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## NEWS

### **'The Best Strategy': \$795K Resolution Reached in Federal COVID-Accommodation Dispute**

Attorneys on either side of a pandemic-related workplace accommodation dispute have reached a \$795,000 resolution between the Georgia Department of Natural Resources and a former employee.

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🕒 8 minute read



**By Cedra Mayfield**

Litigation Reporter

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## What You Need to Know

- Georgia Department of Natural Resources settles employee retaliation dispute for \$795,000.
- Plaintiff counsel with Beal Sutherland Berlin & Brown struck resolution with Office of the Attorney General on Dec. 9 following mediation.
- Plaintiff attorney Brian J. Sutherland credits resolution to 'dogged determination in discovery and rigorous preparation' for trial.

Attorneys on either side of a pandemic-related workplace accommodation dispute have reached a federal \$795,000 resolution following two years of litigation.

Now plaintiff counsel with Beal Sutherland Berlin & Brown in Chamblee are detailing the role they played in persuading the Georgia Department of Natural Resources to resolve a terminated employee's claims of Americans With Disabilities Act, Family and Medical Leave of Absence and Georgia Whistleblower Act violations.

"The best strategy for settlement is not to aim for it but to show the other side you're ready to try the case," said plaintiff counsel Brian J.

Sutherland. "I think the state knew that we were ready to try this case very effectively and that helped."

## 'Unlawful Retaliation'

Sutherland represented plaintiff Michelle McLaurin in bringing a federal complaint against the Georgia Department of Natural Resources, or DNR, following the budget analyst's termination from the agency after 24 years of services. Leading up to her termination, McLaurin endured retaliation after requesting permanent telework as an accommodation for being disabled and immunocompromised amid the ongoing pandemic, according to plaintiff counsel.

In addition to citing political reasons for refusing McLaurin's accommodation request, plaintiff counsel said the department "forced [McLaurin] to take FMLA leave instead of being allowed to continue working remotely." Sutherland noted that only after McLaurin filed charges against the DNR with the U.S. Department of Labor did her employer restore the plaintiff's Family and Medical Leave of Absence balance.



(l-r) Berlin Sutherland Berlin & Brown managing partners Brian Sutherland and Rachel Berlin Benjamin. Courtesy photo

In a complaint transferred from the Cobb County Superior Court to the U.S. District Court for the Northern District of Georgia in September 2022, plaintiff counsel asserted claims for violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Plaintiff counsel also asserted claims for interference and retaliation in violation of the Family and

Medical Leave Act, discrimination, failure to provide reasonable

accommodation, and retaliation in violation of the Americans with Disabilities Act and the Rehabilitation Act, and whistleblower retaliation in violation of the Georgia Whistleblower Act.

On top of back pay and lost economic benefits of employment, Sutherland and co-counsel Rachel Berlin Benjamin sought liquidated damages, compensatory damages for emotional pain and suffering, punitive damages, reinstatement, injunctive relief and attorney's fees and costs on McLaurin's behalf.

"As a direct and proximate result of DNR's unlawful retaliation against Plaintiff McLaurin, she has suffered out-of-pocket losses and been deprived of job-related economic benefits, including wage income, retirement benefits and other benefits, including Social Security, all in an amount to be established at trial," the complaint read. "DNR's actions have caused, continue to cause, and will cause Plaintiff McLaurin to suffer damages for emotional distress, mental anguish, loss of enjoyment of life, and other non-pecuniary losses all in an amount to be established at trial."

The complaint sought the "feasible" reinstatement of McLaurin's employment by the state department, or "an award of damages for future lost wages and benefits of employment."

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But McLaurin's retaliation claims against the DNR did not stop there.

The plaintiff alleged the DNR continued to retaliate against her "by changing her job description to suddenly include in-office requirements and calling her doctor to insist that she be given direction to return to work," according to Sutherland.

"The Court found based on this and the record evidence of her good performance remotely during the pandemic, there was a triable issue on whether she could do her job remotely," Sutherland said. "After the State

got her doctor to write a new recommendation that she could return two weeks after getting the vaccine, she went to get it even though she was concerned about the safety and efficacy of the vaccine. She presented evidence that the [DNR] knew this and fired her eight days later before the two weeks elapsed."

McLaurin also testified before U.S. Magistrate Judge J. Clay Fuller that her supervisors questioned her about the optics of the government "telling people the State was 'open for business,'" but then enabling government employees to work remotely.

"The Court recognized this as evidence that the reason given for the in-office requirement was not because it was an essential function but was instead political," Sutherland said.

## **'Issues of Material Fact Exist'**

Former Assistant Attorney Generals Mary Catherine Greaber and Courtney Poole defended the DNR, DNR Director Larry Blakenship and former DNR Commissioner Mark Williams in the dispute, but did not respond to a Daily Report request for comment. On the defendants' behalves, the assistant AGs motioned to dismiss all of McLaurin's claims except for those brought under the Rehab Act and Georgia Whistleblower Act in September 2022. Ten months later, Fuller issued a report in July 2023 recommending the defendants' dismissal motion be granted as to McLaurin's FMLA claims for damages on the basis of sovereign immunity, but denied dismissal of the plaintiff's ADA claims on the basis of sovereign immunity.

U.S. District Judge Steve C. Jones adopted the recommendation in September 2023, but that didn't stop defense counsel from seeking to nix the case.

In November 2023, the defendants motioned for summary judgment and to exclude several opinions from McLaurin's expert witness, Dr. Scott E.

Singer. Defense counsel briefed in their motion that Singer's opinions shouldn't be considered because they'd not been "based on sufficient facts or data, and because his opinions are not reliable." When plaintiff counsel responded by submitting a declaration of Daniel Levitas, opposing counsel objected to any testimony being permitted by the expert witness.

After considering the pleadings, Fuller granted Singer clearance to "testify to factual opinions that would support a legal conclusion or that discuss the ADA and FMLA." However, Fuller prohibited Singer from testifying "as to the ultimate legal issues of the ADA and FMLA." Finding that McLaurin had not relied on Levitas' opinion in opposition to the defense summary judgment motion, Fuller opted to overrule the defendants' objections to Levitas' testimony.

"Because genuine issues of material fact exist to be tried on whether Defendants retaliated against Plaintiff for engaging in statutorily protected activity by terminating her, it is recommended that [the] defendants' motion for summary judgment be denied on [the] Plaintiff's FMLA, ADA, Rehab Act, And GWA Retaliation Claims," read Fuller's report and recommendation issued in May.

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In July, Jones adopted Fuller's recommendation to deny defense counsel summary judgment on all of McLaurin's claims. But rather than greenlight a federal trial date in the matter, Jones ordered mediation between the parties.

On Dec. 9, Sutherland said the parties "settled and finally concluded the case," after reaching a resolution for \$795,000.

#### **'Before the Risk Is Greater'**

One day after striking the settlement, Sutherland told the Daily Report he'd been prepared to try the case but would have preferred for the matter to have been resolved sooner.

"I never understand why employers don't settle earlier before the risk is greater, but I was grateful that our client was compensated," Sutherland said. "I can't speak to the State's decision-making in this case. All I can say is that I think they should have settled it earlier, and I'm glad they finally did."

The Beal Sutherland Berlin & Brown partner credited the six-figure outcome to his strategy of engaging "dogged determination in discovery and rigorous preparation." He shared that the case had reminded him of why he loved being a plaintiff attorney.

"It's a great privilege to represent plaintiffs in employment discrimination and retaliation cases and to be able to right wrongs for them and hopefully make a difference for others too," Sutherland said. "And it's a lot of fun in Georgia because we have great lawyers on both sides of the 'v.'"

Albeit pleased for his client, Sutherland noted the case provided him with valuable insight, too. For starters, Sutherland said the outcome underscored that workforce decisions made during the height of the pandemic remain relevant in the present.

"[T]he COVID-19 pandemic was not Las Vegas—what happened then matters now. Despite all the arguments, we demonstrated that successful remote work experience impacts what the law will recognize as essential job functions," Sutherland said.

Based on his handling of the case, Sutherland also wanted to highlight for other litigators that the reasonable attorney's fees provisions of the federal civil rights and employment statutes enable plaintiff attorneys to "bring these cases regardless of the amount in controversy." He urged employers "to remember this or ... risk a lot of unnecessary exposure."

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