

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

OPHELIA PARKER, and JOSEPH NASO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

Case No. 6:16-cv-01193-CEM-DAB

UNIVERSAL PICTURES, a division of
UNIVERSAL CITY STUDIOS, LLC;
LEGEND PICTURES, LLC; LEGENDARY
PICTURES FUNDING, LLC; LEGENDARY
ANALYTICS, LLC; and HANDSTACK,
P.B.C.,

Defendants.

DECLARATION OF RODNEY A. MAX

I, Rodney A. Max, declare:

1. My name is Rodney A. Max. I am over the age of 18 and I am competent to give testimony. The statements contained in this declaration are based upon my own personal knowledge and are true and correct.

I. BACKGROUND AND EXPERIENCE

2. I graduated in 1975 cum laude from the Cumberland School of Law. Upon graduation, I became licensed to practice law in the state of Alabama (1975) and the state of Florida (1976). I am currently a member of Upchurch, Watson, White & Max Mediation Group, Inc.

3. Since 1992, my practice has focused exclusively on alternative dispute resolution, with an emphasis on mediation.

4. I have national mediation experience and have mediated in 32 states and the District of Columbia. I have been selected to conduct mediations by leading plaintiffs' attorneys, defense counsel and in-house counsel for national and international manufacturers, distributors, transporters, insurers and service provider companies and have been appointed by federal and state judges from coast to coast.

5. I have mediated cases involving consumer fraud, wrongful death and personal injury, breach of contract, bad faith, securities (NASD), antitrust, patent and trademark, Lanham Act, construction, property, environmental, fraud and suppression, banking, estate and trusts, stockholder disputes, partnership disputes and derivative claims. I have mediated numerous national and statewide class actions as well as numerous mass tort, contract and statutory warranty cases. I have convened parties for mediation before suits have been filed, as well as mediated cases on appeal.

6. Over the course of my career, I have conducted mediations in over 10,000 cases.

7. I am a past President of the American College of Civil Trial Mediators.

Additionally, I am a member of the Alabama Center of Dispute Resolution, the Florida Academy of Professional Mediators and the Dispute Resolution Section of the American Bar Association.

8. I have played a major role in establishing rules, standards and ethics for mediators. I initiated the Mediation Process and Practice Program at Cumberland School of Law as an adjunct professor from 1997-2002. Additionally, I have lectured at CLE seminars for attorneys or those who have sought training on mediation at the following courses:

- American College of Attorney Mediators - Multi Party Mediation, The Business of Mediation;
- American Bar Association Dispute Resolution Section - Multi Party Mediation, Ethics of Mediation, The Business of Mediation;
- New Jersey Bar Association - The Practice of Mediation;
- Alabama Bar Association - Multi Party Mediation; Mediation Dissected;
- Florida Academy of Civil Trial Mediators- Opening Statements;
- University of Florida - Designing The Mediation; and
- The International Academy of Mediators- Ethics of Mediation.

9. I have also published a number of articles. The following abridged list is a sampling: Mediation Comes of Age, published in The American Journal of Trial Advocacy, Volume 23, Issue 3 (Spring 2000); Multiparty Mediation, published in The American Journal of Trial Advocacy, Volume 23, Issue 2 (Fall 1999); Designing The Mediation, presented at professional seminars; The Ethical Civil Trial Mediator, The Letter, The Spirit and The Practice, presented at professional seminars; and Mediation: The Humanization of the Justice System, presented at professional seminars.

II. FAMILIARITY WITH THE PRESENT LITIGATION

10. I was retained by the parties in this matter for the purpose of mediating the action and to assist in reaching resolution, if possible. In my capacity as mediator, I am a neutral party, representing neither plaintiffs nor defendants.

11. I began to serve as mediator in this matter in September of 2018 after a previous unsuccessful mediation session in which I did not participate as mediator. In preparing for the mediation, I requested that the parties each provide me with a variety of information about the

lawsuit. Each party also submitted a mediation statement to me that summarized their respective views about the case. Additionally, I had multiple pre-mediation discussions with all parties to learn more about the facts of the dispute, the procedural background of the case, and the positions of the parties. The purpose of these initial communications and discussions was to familiarize myself fully before conducting the first in-person mediation. This was especially important for this particular mediation because I wanted to understand (1) what prevented the previous mediation from resulting in a settlement or at least advancing the case closer to resolution and (2) determine how I could best facilitate a more meaningful and useful discussion in the upcoming in-person mediation session.

12. The first in-person mediation session was scheduled for October 16, 2018.

Through my review of court filings and submissions from the parties, as well as the discussions with counsel, I had a detailed understanding of the nature of the claims and defenses asserted in this matter, as well as the parties' positions and desires for settlement.

III. THE MEDIATED SETTLEMENT NEGOTIATIONS

13. The proposed settlement is the result of lengthy and particularly hardfought negotiations, which took place on an ongoing basis between April 2018 and November 2018. The quality of the representation of both sides was exemplary in my experience. The in-person mediations over which I presided consisted of two sessions on October 16, 2018, in Orlando, FL and on October 28, 2018 in Chicago, IL.

14. Compared to some other TCPA cases, this case was particularly complex. Four potential classes needed protection, which raised unique complexities, particularly given the disparity in size between the classes. The ATDS class was more than significantly larger than the "Out of Time" and the "Internal Procedures" class, which raised unique challenges to adequately

protect all classes while simultaneously taking into account the differences in likelihood of success on the merits for each of the classes, since liability for different classes was based on different legal theories.

15. Further, there were multiple defendants, each of whom were potentially liable based upon different legal theories, with different facts relevant to each theory. Numerous third-party interests and considerations raised additional hurdles to overcome during negotiations. In sum, this case presented one of the more complex and difficult TCPA settlement discussions in which I have taken part.

16. Prior to the October 16 session, defendants provided plaintiffs' counsel with responses to targeted written questions and with extensive documents and data critical to plaintiffs' claims and the settlement negotiations. The parties reached an agreement in principle at the conclusion of the October 28 session.

17. Negotiations on some of the finer points of the Settlement continued after the parties reached agreement in principle.

18. A review of my records shows that, in total, I personally spent in excess of hours coordinating, preparing, pre-mediating and mediating the resolution of this case.

19. These lengthy negotiations were contentious and difficult, for the parties and their counsel. The discussions allowed the parties to express their views of the strengths and weaknesses in the case both directly to the opposing parties and counsel, as well as confidentially to me. I never perceived any collusion between the parties. To the contrary, negotiations were conducted at arm's-length and, while professionally conducted, were quite adversarial. In fact, both parties made it quite clear that they were willing, and indeed had been preparing, to file respective Motions for Summary Judgment before the then imminent deadline for dispositive

motions. This, of course, contributed to the complexities involved and further demonstrated the adversarial nature of the discussions.

20. The relief for class members was the primary focus of the settlement negotiations. Only after the parties had agreed on the substantive relief to class members did the parties negotiate the provisions of the settlement providing for payment of attorneys' fees and incentive payments to the Named Plaintiffs. . There were no discussions of or agreement on attorneys' fees, costs, or incentive awards until the substantive terms of the settlement were negotiated and agreed to.

21. In my opinion, the settlement negotiations in this case resulted in a resolution that is fair, reasonable and adequate for class members. The settlement, including the monetary and injunctive relief provided to the class, is a fair and non-collusive settlement that was conducted at arm's length by skilled, well-informed lawyers with sufficient discovery and investigation prior to completion of the mediation, and through the intense, lengthy mediation process described above.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 29th day of November, 2018.



Rodney A. Max