

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

ERNESTINE ELLIOTT, individually :
and as Personal Representative of the :
Estate of KATRINA M. COOK, : Civil Action File No. 2019CV328802
: :
Plaintiff, :
: :
-against - : **COMPLAINT**
: :
GARY, WILLIAMS, PARENTI, :
WATSON AND GARY, P.L.L.C., :
FOREST B. JOHNSON AND :
ASSOCIATES, WILLIE E. GARY, :
CHANTHINA B. ABNEY, LERONNIE :
MASON, and RENEE Y. TUCKER, :
: :
Defendants. :
:

COMES NOW Plaintiff ERNESTINE ELLIOTT, individually, and as Personal Representative of the Estate of her daughter KATRINA M. COOK, who alleges as follows for her complaint against Defendants GARY, WILLIAMS, PARENTI, WATSON AND GARY, P.L.L.C. (the "Gary Firm"), FOREST B. JOHNSON AND ASSOCIATES (the "Johnson Firm"), WILLIE E. GARY, CHANTHINA B. ABNEY, LERRONIE MASON, and RENEE Y. TUCKER:

NATURE OF ACTION

1. This is a civil action for legal malpractice, fraud, conversion, civil theft, and bad faith to recover compensatory and punitive damages arising from Defendants representation of Ms. Elliott in wrongful death claims related to a March 14, 2014 automobile accident in which Ms. Elliott's daughter, Katrina M. Cook, was killed.

2. In particular, Defendants failed to bring two meritorious wrongful death claims on behalf of Ms. Cook's estate in a timely manner: (i) a products liability claim against the manufacturer of the car Ms. Cook was driving, a 2005 Nissan Infiniti, before the expiration of the

statute of repose and the statute of limitations; and (ii) a personal injury action against the owner and driver of a Freightliner tractor-trailer responsible for the accident, Schneider National Carrier, Inc. (“Schneider National”) and its employee-driver, Mr. Alhassane Dansoko.

3. In addition, Defendants Gary Firm and Willie Gary (the “Gary Defendants”) willfully converted a check for \$100,000 payable to Ms. Elliott in her individual capacity, forged her signature to cash that check, retained the entire \$100,000 for almost two years, and have retained over \$50,000 to date. Ms. Cook’s automobile insurer issued the check as a death benefit under the policy’s uninsured motorist insurance policy, which had nothing to do with the scope of Defendants’ retention. The Gary Defendants fraudulently induced Ms. Elliott to instruct the insurer to send the check to them, forged Ms. Elliott’s signature as an endorsement of the check, and then fraudulently misrepresented that the funds were proceeds of a wrongful death settlement.

THE PARTIES

4. Plaintiff Ernestine Elliott is a citizen of Georgia. She is the personal representative of the estate of her deceased daughter, Katrina M. Cook.

5. Defendant Gary, Williams, Parenti, Watson and Gary, P.L.L.C. (the “Gary Firm”) is a Florida professional limited liability company that maintains its principal place of business in Stuart, Florida and whose members are citizens of Florida.

6. Forest B. Johnson and Associates (the “Johnson Firm”) is a Georgia law firm, not registered with the Georgia Secretary of State, that maintains offices in this County at 1745 Martin Luther King Jr. Drive, Atlanta, Georgia 30314.

7. Defendant Willie E. Gary, the managing member of the Gary Law Firm, is a citizen of Florida and represented Plaintiff in the claims arising from Ms. Cook’s death.

8. Defendant Chanthina R. Abney is a citizen of Florida, a member of the Gary Firm

and represented Plaintiff in the claims arising from Ms. Cook's death.

9. Defendant LeRonnie Mason is a citizen of Florida, an attorney employed by the Gary Firm and represented Plaintiff in the claims arising from Ms. Cook's death.

10. Renee Y. Tucker is a citizen of Georgia, an attorney employed by the Johnson Firm and represented Plaintiff in the claims arising from Ms. Cook's death.

VENUE

11. Venue is proper in this County under O.C.G.A. § 9-10-93 because (i) this is an action against nonresidents over which this Court has personal jurisdiction pursuant to Article 4, Chapter 10 of the Official Code of Georgia; and (ii) a substantial part of the transactions and tortious acts giving rise to this action occurred in this County. Venue is also proper under O.C.G.A. § 9-10-30 because one of the Georgia defendants against whom substantial relief is prayed, Forest B. Johnson & Associates, resides in this County.

BACKGROUND

A. The Fatal Automobile Accident.

12. On March 10, 2014, the 2005 Nissan Infiniti G35 that Ms. Cook was driving burst into flames when a Freightliner tractor-trailer traveling north on the C.H. James Parkway in Cobb County crashed into the rear of Ms. Cook's Infiniti. Ms. Cook, who was the only occupant in her Infiniti, was trapped and died in the fire. The driver of the Freightliner owned and operated by Schneider National was uninjured.

13. The fatal crash was precipitated when two cars traveling south on the Parkway, a 1998 Mazda and a 2001 Toyota Tundra, collided, sending the Toyota across the center lane to hit Ms. Cook's north-traveling Infiniti. Because the Freightliner tractor-trailer was tailgating directly behind Ms. Cook's Infiniti and exceeding the speed limit, it could not stop before rear-ending the

Infiniti. Design defects in the Infiniti caused it to burst into flames upon impact. None of the drivers or occupants of the three other cars involved in the accident died and only the driver of the Mazda sustained any personal injuries.

B. Willie Gary Solicits Plaintiff to Retain Him and His Firm.

14. On March 11, 2014, the day after Ms. Cook's death, Willie Gary, a Florida lawyer based in Stuart, Florida, contacted Ms. Cook's mother, Plaintiff Ernestine Elliott, to solicit her to retain him and the Gary Firm to bring wrongful death claims on behalf of Ms. Cook's estate. On Saturday, March 15, 2014, Gary travelled to Georgia to meet personally with Ms. Elliott and Ms. Cook's father, Robert Elliott.

15. Although Ms. Cook's parents wanted to wait until after the funeral to discuss potential legal action, Gary insisted that he must be retained immediately to "preserve critical evidence." Gary represented he had obtained billion-dollar verdicts in similar cases and that he could obtain such a recovery for Ms. Cook's estate against the car manufacturer and the owner-operator of the Freightliner tractor-trailer.

16. Ms. Elliott believed Gary's representations and executed the retainer agreement annexed hereto as Exhibit 1 on or about March 15, 2014.

17. Despite Gary's insistence that immediate action was required to protect Ms. Elliott's rights, he and the other defendants did nothing to do so. On the contrary, Defendants took no action to preserve the wrecked Infiniti and other vehicles involved in the crash. As a result, that critical evidence was lost.

C. Defendants Fail to Commence an Action Against Nissan Prior to the Expiration of the Statute of Limitations and the Statute of Repose.

18. On May 24, 2016 -- over two years after Ms. Cook's March 10, 2014 accident --

the Gary Firm commenced a wrongful death action in the Superior Court of Cobb County against Nissan North America, Inc., *Ernestine Elliott, as Personal Representative of the Estate of Katrina Cook v. Nissan North America, Inc.*, Case No. 16-1-4096-99 (the “Nissan Action”). The Nissan Action asserted claims for strict liability, negligent design and failure to warn, and breach of implied warranties.

19. Nissan removed the action to the United States District Court for the Northern District of Georgia, where it was assigned Civil Action Number 1:16-cv-02400-LMM. Three lawyers with the Gary Firm appeared on behalf of Ms. Cook’s estate, Willie E. Gary, LeRonnie Mason, and Chanthina Abney. The Gary Firm retained Forest B. Johnson & Associates as Georgia counsel and one of its lawyers, Renee Y. Tucker, to appear on behalf of Ms. Elliott and Ms. Cook’s estate.

20. On April 20, 2017, Nissan moved for summary judgment on the grounds that (i) the claims seeking wrongful death damages were time barred under the two-year statute of limitations set forth in O.C.G.A. § 9-3-33; and (ii) the product liability claims were barred under Georgia’s ten-year statute set forth in O.C.G.A. § 51-1-11(c), which requires that such claims be brought no later than ten years after the first sale of the property alleged to have caused plaintiff’s injuries.

21. In this case, the first sale of Ms. Cook’s 2005 Infiniti G35 was on September 3, 2005, which required that any product liability claims be commenced on or before September 3, 2015. Here, Gary insisted that Ms. Elliott retain him only a few days after Ms. Cook’s death on March 10, 2014, which provided Defendants with almost 18 months to file product liability claims against the manufacturer. Defendants failed to do so, however, waiting until May 24, 2016 – more than eight months after the statute of repose expired.

22. Defendants did not oppose Nissan's motion for summary judgment. On May 16, 2017, the court granted the motion and entered judgment in favor of Nissan. On May 18, 2017, Defendants filed a motion for reconsideration, although the motion did not offer any meritorious defense to Nissan's motion for summary judgment. On May 27, 2017, the court granted the motion for reconsideration, but upon reconsideration, reaffirmed its decision granting summary judgment in favor of Nissan, holding that "Plaintiff's claims remain dismissed."

D. Defendants Fail to Commence an Action Against Schneider National Prior to the Expiration of the Statute of Limitations.

23. Defendants took no action to commence an action against Schneider National, the owner-operator of the Freightliner tractor-trailer that rear-ended Ms. Cook's Infiniti, or its employee driver, Mr. Alhassane Dansoko. The two-year statute of limitations for wrongful death claims expired on March 10, 2016, two years after Ms. Cook's death on March 10, 2014. Because the two-year statute of limitations for tort claims commenced on the date of Ms. Elliott's appointment as Ms. Cook's Personal Representative, September 26, 2014, the statute of limitations for torts expired on September 26, 2016.

24. Defendants never took any action against Schneider National or Mr. Dansoko.

E. Willie Gary and the Gary Firm Fraudulently Retain the Death Benefit under Ms. Cook's Uninsured Motorist Policy.

25. Ms. Cook had an automobile insurance policy issued by GEICO General Insurance Company that included a \$100,000 death benefit under the policy's uninsured motorist coverage. Shortly after the accident, a GEICO representative informed Ms. Elliott that Ms. Cook had named her as the policy beneficiary and that she was entitled to the death benefit because the driver of the Mazda that had commenced the multi-car accident was uninsured.

26. When Ms. Elliott mentioned that to Gary, he insisted that she direct GEICO to

send the \$100,000 check to him. He explained that as her lawyer, he would review all payments and issues relating to the accident, including the GEICO check for the \$100,000 death benefit, as a “courtesy” to Ms. Elliott. After receiving the check in or about April 2014, however, Gary or someone acting on his behalf cashed the check without authorization by forging Ms. Elliott’s signature as an endorsement on the check.

27. Gary thereafter stopped returning Ms. Elliott’s calls and generally became unavailable. On the few occasions Ms. Elliott managed to speak with Gary, he asserted that he was “getting close” and “waiting to hear from the courts.” He continued to promise that Ms. Elliott would obtain a “billion-dollar recovery” and that the death benefit was just the beginning.

28. Rather than work on the “billion-dollar” claims against Nissan and Schneider National, however, Defendants asserted a claim for the \$25,000 policy limits under the insurance policy of the Mazda’s owner. While the driver of the Mazda was uninsured because her license had expired, the owner, who was the driver’s mother, had an insurance policy. Like Ms. Cook’s policy, that policy was also issued by GEICO.

29. In May 2016, GEICO agreed to tender the \$25,000 policy limits under the Mazda owner’s policy. Defendants then sent Ms. Elliott a “Closing Statement” that incorrectly showed the total amount of the settlement with “GEICO” as \$125,000. Gary had fraudulently added the \$100,000 death benefit under Ms. Cook’s GEICO policy to the \$25,000 settlement under the Mazda GEICO policy, even though the \$100,000 death benefit had nothing to do with the Mazda GEICO policy or the \$25,000 settlement under that policy.

30. The Closing Statement, which is annexed hereto as Exhibit 2, deducts \$56,000 as contingency fees even though the entire settlement that Defendants negotiated under the Mazda owner’s policy was only \$25,000. The Closing Statement also deducts over \$12,357.21 in other

purported “expenses” and charges, leaving Ms. Elliott with a balance of only \$62,642.79, which she received in June 2016. Before Gary defrauded Ms. Elliott into directing GEICO to send the death benefit check to him, however, GEICO was willing to send the entire \$100,000 death benefit directly to Ms. Elliott in 2014, two years before she received approximately 60% of that amount from Gary.

F. Defendants Conceal Their Misconduct.

31. The final order in the Nissan Action, which reaffirms the court’s summary judgment in favor of Nissan, was filed on May 30, 2017. Defendants did not inform Ms. Elliott that the Nissan Action had been dismissed, however, until over a year and a half later, in January 2019. On the contrary, Defendants failed to advise Ms. Elliott of any developments in the Nissan Action and Willie Gary fraudulently advised her that Defendants had commenced an action against Schneider National when, in fact, no such action had been commenced.

32. By mid-2017, however, Ms. Elliott was increasingly concerned that Defendants were not providing her with any information about the status of her claims. Gary and the other Defendants were not returning her calls. Starting in early 2016, Ms. Elliott repeatedly attempted to contact Willie Gary and/or LeRonnie Mason, but they ignored her calls and messages. She left messages for them to send her the case so she could verify for herself the status of the cases, but they did not respond to her messages or send the files.

33. Finally, on January 17, 2019, Gary Firm lawyer LeRonnie Mason telephoned Ms. Elliott and advised her that the Nissan Action had been dismissed due to the expiration of the statute of repose. She subsequently received a letter dated January 17, 2019 from Mr. Mason, which is annexed hereto as Exhibit 3, stating:

[T]he Court granted the motion for Summary Judgement filed by Nissan

North America based on the Statute of Repose. As such we were unable to appeal this issue as the Statute of Repose is not appealable and therefore had no alternative but to close our file.

This letter will also confirm our conversation this morning where I told you we were in the process of retrieving your file from our storage facility. As I explained this could take a couple of weeks as we have thousands of files in storage. In the interim, I will be forwarding to you a complete copy of your file on a computer disc within the next few days.

34. While Mr. Mason asserted that he had sent a prior letter on November 17, 2017, Ms. Elliott never received such a letter. Nor has she received her case files, either in electronic or physical form, despite Mr. Mason's promise to send them to her.

G. The Gary Firm's Pattern and Practice of Missing Deadlines and Defrauding Clients.

35. Ms. Elliott's meritorious claims against the parties responsible for her daughter's tragic death are not the first claims that the Gary Firm and its lawyers have lost due to missed deadlines. On the contrary, the Gary Firm and its lawyers maintain no coherent system to keep track of the expiration of statutes of limitations and other deadlines imposed by court rules or orders. A series of lost cases, each one of critical importance to the Gary Firm's client, due to the Gary Firm's inability to keep track of or comply with deadlines, establishes that the circumstances of the loss of Ms. Elliott's claims exhibit an entire want of care and an indifference to consequences sufficient to warrant an award of punitive damages.

36. The irony of the Gary Firm's gross incompetence is that it is one of the most financially successful plaintiffs' firms in the country. The firm's founding and managing partner, Willie Gary, describes himself as the "Giant Killer" because of his track record of winning multimillion-dollar verdicts against some of the largest and most powerful companies in the world.

37. Yet the Gary Firm has repeatedly been accused by former clients of malpractice, fraud, and other misconduct. In 2003, for example, a group of former clients sued the Gary Firm for fraud and breach of fiduciary duty, alleging that Gary had defrauded them out of \$51.5 million in a settlement of an employee gender discrimination lawsuit. The former clients alleged that although Gary concealed the actual settlement amount from them, Gary's local Michigan counsel inadvertently disclosed a spreadsheet setting forth the actual settlement amount to one of the clients. The clients then sued Gary for fraudulently stealing \$51.5 million of the settlement. *See Kubik, et al, v. Willie Gary, et al.*, 03-cv-73350 (E.D. Mich.) (the "Kubik Action").

38. Gary defended against the Michigan allegations by asserting that they were implausible, *i.e.*, that a successful law firm such as the Gary Firm would never defraud its clients. After examining some of Gary's emails *in camera*, however, the Michigan court granted the plaintiffs' motion to compel, finding:

There is probable cause to believe that a fraud has been attempted or committed and that the [allegedly privileged] communications at issue were made in furtherance of it.

Opinion and Order Granting Plaintiffs' Motion for Order Compelling Discovery dated February 17, 2005, *Kubik v. Willie Gary, et al.*, Civil Action No. 03-CV-73350-DT (E.D. Mich.) at 9 (emphasis added).

39. The Michigan court also determined that the Gary Firm may regularly engage in fraud against its clients and that otherwise privileged emails had to be produced under the crime/fraud exception to the attorney-client privilege:

[The Gary Firm] may have used a common fraudulent settlement agreement scheme in a variety of cases, and that discussions [among the Gary Lawyers] about the prospective structure of this scheme may have involved advice in furtherance of fraud.

Id. at 8 (emphasis added).

40. The Gary Firm has also repeatedly lost meritorious cases due to gross negligence in missing deadlines and failing to comply with basic court rules and procedures – conduct that is difficult to explain considering the firm’s track record of success and the qualifications and experience of the firm’s lawyers. In a potentially landmark race discrimination case brought against the entertainment industry, for example, the Gary Firm failed to obtain racially derogatory emails sent by the defendants’ employees. After the Gary Firm retained a specialized e-discovery firm to review emails produced by defendants William Morris and Creative Artists Agency, the e-discovery firm produced a memorandum identifying hundreds of emails containing racially derogatory terms. The Gary Firm never bothered to obtain the racially derogatory emails, however, and instead allowed the e-discovery firm to return them to the defendants. A federal district court judge reviewing the facts of that case concluded,

It is inexplicable why the Gary Firm failed to obtain the actual underlying emails [identified on the e-discovery memorandum].

Rowe v. Gary, et al., 181 F. Supp. 3d 1161, 1192 (N.D. Ga. 2016) (the “*Rowe* Action”).

41. Between 2014 and 2016, the two years in which Defendants were allowing Ms. Elliott’s claims to languish and become time-barred, the Gary Firm and its lawyers lost several other cases due to missed deadlines and failure to comply with court orders. In 2014, for example, Ms. Zella Darleen Teague retained Gary to bring a wrongful death case against the tobacco industry when her husband, a life-long smoker, died of lung cancer. Gary waited until June 24, 2016 – three days after the statute of limitations expired – before filing the complaint. Although the case proceeded because Gary had filed a “civil cover sheet” shortly before the statute expired, it was ultimately dismissed because Gary and his firm repeatedly missed court

deadlines, failed to disclose mandatory experts, and failed to offer any coherent explanation for their misconduct. The court explained why it could not grant the Gary Firm's motion to excuse its repeated defaults:

There is a procedure in place. *There are rules of the court [that] must be complied with . . . or else cases will just run amuck, and the justice system really will fall, and no one will benefit from that.*

So when the Court takes the totality of the circumstances under consideration . . . *the [applicable] factors do weigh against finding excusable neglect in this instance;* and with no excusable neglect, the plaintiff's motion to modify and extend the deadlines is denied.

(emphasis added).

42. During Gary's disastrous prosecution of the *Teague* case, Gary and the same lawyers working on *Teague* also represented Ms. Geneva Cook-Gervais in a similar wrongful death case against the tobacco industry. The pre-trial deadlines in the *Cook-Gervais* case were approximately two months after the deadlines in *Teague*. Thus, even though the Gary lawyers had notice of their failure to comply with the *Teague* deadlines, including the *Teague* court's admonition quoted above, they did nothing to attempt to comply with the *Cook-Gervais* deadline. When the tobacco defendants filed a motion for summary judgment based on the Gary Firm's failure to disclose mandatory experts, the Gary lawyers told Ms. Cook-Gervais that she had no choice but to accept a "nuisance value" settlement of \$50,000 to avoid outright dismissal of her case. Like Ms. Elliott and Ms. *Teague*, Ms. Cook-Gervais had been solicited by Gary's promises that her claim would result in a "billion-dollar recovery."

43. In 2015, before losing the *Teague* and *Cook-Gervais* cases, the Gary Firm lost other meritorious cases due to its repeated failure to comply with court orders and deadlines. On August 25, 2015, for example, a Florida state court dismissed three cases based on a finding that the Gary

Firm had failed to comply with multiple court-imposed deadlines and engaged in a “contumacious disregard of the Court’s authority.” At a hearing on that date, Judge Roby of Florida’s 19th Judicial Circuit found that the firm had repeatedly failed to comply with his orders, holding:

The Court further finds that this is a contumacious disregard of the Court’s authority, that had there been an issue relating to need, being an extension of the order, the plaintiff could have very well filed a motion to that effect and waiting until today and coming up with what the Court finds to be specious arguments are inappropriate, and this matter is dismissed.

(emphasis added).

44. The August 25, 2015 date of that hearing was still well within the two-year statute of limitations governing Ms. Elliott’s claims. Had the Gary Firm and its lawyers decided to implement a general review of applicable deadlines in its cases at that time, there was still more than six months to file timely actions on behalf of Ms. Elliott and Ms. Cook’s estate. The Gary Firm’s failure to do so reflects a level of gross negligence and reckless indifference to consequences that mandates the imposition of punitive damages.

**FIRST CLAIM FOR RELIEF
(Legal Malpractice, Breach of Contract, Breach of Fiduciary Duty)**

45. Plaintiff Ms. Elliott, individually and on behalf of Ms. Cook’s estate, repeats the allegations set forth in paragraphs 1 through 44, as though fully set forth herein.

46. On or about March 15, 2014, Ms. Elliott entered into the Retainer Agreement with the Gary Firm annexed hereto as Exhibit 1 (the “Retainer Agreement”).

47. Under the Retainer Agreement, Ms. Elliott entrusted the Gary Firm, its lawyers, and the local Georgia counsel they retained, Forest B. Johnson & Associates, with representing her interests in prosecuting claims arising from Ms. Cook’s death, including claims against Nissan and Schneider National.

48. Under the Retainer Agreement, the Gary Firm, Willie E. Gary, Chanthina Abney and LeRonnie Mason (collectively, with the Gary Firm, the “Gary Lawyers”) agreed to represent Ms. Elliott in prosecuting such claims.

49. Upon information and belief, Defendants Forest B. Johnson & Associates and Renee Y. Tucker (the “Johnson Lawyers”) entered into an agreement (the “Johnson Agreement”) under which they agreed to represent Ms. Elliott in prosecuting such claims.

50. The Retainer Agreement gave rise to an attorney-client relationship between Ms. Elliott, as client, and the Gary Lawyers, as attorneys, which existed from March 11, 2014 through January 17, 2019.

51. The Johnson Agreement gave rise to an attorney-client relationship between Ms. Elliott, as client, and the Johnson Lawyers, as attorneys, which existed from the date of the Johnson Agreement through January 17, 2019.

52. Defendants owed a duty under the Retainer Agreement and the Johnson Agreement to represent Ms. Elliott with ordinary care, skill, and diligence in accordance with the accepted standards of professional service and competence expected of lawyers representing clients in Georgia wrongful death cases.

53. Defendants breached their duty under the Retainer Agreement and the Johnson Agreement by failing to exercise the ordinary care, skill, and diligence in accordance with the accepted standards of professional service and competence expected of lawyers representing clients in Georgia wrongful death cases.

54. Defendants owed a fiduciary duty under the Retainer Agreement and the Johnson Agreement to place Ms. Elliott’s interests over Defendants’ own interests.

55. Defendants breached their fiduciary duties under the Retainer Agreement and the

Johnson Agreement by placing their own interests over Ms. Elliott's interests.

56. Defendants breached their fiduciary duties, contractual duties, and duties of ordinary care, skill, and diligence under the Retainer Agreement and the Johnson Agreement by, *inter alia*, engaging in the following conduct:

- (i) failing to commence the Nissan Action in a timely fashion, before expiration of the statute of repose on September 3, 2015 and the expiration of the statute of limitations for wrongful death claims on March 10, 2016;
- (ii) failing to commence any action against Schneider National before expiration of the statutes of limitations for wrongful death and tort claims on March 10, 2016 and September 17, 2016, respectively;
- (iii) failing to keep Ms. Elliott advised of the developments in the Nissan Action and Defendants' failure to commence an action against Schneider National;
- (iv) misrepresenting that actions against Nissan and Schneider National had been commenced when in fact they had not been commenced;
- (v) fraudulently representing to Ms. Elliott that they would review the \$100,000 death benefit check under Ms. Cook's GEICO policy as a "courtesy" to her and to protect her interests;
- (vi) fraudulently forging Ms. Elliott's signature as an endorsement to the death benefit check without authority;
- (vii) fraudulently retaining the entire amount of the \$100,000 death benefit until June 2016; and
- (viii) fraudulently retaining \$37,357.21 of the death benefit and Ms. Elliott's share of the \$25,000 settlement under the Mazda owner's GEICO policy.

57. These breaches of Defendants' fiduciary, contractual and professional duties caused injury to Ms. Elliott, including, but not limited to:

- (i) dismissal of the Nissan Action, which according to Willie Gary would have resulted in a "billion-dollar recovery;"

- (ii) loss of the right to commence an action against Schneider National, which according to Willie Gary would have resulted in a “billion-dollar recovery;”
- (iii) The delay in receiving any portion of Ms. Elliott’s \$100,000 death benefit under Ms. Cook’s GEICO policy and the loss of \$37,357.21 of that death benefit to date; and
- (iv) The loss of her share of the \$25,000 settlement under the Mazda owner’s GEICO policy.

**SECOND CLAIM FOR RELIEF
(Fraud – Against the Gary Firm and Willie Gary)**

58. Ms. Elliott repeats the allegations set forth in paragraphs 1 through 57, as though fully set forth herein.

59. In telephone calls beginning shortly after Ms. Cook’s death on March 10, 2014 and extending through October 2014, Willie Gary represented to Ms. Elliott that she should direct GEICO to send the \$100,000 check for the death benefit under Ms. Cook’s automobile insurance policy to him because he would review the check as a “courtesy” to protect Ms. Elliott’s rights under that policy. After he fraudulently received the check, Gary repeatedly asked Ms. Elliott to sign a waiver authorizing him to cash the check, representing that this also would be for Ms. Elliott’s benefit. Ms. Elliott refused because she did not understand how allowing Gary to cash her check could be for her benefit. In April 2014, however, Gary or someone on his behalf forged her signature on such a waiver so he could cash the check.

60. When Gary made those representations, he intended to cash the check once he received it, with or without Ms. Elliott’s authorization, and to retain the death benefit indefinitely. He knew his representations to Ms. Elliott were false and he nevertheless made them to induce her to direct GEICO to send him the check.

61. In directing GEICO to send the check to Gary, Ms. Elliott relied on Gary's representations that he intended to review the check to protect her interests under the policy.

62. By relying on Gary's false representations, Ms. Elliott incurred damages, including:

- (i) The delay in receiving any portion of Ms. Elliott's \$100,000 death benefit under Ms. Cook's GEICO policy and the loss of \$37,357.21 of that death benefit to date; and
- (ii) The loss of her share of the \$25,000 settlement under the Mazda owner's GEICO policy.

**THIRD CLAIM FOR RELIEF
(Conversion – Against the Gary Firm and Willie Gary)**

63. Ms. Elliott repeats the allegations set forth in paragraphs 1 through 62, as though fully set forth herein.

64. The Gary Firm and Willie Gary assumed and exercised the right of ownership over the \$100,000 check representing the \$100,000 death benefit under Ms. Cook's insurance policy without authorization and in hostility to Ms. Elliott's rights.

65. That conduct by the Gary Firm and Willie Gary constitutes (i) an act of dominion over Ms. Elliott's personal property inconsistent with her rights; and (ii) an unauthorized appropriation.

66. That conduct by the Gary Firm and Willie Gary caused Ms. Elliott to incur damages, including:

- (i) The delay in receiving any portion of Ms. Elliott's \$100,000 death benefit under Ms. Cook's GEICO policy and the loss of \$37,357.21 of that death benefit to date; and
- (ii) The loss of her share of the \$25,000 settlement under the Mazda

owner's GEICO policy.

**FOURTH CLAIM FOR RELIEF
(Civil Theft under O.C.G.A. § 51-1-6
-- Against the Gary Firm and Willie Gary)**

67. Ms. Elliott repeats the allegations set forth in paragraphs 1 through 66, as though fully set forth herein.

68. The Gary Firm and Willie Gary unlawfully appropriated Ms. Elliott's \$100,000 death benefit under Ms. Cook's insurance policy with the intention of depriving Ms. Elliott of that property.

69. That conduct by the Gary Firm and Willie Gary constitutes a theft by taking as defined in O.C.G.A. § 16-8-2.

70. The Gary Firm and Willie Gary obtained possession of Ms. Elliott's \$100,000 death benefit by deceitful means and artful practice with the intention of depriving Ms. Elliott of that property.

71. That conduct by the Gary Firm and Willie Gary constitutes a theft by deception as defined in O.C.G.A. § 16-8-3.

72. The Gary Firm and Willie Gary knowingly converted Ms. Elliott's \$100,000 death benefit for their own use in violation of their fiduciary, contractual and professional duties.

73. That conduct by the Gary Firm and Willie Gary constitutes a theft by conversion as defined in O.C.G.A. § 16-8-4.

74. By committing theft as set forth above, the Gary Firm and Willie Gary are liable to Ms. Elliott under O.C.G.A. § 51-10-6 for compensatory and punitive damages.

75. Ms. Elliott compensatory damages include:

- (i) The delay in receiving any portion of Ms. Elliott's \$100,000 death

benefit under Ms. Cook's GEICO policy and the loss of \$37,357.21 of that death benefit to date; and

- (ii) The loss of her share of the \$25,000 settlement under the Mazda owner's GEICO policy.

**FIFTH CLAIM FOR RELIEF
(Bad Faith Liability under O.C.G.A. § 13-6-11
– Against the Gary Firm and Willie Gary)**

76. Ms. Elliott repeats the allegations set forth in paragraphs 1 through 75, as though fully set forth herein.

77. The Gary Firm and Willie Gary have acted in bad faith in their assumption and exercise of ownership rights over Ms. Elliott's \$100,000 death benefit under Ms. Cook's insurance policy.

78. Their retention of the entire amount of that \$100,000 death benefit for almost two years and their failure to date to return over \$50,000 of the death benefit constitutes stubbornly litigious behavior.

79. Their conduct has caused plaintiff unnecessary trouble and expense, including forcing her to commence this action to recover her rightful property.

80. Ms. Elliott is therefore entitled to recover the expenses of this action, including reasonable legal fees, under O.C.G.A. § 13-6-11.

**SIXTH CLAIM FOR RELIEF
(Punitive Damages – Against the Gary Firm and Willie Gary)**

81. Ms. Elliott repeats the allegations set forth in paragraphs 1 through 80, as though fully set forth herein.

82. The conduct of the Gary Firm and Willie Gary described above, including their failure to commence timely actions against the parties responsible for Ms. Cook's death, their

failure to implement an effective system to keep track of critical deadlines, their repeated loss of meritorious cases due to missed deadlines and failure to comply with court rules and orders and their unauthorized assumption and exercise of Ms. Elliott's rights of ownership to the \$100,000 death benefit under Ms. Cook's insurance policy constitutes clear and convincing evidence that their actions showed willful misconduct, malice, fraud, wantonness, oppression or that entire want of care which would raise the presumption of conscious indifference to consequence.

83. The Gary Firm and Willie Gary acted, or failed to act, with the specific intent to cause harm to their clients, including Ms. Elliott.

84. The Gary Firm and Willie Gary are therefore liable for punitive damages under O.C.G.A. § 51-11-2 in an amount to be proven at trial.

JURY DEMAND

85. Ms. Elliott demands a jury on all issues that may be tried by jury.

PRAYER FOR RELIEF

WHEREFORE Ms. Elliott demands judgment as follows:

- (i) under the First Claim for Relief, an award of compensatory damages against all Defendants to be proven at trial, but at least \$100 million;
- (ii) under the Second through Sixth Claims for Relief, an award against the Gary Firm and Willie Gary including:
 - (a) compensatory damages in an amount to be proven at trial;
 - (b) punitive damages in an amount to be proven at trial;
- (iii) under all Claims for Relief, an award against all Defendants including:
 - (a) the expenses of this litigation including reasonable legal fees; and

- (b) such other legal or equitable relief as the Court deems appropriate and just.

Dated: October 15, 2019

/s/ Todd K. Maziar

Todd K. Maziar
Ga. Bar No. 479860
P.O. Box 56205
Atlanta, Ga 30343
mazjd@aol.com
(404) 355-3444

*Counsel for Plaintiff Ernestine Elliott,
individually and as Personal Representative
of the Estate of Katrina M. Cook*

Of counsel:

Edward Griffith
(to be admitted pro hac vice)
The Griffith Firm
45 Broadway, Suite 2200
New York, New York 10006
eg@thegriffithfirm.com
(212) 363-3784

GARY, WILLIAMS, PARENTI & WATSON, P.L.L.C.

221 E. Osceola Street
Stuart, FL 34994
(772) 283-8260
1-800-329-4279
Fax: (772) 283-4996

CONTINGENCY FEE AGREEMENT
(Out of State/Co-Counsel)

In consideration of legal services to be rendered by the Law Firm of GARY, WILLIAMS, PARENTI & WATSON, P.L.L.C., the undersigned client (s) retain(s) said Law Firm to prosecute all personal injury claims, including wrongful death claims, for Client(s) injuries and damages sustained on or about the 10th day of March, 2014.

The Law Firm accepts said employment and is authorized to effect a settlement or compromise, subject to client(s) approval, or to institute such legal action or actions as may be advisable in attorneys' judgment in order to enforce client's rights. The parties acknowledge that the attorneys' fee is negotiable and said negotiated fee shall be equal to 40% of the total recovery. However, in no case shall the fee exceed the maximum amount allowed by law.

I hereby agree to pay for the costs incurred in the investigation, negotiation, litigation, trial, appeal and settlement of my claim. These costs include, but are not limited to, postage, express mail services, long distance telephone charges, travel expenses, faxes, document reproduction, fees for copies of records, photography, settlement brochure, exhibit production, court filing and service fees, process server fees, witness fees, computer research fees, library copy fees, videographer and stenographer (court reporter) fees, transcript fees, expert witness fees, artist, graphic design and other creative consultant fees, and jury consultant fees. The law firm which has advanced such costs shall have a lien on my claim, suit or recovery for costs advanced and for attorney's fees.

In the event an appeal is taken, a new and separate agreement shall be entered into by the parties as to services and fees.

An additional 5% fee will be payable from any recovery if garnishment or any proceedings, after judgment, have been brought to collect the judgment or any portion thereof; or if any appellate proceedings are instituted from the lower Court by either side, either pre-judgment/settlement or post-judgment/settlement. These services shall be provided by GARY, WILLIAMS, PARENTI & WATSON, P.L.L.C. or at the law firm's discretion, I authorize GARY, WILLIAMS, PARENTI & WATSON, P.L.L.C. to employ a separate and independent law firm or appellate specialist on my behalf to perform the appellate services.

Client(s) understand that the law firm of GARY, WILLIAMS, PARENTI & WATSON, P.L.L.C. will be assisted by the law office of FAULHABER FAMILY LAW, LLC who will receive 5% of the fee from GARY, WILLIAMS, PARENTI & WATSON, P.L.L.C.

Client(s) further understand that all attorneys agree to assume the same legal responsibility to Client(s) for the performance of the services, that they will follow the course of Client(s)' case and that they will be available at all times for consultation in this matter. Client(s) do, therefore, acknowledge and consent to the division of fees in Client(s)' case as set forth above.

Client(s) grant the Law Firm authorization, at its discretion, to write letters of protection on any medical bills Client(s) incur and to pay same to the extent permitted by the proceeds of any recovery consistent with this Fee Agreement.

Client(s) further agree that in the event the Court should award attorneys' fees, then Client(s)' law firm shall be entitled to either a reasonable fee determined by the Court, or the percentage of the recovery, whichever is greater.



If a recovery is made and the Client is to receive a recovery which will be paid to the Client on a future structured or periodic basis, the contingent fee percentage shall be calculated on the present money value of the verdict or settlement and paid at the time of settlement.

The Law Firm may withdraw at any time by giving reasonable written notice and the Client(s) agree to sign a consent to withdraw or substitution of counsel in the event of such withdrawal.

Client(s) understand that this Law Firm and its lawyers are prohibited by ethical rules to provide any financial assistance to Client(s), directly or indirectly, for any reason, even if the need arises for food, medical care, shelter, transportation, etc. Client(s) further affirm that neither this law firm nor any of its lawyers have provided, promised or suggested any such financial assistance in connection with Client(s)' employment of this law firm to pursue this legal claim.

Should Client(s) terminate this Agreement at any time after three business days, the Law Firm shall be entitled to a reasonable fee, and if the Law Firm has advanced funds on Client(s)' behalf in its' representation of Client(s), the Law Firm shall be reimbursed for such amounts advanced on Client(s)' behalf.

Should Client(s) have a separate worker's compensation, medicare, medicaid, personal injury protection or medical payment claim, probate or guardianship proceedings which would require additional work on the part of the Law Firm. Client(s) understand that Client(s) will have to enter into a separate contract with the Law Firm to represent Client(s) in those matters.

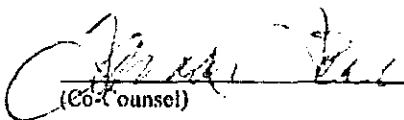
Client(s) agree that if a probate/guardianship will be necessary, they authorize the Law Firm to take the necessary actions to initiate such probate and/or guardianship proceedings, and agree that a reasonable fee shall be determined under the guidelines as set forth in the Florida Statutes sections 733.6171 and 744.108, which fees and costs will be deducted from any recovery and paid to the Law Firm at the time of disbursement of funds.

DATED this ____ day of _____, 20 ____.

GARY, WILLIAMS, PARENTI,
& WATSON, P.L.L.C.

Accepted by:

(Client)



(Counsel)

(Client)

GARY, WILLIAMS, PARENTI
WATSON & GARY, P/L
CLOSING STATEMENT - CLIENT #46330

SUBJECT OF CASE:

WRONGFUL DEATH

THE ESTATE OF KATRINA COOK

- vs -

FRANCIS DARR, ET AL

MONIES RECEIVED FROM:

GEICO GENERAL INSURANCE COMPANY : \$ 125,000.00

LESS DEDUCTIONS:

a) **Attorney's fees (40%)**
Gary, Williams, Parenti : \$ 47,500.00
Tamar Faulhaber, Esq. (5% of \$50,000.00) : \$ 2,500.00

b) **COSTS:**
Advanced by the Law Firm:
Postage : \$ 13.96
Fax : \$.75

[October 10, 2014 @ 1:54pm] →



Travel and/or Expenses	:	\$	713.00
Cobb County Police Department - Accident Report	:	\$	5.00
TOTAL ADVANCED COSTS	:	\$	<u>732.71</u>

c) **UNPAID COSTS:**

Tamar Faulhaber, Esq.	:	\$	769.04
<u>Expert Services:</u>			
Swoope Reconstruction Corp. <i>(copy of page)</i>	:	\$	389.09
Swoope Reconstruction Corp. <i>(copy of page)</i>	:	\$	5,466.37
TOTAL UNPAID COSTS	:	\$	<u>6,624.50</u>

d) **Funds Held in Trust for 90 days
in the event any outstanding bills
(medical or otherwise) are presented
to the Law Firm for payment on
behalf of the Estate of Katrina Cook**

	:	\$	<u>5,000.00</u>
--	---	----	-----------------

*No new
reword
funds
After
90 days
NO B
to be
PAID*

LOCAL DEDUCTIONS
 a) ATTORNEY'S FEES
 b) ADVANCED COSTS
 c) UNPAID COSTS
 d) TRUST FUND FEE

None returned after
 90 days

1	\$0,000.00
2	7,827.71
3	6,024.50
4	8,000.00

TOTAL DEDUCTIONS

\$21,852.21

BALANCE DUE CLIENT

\$ 62,000.00

I, ERNESTINE INEAL ELLIOTT, hereby state that I have read in full the foregoing explained and understood my duties, WILLIE G. GALEY, Jr and his above mentioned assignments. I UNDERSTAND THAT I AM RESPONSIBLE FOR ANY BILLS AND/OR FEES WHICH DO NOT APPEAR ON THE ABOVE CLOSING STATEMENT.

DATED THIS 15th DAY OF Oct 2014

ERNESTINE INEAL ELLIOTT

WILLIE G. GALEY, JR.

WILLIE G. GALEY, ESQ.
 SENIOR PARTNER

Handwritten notes:
 Did not file
 file case until
 May 2017, failed
 to file compliance
 by 1/1/2015
 Was last to
 speak to
 Linda Adams
 on 1/1/2015
 on 1/1/2015
 on 1/1/2015
 on 1/1/2015

Handwritten notes:
 Don't not file
 the case until
 they really had
 the paperwork
 completed and
 discussed.



**GARY, WILLIAMS, PARENTI,
WATSON & GARY, P.L.L.C.**

ATTORNEYS AND COUNSELORS AT LAW

January 17, 2019

PARTNERS

WILLIE E. GARY
LORENZO WILLIAMS
● ROBERT V. PARENTI
DONALD N. WATSON
SEKOU GARY

ASSOCIATES

THOMAS E. WEISKAMP, LL.M.
LERONNIE MASON
LARRY A. STRAUSS
STEPHEN OSTROW
▶ 00 NICHOLAS J. VOGLIO
◆◆◆ 00 AMAR WILLIAMS
RICKY ARMAND
CHARLES SCOTT
CASEY WILLIAMS

DIRECTOR, MED. MAL. DEPT.

◆ PHYLIS M. GILLESPIE

GENERAL COUNSEL

◆◆ CHAN BRYANT ARNEY

OF COUNSEL

ELAINE JOHNSON JAMES
◆◆◆ LOREAL McDONALD
◆◆▶ CANDICE DIAH

LITIGATION CONSULTANT

JACOB A. ROSE, JD

NURSE PARALEGALS

KAREN GREEN, RN, BC, BSN, CLNC
CHARLETHA HARRIS, CLNC

PARALEGALS

RUTH CLARKE
PAULETTE MADSEN
CHRISTINE JONES-MCKENNA, CP
ALI GARY
KOBIE GARY
TERE BLOOMFIELD
MARY ANN RUSSELL
TINA PERAINO
DIANE EDWARDS, AP
KATHLEEN ROSMAN, FRP
BRADLEY EDDISON

PUBLIC RELATIONS DIRECTOR

KORI SEARCY

ALSO ADMITTED

◆ D.C. Bar
◆ GA Bar
◆ MD Bar
◆ ME Bar
◆ NC Bar
▶ NY Bar
00 NJ Bar
◆ PA Bar
◆ TN Bar
◆◆ (NOT LICENSED IN FL)

Ms. Ernestine Elliott
5045 Sophy Drive
Powder Springs, GA 30127

Re: Ernestine Elliott as Personal Representative of the Estate of
Katrina Cook v. Nissan

Dear Ms. Elliott:

Pursuant to our telephone conversation this morning, enclosed please find a copy of the letter we sent you on November 17, 2017 regarding the status of the above noted matter. As I outlined in the letter, the Court granted the Motion for Summary Judgment filed by Nissan North America based on the Statute of Repose. As such we were unable to appeal this issue as the Statute of Repose is not appealable and therefore had no alternative but to close our file.

This letter will also confirm our conversation this morning where I told you we were in the process of retrieving your file from our storage facility. As I explained this could take a couple of weeks as we have thousands of files in storage. In the interim, I will be forwarding to you a complete copy of your file on a computer disc within the next few days.

Finally, my paralegal spoke with the Probate Court this morning and was informed that until the Estate is closed it is necessary for you to file the inventory with the Probate Court on an annual basis. I have left a message for Tamara Faulhaber to call me to discuss closing the Estate. I have also written to her regarding this matter and am enclosing a copy of that letter for your review.

*managed
L. 2/19*

managed it

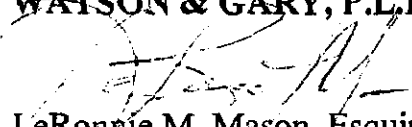


Ms. Ernestine Elliott
January 17, 2019
Page 2

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

**GARY, WILLIAMS, PARENTI,
WATSON & GARY, P.L.L.C.**



LeRonnie M. Mason, Esquire
For the Firm.

LMM/mar
Enclosures – as stated