TCP/IP): < 1 minute

Steve:

Attached is the report which contains the changes you noted by the attorney. I have made a couple of additions which are needed in yellow. Deleting the unusual considerations from the letter of transmittal is technically a violation of ethics and USPAP; however, I think we have presented them within the report so as not to hide them from the reader.

In response to my signing the report, *the attorney has a problem*. He is asking me to commit a crime which under most state licensing requirements is a felony. Thus, I will not be signing the report. If he wants me to sign, I will have to inspect the property, all the comps, etc. The fee for this at my rate of \$250 per hour will be about \$5,000 plus expenses. Keith did the appraisal and as the licensed appraiser in that jurisdiction needs to sign the report. I can sign as the reviewer. It is bad enough that the attorney has introduced hypothetical considerations into the report, now he wants to dictate who signs. If he has a problem with this, have him call me. My cell phone number is 215-280-6996.

Hopefully this will put an end to this since I have spent about a full day on it already.

Merle

----- Headers -----

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Subj: Hogan Built-in Gains Memo

Date: Tue, 21 Aug 2001 12:08:09 PM Eastern Daylight Time

From: "Weil, Paul" <ppweil@BryanCave.com>

To: "Steve Krekeler (E-mail)" <SKrekele@Marshall-Stevens.com>

CC: "Schaperkotter, John" <jdschaperkotter@BryanCave.com>

 s\$_g01!.DOC (19456 bytes)

8/21/01 11:05 AM

Steve,

Here is an electronic copy of the built-in gains memo.. I will bring hard copies of the cited cases for your files, together with the other materials I have assembled, when we meet this afternoon.

I think we will be looking for in your next draft, at a minimum:

(a) a 20% (combined fed/state) discount component for this factor alone, which clearly leaves you a 20%, or more, margin (24% + 2% (tax effected [39% x 6%]), in addition to,

(b) the discounts for lack of merger, sale or liquidation control (66 2/3% required) ("Extraordinary Events");

(c) a discount for the condition of the trucking industry generally (100,000 used trucks in the market place at D/D, or a 3 year supply, as evidenced by the FED Beige Book dated 1/17/01, the Business Journal Article and the other materials I will deliver to you;

(d) an EBITDA multiple of not in excess of 4 (rather than 5) before discounting for the generally declining business climate at D/D, as also evidenced by the Beige Book and the other materials you either have or we will have delivered to you. You will recall from our last meeting that the comparables EBITDA of 5 does not reflect the lower carrying cost of a Penske/GE Capital, Ryder or UHaul who use the market place to raise capital. That factor alone should discount the comparables EBITDA by 20%, or more, since HML's cost of funds is 40% or more of the comparable's cost of funds.

In short, your last draft may have overstated the value of HML by at least 30% or more.

In addition, the lack of control discount must be raised from 5% (which only reflects the expense of disposition) to reflect (b) above to effect the real lack of control for everything except day to day operations, or "management" as distinguished from "ownership" control of Extraordinary Events. As you know, the courts have accorded not less than a 20% discount for that factor alone. I will be delivering as part of your package, an explanation from current legal text of the voting percentages required for extraordinary

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http://aolmail.aol.com/mail.do?id=160

TO: weil, Paul
 Subject: Revised TTM amounts

Paul,

I asked Geri Zinn, the Director of Accounting for Hogan Motor Leasing, Inc., to review the amounts for the trailing-twelve-month ("TTM") income that was provided to Marshall & Stevens for use in their valuation report. She has done this and has determined that the TTM amount is overstated approximately \$300,000. Geri is going to call Steve at Marshall & Stevens.

Additionally, I have attached a calculation of the estimated adjustment to the deferred tax liability shown on the balance sheet at December 31, 2000, as we discussed.

Lou
 Louis W. Fields
 Conner Ash P.C.
 (314)205-2510
 Fax (314)205-2505

CONFIDENTIALITY NOTICE: This e-mail and any attachments may contain confidential information. If you are not the named recipient, please notify us immediately at <mailto:mail@connerash.com> and delete the message without disclosing the contents to anyone, using them for any purposes or storing or copying the information in any medium.
 <<deferred tax adjust.xls>> <<Mime.822>>

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 From: "Weil, Paul" <ppweil@BryanCave.com>
 To: "Steve Krekeler (E-mail)" <SKrekele@Marshall-Stevens.com>
 Cc: "Schaperkotter, John" <jdschaperkotter@BryanCave.com>
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HOGAN MOTOR LEASING, INC.
 ESTIMATED ADJUSTMENT TO THE
 DEFERRED INCOME TAX LIABILITY
 JANUARY 14, 2001

	Per Books	Adjustment	Estimated Revised Amount
Deferred tax assets:			
Net operating loss	\$ 6,442,309	\$ (6,000,000) (1)	\$ 442,309
Other	389,344		389,344
	<u>6,831,653</u>	<u>(6,000,000)</u>	<u>831,653</u>
Deferred tax liability:			
Difference between the net book value of equipment on a federal income tax basis and the appraised value.	17,595,809	1,687,764	19,283,573 (2)
Other	204,094		204,094
	<u>17,799,903</u>	<u>1,687,764</u>	<u>19,487,667</u>
Net deferred tax liability	<u>\$ 10,968,250</u>	<u>\$ 7,687,764</u>	<u>\$ 18,656,014</u>

Notes:

- (1) - Benefit would be reduced because of the change in ownership rules (assuming an unrelated buyer) that would significantly limit the ability to utilize these net operating loss carryover rules (estimate).
- (2) - Estimated built-in-gain amount as per previous calculation



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Subj: Market Value Approach Spreadsheet and Notes
 Date: Thu, 23 Aug 2001 6:08:17 PM Eastern Daylight Time
 From: "Weil, Paul" <ppweil@BryanCave.com>
 To: "Steve Krekeler (E-mail)" <SKrekele@Marshall-Stevens.com>
 CC: "Schaperkotter, John" <jdschaperkotter@BryanCave.com>

sfb03!.XLS (27136 bytes)

8/23/01 5:00 PM

Steve,

I have attached an Excel spreadsheet (written in version 95) which displays my calculations of value using your method, but with discounts for size, as well as, limited customer base and lack of merger/sale control.

Please note the following:

(1) Unless you can point out errors of omission in the construction of the spreadsheet, the subject company has a substantial negative, rather than positive value. Should you be unable to point out those errors/omissions, the issuance of another draft appraisal report which reaches a different conclusion could have substantial consequences. We, of course, look forward to your perusal of the attached and your instruction of our use of your method in a manner different than the spreadsheet displays.

(2) Please read the notes at the bottom of the spreadsheet first in order to understand both the points noted for the record and previously mentioned in meetings among you, the client, and their professional advisors and the method of spreadsheet construction and purpose.

(3) Columns D and E indicate a substantial negative, rather than positive, company value because they reflect, as we have previously discussed, several "off balance sheet" items. Your analysis method and any buyer/investor should and would make similar observations.

(4) Columns G and H reflect those reductions to the discounts to the EBITDA multiple necessary to produce any value.

(5) You have received by email other spreadsheets from Lou Fields of Conner Ash and from me which:

(a) compute built in gain and a legal memo from us which supports its deduction from value. Our spreadsheet reflects the deduction of its entire value, but note that if the that value were converted for presentation purposes into an EBITDA discount that discount would fall squarely in the middle of the range outlined in our memo, after added state taxes, namely 20-22% out of a range of 9-27%;

(b) compute the downward adjustments necessary to the

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deferred tax assets displayed on the balance sheet for deferred tax liability arising out of the loss of net operating loss carrybacks which are currently booked (\$6,000,000);

(c) display the upward adjustments necessary to deferred tax liabilities (\$1.7 million) for built in gain. Your balance sheet computation and your income computations appear not to have been in sync.

(c) trailing 12 month income overstatement of \$300,000.

(6) Positive working capital (\$4,980,000 in your 7/23/01 draft) should be the subject of further discussion, since we believe its use cannot be substantiated at any level in this instance.

I will be out of town tomorrow and back in the office on Monday AM. I will plan to call you then to discuss this email and the attached.

Paul

<<sfbd03!.XLS>>

-----Headers-----

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 From: "Weil, Paul" <ppweil@BryanCave.com>
 To: "Steve Krekeler (E-mail)" <SKrekele@Marshall-Stevens.com>
 Cc: "Schaperkotter, John" <jdschaperkotter@BryanCave.com>
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Hogan.MLValue1	Last Arch: 23 Aug 01 4:03 PM	23-Aug-01	11:52 PM	1326217 v3
See SHEET 2 for Trend Line Analysis				
SHEET 1: Hogan Motor Leasing Revised Appraisal Values				
	23-Jul-01			
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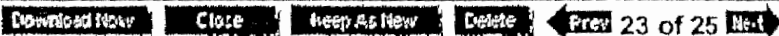
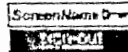
HoganMLValue1

Last Arch: 7 Aug 01 4:50 PM

23-Aug-01 11:52 PM 1326217 v 1

Trend Line Analysis

FYE	Total Assets	Standard Deviation	Growth		Equity	projected equity as % of total asset: Growth	
7/31/05	174,392,657	20,235,348	4.83%		17,254,622	9.89%	2.22%
7/31/04	166,354,939	17,518,274	5.96%		16,879,929	10.15%	2.38%
7/31/03	156,992,870	15,767,696	10.10%		16,486,942	10.50%	2.56%
7/31/02	142,588,190	24,004,706	10.06%		16,075,475	11.27%	2.75%
7/31/01	129,553,306	22,051,966	11.48%		15,645,452	12.08%	2.85%
12/31/00	116,207,794	21,883,881	-0.36%	-0.15%	15,196,920	13.08%	3.17%
7/31/00	116,631,038	16,742,364	15.85%	95.13%	14,730,072	12.63%	5.59%
7/31/99	100,670,134	7,926,058	27.51%	18.34%	13,949,893		16.78% 0.068749
7/31/98	78,949,135		16.55%	16.55%	11,945,020		15.47%
7/31/97	67,739,996				10,344,501		



Subj: HML Revised TTM amounts and Deferred Tax Liab
 Date: Thu, 23 Aug 2001 12:31:52 PM Eastern Daylight Time
 From: "Weil, Paul" <ppweil@BryanCave.com>
 To: "Steve Krekeler (E-mail)" <SKrekele@Marshall-Stevens.com>
 CC: "Schaperkotter, John" <jdschaperkotter@BryanCave.com>

[deferredtaxadjust.zip](#) (9085 bytes)

8/23/01 11:30 AM

Steve,

Here are Lou's note to me re: (1) Revised TTM amounts and (2) revised Fed Tax Liability comp which assumes, as you must, the loss of substantially all the NOL currently carried on the books as a deferred asset, for insert into your computations.

Also, and in addition, this will serve as a "heads up" that my first cut at the discounts to EBITDA multiple, which would include the following

	Size	
10%	Built in Gain	18%
	Limited Customer base	10%
	Lack of merger/sale control	10%
	Expense of Asset Disposition	1%

at very conservative percentages as a group produce a net EBITDA multiple of 2.55. Even if any one of the discounts is off by a point or two, the built in gain discount is way too conservative and would take up any slack, and then some. I have not yet made the successive (vs aggregate) discount computation, but will do so today. (I think the courts would approve any discount in this range, plus 5%).

Now that I have had more time to think about and study your computation, I am convinced that any EBITDA multiple above 3 is grossly in error. No buyer would pay that amount, essentially because there are, as you have now recognized, a significant number of off balance sheet "liabilities." In fact, were I counseling a buyer, I'm not sure I would pay very much for this company (since some of my computations show a negative value).

I will be out of town tomorrow, but will call you on Monday to see what progress has been made.

Paul

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-----Original Message-----

From: "Louis Fields" <lfields@connerash.com> REF: 0015
Sent: Wednesday, August 22, 2001 5:29 PM

veil, Paul
Subject: Revised TTM amounts

ed Geri Zinn, the Director of Accounting for Hogan Motor Leasing, Inc.,
view the amounts for the trailing-twelve-month ("TTM") income that was
ded to Marshall & Stevens for use in their valuation report. She has
this and has determined that the TTM amount is overstated approximately
.000. Geri is going to call Steve at Marshall & Stevens.

tionally, I have attached a calculation of the estimated adjustment to
ferred tax liability shown on the balance sheet at December 31, 2000,
e discussed.

s W. Fields
er Ash P.C.
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