

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

RHYNETTE NORTHCROSS HURD,

Plaintiff,

v.

CASE No. _____

**SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.,**

Defendant.

JURY DEMANDED

COMPLAINT

COMES NOW Plaintiff Rhynette Northcross Hurd (“Plaintiff”) and brings this action against her former employer Defendant Sedgwick Claims Management Services, Inc. (“Defendant”) for discrimination on the basis of race and for retaliation both in violation of 42 U.S.C. § 1981 of the Civil Rights Act of 1866 and the Tennessee Human Rights Act. Plaintiff has also filed a charge with the Equal Employment Opportunity Commission (“EEOC”) against Defendant for violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and will timely move to amend this Complaint to add those claims once a Right to Sue letter has been issued.

PARTIES

1. Plaintiff Rhynette Northcross Hurd is an African-American female resident of Shelby County, Tennessee and former Corporate Counsel for Sedgwick Claims Management Services, Inc.

2. Defendant Sedgwick Claims Management Services, Inc. is a corporation headquartered in Memphis, Tennessee that administers claims and provides cost management services to major employers. Defendant employs more than 6,400 individuals in the United States and Canada.

JURISDICTION

3. The Court has jurisdiction over Plaintiff's claims brought under 42 U.S.C. § 1981 pursuant to 28 U.S.C. §§ 1331 and 1343(4). In addition, Plaintiff has filed a timely charge of discrimination with the EEOC. The EEOC is still in the process of conducting its investigation. Plaintiff will amend her complaint to add certain Title VII violations once a right to sue notice has been issued and received.

4. Plaintiff requests that the Court exercise its pendent jurisdiction under 28 U.S.C. § 1367 and accept Plaintiff's state law claims arising out of the Defendant's violations of the Tennessee Human Rights Act and the claims arising out of Defendant's violations of the common law of the State of Tennessee.

STATEMENT OF FACTS

5. Plaintiff is an African-American attorney licensed to practice law in the State of Tennessee.

6. Defendant hired Plaintiff on April 4, 2005 in the position of Corporate Counsel/Director of E&O (errors and omissions). Plaintiff's responsibilities included managing all error and omissions claims, litigation, and EEOC charges filed against Defendant. Additionally, Plaintiff provided advice and counsel to Defendant's employees on avoiding errors and omissions exposure and mitigating exposure when claims were made. Plaintiff also retained and supervised outside counsel; prepared monthly and quarterly reports to senior management and to

Defendant's insurance carriers; and developed and delivered training to employees on errors and omissions avoidance and human resources matters.

7. In September 2006, Plaintiff received a performance review that was positive.

8. Initially, Paul Posey supervised Plaintiff. Posey was then promoted from the position of General Counsel to Chief Operating Officer.

9. In the third quarter of 2007, Kimberly Brown ("Brown") was promoted to the General Counsel position and began to supervise Plaintiff. Plaintiff received positive feedback for her work from Brown both before and after Brown's promotion to General Counsel.

10. In 2007, Steve Hurley ("Hurley"), a white attorney hired in November 2004, was placed on the Operating Committee ("OpComm"). OpComm was a group designated as company leaders and all members received a monthly allowance.

11. In September or October 2007, Plaintiff requested and was denied a position on OpComm despite holding a position at the same level as Hurley and at a higher level than many members serving on OpComm. OpComm membership was arbitrary, and Plaintiff was told that her membership would not be approved by Jim Wiertelak, Defendant's COO at the time, because Plaintiff, who holds a Ph.D. and a J.D, had "too many degrees."

12. By the end of 2007 following Plaintiff's request, OpComm was discontinued but prior members continued to receive monthly allowances.

13. In 2008, Hurley received a larger bonus than Plaintiff and subsequently received a promotion to a higher pay grade level which opened the door to the opportunity for larger bonuses. The position to which Hurley was promoted was not posted.

14. Plaintiff was qualified for the position to which Hurley was promoted but was prevented from applying because the position was not posted.

15. In September 2008, Plaintiff met with Brown regarding the possibility of promotion. Brown informed her that no promotional opportunities were available within the department. Brown said she would explore possibilities outside of the department for Plaintiff. When Plaintiff inquired later about any possibilities, Brown said that none were available.

16. In September 2008, Defendant selected Hurley for the Leadership Memphis Fast-Track Program. No notice was given that the opportunity for the program was available. Brown told Plaintiff that she did not think Plaintiff would have been interested.

17. Also in September 2008, Plaintiff met with Defendant's Colleague Relations Director ("HR") to express her concerns about the lack of opportunity to advance, overall compensation, and bonuses as compared to her white male colleague. Plaintiff lodged a complaint about the lack of opportunity to advance and the failure of Defendant to post available positions.

18. In October 2008, Plaintiff had a follow-up meeting with HR. HR had conducted no investigation or, if it had, no results were shared with Plaintiff. Plaintiff discussed having HR serve as mediator in meeting with Brown to discuss reasons for differences in treatment.

19. In December 2008, Plaintiff met with HR and Brown to discuss the lack of promotional opportunities and the unequal treatment that she was receiving compared with Hurley. Brown responded, "There is no disparate treatment." When asked about OpComm allowances, Brown falsely stated that former members did not continue to receive an allowance. At this meeting, Brown expressed no concerns or complaints about Plaintiff's job performance.

20. After this meeting, Plaintiff noted increased supervision of her work and micromanagement by Brown.

21. In January 2009, Plaintiff met with HR and then with HR and Brown again to follow up on the findings of any investigation conducted by HR about the differences in salaries, bonuses,

benefits, and promotions. Once again, HR either did not conduct an investigation or did not share the results with Plaintiff.

22. In February 2009, Hurley again received a significantly larger bonus than Plaintiff.

23. On April 2, 2009, Plaintiff received the First Record of Verbal Counseling for “mistakes in judgment” by Brown. Brown provided no correction plan.

24. On April 23, 2009, Plaintiff again met with HR and expressed her concern about disparate treatment on the account of race because she had not been promoted and had received lower bonuses than Hurley. Also, Plaintiff expressed her belief that the Verbal Counseling was retaliatory and was without basis. Plaintiff again asked HR to investigate the differences in salary, bonuses, promotions, and benefits.

25. On May 20, 2009, Plaintiff received a very low performance rating for her 2008 review, though all of the examples of alleged poor performance were from 2009.

26. On June 5, 2009, Plaintiff received her First Written Warning. Brown once again suggested no correction plan. Defendant, however, required Plaintiff to meet weekly and show immediate improvement.

27. In June and July 2009, Plaintiff met three times with Brown. Plaintiff inquired as to what she needed to do to improve her performance, and Brown gave no guidance other than to “communicate.”

28. On August 12, 2009, Plaintiff received a Final Written Warning.

29. On August 14, 2009, Brown advised Plaintiff that Plaintiff had options for transitioning out of the Company and advised Plaintiff to meet with the head of HR if Plaintiff wished to discuss the options.

30. On August 19, 2009, Plaintiff met with the head of HR. Told that leaving the company was not her only option and there was still time to work things out with Brown, Plaintiff was offered a six month severance package subject to approval by her superiors and signing a release and waiver of rights against the company. HR also agreed to inquire about other positions for Plaintiff in the company.

31. On August 20, 2009, HR confirmed that the six months severance package was available.

32. On August 28, 2009, Plaintiff agreed to take administrative leave while the parties tried to agree on the terms of a settlement agreement under the condition that should a severance agreement not be reached by the end of business on September 14, 2009, Plaintiff would be allowed to return to work on September 15, 2009.

33. The severance agreement negotiations were not successful. Plaintiff was terminated by Defendant on September 14, 2009, despite the parties' agreement that taking the severance agreement would not be interpreted as a voluntary resignation or termination.

CAUSES OF ACTION

34. Plaintiff incorporates paragraphs 1 through 33 above as though specifically set forth herein, and alleges that:

35. Defendant's actions constitute unlawful racial discrimination in violation of 42 U.S.C. § 1981;

36. Defendant's actions constitute unlawful retaliation and retaliatory harassment in violation of 42 U.S.C. § 1981;

37. Defendant's actions constitute discrimination on the basis of race in violation of the Tennessee Human Rights Act;

38. Defendant's actions constitute unlawful retaliation and retaliatory harassment in violation of the Tennessee Human Rights Act.

39. As a direct and proximate result of Defendant's unlawful, discriminatory conduct toward Plaintiff, Plaintiff has lost wages and benefits and has sustained other pecuniary loss. Plaintiff, as a result of Defendant's actions, has suffered damage to her professional career and professional reputation, as well as to her personal reputation. Defendant's discriminatory practices and retaliation have been demeaning to Plaintiff and have caused her to suffer pain, humiliation, and embarrassment, as well as emotional distress;

40. Defendant's unlawful actions complained of above were intentional, malicious, and taken in reckless disregard to the statutory rights of Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the following relief be granted following a jury verdict in her favor:

1. Back pay, lost benefits, and other pecuniary losses proximately caused by Defendant's unlawful conduct;
2. Front pay and the value of future lost benefits since reinstatement is not feasible;
3. Compensatory damages against Defendant in an amount to be determined by the jury;
4. Punitive damages against Defendant in an amount to be determined by the jury;
5. All costs, disbursements, pre-judgment interest, post-judgment interest, expert witness fees and reasonable attorneys' fees allowed under actions brought pursuant to 42 U.S.C. § 1981 and T.C.A. §§ 4-21-101 et seq.; and,
6. Such further relief as is deemed just and proper.

Respectfully submitted,

DONATI LAW FIRM, LLP

/s/ Bryce W. Ashby

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE, SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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Sedgwick

BERNICE B. DONALD

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