

No. 16-15470

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

PARKER AUTO BODY, INC, *et al.*,

Plaintiffs-Appellants,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,

Defendants-Appellees.

**RESPONSE OF CERTAIN APPELLEES TO APPELLANTS' MOTION TO
REINSTATE APPEAL**

Dan W. Goldfine
Joshua Grabel
Jamie L. Halavais
Ian Fischer
LEWIS ROCA ROTHGERBER CHRISTIE LLP
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004
Telephone: 602-262-5392
Facsimile: 602-262-5747
Email: dgoldfine@lrrc.com
jgrabel@lrrc.com
jhalavais@lrrc.com
ifischer@lrrc.com

Counsel for Defendants/Appellees GEICO Casualty Company, GEICO General Insurance Company, GEICO Indemnity Company and Government Employees Insurance Company

Parker Auto Body, Inc. v. State Farm Mutual Automobile Insurance Company

Richard C. Stanley, 8487
Elizabeth S. Horn, 35829
Stanley, Reuter, Ross, Thornton & Alford, L.L.C.
909 Poydras Street, Suite 2500
New Orleans, Louisiana 70112
Telephone: 504-523-1580
Facsimile: 504-524-0069
rca@stanleyreuter.com
esh@stanleyreuter.com

Attorneys for Defendant/Appellee Fireman's Fund Insurance Company

Kathleen Maloney Skambis, 913073
Christopher C. Skambis, 0262358
The Skambis Law Firm
720 Rugby Street, Suite 120
Orlando, Florida 32804
Telephone: (407) 649-0090
Facsimile: (407) 649-0191
E-mail: kskambis@skambislaw.com
E-mail: cskambis@skambislaw.com

Counsel for Defendant/Appellee Safeway Insurance Company of Louisiana

CORRECTED CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rules 26.1-1, *et seq.*, 26.1-2, and 26.1-3, counsel for Defendants/Appellees hereby submit the following corrections and/or additions (noted in bold) to the list of persons and entities that have an interest in the outcome of this appeal:

10 W. Nationwide, LLC

1000 Yard Street, LLC

101 N Twentieth St, LLC

1015 Long Street, LLC

1050 Yard Street, LLC

1125 Rail Street, LLC

120 Acre Partners, LLC

120 Acre Partners, Ltd.

1492 Capital, LLC

155 Rivulon Boulevard, LLC

180 E. Broad Partners, LLC

21st Centennial Insurance Company

21st Century Advantage Insurance Company

21st Century Auto Insurance Company of New Jersey

21st Century Centennial Insurance Company

~~21st Century North American Insurance Company~~ **21st Century North America Insurance Company**

21st Century Pinnacle Insurance Company

21st Century Preferred Insurance Company

21st Century Premier Insurance Company

21st Century Superior Insurance Company

275 Rivulon Boulevard, LLC

400 West Nationwide Boulevard, LLC

425 West Nationwide Boulevard, LLC

44 Chestnut, LLC

75 Rivulon Boulevard, LLC

775 Yard Street Restaurant, LLC

775 Yard Street, LLC

780 Yard Street, LLC

795 Rail Street, LLC

800 Bobcat Avenue, LLC

800 Goodale Boulevard, LLC

800 Yard Street, LLC

805 Bobcat Avenue, LLC

808 Yard Street, LLC

820 Goodale Boulevard, LLC

840 Third Avenue, LLC

845 Yard Street, LLC

850 Goodale Blvd., LLC

860 Third Avenue, LLC

880 Third Avenue, LLC

895 W. Third Avenue, LLC

975 Rail Street, LLC

AD Investments, LLC

Adams Collision, LLC

ADTV, LLC

Advantage Collision Center Inc.

Affirmative Casualty Insurance Company

Affirmative Insurance Company

Affirmative Insurance Group, Inc.

Affirmative Insurance Holdings, Inc. (AFFMQ)

AGMC Reinsurance, Ltd.

AIG Property Casualty Company

AIG Property Casualty U.S., Inc.

AIUH LLC

Alexander, Kevin David

Alliant Insurance Service Company

Allianz Europe B.V.

Allianz Global Risks US Insurance Company

~~**Allianz Group**~~

Allianz of America, Inc.

Allianz SE (OTC Markets: AZSEY)

ALLIED General Agency Company

ALLIED Group, Inc.

Allied Holdings (Delaware), Inc.

ALLIED Insurance Company of America

ALLIED Property & Casualty Insurance Company

ALLIED Property and Casualty Insurance Company

ALLIED Texas Agency, Inc.

Allstate Corporation (NYSE: ALL)

Allstate Fire & Casualty Insurance Company

Allstate Fire and Casualty Insurance Company

Allstate Indemnity Company

Allstate Insurance Company

Allstate Insurance Holdings, LLC

Allstate Property and Casualty Company

~~**Allstate Property & Casualty Insurance Company**~~

Alston & Bird, LLP

AMCO Insurance Company

America First Insurance Company

~~**American International Group, Inc. (NYSE: AIG)**~~ **American International Group, Inc.**

American Marine Underwriters, Inc.

American National General Insurance Company

~~American National Insurance Company~~ **American National Insurance Company (NASDAQ: ANAT)**

~~American National Property & Casualty Company~~ **American National Property And Casualty Company**

Anderson Meadows, LLC

Antleys Collision & Repair Center, LLC

Arena District CA I, LLC

Arena District Owners Association

Austin, Brent R.

Auto Body Specialists, Inc.

Axinn, Veltrop & Harkrider, LLP

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

Baker & Hostetler, LLP

Barthel, David John

Battery Warehouse of Natchitoches Inc., d/b/a Tony's Body Shop

BCCS Investment Fund LLC

~~Beek, Norman K.~~

Beekhuizen, Michael

~~Berkshire Hathaway Group (NYSE: BRK-A AND/OR BRK-B)~~ **Berkshire Hathaway Inc. (ticker: BRK-A and BRK-B)**

Bernard, Cassica Elliot & Davis

~~Best, Robert Bradley~~ **Best, R. Bradley Esq.**

Besvinick, Laura E.

Birk, Daniel D.

Bobbys Paint & Body Shop & Auto Sales, LLC

Body By Cook, Inc.

Bonk, Jason B.

Botti, Mark J.

Boulevard Inn Limited Liability Company

Boyd & Jenerette, PA

Bracken, Kristen W.

Bradshaws Body Shop Inc.

Breithaupt Dunn

Brileys Paint & Body Inc.

Broad Street Retail, LLC

Brooke School Investment Fund, LLC

Brouillettes Paint & Body, LLC

C & C Automotive, LLC, d/b/a Miles Paint & Body

Caldwell, Lori J.

Carlton Fields Jordan Burt, PA

Carpenter Lipps & Leland LLP

Carpenter, Michael

Carville, Elizabeth Babin

Cashdan, Jeffrey S.

CHP New Markets Investment Fund, LLC

Clark, Johanna W.

CNRI- Cannonsport, LLC

CNRI-Cannonsport Condominium, LLC

CNRI-Cannonsport, LLC

Coast to Coast Corporation

Coddington, Hicks & Danforth

Co-Investment Fund, LLC

~~**Cole, Scott & Kissane, PA**~~

COLHOC Limited Partnership

Colonial County Mutual Insurance Company

Columbus Arena Management, LLC

Complete Collision Center, LLC

Continental/North Shore I, L.P.

Continental/North Shore II, L.P.

Continental/NRI North Shore Investments, LLC

Cook, Yancey, King & Galloway, APLC

Cotton Mill Partners, LLC

Cottrell, Edward Keenan

Country Club Auto Repair Inc.

Crestbrook Insurance Company

Crewville, Ltd.

CSAA General Insurance Company (formerly known as Western United Insurance Company)

CSAA Insurance Exchange

de Leeuw, Michael B.

Dentons, US LLP

Depositors Insurance Company

Diamantas, Kyle A.

Direct General Insurance Company of Louisiana*

Discover Affordable Housing Investment Fund I LLC

Donelon, James J., Commissioner of Insurance for the State of Louisiana

Dow, Randy R.

Drive Insurance Holdings, Inc.

DuBos, Michael L.

Duchesne, Edward, d/b/a Duchesne Paint & Body

DVM Insurance Agency

Eagle Auto Body & Paint Service Inc.

Eagle Captive Reinsurance, LLC

East of Madison, LLC

Eaves, Jr., John A.

Eimer Stahl LLP

Elara Holdings, Inc.*

ELH Investment Fund LLC

Encompass Indemnity Company

Encompass Insurance Company of America

~~Encompass Property & Casualty Company~~

Esurance Holdings, Inc.

Esurance Insurance Company

Parker Auto Body, Inc. v. State Farm Mutual Automobile Insurance Company

Esurance Property and Casualty Insurance Company

Farmers Group, Inc.

Farmers Insurance Exchange

~~**Farmers Insurance Group**~~

Farmland Mutual Insurance Company

Fenton, Richard L.

Final Touch Collision Repair Inc.

Fire Insurance Exchange

~~**Firemans Fund Insurance Company**~~ **Fireman's Fund Insurance Company**

Fischer, Ian Matthew

Freedom Specialty Insurance Company (fka Atlantic Insurance Company)

Fry, Allison P.

GEICO Casualty Company

GEICO General Insurance Company

GEICO Indemnity Company

Goldfine, Dan W.

Goldstons Auto Body, LLC

Government Employee's Insurance Company

GPN-1 Property Owners Association, Inc.

Grabel, Joshua

Grandview Yard Hotel Holdings, LLC

Grandview Yard Hotel, LLC

Griffith, Jr., Steven F.

Halavais, Jamie L.

Hanover, Mark L.

Harleysville Group Inc.

Harleysville Insurance Company

Harleysville Insurance Company of New Jersey

Harleysville Insurance Company of New York

Harleysville Lake States Insurance Company

Harleysville Life Insurance Company

Harleysville Pennland Insurance Company

Harleysville Preferred Insurance Company

Harleysville Worcester Insurance Company

~~**Hartford Accident & Indemnity Company**~~ **Hartford Accident and Indemnity Company**

Hartford Casualty Insurance Company

Hartford Financial Services Group, Inc. (The) (NYSE: HIG)

Hartford Fire Insurance Company

Hartford Insurance Company of the Midwest

Hayes, Karen L. (United States Magistrate Judge)

Helmer, Elizabeth

Hideaway Properties Corp.

Hochstadt, Eric

~~**Holcomb Dunbar Watts Best Masters & Golmon, PA**~~ **Holcomb, Dunbar, Watts, Best, Masters & Golmon, PA**

Horn, Elizabeth Swingle

Parker Auto Body, Inc. v. State Farm Mutual Automobile Insurance Company

Imperial Fire & Casualty Insurance Company

Insurance Intermediaries, Inc.

James, Robert G. (United States District Judge)

Jerome Village Company, LLC

Jerome Village Master Property Owners Association

Jerome Village Residential Property Owners Association, Inc.

Jim's Body Shop, LLC

John Arthur Eaves, Attorneys at Law

Johnnie's Paint & Body Shop, Inc.

Johnson, Wayne

Jordan, Robert, d/b/a Jordan's Automotive & Performance

JV Developers, LLC

~~Kaplan, Howard Bruce~~ Kaplan, Howard B.

Keith's Paint & Body, LLC

Kelley, Joseph S., d/b/a Kelley Kustoms

Kencade Enterprises, Inc., d/b/a Ken's Kustom Body Shop

Kenny, Michael P.

King & Spalding, LLP

~~Kissane, Joseph T.~~

Koch, Amelia W.

Kochis, Kymberly

Korinko, Jonathon J.

Krystal Auto Collision Inc.

Kubicki Draper, PA

Landry, Dominic, d/b/a Dom's Paint & Body

Larzelere Picou Wells Simpson Lonero, LLC

Lau, Bonnie

Leaguers Investment Fund, LLC

Lee, Wayne J.

LeJeunes Body Works, Inc.

~~Lewis Roca Rothgerber Christie~~ **Lewis Roca Rothgerber Christie, LLP**

Liberty Insurance Holdings Inc.

Liberty Mutual Agency Corporation

Liberty Mutual Fire Insurance Company

~~Liberty Mutual Group~~ **Liberty Mutual Group Inc.**

Liberty Mutual Holding Company, Inc.

Liberty Mutual Insurance Company

Life REO Holdings, LLC

Litchford, Hal K.

Lloyd Lauw Collision Repair Center, LLC

LMHC Massachusetts Holdings Inc.

Lone Star General Agency, Inc.

Lonero, Jay M.

Louisiana Farm Bureau Casualty Insurance Company

Loveland, R. Wardell Esq.

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard

Martin's Paint & Body Inc.

Mastando, III, John

~~Masters, Jonathan Stuart~~ **Masters, Jonathan S. Esq.**

Match School Investment Fund, LLC

Mazarac, Keith, d/b/a Precision Body and Frame

McCluggage, Michael L.

McGlinchey Stafford, PLLC

McGlinchey Stafford, PLLC-Houston

Medines Collision Center, LLC

Mumford, Michael E.

NAPA Collision Center of Bastrop, LLC

National Casualty Company

National Casualty Company of America, Ltd.

National General Holdings Corp. (NASDAQ: NGHC)

Nationwide Advantage Mortgage Company

Nationwide Affinity Insurance Company of America

Nationwide Agribusiness Insurance Company

Nationwide Alternative Investments, LLC

Nationwide Arena, LLC

Nationwide Asset Management Holdings, Inc.

Nationwide Asset Management, LLC

Nationwide Assurance Company

Nationwide Bank

Nationwide Cash Management Company

Nationwide Corporation

Nationwide Emerging Managers, LLC

Nationwide Exclusive Agent Risk Purchasing Group, LLC

Nationwide Financial Assignment Company

Nationwide Financial General Agency, Inc.

Nationwide Financial Institution Distributors Agency, Inc.

Nationwide Financial Services Capital Trust

Nationwide Financial Services, Inc.

Nationwide Foundation

Nationwide Fund Advisors

Nationwide Fund Distributors LLC

Nationwide Fund Management LLC

Nationwide General Insurance Company

Nationwide Global Holdings, Inc.

Nationwide Global Ventures, Inc.

Nationwide Indemnity Company

Nationwide Insurance Company of America

Nationwide Insurance Company of Florida

Nationwide Investment Advisors, LLC

Nationwide Investment Services Corporation

Nationwide Life and Annuity Insurance Company

Nationwide Life Insurance Company

Nationwide Life Tax Credit Partners 2002-A, LLC
Nationwide Life Tax Credit Partners 2002-B, LLC
Nationwide Life Tax Credit Partners 2002-C, LLC
Nationwide Life Tax Credit Partners 2003-A, LLC
Nationwide Life Tax Credit Partners 2003-B, LLC
Nationwide Life Tax Credit Partners 2003-C, LLC
Nationwide Life Tax Credit Partners 2004-A, LLC
Nationwide Life Tax Credit Partners 2004-B, LLC
Nationwide Life Tax Credit Partners 2004-C, LLC
Nationwide Life Tax Credit Partners 2004-D, LLC
Nationwide Life Tax Credit Partners 2004-E, LLC
Nationwide Life Tax Credit Partners 2004-F, LLC
Nationwide Life Tax Credit Partners 2005-A, LLC
Nationwide Life Tax Credit Partners 2005-B, LLC
Nationwide Life Tax Credit Partners 2005-C, LLC
Nationwide Life Tax Credit Partners 2005-D, LLC
Nationwide Life Tax Credit Partners 2005-E, LLC
Nationwide Life Tax Credit Partners 2007-A, LLC
Nationwide Life Tax Credit Partners 2009-A, LLC
Nationwide Life Tax Credit Partners 2009-B, LLC
Nationwide Life Tax Credit Partners 2009-C, LLC
Nationwide Life Tax Credit Partners 2009-D, LLC
Nationwide Life Tax Credit Partners 2009-E, LLC

Nationwide Life Tax Credit Partners 2009-F, LLC

Nationwide Life Tax Credit Partners 2009-I, LLC

Nationwide Life Tax Credit Partners No. 1, LLC

Nationwide Lloyds

Nationwide Member Solutions Agency Inc.

Nationwide Mutual Capital I, LLC

Nationwide Mutual Capital, LLC

Nationwide Mutual Fire Insurance Company

Nationwide Mutual Insurance Company

Nationwide Mutual Insurance Company Nationwide Defined Benefit Master Trust

Nationwide Private Equity Fund, LLC

Nationwide Property and Casualty Company

Nationwide Property and Casualty Insurance Company

Nationwide Realty Investors, Ltd.

Nationwide Realty Management, LLC

Nationwide Realty Services, Ltd.

Nationwide Retirement Solutions, Inc.

Nationwide Securities, LLC

Nationwide Services Company, LLC

Nationwide Tax Credit Partners 2009-G, LLC

Nationwide Tax Credit Partners 2009-H, LLC

Nationwide Tax Credit Partners 2013-A, LLC

Nationwide Tax Credit Partners 2013-B, LLC

ND La Quinta Partners, LLC

Nelson, Michael R.

NE-REI, LLC

Newhouse Capital Partners II, LLC

Newhouse Capital Partners, LLC

Newton, Emily S.

NFS Distributors, Inc.

NHT XII Tax Credit Fund, LLC

NNOV8, LLC

Nolan, Francis X.

North Bank Condominium Home Owners Association

North of Third, LLC

Northstar Commercial Development, LLC

Northstar Master Property Owners Association, Inc.

Northstar Residential Development, LLC

NRI 220 Schrock, LLC

NRI Arena, LLC

NRI Brookside, LLC

NRI Builders, LLC

NRI Communities/Harris Blvd., LLC

NRI Cramer Creek, LLC

NRI Equity Land Investments, LLC

NRI Equity Tampa, LLC

NRI Maxtown, LLC

NRI Office Ventures, Ltd

NRI Telecom, LLC

NRI-Rivulon, LLC

NS Developers, LLC

NTCIF-2011 Georgia State Investor, LLC

NTCIF-2011, LLC

NTCP 2011-A, LLC

NTCP 2012-A, LLC

NTCP 2013-C, LLC

NTCP 2014-A, LLC

NTCP 2014-B, LLC

NTCP 2014-C, LLC

NTCP 2015-A, LLC

NTCP 2015-B, LLC

NW REI, LLC

NW-Amesbury, LLC

NW-Bandera, LLC

NW-Bayshore, LLC

NW-Bee Cave, LLC

NW-Belleview, LLC

NW-Brooklyn, LLC

NW-Camelback, LLC

NW-Cameron, LLC

NW-Cedar Springs, LLC

NW-Central Station, LLC

NW-CNC Coppell, LLC

NW-Corvallis, LLC

NWD 205 Vine, LLC

NWD 225 Nationwide, LLC

NWD 230 West, LLC

NWD 240 Nationwide, LLC

NWD 250 Brodbelt, LLC

NWD 265 Neil, LLC

NWD 275 Marconi, LLC

NWD 295 McConnell, LLC

NWD 300 Neil, LLC

NWD 300 Spring, LLC

NWD 355 McConnell, LLC

NWD 425 Nationwide, LLC

NWD 500 Nationwide, LLC

NWD Arena Crossing, LLC

NWD Arena District I, LLC

NWD Arena District II, LLC

NWD Arena District MM, LLC

NWD Arena District PW, LLC

NWD Arena District V, LLC

NWD Asset Management Holdings, Inc.

NWD Athletic Club, LLC

NWD Franklinton, LLC

NWD Investment Management, Inc.

NWD Investments, LLC

NW-Deerfield, LLC

NW-Dulles, LLC

NW-Franklin Mills, LLC

NW-Howell Mill, LLC

NW-Hudnall, LLC

NW-Jasper WAG, LLC

NW-Jefferson, LLC

NW-Kentwood Towne Center, LLC

NW-Lawrence, LLC

NW-Lovers Lane, LLC

NW-Montrose, LLC

NW-Mueller II, LLC

NW-Northridge, LLC

NW-Oakley Station, LLC

NW-Olathe, LLC

NW-Park 288, LLC

NW-Park Memorial, LLC

NW-Peachtree, LLC

NW-Portales, LLC

NW-Promenade at Madison, LLC

NW-South Park, LLC

NW-Taylor Farmer Jack, LLC

NW-Triangle, LLC

NW-Tysons, LLC

NW-West Ave., LLC

NW-Windcross, LLC

O'Connor, Cozen

OCH Company, LLC

Ohio Center Hotel Company, Ltd.

Old Track Street Owners Association

Olentangy Reinsurance, LLC

On Your Side Nationwide Insurance Agency, Inc.

Ordeneaux, James Keith

OYS Fund LLC

Park 288 Industrial, LLC

Parker Auto Body, Inc.

Parker, Daniel P.

Pennison, Christopher R.

~~Perez, Karina Isabel Perez, Karina~~

Perimeter A, Ltd.

Pizzuti Properties, LLC

~~Plauche, Jr., Andrew Lane~~ Plauché, Andrew L.

~~Plauche Maselli Parkerson LLP~~ Plauché Maselli Parkerson LLP

Polaris A, Ltd.

Powers, Tiffany L.

Premier Agency, Inc.

Presnell, Gregory (Honorable)

Privilege Underwriters Reciprocal Exchange

Privilege Underwriters, Inc.

Profit, David, d/b/a Dave's Auto Body

Progressive Direct Holdings, Inc.

Progressive Paloverde Insurance Company

Progressive Security Insurance Company

Pure Insurance Company

Pure Risk Management, LLC

Registered Investment Advisors Services, Inc.

Retention Alternatives Ltd.

Reynolds Body Works, LLC

Risk & Regulatory Consulting, LLC

Riverview Diversified Opportunities, LLC

Riverview International Group, Inc.

Riverview Multi Series Fund, LL - Class Event

Riverview Multi Series Fund, LL - Class N

Riverview Polyphony Fund, LLC

Robertson, Christopher, d/b/a Chris Auto Body Shop

Rohback, Thomas G.

Rollo, Anthony J.

Rooney, Timothy J.

~~**Rumberger, Kirk & Caldwell, PA**~~ **Rumberger, Kirk & Caldwell, PA**

Safeco Corporation

Safeco Insurance Company of America

Safeco Insurance Company of Oregon

Safeway County Mutual Insurance Company

Safeway Financial Holding Company

Safeway Insurance Company of Alabama

Safeway Insurance Company of Georgia

~~**Safeway Insurance Company of Louisiana**~~

~~**Safeway Insurance Group**~~

Safeway Leasing, Inc.

Safeway Property Insurance Company

Schmeeckle, Seth A.

Scottsdale Indemnity Company

Scottsdale Insurance Company

Scottsdale Surplus Lines Insurance Company

Seewald, Jeffrey R.

Parker Auto Body, Inc. v. State Farm Mutual Automobile Insurance Company

Sentry Insurance A Mutual Company

Sentry Select Insurance Company

Sentry Insurance Group

Shelter General Insurance Company

Shelter Mutual Insurance Company

~~Skambis, Jr., Christopher Charles~~

~~Skambis Law Firm, The Skambis & Skambis, P.A.~~

Skambis, Kathleen M.

Smith, Gambrell & Russell, LLP

Smith, Jay, d/b/a Precision Collision

Smith, Thomas (Honorable)

Southern Farm Bureau Casualty Insurance Company

SPIC Financial Corporation

Squire Patton Boggs (US) LLP

Staggs, A.W., d/b/a Staggs Auto Body Shop

~~Stanley & Flanagan, L.L.C.~~

~~Stanley, Reuter, Ross, Thornton & Alford~~ **Stanley, Reuter, Ross, Thornton & Alford, LLC**

Stanley, Richard C.

State Farm Fire and Casualty Company

State Farm General Insurance Company

State Farm Mutual Automobile Insurance Company

Streets of Toringdon, LLC

Stroock & Stroock & Lavan, LLP

Stubbs, Inc., d/b/a Expressway Paint & Body

Sullivan, John J.

Sutherland, Asbill & Brennan, LLP

Taylor Auto Body, LLC

~~Allstate Corporation (NYSE: ALL)~~ **The Allstate Corporation (NYSE: ALL)**

~~Hanover American Insurance Company~~ **The Hanover American Insurance Company**

~~Hanover Insurance Company~~ **The Hanover Insurance Company**

~~Hanover Insurance Group (The) (NYSE: THG)~~ **The Hanover Insurance Group (Ticker: THG)**

The Hideaway Club

The Hideaway Owners Association

The Madison Club

The Madison Club Owners Association

The Phoenix Insurance Company

~~Progressive Corp. (The) (NYSE: PGR)~~ **The Progressive Corporation (ticker: PGR)**

~~Travelers Companies, Inc., The (NYSE: TRV)~~ **The Travelers Companies, Inc., (ticker: TRV)**

The Travelers Indemnity Company

~~Travelers Indemnity Company of Connecticut~~ **The Travelers Indemnity Company of Connecticut**

THI Holdings (Delaware), Inc.

Titan Auto Insurance of New Mexico, Inc.

Titan Indemnity Company

Titan Insurance Company

Titan Insurance Services, Inc.

Travelers Casualty Insurance Company of America

~~Travelers Casualty & Surety Company~~ **Travelers Casualty and Surety Company**

~~Travelers Casualty & Surety Company of America~~ **Travelers Casualty and Surety Company of America**

Travelers Casualty Insurance Company of America

Travelers Indemnity Company of America

Travelers Insurance Group Holdings, Inc.

Travelers Property Casualty Company of America

Travelers Property Casualty Corporation

Truck Insurance Exchange

~~United Fire & Casualty Company~~ **United Fire and Casualty Company**

United Fire & Indemnity Company

~~United Fire Group~~ **United Fire Group, Inc. (UFCS)**

United Services Automobile Association

USAA Casualty Insurance Company

USAA General Indemnity Company

~~U.S. Agencies Casualty Insurance Company~~ **US Agencies Casualty Insurance Company, Inc.**

V.P.I. Services, Inc.

Vargo, Ernest E.

Veterinary Pet Insurance Company

Victoria Automobile Insurance Company

Victoria Fire & Casualty Company

Victoria Fire & Casualty Insurance Company

Victoria National Insurance Company

Victoria Select Insurance Company

Victoria Specialty Insurance Company

Vitale, Michael S.

Weil, Gotshal & Manges, LLP

Wenger, Kristen

Western Heritage Insurance Company

Westport Capital Partners II

Wilson Road Developers, LLC

Wilkes, Gregg A.

Winston & Strawn, LLP

Yohai, David

Zais Zephyr A-4, LLC

Zurich Insurance Group, Ltd.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1, Appellees/Defendants submit the following information:

GEICO Indemnity Company (“GEICO Indemnity”) is a wholly-owned subsidiary of GEICO Corporation. GEICO Corporation is an indirect, wholly-owned subsidiary of a publicly-traded holding company, Berkshire Hathaway, Inc. No publicly held company directly owns 10% or more of GEICO Indemnity’s stock.

GEICO Casualty Company (“GEICO Casualty”) is a wholly-owned subsidiary of GEICO Corporation. GEICO Corporation is an indirect, wholly-owned subsidiary of Berkshire Hathaway, Inc., which is a publicly traded company. No publicly held company directly owns 10% or more of the stock of GEICO Casualty.

GEICO General Insurance Company (“GEICO General”) is a wholly-owned subsidiary of GEICO Corporation. GEICO Corporation is an indirect, wholly-owned subsidiary of a publicly-traded holding company, Berkshire Hathaway, Inc. No publicly held company directly owns 10% or more of Government Employees’ stock.

Government Employees Insurance Company (“Government Employees”) is

a wholly owned subsidiary of GEICO Corporation. GEICO Corporation is an indirect, wholly owned subsidiary of a publicly traded, holding company, Berkshire Hathaway, Inc. No publicly held company directly owns 10% or more of Government Employees' stock.

Fireman's Fund Insurance Company is a wholly owned subsidiary of Allianz Global Risks US Insurance Company, an Illinois corporation, which is a wholly owned subsidiary of Allianz of America, Inc., a Delaware corporation. Allianz of America is a wholly owned subsidiary of Allianz Europe B.V., a private limited liability company registered in the Netherlands, which is a wholly owned subsidiary of Allianz SE, a European company. Fireman's Fund Insurance Company, Allianz Global Risks US Insurance Company, Allianz of America, Inc., and Allianz Europe B.V. are not publicly-traded. Allianz SE is a publicly-traded corporation with the ticker symbol AZSEY (OTC Markets).

The parent company of Safeway Insurance Company of Louisiana is Safeway Insurance Company, an Illinois domesticated company. No publicly held corporation owns ten percent or more of the stock of either Safeway Insurance Company of Louisiana or Safeway Insurance Company.

**RESPONSE OF CERTAIN APPELLEES TO APPELLANTS' MOTION TO
REINSTATE APPEAL**

Appellants' and their counsel's disregard for Rules and deadlines is well documented. *See, e.g.*, Appendix of Supporting Documentation ("Appendix") at Tab 1 (Response of Certain Appellees to Appellants' Motion to Reinstate Appeal in *Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company*, Case No. 16-13601 (September 6, 2016) (noting, among other things, that Appellants' second amended complaint in this matter was due on May 18, 2015, but they did not file it until May 21, 2015)). In this appeal, Appellants did not timely file their Civil Appeal Statement, resulting in additional briefing by the Parties. *See* September 1, 2016 Notice; September 13, 2016 Motion for Leave to File Under Seal; September 21, 2016 Response to Motion to Seal Documents. Appellants also failed to timely file their Certificate of Interested Parties, Corporate Disclosure Statements and Transcript Order Form. *See* September 7 and 9, 2016 Notices. On October 18, 2016, Appellants also filed a Reply to Appellees' Response to File Motion Under Seal more than two weeks after the deadline. *See* FRAP 27(a)(4).

Appellants' and their counsel's disregard for deadlines now manifested itself in Appellants' failure to timely file their Appendix, which resulted in the Clerk's Entry of Dismissal for failure to prosecute on October 5, 2016. Appellants' excuse

for this failure is: in the first five cases appealed from this multi-district litigation (now consolidated in *Quality Auto Painting Center of Roselle, Inc. v. State Farm Indemnity Company*, Case No. 15-14160), the “clerk’s representative twice told counsel the appendix could be filed at any time, usually within seven to ten days but no more than two weeks after the filing of the brief.” Mot. to Reinstate Appeal ¶ 1.

Appellants’ claim that the Eleventh Circuit Clerk’s Office gave their counsel incorrect information is contradicted by the Civil Appeal Briefing Notice the Clerk’s Office sent to counsel in each of the first five cases on October 22, 2015. Those Notices stated in bold, capital letters:

**APPELLANT’S APPENDIX MUST BE SERVED AND FILED
NO LATER THAN 7 DAYS AFTER FILING OF THE
APPELLANT’S BRIEF.**

Appendix at Tab 2. This is not the first time Appellants’ counsel has tried to improperly shift blame for an Appellant’s late filing to the Clerk’s Office. *See* Appendix at Tab 3 at ¶ 3-4 (Appellants’ Motion for Leave to Amend/Correct Reply Brief and For Extension of Word Count Limitation (Out of Time) in *Quality* (July 20, 2016)).

An appeal dismissed for failure to file a timely appendix may be reinstated only upon a showing of extraordinary circumstances. 11th Cir. R. 42-2(e). Appellants and their counsel make no such showing of extraordinary

circumstances justifying reinstating the appeal. Appellants' and their counsel should not be permitted to continue to ignore deadlines and Rules. Appellants' Motion to Reinstate should be denied.

Appellants' requested that their Motion to Reinstate "be treated as a time sensitive matter," even though a ruling is not required by a date certain. *See* Mot. to Reinstate ¶ 4; 11th Cir. r. 27-1(b)(1) (setting the criteria for "time sensitive" motions).¹ Appellees do not object to the Court addressing Appellants' Motion to Reinstate on the schedule the Court deems appropriate. Appellees request, however, that, if the Court is inclined to reinstate the appeal, the Court set a new briefing schedule for this appeal so that Appellees have at least 30 days to prepare their responding briefs.

¹ Appellants also incorrectly claim that the Motion was "filed within seven (7) days of the dismissal notice." Mot. to Reinstate ¶ 5. The dismissal notice was issued on October 5 and the Motion was filed on October 14, nine days later.

Dated: October 24, 2016

Respectfully submitted,

/s/ Dan W. Goldfine

Dan W. Goldfine

Joshua Grabel

Jamie L. Halavais

Ian Fischer

LEWIS ROCA ROTHGERBER CHRISTIE L.L.P.

201 East Washington Street, Suite 1200

Phoenix, Arizona 85004

Telephone: 602-262-5392

Facsimile: 602-262-5747

Email: dgoldfine@lrrc.com

jgrabel@lrrc.com

jhalavais@lrrc.com

ifischer@lrrc.com

*Counsel for Defendants/Appellees GEICO
Casualty Company, GEICO General Insurance
Company, GEICO Indemnity Company and
Government Employees Insurance Company*

/s/ Elizabeth S. Horn (w/permission)

Richard C. Stanley, 8487

Elizabeth S. Horn, 35829

Stanley, Reuter, Ross, Thornton & Alford, L.L.C.

909 Poydras Street, Suite 2500

New Orleans, Louisiana 70112

Telephone: 504-523-1580

Facsimile: 504-524-0069

rsc@stanleyreuter.com

esh@stanleyreuter.com

*Attorneys for Defendant/Appellee Fireman's Fund
Insurance Company*

/s/ Christopher C. Skambis (w/permission)

Kathleen Maloney Skambis, 913073

Christopher C. Skambis, 0262358

The Skambis Law Firm

720 Rugby Street, Suite 120

Orlando, Florida 32804

Telephone: (407) 649-0090

Facsimile: (407) 649-0191

E-mail: kskambis@skambislaw.com

E-mail: cskambis@skambislaw.com

*Counsel for Defendant/Appellee Safeway
Insurance Company of Louisiana*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record that are registered with the Court's CM/ECF system.

/s/ Dan W. Goldfine

Dan W. Goldfine

Parker Auto Body, Inc. v. State Farm Mutual Automobile Insurance Company

No. 16-15470

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

PARKER AUTO BODY, INC., *et al.*,

Plaintiffs-Appellants,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,

Defendants-Appellees.

**APPENDIX TO
RESPONSE OF CERTAIN APPELLEES TO APPELLANTS' MOTION TO
REINSTATE APPEAL**

Dan W. Goldfine
Joshua Grabel
Jamie L. Halavais
Ian Fischer
LEWIS ROCA ROTHGERBER CHRISTIE LLP
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004
Telephone: 602-262-5392
Facsimile: 602-262-5747
Email: dgoldfine@lrrc.com
jgrabel@lrrc.com
jhalavais@lrrc.com
ifischer@lrrc.com

Counsel for Defendants/Appellees GEICO Casualty Company, GEICO General Insurance Company, GEICO Indemnity Company and Government Employees Insurance Company

Richard C. Stanley, 8487
Elizabeth S. Horn, 35829
Stanley, Reuter, Ross, Thornton & Alford, L.L.C.
909 Poydras Street, Suite 2500
New Orleans, Louisiana 70112
Telephone: 504-523-1580
Facsimile: 504-524-0069
rca@stanleyreuter.com
esh@stanleyreuter.com

Attorneys for Defendant/Appellee Fireman's Fund Insurance Company

Kathleen Maloney Skambis, 913073
Christopher C. Skambis, 0262358
The Skambis Law Firm
720 Rugby Street, Suite 120
Orlando, Florida 32804
Telephone: (407) 649-0090
Facsimile: (407) 649-0191
E-mail: kskambis@skambislaw.com
E-mail: cskambis@skambislaw.com

Counsel for Defendant/Appellee Safeway Insurance Company of Louisiana

INDEX

<u>Document</u>	<u>Tab</u>
Response of Certain Appellees to Appellants’ Motion to Reinstate Appeal, Case No. 16-13601, Dated 09/06/2016.....	Tab 1
Memorandum to Counsel or Parties from Clerk of the United States Court of Appeals, for the Eleventh Circuit, Case Nos. 15-14178, 15-151480, 15-14179, 15-14160, 15-14162, all Dated 10/22/2015.....	Tab 2
Motion for Leave to Amend/Correct Reply Brief and for Extension of Word County Limitation (Out of Time), Case No. 15-14160, Dated 07/20/2016.....	Tab 3

Dated: October 24, 2016

Respectfully submitted,

/s/ Dan W. Goldfine

Dan W. Goldfine
Joshua Grabel
Jamie L. Halavais
Ian Fischer
LEWIS ROCA ROTHGERBER CHRISTIE L.L.P.
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004
Telephone: 602-262-5392
Facsimile: 602-262-5747
Email: dgoldfine@lrrc.com
jgrabel@lrrc.com
jhalavais@lrrc.com
ifischer@lrrc.com

Counsel for Defendants/Appellees GEICO Casualty Company, GEICO General Insurance Company, GEICO Indemnity Company and Government Employees Insurance Company

/s/ Elizabeth S. Horn (w/permission)

Richard C. Stanley, 8487

Elizabeth S. Horn, 35829

Stanley, Reuter, Ross, Thornton & Alford, L.L.C.

909 Poydras Street, Suite 2500

New Orleans, Louisiana 70112

Telephone: 504-523-1580

Facsimile: 504-524-0069

rca@stanleyreuter.com

esh@stanleyreuter.com

*Attorneys for Defendant/Appellee Fireman's Fund
Insurance Company*

/s/ Christopher C. Skambis (w/permission)

Kathleen Maloney Skambis, 913073

Christopher C. Skambis, 0262358

The Skambis Law Firm

720 Rugby Street, Suite 120

Orlando, Florida 32804

Telephone: (407) 649-0090

Facsimile: (407) 649-0191

E-mail: kskambis@skambislaw.com

E-mail: cskambis@skambislaw.com

*Counsel for Defendant/Appellee Safeway
Insurance Company of Louisiana*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record that are registered with the Court's CM/ECF system.

/s/ Dan W. Goldfine _____
Dan W. Goldfine

EXHIBIT 1

No. 16-13601

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

INDIANA AUTOBODY ASSOCIATION, *et al.*,

Plaintiffs-Appellants,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,

Defendants-Appellees.

**RESPONSE OF CERTAIN APPELLEES TO APPELLANTS' MOTION TO
REINSTATE APPEAL**

Dan W. Goldfine
Joshua Grabel
Jamie L. Halavais
Ian Fischer
LEWIS ROCA ROTHGERBER CHRISTIE LLP
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004
Telephone: 602-262-5392
Facsimile: 602-262-5747
Email: dgoldfine@lrrc.com
jgrabel@lrrc.com
jhalavais@lrrc.com
ifischer@lrrc.com

*Counsel for Defendants/Appellees GEICO General Insurance Company and
GEICO Indemnity Company*

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Brian S. Jones
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Ste. 2700
Indianapolis, IN 46204
Tel: (317) 684-5462
b.jones@boselaw.com

Counsel for Defendants-Appellees Indiana Farmers Mutual Insurance Company

Michael H. Carpenter
Michael N. Beekhuizen
David J. Barthel
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
(614) 365-4100 telephone
(614) 365-9145 facsimile
carpenter@carpenterlipps.com
beekhuizen@carpenterlipps.com
barthel@carpenterlipps.com

Mark J. Botti
Squire Patton Boggs (US) LLP
1200 19th Street, N.W., Suite 300
Washington, District of Columbia
20036
(202) 626-6600 telephone
(202) 626-6780 facsimile
mark.botti@squirepb.com

Attorneys for Defendants-Appellees Nationwide Mutual Insurance Company, Nationwide Assurance Company, and Nationwide Property and Casualty Insurance Company

Ernest E. Vargo
Michael E. Mumford
Jonathon J. Korinko
BAKERHOSTETLER
Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114-1214
Telephone: (216) 621-0200
Facsimile: (216) 696-0740
Email: evargo@bakerlaw.com
Email: mmumford@bakerlaw.com
Email: jkorinko@bakerlaw.com

Counsel for Defendants-Appellees Liberty Mutual Insurance Company, Safeco Insurance Company of Indiana, American States Insurance Company, and Indiana Insurance Company

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Kathy L. Osborn
Indiana Atty. No. 21927-53
Ryan M. Hurley
Indiana Atty. No. 24956-49
Sarah C. Jenkins
Indiana Atty. No. 26421-53
FAEGRE BAKER DANIELS LLP
300 North Meridian Street, Suite 2700
Indianapolis, IN 46204
Kathy.osborn@faegrebd.com
Ryan.hurley@faegrebd.com
Sarah.jenkins@faegrebd.com
Tel. (317) 237-0300
Fax (317) 237-1000

Michael S. McCarthy
Colorado Atty. No. 6688
Heather Carson Perkins
Colorado Atty. No. 30168
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203-4532
Tel. (303) 607-3703
Fax (303) 607-3600
Michael.mccarthy@faegrebd.com
Heather.perkins@faegrebd.com

Counsel for American Family Mutual Insurance Company

Thomas W. Curvin
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, NE, Suite 2300
Atlanta, Georgia 30309-3996
404.853.8314 (T)
404.853.8806 (F)
tom.curvin@sutherland.com

Counsel for Appellees Zurich American Insurance Company and Zurich American Insurance Company of Illinois

Jeffrey S. Cashdan
KING & SPALDING LLP
1180 Peachtree Street, NE
Atlanta, Georgia 30309
Telephone: (404) 572-4600
Facsimile: (404) 472-5139
jcashdan@kslaw.com

Michael R. Nelson
Sutherland Asbill & Brennan LLP
1114 Avenue of the Americas, 40th Fl.
New York, NY 10036-7703
Telephone: (212) 389-5068
michael.nelson@sutherland.com

Counsel for Defendants/Appellees Progressive American Insurance Company, Progressive Casualty Insurance Company, Progressive Classic Insurance Company, Progressive Direct Insurance Company, and Progressive Max Insurance Company

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Richard L. Fenton
(admitted pro hac vice)
Mark L. Hanover
(admitted pro hac vice)
Dentons US LLP
233 South Wacker Drive, Suite 5900
Chicago, Illinois 60606
Tel: (312) 876-8000
Fax: (312) 876-7934
Email: richard.fenton@dentons.com
Email: mark.hanover@dentons.com

Bonnie Lau
Dentons US LLP
One Market Plaza, Spear Tower, 24th
Floor
San Francisco, CA 94105
Tel: (415) 882-5000
Fax: (415) 882-0300
Email: bonnie.lau@dentons.com

Lori J. Caldwell (Florida Bar No.
0268674)
Rumberger, Kirk & Caldwell, P.A.
Lincoln Plaza, Suite 1400
300 South Orange Avenue (32801)
Post Office Box 1873
Orlando, Florida 32802-1873
Telephone: (407) 872-7300
Facsimile: (407) 841-2133
Email: lcaldwell@rumberger.com

Counsel for Defendants-Appellees Allstate Indemnity Company, Allstate Property and Casualty Insurance Company, Allstate Insurance Company, and Allstate Vehicle and Property Insurance Company

CORRECTED CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rules 26.1-1, *et seq.*, 26.1-2, and 26.1-3, counsel for Defendants/Appellees hereby submit the following corrections and/or additions (noted in bold) to the list of persons and entities that have an interest in the outcome of this appeal:

10 W. Nationwide, LLC

1000 Yard Street, LLC

101 N Twentieth St, LLC

1015 Long Street, LLC

1050 Yard Street, LLC

1125 Rail Street, LLC

120 Acre Partners, LLC

120 Acre Partners, Ltd.

1492 Capital, LLC

155 Rivulon Boulevard, LLC

180 E. Broad Partners, LLC

275 Rivulon Boulevard, LLC

400 West Nationwide Boulevard, LLC

425 West Nationwide Boulevard, LLC

44 Chestnut, LLC

75 Rivulon Boulevard, LLC

775 Yard Street Restaurant, LLC

775 Yard Street, LLC

780 Yard Street, LLC

795 Rail Street, LLC

800 Bobcat Avenue, LLC

800 Goodale Boulevard, LLC

800 Yard Street, LLC

805 Bobcat Avenue, LLC

808 Yard Street, LLC

820 Goodale Boulevard, LLC

840 Third Avenue, LLC

845 Yard Street, LLC

850 Goodale Blvd., LLC

860 Third Avenue, LLC

880 Third Avenue, LLC

895 W. Third Avenue, LLC

975 Rail Street, LLC

AD Investments, LLC

ADTV, LLC

AGMC Reinsurance, Ltd.

Alerding Castor Hewitt, LLP

ALLIED General Agency Company

ALLIED Group, Inc.

Allied Holdings (Delaware), Inc.

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

ALLIED Insurance Company of America

ALLIED Property & Casualty Insurance Company

ALLIED Property and Casualty Insurance Company

ALLIED Texas Agency, Inc.

Allstate Corporation (NYSE: ALL)

Allstate Indemnity Company

Allstate Insurance Company

Allstate Insurance Holdings, LLC

Allstate Property and Casualty Insurance Company

Allstate Vehicle and Property Insurance Company

Alston & Bird, LLP

AMCO Insurance Company

American Family Mutual Insurance Company

American Marine Underwriters, Inc.

American States Insurance Company

Anderson Meadows, LLC

Arena District CA I, LLC

Arena District Owners Association

Austin, Brent R.

Auto Body Specialties of Lafayette, Inc.

Baker & Hostetler, LLP

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

Barthel, David John

BCCS Investment Fund LLC

Beekhuizen, Michael

Berkshire Crossing Development, LLC

~~Berkshire Hathaway Group (NYSE: BRK-A AND/OR BRK-B)~~ Berkshire Hathaway Inc. (ticker: BRK-A and BRK-B)

~~Best, Robert Bradley~~ **Best, R. Bradley, Esq.**

Birk, Daniel D.

Bose, McKinney & Evans, LLP

Botti, Mark J.

Boulevard Inn Limited Liability Company

Broad Street Retail, LLC

Brooke School Investment Fund, LLC

Brothers Body and Paint of Morgan County, Inc.

Bunning, David L (United States District Judge)

Caldwell, Lori J.

Cantrell, Dennis F.

Cantrell Strenski & Mehringer, LLP

Carlton Fields Jordan Burt, PA

Carpenter Lipps & Leland LLP

Carpenter, Michael H.

Cashdan, Jeffrey S.

Chesler, Stanley R. (United States District Judge)

CHP New Markets Investment Fund, LLC

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Clark Automotive, Inc.

Clark, Johanna W.

Clarksville Collision Center, Inc.

CNRI- Cannonsport, LLC

CNRI-Cannonsport Condominium, LLC

CNRI-Cannonsport, LLC

Co-Investment Fund, LLC

Cole, Scott & Kissane, PA

COLHOC Limited Partnership

Colonial County Mutual Insurance Company

Columbus Arena Management, LLC

Continental/North Shore I, L.P.

Continental/North Shore II, L.P.

Continental/NRI North Shore Investments, LLC

Cotton Mill Partners, LLC

Crestbrook Insurance Company

Crewville, Ltd.

Cross Paint & Body Shop, Inc.

Curvin, Thomas William

Dan T. Gratz Body & Paint Shop, Inc.

~~Decker & Vickory, Inc.~~

DeLaney & DeLaney LLC

DeLaney, Kathleen Ann

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Dentons US LLP

Depositors Insurance Company

Dimick, Julia E.

Discover Affordable Housing Investment Fund I LLC

Donovan, Kimberly J.

Drive Insurance Holdings, Inc.

Drummy, John B.

DVM Insurance Agency

Eagle Captive Reinsurance, LLC

East of Madison, LLC

Eaves, Jr., John Arthur

Eaves Law Office

Eimer Stahl LLP

ELH Investment Fund LLC

Enneking Auto Body, Inc.

Excel Auto Body & Glass, Inc.

Faegre Baker Daniels, LLP

Farmland Mutual Insurance Company

Fenton, Richard L.

Fischer, Ian Matthew

Freedom Specialty Insurance Company (fka Atlantic Insurance Company)

Fry, Allison P.

Gary Conns Collision Center, Inc.

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

GEICO Advantage Insurance Company

GEICO Casualty Company

GEICO Choice Insurance Company

GEICO Corporation

GEICO County Mutual Insurance Company

GEICO General Insurance Company

GEICO Indemnity Company

GEICO Secure Insurance Company

Generations Custom Auto & Collision, Inc.

General Insurance Company of America

Goldfine, Dan W.

Gorham, Patricia A.

GPN-1 Property Owners Association, Inc.

Grabel, Joshua

Grandview Yard Hotel Holdings, LLC

Grandview Yard Hotel, LLC

~~Halavais, Jamie L.~~ Halavais, Jamie L.

Hanover, Mark L.

Harleysville Group Inc.

Harleysville Insurance Company

Harleysville Insurance Company of New Jersey

Harleysville Insurance Company of New York

Harleysville Lake States Insurance Company

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Harleysville Life Insurance Company

Harleysville Pennland Insurance Company

Harleysville Preferred Insurance Company

Harleysville Worcester Insurance Company

Harwood Collision Repair, LLC

Helmer, Elizabeth

Hideaway Properties Corp.

~~Holcomb Dunbar Watts Best Masters & Golman, PA~~ **Holcomb, Dunbar,
Watts, Best, Masters & Golmon, PA**

~~Hopkinson, Christine A.~~

Howard, Kimberly E.

Hudson, Henry E. (United States District Judge)

Hurley, Ryan Michael

Indiana Autobody Association, Inc.

Indiana Farmers Mutual Insurance Company

Indiana Insurance Company

Insurance Intermediaries, Inc.

Jenkins, Sarah

Jerome Village Company, LLC

Jerome Village Master Property Owners Association

Jerome Village Residential Property Owners Association, Inc.

Jones, Brian Scott

Jones, Curtis Tre

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Jonkman Garage, Inc.

Jon's Body Shop, Inc.

JV Developers, LLC

Kenny, Michael P.

Kightlinger & Gray

King & Spalding, LLP

~~**Kissane, Joseph T.**~~

KNJ LLC

Kochis, Kymberly

Korinko, Jonathon J.

Kruppa, Andrew R.

Laguerre, Salomon

Lau, Bonnie

LaRue, Denise K. (Honorable)

Law Office of Miller & Fischer, LLC

Law Office of Smith Fisher Maas & Howard

Leaguers Investment Fund, LLC

~~Lewis Roca Rothgerber Christie~~ Lewis Roca Rothgerber Christie, LLP

Liberty Insurance Holdings Inc.

Liberty Mutual Agency Corporation

Liberty Mutual Group Inc.

Liberty Mutual Holding Company, Inc.

Liberty Mutual Insurance Company

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Life REO Holdings, LLC

LMHC Massachusetts Holdings Inc.

Locke Lord, LLP

~~Locke, Cynthia M.~~

Lone Star General Agency, Inc.

Maas, Rebecca Jean

Main Street Body Shop, Inc.

Martin's Body Shop, Inc.

~~Masters, Jonathan Stuart~~ **Masters, Jonathan S., Esq.**

Match School Investment Fund, LLC

Mattingly Collision Center, Inc.

McCarthy, Michael Sean

McCluggage, Michael L.

Miller & Fisher, LLC

Miller, Debra H.

Minton Body Shop, Inc.

Mumford, Michael E.

Nagle, Joel T.

National Casualty Company

National Casualty Company of America, Ltd.

Nationwide Advantage Mortgage Company

Nationwide Affinity Insurance Company of America

Nationwide Agribusiness Insurance Company

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Nationwide Alternative Investments, LLC

Nationwide Arena, LLC

Nationwide Asset Management Holdings, Inc.

Nationwide Asset Management, LLC

Nationwide Assurance Company

Nationwide Bank

Nationwide Cash Management Company

Nationwide Corporation

Nationwide Defined Benefit Master Trust

Nationwide Emerging Managers, LLC

Nationwide Exclusive Agent Risk Purchasing Group, LLC

Nationwide Financial Assignment Company

Nationwide Financial General Agency, Inc.

Nationwide Financial Institution Distributors Agency, Inc.

Nationwide Financial Services Capital Trust

Nationwide Financial Services, Inc.

Nationwide Foundation

Nationwide Fund Advisors

Nationwide Fund Distributors LLC

Nationwide Fund Management LLC

Nationwide General Insurance Company

Nationwide Global Holdings, Inc.

Nationwide Global Ventures, Inc.

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Nationwide Indemnity Company

Nationwide Insurance Company of America

Nationwide Insurance Company of Florida

Nationwide Investment Advisors, LLC

Nationwide Investment Services Corporation

Nationwide Life and Annuity Insurance Company

Nationwide Life Insurance Company

Nationwide Life Tax Credit Partners 2002-A, LLC

Nationwide Life Tax Credit Partners 2002-B, LLC

Nationwide Life Tax Credit Partners 2002-C, LLC

Nationwide Life Tax Credit Partners 2003-A, LLC

Nationwide Life Tax Credit Partners 2003-B, LLC

Nationwide Life Tax Credit Partners 2003-C, LLC

Nationwide Life Tax Credit Partners 2004-A, LLC

Nationwide Life Tax Credit Partners 2004-B, LLC

Nationwide Life Tax Credit Partners 2004-C, LLC

Nationwide Life Tax Credit Partners 2004-D, LLC

Nationwide Life Tax Credit Partners 2004-E, LLC

Nationwide Life Tax Credit Partners 2004-F, LLC

Nationwide Life Tax Credit Partners 2005-A, LLC

Nationwide Life Tax Credit Partners 2005-B, LLC

Nationwide Life Tax Credit Partners 2005-C, LLC

Nationwide Life Tax Credit Partners 2005-D, LLC

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Nationwide Life Tax Credit Partners 2005-E, LLC

Nationwide Life Tax Credit Partners 2007-A, LLC

Nationwide Life Tax Credit Partners 2009-A, LLC

Nationwide Life Tax Credit Partners 2009-B, LLC

Nationwide Life Tax Credit Partners 2009-C, LLC

Nationwide Life Tax Credit Partners 2009-D, LLC

Nationwide Life Tax Credit Partners 2009-E, LLC

Nationwide Life Tax Credit Partners 2009-F, LLC

Nationwide Life Tax Credit Partners 2009-I, LLC

Nationwide Life Tax Credit Partners No. 1, LLC

Nationwide Lloyds

Nationwide Member Solutions Agency Inc.

Nationwide Mutual Capital I, LLC

Nationwide Mutual Capital, LLC

Nationwide Mutual Fire Insurance Company

Nationwide Mutual Insurance Company

Nationwide Private Equity Fund, LLC

Nationwide Property and Casualty Company

Nationwide Property and Casualty Company

Nationwide Realty Investors, Ltd.

Nationwide Realty Management, LLC

Nationwide Realty Services, Ltd.

Nationwide Retirement Solutions, Inc.

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Nationwide Securities, LLC

Nationwide Services Company, LLC

Nationwide Tax Credit Partners 2009-G, LLC

Nationwide Tax Credit Partners 2009-H, LLC

Nationwide Tax Credit Partners 2013-A, LLC

Nationwide Tax Credit Partners 2013-B, LLC

ND La Quinta Partners, LLC

Neary Collision, Inc.

Nelson, Michael R.

NE-REI, LLC

Newhouse Capital Partners II, LLC

Newhouse Capital Partners, LLC

~~Newton, Emily~~ **Newton, Emily S.**

NFS Distributors, Inc.

NHT XII Tax Credit Fund, LLC

NNOV8, LLC

Nolan, Francis X.

North Bank Condominium Home Owners Association

North of Third, LLC

Northstar Commercial Development, LLC

Northstar Master Property Owners Association, Inc.

Northstar Residential Development, LLC

NRI 220 Schrock, LLC

NRI Arena, LLC

NRI Brookside, LLC

NRI Builders, LLC

NRI Communities/Harris Blvd., LLC

NRI Cramer Creek, LLC

NRI Equity Land Investments, LLC

NRI Equity Tampa, LLC

NRI Maxtown, LLC

NRI Office Ventures, Ltd

NRI Telecom, LLC

NRI-Rivulon, LLC

NS Developers, LLC

NTCIF-2011 Georgia State Investor, LLC

NTCIF-2011, LLC

NTCP 2011-A, LLC

NTCP 2012-A, LLC

NTCP 2013-C, LLC

NTCP 2014-A, LLC

NTCP 2014-B, LLC

NTCP 2014-C, LLC

NTCP 2015-A, LLC

NTCP 2015-B, LLC

NW REI, LLC

NW-Amesbury, LLC

NW-Bandera, LLC

NW-Bayshore, LLC

NW-Bee Cave, LLC

NW-Belleview, LLC

NW-Brooklyn, LLC

NW-Camelback, LLC

NW-Cameron, LLC

NW-Cedar Springs, LLC

NW-Central Station, LLC

NW-CNC Coppell, LLC

NW-Corvallis, LLC

NWD 205 Vine, LLC

NWD 225 Nationwide, LLC

NWD 230 West, LLC

NWD 240 Nationwide, LLC

NWD 250 Brodbelt, LLC

NWD 265 Neil, LLC

NWD 275 Marconi, LLC

NWD 295 McConnell, LLC

NWD 300 Neil, LLC

NWD 300 Spring, LLC

NWD 355 McConnell, LLC

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

NWD 425 Nationwide, LLC
NWD 500 Nationwide, LLC
NWD Arena Crossing, LLC
NWD Arena District I, LLC
NWD Arena District II, LLC
NWD Arena District MM, LLC
NWD Arena District PW, LLC
NWD Arena District V, LLC
NWD Asset Management Holdings, Inc.
NWD Athletic Club, LLC
NWD Franklinton, LLC
NWD Investment Management, Inc.
NWD Investments, LLC
NW-Deerfield, LLC
NW-Dulles, LLC
NW-Franklin Mills, LLC
NW-Howell Mill, LLC
NW-Hudnall, LLC
NW-Jasper WAG, LLC
NW-Jefferson, LLC
NW-Kentwood Towne Center, LLC
NW-Lawrence, LLC
NW-Lovers Lane, LLC

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

NW-Montrose, LLC

NW-Mueller II, LLC

NW-Northridge, LLC

NW-Oakley Station, LLC

NW-Olathe, LLC

NW-Park 288, LLC

NW-Park Memorial, LLC

NW-Peachtree, LLC

NW-Portales, LLC

NW-Promenade at Madison, LLC

NW-South Park, LLC

NW-Taylor Farmer Jack, LLC

NW-Triangle, LLC

NW-Tysons, LLC

NW-West Ave., LLC

NW-Windcross, LLC

OCH Company, LLC

Ohio Center Hotel Company, Ltd.

Old Track Street Owners Association

Olentangy Reinsurance, LLC

On Your Side Nationwide Insurance Agency, Inc.

Osborn, Kathy Lynn

OYS Fund LLC

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Park 288 Industrial, LLC

~~Parker, Paula Anastasia~~

Perimeter A, Ltd.

Perkins, Heather Carson

Pizzuti Properties, LLC

Polaris A, Ltd.

Powers, Tiffany L.

Pratt, Tanya W. (Honorable)

Premier Agency, Inc.

Presnell, Gregory (Honorable)

Prestige Auto Body Repair, Inc.

Privilege Underwriters Reciprocal Exchange

Privilege Underwriters, Inc.

~~**Progressive American Insurance Co.**~~ **Progressive American Insurance Company**

~~**Progressive Casualty Ins. Company**~~ **Progressive Casualty Insurance Company**

Progressive Classic Insurance Company

Progressive Corp. (NYSE: PGR) The Progressive Corporation (ticker: PGR)

Progressive Direct Holdings, Inc.

Progressive Direct Insurance Company

Progressive Max Insurance Company

Pure Insurance Company

Pure Risk Management, LLC

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Quality Collision, Inc.

Registered Investment Advisors Services, Inc.

Retention Alternatives Ltd.

Riverview Diversified Opportunities, LLC

Riverview International Group, Inc.

Riverview Multi Series Fund, LL - Class Event

Riverview Multi Series Fund, LL - Class N

Riverview Polyphony Fund, LLC

Ross, John A. (United States District Judge)

Rudolph, Amelia T.

Rumberger, Kirk & Caldwell, PA

Safeco Corporation

Safeco Insurance Company of Indiana

Scottsdale Indemnity Company

Scottsdale Insurance Company

Scottsdale Surplus Lines Insurance Company

Seyfarth Shaw, LLP

Shelter General Insurance Company

Shelter Mutual Insurance Company

Smith, Candace J. (United States Magistrate Judge)

Smith Fisher Maas & Howard, P.C.

~~Smith, Thomas (Honorable)~~ Smith, Thomas B. (Honorable)

Sniderman, Mark W.

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Sniderman Nguyen LLP

Southlake Collision Center, Inc.

Squire Patton Boggs (US) LLP

State Farm Fire and Casualty Company

State Farm General Insurance Company

State Farm Mutual Automobile Insurance Company

Streets of Toringdon, LLC

Sutherland, Asbill & Brennan, LLP Sutherland Asbill & Brennan LLP

Team 150, Inc.

The Allstate Corporation (ticker: ALL)

The Hideaway Club

The Hideaway Owners Association

The Madison Club

The Madison Club Owners Association

THI Holdings (Delaware), Inc.

Thurman Body Shop, LLC

Thurman, Carl

Titan Auto Insurance of New Mexico, Inc.

Titan Indemnity Company

Titan Insurance Company

Titan Insurance Services, Inc.

V.P.I. Services, Inc.

Vargo, Ernest E.

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Veterinary Pet Insurance Company

Victoria Automobile Insurance Company

Victoria Fire & Casualty Company

Victoria Fire & Casualty Insurance Company

Victoria National Insurance Company

Victoria Select Insurance Company

Victoria Specialty Insurance Company

Vitale, Michael S.

Voelz Body Shop, Inc.

Waldor, Cathy L. (United States Magistrate Judge)

Wells, Kevin

Wells, Kevin doing business as KNJ LLC

Western Heritage Insurance Company

Westport Capital Partners II

Wilson Road Developers, LLC

Zais Zephyr A-4, LLC

Wilkerson Body and Frame, Inc.

Zurich American Insurance Company

Zurich American Insurance Company of Illinois

Zurich Insurance Group Ltd. (SIX: ZURN)

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1, Appellees/Defendants submit the following information:

Allstate Indemnity Company is a wholly-owned subsidiary of Allstate Insurance Holdings, LLC, which is a Delaware limited liability company. Allstate Insurance Holdings, LLC is a wholly-owned subsidiary of The Allstate Corporation, which is a Delaware corporation. The stock of The Allstate Corporation is publicly traded. No publicly-held entity owns 10% or more of the stock of The Allstate Corporation.

Allstate Insurance Company is a wholly-owned subsidiary of Allstate Insurance Holdings, LLC, which is a Delaware limited liability company. Allstate Insurance Holdings, LLC is a wholly-owned subsidiary of The Allstate Corporation, which is a Delaware corporation. The stock of The Allstate Corporation is publicly traded. No publicly-held entity owns 10% or more of the stock of The Allstate Corporation.

Allstate Property and Casualty Insurance Company is a wholly-owned subsidiary of Allstate Insurance Holdings, LLC, which is a Delaware limited liability company. Allstate Insurance Holdings, LLC is a wholly-owned subsidiary of The Allstate Corporation, which is a Delaware corporation. The stock of The

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Allstate Corporation is publicly traded. No publicly-held entity owns 10% or more of the stock of The Allstate Corporation.

Allstate Vehicle and Property Insurance Company is a wholly-owned subsidiary of Allstate Insurance Holdings, LLC, which is a Delaware limited liability company. Allstate Insurance Holdings, LLC is a wholly-owned subsidiary of The Allstate Corporation, which is a Delaware corporation. The stock of The Allstate Corporation is publicly traded. No publicly-held entity owns 10% or more of the stock of The Allstate Corporation.

American Family Mutual Insurance Company, a Wisconsin corporation, does not have any parent corporation and is not publicly traded. No publicly-held entity owns 10% or more of the stock of American Family Mutual Insurance Company.

American States Insurance Company is a wholly-owned subsidiary of Safeco Corporation, an insurance holding company incorporated in Washington. Safeco Corporation is a wholly-owned subsidiary of Liberty Mutual Agency Corporation, an insurance holding company incorporated in Delaware. Liberty Mutual Agency Corporation is a wholly-owned subsidiary of Liberty Insurance Holdings, Inc., an insurance holding company incorporated in Delaware. Liberty Insurance Holdings, Inc. is a wholly-owned subsidiary of Liberty Mutual Insurance Company, a Massachusetts insurance company. Liberty Mutual Insurance

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Company is a wholly-owned subsidiary of Liberty Mutual Group Inc., a Massachusetts company. Liberty Mutual Group Inc. is a wholly-owned subsidiary of LMHC Massachusetts Holdings Inc., a Massachusetts company. LMHC Massachusetts Holdings, Inc. is a wholly-owned subsidiary of Liberty Mutual Holding Company Inc., a Massachusetts company. No publicly-held entity owns 10% or more of the stock of American States Insurance Company.

GEICO Indemnity Company (“GEICO Indemnity”) is a wholly-owned subsidiary of GEICO Corporation. GEICO Corporation is an indirect, wholly-owned subsidiary of a publicly-traded holding company, Berkshire Hathaway, Inc. No publicly held company directly owns 10% or more of GEICO Indemnity’s stock.

GEICO General Insurance Company (“GEICO General”) is a wholly-owned subsidiary of GEICO Corporation. GEICO Corporation is an indirect, wholly-owned subsidiary of a publicly-traded holding company, Berkshire Hathaway, Inc. No publicly held company directly owns 10% or more of Government Employees’ stock.

Indiana Farmers Mutual Insurance Company hereby states that it has no parent corporation and no publicly-held corporation owns more than 10% of its stock.

Indiana Insurance Company is a wholly-owned subsidiary of Liberty Mutual

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Agency Corporation, an insurance holding company incorporated in Delaware. Liberty Mutual Agency Corporation is a wholly-owned subsidiary of Liberty Insurance Holdings, Inc., an insurance holding company incorporated in Delaware. Liberty Insurance Holdings, Inc. is a wholly-owned subsidiary of Liberty Mutual Insurance Company, a Massachusetts insurance company. Liberty Mutual Insurance Company is a wholly-owned subsidiary of Liberty Mutual Group Inc., a Massachusetts company. Liberty Mutual Group Inc. is a wholly-owned subsidiary of LMHC Massachusetts Holdings Inc., a Massachusetts company. LMHC Massachusetts Holdings, Inc. is a wholly-owned subsidiary of Liberty Mutual Holding Company Inc., a Massachusetts company. No publicly-held entity owns 10% or more of the stock of Indiana Insurance Company.

Liberty Mutual Insurance Company is a wholly-owned subsidiary of Liberty Mutual Group Inc., a Massachusetts company. Liberty Mutual Group Inc. is a wholly-owned subsidiary of LMHC Massachusetts Holdings Inc., a Massachusetts company. LMHC Massachusetts Holdings, Inc. is a wholly-owned subsidiary of Liberty Mutual Holding Company Inc., a Massachusetts company. No publicly-held entity owns 10% or more of the stock of Liberty Mutual Insurance Company.

Nationwide Mutual Insurance Company is an Ohio mutual insurance company which is owned entirely by its policyholders and, as such, is not owned by a parent company or a public company and no stock is publicly held.

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

Nationwide Assurance Company is a wholly-owned subsidiary of Nationwide Mutual Insurance Company. Nationwide Mutual Insurance Company is an Ohio mutual insurance company which is owned entirely by its policyholders and, as such, is not owned by a parent company or a public company and no stock is publicly held.

Nationwide Property and Casualty Insurance Company is a wholly-owned subsidiary of Nationwide Mutual Insurance Company. Nationwide Mutual Insurance Company is an Ohio mutual insurance company which is owned entirely by its policyholders and, as such, is not owned by a parent company or a public company and no stock is publicly held.

Progressive American Insurance Company, Progressive Casualty Insurance Company, and Progressive Classic Insurance Company are wholly-owned subsidiaries of Drive Insurance Holdings, Inc., a private company. Progressive Direct Insurance Company and Progressive Max Insurance Company are wholly-owned subsidiaries of Progressive Direct Holdings, Inc., a private company. Progressive Direct Holdings, Inc. and Drive Insurance Holdings, Inc. are wholly-owned subsidiaries of The Progressive Corporation. The Progressive Corporation is a public company. No publicly-held entity owns 10% or more of the stock of The Progressive Corporation.

Safeco Insurance Company of Indiana is a wholly-owned subsidiary of

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

General Insurance Company of America, a New Hampshire insurance company. General Insurance Company of America is a wholly-owned subsidiary of Safeco Corporation, an insurance holding company incorporated in Washington. Safeco Corporation is a wholly-owned subsidiary of Liberty Mutual Agency Corporation, an insurance holding company incorporated in Delaware. Liberty Mutual Agency Corporation is a wholly-owned subsidiary of Liberty Insurance Holdings, Inc., an insurance holding company incorporated in Delaware. Liberty Insurance Holdings, Inc. is a wholly-owned subsidiary of Liberty Mutual Insurance Company, a Massachusetts insurance company. Liberty Mutual Insurance Company is a wholly-owned subsidiary of Liberty Mutual Group Inc., a Massachusetts company. Liberty Mutual Group Inc. is a wholly-owned subsidiary of LMHC Massachusetts Holdings Inc., a Massachusetts company. LMHC Massachusetts Holdings, Inc. is a wholly-owned subsidiary of Liberty Mutual Holding Company Inc., a Massachusetts company. No publicly-held entity owns 10% or more of the stock of Safeco Insurance Company of Indiana.

Zurich American Insurance Company of Illinois is a wholly-owned subsidiary of American Zurich Insurance Company, an Illinois corporation. American Zurich Insurance Company is a wholly-owned subsidiary of Steadfast Insurance Company, a Delaware corporation. Steadfast Insurance Company is a wholly-owned subsidiary of Zurich American Insurance Company, a New York

Indiana Autobody Association v. State Farm Mutual Automobile Insurance Company

corporation.

Zurich American Insurance Company is a wholly-owned subsidiary of Zurich Holding Company of America, Inc., a Delaware corporation. Zurich Holding Company of America, Inc. is 99.8711% owned directly by Zurich Insurance Company Ltd, a Swiss corporation, with the remaining shares indirectly owned by Zurich Insurance Company Ltd. Zurich Insurance Company Ltd is directly owned by Zurich Insurance Group Ltd, a Swiss corporation. Zurich Insurance Group Ltd (CH: ZURN) is the only publicly traded parent company, with a listing on the Swiss stock exchange, and a further trading of American Depositary Receipts.

RESPONSE OF CERTAIN APPELLEES¹ TO APPELLANTS' MOTION TO REINSTATE APPEAL

Appellants' late filing of their brief, which resulted in the Clerk's Entry of Dismissal for failure to prosecute, is not the first time Appellants have filed a critical document late in this case, without first seeking leave of court. Nor is it the first time these counsel have filed a critical document after the filing deadline passed in an appeal from the multidistrict litigation from which this appeal comes, without first seeking leave of this Court. It is not even the first time these counsel have blamed computer issues as an excuse for a late filing. Appellants' and their counsel's habit of late-filing and blaming counsel's computer has wasted judicial resources, caused delay, and inconvenienced the parties. Appellants' Motion to Reinstate fails to establish extraordinary circumstances excusing their late filing and warranting reinstatement of this appeal, and the Court would be justified in denying the Motion.

¹ "Certain Appellees" includes GEICO Indemnity Company, GEICO General Insurance Company, Indiana Farmers Mutual Insurance Company, Nationwide Mutual Insurance Company, Nationwide Assurance Company, Nationwide Property and Casualty Insurance Company, Zurich American Insurance Company, Zurich American Insurance Company of Illinois, Liberty Mutual Insurance Company, Safeco Insurance Company of Indiana, American States Insurance Company, and Indiana Insurance Company, American Family Mutual Insurance Company, Progressive American Insurance Company, Progressive Casualty Insurance Company, Progressive Classic Insurance Company, Progressive Direct Insurance Company, Progressive Max Insurance Company, Allstate Indemnity Company, Allstate Property and Casualty Insurance Company, Allstate Insurance Company, and Allstate Vehicle and Property Insurance Company.

Appellants Did Not Timely File Their Brief

- This appeal was lodged on June 14, 2016.
- On July 5, 2016, the Clerk's Office notified the parties that Appellants' brief must be served and filed on or before July 25, 2016.
- On July 25, 2016, the Clerk granted Appellants an over the phone extension and notified the parties that Appellants' brief would be due August 8, 2016.
- On August 9, 2016, Appellants' filed their initial brief late.
- On August 16, 2016, the parties were notified that the appeal was dismissed, effective August 9, 2016, because Appellants failed to timely file their brief.
- On August 23, 2016, Appellants' filed a Motion to Reinstate Appeal, claiming issues with their counsel's web browser resulted in the late filing of their brief.

Appellants' And Their Counsel's History of Late Filings

This late filing is not a one-off error, easily overlooked by Appellees. Appellees, the District Court, and this Court have been patient with Appellants and their counsel, but their late filings have become the predictable standard and must be addressed.

This case is one of twenty-four similar actions consolidated for pretrial purposes in a multidistrict litigation. *See* 6:14-md-02557 (M.D. FL) (“MDL”). Plaintiffs in twenty-one of these cases, including this one, were represented by the

same counsel. These counsel have repeatedly filed documents after the deadlines to do so have passed.

In the District Court, in this case, after their First Amended Complaint was dismissed without prejudice, the District Court allowed Appellants to file an amended pleading “on or before April 13, 2015.” Appendix of Supporting Documentation (“Appendix”) at Tab 1 (Doc. 150 in the case below).² But Appellants did not file their Second Amended Complaint (the complaint at issue in this appeal) until April 14, 2015 – one day late. *Id.* at Tab 2 (excerpt from the ECF docket below showing the filing date of Doc. 151). This late filing raised jurisdictional concerns and prompted a Motion to Strike in the court below, arguing that the District Court lacked jurisdiction to accept the Second Amended Complaint. *Id.* at Tab 3 (Doc. 153 in the case below).³ In response, Appellants’ counsel blamed their failure to timely file on computer problems, as they have done here. *Id.* at Tab 4, pp. 44-45 (excerpt from Plaintiffs’ May 19, 2015, Omnibus Response to Certain Motions to Dismiss (Doc. 158) responding to motion to strike).

In other *MDL* cases appealed to this Court, the same counsel have filed

² The Appendix is provided pursuant to FRAP 27(a)(2)(B)(i) and 11th Cir. R. 27-1(a)(3).

³ The Motion to Strike raised concerns about the District Court’s subject matter jurisdiction that are pertinent to this Court as well.

several briefs late. Their brief in *Quality Auto Painting Center of Roselle, Inc. v. State Farm Indemnity Company* was due on February 8, 2016, but they filed on February 9, 2016. See Appendix at Tab 5 (excerpt from the ECF docket in Case No. 15-14160).⁴ Their reply brief in *Quality* was due on June 6, 2016. They filed two reply briefs, the second one on June 7, 2016, which was rejected as untimely. See *id.* at Tab 6 (June 17, 2016 ECF Notice returning the late-filed reply brief). Their brief in *Automotive Alignment & Body Service, Inc. v. State Farm Mutual Automobile Insurance Company* was due on July 25, 2016, but they filed on July 26, 2016. See *id.* at Tab 7 (excerpt from the ECF docket in Case No. 16-13596).

When these matters were before the District Court, the same counsel filed amended complaints late. For example, in *Parker Auto Body, Inc. v. State Farm Mutual Automobile Insurance Company*, the plaintiffs' second amended complaint was due on May 18, 2015, but they did not file it until May 21, 2015. See Appendix at Tab 8, pp. 1-2 (Doc. 163, District Court order in 6:14-cv-06004-GAP-TBS (M.D. FL March 15, 2016) discussing the timing of the filing). In *Alpine Straightening Systems v. State Farm Mutual Automobile Insurance Company*, the plaintiffs' second amended complaint was due May 18, 2015, but they did not file it until May 20, 2015. See Appendix at Tab 9, p. 1 (Doc. 123, District Court order

⁴ These counsel also filed their Civil Appeal Statement late in *Quality*, after two notices from the Acting Clerk of the Court. See *id.*

in 6:14-cv-06003-GAP-TBS (M.D. FL November 20, 2015) discussing the timing of the filing).⁵

Appellants' Counsel's History of Blaming Computer Problems for Late Filings

Appellants' counsel have blamed their computers for late filings in *MDL* cases in this Court and in *MDL* cases below. When the appellants in *Quality* moved to reinstate that appeal, after it had been dismissed for failure to timely file their brief, these counsel notified this Court that issues with their web browser resulted in the late filing of the initial brief. Appendix at Tab 12 (February 25, 2016 Motion to Reinstate Appeal in Case No. 15-14160). When Appellants opposed the motion to strike their Second Amended Complaint in the District Court in this case, these counsel also blamed the ECF system, claiming the late filing was the result of problems uploading documents to ECF. *Id.* at Tab 4, pp. 44-45 (excerpt from Plaintiffs' May 19, 2015, Omnibus Response to Certain

⁵ This recitation does not include numerous other late filings in the District Court by the same counsel in this and other cases. For example, Appellants' responses to the Defendants' motions to dismiss in this case were due on May 18, 2015, but were filed on May 19, 2015. *See* Appendix at Tab 2 (excerpt from the ECF docket below showing GEICO's motion to dismiss (Doc. 155) was filed on May 1, 2015, and Plaintiffs' response (Doc. 158) was filed on May 19, 2015); *see, also, e.g.*, Appendix at Tab 10 (Doc. 140 in *Alpine*: May 17, 2016 Order granting motion to strike plaintiffs' objection to Magistrate Judge Smith's Report & Recommendation because the objection was due April 8, 2016, but was not filed until April 9, 2016); Appendix at Tab 11 (Doc. 185 in *Parker*: May 27, 2016 Order granting motion to strike plaintiffs' objection to Magistrate Judge Smith's Report & Recommendation because the objection was filed 8 days late).

Motions to Dismiss (Doc. 158) responding to motion to strike). When the plaintiffs in *Parker* opposed the motion to strike in that case, these counsel again claimed the late filing was the result of computer problems. *Id.* at Tab 13, pp. 6-7 (Plaintiffs' July 6, 2015, Response to Motion to Strike First Amended Complaint (Doc. 136) in 6:14-cv-06004-GAP-TBS).

Appellants' Motion Fails to Establish Extraordinary Circumstances

An appeal dismissed for failure to file a timely brief may be reinstated only upon a showing of extraordinary circumstances. 11th Cir. R. 42-2(e). Appellants and their counsel make no such showing of "extraordinary circumstances" justifying reinstating the appeal.

Appellants' counsel has an admitted awareness of the possibility of computer issues. *See, e.g.*, Mot. to Reinstate ¶ 2 (asserting "there exists chronic issues" between Windows and certain browsers). Despite this claimed awareness, and their history of alleged computer problems, counsel only began the process of uploading Appellants' brief twenty minutes before the filing deadline. Mot. to Reinstate ¶¶ 1, 4 (admitting the brief was filed 19 minutes late and claiming the filing process took approximately forty minutes). This, after Appellants asked for, and received, a two-week extension to file their brief, giving them ample time to file their brief before the deadline. Instead of doing so, Appellants waited until it was well into the eleventh hour to file their brief and filed it late. Such a common

occurrence for Appellants and their counsel cannot be the basis of the extraordinary circumstances required to reinstate this appeal. *See Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380, 396 (1993) (“[C]lients must be held accountable for the acts and omissions of their attorneys.”).

Conclusion

Appellants’ Motion to Reinstate should be denied because Appellants failed to establish the extraordinary circumstances required to reinstate this appeal. If the Court is inclined to reinstate the appeal, Appellees request the Court set a new briefing schedule for this appeal so that Appellees have at least 30 days to prepare their responding briefs.

Dated: September 6, 2016

Respectfully submitted,

/s/ Dan W. Goldfine

Dan W. Goldfine

Joshua Grabel

Jamie L. Halavais

Ian Fischer

LEWIS ROCA ROTHGERBER CHRISTIE L.L.P.

201 East Washington Street, Suite 1200

Phoenix, Arizona 85004

Telephone: 602-262-5392

Facsimile: 602-262-5747

Email: dgoldfine@lrrc.com

jgrabel@lrrc.com

jhalavais@lrrc.com

ifischer@lrrc.com

*Counsel for Defendants/Appellees GEICO General
Insurance Company and GEICO Indemnity
Company*

/s/ Brian S. Jones

Brian S. Jones

BOSE MCKINNEY & EVANS LLP

111 Monument Circle, Ste. 2700

Indianapolis, IN 46204

Tel: (317) 684-5462

b.jones@boselaw.com

*Counsel for Defendants-Appellees Indiana
Farmers Mutual Insurance Company*

/s/ Michael H. Carpenter

Michael H. Carpenter
Michael N. Beekhuizen
David J. Barthel
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
(614) 365-4100 telephone
(614) 365-9145 facsimile
carpenter@carpenterlipps.com
beekhuizen@carpenterlipps.com
barthel@carpenterlipps.com

Mark J. Botti
Squire Patton Boggs (US) LLP
1200 19th Street, N.W., Suite 300
Washington, District of Columbia 20036
(202) 626-6600 telephone
(202) 626-6780 facsimile
mark.botti@squirepb.com

*Attorneys for Defendants-Appellees Nationwide
Mutual Insurance Company, Nationwide
Assurance Company, and Nationwide Property
and Casualty Insurance Company*

/s/ Michael E. Mumford

Ernest E. Vargo

Michael E. Mumford

Jonathon J. Korinko

BAKERHOSTETLER

Key Tower

127 Public Square, Suite 2000

Cleveland, OH 44114-1214

Telephone: (216) 621-0200

Facsimile: (216) 696-0740

Email: evargo@bakerlaw.com

Email: mmumford@bakerlaw.com

Email: jkorinko@bakerlaw.com

Counsel for Defendants-Appellees Liberty Mutual Insurance Company, Safeco Insurance Company of Indiana, American States Insurance Company, and Indiana Insurance Company

/s/ Kathy L. Osborn

Kathy L. Osborn, Indiana Atty. No. 21927-53
Ryan M. Hurley, Indiana Atty. No. 24956-49
Sarah C. Jenkins, Indiana Atty. No. 26421-53
FAEGRE BAKER DANIELS LLP
300 North Meridian Street, Suite 2700
Indianapolis, IN 46204
Kathy.osborn@faegrebd.com
Ryan.hurley@faegrebd.com
Sarah.jenkins@faegrebd.com
Tel. (317) 237-0300
Fax (317) 237-1000

Michael S. McCarthy, Colorado Atty. No. 6688
Heather Carson Perkins, Colorado Atty. No. 30168
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203-4532
Tel. (303) 607-3703
Fax (303) 607-3600
Michael.mccarthy@faegrebd.com
Heather.perkins@faegrebd.com

*Counsel for American Family Mutual Insurance
Company*

/s/ Thomas W. Curvin

Thomas W. Curvin
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, NE, Suite 2300
Atlanta, Georgia 30309-3996
404.853.8314 (T)
404.853.8806 (F)
tom.curvin@sutherland.com

*Counsel for Appellees Zurich American Insurance
Company and Zurich American Insurance
Company of Illinois*

/s/ Jeffrey S. Cashdan

Jeffrey S. Cashdan
KING & SPALDING LLP
1180 Peachtree Street, NE
Atlanta, Georgia 30309
Telephone: (404) 572-4600
Facsimile: (404) 472-5139
jcashdan@kslaw.com

/s/ Michael R. Nelson

Michael R. Nelson
Sutherland Asbill & Brennan LLP
1114 Avenue of the Americas, 40th Floor
New York, NY 10036-7703
Telephone: (212) 389-5068
michael.nelson@sutherland.com

*Counsel for Defendants/Appellees Progressive
American Insurance Company, Progressive
Casualty Insurance Company, Progressive Classic
Insurance Company, Progressive Direct Insurance
Company, and Progressive Max Insurance
Company*

/s/ Richard L. Fenton

Richard L. Fenton (admitted pro hac vice)
Mark L. Hanover (admitted pro hac vice)
Dentons US LLP
233 South Wacker Drive, Suite 5900
Chicago, Illinois 60606
Tel: (312) 876-8000
Fax: (312) 876-7934
Email: richard.fenton@dentons.com
Email: mark.hanover@dentons.com

Bonnie Lau
Dentons US LLP
One Market Plaza, Spear Tower, 24th Floor
San Francisco, CA 94105
Tel: (415) 882-5000
Fax: (415) 882-0300
Email: bonnie.lau@dentons.com

Lori J. Caldwell (Florida Bar No. 0268674)
Rumberger, Kirk & Caldwell, P.A.
Lincoln Plaza, Suite 1400
300 South Orange Avenue (32801)
Post Office Box 1873
Orlando, Florida 32802-1873
Telephone: (407) 872-7300
Facsimile: (407) 841-2133
Email: lcaldwell@rumberger.com

*Counsel for Defendants-Appellees Allstate
Indemnity Company, Allstate Property and
Casualty Insurance Company, Allstate Insurance
Company, and Allstate Vehicle and Property
Insurance Company*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of September, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record that are registered with the Court's CM/ECF system.

/s/ Dan W. Goldfine

Dan W. Goldfine

EXHIBIT 2

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Amy C. Nerenberg
Acting Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 22, 2015

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 15-14178-AA

Case Style: Campbell County Auto Body, In v. State Farm Mutual Automobile I, et al

District Court Docket No: 6:14-md-02557-GAP-TBS

Secondary Case Number: 6:14-cv-06018-GAP-TBS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

Eleventh Circuit Rule 31-1 requires that APPELLANT'S BRIEF BE SERVED AND FILED ON OR BEFORE November 30, 2015. APPELLANT'S APPENDIX MUST BE SERVED AND FILED NO LATER THAN 7 DAYS AFTER FILING OF THE APPELLANT'S BRIEF. INCARCERATED PRO SE PARTIES ARE NOT REQUIRED TO FILE AN APPENDIX.

This is the only notice you will receive concerning the due date for filing briefs and appendices. See Fed.R.App.P. 28, 30, 31, 32, the corresponding circuit rules, General Order 39 and the Guide to Electronic Filing for further information. Pro se parties who are incarcerated are not required to file an appendix.

If you have not entered your appearance in this appeal, please note that the clerk may not process your filings. See 11th Cir. R. 46-6. [Appearance of Counsel Forms](#) are available on the court's Web site.

FRAP 26.1 and the accompanying circuit rules provide that the Certificate of Interested Persons and Corporate Disclosure Statement (CIP) must be filed with the court by every appellant, appellee, intervenor and amicus curiae, including governmental parties. Appellants (and cross-appellants) must file their CIP within 14 days of the date this appeal has been docketed, or along with the filing in this court of any motion, petition, or pleading, whichever occurs first. The time for filing the opposing party's CIP or notice is set by 11th Cir. R. 26.1-2(c). In the case of publicly traded corporations, counsel must include the stock ticker symbol after the corporate name. See 11th Cir.R. 26.1-3(c).

On the same day the CIP is served, the party filing it must also complete the court's web-based certificate at the [Web-Based CIP](#) link of the court's website. Pro se parties are **not required or**

authorized to complete the web-based certificate.

Attorneys must file briefs electronically using the ECF system. Use of ECF does not modify the requirements of the circuit rules that counsel must also provide seven (7) paper copies of a brief to the court, nor does it modify the requirements of the circuit rules for the filing of appendices in a particular case.

Sincerely,

AMY C. NERENBERG, Acting Clerk of Court

Reply to: David L. Thomas, AA

Phone #: (404) 335-6169

BR-1CIV Civil appeal briefing ntc issued

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Amy C. Nerenberg
Acting Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 22, 2015

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 15-14180-AA
Case Style: Concord Auto Body, Inc v. State Farm Mutual Automobile I, et al
District Court Docket No: 6:14-md-02557-GAP-TBS
Secondary Case Number: 6:15-cv-06022-GAP-TBS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

Eleventh Circuit Rule 31-1 requires that APPELLANT'S BRIEF BE SERVED AND FILED ON OR BEFORE November 30, 2015. APPELLANT'S APPENDIX MUST BE SERVED AND FILED NO LATER THAN 7 DAYS AFTER FILING OF THE APPELLANT'S BRIEF. INCARCERATED PRO SE PARTIES ARE NOT REQUIRED TO FILE AN APPENDIX.

This is the only notice you will receive concerning the due date for filing briefs and appendices. See Fed.R.App.P. 28, 30, 31, 32, the corresponding circuit rules, General Order 39 and the Guide to Electronic Filing for further information. Pro se parties who are incarcerated are not required to file an appendix.

If you have not entered your appearance in this appeal, please note that the clerk may not process your filings. See 11th Cir. R. 46-6. [Appearance of Counsel Forms](#) are available on the court's Web site.

FRAP 26.1 and the accompanying circuit rules provide that the Certificate of Interested Persons and Corporate Disclosure Statement (CIP) must be filed with the court by every appellant, appellee, intervenor and amicus curiae, including governmental parties. Appellants (and cross-appellants) must file their CIP within 14 days of the date this appeal has been docketed, or along with the filing in this court of any motion, petition, or pleading, whichever occurs first. The time for filing the opposing party's CIP or notice is set by 11th Cir. R. 26.1-2(c). In the case of publicly traded corporations, counsel must include the stock ticker symbol after the corporate name. See 11th Cir.R. 26.1-3(c).

On the same day the CIP is served, the party filing it must also complete the court's web-based certificate at the [Web-Based CIP](#) link of the court's website. Pro se parties are **not required** or

authorized to complete the web-based certificate.

Attorneys must file briefs electronically using the ECF system. Use of ECF does not modify the requirements of the circuit rules that counsel must also provide seven (7) paper copies of a brief to the court, nor does it modify the requirements of the circuit rules for the filing of appendices in a particular case.

Attorneys who wish to participate in this appeal must be properly admitted either to the bar of this court or for this particular proceeding pursuant to 11th Cir. R. 46-1. In addition, all attorneys (except court-appointed counsel) who wish to participate in this appeal must complete and return an appearance form within fourteen (14) days. [Application for Admission to the Bar](#) and [Appearance of Counsel Form](#) are available on the Internet at www.ca11.uscourts.gov. The clerk may not process filings from an attorney until that attorney files an appearance form. See 11th Cir. R. 46-6.

Sincerely,

AMY C. NERENBERG, Acting Clerk of Court

Reply to: David L. Thomas, AA
Phone #: (404) 335-6169

BR-1CIV Civil appeal briefing ntc issued

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Amy C. Nerenberg
Acting Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 22, 2015

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 15-14179-AA

Case Style: Lee Pappas Body Shop, Inc., et al v. State Farm Mutual Automobile I, et al

District Court Docket No: 6:14-md-02557-GAP-TBS

Secondary Case Number: 6:14-cv-06019-GAP-TBS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

Eleventh Circuit Rule 31-1 requires that APPELLANT'S BRIEF BE SERVED AND FILED ON OR BEFORE November 30, 2015. APPELLANT'S APPENDIX MUST BE SERVED AND FILED NO LATER THAN 7 DAYS AFTER FILING OF THE APPELLANT'S BRIEF. INCARCERATED PRO SE PARTIES ARE NOT REQUIRED TO FILE AN APPENDIX.

This is the only notice you will receive concerning the due date for filing briefs and appendices. See Fed.R.App.P. 28, 30, 31, 32, the corresponding circuit rules, General Order 39 and the Guide to Electronic Filing for further information. Pro se parties who are incarcerated are not required to file an appendix.

If you have not entered your appearance in this appeal, please note that the clerk may not process your filings. See 11th Cir. R. 46-6. [Appearance of Counsel Forms](#) are available on the court's Web site.

FRAP 26.1 and the accompanying circuit rules provide that the Certificate of Interested Persons and Corporate Disclosure Statement (CIP) must be filed with the court by every appellant, appellee, intervenor and amicus curiae, including governmental parties. Appellants (and cross-appellants) must file their CIP within 14 days of the date this appeal has been docketed, or along with the filing in this court of any motion, petition, or pleading, whichever occurs first. The time for filing the opposing party's CIP or notice is set by 11th Cir. R. 26.1-2(c). In the case of publicly traded corporations, counsel must include the stock ticker symbol after the corporate name. See 11th Cir.R. 26.1-3(c).

On the same day the CIP is served, the party filing it must also complete the court's web-based certificate at the [Web-Based CIP](#) link of the court's website. Pro se parties are **not required or**

authorized to complete the web-based certificate.

Attorneys must file briefs electronically using the ECF system. Use of ECF does not modify the requirements of the circuit rules that counsel must also provide seven (7) paper copies of a brief to the court, nor does it modify the requirements of the circuit rules for the filing of appendices in a particular case.

Attorneys who wish to participate in this appeal must be properly admitted either to the bar of this court or for this particular proceeding pursuant to 11th Cir. R. 46-1. In addition, all attorneys (except court-appointed counsel) who wish to participate in this appeal must complete and return an appearance form within fourteen (14) days. [Application for Admission to the Bar](#) and [Appearance of Counsel Form](#) are available on the Internet at www.ca11.uscourts.gov. The clerk may not process filings from an attorney until that attorney files an appearance form. See 11th Cir. R. 46-6.

Sincerely,

AMY C. NERENBERG, Acting Clerk of Court

Reply to: David L. Thomas, AA
Phone #: (404) 335-6169

BR-1CIV Civil appeal briefing ntc issued

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Amy C. Nerenberg
Acting Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 22, 2015

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 15-14160-AA
Case Style: Quality Auto Painting Center v. State Farm Indemnity Company, et al
District Court Docket No: 6:14-md-02557-GAP-TBS
Secondary Case Number: 6:14-cv-06012-GAP-TBS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

Eleventh Circuit Rule 31-1 requires that APPELLANT'S BRIEF BE SERVED AND FILED ON OR BEFORE November 30, 2015. APPELLANT'S APPENDIX MUST BE SERVED AND FILED NO LATER THAN 7 DAYS AFTER FILING OF THE APPELLANT'S BRIEF. INCARCERATED PRO SE PARTIES ARE NOT REQUIRED TO FILE AN APPENDIX.

This is the only notice you will receive concerning the due date for filing briefs and appendices. See Fed.R.App.P. 28, 30, 31, 32, the corresponding circuit rules, General Order 39 and the Guide to Electronic Filing for further information. Pro se parties who are incarcerated are not required to file an appendix.

If you have not entered your appearance in this appeal, please note that the clerk may not process your filings. See 11th Cir. R. 46-6. [Appearance of Counsel Forms](#) are available on the court's Web site.

FRAP 26.1 and the accompanying circuit rules provide that the Certificate of Interested Persons and Corporate Disclosure Statement (CIP) must be filed with the court by every appellant, appellee, intervenor and amicus curiae, including governmental parties. Appellants (and cross-appellants) must file their CIP within 14 days of the date this appeal has been docketed, or along with the filing in this court of any motion, petition, or pleading, whichever occurs first. The time for filing the opposing party's CIP or notice is set by 11th Cir. R. 26.1-2(c). In the case of publicly traded corporations, counsel must include the stock ticker symbol after the corporate name. See 11th Cir.R. 26.1-3(c).

On the same day the CIP is served, the party filing it must also complete the court's web-based certificate at the [Web-Based CIP](#) link of the court's website. Pro se parties are **not required or**

authorized to complete the web-based certificate.

Attorneys must file briefs electronically using the ECF system. Use of ECF does not modify the requirements of the circuit rules that counsel must also provide seven (7) paper copies of a brief to the court, nor does it modify the requirements of the circuit rules for the filing of appendices in a particular case.

Sincerely,

AMY C. NERENBERG, Acting Clerk of Court

Reply to: David L. Thomas, AA

Phone #: (404) 335-6169

BR-1CIV Civil appeal briefing ntc issued

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Amy C. Nerenberg
Acting Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 22, 2015

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 15-14162-AA
Case Style: Ultimate Collision Repair, In v. State Farm Indemnity Company, et al
District Court Docket No: 6:14-md-02557-GAP-TBS
Secondary Case Number: 6:14-cv-06013-GAP-TBS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

Eleventh Circuit Rule 31-1 requires that APPELLANT'S BRIEF BE SERVED AND FILED ON OR BEFORE November 30, 2015. APPELLANT'S APPENDIX MUST BE SERVED AND FILED NO LATER THAN 7 DAYS AFTER FILING OF THE APPELLANT'S BRIEF. INCARCERATED PRO SE PARTIES ARE NOT REQUIRED TO FILE AN APPENDIX.

This is the only notice you will receive concerning the due date for filing briefs and appendices. See Fed.R.App.P. 28, 30, 31, 32, the corresponding circuit rules, General Order 39 and the Guide to Electronic Filing for further information. Pro se parties who are incarcerated are not required to file an appendix.

If you have not entered your appearance in this appeal, please note that the clerk may not process your filings. See 11th Cir. R. 46-6. [Appearance of Counsel Forms](#) are available on the court's Web site.

FRAP 26.1 and the accompanying circuit rules provide that the Certificate of Interested Persons and Corporate Disclosure Statement (CIP) must be filed with the court by every appellant, appellee, intervenor and amicus curiae, including governmental parties. Appellants (and cross-appellants) must file their CIP within 14 days of the date this appeal has been docketed, or along with the filing in this court of any motion, petition, or pleading, whichever occurs first. The time for filing the opposing party's CIP or notice is set by 11th Cir. R. 26.1-2(c). In the case of publicly traded corporations, counsel must include the stock ticker symbol after the corporate name. See 11th Cir.R. 26.1-3(c).

On the same day the CIP is served, the party filing it must also complete the court's web-based certificate at the [Web-Based CIP](#) link of the court's website. Pro se parties are **not required or**

authorized to complete the web-based certificate.

Attorneys must file briefs electronically using the ECF system. Use of ECF does not modify the requirements of the circuit rules that counsel must also provide seven (7) paper copies of a brief to the court, nor does it modify the requirements of the circuit rules for the filing of appendices in a particular case.

Sincerely,

AMY C. NERENBERG, Acting Clerk of Court

Reply to: David L. Thomas, AA

Phone #: (404) 335-6169

BR-1CIV Civil appeal briefing ntc issued

EXHIBIT 3

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 15-14160-AA

**QUALITY AUTO PAINTING CENTER OF ROSELLE, INC.,
Traded as Prestige Auto Body,**

Plaintiff - Appellant,

v.

STATE FARM INDEMNITY COMPANY, et al.,

Defendants - Appellees.

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

**REPLY BRIEF FOR QUALITY AUTO PAINTING CENTER OF
ROSELLE, INC.,
Traded as Prestige Auto Body, AS PLAINTIFF - APPELLANT**

ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiff - Appellant
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 15-14162-AA

ULTIMATE COLLISION REPAIR, INC.,

Plaintiff - Appellant,

v.

STATE FARM INDEMNITY COMPANY, et al.,

Defendants - Appellees.

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

**REPLY BRIEF FOR ULTIMATE COLLISION REPAIR, INC.
AS PLAINTIFF - APPELLANT**

ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiff - Appellant
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 15-14178-AA

CAMPBELL COUNTY AUTO BODY, INC.,

Plaintiff - Appellant,

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**

**REPLY BRIEF FOR CAMPBELL COUNTY AUTO BODY, INC.
AS PLAINTIFF - APPELLANT**

ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiff - Appellant
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 15-14179-AA

LEE PAPPAS BODY SHOP, INC., 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**

**REPLY BRIEF FOR LEE PAPPAS BODY SHOP, INC., et al.
AS PLAINTIFFS - APPELLANTS**

ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiffs - Appellants
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 15-14180-AA

CONCORD AUTO BODY, INC.,

Plaintiff - Appellant,

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**

**REPLY BRIEF FOR CONCORD AUTO BODY, INC.
AS PLAINTIFF - APPELLANT**

ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiff - Appellant
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

CERTIFICATE OF INTERESTED PARTIES

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

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**MOTION FOR LEAVE TO AMEND/CORRECT REPLY BRIEF AND FOR
EXTENSION OF WORD COUNT LIMITATION (OUT OF TIME)**

Pursuant to Federal Rule of Appellate Procedure 27, and 27-1(c), Appellants in the above-captioned consolidated appeal move the Court for leave to amend/correct the reply briefs filed as well as permission to file in excess of the word limitation, and state to the Court the following:

1. Upon request from Defendant-Appellees, the Plaintiff-Appellants (“body shops”) agreed to consolidate the pending cases now before the Court. Body shop counsel was under the impression, based upon conversation with opposing counsel, that each side would be filing a single, consolidated brief.

2. Instead, Defendant-Appellees filed twelve response briefs on Friday, May 6, 2016. Body shop counsel contacted the Eleventh Circuit Clerk’s Office on Monday, May 9, 2016, and was directed to file a reply brief to each response brief filed. To facilitate this, the body shops were given two additional weeks to prepare and file reply briefs, as it was agreed preparation of twelve reply briefs could not be accomplished in fourteen days.

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

3. Subsequent to filing reply briefs, the Circuit Clerk's office notified body shop counsel only a single reply brief should be filed, the multiple briefs should be consolidated and this motion filed.

4. The Appellants complied with the above directions. Subsequent thereto, Appellants' counsel was again contacted by the Clerk's Office regarding purported deficiencies. Upon discussion, it was discovered that Eleventh Circuit Rule 28-3, which sets out specifically what is required for the contents of a Reply brief, is incomplete. Thus, although Appellants complied with Rule 28-3, the Clerk's Office has directed this motion and its attachments be amended as per their instructions.

5. The body shops therefore move this Court for leave to amend/correct the Reply Brief. A copy of the proposed amended/corrected reply brief is attached hereto following the body of this motion.

6. The body shops further request an extension of the word count limitation for reply briefs. In their response briefs, the Appellees raised multiple arguments neither noticed pursuant to a notice of cross-appeal, nor raised in the Appellants' consolidated brief. Although these arguments are arguably not before the Court on appeal, the body shops have addressed them out of an abundance of caution as the only other option leaves the matters without response.

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

7. The amended/corrected reply brief contains approximately 10,373 words. Argument addressing arguments improperly raised by Appellees account for nearly 2,000 words of that count. As it is improper for the Court to offer assurances arguments raised first in response briefs without cross-notice will be omitted from consideration, the body shops respectfully submit the interests of justice require they be permitted to dispute them.

8. Appellants are fully aware the Certificate of Compliance is incorrect, that the Reply Brief exceeds the word-count limitation as per Rule. However, although the incorrect nature of the Certificate was raised, Appellants were specifically directed to include the Certificate by the Clerk's Office.

9. Appellants therefore respectfully request leave to amend/correct and an extension of permitted word count for the reasons set forth above.

Respectfully submitted, this the 20th day of July, 2016.

/s/ Allison P. Fry

ALLISON P. FRY

JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiff - Appellant
John Arthur Eaves Law Offices
101 North State Street

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

Jackson, Mississippi 39201
Telephone: (601) 355-7961

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of July, 2016, I electronically filed the Plaintiffs-Appellants Motion for Leave to Amend/Correct Reply Brief and For Extension of Word Count Limitation (Out of Time) with the Clerk of the Court.

/s/ Allison P. Fry
ALLISON P. FRY

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

APPENDIX 1

AMENDED CERTIFICATE OF INTERESTED PERSONS

21st Century Assurance Company

21st Century Centennial Insurance Company

21st Century Pinnacle Insurance Company

Allstate Insurance Group

~~Allstate New Jersey Insurance Company~~ **Allstate New Jersey Insurance Company**

Allstate New Jersey Property and Casualty Insurance Company

American Family Home Insurance Company

American Family Mutual Insurance Company

Ansell Grimm & Aaron

Axinn, Veltrop & Harkrider, LLP

Baker & Hostetler, LLP

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

Barthel, David John

Bauchner, Joshua S.

Beekhuizen, Michael

Berkshire Hathaway Group

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

Berkshire Hathaway, Inc. (ticker: BRK.A and BRK.B)

Botti, Mark J.

Caldwell, Lori J.

Carpenter Lipps & Leland, LLP

Carpenter, Michael

Cashdan, Jeffrey S.

Chesler, Stanley R. (United States District Judge)

D'Amico, Brian J.

Dentons US, LLC

Diamantas, Kyle A.

Eaves Law Office

Eaves, Jr., John Arthur

Farmers Insurance Group

Fenton, Richard L.

Fischer, Ian Matthew

Fry, Allison P.

GEICO Advantage Insurance Company

~~Geico Casualty Company~~

GEICO Casualty Company

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

GEICO Choice Insurance Company

GEICO County Mutual Insurance Company

GEICO Corporation

~~Geico General Insurance Company~~ **GEICO General Insurance Company**

~~Geico Indemnity Company~~ **GEICO Indemnity Company**

GEICO Secure Insurance Company

Goldfine, Dan W.

~~Government Employee's Insurance Company~~ **Government Employees Insurance Company**

Gabel, Joshua

Griffith, Jr., Steven F.

Halavais, Jamie L.

Hanover Insurance Company

Hanover, Mark L.

Hartford Fire and Casualty Group

Hartford Fire Insurance Company

Hartford Insurance Company of the Midwest

Hartford Underwriters Insurance Company

Hochstadt, Eric

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

King & Spalding, LLP

Koch, Amelia W.

Kochis, Kymberly

Lau, Bonnie

Liberty Insurance Corporation

Liberty Mutual Fire Insurance Company

Liberty Mutual Group Inc.

Liberty Mutual Insurance Company

Liberty Mutual Mid-Atlantic Insurance Company

Litchford, Hal K.

LM Insurance Corporation

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard

Mastando, III, John

Mumford, Michael E.

Nationwide Corporation Group

Nationwide Mutual Insurance Company

Nelson, Michael R.

Nolan, Francis X.

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

Oates, Claire Carothers

Presnell, Gregory A. (United States District Judge)

The Progressive Corporation (ticker: PGR)

Progressive Direct Holdings, Inc.

Progressive Freedom Insurance Company

Progressive Garden State Insurance Company

Progressive Group

Quality Auto Painting Center of Roselle, Inc. traded as Prestige Auto Body

Rohback, Thomas G.

Rumberger, Kirk & Caldwell, PA

Salazar, Marjorie M.

Schmeeckle, Seth A.

Smith, Thomas B. (United States Magistrate Judge)

Snell & Wilmer, LLP

Squire Patton Boggs (US), LLP

State Farm Guaranty Insurance Company

State Farm Indemnity Company

State Farm Mutual Automobile Insurance Company

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

Sutherland, Asbill & Brennan, LLP

The Opus Investment Management, Inc.

United Services Auto Association

United Services Automobile Association Group

USAA Casualty Insurance Company

USAA General Indemnity Company

Vargo, Ernest E.

Waldor, Cathy L. (United States Magistrate Judge)

Weil, Gotshal & Manges, LLP

Yohai, David L.

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 15-14160-AA

**QUALITY AUTO PAINTING CENTER OF ROSELLE, INC.,
Traded as Prestige Auto Body,**

Plaintiff - Appellant,

v.

STATE FARM INDEMNITY COMPANY, et al.,

Defendants - Appellees.

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

**REPLY BRIEF FOR QUALITY AUTO PAINTING CENTER OF
ROSELLE, INC.,
Traded as Prestige Auto Body, AS PLAINTIFF - APPELLANT**

ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiff - Appellant
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 15-14162-AA

ULTIMATE COLLISION REPAIR, INC.,

Plaintiff - Appellant,

v.

STATE FARM INDEMNITY COMPANY, et al.,

Defendants - Appellees.

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

**REPLY BRIEF FOR ULTIMATE COLLISION REPAIR, INC.
AS PLAINTIFF - APPELLANT**

ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiff - Appellant
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 15-14178-AA

CAMPBELL COUNTY AUTO BODY, INC.,

Plaintiff - Appellant,

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**

**REPLY BRIEF FOR CAMPBELL COUNTY AUTO BODY, INC.
AS PLAINTIFF - APPELLANT**

ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiff - Appellant
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 15-14179-AA

LEE PAPPAS BODY SHOP, INC., 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**

**REPLY BRIEF FOR LEE PAPPAS BODY SHOP, INC., et al.
AS PLAINTIFFS - APPELLANTS**

ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiffs - Appellants
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

Nos. 15-14160-AA, 15-14162-AA, 15-14178-AA, 15-14179-AA, and 15-14180-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 15-14180-AA

CONCORD AUTO BODY, INC.,

Plaintiff - Appellant,

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**

**REPLY BRIEF FOR CONCORD AUTO BODY, INC.
AS PLAINTIFF - APPELLANT**

ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiff - Appellant
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

TABLE OF CONTENTS

	<u>PAGE</u>
Table of Contents.	i
Table of Authorities.....	ii
Argument.....	1
I. INTRODUCTION	1
II. Federal Claims.	3
A. Appellees Are Precluded From Raising “Group Pleading” Argument.	3
B. Appellees Are Precluded From Raising “Shotgun Pleading” Argument.	6
C. Price Fixing.....	6
D. Group Boycotting	17
III. State Law Causes of Action.	21
A. Unjust Enrichment.	21
1. The District Court Erred in Deciding the Merits Of the Claim	21
2. Defendants’ unilateral intent to refuse Full payment does not extinguish an unjust enrichment claim.	24
3. Merely paying something does not defeat a plaintiff’s unjust enrichment claim.	27

4.	The district court erred in creating new elements of state law.	28
5.	The district court’s holding violates corollary state authority.	30
6.	The District Court committed reversible error by applying affirmative defenses contradicting the contents of the complaint.	31
7.	State Farm fails to provide any authority or argument regarding the district court’s errors of the factual contents of the complaints.	34
8.	State Farm improperly argues the existence of a contract.	35
B.	Appellees Improperly Raise the Question of Benefit Conferred	37
C.	Quantum Meruit.	38
1.	New Jersey	38
2.	Kentucky	42
3.	Virginia	43
D.	Tortious Interference	44
	Conclusion.	48
	Certificate of Compliance.	--
	Certificate of Service.	--

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)... 4, 5

Cases

Alexander Hamilton Life Ins. Co. v. Lewis, 550 S.W.2d 558 (Ky. 1977)... 37
Appalachian Reg'l Healthcare v. Coventry Health & Life Ins. Co.,
2013 WL 1314154 (E.D. Ky. Mar. 28, 2013)... 42
Arista Records, LLC v. Doe 3, 604 F.3d 110, 119-20 (2nd Cir. 2010)... 7
Ashcroft v. Iqbal, 556U.S. 662 (2009)... 7, 12, 23, 24
Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)... 2
Boykin v. KeyCorp, 521 F.3d 202, 215 (2d Cir. 2008)... 11
Brand Name Prescription Drugs Antitrust Litig., 186 F.3d 781
(7th Cir.1999)... 16
Broad Street Surgical Ct., LLC v. UnitedHealth Group, Inc., 2012 WL 762498
(D.N.J. 2012)... 37
Brooke Group v. Brown & Williamson Tobacco Corp.,
509 U.S. 209 (1993)... 18
Brooks v. Blue Cross & Blue Shield of Florida, Inc.,
116 F.3d 1364 (11th Cir. 1997)... 3

TABLE OF AUTHORITIES, CONT.

PAGE

Brown v. Budz, 398 F.3d 904 (7th Cir. 2005) 43

Cambridge Univ. Press v. Patton, 769 F.3d 1232 (11th Cir. 2014). 5

Cattano v. Bragg, 283 Va. 638 (Va. 2012) 37

Christidis v. First Pennsylvania Mortgage Trust, 717 F.2d 96 (3d Cir. 1983) . . . 11

Continental Ore Co. v. Union Carbide & Carbon Corp.,
370 U.S. 690 (1962) 12

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

Dubyk v. RLF Pizza, Inc., 2014 WL 1153044 (S.D. Fla. Mar. 17, 2014) 10

Erickson v. Pardus, 551 U.S. 89, 93 (2007) 7

Evans v. City of Browning, Mont., 953 F.2d 1386 (9th Cir. 1992) 20

Grossman v. Nationsbank, N.A., 225 F.3d 1228 (11th Cir. 2000) 2

Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205 (1979) 14

Haverty v. Andres & Berger, P.C., 2004 WL 2701040
(N.J. Super. Ct. App. Div. Nov. 9, 2004). 40

Howard v. Turnbull, 316 S.W.3d 431 (Mo. Ct. App. 2010) 37

In re Cardizem D Antitrust Litig., 105 F. Supp. 2d 618
(E.D. Mich. 2000). 16

In re Demos, 57 F.3d 1037 (11th Cir. 1995) 4

TABLE OF AUTHORITIES, CONT.	PAGE
<i>In re K-Dur Antitrust Litig.</i> , 338 F. Supp. 2d 517 (D.N.J. 2004).	27
<i>Interstate Circuit, Inc. v. United States</i> , 306 U.S. 208 (1939)	8
<i>Isaacs v. Lawson</i> , 2012 WL 5274431 (Ky. Ct. App. Oct. 26, 2012).	43
<i>ISystems v. Spark Networks, Ltd.</i> , 428 F. App'x 368, (5th Cir. 2011)	30
<i>Jennings v. Stephens</i> , 135 S. Ct. 793 (2015)	5
<i>Kopin v. Orange Products, Inc.</i> , 688 A.2d 130 (N.J. App. Div. 1997).	39
<i>Leavitt v. Jane L.</i> , 518 U.S. 137 (1996)	31
<i>Lockheed Martin Corp. v. Boeing Co.</i> , 357 F. Supp. 2d 1350 (M.D. Fla. 2005).	3
<i>Mandeville Island Farms v. Am. Crystal Sugar Co.</i> , 334 U.S. 219 (1948).	15
<i>Meacham v. Knolls Atomic Power Lab.</i> , 554 U.S. 84 (2008).	33
<i>Mullins v. First Night, Wayne</i> , 326 N.J. Super. 93 (App.Div. 1999)	37
<i>Neitzke v. Williams</i> , 490 U.S. 319 (1989).	45
<i>O'Lone v. Dep't of Human Servs.</i> , 814 A.2d 665 (N.J.App. Div. 2003).	41
<i>Park v. El Paso Bd. of Realtors</i> , 764 F.2d 1053 (5th Cir. 1985)	20
<i>Petrie v. LeVan</i> , 799 S.W.2d 632 (Mo. Ct. App. 1990)	37
<i>Robertson v. Sea Pines Real Estate Cos.</i> , 679 F.3d 278 (4th Cir. 2012).	44
<i>S.E.C. v. Levin</i> , 2013 WL 5588224 (S.D. Fla. Oct. 10, 2013).	30

TABLE OF AUTHORITIES, CONT.	PAGE
<i>St. Barnabas Medical Ctr. v. County of Essex</i> , 111 N.J. 67 (N.J. 1988)	37
<i>Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.</i> , 305 F.3d 1293 (11 th Cir. 2002).	6
<i>Swanson v. Citibank, N.A.</i> , 614 F.3d 400, 404 (7th Cir. Ill. 2010)..	3
<i>Sprint Sols., Inc. v. Cell Xchange, Inc.</i> , 2015 WL 1001272 (M.D. Fla. 2015).. . . .	45
<i>Telecor Commc'ns, Inc. v. Sw. Bell Tel. Co.</i> , 305 F.3d 1124 (10th Cir. 2002). . .	15
<i>Thompson v. RelationServe Media, Inc.</i> , 610 F.3d 628 (11th Cir. 2010).. 9 6 <i>Thompson v. Williams</i> , 2007 WL 1655428 (W.D. Wash. June 7, 2007) 9	9
<i>Twin City Fire Ins. Co. v. Harman, Simons & Wood, LLP</i> , 609 Fed. App'x. 972 (11 th Cir. 2015).	31, 36
<i>United States v. Appalachian Coals, Inc.</i> , 1 F. Supp. 339 (D. Va. 1932)	15
<i>United States v. Paramount Pictures, Inc.</i> , 334 U.S. 131 (1948)..	8
<i>United Techs. Corp. v. Mazer</i> , 556 F.3d 1260 (11th Cir. 2009)..	36
<i>Weichert Co. Realtors v. Ryan</i> , 608 A.2d 280 (N.J. 1992)..	39, 41
<i>West v. American Tel. & Tel. Co.</i> , 311 U.S. 223 (U.S. 1940)..	30
 FEDERAL RULES OF CIVIL PROCEDURE	
Fed. R.Civ. Pro. 8	7, 11, 17, 45
Fed. R.Civ. Pro. 8(d)(2)	37

TABLE OF AUTHORITIES, CONT.	PAGE
Fed. R. Civ. Pro. 9(b)	7, 11, 46, 47
Fed. R. Civ. Pro. 12(b)(6)	2, 45
Kentucky Rules of Civil Procedure (CR) Rule 76.37	42

OTHER AUTHORITY

United States Department of Justice, <i>Price Fixing, Bid Rigging, and Market Allocation Schemes: What They Are and What to Look For</i> https://www.justice.gov/atr/price-fixing-bid-rigging-and-market-allocation-schemes	13, 14
Webster's Third New International Dictionary 264 (1971).	19

ARGUMENT

I. INTRODUCTION

The Response briefs filed by various Appellees raise a number of arguments which are not properly before this Court as Appellees failed to file any notice of cross-appeal, or they argue decisions never made by the district court. These are noted below.

Substantively, the Appellees argue in a circular fashion that because the district court ruled a particular way, the ruling must be correct. Indeed, the majority of the arguments rely and cite only to the orders as substantiation, rather than applicable state or federal authority. Particularly with respect to the state law causes of action, this is because extant state law holds diametrically opposed to the district court's decisions.

While arguing the district court's findings were correct, Appellees fail to recognize a dispositive issue— whether the district court had authority or discretion to make those findings at all. Binding authority holds it did not. However, Appellees' briefs do highlight the erroneous analysis of the district court— it approached the various motions to dismiss backwards.

Defending against a motion to dismiss is likely the one instance where a plaintiff holds a significant advantage. The court is required, in essence, to start off

on the plaintiff's side. The trial court here started from the opposite position, assuming defendants' motions arguments were true, looking to the complaints only to see if they defeated those arguments, whether or not those arguments actually reflected existing law. The result is a dismissal order predicated not upon failure to adequately plead, but upon purported failure to negate the defendants' arguments.

Analysis of 12(b)(6) motions is narrow and well-defined. After ascertaining the asserted claim elements, the complaint is reviewed to determine whether it adequately alleges those elements. The court must assume the facts are true and, drawing all reasonable inferences in favor of the plaintiff, determine whether those facts plausibly suggest a right to relief. "No matter how likely it may seem that the pleader will be unable to prove his case, he is entitled, upon averring a claim, to an opportunity to try to prove it." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 563, FN 8 (2007).

Absent exception not present here, the court is limited to the contents of the complaint and its exhibits in passing on a motion to dismiss. *Grossman v. Nationsbank, N.A.*, 225 F.3d 1228, 1231 (11th Cir. 2000).

The court is prohibited from accepting defendants' motion arguments or justifications, as the court is prohibited from weighing facts or drawing inferences

favorable to the defendants instead of the plaintiffs. *Lockheed Martin Corp. v. Boeing Co.*, 357 F. Supp. 2d 1350, 1368 (M.D. Fla. 2005).

Nor may the court resolve factual disputes, determine the merits of the claims, or applicability of defenses. *Brooks v. Blue Cross & Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1368 (11th Cir. 1997). The court does not determine if the facts alleged actually did happen, only if they could. *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404 (7th Cir. Ill. 2010).

The district court was therefore limited to determining whether the complaints adequately pled the elements of the claims. It was not permitted to decide the merits, or decide defendants' motion argument alternatives were preferable or more plausible. However, that is exactly what the court did. Appellees arguments actually highlight these errors rather than contradicting them.

II. FEDERAL CLAIMS

A. Appellees are precluded from raising group pleading argument

Defendant insurers criticize supposedly impermissible group pleading, concluding the district court correctly dismissed the federal claims for this flaw.

That is not, however, exactly what the court ruled. The magistrate judge recommended dismissing all claims for purported group pleading deficiencies.

However, it also recommended dismissing the federal claims on the grounds set forth by the district judge in the separate order now available at *A & E Auto Body, Inc. v. 21st Century Centennial Ins. Co.*, 2015 WL 304048, (M.D. Fla. Jan. 21, 2015). This recommendation was adopted, and the January 21, 2015, order became the order regarding federal claims for all appeals presently before the Court.

In that order, the district court referenced group pleading and, after discussion of prior attempts to plead in a manner agreeable to the court, concluded the matter by directing, “The Plaintiffs [] insure that their references to “the Defendants” are, in fact, intended to encompass every single Defendant.” *Id.* at 4.

The district court therefore did not prohibit plaintiffs from utilizing group pleading for the federal antitrust claims; it directed plaintiffs do so appropriately. Parties are permitted to rely upon a court’s orders; to hold otherwise would be to permit parties the option of deciding which orders to obey, or conversely to condemn parties to the instability of guessing which orders to abide and which to ignore. *In re Demos*, 57 F.3d 1037, 1039 (11th Cir. 1995).

If Appellees were aggrieved by this, it should have filed an appropriate notice of cross-appeal. They did not and are now prohibited from raising an argument not noticed and which is outside the scope of Appellants’ brief:

As we have previously explained, a party who has not appealed may not bring an argument in opposition to a judgment or attack the judgment in any respect, or hitch a ride on his adversary's notice of appeal to enlarge his rights under the judgment or diminish those of the opposing party.

Cambridge Univ. Press v. Patton, 769 F.3d 1232, 1255 (11th Cir. 2014).

The Appellants' Brief did not address "group pleading" of federal claims as it was not a dispositive ground for dismissal, though Appellees suggest otherwise. Without filing any notice, the Appellees "hitch a ride" upon Appellants' notice, ask this Court approve its arguments and thereby restrict the rights afforded to the body shops. The Supreme Court has specifically disapproved of such. *Jennings v. Stephens*, 135 S. Ct. 793, 798 (2015).

It should also be noted the complaints now on appeal were filed the first week of November, 2014. The order in *A & E Auto Body* was not issued until January 15, 2015, some two months after the complaints were filed. Appellees' complaints that plaintiffs have willfully failed to abide by the court's directions regarding group pleading are therefore untenable. The Plaintiffs cannot be held to have failed to comply with an order that did not exist when the complaints were filed.

Appellees' group pleading argument should be wholly disregarded.

B. Appellees are precluded from raising “shotgun pleading” argument

Appellees complain of improper shotgun pleading. However, the district court did not dismiss the complaints for shotgun pleading. As the court did not enter such an order, Appellants respectfully submit the Court is without jurisdiction to consider the argument.¹

Alternatively, Appellees’ complaint is without merit. Shotgun pleading is defined as incorporating by reference the allegations of preceding counts. *Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 (11th Cir. 2002). No such incorporation exists within any present complaint.

Appellees also argue improper shotgun pleading due to the absence of incorporation. Appellees provide no authority that shotgun pleading may exist in the absence of incorporation.

Appellees’ shotgun pleading argument should be wholly disregarded.

C. Price Fixing

Notably, the Appellees do not argue the complaints failed to allege the elements of a price fixing claim. Instead, they argue the lack of specificity in the complaint to lobby the district court’s dismissal was correct, to wit, it fails to detail

¹The only discussion of shotgun pleading in the Report and Recommendation adopted by the district court referred to a single case not before this Court on appeal, *Haury’s Auto Body, Inc., et al, v. State Farm Mutual Auto. Ins. Co., et al*, 6:14-cv-6015.

how, when, by whom the agreement to fix prices was created, the amount each defendant paid and so forth. Appellees' argument is contradicted by clear Supreme Court authority. This "who, what, when and how" approach is the hallmark of Rule 9(b) specificity pleading. However, Sherman Act claims are subject only to notice pleading requirements of Rule 8. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Rule 8 does not require "detailed factual allegations." *Id.* at 678. The Supreme Court expressly rejected the specificity pleading Appellees are attempting to compel. "Specific facts are not necessary; the statement need only give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)(emphasis added).

Federal courts have recognized that requiring greater specificity breaches the simple notice pleading mandated by the Rules. Requiring more than fair notice by definition imposes a heightened, inapplicable, pleading standard which conflicts with Federal Rule and Supreme Court mandate. *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 119-20 (2nd Cir. 2010).

The insurers fail to cite any authority which overrules, limits or amends the Supreme Court's unambiguous rulings on Rule 8 pleading sufficiency. Further, the argument pre-supposes the Plaintiffs will ever be required to establish the facts Appellee insurers seek to compel, for example, which corporate officers met to form

the agreement, when or in whose office. Plaintiffs are not required to plead or prove any of this. “It is elementary that an unlawful conspiracy may be and often is formed without simultaneous action or agreement on the part of the conspirators.” *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 227 (1939). See also *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 143 (1948) (“It is not necessary to find an express agreement in order to find a conspiracy. It is enough that a concert of action is contemplated and that the defendants conformed to the arrangement.”)

As these cases demonstrate, the judiciary understands and accepts that only rarely will there be direct evidence of an express agreement, and a plaintiff is neither required to plead or prove the same. Conspirators are generally anxious to conceal their crimes and any direct evidence of unlawful agreements are solely within the possession or control of the guilty parties or they were not foolish enough to write down their illegal agreement.

The need for great caution to conceal their agreement is particularly evident in these cases, as there exists a federal consent decree prohibiting the actions in which the defendants are engaged. Plaintiffs attached to their complaints as Exhibit “4” the consent decree entered in *United States v. Association of Casualty and Surety Companies, et al*, Docket No. 3106, Southern District of New York. In 1963, the defendant insurers were careless enough to create written records of their agreement

and this carelessness provided substantial direct evidence the Department of Justice was able to subpoena. Undoubtedly this is why that case was filed and concluded within mere days.

Thus, as the insurers recommenced the prohibited behavior described in the current complaints, the only conclusion to be reasonably drawn is the experience with the consent decree did not alter defendant insurers' illegal. They simply became better at concealing their crime.

Some defendants argue there is no evidence any of them are members of the trade associations bound by the consent decree and therefore the district court correctly ignored it. However, discovering facts in support of claims is exactly what discovery is for. See, e.g., *Thompson v. Williams*, 2007 WL 1655428, at *2 (W.D. Wash. June 7, 2007). Plaintiffs are not required to produce evidence in a complaint.

Further, courts are permitted to take judicial notice of records publicly filed with government agencies. See, e.g., *Thompson v. RelationServe Media, Inc.*, 610 F.3d 628, 642 (11th Cir. 2010). Each of the three insurance trade associations presently bound by the Consent Decree shelter beneath a 501(c)(3) tax-exempt status and are therefore required to publicly disclose their respective Form 990s filed with the Internal Revenue Service. Those Form 990s identify the corporate officers and board members. Each of the associations routinely identify as board members

corporate officers of the handful of insurers which control the lion's share of the private passenger insurance market, including State Farm, Allstate, GEICO, USAA, Liberty Mutual, Farmers, and Travelers.²

However, per the terms of the Decree, its prohibitions are not binding merely upon the associations, but their members and anyone in active concert with any members. Therefore the terms are binding upon any insurer in active concert with any member, whether or not a member of any association themselves. It is thus unnecessary for Plaintiffs to plead and prove each named defendant is a member of any trade association for the terms of the consent decree bind them.

Appellees also neglect to mention a complaint may not be dismissed for failing to allege specific facts when those facts are within the possession and control of the defendants. *Dubyk v. RLF Pizza, Inc.*, 2014 WL 1153044, at *2 (S.D. Fla. Mar. 17, 2014). Only the defendants currently know the details of the price fixing agreement formation. This does not prevent a complaint from moving forward to discovery.

²See, e.g., Form 990s filed by Property Casualty Insurers Association of America (PCI), one of the trade associations bound by the consent decree, <https://www.citizenaudit.org/organization/200487810/property-casualty-insurers-association-of-america/>

PCI stopped listing the insurer employers of its board members in recent years, listing only their names. However, the information is listed on the older filed tax records and the individual's names can be followed through to current forms. PCI's 2005 form 990 lists executives from Allstate, GEICO, Farmers, Liberty Mutual, Harleysville Insurance (a Nationwide subsidiary), among others. Form 990s are also available for the two other trade associations bound by the consent decree, National Association of Mutual Insurance Companies (NAMIC) and American Insurance Association (AIA).

Even when Rule 9(b) particularity pleading applies, a complaint may not be dismissed for failing to include factual details only the defendants know. *Boykin v. KeyCorp*, 521 F.3d 202, 215 (2d Cir. 2008).

Dismissal of claims lacking such details prior to discovery results only in allowing sophisticated defendants to successfully hide the evidence of their crimes. *Christidis v. First Pennsylvania Mortgage Trust*, 717 F.2d 96, 100 (3d Cir. 1983).

As the body shops will never be required to prove the details Appellees demand, they are not required to plead them to move forward to discovery.

As noted above, there is a notable lack of argument about dispositive matters. Appellees do not allege they cannot understand the nature or grounds for the price fixing claim, nor do they allege the complaints failed to allege facts supportive of each element of the claim. They merely argue the facts asserted are too few in number and non-specific, reciting purported failures argued in motions to dismiss that Plaintiffs allegedly failed to rebut.

However, these arguments (aside from urging this Court to apply Rule 9(b) to a Rule 8 claim) encourage this Court to commit the same errors as the district court. That is, analyze the motion to dismiss backward— start from the position defendants' arguments are correct and determine whether the complaint adequately defeats those arguments.

The district court found the facts alleged did not create a context plausibly suggesting the existence of an agreement to fix prices, finding each fact individually insufficient to carry the day. In the same erroneous manner, Appellees disassemble the complaints, arguing the implausibility of each individual fact because there exist innocent alternatives for each, leaving no facts to support the claim at the end.

This approach contravenes all relevant federal requirements for evaluating a complaint's contents. The district court was required to view the allegations of the complaint as whole, not dismembered into discrete pieces analyzed individually. The Supreme Court has forbidden this approach. *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690,699 (1962). This is particularly important for antitrust claims. *Id.*

As to the claim as a whole, Appellees additionally encourage the Court to do as the district court did, simply disbelieve the facts asserted. However, the district court was not permitted to simply disregard the facts alleged. The Supreme Court has clearly established the circumstances under which a court is permitted to disregard or disbelieve alleged facts: when those facts “are sufficiently fantastic to defy reality as we know it: claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in time travel.” *Iqbal*, 556U.S. at 696.

The facts of the complaints do not reach this level. On the contrary, the complaints' contents fall squarely within the parameters of what the Department of Justice defines as hallmarks of price fixing: (1) holding prices firm, and (2) adopting a standard formula for computing prices. Where these things exist, price fixing should be suspected.³

The plaintiffs alleged these very hallmark actions—standardized formulas for calculating labor rates, parts purchases and paint and materials compensation; identical fixed prices for labor rates which hold firm until State Farm authorizes a change, among many others. The complaints also include, with examples, the insurers utilization of identical scripts for refusing to honor labor rates which do not conform to the fixed price, identical scripts for limiting payment on paint and material, identical scripts for limiting payment of parts. These, too, are indicators price fixing is occurring per the Department of Justice.⁴

Thus, the context plausibly suggesting an agreement the district court found lacking fits exactly the context the Department of Justice finds indicative of price-fixing.

³<http://www.justice.gov/atr/price-fixing-bid-rigging-and-market-allocation-schemes>

⁴ *Id.* “References to industry-wide or association schedules” and “any statement indicating vendors have discussed prices among themselves or have reached an understanding about prices” are “tip off[s] to collusion.”

Moreover, the Supreme Court has previously noted these circumstances constitute price fixing, and in dicta, specifically recognized this would be the case where the parties involved were insurers and auto body repairers. *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 232 (1979).

Appellees argue nothing precludes a business from refusing to pay more than its competitors. This argument is disingenuous, as it reconstructs in soft focus what the body shops have alleged. The insurers are not merely trying to strike as good a deal as their competitors, they are compelling the plaintiffs to accept what the insurers have agreed amongst themselves to pay. They are able to effect this compulsion through economic power.

Which raises the next point the district court failed to give effect and Appellees fail to acknowledge— the overall position of the parties and the power wielded by the defendants. As set out in the complaints, the insurers hold nearly complete control of the private passenger auto insurance markets in the respective states and nearly all of the defendants are subsidiaries or affiliates of only a handful of companies. Concentration of power in a small group of companies is also considered by the Department of Justice as a setting conducive to price fixing.⁵

⁵Department of Justice, <https://www.justice.gov/atr/price-fixing-bid-rigging-and-market-allocation-schemes>

In sum, the plaintiffs have alleged there exists a group of companies which hold overwhelming dominant position within their market and exert manifest influence over the only avenue the body shops have to sell their product— consumers. As set out in the complaints, nearly all body shop business is comprised of insurance-paying customers. The defendant insurers mandate price controls over every aspect of the repair process and compel compliance with those terms. Refusal to comply results in insurers punishing the shops by choking off the customer base (see discussion below, re: boycotting).

This is the exact set of circumstances the Supreme Court has previously recognized as violative of the Sherman Act. An agreement among competitors to fix uniform prices at which they would purchase a commodity sold by third parties constituted illegal price fixing under the Sherman Act. *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U.S. 219 (U.S. 1948).

The violation is made more egregious where the group of defendants has substantial or complete control over the avenues for selling plaintiffs' products or services, and defendants' fixed prices through economic coercion leaves plaintiffs with only the options of submission or going out of business. *Id. See also, Telecor Commc'ns, Inc. v. Sw. Bell Tel. Co.*, 305 F.3d 1124, 1135 (10th Cir. 2002), *United States v. Appalachian Coals, Inc.*, 1 F. Supp. 339, 348 (D. Va. 1932).

Disguised as a pleading deficiency argument, Appellees actually argue they are permitted to do as they are. However, the Supreme Court has twice stated they may not; the insurers actions violate the Sherman Act.

Appellees also encourage this Court engage in the prohibited act of weighing the facts alleged against the defendants' motion arguments and deciding which has more superficial credibility and persuasiveness, as the trial court did.

However, it was not within the district court's purview to be persuaded. The district court was required to accept the allegations as true and the district court was prohibited from imagining possibilities that would render the facts without sufficient weight.

State Farm separately argues the district court dismissal was correct because the complaints failed to exclude all possibility the insurers unanimously arrived at an identical mythical "market rate" by independent unilateral conduct. The argument fails on its face.

The body shops are not required to exclude all alternatives, not even at trial. Arguments identical to this, requiring pleading which excludes all possibility of innocent alternatives, has been held to be "absurd." *In re Cardizem CD Antitrust Litig.*, 105 F. Supp. 2d 618, 650 (E.D. Mich. 2000)(citing *Brand Name Prescription Drugs Antitrust Litig.*, 186 F.3d 781, 787 (7th Cir.1999).

State Farm also argues the complaints fail to allege necessary plus factors. This is wrong. The complaints allege numerous plus factors. See Appellants Brief, Section I.A., pp. 18-25 and footnotes thereto.

In sum, Appellees fail to rebut the body shops' identification of the many reversible errors committed by the trial court or the authority cited in support thereof. Appellees have failed to successfully argue the plaintiffs did not plead facts relevant to each of the elements of the price fixing claim, and do not bother arguing they have not received fair notice. The Appellants have fully satisfied the Rule 8 notice pleading requirements and respectfully submit the dismissal of this claim should be reversed.

D. Group Boycotting

For the most part, the Appellees collapse price fixing and boycotting into essentially a single argument, applying their arguments to both claims, e.g., purportedly failing to plead specific facts. As such, the body shops' argument in response, supra, are equally applicable and are affirmatively adopted and here incorporated by reference.

Arguments specific to boycotting are limited. The Farmers Appellees argue the price fixing and boycotting claims are contradictory; though refusing to pay plaintiffs for all work performed, they are still paying them and therefore the body shops could

not have been boycotted because they still had customers.

Again, this is a backward approach. Group boycotting does not depend upon successful outcome to be illegal; it is the agreement itself that constitutes a violation of the Sherman Act, not whether the agreement is successful. See *Brooke Group v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 251 (1993). Appellees failed to substantively acknowledge this binding authority.

As the body shops also pointed out, the method chosen by the insurers to boycott is subject to the fortitude of consumers to withstand insurers' coercion. Some are unable to withstand the coercion, others refuse to bend. Indeed, it is primarily through the failures that Plaintiffs have been able to identify the offending insurers and learn the details of the methods of boycotting. Successfully boycotted customers usually do not return to notify the body shops of the reasons why they go elsewhere for repairs.

Which also reinforces the body shops' argument above, regarding the defendants being in possession and control of necessary facts. Only the defendants know the full extent of their success in boycotting.

Lacking full control over the boycott outcome does not render it legal. The law accounts for failure to achieve the boycotts' end goal, as shown by the law establishing the agreement itself is the crime, not the agreement's result. While the

boycotting is a direct result of the insurers' fidelity to the price fixing agreement, they are not mutually exclusive. At the same time the insurers are driving away customers, they are also failing to make full payment for all the services rendered to the customers who withstand boycotting efforts.

State Farm adds to this argument separately the shop-worn argument a company is free to choose with whom it does business. In these cases, insurers do not have that right. Each state at issue has affirmative authority prohibiting an insurer from making payment of repairs contingent upon a consumer's use of an insurer-preferred repairer. (See Appellants Brief, Section B.3., pp. 47-49). Thus, insurers are not permitted to refuse to do business with the plaintiffs.

In addition to failing to adequately allege boycotting, Appellees argue the plaintiffs failed to cite any contents of the complaint which include facts relevant to the claim. This is inaccurate. Plaintiffs direct the Court to Appellants' Consolidated Brief, pp. 30-31 and FN 10.

State Farm complains the boycotting motive is not "coherent." The complaints do allege motive, retaliation for the plaintiffs' failure to simply shut up and submit to fixed prices. State Farm argues this isn't enough, implying an economic gain is both required and lacking, while failing to cite any authority for this proposition.

Case law shows, unfortunately, retaliatory boycotts with and without economic motive are all too common. See, e.g., *Evans v. City of Browning, Mont.*, 953 F.2d 1386 (9th Cir. 1992), *Park v. El Paso Bd. of Realtors*, 764 F.2d 1053 (5th Cir. 1985).

In fact, the term derives from a method of retaliation used against a land agent, Captain Boycott, who paid starvation wages to tenants and then evicted those who protested. See Webster's Third New International Dictionary 264 (1971).

By literal definition, a boycott is a retaliatory act, originating from failure to pay reasonable value for services rendered. Retaliatory boycotts are well established in law. State Farm's scorn notwithstanding, this was alleged in the complaint, the district court was required to accept it as true and draw all reasonable inferences in favor of the plaintiffs.

Appellants submit it is stretching serendipity too far to conclude all of the insurers independently and coincidentally created identical sets of false statements, misrepresentation and economic threats and independently began reciting the script to the exact same class of people and did so following the exact same triggering events.

The far more reasonable inference is the defendants entered an agreement to boycott noncompliant body shops, and agreed upon the most effective script for effectuating the goal of driving customers away from the plaintiffs. The district court

specifically refused to draw inferences favorable to the body shops, just as it specifically chose to draw inferences favorable to the defendants, which it is not permitted to do.

The body shops have pled all facts necessary to proceed to discovery. They are not required to prove their case on the complaint, merely allege sufficient facts to provide reasonable notice of the claim. The district court erred in requiring more.

III. STATE LAW CLAIMS

A. Unjust Enrichment

1. The district court erred in deciding the merits of the claim

The district court's sole duty was to determine whether the claim had been adequately pled; it was not permitted to determine the claim's merits. The court did, however, determine the claim's substantive merits and all of its conclusions flowed from its handling of a single element: insurers' retention of benefit without full payment was not inequitable and therefore no unjust enrichment occurred. However, rendering this decision on the merits was not only impermissible per se, it repeatedly violated applicable law.

Appellees merely argue the lower's court's merit determination was correct because the court was permitted to consider "circumstances." However, the

“circumstances” which render retention of a benefit unjust are prescribed by state law, not the limits of imagination.

Given the purported basis for dismissal, the district court was required to determine where each relevant state’s law has set the tipping point between enrichment which is unjust and no liability. As cited in Appellants’ Consolidated Brief, that point is whether or not a defendant has paid reasonable value for the benefit received. Value is therefore indispensable under each state’s law to a determination of this element. See Appellants’ Brief, Section II. A.5. , pp. 51-54.

After reciting the claim elements, the district court did not discuss value or payment thereof at all. It completely ignored it. By default, the district court decided the value of body shops’ services was irrelevant to the merits.

This was reversible error for at least three reasons. First, the district court was not permitted to determine the value of the body shops' work. Relevant state law holds determination of value is a question of fact for jury determination.⁶ Even had the district court acknowledged the value requirement, it could not render a decision on the merits.

⁶See Appellants’ Consolidated Brief, pg. 53, FN 30, for complete citation to applicable individual state law holding determination of reasonable value is a fact question for jury determination.

In response, Appellees merely argue value is a question of damages and therefore is not reached at this point in the proceedings therefore the district court correctly decided the issue. This argument requires the Court to ignore or refuse to apply binding state law holding to the contrary.

Second, even if value determination was within the district court's discretion, it could not make a determination as it had no evidence before it to do so. There were no facts before the court as to how much the repair services were worth, how much had been paid or any other facts which would allow a fact finder to determine whether the shops' had received all they are entitled to receive. The Appellees ignored this point.

Third, the district court fully accepted the arguments of insurers they had paid all they intended to pay, and chose to ignore or disregard facts in the complaints setting out the complete failure of the defendant insurers to make any payment at all for numerous repair elements and arbitrary decision to make only partial payment for others.

The court, however, is prohibited from doing that. A court may only disregard facts alleged if they “are sufficiently fantastic to defy reality as we know it: claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in time travel.” *Iqbal*, 556 U.S. at 696.

Respectfully, asserting services were performed for which the obligated party did not make full payment are not facts reaching the level of blatant delusion mandated by *Iqbal*. They are simply not inherently implausible.

The district court was required to limit its scope of review to whether the complaints adequately pled the elements of the claim such that defendants received fair notice. It was not permitted to go beyond that to determine the merits as a matter of law, nor make merit rulings which contradict both state law and the complaints' allegations.

The argument that "circumstances" permitted the district court to rule on the merits is without legal or factual basis. This is even more apparent as the "circumstances" relied upon by the district court are each prohibited as well, as shown below.

2. Defendants' unilateral intent to refuse full payment does not extinguish an unjust enrichment claim

Insurers argue the court correctly ruled on the merits because a unilateral decision not to pay was a reasonable "circumstance" to consider. The court adopted defendants' motion argument in whole, finding the body shops had no reasonable expectation of payment because the defendant insurers never intended to make full

payment, and, ergo, no unjust enrichment occurred. Appellees do not dispute this is exactly what the district court did, they merely argue the result was correct.

This conclusion was prohibited by state law. The law does not care whether a defendant intended to make appropriate payment, or whether a plaintiff had knowledge of a defendant's intent to default. The obligation to make just payment is implied by law, not the parties, and is imposed despite and sometimes in violation of parties' intentions.⁷ Thus, whether or not a defendant ever intended to make full and proper payment is irrelevant to whether or not a plaintiff is permitted to seek legal redress under an unjust enrichment claim. The defendant insurers' intentions simply do not control.

Strictly speaking, neither Virginia, Missouri nor Kentucky include reasonable expectation of payment as an element of the claim, which the district court ignored entirely. See Elements, Appellants Brief, Section II.A.2.a., pp. 38-39. They only require the defendant know services were being performed and, in Virginia, reasonably expected to pay for them.

The court again approached its analysis backwards. Instead of analyzing whether the complaints alleged the defendants knew the work was being performed

⁷See Appellants' Consolidated Brief, pg. 46, FN 25, for complete citation to applicable individual state law holding a defendant's intention to pay is irrelevant to an unjust enrichment claim.

and reasonably understood they were expected to pay for that work, it shifted the obligation to plaintiffs to plead and prove (by way of the complaint) they believed the defendants would make full payment. That is not what the law of any relevant state requires.

Assuming for purposes of this brief the body shops were required to plead they reasonably expected payment (rather than defendants reasonably understood they were expected to pay), the complaints did so. The body shops specifically averred they performed services with the expectation of payment from the insurers, that corollary state law prohibits the insurers from refusing payment (see below) and the insurers admitted payment was owed by making partial payment. The only reasonable conclusion to be drawn from these allegations is the body shops were reasonable in expecting payment and reasonable in expecting payment from the insurers.

The plaintiffs therefore pled all that was required to satisfy the quasi-element of “reasonable expectation of payment.” The insurers’ intentions are irrelevant and the district court's adoption of defendants' motion arguments violates binding state authority and federal pleading standards prohibiting adoption of a defendants' justifications for their actions.

3. Merely paying something does not defeat a plaintiff's unjust enrichment claim

Inherent in the court's ruling and Appellee's brief is the notion that having been paid something, the body shops' unjust enrichment claim is extinguished. That is not the law. Paying something does not equate to paying value.

Similar arguments have been forwarded before and unequivocally rejected:

The various decisions cited by Defendants do not support their contention that "any consideration" given for a benefit conferred necessarily defeats unjust enrichment claims. . . . To read "fair" consideration as equivalent to "any" consideration would pervert its ordinary meaning. . . . Defendants have failed to cite a single case finding that payment or receipt of anything of value from a defendant will defeat a plaintiff's claims for unjust enrichment. Determinations that depend on evaluating whether a benefit received approximates the value paid are primarily questions of fact, and as such, are not appropriately addressed on a motion to dismiss.

In re K-Dur Antitrust Litig., 338 F. Supp. 2d 517, 545-46 (D.N.J. 2004).

Again, the district court's analysis was backwards. Instead of analyzing whether the body shops pled they had not received all they are entitled to receive, the district court accepted the defendants' motion argument they paid all they ever intended to pay. This necessarily required the court to decide the insurers' subjective choice of payment was equivalent to objective reasonable value, which it was not

permitted to do, and to disregard the facts alleged in the complaints, which it was also not permitted to do.

It was clear error for the district court to dismiss the claim because the body shops had no reasonable expectation of full payment. The law does not require a plaintiff plead expectation of “full payment” or a specific amount. Neither court nor defendants has ever produced any authority supporting this position. The law implies an obligation to pay reasonable value, whether or not that coincides with a defendant’s subjective decision to pay.

Appellees' assertion the body shops have provided no authority permitting them to seek payment for unpaid amounts is inaccurate. The consolidated brief provided multiple authority from each state permitting exactly that. State law permits a plaintiff to seek payment for the value of their work where such payment has not been received. The district court erred holding otherwise.

4. The district court erred in creating new elements of state law

The district court ruled because the plaintiffs failed to plead they bargained with insurers prior to commencing repairs and failed to justify their failure to bargain (“bargaining”), and because request for services did not come from the insurers

(“request”), the defendant insurers were not unjustly enriched by their refusal to make full payment for services rendered.

The body shops pointed out no relevant state law requires either bargaining or request to state a cognizable claim of unjust enrichment. The district court requiring these things was impermissible creation of new elements of state law.

In Response, Appellees assert the district court did not create new elements of state law; bargaining and request were merely “circumstances” the court was permitted to consider in ruling there was no unjust enrichment.

That, however, is disingenuous. The court did not merely note the absence of these things in background discussion. It specifically stated the failure to bargain and lack of direct request for services were grounds for dismissal and did dismiss on these grounds.

There is thus no question the district court treated them as essential elements. As no such elements exist, the court’s requirement they must be pled for a complaint to adequately allege unjust enrichment is, *quod erat demonstrandum*, impermissible creation of new elements of state law.

The district court was required to apply the law of the state as each state has defined it. It is not free to create new law it finds preferable or better reasoned. *West v. American Tel. & Tel. Co.*, 311 U.S. 223, 236-237 (U.S. 1940)

The Appellees provide no state law authority whatsoever defining bargaining and/or request as necessary elements of the claim. The district court erred by dismissing for failing to allege facts supporting non-existent elements. *ISystems v. Spark Networks, Ltd.*, 428 F. App'x 368, 372, FN 4 (5th Cir. 2011), *S.E.C. v. Levin*, 2013 WL 5588224, at *8 (S.D. Fla. Oct. 10, 2013).

5. The district court's holding violates corollary state authority

Each state at issue has promulgated either statute or regulation which reserves exclusive choice of repairer to the consumer. Regardless of where repairs are performed, insurers are obligated to pay. See Appellants' Consolidated Brief, Section II.A.3., pp. 47-49.

By conditioning the unjust enrichment claim upon affirmative request of the insurers for services, the district court created a requirement which renders the protected consumer's choice illusory and ineffective. An insurer may simply remain silent until a consumer capitulates to having repairs performed at an insurer-preferred shop.

The district court therefore not only created a new element of state law, it created a new element that nullifies corollary state authority. A district court's blatant

nullification of state law is impermissible. See, *Leavitt v. Jane L.*, 518 U.S. 137, 144-45 (1996).

The Appellee insurers failed to address this argument. Appellants respectfully submit the Appellees concede the district court erred.

6. The district court committed reversible error by applying affirmative defenses contradicting the contents of the complaints

In response to the body shops' argument the district court erroneously applied affirmative defenses of waiver, estoppel and volunteer to excuse the insurers from liability, Appellees argue the district court was permitted to do so as the face of the complaints establish their application. Importantly, the Appellees confirm the district court did apply affirmative defenses to dismiss this claim.

Appellees' argument is without support. A district court may only apply affirmative defenses when facts supporting application plainly appear on the face of the complaint, which means application of affirmative defenses inevitably flow from the complaint's contents. *Twin City Fire Ins. Co. v. Harman, Simons & Wood, LLP*, 609 Fed. App'x. 972, 978 (11th Cir. 2015).

The court may not assume facts or imagine scenarios not set out in the complaint to justify application of an affirmative defense. *Id.* at 977-78.

For waiver to plainly appear on the face of the complaint, there needs be facts unambiguously showing the plaintiff willingly and unequivocally chose to forgo pursuit of a legal right.⁸ The complaints aver the opposite; body shops repeatedly attempted to obtain full payment but were met with refusal, economic coercion, duress and tortious retaliation by the defendants, which prompted the filing of the complaints. The Appellees simply ignore these facts.

For estoppel to plainly and inevitably appear on the face of the complaint, there needs be facts alleged the plaintiffs acted in such a manner that the defendants detrimentally altered their position in reliance upon the plaintiffs' actions.⁹

The complaints allege the opposite– the insurers' conduct has been consistent and the insurers have reaped considerable profit from their own misconduct. The Appellees simply ignore these facts.

To apply the affirmative defense of volunteer, there needs be plainly asserted facts showing the body shops commenced repairs without any intention of ever being paid for their work. Again, the complaints alleged the opposite. The plaintiffs performed professional services, upon request of consumers, with the intention of being paid. The Appellees simply ignore these facts.

⁸See Appellants Consolidated Brief, pp. 60–62 for citations to authority setting out the state requirements of a waiver affirmative defense.

⁹See Appellants Consolidated Brief, pp. 60-62 for citations to authority setting out the state requirements of an estoppel affirmative defense.

Neither the Appellees nor the district court ever identified any complaint content showing any of the required facts to apply affirmative defenses. The Appellees (and the district court) identified only one sentence in any complaint to justify such an application: the defendants have repeatedly refused to make full payment.

But, again, this is backward. All three affirmative defenses are defined by a plaintiff's conduct and intent. Both the Appellees and the district court reversed this, finding a defendant's own misconduct can unilaterally create these affirmative defenses as a matter of law. Neither Appellees nor the district court provided any authority for re-defining this settled law. Such authority likely does not exist as each state holds a defendant may not profit from submission gained through wrongful means which, like value, is a question of fact for a jury.¹⁰

The court also necessarily excused the defendants from their burden of pleading and proving affirmative defenses. *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. 84, 93 (2008). The Appellees simply ignored this, too.

The complaints allege the exact opposite of everything required for application of these affirmative defenses. The only manner in which the district court could find any affirmative defenses applicable was to fully disregard the allegations of the

¹⁰ See Appellants' Consolidated Brief, pp. 18-19, FN 5, for complete citation to state law holding a defendant may not profit from submission gained through wrongful means.

complaint, draw inferences favorable to the defendants, and go outside the complaints to adopt the motions arguments of defendants.

All of these things are prohibited, which Appellees failed to address at all. The district court committed reversible error in applying affirmative defenses to dismiss the claim.

7. **Appellees fail to provide any authority or argument regarding the district court's error of the factual contents of the complaints**

In dismissing the unjust enrichment claim, the district court made several statements regarding allegedly missing facts in support of the unjust enrichment claim. All of the purportedly missing facts related to supporting the non-existent element of bargaining. See Appellants' brief, Section II.A.2.d., pg. 42-44.

The complaint does include the very facts the district court stated were missing, just not in the context of bargaining (as bargaining is not required). *Id.*

Appellees failed to address this argument. The body shops respectfully submit the Appellees have conceded the district court erroneously characterized the contents of the complaints.

8. Appellees improperly argue the existence of contracts

In response briefs, Appellees argue the existence of express contracts preclude the equitable claims. However, the district court did not rule there existed any express contracts. Although detailed discussion was presented on the history of quasi-contractual remedies, at no point did the court rule there existed any contracts.

As no such ruling exists, and Appellees failed to notice a cross-appeal, the Court is arguably without jurisdiction to consider the argument. Appellees should not ask this Court to evaluate a decision never made. Out of an abundance of caution, Appellants address the argument.

Nowhere in the complaint do the body shops allege there exists any contracts. The only ones claiming the existence of contracts are the defendants, thereby making the assertion an affirmative defense. The party asserting the existence of a contract bears the burden of pleading and proving the contract and its terms.¹¹

None of the Appellees have provided this or any other court with any contract nor even recited any purported contract term or provision. They rely on application of authority ordinarily reserved only to mothers, “Because I said so.”

¹¹See Appellants' Consolidated Brief, pg. 21, FN 6, for complete citation to state authority holding party asserting existence of a contract bears burden of pleading and proving the contract and its terms.

The defendants bear the burden of not only proving the existence of alleged contracts, but also that such alleged contracts are valid. This includes proof the plaintiffs assented to contract terms and conditions and did so willingly.¹² In the absence of willing assent by both parties, a contract is not valid.

This circuit has firmly directed district courts they are not permitted to assume the existence of facts which do not appear within a complaint. *Twin City Fire Ins. Co.*, 609 Fed. App'x. at 978. The court performed backwards analysis again, accepting the arguments of defendants that contracts existed in the absence of any support extant within the complaints. It simply isn't there.

The district court here was required to accept the absence of facts; it was not permitted to assume valid contracts exist. It would be clear error to find any valid contract, the product of mutual, willing assent, on the asserted facts.

Even if contracts existed, dismissal would still be in error, as pleading equitable remedies in the alternative is fully permitted. Fed. R.Civ. Pro. 8(d)(2). See also, *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1273 (11th Cir. 2009).

This improperly raised argument is without legal or factual merit.

¹²See Appellants' Consolidate Brief, pg. 21, FN 7, for complete citation to state authority holding the party asserting the existence of a contract bears the burden of proving contract validity, i.e., the purported contract was the product of mutual voluntary assent and agreement.

B. APPELLEES IMPROPERLY RAISE THE QUESTION OF BENEFIT CONFERRED

In Response briefs, Appellee insurers argue dismissal of the unjust enrichment claim should be upheld because the body shops conferred no benefit upon the insurers. However, the district court specifically declined to rule on this issue, no Appellee filed a notice of cross-appeal and it is not properly before this Court. Again, out of an abundance of caution, Appellants address the argument.

Authority from each states holds that when one party performs services permitting the defendant to execute or conclude a legal duty owed a third party or adds to the defendant's advantage, that defendant has been enriched.¹³

Appellees cite a variety of cases in support of its argument that no benefit has been conferred. None of the authority cited provides such support. One was decided under New York law (*Broad Street Surgical Ct., LLC v. UnitedHealth Group, Inc.*, 2012 WL 762498 (D.N.J. 2012), while the remaining cases were decided because the

¹³New Jersey: *St. Barnabas Medical Ctr. v. County of Essex*, 111 N.J. 67, 79 (N.J. 1988), *Mullins v. First Night, Wayne*, 326 N.J. Super. 93, 96 (App.Div. 1999)
Kentucky: *Alexander Hamilton Life Ins. Co. v. Lewis*, 550 S.W.2d 558, 559 (Ky. 1977)(Kentucky uses *Restatement of Restitution*, § 1, which defines benefit as services satisfying the duty of another, or any form of advantage)
Missouri: *Petrie v. LeVan*, 799 S.W.2d 632, 635 (Mo. Ct. App. 1990)(Missouri uses *Restatement of Restitution*, § 1, which defines benefit as services satisfying the duty of another, or any form of advantage)
Virginia: *Cattano v. Bragg*, 283 Va. 638, 648 (Va. 2012)(services providing advantage to defendant constitutes benefit)

plaintiffs claimed to have conferred benefits upon someone other than the named defendant, or no one at all. No complaint before this court proceeds under New York law, and each complaint avers the plaintiffs have conferred a benefit upon each named defendant.

One State Farm-cited case is actually helpful to the body shops. *Howard v. Turnbull*, 316 S.W.3d 431 (Mo. Ct. App. 2010) holds that while a plaintiff who has conferred a benefit upon a corporate entity may not seek restitution from the entity's owners, an unjust enrichment claim may be asserted against the entity itself. *Id* at 437. As the body shops have sued the entities, not corporate officers or shareholders, *Howard* actually supports the body shops, not the defendants.

Appellees urge this Court make a final determination on the merits of the claim, not whether the claim has been sufficiently pled, and hold the lower court in error on a decision it did not make. The complaints complied in all respects with recognized state law. That is all that is required at this stage. Whether they are ultimately successful in proving the claim is not a question presently before the Court, despite Appellees' urging to the contrary.

C. QUANTUM MERUIT

1. New Jersey

In response to the Appellants' brief, Appellees argue several points while

pointing primarily to the dismissal order itself as authority for its arguments, the same circular argument presented for the other claims, doing naught to rebut Appellants' brief.

Appellees argue the body shops' expectation of full payment was unreasonable given the insurers persistent refusal to do so and therefore they have not been unjustly enriched. This argument relies upon the same errors of law made with respect to unjust enrichment.

The elements of quantum meruit do not require a plaintiff plead entitlement to a particular or specific amount. That insurers had refused full payment before is of no moment because, as with unjust enrichment, the defendant's intentions are irrelevant. The body shops are still entitled to the reasonable value of their work, which has not been paid. *Kopin v. Orange Products, Inc.*, 688 A.2d 130, 136 (N.J. App. Div. 1997).

Failure to agree on a price before rendering services does not extinguish a quantum meruit claim, or render expectation of payment unreasonable, as the district court found. On the contrary, New Jersey law recognizes quantum meruit as the appropriate vehicle for obtaining compensation specifically when the parties have not agreed on a price, which distinguishes it from a contract claim. *Weichert Co. Realtors v. Ryan*, 608 A.2d 280, 286 (N.J. 1992).

Although Appellees' persistent use of “additional” or “extra” payment is not appropriate to describe failing to pay for services in the first place, New Jersey law has spoken on this issue, as well. It has recognized the right to seek compensation in quantum meruit for “additional” amounts over and above what a defendant has offered to pay. *Haverty v. Andres & Berger, P.C.*, 2004 WL 2701040, at *11 (N.J. Super. Ct. App. Div. Nov. 9, 2004).

Also, deciding the defendants’ unilateral course of conduct defeats the claim requires application of either waiver or estoppel affirmative defenses. Deciding the claim is defeated because defendants did not request services and the body shops are therefore volunteers/officious meddlers also requires application of an affirmative defense.

For the same reasons application of affirmative defenses fail for the unjust enrichment claim, they also fail for the quantum meruit claim, including violation of corollary authority specifically reserving exclusive choice of body shop to the consumer. See Section 3.A.5., pp. 30-31, above.

Third, requiring bargaining and direct request for services from the insurers is not an element of the claim. By specifically requiring such, the district court erroneously created a new element of state law. See Section III.A.4, pp. 28-30, above.

It is irrelevant whether or not the body shops could have negotiated prices prior to performing services. What a party could have done does not negate the obligation of a defendant to pay the reasonable value of services rendered. *Weichert*, 608 A.2d at 287.

However, the complaint sets out the body shops could not have negotiated; payment was always subject to a take-it-or-leave-it compulsion by the insurers, and attempts to gain full payment were met with refusal, coercion, duress, and retaliatory tortious conduct. The district court discounted these facts, a conclusion which violates multiple state laws. Not only does New Jersey law not require a plaintiff to bargain to proceed in quantum meruit law, it does not require a party perform a futile act. *O'Lone v. Dep't of Human Servs.*, 814 A.2d 665, 671 (N.J.App. Div. 2003).

The district court was prohibited from deciding the claim on the merits, the district court was prohibited from looking outside the complaint for justifications to dismiss the claim, and the district court was prohibited from adopting arguments of defendants. The district court was required to accept the allegations of the complaint as true, unless they are so fantastical as to defy everyday reality. The district court violated all these prohibitions and failed to perform that which was required. Appellees have failed to establish the district court's dismissal was supported by valid law.

2. Kentucky

Appellees argue the dismissal of quantum meruit was appropriate by disputing application of relevant state authority provided in the Appellants' brief. This interpretation is not supported by the authority itself.

As noted in the Appellants' Brief, quantum meruit is available to a plaintiff who has performed services enabling the named defendant to execute a duty owed a third party. *Appalachian Reg'l Healthcare v. Coventry Health & Life Ins. Co.*, 2013 WL 1314154, at *4 (E.D. Ky. Mar. 28, 2013).

Appellees argue *Appalachian* does not apply because in that case there was no one else to whom the plaintiff could look for payment. However, that was not the basis for the court's ruling. It was specifically held "all prongs of the quantum meruit analysis are satisfied." *Id.* Being the sole source of payment is not an element of a quantum meruit claim under Kentucky law and, as the court ruled the elements adequately alleged, it could not have decided based on the lack of alternative payor.

If the district court found the issue ambiguous, the proper solution was not dismissal but to certify the question to the Kentucky Supreme Court, as it is permitted to do. Kentucky Rules of Civil Procedure (CR) Rule 76.37.

Appellees further argue the complaint fails to sufficiently allege facts showing the defendants were unjustly enriched, however Kentucky plaintiffs are not required

to do so for this claim. See *Isaacs v. Lawson*, 2012 WL 5274431, at *4 (Ky. Ct. App. Oct. 26, 2012)(discussing distinctions between unjust enrichment and quantum meruit.)

Appellees' argument suffers another problem. The plaintiffs are not required “to show” anything in a complaint, merely plead facts relative to the elements of the claim. “At this stage of the litigation, we are concerned not with what plaintiff did or did not show, but rather with what plaintiff did or did not allege.” *Brown v. Budz*, 398 F.3d 904, 914 (7th Cir. 2005). Appellees' arguments are without merit or support.

3. Virginia

Appellees argue the district court did not apply an incorrect formulation of Virginia’s quantum meruit elements; plaintiffs failed to offer analysis showing facts deemed conclusory by the district court support the unjust enrichment claim; and the plaintiffs have failed to show defendants have been unjustly enriched.

The second argument is facially deficient. The claim at issue is quantum meruit, not unjust enrichment. Body shops have asserted an alternative unjust enrichment claim and it was adequately alleged, as shown above and provided the purportedly missing factual analysis.

Appellees also propitiate the district court's errors in applying the incorrect standard. At the motion to dismiss stage, plaintiffs are not required "to show" anything. A "complaint need not 'make a case' against a defendant or 'forecast evidence sufficient to prove an element' of the claim. It need only 'allege facts sufficient to state elements' of the claim." *Robertson v. Sea Pines Real Estate Cos.*, 679 F.3d 278, 291 (4th Cir. 2012).

Body shops were therefore not required "to show" the defendants had been unjustly enriched; they were required to plead facts supportive of the elements and the elements at issue are those of quantum meruit, which they have done.

With respect to the first alleged deficiency, incorrect formulation of Virginia's quantum meruit elements, the body shops' Consolidated Brief more than sufficiently sets out exactly how and why the district court erred by incorporating a "request" element into Virginia law of quantum meruit. See Appellants' Consolidated Brief, Section II.B.9 and 10. This argument is without merit.

D. TORTIOUS INTERFERENCE

The district court acknowledged the conduct described in the complaints sufficiently pled the elements of a tortious interference claim. The only ground for dismissal was purported improper group pleading. As the district court candidly admitted, it simply did not believe each defendant engaged in the conduct described

with respect to each plaintiff, ergo, improper group pleading.

The district court's candor is helpful, as it clearly defines the error: "Rule 12(b)(6) does not countenance dismissals based on a judge's disbelief of a complaint's factual allegations." *Neitzke v. Williams*, 490 U.S. 319, 327, (1989).

The facts alleged do not meet the exceedingly high standard established by the Supreme Court for disregarding factual allegations. They are not of frankly delusional character, and the district court therefore erred in refusing them.

When, as here, a complaint asserts each defendant engaged in the conduct described, use of "the Defendants" is permissible as no technical form of pleading is required under Rule 8 notice pleading. *Crowe v. Coleman*, 113 F.3d 1536, 1539 (11th Cir. 1997).

In response, Appellees make essentially two arguments. First, that *Crowe v. Coleman* and notice pleading have both been displaced. However, the Federal Rules of Civil Procedure still provide for notice pleading, and this Court and many others continue to cite and rely upon *Crowe* for the same point of law the body shops did, including the Middle District of Florida. *Crespo v. Coldwell Banker Mortgage*, 599 F. App'x 868, 872 (11th Cir. 2014), *Sprint Sols., Inc. v. Cell Xchange, Inc.*, 2015 WL 1001272, at *2 (M.D. Fla. 2015).

As a district court hasn't authority to overrule this Court, and no court may

amend the Federal Rules by fiat, Appellants respectfully submit this argument is facially without merit.

Appellees' second argument is group pleading renders the complaint incomprehensible. This is simply not credible. Not only did the district court have no trouble discerning the nature of the claim and its supporting factual allegations, Appellees' motions to dismiss included lengthy argument disputing the claim. The primary grievance was not lack of comprehensibility but failure to set out the “who, what, where, when and how” of the interference, and lobbied the district court to apply the Rule 9(b) specificity pleading requirements.

Though the district court ruled 9(b) specificity does not apply, Appellees continue to lobby for it (without filing a cross-appeal), arguing the complaints lack specificity and “are devoid of allegations detailing the identity of customers, whether the relationships with those customer were existing or contemplated, the type or extent of any interference, and any actual resulting injury.”

A simple review of the complaints shows this grievance is meritless. The complaints provide the defendants with notice of who they interfered with, when they commenced interference, how they interfered, provided specific examples of the manner and method of interference and identified the result of the interference.

This is more than enough information to satisfy notice pleading. The body

shops are simply not required to plead with the specificity the Appellee insurers demands. Tortious interference is not a Rule 9(b) claim.

In support of the “confusion” argument, Appellees emphasize the number of parties involved in this litigation. However, that, too, is specious. Four of the five complaints involve only a single plaintiff—no confusion there as to with whom the insurers tortiously interfered. While many individual defendants are named, in reality nearly all are owned or controlled by the same eight to ten companies, which does not rise to the level of incomprehensibility.

Finally, Appellees failed to address the irresolvable pleading conflict created by the district court. In a companion case, the district court disapproved of “group pleading” and ordered the plaintiffs to specifically identify each defendant to which the factual allegations were intended to apply. After doing so, the district court complained the complaint was too long and confusing (which the plaintiffs had warned would be the result) and threatened sanctions if ever done again. The lower court then found the current complaints should not use “the Defendants,” either, as described above, and had to designate each defendant individually. Appellants respectfully suggest a court should not order a plaintiff to engage in conduct it has already stated will result in sanctions.

The district court thus left the plaintiffs with no way to plead—prohibited from

using “the Defendants” and prohibited from individually naming the defendants under threat of sanctions.

If this Court determines use of “the Defendants” is impermissible in the present cases, Appellants respectfully request this Court make a specific ruling as to how defendants may be identified, or prohibit sanctions from being imposed.

CONCLUSION

In the end, Appellees fail to rebut any of the arguments or authority presented by the body shops. They succeed only in making the district court’s errors more obvious. Appellants respectfully request this Court reverse the district court’s dismissal of the complaints.

Respectfully submitted,

/s/ Allison P. Fry
ALLISON P. FRY
JOHN ARTHUR EAVES, JR.
Attorneys for Plaintiff - Appellant
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201
Telephone: (601) 355-7961

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief does not exceed the type-volume limitation imposed by the Federal Rules of Civil Procedure, 11th Circuit Court of Appeals. The brief was prepared using Corel WordPerfect 12 and contains 10,373 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

/s/ Allison P. Fry

CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of July, 2016, I electronically filed the Plaintiffs-Appellants Reply brief with the Clerk of the Court. In addition, the original and six copies of the foregoing were 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 1

AMENDED CERTIFICATE OF INTERESTED PERSONS

21st Century Assurance Company

21st Century Centennial Insurance Company

21st Century Pinnacle Insurance Company

Allstate Insurance Group

~~Allstate New Jersey Insurance Company~~ **Allstate New Jersey Insurance Company**

Allstate New Jersey Property and Casualty Insurance Company

American Family Home Insurance Company

American Family Mutual Insurance Company

Ansell Grimm & Aaron

Axinn, Veltrop & Harkrider, LLP

Baker & Hostetler, LLP

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

Barthel, David John

Bauchner, Joshua S.

Beekhuizen, Michael

Berkshire Hathaway Group

Berkshire Hathaway, Inc. (ticker: BRK.A and BRK.B)

Botti, Mark J.

Caldwell, Lori J.

Carpenter Lipps & Leland, LLP

Carpenter, Michael

Cashdan, Jeffrey S.

Chesler, Stanley R. (United States District Judge)

D'Amico, Brian J.

Dentons US, LLC

Diamantas, Kyle A.

Eaves Law Office

Eaves, Jr., John Arthur

Farmers Insurance Group

Fenton, Richard L.

Fischer, Ian Matthew

Fry, Allison P.

GEICO Advantage Insurance Company

~~Geico Casualty Company~~ **GEICO Casualty Company**

GEICO Choice Insurance Company

GEICO County Mutual Insurance Company

GEICO Corporation

~~Geico General Insurance Company~~ **GEICO General Insurance Company**

~~Geico Indemnity Company~~ **GEICO Indemnity Company**

GEICO Secure Insurance Company

Goldfine, Dan W.

~~Government Employee's Insurance Company~~ **Government Employees Insurance Company**

Gabel, Joshua

Griffith, Jr., Steven F.

Halavais, Jamie L.

Hanover Insurance Company

Hanover, Mark L.

Hartford Fire and Casualty Group

Hartford Fire Insurance Company

Hartford Insurance Company of the Midwest

Hartford Underwriters Insurance Company

Hochstadt, Eric

King & Spalding, LLP

Koch, Amelia W.

Kochis, Kymberly

Lau, Bonnie

Liberty Insurance Corporation

Liberty Mutual Fire Insurance Company

Liberty Mutual Group Inc.

Liberty Mutual Insurance Company

Liberty Mutual Mid-Atlantic Insurance Company

Litchford, Hal K.

LM Insurance Corporation

Lugenbuhl, Wheaton, Peck, Rankin & Hubbard

Mastando, III, John

Mumford, Michael E.

Nationwide Corporation Group

Nationwide Mutual Insurance Company

Nelson, Michael R.

Nolan, Francis X.

Oates, Claire Carothers

Presnell, Gregory A. (United States District Judge)

The Progressive Corporation (ticker: PGR)

Progressive Direct Holdings, Inc.

Progressive Freedom Insurance Company

Progressive Garden State Insurance Company

Progressive Group

Quality Auto Painting Center of Roselle, Inc. traded as Prestige Auto Body

Rohback, Thomas G.

Rumberger, Kirk & Caldwell, PA

Salazar, Marjorie M.

Schmeeckle, Seth A.

Smith, Thomas B. (United States Magistrate Judge)

Snell & Wilmer, LLP

Squire Patton Boggs (US), LLP

State Farm Guaranty Insurance Company

State Farm Indemnity Company

State Farm Mutual Automobile Insurance Company

Sutherland, Asbill & Brennan, LLP

The Opus Investment Management, Inc.

United Services Auto Association

United Services Automobile Association Group

USAA Casualty Insurance Company

USAA General Indemnity Company

Vargo, Ernest E.

Waldor, Cathy L. (United States Magistrate Judge)

Weil, Gotshal & Manges, LLP

Yohai, David L.