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Fulton County Superior Court

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**IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA**

| | | |
|--|---|-----------------------|
| OMAR ABDEL-ALEEM, YUSSUF ABDEL-ALEEM, and TAREK ABDEL-ALEEM, |) | |
| |) | |
| Plaintiffs, |) | CIVIL ACTION FILE NO. |
| |) | 2017CV287616 |
| |) | |
| v. |) | |
| |) | |
| MINALKUMAR PATEL, UDAY PATEL, SONAL PATEL A/K/A HEMANGINI JARIVALA, TUSHAR NARROTAM, TWIN LAKES LABORATORIES, LLC, PHYSICIAN'S FIRST TOXICOLOGY, LLC, LABGUIDE, LLC, and LABSOLUTIONS, LLC |) | |
| |) | Bus. Case Div. 3 |
| Defendants/Third Party Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| JOSEPH & ALEEM, LLC d/b/a JOSEPH, ALEEM & SLOWIK, and JACOB SLOWIK, |) | |
| |) | |
| Third Party Defendants. |) | |

ORDER GRANTING MOTION TO DISQUALIFY

The above styled matter is before the Court on Plaintiffs Omar Abdel-Aleem (“Omar”), Tarek Abdel-Aleem (“Tarek”), and Yussuf Abdel-Aleem (“Yussuf”) (collectively “Plaintiffs” or “Aleems”) and Third Party Defendants Jacob Slowik and Joseph & Aleem, LLC d/b/a Joseph, Aleem & Slowik, LLC’s (the “Joseph & Aleem Firm”)¹ Motion and Brief on Disqualification of Defendants’ Counsel (“Motion to Disqualify”). Having considered the record and the Motion to Disqualify, the Court finds as follows:

¹ Plaintiffs and Third Party Defendants will be referred to herein as “Movants” as appropriate.

SUMMARY OF PLEADINGS

Plaintiffs' Primary Allegations

According to Plaintiffs' Verified Complaint and Demand for Jury Trial filed Mar. 20, 2017 ("Complaint"), in 2014 Defendant Minalkumar Patel ("Minal") reached out to Plaintiffs to assist Labsolutions, LLC ("Labsolutions") in its efforts to build an independent toxicology and genetics testing laboratory ("Lab").² Plaintiffs allege that in 2014 Defendants had learned that Omar had successfully built a genetics testing laboratory for another entity and they wanted Omar to join Labsolutions for his expertise in that arena.³ In late 2013 or early 2014, Defendants also allegedly learned that Yussuf and Tarek served as legal and business consultants to multiple toxicology and genetics laboratories and sought their expertise to the build the Lab for Labsolutions.⁴

Plaintiffs contend that in the spring of 2014, Plaintiffs met with Minal and the parties agreed that Plaintiffs would receive a 25% interest in Labsolutions and that Omar would be hired as a consultant to lead the development of the Lab.⁵ In or around May 2014, Plaintiffs Omar and Yussuf allegedly began searching for a location for the Lab and during the summer of 2014 Omar began developing the Lab at its current location.⁶ According to Plaintiffs, they all assisted Labsolutions in operating its "entire business" and were "instrumental" in acquiring toxicology and genetics clients for Labsolutions.⁷

On February 27, 2015, the parties memorialized their arrangement in an Operating Agreement. The Joseph & Aleem Firm, a law firm owned and operated by Yusuf and Tarek,

² Complaint, ¶16.

³ Complaint, ¶14.

⁴ Complaint, ¶15.

⁵ Complaint, ¶19.

⁶ Complaint, ¶20.

⁷ Complaint, ¶24.

allegedly “drafted the [Operating Agreement] at the Defendants’ request.”⁸ Under the Operating Agreement, Plaintiffs were entitled to receive 25% of the profits generated from Labsolutions’ Molecular Genetics Activities (“Genetics”).⁹ On January 3, 2017, Defendants issued a disbursement check to Plaintiffs for the third and fourth quarters of 2016 in the amount of \$406,757.26, which Plaintiffs claim is at least 50% less than what they were due under the terms of the Operating Agreement.¹⁰

Plaintiffs claim Defendants diverted millions of dollars of Labsolutions’ Genetics profits for their own use by: paying out “exorbitant” annual salaries to relatives that provided “nominal services, if any for Labsolutions”; diverting the profits to other businesses and other components of Labsolutions (including Defendants Twin Lakes Laboratories, LLC, Physician’s First Toxicology, LLC, and LabGuide, LLC); and misappropriating the funds for Minal’s personal use and benefit.¹¹ Plaintiffs allege that, upon learning of the substantial profits Genetics would generate, Defendants “schemed” to defraud them of their share of the profits and have failed to properly distribute to them amounts owed under the Operating Agreement since February 27, 2015.¹² Additionally, Plaintiffs allege that on March 10, 2017, Defendants attempted to improperly and unilaterally terminate the Operating Agreement despite the parties having engaged in negotiations for eleven months before executing it and despite having expressly acknowledged therein they had had an adequate opportunity to review it, had an opportunity to consult with independent counsel, and they waived any conflict arising from the Joseph & Aleem Firm’s authorship of the agreement.¹³

⁸ Complaint, ¶22, Ex. A (Operating Agreement).

⁹ Complaint, ¶22.

¹⁰ Complaint, ¶27.

¹¹ Complaint, ¶¶ 29-31.

¹² Complaint, ¶¶ 32-33.

¹³ Complaint, ¶¶42-43, Ex. A at §9.16.

Based on the foregoing, Plaintiffs seek a declaratory judgment affirming the enforceability of the Operating Agreement.¹⁴ They also assert the following claims: (1) breach of contract for misappropriating Plaintiffs' share of Genetics profits (by Plaintiffs against Minal, Uday Patel, Sonal Patel, Tushar Narrotam, and Labsolutions); (2) conversion (by Plaintiffs against Minal, Uday Patel, Sonal Patel, Tushar Narrotam, and Labsolutions); (3) conspiracy to commit theft by receiving (by Plaintiffs against all Defendants); (4) breach of fiduciary duty for the failure to distribute profits and to provide a proper accounting (by Plaintiffs against Minal); (5) unjust enrichment (by Plaintiffs against all Defendants); (6) breach of the covenant of good faith and fair dealing (by Plaintiffs against Minal, Uday Patel, Sonal Patel, Tushar Narrotam, and Labsolutions); (7) punitive damages (by Plaintiffs against all Defendants); and (8) attorney's fees (by Plaintiffs against Minal, Uday Patel, Sonal Patel, Tushar Narrotam, and Labsolutions).

ON Consulting Related Allegations

In a separate Verified Complaint and Demand for Jury Trial ("ON Consulting Complaint") initially filed on March 24, 2017, in a separate action,¹⁵ but was subsequently consolidated into this litigation, Plaintiffs ON Consulting, LLC ("ON Consulting") and Omar (collectively "ON Consulting Plaintiffs") allege that in December, 2016, Labsolutions summarily fired Omar in bad faith and attempted to strip him of his profit-sharing interest in Labsolutions.¹⁶ Thereafter, Omar established ON Consulting, LLC as his consulting company.¹⁷ On January 6, 2017, they entered into an agreement with Otogenetics Corporation ("Otogenetics") whereby ON Consulting and Omar would provide consulting services to Otogenetics.¹⁸

¹⁴ Complaint, ¶¶ 39-47.

¹⁵ ON Consulting, LLC and Omar Abdel-Aleem v. Minalkumar Patel, Badih Saliba, and Labsolutions, LLC, Civil Action File No. 2017CV287861.

¹⁶ ON Consulting Complaint, ¶17.

¹⁷ ON Consulting Complaint, ¶18.

¹⁸ ON Consulting Complaint, ¶¶ 19-20, Ex. A (Laboratory Services Consulting and License Agreement).

The ON Consulting Plaintiffs allege Minal and Badih Saliba (Labsolutions' CEO; "Saliba") learned of the contract and, for the purpose of inducing Otogenetics to breach the agreement, made false representations that they were subject to restrictive covenants that prohibited them from providing consulting services to Otogenetics.¹⁹ They also allege Minal made false and defamatory statements about Omar's character to Labsolutions' employees and third parties, including Otogenetics, which damaged his personal and professional reputation.²⁰ Based on the foregoing, the ON Consulting Plaintiffs allege the following claims against Minal, Saliba, and Labsolutions: (1) tortious interference with contract; (2) defamation; (3) defamation per se; (4) tortious interference with business relations; (5) punitive damages; and (6) attorney's fees.

Aleems' Application for Inspection of Labsolutions' Records

Finally, in a separate Application to Compel Inspection of Corporate Records ("Application for Inspection of Records") initially filed on March 29, 2017, in a separate action,²¹ but was subsequently consolidated into this litigation, the Aleems allege they have repeatedly made oral and written demands to inspect Labsolutions' records, including financial statements, tax returns, and documents regarding disbursements.²² However, Labsolutions has refused to make the documents available for inspection and instead, on March 10, 2017, attempted to improperly and unilaterally terminate the Aleems' membership interest in Labsolutions.²³ The Aleems ask the Court to order Labsolutions to permit them to inspect and examine Labsolutions' books and records pursuant to O.C.G.A. §14-11-313.

¹⁹ ON Consulting Complaint, ¶¶ 21-23.

²⁰ ON Consulting Complaint, ¶24.

²¹ Omar Abdel-Aleem, Yussuf Abdel-Aleem, and Tarek Abdel-Aleem, as members of Labsolutions, LLC v. Labsolutions, LLC, Civil Action File No. 2017CV287861.

²² Application for Inspection of Records, ¶¶ 4-10.

²³ Application for Inspection of Records, ¶¶ 12-14.

Defendants' Allegations, Counterclaims, and Third Party Claims

Defendants acknowledge they signed the Labsolutions Operating Agreement but assert they were induced to do so under fraudulent pretenses and have since properly exercised their rights under Georgia law to void the agreement. Specifically, Defendants allege Labsolutions engaged Yussuf and Tarek's ("Aleem Attorneys") law firm, the Joseph & Aleem Firm—including their law partner, Jacob Slowik—to essentially serve as its outside general counsel and to advise the company on all legal matters.²⁴ According to Defendants, "[a]t all times relevant to this dispute", the Aleem Attorneys, the Joseph & Aleem Firm, and Mr. Slowik provided legal services to Labsolutions and were paid a monthly retainer of approximately \$16,500.²⁵

In 2014, Labsolutions identified a potential new business line centered upon providing genetics testing services to customers and shared the opportunity with the Aleem Attorneys for the purpose of seeking legal advice on how to properly structure the venture.²⁶ However, the Aleem Attorneys allegedly positioned themselves to improperly benefit from their client's business opportunity. Defendants assert the Aleem Attorneys, the Joseph & Aleem Firm, and Mr. Slowik, abused the trust Defendants placed in them as counsel by drafting themselves into an equity position at Labsolutions with no independent legal instrument memorializing the transfer of interest and without Plaintiffs providing any consideration in return.²⁷ Defendants further allege they unlawfully "crafted" the Operating Agreement to give the Aleems 25% of Labsolutions' Genetics revenue and to improperly favor the Aleems' collective interests and

²⁴ Defendants' Verified Answer and Counterclaims ("Answer and Counterclaim"), p. 23 at ¶3; Defendants' Amended Third Party Complaint Against Joseph & Aleem d/b/a Joseph, Aleem, & Slowik and Jacob Slowik ("Amended Third Party Complaint"), ¶¶ 5-6.

²⁵ Answer and Counterclaims, pp. 20-21 at ¶1, p. 23 at ¶3; Amended Third Party Complaint, ¶5.

²⁶ Answer and Counterclaims, p. 23 at ¶¶4-5; Amended Third Party Complaint, ¶¶ 7-8.

²⁷ Answer and Counterclaims, p. 21 at ¶1, p. 24 at ¶9; Amended Third Party Complaint, ¶16.

rights over their clients, Defendants.²⁸ In exchange, the Aleem Attorneys allegedly “unloaded” their brother, Omar, onto Labsolutions’ payroll by misrepresenting his abilities and qualifications.²⁹ Although Omar was paid to build the Genetics Lab, he allegedly failed to timely and properly do so, requiring Labsolutions to hire an outside consultant to implement the Lab and to send genetics samples to another laboratory, Otogenetics, for testing.³⁰ Ultimately Omar was terminated for conspiring to set up a competing business while still “on paper” as an equity member of Labsolutions and for attempting to extort Defendants.³¹

Defendants have asserted the following counterclaims against Plaintiffs: (1) declaratory judgment (against all Plaintiffs seeking a declaration that Defendants were within their right to and did properly void the Operating Agreement); (2) fraud regarding Omar’s employment (against all Plaintiffs); (3) civil conspiracy to commit fraud (against all Plaintiffs); (4) negligent misrepresentation (against all Plaintiffs); (5) unjust enrichment (against all Plaintiffs); (6) breach of fiduciary duty and breach of duty of loyalty (against Omar); (7) breach of fiduciary duty and breach of duty of loyalty (against Yussuf and Tarek); (8) fraudulent inducement as to the Operating Agreement (against all Plaintiffs); (9) rescission as to the Operating Agreement (against all Plaintiffs); (10) misappropriation of trade secrets (against all Plaintiffs); (11) punitive damages (against all Plaintiffs); (12) violations of Georgia’s civil Racketeer Influenced and Corrupt Organizations (“RICO”) Act (against all Plaintiffs); (13) conspiring and endeavoring to violate the Georgia RICO Act (against all Plaintiffs); and (14) attorney’s fees (against all Plaintiffs).

²⁸ Answer and Counterclaims, p. 21 at ¶1, pp. 24-25 at ¶¶ 7, 9-10; Amended Third Party Complaint, ¶¶ 11, 16-18.

²⁹ Answer and Counterclaims, p. 21 at ¶1, pp. 25-26 at ¶¶ 12-13; Amended Third Party Complaint, ¶¶ 10, 23.

³⁰ Answer and Counterclaims, pp. 21-22 at ¶1, pp. 25-26, ¶¶ 14-17, p. 28 at ¶¶ 27-29.

³¹ Answer and Counterclaims, pp. 21-22 at ¶1; Amended Third Party Complaint, ¶¶ 24-25, 27, 31-34

Additionally, Defendants have filed a Third Party Complaint which, as amended, mirrors many of the allegations made in the counterclaims raised against Plaintiffs and asserts the following claims against the Joseph & Aleem Firm and Mr. Slowik: (1) breach of fiduciary duty and breach of duty of loyalty; (2) punitive damages; (3) violations of the Georgia RICO Act; (4) conspiring and endeavoring to violate the Georgia RICO Act; and (5) attorney's fees.

In turn, the Joseph & Aleem Firm, as a Third-Party Defendant, has filed a counterclaim against Third-Party Plaintiff Labsolutions for failing to pay its monthly \$20,000 retainer fee between January through March 2017, and asserts the following claims: (1) breach of contract; and (2) attorney's fees.

ANALYSIS AND CONCLUSIONS OF LAW

Plaintiffs and Third Party Defendants now move to disqualify Attorney Kevin Ward and the law firm of Schulten, Ward, Turner & Weiss, LLP ("SWTW") from representing Defendants/Third Party Plaintiffs due to a conflict of interest arising from a legal consultation Mr. Ward provided Tarek in September 2014.

A. Relevant Allegations

In 2014 Tarek was involved in a dispute with Fried, Rogers, Goldberg, LLC ("FRG") based on an FRG attorney's alleged interference with Tarek and his firm's (non-party Aleem, LLC) representation of a client in a wrongful death case and alleged defamatory statements made by the FRG attorney ("FRG Matter").³² Tarek is a member of both the Joseph & Aleem Firm and Aleem, LLC. While the Joseph & Aleem Firm focuses primarily on healthcare compliance and regulation, Aleem, LLC focuses largely on personal injury and other tort litigation.³³ In the FRG Matter, Tarek and Aleem, LLC alleged that FRG and its agents solicited and intentionally

³² Motion to Disqualify, Ex. A ("Tarek Aff.") at ¶3; Second Tarek Aff. (Aug. 31, 2018) at ¶2.

³³ Tarek Aff. at ¶1; Second Tarek Aff. (Aug. 31, 2018) at ¶1.

induced a client to discontinue his attorney-client relationship with Tarek and Aleem, LLC through false and defamatory statements that they had done something improper in managing the case and were not qualified to handle it, asserting Tarek was primarily a healthcare law attorney.³⁴

According to Tarek, Mr. Ward had represented Minal and/or Labsolutions in the past so Minal referred Tarek to Mr. Ward for representation in connection with the FRG Matter.³⁵ Tarek contacted Mr. Ward and the two participated in a phone consultation in early September, 2014. Tarek describes the call as “in-depth” and avers that during the call they discussed, *inter alia*: Tarek’s “connection” with Labsolutions; that Tarek owned an interest in Labsolutions and also represented Labsolutions in his capacity as an attorney; the structure, finances, and clients of the Joseph & Aleem Firm and the experience and qualifications of its members which was discussed in order to rebut the allegation that Tarek was primarily a healthcare law attorney; the fact that Tarek’s law partners, Yussuf and Mr. Slowik, were not at the time licensed to practice law in Georgia and, thus, could not represent him in the FRG Matter; the billing mechanics and compensation structures for clients of the two law firms and the financial performance of the firms, respectively, to explore how to distinguish revenue from personal injury cases versus that from healthcare cases; and the Joseph & Aleem Firm’s healthcare clients, including Defendant Labsolutions, Defendant Physician’s First Toxicology (known at the time as Pro Care), Confirmatrix Laboratories, and Alpha Genomix.³⁶

According to Mr. Ward, the September, 2014, phone conversation was limited and relatedly exclusively to non-party Aleem, LLC’s interest in pursuing a potential tortious

³⁴ Tarek Aff. at ¶4; Motion to Disqualify, Ex. E (“FRG Complaint”) at ¶¶ 18-26.

³⁵ Tarek Aff. at ¶7.

³⁶ Tarek Aff. at ¶¶ 5, 8, 10-16.

interference claim against FRG.³⁷ He has no handwritten or other notes from the phone conversation and, other than general information used from the conversation to provide the scope of services for a proposed retainer agreement, he has no recollection of any details that were discussed.³⁸ Mr. Ward avers that at the time of the phone conversation, he did not represent and had not previously represented Labsolutions and had no reason to discuss Labsolutions or its membership as it was not related to the FRG Matter.³⁹ He asserts that, even if Labsolutions was mentioned during the phone call, he has no recollection of it being discussed and had no reason to take note of it at the time.⁴⁰ Mr. Ward avers he has not used and could not use any information provided by Tarek or Aleem, LLC to further his representation of Defendants in this action.⁴¹

Defense counsel J. Zachary Zimmeman, another attorney at SWTW, avers he did not participate in the September, 2014, phone consultation, but was only forwarded an email sent by Tarek regarding the FRG Matter. He has no recollection of receiving or reviewing the email or any information related to Aleem, LLC and testified he has not used any information from the phone consultation in representing his clients in this action.⁴²

Following the phone call, Tarek and another individual apparently associated with Aleem, LLC emailed Mr. Ward three times. Mr. Ward contends the emails dealt exclusively with Aleem, LLC's potential claim against FRG and the materials included "were all public, largely promotional information such as links to the law firm's website and *Fulton Daily Report* articles."⁴³ A paralegal at SWTW then sent Tarek a proposed "Representation Agreement" dated

³⁷ Defendants' Response to Plaintiffs' Motion to Disqualify, Ex. 5 ("Ward Aff.") at ¶3.

³⁸ Ward Aff. at ¶¶ 4-5.

³⁹ Ward Aff. at ¶6.

⁴⁰ *Id.*

⁴¹ Ward Aff. at ¶12.

⁴² Defendants' Response to Plaintiffs' Motion to Disqualify, Ex. 6 ("Zimmerman Aff.") at ¶¶ 3-6.

⁴³ Ward Aff. at ¶¶ 7-8.

September 11, 2014.⁴⁴ SWTW's records indicate that Mr. Ward spent just over an hour related to the potential representation, including the phone consultation, reviewing information provided in the three emails and emailing other lawyers about the potential representation.⁴⁵

Ultimately, Tarek/Aleem, LLC decided not to retain SWTW and instead Tarek filed a lawsuit against FRG on behalf of himself and Aleem, LLC.⁴⁶ Nevertheless, Movants assert that insofar as matters relevant to this litigation were discussed during the September 2014 phone consultation, such raises a conflict under Georgia's Rules of Professional Conduct that warrants Mr. Ward's and SWTW's disqualification.

B. Standards Regarding Conflicts and Disqualification of Counsel

a. Motions for Disqualification

Georgia courts approach motions to disqualify counsel "with great caution" given the hardships brought about by disqualification. Bernocchi v. Forcucci, 279 Ga. 460, 462, 614 S.E.2d 775, 778 (2005). As explained by Georgia Supreme Court in Bernocchi,

"[t]he right to counsel is an important interest which requires that any curtailment of the client's right to counsel of choice be approached with great caution." Blumenfeld v. Borenstein, 247 Ga. 406, 408, 276 S.E.2d 607 (1981). "[D]isqualification has an immediate adverse effect on the client by separating him from counsel of his choice, and...inevitably cause[s] delay." Reese v. Ga. Power Co., 191 Ga.App. 125(2), 381 S.E.2d 110 (1989). "[A] client whose attorney is disqualified may suffer the loss of time and money in finding new counsel and 'may lose the benefit of its longtime counsel's specialized knowledge of its operations.'" Bergeron v. Mackler, 225 Conn. 391, 398, 623 A.2d 489 (Conn.1993). Because of the right involved and the hardships brought about, disqualification of chosen counsel should be seen as an extraordinary remedy and should be granted sparingly. Anderson Trucking Service v. Gibson, 884 So.2d 1046, 1049 (Fla.App.2004).

⁴⁴ Tarek Aff. at ¶¶ 5, 19, Ex. A ("SWTW Representation Agreement"); Ward Aff. at ¶9, Ex. A.

⁴⁵ Ward Aff. at ¶10.

⁴⁶ Tarek Aff. at ¶20.

Bernocchi, 279 Ga. at 462. *See Hodge v. URFA-Sexton, LP*, 295 Ga. 136, 138–39, 758 S.E.2d 314, 318 (2014) (“We approach motions to disqualify with caution due to the consequences that could result if the motion is granted...Additionally, we are mindful of counsel using motions to disqualify as a dilatory tactic”) (citations omitted); Ga. R. of Prof. Conduct 1.7, Cmt. [15] (“Where the conflict [of interest] is such as clearly to call into question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment”).

“In determining whether to disqualify counsel, [a] trial court should consider the particular facts of the case, balancing the need to ensure ethical conduct on the part of lawyers against the litigant's right to freely chosen counsel.” Befekadu v. Addis Int'l Money Transfer, LLC, 332 Ga. App. 103, 106, 772 S.E.2d 785, 788 (2015) (quoting Clough v. Richelo, 274 Ga. App. 129, 132(1), 616 S.E.2d 888 (2005)). The party seeking disqualification has the burden of demonstrating that disqualification is warranted. *See Cardinal Robotics, Inc. v. Moody*, 287 Ga. 18, 21, 694 S.E.2d 346, 349 (2010) (citing Outdoor Advertising Assn. of Ga., Inc. v. Garden Club of Ga., Inc., 272 Ga. 146, 150(2)(a), 527 S.E.2d 856 (2000); Dismuke v. C & S Trust Co., 261 Ga. 525, 527(3), 407 S.E.2d 739 (1991)).

b. Waiver of conflict

Georgia courts have held that “[a] motion to disqualify should be made with reasonable promptness after a party discovers the facts which lead to the motion.” Shuttleworth v. Rankin-Shuttleworth of Georgia, LLC, 328 Ga. App. 593, 596, 759 S.E.2d 873, 877 (2014) (citing Rescigno v. Vesali, 306 Ga. App. 610, 613(1), 703 S.E.2d 65, 69 (2010)). “The failure to make a “reasonably prompt” motion to disqualify counsel can result in waiver.” Zelda Enterprises, LLLP

v. Guarino, 343 Ga. App. 250, 253, 806 S.E.2d 211, 214 (2017), reconsideration denied (Oct. 20, 2017) (citations omitted).

Four factors are determinative of this issue: [1] the length of the delay in light of the circumstances of the particular case, inclusive of when the movant learned of the conflict; [2] whether the movant was represented by counsel during the delay; [3] why the delay occurred; and [4] whether disqualification would result in prejudice to the nonmoving party. (Citations and punctuation omitted.) Rescigno, *supra*, 306 Ga. App. at 613(1), 703 S.E.2d 65. The trial court must weigh these factors against the seriousness of the conflict alleged and the extent to which the public's confidence in the judicial system would be eroded if the motion was denied. Ga. Baptist Health Care Sys., Inc. v. Hanafi, 253 Ga. App. 540, 542, 559 S.E.2d 746 (2002).

Shuttleworth, 328 Ga. App. at 596. *See, e.g., id.* (plaintiffs' motion to disqualify attorney from representing former business partner deemed timely given the nature of the conflict and even though plaintiffs were aware of possible conflict before filing lawsuit but waited until eleven months after attorney first entered appearance to notify him of potential conflict and an additional seven months before seeking disqualification, as there was little prejudice to business partner due to fact that numerous motions to compel were pending and discovery was not yet complete); Summerlin v. Johnson, 176 Ga. App. 336, 335 S.E.2d 879 (1985) (defendant in personal injury action did not waive right to move to disqualify opposing party's attorney although some discovery had already taken place where defendant moved to disqualify the attorney immediately upon learning at deposition of circumstances supporting disqualification). *Compare* Rescigno, 306 Ga. App. At 613 (former resident bringing wrongful eviction action waived conflict based on property owner's lawyer's firm's representation of former resident in defense of legitimation and custody case where former resident knew firm represented owner before filing complaint, she was represented at all times, the reason for her delay was unexplained, and disqualification would have likely prejudiced

property owner given 10 year attorney-client relationship and attorney's extensive efforts in preparing owner's defense); Head v. CSX Transp., Inc., 259 Ga. App. 396, 398, 577 S.E.2d 12, 14 (2003) (conflict waived where movant knew of alleged conflict during trial, prior to the return of the verdict, and prior to the entry of judgment but failed to timely raise objection or move for disqualification and instead raised the issue for the first time with the court in a post-judgment motion for new trial). Georgia Baptist Health Care Sys., Inc. v. Hanafi, 253 Ga. App. 540, 542, 559 S.E.2d 746, 748 (2002) (evidence demanded finding of waiver in renewal action where movant had known of conflict for four years, but waited seventeen months before raising it in prior action and waited eight months to raise it in the renewal action when discovery was almost complete, there was some evidence he consented to the conflict, and disqualification was not necessary to protect movant's confidences since screening measures were available).

c. Disclosure of Confidential Information by Prospective Clients and Conflicts of Interest

“The rules of disqualification of an attorney will not be mechanically applied; rather, we should look to the facts peculiar to each case in balancing the need to ensure ethical conduct on the part of lawyers appearing before the court and other social interests, which include the litigant’s right to freely chosen counsel.” Cohen v. Rogers, 338 Ga. App. 156, 170–71, 789 S.E.2d 352, 363 (2016), cert. granted (Mar. 20, 2017) (citing Stoddard v. Bd. of Tax Assessors, 173 Ga. App. 467, 468, 326 S.E.2d 827 (1985)). Here, Movants asserts Mr. Ward and SWTW should be disqualified because the confidential information gleaned during the September, 2014, phone consultation creates a conflict of interest and is being used against them in this litigation, specifically citing Rules of Professional Conduct 1.6, 1.7, 1.9 and 3.7.

Under Georgia’s Rules of Professional Conduct, the confidentiality of information provided to lawyers must be strictly maintained:

A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these Rules or other law, or by order of the court...

The duty of confidentiality shall continue after the client-lawyer relationship has terminated.

Ga. R. of Prof. Conduct 1.6(a), (e). Notably, “[i]nformation gained in the professional relationship includes information gained from a person (prospective client) who discusses the possibility of forming a client-lawyer relationship with respect to a matter. *Even when no client-lawyer relationship ensues, the restrictions and exceptions of these Rules as to use or revelation of the information apply, e.g., Rules 1.9 and 1.10.*” Id. at Cmt. [4A] (emphasis added).

Georgia Rule of Professional Conduct 1.7 sets forth the general rule regarding conflicts of interest and provides in part:

A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b) [setting forth process for obtaining client informed consent where such is permissible].

Ga. R. of Prof. Conduct 1.7(a).

Conflicts can also arise from successive representations: “A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former gives informed consent, confirmed in writing.” Ga. R. of Prof. Conduct 1.9(a).

A lawyer is required to decline successive representation, i.e., representing a party in a matter adverse to a former client, where the second matter is “substantially related” to the lawyer’s representation of the former client. Crawford W. Long Mem. Hosp. &c. v. Yerby, 258 Ga. 720, 721(1), 373 S.E.2d 749 (1988). This rule is based on an irrebuttable presumption that confidences have been disclosed. “If such a substantial relationship between the cases is shown, the court will then irrebuttably presume that during the course of the former representation confidences were disclosed to the attorney bearing on the subject matter of the representation.” (Citations omitted.) Summerlin v. Johnson, 176 Ga.App. 336, 338(1), 335 S.E.2d 879 (1985). See also Carragher v. Harman, 220 Ga.App. 690, 691-692(1), 469 S.E.2d 443 (1996). The party seeking disqualification is not required to point to specific confidences revealed to his attorney that are relevant to the pending case; rather, his burden is only to show a substantial relationship between the two cases. Summerlin, 176 Ga.App. at 338(1), 335S.E.2d 879...[L]aw firms are expected to screen prospective clients for possible conflicts and decline representation where one exists.

Humphrey v. State, 244 Ga. App. 808, 810–12 537 S.E.2d 95, 98 (2000). “[T]he representation of a former client during the time that the subsequent client’s cause of action arose constitutes such a serious appearance of conflict of interest that recusal of counsel [i]s required.” Paul v. Smith, Gambrell & Russell, 267 Ga. App. 107, 109, 599 S.E.2d 206, 209 (2004). “Rule [1.9] aims to protect former clients, avoid the appearance of any impropriety, and maintain public confidence in the integrity of our adversarial system.” Hodge v. URFA-Sexton, LP, 295 Ga. 136, 139, 758 S.E.2d 314, 318 (2014) (citing Registe v. State, 287 Ga. 542(3)(c), 697 S.E.2d 804 (2010); Crawford W. Long Mem’l Hosp. of Emory Univ. v. Yerby, 258 Ga. 720(1), 373 S.E.2d 749 (1988); and Rule 1.9, Cmt. [9]). See also Restatement (Third) of the Law Governing Lawyers §15 (2000) (“A lawyer [who has discussed the possibility of forming a client-lawyer relationship with a prospective client] may not represent a client whose interests are materially adverse to those of a former prospective client in the same or a substantially related matter when the lawyer...has received from the prospective client confidential information that could be significantly harmful to the prospective client in the matter...”).

[G]uidance as to the meaning of “substantial relation” can be found by looking to the plain meaning of the words. In the Preamble to Georgia's Rules of Professional Conduct, “substantial” is defined, in part, as “denot[ing] a material matter of clear and weighty importance.” And the dictionary defines “relation” as “[a] logical or natural association between two or more things; connection.” Taken together, *the plain meaning of this phrase suggests that the former cases must have both material and logical connections with the subsequent case.*

Duvall v. Bledsoe, 274 Ga. App. 256, 258–59, 617 S.E.2d 601, 605 (2005) (citation omitted).

“Matters may also be substantially related if there otherwise is a substantial risk that confidential information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.” In re Cabe & Cato, Inc., 524 B.R. 870, 883 (Bankr. N.D. Ga. 2014) (citing Ga. R. of Prof. Conduct 1.9, Cmt. [3]).

Finally, a lawyer is prohibited from acting as an advocate in a trial in which the lawyer is likely to be a necessary witness except where: “(1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client.” Ga. R. of Prof. Conduct 3.7.

C. Findings and Conclusions of Law

Applying the foregoing authorities to this action, the Court is compelled to find Mr. Ward and SWTW are disqualified from continuing to represent Defendants in this action under Rules 1.6, 1.7, and 1.9. Although Tarek is not a former client of Mr. Ward or SWTW in the sense that he did not retain them to represent him and Aleem, LLC in the FRG Matter, it is undisputed that Tarek participated in a phone consultation with Mr. Ward concerning possible legal representation and, thus, was a prospective client who it appears shared at least some confidential information with Mr. Ward. As to what information was disclosed, Tarek has affirmatively

sworn under oath he provided specific information substantially related to matters at issue in this litigation. In turn, Mr. Ward merely avers he has no notes from the phone conversation, has no recollection of any details discussed other than the general information included in the scope of services set forth in the proposed retainer agreement, and he would have had no reason to discuss Labsolutions as it was not relevant to the tortious interference claim at issue in the FRG Matter. Given Mr. Ward does not have any specific recollections of the September, 2014, phone consultation and absent testimony or other evidence that would rebut Tarek's testimony, the Court is left with the affirmative representations made by Tarek under oath.

Further, although the claims at issue in the FRG Matter (*i.e.*, tortious interference with contractual and business relations and defamation) are distinct from the claims, counterclaims, and third-party claims asserted in this litigation, there are material and logical connections the Court cannot ignore with respect to the matters discussed during the phone consultation. Tarek avers they discussed the relationships between the Aleems, their ownership interests in clients they serve, and business origination practices.⁴⁷ In particular, the discussion regarding Tarek's ownership interest in and legal representation of Labsolutions⁴⁸ is directly related to the parties' claims regarding the enforceability/unenforceability of the Labsolutions Operating Agreement, any conflict of interest arising from Tarek's (and Yussuf's) roles as members and attorneys of Labsolutions, and the validity of any waiver of such conflict. This is particularly so given the phone consultation occurred in September, 2014, while the parties were in the midst of negotiating the Labsolutions Operating Agreement, since the timing of when the Aleems began

⁴⁷ Tarek Aff. at ¶¶ 8, 13, 16.

⁴⁸ Tarek Aff. at ¶8.

acting as attorneys for Labsolutions versus when they became business associates to Defendants and members of Labsolutions has become a material issue in this action.⁴⁹

Tarek also testified that he discussed the membership structure and financial split among the members of the Joseph & Aleem Firm and Aleem, LLC.⁵⁰ “[T]he mere fact that an attorney has general financial information about a former client does not necessarily warrant disqualification.” Duvall v. Bledsoe, 274 Ga. App. 256, 259, 617 S.E.2d 601, 605 (2005). However, here, information regarding how the Aleems and the Joseph & Aleem Firm manage their finances and distribute revenue among members/owners/partners is material to Defendants/Counterclaimants’ claims for civil RICO violations and conspiracy; particularly insofar as Defendants/Counterclaimants repeatedly allege the Aleems, the Joseph & Aleem Firm, and Mr. Slowik schemed and/or conspired together to defraud them and that each received some portion of the proceeds of the scheme, leading Defendants to seek tax and financial information in discovery. *See* Defendants’ Verified Answer and Counterclaim at ¶120 (“Plaintiffs and third party defendants had a scheme or artifice to defraud Defendants into conveying the subject valuable property to Plaintiffs. Plaintiffs further used the Aleem Law Firm^[51] to receive Defendants’ valuable property once their scheme to defraud had come to fruition: i.e. Plaintiffs directed their LabSolutions dividend check in the amount of \$406,757.26 be made out to the Aleem Law Firm. Upon information and belief, Slowik, as a partner of the Aleem Firm, thereafter took possession of some portion of the valuable property Defendants were deceived

⁴⁹ Defendants’ Response to Plaintiffs’ Motion to Disqualify, Ex. 10 (“Minal Patel Depo.”) at p. 62; Motion to Disqualify, Ex. G (“Slowik Depo.”), pp. 19-25. Although the Slowik Deposition submitted to the Court is an “Uncertified Rough Draft Only”, the Court will consider it insofar as both sides have referenced the deposition in their arguments.

⁵⁰ Tarek Aff. at ¶¶ 11, 13-16.

⁵¹ As used in Defendants’ Verified Answer and Counterclaim as well as Defendants’ Amended Third Party Complaint Against Joseph & Aleem d/b/a Joseph, Aleem & Slowik and Jacob Slowik, the terms “Aleem Firm” and “Aleem Law Firm” refer to the Joseph & Aleem law firm d/b/a Joseph, Aleem & Slowik, LLC, otherwise referred to herein as the Joseph & Aleem Firm.

into providing to Plaintiffs”); *id.* at ¶123 (“This unlawful and fraudulent conduct resulted in pecuniary gain to each of the Plaintiffs and third party defendants and operated to the financial detriment of Defendants”) *id.* at ¶¶ 136-138 (“Starting in 2015 and through 2017, LabSolutions caused to be transmitted to the Aleem Attorneys and third party defendants via either United States Mail or interstate wire communication, wire transfers for payment of purported legal services provided to the Company...Each Plaintiff and third party defendant acted willfully and with an intent to defraud and to wrongfully obtain money or other property from Plaintiffs...As a result of the scheme, each Plaintiff and third party defendant fraudulently obtained or retained money or other property from Plaintiffs”); *id.* at ¶152 (“Plaintiffs and third party defendants agreed to participate in and did in fact participate in a conspiracy and endeavor to violate O.C.G.A. §16-14-4(a) by obtaining personal property, including money, directly and indirectly from Defendants through a pattern of racketeering activity, in violation of O.C.G.A. §16-14-4(a)”); Defendants’ Amended Third Party Complaint Against Joseph & Aleem d/b/a Joseph, Aleem & Slowik and Jacob Slowik at ¶30 (“[T]he Attorney Aleems left LabSolutions with a check for \$406,000.00 made out to the Aleem Firm. Slowik was also a beneficiary as a partner at the Aleem Firm”); *id.* at ¶57 (“The Aleems and Third Party Defendants had a scheme or artifice to defraud Third Party Plaintiffs into conveying the subject valuable property to the Aleems and Third Party Defendants. The Aleems further used the Aleem Firm to receive Third Party Plaintiffs’ valuable property once their scheme to defraud had come to fruition: i.e. Plaintiffs directed that their LabSolutions dividend check be made out to the Aleem Law Firm. Upon information and belief, Slowik, as a partner of the Aleem Firm, thereafter took possession of

some portion of the valuable property Third Party Plaintiffs were deceived into providing to the Aleems and Third Party Defendants”).⁵²

Further, Tarek avers that during the phone consultation he discussed with Mr. Ward licensure issues regarding Yussuf and Mr. Slowik, an issue which it appears was discussed at length during Mr. Slowik’s deposition.^{53 54} In short, several of the matters allegedly discussed during the September 2014 phone consultation have a substantial connection to this case and could be used to Movants’ detriment and to Defendants’ advantage in this litigation such that Mr. Ward must be disqualified from this action. Insofar as Mr. Ward is disqualified, his firm SWTW is also disqualified from representing Defendants. *See* Ga. R. of Prof. Conduct 1.10(a) (“While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by *Rule 1.7: Conflict of Interest: General Rule, 1.8(c): Conflict of Interest: Prohibited Transactions, 1.9: Former Client or 2.2: Intermediary*”).

However, Defendants also contend that, even if there was a conflict of interest, the Movants have waived their right to seek disqualification by failing to raise the issue earlier. In July, 2017, Plaintiffs moved to disqualify Labsolutions’ counsel, Von DuBose of DuBose Miller,

⁵² Defendants acknowledge, discovery related to the Joseph & Aleem Firm’s finances is “highly relevant and would materially advance [their] counterclaims.” Defendants’ Response to Plaintiffs’ Motion to Disqualify, p.7.

⁵³ Slowik Depo., pp. 16-19.

⁵⁴ Indeed, the parties’ arguments with respect to Mr. Slowik’s July 24, 2018, deposition appear to highlight the connection between the matters discussed during the September, 2014, phone consultation and this litigation. Movants take the position that Defense counsel’s line of questioning during Mr. Slowik’s deposition shows that Defense counsel used information obtained from Tarek during the September 2014 phone consultation (*e.g.*, that Tarek and Yussuf held themselves out as owners of Labsolutions during this period, whether Tarek/Yussuf/Mr.Slowik were licensed in Georgia, the finances and clients of the Joseph & Aleem Firm, etc.) to their advantage in the deposition. *See* Motion to Disqualify, pp. 14-15, 17-23. On the other hand, Defendants challenge the “remarkable coincidence” that many of the topics Tarek claims were discussed during the 2014 phone consultation “mirror precisely the damaging testimony that Jacob Slowik provided in his deposition” although their counsel aver that the questions asked at the deposition were developed exclusively from public information, discovery documents, and their legal acumen. *See* Defendants’ Response to Plaintiffs’ Motion to Disqualify, pp. 7-8, Ex. 5 at ¶12, Ex. 6 at ¶¶ 5-6.

LLC, asserting counsel cannot adequately protect the interests of Labsolutions while also representing the other Defendants. Therein Plaintiffs also indicated they will move to disqualify Defendants' other attorney, Odis Williams, although no such motion was filed.⁵⁵ However, shortly after Mr. Ward and SWTW entered an appearance in this matter on August 21, 2017, Plaintiffs' counsel also threatened to disqualify them "for conflict purposes" and asserting via email the conflict is "greater than the conflict that exists with Von [DuBose] since [Mr. Ward's] relationship dates back to the inception and before."⁵⁶ Mr. Ward asserts that around this time he had a phone conversation with Plaintiffs' counsel, Mohamad Ahmad, during which Mr. Ahmad suggested Mr. Ward had a conflict that would allow him to be disqualified because he had "represented Tarek."⁵⁷ Insofar as Movants' basis now for seeking disqualification was known to Plaintiffs' counsel in August, 2017, Defendants argue Movants have waived their right to seek disqualification by waiting eleven months to file their motion.

Movants contend the discussions regarding Mr. Ward and SWTW's disqualification in August, 2017, were based on the same theory advanced in Plaintiffs' Motion to Disqualify Mr. DuBose, a conflict arising from Mr. Ward's prior representation of Labsolutions and/or its members which Mr. Ahmad learned of when Yussuf described a meeting he attended in Mr. Ward's office prior to this litigation.⁵⁸ Because the Court denied the Motion to Disqualify Mr. DuBose, they decided not to pursue a motion premised on similar grounds as to Mr. Ward and SWTW.⁵⁹ Movants maintain they were not aware of a conflict arising from the September, 2014, phone consultation until Tarek attended the July 24, 2018, deposition of Mr. Slowik and, upon

⁵⁵ Plaintiffs' Motion to Disqualify Counsel of Labsolutions LLC and Appoint Neutral, Independent Counsel, p. 1 n. 1.

⁵⁶ Defendants' Response to Plaintiffs' Motion to Disqualify, Ex. 4.

⁵⁷ Ward Aff. at ¶13.

⁵⁸ Ahmad Aff. (Jul. 30, 2018) at ¶¶ 3-6; Ahmad Aff. (Aug. 17, 2018) at ¶18; Motion to Disqualify, Ex. H ("Slowik Aff.") at ¶¶ 8-9, and Ex. I ("Yussuf Aff.") at ¶¶ 11-13.

⁵⁹ Ahmad Aff. (Jul. 30, 2018) at ¶15.

recognizing that Mr. Ward's voice was familiar, researched his files and realized Mr. Ward was the attorney he had spoken with in September, 2014, regarding the FRG Matter.⁶⁰ Yusuf and Mr. Slowik, in particular, aver they were not aware that Tarek had consulted with Mr. Ward in 2014 regarding the FRG Matter, were not aware of the conflict until after Mr. Slowik's July 24, 2018, deposition, and that they would have sought disqualification sooner had they been aware of the prior consultation.⁶¹

The Court is left to reconcile the conflicting positions of counsel regarding their communications in August, 2017, concerning alleged conflicts involving Mr. Ward and SWTW. Although Mr. Ward avers that during a phone conversation with Mr. Ahmad in August, 2017, Mr. Ahmad suggested there was a conflict because Mr. Ward had "represented Tarek", it appears Mr. Ward merely responded he did not believe that there was any such conflict and via email asked Mr. Ahmad to specify the nature of the conflict alleged. No further details are provided regarding counsel's August 2017 phone conversation from which the Court could determine that Plaintiffs and/or their counsel were on notice of the conflict arising specifically from Tarek's September 2014 phone consultation with Mr. Ward.

As Defendants rightfully point out, it is somewhat suspicious that numerous documents have been exchanged in this action with Mr. Ward and SWTW's name, but Tarek did not make the association between Mr. Ward and the September 2014 phone consultation until he heard Mr. Ward's voice on July 24, 2018, nearly four years later. Nonetheless, Tarek avers that it was not until he recognized Mr. Ward's voice as familiar that he remembered the phone consultation and searched his records. Further, Yussuf and Mr. Slowik have testified they did not know that Tarek had consulted with Mr. Ward regarding the FRG Matter until July 24, 2018, and, thus, could not

⁶⁰ Tarek Aff. at ¶6; Ahmad Aff. (Jul. 30, 2018) at ¶¶ 18-20; Slowik Aff. at ¶10; Yussuf Aff. at ¶14.

⁶¹ Slowik Aff. at ¶¶ 6-7, 11-12; Yussuf Aff. at ¶¶ 6-9, 14, 16.

have moved for disqualification sooner, but had they been aware of the consultation they would have immediately moved for Mr. Ward's disqualification.

Thus, in light of the testimony provided and accepting as true Tarek, Yussuf, and Mr. Slowik's testimony that they were not aware of the conflict until July 24, 2018, it appears Plaintiffs' counsel notified opposing counsel and the Court of the perceived conflict that same day and filed the instant motion six days later on July 30, 2018. Further, the fact Defendants' legal team includes attorneys at two other law firms and there are several discovery issues that remain pending pursuant to the rulings set forth in the Court's July 26, 2018 Order minimizes the prejudice to Defendants from the disqualification of Mr. Ward and SWTW. *See Shuttleworth*, 328 Ga. App. at 596; *Summerlin*, 176 Ga. App. at 339-41.


CONCLUSION

The Court has thoughtfully considered the evidence presented with respect to the instant motion and the relevant legal authorities and does not lightly find that disqualification of Defendants' chosen legal counsel is warranted. However, given the record, the Court is compelled to find there are material and logical connections between the information Tarek avers was discussed during the September, 2014, phone consultation and the matters at issue in this litigation, which the Court cannot ignore. Although Mr. Ward/SWTW were ultimately not retained, Tarek was a prospective client who is entitled to the protections and confidentiality afforded under our governing Rules of Professional Conduct. Based on the affirmative representations made to this Court, Tarek shared confidential information concerning himself, his law partners, his law firms, and his clients with Mr. Ward that would provide an advantage to Defendants and would ultimately call into question the fair and efficient administration of justice

if Mr. Ward and SWTW are allowed to remain Defendants' counsel. The Court finds itself constrained to and, thus, does hereby GRANT Plaintiffs' Motion to Disqualify.

Defendants shall have thirty days from the entry of this order to advise the Court whether they will retain additional, new counsel and, if so, to provide an estimated time necessary for this counsel to become familiar with the case. Upon consideration of Defendants' report, the Court will then accordingly amend the case management deadlines in this action.

SO ORDERED, this 24th day of October, 2018.


HON. MELVIN K. WESTMORELAND, JUDGE
Fulton County Superior Court
Business Case Division
Atlanta Judicial Circuit

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| Attorneys for Plaintiffs | Attorneys for Defendants |
|--|--|
| <p>Mohamad Ahmad KERMANI, LLP 3379 Peachtree Road, Suite 555 Atlanta, Georgia 30326 Tel: (424) 253-4254 ma@kermanillp.com</p> | <p>Odis Williams THE LAW OFFICE OF ODIS WILLIAMS, P.C. 1640 Powers Ferry Road, SE Building 20, Suite 300 Marietta, Georgia 30067 Tel: (770) 575-4466 owilliams@odiswilliamspc.com</p> <p>Von DuBose DUBOSE MILLER, LLC 75 14th Street, NE Atlanta, Georgia 30309 Tel: (404)720-8111 dubose@dubosemiller.com</p> <p>Kevin L. Ward J. Zachary Zimmerman SCHULTEN WARD TURNER & WEISS, LLP 260 Peachtree Street, Suite 2700 Atlanta, Georgia 30303 Tel: (404) 688-6800 Fax: (404) 688-6840 k.ward@swtwlaw.com z.zimmerman@swtwlaw.com</p> |