



CUNNINGHAM BOUNDS, LLC

Founded in 1958

Gregory B. Breedlove*
Joseph M. Brown, Jr.*
Toby D. Brown*
David S. Cain, Jr.
Robert T. Cunningham*
George M. Denf, III
George W. Finkbohner, III*
Steven L. Nicholas
Stephen C. Olen
David G. Wirtes, Jr.

William E. Bonner
Bryan E. Comer**
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Robert L. Mitchell
Lucy E. Tuffs

Of Counsel

Richard Bounds
John T. Crowder, Jr.*

Robert T. Cunningham, Sr.
{1918-2001}

January 27, 2011

*(Certified as a Civil Trial Specialist by the *
National Board of Trial Advocacy)
(also admitted in Florida) ***

BY EMAIL

Mr. David A. Z. Brewer
Baldwin County Commission
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

Re: BP oil spill

Dear David:

Thank you for the opportunity to present a proposal to the Baldwin County Commission relating to representing the County in connection with its claims arising from the Deepwater Horizon catastrophe. In this proposal, we outline some of our experience that we believe is pertinent to selecting a law firm to represent the County in this action.

At the outset, I would like to emphasize that we are committed to vigorously prosecuting all matters that relate to the oil spill. As you may be aware, all of the cases filed in the United States federal courts have been centralized in New Orleans, Louisiana, and the case is being presided over by Judge Carl Barbier. Judge Barbier has appointed 15 attorneys to manage that litigation on behalf of all claimants. My partner, Robert T. Cunningham, has been appointed to that steering committee. In addition, other members of the firm are active in the prosecution of that litigation in various respects.

In addition to actively participating in the federal litigation, we are representing hundreds of clients who are participating in the claims process, and many of whom will be filing suit. We are fully staffed to address this case.

Litigation Experience

Cunningham Bounds believes that the best yardstick to measure any litigation firm's capability is success in the courtroom. Since 2003, Cunningham Bounds has had 6 verdicts listed in *VerdictSearch's* annual report of the top 100 verdicts in America. These verdicts include the No. 1 verdict in 2003, the \$11.9 billion jury verdict in *State of Alabama v. Exxon Corp.* where the firm represented the State of Alabama in seeking royalty underpayments from Exxon. In 2007, the firm obtained a \$108 million verdict in the environmental contamination case of *Dirt, Inc. v. Halliburton Energy Services, Inc., et al.*, in which the defendants illegally disposed of hazardous waste into a locally owned landfill. This was the 15th largest verdict listed that year.

Additionally, the firm has a national reputation in complex litigation, which constitutes a significant portion of the firm's overall practice. The firm has handled various complex litigation cases. For example, the firm obtained a \$192 million verdict in 2008 in *Mannsfeld v. Ineos Phenol GmbH & Co. KG, et al.* This case involved Dr. Mannsfeld's invention of a complicated chemical process which was misappropriated by the international company for which he had worked.

More recently, the firm successfully represented the Retirement Systems of Alabama as co-counsel in reaching class action settlements with UBS AG, UBS Warburg LLC and Ernst & Young LLP, totaling \$133.5 million for fraudulent statements and wrongful conduct in connection with HealthSouth's financial records. These settlements follow an earlier settlement with HealthSouth and its former outside directors of \$90 million for the bondholder class represented by Cunningham Bounds.

Cunningham Bounds was also lead counsel in a series of class actions representing over four million consumers which established a defect in certain hardboard siding primarily manufactured and sold by Masonite Corporation. After an initial trial against Masonite, those actions settled with a payout to class members in excess of \$1 billion.

Currently, the firm is involved in a number of complex cases, including:

- a. *The Mitchell Company, Inc. v. Knauf Gips, KG, et al.*, U.S. District Court, Eastern District of Louisiana, MDL-2047

This is a class action on behalf of all builders, developers, and contractors in Alabama, Mississippi, Louisiana, Georgia, Texas, and Florida who built houses or other improvements using defective Chinese drywall. The defective Chinese drywall contains a high amount of sulfur which chemically reacts with certain metals and renders various appliances useless. In addition, the homes often smell like rotten eggs due to the high amount of sulfur in the drywall. I serve as an appointed member of the Homebuilders Steering Committee in this multidistrict litigation. Class certification motions are pending in this matter.

- b. *Clark v. United States of America*, United States Court of Federal Claims, Case No. 00-644C

This is a nationwide class action on behalf of all members of the National Guard concerning compensation owed to Guard members for completion of mandatory correspondence course work. The United States Court of Appeals in Washington has ruled that compensation may be due to the National Guard members if they can establish that certain correspondence course training was mandatory. The case was remanded to the United States Court of Claims for further proceedings including class certification. Discovery has involved the production and review of thousands of pages of National Guard regulations, and related documents.

- c. *Spectrum Stores, Inc., et al. v. Citgo Petroleum Corp.*, CV-H-06-3569, U.S. District Court for the Southern District of Texas, Houston Division

Cunningham Bounds, along with several other law firms, represents the plaintiffs in an action filed against Citgo, which is 100% wholly owned by Venezuela, alleging that Citgo has conspired with the Organization of Petroleum Exporting Countries (OPEC) in such a way as to violate the antitrust laws of the United States.

Cunningham Bounds represents “jobbers,” the parties who purchase oil and refined oil directly and then sell these products to gas stations, etc. This case was dismissed by the trial court based on the “act of state” doctrine, and is currently on appeal to the Fifth Circuit Court of Appeals.

Specialized Experience

Cunningham Bounds has extensive experience in environmental law. As noted above, in 2007, the firm obtained a verdict in excess of \$100 million against Halliburton and others because of environmental damage caused by the illegal disposition of hazardous materials in Mobile County. Additionally, the firm currently represents a group of homeowners who are suing Weyerhaeuser Corp. and International Paper Company because of the contamination of their property through the industrial activities of these defendants. This lawsuit follows a settlement in excess of \$12 million for personal injuries caused by the industrial activities of these defendants.

Additionally, the firm has extensive litigation experience in the oil and gas field. Cunningham Bounds was selected by the State of Alabama to represent its interests in connection with lawsuits brought against the major oil companies for royalty underpayments to the State. These actions resulted in jury verdicts against each of the oil companies who did not settle, including the \$11.9 billion verdict brought against Exxon Mobil Corporation in 2003.

Finally, the firm has extensive experience in admiralty jurisdiction and its interrelationship with tort claims brought in this case. The firm has represented numerous tort claimants whose claims were impacted by admiralty jurisdiction. To assist the firm in resolving any issues relating to admiralty jurisdiction, former Magistrate Judge David Bagwell has been retained to assist the firm. Mr. Bagwell is a well-known admiralty expert and lecturer, and has written extensively on issues relating to admiralty jurisdiction.

The firm is well-versed in issues regarding the Oil Pollution Act of 1990, as well as the interrelationship between the OPA and admiralty law. The firm filed and argued the motion in the limitation proceeding filed by Transocean in the United States District Court for the Southern District of Texas in order to clarify the Court’s injunction that Transocean was not protected from

the filing of OPA claims by virtue of its limitation action. Cunningham Bounds successfully argued that position on May 25, 2007, resulting in a favorable amended order the next day.

As noted above, we are actively involved in the current litigation.

Governmental Clients

As noted above, the firm has recently represented both the State of Alabama and the Retirement Systems of Alabama in connection with complex litigation. Members of the firm have represented Baldwin County in connection with its cable franchising issues. Additionally, we currently represent the City of Orange Beach, the City of Fairhope, the Dauphin Island Park and Beach Board, and the Baldwin County School Board on their oil spill claims. We believe by representing each of these governmental entities we can create both the efficient use of experts and data, and create leverage in the negotiations with BP. While we understand each of our clients has different needs and issues, we believe a coordinated effort by the governmental entities presents advantages to the group.

Key Staff

The attorneys of Cunningham Bounds assuming primary responsibility of this matter are Robert T. Cunningham, Jr., Steve Nicholas, Steve Olen and Billy Bonner. Copies of the profiles of each of these attorneys are attached.

Our lawyers have been recognized in various publications for their excellence. The firm is continually ranked as a top litigation firm in publications such as *Chambers USA*, *America's Leading Lawyers for Business* and *Benchmark Litigation*. Nine of the firm's attorneys are listed as AV rated by *Martindale-Hubbell*, seven of the firm's attorneys are listed in *Best Lawyers in America*®, and eight of the firm's attorneys are listed in *Alabama's Super Lawyers*. In addition, our firm's attorneys participate at all levels of national, state and local civic and professional organizations, including the International Academy of Trial Lawyers, the International Society of Barristers, the American College of Trial Lawyers, the National Board of Trial Advocacy, the American Board of Trial

Advocates, the Litigation Counsel of America, the American Association for Justice, the Alabama Association for Justice, Public Justice, the Alabama Civil Justice Foundation, and the Inns of Court.

Expert Resources

It would be inappropriate for the firm to disclose the identity of experts who have been retained by the firm at the present time, because such disclosure might jeopardize the interests of our current clients. However, we can assure the County that our firm has the necessary contacts and financial resources to retain the caliber of experts necessary to assist us in our representation in this matter. Specifically, we have an agreement in principle to retain two renowned experts in the field of loss profit analysis and projection of future financial losses, an expert on marine economics and the impact of the spill on the economics relating to the Gulf Coast fishing industry, marine biologists and other experts regarding the long-term effect of the oil spill on the fishery and other natural resources.

We are also working with the other attorneys in the multidistrict litigation to obtain the best experts in each of the fields involved.

Financial Resources

Since the firm provides its services to all clients on a contingency fee basis, it is clear that the firm has substantial financial resources in order to operate in this manner. This fact was never clearer than in our firm's representation of the State of Alabama against ExxonMobil in which the firm tried the case and then had to retry the case years later. Our firm has the resources to litigate cases for years, if needed, until the necessary outcome is reached.

Fees

We would propose a contingency fee arrangement whereby we are paid 15% of any recovery which the County receives through the claims process and 25% of any recovery after litigation is

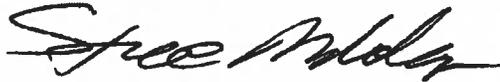
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filed. Alternatively, we would agree to represent the County on a straight 20% contingent fee basis regardless of how or when recovery was made. We would not expect to apply any contingency fee to the amount of BP's current offer.

Accessibility, Local Representation

Our firm is located at 1601 Dauphin Street, Mobile, Alabama 36604. Additionally, each of the attorneys employed at Cunningham Bounds lives in Baldwin County or Mobile County. Many of our attorneys live on or near Mobile Bay and are directly impacted by the damage to the local environment caused by this catastrophe. We are available to attend whatever meetings may be necessary to fully represent the County in this matter, including attending Commission meetings to update the County and citizens regarding our efforts.

With best regards,



Steven L. Nicholas
For the Firm

SLN.slh
Attachments


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Email: apc@cunninghambounds.com

Robert T. Cunningham graduated with honors from the University of South Alabama in 1973. He then attended the University of Florida receiving his Juris Doctorate with honors in 1975. During law school, he was Executive Editor of the University of Florida Law Review. He was admitted to the Alabama Bar in 1975 and has practiced with the law firm of Cunningham Bounds, LLC since that time.

Before entering college, Mr. Cunningham served his country in the United States Marine Corps from 1965 to 1970 as both an enlisted man and officer. During his service as a helicopter pilot, he flew over 300 combat missions in Vietnam, including participation in the Battle of Khe Sanh, before being seriously wounded during the 1968 Tet Offensive. After several months of hospitalization and rehabilitation in Japan, he returned to combat and flew another 200+ missions. Among his decorations are the Distinguished Flying Cross, Purple Heart, 29 Air Medals and the Combat Action Ribbon. He has served his local community as a member of the Board of Directors of the Mobile Metropolitan YMCA, the Gulf Coast Conservation Association and Leadership Mobile. He was a member of the first graduating class of Leadership Alabama and currently chairs the board of the Cunningham Family Charitable Foundation. He and his wife, Joanna, have been married for forty years and are the parents of two sons and a daughter and the grandparents of four boys and four girls.

Mr. Cunningham's areas of practice are complex litigation, environmental torts, class actions, personal injury, products liability, insurance fraud, bad faith, medical negligence, intellectual property, and admiralty and maritime law. He has represented plaintiffs in numerous cases resulting in record breaking verdicts in Alabama and nationwide. He led the firm's *pro bono* representation of the University of Alabama in its fight against the NCAA sanctioning of the Crimson Tide football team and was lead trial counsel in the State of Alabama's \$11.9 billion verdict against ExxonMobil for underpayment of royalties. ([NLJ, Feb. 9, 2004](#)) In October 2007, he was lead counsel for Dirt, Inc. in an environmental contamination trial resulting in a \$108 million jury verdict against Halliburton, Inc. ([NLJ, February 18, 2008](#)) In October 2008, he was co-lead counsel, with partner Skip Finkbohner, in an intellectual property trial representing inventor Dr. Peter Mannsfeld against German chemical company Ineos Phenol GmbH & Co. KG which resulted in a jury verdict of \$192 million.

Affiliations

Mr. Cunningham is certified as a Civil Trial Specialist by the National Board of Trial Advocacy and has been listed in the Best Lawyers in America since 1987 and in Alabama "Super Lawyers" since inception. In 2010 and 2009, Mr. Cunningham was named one of the top 10 attorneys in the state of Alabama by Super Lawyers magazine and was the only lawyer from Mobile to receive this honor ([see cover article](#)). Also in 2009, Best Lawyers in America® named him the "Mobile Best Lawyers Personal Injury Litigator of the Year." In 2010, 2008 and 2007, Mr. Cunningham was

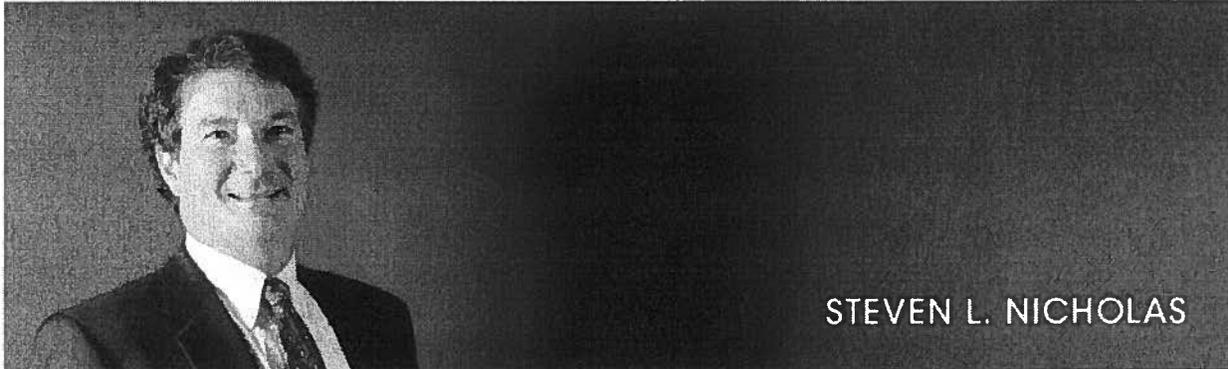
named one of the 500 "Leading Lawyers in America" by Lawdragon Magazine. In addition, he was listed in Lawdragon's top 500 "Leading Plaintiff Lawyers in America" in 2007 and among the top 500 "Leading Litigators in America" in 2006. Chambers USA 2009 lists Mr. Cunningham as one of the top lawyers in America in the area of Commercial Litigation.

In addition to practicing law, Mr. Cunningham's interests include flying and fishing. He is a 57 time IGFA World Record holder on light tackle and fly rod. He also holds the Louisiana state record for tarpon on fly.



The following language is required by Alabama Rules of Professional Conduct: "These recoveries and testimonials are not an indication of future results. Every case is different, and regardless of what friends, family, or other individuals may say about what a case is worth, each case must be evaluated on its own facts and circumstances as they apply to the law. The valuation of a case depends on the facts, the injuries, the jurisdiction, the venue, the witnesses, the parties, and the testimony, among other factors. Furthermore, no representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

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Email: bcc@cunninghambounds.com

Born in Mobile, Alabama on June 13, 1959, Steve Nicholas received his B.B.A. in 1981 from the University of Georgia and his J.D. in 1984 from the University of Alabama. During law school, Mr. Nicholas was a member of the Order of the Coif and a member of the Bench and Bar. He is the recipient of the Dean Leigh Harrison Award, the Corpus Juris Secundum Award and the American Jurisprudence Award, and is a Hugo Black Scholar. He was the Editor of the Alabama Law Review and author of "Recovery of Economic Damages Under Alabama's Extended Manufacturers Liability Doctrine," 35:2 Ala. L. Rev., 1984. He was admitted to the Alabama Bar in 1984.

Mr. Nicholas' practice focuses on commercial litigation, class actions, business torts, and construction litigation. Some noteworthy cases in which he served as lead or co-lead counsel include *Farley, et al. v. Residential Funding Corporation, Homeowners Loan Corp., Laredo National Bank, et al.*, a class action in which a \$10 million settlement was obtained for residential mortgage borrowers whose mortgage loans were processed in violation of TILA, HOEPA and/or RESPA (specifically, the case alleged that certain closing fees were inflated and should have been classified as finance charges under federal consumer protection laws); *Harbert International, Inc. v. Alabama Department of Transportation, et al.*, a \$7.3 million jury verdict was obtained for Harbert for delay damages and return of liquidated damages in connection with Harbert's completion of the Cochran bridge in Mobile, Alabama; and *Micro-comm, Inc. v. BellSouth Telecommunications, Inc., et al.*, a fraud suit in which an \$834,973.63 jury verdict was obtained against BellSouth for billing Micro-comm for records they never needed or used, and for not clearly identifying these charges in the billings.

Mr. Nicholas is married to Charlotte Adams Nicholas, and they have two children, Adam and Caroline. They reside in Mobile and attend Spring Hill Baptist Church. Mr. Nicholas has been active in coaching youth sports, including serving on the Board of Directors of the Matthews Park Athletic Association, as well as coaching and coordinating Upward Basketball at his church.

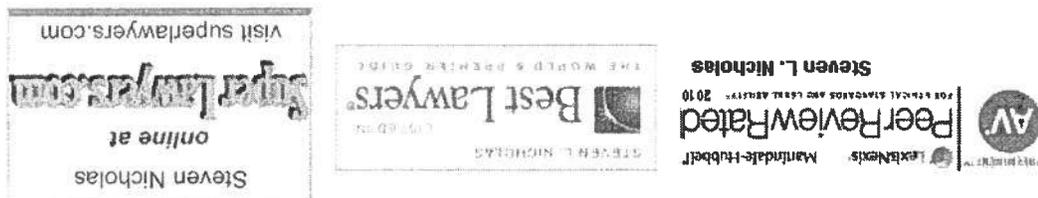
Affiliations

Mr. Nicholas is a member of the Mobile County and American Bar Associations and has served as Chairman of the Business Torts and Antitrust Section of the Alabama State Bar. He serves on the Executive Committee of the Alabama Association for Justice and on the Board of Governors of the American Association for Justice. He is also a member of the Mobile Chapter of Inns of Court.

Mr. Nicholas has been listed as one of the *Best Lawyers in America*® in the area of Commercial Litigation since 2008. In addition, he was selected for inclusion in *Super Lawyers* in 2008, 2009 and 2010 for the State of Alabama.

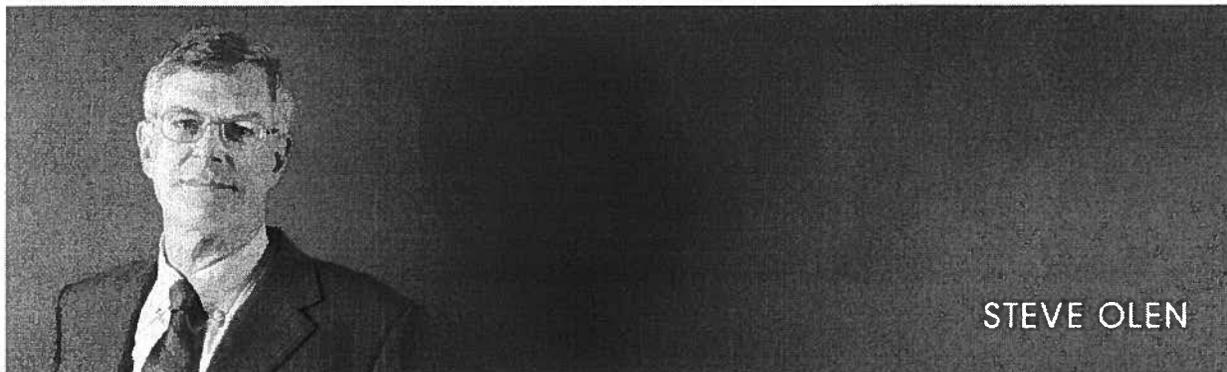
Resources:

- Steven L. Nicholas, Class Litigation and Arbitration.



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Steve Olen graduated from Princeton University in 1976 and received his Juris Doctorate summa cum laude from Cumberland School of Law of Samford University in 1979. During law school he was Editor-in-Chief of The American Journal of Trial Advocacy, a member of Cumberland Law Review, and winner of the Moot Court Competition. He was admitted to the Alabama Bar in 1979.

Mr. Olen's practice focuses on complex litigation, business litigation, class actions and bankruptcy litigation. He has been lead counsel in numerous multimillion dollar verdicts and settlements.

Mr. Olen resides in Mobile, is married to the former Sharon Simmons, and is the father of three children, Beth, Eric and Christopher.

Affiliations

Mr. Olen serves on the Executive Committee of the Alabama Association for Justice and the Executive Committee of the South Alabama Trial Lawyers Association. He is a member of the American Association for Justice, and is a past Treasurer, member of the Executive Committee and Chairman of the Civil Practice Committee of the Mobile Bar Association. Mr. Olen also serves on the Board of Directors of Alabama Appleseed, a nonprofit organization dedicated to improving social justice for all.

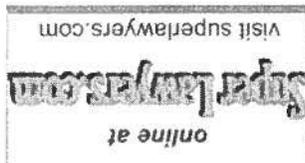
Mr. Olen has been listed in *Best Lawyers in America*® since 1999, and was named the "Mobile Bet-the-Company Litigator of the Year" for 2010. In addition, Mr. Olen was named one of the leading lawyers in the state of Alabama in the area of Business Litigation by *Super Lawyers* magazine (2009 and 2010).

Significant Verdicts and Settlements

- Mobile Register - \$1 Million verdict - [Woman awarded \\$1 million in suit](#)

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WILLIAM E. BONNER

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Billy Bonner was born and raised in Mobile, Alabama. Billy graduated cum laude from Spring Hill College in 2002, where he was also a member of the baseball team and was named an All-American in 2000 and 2002. Immediately after graduating from Spring Hill College, Billy enrolled in law school at the University of Alabama, where he graduated summa cum laude in 2005. During law school, Billy was inducted into the Order of the Coif, was a Hugo Black Scholar, and received the Dean M. Leigh Harrison award for academic excellence. He also served as a senior editor of the Alabama Law Review.

Billy's practice focuses primarily on complex litigation, business litigation, class actions, personal injury, products liability, admiralty, and maritime law. He has successfully tried cases to verdict on behalf of his clients in courts throughout Alabama.

Billy is married to Katie Barnett Bonner, a native of Mobile, Alabama. Together, they reside in Mobile, with their two children, Braxton and Lilly. In his spare time, Billy enjoys spending time with his family, hunting, and fishing.

Affiliations

Billy is a member of the Mobile Bar Association, the Alabama State Bar Association, the Mobile Volunteer Lawyer's Program, and the Southeastern Admiralty Law Institute. He served on the Board of Directors for the Southeastern Admiralty Law Institute in 2009.

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