IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

PROFESSIONAL, INC. d/b/a PROFESSIONALS AUTO BODY,

Plaintiff,

v.

FIRST CHOICE AUTO INSURANCE COMPANY, et al.,

Defendants.

Case No. 6:14-md-02557-GAP-EJK

Case No. 6:18-cv-06023-GAP-TBS

DEFENDANTS' MOTION TO DISMISS COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

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Certain Defendants, by and through their undersigned counsel, respectfully move for the entry of an Order dismissing the Plaintiff Professional, Inc.'s ("Professionals") Complaint (ECF No. 1-2) in its entirety and with prejudice, pursuant to Federal Rules of Civil Procedure 8 and 12(b)(6). The Defendants who have joined in this Motion are listed in Exhibit A, attached hereto.

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiff's Complaint, a late addition to this multi-district litigation ("MDL")[1], fares no better than the other MDL actions that have largely been dismissed in whole or in substantial part. Although this Complaint alleges only state law claims under Pennsylvania law, it suffers from many of the same flaws that this Court has seen in the other cases, and wholly fails to state any valid claims for relief under Pennsylvania law.

Plaintiff Professionals is no stranger to this MDL. Professionals is one of several plaintiffs in the still-pending matter of *Alliance of Automotive Service Providers, Inc. et al. v. State Farm Mut. Auto. Ins. Co. et al.*, No. 6:14-cv-6008-GAP-EJK (M.D. Fla.) ("*Alliance*"). Many of the same Defendants in this action are also Defendants in *Alliance*. The Alliance matter currently only presents anti-trust claims, and Defendants are filing an updated brief in support of their motion to dismiss those claims contemporaneously herewith. Because this Court previously dismissed Professionals' claims of quantum meruit, unjust enrichment, and tortious interference in the *Alliance* matter, those claims are barred by *res judicata*. Further, the doctrine of claim splitting prevents Plaintiff from maintaining this action when it could have brought its claims in *Alliance*.

[1] Plaintiff originally brought this action in state court in Blair County, Pennsylvania in 2017 against 32 separate insurance company Defendants. Defendants Allstate, Encompass and Esurance removed the action to the Western District of Pennsylvania and several other Defendants filed notices of joinder in removal. Following removal, this case was transferred to this Court to join the pending MDL. Certain Defendants are no longer at issue as a result of severance or voluntarily dismissal. There are now 23 Defendants.

As to the pleading defects, the current Complaint in its entirety violates Federal Rule of Civil Procedure 8 because it fails to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Instead, Plaintiff sets forth its claims in vague, general, and conclusory terms, and then appends thousands of pages of repair estimates, purported assignments of claims and other documents, effectively telling Defendants and the Court to "go fish." It is hardly a "short and plain statement of the claim" when it puts the onus on Defendants and the Court to scour the voluminous exhibits in search of facts that might support a cause of action. In the same vein, Plaintiff's Complaint fails to identify what particular actions were taken by which specific Defendants, but rather refers to all 32 original Defendants as one. This improper type of shotgun pleading fails to give Defendants fair or adequate notice of the claims against them. Similarly, for each claim, Plaintiff fails to identify whether it is bringing such claim on its own behalf as the body shop or on behalf of its assignors, leaving Defendants and the Court to merely guess. This too violates Rule 8. That alone requires dismissal.

With respect to the specific claims, the claims for quantum meruit (Count I) and unjust enrichment (Count II) fail for the same reasons previously articulated by this Court in *In re Auto Body Shop Antitrust Litigation*, No. 6:14-CV-6006-ORL-31, 2015 WL 4887882, at *12 (M.D. Fla. June 3, 2015). Specifically, Plaintiff fails to set forth any allegations that its repair of the vehicle owners' vehicles in any way conferred a benefit on Defendant or that it would be unjust for Defendant to retain this supposed benefit. Both are fatal to Plaintiff's claims.

As for its breach of contract claim (Count III), Plaintiff does nothing more than recite the elements of the cause of action. The Complaint involves thousands of individual repair transactions over a period of approximately five years and asserts claims against 32 different insurance carriers, each of which has different policies, coverages, deductibles, limits, exclusions,

and other provisions. The Complaint fails to identify the specific insurance contracts at issue and fails to identify the specific terms or conditions of those contracts that purportedly were breached. Plaintiff's statutory bad faith claim (Count IV) likewise fails because it sets forth nothing more than conclusory allegations and contains no facts establishing any breach of any duty by any carrier, including the lone "example" claim. (Compl. ¶¶ 47-52.) The Complaint simply contains no facts tending to establish that Defendants unreasonably denied any claims. The few facts pleaded at most allege that Plaintiff thinks it should be paid more for repairs performed, which in and of itself is hardly a cause of action.

Nor does the Complaint state a claim for tortious interference with business relations (Count V). Plaintiff failed to allege any purposeful action by any Defendant that unjustifiably interfered with identifiable contracts with identifiable vehicle owners and caused Plaintiff damage. And Defendants' admitted economic interest in the transactions negate any arguable absence of justification, a necessary element for Plaintiff to state a claim.

Lastly, Plaintiff's joinder of 32 separate Defendant insurers violates Federal Rule 20 because the claims against the individual Defendants do not arise out of the same transaction or occurrence. Severance of Plaintiff's claims against each remaining Defendant is thus appropriate under Rule 21.

In sum, the Complaint should be dismissed in its entirety.

II. LEGAL STANDARD

To avoid dismissal, "'the complaint's allegations must plausibly suggest that the plaintiff has a right to relief, raising that possibility above a "speculative level"; if they do not, the plaintiff's complaint should be dismissed.'" *James River Ins. Co. v. Ground Down Eng'g, Inc.*, 540 F.3d 1270, 1274 (11th Cir. 2008) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Plausibility "requires pleading 'factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1264-65 (11th Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The Complaint "must plausibly establish each element of the cause of action" alleged. *Hogan v. Provident Life & Acc. Ins. Co.*, 665 F. Supp. 2d 1273, 1286 (M.D. Fla. 2009). If a plaintiff has "not nudged [his] claims across the line from conceivable to plausible, [his] complaint must be dismissed." *Twombly*, 550 U.S. at 570.

III. ARGUMENT

A. The Complaint Violates Rule 8's Pleading Standard

i. Plaintiff's Voluminous Exhibits Cannot Be Used to Circumvent Rule 8's "Short and Plain Statement" Requirement

Federal Rule of Civil Procedure 8 requires that the complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Fed. R. Civ. P. 8(a)(2). Plaintiff's Complaint wholly disregards this Rule. Plaintiff's 100-paragraph Complaint is almost entirely devoid of specific factual allegations and relies instead on thousands of pages of underlying transactional documents, organized in no meaningful fashion except for the carrier to which they relate. There is a unique and distinct Exhibit A to the Complaint for each Defendant, supposedly containing documents relevant to that particular Defendant insurer. The "Exhibit A" provided for Allstate Insurance Company alone, for example, totals more than 2,600 pages of business records and purported source documents, with no explanatory information or summaries and no way to know precisely what is being claimed on any given transaction, or whether the claim is being asserted by Plaintiff in its own right, or as an assignee of its customer, or both.

This type of pleading is antithetical to Rule 8 and requires dismissal. *United States v. Klausner Lumber One, LLC*, 2016 WL 7366891, at *2 (M.D. Fla. Dec. 2, 2016), *report and*

recommendation adopted, 2016 WL 7338442 (M.D. Fla. Dec. 19, 2016) ("[A]ttaching voluminous exhibits, particularly without doing anything more than generally referencing them in the Complaint, is inconsistent with the requirement that a complaint contain 'a short and plain statement' of the claim(s).").[2] Defendants should not be forced to wade through thousands of pages of exhibits to try and divine what claims are being made against them. *See Fitzgerald v. Dep't of Corr.*, 2007 WL 951861, at *1 (W.D. Wis. Mar. 26, 2007) ("[P]etitioner appears to want the court and respondents to look to the content of those exhibits in an attempt to determine the nature of his claims against them. . . . [I]t is contrary to the dictates of Fed.R.Civ.P. 8 to require respondents to guess at the nature of a petitioner's claims against them."). Dismissal is appropriate on this basis alone.

ii. The Improper Use of Shotgun Pleading Mandates Dismissal

In addition to the inappropriate use of thousands of pages of exhibits, Plaintiff's Complaint is an example of shotgun pleading in that it fails to identify any specific acts by particular Defendants. One type of shotgun pleading, which is employed here, "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1323 (11th Cir. 2015); *see also Magluta v. Samples*, 256 F.3d 1282, 1284 (11th Cir. 2001) (finding complaint a "quintessential 'shotgun' pleading of the kind [ ] condemned repeatedly" where it is "replete with allegations that 'the defendants' engaged in certain conduct, making no distinction among the fourteen defendants charged").

[2] *See also Hoffman v. BBVA Compass*, 2017 WL 11084354, at *3 (M.D. Fla. Aug. 3, 2017) (finding that complaint which "incorporates by reference 42 exhibits, which total almost 600 pages" is "far from a 'short and plain statement of the claim'"); *Cohen v. Delong*, 369 F. App'x 953, 957 (10th Cir. 2010) ("Rule 8 demands more than naked assertions and unexplained citations to voluminous exhibits.").

Most recently, in connection with other cases in this MDL, the Eleventh Circuit found that "[t]he group allegations of tortious interference constitute shotgun pleading because they fail to give any defendant fair notice of the allegations against it." *Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co.*, 953 F.3d 707, 732 (11th Cir. 2020).[3] Although that case involved multiple body shops and multiple insurers, it is applicable to this Complaint, which originally named 32 Defendants without differentiating between them throughout the Complaint. Because the Complaint does not give Defendants "adequate notice of the claims against them and the grounds upon which each claim rests," *Weiland*, 792 F.3d at 1323, it should be dismissed.

B. The Complaint Fails to State a Claim on Behalf of Any Party, Under Any Presented Theory

i. Plaintiff's Claims of Quantum Meruit (Count I) and Unjust Enrichment (Count II) Fail for the Same Reasons Already Determined by this Court

Plaintiff's claims for quantum meruit and unjust enrichment fail for a multitude of reasons. First and foremost, it is entirely unclear from the Complaint whether Plaintiff intends to assert these claims on its own behalf, or if Plaintiff is suing as a purported assignee of the vehicle owner. Either way, these claims fail.

Plaintiff cannot state claims of quantum meruit and unjust enrichment based on its assignments from vehicle owners because the vehicle owners' claims are barred by contract. It is undisputed that written insurance policies exist between Defendants and their insureds, and that the allegations in Plaintiff's Complaint arise out of those insurance policies. (Compl. ¶ 38.) "[I]t is a well-established rule that the doctrine of unjust enrichment is inapplicable when the

[3] Although the Eleventh Circuit rejected the defendants' group pleading argument in *Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indem. Co.*, 917 F.3d 1249, 1274-76 (11th Cir. 2019), the Court was only focused on the tortious interference claims at that point. Here, each one of the claims, including the contract claims, fails to identify specific actions taken by specific Defendants.

relationship between the parties is founded upon written agreements[.]" *Wilson v. Bank of Am., N.A.*, 48 F. Supp. 3d 787, 814 (E.D. Pa. 2014). It is equally well established that Plaintiff, as assignee can assert no greater rights than its assignors. *Crawford Cent. Sch. Dist. v. Com.*, 585 Pa. 131, 137 (2005). So, to the extent that Plaintiff is asserting quantum meruit or unjust enrichment in its supposed capacity as assignee, the claims fail because they are governed by written contracts between Plaintiffs' assignors and the various Defendants.

To the extent Plaintiff sues in its own right, the claims likewise fail. To state a claim for unjust enrichment under Pennsylvania law, Plaintiff must allege: "(1) a benefit conferred on the defendant by the plaintiff, (2) appreciation of such benefit by the defendant, and (3) acceptance and retention of such benefit under circumstances such that it would be inequitable for the defendant to retain the benefit without payment to the plaintiff." *iRecycleNow.com v. Starr Indem. & Liab. Co.*, 674 F. App'x 161, 162 (3d Cir. 2017). An unjust enrichment claim must allege "that there were benefits conferred on defendant *by plaintiff*." *Pellegrino v. Epic Games, Inc.*, 2020 WL 1531867, at *4 (E.D. Pa. Mar. 31, 2020). A claim of unjust enrichment by Plaintiff on its own behalf against Defendants fails because Plaintiff has not alleged that it conferred a benefit on the Defendants or that it would be unjust for Defendants to retain such alleged benefit.

In essence, Plaintiff's unjust enrichment and quantum meruit claims allege that Defendants benefited by retaining sums due to Plaintiff for the repairs Plaintiff performed on vehicles owned by insureds and third-party claimants who are allegedly covered by one of Defendants' insurance policies. The problem with this theory is that the retention of money allegedly owed for the repairs is not a "benefit" conferred on Defendants by Plaintiff. As this Court previously explained, "[t]he shop must confer a benefit on the insurance company before the insurance company's retention of any money would be wrongful; the retention itself cannot make the retention wrongful." *A & E*

Auto Body, Inc. v. 21st Century Centennial Ins. Co., 2015 WL 12867010, at *5 (M.D. Fla. Jan. 22, 2015). The Court went on to state that "even if one could characterize it as a 'benefit,' the insurance company's retention of its money is certainly not something that has been conferred upon it by the repair shop." *Id.* For the same reasons, Professionals' claim should be dismissed.

Additionally, in another prior decision in the MDL on several complaints brought by various body shops against many of the same defendant insurers—including the *Alliance* case involving Professionals—this Court dismissed the claims for unjust enrichment "because Plaintiffs have failed to allege facts showing that it would be unjust to allow Defendants to retain any benefit Plaintiffs may have conferred." *In re Auto Body Shop Antitrust Litig.*, 2015 WL 4887882, at *12 (M.D. Fla. June 3, 2015). The Court explained that:

> There is no allegation in any of these complaints that Defendants (rather than their insureds or claimants) asked any of the Plaintiffs to perform repairs. Plaintiffs must therefore plead facts sufficient to support a conclusion that their failure to bargain with Defendants before performing repairs was justified under the circumstances. The facts pled by Plaintiffs suggest the opposite is true. Plaintiffs do not allege that it was impossible or even impractical for them to bargain with Defendants over price before agreeing to perform repairs.

Id. at *13. The same is true here. The Complaint alleges that the "*automobile owners* . . . did select Professional to make repairs to their damaged automobiles and provided a written authorization to Professionals to perform those repairs[.]" (Compl. ¶ 39; emphasis added.)[4] Further, the Complaint contains no allegations that Defendants asked for Plaintiff's services, or that Plaintiff was unable to bargain with Defendants over a price before performing the repairs. Because the Complaint does not allege that Defendants "requested a benefit from [Plaintiff] or misled it in any way," the unjust enrichment count must be dismissed. *iRecycleNow.com*, 674 F. App'x at 163.

[4] *See also id.* ¶ 56 ("Plaintiff was contacted by the customer and then, *pursuant to the customer's authorization*, expended significant costs in the sense of labor and materials[.]").

Finally, "[b]ecause *quantum meruit* is a remedy, not a freestanding legal claim" under Pennsylvania law, this claim should be dismissed. *Ray Angelini, Inc. v. SEC BESD Solar One, LLC*, 2011 WL 5869906, at *3 (M.D. Pa. Nov. 21, 2011) (dismissing *quantum meruit* claim).

ii. The Complaint Fails to Allege Any Contract with Defendants, Let Alone Breach (Count III)

To state a claim for breach of contract under Pennsylvania law, a plaintiff must plead facts showing: "(1) the existence of a contract, including its essential terms, (2) a breach of the contract; and[ ] (3) resultant damages.'" *Bissett v. Verizon Wireless*, 401 F. Supp. 3d 487, 498-99 (M.D. Pa. 2019) (citations omitted). "[T]he complaint must allege facts sufficient to place the defendant on notice of the contract claim in such a way that the defendant can reasonably respond." *Id*. at 499 (quoting *Jones v. Select Portfolio Servicing, Inc*., 2008 WL 1820935, at *10 (E.D. Pa. Apr. 22, 2008)). Plaintiff's Complaint is devoid of any allegations supporting a breach of contract claim against Defendants.

Like Plaintiff's other claims, the Complaint fails to identify whether this count is brought on behalf of Plaintiff or its assignors. There are no allegations that Plaintiff had any independent contract with the Defendant insurers here. It goes without saying that a threshold element for breach of contract is the existence of a valid and enforceable contract, but to the extent Plaintiff sues in its own right, none is alleged. Thus, to the extent that Count III asserts a breach of contract claim on behalf of Plaintiff directly and not as an assignee, it must be dismissed.

To the extent Plaintiff is asserting the rights of its assignors, the claim fares no better. The only allegations relating to the underlying contracts of insurance states that "any individuals insured by the various defendants have brought their automobiles to the plaintiff's auto body repair shop for repairs that were to be covered pursuant to each insurance policy whether the policy was by and between the owner of the automobile or a policy with the liable third party." (Compl. ¶ 38.) This

says nothing about the terms of the insurance policies that allegedly cover the repairs or what the Defendant insurers' obligations were under their respective contracts, or what terms of each of those contracts were supposedly breached. This is fatal to Plaintiff's claim. *Geesey v. CitiMortgage, Inc.*, 135 F. Supp. 3d 332, 344 (W.D. Pa. 2015) ("[T]he Court concludes that Plaintiffs fail as a matter of law to state a claim for breach of contract because they fail to allege the essential terms of the purported contract.").

Moreover, to the extent that Plaintiff's assignors were third-party claimants, they would have no breach of contract claim against the tortfeasor's insurance company, because any insurance contract ran between the defendant insurer and the tortfeasor, not between the defendant insurer and the third-party claimant/assignor. If the claimant had no breach of contract claim, Plaintiff as assignee would likewise hold no breach of contract claim. *Crawford Cent. Sch. Dist.*, 585 Pa. at 142.

Further, the vague allegation that each Defendant "has failed and/or refused to make payment in full" (Compl. ¶ 78) is nothing more than the kind of "unadorned, the-defendant-unlawfully-harmed-me accusation" rejected in *Iqbal*, 556 U.S. at 678. "[C]ourts are not required to credit bald assertions and legal conclusions in the complaint. Stating that a contract was breached is stating a legal conclusion." *Chemtech Int'l, Inc. v. Chem. Injection Techs., Inc.*, 170 F. App'x 805, 808 (3d Cir. 2006) (holding that "the District Court did not need to credit the assertions that the defendant 'breached' and 'revoked' a contract").

iii. Plaintiff's Bad Faith Claim is Wholly Conclusory (Count IV)

Plaintiff attempts to assert a claim of bad faith under 42 Pa.C.S.A. § 8371 based on Defendants' alleged violation of the Pennsylvania Motor Vehicle Damage Appraisers Act (Compl. ¶ 84), by allegedly failing to "fully and properly evaluate each claim" (*id.* ¶ 85) and the supposed

"failure and/or refusal of each Defendant to fully and properly inspect and make full and proper payment for the repairs necessary to each vehicle" (*id*. ¶ 86). To state a claim under Section 8371, a "plaintiff must present clear and convincing evidence (1) that the insurer did not have a reasonable basis for denying benefits under the policy and (2) that the insurer knew of or recklessly disregarded its lack of a reasonable basis." *McDonough v. State Farm Fire & Cas. Co.*, 365 F. Supp. 3d 552, 557 (E.D. Pa. 2019) (citations omitted). None of Plaintiff's allegations are sufficient to state a claim.

First, Plaintiff has again failed to identify whether this claim is brought on its own behalf or on behalf its assignors. To the extent Plaintiff is attempting to bring this claim on its own behalf or on behalf of its third-party assignors (those who are not insureds under the policies), the claim must fail. "[U]nder Pennsylvania law, a third party claimant cannot have a cause of action for bad faith." *Empire Fire & Marine Ins. Co. v. Jones*, 739 F. Supp. 2d 746, 769 (M.D. Pa. 2010); *Strutz v. State Farm Mut. Ins. Co.*, 609 A.2d 569, 571 (Pa. Super. Ct. 1992) (dismissing bad faith claim brought by third-party claimant).

Even as to any validly assigned first-party claims, the Complaint fails. Each of Plaintiff's statements of bad faith conduct by Defendants is too conclusory to state a claim. "Repeatedly, courts have dismissed bad faith claims under Federal Rule of Civil Procedure 12(b)(6) where the complaint set forth 'bare-bones' conclusory allegations that did not provide a factual basis for an award of bad faith damages." *Mozzo v. Progressive Ins. Co*., 2015 WL 56740, at *2 (E.D. Pa. Jan. 5, 2015) (collecting cases). Here, Plaintiff alleges no facts to suggest that Defendants denied "benefits to plaintiff without a reasonable basis" or "knowingly or recklessly disregarding the lack of a reasonable basis to deny plaintiff's claim[.]" *Atiyeh v. Nat'l Fire Ins. Co. of Hartford*, 742 F.

Supp. 2d 591, 599 (E.D. Pa. 2010) (holding that plaintiff's "'bare-bones' conclusory allegations [ ] do not state a plausible bad faith claims").

Even the one "example" claim alleged at Paragraphs 47-52 of the Complaint establishes nothing more than that Plaintiff and the Defendant insurance carrier disagreed as to the proper reimbursable amount. No facts are pleaded that would suggest that the carrier acted in bad faith or "without a reasonable basis." *Id.* A bad faith claim "'is not present merely because an insurer makes a low but reasonable estimate of an insured's damages.'" *Smith v. State Farm Mut. Auto. Ins. Co.*, 506 F. App'x 133, 136 (3d Cir. 2012) (quoting *Johnson v. Progressive Ins.* Co., 987 A.2d 781, 784 (Pa. Super. Ct. 2009)). In *McDonough*, the court held that it was not sufficient to simply allege in conclusory fashion that the insurer:

> unreasonably withheld the payment of underinsured motorist benefits under the policy, failed to make a reasonable offer of settlement, presented a low offer of settlement, failed to engage in good faith negotiations, presented an offer of less than the amount due in an attempt to compel him to institute litigation, and failed to perform an adequate investigation of the value of his claim for underinsured motorist benefits.

365 F. Supp. 3d at 557–58. Plaintiff's conclusory statements similarly fail. *See Eley v. State Farm Ins. Co.*, 2011 WL 294031, at *4 (E.D. Pa. Jan. 31, 2011) (dismissing claim supported only by allegations that "Defendant has declined to settle Plaintiffs' claim").

Further, to the extent Plaintiff's bad faith claim is based on an alleged violation of the Pennsylvania Motor Vehicle Damage Appraisers Act, there is no private cause of action under this statute. Rather, the authority to enforce the alleged violations rests solely with the Pennsylvania Insurance Commissioner. *See* 63 P.S. § 860 ("The Insurance Commissioner is hereby charged with the administration and enforcement of this act and shall prescribe, adopt and promulgate rules and regulations in connection therewith."). Even if the statute permitted a private claim, Plaintiff failed to plead one here as it does not identify what portion of the statute Defendants allegedly

violated (Compl. ¶ 84), nor does it provide any factual detail regarding the alleged violations.[5]

Finally, to the extent Plaintiff asserts bad faith for repair work performed on customers' vehicles prior to August 23, 2015, Plaintiff's claim is barred by the statute of limitations. Plaintiff alleges that the transactions on which it bases its claims occurred "[a]t various times between August, 2013 up through the date of this filing[.]" (Compl. ¶ 38.) A bad faith claim under Section 8371 is subject to a two-year statute of limitations. *Ash v. Cont'l Ins. Co.*, 932 A.2d 877, 885 (Pa. 2007).[6] To the extent Plaintiff's claim is based on repair work performed prior to August 23, 2015, two years prior to filing the Complaint, Plaintiff's claim is time barred and should be dismissed.

iv. Plaintiff's Claim for Intentional Interference with Business is Untenable (Count V)

Plaintiff's final claim is that "Plaintiff had a contract with each of the vehicle owners to repair each" and that "[e]ach Defendant purposefully and intentionally interfered with that contractual relationship by failing and/or refusing to pay for all reasonable and necessary repairs" or by "attempt[ing] to direct Plaintiff to utilize inferior parts and/or to perform inferior service." (Compl. ¶¶ 91-93.) "Under Pennsylvania law, the elements of a claim for tortious interference with existing contractual relations are: (1) the existence of a contractual relation between the claimant and a third party; (2) purposeful action by the opposing party specifically intended to harm the existing relation; (3) the absence of privilege to do so; and (4) resulting damages." *Simon Prop. Grp., Inc. v. Palombaro*, 682 F. Supp. 2d 508, 511 (W.D. Pa. 2010). Plaintiff's allegations fall short on multiple grounds.

[5] While the statute prohibits appraisers from "requir[ing] that repairs be made in any specified shop," 63 P.S. § 861(d), Professionals does not allege that any insured was restricted in its choice of repair facilities or was not free to choose its own body shop, including Professionals.

[6] Further, the policies of each individual Defendant may contain contractual limitations periods that serve to bar claims brought pursuant to the policy.

First, "[f]or a plaintiff to prevail on an interference claim, Pennsylvania courts require a breach or nonperformance of the contract at issue and do not permit recovery on tortious interference claims where the performance of a contract was rendered more expensive or burdensome." *ClubCom, Inc. v. Captive Media, Inc.*, 2009 WL 249446, at *12 (W.D. Pa. Jan. 31, 2009). Plaintiffs do not allege that any insured breached his or her contract with Plaintiff as a result of any of Defendants' actions; indeed, Plaintiff acknowledges that it "completed the terms of its contract with each vehicle owner." (Compl. ¶ 95.) On that alone, tortious interference fails.

Second, Plaintiff's Complaint lacks any allegations that Defendants took purposeful actions intended to harm Plaintiff or engaged in any "independently wrongful conduct." Plaintiff alleges only that Defendants "fail[ed] and/or refus[ed] to pay for all reasonable and necessary repairs," or requested (apparently unsuccessfully) the use of parts or procedures that Plaintiffs say are "inferior" in some unspecified and unexplained way. (Compl. ¶¶ 92-93.) Neither allegation is sufficient to establish "wrongful" conduct to sustain a tortious interference claim. *Windsor Sec., Inc. v. Hartford Life Ins. Co.*, 986 F.2d 655, 664 (3d Cir. 1993) ("The concept of independently wrongful conduct becomes useless if breach of contract alone constitutes independently wrongful conduct under § 767. Most interferences with contract . . . entail a breach of contract."). Neither a refusal to pay as much as Plaintiff would like for repairs, nor a request to utilize more cost-effective parts and procedures (regardless whether Plaintiff views them as "inferior"), are independently wrongful or unlawful.[7]

[7] In the severed action against Progressive only, the Western District of Pennsylvania dismissed Plaintiff's tortious interference claim on the grounds that Professionals failed to "allege facts that give rise to a reasonable inference that Progressive specifically intended to harm Professionals' contracts with its customers." *Prof'l, Inc. v. Progressive Cas. Ins. Co.*, 2018 WL 10812141, at *7 (W.D. Pa. Feb. 26, 2018). While the court denied the motion to dismiss on the remaining counts, the pleading at issue was an amended complaint containing additional allegations. Further, the court there appeared to apply different pleading standards than those held acceptable in the Eleventh Circuit. Even under that court's standard though, the remaining counts should be dismissed for the reasons discussed herein.

Third, Plaintiff's statement that "[e]ach Defendant lacked privilege or justification for such interference" (Compl. ¶ 94) is far too conclusory to establish a lack of justification. "In Pennsylvania, the plaintiff must demonstrate a lack of privilege or justification as part of the prima facie case, and failure to do so results in dismissal of the claim." *E. Rockhill Twp. v. Richard E. Pierson Materials Corp.*, 386 F. Supp. 3d 493, 502 (E.D. Pa. 2019); *see also Simon Prop. Grp., Inc.*, 682 F. Supp. 2d at 512 (refusing to credit plaintiffs' "blanket, conclusory statement" that defendant's "interference with their existing and prospective contracts was not privileged").

Moreover, the allegations of the Complaint make clear that Defendants' actions were privileged and justified. A court applying Pennsylvania law looks at the factors listed in Restatement (Second) of Torts section 767 to determine if the defendant's conduct is privileged or justified. *E. Rockhill Twp.*, 386 F. Supp. 3d at 503.[8] "[W]here an actor is motivated by a genuine desire to protect legitimate business interests, this factor weighs heavily against finding an improper interference." *Windsor Sec., Inc.*, 986 F.2d at 665. Here, the Complaint clearly alleges that Defendants had a legitimate business interest in the transactions between Plaintiff and the vehicle owners, as the repairs "were to be covered pursuant to each insurance policy whether the policy was by and between the owner of the automobile or a policy with the liable third party." (Compl. ¶ 38.) Defendants' alleged refusal to reimburse Plaintiff, or to utilize less costly parts or procedures in the repair process, was therefore a privileged act and cannot form the basis of a tortious interference claim. *See Valley Forge Convention & Visitors Bureau v. Visitor's Servs., Inc.*, 28 F. Supp. 2d 947, 952 (E.D. Pa. 1998) ("A breach of contract motivated by a defendant's

[8] "Those factors include: '(a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference, and (g) the relations between the parties.'" *Id.*

desire to reduce costs or increase profits or to avoid the consequences of a 'bad bargain' will not support an intentional interference claim.").

Finally, a claim for tortious interference is also subject to a two-year statute of limitations. *See* 42 Pa.C.S.A. § 5524(3). Thus, to the extent Plaintiff's claim for tortious interference is based on repairs completed prior to August 23, 2015, Plaintiff's claim is time barred.

C. Plaintiff's Tort Claims Are Barred by *Res Judicata* with Respect to Certain Defendants

As mentioned above, Professionals' claims of unjust enrichment, quantum meruit, and tortious interference against many of the Defendant insurers have already been dismissed on the merits. In *Alliance of Automotive Service Providers, Inc. et al. v. State Farm Mut. Auto. Ins. Co. et al*., No. 6:14-cv-6008-GAP-EJK (M.D. Fla.) ("*Alliance*"), Plaintiff Professionals, among other body shops, brought claims for unjust enrichment, quantum meruit, and tortious interference numerous against defendant insurers, including many of the Defendants still in this litigation. (*See* Exhibit B.) As demonstrated in Allstate's Consolidated Supplemental Brief in support of its motion to dismiss *Alliance,* the dismissal of the original *Alliance* action became a final dismissal with prejudice when Plaintiffs failed to file their Amended Complaint by September 18, 2015. (No. 6:14-md-2557, ECF No. 228.)

Four factors must be met for a court to find a claim barred on the grounds of *res judicata*: "(1) the prior decision must have been rendered by a court of competent jurisdiction; (2) there must have been a final judgment on the merits; (3) both cases must involve the same parties or their privies; and (4) both cases must involve the same causes of action." *Swindell v. Fla. E. Coast Ry. Co.*, 178 F. App'x 989, 991 (11th Cir. 2006) (finding claim barred). Each factor is met here.

First, there is no question that this Court was of competent jurisdiction to decide the *Alliance* matter. Second, as the Eleventh Circuit recently held, that "orders of dismissal became

final judgments when the deadline to amend expired." *Auto. Alignment & Body Serv., Inc.*, 953 F.3d at 720. The district court's denial of Defendants' Motion to Strike the Amended Complaint (ECF No. 116) does not change this result, as the court did not have jurisdiction to decide the motion to strike. Like the Indiana and Utah complaints addressed by the Eleventh Circuit, the *Alliance* Plaintiffs "never moved to set aside those final judgments under Rules 59(e) or 60(b), so the district court 'surrendered jurisdiction' of the [ ] actions when the deadline to amend expired." *Id*. Third, both cases involve the same Plaintiff and many of the same Defendants. (*See* Exhibit B.) Fourth, both cases involve claims of unjust enrichment, quantum meruit and tortious interference. Therefore, these claims must be dismissed as precluded against the overlapping Defendants.

Even if *res judicata* does not apply, the lesser standard of collateral estoppel operates as a bar. *See Christo v. Padgett*, 223 F.3d 1324, 1339 (11th Cir. 2000) ("It is widely recognized that the finality requirement is less stringent for issue preclusion than for claim preclusion.").

D. Plaintiff's Complaint Should be Dismissed Pursuant to Rule 12(b)(6) for Improper Claim Splitting

In addition to the grounds discussed above, the Complaint should also be dismissed as a form of impermissible claim splitting. "The rule against claim splitting 'requires a plaintiff to assert all of its causes of action arising from a common set of facts in one lawsuit.'" *Yellow Pages Photos, Inc. v. Dex Media, Inc.*, 2019 WL 2247701, at *4 (M.D. Fla. May 24, 2019) (quoting *Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 841 (11th Cir. 2017)). The Eleventh Circuit has held that improper claim-splitting is a doctrine that derives from *res judicata*, which is appropriate grounds for dismissal under 12(b)(6). *Vanover*, 857 F.3d at 836 n.1 (citing *Concordia v. Bendekovic*, 693 F.2d 1073, 1075–76 (11th Cir. 1982)). Dismissing for improper claim-splitting "ensures that a plaintiff may not 'split up his demand and prosecute it by piecemeal, or present

only a portion of the grounds upon which relief is sought, and leave the rest to be presented in a second suit, if the first fails.'" *Id*. at 841 (quoting *Greene v. H&R Block E. Enters., Inc.*, 727 F. Supp. 2d 1363, 1367 (S.D. Fla. 2017) and *Stark v. Starr*, 94 U.S. 477, 485, 24 L.Ed. 276 (1876)). The claim-splitting doctrine "ensure[s] fairness to litigants and ... conserve[s] judicial resources." *Id*. In the Eleventh Circuit, to determine whether a plaintiff has engaged in improper claim splitting, the court applies a two-factor test: "(1) whether the case involves the same parties and their privies, and (2) whether separate cases arise from the same transaction or series of transactions." *Vanover,* 857 F.3d at 841–42. Applying the two-factor test to this action, there is clearly improper claim splitting that warrants dismissal.

i. The *Professionals* Complaint Involves the Same Parties and Privies as the Prior *Alliance* Action

The first factor of the claim-splitting analysis, whether the case involves the same parties and their privies, is satisfied here. As discussed above, Plaintiff Professionals is also a Plaintiff in the *Alliance* matter. The *Alliance* action was first filed on October 31, 2014. At the time that the *Professionals* case was filed in 2017, twenty-one of the thirty-two Defendants in the *Professionals* Action had already been named in this MDL, while six other of the Defendants were part of a family of insurers named in the MDL.

The procedural posture of the *Alliance* action illustrates that Professionals has engaged in improper claim splitting. The first complaint in *Alliance* was filed on October 31, 2014, and asserted both federal and state law claims. Judge Presnell dismissed the first *Alliance* complaint in August 2015, with leave to amend. The Amended Complaint in *Alliance* was filed on September 19, 2015 (one day after the deadline to amend). The Amended Complaint asserts only federal law claims. Professionals, however, filed state law claims (arising from the same core allegations) in this separate action, in the Court of Common Pleas in Pennsylvania.

In *Yellow Pages Photos*, the court held that the "same parties" factor extended to business entities in the same family. 2019 WL 2247701, at *4. There, the court dismissed an action filed against two defendants, YP LLC and YP Intellectual Property LLC, for improper claim splitting where one party, YP LLC, was also named in the earlier-filed lawsuit brought by the same plaintiff, and the other party, YP Intellectual Property LLC, "though only named as a defendant in [Yellow Pages]," was "a sister company" of YP LLC. *Id*. at *3-4. Accordingly, the first factor of the claim-splitting analysis is satisfied here, where the *Professionals* case involves the same parties "and their privies" as the *Alliance* case and several other cases in the MDL.

ii. The *Professionals* Case and the Other Cases in the MDL, Including *Alliance,* are Based on the Same Nucleus of Operative Fact

The second factor of the claim splitting analysis, whether separate cases arise from the same transaction or series of transactions, is also satisfied here. Courts in the Eleventh Circuit have held that cases "arise from the same transaction or series of transactions" when they are "based on the same nucleus of operative fact." *Yellow Pages Photos, Inc*., 2019 WL 2247701, at *4. This action "arise[s] from the same transaction or series of transactions" as the *Alliance* action.[9] *Id*.

Here, Plaintiff filed suit for alleged underpayment of "services rendered and repairs made by plaintiff, Professionals." (Compl. ¶ 40.) Plaintiff's Complaint contains the same core factual allegations that have been alleged in the earlier-filed *Alliance* action, as well as the twenty-four other copycat cases over which this Court has presided in this MDL. For example, this Complaint

[9] That is not to say that the claims against the various defendants have been properly joined. On the contrary, as demonstrated in the next section, the claims against each insurance carrier arise out of different facts, different insurance policies and different circumstances. As Plaintiffs' own voluminous exhibits show, Plaintiffs' claims are based on a separate series of transactions with each of the insurance company defendants. So, notwithstanding that the aggregate transactions in *Professionals* are largely the same aggregate transactions that were at issue in *Alliance*, the claims against the various insurers have not properly been joined and should be severed to the extent this action is not dismissed in its entirety.

and the initial *Alliance* complaint similarly assert:

Professionals	***Alliance***
"Defendants have engaged in intentional, ongoing and concerting courses of conduct in order to improperly and illegally control and depress the costs of automobile repairs, which has all been to the detriment of Plaintiff and the substantial benefit of Defendants." *Professionals*, No. 6:18-cv-06023 (M.D. Fla. Sept. 22, 2017) at ECF No. 1-2, Compl. ¶ 44.	"Defendants have engaged in an ongoing, concerted and intentional course of action and conduct … to improperly and illegally control and depress automobile damage repair costs to the detriment of the Plaintiffs and the substantial profit of the Defendants." *Alliance*, No. 6:14-cv-06008 (M.D. Fla. Oct. 31, 2014) at ECF No. 1, Compl. ¶ 83.
Plaintiff has "expended significant costs in the sense of labor and materials to the benefit of each Defendant and each Defendant's claimant or insured." *Professionals* Compl. ¶ 56.	"Performing said services and expending material resources benefitted Defendants and Defendants' insured/claimants for whom Defendants are required to provide payment for repairs." *Alliance* Compl. ¶ 145.
Defendants "attempt to direct Plaintiff to utilize inferior parts and/or to perform inferior service . . . ." *Professionals* Compl. ¶ 93.	Defendants direct Plaintiffs to "utiliz[e] used and/or recycled parts rather than new parts even when new parts are available and a new part would be the best and highest quality repair to the vehicle[.]" *Alliance* Compl. ¶ 118.
Defendants have "failed and/or refused to remit full reimbursement to Plaintiff for the necessary repairs to each vehicle." *Professionals* Compl. ¶ 69.	Defendants "refus[e] and/or fail[] to compensate Plaintiffs for ordinary and customary repairs and materials costs places Plaintiffs in the untenable position of either performing incomplete and/or substandard repairs . . . ." " Alliance Compl. ¶ 126.

Here, Plaintiff alleges certain additional facts, including that each policyholder has executed an "assignment of proceeds" allegedly "authorizing Professionals to recover any unpaid amount" from the insurers that was purportedly owed to Professionals. (Compl. ¶ 40.) The additional allegations in this action relating to the executed assignments of proceeds, however, do not "change[ ] the essential nature" of the claims, nor do they suggest that Professionals' "claims do not arise from the same 'series of transactions' as those that [it] asserted" in the *Alliance* complaint. *Rumbough v. Comenity Capital Bank*, 748 F. App'x 253, 256. (11th Cir. 2018). The

"nucleus of operative fact[s]" is the same in both actions. *Yellow Pages Photos, Inc.*, 2019 WL 2247701, at *4.

Further, these alleged "assignment of proceeds" agreements date back as far as 2013, well before the filing of the first complaint in *Alliance*, and certainly before the filing of the untimely Amended Complaint in *Alliance*. Allowing Professionals to avoid the "consequences" of its choice not to proceed with additional causes of action "available to it at the time it filed" the *Alliance* action, or to timely file its Amended Complaint in *Alliance* to add those causes of action, would "defeat the objective of the claim-splitting doctrine to promote judicial economy and shield parties from vexatious and duplicative litigation while empowering the district court to manage its docket." *Yellow Pages Photos, Inc.*, 2019 WL 2247701, at *5 (citing *Vanover*, 857 F.3d at 843).

Moreover, there are overlapping causes of action between this action and *Alliance*. Like the initial complaint in *Alliance*, the Complaint here asserts claims for unjust enrichment, quantum meruit, and tortious interference. Plaintiff's assertion of additional legal theories of breach of contract and bad faith does not create a different nucleus of operative facts and is of no consequence to the claim-splitting analysis. The Eleventh Circuit has held that the addition of separate causes of action in a later-filed suit does not prevent dismissal for improper claim splitting. *See Vanover*, 857 F.3d at 843; *see also Watkins v. City of Lauderhill Police*, 2018 WL 10246972, at *2 (S.D. Fla. Feb. 7, 2018) (plaintiff engaged in claim-splitting even though he added new causes of action to the later-filed action). "To rule otherwise would defeat the objective of the claim-splitting doctrine to promote judicial economy and shield parties from vexatious and duplicative litigation while empowering the district court to manage its docket." *Id.* (quoting *Vanover*, 857 F.3d at 843).

Finally, in its January 30, 2018 transfer order, the Judicial Panel on Multidistrict Litigation ("JPML") recognized the significant overlap between *Professionals* and the other actions in this MDL, including *Alliance*. *See Transfer Order*, MDL 2557, ECF No. 306. The JPML explained that "[l]ike many of the centralized actions, plaintiff Professional, Inc., which also is a plaintiff in the MDL, alleges that numerous insurers acted in concert to control and depress the reimbursement rates applicable to automobile collision repair shops and that plaintiff has been injured as a result." *Id.* Also, the JPML court noted, Professionals did not dispute that the actions "involve the same anticompetitive conduct alleged in MDL No. 2557," or that "the state law claims in its new actions overlap with the claims asserted in its previously centralized action." *Id*.

Accordingly, because this case does not raise a "new and *independent*" claim, it satisfies the second prong of the claim-splitting test. *Rumbough,* 748 F. App'x at 256 (emphasis added). Under the applicable two-factor test set forth by the Eleventh Circuit, the Complaint should be dismissed for improper claim splitting, at least to the extent the claims predate the deadline of the Amended Complaint in *Alliance*, because those causes of action were "available to it at the time it filed." *Yellow Pages Photos, Inc.*, 2019 WL 2247701, at *5.

E. Defendants Are Impermissibly Joined and Severance is Appropriate

The claims against the remaining 23 Defendant insurers have been improperly joined. In the event that this action is not dismissed in its entirety or proceeds on amended pleadings, the various claims against the various insurance companies should be severed.

The Federal Rules of Civil Procedure allow a plaintiff to join multiple defendants if: "(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in that action." Fed. R. Civ. P.

20(a)(2). When defendants are misjoined or improperly joined, a court may "on just terms, add or drop a party" or "sever any claim against a party." Fed. R. Civ. P. 21.

i. Plaintiff's Claims Against Each Defendant Arise Out of Many Different Transactions and Seek Individual Relief

The Eleventh Circuit applies the logical relationship test to determine if the right to relief asserted against the joined defendants arises out of the same transaction, occurrence, or series of occurrences under Rule 20. *Barber v. Am.'s Wholesale Lender*, 289 F.R.D. 364, 367 (M.D. Fla. 2013). "Under this test, a logical relationship exists if the claims rest on the same set of facts or the facts, on which one claim rests, activate additional legal rights supporting the other claim." *Id.* (quoting *Smith v. Trans-Siberian Orchestra*, 728 F. Supp. 2d 1315, 1319 (M.D. Fla. 2010). Professionals' claims against Defendants fail this test.

In *Barber*, the plaintiff borrowers brought claims against 10 lenders arising out of 15 separate mortgages. The court found that the claims did not arise out of the "same series of transactions or occurrences" because they "involve conduct by different Defendants, different loan documents, different dates, and different operative factual scenarios." *Id.* at 367. The court explained that "[w]hile Plaintiffs' claims may raise similar legal issues, they are not logically related because they do not arise from common operative facts." *Id.*

Like the *Barber* plaintiffs, Professionals sued myriad different insurers, each with their own policies with different insureds, different vehicle repairs at different times, different amounts alleged to be due, and other differences too numerous to count. As discussed above, in lieu of alleging facts related to each defendant, Professionals attached documents allegedly supporting its generic allegations as to each insurer as a separate "Exhibit A." Indeed, the exhibits for each Defendant explicitly state that "[d]ocuments pertaining to other Defendants and not relevant to this

Defendant are not attached." (*See e.g.* ECF No. 3-1 at 3.) Clearly Professionals' allegations against each defendant do not rest on the same set of facts.

Nor does the Complaint assert relief against the defendants jointly, severally, or in the alternative. *See* Fed. R. Civ. P. 20(a)(2). When there is "no allegation of joint liability or any allegation of conspiracy" and the only similarity is that the joined defendants violated the same state statute, "such commonality on its face is insufficient for joinder." *Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1360 (11th Cir. 1996), *abrogated on other grounds*. Although Professionals aggregates the total amount it alleges the Defendants owe Plaintiff, there is no allegation all Defendants owe the aggregate amount under any theory of joint and several liability or under any alternative theory. It would stretch all bounds of reason to argue all Defendants are liable to Professionals for the total amount demanded where Professionals concedes the actions one Defendant insurer took are "not relevant" to the actions of the other Defendants.[10]

Because Plaintiff's Complaint does not meet the requirements of Rule 20 for proper joinder, severance of the claims against the individual Defendants is appropriate.[11]

ii. Severance Will Not Affect this Court's Jurisdiction over Professionals' Claims Against Certain Defendants

This Court may maintain jurisdiction over Professionals' claims against many of the Defendants even if it severs these claims from the present action. Diversity jurisdiction exists where each plaintiff is diverse from each defendant, and the amount in controversy exceeds $75,000. *Underwriters at Lloyd's, London v. Osting-Schwinn*, 613 F.3d 1079, 1085 (11th Cir.

[10] Even if joinder were allowed under Rule 20, where "joinder would not accomplish the purpose it was designed for, namely to promote trial convenience and enhance the efficiency of litigation, severance is appropriate." *Malibu Media, LLC v. Doe*, 923 F. Supp. 2d 1339, 1343 (M.D. Fla. 2013). Here, the different claims against separate Defendants would result in "mini-trials" which would not serve the interests of justice. *Id*. at 1346.

[11] Notably, claims against certain of the original 32 Defendants have already been severed. (*See* ECF No. 32, noting severance of six Defendants prior to removal.)

2010). Professionals is a Pennsylvania corporation because it is incorporated in and has its principal place of business in Pennsylvania. *See* 28 U.S.C. § 1332(c)(1); Compl. ¶ 1. As shown in the attached chart (Exhibit C), diversity jurisdiction is present for many of the Defendants.

In any event, Defendants respectfully suggest that to the extent the Court finds that any of the improperly joined claims raise separate jurisdictional issues regarding diversity or requisite amount in controversy, that those be addressed on a carrier by carrier basis after severance.

IV. CONCLUSION

Based on the foregoing, Defendants request that the Court dismiss the entirety of Plaintiff's Complaint. Because each of the claims is plagued by more than just pleading deficiencies and otherwise fails as a matter of law, Defendants request that the dismissal be with prejudice. To the extent that the matter is not fully dismissed or proceeds on amended pleadings, the claims against each defendant should be severed.

Dated: August 7, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of August, 2020, 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/ Richard L. Fenton
Richard L. Fenton

Exhibit A

The following Defendants join the Motion to Dismiss:

- Allstate Insurance Company;
- Cincinnati Insurance Company;
- Encompass Home and Auto Insurance Company;
- Esurance Insurance Company;
- Horace Mann Insurance Company;
- Liberty Mutual Insurance Company;
- Nationwide General Insurance Company;
- Safeco Insurance Company of America;
- State Auto Mutual Insurance Company;
- State Farm Mutual Automobile Insurance Company;
- Travelers Property Casualty Insurance Company; and
- USAA Casualty Insurance Company.

EXHIBIT B

The following Defendants and their privies are named in both the current action brought by Professionals and the earlier-filed *Alliance* action:

- AAA Mid-Atlantic Insurance Company (also known as CSAA Mid Atlantic Insurance Company formerly doing business as AAA Mid Atlantic Insurance Company);
- Allstate Insurance Company;
- Donegal Mutual Insurance Company;
- Encompass Home and Auto Insurance Company;
- Esurance Insurance Company;
- Farmers Insurance Exchange;
- GEICO Indemnity Company;
- Hartford Casualty Insurance Company;
- Horace Mann Insurance Company;
- Nationwide General Insurance Company;
- Safeco Insurance Company of America;
- State Automobile Mutual Insurance Company;
- State Farm Mutual Auto Insurance Company;
- Travelers Property Casualty Insurance Company; and
- USAA Casualty Insurance Company.

EXHIBIT C

Defendant	**Amount in Controversy**	**State(s) of Citizenship**
Allstate Insurance Company	At least $397,928.05 (ECF No. 1 at ¶ 18)	Illinois (ECF No. 1 at ¶ 26)
Horace Mann Insurance Company	More than $75,000 (ECF No. 46 *in globo*)	Illinois (ECF No. 46 at ¶ 1)
Nationwide General Insurance Company	At least $83,244.04 (ECF Nos. 17-1 to 17-14, 18-1 to 18-29)	Ohio (ECF No. 40 at 2)
State Farm Mutual Automobile Insurance Company	At least $210,634.53 (ECF No. 8-1)	Illinois (ECF No. 8 at 2)
Travelers Property Casualty Insurance Company	More than $75,000 (ECF No. 2 at 2)	Connecticut (ECF No. 2 at 2)
USAA Casualty Insurance Company	More than $75,000 (ECF No. 14 *in globo*)	Texas (ECF No. 14)