

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WENDY KUBIK, MICHELLE DeTOMASO,
RITA DILLON, JANE DOE #1, JANE DOE #2,
JANE DOE #3, JUDITH FLENNA,
ELAINE KOLODZIEJ, PAMELA LINDSTROM,
PAULINE MANIACI, MARY RICHARDSON,
JOAN RITCH, JANICE SANDORA,
MICHELE BOULTON, SUSAN SCHMALTZ,
JUDY SPRADLEY, ELEANOR TAYLOR,
BEVERLY THOMAS, JUDITH THORNTON,
MARY JO VAN TIEM, RENEE WILLITS,
REBECCA DITCH, SARA AGUINAGA,
JOAN RAHILL, LISA HADDIX,
BARBARA STEWART, PAT BOLONE,
BONNIE BOUSSON, DONNA VAUGHN,
MARJORIE HARDER, CHRISTINA DIEM,
KATHY DIEM, OSUIL MAYO,
CHRISTINE EWALD, PAM ROGERS,
BARBARA ARNOLD, GEORGINA GHAZAWI,
PEGGY PRYZBYLSKI, JANET BOTT,
STEPHANIE HARBIN, DEBORAH PRESLEY,
and THERESA GOULD,

Plaintiffs,

v

WILLIE GARY, TRICIA HOFFLER,
ROBERT PARENTI, SEKOU GARY,
and GARY, WILLIAMS, PARENTI,
FINNEY, LEWIS, McMANUS,
WATSON & SPERANDO, P.C.,

Defendants.

Civil Action No. 03-73350
Hon. Paul D. Borman
Mag. Judge Mona Majzoub

**PLAINTIFFS' THIRD
AMENDED COMPLAINT**

DEMAND FOR JURY TRIAL

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PLAINTIFFS' THIRD AMENDED COMPLAINT

NOW COME Plaintiffs, Wendy Kubik, Michelle DeTomaso, Rita Dillon, Jane Doe #1, Jane Doe #2, Jane Doe #3, Judith Flenna, Elaine Kolodziej, Pamela Lindstrom, Pauline Maniaci, Mary Richardson, Joan Ritch, Janice Sandora, Michele Boulton, Susan Schmaltz, Judy Spradley, Eleanor Taylor, Beverly Thomas, Judith Thornton, Mary Jo Van Tiem, Renee Willits, Rebecca Ditch, Sara Aguinaga, Joan Rahill, Lisa Haddix, Barbara Stewart, Pat Bolone, Bonnie Bousson, Donna Vaughn, Marjorie Harder, Christina Diem, Kathy Diem, Osuil Mayo, Christine Ewald, Pam Rogers, Barbara Arnold, Georgina Ghazawi, Peggy Pryzbylski, Janet Bott, Stephanie Harbin, Deborah Presley and Theresa Gould (collectively hereinafter as "PLAINTIFFS"), by and through their attorneys, Schwartz Law Firm, P.C. and Wigod, Falzon, McNeely & Unwin, P.C., and for their Third Amended Complaint against Defendants, Willie Gary, Tricia Hoffler, Robert Parenti, Sekou Gary, and Gary,

Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., jointly and severally, (collectively hereinafter “DEFENDANTS/ATTORNEYS”), state as follows:

1. Plaintiff, Wendy Kubik, formerly known as Wendy Curdie, is a resident of the City of Fair Haven and a citizen of the State of Michigan.

2. Plaintiff, Michelle DeTomaso, is a resident of the Township of Shelby, County of Macomb and a citizen of the State of Michigan.

3. Plaintiff, Rita Dillon, is a resident of the Township of Harrison, County of Macomb and a citizen of the State of Michigan.

4. Plaintiff, Jane Doe #1, is a citizen of, and resides by herself in, the State of Michigan. She and Jane Doe #2 were represented by DEFENDANTS/ATTORNEYS, in part, as the only plaintiffs in a lawsuit filed in one of the state courts in Michigan. DEFENDANTS/ATTORNEYS know the identity of Jane Doe #1. She is being designated as Jane Doe #1 to help preserve the confidentiality of the outcome of said prior litigation.

5. Plaintiff, Jane Doe #2, is a citizen of, and resides with her husband in, the State of Michigan. She and Jane Doe #1 were represented by DEFENDANTS/ATTORNEYS, in part, as the only plaintiffs in a lawsuit filed in one of the state courts in Michigan. DEFENDANTS/ATTORNEYS know the identity of Jane Doe #2. She is being designated as Jane Doe #2 to help preserve the confidentiality of the outcome of said prior litigation.

6. Plaintiff, Jane Doe #3, is a citizen of the State of Michigan. She was represented by DEFENDANTS/ATTORNEYS, in part, as the only plaintiff in a lawsuit filed in one of the state courts in Michigan. DEFENDANTS/ATTORNEYS know the identity of Jane Doe #3. She is being designated as Jane Doe #3 to help preserve the confidentiality of the outcome of said prior litigation.

7. Plaintiff, Judith Flenna, is a resident of the Township of Chesterfield, County of Macomb and citizen of the State of Michigan.

8. Plaintiff, Elaine Kolodziej, is a resident of Grosse Pointe Park, County of Wayne and citizen of the State of Michigan.

9. Plaintiff, Pamela Lindstrom, is a resident of the Township of Columbus, County of Macomb and citizen of the State of Michigan.

10. Plaintiff, Pauline Maniaci, is a resident of the Township of Clinton, County of Macomb and citizen of the State of Michigan.

11. Plaintiff, Mary Richardson, is a resident of the Township of Macomb, County of Macomb and citizen of the State of Michigan.

12. Plaintiff, Joan Ritch, is a resident in the City of Mt. Clemens, County of Macomb and citizen of the State of Michigan.

13. Plaintiff, Janice Sandora, is a resident of the Township of Macomb, County of Macomb and citizen of the State of Michigan.

14. Plaintiff, Michele Boulton, is a resident of the City of Romeo, County of Macomb and citizen of the State of Michigan.

15. Plaintiff, Susan Schmaltz, is a resident of the Township of Armada, County of Macomb and citizen of the State of Michigan.

16. Plaintiff, Judy Spradley, is a resident of the City of Detroit, County of Wayne and citizen of the State of Michigan.

17. Plaintiff, Eleanor Taylor, is a resident of the Township of Shelby, County of Macomb and citizen of the State of Michigan. She was represented by DEFENDANTS/ATTORNEYS, in

part, in a lawsuit filed in one of the state courts in Michigan, which was also pending in the United States District Court for the Eastern District of Michigan, Case No. 00-CV-73161, before the Honorable Nancy Edmunds, at one point.

18. Plaintiff, Beverly Thomas, is a resident of the City of Detroit, County of Wayne and citizen of the State of Michigan.

19. Plaintiff, Judith Thornton, is a resident of the Township of Clinton, County of Macomb and citizen of the State of Michigan.

20. Plaintiff, Mary Jo Van Tiem, is a resident of the Township of Sylvan Lake, County of Oakland and citizen of the State of Michigan.

21. Plaintiff, Renee Willits, is a resident of the Township of Shelby, County of Macomb and citizen of the State of Michigan.

22. Plaintiff, Rebecca Ditch, is a resident of the Township of Casco, County of St. Clair, State of Michigan.

23. Plaintiff, Sara Aguinaga, is a resident of the Township of Washington, County of Macomb, State of Michigan.

24. Plaintiff, Joan Rahill, is a resident of the Township of Macomb, County of Macomb, State of Michigan.

25. Plaintiff, Lisa Haddix, is a resident of the City of Croswell, County of Sanilac, State of Michigan.

26. Plaintiff, Barbara Stewart, is a resident of the Township of Greenwood, County of St. Clair, State of Michigan.

27. Plaintiff, Pat Bolone, is a resident of the City of Auburn Hills, County of Oakland, State of Michigan.

28. Plaintiff, Bonnie Bousson, is a resident of the City of Capac, County of St. Clair, State of Michigan.

29. Plaintiff, Donna Vaughn, is a resident of the City of Woodhaven, County of Wayne, State of Michigan.

30. Plaintiff, Marjorie Harder, is a resident of the City of Mt. Clemens, County of Macomb, State of Michigan.

31. Plaintiff, Christina Diem, is a resident of the City of Warren, County of Macomb, State of Michigan.

32. Plaintiff, Kathy Diem, is a resident of the Township of Macomb, County of Macomb, State of Michigan.

33. Plaintiff, Osuil Mayo, is a resident of the City of Troy, County of Oakland, State of Michigan.

34. Plaintiff, Christine Ewald, is a resident of the Township of Harrison, County of Macomb, State of Michigan.

35. Plaintiff, Pam Rogers, is a resident of the City of New Haven, County of Macomb, State of Michigan.

36. Plaintiff, Barbara Arnold, is a resident of the Township of Brown City, County of Sanilac, State of Michigan.

37. Plaintiff, Georgina Ghazawi, is a resident of the City of Rochester Hills, County of Oakland, State of Michigan.

38. Plaintiff, Peggy Pryzbylski, is a resident of the Township of Utica, County of Macomb, State of Michigan.

39. Plaintiff, Janet Bott, is a resident of the Township of East Pointe, County of Macomb, State of Michigan.

40. Plaintiff, Stephanie Harbin, is a resident of the City of Southfield, County of Oakland, State of Michigan.

41. Plaintiff, Deborah Presley, is a resident of the City of Detroit, County of Wayne, State of Michigan.

42. Plaintiff, Theresa Gould, is a resident of the City of Detroit, County of Wayne, State of Michigan.

43. Upon information and belief, Defendant, Willie Gary, is a citizen of the state of Florida and is an attorney who at all times relevant herein was practicing his profession through the law firm of Defendant, Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., with a principal place of business in Stuart, Florida.

44. Upon information and belief, Defendant, Tricia Hoffler, is a citizen of the State of Florida and is an attorney who at all times relevant herein was practicing her profession through the law firm of Defendant, Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., with a principal place of business in Stuart, Florida.

45. Upon information and belief, Defendant, Robert Parenti, is a citizen of the State of Florida and is an attorney who at all times relevant herein was practicing his profession through the law firm of Defendant, Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., with a principal place of business in Stuart, Florida.

46. Upon information and belief, Defendant, Sekou Gary, is a citizen of the State of Florida and is an attorney who at all times relevant herein was practicing his profession through the law firm of Defendant, Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., with a principal place of business in Stuart, Florida

47. Upon information and belief, Defendant, Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., is a professional corporation incorporated under the laws of the State of Florida, with a principal place of business in the City of Stuart and at all times material herein, was responsible for the actions of its employees and/or agents.

48. The matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

49. This Court has original jurisdiction of this civil action pursuant to 28 U.S.C. §1332(a)(1) and (c).

50. Venue is appropriate in this judicial district pursuant to 28 U.S.C. §1391(c).

51. In the spring of 2002, Plaintiff, Eleanor Taylor, had a pending lawsuit in a state court in Michigan against Company A.¹ Discovery and case evaluation had been completed. Company A's motion for summary disposition had been taken under advisement. The case was poised for trial. Her Michigan attorneys, Rundell & Nolan, LLP contracted with Defendant, Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C. to serve as co-counsel for her in her claim against Company A. The terms of the contract were never disclosed to Plaintiff Taylor.

¹The designation "Company A" is being utilized to help preserve the confidentiality of the outcome of said dispute. DEFENDANTS/ATTORNEYS know the identity of Company A.

52. Concurrently in the spring of 2002, Jane Doe #1 and Jane Doe #2 had a pending lawsuit in a state court in Michigan against Company A and Company B.² The case was in the discovery phase. Jane Doe #1's and Jane Doe #2's Michigan counsel, Rundell and Nolan, LLP, contracted with Defendant, Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C. to serve as co-counsel for Jane Doe #1 and Jane Doe #2 in their claims against Company A and Company B. The terms of the contract were never disclosed to Jane Doe #1 and Jane Doe #2.

53. Also concurrently in the spring of 2002, Jane Doe #3 had a pending lawsuit in a state court in Michigan against Company A and Company B. The case was in the discovery phase. Jane Doe #3's Michigan counsel, Rundell and Nolan, LLP, contracted with Defendant, Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C. to serve as co-counsel for Jane Doe #3 in her claims against Company A and Company B. The terms of the contract were never disclosed to Jane Doe #3.

54. After Defendant Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C. contracted with Rundell and Nolan, LLP, DEFENDANTS/ATTORNEYS implemented a scheme designed to compel Company A and/or Company B to resolve the pending lawsuits and claims on terms extremely advantageous to DEFENDANTS/ATTORNEYS, including the securing of other women who were similarly situated to their existing clients with respect to claims against Company A and Company B so as to enhance the pool of claimants.

²The designations "Company A" and "Company B" are being utilized to help preserve the confidentiality of the outcome of said dispute. Company A in this paragraph is the same party as Company A in any prior or subsequent paragraph in this Complaint. Company B in this paragraph is the same party as Company B in any prior or subsequent paragraph in this Complaint. DEFENDANTS/ATTORNEYS know the identity of both Company A and Company B.

55. Upon information and belief, Rundell and Nolan, LLP thereafter signed attorney/client representation agreements with 38 additional women (collectively with Plaintiffs Taylor, Jane Doe #1, Jane Doe #2 and Jane Doe #3 as the PLAINTIFFS) to pursue claims on their behalf against Company A and Company B.

56. DEFENDANTS/ATTORNEYS never filed a lawsuit on behalf of any of these 38 other women against Company A or Company B.

57. In May 2002 and July 2002, Company B made settlement offers to DEFENDANTS/ATTORNEYS for a global resolution of PLAINTIFFS' claims.

58. DEFENDANTS/ATTORNEYS never presented these settlement offers to PLAINTIFFS.

59. In July 2002, and without the knowledge and consent of PLAINTIFFS, Company B and DEFENDANTS/ATTORNEYS entered into a global settlement of PLAINTIFFS' claims, which settlement included, but is not limited to, \$51.5 million which would not be received by PLAINTIFFS, PLAINTIFFS permanently dropping their claims against Company A and Company B, and DEFENDANTS/ATTORNEYS agreeing never to sue in the future Company B and, in some circumstances, Company A.

60. PLAINTIFFS were never told of all of the details of total global settlement package.

61. After reaching the global settlement, DEFENDANTS/ATTORNEYS discovered they had never executed attorney/client representation agreements with any of the 42 individuals.

62. DEFENDANTS/ATTORNEYS immediately overnight mailed PLAINTIFFS' contingency fee attorney/client representation agreements with DEFENDANTS/ATTORNEYS,

whereby PLAINTIFFS each agreed to pay DEFENDANTS/ATTORNEYS 33⅓% of their total recovery for their legal services rendered.

63. DEFENDANTS/ATTORNEYS instructed PLAINTIFFS to immediately sign and return the contingency fee attorney/client representation agreements, not informing their clients that the case was already settled.

64. Within approximately one week of receiving the returned agreements, DEFENDANTS/ATTORNEYS scheduled meetings with each of the PLAINTIFFS to discuss a settlement “offer” being made to them individually.

65. During these meetings, DEFENDANTS/ATTORNEYS never divulged the details of the global resolution to PLAINTIFFS and never advised that their claims were already settled.

66. During these meetings, DEFENDANTS/ATTORNEYS mislead PLAINTIFFS into believing that their claims were not yet settled.

67. During these meetings, DEFENDANTS/ATTORNEYS never informed their clients that it was they (DEFENDANTS/ATTORNEYS), not Company B, who decided how much out of the total settlement package each individual plaintiff would receive.

68. DEFENDANTS/ATTORNEY coerced PLAINTIFFS, through a variety of omissions, misrepresentations and other actions that constituted extreme duress, to accept the already agreed upon settlement package.

69. As part of the settlement, DEFENDANTS/ATTORNEYS convinced PLAINTIFFS to permanently dismiss their claims against Company A without receiving any compensation from Company A.

70. DEFENDANTS/ATTORNEYS, without fully disclosing all of the elements of the global settlement package, and through intentional false, misleading and erroneous advice, induced PLAINTIFFS to sign various documents that permanently settled their claims against Company A and Company B.

71. At the conclusion of the representation, DEFENDANTS/ATTORNEYS withheld monies substantially in excess of 33 $\frac{1}{3}$ % of each PLAINTIFF'S total recovery (the legal fees in excess of 33 $\frac{1}{3}$ % hereinafter called "ADDITIONAL LITIGATION PROCEEDS"³) as their purported legal fees, *exclusive* of the aforementioned \$51.5 million.

72. DEFENDANTS/ATTORNEYS represented that the ADDITIONAL LITIGATION PROCEEDS were legal fees being paid by their new client Company B, for other legal work performed for Company B, and that these monies had nothing to do with their representation of PLAINTIFFS against Company B.

73. Even if DEFENDANTS/ATTORNEYS' explanation were in fact true, which PLAINTIFFS believe it is not, DEFENDANTS/ATTORNEYS violated the Michigan Rules of Professional Conduct by, among other things, entering into a blatant conflict of interest arrangement for their own pecuniary advantage.

74. Upon information and belief, the \$51.5 million and the ADDITIONAL LITIGATION PROCEEDS were monies Company A and/or Company B were willing to pay to resolve PLAINTIFFS' claims.

75. PLAINTIFFS have been harmed by DEFENDANTS/ATTORNEYS' wrongful retention of monies belonging to PLAINTIFFS.

³The designation "ADDITIONAL LITIGATION PROCEEDS" is being utilized to help preserve the confidentiality of the outcome of said dispute. DEFENDANTS/ATTORNEYS know the specific sum being referenced.

COUNT I

LEGAL MALPRACTICE

76. PLAINTIFFS repeat and reallege paragraphs 1 through 75 as though each allegation was stated verbatim.

77. At all times material herein, there was a lawyer/client relationship between DEFENDANTS/ATTORNEYS who represented, advised and counseled PLAINTIFFS.

78. DEFENDANTS/ATTORNEYS accepted responsibility in their professional capacity as attorneys, agreeing to advise, consult and represent PLAINTIFFS, and pursue and protect PLAINTIFFS' interests against Company A and Company B, all within the applicable standard of care.

79. At all times pertinent hereto, DEFENDANTS/ATTORNEYS owed PLAINTIFFS a duty to render and provide legal services in conformance with the acceptable standard of care required of lawyers in the community, in light of the facts of the case, and to refrain from acts of negligence and/or professional negligence and to further refrain from negligent omissions and to provide competent and accurate advice, service and legal representation to PLAINTIFFS and other duties which include, but are not limited to:

- A. To use reasonable knowledge, skill, ability and care ordinarily possessed and exercised by attorneys in the State of Michigan, in representation of PLAINTIFFS;
- B. To act in a spirit of loyalty to PLAINTIFFS, assuming a position of the highest trust and confidence;
- C. To exert their best efforts while wholeheartedly advancing PLAINTIFFS' interests with complete fidelity and diligence;

- D. To familiarize themselves with the facts, the rules of the particular courts in which they practice and in the interpretation and construction said court's place upon the law in the State of Michigan and in the United States, including but not limited to common law, statutory law, and court rules;
- E. To enter into an agreement to retain and employ DEFENDANTS/ ATTORNEYS which conforms with the requirements of the Michigan Court Rules and/or the rules of the Florida State Bar;
- F. To comply with all duties imposed upon DEFENDANTS/ATTORNEYS by the Michigan and/or Florida Rules of Professional Conduct, including but not limited to:
 - (i) Competence;
 - (ii) Diligence;
 - (iii) Entering into a contingent fee agreement for representation of PLAINTIFFS only after providing to PLAINTIFFS a statement of client's rights and affording PLAINTIFFS complete opportunity to understand each of the rights set forth therein, and providing a copy of the statement to the PLAINTIFFS, signed by both PLAINTIFFS and DEFENDANTS/ATTORNEYS;
 - (iv) Explaining matters to the extent reasonably necessary in order to permit PLAINTIFFS to make informed decisions regarding the representation;
 - (v) Notifying PLAINTIFFS promptly of all settlement offers;
 - (vi) Preserving the right of PLAINTIFFS to make the final decision regarding settlement of the case;
 - (vii) Keeping PLAINTIFFS reasonably informed about the status of their matter and complying promptly with reasonable requests for information;
 - (viii) In conveying to PLAINTIFFS any settlement offer providing PLAINTIFFS with full disclosure of all payments of money and/or other consideration from Company A and/or Company B to PLAINTIFFS and/or to DEFENDANTS/ATTORNEYS, in order to permit PLAINTIFFS to make an informed decision regarding settlement;

- (ix) Upon conclusion of the contingent-fee matter, providing PLAINTIFFS with a written statement of the full outcome of the matter and the method used to determine PLAINTIFFS' portion of the monies they received;
- (x) Seeking of the lawful objectives of PLAINTIFFS against Company A and Company B through all reasonably available means permitted by law;
- (xi) Not entering into impermissible conflict of interest relationships;
- (xii) Not participating in making an aggregate settlement of PLAINTIFFS' claims with Company A and/or Company B unless each PLAINTIFF consents after full consultation including explanation of the implications of the common representation of multiple clients and the DEFENDANTS/ATTORNEYS' own interests, and the advantages and risks involved, including disclosure of the existence and nature of all the claims involved and of the details of each person's participation in the settlement;
- (xiii) Charging PLAINTIFFS a fee which is legal, reasonable, and not clearly excessive, considering, among other facts, the fee customarily charged in the locality for similar legal services and the maximum allowable fee for such legal services by rules of court and state bar regulation;
- (xiv) Not acquiring a proprietary interest in the cause of action or subject matter of the litigation DEFENDANTS/ATTORNEYS were conducting for PLAINTIFFS, other than the contingency fee;
- (xv) Not practicing law in the State of Michigan without a license to do so;
- (xvi) Not participating in offering or making an agreement in which a restriction on DEFENDANTS/ATTORNEYS' right to practice is part of the settlement of a controversy involving PLAINTIFFS; and
- (xvii) Not soliciting employment from Company A or Company B when DEFENDANTS/ATTORNEYS had no family or prior professional relationship with them and when a significant motive for DEFENDANTS/ATTORNEYS' doing so was DEFENDANTS/ATTORNEYS' pecuniary gain.

- G. Such other duties as are imposed by the Michigan and/or Florida Rules of Professional Conduct, Michigan Court Rules, Michigan Statutes, the common law of the State of Michigan and by the legal community in Michigan where the matter was pending.

80. DEFENDANTS/ATTORNEYS conducted themselves in a professionally negligent manner and breached their duties in rendering services to PLAINTIFFS within the pendency of the attorney-client relationship, and that this professional negligence consisted of, but is not limited to, the following:

- A. Failing to inform PLAINTIFFS of the \$51.5 million;
- B. Failing to take the necessary steps and use due diligence to pursue PLAINTIFFS' objectives against Company A and Company B;
- C. Failing to use reasonable knowledge, skill, ability and care ordinarily possessed and exercised by attorneys in the State of Michigan regarding settlement of disputes;
- D. Failing to act in a spirit of loyalty, with the highest trust and confidence, towards PLAINTIFFS;
- E. Failing to explain all matters to the extent reasonably necessary to permit PLAINTIFFS to make informed decisions regarding their claims against Company A and Company B;
- F. Failing to notifying PLAINTIFFS promptly of all settlement offers and the terms of all settlement offers;
- G. Failing to properly forward PLAINTIFFS their respective portion of their monies;
- H. Entering into impermissible conflict of interest relationships;
- I. Accepting compensation for representing PLAINTIFFS from Company A and/or Company B;
- J. Making an aggregate settlement of PLAINTIFFS' claims without informing each PLAINTIFF of all information needed to be known for them to make an informed decision;

- K. Making false statements and using egregious tactics to get PLAINTIFFS to make decisions about their case;
- L. Intentionally acquiring a proprietary interest in the PLAINTIFFS' claims against Company A and/or Company B for their own pecuniary advantage;
- M. Entering into an agreement in which a restriction on DEFENDANTS/ ATTORNEYS' right to practice is part of the settlement;
- N. Failing in other ways to comply with the standard of practice and care, the Rules of Professional Responsibility, and ethical considerations applicable to attorneys in the State of Michigan and/or State of Florida;
- O. Failing to enter into an agreement to retain and employ DEFENDANTS/ ATTORNEYS which conforms with the requirements of the Michigan Court Rules and the rules of the Florida State Bar;
- P. Failing to preserve the right of PLAINTIFFS to make the final decision regarding settlement of their claims;
- Q. Failing to convey to PLAINTIFFS settlement offers with full disclosure of all payments of money and/or other consideration from Company A and/or Company B so that PLAINTIFFS could make an informed decision regarding settlement;
- R. Failing to inform PLAINTIFFS of the implication of the common representation of multiple clients, and the DEFENDANTS/ATTORNEYS' own interests, and the advantages and risks involved;
- S. Charging PLAINTIFFS a fee which is clearly excessive considering, among other facts, the fee customarily charged in the locality for similar legal services and the maximum allowable fee for such legal services by rules of court and/or state bar regulation;
- T. Entering into a contingent fee agreement for representation of PLAINTIFFS without providing PLAINTIFFS a statement of client's rights and affording PLAINTIFFS a complete opportunity to understand each of the rights set for therein, and providing a copy of the statement of rights, signed by both PLAINTIFFS and DEFENDANTS /ATTORNEYS, to the PLAINTIFFS; and
- U. Committing the acts set forth elsewhere in this Complaint.

81. As a direct and proximate result of DEFENDANTS/ATTORNEYS' breaches of duty to PLAINTIFFS, PLAINTIFFS have sustained substantial pecuniary damages.

WHEREFORE, Plaintiffs, Wendy Kubik, Michelle DeTomaso, Rita Dillon, Jane Doe #1, Jane Doe #2, Jane Doe #3, Judith Flenna, Elaine Kolodziej, Pamela Lindstrom, Pauline Maniaci, Mary Richardson, Joan Ritch, Susan Schmaltz, Judy Spradley, Eleanor Taylor, Beverly Thomas, Judith Thornton, Mary Jo Van Tiem, Renee Willits, Rebecca Ditch, Sara Aguinaga, Joan Rahill, Lisa Haddix, Barbara Stewart, Pat Bolone, Bonnie Bousson, Donna Vaughn, Marjorie Harder, Christina Diem, Kathy Diem, Osuil Mayo, Christine Ewald, Pam Rogers, Barbara Arnold, Georgina Ghazawi, Peggy Pryzbylski, Janet Bott, Stephanie Harbin, Deborah Presley and Theresa Gould, respectfully request that this Honorable Court enter a Judgment in their favor, and against Willie Gary, Tricia Hoffler, Robert Parenti, Sekou Gary, and Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., jointly and severally, for an amount well in excess of Seventy-Five Thousand (\$75,000.00) Dollars, for all pecuniary damages they have incurred, and provide such further relief as this Court deems just.

COUNT II

CONVERSION

82. PLAINTIFFS repeat and reallege the factual content only contained in paragraphs 1 through 81 as though factually each allegation was stated verbatim.

83. DEFENDANTS/ATTORNEYS' retention of PLAINTIFFS' portion of the settlement package is a distinct act of dominion wrongfully exerted over PLAINTIFFS' personal property in denial of or inconsistent with their rights.

84. As a direct and proximate result of DEFENDANTS/ATTORNEYS' actions, PLAINTIFFS have been severely harmed.

85. DEFENDANTS/ATTORNEYS' actions were malicious, willful and wanton misconduct and indicated a reckless disregard of PLAINTIFFS' rights resulting in the PLAINTIFFS suffering humiliation, a sense of outrage and indignity, such that they are entitled to exemplary damages.

WHEREFORE, Plaintiffs, Wendy Kubik, Michelle DeTomaso, Rita Dillon, Jane Doe #1, Jane Doe #2, Jane Doe #3, Judith Flenna, Elaine Kolodziej, Pamela Lindstrom, Pauline Maniaci, Mary Richardson, Joan Ritch, Susan Schmaltz, Judy Spradley, Eleanor Taylor, Beverly Thomas, Judith Thornton, Mary Jo Van Tiem, Renee Willits, Rebecca Ditch, Sara Aguinaga, Joan Rahill, Lisa Haddix, Barbara Stewart, Pat Bolone, Bonnie Bousson, Donna Vaughn, Marjorie Harder, Christina Diem, Kathy Diem, Osuil Mayo, Christine Ewald, Pam Rogers, Barbara Arnold, Georgina Ghazawi, Peggy Pryzbylski, Janet Bott, Stephanie Harbin, Deborah Presley and Theresa Gould, respectfully request that this Honorable Court enter a Judgment in their favor, and against Willie Gary, Tricia Hoffler, Robert Parenti, Sekou Gary, and Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., jointly and severally, for an amount well in excess of Seventy-Five Thousand (\$75,000.00) Dollars, for all pecuniary damages they have incurred and exemplary damages.

COUNT III

BREACH OF FIDUCIARY DUTY

86. PLAINTIFFS repeat and reallege the factual allegations only contained in paragraphs 1 through 85 as though each factual allegation was stated verbatim.

87. At all material times herein, DEFENDANTS/ATTORNEYS were in a position of highest trust and confidence toward PLAINTIFFS.

88. At all material times herein, PLAINTIFFS reposed their faith, confidence and trust in DEFENDANTS/ATTORNEYS' judgment and advice.

89. At all material times herein, DEFENDANTS/ATTORNEYS owed PLAINTIFFS a fiduciary duty that included, among other things, to act in their best interest and with unswerving loyalty.

90. DEFENDANTS/ATTORNEYS breached their fiduciary obligations to PLAINTIFFS by, among other things:

- (i) entering into an attorney/client relationship with Company B while representing PLAINTIFFS against Company B;
- (ii) duping PLAINTIFFS into permanently releasing all claims they may possess against Company A so that ATTORNEYS could receive the ADDITIONAL LITIGATION PROCEEDS and additional compensation; and
- (iii) misappropriating PLAINTIFFS' funds.

91. As a direct and proximate result of DEFENDANTS/ATTORNEYS' actions, PLAINTIFFS have been severely harmed.

92. DEFENDANTS/ATTORNEYS' actions were malicious, willful and wanton misconduct and indicated a reckless disregard of PLAINTIFFS' rights resulting in the PLAINTIFFS suffering humiliation, a sense of outrage and indignity, such that they are entitled to exemplary damages.

WHEREFORE, Plaintiffs Wendy Kubik, Michelle DeTomaso, Rita Dillon, Jane Doe #1, Jane Doe #2, Jane Doe #3, Judith Flenna, Elaine Kolodziej, Pamela Lindstrom, Pauline Maniaci,

Mary Richardson, Joan Ritch, Susan Schmaltz, Judy Spradley, Eleanor Taylor, Beverly Thomas, Judith Thornton, Mary Jo Van Tiem, Renee Willits, Rebecca Ditch, Sara Aguinaga, Joan Rahill, Lisa Haddix, Barbara Stewart, Pat Bolone, Bonnie Bousson, Donna Vaughn, Marjorie Harder, Christina Diem, Kathy Diem, Osuil Mayo, Christine Ewald, Pam Rogers, Barbara Arnold, Georgina Ghazawi, Peggy Pryzbylski, Janet Bott, Stephanie Harbin, Deborah Presley and Theresa Gould, respectfully request that this Honorable Court enter a Judgment in their favor, and against Willie Gary, Tricia Hoffler, Robert Parenti, Sekou Gary, and Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., jointly and severally, for an amount well in excess of Seventy-Five Thousand (\$75,000.00) Dollars, for all pecuniary damages they have incurred, and exemplary damages, and provide such further relief as this Court deems just.

COUNT IV

CONTRACT IN CONTRAVENTION OF PUBLIC POLICY

93. PLAINTIFFS repeat and reallege the factual allegations only contained in paragraphs 1 through 92 as though each factual allegation was stated verbatim.

94. DEFENDANTS/ATTORNEYS entered into 1/3 contingency fee attorney/client representation agreements with PLAINTIFFS.

95. DEFENDANTS/ATTORNEYS withheld monies from PLAINTIFFS in accordance with their attorney/client representation agreement, as legal fees.

96. That the time DEFENDANTS/ATTORNEYS forwarded the Defendant Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C. contingency fee

attorney/client representation agreement to PLAINTIFFS and instructed them to immediately sign it, the case was already settled so that there was nothing contingent about the outcome.

97. Each attorney/client representation agreement DEFENDANTS/ATTORNEYS signed with PLAINTIFFS violates the Michigan Rules of Professional Conduct in the following particulars:

- (i) Entering into an agreement for, charging, or collecting an illegal or clearly excessive fee;
- (ii) Authorizing DEFENDANTS/ATTORNEYS to enter into an impermissible conflict of interest;
- (iii) Failing to explain the implications of common representation, and the advantages and risks involved, when seeking permission to enter in to a conflict of interest situation involving the representation of multiple clients;
- (iv) Acquiring a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, other than the contingency fee; and
- (v) Accepting compensation for representing a client from one other than the client without (1) the client consenting after full consultation; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by MRPC 1.6.

98. Attorney fee agreements that violate the Michigan Rules of Professional Conduct are unethical and unenforceable as a matter of law.

99. As a direct and proximate result of DEFENDANTS/ATTORNEYS entering into arrangements with PLAINTIFFS, which contravene the Michigan Rules of Professional Conduct, PLAINTIFFS have been harmed.

WHEREFORE, Plaintiffs, Wendy Kubik, Michelle DeTomaso, Rita Dillon, Jane Doe #1, Jane Doe #2, Jane Doe #3, Judith Flenna, Elaine Kolodziej, Pamela Lindstrom, Pauline Maniaci,

Mary Richardson, Joan Ritch, Susan Schmaltz, Judy Spradley, Eleanor Taylor, Beverly Thomas, Judith Thornton, Mary Jo Van Tiem, Renee Willits, Rebecca Ditch, Sara Aguinaga, Joan Rahill, Lisa Haddix, Barbara Stewart, Pat Bolone, Bonnie Bousson, Donna Vaughn, Marjorie Harder, Christina Diem, Kathy Diem, Osuil Mayo, Christine Ewald, Pam Rogers, Barbara Arnold, Georgina Ghazawi, Peggy Pryzbylski, Janet Bott, Stephanie Harbin, Deborah Presley and Theresa Gould, respectfully request that this Honorable Court order Defendants, Willie Gary, Tricia Hoffler, Robert Parenti, Sekou Gary, and Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., to disgorge all monies wrongfully received by Plaintiffs through their entering into arrangements that violate the Michigan Rules of Professional Conduct and Michigan Court Rules, and provide such further relief as this Court deems just.

COUNT V

FRAUD

100. PLAINTIFFS repeat and reallege the factual allegations only contained in paragraphs 1 through 99 as though each factual allegation was stated verbatim.

101. During the first two weeks of August 2002, at the law firm of Rundell & Nolan, LLP in Troy, Michigan, Defendants, Willie Gary, Robert Parenti, Sekou Gary, Curtis Rundell and Debra Nolan made numerous false representation to PLAINTIFFS about their claims such as that they did not have causes of action against Company A, that they could never prevail against Company A, that Company A “had nothing to do” with PLAINTIFFS’ potential claims, that they could not be told what any of the other PLAINTIFFS were being offered, that if they did not accept the settlement offer DEFENDANTS/ATTORNEYS would not represent them any longer and they would have to

pay back DEFENDANTS/ATTORNEYS for all of the time they had spent so far, that some would have to give up their jobs, etc.

102. Upon information, Defendant Tricia Hoffler participated in some of these meeting via telephone.

103. During these discussions, DEFENDANTS/ATTORNEYS never informed PLAINTIFFS all of the details of the global settlement agreement they had reached with Company B.

104. PLAINTIFFS made the ultimate decision regarding their claims against Company A and Company B, and signed documents in accordance therewith, without knowledge of all of the details of the global settlement, including the \$51.5 million.

105. DEFENDANTS/ATTORNEYS' representations and omissions were intentional, false and material.

106. DEFENDANTS/ATTORNEYS' representations and omissions were made with the intention that PLAINTIFFS relied upon it.

107. PLAINTIFFS acted in reliance upon DEFENDANTS/ATTORNEYS' actions.

108. PLAINTIFFS have been severely harmed by their reliance upon DEFENDANTS/ATTORNEYS' fraudulent representations and omissions.

109. DEFENDANTS/ATTORNEYS' actions were malicious, willful and wanton misconduct and indicated a reckless disregard of PLAINTIFFS' rights resulting in the PLAINTIFFS suffering humiliation, a sense of outrage and indignity, such that they are entitled to exemplary damages.

WHEREFORE, Plaintiffs, Wendy Kubik, Michelle DeTomaso, Rita Dillon, Jane Doe #1, Jane Doe #2, Jane Doe #3, Judith Flenna, Elaine Kolodziej, Pamela Lindstrom, Pauline Maniaci, Mary Richardson, Joan Ritch, Susan Schmaltz, Judy Spradley, Eleanor Taylor, Beverly Thomas, Judith Thornton, Mary Jo Van Tiem, Renee Willits, Rebecca Ditch, Sara Aguinaga, Joan Rahill, Lisa Haddix, Barbara Stewart, Pat Bolone, Bonnie Bousson, Donna Vaughn, Marjorie Harder, Christina Diem, Kathy Diem, Osuil Mayo, Christine Ewald, Pam Rogers, Barbara Arnold, Georgina Ghazawi, Peggy Pryzbylski, Janet Bott, Stephanie Harbin, Deborah Presley and Theresa Gould, respectfully request that this Honorable Court enter a Judgment in their favor, and against Willie Gary, Tricia Hoffler, Robert Parenti, Sekou Gary, and Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C., for an amount well in excess of Seventy-Five Thousand (\$75,000.00) Dollars, for all pecuniary damages they have incurred, and exemplary damages, and provide such further relief as this Court deems just.

COUNT VI

STATUTORY CONVERSION

110. PLAINTIFFS repeat and reallege the factual allegations only contained in paragraphs 1 through 109 as though each factual allegation was stated verbatim.

111. Upon information and belief, the total global settlement monies were transferred from Company B to their attorney, Holland & Knight, to Defendant Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C.

112. After Defendant Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C. received the aggregate settlement amount, they disbursed PLAINTIFFS their net settlement monies.⁴

113. Defendant Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C. converted/embezzled THE ADDITIONAL LITIGATION PROCEEDS when they kept these funds and did not disburse them to PLAINTIFFS.

114. After converting/embezzling the ADDITIONAL LITIGATION PROCEEDS, upon information and belief, Defendant Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C. transferred them to Defendants Willie Gary, Tricia Hoeffler, Robert Parenti and Sekou Gary.

115. Upon information and belief, Defendants Willie Gary, Tricia Hoeffler, Robert Parenti and Sekou Gary all received converted/embezzled property and knew the property had been converted/embezzled from PLAINTIFFS.

116. MCLA 600.2919a provides: "A person damaged as a result of another person's buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property when the person buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees. This remedy shall be in addition to any other right or remedy the person may have at law or otherwise."

⁴Defendant Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, P.C determined PLAINTIFFS tax obligations on their settlements, withdrew these amounts from their gross award and, upon information and belief, eventually forwarded these monies to the tax authorities.

117. Defendants Willie Gary, Tricia Hoffler, Robert Parenti and Sekou Gary, jointly and severally, have violated MCLA 600.2919a.

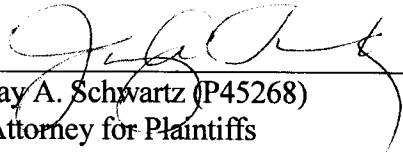
118. As a direct and proximate result of their conduct, they are liable to PLAINTIFFS for 3 times the amount of actual damages they caused, plus reimbursement of PLAINTIFFS' costs and reasonable attorney fees.

119. DEFENDANTS/ATTORNEYS' actions were malicious, willful and wanton misconduct and indicated a reckless disregard of PLAINTIFFS' rights resulting in the PLAINTIFFS suffering humiliation, a sense of outrage and indignity, such that they are entitled to exemplary damages.

WHEREFORE, Plaintiffs, Wendy Kubik, Michelle DeTomaso, Rita Dillon, Jane Doe #1, Jane Doe #2, Jane Doe #3, Judith Flenna, Elaine Kolodziej, Pamela Lindstrom, Pauline Maniaci, Mary Richardson, Joan Ritch, Susan Schmaltz, Judy Spradley, Eleanor Taylor, Beverly Thomas, Judith Thornton, Mary Jo Van Tiem, Renee Willits, Rebecca Ditch, Sara Aguinaga, Joan Rahill, Lisa Haddix, Barbara Stewart, Pat Bolone, Bonnie Bousson, Donna Vaughn, Marjorie Harder, Christina Diem, Kathy Diem, Osuil Mayo, Christine Ewald, Pam Rogers, Barbara Arnold, Georgina Ghazawi, Peggy Pryzbylski, Janet Bott, Stephanie Harbin, Deborah Presley and Theresa Gould, respectfully request that this Honorable Court enter a Judgment in their favor, and against Willie Gary, Tricia Hoffler, Robert Parenti, Sekou Gary, for an amount well in excess of Seventy-Five Thousand

(\$75,000.00) Dollars, for all pecuniary damages they have incurred, and exemplary damages, and provide such further relief as this Court deems just.

SCHWARTZ LAW FIRM, P.C.

By: 
Jay A. Schwartz (P45268)
Attorney for Plaintiffs
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Farmington Hills, Michigan 48331
(248) 553-9400

Dated: September 23, 2004

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WENDY KUBIK, MICHELLE DeTOMASO,
RITA DILLON, JANE DOE #1, JANE DOE #2,
JANE DOE #3, JUDITH FLENNA,
ELAINE KOLODZIEJ, PAMELA LINDSTROM,
PAULINE MANIACI, MARY RICHARDSON,
JOAN RITCH, JANICE SANDORA,
MICHELE BOULTON, SUSAN SCHMALTZ,
JUDY SPRADLEY, ELEANOR TAYLOR,
BEVERLY THOMAS, JUDITH THORNTON,
MARY JO VAN TIEM, RENEE WILLITS,
REBECCA DITCH, SARA AGUINAGA,
JOAN RAHILL, LISA HADDIX,
BARBARA STEWART, PAT BOLONE,
BONNIE BOUSSON, DONNA VAUGHN,
MARJORIE HARDER, CHRISTINA DIEM,
KATHY DIEM, OSUIL MAYO,
CHRISTINE EWALD, PAM ROGERS,
BARBARA ARNOLD, GEORGINA GHAZAWI,
PEGGY PRYZBYLSKI, JANET BOTT,
STEPHANIE HARBIN, DEBORAH PRESLEY,
and THERESA GOULD,

Plaintiffs,

v

WILLIE GARY, TRICIA HOFFLER,
ROBERT PARENTI, SEKOU GARY,
and GARY, WILLIAMS, PARENTI,
FINNEY, LEWIS, McMANUS,
WATSON & SPERANDO, P.C.,

Defendants.

Civil Action No. 03-73350
Hon. Paul D. Borman
Mag. Judge Mona Majzoub

PROOF OF SERVICE

(re: Plaintiffs' Third Amended Complaint
and Demand for Jury Trial)

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WIGOD, FALZON, MCNEELY
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(248) 356-3300

PROOF OF SERVICE


STATE OF MICHIGAN)
) §
COUNTY OF OAKLAND)

I, WENDY L. JONES, being first duly sworn, depose and state that I am employed by the Schwartz Law Firm and that on the 23rd day of September, 2004, I mailed a photocopy of Plaintiffs' Third Amended Complaint and Proof of Service to: Timothy D. Wittlinger, Esq., Suite 3500, 500 Woodward Avenue, Detroit, Michigan, 48226, by placing same in an envelope addressed as above and depositing same in a U.S. Mail receptacle located in Farmington Hills, Michigan. Further saith not.



WENDY L. JONES

Subscribed and sworn to before
me this 23rd day of September, 2004.



LINDA ZAREM, Notary Public
Wayne County, Michigan
My Commission Expires: 4/7/05
Acting in Oakland County, Michigan