

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DRUMMOND COMPANY, INC.,

Plaintiff,

V.

TERRENCE P. COLLINGSWORTH, individually
and as an agent of Conrad & Scherer, LLP; and
CONRAD & SCHERER, LLP,

Defendants.

)
)
)
)
)
) Case No. 2:11-CV-3695-RDP
)
)
)
)
)
)

**DECLARATION OF TERRENCE P. COLLINGSWORTH IN OPPOSITION TO
DRUMMOND’S MOTION FOR SANCTIONS AND IN SUPPORT OF
DEFENDANTS’ MOTION TO COMPEL**

I, Terrence P. Collingsworth, declare under penalty of perjury of the laws of the United States of America and the State of Alabama that:

1. I am a partner at Conrad & Scherer, LLP and lead counsel for the plaintiffs in *Balcero v. Drummond Co., Inc.*, No. 2:09-cv-1041-RDP (N.D. Ala. filed May 27, 2009); *Baloco v. Drummond Co., Inc.*, No. 7:09-cv-0557-RDP, 2012 WL 4009432 (N.D. Ala. Sept. 12, 2012), *appeal docketed*, No. 12-15268-BB (11th Cir. Oct. 15, 2012); and *Melo v. Drummond Co., Inc.*, No. 2:13-cv-0393-RDP (N.D. Ala. filed Feb. 26, 2012). I am also a Defendant in the present libel case, *Drummond Co., Inc. v. Collingsworth, et al.*, No. 2:11-cv-3695-RDP (N.D. Ala. filed Oct. 21, 2011). I provide this declaration based on my personal knowledge and can testify under oath to all of the facts herein.

2. Attached hereto as Exhibit AA is a true and correct copy of the original Spanish and English translation of the Declaration of Oscar David Perez Bertel, previously produced to

Drummond and this Court in the *Balcero* litigation.

3. Attached hereto as Exhibit BB is a true and correct copy of the original Spanish and English translation of the Declaration of Jhon Jairo Esquivel Cuadrado, previously produced to Drummond and this Court in the *Balcero* litigation

4. The production of financing documents in this case took an enormous amount of time because the staff at Conrad & Scherer's main office in Fort Lauderdale had to retrieve boxes of original receipts and expense requests from the firm's warehouse. They then had to sort through boxes of these documents organized by year, manually review thousands and thousands of financial documents, and identify those that were responsive to the Court's October 15, 2013 Order. I was in regular communication with the staff, and I did not receive the last batch of responsive documents until Tuesday, April 1, 2014. Defendants' supplemental production includes thousands of pages of these actual receipts obtained through this arduous manual process. A typical example of the physical receipts Defendants are ready to produce is attached as Exhibit CC.

5. Drummond's Exhibit J to their Emergency Motion for Sanctions is an email exchange between Parker Waichman LLP ("PW") lawyers and me that states in the subject line, **"dole plan and wire info-colombia trip."** Drummond Ex. J, FRR(2)000007. ***This payment was the fee for a non-testifying expert in the Dole case.*** As would be normal in the process of retaining any expert, we arranged an initial meeting to interview the potential expert to determine whether he had the expertise to provide a research report that we wanted to commission. As with any expert, if he was not qualified and could not produce the report we needed, he would not be retained or paid. *Id.* at FRR(2)000008. After a lengthy meeting with PW lawyer Mike Hugo, Robert Perillo and Edgardo Aleman, both contract employees working with me on the Dole and

Chiquita cases in Colombia, and me, we determined that the expert was qualified. *Id.* He was retained and he ultimately produced a comprehensive report that relates to Dole's presence and operations in Colombia's banana zone. Our understanding with the expert witness was that we would keep the report confidential and he would never be asked to testify. I explained that under our legal system, based on Federal Rule of Civil Procedure 26(b)(4)(D), we could keep the report and his identity confidential. The expert in question insisted that he be paid in cash because of his concern that he would face retaliation in the small town where he resided in the banana zone of Colombia if he was identified as a witness against Dole, and his concern that it would also negatively impact his future professional prospects. He wanted no record of the transaction to be available locally. I have a copy of the final report the expert produced and am willing to produce it to the Court under seal for an *in camera* review. As noted, there were three other individuals in the meeting with me and the expert: PW lawyer Mike Hugo, Robert Perillo and Edgardo Aleman. Further, the email chain that Drummond produced identified other PW lawyers who participated in the discussion of the plan to retain and pay the expert: Andy Alonso, Fred Rosenthal, and Gary Falkowitz. All of these individuals can verify that the funds in question were to retain a non-testifying expert in the Dole case who produced a comprehensive expert report.

6. Attached hereto as Exhibit DD is a true and correct copy of the original Spanish and English translation of the Report of Dr. Oscar Julian Guerrero Peralta ("Guerrero Rep.") that has previously been produced to Drummond in this litigation.

7. There is no question that I discussed with my co-counsel at PW that Jaime Blanco Maya, a potential witness in the case, raised with me that his lawyers wanted to be compensated for the extra time they would spend on his case if he testified in the human rights case about

Drummond's participation with the AUC in the murders of the Drummond union leaders and other collaboration with the AUC. I never met the lawyers who were representing Blanco in his criminal case involving his role in the murders of the Drummond union leaders. Blanco told me his lawyers were not going to assist him with any added complications to his case caused by his providing testimony in the Drummond human rights litigation unless they were compensated for that time. The main complication about which I understood Blanco to be talking was that Colombia has an unusually broad right against self-incrimination that allows a witness by law to deny an allegation, not just keep silent about it, in order to avoid admitting to a crime. *See* Guerrero Report (Ex. DD), referenced in paragraph 6, *supra*, for details of the scope of the right in Colombia. I understood, and informed PW, that this meant that without further legal assistance, Blanco could very well decide to continue to deny his role in the murders of the union leaders and that this would necessarily require him to deny Drummond's role in the murders because Blanco's participation in the murders was solely as a collaborator with Drummond officials and the AUC.

8. After much discussion, PW declined to take this step and declined to provide any assistance to the lawyers representing Blanco in his criminal proceeding. There are no documents produced by PW or Conrad & Scherer relating to a payment to Blanco or his criminal lawyers because none was made by them.

9. I understand from a more recent discussion with Blanco that he made some arrangement with the authorities in his criminal case that allowed him to expose his role with Drummond in arranging the murder of the union leaders. At his criminal trial, he admitted that he was part of a conspiracy with Drummond officials to murder the union leaders. His testimony that Drummond officials collaborated with him in murdering the union leaders served as the

basis for the criminal court to convict Blanco of his role in the murders and order an investigation of specific Drummond officials, including “Mr. Gary Drummond, J[im] Adkins, Augusto Jimenez, Luis Carlos Rodriguez, Alfredo Araujo Castro, Rafael Garcia and Jorge Castro Pacheco.” A true and correct copy of the original Spanish and an English translation of that portion of the sentencing order is attached hereto as Exhibit EE. This sentencing order was previously filed with the Court as Exhibit 3 to ECF No. 69 on November 7, 2013.

10. As per the criminal court’s order, the Colombian criminal authorities are now in the process of investigating Drummond’s role in the murders of the Drummond union leaders. At their request, I met with Colombian prosecutors and provided evidence that I had of Drummond’s role in the union murders. Jaime Blanco is also now cooperating in the investigation and provided an October 15, 2013 sworn statement to the prosecutors. A true and correct copy of that declaration is attached hereto as Exhibit FF. Due to the short time allotted to submit this response, Defendants have not yet been able to have this recently-acquired document translated to English, but will submit a certified translation to the Court when it is available.

11. Based on my discussions with Jaime Blanco Maya and my co-counsel in the Drummond human rights cases, Ivan Otero, as well as my review of the documents relating to Blanco’s criminal prosecution for the death of Drummond’s union leaders, it is clear that Ivan Otero has not appeared for Blanco in that case. Drummond is in possession of the same documents regarding Blanco’s criminal proceedings and must also be aware of this fact while also speculating that Mr. Otero was representing Blanco in that case, and was paid by Defendants to do so.

12. The numerous invoices and documents showing payments by Defendants to Mr. Otero, which are part of Defendants’ document production in response to Drummond’s First and

Second Document Requests and this Court's discovery Order, show exactly what Mr. Otero was paid for, and he was never compensated for any representation of Mr. Blanco. The documents show that any payments to Mr. Otero were for work performed exclusively on the Drummond human rights litigation for Defendants, as well as for expenses and costs incurred by him.

13. The purported attorney cooperation agreement between Ivan Otero and me dated January 27, 2009 that Drummond presents to the Court as Exhibit Q to its Emergency Motion for Sanctions was not produced by Defendants in any prior production because it was immediately voided by the parties and was therefore not a valid or operative agreement. I agreed with Ivan Otero to void that agreement within two days of its initial execution. Without waiving any attorney-client or work product privileges applicable to my discussions with my two Colombian co-counsels, Mr. Otero and Francisco Ramirez, I can say that the voided agreement, drafted in haste by me in a hotel room in Colombia, had obvious problems that required it to be voided immediately. Among those are that it did not specify which of the Drummond human rights cases it covered, and it conflicted with a prior verbal fee-sharing understanding I had with Mr. Ramirez. Mr. Otero, Mr. Ramirez and I agreed to new terms for two separate agreements, one for the *Balcero* case and one for the *Baloco* case, that are reflected in the valid written agreement and the valid oral agreement I have produced or disclosed to Drummond.

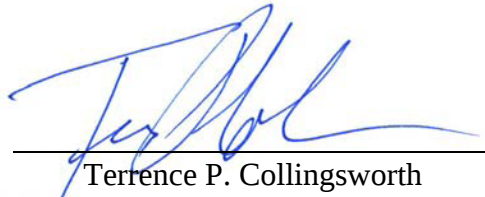
14. Attached hereto as Exhibit GG is a true and correct copy of the Declaration of Professor Steven H. Hobbs. This was previously filed with the Court as Exhibit 1 to ECF No. 98 on February 12, 2014.

15. Attached hereto as Exhibit HH is a true and correct copy of the original Spanish and English translation of the Declaration of Ivan Otero Mendoza (exhibits omitted). This was originally produced to Drummond and the Court as Exhibit 39 to ECF No. 69, filed on

November 7, 2013, and this original filing includes all of Mr. Otero's exhibits.

16. Defendants will be severely prejudiced if Drummond gains access to our litigation strategy map that is revealed by an overall examination of the cost and financing documents that Defendants are now prepared to produce in response to the Court's October 15, 2013 Order. These documents include such highly sensitive facts as the places Defendants meet and stay in Colombia, the cities and places where they have met contacts in Colombia, the internal costs incurred in litigating the case, aspects of funding their investigations in Colombia, and their costs and methods for personal security for their Colombian lawyers.

Executed this 14th day of April, 2014 in Washington, D.C.



Terrence P. Collingsworth