IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION

CAPITOL BODY SHOP, INC., *et al.*,	* **DISPOSITIVE MOTION**
	*
PLAINTIFFS,	* MDL Docket No. 2557
	*
v.	* Case No. 6:14-cv-06000-GAP-TBS
	*
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,	* Originally filed in the Southern * District of Mississippi
	*
DEFENDANTS.	*

CERTAIN DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Certain Defendants ("Defendants") hereby move pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss Plaintiffs' Second Amended Complaint ("SAC") with prejudice. The Defendants who have joined in this Motion are listed in **Exhibit A**, attached hereto.

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiffs' SAC attempts to offer more detail about the same implausible conspiracy and boycott theories set forth in Plaintiffs' prior complaints, continues to rely on allegations of unilateral behavior and conscious parallelism that cannot give rise to claims under Section 1 of the Sherman Act, 15 U.S.C. § 1, fails to correct the legal deficiencies identified by this Court in its February 9 Order (Doc. 82) or in its January 22, 2015 Order dismissing the first amended complaint in the companion *A&E Auto Body* case (*see A&E*, Doc. 293, adopted in this action at Doc. 82 at 15 and Doc. 83 at 1),[1] and in many instances repeats Plaintiffs' pat-

[1] The SAC in this case is closely patterned on Plaintiffs' Second Amended *A&E* Complaint (*A&E*, Doc. 296), which is subject to fully briefed motions to dismiss.

tern of impermissible group pleading. The key features of the SAC are summarized below:

- Plaintiffs have made no effort to allege an express agreement among Defendants to set reimbursement rates.

- The First Amended Complaint ("FAC") alleged Defendants paid consciously parallel labor rates, but did not make any factual allegations of rates actually paid by any defendant and, accordingly, did not even show parallel conduct. The SAC adds allegations that Defendants chose to follow State Farm's $42 body labor rate in 2011, that two Defendants followed State Farm rate increases in 2011 and that more Defendants followed a State Farm increase in 2012. These allegations show nothing more than some parallel reimbursement behaviors on the part of some Defendants in some periods of time.

- The FAC alleged that employees of some unidentified Defendants told some unidentified Plaintiffs at some time that their companies would pay what State Farm pays. The SAC identifies a few insurers that purportedly made such statements to some of the shops. These new allegations reflect nothing more than limited details concerning insurers' unilateral decisions on how to compensate Plaintiffs.

- The SAC's attempts to allege "plus factors" that could transform limited examples of parallel reimbursements into cognizable claims of conspiracy – opportunities to conspire, motivation to seek profits – are for the most part identical to the same conclusory allegations previously rejected by the Court. Plaintiffs' quixotic new theory that some Defendants have various relationships with investment and asset management firm BlackRock lacks any factual or logical connection to a conspiracy claim.

- A few Plaintiffs have added a handful of allegations of purported steering conduct against a few Defendants to support their sweeping claim that all Defendants have engaged in an unlawful boycott. The SAC fails even to allege conduct that could fairly be described as parallel. Moreover, the SAC does not state a boycott claim for the same fundamental reason that the previous iterations fell short – vaguely asserted isolated examples of purported steering are not equivalent to a *concerted* refusal to deal. There are no factual allegations to support the claim that all Defendants conspired to refuse to deal with Plaintiff shops. Indeed, the allegations make clear that these Plaintiffs continue to do business with the Defendants, so there has clearly been no "boycott" at all.

- Plaintiffs have larded the SAC with apparent new claims that Defendants have conspired to fix the prices of replacement parts and to require shops to use aftermarket, salvaged, or recycled parts. Plaintiffs do not tie any of these allegations to any agreement among Defendants regarding reimbursement rates or otherwise; they fail even to allege parallel conduct. These allegations also employ the same collective pleading technique which the Court has twice rejected.

- Plaintiffs' claims of tortious interference with business relations, quantum meruit, and

alleged violation of Mississippi Code § 83-11-501 should be dismissed because they contravene settled principles of Mississippi law and fail to correct legal and pleading deficiencies identified in this Court's prior orders.

II. PLAINTIFFS' ANTITRUST CLAIMS (COUNTS ONE AND TWO) SHOULD BE DISMISSED.[2]

A. Plaintiffs' New Conspiracy Allegations Fail to Overcome the Shortcomings of Their First Amended Complaint.

To survive a motion to dismiss, a plaintiff alleging an antitrust conspiracy must adequately plead that the defendants "(1) entered into 'a contract, combination or conspiracy,' which was (2) 'in restraint of trade or commerce' and (3) that [the plaintiff] was damaged by the violation." *Moecker v. Honeywell Int'l, Inc.*, 144 F. Supp. 2d 1291, 1300 (M.D. Fla. 2001) (citation omitted). Plaintiffs still fail the first prong of this test because they have not alleged a plausible conspiracy among all or any Defendants.

The SAC must, but does not, contain "'allegations plausibly suggesting (not merely consistent with) [a conspiracy or] agreement,'" *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1332-33 (11th Cir. 2010) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)), and must, but does not, offer "'enough factual matter (taken as true) to suggest that an agreement was made.'" (*A&E*, Doc. 293 at 17 (quoting *Twombly*, 550 U.S. at 556).) Allegations "that are 'consistent with conspiracy, but just as much in line with . . . rational and competitive business strategy' are insufficient." *In re Fla. Cement & Concrete Antitrust Litig.*, 746 F. Supp. 2d 1291, 1308 (S.D. Fla. 2010) (quoting *Twombly*, 550 U.S. at 554). "'[F]ormulaic recitations' of a conspiracy claim" are insufficient, and "'a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show

[2] Defendants hereby adopt and incorporate the legal standards for a Rule 12(b)(6) motion set out in the Court's February 9, 2015 Report and Recommendation (Doc. 82 at 3-5, *adopted* Doc. 83).

illegality.'" *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1294 (11th Cir. 2010) (quoting *Twombly*, 550 U.S. at 557).

1. The SAC's Allegations of Conscious Parallelism Do Not Suggest a Conspiracy to Fix Reimbursement Rates

Plaintiffs allege that Defendants imposed maximum price limitations for automobile repair services, but the "crucial question" remains "whether the challenged anticompetitive conduct 'stem[s] from independent decision or from an agreement, tacit or express.'" *Twombly*, 550 U.S. at 553; *see also Williamson Oil Co. v. Philip Morris USA*, 346 F.3d 1287, 1298-99 (11th Cir. 2003) ("[I]t is important to distinguish at the outset between collusive price fixing, i.e., a 'meeting of the minds' to collusively control prices, which is prohibited under the Sherman and Clayton Acts, and 'conscious parallelism,' which is not.").

Like its predecessors, and the companion *A&E* complaint, the SAC fails to meet the standards set by the Supreme Court and the Eleventh Circuit for pleading an antitrust conspiracy. The rate-fixing conspiracy alleged in the FAC was based entirely on Plaintiffs' general characterization of Defendants' conduct as conscious parallelism, without so much as a single factual allegation that there were parallel rate reimbursement levels set by any Defendants. In the SAC, Plaintiffs have added some allegations of episodic instances in which some Defendants paid similar prices for repairs. This Court has already explained, however, that such parallel conduct "falls short of conclusively establishing agreement or itself constituting a Sherman Act offense." (*A&E*, Doc. 293 at 16). In dismissing the antitrust conspiracy claims in the FAC, this Court found that, "aside from conclusory allegations that it exists, the Plaintiffs offer no details at all in the Amended Complaint about the alleged agreement, such as how the Defendants entered into it, or when." (*Id.* at 17.)

Plaintiffs have not cured these defects. They still do not offer any allegations regarding who reached an agreement with whom, what that agreement entailed, or when it began or ended. None of the newly added allegations in the SAC, separately or in context, raise a suggestion of a preceding agreement among Defendants to fix reimbursement rates. There is no factual context to suggest that Defendants agreed with State Farm or among themselves to adopt State Farm's rate reimbursement levels. Indeed, Plaintiffs' core allegation remains simply the self-defeating generalization that after State Farm, the alleged market leader, independently developed and adopted a price structure for labor rates, other Defendants at some point thereafter individually refused to pay any more than State Farm.

Plaintiffs do not allege sufficient factual matter to place this conduct in a "context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action." *Twombly*, 550 U.S. at 557. Thus, there are no factual allegations supporting an inference that the parallel reimbursement rates resulted from a preceding agreement among the Defendants. Because conclusory allegations and recitals of the elements of a cause of action are not presumed true at the pleading stage, *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), Plaintiffs have not, and plainly cannot, set forth factual allegations plausibly establishing an antitrust conspiracy.

On examination, even Plaintiffs' allegations of parallel business conduct reflect inconsistent behavior among Defendants. They claim that State Farm determined that the market rate was $42 per hour for labor and $35 per hour for paint and that other Defendants[3] adopted the same rate for labor. (SAC ¶¶ 205-06.) For several Plaintiffs, such as Pitalo and

[3] Plaintiffs do not identify the prices paid by Defendant Mississippi Farm Bureau. (SAC ¶ 206.)

Bill Fowler's Bodyworks, State Farm's rates for paint and materials actually met or exceeded their posted prices of $32 and $35 per hour, respectively. (*Id*. ¶ 203.) Plaintiffs do not allege when or under what circumstances Defendants decided to pay the rates State Farm was paying. Moreover, in a case purporting to be about a conspiracy to suppress rates, many of the SAC's factual allegations involve Defendants increasing rates, to the benefit of body shops, not decreasing them.

Plaintiffs allege that two Defendants raised their reimbursement rates "within a few weeks" of State Farm raising its rates in October 2011 (*id*. ¶ 214), and that following State Farm's rate increase in the summer of 2012, seven Defendants raised their rates sometime that autumn. (*Id*. ¶ 215.) Plaintiffs surmise that "it can only be reasonably concluded State Farm determines the false market rate and provides the same to the remaining Defendants." (*Id*. ¶ 221.) Plaintiffs do not allege when, how, by what means or to whom State Farm provided such information, nor do they allege that any Defendants possessed this information before State Farm raised the rates it paid to shops. They also do not account for why, in service of a purported scheme to suppress reimbursement rates, Defendants would gradually raise their rates, over a period of weeks or months, in response to State Farm's announcement of its own independent rate increase. The body shops themselves obviously knew what rates State Farm was paying them and almost certainly would have been eager to tell other insurers who allegedly refused to pay more than State Farm that State Farm had increased its market rate. *See In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 329 (3d Cir. 2010) ("The details of commission agreements with other insurers, for example, could be a powerful tool for a broker attempting to negotiate a more favorable agreement with a particular insurer-

partner."). The decisions of those insurers to increase their own rates after State Farm had increased its own market rate hardly indicate the presence of an agreement to suppress the rates (and in any event certainly did not prejudice Plaintiffs). *See In re Travel Agent Comm'n Antitrust Litig.*, 583 F.3d 896, 907 (6th Cir. 2009) (refusing to infer conspiracy where Defendants were not alleged to have received information about rate reductions before they were implemented). If anything, this example tends to show that pricing movements in the market are the result of independent rather than concerted action.

Plaintiffs focus many allegations on State Farm's surveys, but they do not allege that State Farm's surveys involved anything other than State Farm's unilateral conduct. (SAC ¶ 164.) Plaintiffs affirmatively allege that State Farm took measures to protect the confidentiality of its surveys (*id.* ¶¶ 174-75), not that it used the surveys to communicate with other Defendants about rates. In any event, the other Defendants did not need to know any of that information or to conduct their own surveys to know what State Farm and other insurers actually paid body shops.

As in *Twombly*, there are obvious explanations for why rational and self-interested insurers would know the rates paid by their competitors. Plaintiffs allege that Defendants engage with Plaintiffs and with other body shops in hundreds of transactions every day in the ordinary course of business. The rates body shops are paid are an integral part of these transactions. Body shops doing business with State Farm across Mississippi, including Plaintiffs, all would learn in the ordinary course of business what rates State Farm was willing to pay them, just as they would know the rates paid by other insurers with whom they do business. Thus, it is both obvious and entirely reasonable that the rates State Farm paid were well

known among both body shops and the insurers with whom they regularly transact, and that alleged knowledge does not suggest a conspiracy.[4] As the Seventh Circuit has stated, "the practice of the insurance companies to calculate the reimbursement for its insured based upon the lowest prevailing price in the market place (and to insure the integrity of that estimate by having an open list of competing shops which will generally accept it) is the very essence of competition." *Quality Auto Body, Inc. v. Allstate Ins. Co.*, 660 F.2d 1195, 1205 (7th Cir. 1981); *see also In re Baby Food Antitrust Litig.*, 166 F.3d 112, 126 (3d Cir. 1999) ("Gathering competitors' price information can be consistent with independent competitor behavior."); *In re Citric Acid Litig.*, 191 F.3d 1090, 1103 (9th Cir. 1999) ("There are many legal ways in which Cargill could have obtained pricing information on competitors.").[5]

And, of course, merely following a price leader is common within different industries

[4] Plaintiffs' allegations also suggest that insurers would learn competitive pricing information in the implementation of DRP agreements, which purportedly require pricing concessions or most favored nations provisions that oblige shops to charge no more than what other insurers pay for the same services. (SAC ¶¶ 121, 126, 139.) Thus, it is likely if not inevitable that State Farm's rates would be known among both body shops and the insurers with whom those shops did business. *See In re Elevator Antitrust Litig.*, 502 F.3d 47, 51 (2d Cir. 2007) ("Similar contract terms can reflect similar bargaining power and commercial goals (not to mention boilerplate); similar contract language can reflect the copying of documents that may not be secret; similar pricing can suggest competition at least as plausibly as it can suggest anticompetitive conspiracy . . . . ").

[5] Plaintiffs allege that a USAA representative told an Oklahoma body shop that USAA would soon pay higher labor rates because State Farm survey results "had just been sent out" and it would "take USAA a couple of weeks to put them in motion." (SAC ¶ 182.) First, the allegation concerns a rate increase by a market buyer, which is indicative of a pro-competitive and expected reaction to changing market conditions. Thus, even taken at face value, the allegations against USAA at most suggest independent reaction to a price change, which the Court has previously recognized does not support the notion of a price-fixing conspiracy. (*A&E*, Doc. 293 at 18). Second, while Plaintiffs contend that the "only reasonable inference" from this ambiguous statement is that "State Farm provided this information to the other individual Defendants" (*id.* ¶ 186), Plaintiffs do not allege facts that explain how the purported statement is relevant to Mississippi rates, who sent these results, or when and to whom, or how general dissemination of the results supports an inference of conspiracy. (*Id*.) In short, the inference Plaintiffs insist must be drawn simply does not flow from the words that allegedly were said to some unidentified body shop employee in Oklahoma, nor is there any factual support for such an inference.

and does not suggest the existence of an agreement. *See In re Travel Agent*, 583 F.3d at 910 (explaining that, "as will often be the case, the leader's price increase is likely to be followed" and concluding that "each defendant's decision to match a new commission cut was arguably a reasoned, prudent business decision"); *Kendall v. Visa U.S.A.*, 518 F.3d 1042, 1048 (9th Cir. 2008) ("merely charging, adopting or following the fees set by a Consortium is insufficient as a matter of law to constitute a violation of Section 1 of the Sherman Act"); *Quality Auto Body*, 660 F.2d at 1200 (conspiracy not inferable from Defendants' "adherence to a 'common formula' for calculating damage estimates" for automobile repairs).

In short, Plaintiffs' factual allegations show that it was in the rational, independent business interests of State Farm to demand lower prices and of the other insurers to refuse to permit a body shop to charge them more than the shop was charging State Farm. *See Twombly*, 550 U.S. at 554 (allegations that are "consistent with conspiracy, but just as much in line with . . . rational and competitive business strategy" do not suffice). Mississippi law actually provides that an insurer need not reimburse shops at a rate any higher than the lowest price the insured could obtain in the same geographic area. *See* Miss. Code Ann. § 83-11-501 (quoted in Point V *infra*). In dismissing the FAC, this Court adopted its analysis of the factually indistinguishable allegations in the *A&E Auto Body* case, where it ruled that Plaintiffs' allegations of purported statements by insurers that they would pay no more than State Farm did not give rise to an inference of a prior agreement:

> It is not illegal for a party to decide it is unwilling to pay a higher hourly rate than its competitors have to pay, and the fact that a number of the Defendants made statements to that effect does not tip the scales toward illegality. . . . Without more, statements such as these suggest that the party is acting out of its own economic self-interest rather than because of an agreement to fix prices, as required to violate § 1. . . . Plaintiffs themselves suggest that the Defendants

might have been acting in response to perfectly lawful motivations.

(*A&E*, Doc. 293 at 18.) Plaintiffs have not provided any new allegations that would alter this conclusion in the present case.

2. The SAC Does Not Allege Any Factual Plus Factor Supporting a Plausible Inference of Conspiracy.

The SAC provides no details regarding the supposed agreement or any "specific time, place, or person involved in the alleged conspiracies." *See Twombly*, 550 U.S. at 565 n.10. Plaintiffs also do not offer any "plus factors" that might make it plausible to infer a conspiracy from the alleged parallel conduct. *See id.* at 556 n.4 (discussing examples of plus factor allegations that might suffice to plead conspiracy); *Williamson Oil Co.*, 346 F.3d at 1301 ("[P]rice fixing Plaintiffs must demonstrate the existence of 'plus factors' that remove their evidence from the realm of equipoise and render that evidence more probative of conspiracy than of conscious parallelism."). Plaintiffs simply recycle, at somewhat greater length, the conclusory allegations this Court previously rejected.

a. Opportunities to Conspire (SAC ¶¶ 372-93).

In support of their theory that 18 different insurers conspired to fix the prices they would agree to pay for auto repairs throughout Mississippi, Plaintiffs point to Defendants' membership in various trade associations and standard-setting organizations. (*See* SAC ¶¶ 373-93.) Unspecified meetings of these associations, Plaintiffs speculate, could have served as opportunities for high-level executives and officers of Defendants to get together and form a conspiracy. (*See id.* ¶¶ 378, 382-83, 388.)

Contrary to Plaintiffs' claims, mere opportunities to conspire at trade association meetings do not plausibly suggest an agreement, particularly where the Defendants had an

independent, rational reason to be at the alleged meeting place. *See Am. Dental Ass'n*, 605 F.3d at 1295 ("participation in trade organizations provides no indication of conspiracy"); *see also In re Ins. Brokerage Antitrust Litig.*, 618 F.3d at 349 (affirming dismissal where "neither Defendants' membership in the CIAB, nor their common adoption of the trade group's suggestions, plausibly suggest conspiracy"); *In re Travel Agent*, 583 F.3d at 911 ("[A] mere opportunity to conspire does not, standing alone, plausibly suggest an illegal agreement because [Defendants'] presence at such trade meetings is more likely explained by their lawful, free-market behavior.").

Moreover, Plaintiffs have not alleged facts that could have created an opportunity to conspire in the first place. They do not list or describe a single meeting of any of these associations, who attended, when it occurred, what contacts or communications occurred, or how any of these unspecified contacts or communications might be substantively, temporally, or causally related to any of the purported parallel conduct that Plaintiffs allege. *See In re Travel Agent*, 583 F.3d at 910 (affirming dismissal where complaints did "not cite any specific meetings that involved both [Defendants]").[6]

Plaintiffs also repeat their allegations concerning a State Farm meeting with representatives of the Mississippi Department of Insurance and body shop representatives, at which a State Farm employee referred to monthly insurance industry meetings. (SAC

[6] Only four Defendants, not including State Farm, are members of the American Insurance Association (SAC ¶ 373), and only six, not including State Farm, are members of the Property and Casualty Insurer Association of America (*id.*). Only three are members of the Certified Automotive Parts Association (CAPA) (*id.* ¶ 387), which also includes body shop members – making its attractiveness as a conspiracy-planning location doubtful at best. Only two are members of the National Association of Mutual Insurance Companies (NAMIC). (*Id.* ¶ 373.) State Farm, which purportedly plays "a leading role" in the conspiracy (*id.* ¶ 79), belongs only to CAPA, NAMIC, and the Insurance Institute for Highway Safety ("IIHS"). (*Id.* ¶¶ 373, 381, 387.)

¶¶ 244-47.) As this Court has explained, the fact that "State Farm and unnamed members of the 'insurance industry' meet regularly does not suggest that any Defendant insurance company entered into a price-fixing agreement." (*A&E*, Doc. 293 at 17 n.11).

b. Common Motive to Conspire (SAC ¶¶ 394-429).

As before, the only motive Plaintiffs offer for the alleged price-fixing conspiracy is that it would be profitable for Defendants to pay less for repairs. (*See* SAC ¶ 394.) A profit motive is not sufficient to articulate a common motive to conspire. *See, e.g.*, *White v. R.M. Packer Co.*, 635 F.3d 571, 582 (1st Cir. 2011) ("Taking as a given that all of the defendants had motive to conspire with one another to earn high profits, all such a motive shows is that the defendants could reasonably expect to earn higher profits by keeping prices at a supracompetitive level through parallel pricing practices.").

As this Court noted in dismissing the FAC, the parallel pricing conduct alleged by Plaintiffs is in the independent, profit-maximizing self-interest of each defendant insurer, which renders Plaintiffs' conspiracy claim implausible. (*See A&E*, Doc. 293 at 18); *see also Jacobs*, 626 F.3d at 1342 ("Jacobs had the burden to present allegations showing why it is more plausible that TPX and its distributors—assuming they are rational actors acting in their economic self-interest—would enter into an illegal price-fixing agreement (with the attendant costs of defending against the resulting investigation) to reach the same result realized by purely rational profit-maximizing behavior.").

In the SAC, Plaintiffs have attempted to piece together a tenuous theory that some Defendants were somehow incentivized to conspire because they have relationships with BlackRock. (SAC ¶¶ 404-29.) Specifically, Plaintiffs allege that "the majority of the named

Defendants" invest through BlackRock, an asset management firm that manages over $4.32 trillion. (*Id.* ¶¶ 403-04.) Plaintiffs claim, among other things, that Defendants profit by steering customers to a collision repair multi-shop operator, Service King, which was purportedly purchased from Carlyle Group by BlackRock. (*Id.* ¶¶ 405-11.) Plaintiffs' allegations rest on a blatant misstatement of fact. Service King was purchased from Carlyle Group by Blackstone – not BlackRock.[7] Defendants suggest no further response to the Service King-related allegations could possibly be warranted, but even if it were not blatantly false, this allegation hardly suggests a common motive to conspire to set reimbursement rates.

Plaintiffs' concoction of the BlackRock scheme continues, however. They also allege that BlackRock owns shares of a paint manufacturer, PPG Industries, and a supplier of recycled parts, LKQ Corporation. (SAC ¶¶ 412, 420.) As alleged, BlackRock owns a total of 4.15% of PPG's stock and 2.82% of LKQ's stock. Plaintiffs claim that Defendants somehow share a motive to conspire in order to reap the potential profit realized "through increased sales of products sold by" PPG and LKQ. (*Id.* ¶¶ 417, 426.) Plaintiffs do not and cannot allege that Defendants did, would be motivated to, or could conspire based on the fact that an asset manager – with whom not all Defendants had invested – purchased very minor interests

[7] The Court may take judicial notice of these press releases and articles under Fed. R. Evid. 201 because the ownership of Service King is not subject to reasonable dispute, is generally known, and can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned. *See Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458-59 (9th Cir. 1995) (taking judicial notice of facts in a newspaper article because they would be generally known and easily verified); *Peters v. Del. River Port Auth. of Pa. & N.J.*, 16 F.3d 1346, 1357 (3d Cir. 1994) ("While not critical to our holding, we take judicial notice of newspaper accounts highlighting controversies over the DRPA's toll increases, spending practices, and public announcements."). *See also* Blackstone, *Press Release: Blackstone to Acquire Majority Stake in Service King Collision Repair Centers* (July 23, 2014), http://blackstone.com/news-views/press-releases/details/blackstone-to-acquire-majority-stake-in-service-king-collision-repair-centers; Service King, *Press Release: Blackstone Acquires Majority Share of Service King Collision Repair Centers* (July 21, 2014), http://serviceking.com/news/67-blackstone-acquires-majority-share-of-service-king-collision-repair-centers.

in two companies. Their contrived theory has no allegation of how Defendants did or could have coordinated their collision repair decisions through BlackRock, or that they had any say in BlackRock's investment decisions. Moreover, Plaintiffs do not allege that any Defendants have required that a specific type of paint be used, let alone PPG's paint, or that all Defendants require that LKQ's recycled parts must be used for repairs – only that parts from LKQ "may be required." (*Id.* ¶ 421 n.33.)

c. Action Against Self-Interest (SAC ¶¶ 430-33).

The SAC adds no coherent allegations that would show why, absent an agreement, it would be irrational for an insurer to ask body shops to lower their labor rates to the levels they charge a different insurer. *See Blue Cross & Blue Shield United of Wis. v. Marshfield Clinic*, 65 F.3d 1406, 1415 (7th Cir. 1995) ("buyers try to bargain for low prices, by getting the seller to agree to treat them as favorably as any of their other customers" and "that is the sort of conduct that the antitrust laws seek to encourage"). Defendants set the amounts they will pay to reimburse for repairs regardless of which body shop their policyholders choose, and Plaintiffs concede that even when a shop wants to charge higher rates, the Defendants simply refuse to reimburse for the higher charges. (*See, e.g.*, SAC ¶¶ 296-97.) Plaintiffs offer nothing to suggest that the ability or decision of a defendant to refuse to pay these higher prices depended on the actions of other insurers.

3. Plaintiffs' New Allegations Regarding Prices of Replacement Parts, Types of Parts Used, and Reimbursement Policies for Various Repair Procedures Do Not Set Forth a Purported Price-Fixing Claim.

Plaintiffs have added or expanded a number of allegations concerning Defendants' payments for replacement parts (as distinguished from body labor or paint and materials

rates), certain repair processes and procedures, and requirements for use of allegedly "sub-standard or dangerous" replacement parts. (SAC ¶¶ 69, 227.)[8] The SAC does not tie any of these allegations to any agreement by Defendants regarding parts reimbursement rates or policies. To the contrary, these new allegations only underscore differences among the alleged reimbursement practices and parts replacement decisions of Defendants, rendering any alleged conspiracy or agreement implausible.[9] *See In re Elevator Antitrust Litig.*, 502 F.3d at 50-51 (affirming dismissal of claim that Defendants conspired to fix the various terms of elevator repair parts and services for failure to show any parallel conduct in the first place).

On Plaintiffs' third try, they have still failed to "nudge" their antitrust conspiracy claim "across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. Plaintiffs' suggestion that their allegations entitle them to discovery that will enable them to repair the deficiencies in their claim (SAC ¶ 226) is wholly unwarranted. In the absence of "allegations that reach the level suggesting conspiracy" and of any "'"reasonably founded hope that the [discovery] process will reveal relevant evidence'" to support a § 1 claim," allowing this case

[8] The SAC is also replete with a catalog of other body shop grievances and accusations concerning matters having no apparent logical relationship to Plaintiffs' claims. Examples include DRP indemnity agreements (SAC ¶¶ 128, 130, 294), "desk review" claims processes (*id.* ¶ 254), and disclosures of aftermarket parts. (*Id.* ¶¶ 286-90). These irrelevant allegations of various supposed practices by different insurers also are inconsistent with any notion of parallel conduct by Defendants.

[9] For instance, with respect to the type of replacement parts the shops are required to use, some Defendants write estimates specifying the use of "aftermarket" (non-OEM) parts. (*Id.* ¶ 98.) Other Defendants allegedly specify salvage parts. (*Id.*) Yet other Defendants are "exceptions." (*Id.*) With respect to parts procurement, some Defendants require parts to be ordered through the PartsTrader electronic marketplace. (*Id.* ¶ 99.) Other Defendants order the parts themselves and ship them to the body shop. (*Id.* ¶ 103.) Still others tell the body shop which part to order from which vendor. (*Id.*) With respect to reimbursement practices, Plaintiffs allege that Defendants base their estimates on different estimating software programs or independent appraisers. (*Id.* ¶¶ 237-40.) Defendants' decisions to reimburse for certain procedures also are based on different methods and appear to vary depending on the circumstances. (*See id.* ¶¶ 249, 251-52, 254-59.) Such pervasive variations hardly support even the SAC's general allegations of parallel conduct, much less give rise to a plausible inference of conspiracy or agreement.

to proceed to enormously expensive antitrust discovery would contravene the dictates of *Twombly*. 550 U.S. at 559-60 (citation omitted). Indeed, given Plaintiffs' "repeated failure to cure deficiencies by amendments previously allowed," *Goldstein v. MCI WorldCom*, 340 F.3d 238, 254 (5th Cir. 2003), Plaintiffs' antitrust conspiracy claims should be dismissed with prejudice as a matter of law.

B. The SAC's Boycott Allegations Are Insufficient as a Matter of Law.

Count Two should be dismissed for the independent reason that Defendants' alleged conduct does not constitute a group boycott as a matter of law. A group boycott under the antitrust laws requires proof of a "concerted refusal" to deal. *Quality Auto Body*, 660 F.2d at 1206; *Mendelovitz v. Adolph Coors Co.*, 693 F.2d 570, 577 (5th Cir. 1982).

The conduct that Plaintiffs allege in apparent support of their boycott claim includes a smattering of allegations that a few Defendants attempted to steer policyholders to non-plaintiff shops or told certain of their policyholders not to take their cars to certain body shops. As Defendants pointed out in their motions to dismiss the FAC, steering is not equivalent to a refusal to deal and, accordingly, cannot support a boycott claim. In addition, there is no legally cognizable allegation of concerted action. (*See A&E*, Doc. 293 at 21 ("Plaintiffs offer even less 'evidence' of an agreement to boycott than they did of an agreement to fix prices.").) The SAC offers no facts to support the claim that 18 different insurers agreed to refuse to deal with Plaintiffs in hundreds or thousands of transactions, much less any detail about when, how, or with whom agreements were or could have been made.[10]

[10] *See also Quality Auto Body*, 660 F.2d at 1206 (even if two insurers agreed to refuse to pay more than competitive price for automobile repairs, that agreement did not constitute a boycott); *Custom Auto Body, Inc. v. Aetna Cas. & Sur. Co.*, 1983 WL 1873, at *19 (D.R.I. Aug. 3, 1983) (body shop

Allegations concerning the purported impact of the alleged misconduct – for example, that Clinton Body Shop's volume of business with State Farm declined from 731 repairs in 2012 to 485 repairs in 2014 (SAC ¶ 346) – contradict the notion that even individual Defendants refused to deal with Plaintiffs. Moreover, the allegations concerning Clinton Body Shop clearly suggest why its volume of business declined: that shop left State Farm's DRP program in 2013 and was no longer a "preferred provider" receiving referrals. (*Id.* ¶¶ 343, 126.)

In short, because Plaintiffs' allegations do not support a plausible claim of boycott, Count Two should be dismissed with prejudice.

III. PLAINTIFFS' CLAIM FOR TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS (COUNT THREE) SHOULD BE DISMISSED.

Plaintiffs' third attempt to state a claim for tortious interference with business relations also fails as a matter of law. As shown below, Plaintiffs have not alleged facts that support the element of malice. Mississippi state and federal courts have addressed similar claims of tortious interference on several occasions, and their rulings make clear that even assuming Plaintiffs' properly pled, nonconclusory allegations are true, the conduct alleged by Plaintiffs would not suffice to establish the "bad acts" required for tortious interference.

Furthermore, Plaintiffs' attempt in the SAC to allege a claim for tortious interference with business relations fails to remedy the deficiencies of their previous complaints. As with

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"at all times has been free to compete for the business of the defendant and its insureds by offering lower prices or higher quality services"); *Nationwide Mut. Ins. Co. v. Auto. Serv. Councils of Del., Inc.*, 1981 WL 2053, at *2-4 (D. Del. Apr. 10, 1981) (discouraging insureds from using body shops "by telling them that their prices were too high, and by notifying the owners that Nationwide would not guarantee full reimbursement" did not constitute refusal to deal; there was "no suggestion of an outright refusal of Nationwide to deal with any repair shop," rather Nationwide had "simply refused to accede to what it considers to be Defendants' excessive prices"). Plaintiffs cannot cure the deficiencies of their boycott claim by invoking the term "coercion." (SAC ¶ 481.) None of the alleged conduct comes close to coercion. *See Nationwide Mut.*, 1981 WL 2053, at *3 ("driving a hard bargain . . . hardly constitutes a form of 'coercion' cognizable under the antitrust laws").

their original Complaint and FAC, Plaintiffs still rely primarily on impermissible group pleading, which is insufficient to state a claim under Mississippi law and Supreme Court precedent. Moreover, to the extent Plaintiffs have added limited allegations regarding a small number of specific instances of purported tortious interference involving specific identified customers, those allegations do not meet the essential requirements for pleading a claim for tortious interference under Mississippi law.

A. Plaintiffs Continue to Rely on Impermissible Group Pleading.

Plaintiffs continue by and large to rely impermissibly on generalized statements that do not disclose which Defendant is alleged to have committed what acts in purportedly unlawfully diverting which Plaintiff's customers. Indeed, in the section of the SAC entitled "Defendants' Steering Is Malicious, Punitive in Nature and Intentional" (SAC ¶¶ 324-40), Plaintiffs have failed to identify even a single Defendant and specify that Defendant's conduct toward a Plaintiff or insured. Rather, all of Plaintiffs' allegations in this section refer only to "Defendants" or "a Defendant." (*See id.*)

As the Court stated in dismissing the tortious interference claim in the FAC, "this is not an acceptable manner of pleading." (Doc. 82 at 13.) Rejecting Plaintiffs' "allegations that every Defendant tortiously interfered in the business of every Plaintiff with respect to all the same customers," this Court instructed Plaintiffs to "identify specifically which Defendants interfered with which Plaintiffs." (*Id.* at 14.) Plaintiffs have not done so.

The inadequacy of this manner of pleading is underscored by Plaintiffs' allegations with respect to a small number of customers, some of whom were allegedly "steered" by Defendants to DRPs. Of the 27 Plaintiff body shops, only eight are included among the SAC's

purported individual examples of allegedly improper "steering." (*See* Doc. 87 ¶¶ 304-20; *see also* Exhibit B hereto.) Of the 18 Defendant insurers, only seven are included, as having purportedly engaged in improper "steering," and many of the alleged instances were unsuccessful. (*See id.*; *see also* Point III.B *infra.*) Moreover, the allegations regarding these individual transactions vary significantly, demonstrating that Plaintiffs' generalized allegations cannot apply across the board to all Defendants and to all of Plaintiffs' transactions with Defendants' insureds. Given Plaintiffs' failure to follow the Court's instructions, all tortious interference claims not sufficiently supported by specific allegations by a Plaintiff against a Defendant should be dismissed with prejudice.

B. Plaintiffs' Additional Allegations Do Not State a Claim for Any Purported Specific Instance of Tortious Interference with Business Relations.

The elements of a claim for tortious interference under Mississippi law are: "'(1) The acts were intentional and willful; (2) The acts were calculated to cause damage to the plaintiffs in their lawful business; (3) The acts were done with the unlawful purpose of causing damage and loss, without right or justifiable cause on the part of the defendant (which constitutes malice); (4) Actual damage and loss resulted.'" *Biglane v. Under the Hill Corp.*, 949 So. 2d 9, 15-16 (Miss. 2007) (citation omitted); *see also Cenac v. Murray*, 609 So. 2d 1257, 1271 (Miss. 1992) (for tortious interference, defendant must "engage[] in some act with a malicious intent to interfere with and injure the business of another"). Moreover, the alleged interference must be with ... economic relations as to which there is a reasonable prospect of immediate consummation." *Pannell v. Associated Press*, 690 F. Supp. 546, 551 (N.D. Miss. 1988). A plaintiff must support these elements, including malice, with sufficient plausible factual allegations. *See BC's Heating & Air & Sheet Metal Works v. Vermeer Mfg. Co.*, 2012

WL 642304, at *3 (S.D. Miss. Feb. 27, 2012) (dismissing tortious interference claim; allegations did "not reflect the sort of intentional, calculated effort – or malice – that is required").

While Mississippi permits a tortious interference claim for *unlawfully* diverting prospective customers (*see, e.g., Par Indus., Inc. v. Target Container Co.*, 708 So. 2d 44, 48 (Miss. 1998)), Mississippi courts, including the Mississippi Supreme Court, "have recognized the right to engage in legitimate competition," holding that "[i]t is proper to engage in competition for prospective gain, as long as tortious acts are not employed to further that gain." *MBF Corp. v. Century Bus. Commc'ns, Inc.*, 663 So. 2d 595, 598 (Miss. 1995); *see also id.* (It is "not a tort to fairly compete with a business rival for a prospective customer. A competitor should feel free to acquire business for himself by fair and reasonable means."). "'[A]ggressive marketing,'" even when "'described as playing hardball,'" is "'not illegal.'" *Hightower v. Aramark Corp.*, 2012 WL 827113, at *6-7 (N.D. Miss. Mar. 9, 2012) (quoting *McBride Consulting Serv., LLC v. Waste Mgmt. of Miss.*, 949 So. 2d 52, 56 (Miss. Ct. App. 2006)), *aff'd*, 537 F. App'x 489 (5th Cir. 2013). Thus, under Mississippi law, a claim for tortious interference requires "'bad acts exceeding the realm of legitimate competition'" that were "'committed without legal or social justification.'" *Id.* at *5 (citation omitted).

Under these principles, Mississippi courts have repeatedly recognized that insurance companies may properly maintain networks of "preferred" body shops and may recommend them to insureds. *See Mosley v. GEICO Ins. Co.*, 2014 WL 7882149, at *11 (S.D. Miss. Dec. 16, 2014); *Christmon v. Allstate Ins. Co.*, 82 F. Supp. 2d 612, 615-16 (S.D. Miss. 2000); *Auto. Alignment & Body Serv. v. State Farm Mut. Auto. Ins. Co.*, 2005 WL 4826893 (Miss. Ch. Ct. Mar. 22, 2005); *Addison v. Allstate Ins. Co.*, 97 F. Supp. 2d 771, 774 (S.D. Miss. 2000);

Hardy Bros. Body Shop v. State Farm Mut. Auto. Ins. Co., 848 F. Supp. 1276, 1291 (S.D. Miss. 1994). Plaintiffs here have failed to provide allegations of "bad acts" by the Defendants that, if accepted as true, would warrant a different result and establish a claim for tortious interference. For example, Plaintiffs assert that Defendant State Farm told insured Joseph Compretta that Plaintiff Lakeshore Body Shop "was not 'on our list.'" (SAC ¶ 311.) There is no authority holding that it is tortious or unlawful for an insurer to let an insured know that a shop is not a DRP shop. The fact that the State Farm representative also told Mr. Compretta that they "couldn't find" Lakeshore "in the computer, [and] asked where it was located, what was the phone number, the address and other questions" (*id.*) is clearly not a "bad act." Furthermore, the SAC notes that State Farm in fact "processed [Mr. Compretta's] claim" (*id.*), and Mr. Compretta apparently had his car fixed by Plaintiff Lakeshore.

Many of Plaintiffs' other allegations in their examples of purported "steering" also clearly do not rise to the level of "bad acts" beyond the scope of legitimate competition, as required by Mississippi law. For example, Plaintiffs complain about statements by Defendants to their insureds that they guarantee repairs done by DRP shops. Plaintiffs allege that these statements are "misleading" because they supposedly imply that Plaintiffs do not offer their own guarantees. (SAC ¶ 338.) However, Plaintiffs do not allege any statement by an insurer that non-DRP body shops do or do not guarantee their work, nor do they identify any insured who was misled in the manner alleged. Likewise, Plaintiffs' allegations that the Defendants do not really offer guarantees because they offer them through their DRP shops (*id.* ¶ 335) simply do not support a claim for tortious interference. Plaintiffs' further allegation that "insurers and their network/preferred shops regularly and routinely perform poor work or

simply fail to perform necessary repairs at all" (*id.* ¶ 336) is impermissibly conclusory and generalized – as well as contrary to Plaintiffs' concession that "[n]ot all DRPs are poor repair facilities, not even most" and that in fact "[m]ost are honorable, hardworking and professional collision repairers." (*Id.* ¶ 124). And Plaintiffs identify only a single customer, Swatiben Desai, whose car is alleged not to have been properly repaired by a DRP shop. (*Id.* ¶ 308.)

Similarly, although Plaintiffs point to statements by insurers that it may "take longer" to get a repair done in their shops, Plaintiffs do not allege that it is untrue that there may be delays in repairs at non-DRP shops, as compared to DRP shops. Rather, Plaintiffs conclusorily lay the blame for the delays on the Defendant insurers. (*Id.* ¶ 327.) However, Plaintiffs provide no factual basis for their conclusory allegations that any differences in the time required for insurers' inspections of damaged cars and/or approvals of repair estimates at non-DRP shops and DRP shops result from malice towards non-DRP shops, rather than from the efficiencies arising from the arrangements between DRPs and insurers. Likewise, Plaintiffs' allegations that insureds were told that, if they went to non-DRP shops, they might have to pay for repair charges that were not deemed reasonable by the insurer, accurately reflect the standard coverage provided by auto insurance policies. *See, e.g.*, *Quality Auto Body*, 660 F.2d at 1204 ("the only consequence of a refusal to perform the work at [the price offered by the insurer] is that the customer will have to pay the additional charge himself . . ."). Plaintiffs also provide no support for their assertion that it is "illegal" for an insurer to require an insured to bring his or her car to a DRP shop for an estimate. (*E.g.*, SAC ¶ 305.) Plaintiffs do not identify any Mississippi statute or regulation prohibiting this alleged practice.

Plaintiffs' other allegations are also unavailing. Plaintiffs' generalized, conclusory al-

legations that the "Defendant insurers" "defame" them "with falsehoods" and "accuse" them of "misdeeds and malfeasance" (SAC ¶ 339) are not borne out by Plaintiffs' allegations regarding specific insureds. (*Id.* ¶¶ 304-20.) Allegations of accusations of "misdeeds and malfeasance" and defamatory falsehoods are conspicuously absent from Plaintiffs' descriptions of purported individual instances of "steering." Furthermore, as with Mr. Compretta (*id.* ¶ 311), many of Plaintiffs' other purported examples of "steering" are also unsuccessful, and Plaintiffs' own allegations reveal that the insured actually had his car repaired at the Plaintiff's shop. (*See id.* ¶¶ 304, 312, 316-17, 319.) In other purported examples of steering, Plaintiffs do not bother to state whether the alleged steering was successful or unsuccessful. (*Id.* ¶¶ 314-15, 318, 320.) Such claims are insufficient as a matter of law. For all these reasons, Plaintiffs' tortious interference claim should be dismissed with prejudice.

IV. PLAINTIFFS' CLAIM FOR QUANTUM MERUIT (COUNT FOUR) SHOULD BE DISMISSED.

Plaintiffs' third attempt to plead a quantum meruit claim is just as legally insufficient as their prior attempts because, according to their own allegations, Plaintiffs had no reasonable expectation of additional payments from Defendants.[11] *See In re Estate of Fitzner*, 881 So. 2d 164, 173 (Miss. 2003) ("a prerequisite to establishing grounds for quantum meruit recovery is [the] claimant's reasonable expectation of compensation"). Plaintiffs assert that they are only required to allege that Defendants "understood" Plaintiffs expected *some* pay-

[11] According to the SAC, Defendants made clear to autobody shops the amounts they would pay for repairs. (*See, e.g.*, SAC ¶¶ 128-29, 138, 143, 146-47, 149-50, 163, 189, 197-99, 202, 205-10, 297.) Indeed, Plaintiffs' allegations show that the same or similar DRP agreements and pricing practices have existed for many years and are well known to body shops. (*See, e.g.*, *id.* ¶¶ 120-36, 222, 261, 443-56.) There can be no plausible claim that, when Plaintiffs took on repairs, they expected higher payments than they received.

ment for their repair work. (SAC ¶ 503.) However, as the Court stated in rejecting the same assertion by Plaintiffs in the Indiana action, "[i]t is not enough for the Plaintiffs to demonstrate that they expected *some* payment, because they received *some* payment. They must demonstrate that they expected more." (*Indiana AutoBody*, No. 6:14-cv-6001, Doc. 150 at 2.)[12] Accordingly, "[a]ccepting as true the facts alleged here by the Plaintiffs – essentially that they agreed to perform repairs at certain prices, and that they knew that the Defendants had always refused to pay more than those prices – the Plaintiffs could not, under any level of reasonableness, have expected to be paid more than what they received," and their quantum meruit claim should be dismissed as a matter of law. (*Id.*; *accord* Doc. 82 at 10.)

V. PLAINTIFFS' CLAIM FOR VIOLATIONS OF MISSISSIPPI CODE § 83-11-501 (COUNT FIVE) SHOULD BE DISMISSED.

Plaintiffs allege that the Defendants have violated Miss. Code Ann. § 83-11-501, by refusing to pay for necessary procedures and processes, "utilizing used and/or recycled parts," and "requiring shops to purchase replacement parts of unknown manufacture, reliability and/or quality." (SAC ¶ 508.) Section 83-11-501 has no application to this alleged conduct. As this Court held in dismissing the FAC, "the sole duty § 83-11-501 imposes on automobile insurance companies is to refrain from 'requir[ing] as a condition of payment of a claim that repairs to a damaged vehicle . . . must be made by a particular contractor or motor vehicle repair shop.'" (Doc. 82 at 5.) The section also sets a cap on the amount an insurer is required to pay for repairs, providing that "the most an insurer shall be

[12] Plaintiffs' citation (SAC ¶ 503) to *In re Estate of Eubanks*, 2015 Miss. LEXIS 83, at *24-25 & n.32 (Miss. Feb 12, 2015), is misplaced because that decision simply quotes a case quoting *In re Fitzner*, which (as noted above) makes clear that that a plaintiff must have a "reasonable expectation of compensation" to recover under quantum meruit. 881 So. 2d at 173.

required to pay . . . is the lowest amount that such vehicle or glass could be properly and fairly repaired or replaced by a contractor or repair shop within a reasonable geographical or trade area of the insured." § 83-11-501. The statute does not set a minimum payment or require insurers to "pay for a proper and fair repair," as Plaintiffs allege. (*See* SAC ¶ 506.)

The SAC fails to plead any facts showing that any Defendants conditioned payment of claims on an insured's use of a particular body shop. Even if such allegations had been made, however, Count Five would still be subject to dismissal because there is no private right of action under § 83-11-501.[13] Under Mississippi law, a party claiming a private right of action under statute "'must establish a legislative intent, express or implied, to impose liability for violations of that statute.'" *Tunica Cnty. v. Gray*, 13 So. 3d 826, 829 (Miss. 2009) (citation omitted). Section 83-11-501 does not expressly grant a private right of action, and the language of the statute provides no basis for implying a private right of action, especially for auto body shops. The statute, which is part of the Mississippi Insurance Code, clearly is intended to give insureds the right to choose an auto body shop while protecting insurers from having to make payments in excess of the "lowest amount" in the local market for fair and proper repairs to their insureds' cars. There is no indication of a legislative intent to provide auto body shops with a private right of action under section 83-11-501. *See id.*

VI. CONCLUSION

After three tries, it is apparent that any further amendment of Plaintiffs' Complaint would be futile. Accordingly, the Court should dismiss all of Plaintiffs' claims against Defendants with prejudice. *See Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005).

[13] In ruling on the FAC, the Court did not reach the issue of whether there is a private right of action under § 83-11-501. (Doc. 82 at 6 n.1.)

Dated: April 9, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record that are registered with the Court's CM/ECF system.

/s/ Johanna W. Clark
Johanna W. Clark

EXHIBIT A

EXHIBIT A

Allstate Insurance Company

Allstate Property and Casualty Company

Shelter General Insurance Company

Shelter Mutual Insurance Company

State Farm Fire and Casualty Company

State Farm Mutual Automobile Insurance Company

United Services Automobile Association

USAA Casualty Insurance Company

EXHIBIT B

EXHIBIT B

A. Plaintiffs Who Have Not Alleged Any Specific Act of Tortious Interference Against Any Defendant (SAC ¶¶ 298 – 323)

1. Capitol Body Shop, Inc.
2. Automotive Alignment & Body Service, Inc.
3. B & W Body Shop, Inc.
4. Bill Fowler's Bodyworks, Inc.
5. Canton Collision, LLC
6. Capitol Body Shop of Ridgeland, Inc.
7. Capitol Body Shop of Byram, Inc.
8. Clinton Body Shop, Inc.
9. Clinton Body Shop of Richland, Inc.
10. East McComb Body Shop, Inc.
11. George Carr Buick Pontiac Cadillac GMC, Inc.
12 Hypercolor Automotive Reconditioning, LLP
13. Patriot Auto Body, LLC
14. Porter's Body Shop, Inc.
15. Pro Touch Collision, LLC
16. Roy Rogers Body Shop, Inc.
17. Smith Bros. Body Shop, Inc.
18. Smith Bros. Collision Center, Inc.
19. Mark Cook and Barry Lewis d/b/a/ European Coachworks, Ltd.
20. Richie's Collision Center, LLC
21. Quality Body Shop, Inc.
22. Bolden Body Shop*

*Bolden Body Shop alleges only unsuccessful steering (SAC ¶¶ 304, 316), or steering that is not specified to be successful or unsuccessful (SAC ¶¶ 315, 318).

B. Insurance Company Defendants That Have Not Been Alleged to Have Committed Any Specific Act of Tortious Interference (SAC ¶¶ 298 – 323)

1. United Services Automobile Association
2. Safeco Insurance Co. of Illinois
3. Direct General Insurance Co.
4. Mississippi Farm Bureau
5. Shelter*
6. Nationwide*
7. Allstate*

* Shelter, Allstate, and Nationwide are alleged only to have attempted unsuccessfully to steer customers to a DRP or engaged in attempts to steer that are not specified to be successful or unsuccessful. (*See* SAC ¶ 304 (Shelter); ¶ 315 (Allstate); ¶¶ 317, 319 (Nationwide).