

# HARD COPY

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

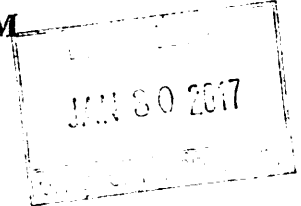
File No. 3-16554

In the Matter of:

GRAY FINANCIAL GROUP,  
INC., LAURENCE O. GRAY, and  
ROBERT C. HUBBARD, IV,

Respondents.

AFFIDAVIT OF  
LINDA D. JELLUM



Personally appeared before me, the undersigned officer duly authorized by law to administer oaths, Linda D. Jellum, who, after being duly sworn, stated on her personal knowledge as follows:

1. My name is Linda D. Jellum. I am over the age of eighteen, am suffering no disabilities, and am competent to execute this Affidavit.

2. I am currently employed as a law professor at Mercer University School of Law in Macon, Georgia. Further, I am a leading expert in statutory interpretation. Mercer is one of the only schools in the nation with a course in statutory interpretation, which I have taught for the last thirteen years. I have written two casebooks and a hornbook with Carolina Academic Press explaining the accepted methods for interpreting statutes. I have been teaching statutory interpretation to various audiences including administrative law judges, foreign judges, and lawyers around the country and the world. These are the techniques I used to interpret the New Georgia Pension Law. Contrary to the SEC's assertion, I am not an advocate in this case. I am an impartial expert, hired for my skill and expertise. My interpretation of this statute would be the same even if the SEC had chosen to contact me.

3. As a result of the poor drafting and undefined terms, O.C.G.A. § 47-20-87 (the “New Georgia Pension Law”) is highly complex and difficult to interpret. The many ambiguities and potential absurdities allow for countless interpretations of the various provisions, which I have identified in my expert report. (The analysis of O.C.G.A. § 47-7-127 is virtually identical and will not be addressed separately.) I have identified the two most reasonable interpretations, neither of which correspond to the SEC’s highly-literal interpretation that a fund of funds must meet all of the statutory requirements at the time of each investment (in fact the SEC does not even seem to stay consistent to this interpretation, allowing the amount of the fund size to change as investors invest).

4. The SEC interprets the words and phrases in this statute in isolation, ignoring the well-known statutory interpretation canon of *in pari materia*. As Chief Justice Roberts recently explained, the job of the court is to “construe statutes, not isolated provisions.” Hence, interpreters must read the words of a statute in context with a view to their place in the overall statutory scheme. Even former Justice Scalia, originator of new textualism, “wholeheartedly agree[d] ... that sound interpretation requires paying attention to the whole law.” The SEC’s interpretation does not comply with this direction; rather, the interpretation is hyper-literal because it focuses on isolated words and provisions while virtually ignoring the legislative intent and statutory purpose.

5. Further, this approach is consistent with Georgia’s purposivist approach. In Georgia, one “must look for the intent of the legislature and construe statutes to effectuate that intent.” *Roswell v. Atlanta*, 261 Ga. 657 (1991). To find legislative intent, one must consider the purpose of a statute, meaning the law as it existed prior to enactment, the evil the legislature intended to address, and the remedy the legislature selected to address that evil. O.C.G.A. § 1-3-

1(a). One must remember that “the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes.” *State v. Brown*, 551 S.E.2d 773, 775 (Ga. Ct. App. 2001). In other words, literalism (interpreting a statute’s words in isolation) is never appropriate. An interpreter may look to text alone only when the words of a statute have but one meaning and do not produce absurd, impractical, or contradictory interpretations. *Busch v. State*, 523 S.E.2d 21 (Ga. 1999). However, when words are ambiguous, absurd, impractical, or contradictory, a court must construe the statute, keeping in mind the purpose of the statute and “the old law, the evil, and the remedy.” *Brown*, 551 S.E.2d at 775 (citing O.C.G.A. § 1-3-1(a)).

6. Using Georgia’s purposivist approach to interpreting statutes, I have spent more than 125 hours working to interpret this highly complex and technical statute. The New Georgia Pension Law is distinct and unique. There is no other statute in the nation that is similar. The law was not modeled on any other statute in the nation, federal or state. Moreover, none of its specific sections were modeled on any other jurisdiction’s language. Further, the law is not a uniform act. Thus, there are simply no statutes similar to the New Georgia Pension Law to provide interpretive guidance.

7. Further, there is little legislative history to examine and no prior judicial opinions to offer guidance.

8. To discern the legislative intent, I identified the twin purposes for this statute: allowing public retirement systems to invest in alternative investments while simultaneously reducing the risk of those investments. I spoke with experts in securities regulation to better understand how the purposes of this statute could be furthered by the statute’s limitations.

9. I identified multiple ambiguities and absurdities in the statute and worked to resolve them in a way that would further both purposes, not just the protection purpose the SEC

is so focused on. For example, the statute provides: “The alternative investment shall not exceed in any case 20 percent of the aggregate amount of: [t]he *capital to be invested in the applicable private pool*, including all parallel pools, and other related investment vehicles established as part of the investment program of the applicable private pool.” O.C.G.A § 47-20-87(c)(1)(emphasis added). The italicized language is ambiguous in the case of a fund of funds; it might mean money invested in the underlying investment or it might mean the money invested in the fund of funds. I explain why “the capital to be invested in the applicable private pools” means the money the fund of funds invests in the underlying investments. Alternatively, I explain that if the legislature meant the phrase to apply to the fund of funds, then further ambiguities appear. Specifically, how is the cap calculated: based on the money in the fund of funds at the time of the investment, based on the cover amount of the fund of funds, or based on the amount in the fund of funds when it closes to new investment? I resolved these ambiguities.

10. I also examined the legislative history that did exist, including various drafts of the bill as it wound its way through the State Senate and General Assembly. I compared changes in the drafts and examined an attorney general opinion that interpreted the 5 percent requirement in O.C.G.A. § 47-7-127. The New Georgia Pension Law was amended to address an ambiguity that existed in that earlier statute.

11. I also applied the plain meaning canon and its technical corollary to determine when the legislature intended words to have their ordinary meaning and when the legislature intended words to have their technical meaning. Some of the phrases used, such as “other related investment vehicles established as part of the investment program of the applicable private pool,” have no ordinary or technical meaning. Rather these words combined words that had both types

of meaning. The only term the legislature defined in this statute was “alternative investments.” More definitions were needed.

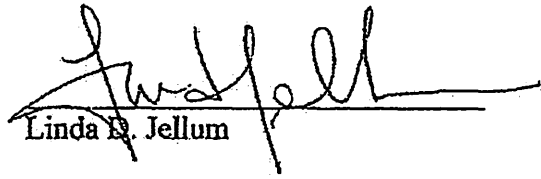
12. To resolve the ambiguities, I applied the linguistic canons of interpretation. For example, I applied the identical words presumption when the statute used the same word or phrase to conclude that that word or phrase had the same meaning throughout the statute. Alternatively, when the legislature changed the word or phrase, I presumed that the legislature changed the meaning of the word. For example, the statute uses the term “issuers” but does not define that term nor incorporate any other statute by reference that does interpret that term. Additionally, the statute uses the phrase “alternative investment firm.” These two phrases should mean something different.

13. I also applied the rule against surplusage, when appropriate, and rejected its application, when appropriate. The rule helps explain, for example, that the terms “private pools” and “issuers” in the \$100 million requirement should mean something different. Otherwise, the term “private pools” would be redundant.

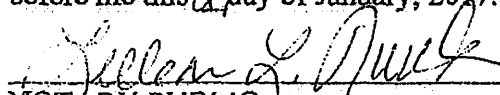
14. I examined the doctrine of last antecedent as it applied to the concurrent investor requirement, ultimately rejecting its application and concluding that the legislature had simply made a grammatical error. And this is just a start of the ambiguities and absurdities.

15. In summary, the New Georgia Pension Law is highly complex and technical and utterly unique. Expert guidance regarding the appropriate method for interpreting this Georgia statute can only assist this court with interpreting this statute for the first time. I am, after all of my work, the leading expert on this statute and can provide the court with that guidance.

FURTHER AFFIANT SAYETH NOT.

  
Linda B. Jellum

Sworn to and subscribed  
before me this 2 day of January, 2017.

  
NOTARY PUBLIC  
My Commission Expires: 10/25/2018



**CERTIFICATE OF SERVICE**

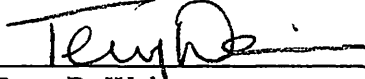
The undersigned counsel for Respondents Gray Financial Group, Inc., Laurence O. Gray, and Robert C. Hubbard, IV hereby certifies that he has served a copy of the foregoing **AFFIDAVIT OF LINDA D. JELLUM** by electronic mail and by United Parcel Service, addressed as follows:

Secretary Brent J. Fields  
Securities and Exchange Commission  
100 F Street N.E.  
Washington, D.C. 20549-1090

Honorable Cameron Elliot  
Securities and Exchange Commission  
100 F Street N.E.  
Washington, D.C. 20549-1090

Pat Huddleston II  
William P. Hicks  
Securities and Exchange Commission  
Division of Enforcement  
950 East Paces Ferry Road, Suite 900  
Atlanta, Georgia 30326

This 27th day of January, 2017.

  
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Terry R. Weiss