No. 16-13601-AA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-13596-AA

INDIANA AUTOBODY ASSOCIATION, et al.

Plaintiffs - Appellants,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al.,

Defendants - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BRIEF FOR INDIANA AUTOBODY ASSOCIATION., et al. AS PLAINTIFFS - APPELLANTS

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to Eleventh Circuit Rule 26.1-1, Appellants attache hereto their Certificate of Interested Parties. Due to the length of the Certificate, Appellants attach the same as Appendix 1 to this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Eleventh Circuit Rule 28-1(b), Appellants submit the following statement identifying parent corporations and any publicly held corporation that owns ten percent or more of Appellants' stock: None. All Appellants are privately owned businesses.

STATEMENT REGARDING ORAL ARGUMENT

The questions and issues raised by Appellants implicate fundamental issues of civil pleading that substantially impact every civil litigant's protected right of access to the courts. Specifically, the quantity of facts and degree of factual specificity a complaint must include to constitute sufficient pleading under Rule 8(a)(2) of the Federal Rules of Civil Procedure. This is an area of law which has experienced substantial confusion at the district court level and does not appear to have been fully addressed by this Court. As an issue of unsettled impression within this Circuit, Appellants believe oral argument would be helpful to resolution.

Additionally, Appellants raise issues of state law from without this circuit, particularly the issue of a federal court's authority to alter or amend state law. As this requires an in-depth review of state law and the elements of certain causes of action under Indiana law, Appellants submit oral argument would be efficient and helpful to the Court.

For these reasons, Appellants request oral argument.

TABLE OF CONTENTS

PAGE

Certificate of Interested Parties . . . . . Appendix

Corporate Disclosure Statement ii

Statement Regarding Oral Argument iii

Table of Contents iv

Table of Authorities viii

Jurisdictional Statement 1

Statement of Issues 2

Statement of the Case 3

Procedural Background 8

Standard of Review 9

Summary of the Arguments 10

Argument 11

I. Standard for Disregarding Facts Alleged in the Complaint 11

II. Federal Claims 14

A. Price Fixing 15

B. Boycotting 29

III. Motion to Reconsider 34

IV. State Law Causes of Action 36

A. Tortious Interference 36

1. Illegal Conduct 37

2. Justification 40

3. Valid Business Relationship 43

4. Group Pleading 46

B. Quantum Meruit 49

1. Reasonable Expectation of Payment 51

2. Benefit Conferred 55

3. Contracts 57

4. Affirmative Defenses 59

V. Reassignment to Another Judge 61

CONCLUSION 64

CERTIFICATE OF COMPLIANCE 66

CERTIFICATE OF SERVICE 67

APPENDIX 68

TABLE OF AUTHORITIES

PAGE

Current Multidistrict Litigation Cases

A & E Auto Body, Inc., et al. v. 21st Century Centennial Ins. Co., et al. 2015 U.S. Dist. LEXIS 16153 (M.D. Fla. Jan. 21, 2015) . . 16, 17, 29, 31, 51

Cases

Adinolfe v. United Techs. Corp., 768 F.3d 1161 (11th Cir. 2014)) 12

Albright v. Oliver, 510 U.S. 266 (1994)) 46

Ashcroft v. Iqbal, 556 U.S. 662 (2009) 11, 38

Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328 (1990)) 15

Bain v. Board of Trustees of Starke Mem'l Hosp., 550 N.E.2d 106 (Ind. Ct. App. 1990)) 60

Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) 13, 21

Bochnowski v. Peoples Fed. Sav. & Loan Ass'n, 571 N.E.2d 828 (Ind. 1991) . . 44

Board of Pub. Works of City of Hammond, Indiana v. L. Cosby Bernard & Co., 435 N.E.2d 575 (Ind. Ct. App. 1982) 54-55

Brooke Group v. Brown & Williamson Tobacco Corp., 509 U.S. 209 (1993) . . 31

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)) 46

Cent. Dredging Co. v. F.G. Proudfoot Co., 158 N.E. 229 (Ind. Ct. App. 1927) . 55

Chudasama v. Mazda Motor Corp., 123 F.3d 1353 (11th Cir. 1997)) 63

TABLE OF AUTHORITIES (continued): **PAGE**

City of Indianapolis v. Twin Lakes Enterprises, Inc., 568 N.E.2d 1073 (Ind. Ct. App. 1991) 58-59

Comfax Corp. v. N.Am Van Lines, Inc., 587 N.E.2d 118 (Ind. Ct. App. 1992) . . 45

Computers Unlimited, Inc. v. Midwest Data Sys., Inc., 657 NE.2d 165 (Ind. Ct. App. 1995) 45

Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962) 25-26

Crespo v. Coldwell Banker Mortgage 599 F. App'x 868 (11th Cir. 2014) 45

Crowe v. Coleman, 113 F.3d 1536 (11th Cir. 1997) 45

Denton v. Hernandez, 504 U.S. 25 (1992) 11

Dobyns v. United States, 91 Fed. Cl. 412, 427 (2010) 57
*Fernandez-Montes v. Allied Pilot's Ass'n,*987 F.2d 278 (5th Cir. 1993) 47

Galloway v. Methodist Hosps, Inc., 658 N.E.2D 611(Ind. Ct. App. 1995) 54

Glenn v. Point Park Coll., 272 A.2d 895 (Pa. 1971) 44

Godix Equip. Export Corp. v. Caterpillar, Inc., 948 F.Supp. 1570 (S.D. Fla. 1996) 15

Gov't Payment Serv., Inc. v. Ace Bail Bonds, 854 N.E.2d 1205 (Ind. Ct. App. 2006) 45

Grossman v. Nationsbank, N.A., 225 F.3d 1228 (11th Cir. 2000) 9

Guthrie v. U.S. Gov't, 618 F.App'x 612 (11th Cir. 2015) 11

TABLE OF AUTHORITIES (continued): **PAGE**

Indianapolis Raceway Park, Inc. v. Curtiss, 386 N.E.2D 724 (Ind. 1979) 54

In Re Insurance Brokerage Antitrust Litigation, 618 F.3d 300 (3rd Cir. 2010)) 21

In Re Text Messaging Antitrust Litig., 630 F.3d 622 (7th Cir. 2010) 35

Jackson v. Bank of America, NA, 578 F.App'x 856 (11th Cir. 2014) 45

Jallali v. Sun Healthcare Group, et al., 2016 WL 3564248 (11th Cir. July 1, 2016) 40

Jones v. Serval, Inc. 186 N.E.2d 689 (Ind. Ct. App. 1962) 55

Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc., 340 U.S. 211 (1951)) . 15

Lamar Advert. of Mobile, Inc. V. City of Lakeland, Fla., 189 F.R.D. 480 (M.D.Fla. 1999) 34

Mann v. Adams Realty Co., 556 F.2d 480 (5th Cir. 1977) 34

Meacham v. Knolls Atomic Power Lab, 554 U.S. 84 (2008) 60

*Meridian Fin. Advisor*s, *Ltd. v. Pence*, 763 F.Supp. 2d 1046 (S.D. Ind. 2011) . . 44

Mitchell v. Beverly Enterprises, Inc., 248 F.App'x 73 (11th Cir. 2007) 40

Mueller v. Karns, 873 N.E.2d 652, 659 (Ind. Ct. App. 2007) 50, 54

Neitzke v. Williams, 490 U.S. 319 (1989) 11

Nunez v. J.P. Morgan Chase Bank, N.A., 2016 WL 1612832 (11th Cir. 2016) . . 50

Nettles v. City of Leesburg - Police Dep't 415 Fed. Appx. 116 (11th Cir. 2010) 14

TABLE OF AUTHORITIES (continued): **PAGE**

Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co., 472 U.S. 284 (1985) 28

Nynex Corp. v. Discon, 525 U.S. 128 (1998) 28

Omar ex rel. Cannon v. Lindsey, 334 F.3d 1246 (11th Cir. 2003) 46

Renfroe v. Nationstar Mortgage, LLC, 822 F.3d 1241 (11th Cir. 2016) 10, 39

Re/Max Int'l, Inc. v Realty One, Inc., 173 F.3d 995 (6th Cir. 1999)) 22

Rose v. Owen, 85 N.E. 129 (Ind. 1908) 60

SD3, LLC v. Black & Decker (U.S.), Inc., 801 F.3d 412 (4th Cir. 2015) 57

Snyder v. Classic Rest. Servs., LLC, 985 N.E.2d 374 (Ind. Ct. App. 2013) 37

State Oil Co. v. Khan, 522 U.S. 3 (1997)) 14

St. Paul Fire & Marine Ins. Co. v. Barry, 438 U.S. 531 (1978) 28

Swanson v. Citibank, N.A., 614 F.3d 400 (7th Cir. 2010) 10, 31

Texaco v. Dagher, 547 U.S. 1 (2006)) 14

Thorsteinsson v. M/V Drangur, 891 F.2d 1547 (11th Cir. 1990) 59

Twin City Fire Ins. Co. v. Hartman, Simons & Wood, LLP, 609 F. App'x 972 (11th Cir. 2015) 53, 58

United States v. Ameritrade Terminals, Inc., 177 F. App'x 855 (11th Cir. 2006) 9

United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940*)* 14

TABLE OF AUTHORITIES (continued): **PAGE**

VP Properties & Develop., LLP v. Seneca Specialty Ins. Co., 2016 WL 945230 (11th Cir. 2016) 58

Wenning v. Calhoun, 827N.E.2D 627, 630 (Ind. Ct. App. 2005) 54

West v. American Tel. & Tel. Co., 311 U.S. 223 (1940) 40, 54

Williams v. Karf, 2010 WL 5624650 (S.D.Ga. Dec. 20, 2010) 11

Williams v. Karf, 2010 WL 201770 (S.D.Ga. Jan. 19, 2011)) 11

United States Statutes

15 U.S.C. § 1 . . . . . 2, 12,14, 28

28 U.S.C. § 1331 1

28 U.S.C. § 1367(a) 1

State Statutes

Indiana Code Section 27-1-2-3 39

Indiana Code Section 27-1-2-4 43

Indiana Code Section 27-4-1 . . . . . 38, 39

Indiana Code Section 27-4-1.5 43

Indiana Code Section 27-4-1.5-11 44

Indiana Code Section 27-4-1.5-12 44

TABLE OF AUTHORITIES (continued): **PAGE**

Indiana Code Section 27-4-1-4.5 . . . . . 40, 43

Federal Rules of Civil Procedure

Rule 8 . . . . . 9, 27, 44

Rule 8(a)(2) 12, 38

Rule 9 . . . . . 38, 62

Rule 9(b) 38, 62

Rule 12(b)(6) 1, 39, 44

Rule 56 44

Other

Random House Dictionary (2015 ed.) 34

Restatement (Second) of Torts 45, 47, 55, 56, 57,58

United States Department of Justice, Price Fixing, Bid Rigging, and Market Allocation Schemes: What They Are and What to Look For 24, 5, 26

United States v. Stora Enso North American Corp., 03:06cr323 (CFD) United States district Court for the District of Connecticut (July 2007) 32

Wright & Miller, Federal Practice and Procedures § 1356 (1990) 50

William E. Kovacic, PLUS 62 FACTORS AND AGREEMENT IN ANTITRUST LAW, Vol. 110:393, Mich. Law Rev. (December 2011) 21

JURISDICTIONAL STATEMENT

This case originated in the District Court for the Southern District of Indiana, Indianapolis Division. . Federal jurisdiction was asserted based upon federal question jurisdiction under 28 U.S.C. § 1331, with supplemental jurisdiction over state law causes of action pursuant to 28 U.S.C. § 1367(a).

Subsequent thereto, the Clerk of the Judicial Panel on Multidistrict Litigation issued a transfer order transferring the case to MDL 2557 pending before the Middle District of Florida, a district court within the Eleventh Circuit.

STATEMENT OF THE ISSUES

1. The district court erred by imposing an incorrect pleading standard upon Appellants' complaint, and issued contradictory orders effectively leaving Appellants no way to plead.

2. The district court erred by altering, amending or refusing to apply extant to state law to state law causes of action.

3. The district court abused its discretion in denying Appellants' Motion to Reconsider.

STATEMENT OF THE CASE

Each Appellant is a professional repairer of auto physical damage, i.e., body shops. Appellees are auto insurers, all of which sell policies and service claims of insureds and third-party claimants within the state of Indiana.

Appellants initiated litigation alleging price-fixing and boycotting in violation of 15 U. S. C. § 1. Appellants additionally asserted several state law causes of action, including tortious interference with business relations ("tortious interference") and quantum meruit.

The federal and state law claims arise from the same set of underlying facts. In 1963, the Department of Justice brought suit against the three major insurance trade associations in *United States v. Association of Casualty and Surety Companies,*[1] alleging price-fixing and boycotting violations of 15 U.S.C. § 1. This resulted in entry of the consent decree which enjoined, in perpetuity; (1) directing, advising or otherwise suggesting that any person or firm do business or refuse to do business with any independent or dealer franchised body shop; (2) exercising any control over the activities of any appraiser of damages to automotive vehicles; (3) fixing, establishing, maintaining or otherwise controlling the prices to be charged by independent or dealer franchised body shops or for replacement parts or labor in connection

[1] Docket No. 3106, Southern District of New York.

therewith, whether by coercion, boycott or intimidation or by the use of flat rate or parts manuals or otherwise.

Despite this, after a period of apparent dormancy, Appellees formed an agreement to uniformly enforce a fixed labor rate ceiling, what they termed the "market rate" for a "market area." The "market rate" bears no relation to the actual rates charged by Appellants or the industry at large, but once imposed it does not vary. Appellees have never defined a "market area" nor do they conduct any form of market analysis to superficially justify the imposition of price ceilings, save one.

State Farm conducts what it terms a survey, a method by which it supposedly inputs local rate data and determines a "market rate." However, State Farm's data is fabricated, the labor rates are manipulated and its calculation methodology, what it calls "half plus one," lacks any statistical or mathematical validity. Further, a State Farm representative has admitted the "market rate" is a sham, that State Farm simply decides with the rate is going to be and labels it "market rate" so as to appear legitimate in public. The details of State Farm's "half plus one" method are set forth in the complaint.[2]

Though State Farm does not publish or otherwise make publicly available its survey, the other Appellees claim the same "market rate" as State Farm, despite

[2]SAC, Doc. No. 151, ¶¶ 191- 200, 223.

conducting no market inquiry of their own. Various insurer representatives have admitted their labor rate is determined by State Farm and only alters when State Farm permits it.[3]

The Appellees uniformly refuse to pay for certain necessary repair elements. Th body shops identified over sixty such processes and procedures for which the Appellees refuse to make payment, although necessary when performed, and such necessity is reflected in the industry-accepted database references which the insurers rely upon themselves. The insurers uniformly use identical false reasons for doing so.[4]

Although ostensibly relying upon the databases themselves, the Appellees refuse to abide by them consistently. They refuse to acknowledge the databases when it comes to "blackballed" procedures, but insist they are authoritative if a particular repair exceeds a database estimate. All of the Appellees employ this practice.[5]

Appellees compel use of salvaged or aftermarket parts. Professional repairers generally prefer original equipment manufacturer ("OEM") parts as the safest, highest-quality replacement part as they are specifically manufactured to fit particular

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[3] *Id.*, ¶¶ 169, 183, 185-190, 202-213, 229.

[4] *Id.*, ¶¶ 273, 451.

[5] *Id.*

vehicles. Aftermarket parts usually do not fit correctly, are constructed of inferior materials, and compromise the safety of a vehicle in a subsequent collision. Salvage parts are stripped from total vehicles. Body shops have no way to determine the provenance of such parts, their quality, prior history or any other factor directly impacting the integrity of the part and thus the safety of the vehicle.[6]

Despite these known safety risks, Appellees insist on their use. If a body shop (or vehicle owner) balks, the Appellees refuse to pay for the new, safe part. Instead, the Appellees will only pay the amount for which a junkyard or aftermarket part could have been purchased, leaving the shops to absorb the cost or render an incomplete or unsafe repair. All of the Appellees employ this practice.[7]

Body shops which "buck the system," including Appellants, are labeled "problem" shops. The identity of "problem" shops are shared by the Appellees with each other and once identified, the Appellees commence a group boycotting of the problem shop. In the industry, this boycotting is called "steering." When a consumer notifies an insurer that a "problem" shop has been selected for repairs, the insurers steer the customers away to an insurer-preferred shop. This is accomplished by conveying false and misleading statements and misrepresentations about the quality,

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[6] *Id.*, ¶¶ 107-121, 166-167, 285-309.

[7] *Id.*

cost, and integrity of the boycotted shop's work, or falsely telling consumers they are not permitted to utilize the selected shop, and exerting economic coercion on consumers threatening substantial financial impact if they persist in using an Appellant's shop.

A detailed description of the false, misleading and coercive statements the insurers convey is included in the complaint.[8]

The price-fixing and boycotting reached a critical mass in early 2014, when Appellants decided to fight back legally. This litigation was thereafter commenced.

[8] *Id.*,¶¶ 310-312.

PROCEDURAL BACKGROUND

Appellants filed their initial complaint in the District Court for the Southern District of Indiana on April 2, 2014. The cause was transferred to the Middle District of Florida as part of MDL 2557 and assigned Cause Number 6:14-CV-6001.

The complaint was amended once on August 18, 2014, to correct the names of parties.

Over the next two years, Appellees filed multiple motions to dismiss. The complaint was amended once for content on April 14, 2015, per order of the district court issued January 21, 2015.

The magistrate issued a Report and Recommendation of dismissal of all claims on February 26, 2016. The district court adopted the recommendation as to the federal claims on February 29, 2016. Appellants filed a Motion to Reconsider this order on March 12, 2016. The district court denied this motion on May 12, 2016.

Appellants filed an objection to the Report and Recommendation as to the state law claims on March 12, 2016. The cause was dismissed by order of the district court on June 10, 2016. This appeal was thereafter noticed and perfected.

STANDARD OF REVIEW

This court reviews de novo a district court's dismissal of the complaint pursuant to F.R.C.P. 12(b)(6). Review is limited to the four corners of the complaint and any exhibits attached thereto. *Grossman v. Nationsbank, N.A.*, 225 F.3d 1228, 1231 (11th Cir. 2000).

The court reviews denials of a motion to reconsider for abuse of discretion. *United States v. Ameritrade Terminals, Inc.*, 177 F. App'x 855, 857 (11th Cir. 2006).

SUMMARY OF THE ARGUMENTS

The district court employed an improper and heightened pleading standard in dismissing Appellants' complaint, a standard substantially higher than that set forth by the Federal Rules of Civil Procedure and explained by the United States Supreme Court. The district court improperly breached its obligations and duties by adopting the arguments of Appellees set out in their various motions to dismiss, improperly disregarding or discrediting facts alleged in the complaint, mischaracterizing factual allegations, recasting factual allegations as conclusory statements, applying affirmative defenses to causes of action, and requiring appellants to plead specific facts beyond that required by Rule 8 of the Federal Rules of Civil Procedure.

The district court further erred by ignoring or modifying Indiana state law, including but not limited to, creating privileges which do not exist under state law, ignoring state authority which contradicts the court's ruling, making dispositive factual conclusions which are specifically reserved to the jury under Indiana law, making dispositive factual conclusions which nullify corollary state law, and are contradicted by the facts of the complaint.

The district court's dismissal on all asserted grounds is in error and, respectfully, must be reversed.

ARGUMENT

I. STANDARD FOR DISREGARDING FACTS ALLEGED IN THE COMPLAINT

Throughout the Report and Recommendation ("Report"), the dismissal order ("order"), and the order denying reconsideration, the court below frankly admitted it was disregarding facts alleged in the second amended complaint("SAC") because it did not believe them. It also repeatedly chose alternative facts and explanations proffered in motions to dismiss because they were more "plausible," doing so both explicitly and by necessary inference, in derogation of contradictory facts set forth in the SAC. Because this occurs repeatedly for all causes, Appellant body shops separate this matter into a single argument to avoid unnecessary later repetition.

In passing on a motion to dismiss, the court is required to accept the allegations of the complaint as true and draw all reasonable inferences in favor of the plaintiff. *Renfroe v. Nationstar Mortgage, LLC*, 822 F.3d 1241, 1243 (11th Cir. 2016).

The district court is not permitted to weigh the persuasiveness of the facts alleged, nor dismiss the complaint if it does not present a more compelling set of facts than that argued by defendants. See, *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404 (7th Cir. 2010). Doing so is reversible error as it "turns the standard for considering

a Federal Rule of Civil Procedure 12(b)(6) motion on its head." *Renfroe*, 822 F.3d at 1245.

The court may only disregard facts when they are facially delusory or so fantastical as to be detached from reality. The bar to qualify for this is set extremely high: "claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in time travel." *Ashcroft v. Isqbal*, 556 U.S. 662, 696 (2009). See also, *Denton v. Hernandez,* 504 U.S. 25, 32-33 (1992)(facts that are "fanciful," "fantastic," and "delusional"), *Nietzke v. Williams*, 490 U.S. 319, 328 (1989)("claims describing fantastic or delusional scenarios").

Examples of alleged facts fitting this description include bizarre government conspiracy theories (e.g., the United States government plotted and executed the 9/11 attacks), allegations of government manipulations of plaintiff's will or mind, or supernatural intervention. *Guthrie v. U.S. Gov't*, 618 F.App'x 612, 617 (11th Cir. 2015). Or claims of implantation of devices by unknown government agents or similar bodily manipulation. *Williams v. Karf*, 2010 WL 5624650 (S.D. Ga. Dec. 20, 2010), report and recommendation adopted sub nom. *Williams v. Karpf*, 2011 WL 201770 (S.D.Ga., Jan. 19, 2011).

Thus, it is insufficient for a district court to not be "persuaded" by the facts alleged, *Neitzke*, 490 U.S. at 327; they must be so devoid of reality as to make them

facially irrational. This is the difference between a fact not being believed, and a fact not being believable.

The district court appears to have proceeded on the assumption it may subjectively decide whether individual facts were "plausible" to determine whether the ones left after individual scrutiny adequately pled the claim, instead of whether the cause of action was plausibly alleged assuming all facts to be true. The district court was not permitted to disbelieve non-delusory factual allegations.

It was also error for the court to implicitly reject non-delusory facts by ignoring them, or refusing to draw favorable inferences from them while adopting contradictory explanations alleged by the Appellees.

Motions to dismiss under Rule 12(b)(6) test the legal sufficiency of the complaint; they do not evaluate the relative value or weight of the facts alleged. *Adinolfe v. United Techs. Corp.*, 768 F.3d 1161, 1168 (11th Cir. 2014). Thus, the mandatory requirement that facts alleged be accepted as true, and an extremely high bar to clear to disregard them.

As discussed below, the facts alleged in the SAC do not even arguably meet the exceptionally high standard required for the district court to permissibly disbelieve or disregard them. Doing so constitutes reversible error.

II. FEDERAL CLAIMS

The SAC asserts two federal antitrust claims arising under 15 U.S.C. § 1, the Sherman Antitrust Act, price-fixing and boycotting.

In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the Supreme Court clarified that Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555 (internal punctuation omitted).

Detailed facts are not required, merely sufficient facts to raise the right to relief above the speculative level, i.e., plausible on its face. *Id*. A claim has facial plausibility with the factual content allows the court to draw the reasonable inference the defendant is liable for the misconduct alleged. *Id*. at 556.

As *Twombly* was an antitrust case, the court defined the requirement as "a complaint with enough a factual matter (taken as true) to suggest that an agreement was made." *Id.* at 556. "Plausible" does not require probability, merely enough substance to "raise a reasonable expectation that discovery will reveal evidence of an illegal agreement."

Unfortunately, this caused some courts to believe a heightened pleading standard applies to antitrust cases. Circuit courts which have addressed the issue

directly, including this one, recognize no such heightened pleading standard exists, either generally or specific to antitrust claims. *Nettles v. City of Leesburg - Police Dep't*, 415 Fed. Appx. 116, 121 (11th Cir. 2010).

Despite the readily available authority, the district court in the present case nonetheless imposed a substantially heightened pleading standard.

A. Price Fixing

The Sherman Act makes illegal any combination or conspiracy in restraint of trade. 15 U.S.C. § 1. This prohibition includes agreements to fix the prices of goods or services. Agreements between ostensible competitors are referred to as horizontal price-fixing. *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006).

A combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se. *United States v. Socony-Vacuum Oil Co.,* 310 U.S. 150, 223 (1940).

Price fixing agreements are deemed so pernicious that no additional analysis is required-once a horizontal price fixing agreement has been found, it is a per se violation of the Sherman Act. *State Oil Co. v. Khan*, 522 U.S. 3, 11 (1997).

It is irrelevant whether the agreement is to fix maximum or minimum prices. Both "cripple the freedom of traders and thereby restrain their ability to sell in

accordance with their own judgment." *Keifer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211, 213 (1951)(overruled on other grounds).

A horizontal price fixing agreement has but two essential elements: (1) an agreement to fix prices; and (2) injury to plaintiffs as a result. *Godix Equp. Export Corp. v. Caterpillar, Inc.,* 948 F.Supp. 1570, 1576 (S.D.Fla. 1996)(citing *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 341-343 (1990)).

In dismissing the antitrust claims, the district court adopted the reasoning set forth in a companion case, *A & E Auto Body, Inc. v. 21st Century Centennial Ins. Co., et al*, 2015 WL 304048 (M.D.Fla. Jan. 21, 2015).

In that order, the district court ruled no facts had been pled which suggested anything more than independent businesses acting in parallel out of their own economic self-interest. *Id.* at *10. Per the district court, the complaint failed to create a context suggesting the existence of an agreement, merely described businesses exercising their right to do business, or not, with whomever they please and were doing so in a manner that just happens to be identical. *Id.* at *11.

Respectfully, the only manner in which the district court could have reached these conclusions was to disregard the relevant pleading standard, the SAC's facts and substantive state law which conditions the defendant insurers' business activities.

The SAC was filed several months after the *A & E* order was entered and was specifically amended in compliance with the purported deficiencies noted by the District court in that order. Troublingly, the district court adopted its prior order in whole, without any reference whatsoever to the additions in the SAC, though responses to motions to dismiss pointed out explicitly the SAC made the exact changes the district court noted in the *A & E* order.[9] The district court apparently assumed the changes were insufficient and defaulted to its prior context finding. However, in the absence of any discussion, the body shops were left without any guidance as to what exactly was insufficient in the SAC.

The context in this case is unique. It is not a traditional buyer-seller transaction. While the body shops are the sellers, the defendant insurers are not the buyers, consumers are. The insurers' role is that of payor only; they are neither buyer nor seller. They do not, as the district court ruled, have the right to refuse to do business with any plaintiff body shop.

Numerous statutory provisions limit the conduct of insurers operating within Indiana. An insurer may not, for example, attempt to conclude a claim for less than a reasonable amount (for example by refusing to pay for necessary repair elements),

[9]Doc. No. 158, Omnibus Response to Various Motions to Dismiss

nor may they refuse to pay for necessary replacement parts selected by the consumer. See Section IV.A.1 and 2, below.

While state law does not alter federal law, it does necessarily alter the context in which the insurers' conduct must be viewed. The ordinary rules upon which the district court relied do not apply. The district court commenced its contextual landscape analysis looking in the wrong direction.

The SAC included the following facts:

- all of the insurers claim to pay the "market rate."[10]
- none of the insurers save State Farm perform any review of "the market."[11]
- the "survey" conducted by State Farm does not reflect the labor rates actually charged by body shops, is consistently lower than the labor rates actually charged by body shops, and is identical throughout the state of Indiana, although body shop rates show reasonable variability across the state.[12]
- the "survey" conducted by State Farm uses falsified data, an analysis methodology devoid of mathematical or statistical validity and produces a fabricated result.[13]

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[10] See FN 3.

[11] See FN 3.

[12]SAC, Doc. No. 151, ¶¶ 203-215.

[13] See FN 2.

- State Farm claims it does not share the results of its "survey."[14]

- the insurers all pay the same "market rate," which is identical to the fabricated State Farm "market rate," without ever performing any rate analysis.[15]

- a USAA representative has admitted State Farm actually does circulate it survey results to other insurers, which then apply the State Farm-determined "market rate."[16]

- representatives of the insurers have specifically linked their "market rate" to that of State Farm, asserting they are restrained from altering their rate unless and until State Farm permits, regardless of what body shop rates actually are.[17]

- all the insurers utilize the same false reasons for refusing to honor posted labor rates, i.e., "you're the only one who wants a higher labor rate" when it is known multiple body shops have increased labor rates. This is accompanied by threats of legal problems if the body shops discuss their own publicly posted rates with each other. [18]

- the insurers routinely compel or attempt to compel use of salvage or imitation parts which are unsafe or inappropriate even though insurance representatives have publicly acknowledged the safety issues these raise.[19]

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[14] See FN3.

[15]SAC, Doc. No. 151, ¶¶ 203-15.

[16] *Id.*,¶¶ 186, 190.

[17] *Id.*, ¶¶ 216-230.

[18] *Id.*,¶¶ 234-37, 451.

[19]See FN 6.

- the majority of named insurers are known investors of equity group, BlackRock, which owns a substantial amount of stock in LKQ, Inc., and its subsidiary, Keystone, vendors of aftermarket and salvage parts.[20]

- the insurers compel or attempt to compel body shops to purchase replacement parts from or through LKQ and/or Keystone.[21]

- when body shops refuse to use unsafe or inappropriate salvage or imitation parts, the insurers refuse to pay for appropriate parts but only pay the amount for which the unsafe or inappropriate part could have been purchased.[22]

- insurers routinely refuse to pay or pay in full for the same processes and procedures required to return the vehicle to its pre-accident condition.[23]

- insurers refuse to pay or pay in full for the same processes and procedures in contravention of bodyshop industry labor databases, which the insurers use themselves, and State Farm has promised to abide by but does not.[24]

- insurers all use the same false reasons for refusing to honor the database estimates, i.e., “you’re the only one charging for that” when it is known multiple body shops charge for a particular process or procedure.[25]

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[20] SAC, Doc. No. 151, ¶¶ 405-412.

[21] *Id*.

[22] *Id*. at 112-13, 308-09, 408.

[23] See FNs 4 and 5.

[24] SAC, Doc. No. 151, ¶ 451.

[25] *Id*., ¶¶ 234-37, 451.

Several months after filing the SAC, the body shops developed direct evidence of price fixing. A Progressive representative admitted insurance companies fix body shop labor rates; that body shops have no effect on their own labor rates; that insurance companies get together at big meetings to decide what body shop labor rates will be, and even identified when the next meeting was scheduled to occur. [26]

Also, a State Farm representative admitted State Farm intentionally fixes and suppresses labor rates, that the survey is a sham and merely use to publicly justify its intentional price fixing.[27]

After the district court ordered dismissal of the SAC, the body shops filed a motion to reconsider, providing the direct admissions of price fixing that did not exist at the time the SAC was filed. The district court decided these admissions were vague and conclusory and denied the motion (see below).[28]

While the timing could have been more convenient, in the end, the district court had before it two direct admissions of price fixing from two different defendants and substantial circumstantial facts supporting those admissions.

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[26] See Motion to Reconsider, Doc. No. 178.

[27] *Id.*

[28] See Doc. No. 183.

Despite this, the district court continued to rely upon its finding the body shops had failed to plausibly suggest the existence of an agreement to fix prices.

Where there exists direct evidence of price fixing, a plaintiff need not offer circumstantial evidence of parallel conduct to defeat summary judgment. *In re Insurance Brokerage Antitrust Litig.*, 618 F.3d 300, 323 (3rd Cir. 2010)(citing *Twombly*, 550 U.S. at 564). The requirements to defeat a 12(b)(6) motion to dismiss are substantially lower than summary judgment.

In this case, the body shops provided not only direct admissions of price fixing, but substantial facts supportive of "plus factors," facts suggesting the existence of an agreement where defendants display parallel conduct.

There is no finite list of plus factors, as this varies with the facts of each case. The Supreme Court identified as a plus factor parallel behavior that would probably not result from chance, coincidence, independent responses to common stimuli, or mere interdependence unaided by an advance understanding among the parties, and conduct that indicates the sort of restricted freedom of action and sense of obligation one generally associates with agreement. *Twombly*, 550 U.S. at 557, FN 4.

Courts have identified as plus factors: (1) whether the defendants' actions, if taken independently, would be contrary to their economic self-interest; (2) whether the defendants have been uniform in their actions; (3) whether the defendants have

exchanged or have had the opportunity to exchange information relative to the alleged conspiracy; (4) whether the defendants have a common motive to conspire. *Re/Max Int'l, Inc., v. Realty One, Inc.,* 173 F.3d 995, 1009 (6th Cir.1999).

The sharing of information by competitors has been characterized as a "super plus factor" to be weighted most heavily in favor of finding collusion. William E. Kovacic, PLUS FACTORS AND AGREEMENT IN ANTITRUST LAW, Vol. 110:393, Mich. Law. Rev. (Dec. 2011).

Just as there is no finite list of plus factors, there is no minimum number of plus factors which must be included in a complaint to be considered adequate. A single plus factor may suffice. The district court concluded the SAC did not contain any plus factors. However, this is demonstrably inaccurate.

It is unlikely all of the named defendants independently and by coincidence created an identical "market rate" which conflicts with and is consistently lower than actual body shop rates, even though none save State Farm even conduct a pro forma determination of the market. State Farm's "survey" is fabricated and a witness has confirmed it is a sham, intended to publicly justify the fixing of body shop prices, while another witness has confirmed State Farm circulates its survey to the other insurers. Given these facts, it is unlikely the insurers' conduct is the result of coincidence or lack of agreement, a plus factor.

It is also unlikely all of the insurers coincidentally and independently devised an identical list of repair processes and procedures they will not pay for, and the same false excuses for refusing payment, while knowing those excuses contradict repair standards and industry-accepted references as they utilize the same standards and references themselves. It is far more likely the uniformity of action and justification for action is a result of sharing information and agreement, a plus factor.

Representatives of various insurers have repeatedly stated they are restricted from altering the purported "market rate" unless and until authorized by State Farm. Requiring permission from a competitor to set company procedures its behavior is indicative of restricted freedom and fidelity to a pre-existing agreement, a plus factor.

The insurers adhere to the artificial State Farm-created "market rate" over the course of years, changing uniformily with each other, adhere to the same set of "no pay" processes and procedures, for identical articulated reasons, though those reasons are contradicted by reality. This is uniformity of action, another recognized plus factor.

The Appellees are motivated by the shared motive to maximize profits, which rise into the billions of dollars, also a plus factor.

The identical labor rates, identical refusal to compensate for the same processes and procedures, identical false excuses for such refusal, uniform adherence to the

Case: 16-13601 Date Filed: 09/30/2016 Page: 37 of 83

refusal to alter labor rates until State Farm does, is indicative of shared information and agreement overall, including the identical language used in refusing payment for repair elements ("a script"). Additionally, industry representatives have admitted to exchanging information relative to price-fixing and that this occurs at regular meetings of the insurance industry, a direct admission which supports the circumstantial facts and constitutes a "super plus factor."

The insurers belong to multiple trade associations and organizations which meet regularly, both internally and with each other, providing substantial opportunity to conspire, a plus factor. A Progressive representative has stated this is actually what occurs.

The district court ignored all of these facts, which fit squarely within several identified categories of plus factors. Individually, each fact is perhaps arguably insufficient to carry the day. However, the district court was obligated to view not individual facts, but the entirety of the complaint. "Plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each . . . The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole." *Continental Ore Co. v. Union*

Case: 16-13601 Date Filed: 08/30/2016 Page: 38 of 83

Carbide & Carbon Corp., 370 U.S. 690, 699 (1962)(abrogated by statute on other grounds).

In addition to facts constituting numerous plus factors, the SAC describes conduct considered the hallmarks of price fixing by the U.S. Department of Justice ("DOJ"). Per the DOJ, examples of behavior indicating price fixing agreements include holding prices firm, and adopting a standard formula for computing prices.[29]

The allegations of the SAC set out facts meeting these hallmarks. Not only does the SAC allege insurers have held body shop labor rates at a fixed ceiling, the SAC alleges tacit admissions of agreement to keep the fixed ceiling in place, requiring State Farm's permission as the leader. This indirect evidence is substantiated by the direct admissions of price fixing and information sharing.

The SAC further sets out the factual indicators of an agreed-upon standard formula for fixing prices on parts, paint and materials. While the cost of repairs varies from one to another, the insurers nonetheless utilize a standard common formula for determining what will and will not be compensated. The insurers uniformly refuse to pay for more than salvage or aftermarket parts, even when that is not the part used, which violates Indiana law (see below); the Appellees refuse to pay more than their

[29] http://www.justice.gov/atr/price-fixing-bid-rigging-and-market-allocation-schemes

fixed ceiling for paint and materials. The insurers uniformly refuse to pay for identical repair elements, for the same articulated reasons, though necessary for a full and safe repair.

In the absence of an agreement, there should be variability. No two vehicles wreck the same. At least some of the Appellees should find a pinch weld necessary following a frame repair every now and again, for instance.[30] Estimates written by the Appellees, however, are astonishingly uniform. Given the individuality of each repair, the district court should have given the uniformity of estimates some consideration in analyzing context. However, based upon the ruling, the district court gave this no consideration at all.

The DOJ has further warned collusion may occur when the number of firms is fairly large, but there is a small group of major sellers and the rest are “fringe” sellers with a small market share.[31] That is precisely the current setting. The vast majority of named defendants are subsidiaries or affiliates of each other, not unrelated companies. This minority controls well over half of the private passenger auto insurance market within the state of Indiana.[32]

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[30] See Exhibit “2" to the SAC, Doc. No. 151.

[31] http://www.justice.gov/atr/price-fixing-bid-rigging-and-market-allocation-schemes

[32] See Exhibit “1" to the SAC, Doc. No. 151.

The economic realities of the parties and economic power the Appellees hold over body shops should have contributed to the district court's analysis of context. However, based upon the ruling, the district court gave this no consideration at all.

Additionally, insurers fixing body shop rates has happened before. As described above, insurers are subject to a consent decree which prohibits them from engaging in the conduct described in the SAC. The decree is binding upon the three major trade associations and their member companies in perpetuity, and the defendant insurers are members of one or more of those trade associations.[33]

That identical antitrust violations have occurred before, in the very same industries, involving the very same prohibited practices and by many of the very same major insurers, should have contributed to the court's analysis of context. However, the district court specifically stated it found the consent decree irrelevant. *A & E Auto Body, Inc*., 2015 WL 304048, at *2.

Viewed holistically, the facts plausibly suggest the existence of an agreement to fix prices. It is difficult to imagine what facts the district court would deem sufficient if direct admissions of price fixing, plus factors (including a "super plus factor"), conduct considered by law enforcement as hallmarks of price fixing and a prior history is considered not enough to proceed to discovery.

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[33]SAC, Doc. No. 151, ¶¶ 428-39.

It is apparent the district court applied an incorrect pleading standard far in excess of Rule 8's notice pleading and more akin to that of criminal law's beyond a reasonable doubt. Appellants respectfully submit the trial court erred in dismissing the price fixing claim.

B. Boycotting

In addition to price fixing, the Sherman Act prohibits group boycotting. 15 U.S.C. § 1. Like price fixing, horizontal group boycotting is a per se violation of the Sherman Act. *Nynex Corp. v. Discon*, 525 U.S. 128, 135 (1998)(defining a horizontal boycott as an agreement among direct competitors). It is deemed so detrimental to competition and free enterprise that anticompetitive effect is presumed. *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284, 290 (1985).

"Boycott" refers to a method of pressuring a party with whom one has a dispute by withholding, or enlisting others to withhold, patronage or services from the target. *St. Paul Fire & Marine Ins. Co. v. Barry*, 438 U.S. 531, 541 (1978).

All a plaintiff need show to prevail on the claim is the existence of a horizontal agreement between the defendants to jointly participate in the boycott. *Nynex Corp.*, 525 U.S. at 136.

The district court's analysis of Appellants' boycotting claim was very slim. It found all the body shops really asserted was the insurers "badmouthed" them, producing no evidence of the concerted refusal to deal. *A & E Auto Body, Inc.*, 2015 WL 304048, at *12.

Again, this conclusion can only be reached if the district court ignored the facts asserted in the SAC and the reasonable inferences to be drawn from them. The SAC included the following facts:

- the plaintiff body shops are targeted by the insurers as punishment for refusing to quietly comply with defendants fixed prices.[34]

- as the insurers refuse to pay more than their unilaterally determined fixed amount regardless of where repairs are performed, steering customers to insurer-preferred shops serves no purpose but to harm the non-compliant plaintiff shops.[35]

- insurers effect punishment by steering away customers who have verbalized the intention of conducting business with a plaintiff body shop by knowingly conveying false and misleading statements impugning the quality, cost and integrity of plaintiffs' work as well as exerting economic coercion upon the customers.[36]

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[34]SAC, Doc. No. 151, ¶¶ 142, 327, 351-56, 359, 465, 468-71, 478.

[35] *Id*., ¶ 479.

[36]*Id*, ¶¶ 310-12.

- all of the insurers utilize the same script containing identical false and misleading steering statements and threats of economic consequences.[37]

- insurers withhold known information their preferred shops perform poor repairs while actively defaming plaintiffs.[38]

- commencement of boycotting is linked to identifiable events, such as refusal to comply with fixed prices or disassociation from an insurer's DRP. After leaving a DRP or being designated a "problem" shop for complaining about fixed prices, the plaintiff body shops experience a sudden, across-the-board drop in customers for whom the defendants are responsible for making repair cost payment. This is not limited to the insurer the "problem" shop has presumably angered, but all named insurers.[39]

The district court decided all of these facts merely constitute "bad mouthing" and dismissed the claim, concluding the shops did not even allege the insurers had ever refused to allow a consumer to do business with Appellants or that any had refused to pay for repairs performed by the Appellants. However, the SAC alleges the opposite. It contains numerous allegations the insurers failed to pay for necessary repair elements, and unilaterally refused to make full payment for others.

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[37] *Id.*, ¶¶ 310-12, 355, 480.

[38] *Id.*, ¶¶ 354, 356, 480.

[39] *Id.*, ¶¶ 341-53.

Further, although these facts are included in the SAC, the body shops are not required to allege them. It is the agreement itself to restrain trade that constitutes a violation of the Sherman Act, not whether or not the agreement is successful. See *Brooke Group v. Brown & Williamson Tobacco Corp.,* 509 U.S. 209, 251 (1993).

Federal jury instructions incorporate this principle: "The agreement itself is a crime. Whether the agreement is ever carried out or whether it succeeds or fails does not matter. Indeed the agreement need not be consistently followed. Conspirators may cheat on each other and still be conspirators. It is the agreement to do something that violates the law. That is the essence of a conspiracy." *United States v. Stora Enso North American Corp.*, 03:06cr323 (CFD) United States district Court for the District of Connecticut (July 2007).

It is irrelevant whether the insurers are successful in every attempt to boycott, or whether each such event requires use of the full panoply of Appellees' boycotting arsenal. This is necessarily dependent upon the subjective fortitude of a given consumer to withstand the pressure.

But the district court's reliance upon instances of failed boycotting indicates strongly the facts alleged were not credited with truth, and that the court believed success a necessary element of a boycotting claim. The district court clearly believed

some other set of facts plausibly explained insurers' conduct. However the district court was not free to make that sort of judgment. *Swanson*, 614 F.3d at 404.

Use of identical false and misleading statements about the body shop is particularly telling. This, by itself, satisfies multiple plus factors. It is unlikely the defendant insurers independently created an identical set of false statements by mere chance. The only manner such a conclusion may be reached is if the district court decided the statements were not false or misleading, which, again, the district court was not permitted to do. See Section I.

Utilizing the same script is also indicative of information sharing and agreement on formulating the most effective set of statements to utilize, and unity of action by the Appellees.

The Appellees further utilize the same set of economic pressure and threats against consumers to compel or attempt to compel them away from Appellants' businesses. The SAC further alleges a common goal, punishment for noncompliance.

It also appears the district court read the boycotting allegations not only as discrete facts but in isolation from the remaining complaint. The Appellees' actions in fixing prices is part and parcel of the boycotting environment, as it supports the motive for boycotting. Again, the only manner in which the district court could find context lacking is if it simply chose to disbelieve the facts asserted and thereafter

refused to draw inferences favorable to the body shops, which it is not permitted to do. See Section I.

The facts set out in the SAC more than sufficiently set forth a plausible basis that Appellees have entered an agreement and acted in furtherance of a common boycotting goal or plan such that the body shops should be permitted to pursue discovery. The district court's dismissal of this claim was error.

III. MOTION TO RECONSIDER

After the SAC was dismissed, the body shops filed a motion to reconsider that decision.[40] The motion provided to the district court the direct admissions of price fixing by Progressive and State Farm, neither of which were available when the SAC was filed as they did not then exist.

The district court denied the motion, finding the direct admissions of price fixing were vague and conclusory.[41] With respect, the district court abused its discretion in denying the motion.

The grounds for granting a motion to reconsider are limited, as they are not intended to be vehicles for re-litigating decided issues. They are: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to

[40]See Doc. No. 178.

[41]See Doc. No. 183.

correct clear error or manifest injustice. *Lamar Advert. of Mobile, Inc. v. City of Lakeland, Fla.,* 189 F.R.D. 480, 489 (M.D.Fla. 1999).

When new evidence would alter a complaint so as to adequately allege a cause of action, motions to reconsider should generally be granted. See, e.g., *Mann v. Adams Realty Co.*, 556 F.2d 288, 297 (5th Cir. 1977).

The district court's ruling the new information was vague and conclusory is incomprehensible. It is difficult to objectively define a defendant's direct admission of price fixing as vague. The Progressive representative stated, "body shops have no say in the setting of their own labor rates, that the insurance companies get together at big meetings to set body shop labor rates, and that the insurance companies uniformly apply the labor rates agreed upon at these meetings. This representative even identified when the next such meeting was going to occur."[42]

The State Farm representative stated, "State Farm intentionally suppresses and fixes body shop labor rates, and that State Farm's labor rate survey is a sham to justify its intentional fixing of labor rates."[43]

"Vague" does not appear to be defined within the law. Random House Dictionary defines it as not clearly or explicitly stated or expressed. The body shops

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[42]See Doc. No. 178.

[43]*Id.*

assert there is nothing unclear about the new information. They both clearly and explicitly express intentional price fixing. Such statements have been held "the smoking gun in a price-fixing case: direct evidence, which would usually take the form of an admission by an employee of one of the conspirators, that officials of the defendants had met and agreed explicitly on the terms of a conspiracy to raise prices." *In re Text Messaging Antitrust Litig.*, 630 F.3d 622, 628 (7th Cir. 2010).

Appellant body shops respectfully submit the district court abused its discretion in denying the motion to dismiss as direct evidence of price fixing does adequately allege the claim asserted.

IV. STATE LAW CLAIMS

A. Tortious Interference

The district court dismissal of the tortious interference claim effectively proceeded on two grounds– one, allegations against all defendant insurers, which it erroneously dismissed on "group pleading" grounds; and two, analysis of the examples of interference provided in support of the allegations, which it dismissed on various grounds. The district court's written findings show it dismissed the claim out of hand, applying an erroneous standard of pleading and failing to apply Indiana law.

Tortious interference with business relations has five identified elements under Indiana law: (1) the existence of a valid business relationship; (2) the defendant's knowledge of the existence of the relationship; (3) the defendant's intentional interference with that relationship; (4) the absence of justification; and (5) damages resulting from the defendant's wrongful interference with the relationship. *Snyder v. Classic Rest. Servs., LLC,* 985 N.E.2d 374 (Ind. Ct. App. 2013). State law also requires a defendant to have acted illegally. *Id*.

1. Illegal Conduct

The district court ruled the complaint failed to establish the insurers acted illegally. The complaint alleges the insurers violated Indiana code § 27-4-1 prohibiting unfair or deceptive trade practices. The district court ruled that because this code section contains numerous parts and subparts, the claim failed to adequately allege illegal acts for failing to identify which particular portion(s) of the statute the defendant insurers violated.

However, in Paragraphs 481-84, the SAC specifically identifies the statutory provisions the insurers violated:

> 481. Additionally, Defendants' behavior described above violates Indiana code 27-4-1, et seq., in particular the following provision:
>
> Sec. 3. No person shall engage in this state in any trade practice which is defined in this chapter or determined pursuant to this chapter as an

unfair method of competition or as an unfair or deceptive act or practice in the business of insurance as defined by IC 27-1-2-3.

482. Indiana Code provides examples of unfair methods of competition, and unfair or deceptive acts or practices in the business of insurance, including, but not limited to, the following:

483. Sec. 4.(a)(1)(E)(16) Committing or performing, with such frequency as to indicate a general practice, unfair claims settlement practices (as defined in section 4.5 of this chapter).

484. Unfair claims settlement practices include but are not limited to misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; refusing to pay claims without conducting a reasonable investigation based upon all available information; not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; attempting to settle a claim for less than the amount to which a reasonable individual would have believed the individual was entitled by reference to written or printed advertising material accompanying or made part of an application. I.C. § 27-4-1-4.5.

In Paragraph 485, the SAC summarized the insurers' conduct which violates the statute:

485. The Defendants have violated by their intentional conduct described above the unfair methods of competition, unfair or deceptive acts or practices, and/or unfair claims settlement practices. Defendants have required Plaintiffs to omit necessary operations and procedures to return vehicles to their pre-accident condition, utilize substandard, dangerous or otherwise inferior replacement parts, and other acts described above, all in violation of applicable Indiana statute. Defendants acted in violation of law so as to avoid their respective obligations to make payment for full and complete repairs to the vehicles of their respective insureds and claimants.

The Appellant body shops pointed out these inclusions in the SAC in their Objections to the Report.[44] The district court, however, ignored this and adopted the Report's conclusion the SAC failed to identify the statutory provisions the insurers violated.

The conclusion is facially erroneous. As set out immediately above, the SAC does include the very information the court ruled was absent. It was clear error for the district court to rule the claim insufficiently pled for failing to plead that which is undeniably present in the SAC.

The Report compounded this error by finding the allegations of statutory violation lacked the "who, what, when, where, or how" of the purported violations. Notice pleading does not require a plaintiff to set out the "who, what, when, where, or how." Such particularity is the *sine qua non* of Rule 9 specificity pleading. *Jallali v. Sun Healthcare Group, et al.,* 2016 WL 3564248, *1 (11th Cir. July 1, 2016), *Mitchell v. Beverly Enterprises, Inc.,* 248 F.App'x 73, 74 (11th Cir. 2007).

F.R.C.P. 9(b) does not apply to tortious interference claims. It is subject only to notice pleading under Rule 8(a), which does not require detailed factual allegations, merely sufficient information to fairly place the defendants on notice of the claim and the basis for the claim. *Iqbal*, 556 U.S. at 678. As the district court

[44]Doc. No. 177, pp. 1-3.

candidly stated it was requiring the claim be pled with the factual specificity only applicable to Rule 9(b), its error is clear. The district court dismissed the claim for failing to meet the requirements of a rule which does not apply.

2. Justification

The district court further ruled the complaint was inadequately pled for failing to establish lack of justification for the defendant insurers' actions. In doing so, the trial court specifically relied upon and adopted the insurers' motion arguments as to why their conduct was justifiable, to wit, the insurers have a legitimate business interest in reducing the cost of repairs.[45]

The district court was affirmatively prohibited from adopting the defendants' motion arguments. This Court has clearly held:

> Nationstar resists this outcome by saying that we should elevate its own conclusions . . . over Mrs. Renfroe's allegations. This dangerous argument turns the standard for considering a Federal Rule of Civil Procedure 12(b)(6) motion on its head. In reviewing Rule 12(b)(6) motions, courts are bound to accept the plaintiff's allegations as true and to construe them in the light most favorable to her. Nationstar asks us to do the opposite. Nationstar suggests we should accept its contrary allegations . . . and then to grant its motion to dismiss on that basis. We decline to do that.

Renfroe, 822 F.3d at 145.

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[45]Report, Doc. No. 175, pp. 14-15.

The district court's candor as to its reasoning unequivocally establishes the reversible error committed. At the pleading stage, the district court was not permitted to accept the defendants' arguments as to why their conduct was justified; it was required to accept the body shops' averments as to why it was not.

The district court substantially compounded this error by specifically relying upon Florida state law in deciding the defendants' motion arguments had merit, including application of a qualified privilege which does not exist in Indiana law.[46] However, this claim is not subject to Florida law in any manner. Indiana law applies. That the district court subjectively found Florida law preferable does not permit it to arbitrarily apply the law of another state to an Indiana state law claim. *West v. American Tel. & Tel. Co.*, 311 U.S. 223, 236-237 (U.S. 1940).

Even if the district court was permitted to elevate the insurers' arguments over the averments of the SAC, Indiana law does not permit the conclusion reached. Indiana statute prohibits insurers from refusing to pay for necessary repairs under multiple provisions of I.C., § 27-4-1-4.5, including but not limited to those set forth in Paragraph 484 of the SAC. Thus, whether or not the insurers wish to reduce repair costs, their methods for doing so are not justifiable. They are, in fact, prohibited. The district court effectively ruled the insurers are permitted to justify their conduct when

[46]Report, Doc. No. 175, pg. 15.

said conduct violates statute and is a criminal act.[47] The district court identified no Indiana authority allowing a defendant to employ a profit justification for tortiously interfering when the conduct is itself criminal.

Further, I.C. §27-4-1-4.5(16) defines as an unfair or deceptive practice engaging in any activity prohibited by I.C. § 27-4-1.5. These statutory provisions provide, among other things, that an insurer who commands use of auto body parts different from that selected by the insured, or refuses to pay for the parts selected by the insured commits an unfair claims settlement practice. I.C. § 27-4-1.5-11 and I.C. § 27-4-1.5-12. The SAC clearly alleges the defendant insurers engage in these actions. Again, if there is any Indiana authority permitting a defendant to justify criminal acts for profit, the district court failed to identify it.

In the absence of Indiana authority supporting dismissal as a matter of law, the defendant insurers' alleged financial interest is insufficient to constitute justification such that the claim fails on the pleadings. Whether their justification is sufficient is an issue of fact for jury determination. In all respects, the district court's handling of this element was clear and reversible error.

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[47] Indiana code§ 27-1-2-4 makes violation of the insurance statutes a Class A misdemeanor.

3. Valid Business Relationship

The district court further determined the SAC failed to allege the existence of valid business relationships with which the insurers interfered. To do so, the district court recharacterized the allegations of the complaint, stating the SAC failed to allege anything but "bald assertions of possible business opportunities." [48] This not only misconstrues the allegations of the SAC but also applies an incorrect pleading standard as shown by the authority relied upon by the Report in support of its conclusion.

Indiana law recognizes this tort protects against interference with prospective business, not merely extant business. Thus, the distinction between the tort alleged and the tort of interference with contractual relations. *Meridian Fin. Advisor*s, *Ltd. v. Pence*, 763 F.Supp. 2d 1046, 1063 (S.D. Ind. 2011).

Indiana law does not define what constitutes a valid business expectancy. However, Indiana courts routinely rely upon the *Restatement of Torts* in examining tortious interference claims. See, e.g., *Bochnowski v. Peoples Fed. Sav. & Loan Ass'n*, 571 N.E.2d 828, 285 (Ind. 1991).

[48]Report, Doc. No. 175, pg. 11.

The *Restatement*, in comment c, speaks to the issue: any prospective business relationship that would be of pecuniary value constitutes a valid business expectancy. *Restatement (Second) of Torts* § 766B, cmt. c (1979).

As the Pennsylvania Supreme Court has eloquently expressed, "Anything that is prospective in nature is necessarily uncertain. We are not here dealing with certainties, but with reasonable likelihood or probability. This must be something more than a mere hope or the innate optimism of the salesman." *Glenn v. Point Park Coll.,* 272 A.2d 895, 898-99 (Pa. 1971).

The facts alleged in the SAC more than meet this requirement. It alleges the insurers intentionally interfered in the body shops' reasonable expectation of business with persons who had identified a specific plaintiff body shop as the chosen repairer. The body shops' expectation was not predicated upon mere hope, but consumers who had specifically chosen a plaintiff body shop as their service provider and conveyed that choice to a defendant insurer.

The district court, however, required certainty. It reduced the verbalized intention of doing business with the plaintiff body shops to nothing more than a mere hope of future business. This is in error.

The improper requirement of certainty is substantiated by the district court's choice of authority. Every case cited for the proposition that something more was

required was disposed of at the summary judgment phase or trial. *Comfax Corp. v. N.Am Van Lines, Inc.*, 587 N.E.2d 118 (Ind. Ct. App. 1992)(summary judgment), *Gov't Payment Serv., Inc. v. Ace Bail Bonds*, 854 N.E.2d 1205 (Ind. Ct. App. 2006(trial), *Computers Unlimited, Inc. v. Midwest Data Sys., Inc.*, 657 NE.2d 165 (Ind. Ct. App. 1995)(summary judgment).

Each of these cases terminated after discovery and each stand only for the proposition that, in those circumstances, the plaintiff did not develop evidence to substantiate its claim. The body shops have been denied that opportunity. The analyses of summary judgment and motion to dismiss are not coincidental. Rule 12(b)(6) tests the sufficiency of allegations in the complaint to state a cognizable claim, *Albright v. Oliver*, 510 U.S. 266 (1994), whereas Rule 56 tests the sufficiency of evidence to support those allegations. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

The SAC was subject only to the pleading requirements of Rule 8. It is required only to set forth causes of action and factual averments in support of those causes. The complaint is not a vehicle for production of evidence, which the district court not only required, but required to be more convincing than the arguments of the insurers. The district court was not permitted to do these things and in the doing, committed reversible error.

4. Group Pleading

This Court has repeatedly authorized use of "the defendants" to refer to multiple defendants where the plaintiff intends and does assert each named defendant engaged in the prohibited conduct. *Crowe v. Coleman*, 113 F.3d 1536, 1539 (11th Cir. 1997). See also, *Crespo v. Coldwell Banker Mortgage*, 599 F. App'x 868, 872 (11th Cir. 2014), *Jackson v. Bank of Am., NA*, 578 F. App'x 856, 860 (11th Cir. 2014).

The district court dismissed the tortious interference claim on the grounds of improper group pleading. While authorized by this Court, the district court nonetheless refused to allow the Appellant body shops to do so because it found the assertion that all defendant insurers engaged in the same misconduct "implausible."[49]

That the district court exceeded the permissible scope of analysis by choosing to disbelieve the allegations of the complaint is established above, Section I. The court's skepticism might be understandable, if still not permissible, if it had accurately recited the contents of the SAC. The district court stated the use of "group pleading resulted in allegations that every Defendant tortiously interfered in the business of every Plaintiff with respect to all the same customers."[50]

[49]Report, Doc. No. 175, pg. 6.

[50] *Id*.

As recited by the district court, the "facts" conjures an image of one person getting phone calls from every named defendant, even once uninvolved in a particular repair, which would be a somewhat ludicrous scenario. That is not what the SAC alleges. The SAC alleges that when a consumer notifies any of the named defendants of intent to patronize any of the named plaintiffs, each defendant tortiously interferes in the completion of the prospective business between the identified body shop and the notifying consumer. Appellants do not understand how the district court transformed this into an allegation that every defendant interfered as a group with "all the same customers."[51]

When the SAC is read, instead of reinterpreted, the allegations do not fall within the scope of frankly delusional character permitting the court to disbelieve them. Even if skeptical, the district court was required to accept the allegations as true. *Nietzke*, 490 U.S. at 327.

Further, this Court has recognized that any perceived factual ambiguities or doubts must be resolved in favor of the plaintiff. Resolving ambiguities against the plaintiffs is error. *Omar ex rel. Cannon v. Lindsy*, 334 F.3d 1246, 1252 (11th Cir.

[51] It is not impossible for an insurer to tortiously interfere with more than one plaintiff body shop with respect to a single customer, particularly in smaller towns, which support only one or two body shops. In Louisiana, an insurer told a customer she was not permitted to use her chosen repairer and when she named her next choice, she was told she could not use that one either. Both named body shops are plaintiffs in the Louisiana Action.

2003). See also, *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993).

Affirmative authority permits the Appellants to collectively refer to "the defendants" under the circumstances and, given the extensive discussion of the claim within the various motions to dismiss, "the defendants" have confirmed they have a clear and unambiguous understanding of the claim asserted against them. The objection to use of the collective plural reference serves no purpose but to unnecessarily elevate form over function.

Finally, the history of these cases has produced an irresolvable conflict. In a separate action in this MDL, the district court ordered the plaintiffs therein to amend the complaint so as to particularly identify each defendant by name in relation to the facts and causes of action asserted. After plaintiffs did so, the court expressed its extreme dissatisfaction, complaining that listing each and every defendant for each and every factual allegation and cause of action made the complaint unnecessarily long and threatened plaintiffs with sanctions if it was done again. See *A & E Auto Body, Inc.,* 2015 WL 304048.

The lower court then found the current complaint should not use "the defendants" either, as described above, and had to designate each defendant individually.

Thus, the body shops have effectively been left with no acceptable manner of pleading. They either identify each defendant by name and face sanctions, or they utilize "the defendants" and face dismissal.

If this Court determines use of "the defendants" is impermissible in the present case, Appellants respectfully request this Court make a specific ruling as to how defendants may be identified. Alternatively, Appellants request the court prohibit the district court from imposing sanctions for identifying each individual defendant by name for each factual allegation.

B. Quantum Meruit

The grounds upon which the district court decided to dismiss the quantum meruit claim are not entirely clear. The Report appears to adopt by reference the grounds identified in a prior recommendation. It does not however, explicitly state the SAC was being dismissed on those grounds. Out of an abundance of caution, the body shops assume all three grounds from the first Report provide the grounds for dismissal in the second.

In handling this claim, the district court engaged in every prohibited act with regard to a motion to dismiss and performed none of its required obligations.

Under Indiana law, to state a claim for quantum meruit, a complaint needs allege a benefit was rendered to the other party at the express or implied request of

that party, that allowing the other party to retain the benefit without paying for it would be unjust, and that the party seeking recovery expected payment for his services. *Mueller v. Karns*, 873 N.E.2d 652, 659 (Ind. Ct. App. 2007).

The SAC alleged all of these elements: the body shops conferred a benefit upon the defendant insurers; the insurers have an independent duty and obligation to pay for repairs to the vehicles of their respective insureds and claimants which the body shops' services allow the insurers to execute.[52]

The services were rendered upon the implied request of the insurers; the insurers are not permitted to refuse payment for repairs to the vehicles of their respective insureds and claimants. The SAC further alleges the insurers require the body shops to await their permission before commencing repairs under threat of complete non-payment for any repairs, said repairs being performed with the insurers' knowledge and express permission.[53]

The body shops perform repairs in the ordinary course of performing their lawful profession and expect to be paid for their work.[54]

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[52] SAC, Doc. No. 151, ¶¶ 79, 489.

[53] *Id.*, ¶¶ 490-91.

[54] *Id.*, ¶¶ 77-78, 492.

Thus, allowing the insurers to obtain a full release of their obligation and duty to insureds and claimants without making full and reasonable payment for the services rendered is unjust.[55]

Having alleged all the elements of the claim, the district court was required to give them full effect. It was required to accept the factual allegations of the SAC as true and draw all inferences favorable to the plaintiffs. It was not permitted to ignore facts alleged in the complaint or draw inferences favorable to the defendants. *Nunez v. J.P. Morgan Chase Bank, N.A.*, 2016 WL 1612832, *3 (11th Cir., Apr. 22, 2016). Nor may the district court move beyond to weigh the facts, resolve factual questions, determine the merits of the claim, or the application of affirmative defenses. 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1356 (1990).

The district court performed all of these prohibited actions, thereby committing reversible error.

1. Reasonable Expectation of Payment

The Report states that because the body shops were told the insurers would default, they had no reasonable expectation of additional payment. This conclusion

[55] Whether the insurers are legally permitted to require the shops to obtain their permission before commencing repairs has not been established. For purposes of this complaint, however, the insurers insistence on it is highly relevant to this cause of action.

breaches multiple principles of established state law and federal pleading analysis. It also misrepresents the contents of the SAC.

The court's characterization of the body shops' demand for "additional" payment is inaccurate. The body shops asserted the insurers refused all payment for multiple necessary repair elements, the most common of which were set out in Exhibit "3" to the SAC, and made only partial payment for others. The court's conclusion the body shops simply want more contradicts these allegations; it cannot reasonably be inferred the body shops just want more when the SAC states unequivocally they have not received payment at all for substantial portions of their work.

The district court supported its ruling with inapplicable authority. The cases the court relied upon originate from Georgia, Mississippi,[56] Ohio and Florida, applying the law of those states. In fact, other than citing to the elements, the Report does not reference Indiana authority at all.

Facially, the court's ruling the body shops' expectation of payment was unreasonable fails. The SAC avers the insurers were aware of the repairs, were aware

[56] With respect to the Mississippi case cited by the district court, *Lauderdale County*, the district court's reading of this authority was incorrect, as shown in the Appellants' brief for the related case *Automotive Alignment & Body Service, et al., v. State Farm Mutual Auto Insurance Company, et al.*, Docket No. 16-13596-AA.

the shops expected to be paid by the insurers, and they affirmed the reasonableness of this expectation by making partial payment. None of the insurers have ever denied they are required to pay for repairs. The dispute then is not whether the shops had a reasonable expectation of payment. The dispute is how much must be paid.

The district court cited no authority that a defendant can unilaterally decide how much it is required to pay and force a vendor to accept that amount without legal recourse. Appellants respectfully submit no such authority exists in Indiana law, as it, like other jurisdictions, recognizes the duty to pay reasonable value for work performed is not contingent upon the defendant's intent to pay that value.

Quasi-contracts arise by operation of law, to ensure that one performing labors receives just compensation. The obligation to pay is imposed without regard to a defendant's intentions. *Indianapolis Raceway Park, Inc. v. Curtiss*, 386 N.E.2D 724, 726 (Ind. 1979)("Contracts implied in law . . . are not contracts in the true sense. They rest on a legal fiction imposed by law without regard to assent of the parties. They arise from reason, law, and natural equity, and are clothed with the semblance of contract for the purpose of a remedy. . . . In other words, where there is a wrong, the court will find a remedy.")(emphasis added), *Wenning v. Calhoun*, 827N.E.2D 627, 630 (Ind. Ct. App. 2005), *Galloway v. Methodist Hosps, Inc.*, 658 N.E.2D 611, 614 (Ind. Ct. App. 1995).

Case: 16-13601 Date Filed: 09/30/2016 Page: 66 of 83 SEALED

Thus, under Indiana law, whether or not the insurers ever intended to pay or announced their intent to default is irrelevant. Indiana law recognizes just such fact scenarios to allow quantum meruit for full payment after a defendant has made partial payment, or tendered what he chose to pay and refused further payment. Indiana law has so recognized and enforced quantum meruit claims under these circumstances consistently for nearly a century. *Mueller,* 873 N.E.2d 652, *Board of Pub. Works of City of Hammond, Indiana v. L. Cosby Bernard & Co.*, 435 N.E.2d 575, 578 (Ind. Ct. App. 1982), *Jones v. Serval, Inc*. 186 N.E.2D 689, 695 (Ind. Ct. App. 1962), *Cent. Dredging Co. v. F.G. Proudfoot Co.,* 158 N.E. 229, 231 (Ind. Ct. App. 1927).

The district court's ruling thus breaches state law.

The district court's ruling necessarily required the court to apply the conclusion that insurers are legally permitted to refuse to make full payment for necessary repairs performed upon the vehicles of their respective insurance and claimants. No facts appear in the SAC to support such a conclusion. It does appear in the motion arguments of Appellee insurers–because they have an interest in reducing payment for repairs, they are entitled to refuse payment for necessary repairs.

The district court adopted this argument. In so doing, the district court breached its obligation to accept the allegations of the complaint as true, hypothesized a legal justification to decide the merits of the claim, and drew inferences unfavorable

to the plaintiffs, all of which it is prohibited from doing. *Twin City Fire Ins. Co.,* 609 Fed. App'x. at 977-78.

2. Benefit Conferred

Despite the SAC alleging to the contrary, the district court ruled the body shops provided no benefit to the insurers and therefore the claim must fail. Although the SAC identified the benefit conferred, the district court decided it was not good enough. Specifically the Report stated, "the only effect repairs have on Defendants is the incurring of an obligation to pay for it."[57]

The district court's ruling was specifically based upon Florida law.[58] Florida law does not apply to this claim. Indiana law applies. The district court is not permitted to substitute the law of one state for that of another. *West,* 311 U.S. at 236-237.

Indiana regularly relies upon the *Restatement* to determine the equities of a claim. The *Restatement's* definition of a benefit is very broad:

> b. What constitutes a benefit. A person confers a benefit upon another if he gives to the other possession of or some other interest in money, land, chattels, or choses in action, performs services beneficial to or at the request of the other, satisfies a debt or a duty of the other, or in any way adds to the other's security or advantage. He confers a benefit not

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[57]Report, Doc. No. 175, pg. 23.

[58]*Id.,* pg. 22.

> only where he adds to the property of another, but also where he saves the other from expense or loss. The word "benefit," therefore, denotes any form of advantage.

Restatement (First) of Restitution § 1, cmt. B (1937).

The SAC alleges the body shops' services permit the insurers to execute their independent duty and obligations to insureds and claimants. Failure to execute this duty leaves the insurers open to litigation from both its insureds (for breach of contract) and third-party claimants (for declaratory judgment). The SAC therefore alleged benefits conferred which fall squarely within the definition set forth by the *Restatement*.

At the motion to dismiss stage, the district court was limited to determining whether the SAC alleged a benefit was conferred; it did so. It is not a benefit which is obviously delusory, therefore the district court was not permitted to find it insufficiently "plausible." Merely because the insurers argued they were not benefitted alters this, nor does it alter the required motion analysis.

The district court improperly exceeded the boundaries of analysis to decide the insurers' argument was better, and resolved an issue of fact based solely upon those arguments, which it was not permitted to do. See Section I.

More egregiously, the district court did so without any evidence before it. In so doing the district court committed reversible error. See, *SD3, LLC v. Black & Decker (U.S.), Inc.*, 801 F.3d 412, 434 (4th Cir. 2015)(it is error for the district court to "collapse discovery, summary judgment, and trial into the pleading stages of a case.") (Internal punctuation omitted), *Dobyns v. United States*, 91 Fed. Cl. 412, 427 (2010).

Whether or not the Appellees benefitted from the body shops' services cannot be decided at the pleading stage, and it certainly may not be decided simply because the defendants denied it by way of motion. The district court was constrained to accept the non-delusory allegations of the complaint as true and draw all inferences favorable to the plaintiffs. It was not permitted to make factual determinations and certainly it was not permitted to draw factual merit conclusions based upon inapplicable, out-of-state authority.

3. Contracts

The SAC specifically denied the existence of any express contract covering the claims asserted. Despite this, the district court accepted the defendants' motion argument that contracts did exist and therefore equitable relief was foreclosed.

The district court was prohibited from disregarding the allegations of the complaint to favor the motion arguments of the insurers. This error is even more

egregious here, as the defendants merely asserted contracts existed; they produced no contracts, identified no contract terms, or provided a factual basis for assuming the validity of any purported contract. They simply said contracts existed and the district court accepted this in direct contradiction of the SAC's allegations.

Where the existence of a contract is disputed, that existence is a question of fact for the jury. *City of Indianapolis v. Twin Lakes Enterprises, Inc.*, 568 N.E.2d 1073, 1079 (Ind. Ct. App. 1991). It may not be decided as a matter of law by the court. *Id.*

Further, the intentions of the parties to a purported contract is also a question of fact for the jury. *Id.* It is essential to the formation of a valid contract that both parties willingly assent to its terms. *Bain v. Board of Trustees of Starke Mem'l Hosp.*, 550 N.E.2d 106, 110 (Ind. Ct. App. 1990). A contract formed under dress is not valid, "a fundamental principle of law" Indiana has recognized for over a century. *Rose v. Owen*, 85 N.E. 129, 131 (Ind. 1908).

Here, the district court not only accepted the defendants' assertion of contracts' existence–in direct contradiction of the SAC– it assumed validity of the undisclosed contracts. The SAC precludes any reasonable inference any contract formation was

valid. On the contrary, the SAC alleges the insurers routinely impose their will through threats, duress and economic coercion.[59]

The district court ignored the contents of the SAC and improperly assumed the role of jury to determine the undisclosed contracts existed, covered the present controversy, and the body shops willingly assented to those undisclosed terms. In all respects, the district court's conclusion regarding the existence of contracts breached every conceivable obligation and duty imposed in passing on a motion to dismiss.

4. Affirmative Defenses

In dismissing the quantum meruit claim, the district court necessarily applied a number of affirmative defenses on behalf of the insurers. Although this was pointed out in Appellants' Objections, the district court did not substantively address the matter.

An affirmative defense is one that admits to the complaint, but avoids liability, wholly or partly, by new allegations of excuse, justification, or other negating matters. *VP Properties & Developments, LLP v. Seneca Specialty Ins. Co.,* 2016 WL 945230, *3 (11th Cir. Mar. 14, 2016).

Ordinarily, a motion to dismiss may not be decided upon an affirmative defense, specifically because the trial court is required to accept the factual

[59]SAC, Doc. No. 151, ¶¶ 82, 130, 142, 160, 164-65, 194, 236, 311, 329 and 466.

allegations of the complaint as true; a plaintiff is not required to negate an anticipated affirmative defense in a complaint. *Twin City Fire Insurance Co.*, 609 Fed. App'x. at 976-77. Only if the existence of an affirmative defense plainly and conclusively appears on the face of the complaint made dismissal even be considered. *Id.*

The trial court may not, however, draw negative inferences, assume facts or hypothesize scenarios to justify application of an affirmative defense. *Id.* at 977-78.

The district court clearly applied an affirmative defense in ruling the existence of a contract extinguished the quantum meruit claim. It hypothesized the existence of valid contracts. As the SAC explicitly stated no contracts existed, the district court necessarily looked outside the complaint's contents to find an avoidance of liability on behalf of the insurers. The district court did not require the insurers to produce the alleged contracts, provide any basis establishing the validity of the purported contracts nor even recite the terms showing the purported contracts covered the present controversy. It simply adopted the insurers' arguments without any evidence whatsoever. All of this constitutes application of an affirmative defense without justification.

This was not the only application of affirmative defenses, however. The district court ruled the insurers' course of conduct in repeatedly defaulting on their obligations rendered the body shops' claim untenable as a matter of law. The body

shops pointed out this conclusion required application of course of conduct affirmative defenses, either waiver or estoppel, neither of which was supported by the allegations of the SAC. The district court ignored this.

Which of these affirmative defenses, or some other, was applied in conjunction with the contract affirmative defense is unknown but it is clear the court avoided liability on behalf of the defendants in direct contradiction of the SAC's contents. As a defendant bears the burden of pleading and proving affirmative defenses, *Meacham v. Knolls Atomic Power Lab.,* 554 U.S. 84, 93 (2008), *Thorsteinsson v. M/V Drangur*, 891 F.2d 1547, 1550-51 (11th Cir. 1990), it was reversible error for the district court to dismiss the claim on this basis.

V. REASSIGNMENT TO ANOTHER JUDGE

If this Court remands this case, the body shops respectfully request reassignment to a different judge. Appellants understand reassignment is an extraordinary measure not taken lightly. However, the body shops believe the history of this and related cases warrants reassignment.

Three factors inform the decision to reassign a case on remand: (1) whether the original judge would have difficulty putting his previous views and findings aside; (2) whether reassignment is appropriate to preserve the appearance of justice; and (3) whether reassignment would entail waste and duplication out of proportion to the

gains realized from reassignment. *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1373 (11th Cir. 1997).

The district court has repeatedly shown it is unwilling to set aside its previous rulings. This is most obvious in the court's handling of the alleged "group pleading" problem. As discussed above, the court has refused to allow use of "the defendants" despite that use falling well within the precedents of this Court. Simultaneously, the court prohibited the body shops from identifying each insurer by name under threat of sanctions. This leaves the body shops with no way to plead, a problem that has been repeatedly pointed out to the district court in this and companion cases but the district court has ignored it.

The court issued an order on the antitrust claims which included directions as to what needed to be included to meet the court's pleading requirements. The body shops amended their complaint to specifically include these purportedly necessary facts. The body shops notified the district court of these amendments, directly relating them to the previous order, in response to the inevitable motions to dismiss which followed amendment. The body shops pointed out each purported deficiency in the order and a corresponding change in the SAC.[60]

[60]Omnibus Response to Motions to Dismiss, Doc. No. 158.

However, although the complaint had changed, and these changes were pointed out, the district court merely adopted the order which predated the amended complaint. It did not address at all the amendments made in direct response to the previous order, nor provide explanation why the new complaint was insufficient despite complying with the previous order. This begs the question of whether the district court even viewed the amended complaint.

The district court has repeatedly been presented with unambiguous authority that its rulings are legally insupportable, for both state and federal claims. When this is raised in Objections, it is ignored. The court created a qualified privilege for the Indiana state law tortious interference claim specifically claiming authority for such arising out of Florida state law, which does not apply. The body shops pointed this out in their Objections, but the district court ignored it. The district court frequently and improperly relies upon the law of other states to justify its decisions, even when doing so directly contradicts established applicable state law. Again, this is been pointed out to the district court which has ignored it.

The Report adopted by the district court in this and other related cases specifically required Rule 9 pleading, demanding the "who, what, when, where, [and] how" of the claims. It has been repeatedly pointed out in Objections that no claim in

any complaint is subject to Rule 9(b) particularity pleading. The district court ignored this and adopted the recommendation anyway.

These are only a few examples of the numerous instances in which the body shops have pointed out the factual and legal errors made in the Reports and orders. In every instance, the court has refused to acknowledge the problems it created, choosing to repeat them instead.

The same facts support reassignment to preserve the appearance of justice. The district court's repeated refusals to apply proper state law and federal rule, repeated refusal to even acknowledge the problems it created, strongly indicates its indifference to justice, both apparent and actual.

As this case has never progressed beyond the initial pleading stage, despite substantial passage of time, reassignment would not create any duplicate effort or waste. Appellants respectfully submit reassignment is appropriate and necessary in the event of remand.

CONCLUSION

The district court erred repeatedly in failing to abide by the required standard of pleading. It consistently adopted Appellees' arguments contrary to the factual allegations of the complaint, disregarded facts and otherwise failed to cloak the complaint with the acceptance of truth provided for in law. The district court

repeatedly amended, altered and otherwise failed to faithfully apply the law of the state to state law claims. Had the proper analysis been conducted, the dismissals would not have been granted. Appellants respectfully request this Court reverse the district court and remand for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief does not exceed the type-volume limitation imposed by local rule. The brief was prepared using Corel WordPerfect 12 and contains 13, 327 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

/s/ Allison P. Fry

ALLISON P. FRY

August 8, 2016.

CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of August, 2016, I electronically filed the Plaintiffs-Appellants brief with the Clerk of the Court. In addition, the original and six copies of the foregoing was filed with the Clerk of the Court via first class mail and an electronic version of the foregoing was sent via the Court's filing system or email to counsel of record.

/s/ Allison P. Fry

ALLISON P. FRY

APPENDIX

CERTIFICATE OF INTERESTED PARTIES

Allstate Indemnity Company
Allstate Insurance Company
Allstate Property and Casualty Insurance Company
Allstate Vehicle And Property Insurance Company
American Family Mutual Insurance Company
American States Insurance Company
Austin, Brent R.
Auto Body Specialties of Lafayette, Inc.
Barthel, David John
Beekhuizen, Michael
Best, Robert Bradley
Botti, Mark J.
Brothers Body and Paint of Morgan County, Inc.
Caldwell, Lori J.
Cantrell, Dennis F.
Carpenter, Michael
Cashdan, Jeffery S.
Clark Automotive, Inc.
Clark, Johanna W.
Clarksville Collision Center, Inc.
Cross Paint & Body Shop, Incorporated
Curvin, Thomas William
Dan T. Gratz Body Shop, Inc.
DeLaney, Kathleen Ann
Dimick, Julia E.
Drummy, John B.
Eaves, Jr., John Arthur
Enneking's Auto Body, Inc.
Excel Auto Body, Inc.
Fenton, Richard L.
Fischer, Ian Matthew
Fry, Allison P.
Gary Conns Collision Center, Inc.

GEICO General Insurance Company
Geico Indemnity Company
Generations Custom Auto & Collision, Inc.
Goldfine, Dan W.
Gorham, Patricia A.
Grabel, Joshua
Halavais, Jamie L.
Hanover, Mark L.
Harwood Collision Repair, LLC
Helmer, Elizabeth
Howard, Kimberly E.
Hurley, Ryan Michael
Indiana Autobody Association, Inc.
Indiana Farmers Mutual Insurance Company
Indiana Insurance Company
Jenkins, Sarah
Jones, Brian Scott
Jones, Curtis Tre
Jon's Body Shop, Inc.
Jonkman Garage, Inc.
Kenny, Michael P.
Kissane, Joseph T.
Kochis, Kymberly
Lau, Bonnie
Liberty Mutual Insurance Company
Litchford, Hal K.
Locke, Cynthia M.
Lynch, Debra McVicker (Honorable)
Maas, Rebecca Jean
Main Street Body Shop, Inc.
Martin's Body Shop, Inc.
Master, Jonathan Stuart
Mattingly Collision Center, Inc.
McCarthy, Michael Sean
McCluggage, Michael L.
McNamar, Eric C.
Miller, Debra H.

Minton Body Shop, Inc.
Mumford, Michael E.
Nagle, Joel T.
Nationwide Assurance Company
Nationwide Mutual Insurance Company
Nationwide Property and Casualty Insurance Company
Neary Collision, Inc.
Nelson, Michael R.
Newton, Emily
Nolan, Francis X.
Osborn, Kathy Lynn
Parker, Paula Anastasia
Perkins, Heather Carson
Powers, Tiffany L.
Pratt, Tanya Walton (Honorable)
Presnell, Gregory (Honorable)
Prestige Auto Body Repair, Inc.
Progressive American Insurance Company
Progressive Casualty Insurance Company
Progressive Classic Insurance Company
Progressive Direct Insurance Company
Progressive Max Insurance Company
Rudolph, Amelia T.
Safeco Insurance Company of Indiana
Shelter General Insurance Company
Shelter Mutual Insurance Company
Smith, Thomas (Honorable)
Sniderman, Mark
Snow, Peter T.
Southlake Collision Center, Inc.
State Farm Fire And Casualty Company
State Farm General Insurance Company
State Farm Mutual Automobile Insurance Company
Team 150, Inc.
Thurman, Carl
Trimble, John Carl
Vargo, Ernest E.

Vitale, Michael S.
Voelz Body Shop, Inc.
Wells, Kevin
Wilkerson Body and Frame, Inc.
Zurich American Insurance Company
Zurich American Insurance Company of Illinois