

ORIGINAL

FILED IN CLERK'S OFFICE
U S D C Atlanta

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

OCT 21 2004

MARIETTA GOODMAN AND)
SHARRON MANGUM on behalf of)
themselves and all others similarly situated)
Plaintiffs,)

LUTHER D. THOMAS, Clerk
[Handwritten signature] Clerk

vs.)

CIVIL ACTION
FILE NO. 1.03-cv-3387-RWS

WILLIE E GARY, et al.,)
Defendants.)

AFFIDAVIT OF WILLIE E. GARY

State of Florida)

County of Martin)

PERSONALLY APPEARED before the undersigned officer, duly authorized to administer oaths in this State, Willie E. Gary, who, after first being duly sworn, deposed and stated from his personal knowledge, as follows:

1.

Affiant's name is Willie E. Gary. He is one of the above-named defendants in this action. He is a resident of Martin County, State of Florida

2.

Affiant is an attorney at law licensed in Florida since 1975. He graduated North Carolina Central University College of Law in 1974. Since then he has

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maintained a practice in trial law in Stuart, Florida. He is admitted to the bar of the U.S. District Court, Southern District of Florida. In the past five years, his practice has included litigation of claims of professional negligence, motor vehicle negligence, products liability, commercial law and employment discrimination

3.

Affiant is a shareholder in the defendant Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.L., ("his law firm"). F. Shields McManus and Tricia P. Hoffler are also shareholders in the defendant law firm. Mary Diaz and Jerome Stone were never shareholders in the defendant law firm.

4.

Affiant's opinions in this matter are based upon his education, training and experience, and on his personal knowledge as one of the attorneys representing Marietta Goodman and Sharron Mangum in their claims against the Coca-Cola Company filed in the Northern District of Georgia, respectively case numbers 1:00-cv-1774 (RWS) and 1:01-cv-2866 (RWS) ("plaintiffs' litigation").

5.

The Affiant, the other attorney defendants and the defendant law firm did undertake to represent the plaintiffs Goodman and Mangum in their claims and

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entered into written fee agreements.

6.

Affiant, his partners, his associates, and his law firm received no attorneys fees from plaintiffs and have not claimed any such fees are due and owing

7.

Affiant, his partners, his associates and his law firm advanced costs on behalf of plaintiffs in the course of representing them in plaintiffs' litigation. No reimbursement of costs advanced were made by or on behalf of plaintiffs.

Plaintiffs have not been billed for costs, and no amount of money is claimed to be due and owing from them.

8.

Affiant, his partners, his associates, and his law firm have not received any money or other thing of value, directly or indirectly, from any "illegal scheme" as alleged in plaintiffs' Complaint.

9.

No "illegal scheme" as alleged in plaintiffs' Complaint occurred.

10.

Defendant attorneys, their law firm, and MBC did not commit mail fraud,

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wire fraud, or money laundering.

11

Defendant attorneys, their law firm, and MBC did not scheme to cheat and defraud plaintiffs.

12

Affiant owns an interest in a non-party company which owns a majority of the stock in the corporation which is MBC

13

MBC does not own, operate, manage and/or control, directly or indirectly, the defendant law firm Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.L

14

The defendant Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.L., does not own, operate, manage, and/or control directly or indirectly, the defendant MBC.

15.

The Affiant did not conspire with the other defendants, or with other persons or other entities, to conduct any illegal racketeering enterprise or engage

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in a pattern of racketeering activity.

16.

The defendant attorneys and their law firm did not conspire with MBC, the Coca-Cola Company, or any other persons or entities to use, and did not use extortion, threats, intimidation or fear against plaintiffs at any time.

17.

The defendant attorneys and their law firm did not conspire to obstruct, did not obstruct, nor did they continue to obstruct justice, corruptly influence or threaten potential witnesses, conceal information improperly, or hinder or prevent communication with law enforcement.

18.

In the course of his representation of plaintiffs, the Affiant has not conspired to engage in, has not attempted to commit nor committed, nor solicited, nor attempted to coerce others to commit theft, securities fraud, mail fraud, wire fraud, money laundering, obstruction of justice, influencing witnesses improperly, tampering with evidence, or extortion, or any other criminal activity.

19.

Contrary to plaintiffs' allegations, there was never an agreement whereby

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defendant attorneys, their law firm, or MBC would receive \$40 million dollars, or any other sum of money, as part of a settlement package in exchange for plaintiffs' permanently dropping their claims against the Coca-Cola Company, and defendant attorneys agreeing never to pursue litigation against the Coca-Cola Company again in the future. Furthermore, plaintiffs did not drop their claims against the Coca-Cola Company, and defendant attorneys have continued to pursue litigation against the Coca-Cola Company after ceasing to represent the plaintiffs.

20.

Neither the Affiant, the other defendant attorneys, nor their law firm were retained by the Coca-Cola Company, or entered into any contract, agreement or arrangement with the Coca-Cola Company directly or indirectly, for their own pecuniary advantage

21.

The Affiant, the other attorney defendants, and his law firm did not enter into any agreement with anyone to receive any money or other thing of value, directly or indirectly, from the Coca-Cola Company.

22.

Neither Affiant, nor any of the defendant attorneys, have received any

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money or other thing of value from, or on behalf of, MBC or the Coca-Cola Company

23.

In the course of plaintiffs' litigation, Affiant and the other defendant attorneys did engage in settlement negotiations with attorneys representing the Coca-Cola Company.

24.

All offers to plaintiffs made on behalf of the Coca-Cola Company were accurately communicated to plaintiffs by telephone and in correspondence. The highest of such offers ever made was the same amount as the plaintiffs would have received from the class action settlement in *Ingram v. The Coca-Cola Company*, No. 98-cv-3679, U.S. District Court Northern District of Georgia. The Coca-Cola Company made this offer as early as May 2001 to Marietta Goodman and in January 2002 to Marietta Goodman and Sharron Mangum, and renewed it several times before reducing the offers as the litigation progressed into 2003, and withdrawing the offers as of September 30, 2003. Ms. Goodman was offered \$18,800.37 and Ms. Mangum was offered \$32,043.30. The total of all offers to defendant attorneys' seventeen (17) clients was \$846,561.45.

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25.

In conversations with plaintiffs individually, Affiant did advise plaintiffs of the risk of losing, but Affiant did not insist that plaintiffs permanently dismiss their claims against the Coca-Cola Company without receiving any compensation. Rather, Affiant advised plaintiffs of the settlement offers from the Coca-Cola Company, and, further, Affiant and all defendant attorneys offered to waive their right to attorneys' fees and costs.

26.

Plaintiffs declined the offers from the Coca-Cola Company to settle despite being advised by defendant attorneys that they should consider the offers. Plaintiffs had been advised of research about prior discrimination verdicts. Also Plaintiffs were advised of adverse outcomes in similar cases.

27

Defendant attorneys represented other persons in claims against the Coca-Cola Company and some of them did settle their claims. Due to those clients' attorney-client privileges, Affiant cannot give any details of communications with those clients. No fraud, unethical or illegal acts were committed by defendant attorneys in those representations.

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28.

In June 2000, the defendant attorneys filed a lawsuit against the Coca-Cola Company on behalf of Marietta Goodman and others in Fulton County, Georgia, Superior Court, which was removed to the U.S. District Court, Northern District of Georgia, Atlanta Division. Defendant attorneys engaged in discovery by sending requests for production and interrogatories to the Coca-Cola Company. As a result the Coca-Cola Company produced thousands of company records relating to personnel policies, individual employee personnel records, Ms. Goodman's complaints to the human resources department, and complaints to her managers and other records of the Coca-Cola Company.

29.

The defendant attorneys communicated with Marietta Goodman during the course of her litigation by letter, telephone and personal meetings.

30.

The defendant attorneys withdrew as attorneys for Ms Goodman at the conclusion of the action in the District Court in August 2003.

31

Marietta Goodman never voluntarily dismissed her lawsuit against the

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Coca-Cola Company while defendant attorneys represented her.

32.

In representing Sharron Mangum in Civil Action No 1:01-cv-2866 (RWS), Defendant attorneys required the Coca-Cola Company to produce documents numbering thousands of pages, scheduled depositions which were canceled to be rescheduled later, and performed all disclosures appropriate per Rule 26, Federal Rules of Civil Procedure, and the Local Rules of the Court. Before additional discovery could occur, Sharron Mangum discharged defendant attorneys on May 11, 2003 and their withdrawal was allowed by Order of July 15, 2003. Defendant attorneys then provided Ms Mangum with copies of her entire file including the Coca-Cola Company's substantial document production.

33.

The defendant attorneys communicated with Sharron Mangum during the course of her litigation by letter, telephone and personal meetings.

34.

In January 2003, at Ms. Mangum's request, supplemental claims were made against the Coca-Cola Company. Defendant attorneys chose to do this by filing a new lawsuit which was then consolidated with the existing lawsuit.

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35.

Based on his education, training and experience, Affiant is familiar with the degree of care, skill and diligence ordinarily exercised by attorneys and other members of the legal community generally in the handling of civil litigation in the federal courts of Georgia and elsewhere, as well as the procedural and substantive law associated therewith. Specifically, he is familiar with the standard of care required of attorneys in handling employment discrimination cases such as the litigation filed on behalf of Marietta Goodman and Sharron Mangum against the Coca-Cola Company, in the U. S. District Court of the Northern District of Georgia (“the plaintiffs’ litigation”).

36

Affiant has personal knowledge of all client communications, the pleadings, discovery, correspondence, attorneys’ work product, settlement discussions, and actual events that occurred in the plaintiffs’ litigation

37.

Based on his personal knowledge, as well as his education, training and experience as a trial lawyer, it is Affiant’s opinion that the law firm of Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.L., by and

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through its members, partners, associates, agents, employees and/or attorneys, including, but not limited to, F. Shields McManus, Tricia P. Hoffler, Mary Diaz, and Jerome Stone, as well as himself, did exercise that degree of care, skill and diligence ordinarily exercised by attorneys and members of the legal profession generally under the same or similar circumstances in handling the plaintiffs' litigation, and did not breach their contract or any fiduciary duty to plaintiffs.

38

Affiant's specific opinion is that the defendant Attorneys.

- A. Did inform plaintiffs of all settlement offers;
- B. Did use due diligence to pursue the proper objective plaintiffs' litigation in a reasonable manner;
- C. Did use reasonable knowledge, skill, ability and care ordinarily possessed and exercised by attorneys in the State of Georgia regarding settlement disputes;
- D. Did not fail to act in a spirit of loyalty, with the highest trust and confidence, toward plaintiffs;
- E. Did explain all matters to the extent reasonably necessary to permit plaintiffs to make informed decisions regarding their claims against

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the Coca-Cola Company;

- F. Did notify plaintiffs promptly of all settlement offers and the terms of all settlement offers;
- G Did not receive any settlement monies relating to the plaintiffs' cases,
- H. Did not enter into any impermissible conflict of interest relationships,
- I. Did not accept any compensation from the Coca-Cola Company for representing plaintiffs,
- J. Did not make an aggregate settlement of plaintiffs' claims;
- K. Did not make false statements or use egregious tactics to get plaintiffs to make decisions about their case;
- L. Did not acquire a proprietary interest in the plaintiffs claims against the Coca-Cola Company for their own pecuniary advantage;
- M Did not enter into a settlement agreement with the Coca-Cola Company restricting defendant attorneys' right to practice;
- N. Did not fail in other ways to comply with the standard of practice and care, the Canons of Ethics, the Rules of Professional Responsibility, or the ethical considerations applicable to attorneys in the State of Georgia, and

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O Did not commit any of the wrongful acts alleged in the Complaint.

39.

It is Affiant's opinion that it was more likely than not that a Summary Judgment would have been entered against Ms. Goodman given the facts testified to by Ms Goodman and the facts discovered in the litigation, despite the reasonable efforts of competent attorneys, so that it cannot be said that but for the acts or omissions of defendant attorneys, Ms. Goodman would have prevailed in her law suit

40.

It is Affiant's further opinion that the defendant attorneys did not harm the ability of Ms. Mangum to prevail on her lawsuit against the Coca-Cola Company, but that her claim will be determined by the facts of her case regardless of the defendant attorneys' previous representation of her..

41.

Neither the Affiant nor the other defendant attorneys entered in to any attorney/client relationship with the Coca-Cola Company.

42.

Neither the Affiant nor the other defendant attorneys duped any of their

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clients into releasing their claim against the Coca-Cola Company

43.

The defendant attorneys and their law firm did not receive any of the plaintiffs' money or other thing of value.

44.

No property, money, funds or other thing of value belonging to plaintiffs ever came into the possession or control of Affiant, the other defendant attorneys, or their law firm.

45.

Neither Affiant, the other defendant attorneys, nor their law firm had a conflict of interest in representation of plaintiffs and others against the Coca-Cola Company.

46

The defendant attorneys did disclose to plaintiffs that they were representing several claimants against the Coca-Cola Company, and discussed the advantages and disadvantages of common representation.

47.

Plaintiffs were fully advised of defendants' involvement with MBC and

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waived any possible conflict.

48.

The questions of conflict of interest because of his involvement with MBC was also widely reported in the Atlanta media and was the subject of a motion by class counsel in the Ingram v. Coca-Cola class action in June 2000

49.

Plaintiffs sought out representation by the defendant attorneys together with other persons and were well aware that several past and present employees of the Coca-Cola Company were being represented in individual claims by the defendant attorneys.

50.

Plaintiffs knowingly consented to defendant attorneys' representation of multiple claimants and engaged in meetings and telephone conferences jointly with other clients of defendant attorneys.

51.

While the Affiant and other defendant attorneys met jointly with plaintiffs and other clients on occasion, defendants took care not to disclose individual client's case facts, demands, and offers to any other client or third party. For this

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reason, letters from attorneys for the Coca-Cola Company were redacted before sending copies to individual clients.

52

There was no interference with the Affiant's or other defendant attorneys' independence of professional judgment or with the client-lawyer relationship. Each case was worked up separately and evaluated separately. All offers by the Coca-Cola Company were made as to individual claims and were communicated by defendant attorneys to the client individually.

53.

Under the circumstances of the employment discrimination claims being made against the Coca-Cola Company, Affiant had a reasonable good faith belief that the advantages of representation of multiple clients in their individual claims against the Coca-Cola Company clearly benefitted the clients more than any risk from such representation.

54

Defendant attorneys reasonably believed that no actual conflict of interest existed in their representing plaintiffs and others against the Coca-Cola Company.

55.

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No damage was caused to plaintiffs by defendant attorneys' representation of multiple claimants in their individual claims against the Coca-Cola Company.

56.

Affiant, the other defendant attorneys, and their law firm did not obtain any proprietary interest in plaintiffs' litigation other than the contingency fee agreement

57.

After discovery was obtained in each case, Affiant and the other defendant attorneys advised each plaintiff individually as to the attorneys' evaluation of each claim, recommending in both cases that plaintiffs accept the offer made by the Coca-Cola Company because each plaintiff's claim was unlikely to survive summary judgment

58.

Neither Affiant nor the other defendants ever misinformed plaintiffs about the course of the litigation or any offers made by the Coca-Cola Company. Plaintiffs were not informed that the Coca-Cola Company would be paying \$40 million dollars in exchange for plaintiffs' permanently releasing their claims against the Coca-Cola Company because no such offer or agreement ever existed,

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and defendants never received any money from the Coca-Cola Company.

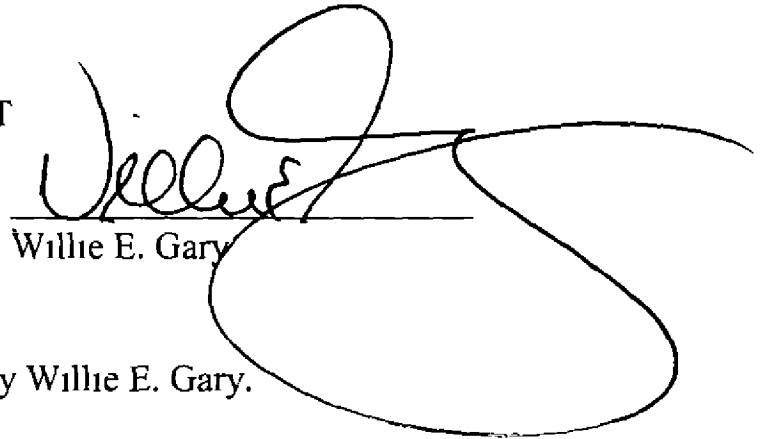
59.

At all times, Affiant and the other defendants have acted in good faith in defending themselves from the plaintiffs' allegations, all of which are false and without a scintilla of evidence to support them.

60.

It is not the purpose of this affidavit to set forth each and every fact or opinion I have

FURTHER AFFIANT SAYETH NOT


Willie E. Gary

Sworn to and subscribed before me
this 11th day of October, 2004 by Willie E. Gary.


NOTARY PUBLIC

My Commission Expires.



Shannon S. McCullough
MY COMMISSION # DD140828 EXPIRES
August 11, 2006
BONDED THRU TROY FA'N INSURANCE, INC.