

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

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

David J. Smith
Clerk of Court

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April 20, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 15-14160-U ; 15-14162 -U ; 15-14178 -U ; 15-14179 -U ; 15-14180 -U
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.

For the purposes of the upcoming en banc rehearing in the above referenced case, the court desires for counsel to focus their briefs on the following issues:

- 1) Can a per se illegal price fixing agreement or conspiracy between and among the several defendant-insurance companies plausibly be inferred from the allegations of the complaints in the several cases before this Court.

If so, identify the allegations from which such an agreement or conspiracy can plausibly be inferred, and discuss whether any asserted inference of agreement or conspiracy is "just as much in line with a wide swath of rational competitive business strategy prompted by common perceptions of the market," Bell Atlantic Corp. V. Twombly, 550 U.S. 544, 554, 127 S.Ct. 1955, 1964 (2007), or whether such inference is supported by allegations tending "to rule out the possibility that the defendants were acting independently." *Id.*

- 2) Can a per se illegal agreement or conspiracy between and among the several defendant-insurance companies to boycott the plaintiffs' body shops plausibly be inferred from the allegations of the complaints in the several cases before this Court.

If so, identify the allegations from which such an agreement or conspiracy can plausibly be inferred, and discuss whether any asserted inference of agreement or conspiracy is "just as much in line with a wide swath of rational competitive business strategy prompted by common perceptions of the market," Bell Atlantic Corp. V. Twombly, 550 U.S. 544, 554, 127 S.Ct. 1955, 1964 (2007), or whether such inference is supported by allegations tending "to rule out the possibility that the defendants were acting independently." Id.

APPELLANT'S EN BANC BRIEF SHALL BE SERVED AND FILED ON OR BEFORE MAY 30, 2018 by 5:00 p.m. APPELLEES' EN BANC BRIEF SHALL BE SERVED AND FILED ON OR BEFORE JUNE 29, 2018 by 5:00 p.m. An en banc reply brief shall be filed on or before July 13, 2018 by 5:00 p.m. NO EXTENSIONS WILL BE GRANTED. Twenty (20) copies of the en banc briefs should be filed (appellant's in blue covers, appellees' in red covers and any reply in gray covers). The parties are expected to insure that all parties receive a copy of their briefs before the close of business on the day of filing (facsimile, e-mail, etc.). NO TIME FOR MAILING SHALL BE ALLOWED. The filing of an en banc amicus briefs is governed by 11th Cir. R. 35-8.

All counsel is requested to file 16 copies of their original opening panel briefs, appendix and supplemental authorities prior to Wednesday, May 30, 2018.

Oral argument will be conducted the week of October 22, 2018 in Atlanta, Georgia. Each party will be allotted 20 minutes per side for oral argument. Counsel will receive subsequent correspondence regarding the specific time of oral argument.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jenifer L. Tubbs
Phone #: 404-335-6166

BR-1CIV Civil appeal briefing ntc issued