

The Eleventh Circuit

I. Summary

Ignorance of the court's rules is not a proper defense, and I would imagine you might provide relief to a plaintiff who has struggled to secure counsel (Howze v Jones & Laughlin Steel Corp., 750 F. 2d 1208 (3rd Cir. 1984).

I've prepared to fight this battle since I first began documenting my performance in October of 2007. My history with the defendant is well noted along with my battle through the Equal Employment and Opportunity Commission. For convenience, I submit to you a timeline.

1/27/10 - Complaint filed with the EEOC

Defendant requests and extension

6/2/10 - Defendant requests an extension

2/15/11 - Defendant requests an extension

2/17/11 - Defendant requests and extension

5/19/11 - Defendant requests more time

7/12/11 - Defendant ask for additional dates

10/19/11 - Defendant states intention to comply

11/18/11 - EEOC issues dismissal letter

2/16/12 - Complaint filed with District Court

3/7/12 - Defendant requests and extension

Request for reports & Settlement Discussions

7/5/12 - Change of Plaintiff's counsel

7/31/12 - Plaintiff's Counsel requests a 4 month extension

11/6/12 - Plaintiff's Counsel requests Discovery of Plaintiff

11/7/12 - Plaintiff provides list

11/16/12 - Plaintiff Counsel requests 2 month extension

The Eleventh Circuit

12/14/12 - Defendant requests extension

1/8/13 - Defendant misses self established delivery date for Discovery

1/14/13 - Discovery provided

1/15/13 - Plaintiff receives Discovery and is dropped as a client

2/1/13 - Final and correct Discovery request sent to Defendant

The basis of this request is the ability to obtain information that was originally requested in February of 2010 through the EEOC, again on February 11, 2011, through counsel in March 2012 and finally on February 1, of 2013 as well as vacate the summary judgement in favor of Defendant.

Plaintiff, during the first 6 of his 8 years of employment served in Cleveland, Ohio and learned the trade of group insurance. He was able to "master" the skills of underwriting while growing in his sales and service capacity from groups of 2 employees through 25,000 (Gwinnett County School District).

Plaintiff always worked every assignment given to him but everything changed when he was offered a position that he was physically unable to take. After his employment was threatened, he elected to have his knees surgically repaired so that he could return to work at full strength. Upon return however, opportunity was removed and he was forced to maintain a role of a diverse face in the market.

Ultimately, there is sufficient documentation to prove that while in Ohio, Plaintiff received not only proper training but also earned a strong track record of success. There are documents showing this carried over to Atlanta, what is missing however is the reporting that confirms opportunity or lack thereof.

II. The Requests

The Eleventh Circuit

Having secured e-mails, surveys, and reporting, Plaintiff approached the EEOC, but was rebuffed when the Defendant refused to comply. Without having the ability to determine whether or not discrimination took place, the EEOC dismissed the claim and issued a right to sue letter.

Having secured counsel, Plaintiff approached his attorney with a list of documents needed and after rounds of negotiations Defendant offered a settlement of \$15,000 but again refused to provide the information. During discovery, the Plaintiff provided yet another copy of the document list to counsel which was submitted to Defendant, but incomplete.

III. The Exchange

On January 15, 2013, finding himself in a position without the information necessary to prove the case he began working on 3 years prior, more than a basic understanding of the legal system, or counsel to guide him through, Plaintiff asked as a final request that counsel draft a request for discovery as a separation agreement.

Due to an apparent illness, Plaintiff was forced to wait until January 28th to receive the agreed upon draft and submitted a final copy to Defendant on February 1, 2013. On February 11th, Defendant notified Plaintiff that the requests were untimely. On the 12th, Plaintiff filed a Motion for the Extension of the Discovery Period, which referenced counsel's failure to properly request discovery.

The Defendant filed opposition noting,

"Plaintiff, with only three days left in discovery period, complains that he needs an additional 60 days for discovery because he believes that his initial discovery requests were not sufficiently drafted to inquire about or obtain the information he now wants. What Plaintiff fails to disclose to the court, however, is that he e-mailed a second set of discovery requests to counsel for MetLife on February 1, 2013 and was promptly notified that those requests were untimely."

The Eleventh Circuit

Defendant knew, per the deposition on November 13, 2012, in addition to previous requests this information has always been desired. Further, "promptly" may be relative, but with 3 emails sent between February 1st and 7th and a total of 10 days before notification, it hardly fits here.

It was also noted in RESPONSE TO DEFENDANT'S OPPOSITION OF DISCOVERY PERIOD EXTENSION that, "The documents [to be] made available with the signature of the Amended Stipulated Confidentiality Order haven't been entirely provided. Plaintiff is still waiting for answers to Requests 1, 2, 3, 5 as well as Request and Interrogatory number 9."

On March 4th, 2013, Judge Russell Vineyard Issued an Order denying Plaintiff's Motion stating,

"Plaintiff has failed to show why the additional discovery he seeks is necessary for his case, and why it could not have been obtained prior to the close of the extended discovery period. Plaintiff consented to the withdrawal of his counsel in this case on January 15th, 2013 and he assumed responsibility for prosecuting his case *pro se*, with knowledge that the extended discovery deadline was looming. However, it does not appear from the record that he acted promptly to rectify the alleged failings of his prior counsel about which he complains in his motion. Instead, plaintiff waited until just days before discovery was scheduled to expire to seek another extension. Even in his current *pro se* status, plaintiff must "[bear] the consequences of his own delay." Wayne v. Jarvis, 197 F.3d 1098, 1104 (11th cir. 1999)."

As Judge Vineyard indicates, Counsel was withdrawn on January 15th and assumes Plaintiff was aware of the discovery deadline. As an untrained litigant however, Plaintiff was hardly in a position to read the 1,391 pages submitted, catch up on the local rules, and properly submit a request for Discovery...in one day.

The Eleventh Circuit

Further, the case cited, Wayne v. Jarvis, references a *pro se* plaintiff who was allotted two extensions on Discovery and denied a third. The difference between Wayne and Plaintiff Rowell is that Wayne was always *pro se* and would have been aware of the rules of the Court.

Despite the complications, Plaintiff, with the exception of the first filing turned briefs around within 24 hours, which without having passed the bar requires physical delivery.

IV. The Appeal

On March 12, 2013, Plaintiff filed an appeal to address the courts concerns and as there is no excuse for not abiding by the rules of the Court, provided there is time to read them, Plaintiff failed to act in one area.

No attempt to schedule conference to extend the Discovery period was made, but given the history of reluctance to release the pending information, Plaintiff can't imagine how the Defendant would have been agreeable.

On November 18, 2013, Judge William S. Duffey, jr. issued an Opinion and Order where he addresses Plaintiff's Appeal of the Magistrate Judge's Order and says,

"Plaintiff had failed to properly show why the additional discovery Plaintiff requested could not have been obtained before the close of the already-extended deadline. Judge Vineyard also noted that Plaintiff had not attempted to arrange a conference with the court to resolve any discovery disputes, but instead waited until discovery was about to close to file a request for his third extension."

While ideally, Plaintiff would have allowed more than 3 days notice, Local Rule 26.2 (b) state's, "Motions requesting extensions of time for discovery must be made prior to the expiration of the existing discovery period" and Plaintiff abided by this rule.

The Eleventh Circuit

V. Summary

The last thing Plaintiff wants to do is burden the Court with a request, but given the history of this case, he is requesting that you see the circumstance in which he was placed and allow the record to be judged having the gaps in the record filled Patton v. MFS/Sun/Life Financial Distributors 480 F. 3D 478 (7th Cir 2007).

Given the 9 requests and grants from Defendant for extensions and that this is the first coming directly from the Plaintiff, a Motion to Reopen Discovery and vacate summary judgement is warranted.



MetLife's Response

A. Course of Proceedings and Disposition Below

On February 16, 2012, Rowell filed suit against MetLife asserting claims of race discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., race discrimination in violation of 42 U.S.C § 1981, and state-laws claims for negligence and intentional infliction of emotional distress. MetLife provided its initial disclosures on April 25 and the District Court issued its initial scheduling order on May 2, with discovery scheduled to close on August 23, 2012. On July 31, Rowell requested with MetLife's consent a four month extension of the discovery period; that extension was granted on August 2 and extended the close of discovery to December 15. After three and a-half more months of discovery, on November 16, Rowell requested - again with MetLife's consent - a two month extension of the

The Eleventh Circuit

discovery period; that extension was granted on the same day with discovery set to close on February 15, 2013.

On January 15, 2013, Rowell consented to his then second counsel's withdrawal and elected to proceed *pro se*. A month later, on February 12, Rowell filed a motion to extend the discovery period for another 60 days. MetLife opposed this third request for an extension. The magistrate judge denied Rowell's motion. Rowell appealed the magistrate judge's order to the District Court.

MetLife moved for summary judgement on March 18. On October 9, 2013, the magistrate judge issued a comprehensive Final Report and Recommendation recommending that MetLife's motion be granted; Rowell did not file any objections to the magistrate judge's proposed findings and recommendations. On November 18, the District Court adopted the magistrate judge's Final Report in full, granted MetLife's motion for summary judgement, denied Rowell's appeal of the magistrate judge's discovery order, and dismissed Rowell's case in its entirety. The District Court also entered a judgement for MetLife to recover its costs.

Rowell filed a notice of appeal on December 17. Rowell argues only that the District Court abused its discretion by denying his motion to extend the discovery period. He does not contend that the District Court's order granting summary judgement in MetLife's favor was error.

B. Statement of Facts

MetLife sells group life, dental, and disability insurance plans to employers. Rowell, an African-American, began working for MetLife as a Sales Representative in 2002 in Ohio. After a few years, he was promoted to the position of Account Executive. In 2008, Rowell requested and was granted a transfer to MetLife's office in Atlanta, Georgia, where he was employed as a Client Executive. As a Client Executive, Rowell was responsible for managing MetLife's accounts with employers having 500 to 15,000 employees.

The Eleventh Circuit

In 2009, Rowell achieved only 10.6% of his sales goal. That same year, MetLife incurred over \$3,000,000 in losses resulting from clients assigned to Rowell who cancelled their contracts.

2010 was no better. Although Rowell was expected to reach a sizable percentage of his annual sales goal within the first quarter, he had achieved only 6% of his goal after the first two months of the year. Rowell's sales were markedly lower than those of his coworkers. In addition, MetLife received several complaints from customers regarding Rowell's job performance.

Because of his performance issues, on February 23, 2010, Rowell's supervisor placed him on a Performance Improvement Plan. On July 30, 2010, Rowell resigned his position at MetLife to start his own insurance agency.

C. Standard of Review

The Court reviews a district court's ruling on discovery matters only for abuse of discretion. *Harrison v. Culliver*, 746 F.3d 1288, 1297 (11th Cir. 2014). Under that standard of review, a district court's ruling is upheld unless the court "made a clear error of judgement or . . . applied the wrong legal standard." *Id.* (Quoting *Josendis v. Wall to wall Residence Repairs, inc.*, 662 F. 3d 1292, 1307 (11th Cir. 2011)). This Court will reverse a discovery ruling only where it is shown that the ruling "resulted in substantial harm to the appellant's case." *Id.* (quoting *Iraola & CIA, S.A. v. Kimberly-Clark Corp.*, 325 F.3d 1274, 1286 (11th Cir. 2003)).

Summary of Argument

The District Court's decision denying Rowell's third motion to extend the discovery period was not an abuse of its discretion as the District Court did not make a clear "error of judgement" or "apply the wrong legal standard" when it denied Rowell's request. Before the Court denied Rowell's third request for additional discovery, Rowell had (i) requested and been granted two extensions of the discovery period totaling an additional six months of discovery; (ii) submitted substantial requests to MetLife (20 interrogatories and 41 document requests); and

The Eleventh Circuit

(iii) received comprehensive responses to those requests, including approximately 1,400 pages of responsive documents.

The District Court's denial of Rowell's third motion to extend discovery should be affirmed because that ruling did not result in "substantial harm" to his case. The District Court granted summary judgement in favor of MetLife on multiple grounds; no adverse job actions, no similarly situated comparators, and no pretext for race discrimination claims; no hostile work environment for harassment claim; no severe emotional distress for intentional infliction of emotional distress claim; and no physical impact for negligent retention claim (which also failed because it is a derivative claim). An additional 60 days of discovery would not have changed the facts or the result.

ARGUMENT AND CITATIONS OF AUTHORITY

A. The District Court Did Not Abuse its Discretion by Denying Rowell's Motion to Extend the Discovery Period for the Third Time After Discovery had been Open for Nearly One Year

Before the District Court issued the order that Rowell now appeals, Rowell had requested - and been granted - two extensions of the discovery period. On July 31, 2012, after discovery had been open for three months, Rowell requested a four month extension of the discovery period (to which MetLife consented) and the Court extended the close of discovery to December 15. After another three months of discovery, on November 16, Rowell requested a two month extension of the discovery period (to which MetLife again consented) and the Court extended the close of discovery to February 15, 2013.

The District Court's decision not to extend discovery for a *third* time, after Rowell had ample opportunity to engage in discovery, was not an abuse of discretion. *See Fed. Deposit Ins. Co. v. Merchants Nat'l Bank of Mobile*, 725 F.2d 634, 640 (11th Cir. 1984) (denying a third extension of the discovery period was not an abuse of discretion where "[n]o showing was made

The Eleventh Circuit

that extending the discovery deadline for a third time would lead to other admissible evidence"); *see also Goodman-Gable-Gould Co. v. Tiara Condominium Ass'n* 595 F.3d 1203, 1210 n.21 (11th Cir. 2010) (no abuse of discretion in refusing to extend discovery where the parties had more than six months to engage in discovery); *Goodman v. Ga. Sw.*, 147 F. App'x 888, 890 (11th Cir. 2005) (no abuse of discretion to deny a *pro se* plaintiff's motions seeking further discovery when discovery had been open for nine months).

Moreover, Rowell was well aware that the discovery period was ending on February 15, 2013. He had ample time to prepare for that date because it was set months in advance when the District Court granted his second request to extend the discovery period. But Rowell waited until there were only three days of discovery remaining to inform the court that he thought he needed an additional 60 days.

The [D]istrict [C]ourt's decision to hold [Rowell] to the clear terms of [the] scheduling orders is not an abuse of discretion." *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1307 (11th Cir. 2011). That is particularly true where, as here, the party who moves for an extension of the discovery period waits until the eleventh hour to do so. *See Evans v. Boyd Restaurant Grp., LLC*, 240 F. App'x 393, 397 (11th Cir. 2007) (no abuse of discretion to deny a motion to extend the discovery period where the motion "was made the day before the end of the discovery period with no explanation for the delay").

The fact that Rowell is *pro se* is of no moment: "Even *pro se* litigants are under obligation to obey discovery orders." *Morton v. Harris*, 628 F.2d 438, 440 (5th Cir. Unit B 1980); *see also Goodman*, 147 F. App'x at 889-90 (affirming the denial of a *pro se* litigant's motions seeking further discovery in a Title VII case where discovery had already been open for nine months). That Rowell's counsel withdrew one month before the discovery period was scheduled to end also has no impact on this analysis. *See Evans*, 240 F. App'x at 397 (no abuse of discretion to deny a *pro se* litigant's motion to extend the discovery period after her counsel had

The Eleventh Circuit

withdrawn). Before his counsel withdrew, the court had twice extended the discovery period, giving Rowell plenty of time to conduct discovery and to rectify any of the alleged failings of his attorney that he claims entitle him to a third extension of the discovery period.

Both in the District Court and now before this Court, Rowell has failed to explain why the additional discovery he seeks is necessary to his case or why he could not have obtained it during the twice-extended discovery period. Indeed, Rowell submitted substantial discovery requests to MetLife (20 interrogatories and 41 document requests) and received comprehensive responses to those requests (including approximately 1,400 pages of responsive documents). The District Court correctly recognized that under these circumstances, there was no reason to extend the discovery period a third time and further prolong this litigation. The District Court's denial of Rowell's motion was well within its permissible range of discretion and should be affirmed.

B. The District Court's Denial of Rowell's Third Request to Extend the Discovery Period Should be Affirmed Because That Denial Did Not Result in Substantial Harm to Rowell's Case

Not only has Rowell failed to show that the district court made a clear error of judgement or applied the wrong legal standard when it denied his third request to extend discovery, he has not even attempted to show that the denial of his request for 60 days of discovery caused "substantial harm" to his case. *See Harrison*, 746 F.3d at 1297 (a discovery ruling can only be reversed if the ruling resulted in "substantial harm to the appellant's case"). Nor can he make such a showing in light of the District Court's order granting summary judgement to MetLife on multiple independent grounds.

The District Court adopted the magistrate judge's thorough and detailed Final Report and Recommendation and granted summary judgement in favor of MetLife on Rowell's race discrimination claims because he failed to establish a *prima facie* case of discrimination and

The Eleventh Circuit

failed to establish that MetLife's legitimate, nondiscriminatory reasons for its decisions were pretextual. First, Rowell failed to show that being placed on the Performance Improvement Plan was an adverse employment action. Second, he failed to provide any evidence that there were similarly situated employees outside of his protected class who were related more favorably than he was. And third, even if Rowell had established a *prima facie* case, MetLife was still entitled to summary judgement because he did not provide any evidence that MetLife's performance-related reasons for placing him on a Performance Improvement Plan were pretext for unlawful discrimination. Each of those failures standing alone was enough to defeat Rowell's discrimination claims.

Rowell's harassment claim is similarly lacking in evidentiary support. There were three independent reasons why MetLife was entitled to summary judgement on that claim: (i) Rowell failed to show that the alleged harassment he experienced was based on his race; (ii) Rowell failed to show that it was sufficiently severe or pervasive to alter the terms and conditions of his employment; and (iii) Rowell failed to show any basis for holding MetLife liable. Each of those reasons by itself was enough to defeat Rowell's harassment claim.

Even after discovery had been extended twice and MetLife had responded to Rowell's extensive discovery requests and provided him with approximately 1,400 pages of responsive documents, Rowell's federal-law claims were unsupported by the evidence of record; his state law claims fared not better. The lack of support for Rowell's claims was not because the discovery period was too short, it was because there is no evidence to support them. Rowell cannot explain how 60 more days of discovery would change the various independent and conclusive facts that defeat his claim. In light of the lack of evidentiary support for Rowell's claims, the District Court's denial of his third request to extend the discovery period did not cause substantial harm to his case and that discovery decision should be affirmed.

**C. Rowell has Abandoned Any Argument that the District Court Erred by Granting
MetLife's Motion for Summary Judgement**

Rowell does not argue that the District Court erred by granting MetLife's motion for summary judgement. He has not listed that as an issue on appeal, has not cited any authority about it, and has devoted no argument to it. Accordingly, Rowell has abandoned any argument that the District Court erred in granting MetLife's motion for summary judgement and this Court should not consider that issue if Rowell raises it in his reply brief. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) ("[I]ssues not briefed on appeal by a *pro se* litigant are deemed abandoned."); *see also Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 683 (11th Cir. 2014) (arguments that are made for the first time in a reply brief "come too late" and are not considered).

Conclusion

Because the District Court did not abuse its discretion by denying Rowell's third motion to extend the discovery period and Rowell has abandoned any argument that the District Court erred by granting summary judgement in MetLife's favor, MetLife respectfully requests that this Court affirm the District Court's judgement in its entirety.



My Reply

I. Purpose

The Eleventh Circuit

The gist of Defendant's Appellee Brief as far as Plaintiff can tell is that the court's decision to not allow additional time for discovery wouldn't have affected the outcome of this case and Plaintiff will show in the following pages why that is not true.

II. Need for Discovery

Discovery went on far longer than necessary considering the information requested and when it was. Defendant had ample notice and opportunity to provide documents that Plaintiff is seeking as stated in the deposition on November 9th,

Konn - "I'm going to get back to the complaint, okay. Paragraph 27, one of the other explanations for your belief that you were racially discriminated against was that you were intentionally treated differently and less favorably than similarly situated non-African-American employees on the basis of your race by, in this case, excluding you from key contacts and accounts from which you would have obtained compensation, career development and networking opportunities. And that's several pieces all in one. I'm going to work through each piece separately, okay?"

Rowell - "Okay."

Konn - "We've already talked about who the similarly situated non-African-American employees were. Are they different for this part of Paragraph 27 than they were before?"

Rowell - "The same."

Konn - "Now let's talk specifically about the key contacts and accounts that you were excluded from. Can you tell me what were or who were those key contacts and accounts?"

Rowell - "Ones that would have provided opportunity."

Konn - "Do you have any specifics?"

The Eleventh Circuit

Rowell - "I can only tell you that there were approximately 125 brokers and consultants that worked through Atlanta, and with four reps, being Vietri, Ed -- no, Vietri, Blackburn, and Leweling, if you divide that equally, what is that, 32? I have seven or eight. I can look it up."

Konn - "Okay. So I'm asking you though are there any specific key contacts and accounts that you were excluded from as alleged? Do you have any specifics at all?"

Rowell - "I can find them."

Konn - "But as you sit here today and when this complaint was drafted, do you have any evidence of specific, quote, key contacts and accounts, end quote, that you were excluded from?"

Rowell - "Yes."

Konn - "What is that?"

Rowell - "My reports."

Konn - "Tell me who those key contacts and accounts were, please."

Rowell - "I can provide them."

Konn - "But as you sit here today, you don't know the names of any of them?"

Rowell - "I have them."

Konn - "I'm asking you as you sit here today, can you tell me who they are?"

Rowell - "Yeah."

Konn - "Please."

Rowell - "All right, One second, I have names of brokers, not clients, because we've requested those through the EEOC since this investigation started and you haven't provided them yet."

Konn - "So we started with sale opportunities, and then I asked you how the sales opportunities you believe Vietri was assigned that you were excluded from were above his skills,

The Eleventh Circuit

and you told me he was simply in over his head. Then I asked you how it was above his experience, and it was you think he wasn't there long enough?"

Rowell - "You didn't write down what I said, which is that there are complaints from the national service center."

Konn - "About Vietri's performance?"

Rowell - "Ability."

Konn - "So again, you don't think Vietri should have gotten those opportunities?"

Rowell - "I think he should have had the opportunity to succeed."

Konn - "You think you should have gotten them instead?"

Rowell - "I think I had 20 quotes and he had 316."

Konn - "Let's talk about Leweling's sales opportunities. What sales opportunities was she offered that you were excluded from?"

Rowell - "She got a bunch of consultants as far as I can see."

Konn - "Is that it? Anything else that you think you were excluded from that she was provided?"

Rowell - "I haven't seen her case list because they haven't provided it."

Konn - "Let's talk about the specific allegations you do have. What facts support the assertion that your documented unsatisfactory performance and customer reviews were fabricated?"

Rowell - "I was never provided any documentation."

Konn - "Never provided documentation of what, sir?"

Rowell - "Complaints."

Konn - "You were provided documentation, pretty clear documentation your performance was unsatisfactory."

The Eleventh Circuit

Rowell - "Based on numbers."

Konn - "You were provided documentation showing that your sales numbers were substantially below your goal?"

Rowell - "Yeah."

Konn - "And do you have facts to support your allegation that the poor customer reviews were fabricated?"

Rowell - "I haven't seen anything."

Konn - "Now assuming that the performance ratings, customer reviews were fabricated, as you allege, what evidence do you have that Trinkwon or Johnson fabricated those ratings to or with the intent to cause you emotional distress?"

Rowell - "I haven't seen -- repeat the question, if you would."

Konn - "You allege that the performance ratings and customer reviews were fabricated. I'm saying look, I'll assume they were fabricated. I'm not going to admit it yet, but I'm assuming they were for the purpose of this question. What evidence do you have that Trinkwon and Johnson who are the individuals we've talked about in this paragraph, fabricated those ratings or reviews with the intent to cause you emotional distress?"

Rowell - "Well, if they're going to lie on me, it's for a purpose."

Konn - "Do you have any -- well, so you have no evidence to establish that it was done to cause you emotional stress?"

Rowell - "I don't know what else they would do it for."

Konn - "But you don't know if they did in fact fabricate anything?"

Rowell - "Like I said, I haven't seen any reports."

Konn - "You said the complaints. What do you mean, the complaints? You allege that it was an ongoing racially hostile and demeaning work environment at MetLife that was

The Eleventh Circuit

intentionally inflicting emotional distress, and I'm asking you what facts supports the assertion, that allegation. You said complaints, I don't -- it's not what do you mean? What are the complaints?"

Rowell - "The ones I believe to be fabricated."

Konn - "So you're talking about customer complaints?"

Rowell - "Yeah."

Konn - "So the fact -- you believe that customer complaints were fabricated?"

Rowell - "I haven't seen evidence to the contrary."

Konn - "Blackburn, So he had more contacts than you. Then the next -- the final eight pages represents all the contacts for Vietri, and I'm sorry, I cant remember his last name."

Rowell - "Vieri."

Konn - "And he had 343 contacts."

Rowell - "That's correct."

Konn - "And he had 343 contacts, yet he was in training when you came on board to the Atlanta office; is that correct?"

Rowell - "Yes, it is. Seven times my opportunity."

Konn - "Pardon?"

Rowell - "Seven times my opportunity."

Konn - "And we're talking about Vietri?"

Rowell - "Right."

Konn - "Are there any other documents that you have and haven't disclosed that you feel support your claims that you received less financial opportunities than whites in your same position?"

Rowell - "The remaining reports have not been provided."

The Eleventh Circuit

Konn - "And the remaining reports have not been provided because you don't have possession of them or because defendants have possession of them?"

Rowell - "The latter."

Konn - "Actually I recognize this report from your production, and it was part of an e-mail sent in January 2010. Does that sound right to you, sir?"

Rowell - "Yes."

Konn - "Plaintiff's (exhibit) 4 was a quote history by broker. Are these the brokers to which you were assigned when you became an account executive, or are there other brokers on this list as well?"

Rowell - "Those are the ones."

Konn - "And if you could, I was a little unclear on exactly what this showed, but am I correct that so each entry, for example, the first ones are for multiple benefit services, each entry on this chart shows a prior sale of some MetLife product to them in the prior three years?"

Rowell - "No."

Konn - "What does it show?"

Rowell - "Quotes."

Konn - "So this is quote activity for each of the brokers to which you were assigned; is that right?"

Rowell - "The same report I requested of you, yes. The same report that I already requested, yes."

In fact, Plaintiff wasn't aware of former counsels second request to extend discovery and based on the motion,

The Eleventh Circuit

- Plaintiff's counsel has requested leave of absence(s) to care for an immediate family member with a serious medical condition. Whereas, Plaintiff's counsel has requested a one week leave during Thanksgiving week, more time may be required depending upon any medical necessity that is unknown at this time.
- Plaintiff's counsel has two motions for summary judgement responses due in December: (1)
December 6 and December 10, 2012
- Plaintiff's counsel will be seeking outpatient medical care the week of December 9, 2012.
- Defendant has served additional written discovery on Plaintiff.
- The parties have agreed to discuss the possibility of settlement the week of December 2, 2012.
- Plaintiff has a New York MSPB administrative hearing docketed to commence on January 14, 2012 and to be completed by January 16, 2012. All available time in December will be needed to conduct six depositions previously scheduled in November but not completed due to Hurricane Sandy. As such deposition in this case will not be conducted until after this hearing is completed.

had nothing to do with Plaintiff.

In good faith, Plaintiff filed motions to extend discovery in an effort to obtain a complete picture before Summary Judgement was to be filed and noted in his Response to Summary Judgement under Misstatement of Facts points 2, 5, 8, and 10 as well as the top of page 6, and page 8 that additional discovery was needed.

III. The Numbers

Defendant contends that Plaintiff was placed on Performance Improvement Plan largely based on sales and persistency but fails to disclose the entire story. In 2009, Plaintiff achieved

The Eleventh Circuit

10.6% of his annual sales objective, incurred \$3,000,000 in losses, and sold 6% of his goal in the first 2 months of 2010.

When entering a new market, there is a ramp up period, which is the basis for a first year guaranteed salary:

Konn - And because Jeff, or Mr. Trinkwon, at MetLife wanted to give you time to acclimate to the new position, they gave you a one-year salary guarantee; is that right?"

Rowell - "They did."

Konn - "And doing the math, you were guaranteed from July 2008 through the end of June 2009 to receive a minimum payment where it says minimum payment of \$12,000.83; is that right?"

Rowell - "Kind of."

Konn - "Why only kind of?"

Rowell - "If you read the first two sentences, one from each bullet, effective 7/1/08, 'Your base salary will be \$65,000 annually, which will be payable in semimonthly -- payable semimonthly,' excuse me."

Konn - "Uh-huh."

Rowell - "The second bullet says, 'You'll receive a guaranteed payment beginning 7/1/08 through 6/30/09 in the amount of \$12,083 payable monthly in the last payroll of the month.'"

Konn - "Uh-huh."

Rowell - "As I pointed out to Jeff when I first read this, they were paying me too much."

Konn - "Well, that depends on your reading, sir, but the \$12,000.83 -- \$12,083 was the minimum salary that MetLife said they would guarantee to you during the first year to allow you to acclimate; is that right?"

The Eleventh Circuit

Rowell - "The agreement was that I would make \$145,000 for the first year as a client executive, which is roughly the same I made as an account executive the year prior."

Konn - "So MetLife guaranteed you that during your first year you were working as a client executive, to help you acclimate to that position, you would be receiving approximately \$145,000 in salary?"

Rowell - "That was what was supposed to happen."

Konn - "Did that not happen?"

Rowell - "They paid me too much."

Konn - "So you made more than the \$145,000 that year?"

Rowell - "The first check was scheduled for \$210,000."

As noted, Rowell notified MetLife that they were scheduled to pay him an excess of \$65,000. During this time, he transitioned into his new role where he wasn't expected to achieve his 2009 sales goal:

Konn - "So you had only hit 10% of your goal for sales in 2008; is that correct?"

Rowell - "yeah."

Konn - "Does that sound substandard to you?"

Rowell - "Not when Jeff Trinkwon told me he didn't expect me to hit my goal my first year."

Konn - "Your first year was 2008?"

Rowell - "Selling into 2009, which is including my guarantee period."

Konn - "But I'm assuming you're supposed to hit a hundred percent of your goal. Was that the target?"

Rowell - "According to Jeff, no."

The Eleventh Circuit

Konn - "So what had Jeff told you your target was?"

Rowell - "He told me to keep doing what I was doing."

Konn - "He didn't tell you -- did he tell you to try to hit 10%"

Rowell - "He didn't say that, no."

Konn - "Did he tell you to try to hit your sales objective?"

Rowell - "He told me to keep doing what I was doing."

Konn - "Mr Rowell, you don't think that you were assigned -- you were assigned a sales objective of \$6.5 million, correct?"

Rowell - "Correct."

Konn - "And you're telling me today that you weren't going to try and hit that number?"

Rowell - "I tried everyday to what was right to the best of my ability, and what I'm telling you is Jeff told me that he didn't expect me to hit my goal in my first year."

Konn - "Okay. And what was your understanding as a result of your conversations with Jeff Trinkwon?"

Rowell - "The first year he told me he didn't expect me to hit my goal."

Konn - "Were you concerned that he didn't think you were doing a good job as a client executive?"

Rowell - "No."

Konn - "You did write that you hope he's okay with the job you're doing. You weren't concerned that he wasn't okay with the job you were doing?"

Rowell - "No."

The Eleventh Circuit

\$3,000,000 may be the top line number, but Defendant's own exhibit shows a lesser number of \$1,62,667 based on transition:

Konn - "All Right. What was your responsibility at Gwinnett County Schools, that account?"

Rowell - "They wanted something MetLife had only done once before."

Konn - "And what was that?"

Rowell - "Direct Reimbursement."

Konn - "All Right. And were you able to make that happen for them?"

Rowell - "Not really."

Konn - "Any why is that?"

Rowell - "Because MetLife had only done it once before at the national account level and they had little experience on mid-large."

Konn - "Were you able to make any sales that resulted from that account?"

Rowell - "No."

Konn - "Did you see a lot of opportunities to make any sales with that account?"

Rowell - "There wasn't time."

Konn - "Huh?"

Rowell - "No."

Konn - "There wasn't time? What do you mean by that, there wasn't time?"

Rowell - "By the time we had got the issues resolved, they had transferred to national accounts."

Konn - "And you were just mid -- mid-level accounts?"

Rowell - "That's correct."

The Eleventh Circuit

This number was further reduced based on sh*t accounts assigned by reps with management consent,

Konn - "Okay. And as far as you know, were the -- did the raps have to voluntarily give up these accounts?"

Rowell - "I believe Jeff asked people to do so, yes."

Konn - "So when you accepted the position, you accepted the position not knowing what accounts you would be assigned?"

Rowell - "That's correct."

Konn - "What was your expectation when you accepted the position."

Rowell - "That I'd have an opportunity to succeed."

Konn - "Okay. And how -- what would you need when you accepted that position to have an opportunity to succeed?"

Rowell - "(A) number of accounts with sales opportunities."

Konn - "And did you ever have a discussion with anybody at Atlanta about that?"

Rowell - "With Jeff Trinkwon."

Konn - "So you were assigned typical client executive opportunities?"

Rowell - "They had a very -- the ones according to Ed were, quote/unquote, shit."

Konn - "Did Ed tell you that?"

Rowell - "I was told by somebody else."

Konn - "Did Mr. Ryan ever tell you he was giving you his shit accounts?"

Rowell - "No."

Konn - "Who told you that Mr. Ryan said he was giving you his shit accounts?"

The Eleventh Circuit

Rowell - "█████ Remus."

Konn - "And is it your assertion that Mr. Ryan told Mr. Remus that Mr. Ryan was giving you his shit accounts?"

Rowell - "Yes."

Konn - "Is that what Mr. Remus told you?"

Rowell - "Yes."

including accounts designated as "at risk" when Plaintiff received them,

Konn - "Would it surprise you to find out that the renewal rate for those clients was significantly lower?"

Rowell - "What do you mean by renewal rate?"

Konn - "I'm just asking you. You don't know? You don't understand that or you don't know?"

Rowell - "Ten years I've been in the business, renewal -- you get renewal rate increases, wraps or decreases, but you don't characterize rates as high or low because there's a market."

Konn - "How about the consistency rate?"

Rowell - "Persistency rate?"

Konn - "Persistency rate, sorry."

Rowell - "That wasn't very good either."

Konn - "Your persistency rate was not very good?"

Rowell - "No."

Konn - "As a client executive?"

Rowell - "Well, there's a reason for that."

The Eleventh Circuit

Konn - "What are those reasons?"

Rowell - "They're illustrated in my initial complaint."

Konn - "To?"

Rowell - "The EEOC and MetLife."

Konn - "But you acknowledge that your persistency rate was lower, was low?"

Rowell - "I'll give you an example. Caterpillar dealers has a nationwide trust. If you know anything about association business, you realize that some supplement others. In other words if you have good experience, its going to help those who have bad experience. And from the time that I got the account and went to Chicago to sit down with the account manager, they designated this case was falling apart."

Konn - "Was it a prior MetLife client?"

Rowell - "It was existing."

Konn - "How long had it been with MetLife?"

Rowell - "I don't know."

Konn - "But before you joined MetLife in Atlanta?"

Rowell - "It was a case I inherited."

Konn - "And you lost that case, they didn't continue their coverage?"

Rowell - "I know they fell apart, but not before I sold them a dental plan."

cases Rowell warned management about,

Konn - "Okay. But isn't it true that you lost that account because they -- because MetLife refused to lower rates?"

The Eleventh Circuit

Rowell - "I approached Jeff Trinkwon after resolving all their service issues to let him know that Children's Healthcare of Atlanta was at risk because they were unhappy with their dental rates."

Konn - " Okay. All right. I'm just trying to confirm, the account was lost because there was refusal to lower rates on behalf of MetLife?"

Rowell - "By Jeff Trinkwon, yes."

and a case that was bought out:

Konn - "What about Choice Point?"

Rowell - "That was an account I had received negative review on based on this complaint for lost revenue. However, that company was bought out by a larger company."

Rowell was also placed on PIP according to Defendant based on customer complaints, but has yet to see them:

Rowell - "I was told there was customers that complained about me, but I wasn't provided anything."

What defendant claims to be customer complaints are actually internal surveys,

Konn - "And the survey is a way for MetLife to determine if its clients are happy with a service they're receiving?"

Rowell - "No."

Konn - "No. What is the survey for?"

The Eleventh Circuit

Rowell - "That survey is internal from our service and underwriting partners to the sales reps."

Konn - "And is that a way for them to determine if they're happy with the service they're receiving from the client executive?"

Rowell - "You could say that."

Konn - "Or account executives?"

Rowell - "It determines how well we work together."

Konn - "And Trinkwon explained to you at the meeting that the company received several unfavorable comments about your performance; isn't that right?"

Rowell - "Yes."

Konn - "And do you have any reason to doubt the veracity of the statements from the survey?"

Rowell - "No."

Konn - "And you were provided some copies of some of those negative survey responses, weren't you?"

Rowell - "I was."

Konn - "Trinkwon also told you that some customers complained about your performance; is that right?"

Rowell - "Yes."

Konn - "Do you have any reason to doubt the veracity of those complaints?"

Rowell - "Like we talked about before, I haven't seen them in writing."

and while they may not all be positive,

The Eleventh Circuit

Konn - "Anything else in this performance improvement plan you believe is false, as alleged in paragraph 28 of your complaint?"

Rowell - "I have a hard time believing that this internal survey jives with the rating that was given to the EEOC by your office."

Konn - "I want you to tell me what you mean by that, sir."

Rowell - "I see averages of 4.6, 5.23"

Konn - "Where are you looking at? You have to slow down for the court reporter. The second to last page of the document marked as Exhibit 9; is that right?"

Rowell - "Yeah."

Konn - "And you're telling me -- I don't want to speak for you, Mr. Rowell, but its sounds like you're saying that you don't believe that the numbers in this chart don't indicate you had poor performance; is that right? Is that what you're telling me?"

Rowell - "What I'm saying is that they don't match with the two."

Konn - "What two, sir?"

Rowell - "The two rating that your office gave to the EEOC."

Konn - "Sir, isn't this chart in fact responses from a client survey, not your review from your manager, Mr. Trinkwon?"

Rowell - "You'd have to tell me."

Konn - "Okay. If I told you these were the responses from your client survey as opposed to any sort of review from Mr. Trinkwon, do you have any reason to doubt that?"

Rowell - "No, but it makes it more interesting for the substandard portion."

Konn - "How is that?"

Rowell - "Because these aren't bad."

The Eleventh Circuit

Konn - "A client, second line, a client was asked if you negotiate collaboratively between sales and service to arrive at business solutions best for client and MetLife. At least one client said they disagreed. Do you see that?"

Rowell - "I see three neutral, two somewhat agree, five agree and two strongly agree."

Konn - "But at least one disagreed?"

Rowell - "I see one, yeah."

Konn - "So its a negative response from a client?"

Rowell - "There's one disagree, not even strongly."

Konn - "But it's a negative response from a client?"

Rowell - "I suppose you could characterize it as such."

Konn - "I'm asking you. It seems like there are multiple options here, from strongly disagree through strongly agree and also a no chance to observe, and at least one person who was asked this question disagreed that you negotiated collaboratively?"

Rowell - "And if you weigh it on the scales of justice with neutral being -- I don't have the word, the crux, you've got nine on agree and one dis."

Plaintiff had a track record of success working with the same customer service center while employed in Ohio and has yet to see this report for his Atlanta comparators:

Rowell - "As far as I'm aware, I was the only one who was placed on that."

Konn - "Had any of those individuals, Vietri, Leweling, Blackburn or Ryan, received customer complaints?"

Rowell - "That's confidential."

Konn - "Are you aware that any of them had received customer complaints?"

Rowell - "No."

The Eleventh Circuit

Konn - "Did any of those four achieve ten percent or less of their sales goal in 2009?"

Rowell - "No."

Konn - "Did any of those four achieve six percent or less of their sales goals for 2010?"

Rowell - "I don't know."

Konn - "Had any of those four received low performance ratings?"

Rowell - "Confidential."

Most large companies renew their benefits on January 1, to match deductible with calendar year, which puts targets for someone in Plaintiff's position to achieve 25% or more of their sales goal on January 1st.

Having been forced to take disability in the 4th quarter of 2009,

Konn - "But you just didn't sell very much because your 2009 number was only ten percent of your goal?"

Rowell - "That was in the same time I was going for disability and I requested the ability to work at home as opposed to taking disability, which HR made me take, so I could work on the leads generated from the Caterpillar dealers."

and being rebuffed by the New York office on the one sales opportunity that would have allowed Plaintiff to achieve his goal,

Konn - "But that wasn't unrealistic or unattainable. You said there were parts of the performance improvement plan that were unrealistic or unattainable."

Rowell - "The goal."

The Eleventh Circuit

Konn - "The goal. So what is it about the accounts you were assigned that made the sales goal unrealistic or unattainable?"

Rowell - "Lack of white space."

Konn - "I'm sorry? Lack of?"

Rowell - "White."

Konn - "What does that mean?"

Rowell - "It's four core products, life insurance, short-term disability, long-term disability and dental. If the client has three of those, their white space is one."

Konn - "And that's because you can only sell in the other line; is that what you mean?"

Rowell - "Yeah."

Konn - "Couldn't you sell into the existing lines, new products, better products?"

Rowell - "Not if they have already them."

Konn - "So the opportunity for a client is where they don't already have some product?"

Rowell - "Yeah."

Konn - "Who is servicing the products they have already?"

Rowell - "I was."

Konn - "So you could potentially earn new commissions on renewals?"

Rowell - "Yeah, as discussed."

Konn - "And you could earn commissions on selling them better, higher end products?"

Rowell - "Extensions, revisions, yeah."

Konn - "So there were opportunities there outside of the, quote, white space?"

Rowell - "Not to achieve a \$4 million goal, there wasn't."

Konn - "But there were some?"

Rowell - "Well, that's mistaken. There was one opportunity that I had that eclipsed my goal."

The Eleventh Circuit

Konn - "Tell me about that."

Rowell - "I ran through all the numbers from every angle, and New York didn't want to do it."

Konn - "Can you tell me about that?"

Rowell - "Yeah. Then Jeff offered me a promotion."

Konn - "That's right. Because you can sell products in 2010, but they don't go in force until -- sorry, 2009, but it's when they go in force that counts toward your numbers."

Rowell - "Yeah."

Konn - "Well, I'm asking you about the accounts you were assigned that made the goals in your performance improvement plan unrealistic or unattainable?"

Rowell - "That was my only shot."

Konn - "You were assigned other accounts; am I correct?"

Rowell - "I was."

Konn - "In 2009, you had other client executive accounts, client executive clients you were working with?"

Rowell - "In 2009, I did."

Konn - "And in 2009, you could have sold products to clients in 2009 that would have counted toward your 2010 numbers?"

Rowell - "If they took effect for January 1st or later."

Rowell - "MetLife has a strong distaste for hospitals when it comes to disability."

Konn - "When it comes to disability insurance?"

Rowell - "Yes."

The Eleventh Circuit

Konn - "Okay. And that was the product that was needed to be sold to Children's Healthcare?"

Rowell - "In order for me to come closer to hitting my goal, yes."

Konn - "And why do you say they have a strong dislike?"

Rowell - "It's very well known internally that their pricing is uncompetitive."

Konn - "And when you say their pricing, you mean MetLife's pricing?"

Rowell - " Yes."

Konn - "All right. Well, would you consider the Cobb County Schools an account that offered you new business opportunities?"

Rowell - "They had the biggest opportunity I had."

Konn - "Okay. And what happened with that biggest opportunity?"

Rowell - "New York was unwilling to take the risk."

Konn - "Okay. And they were unable to take the risk. What do you mean by unable to take the risk?"

Rowell - "There was an opportunity to flip their self-insured dental insurance to fully insured, which would have resulted in a large increase to the bottom line."

Konn - "Okay. And how large are we talking about?"

Rowell - "\$6 million."

Konn - "All right. And what would that have meant to you?"

Rowell - "It would have eclipsed my goal."

Konn - "And -- but who did you have to submit your proposal to in order to get this piece of business?"

Rowell - "To the broker of record, consultant."

Konn - "And the ultimate result, it was turned down by MetLife?"

The Eleventh Circuit

Rowell - "It was declined by Cobb County."

Konn - "It was declined by Cobb County. So you did make a proposal to Cobb County, and they declined it?"

Rowell - "That's correct."

Konn - "Okay. And do you know why they declined the proposal?"

Rowell - "They had more competitive quotes other places, in addition to the fact they they wanted additional guarantees on the fully insured rates, which was what MetLife was unwilling to provide."

Konn - "All right. And would you agree with the comment or statement that Crawford & Company represented a low income producing opportunity for you?"

Rowell - "They did."

Konn - "Okay. And why was that?"

Rowell - "There was no real opportunity aside from what Jeff Trinkwon evaluated as a pension transfer."

Konn - "All right. And what was the problem with that?"

Rowell - "They didn't qualify."

Konn - "Okay. And what do you mean by they didn't qualify?"

Rowell - "Unless I'm mistaken, they didn't have enough money in their pension to make it holdable for MetLife."

Konn - "Okay. So if -- even if you had gotten the pension transfer, MetLife wouldn't have accepted the deal, right?"

Rowell - "That's correct."

achieving \$4.4 million in new sales was nearly impossible especially considering the math:

The Eleventh Circuit

Konn - "In paragraph 28 you say that MetLife assigned to you a sales goal which was unrealistic and unattainable. Do you see that? Are you talking about the sales goal detailed in the performance improvement plan or a different sales goal?"

Rowell - "They're the same."

Konn - "So you were talking about the one in the performance improvement plan, not some other sales goal."

Rowell - "No, I had a sales goal for 2010."

Konn - "And what about that sales goal was unrealistic?"

Rowell - "As I noted this morning, I had 20 at bats, or 20 quotes. The national closing ratio is seven percent. Quick math is 1.4 sales. \$400,000 is the average case size. That's with rounding, even from under half, would be two cases at \$400,000 a piece."

Konn - "So that's your basis for your belief that the sales objective was unrealistic?"

Rowell - "Yeah."

Konn - "It's also the basis for your belief that the sales goal was unattainable?"

Rowell - "Yes."

Konn - "And hadn't you previously agreed with Mr. Trinkwon that the \$4.4 million sales goal was fair?"

Rowell - "No."

Konn - "You had not?"

Rowell - "No."

Konn - "You've been handed, Mr. Rowell what's been marked as Rowell deposition Exhibit Number 10. The document was actually produced to you by MetLife." That's why those little numbers at the bottom -- that's your designation. This is a chain of correspondence between yourself and Mr. Trinkwon in February 2010; is that correct?"

The Eleventh Circuit

Rowell - "Looks to be."

Konn - "And on page, the bottom of page two of that document that's been marked as 125, Mr. Trinkwon is sending you an e-mail explaining to you how he arrived at our sales goal for 2010. Do you see that?"

Rowell - "I see it."

Konn - "And then if you go to the first page, you write back to Mr. Trinkwon, and the second point in your e-mail is, 'I understand the math and I agree that the calculation is fair.' Do you see that?"

Rowell - "I see it."

Konn - "So you did agree with Mr. Trinkwon that the \$4.4 million sales objective for 2010 was fair"

Rowell - "That's not what it says."

Konn - "And you told me that the accounts you were assigned made the performance improvement plan unrealistic and unattainable, and now I'm asking you what about those accounts made the goals unrealistic and unattainable."

Rowell - "Because I had 20 quotes, which would have produced an average of \$800,000 of business."

Konn - "All right. And explain what do you see under quotes that supports your claim that you have less financial opportunity than your peers?"

Rowell - "There's a seven percent closing ratio nationwide."

Konn - "Okay. And how do you know that number's correct, the seven percent?"

Rowell - "That's what we've been told since I started at MetLife."

Konn - "Okay. What does that mean?"

The Eleventh Circuit

Rowell - "For every 100 opportunities that you see, you're expected to close seven."

Konn - "All right."

Rowell - "With 20 here, I was expected to close 1.4"

Konn - "Okay. and the 20, where are you looking at the 20?"

Rowell - "Immediately to the right of my name."

Konn - "Okay. Under metrics snapshot?"

Rowell - "That's correct."

Konn - "Okay. And you're going to have to explain that, because none of us here are in your business. And for future reference, a judge is not going to be in your business. So explain how the 20 quotes in comparison to your comparators means that you have less opportunities for your business."

Rowell - "One point four is what I would have closed on based on national closing ratio."

Konn - "Okay."

Rowell - "One point four accounts at \$400,000 as the average size of an account, that puts it at \$560,000."

Konn - "And what were your goals?"

Rowell - "Well over \$4 million."

Konn - "And who set those goals?"

Rowell - "Jeff Trinkwon."

Konn - "So are you stating based upon the number of quotes you received, that there was no way to reach the \$4 million goal?"

Rowell - "Its mathematically impossible."

IV. Extending Discovery

The Eleventh Circuit

By enlarging the discovery period, Plaintiff hopes to further address issues such as adverse job actions,

Rowell - "I considered resigning because they threatened my job."

Konn - "How did they threaten your job, sir?"

Rowell - "They told me I could take it or find a new one."

Konn - "That's a lot of context I think I'm missing there, so do you want to tell me about that?"

Rowell - "Absolutely. Jeff Trinkwon was impressed with the way I handled multiple situations and offered me additional territory."

Konn - "And this is August of 2009 or prior to August of 2009."

Rowell - "It may have gone as early as, the comments started since I got there in 2008."

Konn - "What comments?"

Rowell - "The kudos he was giving me."

Konn - "Okay. So he had been complimenting you, that you were doing the job okay?"

Rowell - "Absolutely, yeah."

Konn - "And that was when you started?"

Rowell - "Yeah."

Konn - "So the person you're alleging now was racially discriminating against you was actually giving you kudos and comments throughout your time at MetLife; is that right?"

Rowell - "Throughout my time in Atlanta, up until the time at which I declined his promotion."

Konn - "Okay. So tell me more about that."

Rowell - "He offered me a territory I physically couldn't handle."

Konn - "Why is that? Well, first what territory?"

The Eleventh Circuit

Rowell - "Skelley's territory."

Konn - "Okay. And Skelley is who?"

Rowell - "She was an account executive in mid-large. Now she's last I heard doing national accounts."

Konn - "And when you were offered the opportunity to work her territory, she was the account executive in the MetLife Atlanta office?"

Rowell - "Yes. She was transferring."

Konn - "She was transferring. So there was no one left to service her clients or -- is it clients?"

Rowell - "It's a trick question, because Vietri wound up getting her cases."

Konn - "Okay. You were a client executive at the time?"

Rowell - "Yes."

Konn - "And ■ Ryan was a client executive at the time?"

Rowell - "Yes."

Konn - "And Ms. Shelley was a client executive?"

Rowell - "No."

Konn - "Account executive?"

Rowell - "Yes."

Konn - "And Trinkwon offered you the opportunity to work Ms. Sculley's accounts?"

Rowell - "Skelley."

Konn - "Skelley. Is that correct?"

Rowell - "Yes."

Konn - "You turned him down?"

Rowell - "Couldn't do it."

Konn - "Why not?"

The Eleventh Circuit

Rowell - "Because I was sitting and standing on one knee for a year."

Konn - "Okay. So you turned down the opportunity to work the additional clients?"

Rowell - "Yeah."

Konn - "And that's why you decided -- it was at that point you considered resigning?"

Rowell - "When he threatened my job, yeah."

Konn - "Okay. Tell me about that."

Rowell - "He told me I could take the additional territory or find a new job."

Konn - "Okay. So Mr. Trinkwon, because one of his agents was being reassigned, offered you additional clients, offered you clients to service, and you had previously been --"

Rowell - "Brokers."

Konn - "--brokers and clients, so lots of opportunities? So lots of opportunities?"

Rowell - "More opportunities that I could handle physically."

Konn - "And you turned that down?"

Rowell - "Correct."

Konn - "And Mr. -- and you tell me what happened next. I don't want to misstate anything."

Rowell - "After he told me I could take it or find a new job, I told him I'd do it. At which point he wasn't ready for me to take the responsibility. In response to an e-mail I sent about getting started so I'd have a running start for January 1st effective dates, he told me to hang on for another two weeks."

Konn - "And then you considered resigning?"

Rowell - "I considered resigning from the time that my job was threatened."

The Eleventh Circuit

Rowell - "When I returned from disability, one of my special assignments was cold calling on associations. The difference between that and calling on brokers, a broker's already got business. An association, you keep on trying to sell a person some amount of money."

Konn - "Sounds like a new opportunity to me, Mr. Rowell, not a removed opportunity. So you were given that additional opportunity when you came back to account executive?"

Rowell - "I was given it until it was taken away."

Konn - "Mr Ehrlich is a white male?"

Rowell - "Yes."

Konn - "So you were treated the same as John Ehrlich, who's a white male?"

Rowell - "Except for the fact that I had black responsibilities."

Konn - "So the only way you were treated differently than John Ehrlich is that you were assigned to help recruit at Morehouse, the relationship with Atlanta Life, and you had one consultant who was black? That's the only difference?"

Rowell - "Primarily, except for I think he had a bigger book of business than I did."

Konn - "How long had John Ehrlich been with MetLife?"

Rowell - "I don't know."

Konn - "Because he eventually resigned from Metlife; is that correct?"

Rowell - "He was put in a position where it was best for him to take another opportunity."

Konn - "And that's the same thing that you believe happened to you?"

Rowell - "Reducing accounts to the point where you can't reach your goal, yes."

Konn - "You allege that MetLife affirmatively made a decision to constructively terminate your employment. What facts do you have to support that actual decision was made by MetLife to constructively terminate your employment?"

The Eleventh Circuit

Rowell - "Because it was night and day when I returned."

Konn - "And I'm asking you about the facts that make you believe that you were constructively terminated or that support that allegation that there was a decision made."

Rowell - "January 4th I walked into a really hostile work environment."

Konn - "What does that mean?"

Rowell - "It means that the people in the office were aware of supposed complaints while I was on disability despite the fact that that information's confidential."

Konn - "How else had things changed as of January 4th? Just the fact that people were aware that customers had complained about your performance?"

Rowell - "Supposedly. But again, that's environment. You can't forget that my responsibility changed too."

Konn - "And if I'm -- well, I know you resigned in July 2010. Was your -- were there any other decisions made by MetLife, as you allege in paragraph 28, to constructively terminate your employment, or just -- now we're talking about only what happened in January?"

Rowell - "After January?"

Konn - "Any time."

Rowell - "All right, I can tell you when Jeff gave me my new assignment, it was something I immediately recognized to be bogus."

Konn - "What new assignment?"

Rowell - "Calling on associations as well as cold calling from the Yellow Pages."

Konn - "And you were given those new assignments in early 2010; is that right?"

Rowell - "Yeah."

Konn - "You didn't resign until July of 2010?"

Rowell - "That's correct."

The Eleventh Circuit

Konn - "Was there anything in lose proximity to July 2010 that you're alleging was the cause for your -- or that you allege here, MetLife made a decision to terminate, constructively terminate your employment? I'm asking was there anything else that lead you to believe that MetLife made a decision to constructively terminate your employment?"

Rowell - "They were riding me pretty hard."

Konn - "What does that mean?"

Rowell - "They began to pick on me."

Konn - "Can you please elaborate?"

Rowell - "Jeff used to not care what I said, and all of a sudden I was a topic of conversation."

Konn - "Tell me more about that."

Rowell - "Any time the meeting opened, the first questions, the hardest ones he could think of, came to me."

Konn - "When was this?"

Rowell - "After I got back from disability and after I filed my complaint."

Konn - "Which complaint."

Rowell - "I'm sure both."

Jaimie - "I'm sorry, I couldn't hear your answer."

Rowell - "Both but whether it started with the internal one or the EEOC, I'm not positive, but I do recall a change."

Konn - "And your position had changed before that as well; is that correct? You were now in a new role at MetLife?"

Rowell - "As of January 4th 2010."

Konn - "And do you believe you were -- or are you alleging that your change from a client executive to an account executive was done for a racially discriminatory reason?"

The Eleventh Circuit

Rowell - "I believe it was done as a way to get me out the door."

Konn - "I'm asking if it was done, if you believe it was done for a racially discriminatory reason?"

Rowell - "I can't say that."

Konn - "What reason do you think it was -- so you think it was done to, quote, get you out the door?"

Rowell - "Yeah."

Konn - "The same way it was done to John Ehrlich?"

Rowell - "You're in a position where you can't win."

Konn - "Do you have any other facts that support your allegation that MetLife, quote, affirmatively, end quote, made a decision -- sorry. Do you have any other facts to support your allegation that MetLife affirmatively made a decision to constructively terminate your employment?"

Rowell - "Aside from Jeff picking on me at the beginning of the meetings, I would say everything would be documented."

Konn - "What do you mean everything would be documented."

Rowell - "Robert Johnson was instrumental in making sure that any debrief or any comment regarding cases went into Sales Radar as a way of tracking my ability."

Konn - "Your performance?"

Rowell - "There you go."

Konn - "And that was actually part of the performance improvement plan?"

Rowell - "No."

Konn - "No?"

Rowell - "Debriefs were, but the one that stands out to me at that time wasn't necessarily such."

The Eleventh Circuit

Konn - "You say you were picked on at meetings by Mr. Trinkwon. Mr. Trinkwon resigned from MetLife in May 2010; isn't that right?"

Rowell - "Yes."

Konn - "But you didn't resign until July 2010?"

Rowell - "That's correct."

Konn - "So two months later, you are alleging you were constructively terminated?"

Rowell - "No I was constructively terminated, at least set up. The threat of termination began in August 2009 and persisted through my departure date."

Konn - "We talked about the August 2009 threat of termination, and that was related exclusively to you turning down the opportunity to work on Margaret Skelley's accounts?"

Rowell - "Skelley."

Konn - "But otherwise, that's a correct statement?"

Rowell - "Say it again."

Konn - "We talked about your August 2009 what you say was a threat of termination, and that was based on you turning down the opportunities presented by Trinkwon to take over Skelley's accounts?"

Rowell - "Correct."

Konn - "But not your race?"

Rowell - "No. That was disability."

Konn - "So you have no facts to establish that an actual decision was made by somebody at MetLife to constructively discharge you."

Rowell - "When you walk in one day and everything's all of a sudden different, you have less than a little to work with, you feel like something's happened."

Konn - "But no evidence that some decision was made by somebody?"

The Eleventh Circuit

Rowell - "I mean that assignments are given at discretion, and all of a sudden, my assignment was very little. Yeah, I feel like that's evidence."

Konn - "And your assignments came from Mr. Trinkwon?"

Rowell - "Per your documents, yes."

Konn - "Well, I'm asking you. Is that how you believe assignments were assigned?"

Rowell - "I know that Jeff reported to Robert Johnson."

Konn - "And you believe that Mr. Trinkwon gave you assignments that had less opportunities because of your race?"

Rowell - "I think that played a part, yes."

Konn - "Played a part?"

Rowell - "Correct."

Konn - "What was the other part?"

Rowell - "The fact that I turned down the additional opportunity."

Konn - "So potentially Mr. Trinkwon treated you differently because you turned down the Skelley opportunity?"

Rowell - "Threatened termination I'd say is different, yeah."

Rowell - "I got all the higher education they could offer, except for there is one that Greg Falzone suggested I get, but at that point I was trying to hang onto my job."

Konn - "You say all the educational opportunities. You're talking about internal training at MetLife?"

Rowell - (nods his head affirmatively)

Konn - "So you were provided lots of internal training at MetLife."

Rowell - "Including elected to the mastermind board."

Konn - "And those were career advancement opportunities?"

The Eleventh Circuit

Rowell - "If you have that stuff and sales, you're on you're way to the top."

Konn - "What was your expectation when you accepted the position?"

Rowell - "That I'd have an opportunity to succeed."

Konn - "Okay and how -- what would you need when you accepted that position to have an opportunity to succeed?"

Rowell - "[A] number of sales accounts with sales opportunities."

Konn - "And did you ever have a discussion with anybody at Atlanta about that?"

Rowell - "With Jeff Trinkwon."

Konn - "Okay. And what was your understanding as a result of your conversations with Jeff Trinkwon?"

Rowell - "The first year he told me he didn't expect me to hit my goal."

Konn - "All right. Anything else?"

Rowell - "I was -- upon first assignment, there was a subsequent conversation when he -- when he assigned me my second one."

Konn - "Okay. And what was that conversation?"

Rowell - "I discussed with him what I'd found based on the assignments that he'd given me."

Konn - "Uh huh."

Rowell - "His response to me was, if you think that I'm f-*c-k-i-n-g you, you're entitled to your own opinion."

Konn - "Can I, just for the record, he said, do you think I'm -- your fucking him? I mean, I'm like -- like, he didn't say f-*c-k-i-n-g, correct?"

Rowell - No, he said, and I quote --"

The Eleventh Circuit

Konn - "You can say the word. I'm not going to -- it's not going to offend me, and it's the truth, if that's what he said. Tell us what he said, please."

Rowell - He told me, "If you think that I'm fucking you, you're entitled to your own opinion."

Jamie - "And what was your response?"

Rowell - "My quote was that I never said that."

Konn - "Okay. And what was said after that meeting, I mean after that?"

Rowell - "That was the end of the meeting."

Konn - "All right. So you just walked out with it unresolved?"

Rowell - "He walked out of my office."

Konn - "He walked out of your office. Did you -- after you had that meeting, did you get any -- well, let's go back to that meeting. What prompted you to have the meeting with Jeff Trinkwon?"

Rowell - "Because I investigated the opportunity he gave me upon return from disability."

Konn - "And did you ask for the meeting, or did this meeting just happen?"

Rowell - "That was taken as part of the PIP."

Konn - "As part of the PIP?"

Rowell - "Performance Improvement Plan. It was in response to being placed on a performance improvement plan."

Konn - "All right. So it was in response of being placed on the PIP, and so y'all were meeting about the PIP?"

Rowell - "We were meeting to discuss the opportunity I'd been given."

Konn - "All right. And what did you say to him?"

Rowell - "I explained to him what I found."

Konn - "And what did you find?"

The Eleventh Circuit

Rowell - "Nothing."

Konn - "Well, when you found nothing, you mean no opportunity?"

Rowell - "That's correct."

Konn - "All right. And his -- that's when he re -- okay, that's when he responded, "If you think I'm fucking you, you're entitled to your own opinion?"

Rowell - "Yes."

Konn - "All right. And is there anything else you can remember about that meeting?"

Rowell - "He didn't just walk out. He said that this is pointless, and then walked out."

Konn - "Was it after that or prior to that you filed your written complaint about opportunity as compared to others in the office?"

Rowell - "It was after."

similarly situated comparators,

Rowell - "One broker could have five clients or 500 clients. A broker who's got more clients typically is better quality than the one who has less."

Konn - "So it's not the number of brokers so much as the quality of brokers?"

Rowell - "It's a combination."

Konn - "It's a combination. So if you were assigned a hundred brokers, but each one of them only had one client each, it would be similar to being assigned one broker with a hundred clients?"

Rowell - "Depends on the size of the client."

Konn - "So if you had one broker with a hundred large clients, would that be better, sir, than having a hundred brokers with one small client?"

Rowell - "It would be about equal. Well, say that again."

The Eleventh Circuit

Konn - "Or it would be equal?"

Rowell - "Repeat the question."

Konn - "I'm trying to make sure I understand that it's not exclusively the numbers you are concerned about, it is the number of brokers and the quality of brokers together?"

Rowell - "It's the overall opportunity."

Konn - "And the opportunity -- and you use those words in here. I'm just trying to make sure I understand them. You say you were prevented from receiving employment opportunities, we had talked -- I thought you were talking about brokers and consultants, and now more specifically you're telling me it's the quality and quantity of the brokers and consultants that you believe you were prevented from receiving; is that correct?"

Rowell - "It's the opportunity in general."

Konn - "Can you tell me what that means?"

Rowell - "Vietri, for example, had 88 brokers assigned to him, from south Georgia up through Tennessee."

Konn - "Uh-huh."

Rowell - "I had seven. Eight, maybe."

Konn - "Do you have any reason to believe that your -- the 88 Vietri had were of higher quality than the seven you had?"

Rowell - "Yeah."

Konn - "And what's the basis for that?"

Rowell - "Quote activity."

Konn - "Tell me more about that."

Rowell - "There's a report that shows for year to date -- I have to look at the date. I had 20 opportunities at that point in time."

Konn - "What point in time?"

The Eleventh Circuit

Rowell - "Year to date."

Konn - "What year to date, sir?"

Rowell - "I believe it must have been June 2010, if I'm not mistaken."

Konn - "And I'm trying to get back to your specific allegation, okay? You claim that you were not provided -- or were treated differently than Ryan, Vietri, Blackburn and Leweling on the basis of your race because you were prevented from receiving employment opportunities, and I'm just trying to make sure I understand what the employment opportunity are, okay?"

Rowell - "Okay."

Konn - "And that was the -- and if I'm getting this wrong, please tell me, but that's assignment to brokers or consultants as an account executive or assignment to clients as a client executive?"

Rowell - "That's the MetLife rule of thumb. In Atlanta it was treated differently. Favorites were played. Blackburn had clients in addition to brokers and consultants."

Konn - "Again, I'm asking you in this section of the complaint, in really just this paragraph, when you were talking about being prevented from receiving employment opportunities, what is it that you're telling me you were prevented from receiving?"

Rowell - "Clients, brokers and consultants."

Konn - "And you're not complaining about specific clients, brokers, consultants you're complaining generally that you had less?"

Rowell - "Correct."

Konn - "So I'll ask you again. What were those key contacts and accounts that you were alleging in paragraph 27 you were excluded from by MetLife?"

The Eleventh Circuit

Rowell - "There's a document here that's top 20 brokers year to date of 2010 and for year 2009. The total between the two years is \$110 million in revenue, of which I wasn't assigned any."

Konn - "I guess we will use this as an exhibit then. What's the next number?"

Stenographer - "This will be 8."

Konn - "Mr. Rowell, in paragraph 27 when you were saying that you were excluded from key contacts and accounts, you were alleging -- these are key contacts and accounts you were alleging you were excluded from on what's now been marked as Rowell exhibit number 8?"

Rowell - "It's the top 20."

Konn - "So I'm asking you again, these are the accounts you are alleging you were excluded from in paragraph 27?"

Rowell - "At least in part."

Konn - "There were others beyond these?"

Rowell - "This is only the top 20 for the office. There's I don't know how many brokers working. Maybe a hundred total."

Konn - "And you were excluded from working with all those brokers?"

Rowell - "I was excluded from working with the best."

Konn - "And where is your cutoff for the best, Mr. Rowell?"

Rowell - "Well, there were not any in the top 20."

Konn - "So is it the top 20 or is it the accounts of brokers beyond the top 20 you are now alleging you were excluded from working with?"

Rowell - "At the very least, the top 20."

The Eleventh Circuit

Konn - "So you think -- is it your allegation that the fact that you were not treated the same as Blackburn, who was historically the highest signed rep in your office, was racially discriminatory?"

Rowell - "That in and of itself, no. You can make a case for giving a rep who's had success additional opportunity. Where I find fault is that you gave Vietri just about as much as Blackburn, and he had less than a year -- about a year and a half of experience in the industry."

Konn - "So is it really just -- so is your allegation really just based on the fact that you were treated differently than Vietri?"

Rowell - "As a whole, I was treated differently."

Konn - "But is your allegation of racial discrimination based on you being treated differently than Vietri?"

Rowell - "In part."

Konn - "What's the other part?"

Rowell - "Leweling had additional opportunity."

Konn - "Leweling?"

Rowell - "She did."

Konn - "So is your claim for racial discrimination that you were treated differently than Leweling and Vietri?"

Rowell - "And Blackburn."

Konn - "For Blackburn, I thought we had established that that was not racially discriminatory, he was simply a longer standing very successful rep?"

Rowell - "I said you could make a case for that."

Konn - "So you don't think he was successful?"

Rowell - "I didn't say that either."

Konn - "Well, you tell me, sir. It's your allegation."

The Eleventh Circuit

Rowell - "I'm alleging that I was treated differently than everybody else in the office, and in fact, in the southeastern United States."

Konn - "And how were the sales opportunities assigned to Vietri above his skills?"

Rowell - "He was constantly asking for help."

Konn - "Can you tell me more about that? You allege that he was assigned or provided with opportunities that were above his level of skills, and I want to know how the sales opportunities you're telling me he was assigned were above his skills."

Rowell - "Because he had only been in the business for a little over a year, and quite frankly, he was in over his head, as noted by the customer -- the national service center."

Konn - "So you don't think Vietri had the skill set to handle the brokers and accounts he was assigned?"

Rowell - "He got along all right. I don't think he knew much about insurance, aside from the fact that his dad was senior VP."

Konn - "And you said that Vietri -- you were alleging that Vietri was assigned sales opportunities that were above his experience. And I think we talked about that earlier that Vietri was with the Atlanta office as an account executive before you even joined the Atlanta office; is that right?"

Rowell - "He had a total of a year and three quarters experience versus my eight."

Konn - "So you were assigned a block of brokers, which is exhibit 7; is that right?"

Rowell - "Yeah."

Konn - "And you were also assigned the opportunity to work with every other broker in the Atlanta area that was not already assigned to somebody else?"

Rowell - "Correct."

The Eleventh Circuit

Konn - "That potentially was hundreds of other brokers?"

Rowell - "Potentially."

Konn - "It was hundreds of other brokers, wasn't it?"

Rowell - "There -- no."

Konn - "What's that?"

Rowell - "No."

Konn - "It was not hundreds of other brokers?"

Rowell - "Absolutely not, I may have uncovered less than five."

Jamie - "Okay. And when I'm looking at the number of quotes, the only individuals I see that have the number of quotes are Rosenfeld, II. He had 345. Blackburn, 354, and Vietri, 315."

Rowell - "Sixteen."

Jamie - "Three hundred sixteen, excuse me. So I think we'd talked about -- was Rosenfeld an account executive or was he part of management?"

Rowell - "He was an account executive."

Jamie - "And Blackburn, he was an account executive?"

Rowell - "That's correct."

Jamie - "And so was Vietri, he was an account executive?"

Rowell - "That's true."

Jamie - "And all of these individuals are white?"

Rowell - "Yes."

Jamie - "Well, what advantage did Vietri get that you did not get in order for him to get those 316 quotes?"

The Eleventh Circuit

Rowell - "He was assigned them by Jeff Trinkwon, and despite defense's supposition hat because they're rural brokers, they would have less opportunity, the report clearly shows to the contrary."

Jamie - "Do you know of any other account executive who was assigned to look for accounts by cold calling through the Yellow Pages?"

Rowell - "There was none other."

Jamie - "Okay. And how does this report support your claims?"

Rowell - "If you count the number of contacts that were assigned by agency, you'll see that I had 51 people to talk to."

Jamie - "And what did your, I'll call them, comparators -- what did the other white executives, what was the number they had to talk do?"

Rowell - "Leweling had 166."

Jamie - "Okay."

Rowell - "Blackburn had 129. And despite his year and half or two years of experience, Vietri had 343."

Jamie - "So your contention is the more individuals that you had assigned to you as contacts, the greater the opportunity for sales."

Rowell - "Yes."

pretext for discrimination,

Konn - "How were you treated differently, Mr. Rowell?"

The Eleventh Circuit

Rowell - "I was given assignments based on race as well as opportunity that did match up with what my peers were seeing."

Konn - "Talk about those opportunities based on race, Mr. Rowell."

Rowell - "I was responsible for recruiting employees, future employees from Morehouse College."

Konn - "And you went to Morehouse College; is that right?"

Rowell - "That's correct."

Konn - "Any other opportunities, sir, or any other assignments based on your race?"

Rowell - "It's important to note that Morehouse College is a historically black college or university."

Konn - "And you went to Morehouse College?"

Rowell - "As indicated."

Konn - "Any other assignments that were based on your face, Mr. Rowell?"

Rowell - "Atlanta Life."

Konn - "Tell me more about Atlanta Life. What is that?"

Rowell - "It's the [second] largest minority-owned insurance company in the country."

Konn - "And why do you believe you were assigned to Atlanta Life based on your race?"

Rowell - "Because its the [second] largest minority-owned insurance company in the country."

Konn - "No, you told me that already. I'm asking you why you thought you were assigned to that client on the basis of your race."

Rowell - "Because Jeff Trinkwon was under the impression that I was able to make inroads because we shared race in common."

Konn - "Did Mr. Trinkwon tell you that?"

Rowell - "Yes."

The Eleventh Circuit

Konn - "He explicitly told you those word? Those were his words?"

Rowell - "His words exactly, I don't recall."

Konn - "Well, what do you recall him telling you?"

Rowell - "He made reference to me working with Atlanta Life because of their race."

Konn - "Because of whose race?"

Rowell - "The minority status of the company."

Konn - "Any other projects or clients you were assigned, you believe, because of your race?"

Rowell - "I was assigned a broker."

Konn - "And who was that?"

Rowell - "Charles Atkinson of Benalytics Consulting."

Konn - "I'm sorry. Charles Dickenson?"

Rowell - "Atkinson."

Konn - "And what was the company?"

Rowell - "Benalytics Consulting."

Konn - "And what's the basis for your belief that you were assigned to work with Mr. Charles Atkinson on the basis -- because of your race?"

Rowell - "Because he's an African-American himself."

Konn - "Were you assigned any white brokers, Mr. Rowell, to work with any white brokers?"

Rowell - "No."

Rowell - "I was not aware of being treated differently until I was assigned responsibilities that were specific to my race. After that, I was able to evaluate what I had compared to my peers."

The Eleventh Circuit

Konn - "So what evidence does support your position now that the opportunities you received were based on your race?"

Rowell - "I received opportunities that signaled me out as an African-American when it came to needs that MetLife needed to fulfill but was not allowed to share with the other opportunities that were greater."

Konn - "And the -- I mean, the clients you're telling me that you were assigned on the basis of your race, those are the ones we discussed earlier, is that correct, Morehouse College, Atlanta Life and Charles Atkinson with Benalytics Consulting?"

Rowell - "That's correct."

Konn - "So you believe you were discriminated against on the basis of your race because you were asked to help MetLife recruit individuals from an area college that you went to?"

Rowell - "I had done work with Morehouse prior to transferring to Atlanta, and that in and of itself is not why I'm filing the charge. It's that in combination with the fact that I was also assigned to Atlanta Life as well as Charles Atkinson as an outside responsibility that didn't apply to the job description."

Konn - "And shortly after you joined the Atlanta office, Mr. Trinkwon assigned you to work with a consultant? That's Charles Atkinson."

Rowell - "Correct."

Konn - "And you previously had experience working with consultants and clients, brokers, excuse me, as an account executive."

Rowell - "I had experience with all three."

The Eleventh Circuit

Konn - "And how was your assignment to work with Mr. Atkinson, if at all, any different that your previous assignments to work with brokers or consultants?"

Rowell - "It wasn't [in] my job description."

Konn - "And your allegation that you were excluded from key contacts and accounts is based on the fact that you were not -- that the top 20 list of brokers, clients -- sorry, no, right, that none of the brokers of the top 20 list were reassigned from another account executive to you?"

Rowell - "That's correct. While at the same time, I was still continuing my responsibility of calling on the African-American responsibilities."

Konn - "And those are, make sure we're on the same page, Morehouse College, Atlanta Life and Charles Atkinson."

Rowell - "Correct."

Konn - "Okay. And you said that you thought your race was singled out, and your single basis for that was an in interview prior to moving from Cleveland to Atlanta, a move you requested, Jeff Trinkwon said that he wanted to increase the diversity on his staff?"

Rowell - "He also told me that he saw an attractive African-American woman in the building and that I should approach her."

Konn - "And when was that?"

Rowell - "When we moved to the Perimeter office."

Konn - "When was that?"

Rowell - "My guess is the first quarter of '09. And there is another example too."

Konn - "Okay. Please go ahead."

Rowell - "Race was an issue before I set foot in the office."

The Eleventh Circuit

Konn - "Can you elaborate for me?"

Rowell - "He made a comment to Linda Mercer that -- (to Jamie) can I produce a document?"

Jamie - "No."

Konn - "No. You just tell me what you believe he said. And this was not something he told you, this is something he told somebody else?"

Rowell - "She had signed a statement for it."

Konn - "And what did he tell you -- sorry, how did you find out that Trinkwon -- you haven't even told me what he said yet, but that he said that?"

Rowell - "She told me."

Konn - "She told you?"

Rowell - "That he told her when I was -- officially that I was moving to Atlanta, that he had just hired somebody from Morehouse. Her response was, 'Okay.' He repeated it again, 'he went to Morehouse.'"

Konn - "Is that the extent of the conversation as far as you're aware?"

Rowell - "According to the document, which I have, she got the impression that he was referencing the fact that I was African-American."

Konn - "You are African-American; am I correct?"

Rowell - "Yeah."

Konn - "And you went to Morehouse?"

Rowell - "Yeah."

Konn - "And you weren't part of that conversation?"

Rowell - "That conversation took place in Atlanta while I was in Cleveland."

Konn - "And as far as you're aware, or Ms. Mercer never told you that Trinkwon actually said anything about your race?"

The Eleventh Circuit

Rowell - "What's that?"

Konn - "He didn't say anything about your race?"

Rowell - "According to her statement, she got the impression based on the fact that he repeated where I went to school that he was referencing that I'm black."

Konn - "But you did go to Morehouse. He said you went to Morehouse and you did go to Morehouse, correct?"

Rowell - "I went to Morehouse."

Konn - "When was that conversation, as far as you're aware?"

Rowell - "Prior to me moving to Atlanta."

Konn - "Now, you actually alleged in your complaint you were treated differently. How is that evidence of you being treated differently on the basis of your race?"

Rowell - "I was seen through tinted glasses."

Konn - "Is that the same response if I asked you how Trinkwon telling you to approach a black woman who I guess he thought was attractive in early 2009, how was that racially discriminatory?"

Rowell - "Its certainly suggestive."

Konn - "And I'm asking you did you complain to Mr. Downs in 2002 that you were being racially discriminated against?"

Rowell - "I told him that I received the black treatment in 2002 as well."

Konn - "And what does the 'black treatment' mean Mr. Rowell?"

Rowell - "It means I was assigned a broker who was black and 30 miles outside my territory."

Konn - "So you are alleging now that while you were in Cleveland you were discriminated against as well?"

The Eleventh Circuit

Rowell - "I'm not alleging it now because its a complaint that I gave you already."

Konn - "I'm asking you if -- there's an allegation that forms the basis of your complaint of discrimination while we spent a lot of time going through, and you haven't previously told me this. I'm asking you if one of the bases for your complaint as you sit here today --"

Rowell - "Yes, sir."

Konn - "--is that in 2002 while you worked in Cleveland, Ohio for a wholly different manager doing a wholly different job, you were racially discriminated against?"

Rowell - "It was MO for Metlife to treat their African-American sales reps this way."

Rowell - "I told him that I was being discriminated against. He couldn't understand how, again, because he's not in the industry, and the way I described it to him was something to the effect of having, call it three additional people in the office, everybody's got a hundred opportunities. You have ten, and you're only black one."

Rowell - "I had one broker as a Client Executive. They didn't take that one away."

Konn - "So you still had one broker. In fact, you had a lot more brokers because you were now an account executive?"

Rowell - "That's relative. Its not 88, its six more."

Konn - "You had more?"

Rowell - (Nods head affirmatively)

Konn - "So brokers were not removed from you when you returned from disability?"

Rowell - "No. The one that they assigned me, Charles Atkinson, the African-American one, I kept."

The Eleventh Circuit

Konn - "Now, what facts led you to believe that MetLife removing the few accounts we talked about or the one account we talked about was done because of your race? This is the account that was removed when you returned from disability leave, and I'm asking you what facts let you believe that that was done because of your race?"

Rowell - "It was disproportionate."

Konn - "It was disproportionate to whom?"

Rowell - "To me."

Konn - "I don't follow you. I'm asking you how was that -- why was that done because of your race?"

Rowell - "Disproportionate to my race, because if you're going to remove responsibilities, why just remove responsibilities that provide income as opposed to ones that I'm doing as a token employee?"

Konn - "What other white employees' racist misconduct -- so who are the other white employees you're talking about here?"

Rowell - "Robert Johnson."

Konn - "Any others?"

Rowell - "There was a comment made which I find particularly interesting."

Konn - "I'm asking you first who are the other white employees who engaged in racist misconduct? You said Robert Johnson. Are there any other white employees who engaged in the racist misconduct you're alleging directed at you in paragraph 39?"

Rowell - "No."

Konn - "What facts support your allegation that Trinkwon engaged in racist misconduct directed at you?"

The Eleventh Circuit

Rowell - "Because after I was reassigned, Vietri came to my office and made a comment saying something with respect to my opportunity, he gave the black guy all the bad business, negative cases, lack of opportunity, something to that effect, but he definitely said black guy."

Konn - "So are you telling me that your assignment to Pinkey-Perry is the basis for your racial discrimination complaint filed in February 2012?"

Rowell - "It just adds to the modus operandi."

Konn - "What do you mean sir?"

Rowell - "The treatment I received while working at MetLife."

Konn - "I'm asking you again, do you believe your assignment to work with Pinkney-Perry -- They are a broker; is that right?"

Rowell - "Yes."

Konn - "To work with Pinkey-Perry as a sales representative in 2002 and 2003 is evidence to support your current racial discrimination claims?"

Rowell - "Yes."

Konn - "And what reason do you have to believe that your assignment to Pinkey-Perry by your manager in 2002-2003 was racially discriminatory?"

Rowell - "Because I was assigned them because of my race."

Konn - "And why do you say that?"

Rowell - "Because he told me that they are an African-American-owned agency."

Konn - "So the fact that they're a minority-owned or a black-owned company led you to believe it was racially discriminatory assignment?"

Rowell - "And that it was noted upon assignment, yes."

Konn - "What was noted upon assignment?"

The Eleventh Circuit

Rowell - "The fact that they're African-American owned."

Konn - "So the fact that someone told you they're minority-owned or African-American-owned is the basis for your belief the assignment to that account was racially discriminatory?"

Rowell - ""I believe it was the basis for the assignment."

Konn - "Have you spoke with [Moe] regarding how MetLife treats non-white employees?"

Rowell - "I believe so."

Konn - "What did you discuss with him?"

Rowell - "There was a conversation between Tony, he and myself, if I'm not mistaken."

Konn - "Okay. What did the three of you discuss?"

Rowell - "That an Arab-American employee at MetLife would apparently never see the streets."

hostile work environment,

Konn - "So what specifically are you alleging that Robert Johnson did to create a hostile work environment for you?"

Rowell - "He put me in a position where I was in a real hard place to make a living."

Konn - "To make a what? A living? Is that what you said sir?"

Rowell - "Yeah."

Konn - "Which is the same thing you allege was done to Ehrlich?"

Rowell - "Yes."

Konn - "Are their any other agents of MetLife you allege in Paragraph 33 that assisted or acquiesced in the creation of this alleged hostile work environment? So it was Trinkwon and Robert Johnson?"

The Eleventh Circuit

Rowell - "Those two."

Konn - "What facts support your allegation in paragraph 36 that MetLife and its agents intentionally harassed you?"

Rowell - "I feel like being singled out because of my race was pretty intentional."

Konn - "You feel like its harassing?"

Rowell - "Yeah."

Konn - "And how were you singled out because of your race?"

Rowell - "Because I was given assignments based on my race."

Konn - "And the three assignments you believe you were given because of your race were the recruiting with Morehouse College, the reinsurance work with Atlanta Life, and the assignment to work with Benalytics Consulting?"

Rowell - "Yeah."

Konn - "You think -- you thought that was harassment?"

Rowell - "I feel like responsibility over and above what everybody was getting simply because of my race was harassment."

Konn - "What are the emotional injuries you suffered as a result of MetLife's alleged failures?"

Rowell - "Stress."

Konn - "Tell me more."

Rowell - "I went to a doctor because I was sweating heavily at night."

Konn - "When was this?"

Rowell - "First quarter of 2010."

Konn - "Who was the doctor?"

The Eleventh Circuit

Rowell- "You have the records. I don't know off the top of my head."

Konn - "You don't know the doctor's name?"

Rowell - "I can look it up."

Konn - "How many times did you see that doctor?"

Rowell - "I went once for an evaluation."

Konn - "You didn't return?"

Rowell - "Well, once I received results that were negative of any problems, so to speak, I didn't have to go back, as I can imagine."

Konn - "So the doctor's results indicated there was nothing wrong with you?"

Rowell - "Aside from stress, no."

Konn - "How long do you feel that you were suffering from stress?"

Rowell - "Oh, its a stressful job."

Konn - "So you were -- it was a stressful job while you were in Cleveland?"

Rowell - "Yeah."

Konn - "So from 2002, you would say it was a stressful job? That's when you started?"

Rowell - (Nods head affirmatively)

Konn - "And that's when you became an account executive while you were in Cleveland; is that right?"

Rowell - "Yeah."

Konn - "And that was stressful?"

Rowell - "Not as much, but it was."

Konn - "Okay. And you then requested a transfer to the Atlanta office and began working as a client executive?"

Rowell - "Yes."

Konn - "And that was stressful?"

The Eleventh Circuit

Rowell - "Yeah."

Konn - "And you were having medial issues in August, or let's say 2009, and that was stressful?"

Rowell - "Yes."

Konn - "That caused you a lot of stress, medical related stress?"

Rowell - "If not pain, certainly. If not stress, certainly pain, so I'd say both."

Konn - "And you then took disability leave to have your knees taken care of; is that right?"

Rowell - "Yes."

Konn - "Were you under some stress while you were out on leave?"

Rowell - "Yes."

Konn - "And then when you returned from leave, you became an account executive, and you had stress then too?"

Rowell - "I did."

Konn - "And you resigned from MetLife in July of 2010?"

Rowell - "Yeah."

Konn - "And then you started working for another employer; is that right?"

Rowell - "Yeah."

Konn - "Selling insurance products?"

Rowell - "Yes."

Konn - "That's also stressful?"

Rowell - "Yeah."

Konn - "I'm going to go to count five of your complaint, which is the final count, which is good news for those of us who want to go home sometime soon. Count five of your complaint

The Eleventh Circuit

alleges intentional infliction of emotional distress. What facts support your claim for infliction of emotional distress?"

Rowell - "I had my salary cut in half."

Konn - "...he alleges the PIP was also fabricated. Performance improvement plan, I apologize. Also fabricated. So I'm asking you, assuming it was fabricated, what evidence do you have that Trinkwon of Johnson fabricated it to cause you intentional emotional distress?"

Rowell - "It's the first step to termination."

Konn - "Anything else?"

Rowell - "No."

Konn - "You allege that a process was fabricated in paragraph 45. What process are you alleging was fabricated? Bottom of page 19, beginning of 20. Fabricated, using a fabricated process as a basis for terminating you. What's this -- 'process' is a very vague word. I'm asking you what you mean by 'process?'"

Rowell - "I was back from disability a month. The next thing I know, I'm on PIP."

Konn - "So it's the performance improvement plan process you're alleging was fabricated?"

Rowell - "Yes."

Konn - "And on what basis are you asserting that the process was fabricated?"

Rowell - "Because I was completely blind-sided from returning from disability to an assignment which was far from appealing after being offered a promotion."

Konn - "How did the conduct you allege in paragraph 45 cause you emotional distress?"

Rowell - "I was facing termination after giving my all to a company for eight years."

Konn - "So what was the emotional distress that you faced as a result of the conduct?"

The Eleventh Circuit

Rowell - "Potentially losing my income."

Konn - "And the emotional distress you allege you suffered was that you would potentially lose your income in July -- as of January 1, 2011?"

Rowell - "In addition to the night sweats and exceeding loss of hair."

Konn - "That's new. You've not told me that before regarding this charge, so let's go back and talk about those. So the emotional distress you're telling me is not just that you were potentially losing income, you had night sweats?"

Rowell - "I already said that, yeah."

Konn - "And loss of hair?"

Rowell - "Yeah, worsening."

Konn - "And you think those are -- both the result of stress; is that your allegation?"

Rowell - "Yes."

Konn - "Now, what kind of coaching did Jeff Trinkwon try to conduct with you, if any?"

Rowell - "The closest coaching came in the form of the way he treated me in the meetings."

Konn - "And how did he treat you in the meetings?"

Rowell - "[He] tried to pick me apart."

Konn - "And how did he try to pick you apart?"

Rowell - "He tried to hammer on anything that he didn't necessarily agree with."

Konn - "Well, okay. I mean, you're giving me a lot of descriptive generalities. Give me an example."

The Eleventh Circuit

Rowell - "If one comes to mind, I'll let you know. I can say specifically that the opening of our sales meetings, which was rare that we had them, he would pose a topic and then immediately question me about it."

Konn - "Did he ever question anybody else about a topic?"

Rowell - "Not like he did me."

Konn - "What is the difference that you saw on how he questioned you?"

Rowell - "Aggressive."

Relevant evidence in civil cases - that is, the acceptable knowledge base of facts for the jury - is found in an aggregate of historical facts, data, information, objects and opinions that the law allows the parties to place before the finder-of-fact to decide the case. To assist the parties in assembling all the knowledge fairly needed to prove a cause of action or defense, the rules establish a pretrial process called discovery, which (as its name implies) is also meant to afford a means of apprehending that which they do not know. Hence, the process begins with a wide sweep, gathering many kinds of knowledge only possibly germane (if at all), yet capable of leading to admissible trial evidence. At discovery's end, the accumulated knowledge is distilled into the evidence the parties can lay before the jury.

When this discovery is not allowed to have its intended scope - for example, when one party is blocked from ascertaining and acquiring from the other party unprotected, relevant information and data that is admissible at trial - the sum of knowledge placed before the jury will be unfairly deficient, hence misleading. The whole structure of the trial will be faulty. The Jury's basis for resolving facts will be tilted against the party denied that access. Trial then will be an expedition on an errant course. Because the

The Eleventh Circuit

possible factual base for the jury has been unreasonably curtailed preemptorily, a jury's resolution of the facts will be unreliable, and its verdict untrustworthy. - *Alvarez v. Cooper Tire & Rubber Company*, Fla Dist. Court of Appeals, 4th Dist., 2010

Rowell, despite Judge Vineyard's and Defendant's assertion was not aware of a looming close of the discovery period, because he had hired an attorney. By reopening discovery, Rowell hopes to get answers to the nine outstanding document requests and four questions.

V. Summary

Through painstaking work, Plaintiff has endured, documented and attempted to overcome, but needs the ability to get additional documentation to not only close this case but this chapter in his life.