

MONDAY, MARCH 24, 2014

DAILY REPORT

A SMART READ FOR SMART READERS

An ALM Publication

3 ex-defendants to sue Cobb County

THEY CONTEND former DA lent his powers to Glock Inc. in malicious prosecution over legal fees

R. ROBIN MCDONALD
rmcdonald@alm.com

ONE YEAR AFTER the Cobb County district attorney dismissed a felony racketeering indictment against a former federal prosecutor, an Atlanta lawyer and a metro businessman, the former defendants have notified the DA and the county that they intend to sue over what they contend was a malicious and unwarranted prosecution done at the behest of international gun manufacturer Glock Inc.

Former Assistant U.S. Attorney James Harper III said he is seeking more than \$4 million in damages because the district attorney's office—then led by Marietta lawyer Patrick Head—indicted him, Atlanta attorney Jeffrey Pombert and Loganville businessman Jerry Chapman on charges that “they were unable to produce evidence had even occurred, forcing us to expend over three years of our lives trying to unravel their lies and other wrongdoings.”

Prosecutors and other government officials traditionally are immunized from suits by former defendants, but Chapman's attorney expressed confidence that those legal hurdles can be cleared.

Atlanta attorney Fenn Little, who represents Chapman and an unindicted co-conspirator from the underlying case, said he suspects the DA will argue that absolute immunity is afforded to prosecutors in the conduct of their work. But Little contended that there is case law to support the argument that prosecutors lose their immunity when they assume the investigative role of police officers.

“How they got themselves into this is that they switched from their role as prosecutors



JOHN DISNEY/DAILY REPORT

James Harper is suing the Cobb DA's office for \$4 million in damages after he and two others were indicted on charges that were later dismissed.

... to investigators,” Little said. “That is why they don't have complete immunity.”

The lawyer also said that when Cobb County allowed two attorneys representing Glock to conduct a plea proffer associated with the investigation, and began identifying specific evidence they wanted to subpoena or seize via search warrant, “They cross that line to creating, not evaluating evidence. ... When they started playing cop, they lose that immunity.”

Harper said that from the time a county grand jury issued its indictment in January 2010 until newly elected Cobb District

Attorney Vic Reynolds dismissed the charges against the three men on March 13 last year, county prosecutors “did not turn over exculpatory evidence, ignored the sworn statements of their own witnesses, and turned the power and authority of their office over to the representatives of foreign nationals.”

Those foreign nationals, Harper told the Daily Report, are individuals and companies affiliated with the empire headed by Austrian Gaston Glock, the inventor of the Glock pistol.

“Having served as a prosecutor both with

the United States Marine Corps and the United States Attorney's Office in Atlanta, I never would have believed that the authorities in Cobb County, where I grew up and still live, would engage in such false representations and allegations, but that is exactly what they did and I am prepared to prove it," Harper said.

Harper's personal accountant Michael Stresser—listed as an unindicted co-conspirator—also has filed a notice of his intent to sue Cobb County and the district attorney's office.

In a written statement, Reynolds told the Daily Report: "We hope there is not litigation, but we have to presume based on the notice that there will be, so I am not comfortable answering any questions at this time."

Cobb County Attorney Deborah Dance said in a written statement that her office had no prior knowledge of the allegations before she was contacted by the Daily Report. Dance also said she "will initiate a review" on behalf of the Cobb County Commission. She had no further comment.

The four men also sent notices of intent to sue last September to the City of Smyrna and the Smyrna Police Department, which initiated the investigation that led to their indictment. Those notices accused Smyrna police and the detective who investigated Harper and his team of engaging in a racketeering conspiracy with Glock that had, as its goal, the malicious prosecution of Harper, Pombert and Chapman.

The investigation was prompted by allegations Glock executives made against Harper in 2007, four years after he ended a business relationship with the gun manufacturer. Glock's North American manufacturing headquarters is in Smyrna. Pombert and Chapman worked for Harper.

Harper said that neither the city nor the police department has responded to the sue notices.

Smyrna city attorney Scott Cochran was out of the office and could not be reached for comment.

The charges against Harper, Pombert and Chapman stemmed from a three-year investigation that Harper conducted on behalf of Gaston Glock, following Glock's attempted assassination in 1999 in Luxembourg.

From 2000 to 2003, Harper led a team of 16 investigators, attorneys, accountants and former law enforcement officers who assisted him in tracing and reclaiming at least \$80 million in corporate funds that Glock confidante Charles Marie Joseph Ewert—who is serving a 20-year prison sentence in Luxembourg for the attempted murder of Glock—had misappropriated. Harper and his team—which included

Pombert and Chapman—ended their investigation two weeks after Ewert was convicted.

Four years later, Glock executives contacted Smyrna police, claiming that Harper had overbilled Glock corporate entities more than \$3 million in legal fees—the total amount paid to Harper over the course of his inquiry.

In 2010, Cobb County prosecutors led by then-Assistant District Attorney John Butters secured an indictment that accused Harper, Pombert and Chapman of racketeering, wire fraud, mail fraud, extortion, money-laundering, theft and obstruction of justice. The charges stemmed from Glock allegations that Harper and his team had either overbilled fees, billed for services not rendered or used legal bills to cover allegedly illegal transfers of funds to and from legal trust accounts.

Harper said that Head, then the Cobb DA, and his staff "consistently rebuffed questions as to how payments made based on regularly submitted invoices could somehow be regarded as thefts after a lapse of seven years."

A Cobb County judge had agreed with the DA that the statute of limitations for the vast majority of the criminal charges against Harper and his co-defendants, including the racketeering charge, could be extended from four to 15 years under the state's elder crimes law because Gaston Glock was older than 65 and a corporate shareholder or the beneficiary of a trust that held corporate stock. But last year the state Supreme Court held that the elder crimes law did not apply.

Reynolds told the Daily Report last year that he dismissed the indictment after his white-collar crime prosecutor reviewed the case in the wake of the high court's decision because nothing remained that warranted prosecution.

Head and Butters could not be reached Friday afternoon.

After filing his sue notice, Pombert told the Daily Report that he is "very grateful" to Reynolds, who did not become DA until the indictment had been pending for three years, for dismissing the case. But, he said, "I really would like to try to understand how this came to be. ... I hope that what we're doing now can lead to giving me a chance to sit down with him [Reynolds] so I can understand really what went wrong with the prior Cobb County district attorney's administration that created this terrible injustice in my life. I am very hopeful we can reach that point and have a productive conversation. ... It would be nice to have some answers."

Pombert's sue notice also included allegations that the DA's office illegally disclosed bank records from Pombert's firm trust accounts that were seized by Smyrna police during the investigation and allegedly disclosed to third parties, including Glock, in

violation of federal bank privacy and state grand jury secrecy laws.

"It was like throwing salt in the wound," said Pombert's lawyer, Atlanta attorney David Hungeling. "You had a wrongful, ill-advised, poorly investigated prosecution that really gets into personal, confidential information. And then, to make matters worse, you disclose it to third parties."

Hungeling said they have documented at least one instance where Cobb prosecutors turned over the bank records to an outside party not affiliated with the criminal investigation. And, he added, "We assume they may have shared it with Glock and Glock entities."

Unlike Harper and Pombert, Chapman had a criminal conviction stemming from the Glock legal fee dispute. In May 2003, after Harper and Glock parted ways, Harper threatened to sue Glock, claiming he was owed more than \$1.8 million in unpaid legal bills stemming from the investigation, according to transcripts of two pretrial hearings in the now-dismissed racketeering case. Harper eventually decided not to sue, but Chapman—who had kept the books during the course of Harper's investigation—made a heavy-handed attempt, without Harper's knowledge, to collect the outstanding bill.

In a letter to Gaston Glock obtained by the Daily Report, Chapman said he had kept every document that came through the team's office and recorded most of the meetings he attended. Suggesting that the IRS and the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives might be interested in his information, Chapman wrote: "Now I realize that I can use the information to vindicate Jim, generate the funds you refuse to rightfully pay him, and penalize you ... for the way you treated him Harper."

The firearms company responded by pressing extortion charges against Chapman in Gwinnett County in 2004. Chapman subsequently entered a first offender plea in Gwinnett County and was placed on probation. ☞



David Hungeling